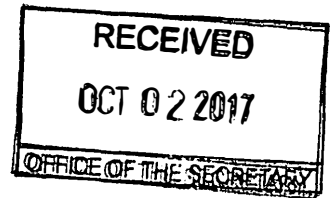


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING  
File No. 3-17950

In the Matter of

David Pruitt, CPA,

Respondent.

**DIVISION OF ENFORCEMENT'S OPPOSITION TO  
RESPONDENT'S MOTION TO STAY PENDING  
SUPREME COURT REVIEW OF APPOINTMENT'S CLAUSE CHALLENGE**

Respondent's motion should be denied for the straightforward reason that the Commission has not changed its position that the Appointments Clause's requirements, *see* U.S. Const. art. II, §2, cl. 2, apply only to officers of the United States, not employees, and that Administrative Law Judges are employees. *See, e.g., Bennett Grp. Fin. Servs., LLC & Dawn J. Bennett*, Securities Act Release No. 10331, 2017 WL 1176053, at \*5 (Mar. 30, 2017), *pet. filed* (10th Cir. No. 17-9524). Although respondent contends (p. 1; *see also* p. 4) that "it is highly likely the Supreme Court will address" whether Commission Administrative Law Judges are officers or employees "in the coming term," the Commission has already rejected that argument as "speculative at this time," *Lynn Tilton et al.*, Investment Advisers Act Release No. 4735, 2017 WL 3214456, at \*1 (July 28, 2017). Nor does respondent's complaint (pp. 2, 6) about the costs of litigating his claims before an administrative tribunal warrant a stay; the Commission recently reaffirmed that "the burden of being haled into an allegedly improper forum does not constitute an irreparable injury warranting interruption of an ongoing proceeding." *Tilton*, 2017 WL 66592, at \*2 (quotation marks omitted); *see also, e.g., FTC v. Standard Oil Co. of Cal.*, 449 U.S.

232, 244 (1980). Finally, respondent urges (pp. 8-11) that the Supreme Court will likely hold that Commission Administrative Law Judges are officers, but that argument is speculative and ignores numerous Commission precedents to the contrary. Because the Commission has adhered to its view that its Administrative Law Judges are not constitutional officers and respondent offers no other arguments justifying a stay, his motion should be denied in all respects.

Dated: September 29, 2017  
New York, New York

DIVISION OF ENFORCEMENT

By:



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## CERTIFICATE OF SERVICE

I hereby certify that I served the Division of Enforcement's September 29, 2017 Opposition to Respondent's Motion to Stay by mailing a copy of the same via e-mail, on this 29th day of September 2017, to Respondent:

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H. Gregory Baker