

**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

JOINT SCHEDULING RECOMMENDATIONS

Pursuant to Magistrate Judge Mark Lane’s August 14, 2024 order, Dkt. 91, the parties jointly recommend that deadlines be entered for the elements in Judge David Alan Ezra’s form Proposed Scheduling Order in Civil Cases, as set forth at pages 2-4, *infra*. The parties further preliminarily state as follows:

On July 16, 2024, during the week when scheduling recommendations were due under order of the Court, Defendant moved for judgment on the pleadings. Dkt. 82. The parties agreed—and asked the Court to order through the initial scheduling recommendations—that Plaintiffs’ response to the motion would be due no earlier than August 26, 2024, and Defendant’s reply would be due on September 23, 2024. Dkt. 84 ¶¶ 3-4. The parties reassert that agreed request and therefore respectfully request that the Court set the following dates as it pertains to the motion for judgment on the pleadings:

- a. Plaintiffs' response to the motion for judgment on the pleadings due August 26, 2024.
- b. Defendant's reply in support of its motion for judgment on the pleadings due September 23, 2024.

The parties' agreed recommended dates for the elements of the Court's form scheduling recommendations are as follows:

1. A report on alternative dispute resolution in compliance with Local Rule CV-88 shall be filed by December 15, 2024.

2. The parties asserting claims for relief shall submit a written offer of settlement to opposing parties by October 1, 2024, and each opposing party shall respond, in writing, by October 15, 2024.

3. The parties shall file all motions to amend or supplement pleadings or to join additional parties by January 6, 2025.

4. All parties asserting claims for relief shall file their designation of potential witnesses, testifying experts, and proposed exhibits, and shall serve on all parties, but not file the materials required by FED. R. CIV. P. 26(a)(2)(B) by April 15, 2025. Parties resisting claims for relief shall file their designation of potential witnesses, testifying experts, and proposed exhibits, and shall serve on all parties, but not file the materials required by FED. R. CIV. P. 26(a)(2)(B) by May 15, 2025. All designations of rebuttal experts shall be designated within 14 days of receipt of the report of the opposing expert.¹

¹ Defendant Commodity Futures Trading Commission ("CFTC") notes that the currently pending Second Amended Complaint, Dkt. 55, Counts I and II, alleges violations of the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* ("APA"). In the view of the CFTC, district court cases under the APA are usually decided by cross-motions for summary judgment, rather than by trial. *See, e.g., National Association of Manufacturers v. United States Securities and Exchange Commission*, 631 F. Supp. 3d 423, 427 (W.D. Tex. 2022) (stating that summary judgment is "proper mechanism" for deciding whether agency action complies with APA). As a result, in the

5. An objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, within 30 days of receipt of the written report of the expert's proposed testimony, or within 30 days of the expert's deposition, if a deposition is taken, whichever is later.

6. The parties shall complete all discovery on or before December 1, 2024. Counsel may by agreement continue discovery beyond the deadline, but there will be no intervention by the Court except in extraordinary circumstances, and no trial setting will be vacated because of information obtained in post-deadline discovery.

7. All dispositive motions shall be filed no later than March 10, 2025. Dispositive motions as defined in Local Rule CV-7(c) and responses to dispositive motions shall be limited to twenty (20) pages in length. Replies, if any, shall be limited to ten (10) pages in length in accordance with Local Rule CV-7(e). **If the parties elect not to file dispositive motions, they must contact the courtroom deputy on or before this deadline in order to set a trial date.**

8. The hearing on dispositive motions will be set by the Court after all responses and replies have been filed.

9. The trial date will be determined at a later date by the Court. The parties shall consult Local Rule CV-16(e)-(g) regarding matters to be filed in advance of trial. At the time the trial date is set, the Court will also set the deadline for the filing of matters in advance of trial.

view of the CFTC, scheduling elements 4 and 5 are likely to be inapplicable to resolution of the issues raised by the Second Amended Complaint. We emphasize, however, that to the extent the course of the litigation makes elements 4 and 5 relevant, all parties agree to the dates specified in the text.

10. All of the parties who have appeared in the action conferred concerning the contents of the proposed scheduling order, and the parties have agreed as to its contents with the exception of the “note” in footnote 1. The parties therefore do not present positions or reasons for disagreement as to the contents of the proposed scheduling order. All parties have been served through counsel with the papers in this case and these scheduling recommendations.

Respectfully submitted,

/s/ Martin B. White

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CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2024, a copy of the foregoing was filed electronically and was served on counsel of record through the Court's electronic case filing/case management (ECF/CM) system.

/s/ Michael J. Edney _____
Michael J. Edney