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October 19, 2018

VIA E-MAIL (ALJ@SEC.GOV)

Honorable James E. Grimes
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Re: *In the Matter of David Pruitt, CPA; Admin. Proc. File No. 3-17950*

Dear Judge Grimes:

We represent Respondent David Pruitt in the above-referenced proceeding and respectfully submit this letter in response to the Court's Order Following Prehearing Conference, dated October 10, 2018. The parties were not able to agree on a proposed date for the commencement of the hearing and Respondent submits this letter setting forth a proposed hearing date of July 15, 2019 and the reasons supporting this request.¹

¹ The Division of Enforcement (the "Division"), during the Court-ordered meet and confer, led Respondent's counsel to believe that it would be inclined to agree to a hearing date in either late May or in June 2019 and encouraged Respondent to propose such a date. This mutual understanding was reached after considering the Court's schedule in April and the fact that defense counsel has several longstanding personal scheduling conflicts in May. Respondent, in good-faith reliance on the Division's representations and solely for the purpose of compromise, submitted a proposed schedule with a June 2019 date. One day later, on October 18, 2019, the NYRO Trial Unit Chief who did not participate in the meet and confer and who has never made an appearance in this proceeding or its prior incarnation, informed Respondent that contrary to its prior representations, the Division would not agree to a hearing date beyond March 2019 due to "all the work that has already been done on this case." It is unfortunate that progress made in the meet and confer was undone by a superior who did not participate in the conference between the parties.

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A July 15 hearing² would occur ten months from the Chief Administrative Law Judge's Order Assigning Proceedings Post *Lucia v. SEC*, dated September 12, 2018, and is in compliance with Rule 360(a)(2)(ii).³ More importantly, but for a few procedural issues, this matter is starting over and fairness and justice dictate that Respondent be provided sufficient time to prepare his defense, reconstruct the record in this proceeding, and carry out the numerous prehearing tasks necessary for this purpose. The Division's proposed date of the week of March 25, 2019 to commence the hearing is unfair and would cause significant prejudice to Mr. Pruitt in preparing his defense.⁴

First, the Division ignores the undisputed fact that this proceeding was delayed through no fault of Respondent. It was the Commission and by extension the Division, who sought the stay of all administrative proceedings, first to ratify prior decisions⁵ and then to attempt to cure the constitutional violations of the appointment process as required by *Lucia*. It is not reasonable or fair for the Division to expect Respondent to just pick up where things left off four months prior as if the stay did not exist. In fact, it would have been inappropriate for Respondent's counsel to generate significant legal costs and expend limited resources during the months the case was stayed when the future of the proceedings was uncertain and the hearing date was undetermined.

The Division's position that a hearing should take place in March because of "all the work that has already been done" conveniently ignores the fact that most if not all of the "work" must be redone. This litigation is starting over and Respondent intends to seek the various forms of prehearing relief available to him under the Rules of Practice. As the facts of this proceeding have dramatically changed since the Order Instituting Proceedings ("OIP") was filed,⁶ these prehearing motions will not be a carbon copy of the motions made in the prior unconstitutional

² To the extent the Court adopts the Division's proposed prehearing schedule or an alternate schedule, Respondent is not available on April 29-May 10, 2019. Defense counsel also has availability issues during the first three and a half weeks of May.

³ The Securities and Exchange Commission's (the "Commission") August 22, 2018 order states that the Administrative Law Judge shall compute the deadlines for scheduling a hearing and issuing an initial decision as specified in amended Rule of Practice 360(a)(2) from the date the proceeding is assigned to a hearing officer pursuant to the Commission's order, rather than the date of service of the relevant order instituting proceedings. Order, *Pending Admin. Proc.*, Exchange Act Release No. 83907, at 2 n.7 (Aug. 22, 2018).

⁴ It is apparently the Division's "policy" to seek hearing dates at the earliest possible moment regardless of the fairness to respondents or the realities of scheduling witnesses, experts, and the like. The Court should not entertain such an artificially short hearing date that denies Respondent the ability to adequately prepare his defense.

⁵ Order, *Pending Admin. Proc.*, Exchange Act Release No. 82178 (Nov. 30, 2017).

⁶ Respondent David Pruitt's Motion to the Commission to Amend the Order Instituting Proceedings Based Upon Newly Discovered Matters of Fact and to Stay This Proceeding Pending the Commission's Decision, *In the Matter of David Pruitt, CPA*, Admin. Proc. File No. 3-17950 (June 11, 2018).

proceeding. The Court is aware that witnesses have come forward with information that undermines the veracity of key allegations in the OIP. These new facts have not been sufficiently argued or considered by the Court in the prior motion practice. It is critically important to the record in these proceedings that Respondent have sufficient time to prepare these motions. It is clear from the Division's proposed schedule that it would have the Court impose an unreasonable burden on Respondent by fixing arbitrarily short deadlines.⁷

Beyond motion practice, fact and expert discovery both must start over. Respondent intends to take five fact witness depositions, depose the Division's expert, as well as prepare for the depositions the Division intends to take. None of the depositions Respondent plans to take were conducted in the prior proceeding and will require significant "work" to prepare and schedule. Respondent also intends to seek additional expert opinions and will likely disclose additional expert witnesses who will provide reports on key items at issue in this proceeding. None of this work has begun or been completed. Other than a few largely non-substantive motions related to the various protective orders and certain discovery issues, the parties will not rely on or incorporate by reference any other motions or rulings entered in the prior proceedings. Respondent intends to build a new record that will include dispositive motions, additional third-party discovery, motions *in limine*, prehearing briefs, and a hearing that may last several weeks and involve a large number of witnesses and exhibits. There is no legitimate reason to allow Respondent less than the ten months he was granted prior to the Commission-ordered stays. Critically, Respondent's previously designated expert witness is unavailable for extended periods in March due to another already scheduled trial.

Second, the Division's proposed schedule ignores the practical realities of trying to schedule witnesses for depositions and trial on such a short timetable. The Division's schedule would unreasonably require the parties to complete fact and expert discovery by the first week of February 2019, a burden that primarily falls on Respondent who will be taking most of the depositions. Counsel for the parties will have to work with witnesses and their counsel to reschedule all of the depositions during a period of time that includes the intervening holiday season.

Third, in arguing for an unreasonably compressed schedule, the Division does not address the fact that its preliminary witness list identifies more than 20 witnesses who may testify at the hearing. Four months is simply not enough time to complete discovery and prepare for the cross-examination of almost two dozen witnesses and the direct testimony of witnesses Respondent intends to call. The fact that Respondent has been in possession of the 86,000-document investigative file in no way warrants or justifies a deviation from the time permitted under Rule 360(a)(2)(ii) nor is it reasonable to infer that possession of a file this large somehow mandates a *shorter* prehearing period.

⁷ An egregious example is found in the Division's proposed schedule that would require Respondent to make a motion for a more definite statement *and* a motion for judgment on the pleadings on the same day, November 9, 2018, a mere three weeks from the date of this letter.

Basic notions of fairness and due process dictate that Respondent be granted the short amount of time sought herein to prepare his defense. There is no good reason to deny him the benefit of what is now effectively only eight and a half months to prepare his defense and clear his good name.

Respondent respectfully requests the hearing begin on Monday, July 15, 2019. Respondent's proposed hearing date will allow for a fair and reasonable prehearing schedule that affords the parties sufficient time to complete discovery, submit dispositive and prehearing motions, and prepare for the hearing. Respondent also respectfully submits the following proposed prehearing schedule based on a July 15 start date:

- | | |
|--------------------|---|
| November 30, 2018: | Respondent to file answer to OIP. |
| December 14, 2018: | Parties exchange preliminary fact witness lists. |
| January 11, 2019: | Disclosure of expert witnesses. |
| February 8, 2019: | Parties exchange and file expert reports, if any. |
| March 1, 2019: | Deadline for requests under Rule of Practice 232 for deposition subpoenas and for subpoenas to produce documents. |
| March 8, 2019: | Deadline for non-expert depositions.

Parties exchange and file rebuttal expert reports. |
| March 22, 2019: | Production under Rule of Practice 230 of any previously undisclosed materials in the investigatory file.

Deadline for expert witness depositions. |
| April 12, 2019: | Motions for summary disposition, if any, under Rule 250(c) are due. A motion under Rule 250(c) for leave to file a motion for summary disposition should be filed in conjunction with the motion for summary disposition. |
| May 3, 2019: | Oppositions to motions filed under Rule 250(c) are due. |
| May 10, 2019: | Replies to oppositions to motions filed under Rule 250(c) are due.

Parties exchange and file witness and exhibit lists. |
| May 31, 2019: | Motions <i>in limine</i> , including objections to witnesses and exhibits are due. |

Stipulations, requests for official notice, and admissions of fact are due.

Requests under Rule 232 for subpoenas requiring the attendance and testimony of a witness at the hearing are due. Requests for such subpoenas submitted after this date will be permitted only upon a showing of good cause.

June 21, 2019: Prehearing briefs, if any, are due.

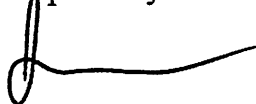
July 1, 2019: Parties exchange but do not file premarked exhibits.

Amendments to witness lists are due.

July 15, 2019: The hearing will begin at 9:30 a.m.

Respondent joins in the Division's request for the hearing to be held in the borough of Manhattan.

Respectfully submitted,

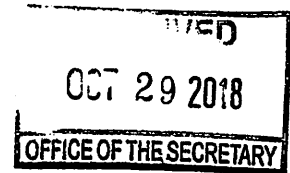


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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-17950

In the Matter of

David Pruitt, CPA

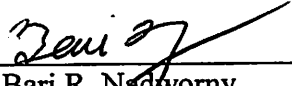
Respondent.

CERTIFICATE OF SERVICE

I, Bari R. Nadworny, an associate at the law firm of Baker & Hostetler LLP located at 45 Rockefeller Plaza, New York, New York 10111, hereby certify that on the 19th day of October, 2018, I caused to be served a true copy of Respondent David Pruitt's letter to Administrative Law Judge James E. Grimes dated October 19, 2018 via electronic mail upon the following parties and other persons entitled to notice:

Honorable James E. Grimes
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Washington, DC 20549

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