



## II. OBJECTIONS TO EXHIBITS

### A. Exhibits that Respondents Failed to Provide

Respondents included four proposed exhibits on their list without providing the actual exhibits or even a description of their content. On their exhibit list, for each of Respondents' proposed exhibits RX015, RX016, RX017 and RX018, Respondents wrote "Pending response by Delaware Office of the State Bank Commissioner" ("DE Commissioner").

Respondents' failure to provide copies of these proposed exhibits in a timely manner should preclude their introduction at trial. The Rules specifically require that the parties supply copies of their proposed exhibits in a prehearing submission. Such submissions should include: "A list of the exhibits to be introduced at the hearing along with a copy of each exhibit." 12 C.F.R. § 1081.215(a)(4). That same section also sets forth the sanction for failure to comply: "No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown." 12 C.F.R. § 1081.215(c). "The failure to submit an exhibit for introduction at trial until just days before the trial begins is a sufficient reason to deny its admission." *Gilbert v. Tulane Univ.*, 909 F.2d 124, 127 (5th Cir. 1990); *In re Terminal Cash Solutions*, No. 05–22440–BKC–RBR, 2006 WL 3922109, at \*3 (Bankr. S.D. Fla. Nov. 27, 2006).

The Administrative Law Judge set a deadline of July 6, 2016 for the exchange of exhibits. Respondents have been on notice since early March of the likely trial dates for this matter. Further, Respondents have been raising defenses related to their licensing by the DE Commissioner since at least November 2014, when they submitted their "NORA" response to the Bureau's notification that it was considering litigation against

Respondents. If these documents were critical to Respondents' defense, they should already have provided them to the Bureau. With only one week remaining before the commencement of trial, it is unfair for Respondents to attempt to introduce evidence that they could have sought long ago.

Finally, these exhibits appear to be irrelevant to the limited issues remaining for trial after the Administrative Law Judge's Order on summary disposition.

**B. Irrelevant Exhibits**

Respondents' proposed exhibits RX007 through RX013 all pertain to Integrity Advance's LLC formation and licensing. The Administrative Law Judge deemed the facts related to these issues to be established in the July 1<sup>st</sup> Order deciding the parties' Motions for Summary Disposition. Order at 5 (Facts 1, 2). The fact that Integrity Advance was an LLC or that it was licensed has no relevance to the issues remaining for trial after the Administrative Law Judge's Order on summary disposition.

Irrelevant and immaterial evidence is inadmissible. 12 C.F.R. § 1081.303(b)(1); *cf. Glob. Fitness Holdings, LLC v. Fed. Recovery Acceptance, Inc.*, No. 2:13-CV-00204-DN, 2015 WL 5918401, at \*3 (D. Utah Oct. 9, 2015). Further, the Administrative Law Judge may exclude evidence because it is unduly repetitive, 12 C.F.R. § 1081.303(b)(1), and "based on considerations of undue delay, waste of time, or needless presentation of cumulative evidence," *id.* § 1081.303(b)(2).

Respondents' defense should be limited to the outstanding issues in this matter. These exhibits are irrelevant evidence that does not go to the limited issues remaining after the July 1 Order.

### **C. Exhibit RX 006**

Exhibit RX006 is the Attachments to a Declaration from Chris Carson, which purportedly contains Respondents' analysis of Integrity Advance consumer transaction data. Enforcement Counsel respectfully requests that it be allowed to raise an objection to Exhibit RX006 at a later date. Respondents did not seek to introduce the data underlying RX006 as part of their exhibits; nor did they provide a copy of the underlying data to Enforcement Counsel. Cf. Fed. R. Evid. 1006. Moreover, Respondents have been unable to confirm that their witness used the same dataset provided to Enforcement Counsel in response to the February 19 subpoena. If the analysis was based on the dataset previously produced, Enforcement Counsel does not object. However, if the analysis was based on a different dataset, then Enforcement Counsel objects to introduction of RX006 because Respondents failed to provide the underlying data.

### **III. OBJECTIONS TO WITNESSES**

Respondents have listed two general categories of witnesses on their witness list without providing any details about the identity of the person who would actually testify. The first is "Representative from the State of Delaware Office of the State Bank Commissioner."<sup>1</sup> The second is "Potential Integrity Advance customer(s), to testify regarding his/her experience with the Integrity Advance loan application, customer service, and issues relating to general customer satisfaction." In addition, Respondents summarily state that they reserve the right to "call additional witnesses for purposes of

<sup>1</sup> After the parties submitted their witness lists, Respondents filed a request for the issuance of a subpoena to compel the attendance of E. Quinn Miller from the Office of the DE Commissioner. Ms. Miller was not named on their witness list, but the Bureau has listed Ms. Miller as a potential rebuttal witness.

impeachment or rebuttal.” Resp. Discl. of Witnesses at 2. These vague designations do not constitute identifying witnesses as required by the Administrative Law Judge. Absent good cause, Respondents should be prohibited from introducing testimony from any witness who they did not identify by name or who was not identified on Enforcement Counsel’s list.

The Rules very specifically describe the information that the parties must exchange about their witnesses in their pre-hearing submissions. 12 C.F.R. § 1081.215(a)(2) requires each party to serve “[a] final list of witnesses to be called at the hearing, including the name and address of each witness and a short summary of the expected testimony of each witness.” As noted above, the sanction for a failure to comply with this Rule is that the witness may not testify. 12 C.F.R. § 1081.215(c).

Vague or incomplete designations on a witness list are insufficient to allow a party to introduce testimony from unnamed persons. *Buskirk v. Midwestern Distribution, Inc.*, No. 89–2202–S., 1991 WL 290449, \*2 (D. Kan. Dec. 18, 1991) (“The purpose of a witness list is to identify those individuals a party intends to have testify at trial. The court will not permit the plaintiff to call any witnesses not listed on the amended witness and exhibit list.”); *Equal Employment Opportunity Commission v. JBS USA, LLC*, 304 F.R.D. 586, 590 (D. Colo. 2014) (holding designation of “other corporate witness familiar with beef operations” to be insufficient).

Respondents have had ample time to identify appropriate witnesses and should not be allowed to introduce testimony from individuals who they have not specifically identified as required by the Administrative Law Judge’s Order. Respondents should know their own customers. Respondents also should know with whom they interacted at the Delaware Office of the State Bank Commissioner. There is no legitimate reason why

Respondents could not have identified these persons, or any other persons necessary for impeachment or rebuttal, by now.

#### **IV. CONCLUSION**

Respondents have failed to comply with this Administrative Law Judge's Orders of April 27, 2016, and June 17, 2016. Accordingly, Enforcement Counsel respectfully requests the Administrative Law Judge 1) deny the admission of Respondents' proposed exhibits RX 007 through RX 013, and RX 014 through RX 018, and 2) not allow Respondents to introduce testimony from persons not individually and specifically identified on their witness list or on Enforcement Counsel's list.

Respectfully submitted,

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s/Alusheyi J. Wheeler

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 11th day of July 2016, I caused a copy of the foregoing Enforcement Counsel's Objections to Respondents' Exhibits and Witnesses, to be filed by electronic transmission (e-mail) with the Office of Administrative Adjudication (CFPB\_electronic\_filings@cfpb.gov), the U.S. Coast Guard Hearing Docket Clerk (aljdocketcenter@uscg.mil), Administrative Law Judge Parlen L. McKenna (cindy.j.melendres@uscg.mil), Heather L. MacClintock (Heather.L.MacClintock@uscg.mil), and served by email on the Respondents' counsel at the following addresses:

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