

**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

**PLAINTIFFS' REPORT ON ALTERNATIVE DISPUTE RESOLUTION**

Pursuant to the Court's August 19, 2024, scheduling order, Dkt. 94, and Local Rule CV-88, Plaintiffs submit the following report on the status of alternative dispute resolution.

Consistent with this Court's requirements and expectation that the parties will engage in alternative dispute resolution to seek to resolve or narrow the issues in the case, the Plaintiffs have repeatedly proposed to have a day-long mediation before a retired federal judge. To remove all funding, logistical, and convenience objections, the Plaintiffs have offered for that mediation to be held in our Nation's capital, close to CFTC headquarters, so agency officials with settlement authority could meaningfully participate without travel, and to cover the cost of the retired federal judge's time if the agency cannot find a fund or appropriation for doing so.

Litigation counsel for the CFTC has repeatedly refused these requests, claiming that it does not believe settlement is possible. That position is reflected in a recent Government motion to be

excused from this Court's alternative dispute resolution requirements. Dkt. 105. Plaintiffs will continue to urge the agency to agree to mediation, as this Court's rules require, and will report on any further developments by the additional meet and confer deadline in advance of the January 7, 2025 hearing on the Government's motion to be excused from alternative dispute resolution. *See* Dkt. 106.

Dated: December 16, 2024

Respectfully submitted,

/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 hereby certify that on December 16, 2024, a copy of the foregoing was served on counsel of record via email because the Court's case management/electronic case filing (CM/ ECF) system was not functioning on the evening of December 16, 2024. Once the CM/ECF system became available again on December 17, 2024, the forgoing was filed electronically and was served on counsel of record through that system.

/s/ Michael J. Edney

Michael J. Edney

**NOTICE OF CM/ECF UNAVAILABILITY**

Plaintiffs were unable to file the forgoing report as planned on the evening of December 16, 2024, because the Court's case management/electronic case filing (CM/ECF) system was not functioning. Counsel for Plaintiffs attempted to log into the system several times over the course of an hour and a half but received an error message each time. Counsel for Plaintiffs notified the Court's CM/ECF Support Desk and Judge Ezra's chambers of the system malfunction, and served the report on counsel of record via email. On the morning of December 17, 2024, the Court's CM/ECF Support Desk confirmed that the system had experienced outages the night before. Once the system became available again on December 17, Plaintiffs promptly filed the report.

*/s/ Michael J. Edney*

\_\_\_\_\_  
Michael J. Edney