

**UNITED STATES OF AMERICA**  
**Before the**  
**CONSUMER FINANCIAL PROTECTION BUREAU**

**ADMINISTRATIVE PROCEEDING**  
**File No. 2015-CFPB-0029**

**In the Matter of:**

**INTEGRITY ADVANCE, LLC and**  
**JAMES R. CARNES,**

**Respondents.**

**NOTICE OF SUPPLEMENTAL  
AUTHORITY**

**NOTICE OF SUPPLEMENTAL AUTHORITY**

Enforcement Counsel submits this notice to advise the Hearing Officer of relevant supplemental authority.

Yesterday, the U.S. Court of Appeals for the Ninth Circuit issued its decision in Consumer Financial Protection Bureau v. Gordon, No. 13-56484 (attached as Ex. A), an appeal arising from a Bureau enforcement action. The defendant in that case argued that the enforcement action should have been dismissed because, at the time of filing, the Bureau’s Director was serving pursuant to an unconstitutional recess appointment. The Ninth Circuit rejected this argument and affirmed the grant of summary judgment to the Bureau. The Ninth Circuit explained that “the CFPB had the authority to bring the action at the time Gordon [the defendant] was charged”—July 2012—and that the Director’s Senate confirmation and subsequent ratification of actions he had taken as a recess appointee “resolve[d] any Appointments Clause deficiencies.” Op. at 8, 20. This

decision removes any possible doubt concerning the Bureau's authority to bring this enforcement proceeding against Integrity Advance and Mr. Carnes.

Respondents here argue that the Bureau did not gain authority to enforce the law against them until the Director was confirmed by the Senate—and that, because respondents stopped engaging in “covered person” conduct before that confirmation, the Bureau cannot bring an enforcement proceeding against them now either. That logic is flawed for the reasons that the Bureau explained in its Opposition to the Motion to Dismiss and at the April 5, 2016 hearing. Whether the Bureau had authority to enforce the law before the Director's Senate confirmation is irrelevant because the Bureau did not bring this proceeding until well after the Director's confirmation. And nothing in the statute provides that the Bureau may bring an enforcement proceeding only if it could have brought the enforcement proceeding at the time the respondent's conduct was ongoing.

The Ninth Circuit's decision in *Gordon* provides yet another reason to reject Respondents' argument: the entire premise is incorrect—the Bureau did have authority to bring this enforcement action before the Director received Senate confirmation. The enforcement action against *Gordon* was filed in July 2012 (one year before the Director's Senate confirmation), and the Ninth Circuit squarely held that “the CFPB had the authority bring the action” at that time. *Op.* at 8, 20. Thus, even assuming (wrongly) that the statute authorizes the Bureau to bring enforcement proceedings only against those whose “covered person” conduct continued at some time when the Bureau had enforcement authority, the Bureau would have authority to enforce the law against Respondents, who admit they continued engaging in “covered person” conduct until December 2012. *Dkt. No. 028-A* at 14.

Respectfully submitted,

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/s/Alusheyi J. Wheeler

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 15<sup>th</sup> day of April 2016, I caused a copy of the foregoing Notice of Supplemental Authority, along with the attached exhibit A, to be filed by electronic transmission (e-mail) with the Office of Administrative Adjudication (CFPB\_electronic\_filings@cfpb.gov), the U.S. Coast Guard Hearing Docket Clerk (aljdocketcenter@uscg.mil), Administrative Law Judge Parlen L. McKenna (cindy.j.melendres@uscg.mil), Heather L. MacClintock (Heather.L.MacClintock@uscg.mil), and served by email on the Respondents' counsel at the following addresses:

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