

**UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU**

**ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029**

In the Matter of:))))) BUREAU'S MOTION FOR A PROPOSED SCHEDULING ORDER) INTEGRITY ADVANCE, LLC and JAMES R. CARNES,)) Respondents.))
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BUREAU'S MOTION FOR A PROPOSED SCHEDULING ORDER

On December 9 and 11, 2015, the Court notified the parties in the above-captioned matter that a scheduling hearing would be held on December 14, 2015, pursuant to 12 C.F.R. § 1081.203. In accordance with the requirements of Rule 203, counsel for the parties held a telephonic conference on December 10, 2015 in an attempt to reach an agreement on a proposed schedule governing this action. The Bureau provided a draft proposed order to Respondents on December 11. On that date, the Bureau also informed Respondents' counsel that the Bureau was planning to file a proposed scheduling order to assist the Court and the parties in finalizing a schedule during the scheduling hearing. The parties discussed scheduling again on December 14, but were unable to reach a consensus on all dates.

During these discussions, counsel for Respondents indicated that Respondents plan to file a motion to dismiss the Notice of Charges initiating this matter. Counsel for

Respondents further indicated that although she anticipated submitting at least one expert report, she strongly prefers a schedule that does not contemplate any discovery related to the experts prior to this Court's resolution of the motion to dismiss she intends to file.

The rules governing this administrative proceeding require an expedient resolution of claims (12 C.F.R. § 1081.101) and require the Court to enter a recommended decision no later than September 13, 2016 (*i.e.*, within 300 days of the filing of the Notice of Charges). *See* 12 C.F.R. § 1081.400(a). The rules also provide the court with 90 days from the conclusion of post-hearing briefing to issue its recommended decision. *Id.* Given these time constraints, a schedule that delays expert discovery during the pendency of a motion to dismiss does not give the parties or the Court sufficient time to complete expert discovery, summary disposition briefing, pre-hearing briefing, the hearing, and post-hearing briefing in a reasonable fashion and still meet the 300 day deadline of September 13, 2016. Even in federal district court, where no 300 day requirement exists, courts routinely allow discovery to proceed during the pendency of a motion to dismiss. *See e.g., De Leon v. R. Marcos*, No. 09-cv-02216, 2009 WL 3756374 (D.Colo. Nov. 9, 2009); *Ford Motor Co. v. U.S. Auto Club, Motoring Division, Inc.*, No. 3-07-CV-2182-L 2008 WL 2038887 (N.D. Tex. Apr. 24, 2008); *People with AIDS Health Group, et al. v. Borroughs Welcome Co.*, No. 91-0574, 1991 WL 221179 (D.D.C. Oct. 11, 1991).

In light of the foregoing, and to assist the Court and facilitate the discussion during the scheduling hearing, the Bureau hereby moves for entry of the Proposed Scheduling Order included as Attachment A.

Respectfully submitted,

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Consumer Financial Protection Bureau**

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s/Alusheyi J. Wheeler

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of December 2015, I caused a copy of the foregoing Bureau's Motion for a Proposed Scheduling Order, along with Attachment A to the Motion, to be filed by electronic transmission (e-mail) with the Office of Administrative Adjudication (CFPB_electronic_filings@cfpb.gov), the U.S. Coast Guard Hearing Docket Clerk (aljdocketcenter@uscg.mil), Administrative Law Judge Parlen L. McKenna (cindy.j.melendres@uscg.mil), and served by email on the Respondents' counsel at the following addresses:

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/s/ Alusheyi J. Wheeler

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