

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

MY BIG COIN PAY, INC.; MY BIG COIN, INC.;
RANDALL CRATER; MARK GILLESPIE; JOHN
ROCHE; and MICHAEL KRUGER;

Defendants,

KIMBERLY RENEE BENGE; KIMBERLY RENEE
BENGE d/b/a GREYSHORE ADVERTISEMENT a/k/a
GREYSHORE ADVERTISET; BARBARA CRATER
MEEKS; ERICA CRATER; GREYSHORE, LLC; and
GREYSHORE TECHNOLOGY, LLC;

Relief Defendants.

Case No.:

1:18-cv-10077-RWZ

**MOTION FOR LEAVE TO FILE REPLY BRIEF FOR DEFENDANTS' MOTION TO
DISMISS AMENDED COMPLAINT**

Pursuant to Rule 7.1 of the Local Rules of this Court, Defendant Randall Crater and all Relief Defendants (together "Movants"), respectfully request leave to file a reply brief to address the issues first raised in Plaintiff's Opposition to Movants' Motion to Dismiss the Amended Complaint (Docket No. 70) ("Opposition"). In support of this motion, Movants state as follow:

1. Movants filed their Motion to Dismiss the Amended Complaint (Docket 68) and Memorandum in Support (Docket 69) ("Memo") on May 4, 2018.

2. In their Memo, Movants argued that the Amended Complaint was fatally flawed. Specifically, Movants argued that because the cryptocurrency at issue in the Amended Complaint was not a "commodity" under the Commodity Exchange Act, the Court lacked subject matter jurisdiction and the Plaintiff, the Commodity Futures Trading Commission, ("CFTC"), lacked jurisdiction to bring the claims. In addition, Movants argued that since the

Amended Complaint did not establish any violations under the CEA, the CFTC had not stated a claim for relief. Based on the plain language of the CEA, an in-depth analysis of the legislative history of the CEA, and on the CFTC's own jurisprudence and "speaking orders," Movants established that in order for a virtual currency to be regulated by the CFTC under the CEA, it had to be a "service, right, or interest in which contracts for future delivery are presently or in the future dealt in." 7 U.S.C. § 1(a)(9). Because there are no futures or derivative contracts traded on the virtual currency at issue in the Amended Complaint, it cannot be regulated by the CFTC under the CEA. Finally, Movants argued that the CFTC's theory of misappropriation was unsupported and not pled with sufficient particularity.

3. The CFTC filed its Opposition on May 18, 2018. Plaintiff filed his Response on May 22, 2017.

4. In its Opposition, the CFTC argues, that a) Movants stated the standard of review improperly, b) the Court has jurisdiction because there is a federal question, c) virtual currency is a "good or article" and not a "service, right, or interest in which contracts for future delivery are presently or in the future dealt in" and d) their theory of misappropriation was properly pled.

5. Movants, who have the burden on their Motion, respectfully request the opportunity to file a reply brief in order to address the arguments and cases raised in the Opposition. In particular, Movants seek the opportunity to respond to the CFTC's contention, for the first time, that virtual currency is actually a "good or article" and is therefore a commodity under the CEA. This argument is an about-face from the CFTC's consistent prior position that virtual currency is a "service, right or interest."

6. Movants seek leave to file a reply brief no longer than 20 pages, on or before June 4, 2018. This Court has scheduled a hearing on the Motion for June 14, 2018.

7. Pursuant to Local Rule 7.1(a)(2), Movants have attempted to confer with counsel for the CFTC in this matter but have not received a response.

WHEREFORE, Movants request that this Court grant Movants leave to file a reply brief addressing issues raised in the Opposition, no longer than 20 pages, on or before June 4, 2018.

Respectfully submitted,

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Counsel for Randall Crater and Erica Crater

Date: May 25, 2018

LOCAL RULE 7.1 CERTIFICATION

I, Katherine Cooper, counsel for the Defendant Randall Crater, hereby certify that I attempted to confer with counsel for the CFTC by email and by phone in a good faith attempt to resolve or narrow the issues concerning this request, but I have received no response.

/s/ Katherine Cooper
Katherine Cooper

CERTIFICATE OF SERVICE

I, Laura Greenberg-Chao, certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 25, 2018.

/s/ Laura Greenberg-Chao
Laura Greenberg-Chao