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' REPLY IN SUPPORT OF THEIR MOTION FOR LEAVE TO FILE AN AMENDED ANSWER**

RESPONDENTS' REPLY IN SUPPORT OF THEIR MOTION FOR LEAVE TO FILE AN AMENDED ANSWER

On May 4, 2016, Respondents filed a motion requesting leave to amend their Answer. The Consumer Financial Protection Bureau ("CFPB" or "Bureau") filed a brief in opposition on May 19, 2016. Because the Bureau does not claim any actual prejudice stemming from Respondents' proposed amendments, the Court should grant Respondents leave to amend their Answer pursuant to 12 C.F.R. § 1081.202.

A. The Bureau Claims No Prejudice

The Bureau does not describe how it is prejudiced by Respondents' motion. A showing of undue prejudice is required under the Bureau's rules. *See* 12 C.F.R. § 1018.202. 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"). However, the Bureau asserts no undue prejudice that would militate against this Court granting Respondents leave to amend their Answer.

Indeed, the Bureau will not be prejudiced in any way. Respondents' amendments would not require or create the need for any additional discovery, nor would the amendments delay these proceedings. The amendment also does not present a "claim or defense" that has not previously been posited by Respondents, and thus, the amendment concerns an argument that the Bureau already has knowledge of.

Claiming no actual prejudice or delay of any sort, the Bureau instead relies on inapposite cases. For example, in *Lyondell-Citgo Ref., LP v. Petroleos De Venezuela S.A.*, cited throughout the CFPB's brief,[1] the court denied a motion for leave to amend an answer and ***file a counterclaim***. No. 02 CIV.0795 CBM AJP, 2004 WL 2650884, at *1 (S.D.N.Y. Nov. 22, 2004). The defendant sought additional discovery to support its counterclaim, which the court found would result in a "delay of additional months of discovery" and "significantly delay resolution of th[e] case, to the prejudice of [the plaintiff] and the judicial process." *Id.* at *3. The Bureau's motion carefully omits this extenuating circumstance; indeed, Respondents are not seeking leave to amend to plead a counterclaim that will delay this proceeding.

The Bureau also cites *Societe Liz, S.A. v. Charles of the Ritz Group, Ltd.*,[2] which involves a ***plaintiff*** seeking leave to amend its complaint and ***add fourteen additional defendants***, "increase[ing] defendants' expenses and inevitably delay[ing] trial." 118 F.R.D. 2, 4–5 (D.D.C. 1987). Even here, the court acknowledged that "'(m)ere delay is not a reason in and of itself to deny leave to amend,' undue delay that causes prejudice to the opposing party can sustain a decision to deny leave to amend." *Id.* at *5 (quoting *Mercantile Trust Co. N.A. v. Inland Marine Prods. Corp.*, 542 F.2d 1010, 1012 (8th Cir. 1976). Here, of course, Respondents are not

[1] Opp'n at 2, 3, 5.
[2] *Id.* at 2, 3.

seeking to amend pleadings to add any parties, let alone fourteen parties. In fact, the paucity of relevant cases underscores the fact that the Bureau has no good reason for opposing this motion.[3]

B. The Bureau Misstates the "Good Cause" Analysis

The proposed amendments bring ¶ 29 and ¶ 30 of the Answer into harmony with ¶ 54 and ¶ 64, in accordance with Respondents' defenses. Correcting the Answer to achieve this result is good cause and warrants a grant of leave, although "good cause," especially as the Bureau defines it, is not even needed here.

The Bureau implies that "good cause" is a burden that Respondents must meet. But, there is no case law to support this assertion, to the contrary. The Bureau's chief case for this point, *Columbus Bank & Trust Co. v. McKenzie Trucking & Leasing LLC*, calls for "good cause" to be shown only ***after*** it is found that a delay in seeking leave to amend "hinders judicial economy and prejudices [the movant's] opponent . . . ." No. 4:07-CV-189 (CDL), 2009 WL 3526648, at *4 (M.D. Ga. Oct. 23, 2009). The court describes a burden shifting analysis that occurs, once hindrance and prejudice are shown. *Id.* The Bureau does not claim—much less

[3] *Lyondell-Citgo* and *Societe Liz* are not the only examples of inapposite and hyperbolic citations. The court in *Remington Arms Co. v. Modern Muzzleloading, Inc.*, Opp'n at 2, denied leave to amend an answer ***and file a counterclaim*** a full year after the original answer had been filed and after the close of discovery. No. 2:97CV00660, 1998 WL 1040949, at *1 (M.D.N.C. Dec. 17, 1998); *see also Classicberry Ltd. v. Musicmaker.com, Inc.*, 48 F. App'x 360, 361 (2d Cir. 2002) (seeking to ***add two counterclaims***); *Lifescan, Inc. v. Polymer Tech. Int'l Corp.*, No. C94-672R, 1995 WL 271599, at *18 (W.D. Wash. Jan. 3, 1995) (seeking to ***add an affirmative defense***); *Elf Atochem N. Am., Inc. v. United States*, 161 F.R.D. 300, 302 (E.D. Pa. 1995) (***same***). In *In re Peterson*, a defendant tried to amend its answer to conform it to the evidence, when the only evidence was the affidavit of the plaintiff/debtor. No. 03-65019-MGD, 2006 WL 6589911, at *5 (Bankr. N.D. Ga. July 7, 2006). In *Lowe's Home Centers, Inc. v. Olin Corp.*, Opp'n at 5, the court denied Lowe's motion to **amend its complaint, to add two *additional* claims** after the defendant had filed a motion for summary judgment. 313 F.3d 1307, 1314 (11th Cir. 2002). The court, in *Gallagher's NYC Steakhouse Franchising, Inc. v. N.Y. Steakhouse of Tampa, Inc.*, addresses the application of a rule, Fed. R. Civ. P. 16(a)(4), that is not even remotely at issue here. No. 11 CIV. 1456 THK, 2011 WL 6034481, at *7 (S.D.N.Y. Dec. 5, 2011).

show—either in its brief. Indeed, the court in *Columbus Bank & Trust* noted that the court "generally required a substantial reason to justify ***denial*** of leave to amend." *Id.* (emphasis added).

C. Respondents Would Be Greatly Prejudiced If Denied Leave to Amend

Unless leave to amend their Answer is granted, Respondents will be held to an inconsistent response, half of which the Bureau cherry-picks for its purposes while ignoring the other parts of the Answer. Allowing the inadvertent inconsistency in the Answer to remain in place, when amending the Answer poses no threat of prejudice to the Bureau or delay of these proceedings, unfairly prevents Respondents from fully defending themselves. Moreover, Respondents filed their motion shortly after the Court's ruling on the Motion to Dismiss, hardly an "advanced stage" of any proceeding, notwithstanding the compressed timeline mandated by the Bureau's rules.

CONCLUSION

In sum, the law does not support the Bureau's opposition here. Since Enforcement Counsel is not prejudiced in any way by the proposed amendments, and this proceeding will not be delayed, Respondents should be allowed to amend their Answer under Rule 202. Accordingly, Respondents respectfully request leave to amend.

Respectfully submitted,

Dated: May 25, 2016

By: /s/ Allyson B. Baker

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CERTIFICATION OF SERVICE

I hereby certify that on the 25th 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:

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