

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

KEVIN CLARKE, 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 OPPOSITION TO PLAINTIFFS' MOTION FOR THIS COURT
TO REQUEST RETURN OF THE CASE FROM THE DISTRICT OF COLUMBIA AND
INTEGRATED REQUEST FOR EXPEDITED TREATMENT; RENEWED MOTION
FOR STAY OF TRANSFER ORDER; AND REPLY IN SUPPORT OF SUCH STAY**

Plaintiffs' motion for this court to request return of this case from the District Court for the District of Columbia should be denied.¹ Plaintiffs, in essence, ask this Court to request the District of Columbia Court to return the case merely as a matter of administrative convenience for further proceedings, even though this Court has determined on the merits that a transfer is appropriate. By contrast, in previous cases, requests for retransfer have typically been made

¹ If the motion to request return of the case is denied, the remainder of the relief requested in the motion would be moot.

after a determination that the transfer was wrong on the merits. *See, e.g., Def. Distrib. v. Bruck*, 30 F.4th 414, 433-36 (5th Cir. 2022); *In re: Ryze Claim Solutions, LLC*, 968 F.3d 701, 708-12 (7th Cir. 2020); *In re Warrick*, 70 F.3d 736, 740-41 (2d Cir. 1995); *Fine v. McGuire*, 433 F.2d 499, 500-02 (D.C. Cir. 1970); *see generally CCA Glob. Partners, Inc. v. Yates Carpet, Inc.*, 2005 WL 8159381 at *2 (N.D. Tex. Dec. 22, 2005) (retransferring case following transferor court's determination that it erred); *but see In re Nine Mile Ltd.*, 673 F.2d 242 (8th Cir. 1982) (directing district court to request retransfer where district court did not follow transfer procedure specifically recommended in Eight Circuit precedent); *Herman v. Cataphora Inc.*, 2013 WL 275960 (N.D. Cal. Jan. 24, 2013). Just as there is no authority in this district holding that a court must stay or delay its own decision to transfer a case, *see* Dkt. 66 at p. 3, there is also no authority holding that the transferor court should request return of a case when, as here, a party failed to seek a timely stay before transfer was complete.

In this case, it makes sense to follow the procedure outlined by the Fifth Circuit in *Defense Distributed* and request retransfer only if the Court of Appeals so orders, for several reasons. For this Court to request retransfer without a Court of Appeals determination on the merits would be an imposition on the transferee court. It risks treating this case like a yo-yo since, if the case is returned, it would have to be transferred back to the District of Columbia if the original transfer is left in place by the Fifth Circuit in the forthcoming mandamus proceedings. Such an outcome is likely given the high bar for mandamus and this Court's well-reasoned decision. Plaintiffs' motion also wastes judicial resources by requiring additional district court proceedings in two districts before Plaintiffs proceed with their planned mandamus petition.

The proper course for the Plaintiffs, if they disagree with the transfer, is to use the

procedure set forth in *Defense Distributed* and petition for mandamus in the Court of Appeals. If the Court of Appeals so orders, this Court can request retransfer at the proper time, without prematurely creating additional work for two judicial districts.

CONCLUSION

Plaintiffs' motion should be denied.

Respectfully submitted,

/s/ Martin B. White

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CERTIFICATE OF SERVICE

I certify that on January 26, 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