

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KALSHIEX LLC,

Plaintiff,

v.

COMMODITY FUTURES TRADING
COMMISSION,

Defendant.

Civil Action No. 1:23-cv-03257 (JMC)

**Defendant Commodity Futures Trading Commission’s Motion
for Leave to File Supplemental Memorandum Responding to New Issues
Raised at May 30, 2024 Hearing on Cross-Motions for Summary Judgment**

Defendant Commodity Futures Trading Commission (“CFTC” or “Commission”) seeks leave of the Court to file the attached supplemental memorandum in support of its cross-motion for summary judgment in order to respond to new arguments raised by plaintiff KalshiEx, LLC (“Kalshi”) at the May 30, 2024 hearing on summary judgment. In support of this motion, the CFTC represents and states as follows:

1. On May 30, 2024 the Court held a hearing on the parties’ cross-motions for summary judgment filed in the above-captioned proceeding.
2. At the hearing, Kalshi asserted two new arguments: (1) that the terms “agreements, contracts, or transactions” in CEA Section 5c(c)(5)(C) are not three separate terms as written, but a “sort of triplet” referring to the “instrument” that “appears throughout the statute” without giving “independent significance” to any of the three, Tr. 9-10; and (2) that because the Commission has not prohibited Kalshi from offering certain *other* event contracts whose underlying events are “contests of others” (as the election-betting contracts are here), the Commission is arbitrarily classifying Kalshi’s election-betting contracts as “gaming,” Tr. 76.

3. Because Kalshi raised a new statutory construction argument which referenced language “throughout the statute” without specific cites to which the CFTC could respond at argument, and because Kalshi asserted a new argument in rebuttal where the CFTC did not have the benefit of rebuttal of its own, the CFTC has not had the opportunity to adequately respond to these new arguments in briefing or at the May 30, 2024 hearing.

4. Permitting the CFTC to file the supplemental memorandum will enable the CFTC to fully address the newly raised arguments, which may assist the Court in deciding the parties’ cross-motions for summary judgment.

5. In accordance with Local Rule 7.1(m), counsel for the CFTC has conferred with counsel for Kalshi who has stated that Kalshi will oppose this motion.

For the foregoing reasons, the CFTC respectfully requests that this Court permit the CFTC to file the attached supplemental memorandum in response to the new arguments raised by Kalshi at the May 30, 2024 hearing on summary judgment. A proposed order granting this request is attached.

Dated: June 10, 2024

Respectfully submitted,

/s/ Raagnee Beri

Raagnee Beri

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CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2024, I served the foregoing on counsel of record using this Court's CM/ECF system.

/s/ Raagnee Beri