

**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. 1:24-cv-00614-DAE

The Honorable David Alan Ezra

**PARTIES' THIRD JOINT SCHEDULING RECOMMENDATIONS
PURSUANT TO ORDER DATED JUNE 18, 2024**

Pursuant to orders of this Court, the parties previously filed joint scheduling recommendations on October 4, 2023, Dkt. 47, and January 3, Dkt.58. The Court has not, to date, ruled on these recommendations. In response to the Court's June 18, 2024, Order for Joint Scheduling Recommendations, Dkt. 81, the parties state as follows:

1. The parties do not consent to Magistrate Judge jurisdiction.
2. On July 16, 2024, Defendant Commodity Futures Trading Commission filed a motion to for judgment on the pleadings in favor of Plaintiffs, with vacatur of the letters at issue in this case. Dkt. 82. This motion is currently pending.
3. The parties disagree on some scheduling recommendations, indicated, where relevant, below.

SCHEDULING RECOMMENDATIONS

1. Plaintiffs recommend a 90-day period for the parties to explore a consensual resolution, including for the Commission to consider certain aspects of a proposal through normal administrative channels, expiring October 1, 2024. Plaintiffs have made a settlement proposal to the Commission (which the Commission has rejected), and the requested settlement period would give the parties additional time to pursue a negotiated resolution to this case. By incorporating this settlement period, Plaintiffs also seek to reduce strain on this Court's docket. *See* Dkt. 61 at 9-10. Defendant, based on previous settlement discussions, believes that proceedings should not be delayed for this purpose.¹

2. Plaintiffs recommend mediation if the matter is not resolved in foregoing period, October 1-October 15, 2024. Defendant, based on previous settlement discussions, believes that proceedings should not be delayed for this purpose.

3. Plaintiffs' response to Defendant's motion for judgment on the pleadings. Plaintiffs recommend that the briefing be due at the end of their proposed settlement negotiation period, October 1, 2024. In the event the settlement period is rejected by the Court, August 26, 2024

4. Defendant's reply to Plaintiffs' response to Defendant's motion for judgment on the pleadings. Plaintiffs recommend October 21, 2024. In the event the settlement period is rejected, September 23, 2024.

¹ In addition, in the view of Defendant, the language of the first sentence of Plaintiffs' recommendation could potentially be construed as affecting Defendant's internal administrative decision procedures, although it is ambiguous on this point. In the view of Defendant, such a construction would be inappropriate and not have a legal basis.

5. The Plaintiffs intend to amend their complaint to account for intervening developments. Deadline for moving for leave to amend, September 15, 2024. Defendant will oppose further amendment of the complaint.

6. Court ruling on Defendant's motion for judgment on the pleadings. Date TBD.²

7. Defendant's filing of administrative record: Plaintiffs recommend October 1, 2024.³ Plaintiffs submit that there is no excuse for further delay of production of the administrative record. The CFTC has answered, has not moved to dismiss, and, in the view of Plaintiffs, has no right to delay production of the administrative record. Defendant recommends 30 days after Court rules on motion for judgment on the pleadings. In the view of Defendant, the motion must be decided on the pleadings and the Court's ruling may make record filing unnecessary.

8. Plaintiffs' motion for summary judgment: No later than January 1, 2024. In the view of Defendant, it may, at a later date, be appropriate to schedule an earlier deadline depending on the Court's treatment of some previously listed events in these recommendations.

9. Defendant's response and cross-motion for summary judgment. No later than 40 days after Plaintiffs' motion for summary judgment.

10. Plaintiffs' response in opposition to and reply in support of summary judgment. No later than 28 days after Defendant's response and cross-motion.

11. Defendant's reply in support of summary judgment. No later than 21 days after Plaintiff's response and reply.

² This ruling potentially could supersede or otherwise affect the remaining items in these recommendations.

³ The Plaintiffs reserve the right to seek discovery after reviewing the Government's production of the administrative record. Defendant will oppose discovery.

Respectfully submitted,

/s/ Martin B. White

Robert A. Schwartz (D.C. Bar No. 489240)

General Counsel

Anne W. Stukes (D.C. Bar No. 469446)*

Deputy General Counsel

Martin B. White (D.C. Bar No. 221259)*

Senior Assistant General Counsel

COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre

1155 21st Street, N.W.

Washington, DC 20581

Phone: (202) 993-1390

Fax: (202) 418-5567

mwhite@cftc.gov

* *Admitted pro hac vice*

/s/ Michael J. Edney

Michael J. Edney

Hunton Andrews Kurth LLP

2200 Pennsylvania Avenue, NW

Washington, DC 20037

T: (202) 778-2204

medney@huntonak.com

*Attorney for Plaintiffs 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,
and Wes Shepherd*

CERTIFICATE OF SERVICE

I certify that on July 22, 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