

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

KEVIN CLARK, TREVOR BOECKMANN,
HARRY CRANE, CORWIN SMIDT,
PREDICT IT, INC., ARISTOTLE
INTERNATIONAL, INC., MICHAEL
BEELER, MARK BORGHI, RICHARD
HANANIA, JAMES MILLER, JOSIAH
NEELEY, GRANT SCHNEIDER, and WES
SHEPHERD,

Plaintiffs,

v.

COMMODITY FUTURES TRADING
COMMISSION,

Defendant.

Civil Docket No. 1:22-cv-00909 DAE

The Honorable David Ezra

**DEFENDANT CFTC’S OPPOSED MOTION FOR EXPEDITED CONSIDERATION OF
FULLY BRIEFED MOTION TO TRANSFER VENUE**

The Commodity Futures Trading Commission (“CFTC”) respectfully requests that the Court rule on the CFTC’s pending motion to transfer venue, Dkt. 50, as quickly as practicable. The CFTC originally moved to transfer on September 20, 2022, 11 days after this case was filed. Dkt. 8. Briefing on a renewed motion to transfer was completed on November 3, 2023. Dkt. 50, 52, 54. As explained below, Fifth Circuit precedent requires that motions to transfer venue be given “top priority.” *In re TikTok Incorporated*, 85 F.4th 352, 362 (5th Cir. 2023). A prompt ruling on the motion will benefit the parties and the Court by removing uncertainty and enabling the parties to take the correct venue into consideration as the case proceeds. Plaintiffs have not consented to this motion.

PROCEDURAL HISTORY¹

Plaintiffs filed this case on September 9, 2022. Dkt. 1. The CFTC filed a motion to transfer venue to the District of Columbia pursuant to 28 U.S.C. § 1404(a) on September 20, 2022. Dkt. 8. On December 12, 2022, Magistrate Judge Mark Lane filed a Report and Recommendation recommending that the motion be granted. Dkt. 31. Plaintiffs filed an objection on December 27, 2022. Dkt. 33.

Meanwhile, on December 23, 2022, Plaintiffs appealed the district court's constructive denial of Plaintiffs' previously filed motion for a preliminary injunction. Dkt. 32. On May 12, 2023, while the appeal was pending, this Court denied the CFTC's motion to transfer without prejudice, subject to re-urging. Dkt. 38. On July 21, 2023, the Court of Appeals issued an opinion ordering a preliminary injunction, with the mandate issuing on September 12, 2023. Dkt. 42. The Court of Appeals did not address venue.

The CFTC filed a re-urged motion to transfer on October 13, 2023. Dkt. 50. Plaintiffs responded on October 27, 2023. Dkt. 52. The CFTC filed its reply, completing briefing, on November 3, 2023. Dkt. 54. On November 27, 2023, with the consent of the CFTC, Plaintiffs filed a Second Amended Complaint. Dkt. 55. The CFTC's answer or dispositive motion in response is currently due on February 26, 2024. Text Order, Jan. 5, 2024.

ARGUMENT

In this Circuit, dispositions of motions to transfer venue under 28 U.S.C. § 1404(a) are required to be given “a top priority in the handling of a case.” *TikTok*, 85 F.4th at 362 quoting *In re Horseshoe Ent.*, 337 F.3d 429, 433 (5th Cir. 2003). See also, e.g., *In re: Apple Inc.*, 979 F.3d 1332, 1337-38 (Fed. Cir. 2020) (transfer motion “should unquestionably take top priority”).

¹ This history is limited to case developments most relevant to the present motion to expedite.

Passage of time does not eliminate the duty to act promptly on a pending transfer motion and a district court that delays cannot rely on intervening litigation developments as a reason to deny the motion. *TikTok*, 85 F.4th at 362-63.

There are compelling justifications for the requirement to give resolution of transfer motions priority over other litigation events. *See, e.g., Apple*, 979 F.3d at 1337-38 (improper for district court to address merits issues before deciding transfer motion). If, in the language of § 1404(a), “the interest of justice” justifies transfer, it makes logical sense that as much of the litigation as possible should take place in the more appropriate district. As the Court explained in *McDonnell Douglas Corp. v. Polin*, 429 F.2d 30 (3d Cir. 1970), transfer motions should be decided early because “the court which ultimately decides the merits should also decide the various questions which arise during the pendency of the suit instead of considering it in two courts.” *Id.* at 30. Conversely, if transfer is not justified, it is fairer and more efficient if the parties are informed of this as soon as possible. Resolution of the venue issue, one way or another, enables the parties to take into consideration the relevant local rules or local precedent in their pleadings and briefs, avoiding wasted effort and making the parties’ filings more helpful to the court that ultimately decides the case. Prompt resolution of the venue issue is particularly feasible in this case because the CFTC’s transfer motion is largely based on the Plaintiffs’ own allegations concerning the location of parties and conduct. *See Motion, Dkt. 50*, at 1-5 (citing Complaint and First Amended Complaint).

The Court should therefore promptly decide the CFTC’s motion to transfer venue. Ideally, if practicable, the motion should be decided before further filings by the parties are due.

CONCLUSION

For these reasons, the Court should grant the CFTC’s motion for an expedited ruling on

the pending transfer motion.

Respectfully submitted,

/s/ Martin B. White

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CERTIFICATE OF SERVICE

I certify that on January 10, 2024, I caused the foregoing document to be served on the Clerk of the Court using the Court's CM/ECF system, which will send notice to all counsel of record in this case.

/s/ Martin B. White
Martin B. White