

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

U.S. COMMODITY FUTURES TRADING)	
COMMISSION,)	
Plaintiff,)	No. 15 C 2881
)	
v.)	Honorable John Robert Blakey
)	
KRAFT FOODS GROUP, INC. and)	
MONDELÉZ GLOBAL LLC,)	
Defendants.)	

**PLAINTIFF U.S. COMMODITY FUTURES TRADING COMMISSION'S
MOTION FOR RELIEF FROM ORDER**

Plaintiff U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) respectfully moves the Court for relief pursuant to Federal Rule of Civil Procedure 60 from the Court’s February 14, 2020 Order granting in part Defendants’ motion for contempt, sanctions, and other relief (“Contempt Motion”), Dkt. Nos. 315, 316. *See* Dkt. No. 378. For the reasons stated below, the CFTC requests that the Court vacate its February 14, 2020 Order and deny the Contempt Motion as moot. In the event that the Court issues an opinion in connection with the Contempt Motion (or any other order concerning contempt), the Commission respectfully suggests certain parameters to reflect changed circumstances.

BACKGROUND

1. At a hearing on February 13, 2020, the parties informed the Court that they reached an agreement in principle settling the CFTC’s claims in this litigation. (2/13/2020 Tr. at 3.) The parties advised the Court that such settlement was still subject to Commission approval,

among other things, and that the parties would seek settlement by Court order. (2/13/2020 Tr. at 3, 5.)

2. At the same hearing, counsel for Defendants represented to the Court that Defendants had agreed, contingent on the Court entering the settlement, to withdraw the Contempt Motion. (2/13/2020 Tr. at 4-5.) The Court invited the parties to submit proposed language for settlement for the Court to review, and noted that the Contempt Motion remained pending. (2/13/2020 Tr. at 5, 7.)

3. On February 14, 2020, the Court entered an order granting the Contempt Motion in part, and stating that the Court will issue findings of fact and conclusions of law by separate order. Dkt. No. 378. That separate order remains pending.

4. On February 28, 2020, the parties submitted to the Court a revised proposed “Consent Order” for the Court’s review that would resolve all claims in this action. The Consent Order states that Defendants agree, in the event that the CFTC appeals any order of contempt in this case, Defendants “will take no position as to the appropriateness of any relief ordered by the District Court.” Defendants reserved the right to contest any factual assertions the CFTC might make.

5. On March 4, 2020, Defendants filed their motion to withdraw the Contempt Motion (“Motion to Withdraw”). Dkt. No. 382.

6. On March 5, 2020, the Court held another status hearing to discuss the terms of the proposed Consent Order. The Court had a number of questions about the proposed Consent Order’s language concerning the possibility of appeal. The Court also noted that the Motion to Withdraw was in substance a request to vacate the February 14, 2020 Order. The Court again indicated that its findings of fact and conclusions of law would be forthcoming. (3/5/2020 Tr.)

ARGUMENT

1. Federal Rule of Civil Procedure 60(b) permits the Court, on motion, to relieve a party from an order for “any [] reason that justifies relief.” Fed. R. Civ. P. 60(b)(6). The rule confers upon the Court equitable powers to do justice, and “should be liberally construed when substantial justice will thus be served.” *McGraw v. Barnhart*, 450 F.3d 493, 505 (10th Cir. 2006) (internal quotation marks and citation omitted). In reviewing the equities of relief under Rule 60(b), courts in this Circuit have considered, among other factors, the public interest and judicial economy in terms of limiting the expenditure of both the courts’ and the parties’ resources. Judicial economy and the public interest weigh in favor of vacating an order where vacatur will prevent the continued expenditure of judicial and litigant resources. *See Stryker Spine, a Div. of Howmedica Osteonics Corp. v. Spine Grp. of Wis., LLC*, 320 F. Supp. 3d 985, 991 (E.D. Wis. 2018) (“weigh[ing] the judicial economy factor in favor of vacatur” because “[t]o deny the vacatur and to expend further court resources in deciding the pending motion for new trial solely because the court already has expended a good deal of effort would be the equivalent of throwing good money after bad, both for the court and for the parties”); *Lundsten v. Creative Cmty. Living Servs., Inc.*, No. 13-C-108, 2016 WL 111431, at *1 (E.D. Wis. Jan. 11, 2016) (finding “public’s interest in preserving judicial resources favors vacatur” of judgment because settlement reached by parties “would conserve judicial resources by obviating the need for further appellate proceedings”); *Quad Cities Waterkeeper Inc. v. Ballegeer*, No. 4:12-cv-04075, 2018 WL 10435263, at *2 (C.D. Ill. Oct. 2, 2018) (considering conservation of judicial resources in evaluating Rule 60(b)(6) motion to vacate orders).

2. In this case, the public interest and judicial economy strongly favor vacating the February 14, 2020 Order, and not otherwise holding the Commission in contempt. Resolving the

Contempt Motion without further litigation will prevent the continued expenditure of judicial and litigant resources with no countervailing cost to the public, and therefore substantial justice will be served by an order granting this motion.

3. With respect to the Court's questions at the March 5, 2020 hearing about the prospects for appeal, vacating the Contempt Order and denying the Contempt Motion as moot (and not otherwise holding the Commission in contempt) would virtually eliminate the possibility of appellate proceedings, which would further serve judicial economy and the public interest in finality.

4. We understand that the Court believes it is important to publish an opinion with respect to the Contempt Motion and related matters. The Court could still do so, even if it vacates the February 14, 2020 Order and denies the Contempt Motion as moot, and does not otherwise hold the Commission in contempt.

5. We appreciate the Court's statements at the March 5, 2020 hearing that the remaining contempt issues pertain only to the CFTC as a "collective entity," and that the agency's attorneys "conducted themselves well." (3/5/2020 Tr. at 22.) In light of that understanding, we respectfully request that when the Court issues its opinion, it refrain out of fairness from using the names of individuals.

6. We believe that to refrain from naming individuals would be consistent with the Seventh Circuit's instructions for resolving the Contempt Motion. The Court of Appeals explained in its opinion that "the propriety of the Commission's official deeds depends on those deeds, plus the administrative record (if any)."^{*} *In re Commodity Futures Trading Comm'n*, 941 F.3d 869, 873 (7th Cir. 2019). It is irrelevant whether or not any individual acted in good or bad

^{*} There is no administrative record in this instance.

faith. *Id.* at 873 (noting that the test for civil contempt is “objective” and does not depend on what “any of its members or employees thought or planned”). The Court held that accordingly “there is neither need nor justification for testimony by the Chairman, any Commissioners, or any members of the agency’s staff,” and it “direct[ed] the district court to withdraw its demand that these persons appear in court for questioning” and “desist from any effort to . . . look behind the Commission’s public statements and the administrative record.” *Id.* at 873-74.

7. In that context, and as discussed at the March 5, 2020 hearing, it is the CFTC’s position that the Court should not make findings based on one party’s contentions of fact that have not been tested, solely because the Seventh Circuit held that they were irrelevant and ordered the inquiry to cease. *See id.* at 873. The only issues now before the Court on Defendants’ Contempt Motion are whether the text of four specific statements by the Commission violate the language of the Court’s original consent order. *Id.* at 874. However, at the very least, to name individuals in a published recitation of these untested facts would disserve the interests of justice.

Wherefore the CFTC respectfully moves that the Court vacate its February 14, 2020 Order granting in part the Contempt Motion, deny that motion as moot, and decline to otherwise hold the Commission in contempt. Regardless of whether the Court grants that relief, the CFTC respectfully requests that the Court refrain from naming individuals in its published opinion.

Date: March 11, 2020

Respectfully submitted,

/s/Robert A. Schwartz

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CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2020, I served the foregoing on counsel of record via the Court's ECF system.

/s/Robert A. Schwartz