

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

ORDER DENYING
RESPONDENTS' MOTION TO
STRIKE AND DENYING THE
CFPB'S MOTION TO FILE A
SUR-REPLY

Hon. Parlen L. McKenna

**ORDER DENYING RESPONDENTS' MOTION TO STRIKE AND DENYING
THE CFPB'S MOTION TO FILE A SUR-REPLY**

On March 9, 2016, I issued an Order directing the parties to Meet and Confer in an attempt to reach joint stipulations of fact. I also directed each party to submit a list of stipulations it had proposed, but the opposing party disputed, along with legal justification for the proposed stipulation. On March 23, 2016, the parties filed their joint stipulations, as well as individual pleadings listing their proposed but rejected stipulations and justification. The following day, Respondents filed a motion to strike enforcement counsel's controverted issues of fact and justification. The Bureau opposed this motion on April 8, 2016. Respondents filed a Reply on April 14, 2016. The Bureau requested leave to file a sur-reply on April 15, 2016, and Respondents immediately opposed that motion.

The purpose of my March 9, 2016 Order was to narrow the issues for adjudication herein. It was not intended to create additional matters for dispute between the parties.

After reviewing the submissions of the parties, I find there is sufficient information for me to issue an order as to the Motion to Strike. A sur-reply is unnecessary, and I therefore DENY the Bureau's request for leave to file.

"[F]actual stipulations are 'formal concessions ... that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact.'" *Christian Legal Soc. v. Martinez*, 561 U.S. 661, 676 (2010) (ellipses in original) (quoting MCCORMICK ON EVIDENCE § 254, p. 181 (6th ed.2006)). However, courts are not bound by any stipulations parties may make regarding questions of law. *See, e.g.*, *Sanford's Estate v. Comm'r*, 308 U.S. 39, 51 (1939) ("We are not bound to accept, as controlling, stipulations as to questions of law"); *Technicon Instruments Corp. v. Alpkem Corp.*, 866 F.2d 417, 421–22 (Fed.Cir.1989) ("If the stipulation is to be treated as an agreement concerning the legal effect of admitted facts, it is obviously inoperative; since the court cannot be controlled by agreement of counsel on a subsidiary question of law"). Moreover, although I directed the parties to Meet and Confer in an attempt to reach factual stipulations, the decision to enter into any particular stipulation must be made voluntarily. Any facts the parties cannot stipulate to will be resolved after the hearing on the merits, to the extent they are relevant and necessary.

Many of the Bureau's proposed stipulations involve questions of law, or mixed questions of fact and law. Even if the parties had agreed as to those stipulations, they would not be binding. I also agree with Respondents that the Bureau could have tailored their proposed stipulations more narrowly. However, the purpose of the list of controverted issues of fact and the parties' justifications for having proposed them is to inform the court. The greater my understanding of the factual and legal issues in dispute,

the more organized and efficient I can be in deciding this matter. In reaching my decision regarding Respondents' Motion to Dismiss (issued concurrently with this Order), I have considered only the parties' joint stipulations of fact; I have not relied on any argument or documentation from either party's list of controverted issues.

Under the Administrative Procedures Act, the purpose of an administrative proceeding is to create a full and complete factual record, so that the trier of fact can apply the law to those facts in rendering a decision. In addition, it also provides the record for appeal in the event a party(s) seek judicial review after the agency issues its final determination. *Camp v. Pitts*, 411 U.S. 138, 142 (1973). The parties' lists of controverted issues and the attachments thereto provide context about both factual and legal issues that remain in dispute, but are not considered evidence. If either party wishes to enter documents into evidence at the appropriate time, they may do so. In light of the purpose underlying this proceeding and the fact that the parties will have the opportunity to further explore any issues raised by the Bureau's pleading, I do not see any need to strike it from the record, or direct them to revise it and re-file. Accordingly, Respondents' Motion to Strike is DENIED.

ORDER

IT IS HEREBY ORDERED that the Bureau's Motion for Leave to File Sur-Reply is DENIED;

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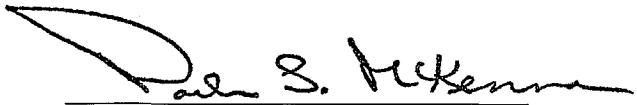
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IT IS HEREBY FURTHER ORDERED that Respondents' Motion to Strike Enforcement Counsel's Controverted Issues of Fact and Justification for Its Rejected Proposed Stipulations is DENIED.

IT IS SO ORDERED.



Hon. Parlen L. McKenna
Administrative Law Judge
United States Coast Guard

Done and dated on this 22nd day of April 2016 at
Alameda, California.

CERTIFICATE OF SERVICE

I hereby certify that I have served the forgoing *Order Denying Respondents' Motion To Strike and Denying The CFPB's Motion to File a Sur-Reply* (2015-CFPB-0029) upon the following parties and entities in this proceeding as indicated in the matter described below:

(Via Fax and email: D05-PF-ALJBALT-ALJDocket)

United States Coast Guard
40 South Gay Street, Suite 412
Baltimore, Maryland 21202-4022
Bus: (410) 962-5100 Fax: (410) 962-1746

Via Electronic Mail to CFPB Counsel(s) and CFPB electronic filings@cfpb.gov:

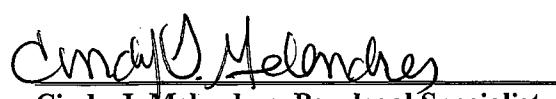
Alusheyi J. Wheeler, Esq.
1700 G Street, NW
Washington, DC 20552
Bus: (202) 435-7786
Fax: (202) 435-7722
Email: alusheyi.wheeler@cfpb.gov

Deborah Morris, Esq.
Email: deborah.morris@cfpb.gov
Craig A. Cowie, Esq.
Email: craig.cowie@cfpb.gov
Wendy J. Weinberg, Esq.
Email: wendy.weinberg@cfpb.gov
Vivian W. Chum, Esq.
Email: vivian.chum@cfpb.gov

Via Electronic Mail to Respondents' Counsel as follows:

Allyson B. Baker, Esq.
Hillary S. Profitta, Esq.
Peter S. Frechette, Esq.
Venable LLP
575 7th Street, NW
Washington, C.D., 20004
Bus: (202) 344-4708
Email: abbaker@venable.com
Email: hsprofitta@venable.com
Email: psfrechette@venable.com
Email: jpbloyd@venable.com

Done and dated this 22nd day of April, 2016
Alameda, California



Cindy J. Melendres, Paralegal Specialist
to the Hon. Parlen L. McKenna