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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VINCENT WU, DYLAN ARANA, GRIFFIN BRANHAM, KEITH DEZMIN, PHIL MAY, DANIEL MCBRIDE, JEFF O'TOOLE, ADAM PATTACHIOLA, SEONG-YOUP SUH, JOHN TWIGG, THOMAS WEILAND and KELLY WILLIAMS SCHELL,

Plaintiffs,

v.

BITFLOOR, INC. and ROMAN SHTYLMAN,

Defendants.

No. 19-CV-238 (RA)

OPINION & ORDER

RONNIE ABRAMS, United States District Judge:

INTRODUCTION

Plaintiffs Vincent Wu, Dylan Arana, Griffin Branham, Keith Dezmin, Phil May, Daniel McBride, Jeff O'Toole, Adam Pattachiola, Seong-Youp Suh, John Twigg, Thomas Weiland, and Kelly Williams Schell brought this action against Defendants Bitfloor, Inc. and Roman Shtylman, alleging that Defendants committed commodities fraud in violation of Section 6(c)(1) of the Commodities Exchange Act ("CEA"), 7 U.S.C. § 9(1), and Regulation 180.1(a) thereunder, 17 C.F.R. § 180.1(a), in addition to violating New York State law.

Plaintiffs, all customers of Bitfloor, allege that Defendants made false or misleading statements and omissions regarding Bitfloor's operations and that reliance on those statements and omissions caused Plaintiffs to suffer economic losses.

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Before the Court is Defendants' motion to dismiss Plaintiffs' First Amended Complaint ("FAC") pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6). In light of the fact that Plaintiff's CEA claim is time-barred, the motion is granted.

FACTUAL BACKGROUND

Except where otherwise noted, the following facts are drawn from Plaintiffs' FAC, the documents attached thereto, and the documents incorporated by reference. *See Faber v. Metro. Life Ins. Co.*, No. 08 Civ. 10588 (HB), 2009 WL 3415369, at *1 n.1 (S.D.N.Y. Oct. 23, 2009) ("In considering a motion to dismiss, the Court may consider documents attached as an exhibit to the complaint or incorporated into the complaint by reference, [and] documents that are integral to the plaintiff's claims, even if not explicitly incorporated by reference . . . ."), *aff'd*, 648 F.3d 98 (2d Cir. 2011). These facts are assumed to be true for purposes of this motion. *See Myun–Uk Choi v. Tower Research Capital LLC*, 890 F.3d 60, 65 (2d Cir. 2018).

I. Parties

Bitfloor is a New York corporation with its principal place of business in New York.[1] FAC, Dkt. 45, ¶ 13. Bitfloor was incorporated in 2011 as an online exchange platform where customers could trade virtual currencies, including Bitcoin. *Id.* ¶¶ 18-19. Customers could buy and sell Bitcoin through Bitfloor, but could also hold their Bitcoin (and other currencies, including traditional fiat currencies) in digital "wallets" that functioned similarly to bank accounts. *Id.* ¶¶ 20-21. Bitfloor charged customers fees for its services. *Id.* ¶ 21. Shtylman owns, operates, and controls Bitfloor as its Chief Executive Officer. *Id.* ¶ 14.

[1] The parties dispute whether Bitfloor still exists as a corporate entity. *Compare* FAC ¶ 32 ("Bitfloor stated it was no longer in business. However . . . Defendants renewed their ownership of 'bitfloor.com' with Namecheap.com . . . ."), *with* Defs.' Mot. to Dismiss ("Defs.' MTD"), Dkt. 22, at 1 (noting Bitfloor is "a now defunct corporation"), *and* Defs.' Reply in Supp. of Mot. to Dismiss, Dkt. 31, at 3 ("The fact that someone later renewed ownership of the bitfloor.com domain name is wholly irrelevant to whether New York dissolved the company.") (citation omitted).

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Plaintiffs are residents of New York, other states, Canada, and the United Kingdom. *Id.* ¶¶ 1-12. Plaintiffs "bought, sold, and held bitcoin at Bitfloor from time to time." *Id.* ¶ 21. Plaintiffs allege that they presently "hold" various amounts of Bitcoin in their Bitfloor wallets that they are "not able to access or sell." *Id.* ¶¶ 1-12.

II. Bitfloor's Closure

By June 2012, Bitfloor had grown to become the fourth-largest Bitcoin exchange in the world. *Id.* ¶ 33; FAC Ex. 1 ("Bitcoin Magazine Report") at 1. However, on April 19, 2013, *Bitcoin Magazine* reported on an announcement by Shtylman (the "2013 Shutdown Announcement") that Bitfloor would "cease all trading operations indefinitely." Bitcoin Magazine Report at 2.[2] The 2013 Shutdown Announcement stated that Bitfloor's closure was due to the closure of its U.S. bank account by its banking partner, Capital One, which meant that it could "no longer provide the same level of USD deposits and withdrawals as [it had] in the past." *Id.* Accordingly, the 2013 Shutdown Announcement stated that "[o]ver the next days" Bitfloor would "be working with all clients to ensure that everyone receives their funds." *Id.*

Plaintiffs allege that they did not receive any notice from Bitfloor concerning the 2013 Shutdown Announcement and that they are not aware of any other Bitfloor customer who received such notice directly from Bitfloor. FAC ¶ 28. In addition, Plaintiffs allege that "Defendants did not return the phone calls from the Plaintiffs," although they do not plead any facts regarding the dates of or circumstances surrounding those purported phone calls. *Id.* ¶ 31.

[2] Although Plaintiffs dispute the facts alleged in the Shutdown Announcement and dispute receiving the Shutdown Announcement at the time it was made, FAC ¶ 28, they do not dispute that the Shutdown Announcement was printed in *Bitcoin Magazine* on or about April 19, 2013, *id.* ¶ 26. Moreover, Plaintiffs attach the Shutdown Announcement as an exhibit to the FAC, and "[a] complaint is also deemed to include any written instrument attached to it as an exhibit." *Sierra Club v. Con-Strux, LLC*, 911 F.3d 85, 88 (2d Cir. 2018) (internal quotation marks and citations omitted). The Court therefore accepts as true that the Shutdown Announcement was published in Bitcoin Magazine on or about April 19, 2013.

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Plaintiffs further allege that Defendants "deliberately closed their site making it impossible for Plaintiffs to contact Defendants and/or recover their property." *Id.* ¶ 34.

III. Shtylman's Courtesy Letter to NYDFS

On January 10, 2018, Shtylman, through his prior counsel, submitted a letter to the New York Department of Financial Services ("NYDFS") in response to a consumer complaint made to NYDFS regarding "Bitfloor.com." FAC ¶ 32; FAC Ex. 2 ("Courtesy Letter") at 1.[3] The Courtesy Letter stated:

- "Bitfloor.com is the former website of the former company, Bitfloor, Inc.," which "effectively ceased operations on April 21, 2013" after Capital One ended its services. "Bitfloor made a public announcement of this fact on its website and in numerous emails sent to Bitfloor customers." Courtesy Letter at 1. "Bitfloor operated in wind-down mode for some period of time thereafter, processing withdrawals of bitcoins and returning US dollar deposits to previous Bitfloor customers that it was able to identify." *Id.*
- Bitfloor "was dissolved in August 2016." *Id.* A record of dissolution from the New York State Department of State, Division of Corporations indicating that Bitfloor was dissolved on August 31, 2016 was attached to the Courtesy Letter. *Id.* at 1, 3-4.
- "Notwithstanding Bitfloor's best efforts, approximately $59,000 in US dollar deposits was unable to be returned to Bitfloor customers. This money was on deposit with the Internet Archive Federal Credit Union in 2016, until that bank closed operations and the money in Bitfloor's account there was forfeited to the US government." *Id.* at 1.
- "Following this forfeiture, and the return of bitcoins to Bitfloor's customers, Bitfloor was dissolved," and therefore "there is no longer a Bitfloor entity that has funds or bitcoins to

[3] The complaint was made by a "Mr. Jeff O'Toole." It appears that this is the same individual now before the Court as a plaintiff.

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redress [the] complaint. Moreover, Mr. Shtylman has no specific recollection of [the complainant's] account or his attempts to withdraw his bitcoins, which is not surprising given the amount of time that has passed since the events alleged in [the] complaint." *Id.*[4]

PROCEDURAL HISTORY

Plaintiffs commenced this action by filing the initial complaint on January 11, 2019. Dkt. 4. Defendants moved to dismiss the initial complaint on April 16, 2019. Dkt. 22. After the parties completed briefing on Defendants' motion to dismiss, Dkts. 29-31, the Court granted Plaintiffs leave to file an amended complaint and provided that the parties could file supplemental briefing on Defendants' pending motion to dismiss, Dkt. 41. Plaintiffs filed the First Amended Complaint—the operative complaint in this action—on June 28, 2019. Dkt. 45. The parties then submitted supplemental briefing on Defendants' motion to dismiss. Dkts. 46-48.

In the First Amended Complaint, Plaintiffs plead violations of the Commodities Exchange Act and the regulations promulgated thereunder, as well as various New York State statutory and common law claims including breach of contract, conversion, fraud, deceptive business practices in violation of New York State's General Business Statute § 349, breach of fiduciary duty, loss of opportunity, negligent misrepresentation, unjust enrichment, and bailment/constructive trust. *See* FAC ¶¶ 51-82.

[4] Plaintiffs do not dispute the fact that Shtylman made the statements in the January 18, 2018 Courtesy Letter, FAC ¶ 32, and attach the Courtesy Letter to the FAC, including the record of dissolution attached thereto, *id.* at Ex. 2. The existence of the Courtesy Letter and record of dissolution are therefore accepted as true for the same reason that the existence of the 2013 Shutdown Announcement is accepted as true. *See supra* note 2.

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