

No. 22-51124

IN THE
**United States Court Of Appeals
For The Fifth Circuit**

KEVIN CLARKE; TREVOR BOECKMANN; HARRY CRANE; CORWIN SMIDT; ARISTOTLE
INTERNATIONAL, INCORPORATED; PREDICT IT, INCORPORATED; MICHAEL BEELER;
MARK BORGHI; RICHARD HANANIA; JAMES D. MILLER; JOSIAH NEELEY; GRANT
SCHNEIDER; WES SHEPHERD,
Plaintiffs-Appellants,

v.

COMMODITY FUTURES TRADING COMMISSION,
Defendant-Appellee.

On Appeal from the United States District Court for the
Western District of Texas, No. 1:22-cv-00909-LY

**UNOPPOSED MOTION TO UNSEAL EXHIBIT 1 TO
THE CFTC'S SUGGESTION OF MOOTNESS**

Robert A. Schwartz
General Counsel
Anne W. Stukes
Deputy General Counsel
Kyle M. Druding
Assistant General Counsel
U.S. COMMODITY FUTURES
TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581
Phone: (202) 418-6024
Fax: (202) 418-5521
kdruding@cftc.gov

March 23, 2023

CERTIFICATE OF INTERESTED PERSONS

No. 22-51124

KEVIN CLARKE, ET AL.,
Plaintiffs-Appellants,

v.

COMMODITY FUTURES TRADING COMMISSION
Defendant-Appellee.

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Plaintiffs-Appellants:

Kevin Clarke
Trevor Boeckmann
Harry Crane
Corwin Smidt
Aristotle International, Inc.
Predict It, Inc.
Michael Beeler
Mark Borghi
Richard Hanania
James D. Miller
Josiah Neeley
Grant Schneider
Wes Shepherd

Counsel:

For Plaintiffs-Appellants:

Michael J. Edney
Shannen Coffin
John J. Byron

For Defendant-Appellee:

Robert A. Schwartz
Anne W. Stukes
Kyle M. Druding

Defendant-Appellee:

United States Commodity Futures
Trading Commission

/s/ Kyle M. Druding

Kyle M. Druding

Counsel of Record for Defendant-Appellee

The United States Commodity Futures Trading Commission (“CFTC”) previously requested that the Court temporarily seal the nonpublic version of Exhibit 1 to the CFTC’s Suggestion of Mootness. *See* ECF Nos. 78 & 79 (Mar. 3, 2023). This Court granted that motion on March 7, 2023. ECF No. 85

Exhibit 1 is a true and correct copy of CFTC Letter No. 22-03, which was sent by Division of Market Oversight (“DMO”) staff to non-party Victoria University of Wellington, New Zealand (“the University”) on March 2, 2023. The public version of Exhibit 1 redacts certain information that was included in a document sent to DMO staff by the University, for which the University had sought confidential treatment under 17 C.F.R. § 145.9.

The University has since communicated to CFTC staff that it is waiving any potential confidentiality protections under 17 C.F.R. § 145.9 as to Exhibit 1 and the underlying document sent to DMO staff by the University. As such, the CFTC respectfully requests that this Court remove that temporary sealing order and replace the redacted version of Exhibit 1 on the public docket with the unredacted version previously submitted under seal (ECF No. 78).

The undersigned has reached out to counsel for Plaintiffs-Appellants, who indicated that they do not oppose this Motion to Unseal.

Dated: March 23, 2023

Respectfully submitted,

/s/ Kyle M. Druding

Robert A. Schwartz

General Counsel

Anne W. Stukes

Deputy General Counsel

Kyle M. Druding

Assistant General Counsel

U.S. COMMODITY FUTURES

TRADING COMMISSION

Three Lafayette Centre

1155 21st Street, N.W.

Washington, DC 20581

Phone: (202) 418-6024

Fax: (202) 418-5521

kdruding@cftc.gov

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2023, I caused the foregoing Motion to Unseal to be filed with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit and served on Plaintiffs-Appellants, using the Court's CM/ECF system, as all participants in this case are registered CM/ECF users.

/s/ Kyle M. Druding
Kyle M. Druding

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Motion to Unseal complies with the type-volume limits of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 27(a)(2)(B) and 32(f), it contains 213 words.

2. I hereby certify that this Motion to Unseal complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2019 in 14-point Times New Roman.

/s/ Kyle M. Druding
Kyle M. Druding

Dated: March 23, 2023