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' OPPOSITION TO ENFORCEMENT COUNSEL'S MOTION *IN LIMINE* TO PRECLUDE EVIDENCE DISPUTING ISSUES DECIDED AND FACTS ESTABLISHED AT SUMMARY DISPOSITION**

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INTRODUCTION

As is made clear by Enforcement Counsel's *own exhibit* to its Motion *in Limine*, the entire basis of Enforcement Counsel's motion is a fundamentally incorrect representation of Respondents' position regarding Enforcement Counsel's request for consent to withdraw Count IV of the Notice of Charges.[1] Furthermore, Enforcement Counsel points to no specific evidence from which Respondents should be precluded from presenting at trial. Instead, Enforcement Counsel makes a broad, vague claim that this Court must exclude "evidence not pertinent to the issues remaining after the July 1, 2016 Order," but offers no indication of which specific evidence the Court should preclude. *See* CFPB Motion at 5.

[1] Pursuant to Enforcement Counsel's agreement that it seeks dismissal of Count IV with prejudice, Respondents have since consented to the withdrawal of this claim.

ARGUMENT

I. Respondents Do Not Seek To Re-Litigate Issues Already Decided

In the face of a document that directly contradicts Enforcement Counsel's representation of Respondents' position, Enforcement Counsel attempts to argue that Respondents seek to introduce evidence and argument at trial in order to re-litigate issues already decided by this Court's July 1, 2016 Order ("the July 1 Order.") *See* CFPB Motion at 1–2. Respondents do not seek to re-litigate issues already decided by the July 1 Order. Indeed, as illustrated by *Enforcement Counsel's own exhibit*, counsel for Respondents expressly told Enforcement Counsel that Respondents "do not agree" when Enforcement Counsel stated that it understood Respondents' reason for not consenting to a withdrawal of Count IV as being that Respondents "intend to present evidence and argument at trial to challenge the ALJ's findings and conclusions in the July 1 Order." *See* CFPB Motion, Ex. A at 3.

II. Enforcement Counsel Makes No Attempt To Identify The Evidence It Seeks To Preclude

Furthermore, Enforcement Counsel makes no attempt to actually identify the evidence – testimonial, documentary or otherwise – that it seeks to preclude. On July 6, 2013, per the Court's scheduling order, two days before Enforcement Counsel filed its Motion *in Limine*, Respondents provided Enforcement Counsel with the exhibits and witnesses that they may introduce at trial as part of their case-in-chief. Tellingly, Enforcement Counsel's motion points to none of those exhibits, anticipated testimony from those witnesses disclosed on Respondents' list, nor to any other piece of evidence in the record to date, that should be precluded as a result of the Court's July 1, 2016 Order. Enforcement Counsel's Motion *in Limine* is entirely vague as to what evidence it purports Respondents must be precluded from presenting. It is axiomatic that courts deny motions *in limine* that are as vague as the one at issue here. *See Feezor v. Golden*

Bear Restaurant Grp., Inc., No. 2:09-cv-03324, 2012 WL 2873353 at *1, 3, 5 (E.D. Cal. July 12, 2012) (denying various motions *in limine* because "it is unclear what evidence is involved" or "no particular testimony or documents are sought to be excluded"); *see also Godwin v. Buckhalter*, No. 2:12cv164, 2013 WL 4544313 (M.D. Ala. Aug. 27, 2013) (denying motion *in limine* "as to evidence which supports claims that have been dismissed" as to a particular defendant because "[w]ithout the identification of specific evidence . . . the court is unable to conclude" that all evidence regarding that particular defendant is to be excluded); *Equity Lifestyle Props., Inc. v. Fl. Mowing & Landscape Serv., Inc.*, No. 2:05cv165; 2006 WL 1071997 at * (M.D. Fla. April 24, 2006) (denying motion *in limine* to exclude evidence regarding a claim not alleged in the complaint because it is "unclear . . . what evidence [the movant] refers to; the *motion in limine* is simply too vague for the Court to make a ruling excluding evidence.").

Indeed, by identifying no specific evidence, Enforcement Counsel merely highlights that its Motion *in Limine* is nothing more than a thinly-veiled attempt to preclude Respondents from introducing evidence that is relevant to the remaining issues in this matter and that cannot necessarily be separated from the issues decided in the July 1 Order. For example, the Court expressly acknowledged that "[t]he parties genuinely dispute the actual injuries suffered," which has a direct bearing on monetary damages. *See* July 1 Order at 42. Enforcement Counsel acknowledges that the remaining issues pertain to Mr. Carnes' liability under Count III and Respondents' liability as to Count VII, as well as the appropriate relief. *See* CFPB's Motion at 3. These are issues about which Respondents are entitled – and will – present evidence.

CONCLUSION

For the reasons state above, the court should deny Enforcement Counsel's Motion *in Limine* to preclude evidence disputing issues decided and facts established at summary disposition.

Respectfully submitted,

Dated: July 11, 2016

By: /s/ Allyson B. Baker

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CERTIFICATION OF SERVICE

I hereby certify that on the 11th day of July, 2016, I caused a copy of the foregoing Opposition to be filed by electronic transmission (e-mail) with the U.S. Coast Guard Hearing Docket Clerk (aljdocketcenter@uscg.mil), Heather L. MacClintock (Heather.L.MacClintock@uscg.mil), and Administrative Law Judge Parlen L. McKenna (cindy.j.melendres@uscg.mil), and served by e-mail on the following parties who have consented to electronic service:

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