

**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' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT

Plaintiffs Kevin Clarke, Trevor Boeckmann, Harry Crane, Corwin Smidt, Michael Beeler, Mark Borghi, Richard Hanania, James D. Miller, Josiah Neeley, Grant Schneider, Wes Shepherd, Predict It, Inc. (“PredictIt”), and Aristotle International, Inc. (“Aristotle”), and prospective Plaintiff *The Washington Free Beacon* (“*The Free Beacon*”), by and through their undersigned counsel and pursuant to Fed. R. Civ. P. 15(a)(2), hereby move for leave to amend the Second Amended Complaint for Declaratory and Injunctive Relief (Dkt. 55) against Defendant Commodity Futures Trading Commission (“CFTC” or the “Commission”) to address issues and information arising from the discovery process and to add claims based on violations of the First and Fifth Amendments to the United States Constitution against the Commission, its Chairman, Rostin Behnam, and the Director of the Commission’s Division of Market Oversight, Vincent McGonagle, stemming from the Commission’s actions to shut down the PredictIt Market

challenged in this matter. The Commission’s attempts to shut down the PredictIt Market violate the rights to freedom of speech, freedom of the press, and due process afforded to Plaintiffs and *The Free Beacon* by the Constitution of the United States. Justice requires that claims based on these violations, arising from the same facts as the existing claims in this action, be added to this action. Pursuant to Local Rule CV-7(B), an executed copy of the proposed Third Amended Complaint is attached hereto as Exhibit A.¹ For the convenience of the Court and the CFTC, a redline showing the changes between the Second Amended Complaint and Third Amended Complaint is attached as Exhibit B.²

BACKGROUND

In 2022, the CFTC abruptly attempted to revoke the PredictIt Market’s license to operate, which had been granted in 2014. *Clarke v. Commodity Futures Trading Comm’n*, 74 F.4th 627, 634-35 (5th Cir. 2023). On March 2, 2023, in an attempt to avoid an unfavorable ruling by the Fifth Circuit, the Commission issued CFTC Letter 23-03 (“2023 Letter”) as a replacement for its 2022 decision to close the Market, alleging a series of violations that, in its view, justified closing the Market in the very near future. Dkt. 55-3 at 3. The Fifth Circuit held that the CFTC’s effort to withdraw and replace its 2022 decision to close the Market “violate[d] the injunction pending

¹ The exhibits to the Third Amended Complaint are identical to those of the Second Amended Complaint (Dkt. 55) and will be filed together with the Third Amended Complaint should leave be granted.

² Counsel for the Plaintiffs conferred with counsel for the CFTC. Counsel for the CFTC indicated that the Commission intends to review the proposed Third Amended Complaint before deciding whether to consent to or oppose its filing. For their part, Plaintiffs were hoping that the parties would resolve certain discovery issues that would bear on the content of the amended complaint, a process of conciliation that definitively concluded in a lack of success on Thursday, January 2, 2025. Plaintiffs are amenable to a reasonable extension of time of the CFTC’s deadline to respond to this motion to allow time for that review and are hopeful that the CFTC will consent to the amendment, obviating the need for the Court to resolve this motion. Plaintiffs file this motion in order to timely comply with the Court’s scheduling order, which set a January 6 deadline for motions to amend—a timing that was designed to follow the completion of discovery.

appeal,” was an effort “to game the system,” and itself included arbitrary reasoning for closing the Market. *Clarke*, 74 F.4th at 641-43.

On November 27, 2023, Plaintiffs filed their Second Amended Complaint, adding allegations regarding the 2023 Letter, including that “[e]ach of these alleged violations is invalid and contrary to the text, context, and history of the No-Action Relief decision and extensive subsequent communications with CFTC staff. Taken together, the alleged violations cannot justify the preliminary conclusion that the No-Action Relief is void and should be withdrawn.” Dkt. 55 at 28 ¶ 93.

On July 16, 2024, the CFTC filed a motion for judgment on the pleadings, stating that “[f]or the purposes of this motion only, the CFTC assumes the accuracy of factual allegations in the [Second Amended Complaint]” but seeking not to be bound by those admissions in any future proceedings. Dkt. 82 at 1 n.1. Throughout the process, the Commission has appeared committed to exiting this litigation and then repeating its efforts to close the Market, with no tethers or limitations arising from the judicial disapproval of its actions leading to this litigation. The motion for judgment on the pleadings should be denied for the reasons set forth in the Plaintiffs’ opposition. Dkt. 96.

On August 16, 2024, the parties jointly submitted scheduling recommendations, including that “[t]he parties shall file all motions to amend or supplement pleadings or to join additional parties by January 6, 2025.” Dkt. 93 ¶ 3. The parties proposed this timing for seeking amendments of pleadings, in line with this Court’s model scheduling order, to follow the discovery process. The Court adopted the parties’ recommendations in a scheduling order issued on August 19, 2024, which gives the parties until January 6, 2025, to file motions to amend or supplement the pleadings or to join additional parties. Dkt. 94 ¶ 4. Plaintiffs and *The Free Beacon* bring this motion in

compliance with that deadline.

Plaintiffs and *The Free Beacon* seek to add four counts to the complaint: two counts seeking to remedy the violation of rights to free expression and to the press guaranteed by the First Amendment to the United States Constitution, and two counts designed to remedy violations of due process rights guaranteed by the Fifth Amendment to the United States Constitution. *See Ex. A ¶¶ 143-174*. In short, *The Free Beacon* is among the many media organizations that rely on the PredictIt Market as a source of information for reporting on political topics and events. The Commission's efforts to shut down the PredictIt Market will restrict the flow of this information to the press and restrict the press's ability to focus on topics that are part of the First Amendment's core protections, including national politics and the operation of our Nation's Government.

The manner of closing the PredictIt Market also has violated the constitutional due process rights of several Plaintiffs, including the requirements of adequate notice or opportunity to be heard. The amendment seeks a permanent injunction against future violations of the Plaintiffs' constitutional rights.

The amendment further seeks to add detail to the existing claims arising from the discovery process. The amendment alleges that the Commission's stated reasons for ending the PredictIt Market, articulated in its March action, are unsupported by the administrative record produced in discovery and are pretextual cover for the agency's true motivations. Some of these allegations arise from the agency's refusal to produce documents relevant to the decisions to end the PredictIt Market that were before the agency at the time it made those challenged decisions, but were not produced as part of the administrative record. These documents include communications from other institutions seeking authorization to offer political event contracts and citing PredictIt's ability to do so. Those documents would show that PredictIt's continued operation was creating a

political problem for Commission leadership, leading to the instruction to attempt to find grounds to cancel PredictIt's license to operate. *See* Ex. A ¶¶ 20-24.

ARGUMENT

A. Plaintiffs Are Entitled to Amend the Complaint

Federal Rule of Civil Procedure 15(a)(2) provides that a party may amend its pleading with the consent of all parties or “with the court’s leave,” which “should [be] freely give[n] when justice so requires.” Fed. R. Civ. P. 15(a)(2). The language of Rule 15(a) “evinces a bias in favor of granting leave [to amend].” *Jamieson By & Through Jamieson v. Shaw*, 772 F.2d 1205, 1208 (5th Cir. 1985) (quotation and citation omitted). Indeed, unless there is a “**substantial reason** to deny leave to amend, the discretion of the district court is not broad enough to permit denial.” *Dussouy v. Gulf Coast Investment Corp.*, 660 F.2d 594, 598 (5th Cir. 1981) (emphasis added). “The policy of the federal rules is to permit liberal pleading and amendment, thus facilitating adjudication on the merits while avoiding an excessive formalism.” *Jamieson*, 772 F.2d at 1208 (citing *Dussouy*, 660 F.2d at 598).

Accordingly, the Court must possess a “substantial reason” to deny a request for leave to amend. *Id.* Courts in the Fifth Circuit examine five factors in considering motions to amend: “(1) undue delay; (2) bad faith or dilatory motive on the part of the movant; (3) repeated failure to cure deficiencies by amendments previously allowed; (4) undue prejudice to the opposing party by allowing the amendment, and (5) futility of amendment.” *Jack v. Evonik Corp.*, 79 F.4th 547, 565 (5th Cir. 2023). “If none of those factors is present, the leave sought should be ‘freely given.’” *Id.* (quotation and citation omitted).

There is no substantial justification for denying Plaintiffs leave to file their Third Amended Complaint. First, this motion is brought in compliance with the agreed upon and court-ordered deadline for seeking leave to amend, so there has been no undue delay. That timing was designed

to follow discovery, and the amendments arise in part from what the Commission has produced and is withholding from production.

Second, Plaintiffs and *The Free Beacon* are not acting in bad faith or with a dilatory motive. As set forth in the previous paragraph, the goal of Plaintiffs is to remedy the illegal aspects of the Commission's efforts to close the PredictIt Market and to obtain injunctive relief against their repetition.

Third, Plaintiffs have not repeatedly failed to cure deficiencies in the complaint; no deficiencies have ever been found.

Fourth, the filing of this amendment will not cause any undue prejudice to the CFTC, Behnam, or McGonagle. There is no undue prejudice where, as here, "the challenged conduct . . . is essentially the same as that challenged in the initial pleadings." *Dussouy*, 660 F.2d at 599 (holding that leave to amend should have been granted one week before trial date). Instead, the amendment provides more detail on the alleged illegality of the Commission's actions, challenged from the beginning of this case and to bring greater granularity to existing claims from information gleaned from the discovery process.

Finally, the amendment is not futile. Plaintiffs' existing claims are far from flawed, as the Fifth Circuit has held that the Plaintiffs are likely to succeed on them to the point that a preliminary injunction is warranted. The added claims identify incremental legal defects in the Commission's actions and seek a durable remedy against illegal government action, through permanent injunctions against future violations of the Plaintiffs' constitutional rights.³

³ Denying leave to amend would also result in duplicative litigation. *The Free Beacon* has the right to sue the CFTC, Behnam, and McGonagle in a new action, which would be "the functional equivalent of granting the motion to amend." *Dussouy*, 660 F.2d at 600. The Federal Rules of Civil Procedure must be "construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding."

B. Plaintiffs Are Entitled to Join Additional Parties

“On motion or on its own, the court may at any time, on just terms, add or drop a party.” Fed. R. Civ. P. 21. The appropriate mechanism for adding parties to the case is through amendment of the complaint, and the scheduling order expressly envisions joining additional parties to this action. Dkt. 94 ¶ 4. Federal Rule of Civil Procedure 20 provides that:

Persons . . . may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

Fed. R. Civ. P. 20(a)(2). Both factors are present here. The constitutional claims asserted against Behnam and McGonagle arise out of the same series of occurrences as the claims against the CFTC, and questions of law and fact are common to the CFTC and its newly-named officials. *See* Ex. A. Moreover, the Third Amended Complaint seeks forward-looking injunctive relief against federal government officials in their official capacity, which is the appropriate mechanism to bring direct constitutional claims and to seek remedies for them. *See, e.g., Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326 (2015) (noting that Supreme Court has “long held” that federal courts may grant injunctive relief against federal officials alleged to have violated constitutional provisions to prevent future violations thereof). Accordingly, the Court should add them to this action.

Fed. R. Civ. P. 1. Denial of leave to amend would result in an additional case on the Court’s docket, “and disposition of the merits delayed, a result that rule 1 directs us to avoid and that undercuts the policy of the federal rules in favor of consolidating litigation to facilitate an efficient and expeditious resolution of disputes.” *Dussouy*, 660 F.2d at 600.

CONCLUSION

For the reasons set forth above, the Court should allow Plaintiffs and *The Free Beacon* to file the Third Amended Complaint.

Dated: January 6, 2025

Respectfully submitted,

/s/ Michael J. Edney

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and Wes Shepherd and prospective Plaintiff
The Washington Free Beacon*

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2025, 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

EXHIBIT A

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

KEVIN CLARKE, in his individual capacity,
TREVOR BOECKMANN, in his individual
capacity, HARRY CRANE, in his individual
capacity, CORWIN SMIDT, in his individual
capacity, PREDICT IT, INC., a Delaware
corporation, ARISTOTLE
INTERNATIONAL, INC., a Delaware
corporation, MICHAEL BEELER, in his
individual capacity, MARK BORGHI, in his
individual capacity, RICHARD HANANIA,
in his individual capacity, JAMES D.
MILLER, in his individual capacity, JOSIAH
NEELEY, in his individual capacity, GRANT
SCHNEIDER, in his individual capacity,
WES SHEPHERD, in his individual capacity,
and THE WASHINGTON FREE BEACON,

Plaintiffs,

v.

COMMODITY FUTURES TRADING
COMMISSION, ROSTIN BEHNAM,
Chairman of the Commodity Futures Trading
Commission, in his official capacity, and
VINCENT MCGONAGLE, Director of the
Division of Market Oversight, Commodity
Futures Trading Commission, in his official
capacity,

Defendants.

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

THIRD AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Kevin Clarke, Trevor Boeckmann, Harry Crane, Corwin Smidt, Michael Beeler, Mark Borghi, Richard Hanania, James D. Miller, Josiah Neeley, Grant Schneider, Wes Shepherd, Predict It, Inc. (“PredictIt”), Aristotle International, Inc. (“Aristotle”), and *The Washington Free Beacon* (“*The Free Beacon*”) by and through their undersigned counsel, allege for their Third

Amended Complaint for Declaratory and Injunctive Relief against Defendants Commodity Futures Trading Commission (“CFTC” or the “Commission”), CFTC Chairman Rostin Behnam, and Director of the CFTC’s Division of Market Oversight Vincent McGonagle as follows:

INTRODUCTION

1. Since 2014, the Victoria University of Wellington (“Victoria University”) has operated an online market for political-event contracts (the “PredictIt Market” or the “Market”). This case challenges the Commodity Futures Trading Commission’s decision and actions to arbitrarily, capriciously, without legally required process, and in violation of constitutionally guaranteed rights revoke its permission and license for the Market to operate. These decisions and actions attempt to deprive operators, academics, and traders of the benefits of the Market protected by the Commission’s license for the Market to function and to force the premature and otherwise improper liquidation of dozens of contracts, damaging those who invest in the Market, scholars who study and teach from the data produced by the Market, and the entities servicing the Market.

2. The PredictIt Market provides members of the public an opportunity to make investments based on their views about the likely outcome of future elections or other significant political events, like the passage of federal legislation or the nomination of Supreme Court Justices and cabinet officials. Essentially a stock exchange for political events, the PredictIt Market hosts dozens of event markets about the outcomes of future political events. Each event market includes one or more questions about a particular political event, such as the 2024 presidential election. Each question is binary—it must have a yes or no answer—and investors’ positions on the outcome are known as “contracts.” PredictIt Market users purchase “yes” or “no” contracts in an event market—*e.g.*, yes, Joe Biden will win reelection, or no, Joe Biden will not win reelection—for prices ranging from 1 to 99 cents. Contract prices fluctuate based on the investors’ willingness to

pay as measured by their view of the probability of the event taking place. If the prediction of the outcome of a contract is correct, it is redeemed for one dollar, while incorrect outcome predictions receive no payout.

3. Unlike a fully regulated stock, futures, or swaps market, however, investors are not permitted to purchase as many as they wish of any one contract. Instead, an investor may not invest funds in excess of \$850 in any one contract. In addition, the total number of active traders in any one contract is limited to 5,000. This is in line with the primary purpose of the Market—to be a small-scale market with an academic purpose to produce market-generated trading/pricing information regarding what informed investors believe the outcome is going to be, reinforced by a relatively small financial investment, without giving any one person enough of a financial stake through the Market to try to change the outcome of a political event.

4. Victoria University launched the PredictIt Market for the academic value of the pricing/trading data generated by investor trading on political event contracts and to study, among other things, whether markets are more accurate than polling. Indeed, the results data generated by the PredictIt Market have been used by more than 140 academics around the world, both in their teaching and research. Through this study, the percentage-trading price of election- and political-event contracts offered on the Market has been found to be a remarkably accurate predictor of the outcomes, as informed onlookers tend to put aside biases and other views when they put up even a modest financial investment on the outcome. This accuracy is reflected by the heavy reliance of news outlets on political-event markets in reporting on projected political outcomes. *See, e.g.,* Bernard Stanford, *There's a Glorious Website Where You Can Bet on Politics, and the U.S. is About to Kill it*, Slate (Aug. 14, 2022), <https://slate.com/business/2022/08/predictit-cftc-shut-down-politics-forecasting-gambling.html>; Victor Reklaitis, *Betting Markets Now See*

Democrats Keeping Their Grip on Senate in Midterm Elections, MarketWatch (Aug. 4, 2022), <https://www.marketwatch.com/story/betting-markets-now-see-democrats-keeping-their-grip-on-senate-in-midterm-elections-11659542352>; A.G. Gancarki, *Donald Trump Retakes 2024 Prediction Market Lead from Ron DeSantis*, Florida Politics (July 7, 2022), <https://floridapolitics.com/archives/537385-donald-trump-retakes-2024-prediction-market-lead-from-ron-desantis/>; UBS Editorial Team, *ElectionWatch: Potential Outcomes of the Midterms*, UBS Wealth Management USA (Apr. 22, 2022), <https://www.ubs.com/us/en/wealth-management/insights/market-news/article.1563885.html>; The Washington Free Beacon, *Donald Trump is the Betting Favorite to Win the 2024 Election*, (Jan. 7, 2022), <https://freebeacon.com/elections/donald-trump-is-betting-favorite-to-win-2024-election/>.

5. Plaintiffs Kevin Clarke, Michael Beeler, Trevor Boeckmann, Mark Borghi, Josiah Neeley, Grant Schneider, and Wes Shepherd (together, the “Investor Plaintiffs”) each have invested in hundreds of PredictIt Market event contracts over several years. Several of the Investor Plaintiffs hold event contracts that turn on the outcome of the 2024 presidential election and projecting the outcomes of political events occurring in 2025, for which they believe—based on informed views on political events and study of the fluctuations in the Market as an indicator of change—that they have chosen the correct outcome and wish to purchase further and future similar contracts. For each contract, the Investor Plaintiffs expect to realize a profit on their investments either by selling at a favorable point during the life of the market or by holding the contract to the conclusion of the market when they expect to redeem it at one dollar. The Investor Plaintiffs made their investments in PredictIt Market contracts based on their understanding that the Market’s offerings were permitted by the federal government and that their contracts could be traded until

the political event on which the contracts are based occurs. All Investor Plaintiffs would continue actively trading on the Market if it were permitted to continue to operate.

6. Plaintiffs Harry Crane, Richard Hanania, James D. Miller, and Corwin Smidt (together, the “Academic Plaintiffs”) are among the university professors and academics who rely on the PredictIt Market as a source of data for research and academic scholarship and as a pedagogical tool for teaching college and graduate students regarding political events and the efficiency of markets. Professors Crane, Miller, and Smidt, and Mr. Hanania, have relied and intend to draw on data generated by the PredictIt Market in their research in the fields of statistics, political science, and economics. They have also incorporated the PredictIt Market into their classes. By studying the PredictIt Market (a real-world, topical example of prediction markets), student engagement increases and students gain a practical understanding of the Market and its operation.

7. Plaintiff *The Washington Free Beacon* is an online newspaper reporting on national public policy and politics from our Nation’s capital. *The Free Beacon* is among the many media organizations that turn to the PredictIt Market as a source of data and information for reporting on political topics and events. *The Free Beacon’s* readers seek real time information on the effect that events will have on the outcome of elections, congressional votes, and executive action. *The Free Beacon* reports on polling data to provide readers with information regarding how events are affecting the chances of a particular candidate being elected. *The Free Beacon* also believes that the data provided by a political event market is another source of data about the likely outcome of elections and other significant political events is a useful complement to polling and is important to giving its readers a full picture of the current status of electoral contests or the effects of

intervening events on them. *The Free Beacon* has relied on and intends to continue relying on the data generated by the PredictIt Market in its reporting on politics.

8. The PredictIt Market has operated for nine years pursuant to “no-action relief” (“No-Action Relief”) granted under Commodity Futures Trading Commission regulations. 17 C.F.R. § 140.99. The terms of the Commission’s grant of No-Action Relief are memorialized in a written decision. The No-Action Relief has permitted Victoria University to operate the PredictIt Market without formally registering it as a designated contract market or swap-execution facility. The No-Action Relief sets forth the terms under which the PredictIt Market is permitted to operate. A true and correct copy of the No-Action Relief, “CFTC Ltr. No. 14-130,” is attached hereto as **Exhibit 1**.

9. The No-Action Relief functions as a “license” for the PredictIt Market to operate, as that term is defined by the Administrative Procedure Act.

10. On August 4, 2022, the CFTC purported to revoke the No-Action Relief and, thus, the PredictIt Market’s license to operate. The Commission communicated its decision through “CFTC Letter 22-08” (the “Revocation”), a true and correct copy of which is attached hereto as **Exhibit 2**.

11. The only explanation in the Revocation was that Victoria “University has not operated its market in compliance with the terms of [CFTC] Letter 14-130,” the 2014 No-Action Relief. *See* Ex. 2 at 2. The Revocation contained no explanation of *how* the PredictIt Market’s operations violated the terms of the Commission’s No-Action Relief or *why* revocation of the Commission’s license for the Market to operate is the appropriate remedy for those violations. The Revocation provided neither notice of the facts that may warrant revocation, nor an

opportunity to demonstrate or achieve compliance with the terms of the Commission's No-Action Relief. *Id.*

12. The Revocation, instead, made the following commands:

To the extent that the University is operating any contract market, as of the date of this letter, in a manner consistent with each of the terms and conditions provided in Letter 14-130, all of those related and remaining listed contracts and positions comprising all associated open interest in such market should be closed out and/or liquidated no later than 11:59 p.m. eastern on February 15, 2023.

Id.

13. The Revocation's command to prematurely liquidate contracts would cause a chaotic wind-down of the Market. Many PredictIt Market contracts in place at the time and continuing now turn on events that would occur well into the future, particularly the 2024 primary and general elections in the United States. Without any detailed explanation as to why or how, the Commission dictated that those contracts needed to be liquidated prematurely, by February 2023. In addition, the Revocation gave no indication of what contracts the Commission believed are "consistent with each of the terms and conditions" of the No-Action Relief and could continue to February 2023 and which are not.

14. The Revocation of the Commission's No-Action Relief effectively commanded the PredictIt Market to close. In doing so, the Commission attempted to deprive entities operating the Market, traders investing in Market contracts, academics studying Market data of the benefits of the Market's continued operation, and the news media of access to important data that is crucial to their reporting on American politics. The Commission took this step with no reasoned explanation for its decision, no explication of facts that would support its decision, no transition plan for addressing scores of existing contracts held by more than ten thousand traders, no consideration of any alternatives to the chaotic, disruptive, and economically damaging wind-down of the Market

its decision forces, and no considered analysis of why operators, academics, traders, and journalists should be deprived of the benefits of the Market’s continuation that was protected by the Commission’s license. The direct consequence of the Revocation—the premature liquidation of contracts that would otherwise turn on events occurring after February 2023—is unnecessarily disruptive.

15. The Revocation decision represented only the first chapter of the Commission’s ongoing mission and actions to close the PredictIt Market as soon as possible. On March 2, 2023, after oral argument before the United States Court of Appeals for the Fifth Circuit in his matter and after that Court had preliminarily enjoined the CFTC from taking actions to close the Market or to deter trading in its contracts, the Commission issued “CFTC Letter 23-03” (the “March Action”), a true and correct copy of which is attached hereto as **Exhibit 3**.

16. The March Action purports to “withdraw[] and supersede[]” the Revocation decision. Ex. 3 at 1. But it reaches the same conclusion—that the Market’s license to operate is void and should be cancelled. Ex. 3 at 3.

17. The Commission issued the March Action in a transparent attempt to shut down judicial review of its efforts to close the PredictIt Market in this Court and in the Fifth Circuit. The Fifth Circuit firmly rejected that attempt.

18. The March Action claims for the first time that the PredictIt Market violated the terms of the No-Action Relief in three ways: (1) that Aristotle, rather than Victoria University, is operating the Market, (2) that Victoria University has received—and permitted Aristotle to receive—separate compensation for the operation of the Market, and (3) that Victoria University has offered contracts falling outside of the scope of the categories of submarkets approved in the

No-Action Relief. Ex. 3 at 3–6. According to the CFTC, these alleged violations are somehow grounds for closing the PredictIt Market.

19. Each of these alleged violations of the No-Action Relief is contrary to the substantial evidence in the record before the agency as a matter of fact and also arbitrarily and capriciously misinterprets the text, context, and history of the No-Action Relief decision and extensive subsequent communications with CFTC staff. The alleged violations cannot support the Commission’s efforts to close the Market and render those efforts arbitrary, capricious, and an abuse of discretion. Indeed, the Fifth Circuit held the CFTC’s allegations were an impermissible attempt at “*post hoc* rationalization.”

20. The administrative record produced by the CFTC on November 14, 2024 contains no evidence underlying any of these alleged violations of the No-Action Relief and thus demonstrates that any effort to rely on these issues to close the PredictIt Market is arbitrary and capricious. *See* ¶ 128, *infra*. The purported administrative record contains no sustained analysis of what particular contracts are inside and outside the authorization of the license’s terms and why, nor is there any meaningful analysis or factual basis for allegations of the operational or financial arrangements between Victoria University and Aristotle, much less of how they might be in violation of the license’s terms.

21. Moreover, each of these alleged justifications for closure of the Market is pretextual, and there are numerous other reasons and communications that motivated Commission leadership to take action to close the Market. On information and belief, the CFTC received numerous third-party requests from institutions, including KalshiEx and FTX (and its leader Sam Bankman-Fried), to permit them to offer political event contracts. Those third-party institutions cited the Commission permitting PredictIt to do so, albeit on a much smaller scale than requested

by those institutions. Some of those institutions were also very politically powerful, particularly with the Democrat-appointed leadership of the Commission, as at least one of the leaders of those institutions had donated tens of millions of dollars supporting the campaigns of the highest levels of elected Democrat party leaders. The Commission was motivated to close the PredictIt Market to make it easier to tell these requesting institutions “no” and that these institutions were not being treated differently than others.

22. Indeed, the Commission’s chairman stated that he was tired of having to explain why PredictIt could continue offering political event contracts, while having to tell other requesting institutions that they could not begin to offer political event contracts. Arising from this true motivation, Commission staff were instructed to find a reason to close the PredictIt Market.

23. These communications with other regulated institutions seeking authorization to offer political event contracts and citing the PredictIt Market as a reason for doing so were before the Commission when it made the challenged decisions to close the PredictIt Market. So were internal Commission communications on how to address the continuation of the PredictIt Market amidst the entreaties from these other institutions seeking authorization to offer political event contracts. But in response to discovery in this matter, the Commission has refused to produce these communications and has improperly withheld them from the administrative record that it has purported to produce. These and other communications are clearly part of the administrative record of documents relevant to the decisions and before the agency when it took the challenged actions to close the PredictIt Market.

24. That the CFTC’s asserted bases for closing the PredictIt Market are pretextual is apparent from the face of the record. Specifically, the withdrawal is purportedly based primarily

on the April 20, 2021 letter from a subsidiary of Victoria University of Wellington, Victoria Link Ltd., to the CFTC. *See* Ex. 3 at 3-4. After Victoria Link Ltd. sent this letter (CFTC.277-281), more than a year elapsed with no communication from the CFTC. *See* CFTC.285 (June 3, 2022 email from the CFTC requesting discussion of the April 20, 2021 letter). This is the same timeframe in which the CFTC was receiving requests from regulated institutions seeking authorization to offer political event contracts, demonstrating that the CFTC only then searched for a reason to shutter the PredictIt Market.

25. In any event, none of these alleged violations justifies closure of the Market, and the March Action lacks a non-arbitrary explanation for attempting to close it.

26. The March Action also suggests that the PredictIt Market must shut down because it demands too much of the Commission's attention. Ex. 3 at 6. But the March Action does not cite any specific numbers to support this claim. It says nothing about the magnitude of resources required and does not explain why they would not be reasonably expended in light of the considerable and longstanding reliance interests of traders, academics, and service companies.

27. More concerningly, the March Action carries forward many of the legal deficiencies of the earlier Revocation decision. Like the Revocation decision, the March Action provides no serious consideration of any alternatives to the chaotic, disruptive, and economically damaging wind-down of the Market it would force. Like the Revocation decision, the March Action does not give the Plaintiffs an opportunity to rebut the Commission's allegations (it allows Victoria University to respond but fails to give the University a chance to demonstrate or achieve compliance with the asserted requirements of the Commission's license, as required when withdrawing a license). And like the Revocation decision, the March Action does not account for

the longstanding reliance interests of the traders, academics, journalists, and service companies that organized their affairs around the Commission's license for the Market to operate.

28. In particular, the consequences of the Commission's sustained efforts to close the PredictIt Market will cause harm to the Investor Plaintiffs. Solely due to the Commission's campaign to close the Market, Mr. Clarke, Mr. Beeler, Mr. Boeckmann, Mr. Neeley, and Mr. Schneider will be deprived of the opportunity to see their positions through to the occurrence or non-occurrence of the political events on which their contracts are based. They do not understand why the Commission, even if it for some reason wants the Market to shut down, cannot let their existing contracts continue to trade until the election or event window would naturally close.

29. They will also be deprived of the benefits of the Market's continued operations and issuance of new contracts in which there would be an opportunity for the Plaintiffs to trade. Private parties investing in Market contracts are among the beneficiaries of the Commission's license for the Market to operate. Neither the Revocation nor the March Action provide any acceptable explanation for the Commission's effort to close the Market with all due haste.

30. The Commission's efforts will cause harm to the Academic Plaintiffs. Gone will be the days that they use the data generated by the Market for research and teaching purposes. This will impact the quality of their legal scholarship and the student experience.

31. The Commission's efforts will also cause harm to Plaintiff *The Washington Free Beacon*. The Commission's efforts will restrict access to information created by the Market regarding the real time effects of events on the likely outcome of elections and other significant political events that *The Free Beacon's* editors and reporters, as well as other journalists, convey to readers and use to report on politics. The Commission, by seeking to shut down the PredictIt

Market, is endeavoring to shrink the information that is available about significant political questions and the Government of which it is a part. It is a straightforward attack on First Amendment rights, and a violation of the APA for arbitrarily casting aside the interests of the media, journalists, and readers in the information flowing from the PredictIt Market.

32. The Commission's Revocation of the No-Action Relief for the PredictIt Market, without explanation or other indication of reasoned decisionmaking, without "written notice of the facts or conduct which may warrant" the Revocation, and without providing anyone an "opportunity to demonstrate or achieve compliance" with the terms of No-Action Relief or other requirements, violates the Administrative Procedure Act. 5 U.S.C. §§ 558, 706.

33. The Commission's attempted do-over suffers from these same deficiencies. *Id.* Among other things, both the Revocation and the March Action are "arbitrary, capricious, an abuse of discretion, [and/or] otherwise not in accordance with law" and occurred "without observance of procedure required by law." 5 U.S.C. § 706. Through both actions, the Commission failed to seriously consider less disruptive alternatives and ignored the serious reliance interests of the Plaintiffs. Moreover, the Commission's actions violated the Administrative Procedure Act by failing to provide the procedural protections that accompany a license from a federal agency, as they offered the Plaintiffs no hearing much less an opportunity "to demonstrate or achieve compliance." 5 U.S.C. § 558(c); *see also id.* § 706(2)(D).

34. The Court should "hold unlawful and set aside" the Revocation and March Action, including any command that contracts be prematurely liquidated. 5 U.S.C. § 706. The Court should also hold that the Revocation and March Action are unconstitutional, in violation of the First and Fifth Amendments of the United States Constitution. The Court should carry forward the preliminary injunction and then enter a permanent injunction against the proscriptions in the

Revocation and March Action that would require premature liquidation of contracts, including contracts that concern the 2024 elections, well before they would ordinarily mature and that would prohibit the Market from offering additional contracts. That injunction should also prohibit Defendants Behnam and McGonagle from further violating the Plaintiffs' constitutional rights.

JURISDICTION AND VENUE

35. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 as Plaintiffs' causes of action arise under the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*, a law of the United States.

36. Venue is proper in this district under 28 U.S.C. § 1391(e)(1)(B)–(C). Plaintiffs Kevin Clarke, Michael Beeler, Mark Borghi, Josiah Neeley, and Wes Shepherd reside in Austin, Texas and no real property is involved in this action. In addition, a substantial part of the events or omissions giving rise to the claims also occurred in this jurisdiction. Mr. Clarke has made numerous investments in event contracts on the PredictIt Market from Austin, Texas, where he has lived since 2010. Mr. Beeler, Mr. Borghi, Mr. Neeley, and Mr. Shepherd have likewise invested and wish to continue to invest in event contracts on the PredictIt Market from Austin. Many of these contracts will not close before the dates specified by the CFTC in the Revocation or the implementation of the March Action. The Revocation decision and the March Action will cause Mr. Clarke, Mr. Beeler, Mr. Borghi, Mr. Neeley, and Mr. Shepherd harm and damage in the Western District of Texas.

37. An actual controversy exists between the parties under 28 U.S.C. § 2201, and this Court has authority to grant declaratory and injunctive relief to set aside the CFTC's withdrawal of the No-Action Relief and to issue all necessary and appropriate process to preserve each

Plaintiff's status or rights pending the conclusion of the proceedings, as requested herein. 28 U.S.C. §§ 2201, 2202; 5 U.S.C. §§ 705–06.

PARTIES AND RELEVANT ENTITIES

38. Defendant Commodity Futures Trading Commission (previously defined as “CFTC” or the “Commission”) is an independent federal agency established under Section 2 of the Commodity Exchange Act, 7 U.S.C. § 2, that regulates the derivatives markets, including futures contracts, options, and swaps, in the United States. The CFTC is headquartered in the District of Columbia.

39. Defendant Rostin Behnam is the current Chairman of the CFTC. He has served in that role since January 4, 2022. Mr. Behnam was previously a CFTC Commissioner from September 2017 until January 21, 2021, when he was elected by Commission members as Acting Chairman. He was subsequently nominated by the President to serve as Chairman of the Commission.

40. Defendant Vincent McGonagle is the Director of the CFTC's Division of Market Oversight and is responsible for the oversight of derivatives trading platforms and products. He has served in that role since April 22, 2022. Previously, Mr. McGonagle was Principal Deputy Director of the CFTC's Division of Enforcement where he also served as Acting Director from October 2020 to April 2022.

41. Plaintiff Kevin Clarke is an individual who lives and works in Austin, Texas, which is in the Western District of Texas. Mr. Clarke has purchased positions in almost every contract market offered by the PredictIt Market, including positions of which the Commission appears poised to terminate trading prior to the occurrence of the subject event. Mr. Clarke also wishes to invest in additional contracts that ordinarily would be issued to address new political events and elections, but for the Commission's efforts to close the Market. Mr. Clarke's use of the PredictIt

Market, including purchases and trades on the Market, has almost universally occurred from his home or business in Austin, Texas, in the Western District of Texas.

42. Plaintiff Trevor Boeckmann is an individual domiciled in New York City, New York. Mr. Boeckmann purchased event contracts on the PredictIt Market that are based on political events that will not occur until after the CFTC has ordered the PredictIt Market to cease operations.

43. Plaintiff Harry Crane is a Professor of Statistics at Rutgers University in New Jersey and a fellow at the London Mathematical Institute. Professor Crane utilizes the PredictIt Market and the data it generates in his teaching and research.

44. Plaintiff Corwin Smidt is an Associate Professor in the Department of Political Science at Michigan State University. Professor Smidt utilizes PredictIt Market data in his teaching and research. Professor Smidt resides and works in Michigan.

45. Victoria University of Wellington (previously defined as “Victoria University”) is not a party to this litigation. Victoria University is a publicly owned university based in and operating under the laws of New Zealand. Victoria University has operated an online market for political-event contracts (previously defined as the “PredictIt Market” or the “Market”) since 2014. Victoria University had no intention of ending the PredictIt Market prior the CFTC’s withdrawal of the No-Action Relief, and, but for the CFTC’s action, Victoria University would have continued the markets for 2024 contracts through their natural conclusions. Victoria University intends to comply with the terms of the CFTC’s Revocation and therefore close the 2024 contracts in advance of their maturity unless the Revocation and March Action are abrogated, amended, or suspended.

46. Plaintiff Predict It, Inc. (previously defined as “PredictIt”) is a Delaware corporation with its principal place of business in the District of Columbia and a subsidiary of

Aristotle International, Inc. PredictIt is an internet distributor of user-generated predictive content. PredictIt, together with Plaintiff Aristotle, services the PredictIt Market.

47. Plaintiff Aristotle International, Inc. (previously defined as “Aristotle”), is a Delaware corporation with its principal place of business in the District of Columbia. Aristotle provides know-your-client and identity-verification services to a wide variety of customers and provides information-technology services to political campaigns and organizations, including software, political data, consulting, and outsourcing services. Victoria University has entered into a market servicing agreement with Aristotle, under which Aristotle serves as the clearing house for trades on the PredictIt Market and provides other services for the PredictIt Market through its Predict It, Inc. subsidiary. Pursuant to that agreement and the terms and conditions of the PredictIt Market, investors that open accounts on the PredictIt Market enter into a contract with Aristotle.

48. Plaintiff Michael Beeler is an individual who lives and works in Austin, Texas. Mr. Beeler holds several positions on the PredictIt Market, including one contract scheduled to expire in 2024. He would make additional 2024 and other investments if the Market were allowed to continue operating. Mr. Beeler’s use of the PredictIt Market, including purchases and trades on the Market, has almost universally occurred from his home or business in Austin, Texas.

49. Plaintiff Mark Borghi is an individual who lives and works in Austin, Texas. Mr. Borghi co-hosts a news podcast that regularly uses data from the PredictIt Market to analyze political developments. The podcast advertises the PredictIt Market under one of PredictIt’s affiliate programs. Mr. Borghi is also a long-time trader on the PredictIt Market and wishes to continue trading in the future.

50. Plaintiff Richard Hanania is the President of the Center for the Study of Partisanship and Ideology. Mr. Hanania is a long-time PredictIt trader and proponent of prediction markets.

51. Plaintiff James D. Miller is a Professor of Economics at Smith College in Northampton, Massachusetts. Professor Miller has been a PredictIt trader since November 2015 and currently has open investments in the Market from which he hopes to gain a profit, including investments in contracts that do not expire until 2024. Professor Miller also utilizes the PredictIt Market and the data it generates in his teaching.

52. Plaintiff Josiah Neeley is an individual who lives and works in Austin, Texas. Mr. Neeley has actively traded on the PredictIt Market since 2015. He currently holds several open contracts, including some that the Commission appears poised to terminate trading of prior to the subject event. Mr. Neeley's use of the PredictIt Market, including purchases and trades on the Market, has almost universally occurred from his home or business in Austin, Texas.

53. Plaintiff Grant Schneider is Vice President of Machine Learning and Head of the Columbus, Ohio office of a leading artificial intelligence lending marketplace. Dr. Schneider has been a PredictIt trader since 2016 and currently holds open positions, including some that do not close until 2024.

54. Plaintiff Wes Shepherd is an individual who lives and works in Austin, Texas. Mr. Shepherd co-hosts a news podcast that regularly uses data from the PredictIt Market to analyze political developments. The podcast advertises the PredictIt Market under one of PredictIt's affiliate programs. Mr. Shepherd is also a long-time trader on the PredictIt Market and wishes to continue trading in the future.

55. Plaintiff *The Washington Free Beacon* is an online newspaper reporting on national public policy and politics from our Nation's capital. *The Free Beacon* produces in-depth investigative reporting on a wide range of issues, including public policy, government affairs, international security, and media. It is committed to serving the public interest by reporting news

and information that is not being fully covered by other news organizations. *The Free Beacon* regularly uses data from the PredictIt Market to report on and analyze political developments, projected political outcomes, and political ideas. *The Free Beacon* wishes to continue using data from the PredictIt Market to contribute to the marketplace of ideas.

BACKGROUND

I. The PredictIt Market’s Operations and Offerings

56. The PredictIt Market poses numerous yes-or-no questions regarding the outcome of political events at any given time. Discrete questions are grouped into “event markets” involving the same election or other political event. Investors can buy “contracts” based on what they believe to be the likely outcome of the political event. For example, the event market involving the 2024 Republican presidential nomination includes yes-or-no contracts on 17 different potential candidates. Other event markets include only one contract.

57. The PredictIt Market limits each contract to 5,000 active participants with each participant’s investment capped at \$850 based on the price of the contracts when the investor purchases them.

58. Until settlement, each contract is valued at less than one dollar. And just like a stock exchange or futures market, the aggregated price of a contract continuously changes as users respond to shifting events that make the outcome more or less likely. One day a contract predicting that Republicans will win the House could be valued at \$0.75. The next day, the same contract’s value could drop to \$0.70.

59. If the event ultimately occurs—*e.g.*, Republicans win control of the House—yes-contracts will close at \$1. If it does not occur—*e.g.*, Republicans do not win the House—yes-

contracts will close at \$0. At any time before the event closes, investors are free to liquidate or add to positions by buying and selling contracts.

II. Value of the PredictIt Market to the Academic Community

60. Victoria University launched the PredictIt Market because of the academic value of the results data generated by investments such as those of Mr. Clarke, Mr. Beeler, Mr. Boeckmann, Mr. Borghi, Mr. Neeley, Mr. Schneider, Mr. Shepherd, and thousands of other traders. This academic purpose is specifically articulated in Victoria University's request for no-action relief and the CFTC's No-Action Relief decision. Consistent with that requirement, the data generated by the PredictIt Market is made available to the academic community at no cost. These data have been the subject of study by over 140 academics at universities around the world. Professors Crane, Miller, and Smidt, and Mr. Hanania, are among the academics that have used and intend to use PredictIt Market data in their teaching and research in the fields of statistics and political science.

61. Professor Smidt—an associate professor of political science at Michigan State University—has used PredictIt Market data to study the reliability of public opinion as an indicator of future political outcomes. PredictIt Market data offers Professor Smidt and other researchers a unique long-term look at the public's view of political outcomes because the PredictIt Market offers event contracts much further in advance of the deciding event to which they relate than comparable markets like the Iowa Electronic Markets.

62. Professor Crane—a statistics professor at Rutgers University—has used and intended to continue using the PredictIt Market in his research and teaching. In his class, Statistics, Science, and Society, he teaches his students to think quantitatively about real-world matters and reporting. As part of the class, students study the PredictIt Market and other methods of forecasting

political outcomes, like polling and pundits, and analyze their reliability and the ways bias can enter decision and reporting processes. Similarly, Professor Crane's research using PredictIt Market data has concerned the reliability of various methods of forecasting future political outcomes. His analysis of PredictIt Market data generated between 2018 and 2020 suggests that the Market's percentage-trading price is a more accurate predictor overall than predictions made on the opinion-poll analysis website FiveThirtyEight.

63. Professor Miller—an economics professor at Smith College—has used and hopes to continue using the PredictIt Market in his teaching. In his discussions with students, Professor Miller stresses the value of the predictions derived from the PredictIt Market because participants must put their own money at risk. Professor Miller believes that PredictIt represents an excellent teaching tool for how stock markets function because many undergraduates have a better understanding of U.S. elections than of traditional financial markets.

64. Richard Hanania—the President of the Center for the Study of Partisanship and Ideology—has drawn on the PredictIt Market in several of his academic writings. He has taken positions on the PredictIt Market and publicly tracks his portfolio, while encouraging other public intellectuals to do the same. Mr. Hanania believes that the accountability mechanism provided by attaching money to political beliefs and predictions improves public discourse. He stresses the potential for PredictIt to overcome many of the shortcomings in American intellectual life, including decreasing civility and inability to conduct conversations across different political tribes.

65. If the PredictIt Market were shut down, its contracts prematurely liquidated, and its ability to offer new contracts to traders terminated, the Commission's efforts to close the Market would deprive professors like Professors Crane, Miller, and Smidt of both a valuable pedagogical tool and a rich source of data for their studies in the fields of statistics, economics, and political

science. For example, if contracts predicting the outcome of the 2024 presidential election were liquidated prior to their close-out event (*i.e.*, the winner of the 2024 presidential election is determined), the trading data from those contracts would be worthless from an academic perspective, foreclosing future use of the Market as a research resource.

III. Value of the PredictIt Market to Media Organizations and Journalists

66. *The Free Beacon* is among the many media organizations that convey PredictIt Market data and information to readers and use the data better to inform their readers on national politics and the operation of Government. The data generated by the PredictIt Market provides some of the most reliable and prompt information on how the events of the day are likely to affect the outcome of elections and other significant political questions. *The Free Beacon* views PredictIt data as an important complement to polling information, which takes days to assemble and can suffer from inaccuracies that small investments in predictions can correct.

67. If the PredictIt Market were shut down, its contracts prematurely liquidated, and its ability to offer new contracts to traders terminated, the Commission's efforts to close the Market would restrict the information available to the media and the public and political reporting.

IV. Investor Plaintiffs' Trades on the PredictIt Market

68. The Investor Plaintiffs have each made significant investments in hundreds of event contracts offered on the PredictIt Market over the past several years.

69. They each believe, based on their research and study of the Market, that they have purchased PredictIt Market contracts in a manner that will produce a profit, given their views that their side of the contracts are likely to occur.

70. Mr. Clarke is an assistant policy debate coach at the University of Texas at Austin and owns a business specializing in the acquisition and management of mineral assets such as gemstones and crystals. He has been trading on the PredictIt Market for roughly two years from

his home and business in Austin, Texas, and currently has investments in every contract market offered on the PredictIt Market and open positions in excess of \$11,000. Among his investments are event contracts related to the outcome of the 2024 election cycle that the Commission appears poised to terminate trading of prior to those elections. He desires to invest in new contracts offered on the Market, provided it is not unlawfully interfered with.

71. Mr. Boeckmann is a public defender at the Neighborhood Defender Service of Harlem in New York City. He has traded on the PredictIt Market since 2016 from his home in Harlem, and he currently has thousands of dollars invested in a wide-range of contract markets. The event contracts he has invested in include several related to the outcome of the 2024 presidential election that the Commission appears poised to terminate trading of prior to those elections. These contracts include certain predictions on which Republican presidential contenders will not win the Republican nomination and which party's candidate will ultimately win the 2024 presidential election.

72. Mr. Beeler is a statistician and holds a Ph.D. in Operations Research. He resides in Austin, Texas. Mr. Beeler has been trading on the PredictIt Market for over four years. He held numerous positions in 2024 election contracts but has sold most of those due to the CFTC's Revocation. He held several positions that expired in 2022 and still holds one contract scheduled to expire in 2024. Mr. Beeler would make additional 2024 and other investments if the Market were allowed to continue operating.

73. Mr. Borghi is a longtime PredictIt trader. He co-hosts a daily news podcast focused on politics—Hard Factor—that is produced in Austin. Mr. Borghi uses data derived from the PredictIt Market on Hard Factor on a weekly basis. If the CFTC's Revocation and March Action

are allowed to stand, Mr. Borghi will be deprived of an important data source for his podcast. He will also lose the chance to profit on PredictIt Market contracts.

74. Mr. Neeley is the Texas Director of a national public policy organization and a non-practicing attorney. He has been a PredictIt trader since 2015 and currently holds several open contracts, including contracts that involve the 2024 presidential races. Mr. Neeley stopped purchasing new positions on the PredictIt Market after the CFTC's Revocation.

75. Mr. Schneider is the Vice President of Machine Learning and Head of the Columbus, Ohio office of a leading artificial intelligence lending marketplace. He holds a Ph.D. in statistics and is the co-author of an introductory statistics textbook. Mr. Schneider has been a PredictIt trader since 2016 and currently holds open positions, including some that do not close until the 2024 elections. As a hiring manager he also views consistent success on the PredictIt Market (or other forecasting platforms) as a valuable signal of aptitude for machine learning. Mr. Schneider also finds the Market useful for understanding future political outcomes that might affect his company's business. The CFTC's Revocation has decreased his overall trading activity.

76. Mr. Shepherd is a longtime PredictIt trader. He co-hosts a daily news podcast focused on politics—Hard Factor—that is produced in Austin, Texas. Mr. Shepherd uses data derived from the PredictIt Market on Hard Factor on a weekly basis. He considers PredictIt data more reliable than polls and pundits. If the CFTC's Revocation and March Action are allowed to stand, Mr. Shepherd will be deprived of an important data source for his podcast. He will also lose the chance to profit on his current PredictIt Market contracts.

77. The Investor Plaintiffs were each aware that the PredictIt Market was operated with the permission of the CFTC and believed that, at a minimum, the event contracts they purchased could be traded until their deciding event occurred.

78. The CFTC's Revocation—ordering that event contracts be closed or liquidated prematurely—and the March Action have distorted the value of Investor Plaintiffs' event contracts. In the wake of these actions, the Investor Plaintiffs have observed and continue to observe changes in the pricing of their positions as traders attempt to salvage their investments in contracts that would be prematurely liquidated, either by withdrawing their assets from the Market entirely or attempting to predict what the public's belief about the outcome will be on the liquidation date or the form of the liquidation, rather than what the outcome will actually be. Amid this disruption, the Investor Plaintiffs do not understand why the CFTC will not allow the contracts they have invested in to run their course.

79. Among the many factors contributing to this disruption, the Revocation and March Action provide no clarity on which contract markets will be permitted to operate going forward, and which must liquidate immediately due to alleged noncompliance with the terms and conditions of the No-Action Relief decision. This uncertainty has led many investors to pull their money out of the Market immediately even if they otherwise could have profited from their investments before Commission shuts down the Market, effecting remaining traders' ability to sell appreciated contracts that they no longer believe predict a correct outcome.

80. For contracts that will not close before the Commission's desired shut down dates—like those related to the outcome of the 2024 election cycle—investors will be denied the opportunity to realize the return they expect if their contracts were allowed to run their course. Indeed, many investors, like the Investor Plaintiffs, strategically invest in PredictIt contract markets early when outcomes are less certain due to their remoteness in time. For example, some traders invest in low-value event contracts—*i.e.*, outcomes believed to be unlikely at the time of investment—based on their belief that their predicted outcome will become more likely as the

deciding event grows closer, presenting an opportunity to reap a significant return on their investments. Other investors invest in high-value event contracts early on based on their belief that the odds of the outcome occurring will continue to increase as the deciding event grows closer, presenting an opportunity to reap a smaller but more reliable return. If enforced, the CFTC's efforts to close the Market also will deprive them of the opportunity to invest in new contracts.

V. The CFTC Grants No-Action Relief to Victoria University, Licensing the Establishment of the PredictIt Market

81. In 2014, Victoria University sought no-action relief pursuant to CFTC regulations. *See* 17 C.F.R. § 140.99. The relief sought would allow Victoria University to operate a not-for-profit market for the trading of event contracts, to offer such event contracts to U.S. persons, and to collect the results data for academic and educational use. A true and correct copy of the June 26, 2014 Application for no-action relief is attached hereto as **Exhibit 4**.

82. Following the procedures specified in its regulations, the Commission granted the requested No-Action Relief, by issuing CFTC Letter No. 14-130. The written grant of relief found that “the operation of [Victoria University’s] proposed market without registration as a DCM, FBOT, or swap execution facility, or without registration of its operators, would [not] be contrary to the public interest.” Ex. 1 at 5.

83. The No-Action Relief serves as a Commission-granted license to operate the Market.

84. In its No-Action Relief decision, the Commission specified certain rules that would govern the PredictIt Market. Importantly, the No-Action Relief decision structured the PredictIt Market to be “small scale,” and thus placed limits on the amount of money (\$850) that any one person could invest in a particular contract and on the number of active traders (5,000) who could participate in a particular contract. These limits ensure that market participants would not build

up so great an interest in the outcome of an election or political event to try to change the outcome or to use the market to hedge a financial investment. And they would ensure the market remained focused on providing information, by aggregating the investment-backed predictions of many. Ex. 1 at 3–5.

85. In its application for no-action relief, Victoria University listed eight examples of political event contracts it might offer, including who a Presidential candidate may select as his running mate and made clear that: “The Market may list additional event-driven contracts based on significant Political Events.” Ex. 4 at 3. The Commission’s No-Action Relief written decision accepted the scope of political event contracts that Victoria University proposed to offer in its application for no-action relief and repeated the non-exclusive list of three of the example contracts Victoria University had identified:

The proposed submarket for political event contracts will include winner-takes-all contracts to predict the following outcomes:

- Which presidential nominee will win his or her party’s primary, the general election popular vote, and the Electoral College;
- Who will be the majority party nominee for Vice President; and
- Which party will control the next Congress.

Ex. 1 at 2. Some of these examples pertained to the outcome of a U.S. election, but another did not, as it pertained to the selection of a vice-presidential nominee, a decision made by a candidate and ratified by his party.

86. The use of the word “include” in the description of “political event” contracts made clear that the examples listed were not exclusive. *Id.* This was further reinforced by the explicit reference back to the “proposed submarket for political event contracts” described in Victoria University’s application (*id.*), and its reference to offering “additional event-driven contracts based

on significant Political Events.” Ex. 4 at 3. The No-Action Relief decision placed only the following restriction on the scope of these contracts: “The market will not list any contracts that involve, relate to or reference terrorism, assassination or war.” Ex. 1 at 2.

87. Lest there be any doubt that approved political event contracts were not limited to election outcomes, a senior Commission official clarified in later correspondence: “NAL 14-130 lists three *non-exclusive* examples of political contracts – each is tied to election outcomes and allows some flexibility with respect to political contracts,” but cautioned that PredictIt should avoid contracts that “appear to have *no relationship to elections or any other meaningful political question.*” CFTC.027.

88. In its March Action, the Commission alleges that the Market has offered contracts “outside the scope of the” Commission’s 2014 license for operation of the Market and implies that the Market should close for that reason. The Commission’s assertion is based on an arbitrary interpretation of the license, restricting contracts to the outcomes of elections. As demonstrated by the above text and context of the No-Action Relief decision, as well as subsequent communications with CFTC staff, the approved political event contracts went beyond just election-outcome contracts. Offering contracts beyond election-outcome contracts therefore cannot serve as a basis for revoking the Market’s license to operate.

VI. The Commission Precipitously and Without Explanation Revokes Permission and Its License to Operate the PredictIt Market

89. Between 2014 and 2022, the PredictIt Market has offered over 8,000 contract markets, in which over 120,000 participants have invested.

90. On August 4, 2022, the CFTC revoked the No-Action Relief by publishing Revocation of CFTC Letter No. 14-130 (previously defined as the “Revocation”). *See* Ex. 2. The Revocation was authorized by Defendant Behnam and issued by Defendant McGonagle.

91. The Revocation—issued without any detailed reasoning, explanation, or legally sufficient process—would have effected a shutdown of the PredictIt Market as of February 15, 2023, as the entities servicing the Market cannot continue to permit trading and Investors cannot continue to participate in the Market after the Commission has effectively revoked the Market’s permission to operate.

92. Victoria University had no intention of ending the PredictIt Market prior the CFTC’s withdrawal of the No-Action Relief, and, but for the CFTC’s action, Victoria University would have continued the markets for 2024 contracts through their natural conclusion. Victoria University intends to comply with the terms of the CFTC’s Revocation (and March Action) and therefore close the 2024 contracts in advance of their maturity unless the CFTC’s actions are abrogated, amended, or suspended.

93. The Revocation itself left the corporate entities servicing the market and investors to speculate about the basis of the Commission’s decision. The Revocation summarily stated:

The University has not operated its market in compliance with the terms of Letter 14-130. As a result, Letter 14-130 is hereby withdrawn and, as such, is not available for the listing or operation of any new or related contracts.

Ex. 2 at 2.

94. The Revocation further specified prescriptions for the wind-down of the PredictIt Market:

To the extent that the University is operating any contract market, as of the date of this letter, in a manner consistent with each of the terms and conditions provided in Letter 14-130, all of those related and remaining listed contracts and positions comprising all associated open interest in such market should be closed out and/or liquidated no later than 11:59 p.m. eastern on February 15, 2023.

Ex. 2 at 2.

95. The Revocation did not specify how the PredictIt Market's operations at any time during the previous seven years had failed to comply with the terms of the No-Action Relief decision. It lacked any indication of reasoned decisionmaking.

96. To the extent that the Commission's Revocation was based on an interpretation of its No-Action Relief decision that limits permitted contracts to those directly related to the outcome of a U.S. election and alleged violations of that claimed limit (as suggested in one oral discussion with the Commission staff), the Revocation incorporates reasoning that is contrary to the text, context, and history of the Commission's own No-Action Relief decision and extensive subsequent communications with CFTC staff. That error, in addition to the lack of explanation in the Revocation itself, further makes the Revocation arbitrary, capricious, and an abuse of discretion.

97. The Commission's Revocation also arbitrarily demanded the shutdown of the PredictIt Market in a manner that ignores less disruptive alternatives without explanation.

98. The arbitrarily chosen end date of February 15, 2023, alone forced the premature liquidation of dozens of contracts, the settling of which depends on the outcome of elections that will occur in 2024. The PredictIt Market's participants will be harmed by a premature liquidation, as it will deprive them of the value they anticipate by the event resolving in their predicted direction in 2024. Even if the Commission had grounds for revoking the Market's permission to operate (which it does not), the Commission arbitrarily passed over, without explanation, the alternative of allowing contracts already issued by the Market to run their course and avoiding the entirely unnecessary displacement caused by the premature liquidation of those contracts. The Commission also passed over the alternative of seeking adjustments to whatever problems it perceived in the Market rather than simply trying to close it.

99. Mr. Clarke, Mr. Beeler, Mr. Boeckmann, Mr. Neeley, Mr. Schneider, and Mr. Shepherd are among those Market participants that will be harmed if the Commission can move forward with premature liquidation or stop the issuance of new contracts in which they can invest. They have invested in open event contracts on the PredictIt Market, including those related to the outcome of the 2024 presidential election, that will not close until that year or 2025. If the PredictIt Market is shut down before those contracts close, Mr. Clarke, Mr. Beeler, Mr. Boeckmann, Mr. Neeley, Mr. Schneider, and Mr. Shepherd, and other PredictIt Market participants will be deprived of the benefit of their investments and of the benefits of a continuing Market.

VII. Following Oral Argument in the Fifth Circuit, the Commission Withdraws the Revocation Letter and Issues a New Determination that the No-Action Relief is Void and Should be Withdrawn

100. In September 2022, the Plaintiffs moved for a preliminary injunction in this Court aimed at preserving the Market during the pendency of litigation and preventing the liquidation of contracts existing as of August 2022. As the February 2023 Revocation deadline drew closer and closer, and this Court had not acted on the preliminary injunction, Plaintiffs deemed the motion effectively denied and appealed the decision to the U.S. Court of Appeals for the Fifth Circuit. On January 26, 2023, the Fifth Circuit granted an injunction allowing Market contracts to continue trading pending resolution of the appeal. The Fifth Circuit expedited the appeal and heard oral argument on February 8, 2023.

101. On March 2, 2023—twenty-two days after oral argument in the Fifth Circuit but before a decision on appeal—the Commission issued “CFTC Letter 23-03” (previously defined as the “March Action”). The March Action was authorized by Defendant Behnam and issued by Defendant McGonagle.

102. The March Action violated the Fifth Circuit’s injunction pending appeal, which granted Plaintiffs’ request to “enjoin the enforcement of the Commission’s February 15, 2023, liquidation mandate and allow the PredictIt Market event contracts that were offered as of the date of the agency’s decision . . . to continue trading pending resolution of [the] appeal.”

103. The March Action purports to “withdraw[] and supersede[]” the August Revocation letter. Ex. 3 at 1. It nevertheless reaches the same conclusion as the prior Revocation—that the No-Action Relief is void and should be cancelled. Ex. 3 at 3.

104. In contrast to the Revocation letter, the March Action attempts to provide an explanation of how the Commission believes the Market violated the conditions of the No-Action Relief. It alleges the following violations:

- a. That Aristotle, rather than Victoria University, is operating the Market, in violation of the No-Action Relief’s condition that faculty at the University must operate and oversee the Market. Ex. 3 at 3–4.
- b. That Victoria University has received, and permitted Aristotle to receive, separate compensation for the operation of the Market, in violation of the No-Action Relief’s condition that faculty at the University must oversee the Market, without receipt of separate compensation. Ex. 3 at 4–5.
- c. That Victoria University has offered contracts falling outside of the scope of the categories of submarkets approved in the No-Action Relief. Ex. 3 at 5–6.

105. Each of these alleged violations is invalid and contrary to the text, context, and history of the No-Action Relief decision and extensive subsequent communications with CFTC staff. Taken together, the alleged violations cannot justify the preliminary conclusion that the No-Action Relief is void and should be withdrawn. The Commission’s assertion of these flawed

allegations to justify its action renders the March Action arbitrary, capricious, and an abuse of discretion.

106. The March Action further justifies its preliminary conclusion that the No Action Relief is void and should be withdrawn by suggesting that the Market demands too much of the Commission's attention and "is not an appropriate use of taxpayer resources." Ex. 3 at 6. The Commission does not cite any specific numbers to support this claim. It says nothing about the magnitude of resources required and does not explain why they would not be reasonably expended in light of the considerable and longstanding reliance interests of the traders, academics, and service companies that have organized their affairs around the No-Action Relief. This is no meaningful justification—much less a non-arbitrary one—for declining the alternative of seeking adjustments to whatever practices the Commission contends are inconsistent with its license of the Market and allowing the Market to continue operating. The assertion of this rationale in support of the closure of the Market renders the March Action arbitrary, capricious, and an abuse of discretion.

107. The March Action also arbitrarily fails to grapple with less disruptive alternatives than full closure of the Market. It states only that it would "be inappropriate" to allow currently existing markets to expire on their own terms in light of the "likelihood of recurrence" of alleged past violations of the No-Action Relief. Ex. 3 at 7. The alleged violations of the No-Action Relief are no such thing and certainly do not warrant closure of the Market. Moreover, the March Action offers no explanation for why alleged past violations suggest a likelihood of recurrence in the future.

108. The March Action invites Victoria University to submit objections to the Letter. Ex. 3 at 7. It does not, however, offer Victoria University—let alone the service companies that

organized their affairs around the No-Action Relief—an opportunity to demonstrate or achieve compliance with the requirements of the No-Action Relief. As a result, the March Action violates the APA’s procedural requirements for withdrawing agency licenses. *See* 5 U.S.C. § 558(c)(2).

109. Finally, the March Action does not account for the longstanding reliance interests of the traders, academics, journalists, and service companies that organized their affairs around the No-Action Relief, as required by prevailing law in the Fifth Circuit when administrative agencies choose to adjust course. Instead, it specifically directs that none of these interested parties will have any opportunity to respond to the March Action, even though all of these parties are beneficiaries of the Commission’s license for the Market to operate. Ex. 3 at 7.

110. The PredictIt Market’s participants will be harmed by the determination in the March Action, as it will deprive them of the value they anticipate by the event resolving in their predicted direction in 2024. It will also deprive them of the benefits of a continuing Market. The Commission arbitrarily passed over, without sufficient explanation, the alternatives of allowing contracts already issued by the Market to run their course and avoiding the entirely unnecessary displacement caused by the premature liquidation of those contracts or of making structural corrections going forward to permit contracts to trade within limits and under conditions that the Commission believes comply with the license.

111. Mr. Clarke, Mr. Beeler, Mr. Boeckmann, Mr. Neeley, Mr. Schneider, and Mr. Shepherd are among those Market participants that will be harmed. They have invested in open event contracts on the PredictIt Market, including those related to the outcome of the 2024 presidential election that will not close until that year or early 2025. If the PredictIt Market is shut down before those contracts close, Mr. Clarke, Mr. Beeler, Mr. Boeckmann, Mr. Neeley, Mr. Schneider, Mr. Shepherd, and other PredictIt Market participants will be deprived of the

benefit of their investments. Moreover, as beneficiaries of the Market's license to operate, Mr. Clarke, Mr. Beeler, Mr. Boeckmann, Mr. Neeley, Mr. Schneider, and Mr. Shepherd wish to continue trading political futures contracts beyond the 2024 presidential election. The full closure of the Market, as opposed to less damaging alternatives like the CFTC targeting allegedly problematic contracts for removal from the Market, would deprive the Investor Plaintiffs of these future trading activities.

112. Professors Crane, Miller, and Smidt are among the academics that will be harmed. They rely on the PredictIt Market as a source of data for research and academic scholarship and as a pedagogical tool for teaching students regarding political events and the efficiency of markets. The quality of the data for academic study is directly tied to the quantity and currency of the data. If the Commission shuts down the PredictIt Market, Professors Crane, Miller, and Smidt will lose this important source of scholarship. This outcome would be significantly more damaging to Professors Crane, Miller, and Smidt than the alternative of the Commission targeting correction of allegedly problematic contracts but leaving the remaining contracts—and the Market as a whole—intact.

113. *The Free Beacon* is among the media organizations that will also be harmed. *The Free Beacon* and its readers rely on the PredictIt Market as a source of data for political reporting. The quality of the data for predicting political outcomes is directly tied to the quantity and currency of the data. If the Commission shuts down the PredictIt Market, *the Free Beacon* will lose this important source of political data. This outcome would be significantly more damaging to *The Free Beacon* than the alternative of the Commission targeting correction of allegedly problematic contracts but leaving the remaining contracts—and the Market as a whole—intact.

114. On the same day it issued the March Action, the Commission moved, on the basis of the Action, to dismiss the Fifth Circuit appeal as moot. Despite the fact that the March Action violated the injunction pending appeal, the Commission argued that the March Action served as a basis for dismissing the appeal. The positions taken by the Commission in its briefing on the motion to dismiss the appeal were not substantially justified and caused the Plaintiffs to incur unnecessary fees to repel an effort to avoid decision of a fully briefed appeal.

115. On May 1, 2023, the Fifth Circuit denied the Commission's motion to dismiss the appeal as moot and clarified that the injunction pending appeal enjoined the Commission from closing the Market or otherwise prohibiting or deterring the trading of Market contracts until 60 days after final judgment in the appeal.

VIII. The Fifth Circuit's Opinion

116. On July 21, 2023, the Fifth Circuit Court of Appeals issued an opinion in this matter. A true and correct copy of the Fifth Circuit's opinion is attached hereto as **Exhibit 5**. The Circuit Court held that the Commission, through the No-Action Relief, had issued a "license" to open and to operate the PredictIt Market. Ex. 5 at 9. The Court considered and rejected as "meritless" each of the CFTC's threshold objections to this suit: (1) that the March Action mooted the case, (2) that the CFTC's actions were not final agency action, (3) that the withdrawal of the No-Action Relief was committed to the CFTC's discretion, and (4) that the Plaintiffs lacked standing. *Id.* at 6–15. The Court then held that the Plaintiffs were likely to succeed on their claims that the Commission's permission and license to operate the Market had been improperly and illegally terminated. *Id.* at 15–19. It also held that the March Action violated the injunction pending appeal. *Id.* at 16.

117. The Court explained that the Commission’s efforts to close the Market—including through the Revocation in August 2022 and the March 2023 Action—likely had violated the Administrative Procedure Act. *Id.* at 15–21. These efforts endangered “significant reliance interests” that Market operators, traders, and academics had in the Market’s continued operation, given their significant investments in standing up, purchasing contracts on, and studying the Market. *Id.* at 15–18. The efforts likely also could not be squared with the procedural protections that accompany a license from a federal agency, the Court held, as the agency provided no hearing much less an opportunity “to demonstrate or achieve compliance.” *Id.* at 17 (quoting 5 U.S.C. § 558(c)). The Fifth Circuit found it unlikely that the agency could reconcile closing the Market with the “significant reliance interests at play.” *Id.* at 15–17. The Court found arbitrary the agency’s efforts to close the Market in light of the alternative of the agency identifying the alleged violations of the No-Action Relief’s terms, seeking correction of them, and then monitoring the Market for future compliance. *Id.* at 18. The Court also held that due to the threat of irreparable injury to Market operators and traders, as well as academics studying the Market, the balance of the equities and the public interest weighed in favor of a preliminary injunction. *Id.* at 19–21.

118. The Fifth Circuit remanded the case to this Court with instructions to “enter a preliminary injunction pending its consideration of [Plaintiffs’] claims.” *Id.* at 21.

COUNT I

(Violation of the Administrative Procedure Act – Agency Action, Findings, and/or Conclusions that are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law)

119. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

120. The Investor Plaintiffs, Academic Plaintiffs, Aristotle, PredictIt, and *The Free Beacon* may assert claims under the Administrative Procedure Act because they have been

adversely affected or aggrieved by the CFTC's withdrawal of the No-Action Relief. 5 U.S.C. § 702.

- a. Investor Plaintiffs are active participants in the PredictIt Market and derive economic value from the ability to trade contracts based on their research and knowledge about the likely outcome of elections and other significant political questions. In addition, Mr. Clarke, Mr. Beeler, Mr. Boeckmann, Mr. Neeley, Mr. Schneider, and Mr. Shepherd have contracts that are not scheduled to settle prior to the Commission's desired termination date, and contracts settling prior to then about which there is uncertainty regarding the timing of their liquidation due to the Commission's vague Revocation and March Action.
- b. The PredictIt Market is a central component of the Academic Plaintiffs' classes, and data generated by PredictIt Market event contracts is valuable to their areas of research. If PredictIt Market event contracts are liquidated prematurely—prior to the close-out event for many contracts—or if the Market is prevented from offering new contracts, they will be stripped of a pedagogical tool that facilitates student engagement and understanding of prediction markets, and data from 2024-presidential-election contracts will be rendered valueless for academic purposes, foreclosing the use of that data in future research.
- c. For more than half a decade, PredictIt and Aristotle have expended significant resources to assist Victoria University in developing and operating the PredictIt Market in reliance on the No-Action Relief. Victoria University is not a party to this litigation; but Victoria University had no intention of ending the PredictIt Market prior to the CFTC's withdrawal of the No-Action Relief, and, but for the

CFTC’s action, Victoria University would have continued the markets for 2024 contracts through their natural conclusions. Victoria University intends to comply with the terms of the CFTC’s Revocation and therefore close the 2024 contracts in advance of their maturity unless the Revocation and March Action are abrogated, amended, or suspended. Aristotle and PredictIt will be forced to incur massive administrative, labor, time, and other costs if forced to liquidate pending contracts prematurely due to the Commission’s wind-down orders. The arbitrary order to terminate contracts early in violation of contract terms leaves Market Operators to guess about how to unwind contracts.

- d. *The Free Beacon* is one of many media organizations that use PredictIt data in their reporting. If the CFTC’s Revocation were allowed to stand, *The Free Beacon*, its journalists, and its readers will be arbitrarily restricted from an important source of information regarding national politics and the operation of Government.

121. The CFTC’s revocation of the No-Action Relief, through both the August 2022 Revocation and the March 2023 Action, is a “final agency action for which there is no other adequate remedy.” 5 U.S.C. § 704.

- a. Under CFTC regulations, no-action relief is to be sought from the appropriate Division of the CFTC, here the Division of Market Oversight. 17 C.F.R. § 140.99. Victoria University did so in 2014. There is no option under the CFTC’s regulations to appeal the issuance, non-issuance, or revocation of no-action relief to the multi-member Commission or any higher power in the Commission. *Id.*
- b. The CFTC’s regulations make clear that no-action letters issued by the Division of Market Oversight bind the division itself in the discharge of its authority delegated

from the CFTC, 17 C.F.R. § 140.99(a)(2), and contemplate that the entity seeking no-action relief may rely on a no-action letter issued by the division. *Id.*

- c. The entire process—from beginning to end—rests with the Division of Market Oversight. Accordingly, Plaintiff has no adequate or available administrative remedy to address the Revocation.
- d. The No-Action Relief is the final agency action of a license, as that term is defined under the Administrative Procedure Act.
- e. The Commission itself approved the revocation of the No-Action Relief. On information and belief, the Division of Market Oversight’s proposed revocation of No-Action Relief was circulated to each Commissioner for his or her objection, and no Commissioner objected.
- f. In the alternative, any effort to obtain administrative remedy would be futile.

122. The Fifth Circuit’s July 21, 2023, opinion in this matter holds that the CFTC’s efforts to withdraw the No-Action Relief constitute final agency action. Ex. 5 at 10–12.

- a. The Fifth Circuit found that the withdrawal of No-Action Relief consummated the CFTC’s decisionmaking process: “[I]t does not matter that the letter pertains only to the staff’s recommendation to the agency. Once the staff decide to issue or withdraw the letter, there is no further appeal within the agency. Illustrating that reality, CFTC regulations state that a beneficiary ‘may rely’ on [the CFTC’s] issuing a no-action letter.” *Id.* at 10 (citing 17 C.F.R. § 140.99(a)(2)).
- b. The Fifth Circuit also found that legal consequences flowed from the decision because the No-Action Relief withdrew some of the CFTC’s discretion by allowing the Market to rely on it. *Id.*

- c. The Court further observed that “none of this is changed” by the March Action, as the letter “does not promise to reconsider its decision that the no-action letter ‘is void and should be withdrawn.’” *Id.* at 11.
- d. The Fifth Circuit’s decision viewed the August 2022 Revocation and the March 2023 Action as a continuous, uninterrupted effort to close the Market that constitutes final agency action.

123. The Commission’s revocation of the No-Action Relief in the August 2022 Revocation letter—including its direct order to liquidate contracts by February 15, 2023, that turn on later events—is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and thus violates the APA. 5 U.S.C. § 706(2)(A).

- a. The Revocation offered no basis to conclude that it was the product of reasoned decisionmaking, much less was it reasonably explained to the regulated party.
- b. In the Revocation, the Commission claimed that “the University has not operated its market in compliance with the terms of Letter 14-130” and that “as a result,” the No-Action Relief is revoked. But the Commission provided absolutely no detail or explanation regarding how, when, or in what instances the terms of No-Action Relief have been violated. The Revocation does not reflect the “reasoned decisionmaking” required by the APA.
- c. To the extent the Commission was claiming that certain contracts offered by the Market have been outside the category of “political event” contracts approved by the No-Action Relief, that contention is arbitrary, capricious, and an abuse of discretion. That assertion is based on a view that the No-Action Relief’s license to operate a market is limited to political-event contracts that are directly related to

the outcome of a U.S. election. To the extent that interpretation of the No-Action Relief is driving the Commission's revocation of No-Action Relief, it is arbitrary, capricious, and/or an abuse of discretion. That is because the Commission, in 2014, permitted the trading of political markets relating to the outcome of elections or other significant political questions that do not relate to war, terrorism, or assassination. The Commission took no issue in its No-Action Relief decision with the permitted scope of political event contracts sought by Victoria University. Instead, its No-Action Relief decision provided a non-exclusive list of examples of the types of contracts to be offered, some of which directly related to election outcomes, and some of which did not, including the selection of a Vice Presidential nominee. From the beginning, the PredictIt Market has offered contracts that predict the outcome of significant political issues, including non-U.S. elections, who would be nominated or confirmed as cabinet officials or Supreme Court justices, and whether key federal legislation would be enacted. The Market offered these contracts without incident for more than seven years. The CFTC has been aware of the PredictIt Market's operations and offerings since its inception, and, through its communications and actions, it has confirmed the PredictIt Market was operating within the scope of the No-Action Relief. To the extent the Commission believes certain contracts have been offered that were outside the scope of No-Action Relief, it should raise those particular contracts with the PredictIt Market and ask that they be addressed. It is arbitrary, capricious, and/or an abuse of discretion to revoke the Market's permission to operate on the basis of the Commission's unexplained and undocumented factual and legal contention that

certain contracts were offered that are not permitted by the No-Action Relief decision.

124. The arbitrary reasoning behind the Revocation has led to and been compounded by arbitrary and capricious commands to liquidate certain contracts prematurely. Specifically, the Revocation permitted the corporate entities servicing the market to continue operating any contract market operated “in a manner consistent with each of the terms and conditions in” the No-Action Relief until February 15, 2023, at which time “all associated open interest in such market should be closed out and/or liquidated.” Ex. 2 at 2. This disorderly wind-down could have been avoided if the agency had not arbitrarily and capriciously issued the Revocation and its commands for liquidation therein.

125. The Commission’s Revocation and associated commands are arbitrary and capricious in at least the following ways:

- a. The new proscriptions do not provide any detail as to what current contracts are not being operated “in a manner consistent with” the No-Action Relief’s terms.
- b. The Revocation does not allow investors, like the Investor Plaintiffs, to realize any benefit from open event contracts that would settle based on events occurring after February 15, 2023—*e.g.*, event contracts related to the 2024 primary and general elections—which are the majority of the investments currently made in the PredictIt Market.
- c. By forcing the liquidation of PredictIt Market event contracts based on the outcome of the 2024 election cycle before their natural maturation, the Revocation renders data generated, to date, by trading of those contracts valueless for academic analysis.

- d. The Revocation attempts to prevent the issuance of new contracts, depriving operators, traders, academics, and journalists of the benefits of a continuing Market without explaining corrections to the Market short of closing it.

126. The Commission’s selection of a remedy—the Revocation and its associated commands—for alleged violations of the No-Action Relief decision’s terms is arbitrary and capricious. It ignored or otherwise failed to explain why obvious alternatives—such as allowing all currently pending contracts to run their course and mature on their own terms, while barring the creation of new event markets or seeking adjustments to a continuing Market or by blocking particular contracts that are problematic as opposed to shuttering the entire Market—should not be selected.

127. The Commission’s determination in the March Action that the No-Action Relief is void and should be withdrawn is likewise “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and thus violates the APA. 5 U.S.C. § 706(2)(A).

128. The March Action provides three ways in which the Commission believes the Market violated the conditions of the No-Action Relief. In fact, none of these alleged actions violates the No-Action Relief.

- a. The Commission first claims that Aristotle, rather than Victoria University, is operating the Market, in violation of the No-Action Relief’s condition that faculty at the University must operate and oversee the Market. Ex. 3 at 3–4. This claim is false and unsupported by the administrative record. The No-Action Relief states that three Victoria University professors and one administrator will oversee the Market. The No-Action Relief notes that Aristotle will assist in providing know-your-customer services, but does not otherwise define the closed scope of services

that service providers may provide. Given the nature of the Market—an online 24/7 financial platform operated with customized software in a different country than the University—and increased interest in the Market over time, it became necessary during the early years of the Market for the University to substantially outsource platform operations. Since the Market’s inception, the University has been transparent in communications with the Commission about Aristotle’s involvement in the Market. On numerous occasions since 2017, the University reiterated to the Commission that Aristotle’s role includes serving as a clearinghouse for deposits and payments, updating software, responding to trader inquiries, assisting with U.S. legal compliance, publicizing the site, generating data for academic study, performing outreach to academics, and informing traders of new Markets. *See* CFTC.051-052; CFTC.067-068; CFTC.279-280. Until the March Action, the Commission never objected to Aristotle’s role.

- b. The Commission next claims that Victoria University has received, and permitted Aristotle to receive, separate compensation for the operation of the Market, in violation of the No-Action Relief’s condition that faculty at the University must oversee the Market, without receipt of separate compensation. This claim is false and unsupported by the administrative record. Victoria University does not receive compensation for operating the Market. Victoria Link Limited, a wholly owned subsidiary of the University, receives \$2,000 per month to cover the monthly costs of operating the platform. This modest amount is allocated to cover Victoria University’s overhead costs in connection with overseeing the Market, and it often is not even enough to cover those costs. As a result, the \$2,000 payment to Victoria

Link Limited is fully consistent with the No-Action Relief's requirements that the Market be operated as a not-for-profit and without compensation for any individuals involved. Victoria University has disclosed this payment to the Commission on multiple occasions, and until the March Action, the Commission never objected to it. *See* CFTC.280. Moreover, the March Action's statement that the Market's "fee structure appears likely to generate funds far greater than those necessary to operate a small-scale market" is false. *See* CFTC.030. The statement is unaccompanied by any supporting data and runs contrary to information previously shared with the Commission explaining the Market's earnings. Specifically, in June 2017 (and later in written correspondence in December 2017), Victoria University and Aristotle disclosed to the Commission that the Market had operated at a net loss up until that point. CFTC.052; *see also* CFTC.068. As of today, expenses have exceeded revenues for the life of the Market.

- c. Finally, the Commission claims that Victoria University has offered contracts falling outside of the scope of the categories of submarkets approved in the No-Action Relief. This claim is false, unsupported by the administrative record, and inconsistent with the text, context, and history of the Commission's own No-Action Relief decision and extensive subsequent communications with CFTC staff. As discussed above, the No-Action Relief's use of the word "include" in the description of "political event" contracts makes clear that the examples listed were not exclusive. Ex. 1 at 2. This is further reinforced by the explicit reference back to the "proposed submarket for political event contracts" described in Victoria University's application (*id.*), and its reference to offering "additional event-driven

contracts based on significant Political Events.” Ex. 4 at 3. As a senior Commission official clarified in later correspondence: “NAL 14-130 lists three *non-exclusive* examples of political contracts – each is tied to election outcomes and allows some flexibility with respect to political contracts,” but cautioned that PredictIt should avoid contracts that “appear to have *no relationship to elections or any other meaningful political question.*” CFTC.027. Based on this understanding, the Market had a good faith and reasonable belief that each of the 17 markets the Commission cites in the March Action fell within the No-Action Relief’s parameters, as each related to a meaningful political question. When the Commission questioned one of these 17 contracts in November 2014, the Market immediately terminated the contract. For the majority of the 17 markets, however, the Commission never raised any objection until the March Action. In addition, these 17 markets represent only a tiny fraction of the 6,829 markets that have been listed since the Market’s inception.

129. The allegations in the March Action are invalid and cannot justify the Action’s preliminary determination that the No-Action Relief is void and should be withdrawn. They are arbitrary and capricious in at least the following ways:

- a. The Commission’s flawed assertions do not satisfy the requirement that agency action be reasonable and reasonably explained.
- b. The closure of the Market is not an appropriate or proportionate remedy for addressing the asserted violations, which are fully consistent with the text, context, and history of the No-Action Relief decision and extensive course of dealing

between the agency and the Market and represent only a fraction of the Market's activities over the past eight years.

- c. Until the March Action, the Commission did not disclose the large majority of these alleged violations to Victoria University or the Plaintiffs. Asserting them for the first time in the March Action thus constitutes an inappropriate *post hoc* rationalization for the Commission's earlier decision to close the Market.

130. The March Action's rationale that the Market demands too much of the Commission's attention and is not an appropriate use of taxpayer resources is likewise arbitrary and capricious. The Commission does not cite any information to support this claim. It does not quantify the Commission resources consumed by the Market and does not explain why the expenditure of such resources is not warranted in light of the considerable and longstanding reliance interests that traders, academics, and service companies have in the Market.

131. Nor does the March Action account for the longstanding reliance interests of the traders like Mr. Clarke, Mr. Beeler, Mr. Boeckmann, Mr. Neeley, and Mr. Schneider, academics like Professors Crane, Miller, and Smidt, service companies like Aristotle and PredictIt, Inc., and media organizations like *The Washington Free Beacon* that organized their affairs around the No-Action Relief. Instead, it specifically directs that none of these interested parties will have a meaningful opportunity to respond to the Action. This is arbitrary and capricious in violation of the principle that administrative agencies must consider such reliance interests before changing course on a given policy and the Fifth Circuit's correct ruling that traders, academics, and operators are beneficiaries of the Commission's license for the Market to operate.

132. Finally, the March Action's selection of a remedy—full withdrawal of the No-Action Relief—for alleged violations of the No-Action Relief's terms is arbitrary and capricious

because it fails to seriously consider less disruptive alternatives, such as blocking only the contracts the Commission believes are out of scope of the license and allowing the rest of the Market to continue. The March Action states only that it would “be inappropriate” to allow currently existing markets to expire on their own terms in light of the “likelihood of recurrence” of alleged past violations of the No-Action Relief. Ex. 3 at 7. The March Action offers no explanation for why alleged past violations suggest a likelihood of recurrence in the future. Moreover, as discussed above, the Commission’s alleged violations are invalid. In addition, the Commission offers no meaningful explanation of why the alternative of seeking forward-looking adjustments to continuing Market operations, to address whatever perceived problems or deviations from license terms the Commission believes there to be, is not a superior method for dealing with the significant reliance and other interests the Plaintiffs have in the continued operation of the Market.

COUNT II

**(Violation of the Administrative Procedure Act, 5 U.S.C. §§ 558 and 706:
Withdrawal of License Without Written Notice or Opportunity to
Demonstrate or Achieve Compliance)**

133. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

134. Section 558(c) of the Administrative Procedure Act prohibits the “withdrawal, suspension, revocation, or annulment of a license” without first giving the licensee: (1) notice by the agency in writing of the facts or conduct which may warrant the action; and (2) opportunity to demonstrate or achieve compliance with all lawful requirements.” 5 U.S.C. § 558(c).

135. A “license” includes “the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission.” 5 U.S.C. § 551(8).

136. The No-Action Relief constitutes a form of permission because it authorizes the PredictIt Market's operation without "registering under the [Commodity Exchange] Act or otherwise complying with the Act or [CFTC] regulations." Ex. 1 at 5.

137. The Fifth Circuit's July 21, 2023, opinion in this matter holds that the No-Action Relief constitutes a "form of permission," and thus "a 'license' within the meaning of the APA." Ex. 5 at 9.

138. The CFTC's August 2022 Revocation letter revoked the No-Action Relief without providing those entities assisting in operating the Market with written notice of the facts or conduct which may warrant the Revocation.

139. The written Revocation of No-Action Relief stated only as follows: "The University has not operated its market in compliance with the terms of Letter 14-130," the No-Action Relief decision. There is not even a specific allegation of how the terms of the No-Action Relief have been violated, much less "notice of the facts or conduct that may warrant the revocation." 5 U.S.C. § 558.

140. In addition, the Revocation provided those entities assisting in operating the Market with no opportunity—formal or informal—"to demonstrate or achieve compliance with all lawful requirements." 5 U.S.C. § 558. The Administrative Procedure Act requires that the permitted or licensed entity be made aware of the facts forming the basis of the Revocation and to have an opportunity to rebut them. But the Revocation took *immediate effect* and provided no opportunity to be heard, much less one informed about the facts that the Commission believes may warrant revocation.

141. Additionally, the CFTC's revocation of the No-Action Relief violates the Administrative Procedure Act as it is "without observance of procedure required by law," *id.*

§ 706(2)(D), insofar as the revocation of the permission to operate the PredictIt Market was not accompanied by the notice and opportunity to demonstrate compliance required by Section 558(c) of the APA.

142. The CFTC’s March Action similarly violates the Administrative Procedure Act because it is “without observance of procedure required by law.” *Id.* § 706(2)(D). Like the August Revocation, the March Action does not provide an opportunity to demonstrate or achieve compliance with the requirements of the No-Action Relief, as required by Section 558(c) of the APA. Nor does it provide several beneficiaries of the Commission’s license the opportunity to be heard in response to the allegations or what the remedy for them should be.

COUNT III
(Violation of the First Amendment Rights to Freedom of Expression and Freedom of the Press; Brought by all Plaintiffs Against the CFTC and Defendants Behnam and McGonagle)

143. Plaintiffs incorporate the proceeding paragraphs as if fully set forth herein.

144. The First Amendment to the United States Constitution forbids “abridging the freedom of speech, or of the press.” U.S. CONST. amend. I.

145. Media organizations and readers who consume their reporting have the right to both receive and convey information.

146. The forced shutdown of the PredictIt Market restricts the right of American citizens—including the Investor Plaintiffs—to express themselves through making investment-backed predictions on the likely outcome of important political questions. The Investor Plaintiffs view their investments as a means of expressing their informed opinions on the likely outcome of crucial political questions as well and the precise strength of those opinions.

147. The shutdown also restricts the right of the press—including *The Free Beacon*—to report on information generated through the PredictIt Market and of readers and viewers of the newspapers, websites, and programming of the press to consume that information.

148. Importantly, the information generated by the PredictIt Market—to and on which the Commission is attempting to restrict access and reporting—concerns issues core to the First Amendment, concerning national politics and the operation of Government.

149. The CFTC’s forced shutdown of the PredictIt Market constitutes a prior restraint of speech regarding topics that are core to the First Amendment’s protections, including national politics and the operation of Government.

150. The revocation of the license for the PredictIt Market to operate is a content-based restriction on speech, particularly as the Commission now is focused on declaring markets for predictions on certain political topics out of bounds.

151. The revocation of the license for the PredictIt Market to operate does not directly advance a substantial government interest, much less a compelling government interest.

152. The revocation of the license for the PredictIt Market is not reasonably, much less narrowly, tailored to achieve any substantial or compelling governmental interest.

153. Plaintiffs will continue to suffer and incur injury to their business and property as a result of this violation.

COUNT IV

(Violation of the Administrative Procedure Act – Agency Action, Findings, and/or Conclusions that are Contrary to Constitutional Right: Violation of the First Amendment Rights to Freedom of Expression and Freedom of the Press; Brought by all Plaintiffs Against the CFTC and Defendants Behnam and McGonagle)

154. Plaintiffs incorporate the proceeding paragraphs as if fully set forth herein.

155. The First Amendment to the United States Constitution forbids “abridging the freedom of speech, or of the press.”

156. For the reasons stated above and specifically in Count III, the Commission’s efforts to close the PredictIt Market violate the First Amendment directly.

157. The CFTC’s forced shutdown of the PredictIt Market also violates the Administrative Procedure Act, as it is “contrary to [the] constitutional right” to freedom of expression and the press. 5 U.S.C. § 706(2)(B).

158. Plaintiffs will continue to suffer and incur injury to their business and property, and rights to expression and of the press, as a result of this violation.

COUNT V

(Violation of the Due Process Clause of the Fifth Amendment by Deprivation of a Property Interest Without Notice or Hearing; Brought by Predict It, Inc., Aristotle International, Inc., and the Investor Plaintiffs Against the CFTC and Defendants Behnam and McGonagle)

159. Plaintiffs incorporate the proceeding paragraphs as if fully set forth herein.

160. The Due Process Clause of the Fifth Amendment protects Plaintiffs’ rights to not be “deprived of . . . liberty, or property, without due process of law.” U.S. Const. amend. V.

161. This fundamental protection ensures that individuals are afforded notice and an opportunity to be heard before the government can deprive them of a protected property interest.

162. Plaintiffs Predict It, Inc., Aristotle International, Inc., and the Investor Plaintiffs have a property interest in the license for the PredictIt Market to operate.

163. Moreover, the contracts offered on the PredictIt Market and entered into by investors are quintessential property interests. *U.S. Tr. Co. v. New Jersey*, 431 U.S. 1, 19 n.16 (1977) (“Contract rights are a form of property.”). The “right of an individual to contract” within the confines of the PredictIt Market is a liberty interest. *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 572 (1972).

164. The CFTC’s Revocation decision and the March Action, by requiring the closure and liquidation of the PredictIt Market and its related contracts, deprived the individual Plaintiffs of their property interests in existing contracts and their liberty interests in the ability to contract further, and deprived the entity Plaintiffs of their property interests in the license for the PredictIt Market to operate.

165. The CFTC’s revocation was preceded by neither notice nor a hearing. Nor did Plaintiffs have any post-revocation opportunity to be heard.

166. Procedural due process requires that Plaintiffs receive a hearing before being finally deprived of their liberty and property interests. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Dennis v. S & S Consol. Rural High Sch. Dist.*, 577 F.2d 338, 343 (5th Cir. 1978) (liberty).

167. A pre-deprivation hearing was required before the CFTC’s revocation because “full relief cannot be obtained at a post-deprivation hearing.” *Mathews*, 424 U.S. at 331. The Revocation decision and the March Action caused confusion in the PredictIt Market, damaging the monetary value of several contracts. Such confusion is irreversibly damaging to the data the PredictIt Market generates.

168. The failure to provide adequate notice and a hearing is a violation of the Due Process Clause of the Fifth Amendment.

169. Plaintiffs Predict It, Inc., Aristotle International, Inc., and the Investor Plaintiffs will continue to suffer and incur injury to their business and property as a result of this violation.

COUNT VI

(Violation of the Administrative Procedure Act – Agency Action, Findings, and/or Conclusions that are Contrary to Constitutional Right: Violation of the Due Process Clause of the Fifth Amendment by Deprivation of a Property Interest Without Notice or Hearing; Brought by Predict It, Inc., Aristotle International, Inc., and the Investor Plaintiffs Against the CFTC and Defendants Behnam and McGonagle)

170. Plaintiffs incorporate the proceeding paragraphs as if fully set forth herein.

171. The Due Process Clause of the Fifth Amendment protects Plaintiffs' rights to not be "deprived of . . . liberty, or property, without due process of law." U.S. Const. amend. V.

172. For the reasons stated above and specifically in Count V, the Commission's efforts to close the PredictIt Market violate the Fifth Amendment directly.

173. The CFTC's forced shutdown of the PredictIt Market also violates the Administrative Procedure Act, as it is "contrary to [the] constitutional right" to due process. 5 U.S.C. § 706(2)(B).

174. Plaintiffs Predict It, Inc., Aristotle International, Inc., and the Investor Plaintiffs will continue to suffer and incur injury to their business and property as a result of this violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs requests that the Court enter judgment in their favor and:

- a) Enter an order vacating, "hold[ing] unlawful and set[ting] aside" the Commission's Revocation of the No-Action Relief as arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law and/or without observance of procedure required by law, 5 U.S.C. § 706;
- b) Enter an order vacating the CFTC's Revocation of the No-Action Relief for failure to provide written notice or an opportunity to demonstrate or achieve compliance with the No-Action Relief's requirements, 5 U.S.C. §§ 558, 706;
- c) Enter an order vacating, "hold[ing] unlawful and set[ting] aside" the Commission's March Action seeking to cancel the No-Action Relief as arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law and/or without observance of procedure required by law, 5 U.S.C. § 706;
- d) Enter an order declaring that each of the alleged violations cited in support of the March Action's seeking to cancel the No-Action Relief—(1) that Aristotle, rather than Victoria University, is operating the Market, (2) that Victoria University has received, and permitted Aristotle to receive, separate compensation for the operation of the Market, and (3) that Victoria University has offered contracts falling outside of the scope of the categories of submarkets approved in the No-Action Relief—is an invalid justification for cancelling the Commission's license for the Market to operate;

- e) Enter an order vacating the CFTC's March Action seeking to cancel the No-Action Relief for failure to provide an opportunity to demonstrate or achieve compliance with the No-Action Relief's requirements and an opportunity for beneficiaries of the Commission's license for the Market to respond to the alleged violations, 5 U.S.C. §§ 558, 706;
- f) Enter an order enjoining the CFTC and Defendants Behnam and McGonagle in their official capacities from requiring the liquidation of outstanding contracts on the PredictIt Market before they are settled in the normal course based on the occurrence or non-occurrence of the event specified in the contract, from prohibiting the addition of new contracts or deterring trading in any existing or new contracts, and from further violating Plaintiffs' constitutional rights, including their Due Process rights guaranteed by the Fifth Amendment to the United States Constitution and their freedoms of express and of the press guaranteed by the First Amendment to the United States Constitution;
- g) Enter an order permanently enjoining the CFTC and Defendants Behnam and McGonagle in their official capacities from requiring the liquidation of outstanding contracts on the PredictIt Market before they are settled in the normal course based on the occurrence or non-occurrence of the event specified in the contract, from prohibiting the addition of new contracts or deterring trading in any existing or new contracts, and from further violating Plaintiffs' constitutional rights based on the arbitrary and capricious reasons stated in the Revocation and March Action;
- h) Enter an order enjoining the CFTC and Defendants Behnam and McGonagle in their official capacities from requiring the liquidation of outstanding contracts on the PredictIt Market before they are settled in the normal course based on the occurrence or non-occurrence of the event specified in the contract or prohibiting the issuance of new contracts or deterring trading in any existing or new contracts until Plaintiffs have had the opportunity to be heard and to present evidence before the Court in support of its claims that the revocation of the No-Action Relief violates the APA;
- i) Enter an order enjoining the CFTC and Defendants Behnam and McGonagle in their official capacities from further violating the First Amendment rights to expression and the press of media organizations and consumers of journalism by shutting down the PredictIt Market without justifications meeting First Amendment standards and restricting the flow of information from the Market and the use of that information to report on the important political affairs of the country;
- j) Enter an order providing for the Court's continued jurisdiction over this case and permanently enjoining the CFTC from taking any action that would have the effect of prohibiting or deterring the issuance or trading of PredictIt Market contracts or to close or otherwise to impede the normal operations of the Market, until 60 days after a final order disposing of any challenge to such CFTC action, provided a Plaintiff files a challenge to that action within 60 days of it becoming final;

- k) Award Plaintiffs their litigation costs and reasonable attorneys' fees, including the fees that Plaintiffs incurred defending against the CFTC's failed effort to dismiss Plaintiffs' Fifth Circuit appeal as moot and in challenging CFTC efforts to close the Market, including an award of fees and expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412, and other authorities available to the Court to award fees and expenses, as the positions taken by the CFTC in defending its efforts to close the Market are not substantially justified; and
- l) Order such other relief as the Court may deem just and proper.

[Signature on Following Page]

Dated: January 6, 2025

Respectfully submitted,

/s/ Michael J. Edney

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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, Wes Shepherd, and The Washington Free Beacon

EXHIBIT B

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

KEVIN CLARKE, in his individual capacity,
TREVOR BOECKMANN, in his individual
capacity, HARRY CRANE, in his individual
capacity, CORWIN SMIDT, in his individual
capacity, PREDICT IT, INC., a Delaware
corporation, ARISTOTLE
INTERNATIONAL, INC., a Delaware
corporation, MICHAEL BEELER, in his
individual capacity, MARK BORGHI, in his
individual capacity, RICHARD HANANIA,
in his individual capacity, JAMES D.
MILLER, in his individual capacity, JOSIAH
NEELEY, in his individual capacity, GRANT
SCHNEIDER, in his individual capacity, ~~and~~
WES SHEPHERD, in his individual capacity,
and THE WASHINGTON FREE BEACON,

Plaintiffs,

v.

~~COMMODITY FUTURES TRADING
COMMISSION,~~

~~Defendant~~ COMMODITY FUTURES
TRADING COMMISSION, ROSTIN
BEHNAM, Chairman of the Commodity
Futures Trading Commission, in his official
capacity, and VINCENT MCGONAGLE,
Director of the Division of Market Oversight,
Commodity Futures Trading Commission, in
his official capacity,

Defendants.

Case No. 1:~~2224~~-cv-~~00909~~00614-DAE

**~~SECOND~~THIRD AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF**

Plaintiffs Kevin Clarke, Trevor Boeckmann, Harry Crane, Corwin Smidt, Michael Beeler,
Mark Borghi, Richard Hanania, James D. Miller, Josiah Neeley, Grant Schneider, Wes Shepherd,

Predict It, Inc. (“PredictIt”), ~~and~~ Aristotle International, Inc. (“Aristotle”), ~~and~~ The Washington Free Beacon (“The Free Beacon”) by and through their undersigned counsel, allege for their ~~Second~~Third Amended Complaint for Declaratory and Injunctive Relief against ~~Defendant~~Defendants Commodity Futures Trading Commission (“CFTC” or the “Commission”), CFTC Chairman Rostin Behnam, and Director of the CFTC’s Division of Market Oversight Vincent McGonagle as follows[†]:

INTRODUCTION

1. Since 2014, the Victoria University of Wellington (“Victoria University”) has operated an online market for political-event contracts (the “PredictIt Market” or the “Market”). This case challenges the Commodity Futures Trading Commission’s decision and actions to arbitrarily, capriciously, ~~and~~ without legally required process, and in violation of constitutionally guaranteed rights revoke its permission and license for the Market to operate. These decisions and actions attempt to deprive operators, academics, and traders of the benefits of the Market protected by the Commission’s license for the Market to function and to force the premature and otherwise improper liquidation of dozens of contracts, damaging those who invest in the Market, scholars who study and teach from the data produced by the Market, and the entities servicing the Market.

2. The PredictIt Market provides members of the public an opportunity to make investments based on their views about the likely outcome of future elections or other significant political events, like the passage of federal legislation or the nomination of Supreme Court Justices and cabinet officials. Essentially a stock exchange for political events, the PredictIt Market hosts dozens of event markets about the outcomes of future political events. Each event market includes one or more questions about a particular political event, such as the 2024 presidential election.

[†] ~~Pursuant to Federal Rule of Civil Procedure 15(a)(2), Plaintiffs file this Second Amended Complaint with the CFTC’s written consent.~~

Each question is binary—it must have a yes or no answer—and investors’ positions on the outcome are known as “contracts.” PredictIt Market users purchase “yes” or “no” contracts in an event market—*e.g.*, yes, Joe Biden will win reelection, or no, Joe Biden will not win reelection—for prices ranging from 1 to 99 cents. Contract prices fluctuate based on the investors’ willingness to pay as measured by their view of the probability of the event taking place. If the prediction of the outcome of a contract is correct, it is redeemed for one dollar, while incorrect outcome predictions receive no payout.

3. Unlike a fully regulated stock, futures, or swaps market, however, investors are not permitted to purchase as many as they wish of any one contract. Instead, an investor may not invest funds in excess of \$850 in any one contract. In addition, the total number of active traders in any one contract is limited to 5,000. This is in line with the primary purpose of the Market—to be a small-scale market with an academic purpose to produce market-generated trading/pricing information regarding what informed investors believe the outcome is going to be, reinforced by a relatively small financial investment, without giving any one person enough of a financial stake through the Market to try to change the outcome of a political event.

4. Victoria University launched the PredictIt Market for the academic value of the pricing/trading data generated by investor trading on political event contracts and to study, among other things, whether markets are more accurate than polling. Indeed, the results data generated by the PredictIt Market have been used by more than 140 academics around the world, both in their teaching and research. Through this study, the percentage-trading price of election- and political-event contracts offered on the Market has been found to be a remarkably accurate predictor of the outcomes, as informed onlookers tend to put aside biases and other views when they put up even a modest financial investment on the outcome. This accuracy is reflected by the

heavy reliance of news outlets on political-event markets in reporting on projected political outcomes. *See, e.g.*, Bernard Stanford, *There's a Glorious Website Where You Can Bet on Politics, and the U.S. is About to Kill it*, Slate (Aug. 14, 2022), <https://slate.com/business/2022/08/predictit-cftc-shut-down-politics-forecasting-gambling.html>; Victor Reklaitis, *Betting Markets Now See Democrats Keeping Their Grip on Senate in Midterm Elections*, MarketWatch (Aug. 4, 2022), <https://www.marketwatch.com/story/betting-markets-now-see-democrats-keeping-their-grip-on-senate-in-midterm-elections-11659542352>; A.G. Gancarki, *Donald Trump Retakes 2024 Prediction Market Lead from Ron DeSantis*, Florida Politics (July 7, 2022), <https://floridapolitics.com/archives/537385-donald-trump-retakes-2024-prediction-market-lead-from-ron-desantis/>; UBS Editorial Team, *ElectionWatch: Potential Outcomes of the Midterms*, UBS Wealth Management USA (Apr. 22, 2022), <https://www.ubs.com/us/en/wealth-management/insights/market-news/article.1563885.html>; [The Washington Free Beacon, *Donald Trump is the Betting Favorite to Win the 2024 Election*, \(Jan. 7, 2022\), <https://freebeacon.com/elections/donald-trump-is-betting-favorite-to-win-2024-election/>.](https://www.washingtonpost.com/news/energy-environment/wp/2022/01/07/donald-trump-is-the-betting-favorite-to-win-the-2024-election/)

5. Plaintiffs Kevin Clarke, Michael Beeler, Trevor Boeckmann, Mark Borghi, Josiah Neeley, Grant Schneider, and Wes Shepherd (together, the “Investor Plaintiffs”) each have invested in hundreds of PredictIt Market event contracts over several years. Several of the Investor Plaintiffs hold event contracts that turn on the outcome of the 2024 presidential election [and projecting the outcomes of political events occurring in 2025](#), for which they believe—based on informed views on political events and study of the fluctuations in the Market as an indicator of change—that they have chosen the correct outcome and wish to purchase further and future similar contracts. For each contract, the Investor Plaintiffs expect to realize a profit on their investments either by selling at a favorable point during the life of the market or by holding the contract to the

conclusion of the market when they expect to redeem it at one dollar. The Investor Plaintiffs made their investments in PredictIt Market contracts based on their understanding that the Market's offerings were permitted by the federal government and that their contracts could be traded until the political event on which the contracts are based occurs. All Investor Plaintiffs would continue actively trading on the Market if it were permitted to continue to operate.

6. Plaintiffs Harry Crane, Richard Hanania, James D. Miller, and Corwin Smidt (together, the "Academic Plaintiffs") are among the university professors and academics who rely on the PredictIt Market as a source of data for research and academic scholarship and as a pedagogical tool for teaching college and graduate students regarding political events and the efficiency of markets. Professors Crane, Miller, and Smidt, and Mr. Hanania, have relied and intend to draw on data generated by the PredictIt Market in their research in the fields of statistics, political science, and economics. They have also incorporated the PredictIt Market into their classes. By studying the PredictIt Market (a real-world, topical example of prediction markets), student engagement increases and students gain a practical understanding of the Market and its operation.

7. Plaintiff *The Washington Free Beacon* is an online newspaper reporting on national public policy and politics from our Nation's capital. *The Free Beacon* is among the many media organizations that turn to the PredictIt Market as a source of data and information for reporting on political topics and events. *The Free Beacon's* readers seek real time information on the effect that events will have on the outcome of elections, congressional votes, and executive action. *The Free Beacon* reports on polling data to provide readers with information regarding how events are affecting the chances of a particular candidate being elected. *The Free Beacon* also believes that the data provided by a political event market is another source of data about the likely outcome of

elections and other significant political events is a useful complement to polling and is important to giving its readers a full picture of the current status of electoral contests or the effects of intervening events on them. *The Free Beacon* has relied on and intends to continue relying on the data generated by the PredictIt Market in its reporting on politics.

7.8. The PredictIt Market has operated for nine years pursuant to “no-action relief” (“No-Action Relief”) granted under Commodity Futures Trading Commission regulations. 17 C.F.R. § 140.99. The terms of the Commission’s grant of No-Action Relief are memorialized in a written decision. The No-Action Relief has permitted Victoria University to operate the PredictIt Market without formally registering it as a designated contract market or swap-execution facility. The No-Action Relief sets forth the terms under which the PredictIt Market is permitted to operate. A true and correct copy of the No-Action Relief, “CFTC Ltr. No. 14-130,” is attached hereto as **Exhibit 1**.

8.9. The No-~~Act~~Action Relief functions as a “license” for the PredictIt Market to operate, as that term is defined by the Administrative Procedure Act.

9.10. On August 4, 2022, the CFTC purported to revoke the No-Action Relief and, thus, the PredictIt Market’s license to operate. The Commission communicated its decision through “CFTC Letter 22-08” (the “Revocation”), a true and correct copy of which is attached hereto as **Exhibit 2**.

10.11. The only explanation in the Revocation was that Victoria “University has not operated its market in compliance with the terms of [CFTC] Letter 14-130,” the 2014 No-Action Relief. *See* Ex. 2 at 2. The Revocation contained no explanation of *how* the PredictIt Market’s operations violated the terms of the Commission’s No-Action Relief or *why* revocation of the Commission’s license for the Market to operate is the appropriate remedy for those violations.

The Revocation provided neither notice of the facts that may warrant revocation, nor an opportunity to demonstrate or achieve compliance with the terms of the Commission's No-Action Relief. *Id.*

~~11~~12. The Revocation, instead, made the following commands:

To the extent that the University is operating any contract market, as of the date of this letter, in a manner consistent with each of the terms and conditions provided in Letter 14-130, all of those related and remaining listed contracts and positions comprising all associated open interest in such market should be closed out and/or liquidated no later than 11:59 p.m. eastern on February 15, 2023.

Id.

~~12~~13. The Revocation's command to prematurely liquidate contracts would cause a chaotic wind-down of the Market. Many ~~existing~~-PredictIt Market contracts [in place at the time and continuing now](#) turn on events that ~~will~~would occur well into the future, particularly the 2024 primary and general elections in the United States. Without any detailed explanation as to why or how, the Commission dictated that those contracts needed to be liquidated prematurely, by February 2023. In addition, the Revocation gave no indication of what contracts the Commission believed are "consistent with each of the terms and conditions" of the No-Action Relief and could continue to February 2023 and which are not.

~~13~~14. The Revocation of the Commission's No-Action Relief effectively commanded the PredictIt Market to close. In doing so, the Commission attempted to deprive entities operating the Market, traders investing in Market contracts, ~~and~~ academics studying Market data of the benefits of the Market's continued operation, [and the news media of access to important data that is crucial to their reporting on American politics](#). The Commission took this step with no reasoned explanation for its decision, no explication of facts that would support its decision, no transition plan for addressing scores of existing contracts held by more than ten thousand traders, no

consideration of any alternatives to the chaotic, disruptive, and economically damaging wind-down of the Market its decision forces, and no considered analysis of why operators, academics, ~~and~~ traders, and journalists should be deprived of the benefits of the Market’s continuation that was protected by the Commission’s license. The direct consequence of the Revocation—the premature liquidation of contracts that would otherwise turn on events occurring after February 2023—is unnecessarily disruptive.

~~14.15.~~ 14.15. The Revocation decision represented only the first chapter of the Commission’s ongoing mission and actions to close the PredictIt Market as soon as possible. On March 2, 2023, after oral argument before the United States Court of Appeals for the Fifth Circuit in his matter and after that Court had preliminarily enjoined the CFTC from taking actions to close the Market or to deter trading in its contracts, the Commission issued “CFTC Letter 23-03” (the “March Action”), a true and correct copy of which is attached hereto as **Exhibit 3**.

~~15.16.~~ 15.16. The March Action purports to “withdraw[] and supersede[]” the Revocation decision. Ex. 3 at 1. But it reaches the same conclusion—that the Market’s license to operate is void and should be cancelled. Ex. 3 at 3.

~~16.17.~~ 16.17. The Commission issued the March Action in a transparent attempt to shut down judicial review of its efforts to close the PredictIt Market in this Court and in the Fifth Circuit. The Fifth Circuit firmly rejected that attempt.

~~17.18.~~ 17.18. The March Action ~~now~~ claims for the first time that the PredictIt Market violated the terms of the No-Action Relief in three ways: (1) that Aristotle, rather than Victoria University, is operating the Market, (2) that Victoria University has received—and permitted Aristotle to receive—separate compensation for the operation of the Market, and (3) that Victoria University has offered contracts falling outside of the scope of the categories of submarkets approved in the

No-Action Relief. Ex. 3 at 3–6. According to the CFTC, these alleged violations are somehow grounds for closing the PredictIt Market.

~~18.19.~~ Each of these alleged violations of the No-Action Relief is contrary to the substantial evidence in the record before the agency as a matter of fact and also arbitrarily and capriciously misinterprets the text, context, and history of the No-Action Relief decision and extensive subsequent communications with CFTC staff. The alleged violations cannot support the Commission’s efforts to close the Market and render those efforts arbitrary, capricious, and an abuse of discretion. Indeed, the Fifth Circuit held the CFTC’s allegations were an impermissible attempt at “*post hoc* rationalization.”

20. The administrative record produced by the CFTC on November 14, 2024 contains no evidence underlying any of these alleged violations of the No-Action Relief and thus demonstrates that any effort to rely on these issues to close the PredictIt Market is arbitrary and capricious. See ¶ 128, *infra*. The purported administrative record contains no sustained analysis of what particular contracts are inside and outside the authorization of the license’s terms and why, nor is there any meaningful analysis or factual basis for allegations of the operational or financial arrangements between Victoria University and Aristotle, much less of how they might be in violation of the license’s terms.

21. Moreover, each of these alleged justifications for closure of the Market is pretextual, and there are numerous other reasons and communications that motivated Commission leadership to take action to close the Market. On information and belief, the CFTC received numerous third-party requests from institutions, including KalshiEx and FTX (and its leader Sam Bankman-Fried), to permit them to offer political event contracts. Those third-party institutions cited the Commission permitting PredictIt to do so, albeit on a much smaller scale than requested

by those institutions. Some of those institutions were also very politically powerful, particularly with the Democrat-appointed leadership of the Commission, as at least one of the leaders of those institutions had donated tens of millions of dollars supporting the campaigns of the highest levels of elected Democrat party leaders. The Commission was motivated to close the PredictIt Market to make it easier to tell these requesting institutions “no” and that these institutions were not being treated differently than others.

22. Indeed, the Commission’s chairman stated that he was tired of having to explain why PredictIt could continue offering political event contracts, while having to tell other requesting institutions that they could not begin to offer political event contracts. Arising from this true motivation, Commission staff were instructed to find a reason to close the PredictIt Market.

23. These communications with other regulated institutions seeking authorization to offer political event contracts and citing the PredictIt Market as a reason for doing so were before the Commission when it made the challenged decisions to close the PredictIt Market. So were internal Commission communications on how to address the continuation of the PredictIt Market amidst the entreaties from these other institutions seeking authorization to offer political event contracts. But in response to discovery in this matter, the Commission has refused to produce these communications and has improperly withheld them from the administrative record that it has purported to produce. These and other communications are clearly part of the administrative record of documents relevant to the decisions and before the agency when it took the challenged actions to close the PredictIt Market.

24. That the CFTC’s asserted bases for closing the PredictIt Market are pretextual is apparent from the face of the record. Specifically, the withdrawal is purportedly based primarily

on the April 20, 2021 letter from a subsidiary of Victoria University of Wellington, Victoria Link Ltd., to the CFTC. See Ex. 3 at 3-4. After Victoria Link Ltd. sent this letter (CFTC.277-281), more than a year elapsed with no communication from the CFTC. See CFTC.285 (June 3, 2022 email from the CFTC requesting discussion of the April 20, 2021 letter). This is the same timeframe in which the CFTC was receiving requests from regulated institutions seeking authorization to offer political event contracts, demonstrating that the CFTC only then searched for a reason to shutter the PredictIt Market.

~~19.25.~~ In any event, none of these alleged violations justifies closure of the Market, and the March Action lacks a non-arbitrary explanation for attempting to close it.

~~20.26.~~ The March Action also suggests that the PredictIt Market must shut down because it demands too much of the Commission's attention. Ex. 3 at 6. But the March Action does not cite any specific numbers to support this claim. It says nothing about the magnitude of resources required and does not explain why they would not be reasonably expended in light of the considerable and longstanding reliance interests of traders, academics, and service companies.

~~21.27.~~ More concerningly, the March Action carries forward many of the legal deficiencies of the earlier Revocation decision. Like the Revocation decision, the March Action provides no serious consideration of any alternatives to the chaotic, disruptive, and economically damaging wind-down of the Market it would force. Like the Revocation decision, the March Action does not give the Plaintiffs an opportunity to rebut the Commission's allegations (it allows Victoria University to respond but fails to give the University a chance to demonstrate or achieve compliance with the asserted requirements of the Commission's license, as required when withdrawing a license). And like the Revocation decision, the March Action does not account for

the longstanding reliance interests of the traders, academics, [journalists](#), and service companies that organized their affairs around the Commission's license for the Market to operate.

[22.28.](#) In particular, the consequences of the Commission's sustained efforts to close the PredictIt Market will cause harm to the Investor Plaintiffs. Solely due to the Commission's campaign to close the Market, Mr. Clarke, Mr. Beeler, Mr. Boeckmann, Mr. Neeley, and Mr. Schneider will be deprived of the opportunity to see their positions through to the occurrence or non-occurrence of the political events on which their contracts are based. They do not understand why the Commission, even if it for some reason wants the Market to shut down, cannot let their existing contracts continue to trade until the election or event window would naturally close.

[23.29.](#) They will also be deprived of the benefits of the Market's continued operations and issuance of new contracts in which there would be an opportunity for the Plaintiffs to trade. Private parties investing in Market contracts are among the beneficiaries of the Commission's license for the Market to operate. Neither the Revocation nor the March Action provide any acceptable explanation for the Commission's effort to close the Market with all due haste.

[24.30.](#) The Commission's efforts will cause harm to the Academic Plaintiffs. Gone will be the days that they use the data generated by the Market for research and teaching purposes. This will impact the quality of their legal scholarship and the student experience.

[31.](#) The Commission's efforts will also cause harm to Plaintiff *The Washington Free Beacon*. The Commission's efforts will restrict access to information created by the Market regarding the real time effects of events on the likely outcome of elections and other significant political events that *The Free Beacon's* editors and reporters, as well as other [journalists](#), convey to readers and use to report on politics. The Commission, by seeking to shut down the PredictIt

Market, is endeavoring to shrink the information that is available about significant political questions and the Government of which it is a part. It is a straightforward attack on First Amendment rights, and a violation of the APA for arbitrarily casting aside the interests of the media, journalists, and readers in the information flowing from the PredictIt Market.

25.32. The Commission’s Revocation of the No-Action Relief for the PredictIt Market, without explanation or other indication of reasoned decisionmaking, without “written notice of the facts or conduct which may warrant” the Revocation, and without providing anyone an “opportunity to demonstrate or achieve compliance” with the terms of No-Action Relief or other requirements, violates the Administrative Procedure Act. 5 U.S.C. §§ 558, 706.

26.33. The Commission’s attempted do-over suffers from these same deficiencies. *Id.* Among other things, both the Revocation and the March Action are “arbitrary, capricious, an abuse of discretion, [and/or] otherwise not in accordance with law” and occurred “without observance of procedure required by law.” 5 U.S.C. § 706. Through both actions, the Commission failed to seriously consider less disruptive alternatives and ignored the serious reliance interests of the Plaintiffs. Moreover, the Commission’s actions violated the Administrative Procedure Act by failing to provide the procedural protections that accompany a license from a federal agency, as they offered the Plaintiffs no hearing much less an opportunity “to demonstrate or achieve compliance.” 5 U.S.C. § 558(c); *see also id.* § 706(2)(D).

27.34. The Court should “hold unlawful and set aside” the Revocation and March Action, including any command that contracts be prematurely liquidated. 5 U.S.C. § 706. ~~The Court~~ The Court should also hold that the Revocation and March Action are unconstitutional, in violation of the First and Fifth Amendments of the United States Constitution. The Court should carry forward the preliminary injunction and then enter a permanent injunction against the

proscriptions in the Revocation and March Action that would require premature liquidation of contracts, including contracts that concern the 2024 elections, well before they would ordinarily mature and that would prohibit the Market from offering additional contracts. [That injunction should also prohibit Defendants Behnam and McGonagle from further violating the Plaintiffs' constitutional rights.](#)

JURISDICTION AND VENUE

[28:35.](#) This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 as Plaintiffs' causes of action arise under the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*, a law of the United States.

[29:36.](#) Venue is proper in this district under 28 U.S.C. § 1391(e)(1)(B)–(C). Plaintiffs Kevin Clarke, Michael Beeler, Mark Borghi, Josiah Neeley, and Wes Shepherd reside in Austin, Texas and no real property is involved in this action. In addition, a substantial part of the events or omissions giving rise to the claims also occurred in this jurisdiction. Mr. Clarke has made numerous investments in event contracts on the PredictIt Market from Austin, Texas, where he has lived since 2010. Mr. Beeler, Mr. Borghi, Mr. Neeley, and Mr. Shepherd have likewise invested and wish to continue to invest in event contracts on the PredictIt Market from Austin. Many of these contracts will not close before the dates specified by the CFTC in the Revocation or the implementation of the March Action. The Revocation decision and the March Action will cause Mr. Clarke, Mr. Beeler, Mr. Borghi, Mr. Neeley, and Mr. Shepherd harm and damage in the Western District of Texas.

[30:37.](#) An actual controversy exists between the parties under 28 U.S.C. § 2201, and this Court has authority to grant declaratory and injunctive relief to set aside the CFTC's withdrawal of the No-Action Relief and to issue all necessary and appropriate process to preserve each

Plaintiff's status or rights pending the conclusion of the proceedings, as requested herein. 28 U.S.C. §§ 2201, 2202; 5 U.S.C. §§ 705–06.

PARTIES AND RELEVANT ENTITIES

~~31:38.~~ Defendant Commodity Futures Trading Commission (previously defined as “CFTC” or the “Commission”) is an independent federal agency established under Section 2 of the Commodity Exchange Act, 7 U.S.C. § 2, that regulates the derivatives markets, including futures contracts, options, and swaps, in the United States. The CFTC is headquartered in the District of Columbia.

39. Defendant Rostin Behnam is the current Chairman of the CFTC. He has served in that role since January 4, 2022. Mr. Behnam was previously a CFTC Commissioner from September 2017 until January 21, 2021, when he was elected by Commission members as Acting Chairman. He was subsequently nominated by the President to serve as Chairman of the Commission.

40. Defendant Vincent McGonagle is the Director of the CFTC's Division of Market Oversight and is responsible for the oversight of derivatives trading platforms and products. He has served in that role since April 22, 2022. Previously, Mr. McGonagle was Principal Deputy Director of the CFTC's Division of Enforcement where he also served as Acting Director from October 2020 to April 2022.

~~32:41.~~ Plaintiff Kevin Clarke is an individual who lives and works in Austin, Texas, which is in the Western District of Texas. Mr. Clarke has purchased positions in almost every contract market offered by the PredictIt Market, including positions of which the Commission appears poised to terminate trading prior to the occurrence of the subject event. Mr. Clarke also wishes to invest in additional contracts that ordinarily would be issued to address new political events and elections, but for the Commission's efforts to close the Market. Mr. Clarke's use of the PredictIt

Market, including purchases and trades on the Market, has almost universally occurred from his home or business in Austin, Texas, in the Western District of Texas.

33.42. Plaintiff Trevor Boeckmann is an individual domiciled in New York City, New York. Mr. Boeckmann purchased event contracts on the PredictIt Market that are based on political events that will not occur until after the CFTC has ordered the PredictIt Market to cease operations.

34.43. Plaintiff Harry Crane is a Professor of Statistics at Rutgers University in New Jersey and a fellow at the London Mathematical Institute. Professor Crane utilizes the PredictIt Market and the data it generates in his teaching and research.

35.44. Plaintiff Corwin Smidt is an Associate Professor in the Department of Political Science at Michigan State University. Professor Smidt utilizes PredictIt Market data in his teaching and research. Professor Smidt resides and works in Michigan.

36.45. Victoria University of Wellington (previously defined as “Victoria University”) is not a party to this litigation. Victoria University is a publicly owned university based in and operating under the laws of New Zealand. Victoria University has operated an online market for political-event contracts (previously defined as the “PredictIt Market” or the “Market”) since 2014. Victoria University had no intention of ending the PredictIt Market prior the CFTC’s withdrawal of the No-Action Relief, and, but for the CFTC’s action, Victoria University would have continued the markets for 2024 contracts through their natural conclusions. Victoria University intends to comply with the terms of the CFTC’s Revocation and therefore close the 2024 contracts in advance of their maturity unless the Revocation and March Action are abrogated, amended, or suspended.

37.46. Plaintiff Predict It, Inc. (previously defined as “PredictIt”) is a Delaware corporation with its principal place of business in the District of Columbia and a subsidiary of

Aristotle International, Inc. PredictIt is an internet distributor of user-generated predictive content. PredictIt, together with Plaintiff Aristotle, services the PredictIt Market.

38.47. Plaintiff Aristotle International, Inc. (previously defined as “Aristotle”), is a Delaware corporation with its principal place of business in the District of Columbia. Aristotle provides know-your-client and identity-verification services to a wide variety of customers and provides information-technology services to political campaigns and organizations, including software, political data, consulting, and outsourcing services. Victoria University has entered into a market servicing agreement with Aristotle, under which Aristotle serves as the clearing house for trades on the PredictIt Market and provides other services for the PredictIt Market through its Predict It, Inc. subsidiary. Pursuant to that agreement and the terms and conditions of the PredictIt Market, investors that open accounts on the PredictIt Market enter into a contract with Aristotle.

39.48. Plaintiff Michael Beeler is an individual who lives and works in Austin, Texas. Mr. Beeler holds several positions on the PredictIt Market, including one contract scheduled to expire in 2024. He would make additional 2024 and other investments if the Market were allowed to continue operating. Mr. Beeler’s use of the PredictIt Market, including purchases and trades on the Market, has almost universally occurred from his home or business in Austin, Texas.

40.49. Plaintiff Mark Borghi is an individual who lives and works in Austin, Texas. Mr. Borghi co-hosts a news podcast that regularly uses data from the PredictIt Market to analyze political developments. The podcast advertises the PredictIt Market under one of PredictIt’s affiliate programs. Mr. Borghi is also a long-time trader on the PredictIt Market and wishes to continue trading in the future.

41.50. Plaintiff Richard Hanania is the President of the Center for the Study of Partisanship and Ideology. Mr. Hanania is a long-time PredictIt trader and proponent of prediction markets.

[42.51.](#) Plaintiff James D. Miller is a Professor of Economics at Smith College in Northampton, Massachusetts. Professor Miller has been a PredictIt trader since November 2015 and currently has open investments in the Market from which he hopes to gain a profit, including investments in contracts that do not expire until 2024. Professor Miller also utilizes the PredictIt Market and the data it generates in his teaching.

[43.52.](#) Plaintiff Josiah Neeley is an individual who lives and works in Austin, Texas. Mr. Neeley has actively traded on the PredictIt Market since 2015. He currently holds several open contracts, including some that the Commission appears poised to terminate trading of prior to the subject event. Mr. Neeley's use of the PredictIt Market, including purchases and trades on the Market, has almost universally occurred from his home or business in Austin, Texas.

[44.53.](#) Plaintiff Grant Schneider is Vice President of Machine Learning and Head of the Columbus, Ohio office of a leading artificial intelligence lending marketplace. Dr. Schneider has been a PredictIt trader since 2016 and currently holds open positions, including some that do not close until 2024.

[45.54.](#) Plaintiff Wes Shepherd is an individual who lives and works in Austin, Texas. Mr. Shepherd co-hosts a news podcast that regularly uses data from the PredictIt Market to analyze political developments. The podcast advertises the PredictIt Market under one of PredictIt's affiliate programs. Mr. Shepherd is also a long-time trader on the PredictIt Market and wishes to continue trading in the future.

[55.](#) [Plaintiff *The Washington Free Beacon* is an online newspaper reporting on national public policy and politics from our Nation's capital. *The Free Beacon* produces in-depth investigative reporting on a wide range of issues, including public policy, government affairs, international security, and media. It is committed to serving the public interest by reporting news](#)

and information that is not being fully covered by other news organizations. *The Free Beacon* regularly uses data from the PredictIt Market to report on and analyze political developments, projected political outcomes, and political ideas. *The Free Beacon* wishes to continue using data from the PredictIt Market to contribute to the marketplace of ideas.

BACKGROUND

I. The PredictIt Market’s Operations and Offerings

46.56. The PredictIt Market poses numerous yes-or-no questions regarding the outcome of political events at any given time. Discrete questions are grouped into “event markets” involving the same election or other political event. Investors can buy “contracts” based on what they believe to be the likely outcome of the political event. For example, the event market involving the 2024 Republican presidential nomination includes yes-or-no contracts on 17 different potential candidates. Other event markets include only one contract.

47.57. The PredictIt Market limits each contract to 5,000 active participants with each participant’s investment capped at \$850 based on the price of the contracts when the investor purchases them.

48.58. Until settlement, each contract is valued at less than one dollar. And just like a stock exchange or futures market, the aggregated price of a contract continuously changes as users respond to shifting events that make the outcome more or less likely. One day a contract predicting that Republicans will win the House could be valued at \$0.75. The next day, the same contract’s value could drop to \$0.70.

49.59. If the event ultimately occurs—*e.g.*, Republicans win control of the House—yes-contracts will close at \$1. If it does not occur—*e.g.*, Republicans do not win the House—yes-

contracts will close at \$0. At any time before the event closes, investors are free to liquidate or add to positions by buying and selling contracts.

II. Value of the PredictIt Market to the Academic Community

~~50.60.~~ Victoria University launched the PredictIt Market because of the academic value of the results data generated by investments such as those of Mr. Clarke, Mr. Beeler, Mr. Boeckmann, Mr. Borghi, Mr. Neeley, Mr. Schneider, Mr. Shepherd, and thousands of other traders. This academic purpose is specifically articulated in Victoria University's request for no-action relief and the CFTC's No-Action Relief decision. Consistent with that requirement, the data generated by the PredictIt Market is made available to the academic community at no cost. These data have been the subject of study by over 140 academics at universities around the world. Professors Crane, Miller, and Smidt, and Mr. Hanania, are among the academics that have used and intend to use PredictIt Market data in their teaching and research in the fields of statistics and political science.

~~51.61.~~ Professor Smidt—an associate professor of political science at Michigan State University—has used PredictIt Market data to study the reliability of public opinion as an indicator of future political outcomes. PredictIt Market data offers Professor Smidt and other researchers a unique long-term look at the public's view of political outcomes because the PredictIt Market offers event contracts much further in advance of the deciding event to which they relate than comparable markets like the Iowa Electronic Markets.

~~52.62.~~ Professor Crane—a statistics professor at Rutgers University—has used and intended to continue using the PredictIt Market in his research and teaching. In his class, Statistics, Science, and Society, he teaches his students to think quantitatively about real-world matters and reporting. As part of the class, students study the PredictIt Market and other methods of forecasting

political outcomes, like polling and pundits, and analyze their reliability and the ways bias can enter decision and reporting processes. Similarly, Professor Crane's research using PredictIt Market data has concerned the reliability of various methods of forecasting future political outcomes. His analysis of PredictIt Market data generated between 2018 and 2020 suggests that the Market's percentage-trading price is a more accurate predictor overall than predictions made on the opinion-poll analysis website FiveThirtyEight.

53-63. Professor Miller—an economics professor at Smith College—has used and hopes to continue using the PredictIt Market in his teaching. In his discussions with students, Professor Miller stresses the value of the predictions derived from the PredictIt Market because participants must put their own money at risk. Professor Miller believes that PredictIt represents an excellent teaching tool for how stock markets function because many undergraduates have a better understanding of U.S. elections than of traditional financial markets.

54-64. Richard Hanania—the President of the Center for the Study of Partisanship and Ideology—has drawn on the PredictIt Market in several of his academic writings. He has taken positions on the PredictIt Market and publicly tracks his portfolio, while encouraging other public intellectuals to do the same. Mr. Hanania believes that the accountability mechanism provided by attaching money to political beliefs and predictions improves public discourse. He stresses the potential for PredictIt to overcome many of the shortcomings in American intellectual life, including decreasing civility and inability to conduct conversations across different political tribes.

65. If the PredictIt Market were shut down, its contracts prematurely liquidated, and its ability to offer new contracts to traders terminated, the Commission's efforts to close the Market would deprive professors like Professors Crane, Miller, and Smidt of both a valuable pedagogical tool and a rich source of data for their studies in the fields of statistics, economics, and political

science. For example, if contracts predicting the outcome of the 2024 presidential election were liquidated prior to their close-out event (*i.e.*, the winner of the 2024 presidential election is determined), the trading data from those contracts would be worthless from an academic perspective, foreclosing future use of the Market as a research resource.

III. Value of the PredictIt Market to Media Organizations and Journalists

66. *The Free Beacon* is among the many media organizations that convey PredictIt Market data and information to readers and use the data better to inform their readers on national politics and the operation of Government. The data generated by the PredictIt Market provides some of the most reliable and prompt information on how the events of the day are likely to affect the outcome of elections and other significant political questions. *The Free Beacon* views PredictIt data as an important complement to polling information, which takes days to assemble and can suffer from inaccuracies that small investments in predictions can correct.

55-67. If the PredictIt Market were shut down, its contracts prematurely liquidated, and its ability to offer new contracts to traders terminated, the Commission's efforts to close the Market would restrict the information available to the media and the public and political reporting.

III-IV. Investor Plaintiffs' Trades on the PredictIt Market

56-68. The Investor Plaintiffs have each made significant investments in hundreds of event contracts offered on the PredictIt Market over the past several years.

57-69. They each believe, based on their research and study of the Market, that they have purchased PredictIt Market contracts in a manner that will produce a profit, given their views that their side of the contracts are likely to occur.

58-70. Mr. Clarke is an assistant policy debate coach at the University of Texas at Austin and owns a business specializing in the acquisition and management of mineral assets such as gemstones and crystals. He has been trading on the PredictIt Market for roughly two years from

his home and business in Austin, Texas, and currently has investments in every contract market offered on the PredictIt Market and open positions in excess of \$11,000. Among his investments are event contracts related to the outcome of the 2024 election cycle that the Commission appears poised to terminate trading of prior to those elections. He desires to invest in new contracts offered on the Market, provided it is not unlawfully interfered with.

59.71. Mr. Boeckmann is a public defender at the Neighborhood Defender Service of Harlem in New York City. He has traded on the PredictIt Market since 2016 from his home in Harlem, and he currently has thousands of dollars invested in a wide-range of contract markets. The event contracts he has invested in include several related to the outcome of the 2024 presidential election that the Commission appears poised to terminate trading of prior to those elections. These contracts include certain predictions on which Republican presidential contenders will not win the Republican nomination and which party's candidate will ultimately win the 2024 presidential election.

60.72. Mr. Beeler is a statistician and holds a Ph.D. in Operations Research. He resides in Austin, Texas. Mr. Beeler has been trading on the PredictIt Market for over four years. He held numerous positions in 2024 election contracts but has sold most of those due to the CFTC's Revocation. He held several positions that expired in 2022 and still holds one contract scheduled to expire in 2024. Mr. Beeler would make additional 2024 and other investments if the Market were allowed to continue operating.

61.73. Mr. Borghi is a longtime PredictIt trader. He co-hosts a daily news podcast focused on politics—Hard Factor—that is produced in Austin. Mr. Borghi uses data derived from the PredictIt Market on Hard Factor on a weekly basis. If the CFTC's Revocation and March Action

are allowed to stand, Mr. Borghi will be deprived of an important data source for his podcast. He will also lose the chance to profit on PredictIt Market contracts.

62.74. Mr. Neeley is the Texas Director of a national public policy organization and a non-practicing attorney. He has been a PredictIt trader since 2015 and currently holds several open contracts, including contracts that involve the 2024 presidential races. Mr. Neeley stopped purchasing new positions on the PredictIt Market after the CFTC's Revocation.

63.75. Mr. Schneider is the Vice President of Machine Learning and Head of the Columbus, Ohio office of a leading artificial intelligence lending marketplace. He holds a Ph.D. in statistics and is the co-author of an introductory statistics textbook. Mr. Schneider has been a PredictIt trader since 2016 and currently holds open positions, including some that do not close until the 2024 elections. As a hiring manager he also views consistent success on the PredictIt Market (or other forecasting platforms) as a valuable signal of aptitude for machine learning. Mr. Schneider also finds the Market useful for understanding future political outcomes that might affect his company's business. The CFTC's Revocation has decreased his overall trading activity.

64.76. Mr. Shepherd is a longtime PredictIt trader. He co-hosts a daily news podcast focused on politics—Hard Factor—that is produced in Austin, Texas. Mr. Shepherd uses data derived from the PredictIt Market on Hard Factor on a weekly basis. He considers PredictIt data more reliable than polls and pundits. If the CFTC's Revocation and March Action are allowed to stand, Mr. Shepherd will be deprived of an important data source for his podcast. He will also lose the chance to profit on his current PredictIt Market contracts.

65.77. The Investor Plaintiffs were each aware that the PredictIt Market was operated with the permission of the CFTC and believed that, at a minimum, the event contracts they purchased could be traded until their deciding event occurred.

66.78. The CFTC’s Revocation—ordering that event contracts be closed or liquidated prematurely—and the March Action have distorted the value of Investor Plaintiffs’ event contracts. In the wake of these actions, the Investor Plaintiffs have observed and continue to observe changes in the pricing of their positions as traders attempt to salvage their investments in contracts that would be prematurely liquidated, either by withdrawing their assets from the Market entirely or attempting to predict what the public’s belief about the outcome will be on the liquidation date or the form of the liquidation, rather than what the outcome will actually be. Amid this disruption, the Investor Plaintiffs do not understand why the CFTC will not allow the contracts they have invested in to run their course.

67.79. Among the many factors contributing to this disruption, the Revocation and March Action provide no clarity on which contract markets will be permitted to operate going forward, and which must liquidate immediately due to alleged noncompliance with the terms and conditions of the No-Action Relief decision. This uncertainty has led many investors to pull their money out of the Market immediately even if they otherwise could have profited from their investments before Commission shuts down the Market, effecting remaining traders’ ability to sell appreciated contracts that they no longer believe predict a correct outcome.

68.80. For contracts that will not close before the Commission’s desired shut down dates—like those related to the outcome of the 2024 election cycle—investors will be denied the opportunity to realize the return they expect if their contracts were allowed to run their course. Indeed, many investors, like the Investor Plaintiffs, strategically invest in PredictIt contract markets early when outcomes are less certain due to their remoteness in time. For example, some traders invest in low-value event contracts—*i.e.*, outcomes believed to be unlikely at the time of investment—based on their belief that their predicted outcome will become more likely as the

deciding event grows closer, presenting an opportunity to reap a significant return on their investments. Other investors invest in high-value event contracts early on based on their belief that the odds of the outcome occurring will continue to increase as the deciding event grows closer, presenting an opportunity to reap a smaller but more reliable return. If enforced, the CFTC's efforts to close the Market also will deprive them of the opportunity to invest in new contracts.

IV.V. The CFTC Grants No-Action Relief to Victoria University, Licensing the Establishment of the PredictIt Market

~~69~~81. In 2014, Victoria University sought no-action relief pursuant to CFTC regulations. *See* 17 C.F.R. § 140.99. The relief sought would allow Victoria University to operate a not-for-profit market for the trading of event contracts, to offer such event contracts to U.S. persons, and to collect the results data for academic and educational use. A true and correct copy of the June 26, 2014 Application for no-action relief is attached hereto as **Exhibit 4**.

~~70~~82. Following the procedures specified in its regulations, the Commission granted the requested No-Action Relief, by issuing CFTC Letter No. 14-130. The written grant of relief found that “the operation of [Victoria University’s] proposed market without registration as a DCM, FBOT, or swap execution facility, or without registration of its operators, would [not] be contrary to the public interest.” Ex. 1 at 5.

~~71~~83. The No-Action Relief serves as a Commission-granted license to operate the Market.

~~72~~84. In its No-Action Relief decision, the Commission specified certain rules that would govern the PredictIt Market. Importantly, the No-Action Relief decision structured the PredictIt Market to be “small scale,” and thus placed limits on the amount of money (\$850) that any one person could invest in a particular contract and on the number of active traders (5,000) who could participate in a particular contract. These limits ensure that market participants would not build

up so great an interest in the outcome of an election or political event to try to change the outcome or to use the market to hedge a financial investment. And they would ensure the market remained focused on providing information, by aggregating the investment-backed predictions of many. Ex. 1 at 3–5.

73:85. In its application for no-action relief, Victoria University listed eight examples of political event contracts it might offer, including who a Presidential candidate may select as his running mate and made clear that: “The Market may list additional event-driven contracts based on significant Political Events.” Ex. 4 at 3. The Commission’s No-Action Relief written decision accepted the scope of political event contracts that Victoria University proposed to offer in its application for no-action relief and repeated the non-exclusive list of three of the example contracts Victoria University had identified:

The proposed submarket for political event contracts will include winner-takes-all contracts to predict the following outcomes:

- Which presidential nominee will win his or her party’s primary, the general election popular vote, and the Electoral College;
- Who will be the majority party nominee for Vice President; and
- Which party will control the next Congress.

Ex. 1 at 2. Some of these examples pertained to the outcome of a U.S. election, but another did not, as it pertained to the selection of a vice-presidential nominee, a decision made by a candidate and ratified by his party.

74:86. The use of the word “include” in the description of “political event” contracts made clear that the examples listed were not exclusive. *Id.* This was further reinforced by the explicit reference back to the “proposed submarket for political event contracts” described in Victoria University’s application (*id.*), and its reference to offering “additional event-driven contracts based

on significant Political Events.” Ex. 4 at 3. The No-Action Relief decision placed only the following restriction on the scope of these contracts: “The market will not list any contracts that involve, relate to or reference terrorism, assassination or war.” Ex. 1 at 2.

75.87. Lest there be any doubt that approved political event contracts were not limited to election outcomes, a senior Commission official clarified in later correspondence: “NAL 14-130 lists three *non-exclusive* examples of political contracts – each is tied to election outcomes and allows some flexibility with respect to political contracts,” but cautioned that PredictIt should avoid contracts that “appear to have *no relationship to elections or any other meaningful political question.*” [CFTC.027.](#)

76.88. In its March Action, the Commission alleges that the Market has offered contracts “outside the scope of the” Commission’s 2014 license for operation of the Market and implies that the Market should close for that reason. The Commission’s assertion is based on an arbitrary interpretation of the license, restricting contracts to the outcomes of elections. As demonstrated by the above text and context of the No-Action Relief decision, as well as subsequent communications with CFTC staff, the approved political event contracts went beyond just election-outcome contracts. Offering contracts beyond election-outcome contracts therefore cannot serve as a basis for revoking the Market’s license to operate.

V.VI. The Commission Precipitously and Without Explanation Revokes Permission and Its License to Operate the PredictIt Market

77.89. Between 2014 and 2022, the PredictIt Market has offered over 8,000 contract markets, in which over 120,000 participants have invested.

78.90. On August 4, 2022, the CFTC revoked the No-Action Relief by publishing Revocation of CFTC Letter No. 14-130 (previously defined as the “Revocation”). See Ex. 2. [The Revocation was authorized by Defendant Behnam and issued by Defendant McGonagle.](#)

~~79.91.~~ The Revocation—issued without any detailed reasoning, explanation, or legally sufficient process—would have effected a shutdown of the PredictIt Market as of February 15, 2023, as the entities servicing the Market cannot continue to permit trading and Investors cannot continue to participate in the Market after the Commission has effectively revoked the Market’s permission to operate.

~~80.92.~~ Victoria University had no intention of ending the PredictIt Market prior the CFTC’s withdrawal of the No-Action Relief, and, but for the CFTC’s action, Victoria University would have continued the markets for 2024 contracts through their natural conclusion. Victoria University intends to comply with the terms of the CFTC’s Revocation (and March Action) and therefore close the 2024 contracts in advance of their maturity unless the CFTC’s actions are abrogated, amended, or suspended.

~~81.93.~~ The Revocation itself left the corporate entities servicing the market and investors to speculate about the basis of the Commission’s decision. The Revocation summarily stated:

The University has not operated its market in compliance with the terms of Letter 14-130. As a result, Letter 14-130 is hereby withdrawn and, as such, is not available for the listing or operation of any new or related contracts.

Ex. 2 at 2.

~~82.94.~~ The Revocation further specified prescriptions for the wind-down of the PredictIt Market:

To the extent that the University is operating any contract market, as of the date of this letter, in a manner consistent with each of the terms and conditions provided in Letter 14-130, all of those related and remaining listed contracts and positions comprising all associated open interest in such market should be closed out and/or liquidated no later than 11:59 p.m. eastern on February 15, 2023.

Ex. 2 at 2.

83.95. The Revocation did not specify how the PredictIt Market's operations at any time during the previous seven years had failed to comply with the terms of the No-Action Relief decision. It lacked any indication of reasoned decisionmaking.

84.96. To the extent that the Commission's Revocation was based on an interpretation of its No-Action Relief decision that limits permitted contracts to those directly related to the outcome of a U.S. election and alleged violations of that claimed limit (as suggested in one oral discussion with the Commission staff), the Revocation incorporates reasoning that is contrary to the text, context, and history of the Commission's own No-Action Relief decision and extensive subsequent communications with CFTC staff. That error, in addition to the lack of explanation in the Revocation itself, further makes the Revocation arbitrary, capricious, and an abuse of discretion.

85.97. The Commission's Revocation also arbitrarily demanded the shutdown of the PredictIt Market in a manner that ignores less disruptive alternatives without explanation.

86.98. The arbitrarily chosen end date of February 15, 2023, alone forced the premature liquidation of dozens of contracts, the settling of which depends on the outcome of elections that will occur in 2024. The PredictIt Market's participants will be harmed by a premature liquidation, as it will deprive them of the value they anticipate by the event resolving in their predicted direction in 2024. Even if the Commission had grounds for revoking the Market's permission to operate (which it does not), the Commission arbitrarily passed over, without explanation, the alternative of allowing contracts already issued by the Market to run their course and avoiding the entirely unnecessary displacement caused by the premature liquidation of those contracts. The Commission also passed over the alternative of seeking adjustments to whatever problems it perceived in the Market rather than simply trying to close it.

87.99. Mr. Clarke, Mr. Beeler, Mr. Boeckmann, Mr. Neeley, Mr. Schneider, and Mr. Shepherd are among those Market participants that will be harmed if the Commission can move forward with premature liquidation or stop the issuance of new contracts in which they can invest. They have invested in open event contracts on the PredictIt Market, including those related to the outcome of the 2024 presidential election, that will not close until that year or ~~early~~-2025. If the PredictIt Market is shut down before those contracts close, Mr. Clarke, Mr. Beeler, Mr. Boeckmann, Mr. Neeley, Mr. Schneider, and Mr. Shepherd, and other PredictIt Market participants will be deprived of the benefit of their investments and of the benefits of a continuing Market.

VI.VII. Following Oral Argument in the Fifth Circuit, the Commission Withdraws the Revocation Letter and Issues a New Determination that the No-Action Relief is Void and Should be Withdrawn

88.100. In September 2022, the Plaintiffs moved for a preliminary injunction in this Court aimed at preserving the Market during the pendency of litigation and preventing the liquidation of contracts existing as of August 2022. As the February 2023 Revocation deadline drew closer and closer, and this Court had not acted on the preliminary injunction, Plaintiffs deemed the motion effectively denied and appealed the decision to the U.S. Court of Appeals for the Fifth Circuit. On January 26, 2023, the Fifth Circuit granted an injunction allowing Market contracts to continue trading pending resolution of the appeal. The Fifth Circuit expedited the appeal and heard oral argument on February 8, 2023.

89.101. On March 2, 2023—twenty-two days after oral argument in the Fifth Circuit but before a decision on appeal—the Commission issued “CFTC Letter 23-03” (previously defined as the “March Action”). [The March Action was authorized by Defendant Behnam and issued by Defendant McGonagle.](#)

~~90.102.~~ The March Action violated the Fifth Circuit’s injunction pending appeal, which granted Plaintiffs’ request to “enjoin the enforcement of the Commission’s February 15, 2023, liquidation mandate and allow the PredictIt Market event contracts that were offered as of the date of the agency’s decision . . . to continue trading pending resolution of [the] appeal.”

~~91.103.~~ The March Action purports to “withdraw[] and supersede[]” the August Revocation letter. Ex. 3 at 1. It nevertheless reaches the same conclusion as the prior Revocation—that the No-Action Relief is void and should be cancelled. Ex. 3 at 3.

~~92.104.~~ In contrast to the Revocation letter, the March Action attempts to provide an explanation of how the Commission believes the Market violated the conditions of the No-Action Relief. It alleges the following violations:

- a. That Aristotle, rather than Victoria University, is operating the Market, in violation of the No-Action Relief’s condition that faculty at the University must operate and oversee the Market. Ex. 3 at 3–4.
- b. That Victoria University has received, and permitted Aristotle to receive, separate compensation for the operation of the Market, in violation of the No-Action Relief’s condition that faculty at the University must oversee the Market, without receipt of separate compensation. Ex. 3 at 4–5.
- c. That Victoria University has offered contracts falling outside of the scope of the categories of submarkets approved in the No-Action Relief. Ex. 3 at 5–6.

~~93.105.~~ Each of these alleged violations is invalid and contrary to the text, context, and history of the No-Action Relief decision and extensive subsequent communications with CFTC staff. Taken together, the alleged violations cannot justify the preliminary conclusion that the No-Action Relief is void and should be withdrawn. The Commission’s assertion of these

flawed allegations to justify its action renders the March Action arbitrary, capricious, and an abuse of discretion.

94.106. The March Action further justifies its preliminary conclusion that the No Action Relief is void and should be withdrawn by suggesting that the Market demands too much of the Commission’s attention and “is not an appropriate use of taxpayer resources.” Ex. 3 at 6. The Commission does not cite any specific numbers to support this claim. It says nothing about the magnitude of resources required and does not explain why they would not be reasonably expended in light of the considerable and longstanding reliance interests of the traders, academics, and service companies that have organized their affairs around the No-Action Relief. This is no meaningful justification—much less a non-arbitrary one—for declining the alternative of seeking adjustments to whatever practices the Commission contends are inconsistent with its license of the Market and allowing the Market to continue operating. The assertion of this rationale in support of the closure of the Market renders the March Action arbitrary, capricious, and an abuse of discretion.

95.107. The March Action also arbitrarily fails to grapple with less disruptive alternatives than full closure of the Market. It states only that it would “be inappropriate” to allow currently existing markets to expire on their own terms in light of the “likelihood of recurrence” of alleged past violations of the No-Action Relief. Ex. 3 at 7. The alleged violations of the No-Action Relief are no such thing and certainly do not warrant closure of the Market. Moreover, the March Action offers no explanation for why alleged past violations suggest a likelihood of recurrence in the future.

96.108. The March Action invites Victoria University to submit objections to the Letter. Ex. 3 at 7. It does not, however, offer Victoria University—let alone the service companies

that organized their affairs around the No-Action Relief—an opportunity to demonstrate or achieve compliance with the requirements of the No-Action Relief. As a result, the March Action violates the APA’s procedural requirements for withdrawing agency licenses. *See* 5 U.S.C. § 558(c)(2).

97.109. Finally, the March Action does not account for the longstanding reliance interests of the traders, academics, [journalists](#), and service companies that organized their affairs around the No-Action Relief, as required by prevailing law in the Fifth Circuit when administrative agencies choose to adjust course. Instead, it specifically directs that none of these interested parties will have any opportunity to respond to the March Action, even though all of these parties are beneficiaries of the Commission’s license for the Market to operate. Ex. 3 at 7.

98.110. The PredictIt Market’s participants will be harmed by the determination in the March Action, as it will deprive them of the value they anticipate by the event resolving in their predicted direction in 2024. It will also deprive them of the benefits of a continuing Market. The Commission arbitrarily passed over, without sufficient explanation, the alternatives of allowing contracts already issued by the Market to run their course and avoiding the entirely unnecessary displacement caused by the premature liquidation of those contracts or of making structural corrections going forward to permit contracts to trade within limits and under conditions that the Commission believes comply with the license.

99.111. Mr. Clarke, Mr. Beeler, Mr. Boeckmann, Mr. Neeley, Mr. Schneider, and Mr. Shepherd are among those Market participants that will be harmed. They have invested in open event contracts on the PredictIt Market, including those related to the outcome of the 2024 presidential election that will not close until that year or early 2025. If the PredictIt Market is shut down before those contracts close, Mr. Clarke, Mr. Beeler, Mr. Boeckmann, Mr. Neeley, Mr. Schneider, Mr. Shepherd, and other PredictIt Market participants will be deprived of the

benefit of their investments. Moreover, as beneficiaries of the Market's license to operate, Mr. Clarke, Mr. Beeler, Mr. Boeckmann, Mr. Neeley, Mr. Schneider, and Mr. Shepherd wish to continue trading political futures contracts beyond the 2024 presidential election. The full closure of the Market, as opposed to less damaging alternatives like the CFTC targeting allegedly problematic contracts for removal from the Market, would deprive the Investor Plaintiffs of these future trading activities.

~~100.112.~~ Professors Crane, Miller, and Smidt are among the academics that will be harmed. They rely on the PredictIt Market as a source of data for research and academic scholarship and as a pedagogical tool for teaching students regarding political events and the efficiency of markets. The quality of the data for academic study is directly tied to the quantity and currency of the data. If the Commission shuts down the PredictIt Market, Professors Crane, Miller, and Smidt will lose this important source of scholarship. This outcome would be significantly more damaging to Professors Crane, Miller, and Smidt than the alternative of the Commission targeting correction of allegedly problematic contracts but leaving the remaining contracts—and the Market as a whole—intact.

113. *The Free Beacon* is among the media organizations that will also be harmed. *The Free Beacon* and its readers rely on the PredictIt Market as a source of data for political reporting. The quality of the data for predicting political outcomes is directly tied to the quantity and currency of the data. If the Commission shuts down the PredictIt Market, *the Free Beacon* will lose this important source of political data. This outcome would be significantly more damaging to *The Free Beacon* than the alternative of the Commission targeting correction of allegedly problematic contracts but leaving the remaining contracts—and the Market as a whole—intact.

~~101.114.~~ On the same day it issued the March Action, the Commission moved, on the basis of the Action, to dismiss the Fifth Circuit appeal as moot. Despite the fact that the March Action violated the injunction pending appeal, the Commission argued that the March Action served as a basis for dismissing the appeal. The positions taken by the Commission in its briefing on the motion to dismiss the appeal were not substantially justified and caused the Plaintiffs to incur unnecessary fees to repel an effort to avoid decision of a fully briefed appeal.

~~102.115.~~ On May 1, 2023, the Fifth Circuit denied the Commission's motion to dismiss the appeal as moot and clarified that the injunction pending appeal enjoined the Commission from closing the Market or otherwise prohibiting or deterring the trading of Market contracts until 60 days after final judgment in the appeal.

~~VII.~~VIII. The Fifth Circuit's Opinion

~~103.116.~~ On July 21, 2023, the Fifth Circuit Court of Appeals issued an opinion in this matter. A true and correct copy of the Fifth Circuit's opinion is attached hereto as **Exhibit 5**. The Circuit Court held that the Commission, through the No-Action Relief, had issued a "license" to open and to operate the PredictIt Market. Ex. 5 at 9. The Court considered and rejected as "meritless" each of the CFTC's threshold objections to this suit: (1) that the March Action mooted the case, (2) that the CFTC's actions were not final agency action, (3) that the withdrawal of the No-Action Relief was committed to the CFTC's discretion, and (4) that the Plaintiffs lacked standing. *Id.* at 6–15. The Court then held that the Plaintiffs were likely to succeed on their claims that the Commission's permission and license to operate the Market had been improperly and illegally terminated. *Id.* at 15–19. It also held that the March Action violated the injunction pending appeal. *Id.* at 16.

~~104.117.~~ The Court explained that the Commission’s efforts to close the Market—including through the Revocation in August 2022 and the March 2023 Action—likely had violated the Administrative Procedure Act. *Id.* at 15–21. These efforts endangered “significant reliance interests” that Market operators, traders, and academics had in the Market’s continued operation, given their significant investments in standing up, purchasing contracts on, and studying the Market. *Id.* at 15–18. The efforts likely also could not be squared with the procedural protections that accompany a license from a federal agency, the Court held, as the agency provided no hearing much less an opportunity “to demonstrate or achieve compliance.” *Id.* at 17 (quoting 5 U.S.C. § 558(c)). The Fifth Circuit found it unlikely that the agency could reconcile closing the Market with the “significant reliance interests at play.” *Id.* at 15–17. The Court found arbitrary the agency’s efforts to close the Market in light of the alternative of the agency identifying the alleged violations of the No-Action Relief’s terms, seeking correction of them, and then monitoring the Market for future compliance. *Id.* at 18. The Court also held that due to the threat of irreparable injury to Market operators and traders, as well as academics studying the Market, the balance of the equities and the public interest weighed in favor of a preliminary injunction. *Id.* at 19–21.

~~105.118.~~ The Fifth Circuit remanded the case to this Court with instructions to “enter a preliminary injunction pending its consideration of [Plaintiffs’] claims.” *Id.* at 21.

COUNT I

(Violation of the Administrative Procedure Act – Agency Action, Findings, and/or Conclusions that are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law)

~~106.119.~~ Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

~~107.120.~~ The Investor Plaintiffs, Academic Plaintiffs, Aristotle, ~~and~~ PredictIt, ~~and~~ [The Free Beacon](#) may assert claims under the Administrative Procedure Act because they have

been adversely affected or aggrieved by the CFTC's withdrawal of the No-Action Relief. 5 U.S.C. § 702.

- a. Investor Plaintiffs are active participants in the PredictIt Market and derive economic value from the ability to trade contracts based on their research and knowledge about the likely outcome of elections and other significant political questions. In addition, Mr. Clarke, Mr. Beeler, Mr. Boeckmann, Mr. Neeley, Mr. Schneider, and Mr. Shepherd have contracts that are not scheduled to settle prior to the Commission's desired termination date, and contracts settling prior to then about which there is uncertainty regarding the timing of their liquidation due to the Commission's vague Revocation and March Action.
- b. The PredictIt Market is a central component of the Academic Plaintiffs' classes, and data generated by PredictIt Market event contracts is valuable to their areas of research. If PredictIt Market event contracts are liquidated prematurely—prior to the close-out event for many contracts—or if the Market is prevented from offering new contracts, they will be stripped of a pedagogical tool that facilitates student engagement and understanding of prediction markets, and data from 2024-presidential-election contracts will be rendered valueless for academic purposes, foreclosing the use of that data in future research.
- c. For more than half a decade, PredictIt and Aristotle have expended significant resources to assist Victoria University in developing and operating the PredictIt Market in reliance on the No-Action Relief. Victoria University is not a party to this litigation; but Victoria University had no intention of ending the PredictIt Market prior to the CFTC's withdrawal of the No-Action Relief, and, but for the

CFTC’s action, Victoria University would have continued the markets for 2024 contracts through their natural conclusions. Victoria University intends to comply with the terms of the CFTC’s Revocation and therefore close the 2024 contracts in advance of their maturity unless the Revocation and March Action are abrogated, amended, or suspended. Aristotle and PredictIt will be forced to incur massive administrative, labor, time, and other costs if forced to liquidate pending contracts prematurely due to the Commission’s wind-down orders. The arbitrary order to terminate contracts early in violation of contract terms leaves Market Operators to guess about how to unwind contracts.

d. *The Free Beacon* is one of many media organizations that use PredictIt data in their reporting. If the CFTC’s Revocation were allowed to stand, *The Free Beacon*, its journalists, and its readers will be arbitrarily restricted from an important source of information regarding national politics and the operation of Government.

~~108.121.~~ The CFTC’s revocation of the No-Action Relief, through both the August 2022 Revocation and the March 2023 Action, is a “final agency action for which there is no other adequate remedy.” 5 U.S.C. § 704.

- a. Under CFTC regulations, no-action relief is to be sought from the appropriate Division of the CFTC, here the Division of Market Oversight. 17 C.F.R. § 140.99. Victoria University did so in 2014. There is no option under the CFTC’s regulations to appeal the issuance, non-issuance, or revocation of no-action relief to the multi-member Commission or any higher power in the Commission. *Id.*
- b. The CFTC’s regulations make clear that no-action letters issued by the Division of Market Oversight bind the division itself in the discharge of its authority delegated

from the CFTC, 17 C.F.R. § 140.99(a)(2), and contemplate that the entity seeking no-action relief may rely on a no-action letter issued by the division. *Id.*

- c. The entire process—from beginning to end—rests with the Division of Market Oversight. Accordingly, Plaintiff has no adequate or available administrative remedy to address the Revocation.
- d. The No-Action Relief is the final agency action of a license, as that term is defined under the Administrative Procedure Act.
- e. The Commission itself approved the revocation of the No-Action Relief. On information and belief, the Division of Market Oversight’s proposed revocation of No-Action Relief was circulated to each Commissioner for his or her objection, and no Commissioner objected.
- f. In the alternative, any effort to obtain administrative remedy would be futile.

109-122. The Fifth Circuit’s July 21, 2023, opinion in this matter holds that the CFTC’s efforts to withdraw the No-Action Relief constitute final agency action. Ex. 5 at 10–12.

- a. The Fifth Circuit found that the withdrawal of No-Action Relief consummated the CFTC’s decisionmaking process: “[I]t does not matter that the letter pertains only to the staff’s recommendation to the agency. Once the staff decide to issue or withdraw the letter, there is no further appeal within the agency. Illustrating that reality, CFTC regulations state that a beneficiary ‘may rely’ on [the CFTC’s] issuing a no-action letter.” *Id.* at 10 (citing 17 C.F.R. § 140.99(a)(2)).
- b. The Fifth Circuit also found that legal consequences flowed from the decision because the No-Action Relief withdrew some of the CFTC’s discretion by allowing the Market to rely on it. *Id.*

- c. The Court further observed that “none of this is changed” by the March Action, as the letter “does not promise to reconsider its decision that the no-action letter ‘is void and should be withdrawn.’” *Id.* at 11.
- d. The Fifth Circuit’s decision viewed the August 2022 Revocation and the March 2023 Action as a continuous, uninterrupted effort to close the Market that constitutes final agency action.

110:123. The Commission’s revocation of the No-Action Relief in the August 2022 Revocation letter—including its direct order to liquidate contracts by February 15, 2023, that turn on later events—is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and thus violates the APA. 5 U.S.C. § 706(2)(A).

- a. The Revocation offered no basis to conclude that it was the product of reasoned decisionmaking, much less was it reasonably explained to the regulated party.
- b. In the Revocation, the Commission claimed that “the University has not operated its market in compliance with the terms of Letter 14-130” and that “as a result,” the No-Action Relief is revoked. But the Commission provided absolutely no detail or explanation regarding how, when, or in what instances the terms of No-Action Relief have been violated. The Revocation does not reflect the “reasoned decisionmaking” required by the APA.
- c. To the extent the Commission was claiming that certain contracts offered by the Market have been outside the category of “political event” contracts approved by the No-Action Relief, that contention is arbitrary, capricious, and an abuse of discretion. That assertion is based on a view that the No-Action Relief’s license to operate a market is limited to political-event contracts that are directly related to

the outcome of a U.S. election. To the extent that interpretation of the No-Action Relief is driving the Commission's revocation of No-Action Relief, it is arbitrary, capricious, and/or an abuse of discretion. That is because the Commission, in 2014, permitted the trading of political markets relating to the outcome of elections or other significant political questions that do not relate to war, terrorism, or assassination. The Commission took no issue in its No-Action Relief decision with the permitted scope of political event contracts sought by Victoria University. Instead, its No-Action Relief decision provided a non-exclusive list of examples of the types of contracts to be offered, some of which directly related to election outcomes, and some of which did not, including the selection of a Vice Presidential nominee. From the beginning, the PredictIt Market has offered contracts that predict the outcome of significant political issues, including non-U.S. elections, who would be nominated or confirmed as cabinet officials or Supreme Court justices, and whether key federal legislation would be enacted. The Market offered these contracts without incident for more than seven years. The CFTC has been aware of the PredictIt Market's operations and offerings since its inception, and, through its communications and actions, it has confirmed the PredictIt Market was operating within the scope of the No-Action Relief. To the extent the Commission believes certain contracts have been offered that were outside the scope of No-Action Relief, it should raise those particular contracts with the PredictIt Market and ask that they be addressed. It is arbitrary, capricious, and/or an abuse of discretion to revoke the Market's permission to operate on the basis of the Commission's unexplained and undocumented factual and legal contention that

certain contracts were offered that are not permitted by the No-Action Relief decision.

~~111.124.~~ 124. The arbitrary reasoning behind the Revocation has led to and been compounded by arbitrary and capricious commands to liquidate certain contracts prematurely. Specifically, the Revocation permitted the corporate entities servicing the market to continue operating any contract market operated “in a manner consistent with each of the terms and conditions in” the No-Action Relief until February 15, 2023, at which time “all associated open interest in such market should be closed out and/or liquidated.” Ex. 2 at 2. This disorderly wind-down could have been avoided if the agency had not arbitrarily and capriciously issued the Revocation and its commands for liquidation therein.

~~112.125.~~ 125. The Commission’s Revocation and associated commands are arbitrary and capricious in at least the following ways:

- a. The new proscriptions do not provide any detail as to what current contracts are not being operated “in a manner consistent with” the No-Action Relief’s terms.
- b. The Revocation does not allow investors, like the Investor Plaintiffs, to realize any benefit from open event contracts that would settle based on events occurring after February 15, 2023—*e.g.*, event contracts related to the 2024 primary and general elections—which are the majority of the investments currently made in the PredictIt Market.
- c. By forcing the liquidation of PredictIt Market event contracts based on the outcome of the 2024 election cycle before their natural maturation, the Revocation renders data generated, to date, by trading of those contracts valueless for academic analysis.

- d. The Revocation attempts to prevent the issuance of new contracts, depriving operators, traders, ~~and academics,~~ and journalists of the benefits of a continuing Market without explaining corrections to the Market short of closing it.

~~113.126.~~ 113.126. The Commission's selection of a remedy—the Revocation and its associated commands—for alleged violations of the No-Action Relief decision's terms is arbitrary and capricious. It ignored or otherwise failed to explain why obvious alternatives—such as allowing all currently pending contracts to run their course and mature on their own terms, while barring the creation of new event markets or seeking adjustments to a continuing Market or by blocking particular contracts that are problematic as opposed to shuttering the entire Market—should not be selected.

~~114.127.~~ 114.127. The Commission's determination in the March Action that the No-Action Relief is void and should be withdrawn is likewise “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and thus violates the APA. 5 U.S.C. § 706(2)(A).

~~115.128.~~ 115.128. The March Action provides three ways in which the Commission believes the Market violated the conditions of the No-Action Relief. In fact, none of these alleged actions violates the No-Action Relief.

- a. The Commission first claims that Aristotle, rather than Victoria University, is operating the Market, in violation of the No-Action Relief's condition that faculty at the University must operate and oversee the Market. Ex. 3 at 3–4. This claim is false and unsupported by the administrative record. The No-Action Relief states that three Victoria University professors and one administrator will oversee the Market. The No-Action Relief notes that Aristotle will assist in providing know-your-customer services, but does not otherwise define the closed scope of services

that service providers may provide. Given the nature of the Market—an online 24/7 financial platform operated with customized software in a different country than the University—and increased interest in the Market over time, it became necessary during the early years of the Market for the University to substantially outsource platform operations. Since the Market’s inception, the University has been transparent in communications with the Commission about Aristotle’s involvement in the Market. On numerous occasions since 2017, the University reiterated to the Commission that Aristotle’s role includes serving as a clearinghouse for deposits and payments, updating software, responding to trader inquiries, assisting with U.S. legal compliance, publicizing the site, generating data for academic study, performing outreach to academics, and informing traders of new Markets. [See CFTC.051-052; CFTC.067-068; CFTC.279-280.](#) Until the March Action, the Commission never objected to Aristotle’s role.

- b. The Commission next claims that Victoria University has received, and permitted Aristotle to receive, separate compensation for the operation of the Market, in violation of the No-Action Relief’s condition that faculty at the University must oversee the Market, without receipt of separate compensation. This claim is false [and unsupported by the administrative record](#). Victoria University does not receive compensation for operating the Market. Victoria Link Limited, a wholly owned subsidiary of the University, receives \$2,000 per month to cover the monthly costs of operating the platform. This modest amount is allocated to cover Victoria University’s overhead costs in connection with overseeing the Market, and it often is not even enough to cover those costs. As a result, the \$2,000 payment to Victoria

Link Limited is fully consistent with the No-Action Relief's requirements that the Market be operated as a not-for-profit and without compensation for any individuals involved. Victoria University has disclosed this payment to the Commission on multiple occasions, and until the March Action, the Commission never objected to it. [See CFTC.280.](#) Moreover, the March Action's statement that the Market's "fee structure appears likely to generate funds far greater than those necessary to operate a small-scale market" is false. [See CFTC.030.](#) The statement is unaccompanied by any supporting data and runs contrary to information previously shared with the Commission explaining the Market's earnings. Specifically, in June 2017, [\(and later in written correspondence in December 2017\),](#) Victoria University and Aristotle disclosed to the Commission that the Market had operated at a net loss up until that point. [CFTC.052; see also CFTC.068.](#) As of today, expenses have exceeded revenues for the life of the Market.

- c. Finally, the Commission claims that Victoria University has offered contracts falling outside of the scope of the categories of submarkets approved in the No-Action Relief. This claim is false, [unsupported by the administrative record,](#) and inconsistent with the text, context, and history of the Commission's own No-Action Relief decision and extensive subsequent communications with CFTC staff. As discussed above, the No-Action Relief's use of the word "include" in the description of "political event" contracts makes clear that the examples listed were not exclusive. Ex. 1 at 2. This is further reinforced by the explicit reference back to the "proposed submarket for political event contracts" described in Victoria University's application (*id.*), and its reference to offering "additional event-driven

contracts based on significant Political Events.” Ex. 4 at 3. As a senior Commission official clarified in later correspondence: “NAL 14-130 lists three *non-exclusive* examples of political contracts – each is tied to election outcomes and allows some flexibility with respect to political contracts,” but cautioned that PredictIt should avoid contracts that “appear to have *no relationship to elections or any other meaningful political question.*” [CFTC.027](#). Based on this understanding, the Market had a good faith and reasonable belief that each of the 17 markets the Commission cites in the March Action fell within the No-Action Relief’s parameters, as each related to a meaningful political question. When the Commission questioned one of these 17 contracts in November 2014, the Market immediately terminated the contract. For the majority of the 17 markets, however, the Commission never raised any objection until the March Action. In addition, these 17 markets represent only a tiny fraction of the 6,829 markets that have been listed since the Market’s inception.

~~116.129.~~ [116.129.](#) The allegations in the March Action are invalid and cannot justify the Action’s preliminary determination that the No-Action Relief is void and should be withdrawn. They are arbitrary and capricious in at least the following ways:

- a. The Commission’s flawed assertions do not satisfy the requirement that agency action be reasonable and reasonably explained.
- b. The closure of the Market is not an appropriate or proportionate remedy for addressing the asserted violations, which are fully consistent with the text, context, and history of the No-Action Relief decision and extensive course of dealing

between the agency and the Market and represent only a fraction of the Market's activities over the past eight years.

- c. Until the March Action, the Commission did not disclose the large majority of these alleged violations to Victoria University or the Plaintiffs. Asserting them for the first time in the March Action thus constitutes an inappropriate *post hoc* rationalization for the Commission's earlier decision to close the Market.

~~117.130.~~ The March Action's rationale that the Market demands too much of the Commission's attention and is not an appropriate use of taxpayer resources is likewise arbitrary and capricious. The Commission does not cite any information to support this claim. It does not quantify the Commission resources consumed by the Market and does not explain why the expenditure of such resources is not warranted in light of the considerable and longstanding reliance interests that traders, academics, and service companies have in the Market.

~~118.131.~~ Nor does the March Action account for the longstanding reliance interests of the traders like Mr. Clarke, Mr. Beeler, Mr. Boeckmann, Mr. Neeley, and Mr. Schneider, academics like Professors Crane, Miller, and Smidt, ~~and~~ service companies like Aristotle and PredictIt, Inc., [and media organizations like *The Washington Free Beacon*](#) that organized their affairs around the No-Action Relief. Instead, it specifically directs that none of these interested parties will have a meaningful opportunity to respond to the Action. This is arbitrary and capricious in violation of the principle that administrative agencies must consider such reliance interests before changing course on a given policy and the Fifth Circuit's correct ruling that traders, academics, and operators are beneficiaries of the Commission's license for the Market to operate.

~~119.132.~~ Finally, the March Action's selection of a remedy—full withdrawal of the No-Action Relief—for alleged violations of the No-Action Relief's terms is arbitrary and

capricious because it fails to seriously consider less disruptive alternatives, such as blocking only the contracts the Commission believes are out of scope of the license and allowing the rest of the Market to continue. The March Action states only that it would “be inappropriate” to allow currently existing markets to expire on their own terms in light of the “likelihood of recurrence” of alleged past violations of the No-Action Relief. Ex. 3 at 7. The March Action offers no explanation for why alleged past violations suggest a likelihood of recurrence in the future. Moreover, as discussed above, the Commission’s alleged violations are invalid. In addition, the Commission offers no meaningful explanation of why the alternative of seeking forward-looking adjustments to continuing Market operations, to address whatever perceived problems or deviations from license terms the Commissions believes there to be, is not a superior method for dealing with the significant reliance and other interests the Plaintiffs have in the continued operation of the Market.

COUNT II

(Violation of the Administrative Procedure Act, 5 U.S.C. §§ 558 and 706: Withdrawal of License Without Written Notice or Opportunity to Demonstrate or Achieve Compliance)

~~120.133.~~ Plaintiffs incorporate the proceeding paragraphs as if fully set forth herein.

~~121.134.~~ Section 558(c) of the Administrative Procedure Act prohibits the “withdrawal, suspension, revocation, or annulment of a license” without first giving the licensee: (1) notice by the agency in writing of the facts or conduct which may warrant the action; and (2) opportunity to demonstrate or achieve compliance with all lawful requirements.” 5 U.S.C. § 558(c).

~~122.135.~~ A “license” includes “the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission.” 5 U.S.C. § 551(8).

~~123.136.~~ The No-Action Relief constitutes a form of permission because it authorizes the PredictIt Market's operation without "registering under the [Commodity Exchange] Act or otherwise complying with the Act or [CFTC] regulations." Ex. 1 at 5.

~~124.137.~~ The Fifth Circuit's July 21, 2023, opinion in this matter holds that the No-Action Relief constitutes a "form of permission," and thus "a 'license' within the meaning of the APA." Ex. 5 at 9.

~~125.138.~~ The CFTC's August 2022 Revocation letter revoked the No-Action Relief without providing those entities assisting in operating the Market with written notice of the facts or conduct which may warrant the Revocation.

~~126.139.~~ The written Revocation of No-Action Relief stated only as follows: "The University has not operated its market in compliance with the terms of Letter 14-130," the No-Action Relief decision. There is not even a specific allegation of how the terms of the No-Action Relief have been violated, much less "notice of the facts or conduct that may warrant the revocation." 5 U.S.C. § 558.

~~127.140.~~ In addition, the Revocation provided those entities assisting in operating the Market with no opportunity—formal or informal—"to demonstrate or achieve compliance with all lawful requirements." 5 U.S.C. § 558. The Administrative Procedure Act requires that the permitted or licensed entity be made aware of the facts forming the basis of the Revocation and to have an opportunity to rebut them. But the Revocation took *immediate effect* and provided no opportunity to be heard, much less one informed about the facts that the Commission believes may warrant revocation.

~~128.141.~~ Additionally, the CFTC's revocation of the No-Action Relief violates the Administrative Procedure Act as it is "without observance of procedure required by law," *id.*

§ 706(2)(D), insofar as the revocation of the permission to operate the PredictIt Market was not accompanied by the notice and opportunity to demonstrate compliance required by Section 558(c) of the APA.

~~129.142.~~ 142. The CFTC’s March Action similarly violates the Administrative Procedure Act because it is “without observance of procedure required by law.” *Id.* § 706(2)(D). Like the August Revocation, the March Action does not provide an opportunity to demonstrate or achieve compliance with the requirements of the No-Action Relief, as required by Section 558(c) of the APA. Nor does it provide several beneficiaries of the Commission’s license the opportunity to be heard in response to the allegations or what the remedy for them should be.

COUNT III
(Violation of the First Amendment Rights to Freedom of Expression and Freedom of the Press; Brought by all Plaintiffs Against the CFTC and Defendants Behnam and McGonagle)

143. Plaintiffs incorporate the proceeding paragraphs as if fully set forth herein.

144. The First Amendment to the United States Constitution forbids “abridging the freedom of speech, or of the press.” U.S. CONST. amend. I.

145. Media organizations and readers who consume their reporting have the right to both receive and convey information.

146. The forced shutdown of the PredictIt Market restricts the right of American citizens—including the Investor Plaintiffs—to express themselves through making investment-backed predictions on the likely outcome of important political questions. The Investor Plaintiffs view their investments as a means of expressing their informed opinions on the likely outcome of crucial political questions as well and the precise strength of those opinions.

147. The shutdown also restricts the right of the press—including *The Free Beacon*—to report on information generated through the PredictIt Market and of readers and viewers of the newspapers, websites, and programming of the press to consume that information.

148. Importantly, the information generated by the PredictIt Market—to and on which the Commission is attempting to restrict access and reporting—concerns issues core to the First Amendment, concerning national politics and the operation of Government.

149. The CFTC’s forced shutdown of the PredictIt Market constitutes a prior restraint of speech regarding topics that are core to the First Amendment’s protections, including national politics and the operation of Government.

150. The revocation of the license for the PredictIt Market to operate is a content-based restriction on speech, particularly as the Commission now is focused on declaring markets for predictions on certain political topics out of bounds.

151. The revocation of the license for the PredictIt Market to operate does not directly advance a substantial government interest, much less a compelling government interest.

152. The revocation of the license for the PredictIt Market is not reasonably, much less narrowly, tailored to achieve any substantial or compelling governmental interest.

153. Plaintiffs will continue to suffer and incur injury to their business and property as a result of this violation.

COUNT IV

(Violation of the Administrative Procedure Act – Agency Action, Findings, and/or Conclusions that are Contrary to Constitutional Right: Violation of the First Amendment Rights to Freedom of Expression and Freedom of the Press; Brought by all Plaintiffs Against the CFTC and Defendants Behnam and McGonagle)

154. Plaintiffs incorporate the proceeding paragraphs as if fully set forth herein.

155. The First Amendment to the United States Constitution forbids “abridging the freedom of speech, or of the press.”

156. For the reasons stated above and specifically in Count III, the Commission’s efforts to close the PredictIt Market violate the First Amendment directly.

157. The CFTC’s forced shutdown of the PredictIt Market also violates the Administrative Procedure Act, as it is “contrary to [the] constitutional right” to freedom of expression and the press. 5 U.S.C. § 706(2)(B).

158. Plaintiffs will continue to suffer and incur injury to their business and property, and rights to expression and of the press, as a result of this violation.

COUNT V

(Violation of the Due Process Clause of the Fifth Amendment by Deprivation of a Property Interest Without Notice or Hearing; Brought by Predict It, Inc., Aristotle International, Inc., and the Investor Plaintiffs Against the CFTC and Defendants Behnam and McGonagle)

159. Plaintiffs incorporate the proceeding paragraphs as if fully set forth herein.

160. The Due Process Clause of the Fifth Amendment protects Plaintiffs’ rights to not be “deprived of . . . liberty, or property, without due process of law.” U.S. Const. amend. V.

161. This fundamental protection ensures that individuals are afforded notice and an opportunity to be heard before the government can deprive them of a protected property interest.

162. Plaintiffs Predict It, Inc., Aristotle International, Inc., and the Investor Plaintiffs have a property interest in the license for the PredictIt Market to operate.

163. Moreover, the contracts offered on the PredictIt Market and entered into by investors are quintessential property interests. *U.S. Tr. Co. v. New Jersey*, 431 U.S. 1, 19 n.16 (1977) (“Contract rights are a form of property.”). The “right of an individual to contract” within the confines of the PredictIt Market is a liberty interest. *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 572 (1972).

164. The CFTC’s Revocation decision and the March Action, by requiring the closure and liquidation of the PredictIt Market and its related contracts, deprived the individual Plaintiffs of their property interests in existing contracts and their liberty interests in the ability to contract further, and deprived the entity Plaintiffs of their property interests in the license for the PredictIt Market to operate.

165. The CFTC’s revocation was preceded by neither notice nor a hearing. Nor did Plaintiffs have any post-revocation opportunity to be heard.

166. Procedural due process requires that Plaintiffs receive a hearing before being finally deprived of their liberty and property interests. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Dennis v. S & S Consol. Rural High Sch. Dist.*, 577 F.2d 338, 343 (5th Cir. 1978) (liberty).

167. A pre-deprivation hearing was required before the CFTC’s revocation because “full relief cannot be obtained at a post-deprivation hearing.” *Mathews*, 424 U.S. at 331. The Revocation decision and the March Action caused confusion in the PredictIt Market, damaging the monetary value of several contracts. Such confusion is irreversibly damaging to the data the PredictIt Market generates.

168. The failure to provide adequate notice and a hearing is a violation of the Due Process Clause of the Fifth Amendment.

169. Plaintiffs Predict It, Inc., Aristotle International, Inc., and the Investor Plaintiffs will continue to suffer and incur injury to their business and property as a result of this violation.

COUNT VI

(Violation of the Administrative Procedure Act – Agency Action, Findings, and/or Conclusions that are Contrary to Constitutional Right: Violation of the Due Process Clause of the Fifth Amendment by Deprivation of a Property Interest Without Notice or Hearing; Brought by Predict It, Inc., Aristotle International, Inc., and the Investor Plaintiffs Against the CFTC and Defendants Behnam and McGonagle)

170. Plaintiffs incorporate the proceeding paragraphs as if fully set forth herein.

171. The Due Process Clause of the Fifth Amendment protects Plaintiffs’ rights to not be “deprived of . . . liberty, or property, without due process of law.” U.S. Const. amend. V.

172. For the reasons stated above and specifically in Count V, the Commission’s efforts to close the PredictIt Market violate the Fifth Amendment directly.

173. The CFTC’s forced shutdown of the PredictIt Market also violates the Administrative Procedure Act, as it is “contrary to [the] constitutional right” to due process. 5 U.S.C. § 706(2)(B).

174. Plaintiffs Predict It, Inc., Aristotle International, Inc., and the Investor Plaintiffs will continue to suffer and incur injury to their business and property as a result of this violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs requests that the Court enter judgment in their favor and:

- a) Enter an order vacating, “hold[ing] unlawful and set[ting] aside” the Commission’s Revocation of the No-Action Relief as arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law and/or without observance of procedure required by law, 5 U.S.C. § 706;
- b) Enter an order vacating the CFTC’s Revocation of the No-Action Relief for failure to provide written notice or an opportunity to demonstrate or achieve compliance with the No-Action Relief’s requirements, 5 U.S.C. §§ 558, 706;
- c) Enter an order vacating, “hold[ing] unlawful and set[ting] aside” the Commission’s March Action seeking to cancel the No-Action Relief as arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law and/or without observance of procedure required by law, 5 U.S.C. § 706;
- d) Enter an order declaring that each of the alleged violations cited in support of the March Action’s seeking to cancel the No-Action Relief—(1) that Aristotle, rather than Victoria University, is operating the Market, (2) that Victoria University has received, and permitted Aristotle to receive, separate compensation for the operation of the Market, and (3) that Victoria University has offered contracts falling outside of the scope of the categories of submarkets approved in the No-Action Relief—is an invalid justification for cancelling the Commission’s license for the Market to operate;

- e) Enter an order vacating the CFTC's March Action seeking to cancel the No-Action Relief for failure to provide an opportunity to demonstrate or achieve compliance with the No-Action Relief's requirements and an opportunity for beneficiaries of the Commission's license for the Market to respond to the alleged violations, 5 U.S.C. §§ 558, 706;
- f) Enter an order enjoining the CFTC and Defendants Behnam and McGonagle in their official capacities from requiring the liquidation of outstanding contracts on the PredictIt Market before they are settled in the normal course based on the occurrence or non-occurrence of the event specified in the contract ~~and~~, from prohibiting the addition of new contracts or deterring trading in any existing or new contracts, and from further violating Plaintiffs' constitutional rights, including their Due Process rights guaranteed by the Fifth Amendment to the United States Constitution and their freedoms of express and of the press guaranteed by the First Amendment to the United States Constitution;
- ~~g)~~ Enter an order permanently enjoining the CFTC and Defendants Behnam and McGonagle in their official capacities from requiring the liquidation of outstanding contracts on the PredictIt Market before they are settled in the normal course based on the occurrence or non-occurrence of the event specified in the contract, from prohibiting the addition of new contracts or deterring trading in any existing or new contracts, and from further violating Plaintiffs' constitutional rights based on the arbitrary and capricious reasons stated in the Revocation and March Action;
- ~~g)h)~~ Enter an order enjoining the CFTC and Defendants Behnam and McGonagle in their official capacities from requiring the liquidation of outstanding contracts on the PredictIt Market before they are settled in the normal course based on the occurrence or non-occurrence of the event specified in the contract or prohibiting the issuance of new contracts or deterring trading in any existing or new contracts until Plaintiffs have had the opportunity to be heard and to present evidence before the Court in support of its claims that the revocation of the No-Action Relief violates the APA;
- ~~i)~~ Enter an order enjoining the CFTC and Defendants Behnam and McGonagle in their official capacities from further violating the First Amendment rights to expression and the press of media organizations and consumers of journalism by shutting down the PredictIt Market without justifications meeting First Amendment standards and restricting the flow of information from the Market and the use of that information to report on the important political affairs of the country;
- ~~h)j)~~ Enter an order providing for the Court's continued jurisdiction over this case and permanently enjoining the CFTC from taking any action that would have the effect of prohibiting or deterring the issuance or trading of PredictIt Market contracts or to close or otherwise to impede the normal operations of the Market, until 60 days

after a final order disposing of any challenge to such CFTC action, provided a Plaintiff files a challenge to that action within 60 days of it becoming final;

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h) Award Plaintiffs their litigation costs and reasonable attorneys' fees, including the fees that Plaintiffs incurred defending against the CFTC's failed effort to dismiss Plaintiffs' Fifth Circuit appeal as moot and in challenging CFTC efforts to close the Market, including an award of fees and expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412, and other authorities available to the Court to award fees and expenses, as the positions taken by the CFTC in defending its efforts to close the Market are not substantially justified; and

i) Order such other relief as the Court may deem just and proper.

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[~~Signatures~~ Signature on Following Page]

Dated: ~~November 27, 2023~~January 6, 2025

Respectfully submitted,

/s/ Michael J. Edney

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