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' STATEMENT OF DISPUTED FACTS IN SUPPORT OF THEIR OPPOSITION TO THE BUREAU'S MOTION FOR SUMMARY DISPOSITION**

RESPONDENTS' STATEMENT OF DISPUTED FACTS
IN SUPPORT OF THEIR MOTION FOR SUMMARY DISPOSITION

Pursuant to 12 C.F.R. § 1081.212(d)(2), Respondents Integrity Advance, LLC and James R. Carnes (collectively, "Respondents") hereby submit the following separate statement of material facts relied on by the CFPB, for which there exists a genuine dispute.[1] In support of their opposition to the Bureau's Motion for Summary Disposition, Respondents identify and dispute the following facts alleged in the Bureau's Statement of Undisputed Facts ("Bureau's Statement").

[1] The references to Respondents' Statement of Undisputed Facts and the facts in this Statement of Disputed Facts are included solely for purposes of supporting Respondents' opposition to the Bureau's Motion for Summary Disposition. These facts are "disputed" for purposes of opposing the Bureau's Motion insofar as the Bureau has contested them. However, the inclusion of any fact in this statement is without waiver of or prejudice to Respondents' rights to contend that any issue or fact is undisputed in support of Respondents' motion.

I. Allegations In The Bureau's Statement Disputed By Respondents

1. Respondents dispute paragraph no. 11 of the Bureau's Statement as incomplete and misleading. While Carnes stated that "the product never changed" (CFPB Exh. 3 (Carnes 22:12)), he later stated that Integrity Advance had "attorneys that were paid to keep up with changes in the law" and that "[t]hings got changed over time to comply with whatever laws were being changed over time . . . ." *See* Frechette Decl. ¶ 2, Ex. 1, Carnes Test. at 216:17-23.

2. Respondents dispute paragraph no. 15 of the Bureau's Statement as inaccurate and misleading. It would have been impossible for Integrity Advance to disclose a two week APR before a consumer completed an online application because the information contained in the application determined the applicable finance charge (*i.e.*, distinguishing between new and returning ("VIP") customers) and the length of the single repayment period (determined by the consumer's next pay date). *See* Frechette Decl. ¶ 2, Ex. 1, Carnes Test. at 217:1-6; 225:1-3.

3. Respondents dispute paragraph nos. 23–25 of the Bureau's statement as incomplete and inaccurate. The auto-renewal provision was only triggered when consumers failed to select their Payment Option three days before the Payment Due Date ***and*** failed to repay their loan in full on the Payment Due Date. *See* Dkt. 90, Facts ¶ 19; Dkt. 91, Profita Decl. ¶ 2, Ex. 1; Frechette Decl. ¶ 2, Ex. 1, Carnes. Test. at 225:13-15 (noting that Integrity Advance "allowed customers to call the day before the due date and pay down or payoff" their loan).

4. Respondents dispute the references to "default payment options" in paragraph nos. 26, 27, 42, 43, and 45 of the Bureau's Statement. The term "default payment option" is the Bureau's characterization of the facts and has no support in the cited exhibits. Neither the Loan Agreement nor any other Integrity Advance document cited by the Bureau refer to the auto-renewal or auto-workout provisions as "default payment options." *See generally* Profita Decl. ¶ 2,

Ex. 1., Dkt. 88D, Ex. 7, Nov. 25, 2013 Interrog. Resp. at 9 (indicating the consumers' selection of a payment option, not the auto-renewal or auto-workout provision, was the "default process".)

5. Respondents dispute paragraph 28 of the Bureau's Statement. Under the terms of the Loan Agreement, the auto-renewal provision only applied if a consumer failed to select their Payment Option ***and*** failed to repay the loan in full on the Payment Due Date. *See* Dkt. 90, Facts ¶ 19; Dkt. 91, Profita Decl. ¶ 2, Ex. 1.

6. Respondents dispute paragraph no. 29 as inaccurate and misleading. In signing the Loan Agreement and ACH authorization, consumers did, in fact, affirmatively direct Integrity Advance to debit their accounts pursuant to the Loan Agreement, including the auto renewal and auto workout provisions. Dkt. 91, Profita Decl. ¶ 2, Ex. 1.

7. Respondents dispute paragraph no. 30 of the Bureau's statement as incomplete. The Bureau's characterization that "when Integrity Advance auto-renewed a loan it would debit an amount equal to the first finance charge from the consumer's account" ignores the fact that customers could, and did, choose, to renew their loans (and thus would have agreed to have Integrity Advance debit an amount equal to the finance charge owed at the time from the consumer's account).

8. Respondents dispute paragraph no. 31 of the Bureau's Statement as incomplete. The Bureau's characterization that "the payment of the finance charge by an auto-renewed customers would not reduce the principal amount owed by the consumer" misleadingly ignores the fact that the payment of interest or finance charges on *any* kind of loan (such as a mortgage) does not reduce the principal owed on the loan.

9. Respondents dispute paragraph no. 32 of the Bureau's Statement as incorrect. Consumers could contact Integrity Advance at any time prior to the fourth Renewal Payment

Due Date to set up repayment options other than the auto-workout provision. *See* Dkt. 90, Facts ¶ 19; Dkt. 91, Profita Decl. ¶ 2, Ex. 1 ("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."). Even the Bureau's cited exhibit indicates the lack of any timing requirement. Dkt. 88D, Ex. 7, Nov. 25, 2013 Interrog. Resp. at 9 ("If a customer failed to contact the Company after the fourth renewal, Company had the option to put the customer into an auto-workout status."). The Bureau's statements also misleadingly implies that all renewals were auto-renewals, and ignores the fact that consumers could choose to renew their loans.

10. Respondents dispute paragraph no. 37 of the Bureau's Statement. Under the Loan Agreement, consumers were required to selection a Payment Option. *See* Dkt. 90, Facts ¶ 19; Dkt. 91, Profita Decl. ¶ 2, Ex. 1 ("You must select your payment option . . . ."). Only if consumers did not select a Payment Option ***and*** did not repay their loan in full on the Payment Due Date would the auto-renew provision take effect. *Id.* (stating "[I]f 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 . . . .") (emphasis added); Frechette Decl. ¶ 2, Ex. 1, Carnes. Test. at 225:13-15 (noting that Integrity Advance "allowed customers to call the day before the due date and pay down or payoff" their loan). The Bureau's factual allegation does not address this, and its cited exhibits in no way contravene the consumer's ability to repay the loan in full on the Payment Due Date and foreclose the possibility that the loan would be renewed. *See* Dkt. 21, Answer ¶ 29[2]; Dkt.

[2] Paragraph no. 29 of the Respondents' Answer is subject to a pending Motion for Leave to file an Amended Answer. *See* Dkt. 83, Resp'ts' Mot. for Leave to File an Amended Answer.

88D, Ex. 7, Nov. 25, 2013 Interrog. Resp. at 9 (stating that "[o]therwise, *if a customer took no action*, a customer was auto-renewed . . . .") (emphasis added).

11. Respondents dispute paragraph no. 38 of the Bureau's Statement. The term "default repayment schedule" is inaccurate because the renewal of the loan extended the deadline for repayment and nothing in the Loan Agreement indicated to consumers that a renewal was part of a "repayment schedule." *See* Dkt. 90, Facts ¶ 19, Dkt. 91, Profita Decl. ¶ 2, Ex. 1. Unless consumers chose to renew the loan or allowed the loan to automatically renew a full four times by failing to contact Integrity Advance to set up a repayment or to pay the loan in full on the Payment Due Date, consumers were bound to the Schedule of Payments set out in the TILA Box. *Id.*

12. Respondents dispute paragraph nos. 39 and 40 of the Bureau's Statement as incorrect and misleading. The sections of the Answer cited by the Bureau acknowledge that the TILA Box disclosure was based on consumers' initial (and only) legal obligation—a repayment in full on the Payment Due Date. *See* Dkt. 21, Answer ¶¶ 26, 31. Consumers who opted to renew their loans paid an additional finance charge. *See* Dkt. 90, Facts ¶ 11, Dkt. 91, Profita Decl. ¶ 2, Ex. 1. Similarly, consumers that did not select a payment option and did not repay their loan in full on the Payment Due Date, allowing the loan to renew, paid an additional finance charge. *See* Dkt. 90, Facts ¶ 19; Dkt. 91, Profita Decl. ¶ 2, Ex. 1. However, the Bureau's factual allegation provides no information on what these consumers actually paid.

13. Respondents dispute paragraph nos. 41–44 of the Bureau's Statement as incomplete. The auto-renewal provision only applied when the consumer failed to select a payment option ***and*** failed to repay the loan in full on the Payment Due Date. *See* Dkt. 90, Facts ¶ 19; Dkt. 91, Profita Decl. ¶ 2, Ex. 1.

14. Respondents dispute paragraph no. 45 of the Bureau's Statement. The Bureau's characterization that some consumers "did not understand how the default payment option of Integrity Advance's contract worked" is misleading and speculative. The CFPB has offered no evidence of what any consumers "understood" – the presence of a complaint does not explain or prove what a consumer "understood" and the Bureau's attempt to characterize customer complaints in this way is improper and irrelevant.

15. Respondents dispute the allegation in paragraph no. 47 of the Bureau's Statement, that "Carnes knew that some consumers had not understood that their first four auto-renewal payments would not reduce loan principal." As can be seen from the Bureau's own exhibit, Exh. 3 (Carnes 243:1-12), Carnes testified only that he was aware of some complaints. Awareness of the presence of some complaints is not knowledge of what consumers "understood." *See* Frechette Decl. ¶ 2, Ex. 1, Carnes Test. at 244:3-4.

16. Respondents dispute the allegation in paragraph no. 48 of the Bureau's Statement that "Carnes understood that most Integrity Advance consumers would make higher repayments than what the company disclosed." The Bureau misconstrues Carnes's testimony because the statements that the Bureau cites do not support the allegation made in paragraph 48. *See* CFPB Exh. 3 (Carnes 245:4-25). This line of questioning concerns only the narrow question of whether "consumers who had rollovers" paid more than their initial legal obligation disclosed in the TILA Box. *See* Frechette Decl. ¶ 2, Ex. 1, Carnes Test. at 245:10-11.

17. Respondents dispute the allegation in paragraph no. 49 of the Bureau's statement, that "Integrity Advance did not provide consumers with full unified versions of their loan agreement until after they had agreed to the loan." The allegation is not supported by the Bureau's own cited exhibit. Dkt. 88C, Ex. 3, Carnes Test. at 213: 11-13 ("[t]he application and

loan agreement would appear online similar to what you have printed out once they filled it out and approved – if they were approved."). Moreover, the allegation fundamentally misconstrues the process of an online loan application, in which the online view as the consumer is filling out the application and reviewing the agreement is necessarily different than the ultimate end product produced once a finalized Loan Agreement is printed out. *See* Frechette Decl. ¶ 2, Ex. 1, Carnes Test at 212:17-22).

18. Respondents dispute that facts alleged in paragraph no. 51 of the Bureau's Statement as wholly incorrect and misleading. The Bureau alleges that "consumers could not receive initial approval of an online application without signing the ACH agreement." CFPB Statement ¶ 51. To support this allegation, the Bureau cherry-picks seven lines from Foster's investigational hearing transcript, Dkt 88D, Ex. 6, Foster Test. 84:1-7, but omits the clarification in the subsequent lines where Foster indicates that consumers could apply for a loan without signing the ACH authorization. *See* Dkt. 91, Profita Decl. ¶ 6, Ex. 5, Foster Test. at 84:8-256, 85: 1-18.

19. Respondents dispute the facts alleged in paragraph no. 56 of the Bureau's Statement, that "[t]o repay in a manner other than ACH transfer, a consumer had to prove to Integrity Advance that he or she could pay by another means." The Loan Agreement expressly provided that consumers could "repay [their] indebtedness through other means, including by providing timely payment via cashiers check or money order directed to: Integrity Advance, 300 Creek View Road, Suite 102, Newark, DE 19711." *See* Dkt. 90, Facts ¶ 21, Dkt. 91, Profita Decl. ¶ 2, Ex. 1. Further, the Bureau's allegation is not supported by its own cited exhibits. *See* Dkt. 88C, Ex. 3, Carnes Test. at 217: 13-17) ("[I] think – I can't remember exactly how that was worded, but I think if they didn't give us authorization, they had to provide some kind of

payment system so we could get paid back. I don't know what that meant. I mean, I don't really remember."); Dkt. 88D, Ex. 6, Foster Test. at 85: 4-13 ("My understanding of the process would have been that if that individual met every other underwriting criteria and thresholds, et cetera, including all the other signatures, and could arrange for a different form of payment they could have been approved for a loan.").

20. Respondents dispute paragraph no. 63 of the Bureau's Statement. The exhibit consists only of a "TranDotCom Solutions Loan Management System Operations Manual," a proprietary document of TranDotCom Solutions LLC, for use in conjunction with the company's loan management system. *See* Dkt. 88E, Ex. 34 (Loan Mgmt. Sys. Ops. Manual at 1–3. The TranDotCom manual was not written by Respondents and the Bureau provides no facts to show whether the manual was ever used by Respondents, and, if so, how it may have been used.

21. Respondents dispute paragraph no. 70 of the Bureau's Statement. The Bureau alleges that "Integrity Advance used the demand draft provision to withdraw money from the accounts of some of the consumers *who had withdrawn ACH authorization*." Dkt. 88, CFPB Statement ¶ 70 (emphasis added). However, of the complaints the Bureau cites, only one consumer states that she revoked her ACH authorization. *See* Dkt. 88E, Ex. 23 (Consumer Complaint).

22. The Bureau does not allege any facts in paragraph no. 71 of its Statement. The Bureau's statement that "Carnes was a director and officer of Integrity Advance charged with managerial responsibility for Integrity Advance" is a legal conclusion and cannot be asserted as an undisputed fact. *See* 12 U.S.C. § 5481(c)(i) (defining "related person" as "any director, officer, or employee charged with managerial responsibility for, or controlling shareholder of, or

agent for, [a] covered person"). As support for the assertion in paragraph 71 of the Bureau's Statement, the Bureau cites only sources acknowledging Carnes's role as President and CEO. Dkt. 21, Answer ¶ 6; Dkt. 88C, Ex. 3, Carnes Test. at 32:15-17.

Respectfully submitted,

Dated: May 27, 2016

By: /s/ Allyson B. Baker

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CERTIFICATION OF SERVICE

I hereby certify that on the 27th 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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