

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Administrative Proceedings Rulings
Release No. 5719 / May 8, 2018

Administrative Proceeding
File No. 3-17716

In the Matter of

**Robert L. Baker,
Jacob B. Herrera,
Michael D. Bowen, and
Terrence A. Ballard**

**Order Adopting
Proposed Schedule**

The Securities and Exchange Commission accepted the settlement offers of the Respondents other than Terrence A. Ballard¹ and ordered additional proceedings on March 22, 2018. At issue is whether the settling Respondents must pay disgorgement. On May 4, 2018, the settling Respondents and the Division of Enforcement (the parties) submitted a joint prehearing conference report proposing a prehearing schedule and a hearing date.

Upon consideration of the joint prehearing conference statement, I ORDER the following procedural schedule:

August 17, 2018: Expert disclosures in accordance with 17 C.F.R. § 201.222(b) (if any) are due.

September 4, 2018: Discovery closes.

Parties are responsible for requesting and serving their own subpoenas for the production of documentary evidence. Subpoena forms are available at <http://www.sec.gov/alj>.

¹ Ballard is in default. *Robert L. Baker*, Admin. Proc. Rulings Release No. 4652, 2017 SEC LEXIS 659 (ALJ Mar. 3, 2017).

September 7, 2018:	Motions for summary disposition are due. ²
October 5, 2018:	Oppositions are due.
October 19, 2018:	Replies are due.
January 17, 2019:	Witness and exhibit lists are due. The parties shall exchange with each other, but not file, copies of their pre-marked exhibits. ³
January 31, 2019:	Objections to witnesses and exhibits and motions in limine are due.
February 8, 2019:	Stipulations are due, including stipulations concerning the contents, authenticity, or admissibility of documents. Subpoenas requiring the attendance of witnesses at the hearing are due. Parties are responsible for requesting and serving their own subpoenas.
February 22, 2019:	A final telephonic prehearing conference will be held at 2 p.m. Eastern.
March 5, 2019:	The hearing will begin at a location to be determined in the Dallas/Fort Worth, Texas, area. My office will secure a hearing location. The parties and their counsel should be prepared to proceed with the hearing on this

² I grant the Division's implicit request for leave to file a motion for summary disposition. 17 C.F.R. § 201.250(c). Since this case concerns disgorgement only, a matter for which a respondent's state of mind is typically not at issue, I find good cause to allow the parties to first attempt to resolve the case on summary disposition. *See Jay T. Comeaux*, Securities Act Release No. 9633, 2014 SEC LEXIS 3001, at *21-22 (Aug. 21, 2014) (suggesting that no public interest analysis applies to determining disgorgement). I have modified the proposed dates to allow more time for responses. The settling Respondents are also free to file motions for summary disposition of their own.

³ The parties suggest a later date for the submission of witness and exhibit lists, but it is inconsistent with their proposed date for the filing of evidentiary objections and motions in limine.

date, as requests for postponement are “strongly disfavor[ed].” 17 C.F.R. § 201.161(b).⁴

After the close of the parties’ evidentiary presentation, I will establish a schedule for the filing of briefs, proposed findings of facts, and exhibits.

Witness lists shall include witnesses’ names, occupations, addresses, and a brief summary of their expected testimony. 17 C.F.R. § 201.222(a)(4). Exhibit lists shall be emailed to my office at alj@sec.gov in Microsoft Excel or Word format and include exhibit numbers, a description of each exhibit, and Bates-stamp numbers, if any. Exhibits shall not be filed with the Office of the Secretary until after the hearing concludes.

The parties have agreed to serve each other by email. However, they must still attend to the required filing with the Office of the Secretary, and electronic courtesy copies of filings should be emailed to alj@sec.gov in both PDF text-searchable format and, when possible, Microsoft Word format. Electronic copies of exhibits should not be combined into a single PDF file, but submitted as separate attachments.

Jason S. Patil
Administrative Law Judge

⁴ Despite appearances, the parties’ proposed hearing date is not in conflict with Rule 360, which contemplates holding a hearing in a proceeding such as this one “approximately four months (but no more than ten months) from the date of service of the order instituting the proceeding.” 17 C.F.R. § 201.360(a)(2)(ii). The Commission issued its order on March 22, 2018, but all deadlines under Rule 360(a) were tolled from March 23, 2018—when I asked the parties to submit additional evidence pursuant to the Commission’s November 2017 order ratifying my appointment and allowing new evidentiary submissions—until May 7, 2018, when I ratified my prior actions. *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10440, 2017 SEC LEXIS 3724, at *2 (Nov. 30, 2017). I have provided the parties with the maximum ten months until the hearing (from May 2018 until March 2019) to allow an opportunity for ruling on motions for summary disposition that could potentially resolve this case. However, in light of this already extended schedule, I am unlikely to consider any requests for further postponement of the hearing.