

**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 CHARGES**  
**SEEKING RESTITUTION,**  
**DISGORGEMENT, OTHER**  
**EQUITABLE RELIEF, AND**  
**CIVIL MONEY PENALTIES**

The Consumer Financial Protection Bureau (“Bureau” or “CFPB”) hereby submits the following Notice of Charges against Respondents, Integrity Advance, LLC (“Integrity Advance”), and its former chief executive James R. Carnes (“Carnes”) related to a small dollar lending operation which systematically misled consumers regarding the terms of its loans, wrongfully required electronic access to consumer bank accounts, and unfairly undermined consumers’ ability to contest withdrawals from their accounts. In support of its Notice of Charges, the Bureau alleges and submits as follows:

**JURISDICTION AND LEGAL AUTHORITY**

1. The Bureau has jurisdiction over this matter pursuant to Sections 1053 and 1055 of the Consumer Financial Protection Act (“CFPA”), 12 U.S.C. §§ 5563, 5565.
2. Under Section 1053 of the CFPA, the Bureau may bring an adjudication proceeding to enforce federal consumer financial law.

## **PARTIES**

3. The Bureau is an independent agency of the United States that is authorized to take enforcement action to address violations of federal consumer-financial law, 12 U.S.C. §§ 5511(c)(4), 5512(a), 5563, 5564, which includes the Truth in Lending Act (“TILA”), 15 U.S.C. §§ 1601 et seq., and the Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. §§ 1693 et seq., except with respect to Section 920 of EFTA. 12 U.S.C. § 5481(12)(C), (O), (14).

4. Respondent Integrity Advance, LLC (“Integrity Advance”) is a limited liability company organized under the laws of Delaware that had its principal place of business at 300 Creek View Road, Newark, Delaware. Integrity Advance originated online payday loans throughout the United States through its website, [www.iadvancecash.com](http://www.iadvancecash.com).

5. Integrity Advance was a wholly owned subsidiary of Hayfield Investment Partners, a privately held company that was also organized under Delaware law.

6. Respondent James R. Carnes is a natural person residing in Kansas. At all times relevant to this Notice of Charges, Carnes functioned as the chief executive officer (“CEO”) and president of Integrity Advance.

7. Carnes owned 52% of Hayfield Investment Partners, Integrity Advance’s parent company.

8. At all relevant times, the senior executives of Integrity Advance reported directly or indirectly to Carnes.

9. Carnes was an active and involved CEO who was personally responsible for all of Integrity Advance’s policies and procedures. Carnes had authority to control Integrity Advance’s practices and knew about its deceptive and unfair practices. Therefore,

Carnes engaged in the deceptive and unfair practices alleged herein along with Integrity Advance.

**INTEGRITY ADVANCE AND CARNES ARE COVERED PERSONS**

10. Integrity Advance is a covered person because it extended credit and serviced loans. 12 U.S.C. § 5481(5), (6), (15)(A)(i).

11. As a director with managerial responsibility, Carnes is a “related person” under the CFPA, 12 U.S.C. § 5481(25). Therefore, Carnes is a “covered person” for purposes of the CFPA, 12 U.S.C. § 5481(25)(B).

**STATEMENT OF FACTS**

**Integrity Advance Operations**

12. From May 15, 2008 through December 2012, Integrity Advance offered short term loans to consumers residing in numerous states around the country.

13. The company offered loans in amounts ranging from \$100 to \$1000.

14. During 2007 and 2008, Integrity Advance developed its policies and procedures governing its application process and forms, disclosures, and underwriting.

15. As the CEO of Integrity Advance at that time, Carnes was directly responsible for all of the policies and procedures developed and implemented by the company.

16. These policies and procedures were used throughout the time that Integrity Advance originated loans.

**The Application Process**

17. Consumers typically applied for loans with Integrity Advance by entering their personal information into a lead generator website.

18. Consumers applied for loans from Integrity Advance without knowing the terms of the loans.

19. Integrity Advance did not allow consumers to see the loan agreement, which contained all of the loan terms, until after they had completed the online application.

20. Integrity Advance instructed call center representatives working on its behalf not to disclose the cost of a loan to a consumer until the consumer had completed an application.

21. In order to complete the online loan application process, Integrity Advance required consumers to agree to an Automated Clearing House (“ACH”) authorization, which enabled the company to deposit and withdraw funds from the consumer’s bank account electronically.

22. Once the application was completed, if it was approved, Integrity Advance would deposit the loan funds within 24 hours after receiving electronic consumer signatures, unless the consumer affirmatively contacted Integrity Advance to decline the loan.

#### The Contract

23. Integrity Advance’s contract prominently stated the cost of the loan “as scheduled” by assuming that the borrower would repay the loan in full in only one payment and thereby pay only a single finance charge.

24. The fine print of the contract, however, provided that unless the borrower took additional action, Integrity Advance would not debit the borrower once to pay the loan in full. Instead, Integrity Advance would debit the borrower’s account multiple times, charging multiple finance charges, and automatically would renew the loan each pay period. As a result, many borrowers paid significantly more than the amount disclosed on the first page of the contract.

25. The first page of the six page contract contained the Truth in Lending Act disclosures in bold print in the middle of the page, outlining the loan APR, finance charge, amount financed, and total of payments.

26. Integrity Advance would calculate each part of those disclosures by assuming that the loan would be fully repaid in one payment on the consumer's first payday after loan origination.

27. However, the true repayment schedule and costs were hidden in fine print that appeared on the second page of the agreement, as illustrated below:

FEDERAL TRUTH IN LENDING DISCLOSURES			
ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate. <b>1368.75%</b>	The dollar amount the credit will cost you. <b>\$150.00</b>	The amount of credit provided to you or on your behalf. <b>\$500.00</b>	The amount you will have paid after you have made all payments as scheduled. <b>\$650.00</b>

**Your Payment Schedule will be:** One (1) payment of \$650.00 due on 7/22/2011 ("Payment Due Date").  
**Security:** You are giving a security interest in the ECHECK/ACH Authorization.  
**Prepayment:** If you pay off early, you will be entitled to a refund of the unearned portion of the finance charge.  
See the terms of the Loan Agreement below for any additional information about nonpayment, default, and prepayment refunds.

**Itemization of Amount Financed:** Amount given to you directly: \$500.00 . Amount paid on Loan#: 50783611 with us: \$650.00.

**PAYMENT OPTIONS:** You must select your payment option at least three (3) business days prior to your Payment Due Date by contacting us at (800) 505-6073. At that time, you may choose:

(a) **Payment in full:** You may pay the Total of Payments shown above, plus any accrued fees, to satisfy your loan in full. When you contact us and choose this option, we will debit Your Bank Account (defined below) for the Total of Payments plus any accrued fees, in accordance with the ACH Authorization below; OR

(b) **Renewal:** You may renew your loan (that is, extend the Payment Due Date of your loan until your next Pay Date<sup>1</sup>) by authorizing us to debit Your Bank Account for the amount of the Finance Charge, plus any accrued fees. If you choose this option, your new Payment Due Date will be your next Pay Date<sup>1</sup>, and the rest of the terms of the Loan Agreement will continue to apply.

**AUTO-RENEWAL:** If you fail to contact us to confirm your Payment Option at least three (3) business days prior to any Payment Due Date, or otherwise fail to pay the loan in full on any Pay Date, Lender may automatically renew your loan as described under (b) above, and debit Your Bank Account on the Payment Due Date or thereafter for the Finance Charge and any accrued fees. Your new Payment Due Date will be your next Pay Date<sup>1</sup>, and the rest of the terms of the Loan Agreement will continue to apply. You must contact us at least three (3) business days prior to your new Payment Due Date to confirm your payment option for the Renewal. If you fail to contact us, or otherwise fail to pay the loan in full on your new Payment Due Date, we may automatically renew the loan until your next Pay Date.<sup>1</sup> After your initial loan payment, you may obtain up to four (4) Renewals. All terms of the Loan Agreement continue to apply to Renewals. All Renewals are subject to Lender's approval. Under Delaware law, if you qualify, we may allow you to enter into up to four (4) Renewals, also known as a "refinancing" or a "rollover". The full outstanding balance shall be due upon completion of the term of all Renewals, unless you qualify for Auto-Workout, as described below.

**AUTO-WORKOUT.** Unless you contact us to confirm your option for Payment in Full prior to your Fourth Renewal Payment Due Date, your loan will automatically be placed into a Workout Payment Plan. Under the Workout Payment Plan, Your Bank Account will automatically be debited on your Pay Date<sup>1</sup> for accrued finance charges plus a principal payment of \$50.00, until all amounts owed hereunder are paid in full. This does not limit any of Lender's other rights under the terms of the Loan Agreement. All Workout Payment Plans are subject to Lender's approval

28. The single repayment assumed in the TILA disclosures did not comport with the default repayment schedule that Integrity Advance used for all of its consumers.

29. Absent affirmative action by the consumer, Integrity Advance would ‘rollover’ the loan four times. Each time, Integrity Advance would debit the entire finance charge, “renew” the loan, and add another finance charge to the consumer’s account. Integrity Advance would apply nothing to the borrower’s principal.

30. After the fourth rollover, absent affirmative action by the consumer, Integrity Advance would continue to take finance charges from the consumer’s account every two weeks and in addition withdraw \$50 which was applied to the loan principal.

31. Integrity Advance would continue to take the \$50 principal payment plus the finance charge every two weeks until the loan was paid off. As represented below, this automatic repayment schedule would result in at least eleven separate payments by the consumer to Integrity Advance for a \$300 loan:

PAYDAY	PAYMENT	FINANCE CHARGE (30% OF REMAINING PRINCIPAL BALANCE)	AMOUNT APPLIED TO PRINCIPAL	REMAINING PRINCIPAL BALANCE	TOTAL PAID TO DATE
1	\$90	\$90	\$0	\$300	\$90
2	\$90	\$90	\$0	\$300	\$180
3	\$90	\$90	\$0	\$300	\$270
4	\$90	\$90	\$0	\$300	\$360
5	\$90	\$90	\$0	\$300	\$450
6	\$140	\$90	\$50	\$250	\$590
7	\$125	\$75	\$50	\$200	\$715
8	\$110	\$60	\$50	\$150	\$825
9	\$95	\$45	\$50	\$100	\$920
10	\$80	\$30	\$50	\$50	\$1000
11	\$65	\$15	\$50	\$0	\$1065
<b>TOTAL</b>	<b>\$1065</b>	<b>\$765</b>	<b>\$300</b>	<b>-</b>	<b>\$1065</b>

32. Complaints submitted by consumers indicate that the consumers thought the company would debit only the total amount disclosed in the TILA disclosure and did not understand that their loans would rollover four times before the company credited any of their payments to principal.

33. Consumers who had their loans rolled over repeatedly paid significantly more in finance charges than the finance charge amount stated in the TILA disclosure.

34. Integrity Advance's forms never disclosed to consumers the total amount of finance charges that they would pay over the course of their loan with the company if they made only the default payments.

35. Consumers who had their loans rolled over repeatedly paid a much higher interest rate than the interest rate stated in the TILA disclosure.

36. Integrity Advance's forms never disclosed to consumers the interest rate they would pay over the course of their loan with the company if they made only the default payments.

37. Consumers who had their loans rolled over repeatedly paid considerably higher 'total payments' than the total of payments stated in the TILA disclosure.

38. Integrity Advance's forms never disclosed to consumers the total sum of all the loan payments they would have to make over the course of their loan with the company if they made only the default payments.

#### Preauthorized Electronic Fund Transfers

39. Integrity Advance required consumers to sign a form authorizing automatic, electronic withdrawals from their accounts in order to pay off the loan (the ACH authorization form).

40. Consumers could only receive loan proceeds by way of an electronic deposit which was authorized by the ACH authorization form.

41. Approximately 95% of Integrity Advance's consumers signed the ACH authorization.

42. The online application contained no indication that a consumer might be able to secure a loan from Integrity Advance without completing an ACH authorization form.

43. The ACH authorization form gave Integrity Advance the ability to execute repeated electronic withdrawals from a consumer's bank account pursuant to the default repayment plan that anticipated multiple rollovers:

You also authorize us to initiate an ACH debit entry to Your Bank Account:

. . . (b) for the Finance Charge plus any accrued fees on the Payment Due Date, or on any subsequent Renewal Payment Due Date, if you contact us at least three (3) business days prior to such date and select Payment Option (b) in the Loan Agreement (RENEWAL), or if you fail to contact us to confirm your payment option;

(c) for the accrued finance charges and fees, plus \$50.00 on each Pay Date after the fourth (4th) Renewal Payment Due Date, until all amounts owed under the Loan Agreement are paid in full.

44. These ACH withdrawals occurred at regular intervals.

45. The ACH authorization form also contained language dictating that the consumer remained obligated to allow electronic access to her account until all indebtedness to IA was satisfied:

**The ACH Authorizations set forth in the Loan Agreement are to remain in full force and effect for this transaction until your indebtedness to us for the Total of Payments, plus any other charges or fees incurred and described in the Loan agreement is fully satisfied.** (Emphasis added)

46. If, nonetheless, a consumer was able to withdraw their consent to Automated Clearing House withdrawals by Integrity Advance, the contract provided that the



company could create checks that would enable Integrity Advance to withdraw funds from the consumer's bank account without the signature or permission of the consumer:

If you revoke your [ACH] authorization, you agree to provide us with another form of payment acceptable to us **and you authorize us to prepare and submit one or more checks drawn on Your Bank Account so long as amounts are owed to us under the Loan Agreement.** (Emphasis added)

47. This unclear and confusing provision was hidden in the fine print of one of the numerous forms that consumers were required to complete in order to obtain a loan with Integrity Advance.

48. Integrity Advance utilized this provision to execute remotely created checks when consumers were contesting the company's right to those funds by withdrawing the consumer's consent to ACH withdrawals.

## **VIOLATIONS**

### **Count I** **(Against Integrity Advance)**

#### **The Truth in Lending Act**

49. The allegations in paragraphs 1-48 are incorporated by reference.

50. TILA and Regulation Z require that creditors disclose "clearly and conspicuously" in writing "the terms of the legal obligation between the parties." 12 C.F.R. § 1026.17(a), (c).

51. Respondent Integrity Advance was a creditor under TILA and Regulation Z.

52. Respondent extended closed-end credit to consumers under TILA and Regulation Z.

53. Integrity Advance calculated its TILA disclosure by assuming that the borrower would pay in full with a single payment.

54. Integrity Advance did not debit the entire amount owed in a single payment unless the borrower took additional action.

55. If the borrower did not take additional action, Integrity Advance would debit the consumer's account repeatedly and would charge multiples of the finance charge disclosed before the consumer had paid in full.

56. Indeed, for many of its borrowers, Integrity Advance debited more than the total cost disclosed in the TILA disclosure.

57. Integrity Advance's inaccurate disclosures violated the Truth in Lending Act, 15 U.S.C. § § 1631, 1638, and Regulation Z, 12 C.F.R. § 1026.17 and 1026.18.

**Count II**  
**(Against Integrity Advance)**

**CFPA**

58. The allegations in paragraphs 1-48 are incorporated by reference.

59. The CFPA defines enumerated statutes to include the Truth in Lending Act. 12 U.S.C. § 5481(12)(O).

60. Under the CFPA, covered persons' and service providers' violations of an enumerated statute are considered violations of the CFPA. 12 U.S.C. § 1036(a)(1)(A).

61. By virtue of its violation of the Truth in Lending Act and Regulation Z, Integrity Advance has violated the CFPA.

**Count III**  
**(Against Integrity Advance and Carnes)**

**CFPA (Deception)**

62. The allegations in paragraphs 1-48 are incorporated by reference.

63. Integrity Advance calculated its disclosures by assuming that the borrower would pay in full with a single payment.

64. Integrity Advance did not debit the entire amount owed in a single payment unless the borrower took additional action.

65. If the borrower did not take additional action, the company would debit the consumer's account repeatedly and would charge multiples of the finance charge disclosed before the consumer had paid in full.

66. Indeed, for many of its borrowers, Integrity Advance debited more than the total cost disclosed in the TILA disclosure.

67. The net impression of Respondents' disclosures misled reasonable consumers into believing that their total finance charges and APR were much lower than they actually were.

68. Respondents' documents never accurately disclosed the total finance charge, APR, or total of payments that a consumer would pay if the consumer made only the default payments under the contract.

69. These misleading disclosures were material to consumers in assessing the cost of a loan from Integrity Advance.

70. Respondents' disclosures were false and misleading and constituted a deceptive act or practice in violation of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B).

**Count IV**  
**(Against Integrity Advance and Carnes)**

**CFPA (Unfairness)**

71. The allegations in paragraphs 1-48 are incorporated by reference.

72. Respondents caused substantial injury to consumers by supplying deceptive disclosures and withholding information about the costs of its loans during the application process.

73. Respondents caused substantial injury to consumers by misleading consumers about their repayment obligations and failing to disclose clearly the costs of a loan that rolled over repeatedly as envisioned by the contract.

74. These practices prevented consumers from properly assessing the actual cost of a loan from Integrity Advance.

75. Consumers could not reasonably avoid these injuries.

76. Respondents' practice of supplying deceptive disclosures did not produce any benefits to consumers or competition that outweighed the substantial injury that the practice caused.

77. Respondents' disclosure practices constituted an unfair practice under the CFPA, 12 U.S.C. §§ 5531(c) and 5536(a)(1)(B).

**Count V**  
**(Against Integrity Advance)**

**The Electronic Fund Transfer Act**

78. The allegations in paragraphs 1-48 are incorporated by reference.

79. Consumers were required to complete Integrity Advance's ACH authorization to complete the loan application process.

80. Taken together, Integrity Advance's contracts and ACH authorizations stated that by signing the documents consumers authorized repeated electronic fund transfers every payday until the principal reduced to zero.

81. Those electronic fund transfers were preauthorized under the definition contained in Regulation E.

82. There was no indication in Integrity Advance's documents that a consumer could obtain a loan without signing the ACH agreement.

83. Integrity Advance's practices conditioned extensions of credit on repayment by preauthorized electronic fund transfers in violation of EFTA, 15 U.S.C. § 1693k, and Regulation E, 12 C.F.R. § 1005.10(e).

**Count VI**  
**(Against Integrity Advance)**

**CFPA**

84. The allegations in paragraphs 1-48 are incorporated by reference.

85. The CFPA defines enumerated statutes to include the Electronic Fund Transfer Act. 12 U.S.C. § 5481(12)(C).

86. Under the CFPA, covered persons' and service providers' violations of an enumerated statute violate the CFPA. 12 U.S.C. § 1036(a)(1)(A).

87. By virtue of its violation of the Electronic Fund Transfer Act and Regulation E, Integrity Advance has violated the CFPA.

**Count VII**  
**(Against Integrity Advance and Carnes)**

**CFPA (Unfairness)**

88. The allegations in paragraphs 1-48 are incorporated by reference.

89. Integrity Advance's contracts with consumers included a provision allowing the company to create remotely created checks (demand drafts) if a consumer successfully canceled their authorization for ACH withdrawals.

90. Respondents used this provision to take consumers' funds when those consumers believed that they did not owe money to Integrity Advance.

91. The remotely created checks created by Respondents caused substantial injury to consumers by causing an unexpected loss of funds and precluding consumers from stopping debits from their accounts for amounts they did not believe they owed.

92. This injury was not reasonably avoidable by consumers.

93. Respondents' practices did not produce any benefits to consumers or competition that outweighed the substantial injury caused.

94. Respondents' practice of obtaining authorization for demand drafts in a confusing manner, and then initiating such demand drafts, constituted an unfair practice under the CFPA, 12 U.S.C. §§ 5531(c) and 5536(a)(1)(B).

#### **PRAYER FOR RELIEF**

Wherefore, as permitted by 12 U.S.C. § 5565 et seq., the Bureau requests an Order granting:

- A. Disgorgement of money, in an amount to be determined at trial;
- B. Restitution in an amount to be determined at trial to compensate borrowers who were the victims of Respondents' practices;
- C. Civil money penalties;
- D. A permanent injunction preventing future violations of the Truth in Lending Act, 15 U.S.C. § 1601, et seq., Regulation Z, 12 C.F.R. § 226, et seq., the Electronic Fund Transfer Act, 15 U.S.C. § 1693, et seq., Regulation E, 12 C.F.R.

§ 205, et seq., the CPFA, 12 U.S.C. § 5536, or any provision of “Federal consumer financial law” as defined by 12 U.S.C. § 5481(14);

- E. Other injunctive relief as the Court may deem just and proper;
- F. Recovery of costs in connection with prosecuting this action; and
- G. Any other legal or equitable relief deemed appropriate.

**TIME AND PLACE OF THE HEARING**

Pursuant to 12 C.F.R. § 1081.203(d), the time and place of the hearing shall be determined by the hearing officer in the scheduling order.

**TIME TO FILE AN ANSWER**

Within fourteen (14) days of service of this notice of charges, the answer must be filed and served in accordance with 12 C.F.R. § 1081.201(a).

Respectfully submitted,

Attorneys for Plaintiff  
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/s/ Alusheyi J. Wheeler

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