

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

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

**JOINT PROPOSED PRE-HEARING SCHEDULE**

On July 24, 2019, Administrative Law Judge (ALJ) Christine L. Kirby ordered the parties to review Rule 1081.203 and confer. The parties did so on August 6, 2019. The ALJ also ordered the parties to submit a Joint Proposed Pre-Hearing Schedule by August 14, 2019, in advance of a telephonic Scheduling Conference on August 16, 2019. The parties now submit as follows:

1. By **August 16, 2019**, Respondents will move to reopen and supplement the record and file a memorandum in support of that motion.<sup>1</sup>

<sup>1</sup> Respondents intend to seek documents under 12 C.F.R. § 1081.208 and deposition testimony under 12 C.F.R. § 1081.209 related to the date of discovery of the CFPRA violations pleaded in the Notice of Charges. Respondents also intend to present expert testimony on issues related to damages and causation. As explained in their memorandum of law, Respondents believe that, consistent with the *Intercollegiate* opinion cited by the ALJ, a new hearing is required in this matter rather than a de novo review of the existing record. See *Intercollegiate Broad Sys., Inc. v. Copyright Royalty Bd.*, 796 F.3d 111, 116 (D.C. Cir. 2015) (holding that a de novo record review was appropriate in that case where the defendant “fail[ed] . . . to point to any instance of an exclusion of relevant evidence that affected the outcome . . . or to any portion of the Final Determination that turned on witness credibility.”) As more fully explained in Respondents’ memorandum of law, Respondents believe that a new hearing is required for the ALJ to determine credibility of certain witnesses on key issues, such as the individual liability of James Carnes, as well as further

2. By **August 27, 2019**, Enforcement Counsel will respond to Respondents' motion to reopen and supplement the record.
3. By **September 3, 2019**, Respondents will file a reply, if any, to Enforcement Counsel's response.
4. By **September 16, 2019**, Respondents will provide notice to Enforcement Counsel whether Respondents will file a motion seeking leave to amend Respondents' Answer to include a defense of advice of counsel/good faith.<sup>2</sup>
5. By **September 20, 2019**, Respondents will file any motion seeking leave to amend Respondents' Answer to include a defense of advice of counsel/good faith. By **September 20, 2019**, Respondents will also file any motion to dismiss.
6. By **October 11, 2019**, Enforcement Counsel will respond to any motion for leave to amend Respondents' Answer and any motion to dismiss.
7. By **October 18, 2019**, Respondents will file replies, if any, to Enforcement Counsel's responses.
8. If the ALJ determines that it is unnecessary to reopen the record, the parties will file any motions for summary disposition by **November 21, 2019**. The parties will file any responses to any motions for summary disposition by **December 12, 2019**. The parties will file replies, if any, by **December 20, 2019**.
9. If the ALJ determines that it is appropriate to reopen the record, within **ten days** of such an order the parties will meet and confer and submit a joint proposed schedule relating to

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development of the factual record due to recent developments in the law on issues such as the statute of limitations, advice of counsel/good faith defense, and restitution. *See, e.g., PHH Corp. v. CFPB*, 839 F.3d 1, 41 (D.C. Cir. 2016) (*upheld on statute of limitation grounds and reversed on other grounds by* 881 F.3d 75 (D.C. Cir. 2018) (statute of limitations applies in both administrative proceedings and civil actions); *see also, CFPB v. CashCall, Inc. et al*, 2018 U.S. Dist. LEXIS 9057, \*35-\*37 (C.D. Cal. Jan. 19, 2018) (holding that restitution in CFPA actions is not appropriate absent a showing of an intent to defraud). Enforcement Counsel disagrees.

<sup>2</sup> On August 6, 2019, Respondents informed Enforcement Counsel that they may pursue an advice of counsel/good faith defense relying on the legal advice provided by transactional counsel.

subpoenas under 12 C.F.R. § 1081.208, depositions of witnesses unavailable for hearing under 12 C.F.R. § 1081.209, expert discovery under 12 C.F.R. § 1081.210, any motions for summary disposition, and any hearing.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of August 2019, I caused a copy of the foregoing Joint Proposed Pre-Hearing Schedule to be filed by electronic transmission (email) with the Office of Administrative Adjudication (CFPB\_electronic\_filings@cfpb.gov), and served by email on opposing counsel at the following addresses:

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