

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

_____)	
ADMINISTRATIVE PROCEEDING)	
File No. 2015-CFPB-0029)	
In the matter of:)	RESPONDENTS' MOTION
INTEGRITY ADVANCE, LLC and)	FOR MODIFICATION OF THE
JAMES R. CARNES)	SCHEDULING ORDER /
_____)	EXTENSION OF TIME

RESPONDENTS' MOTION FOR MODIFICATION OF THE SCHEDULING ORDER / EXTENSION OF TIME

Pursuant to the Order Following Scheduling Conference (“Scheduling Order”) and 12 C.F.R. § 1081.115, Respondents Integrity Advance, LLC and James R. Carnes (“Respondents”), hereby move for a modification of the Scheduling Order, or, in the alternative an extension of time. Specifically, Respondents seek to modify the current Scheduling Order such that summary disposition filings will be due after resolution of Respondents’ pending Motion to Dismiss.

On December 14, 2015, the Court held a Scheduling Conference with undersigned counsel and counsel for the Consumer Financial Protection Bureau (“Bureau”). On December 18, 2015, the Court issued a Scheduling Order setting the following deadlines for summary disposition:

- Motions for Summary Disposition to be filed by 5 PM (EST) on **April 8, 2016**.
- Oppositions to Summary Disposition Motion to be filed by 5 PM (EST) on **April 29, 2016**.
- Reply briefs to Motions for Summary Disposition to be filed by 5 PM (EST) on **May 6, 2016**.

- Exchange of prehearing statements, witness lists, exhibit lists, and pre-marked exhibits by **May 27, 2016**.
- Hearing to commence in Washington, D.C. at a courtroom to be determined on **June 21, 2016**.

Scheduling Order at 4.

Pursuant to the Scheduling Order, undersigned counsel conferred with counsel for the Bureau on February 26, 2016 and February 29, 2016 regarding modification of the above schedule. The parties were unable to come to an agreement. Respondents respectfully request that the Court modify the Scheduling Order, or, alternatively, extend the time for summary disposition filings as follows:¹

	<u>Previous Deadline</u>	<u>New Deadline</u>
Motions for Summary Disposition to be filed by 5 PM (EST) on:	April 8, 2016	May 13, 2016
Oppositions to Summary Disposition Motion to be filed by 5 PM (EST) on:	April 29, 2016	May 27, 2016
Reply briefs to Motions for Summary Disposition to be filed by 5 PM (EST) on:	May 6, 2016	June 3, 2016
Exchange of prehearing statements, witness lists, exhibit lists, and pre-marked exhibits by:	May 27, 2016	June 10, 2016

The Bureau's Rules of Practice do not specifically provide for modification of a scheduling order. However, Rule 115 states that "the hearing officer may, in any proceeding before him or her, for good cause shown, extend the time limits prescribed . . . by any notice or order issued in the proceedings." 12 C.F.R. § 1081.115(a). A hearing officer may grant a

¹ Respondents primarily seek to modify the Scheduling Order to extend the dates for summary disposition filings. However, Respondents also believe that the complexity of the case warrants extension of the current discovery deadlines, including the dates for rebuttal expert reports and depositions, and also the date by which Respondents must produce materials in response to the subpoena. Respondents respectfully request that the Court also extend the deadlines for rebuttal expert discovery and the completion of discovery.

motion for extension of time “where the moving party makes a strong showing that the denial of the motion would substantially prejudice its case.” *Id.* § 1081.115(b).

In determining whether to grant any motions [for extension of time], the . . . hearing officer . . . shall consider, in addition to any other relevant factors:

- (1) The length of the proceeding to date;
- (2) The number of postponements, adjournments or extensions already granted;
- (3) The stage of the proceedings at the time of the motion;
- (4) The impact of the motion on the hearing officer’s ability to complete the proceeding in the time specified by § 1081.400(a); and
- (5) Any other matters as justice may require.

Id.

Denial of the instant Motion would substantially prejudice Respondents’ case. Oral argument on Respondents’ pending Motion to Dismiss will be heard on April 5, 2016. However, the deadline for filing a motion for summary disposition is April 8, 2016. Thus, under the current Scheduling Order, should Respondents choose to file a motion for summary disposition, such motion will be due almost immediately after the Court hears oral argument on complex legal issues surrounding the pending Motion to Dismiss. Moreover, if a motion for summary disposition is due before, or nearly immediately after, resolution of the pending Motion to Dismiss, Respondents could be placed in a position of having to devote large portions of their summary disposition briefing to issues that may be resolved at the dismissal stage, thereby preventing Respondents from presenting the most effective arguments on those issues that might remain post-dismissal.²

² Rule 212(e), which sets the page limits for dispositive motions, states: “[a] motion . . . for summary disposition, together with any brief in support of the motion (exclusive of any

The factors outlined in Rule 115(b) weigh in favor of modifying the scheduling order to extend the summary disposition briefing deadlines. Just over three months have passed since the Bureau filed its Notice of Charges. The Court previously granted Respondents' unopposed motion for an eight-day extension of the deadline by which to respond to the Notice; this is the only schedule extension to date. Oral argument on Respondents' pending Motion to Dismiss will be heard on April 5, 2016, three days before motions for summary disposition are due under the current Scheduling Order. Among other things, "it is in the interest of judicial economy to stay briefing on plaintiffs' summary judgment motion until after the Court has resolved defendants' motion to dismiss." *Halbig v. Sebelius*, No. 13-0623 (PLF) (D.D.C. Oct. 15, 2013). Moreover, the requested extension would not impact the Court's ability to complete the proceedings within the 300-day timeframe specified in Rule 400(a) because Respondents do not seek an extension of the June 21, 2016 date for the commencement of the hearing.

Finally, "inherent in every court [is the power] to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Regarding motions to dismiss and motions for summary judgment, a court will generally delay summary judgment briefing pending resolution of a motion to dismiss. As the United States District Court for the District of Columbia has explained:

Because the Court must necessarily resolve the motions to dismiss before considering plaintiff's summary judgment motion, suspending briefing of the summary judgment motion pending the Court's resolution of the motions to dismiss will not prejudice plaintiff; staying further briefing of the plaintiff's summary judgment motion will allow the parties to avoid the unnecessary expense, the undue burden, and the expenditure of time to brief a motion that the Court may not decide. Moreover, suspending briefing of the summary judgment motion will allow the Court to manage the orderly disposition of this case.

declarations, affidavits, or attachments) shall not exceed 35 pages in length. Motions for extensions of this length limitation are disfavored." 12 C.F.R. § 1081.212(e).

Furniture Brands Int'l, Inc. v. U.S. Int'l Trade Comm'n, No. CIV.A. 1:11-00202, 2011 WL 10959877, at *1 (D.D.C. Apr. 8, 2011). Put simply, “[n]ot needing more lawyers to spend more time on more briefs on more subjects in order to decide the motion to dismiss,” a court will stay summary judgment briefing until dismissal issues have been resolved. *See Freedom Watch, Inc. v. Dep’t of State*, 925 F. Supp. 2d 55, 59 (D.D.C. 2013). These considerations of justice, efficiency, and judicial economy warrant extending the summary disposition briefing deadlines until the Court resolves the pending Motion to Dismiss. *See Order Staying Motion for Summary Judgment at 2–3, Am. Hosp. Ass’n v. Burwell*, No. 1:14-cv-00609 (D.D.C. Oct. 14, 2014), ECF No. 16.

For the foregoing reasons, Respondents respectfully request that the Court grant Respondents’ Motion for Modification of the Scheduling Order / Extension of Time and impose the following summary disposition filing deadlines:

	<u>Previous Deadline</u>	<u>New Deadline</u>
Motions for Summary Disposition to be filed by 5 PM (EST) on:	April 8, 2016	May 13, 2016
Oppositions to Summary Disposition Motion to be filed by 5 PM (EST) on:	April 29, 2016	May 27, 2016
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Exchange of prehearing statements, witness lists, exhibit lists, and pre-marked exhibits by:	May 27, 2016	June 10, 2016

Respectfully submitted,

Dated: March 1, 2016

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CERTIFICATION OF SERVICE

I hereby certify that on the 1st day of March 2016, I caused a copy of the foregoing Answer to be filed by electronic transmission (e-mail) with the U.S. Coast Guard Hearing Docket Clerk (aljdocketcenter@uscg.mil), Heather L. MacClintock (Heather.L.MacClintock@uscg.mil) and Administrative Law Judge Parlen L. McKenna (cindy.j.melendres@uscg.mil), and served by electronic mail on the following parties who have consented to electronic service:

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