

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

KEVIN CLARKE, et al.

Plaintiffs,

v.

COMMODITY FUTURES TRADING
COMMISSION,

Defendant.

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Cause No. 1:24-cv-00614-DAE

The Honorable David A. Ezra

Magistrate Judge Mark Lane

**REPLY OF CFTC IN SUPPORT OF ITS MOTION TO EXTEND TIME TO COMPLY
WITH THE COURT’S JANUARY 8, 2025, ORDER**

Plaintiffs do not oppose the CFTC’s requested thirty-day extension but point out that the extension will make it impractical to comply with the current deadline for dispositive motions. (Plaintiffs’ Response, ECF No. 123.) The current deadline for dispositive motions is March 10, 2025. (ECF No. 94.) Plaintiffs suggest an extension of the dispositive motion deadline by at least 30 days. The CFTC agrees that extending the dispositive motion deadline makes sense, and the CFTC will file a separate motion to modify the Scheduling Order to extend the deadline for the parties to file dispositive motions.¹

¹ The parties are not in complete agreement on the length of the extension necessary for dispositive motions. The CFTC suggests an extension of six-months to allow the Court to rule on the parties’ two pending substantive motions: the CFTC’s Motion for Judgment on the Pleadings (ECF No. 82) and Plaintiffs’ Motion for Leave to File a Third Amended Complaint (ECF No. 117). As the CFTC will explain in its separate motion to modify the scheduling order, the Court’s ruling on these motions will inevitably impact the need for dispositive motions in the first place, and the issues to be addressed in any such motions if necessary. Further, if Plaintiffs are allowed leave to file their proposed Third Amended Complaint, the CFTC intends move to reopen discovery given the new parties and claims that would be at issue. This, too, would necessarily impact the dispositive motion deadline.

Plaintiffs suggest in their response that if the Court extends the CFTC's time to comply with the January 8 Order, the Court should require the CFTC to make productions of documents in the interim. The better course of action is to simply extend the compliance deadline by 30 days to allow the CFTC to complete its work. Attempts at interim productions will be inefficient, and likely disruptive of the internal process required at the CFTC to comply with the Court's January 8 Order.

Wherefore, the CFTC respectfully requests that the Court enter an order allowing the CFTC an extension of 28 days (to March 7, 2025 – the CFTC asked for 30 in its Motion, but revises that request to 28 days) to comply with the Court's January 8 order.

Respectfully submitted,

/s/ Carlin R. Metzger

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CERTIFICATE OF SERVICE

I certify that on February 7, 2025, 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/ Carlin R. Metzger

Carlin R. Metzger
Assistant General Counsel
U.S. COMMODITY FUTURES TRADING
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