

# EXHIBIT A

**In the Matter of:**

PHH Corporation, et al.

*February 14, 2014*

**Condensed Transcript with Word Index**



For The Record, Inc.  
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1 CONSUMER FINANCIAL PROTECTION BUREAU  
2 In the Matter of )  
3 PHH CORPORATION, PHH MORTGAGE )  
4 CORPORATION, PHH HOME LOANS, ) Admin. Proc.  
5 LLC, ATRIUM INSURANCE and ) 2014-CFPB-0002  
6 ATRIUM REINSURANCE )  
7 CORPORATION )  
8 - - - - - )  
9  
10 Friday, February 14, 2014  
11 For The Record, Inc.  
12 10760 Demarr Road  
13 White Plains, MD 20695  
14  
15 The above-entitled Telephonic Scheduling  
16 Conference was held before HONORABLE CAMERON ELLIOT  
17 pursuant to notice, at 2:00 p.m.  
18  
19  
20  
21  
22  
23  
24  
25

2

1 APPEARANCES: (VIA TELEPHONE)  
2 ON BEHALF OF THE CFPB:  
3 DONALD R. GORDON, ESQ.  
4 KIMBERLY J. RAVENER, ESQ.  
5 THOMAS KIM ,ESQ.  
6 NAVID VAZIRE, ESQ.  
7 KENT NAKAMURA, ESQ.  
8 Consumer Financial Protection Bureau  
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11 (202) 435-7357  
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13 ON BEHALF OF RESPONDENTS:  
14 DAVID M. SOUDERS, ESQ.  
15 ROSANNE L. RUST, ESQ.  
16 SANDRA VIPOND, ESQ.  
17 Weiner Brodsky Kider, P.C.  
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19 Washington, D.C. 20036-1609  
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21 souders@thewbkfirm.com  
22  
23 ALSO PRESENT:  
24 CAMERON ELLIOT, Administrative Law Judge  
25

3

1 P R O C E E D I N G S  
2 HONORABLE ELLIOT: We are here in the matter  
3 of PHH Corporation, et al, Consumer Financial  
4 Protection Bureau, Administrative Proceeding, File  
5 Number 2014-CFPB-0002.  
6 My name is Cameron Elliot, presiding  
7 Administrative Law Judge.  
8 May I have appearances from counsel, please.  
9 MR. GORDON: This is Don Gordon appearing  
10 for Enforcement counsel.  
11 MR. VAZIRE: Navid Vazire also appearing for  
12 Enforcement counsel.  
13 MR. KIM: Thomas Kim also appearing for  
14 Enforcement counsel.  
15 MS. RAVENER: And Kimberly Ravener, also  
16 appearing for Enforcement counsel.  
17 MR. SOUDERS: Good afternoon, Your Honor,  
18 this is Dave Souders. I'm appearing with Roseanne  
19 Rust and Sandra Vipond from Weiner Brodsky Kider for  
20 the Respondents.  
21 HONORABLE ELLIOT: All right. So we're here  
22 for our Scheduling Conference and we have a number of  
23 things to talk about.  
24 Before I get to the things that I'm supposed  
25 to talk about, let me ask specifically about

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1 settlement; have there been any settlement discussions  
2 that I need to be made aware of?  
3 Let me direct that first to Mr. Gordon.  
4 MR. GORDON: There have not, Your Honor.  
5 HONORABLE ELLIOT: All right, very well.  
6 So an important date for me is the date of  
7 notice of the charges which in this case was  
8 January 29th; and based upon that, it appears that I  
9 need to issue a recommended decision no later than  
10 November 25, which is the Tuesday before Thanksgiving.  
11 And based upon my experience here at the  
12 SEC, what this means is that I should probably start  
13 the hearing no later than about four months after the  
14 notice of charges. So in other words, basically late  
15 May, early June.  
16 Have the parties had any discussion about  
17 when they want to hold the hearing?  
18 Mr. Gordon?  
19 MR. GORDON: Yes, Your Honor, we have.  
20 HONORABLE ELLIOT: Okay. Tell me.  
21 MR. GORDON: Well, we met and conferred on  
22 Wednesday, Your Honor, and we proposed at that time to  
23 Respondents what we considered to be a pretty  
24 aggressive schedule but one which was realistic which  
25 basically proposed a hearing date of August 4 and

5

1 backed out certain deadlines before that date which I  
 2 can specify if the Court wants.  
 3 HONORABLE ELLIOT: Well I don't think I can  
 4 do August 4th, that's not going to give me enough time  
 5 to write the decision. I --  
 6 MR. SOUDERS: Your Honor, may I speak?  
 7 HONORABLE ELLIOT: Yes, go ahead,  
 8 Mr. Souders.  
 9 MR. SOUDERS: Your Honor, we believe that  
 10 under the CFPB's rules and the commentary that we're  
 11 entitled to a hearing starting 60 days after the  
 12 notice of charges, so our proposal would be a hearing  
 13 date starting on March 31st.  
 14 HONORABLE ELLIOT: Oh, okay. So the parties  
 15 had conferred but had not reached agreement on a  
 16 hearing date; is that what I hear you saying,  
 17 Mr. Souders?  
 18 MR. SOUDERS: That's correct, Your Honor.  
 19 HONORABLE ELLIOT: Oh, very well, okay.  
 20 Well, Mr. Souders, if you're invoking your  
 21 right to 60 days, then March 31st would actually be  
 22 after the 60 days, I think, but -- yes, go ahead.  
 23 MR. SOUDERS: I'm sorry, with kind of the  
 24 weekend, so I think March 31st was a Monday.  
 25 HONORABLE ELLIOT: Well, let's see. Let me

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1 check my calendar. I actually have another case  
 2 starting on March 31st.  
 3 Let's see. Well, let me ask this, before we  
 4 get to the precise start date, let me ask, Mr. Gordon,  
 5 how long do you anticipate your case in chief would  
 6 last?  
 7 MR. GORDON: Your Honor, we've estimated on  
 8 the order of one to two weeks.  
 9 HONORABLE ELLIOT: All right. And,  
 10 Mr. Souders, do you have any idea how long your case  
 11 would last?  
 12 MR. SOUDERS: If as currently pled, two  
 13 weeks.  
 14 HONORABLE ELLIOT: Well, wow. I think I can  
 15 probably start it, I can start it April 28th, but  
 16 right now I have another case set for March 31.  
 17 Let, well let me ask this, Mr. Souders --  
 18 well let me start with Mr. Gordon, where do you think  
 19 the case should be tried?  
 20 MR. GORDON: We suggested since opposing  
 21 counsel, Respondent's counsel, Your Honor, is based  
 22 here, we suggested that it might be best tried in  
 23 Washington, D.C., but Mr. Souders demurred and  
 24 indicated that his client would like it in the  
 25 District of New Jersey.

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1 HONORABLE ELLIOT: All right. Mr. Souders,  
 2 where in the District of New Jersey, New York,  
 3 Philadelphia, somewhere else?  
 4 MR. SOUDERS: Right outside of Philadelphia,  
 5 Your Honor, where the company is located, in Cherry  
 6 Hill or Mount Laurel or either address.  
 7 HONORABLE ELLIOT: Okay. We might have to  
 8 hold it in Philadelphia simply because we have,  
 9 probably have more space available.  
 10 MR. SOUDERS: That would be fine with us,  
 11 Your Honor.  
 12 HONORABLE ELLIOT: All right. Did you have  
 13 any objection to holding it in Washington, D.C?  
 14 MR. SOUDERS: I do, Your Honor, because this  
 15 is going to be, you know, a lot of Respondents' people  
 16 testifying and we believe it's more appropriate closer  
 17 to their headquarters.  
 18 HONORABLE ELLIOT: All right. Very well.  
 19 So I can, I can get this case started in  
 20 March, but I don't think we can finish it and I'm  
 21 probably going to have to do it piecemeal,  
 22 unfortunately, because I've got a, as it stands right  
 23 now, I've got a three-week hearing starting March 31st  
 24 which -- well actually technically it would be a  
 25 four-week hearing and then I've got another hearing

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1 starting May 5.  
 2 So we can, we can do one week of hearing  
 3 starting, say, March 24th, and then we can do another  
 4 week starting, say, April 28.  
 5 And then I've got this other hearing May 5,  
 6 which is expected to last two weeks; and then after  
 7 that, I'm pretty much wide open at this point.  
 8 So we can start it in March and continue it  
 9 in April and finishing up in May.  
 10 Mr. Souders, do you have any objection to  
 11 that schedule?  
 12 MR. SOUDERS: I have to tell you, Your  
 13 Honor, that my client wants to get it -- they want to  
 14 start before the 60 days or at around the 60 days and  
 15 you've accommodated that and if that's the best you  
 16 can do, we'll agree to that.  
 17 HONORABLE ELLIOT: I am fully committed to  
 18 getting you started by the 60-day point. I don't  
 19 think I can finish, though, and I think given the  
 20 length of the case, we probably could not finish  
 21 within the 60-day point anyway, so.  
 22 I'm sorry, say that again?  
 23 MR. SOUDERS: I said let me just explain,  
 24 Your Honor.  
 25 HONORABLE ELLIOT: Yes.

1 MR. SOUDERS: This has, the charges have had  
2 a detrimental affect on our client.

3 On February 5th they lost the sale of a  
4 portfolio of loans because of these notice of charges.  
5 I'm prepared to document that and submit it if we can  
6 submit it in camera, but I cannot overemphasize the  
7 detrimental affect of what has happened here on PHH  
8 and its related entities, so if I sound a little bit  
9 pushy, I apologize, but there has been damage to this  
10 company and they want to get this done as quickly as  
11 possible.

12 That's my instructions from my client and I  
13 appreciate starting on the 24th.

14 HONORABLE ELLIOT: All right. I understand.  
15 We have the same role at the SEC and I have  
16 accommodated at least one case before on exactly the  
17 same grounds, so I understand exactly what you're  
18 saying.

19 Mr. Gordon, any objection to starting on  
20 March 24th in Philadelphia?

21 MR. GORDON: Well, Your Honor, our concern  
22 at this point is that we're, we're not convinced  
23 necessarily and we have to look at the rule and  
24 statute that it is, in fact, a right on the part of  
25 Respondents to have the hearing within 60 days. We

1 just have to assess that issue. So we want to reserve  
2 our rights.

3 What I was going to address with the Court  
4 was a few of the practical concerns that we had which  
5 led to the schedule that we proposed.

6 Now I understand August won't work for you  
7 and we hear that, but there are some issues which I  
8 think would make a very aggressive schedule like  
9 starting in March or even April impracticable and they  
10 relate particularly to the document disclosure  
11 obligations that we have under Rule 206.

12 If I may, I'd like to address those a little  
13 bit.

14 HONORABLE ELLIOT: Yes, go ahead. Go ahead.

15 MR. GORDON: We have been working diligently  
16 since actually before the filing of the notice of  
17 charges to meet those obligations under 206 as we  
18 understand them. We notified 10 third parties on the  
19 date of filing that under Rule 119, which is the  
20 confidentiality rule, that they may have rights to  
21 assert and we have been in touch with them.

22 We're in a slightly unusual posture in this  
23 investigation because, and this informs the document  
24 disclosure issue, because we stand in the shoes of HUD  
25 which prior to the Dodd-Frank transfer date, as we

1 call it, which is July 21st, 2011, HUD had exclusive  
2 Federal responsibility for enforcing RESPA and now we  
3 do following the transfer date. And the practical  
4 result of that in this case was that certain  
5 investigations were transferred to the Bureau, we  
6 pursued and extended those investigations, including  
7 the investigation that led to the initiation of this  
8 proceeding and in the course of that we were provided  
9 with a very large number of documents that HUD had  
10 acquired through administrative subpoena.

11 To give you an idea of the scale we're  
12 talking about, we believe that pursuant to Rule 206,  
13 and I'm speaking approximately here, but on the order  
14 of 100,000 documents are part of our obligation under  
15 Section A of that rule and not subject to any  
16 exceptions for withholdings.

17 Now about 21,000 of those were PHH's own  
18 documents which we duly produced back to them on  
19 February 5th, I believe. But as I say, this is, this  
20 is a very fact-intensive case.

21 As we have proceeded based on our  
22 understanding of Rule 206, I should tell you that PHH  
23 has expressed to us a somewhat different understanding  
24 of Rule 206 in terms of the breadth of our obligation  
25 suggesting, among other things, that we are obliged to

1 provide only material or relevant documents as I  
2 understand it as it goes to, essentially, as I  
3 understand it, the practice at the SEC under a similar  
4 rule, the investigative file less those things that  
5 are subject to narrow exceptions like privilege and so  
6 forth.

7 We're comfortable that the plain language of  
8 the rule and the commentary is supportive of this and  
9 so we feel we're obliged to give them that body of  
10 documents that I've described to you which comprises  
11 both documents we have from HUD which date back to, in  
12 some cases, 2008 and also documents that the Bureau  
13 has acquired through the CIDs and so forth since the  
14 transfer dates.

15 We are, with respect to the document  
16 disclosures, there is this intervening confidentiality  
17 issue and we've been trying to do whatever we can as  
18 one party to this matter with obviously a Respondent  
19 and a number of third parties out there involved as  
20 well to see if we can reach agreement on a stipulated  
21 Order.

22 I'm happy to say that it appears that we  
23 have reached agreement with PHH. We just got their  
24 last mark-up less than two hours before the hearing,  
25 but I had a glance at it, we've had some back and

13

1 forth, some good discussions with Mr. Souders and I  
 2 think we are, we are all square on that.  
 3 I'm obliged to tell you, however, that with  
 4 respect to the 10 third parties, some of them have  
 5 conditionally consented to do the disclosure of their  
 6 documents to PHH but have attached a series of  
 7 conditions in the Protective Order that Enforcement  
 8 counsel are not comfortable agreeing with.  
 9 So we haven't any universal agreement to  
 10 report on that issue and we just, we put that to the  
 11 Court for your resolution, to the extent it needs to  
 12 be resolved.  
 13 But I'm hopeful, Mr. Souders can tell you  
 14 for himself, but I'm hopeful that we can, the parties,  
 15 at least, can submit a joint stipulated Order as  
 16 between us, at least, very soon. And that's...  
 17 So just sort of summing up, the consequence  
 18 of all this, and as you may have gleaned from the  
 19 papers that you've seen so far in this case and as I  
 20 think you probably will glean from the papers that  
 21 you're going to receive shortly from us, there are a  
 22 number of complicated and highly document-intensive  
 23 issues at issue here and so we believe that a,  
 24 although we understand August isn't practicable for a  
 25 hearing date, we would suggest a date that is after

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1 March 31st, preferably a month after.  
 2 HONORABLE ELLIOT: All right. And,  
 3 Mr. Gordon, when you refer to Orders, or Order, I  
 4 should say, are you talking about a Protective Order?  
 5 MR. GORDON: Yes, sir, I'm sorry. That's  
 6 what I meant, Your Honor.  
 7 HONORABLE ELLIOT: Okay.  
 8 MR. SOUDERS: Your Honor, may I respond to  
 9 all that?  
 10 HONORABLE ELLIOT: Go ahead, Mr. Souders.  
 11 MR. SOUDERS: Okay. A couple things, Your  
 12 Honor. They've been, this has been under  
 13 investigation by the CFPB itself for more than two  
 14 years. They decided to go ahead and file these  
 15 charges on two hours notice and we're, and we  
 16 immediately moved to dismiss, as you can see from the  
 17 docket sheet, three days after they were filed.  
 18 This is not a lot of disputed facts. The  
 19 facts are what the facts are.  
 20 Now, with respect to their Rule 26  
 21 obligations, we would like to submit a brief to the  
 22 Court because, or to Your Honor, because under their  
 23 rule and the commentary they submitted with it, it is  
 24 not satisfactory for them to give us back every  
 25 document we gave them, nor do we believe it's adequate

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1 for them to dump 100,000 documents on us.  
 2 That being said, we're going to do whatever  
 3 it takes because of the position they put our client  
 4 in. We want to move forward on the 24th. We'll take  
 5 their documents as they get them, but with respect to  
 6 the Rule 26 obligations, we would like the opportunity  
 7 to explain why what they're doing is not sufficient.  
 8 HONORABLE ELLIOT: All right. Well that's  
 9 fine. I, if there is a dispute over the, over  
 10 Enforcement's production, whatever that dispute may  
 11 be, then the parties are free to file motions with me.  
 12 Enforcement may file a motion for a Protective Order  
 13 and Respondents may file a motion to compel or  
 14 whatever, whatever kind of relief you're seeking.  
 15 MR. SOUDERS: Okay.  
 16 HONORABLE ELLIOT: And I will resolve those  
 17 as they come up.  
 18 I, Mr. Gordon, let me make sure I  
 19 understand, sir, the gist of what you're saying, there  
 20 are these third parties who object to the production  
 21 of a number of documents in your investigative file  
 22 and you're not in a position yet to turn those  
 23 documents over?  
 24 Is that basically what you're saying?  
 25 MR. GORDON: Well, they have conditionally

16

1 consented, subject to the entry of your Protective  
 2 Order, Your Honor.  
 3 And the, as I've communicated, some of them  
 4 have objected to the draft stipulated Order that we  
 5 shared with them which is, which was fairly similar to  
 6 what we've now agreed on with PHH, although different  
 7 in one significant respect.  
 8 One thing I wanted to make sure that the  
 9 Court understood, though, following on from all of  
 10 this is that we understand our obligations to be not  
 11 to disclose or use those documents until these  
 12 confidentiality concerns are resolved and there is an  
 13 Order. And now with that and with Mr. Souders'  
 14 prospective motion on that, that's building in yet  
 15 more time.  
 16 I mean to the extent that Respondents are  
 17 willing to waive the right to receive documents and  
 18 proceed with the hearing anyway, third-party  
 19 documents, that is, which are subject to  
 20 confidentiality claims, that would be one thing. But  
 21 if they are not, I don't really see how this is a  
 22 practicable schedule starting March 31st.  
 23 HONORABLE ELLIOT: Okay.  
 24 MR. SOUDERS: We're not, I'm sorry, Your  
 25 Honor --



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1 HONORABLE ELLIOT: Yeah, go ahead,  
 2 Mr. Souders.  
 3 MR. SOUDERS: We're not going to waive  
 4 anything, Your Honor. We'll put it in our brief and  
 5 they can respond to it. If this is an issue, we can  
 6 revisit it after the Court decides whether they have  
 7 this additional obligation.  
 8 HONORABLE ELLIOT: All right. Very well.  
 9 Well, Mr. Souders, can you direct me --  
 10 well, no. Actually, hold on, no, I think I've found  
 11 it. Okay.  
 12 So I'm trying to read the rules regarding  
 13 the 30- and 60-day requirements and they don't  
 14 actually seem to be written in to the rules, they seem  
 15 to be part of the commentary. I'm referring now to  
 16 the commentary to the Scheduling Conference rule,  
 17 Section 203, where it says that -- well no, hold on  
 18 now, let me look here.  
 19 So it refers to paragraph B1 of Section 203  
 20 and this pertains to a requirement in Section 1053B of  
 21 Dodd-Frank.  
 22 Can I get a representation, I'll ask  
 23 Mr. Gordon about this, can I get a representation that  
 24 this case is brought under 1053B? I see that it  
 25 refers to 1053, but I don't see 1053B anywhere.

18

1 Mr. Gordon?  
 2 MR. GORDON: Yes, Your Honor, 1053B is  
 3 correct.  
 4 HONORABLE ELLIOT: Okay. Very good. So let  
 5 me then go to Section 203 of the rules. Let's see.  
 6 Okay. All right. I see. So 203, B, 1 says  
 7 determination of dates and location of the hearing,  
 8 including, in this proceeding, whether the hearing  
 9 should commence later than 60 days after service of  
 10 the notice of charges.  
 11 All right. Well, I think I'm going to  
 12 have to assume that, without actually reading  
 13 Section 1053B, I think that probably the commentary  
 14 plus the rule itself together suggests that we really  
 15 need to get the hearing commenced within 60 days after  
 16 service of the notice of charges and I think really  
 17 the best time to do that would be March 24th.  
 18 Now, Mr. Gordon, I hear what you're saying  
 19 and I think that probably this provision trumps  
 20 whatever difficulties you may be having with  
 21 production of your file and I, of course, encourage  
 22 the parties to communicate with each other and be  
 23 civil and professional to one another to the extent  
 24 that you can be and try to work this out.  
 25 But, again, if either party feels like they

19

1 need relief in any fashion, just send me a motion  
 2 and --  
 3 MR. VAZIRE: Your Honor?  
 4 HONORABLE ELLIOT: Yes, go ahead.  
 5 MR. VAZIRE: Your Honor, I'm sorry, this is  
 6 Navid from Office of Enforcement. I just want to  
 7 clarify that we do not read Section 1053B to require  
 8 the hearing to be held within 60 days and we certainly  
 9 don't read it to give Respondent any rights to  
 10 enforce, any subsequent rights with respect to  
 11 deadlines and, in fact, I would point to Rule 106  
 12 which is clarifying that that is the case.  
 13 106 states exclusively that the deadlines  
 14 for actions by the hearing officer established by a  
 15 number of rules, including Rule 203, confer no  
 16 substantive rights on the Respondents.  
 17 I say that only to suggest that we have more  
 18 leeway here than is perhaps the assumption that we're  
 19 proceeding under so far.  
 20 HONORABLE ELLIOT: All right. Well bear  
 21 with me. Give me just a moment here. So 106. Okay.  
 22 Well you're right about 106. It says it confers no  
 23 substantive rights on Respondents.  
 24 Now let me look at, okay, so 12 USC, is it  
 25 12 USC?

20

1 MR. GORDON: Yes.  
 2 HONORABLE ELLIOT: Yes, 12 USC,  
 3 Section 1053, okay. Well that's not.  
 4 MR. VAZIRE: It's section 5563, Your Honor.  
 5 HONORABLE ELLIOT: Oh, 5553. Sorry, okay.  
 6 MR. VAZIRE: It's 1053 of the Consumer  
 7 Financial Protection Act.  
 8 HONORABLE ELLIOT: Got it. So 12 USC  
 9 Section 5553?  
 10 MR. VAZIRE: 63.  
 11 HONORABLE ELLIOT: 63.  
 12 MR. VAZIRE: Yeah.  
 13 HONORABLE ELLIOT: There we go. All right.  
 14 Okay. Special rules for cease and desist proceedings.  
 15 The notice shall fix a time and place at which a  
 16 hearing will be held. Such hearing to be held not  
 17 earlier than 30 days nor later than 60 days after  
 18 service, unless an earlier or later date is set by the  
 19 Bureau at the request of any party so served.  
 20 Well, that strikes me as, it appears that  
 21 this was not actually followed in this case because  
 22 the notice does not give a time and place for the  
 23 hearing. It leaves the, that determination up to me,  
 24 but it does say that it's to be held not earlier than  
 25 30 days nor later than 60 days after service, unless

21

1 an earlier or later date is set by the Bureau at the  
 2 request of any party so served.  
 3 So I think if I, the way I read that, if the  
 4 Respondents want to have it held within 60 days after  
 5 service, then I think we need to do that.  
 6 So I'm going to, I'm going to overrule the  
 7 Enforcement's request for a later start date and we'll  
 8 just have to do the best we can in terms of getting  
 9 the investigative file produced.  
 10 And so we'll, we will commence the hearing  
 11 March 24th in Philadelphia at a place to be  
 12 determined. We will look, our office will look for a  
 13 hearing location, probably one of the Federal Courts  
 14 in Philadelphia.  
 15 All right. Okay. So I, I agree with the  
 16 Respondents that that is actually a substantive  
 17 requirement of the rules.  
 18 Okay. Next issue, let's see here. Give me  
 19 a moment, please. All right.  
 20 So I've received the Respondent's answer. I  
 21 received the motion to dismiss or, in the alternative,  
 22 for summary disposition. We've talked about the  
 23 investigative file, the date and location of the  
 24 hearing.  
 25 And now according to Rule 203, we're

22

1 supposed to talk about a number of other things,  
 2 including settlement, amendments to pleadings,  
 3 simplification and clarification of the issues.  
 4 I think at this point all I can really say  
 5 about that is that if the parties want to amend their  
 6 pleadings, simply file a motion.  
 7 If the parties want to depose a witness,  
 8 again, file a motion.  
 9 All right. So have the parties, I'll direct  
 10 this to Mr. Gordon, have the parties discussed any  
 11 kind of pre-hearing schedule? If not, that's fine,  
 12 I'll set one right now. I have one that I prefer  
 13 using, but have you talked about any proposed  
 14 pre-hearing schedules such as exchange of witness  
 15 lists and so forth?  
 16 MR. GORDON: We haven't, separate from our  
 17 just suggestion when we met and conferred, Enforcement  
 18 counsel, to get the date for the pre-hearing  
 19 submission, which contains witness lists, exhibit  
 20 lists and so forth.  
 21 HONORABLE ELLIOT: Oh, okay, what is that  
 22 date?  
 23 MR. GORDON: Well we had proposed, under the  
 24 rules, as I understand it, it had to occur no less  
 25 than 10 days before the date of hearing, so we had

23

1 proposed a date which I think was 10 days before  
 2 August 4th, or July 21st.  
 3 HONORABLE ELLIOT: All right. Mr. Souders,  
 4 do you want to be heard on that?  
 5 MR. SOUDERS: I do, Your Honor, because I  
 6 think one thing that needs to figure in to this are  
 7 expert reports. So we have exchanged with them, I  
 8 don't believe we exchanged a witness date, but 10 days  
 9 prior to the hearing is fine with us. But expert  
 10 reports, we had a suggestion that we sent over to them  
 11 which I think is still workable.  
 12 HONORABLE ELLIOT: Okay. What, what did  
 13 you, did you suggest 10 days beforehand? What did you  
 14 suggest?  
 15 MR. SOUDERS: Yes, okay. I'm sorry, Your  
 16 Honor. We suggested that expert reports be exchanged  
 17 by February 26th, that depositions of experts be held  
 18 on the 5th, 6th or 7th of March, and that rebuttal  
 19 reports be due March 17th, which is still prior to the  
 20 24th, a week ahead of time.  
 21 HONORABLE ELLIOT: All right. And was that  
 22 on the assumption that the hearing would start at  
 23 March 31?  
 24 MR. SOUDERS: It was, Your Honor, but --  
 25 HONORABLE ELLIOT: All right. Okay. Well,

24

1 let's see here. I think I would rather have the  
 2 exchange of materials except for expert reports be a  
 3 little bit earlier, maybe 14 days.  
 4 So we're looking now at March 24th, so the  
 5 parties would exchange exhibit lists, witness lists  
 6 and a complete set of pre-marked exhibits March 10th  
 7 and then otherwise I'm, I have no problem with your  
 8 proposed expert discovery or expert exchange of expert  
 9 materials and depositions schedule.  
 10 Mr. Gordon, do you have any objection to  
 11 what Mr. Souders said about the experts?  
 12 MR. GORDON: Thank you, Your Honor. I don't  
 13 think that we're in a position to agree. I'm not  
 14 trying to be contrary, but just because of this issue  
 15 of the extent to which we can use documents in all of  
 16 those things that these deadlines pertain to, whether  
 17 they're expert reports or witness lists or exhibits  
 18 lists and the exhibits, themselves, of course, because  
 19 that's our position at present.  
 20 HONORABLE ELLIOT: I understand, okay.  
 21 Aside from that objection, I understand what  
 22 you're saying, aside from that objection, do you have  
 23 any objection to the schedule Mr. Souders proposed?  
 24 MR. GORDON: Yeah, I mean if we could get a  
 25 bit more time, Your Honor, I think we could make it a



25

1 bit more practicable.

2 Yeah, I mean there's a question of the  
3 expert's availability and that sort of thing, just  
4 practicalities.

5 HONORABLE ELLIOT: Well, I think that even  
6 the schedule Mr. Souders has proposed is really rather  
7 aggressive given a start date of March 24.

8 Now keep in mind, we're only going to be  
9 able to go for about a week at first and then we'll  
10 take a few weeks off. In fact, we'll take about a  
11 month off, really, and then come back for another  
12 week.

13 So the first week, if the parties plan on  
14 presenting whatever evidence they can that may not  
15 raise any of the issues that are presented by experts  
16 or by the difficulties with the third parties and  
17 disclosure of the third-party information, then that  
18 might make things go more smoothly that first week,  
19 but I think given the fact that we're starting  
20 March 24th, we really do need a fairly aggressive  
21 expert schedule.

22 Well let me ask this, let me direct this to  
23 Mr. Souders, pardon me, what if we were to not have  
24 rebuttal reports until after the first week of the  
25 hearing? So in other words, the rebuttal reports

26

1 would be due sometime in April?

2 MR. SOUDERS: So as long as we did the  
3 initial reports and the depositions, I'd be fine with  
4 that, Your Honor.

5 HONORABLE ELLIOT: All right. So let's try  
6 this, then, we'll make, we'll make the expert reports  
7 due March 3 and then you can do depositions the  
8 following week, that is, the week of March 10th  
9 through the 14th, and then we'll make rebuttal reports  
10 due, let's say, April 21.

11 Okay. All right, Mr. Souders, any objection  
12 to that schedule?

13 MR. SOUDERS: No, that's fine, Your Honor,  
14 thank you.

15 HONORABLE ELLIOT: All right. Mr. Gordon,  
16 again, I understand your basic objection. Any  
17 objection to that schedule?

18 MR. GORDON: No, subject to what I said  
19 earlier, we appreciate it, Your Honor.

20 HONORABLE ELLIOT: All right. Very well.

21 Okay. So, now let me, let me mention a  
22 little bit about what you're supposed to exchange.

23 On the 10th of March, the parties, as I say,  
24 should exchange witness lists and exhibit lists and  
25 pre-marked exhibits. Please file your witness lists

27

1 and exhibit lists, and off the top of my head I can't  
2 remember if there's a rule about filing exhibits, but  
3 if there is, then follow the rule. If the rule does  
4 not require that you file your exhibits before the  
5 hearing, then don't do that and don't send me a copy.

6 But, since it appears that I'm able to  
7 access everything that you've filed, and you don't  
8 need to send me any courtesy copies of anything; you  
9 may, if you like, I have no problem with that. If you  
10 want to send me something by way of courtesy copy, you  
11 can E-mail it to me at ALJ@SEC.gov, but so far it  
12 looks like the electronic filing system that the CFPB  
13 has is working perfectly well, so I don't really need  
14 courtesy copies of anything.

15 Now, in view of the fact that I have the  
16 motion for summary disposition, I don't feel the need  
17 for pre-hearing briefs.

18 So let me start with Mr. Gordon, I propose  
19 that we waive pre-hearing briefs. Do you have any  
20 objection to that?

21 MR. GORDON: I think it's actually -- given  
22 the schedule, we do not, Your Honor, thank you.

23 HONORABLE ELLIOT: All right. Mr. Souders,  
24 do you have any objection to that?

25 MR. SOUDERS: Can I ask a question first,

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1 Your Honor?

2 HONORABLE ELLIOT: Yes, go ahead.

3 MR. SOUDERS: Are we going to have oral  
4 argument on this, on this motion?

5 HONORABLE ELLIOT: Oh, remind me, we'll get  
6 to that in a second. We'll get to that in a second.

7 But do you have any objection -- but, well,  
8 okay, do you want me to answer that question before  
9 you answer the question about pre-hearing briefs?

10 MR. SOUDERS: Here's the only thing I was  
11 going to say, Your Honor, is depending on if you  
12 happen to rule on certain parts of these issues, not  
13 that you happen to rule, but depending on how you  
14 rule, it may be beneficial to have something else, but  
15 that was my only sort of point, is that depending on  
16 what, if part of the case goes away you may find it  
17 beneficial, but I'm not asking to just simply write  
18 more briefs. I think we've laid it out pretty well.

19 HONORABLE ELLIOT: All right. So let's  
20 address then the issue of oral argument on summary  
21 disposition motion. That's fine with me.

22 The, I have not actually sat down and  
23 calculated when Enforcement's response is due, but it  
24 looks like the reply brief would be due sometime in  
25 March; is that right, Mr., let me ask Mr. Souders,

29

1 when do you think we'd be in a position to have an  
 2 oral argument?  
 3 MR. SOUDERS: I think we'd be in a position  
 4 to have oral arguments the week of March 3rd, Your  
 5 Honor, and we, if necessary, and I believe the  
 6 Enforcement division at least indicated the other day  
 7 they were filing next Thursday, we'd be happy to get  
 8 our reply in early by the end of February and the week  
 9 of March 3rd is good, any day but the 4th for us, Your  
 10 Honor.  
 11 HONORABLE ELLIOT: All right.  
 12 MR. SOUDERS: And if it would assist in  
 13 scheduling, if the SEC or someplace has a facility  
 14 down here, we'd be willing to do that here.  
 15 HONORABLE ELLIOT: Okay, so we can, I mean  
 16 I'm available the week of March 3rd to the 7th.  
 17 Let me ask Mr. Gordon, do you have any  
 18 objection to oral argument on the motion for summary  
 19 disposition?  
 20 MR. GORDON: We don't, Your Honor. I did  
 21 want to mention, if I may, also, one thing that we had  
 22 discussed at the meet and confer was that we had  
 23 expected Enforcement counsel to move for summary  
 24 disposition ourselves, so I wanted to make sure that  
 25 that wasn't lost in all of this.

30

1 HONORABLE ELLIOT: Oh, okay. Well, I think  
 2 at this point it would be impractical to try to  
 3 combine the two because if you were to file, if  
 4 enforcement were to file its motion for summary  
 5 disposition today, one, two, three, oh, briefing  
 6 wouldn't be done until pretty much the start of the  
 7 hearing.  
 8 So, I mean my response to that is that  
 9 you're free to file a motion for summary disposition,  
 10 but I don't know that we would be in a position to  
 11 hold oral argument on it, especially because it would  
 12 be right before, the briefing would be complete right  
 13 before the start of the hearing and, you know, I think  
 14 that would just not be practical.  
 15 MR. VAZIRE: Your Honor, this is Navid  
 16 Vazire. I think that's fine that we don't necessarily  
 17 need oral argument on our own motion, but I just would  
 18 like to point out that we will be relying on evidence  
 19 that we've obtained from third parties in which we are  
 20 at least currently not permitted to share with  
 21 Respondents, so that's the position that we find  
 22 ourselves in, given the schedule that we're talking  
 23 about.  
 24 HONORABLE ELLIOT: Understood. So let's  
 25 hold an oral argument on the pending motion for

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1 summary disposition and let's do that, let's see,  
 2 let's try March 4th --  
 3 MR. SOUDERS: Oh, Your Honor, that was the  
 4 one day that we were -- had a conflict.  
 5 HONORABLE ELLIOT: Oh, okay. Well fine.  
 6 Let's try March 5 then.  
 7 MR. SOUDERS: Okay. Thank you.  
 8 HONORABLE ELLIOT: And, Mr. Gordon, are  
 9 there, is there a facility at the CFPB where we can  
 10 hold the oral argument?  
 11 MR. GORDON: Offhand, Your Honor, I don't  
 12 know that there is someplace suitable. I'm happy to  
 13 look into it.  
 14 HONORABLE ELLIOT: Okay. Well that's okay.  
 15 In that case, then, we'll hold it at the SEC office.  
 16 We actually have a pretty good Courtroom here and  
 17 we'll be, our office will be in communication with  
 18 both sides in order to get security taken care of  
 19 because in order to get everyone in here, everyone is  
 20 going to have to be on our security list, which is  
 21 sometimes an inconvenience, unfortunately. But we'll  
 22 work with you to make that happen.  
 23 So let's say March 5, at, let's say 1:30 and  
 24 I will, I'll issue an Order after this conference that  
 25 we'll talk about that and I'll tell you how much time

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1 you'll get. I'm flexible in how much time you want.  
 2 For example, if the parties want to go an hour each,  
 3 that's fine, or we can adjust it when we show up for  
 4 the oral argument. Or if the parties want more time,  
 5 as you prepare for it, just tell me and I'll, I can  
 6 extend the time period or shorten it if you'd like,  
 7 just file a motion.  
 8 Okay. So March 5 at 1:30 we'll have oral  
 9 argument on the pending motion for summary disposition  
 10 and I'll tell you what, I will decide whether or not  
 11 we should have pre-hearing briefs for the hearing  
 12 after that oral argument, okay?  
 13 So I'll take up Mr. Souders' suggestion that  
 14 we not decide that until after we get a little more  
 15 into the motions for summary disposition.  
 16 MR. SOUDERS: Thank you, Your Honor.  
 17 HONORABLE ELLIOT: Okay. Let's see here.  
 18 Let me just talk about subpoenas a little bit. The,  
 19 the subpoena process that I like to employ is if you  
 20 send me a request for subpoenas, I look them over and  
 21 if I see no problems with them, at least they don't  
 22 appear to me to be problematic on their face, then I  
 23 wait a few days and if I don't hear from anybody  
 24 indicating that any party objects to the proposed  
 25 subpoenas, then I sign them and I send them right back

1 to you.  
 2 If I look them over and they look like  
 3 they're, they are potentially a problem, they may be  
 4 over broad, they may be unduly oppressive or something  
 5 like that, then I will issue a notice setting a  
 6 briefing schedule for any objections or motions to  
 7 quash or anything like that. And if I do get a notice  
 8 from the parties that one party or another, that they  
 9 object to the proposed subpoenas, then I'll also set a  
 10 briefing schedule for objections to the subpoenas.  
 11 Let's see. All right. I will probably  
 12 issue an Order which I call my general pre-hearing  
 13 Order and it sets out the practices which I like to do  
 14 in my hearings, for example, how you examine witnesses  
 15 and things like that. I anticipate sending that out  
 16 shortly after I send out the Scheduling Order, but it  
 17 will simply, you know, set forth sort of basically,  
 18 essentially my standing Orders, if you will. So be on  
 19 the look-out for that.  
 20 And I don't know that there's anything else  
 21 we need to talk about.  
 22 Mr. Gordon, is there anything else you want  
 23 to discuss?  
 24 MR. GORDON: I don't believe so, Your Honor.  
 25 HONORABLE ELLIOT: Mr. Souders?

1 MR. SOUDERS: No, Your Honor.  
 2 HONORABLE ELLIOT: All right. Thank you  
 3 very much. I will issue a Scheduling Order as soon as  
 4 I can.  
 5 This matter is adjourned.  
 6 (Whereupon, at 2:36 p.m., the Telephonic  
 7 Scheduling Conference was concluded.)  
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1 CERTIFICATION OF REPORTER  
 2 DOCKET/FILE NUMBER: Admin. Proc. 2014-CFPB-0002  
 3 CASE TITLE: PHH Corporation, et al  
 4 DATE: February 14, 2014  
 5  
 6 I HEREBY CERTIFY that the transcript contained  
 7 herein is a full and accurate transcript of the notes  
 8 taken by me at the Scheduling Conference on the above  
 9 cause before the CFPB to the best of my knowledge and  
 10 belief.  
 11  
 12 DATED: 2/14/14  
 13  
 14  
 15 \_\_\_\_\_  
 16 MONICA A. VOORHEES  
 17  
 18 CERTIFICATION OF PROOFREADER  
 19  
 20 I HEREBY CERTIFY that I proofread the  
 21 transcript for accuracy in spelling, hyphenation,  
 22 punctuation and format.  
 23  
 24 \_\_\_\_\_  
 25

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