

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

CHARLES L. HILL, JR.,

Plaintiff,

v.

U.S. SECURITIES AND
EXCHANGE COMMISSION,

Defendant.

No. 15-cv-1801

**DEFENDANT'S RESPONSE TO THE COURT'S ORDER OF JUNE 8, 2015
REGARDING FURTHER PROCEEDINGS IN THIS CASE**

Defendant the Securities and Exchange Commission (the "SEC") respectfully submits this response to the Court's Order of June 8, 2015, directing the parties to confer on a timetable for conducting discovery and briefing the remaining issues, and to submit by June 15, 2015, a consent scheduling order to the Court for consideration. The Court permitted the parties to submit alternative proposals in the event that they were unable to agree to the terms of a scheduling order. The parties have conferred and were unable to agree on a proposed scheduling order. Accordingly, the parties are setting forth their respective proposals in separate filings.

Defendant intends to appeal the preliminary injunction issued by this Court. Defendant also intends to move to stay all proceedings in this Court pending appeal because the Eleventh Circuit's ruling will have a significant

impact on this case, and any further proceedings in this Court could prove largely superfluous and a waste of the parties' and the Court's resources.

If this Court denies Defendant's anticipated motion for a stay of proceedings pending appeal, then Defendant submits that this case should proceed in accordance with the Federal Rules of Civil Procedure and the N.D. Ga. Local Rules. There is no good cause for Plaintiff's request that the parties begin discovery immediately. First, this Court has already issued a preliminary injunction, and thus, there is no urgency for Plaintiff to proceed faster than the normal pace set by the Federal Rules and the Local Rules. Under Federal Rule of Civil Procedures 12(a)(2), the government is entitled to have until July 20, 2015, to file its answer or other response to Plaintiff's Amended Complaint. There is no reason that the government should be deprived of the usual time that the Federal Rules provide for responding to the Amended Complaint nor that issues regarding whether discovery is warranted need to be resolved before the government has had that opportunity. Moreover, under Local Rule 26.2(A), the discovery period does not commence until "thirty (30) days after the appearance of the first defendant by answer."

Moreover, during the parties' discussion, the undersigned was unable to determine from Plaintiff's counsel what discovery Plaintiff proposes to conduct. Defendant submits that no discovery is necessary because all of Plaintiff's claims involve pure issues of law. Indeed, this Court recently recognized in a case that raises the identical Article II claims as here that "these are likely legal – not factual – issues." Order at 1, *Gray v. SEC*, No. 15-cv-492 (N.D. Ga. June 12, 2015),

ECF No. 40. Thus, the government submits that this case can be resolved on dispositive motions without any factual development. And to the extent any facts are necessary, Plaintiff already has them in his possession. *See id.* at 1-2; Def.'s Opp'n to Pl.'s Emergency Mot. to Supp. Brief at 2 (May 29, 2015), ECF No. 15 (acknowledging that, consistent with his status as an employee, SEC ALJ James E. Grimes was not appointed by the Commissioners of the SEC).

In sum, Defendant respectfully submits that the parties should proceed in accordance with the Federal Rules of Civil Procedure and Local Rules, and that the Court should decide the case without permitting discovery.

Dated: June 15, 2015

Respectfully submitted,

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/s/ Jean Lin
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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rule 7.1(D), that the foregoing has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1(C).

/s/ Jean Lin
JEAN LIN

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2015, I electronically filed a copy of the foregoing. Notice of this filing will be sent via email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Jean Lin
JEAN LIN