

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

COMMODITY FUTURES TRADING)	
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:18-cv-00619
)	
JITESH THAKKAR AND)	
EDGE FINANCIAL TECHNOLOGIES, INC.,)	
)	JURY TRIAL DEMANDED
Defendants.)	
)	

**DEFENDANTS JITESH THAKKAR AND EDGE FINANCIAL
TECHNOLOGIES, INC.’S REPLY IN SUPPORT OF THEIR
RENEWED MOTION FOR SUMMARY JUDGMENT**

Defendants Jitesh Thakkar and Edge Financial Technologies, Inc., for their reply in support of their Renewed Motion for Summary Judgment, state as follows:

INTRODUCTION

The CFTC has all of the information it needs to respond to Defendants’ Motion for Summary Judgment—including instant message communications that the CFTC falsely claimed Defendants did not produce. The CFTC should not be permitted to delay a ruling on Defendants’ Motion by seeking further document discovery when it has all of the relevant documents in this case. Nor should the CFTC be permitted to delay a ruling on Defendants’ Motion by seeking unnecessary depositions. The Court should set a briefing schedule on Defendants’ Motion for Summary Judgment without further delay.

ARGUMENT

I. Further Document Discovery is Unnecessary in this Case

Despite receiving Defendants' answer to interrogatories, responses to document production requests, initial disclosures under the Mandatory Initial Discovery Pilot Project, over 800,000 pages of documents from Defendants in this litigation, and a voluntary production of documents from Edge Financial in 2015, the CFTC claims that document discovery is not complete in this case. However, Defendants produced all relevant documents in their possession, custody, or control to the CFTC after a reasonably diligent search, and the CFTC produced over 421,000 pages of its own documents in this litigation. Summary judgment should not be delayed to allow the CFTC to conduct a further "fishing expedition" in the hopes of finding documents to form a basis for its case not found in the more than 1.2 million pages of documents produced in this litigation or discovered during the government's years-long investigation of Defendants.

As an example of why it needs further document discovery in this case, the CFTC falsely claims that Defendants did not produce instant message chat records to the CFTC. *See* Response, p. 3. Contrary to the CFTC's assertion that Defendants "never produced IMs . . . in any document production in this litigation," Defendants produced relevant instant message communications to the CFTC in their November 1, 2019 production as set forth in the attached letter from Defendants' counsel to the CFTC. *See* Letter to T. Simek, attached hereto as Exhibit 1.^{1, 2} For example,

¹ The CFTC notes that Defendants' counsel did not immediately respond to the CFTC's November 26, 2019 email inquiring about Defendants' production of instant message communications. Lead counsel for Defendants was out of the country following the Thanksgiving holiday. With the holiday, counsel's travel schedule, and counsel's collection of information from Defendants to respond to the CFTC's inquiry, Defendants were not able to immediately respond to the CFTC's November 26, 2019 email. However, Defendants identified the location of instant message communications in Defendants' production to the CFTC by bates label in their December 7, 2019 letter to counsel attached hereto as Exhibit 1.

² Defendants' letter also explains why Defendants cannot access information on the crashed hard drive of a former Edge Financial employee. In addition to being inaccessible, Defendants believe that the

Defendants produced the instant message highlighted by the CFTC in its Response (and attached to the CFTC's Response as Exhibit 3) on November 1, 2019 as DOJ-00855258. Defendants' November 1, 2019 production to the CFTC contained additional instant message communications at DOJ-00855180, DOJ-855190, DOJ-00855214, DOJ-00855247, DOJ-00855273, DOJ-00855562, DOJ-00855562, DOJ-00855566, DOJ-00817520, DOJ-00817504, DOJ-00817506, DOJ-00817509, DOJ-00817510, DOJ-00817511, DOJ-00817512, DOJ-00817514, DOJ-00817513, DOJ-00817515, and DOJ-00817500. If the CFTC more closely reviewed the documents Defendants produced in this litigation, it would be clear to the CFTC that it has all of the documents it needs to respond to Defendants' Motion for Summary Judgment. Indeed, the CFTC's push to move forward with depositions next week indicates an acknowledgement by the CFTC that it has the relevant documents in this case. Accordingly, discovery of all relevant documents in this case is complete, and summary judgment should move forward.

II. The CFTC has not Provided a Sufficient Basis for Depositions in this Case

The CFTC also failed to provide a sufficient basis for taking depositions in this case before responding to Defendant's Motion for Summary Judgment. The CFTC already has the testimony and statements of the key witnesses in this case because they are contained in the transcript of the criminal trial, the transcripts of interviews with witnesses, and in the CFTC's own notes from interviews with witnesses. Unless the CFTC can provide a sufficient basis in accordance with Federal Rule of Civil Procedure 56(d) as to why it needs deposition testimony, as the Court suggested during the September 11, 2019 hearing, summary judgment should move forward.³

information potentially contained on this hard drive is not relevant to the CFTC's response to Defendants' Motion for Summary Judgment.

³ Because the CFTC does not need depositions to respond to Defendants' Motion for Summary Judgment, Defendants have not confirmed their availability for the CFTC's noticed depositions and have not conferred with the former employees identified by the CFTC to determine whether Edge Financial will represent them

Under Rule 56(d), after a party moves for summary judgment, “if a nonmovant shows by affidavit or declaration that, *for specified reasons*, it cannot present facts essential to justify its opposition, the court may . . . allow time to obtain affidavits or declarations or to take discovery[.]” Fed. R. Civ. P. 56(d) (emphasis added). The CFTC has not provided an affidavit or declaration setting forth the *specific reasons* that it needs depositions in this case to respond to Defendants’ Motion for Summary Judgment. First, the CFTC has not identified all of the individuals it believes it needs to depose to respond to Defendants’ Motion for Summary Judgment. *See* Response, p. 4 n.2 (“The CFTC does intend to take depositions of other individuals[.]”). Further, the CFTC noticed the depositions of four former Edge Financial employees, but did not provide an affidavit or declaration setting forth the specific reasons it needs to depose these individuals in order to respond to Defendants’ Motion for Summary Judgment.

The CFTC provided an example of why it seeks to depose one former Edge Financial employee, Mitul Patel, but this unsworn “example” does not provide a sufficient basis for Mr. Patel’s deposition under Rule 56(d). The CFTC stated that Mr. Patel’s testimony will be “important in shedding light on the context and circumstances in which [notes Mr. Patel received from Mr. Thakkar about the program] were prepared, the role they had in Mr. Patel’s work in developing the program, and Mr. Thakkar’s understanding of Trader A’s trading objectives and intentions.” However, the CFTC already has transcripts of multiple recorded FBI interviews of Mr. Patel. In these interviews, the FBI questioned Mr. Patel about his interactions with Jitesh and about the development of the NAVTrader program. Mr. Patel told the FBI he could not recall many aspects of the project that the FBI asked about, given how long ago Mr. Patel worked on the project. The CFTC has not provided a declaration or affidavit explaining the specific reasons why

in depositions. If the Court determines that depositions should go forward, Edge Financial will confer with these individuals about dates and representation by the company.

it cannot respond to Defendants' Motion for Summary Judgment based on Mr. Patel's statements to the FBI and needs a further deposition of Mr. Patel to respond.

Accordingly, if the CFTC believes it cannot respond to Defendants' Motion for Summary Judgment without taking depositions in this case, the Court should order the CFTC to provide an affidavit or declaration consistent with Rule 56(d) setting out the specific reasons it needs depositions from specific individuals to respond to the Motion before allowing depositions to proceed as the Court suggested during the September 11, 2019 hearing.⁴

CONCLUSION

WHEREFORE, for the foregoing reasons and the reasons set forth in Defendants' Renewed Motion for Summary Judgment, Defendants Jitesh Thakkar and Edge Financial Technologies, Inc. respectfully request that this Court grant their motion, enter judgment in their favor, award Defendants their costs and fees, and grant such other or further relief as this Court deems proper. If the CFTC insists it needs additional discovery to respond to the motion, Defendants respectfully request that the Court order the CFTC to provide an affidavit or declaration outlining exactly what discovery it still needs and why pursuant to FRCP 56(d) before any additional discovery is conducted.

Dated: December 8, 2019

Respectfully submitted,

JITESH THAKKAR AND EDGE
FINANCIAL TECHNOLOGIES, INC.,

By: /s/ Holly H. Campbell
One of Their Attorneys

Renato Mariotti
Holly H. Campbell
THOMPSON COBURN LLP
55 East Monroe St., 37th Floor

⁴ Defendants have no objection to the CFTC's request to address all outstanding issues at the December 10, 2019 hearing and strike the December 11, 2019 hearing date.

Chicago, Illinois 60603
(312) 346-7500
rmariotti@thompsoncoburn.com
hcampbell@thompsoncoburn.com

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2019, the foregoing was filed electronically with the Clerk of the Court to be served upon all attorneys of record by operation of the Court's electronic filing system.

/s/ Holly H. Campbell