

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

_____)	
ADMINISTRATIVE PROCEEDING)	
File No. 2015-CFPB-0029)	
In the matter of:)	RESPONDENTS’ MOTION
)	FOR LEAVE TO FILE
INTEGRITY ADVANCE, LLC and)	AN AMENDED ANSWER
JAMES R. CARNES)	
_____)	

**RESPONDENTS’ MOTION FOR LEAVE TO FILE AN AMENDED ANSWER
& MEMORANDUM IN SUPPORT**

MOTION

Respondents respectfully move the Court for an Order under 12 C.F.R. § 1081.202(a) granting Respondents leave to amend their Answer to the Consumer Financial Protection Bureau (“CFPB”) Notice of Charges.¹ Specifically, Respondents seek leave to amend their Answer by the modification of language in ¶¶ 29 and 30 for consistency with the rest of the Answer, to read as follows:

¶ 29. Respondents admit that unless a consumer contacted Integrity Advance – through one of several available means – Integrity Advance renewed the consumer’s loan. Respondents deny the allegations contained in paragraph 29 of the Notice.

¶ 30. Respondents admit that \$50 would be automatically applied to a consumer’s loan principal after four loan renewals, unless a consumer contacted Integrity Advance – through one of several available means. Respondents deny the remaining allegations contained in paragraph 30 of the Notice.

This Motion is based on the subjoined Memorandum.

¹ Respondents have separately moved the Court to stay this proceeding pending the resolution of *PHH Corp. v. CFPB*, No. 15-1177 (D.C. Cir. June 19, 2015). Nothing in the instant motion should be read to undermine Respondents’ arguments in favor of a stay.

MEMORANDUM IN SUPPORT

The CFPB’s Rules of Practice for Adjudication Proceedings, Rule 202(a), allows for the amendment of a pleading “with the opposing party’s written consent or leave of the hearing officer.” 12 C.F.R. § 1081.202(a). Rule 202 “reflect[s] a liberal standard of permitting amendments of pleadings, but implements an appropriate limit for amendments that are unduly prejudicial.” *Rules of Practice for Adjudication Proceedings*, 77 Fed. Reg. 39058-01, 39069 (June 29, 2012); accord Fed. R. Civ. P. 15(a)(2) (stating that when leave of court is required for a party to amend its pleading, “[t]he court should freely give leave when justice so requires”).

A. Justice Requires Leave for Granting the Amendment.

The proposed amendment unifies the affected paragraphs with the rest of the Answer, specifically ¶¶ 54 and 64, which state that:

¶ 54. Integrity Advance admits that unless a consumer contacted Integrity Advance – through one of several available means – Integrity Advance renewed the consumer’s loan. Integrity Advance denies the remaining allegations contained in paragraph 54 of the Notice.

¶ 64. Respondents admit that unless a consumer contacted Integrity Advance – through one of several available means – Integrity Advance renewed the consumer’s loan. Respondents deny the remaining allegations contained in paragraph 64 of the Notice.

Fairness requires that Respondents be allowed to clarify their statements in response to the CFPB’s Notice, since the underlying arguments and defenses have not changed. The amendment is necessary to achieve uniformity in Respondents’ Answer. Moreover, Respondents would be deeply prejudiced if leave is not granted, since Enforcement Counsel have taken and characterized the language at issue far beyond the answer Respondents intended to provide. *See* Bureau’s Opposition to Respondents’ Motion to Dismiss at 15 (Dkt. 33).

Respondents raised this issue with Enforcement Counsel on March 18, and sent specific proposed amendments to Enforcement Counsel on March 21, but have not received a response, nor consent in writing, necessitating this motion for leave of the Court.

B. No Prejudice Will Result.

As a general matter, “[i]n the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive . . . undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. – leave sought should, as the rules require, be ‘freely given.’” *Reiffen v. Microsoft*, 270 F. Supp. 2d 1132, 1159 (N.D. Cal. 2003) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Rule 202 embodies a similar approach, requiring the consent of opposing parties or leave of the Hearing Officer only to discourage parties from “reserving claims and defenses for last minute amendments.”

Respondents’ amendment does not create the need for any additional discovery, nor will it delay the proceedings. The amendment also does not present a “claim or defense” that has not previously been posited by Respondents and therefore known to Enforcement Counsel. The amendments merely more closely accord the language of Respondents’ Answer with Respondents’ asserted position. Thus, Enforcement Counsel is not prejudiced.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Motion be granted.

Respectfully submitted,

Dated: May 4, 2016

By: /s/ Allyson B. Baker

Allyson B. Baker, Esq.

Peter S. Frechette, Esq.

Hillary S. Profita, Esq.

Christine E. White, Esq.

VENABLE LLP

575 7th St. N.W.

Washington, D.C. 20004

(202) 344-4000

Attorneys for Respondents

Integrity Advance, LLC and James R. Carnes

CERTIFICATION OF SERVICE

I hereby certify that on the 4th day of May, 2016, I caused a copy of the foregoing Proposed Order to be filed by electronic transmission (e-mail) with the U.S. Coast Guard Hearing Docket Clerk (aljdocketcenter@uscg.mil), Curtis E. Renoe (Curtis.e.renoe@uscg.mil) and Administrative Law Judge Parlen L. McKenna (cindy.j.melendres@uscg.mil), and served by electronic mail on the following parties who have consented to electronic service:

Deborah Morris, Esq.
Deborah.Morris@cfpb.gov

Craig A. Cowie, Esq.
Craig.Cowie@cfpb.gov

Alusheyi J. Wheeler, Esq.
Alusheyi.Wheeler@cfpb.gov

Wendy J. Weinberg, Esq.
Wendy.Weinberg@cfpb.gov

Vivian W. Chum, Esq.
Vivian.Chum@cfpb.gov

/s/ Peter S. Frechette
Peter S. Frechette, Esq.