

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029

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| In the Matter of: |) | |
| |) | ENFORCEMENT |
| |) | COUNSEL’S PROPOSED |
| |) | FINDINGS OF FACT, |
| |) | CONCLUSIONS OF LAW, |
| INTEGRITY ADVANCE, LLC and |) | AND ORDER |
| JAMES R. CARNES, |) | |
| |) | |
| Respondents. |) | |
| |) | |
| |) | |

ENFORCEMENT COUNSEL’S PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND ORDER

Pursuant to 12 C.F.R. § 1081.305(a), Enforcement Counsel hereby submits the following Proposed Findings of Fact, Conclusions of Law, and Order.

Proposed Findings of Fact

Background

1. Integrity Advance started originating loans to consumers in May 2008. Tr. II 132:23-24.

2. As a part of its purchase of Hayfield Investment Partners, EZ Corp. Inc. purchased some of the assets of Integrity Advance in December 2012. Tr. II 70:22-23.

3. Integrity Advance’s first consumer loan transaction occurred in May 2008 and its final loan transaction occurred on July 9, 2013. Tr. II 132:23 – 133:18; *see also* EC-EX-072; EC-EX-101.

Carnes Was the CEO and Ultimate Majority Owner of Integrity Advance

4. Respondent James Carnes (Carnes) founded Integrity Advance. EC-EX-068 at 7:12-13; Tr. I 94:3-4.
5. Carnes was the sole owner of Willowbrook Marketing LLC. EC-EX-067; Tr. I 102:4-6.
6. Willowbrook Marketing LLC owned a majority share of Hayfield Investment Partners. EC-EX-067; Tr. I 102:8-10.
7. Hayfield Investment Partners was the sole owner of Integrity Advance. EC-EX-067; Tr. II 6:12-16.
8. Carnes was the CEO of Hayfield Investment Partners, the parent company of Integrity Advance, and the chief executive of Integrity Advance. Tr. I 93:22 – 94:12; EC-EX-068 at 31:1-3.
9. Carnes was the president and chief executive of Integrity Advance throughout the entire time that it offered short term, or payday, loans to consumers. EC-EX-065; EC-EX-068 at 31:1-3.

Carnes Profited Directly from Integrity Advance's Loans

10. Carnes received an annual salary of \$250,000 when he was the chief executive of Integrity Advance. Tr. I 167:11-17.
11. Integrity Advance was the most profitable company of all of the Hayfield subsidiaries. EC-EX-068 at 88:24-89:6.
12. Integrity Advance contributed more than 75% of Hayfield's profits in 2010. EC-EX-068 at 92:19-93:9; Tr. I 114:11-25.

13. Integrity Advance contributed more than 75% of Hayfield's profits in 2011. EC-EX-068 at 93:10-14; Tr. I 115:8-21.
14. Integrity Advance contributed more than 75% of Hayfield's profits in 2012. EC-EX-068 at 93:15-16; Tr. I 115:22 – 116:2.
15. Carnes received approximately twenty five million dollars from the sale of Integrity Advance and other Hayfield entities to EZ Corp. Tr. I 239:4-8.
16. Hayfield paid over [REDACTED]. Tr. I 158:24 – 159:4.
17. Hayfield paid [REDACTED]. Tr. I 174:16 – 175:6.

Carnes Had Extensive Oversight Over Employees Who Worked on Behalf of Integrity Advance

18. All persons who worked for Integrity Advance, except for George Davis, worked from a location in Kansas. Tr. I 73:15-17.
19. Carnes directly or indirectly supervised all Integrity Advance employees. EC-EX-065; EC-EX-068 at 32:4-9; EC-EX-069 at 21:23-22:5.
20. The four people who performed services for Integrity Advance when the company commenced operations in 2008 were Carnes, Edward Foster (Foster), Hassan Shahin, and a receptionist. Tr. I 53:19 – 54:10.
21. At its largest, in 2011, Hayfield employed between 20 and 30 people. Tr. II 92:2-6.

22. Timothy Madsen (Madsen), the Vice President of Marketing for Integrity Advance, worked at Integrity Advance from August 2008 until some of Integrity Advance's assets were purchased by EZ Corp. Tr. I 28:4-6; Tr. I 29:6-12.
23. After he was originally hired, Madsen reported directly to Carnes. Tr. I 39:3-7.
24. Carnes spoke with Madsen on a daily basis. Tr. I 35:8-10.
25. Foster worked for Integrity Advance as its executive vice president, general counsel, secretary, and assistant treasurer. Tr. II 8:10-12.
26. Foster reported to Carnes. Tr. II 9:19-22.
27. Carnes spoke with Foster on a daily basis. EC-EX-069 at 22:19-24; EC-EX-068 at 35:15-17.
28. Carnes met with Foster "a few times a week" about Integrity Advance business. EC-EX-068 at 35:18-21.
29. Foster spoke to Carnes if there "was a significant problem" with Integrity Advance. Tr. I 215:5-18.
30. Carnes set Foster's salary. Tr. II 9:17-18.
31. Carnes made the final decision to hire all Integrity Advance employees. EC-EX-068 at 40:24-25; EC-EX-069 at 22:17-18.
32. Carnes directly hired Foster. Tr. I 96:15-16.
33. Carnes and Foster together hired Madsen. Tr. I 98:4-6.
34. Carnes and Foster together hired Stephanie Schaller, Integrity Advance's Vice President of Decision Science. Tr. I 98:17-20.

35. Carnes directly hired George Davis, the Delaware Office Manager. Tr. I 98:24 – 99:1.
36. Carnes directly hired Hassan Shahin, Integrity Advance’s Vice President of Technology. Tr. I 99:6-7.
37. Carnes and Foster together hired Mark Rondeau, Integrity Advance’s Director of IT Operations. Tr. I 99:15-18.

Carnes Exercised Extensive Authority and Control Over the Details of Integrity Advance’s Daily Operations

38. Carnes worked in the office with other Integrity Advance executives on a daily basis. EC-EX-068 at 32:2-3; Tr. I 29:24 – 30:1; Tr. I 74:13-17.
39. Carnes had an open door policy and was accessible to any Integrity Advance employee who wanted to talk to him. EC-EX-068 at 37:11-13; Tr. I 213:10-12; Tr. II 74:6-8.
40. Carnes spoke to Madsen, the Vice President of Marketing for Integrity Advance, about “the behavior of the lead purchase systems that we had in place, how well they were performing, our different partners, and any adjustments that we need to make sure that it backed out for us what it needed to from a business perspective.” Tr. I 31:11-16.
41. The adjustments that Carnes spoke to Madsen about included how much Integrity Advance would pay for a lead and whether the company needed to change its underwriting model in order to purchase more leads. Tr. I 31:19-23.
42. Madsen and Carnes discussed “lead volume conversion rates, long-term performance of any particular sources that we had” as well as default rates. Tr. I 47:13-21.
43. Carnes was knowledgeable about the factors that influenced the price of a lead, such as whether it was a ‘first look lead,’ “where the lead came to you as a lender first before it went

to any other lender” (Tr. I 119:15-19); whether a consumer had direct deposit of her paycheck (Tr. I 121:15-17); or whether the consumer’s account was a savings account versus a checking account (Tr. I 122:16-18).

44. Carnes ultimately made the call on what Integrity Advance would pay for a lead. Tr. I 35:1-6; Tr. I 32:10-14.

45. Madsen had to consult with Carnes about changes in the credit scores Integrity Advance would accept from its customers if they departed by more than a couple of points from set parameters. Tr. I 33:15-21.

46. Integrity Advance had a system, called the dashboard, which it used to monitor the performance of leads. Tr. I 45:13-19.

47. Sometimes Carnes reported results from the dashboard to Madsen, and sometimes Madsen reported results from the dashboard to Carnes. Tr. I 48:16 – 49:1; Tr. I 68:20-22.

48. Carnes was the main decision-maker regarding Integrity Advance’s underwriting policies. EC-EX-069 at 22:17-18; Tr. I 59:18-25.

49. Bruce Andonian (Andonian) worked for Integrity Advance as its Director of Software Development. Tr. I 70:10-13.

50. Andonian worked for Integrity Advance from February 2011 through May of 2013. Tr. I 71:2-5.

51. Carnes would direct Andonian to make changes in Integrity Advance’s website to reflect adjustments in the credit score that the company would accept from its potential customers. Tr. I 77:19 – 78:5.

52. Carnes spoke to Andonian when “something wasn’t working properly. So it was if the database was running slow or if we weren’t accepting leads or the conversion rate was low and there would be an investigation on why that was happening.” Tr. I 75:7-12; Tr. I 216:2-9.
53. Carnes would direct Andonian to remove states from Integrity Advance’s website. Tr. I 77:1-3.
54. Carnes held weekly meetings in his office with Foster, Andonian, and a project manager in which they discussed Integrity Advance IT issues. Tr. I 75:16 – 76:1.
55. Carnes ran the weekly IT meetings. Tr. I 76:2-3.
56. “Most of the time” Carnes set the priorities for the tasks that were addressed at the weekly IT meetings. Tr. I 76:2-13.
57. Carnes had final say over what appeared on the company’s website. EC-EX-068 at 41:1-6; Tr. I 217:1-8.
58. Carnes ran the monthly meetings where all of the employees who did work for Integrity Advance would discuss Integrity Advance as well as other companies owned by Hayfield. Tr. I 78:10-80:12.
59. As chief executive, Carnes had the authority to make all decisions governing Integrity Advance’s policies and procedures. Tr. I 209:1-11; EC-EX-068 at 32:15-17.
60. Carnes “had ultimate authority over [Integrity Advance] and making sure that it complied with the Delaware law.” Tr. I 221:24 – 222:1.
61. Carnes was the primary decision maker at Integrity Advance. Tr. I 51:4-7; Tr. I 82:2-4.

62. Carnes was a director and officer of Integrity Advance charged with managerial responsibility for the company. EC-EX-068 at 32:15-17; Tr. I 209:9-11.
63. Carnes's role as primary decision maker at Integrity Advance did not change from 2008 until the EZ Corp. sale. Tr. I 51:4-15; Tr. I 28:9-29:12.

Carnes Was Signatory for Integrity Advance

64. Carnes signed a contract with a debt collection vendor on behalf of Integrity Advance. EC-EX-085; Tr. I 129:22 – 130:11.
65. Carnes was the signatory on the lead purchase agreement between Integrity Advance and T3 Leads. EC-EX-053; Tr. I 122:22 – 123:14.
66. Carnes was the signatory on the lead purchase agreement between Integrity Advance and Partner Weekly. EC-EX-054; Tr. I 126:17 – 127:13.
67. Carnes was the signatory on the ACH origination agreement between MoneyGram and Integrity Advance. EC-EX-056.
68. Carnes was an authorized signatory for the bank account used by Integrity Advance. EC-EX-055; Tr. I 141:16-20.

Carnes Oversaw Integrity Advance's Use of Call Centers

69. Carnes had communications with the call centers used by Integrity Advance. Tr. I 64:3-6.
70. Carnes analyzed call logs from the call centers used by Integrity Advance. EC-EX-088; Tr. I 179:18 – 180:1.
71. Carnes was involved in the decision to move Integrity Advance's business from one call center to another. Tr. I 64:13-19.

72. Invoices from ClearVox, LLC, a call center used by Integrity Advance, were directed to Carnes's attention. EC-EX-057; EC-EX-058.

73. When a call center used by Integrity Advance had an employee who was allegedly committing fraud, Carnes directed the resolution of the problem. EC-EX-087; Tr. I 177:3-178:3.

The Loan Agreement and the Relevant Terms of the Loans Did Not Change Significantly Between 2008 and 2013

74. Integrity Advance made loans to consumers. Tr. I 94:14-18. Those loans were the sole source of Integrity Advance revenues and operating profits. Tr. I 94:14 – 95:8.

75. Integrity Advance did not offer any products other than consumer loans. Tr. I 94:19-22.

76. The fees that Integrity Advance charged its customers did not change over time. Tr. II 15:24-25; Tr. II 48:14-22.

77. When Integrity Advance's loan agreement template was created and first used in 2008, only four people worked for Integrity Advance. Tr. I 230:25 – 231:5; Tr. I 53:19 – 54:23.

78. In addition to Carnes, the other Integrity Advance employees in 2008 were Edward Foster, the Executive Vice President and General Counsel, Hassan Shahin, the Vice President of Technology, and a receptionist. Tr. I 53:19 – 54:23; *see also* EC-EX-065.

79. As the chief executive, Carnes was ultimately responsible for approving everything related to Integrity Advance's business when the loan agreement was created and first used in 2008. Tr. I 228:8-11.

80. Integrity Advance's loan agreement did not change significantly between 2008 and 2013. Tr. II 38:20 – 39:1; EC-EX-061; EC-EX-063.

Carnes Knew that the Loan Agreements Disclosed the Cost of a Single Payment and that Integrity Advance Would Automatically Renew the Loans as a Default

81. Carnes understood how Integrity Advance's loans worked when he was CEO of Integrity Advance, testifying, "Sure it was our product." Tr. I 220:12.
82. Carnes knew that for a "fictional consumer . . . who had \$100 loan . . . their TILA disclosure would say \$130." Tr. II 50:21 – 51:3.
83. Carnes knew that if a consumer "didn't call or email, and it was their first payment . . . they would be renewed." Tr. I 219:13-20; EC-EX-068 at 227.
84. Carnes knew that if the consumer did nothing on the next payday, the loan would be renewed again. Tr. I 219:21-23.
85. Carnes knew that an Integrity Advance loan would rollover four times before it went to workout. Tr. I 219:24 – 220:3.
86. Carnes understood that about ninety percent of Integrity Advance's loans experienced at least one rollover. Tr. I 222:17-20.
87. Carnes understood that most Integrity Advance consumers would experience at least one rollover. Tr. 219:11 – 222:20.
88. Carnes understood that consumers who had the loans rolled over would pay more than what had been disclosed in their TILA disclosures. EC-EX-068 at 245:10-25.
89. Carnes understood that consumers who did not contact the company would have their loans renewed repeatedly, which would result in much higher costs than what had been disclosed. Tr. 219:13 – 220:3.
90. Carnes had the authority to change Integrity Advance's fee structure. Tr. II 49:15-18.

91. Carnes testified that he “possibly” saw an Integrity Advance loan agreement in 2008 when the company was being formed and started loaning. Tr. I 226:9-14.
92. Carnes’s attorneys had his approval to use the loan agreement. Tr. I 232:7-12.
93. Based on an assessment of all the evidence in the record and of the credibility of the witnesses who testified, Carnes approved Integrity Advance’s use of its loan agreement. Tr. I 228:6-9; Tr. II 96:2-14.

Delaware State Bank Commissioner Neither Designed Nor Approved the Disclosures of the Cost of the Loans

94. The Delaware Office of the State Bank Commissioner’s Licensing Office (Delaware Commissioner) does not approve the loan contracts that non-depository lenders use with their customers. Tr. III 126:19-24.
95. From 2008-2013, the Delaware Commissioner did not require the use of particular loan agreements between non-depository lenders and their customers. Tr. III 148:2-6.
96. From 2008-2013, the Delaware Commissioner did not review changes to a loan application that a non-depository lender used with its customers. Tr. III 131:8-15.
97. From 2008-2013, the Delaware Commissioner did not set the fees that non-depository lenders could charge their customers. Tr. III 148:12-14.
98. From 2008-2013, the Delaware Commissioner did not require non-depository lenders to automatically roll over their customers’ loans. Tr. III 145:24 – 146:2.
99. From 2008-2013, the Delaware Commissioner did not require short term lenders to offer the option of rollovers. Tr. III 146:7-10.

100. The Delaware Commissioner “permitted [rollovers], we didn’t prohibit it in the statute, nor did we require it.” Tr. III 147:16-18.
101. From 2008-2013, the Delaware Commissioner did not review non-depository lenders’ loan agreements for compliance with the Electronic Funds Transfer Act. Tr. III 149:1-3.
102. From 2008-2013, the Delaware Commissioner’s review of Truth in Lending compliance for non-depository lenders consisted of determining whether there was a separate Truth in Lending box in the loan agreement (Tr. III 150:24 – 151:2), and checking the lenders’ calculations of the APR in the Truth in Lending box to determine if it was mathematically correct (Tr. III 153:5-6).
103. The Delaware Commissioner has never denied a non-depository lender’s application for a license. Tr. III 144:23 – 145:1.
104. The Delaware Commissioner has never denied the renewal of a non-depository lender’s license. Tr. III 129:25 – 130:10.
105. The Delaware Commissioner has only revoked a non-depository lender’s license when its surety bond was “cancelled and not resolved by the licensee within the time limit.” Tr. III 132:14-15.

Integrity Advance Used Remotely Created Checks to Obtain Funds from Consumers Who Had Blocked ACH Debits and Already Overpaid on Their Loans

106. Integrity Advance’s ACH agreement contained a provision that allowed the company to execute remotely created checks on its customers’ bank accounts. EC-EX-001-014; EC-EX-063.

107. The ACH agreement stated “[i]f you revoke your authorization, you agree to provide us with another form of payment acceptable to us and you authorize us to prepare and submit one or more checks drawn on Your Bank Account so long as amounts are owed to us under the Loan Agreement.” EC-EX-001-014; EC-EX-063.
108. The remotely created check provision appeared only once in the loan agreement on approximately page 9, at the end of a paragraph, in the middle of the ACH authorization section. EC-EX-001-014; EC-EX-063.
109. The remotely created check provision was not emphasized by any bolded, underlined, capitalized, or enlarged font. EC-EX-001-014; EC-EX-063.
110. Integrity Advance did not require consumers to sign or initial the remotely created check provision separately. EC-EX-001-014; EC-EX-063.
111. The remotely created check provision made no explicit mention of remotely created checks and did not state that the checks to be drawn on a consumer’s bank account did not have to be signed by the consumer. EC-EX-001-014; EC-EX-063.
112. The remotely created check provision did not state that the checks to be drawn on a consumer’s bank account could be submitted without prior warning to the consumer. EC-EX-001-014; EC-EX-063.
113. Integrity Advance used remotely created checks to withdraw funds from consumers’ bank accounts after consumers had revoked the company’s authorization to electronically debit their accounts using the ACH network or stopped ACH withdrawals made by the company, and after those consumers had already paid over the disclosed “Total of Payments.” Tr. II

84:6-11; Tr. II 84:25 – 85:2; 142:15 – 148:4; 152:15 – 153:11; Tr. I 235:19 – 236:3; EC-EX-072 at ¶¶9-11; EC-EX-97; *see also* EC-EX-95; EC-EX-101.

114. Integrity Advance continued to attempt to use remotely created checks on consumers who had revoked the company's ACH authorization or stopped ACH debits by Integrity Advance even after consumers' bank accounts had insufficient funds. Tr. II 142:15-148:4; EC-EX-097; EC-EX-100; *see also* EC-EX-95; EC-EX-101.

115. Integrity Advance used remotely created checks 3,545 times on consumers who had revoked ACH authorization to withdraw funds from their accounts or stopped ACH withdrawals by Integrity Advance. Tr. II 149:4-9, 14-16; EC-EX-097; *see also* EC-EX-95; EC-EX-101.

116. Integrity Advance used remotely created checks 1,271 times on or after July 21, 2011, on consumers who had revoked ACH authorization to withdraw funds from their accounts or stopped ACH withdrawals by Integrity Advance. Tr. II 150:24-151:3; EC-EX-097; *see also* EC-EX-95; EC-EX-101.

117. Integrity Advance used remotely created checks 1,826 times on consumers who had revoked ACH authorization or stopped ACH withdrawals by Integrity Advance and who had already paid an amount equal to the "Total of Payments" in the TILA box in the consumers' loan agreements. Tr. II 149:4-9, 19-22; EC-EX-097; *see also* EC-EX-95; EC-EX-101.

118. Integrity Advance used remotely created checks 602 times on or after July 21, 2011, on consumers who had revoked or stopped their authorization for Integrity Advance to withdraw funds from their accounts and who had already paid an amount equal to the "Total

of Payments” in the TILA box in the consumers’ loan agreements. Tr. II 151:6-11; EC-EX-097; *see also* EC-EX-95; EC-EX-101.

119. Carnes knew that Integrity Advance used remotely created checks to withdraw money from the accounts of some of the consumers who had withdrawn ACH authorization. EC-EX-068 at 219:7-18; Tr. II 84:6 – 85:11.

120. Carnes saw remotely created checks printed using a printer in the Kansas City office. Tr. I 236:10-11, Tr. I 236:20-22.

121. Carnes testified that Integrity Advance printed remotely created checks on a weekly basis and regularly used remotely created checks to collect consumer debt. Tr. I 235:24 – 236:15.

Integrity Advance and Carnes’s Unlawful Conduct Caused Millions in Consumer Harm

122. From May 2008 through July 2013, Integrity Advance obtained \$132,580,041.06 more from its consumers than the amount disclosed in the “Total of Payments” boxes in their TILA disclosures, excluding all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 8; *see also* EC-EX-101.

123. From May 2008 through July 2013, Integrity Advance obtained \$131,433,343.47 more from its consumers than the amount disclosed in the “Total of Payments” box in their TILA disclosures, excluding all fees charged by Integrity Advance and payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 18; *see also* EC-EX-101.

124. Loans where the first transaction occurred on or after August 13, 2011 originated on or after July 21, 2011. Tr. III 37:1–38:6; Tr. II 128:13-129:19.

125. On loans originated on or after July 21, 2011, Integrity Advance obtained \$38,453,341.62 more from its consumers than the amount disclosed in the “Total of Payments” box in their

TILA disclosures, excluding all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 8a; *see also* EC-EX-101.

126. On loans originated on or after July 21, 2011, Integrity Advance obtained \$38,164,153.31 more from its consumers than the amount disclosed in the “Total of Payments” box in their TILA disclosures, excluding all fees charged by Integrity Advance and payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 18a; *see also* EC-EX-101.

127. On or after July 21, 2011, Integrity Advance used remotely created checks to obtain \$115,024.50, excluding all payments denoted as refunds or rebates, from consumers who had revoked or stopped their authorization for Integrity Advance to withdraw funds from their accounts after having paid an amount equal to the “Total of Payments” in the TILA box in the consumers’ loan agreements. Attch. A, Hughes Decl. ¶ 9a; EC-EX-097; Tr. II 152:15 – 153:1; *see also* EC-EX-095; EC-EX-101.

128. On or after July 21, 2011, Integrity Advance used remotely created checks to obtain \$103,623.00, excluding all fees charged by Integrity Advance and payments denoted as refunds or rebates, from consumers who had revoked or stopped their authorization for Integrity Advance to withdraw funds from their accounts after having paid an amount equal to the “Total of Payments” in the TILA box in the consumers’ loan agreements. Attch. A, Hughes Decl. ¶ 19a; EC-EX-097; Tr. II 152:15 – 153:1; *see also* EC-EX-095; EC-EX-101.

Integrity Advance and Carnes’s Unlawful Conduct Connected to First-Time and One-Time Loans Caused Millions in Consumer Harm

129. For all first-time loans from May 2008 through July 2013, Integrity Advance obtained \$69,232,170.39 more from its consumers than the amount disclosed in the “Total of

Payments” box in their TILA disclosures, excluding all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 11; *see also* EC-EX-101.

130. For all first-time loans from May 2008 through July 2013, Integrity Advance obtained \$68,477,934.28 more from its consumers than the amount disclosed in the “Total of Payments” box in their TILA disclosures, excluding all fees charged by Integrity Advance and all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 21; *see also* EC-EX-101.

131. For all first-time loans originated on or after July 21, 2011, Integrity Advance obtained \$12,141,593.76 more from its consumers than the amount disclosed in the “Total of Payments” box in their TILA disclosures, excluding all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 11a; *see also* EC-EX-101.

132. For all first-time loans originated on or after July 21, 2011, Integrity Advance obtained \$11,999,322.85 more from its consumers than the amount disclosed in the “Total of Payments” box in their TILA disclosures, excluding all fees charged by Integrity Advance and all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 21a; *see also* EC-EX-101.

133. For all one-time loans from May 2008 through July 2013, Integrity Advance obtained \$39,734,832.39 more from its consumers than the amount disclosed in the “Total of Payments” box in their TILA disclosures, excluding all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 13; *see also* EC-EX-101.

134. For all one-time loans from May 2008 through July 2013, Integrity Advance obtained \$39,105,182.12 more from its consumers than the amount disclosed in the “Total of

Payments” box in their TILA disclosures, excluding all fees charged by Integrity Advance and all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 23; *see also* EC-EX-101.

135. For all one-time loans originated on or after July 21, 2011, Integrity Advance obtained \$8,934,859.59 more from its consumers than the amount disclosed in the “Total of Payments” box in their TILA disclosures, excluding all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 13a; *see also* EC-EX-101.

136. For all one-time loans originated on or after July 21, 2011, Integrity Advance obtained \$8,807,265.56 more from its consumers than the amount disclosed in the “Total of Payments” box in their TILA disclosures, excluding all fees charged by Integrity Advance and all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 23a; *see also* EC-EX-101.

Proposed Conclusions of Law

1. As the chief executive in charge of Integrity Advance, Carnes is a related person under the Consumer Financial Protection Act (CFPA). 12 U.S.C. § 5481(25)(C)(i).
2. As the ultimate majority owner of Integrity Advance, Carnes is a related person under the CFPA. 12 U.S.C. § 5481(25)(C)(i).
3. As a related person, Carnes is a covered person under the CFPA. 12 U.S.C. § 5481(25)(B).
4. A covered person can be held liable for an unfair or deceptive act or practice when he “engages” in that practice. 12 U.S.C. § 5536(a)((1)(B) (“It shall be unlawful for—(1) any covered person or service provider-(B) to engage in any unfair, deceptive, or abusive act or practice.”).

5. A covered person engages in a deceptive practice when “(1) he participated directly in the deceptive acts *or* had authority to control them, and (2) he had knowledge of the misrepresentations, was recklessly indifferent to the truth or falsity of the misrepresentations, or was aware of a high probability of fraud along with an intentional avoidance of the truth.” *CFPB v. Gordon*, 819 F.3d 1179, 1193 (9th Cir. 2016) (emphasis in original) (quoting *F.T.C. v. Stefanichik*, 559 F.3d 924, 931 (9th Cir. 2009)).
6. By virtue of his direct control over all Integrity Advance operations, policies, and procedures, Carnes participated directly in Integrity Advance’s use of a facially deceptive loan agreement.
7. By virtue of his approval of the company’s loan agreement template, Carnes participated directly in Integrity Advance’s use of a facially deceptive loan agreement.
8. Carnes exercised authority over Integrity Advance and had authority to control the company’s actions, including the use of the facially deceptive loan agreement.
9. Carnes knew that the Integrity Advance loan agreement misrepresented the loan that consumers had accepted.
10. Carnes knew that Integrity Advance disclosed the terms of a multi-payment payday loan as if the loan were a single-payment loan.
11. In light of his knowledge, Carnes was “recklessly indifferent to the truth or falsity of the misrepresentations[.]” *CFPB v. Gordon*, 819 F.3d at 1193.
12. Based on an assessment of all the evidence in the record and of the credibility of the witnesses who testified, Carnes engaged in deceptive acts in violation of the CFPA.

13. An act or practice is “unfair” if it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers” and that “substantial injury is not outweighed by countervailing benefits to consumers or to competition.” 12 U.S.C. § 5531(c).
14. Integrity Advance used remotely created checks against consumers when those consumers had blocked electronic access to their accounts, even when those consumers had satisfied the amount disclosed as the “Total of Payments” in their loan agreement.
15. The language in the Integrity Advance loan agreement which allegedly authorized Respondents’ use of remotely created checks was not clear and conspicuous.
16. The language in the Integrity Advance loan agreement which allegedly authorized Respondents’ use of remotely created checks did not adequately inform consumers of the rights it conferred upon Integrity Advance.
17. Respondents’ use of remotely created checks caused substantial injury to consumers.
18. The injury caused to consumers by Respondents’ use of remotely created checks was not reasonably avoidable.
19. The injury caused to consumers by Integrity Advance’s use of remotely created checks was not outweighed by countervailing benefits to consumers or to competition.
20. Based on an assessment of all the evidence in the record and of the credibility of the witnesses who testified, Integrity Advance’s use of remotely created checks was unfair.
21. By virtue of his direct control over all Integrity Advance operations, policies, and procedures, Carnes participated directly in Integrity Advance’s use of remotely created checks.

22. By virtue of his role of the chief executive of Integrity Advance, Carnes had authority to control the company's use of remotely created checks.
23. Carnes knew that Integrity Advance employed remotely created checks when customers had satisfied the "Total of Payments" in their loan agreements and revoked their ACH authorizations.
24. Based on an assessment of all the evidence in the record and of the credibility of the witnesses who testified, Carnes engaged in unfair acts in violation of the CFPA.
25. The Administrative Law Judge has authority to grant broad relief in this matter, including monetary restitution and civil money penalties. 12 U.S.C. § 5565.
26. Restitution in this matter shall be determined using Enforcement Counsel's proposed methodology of calculating the amount, if any, that each Integrity Advance consumer paid in excess of the amount disclosed in the "Total of Payments" boxes in the TILA disclosures in their loan agreements, excluding all payments denoted as refunds or rebates.
27. Restitution in this matter shall include the amounts of any fees collected by Integrity Advance.
28. Payments collected from consumers who had more than one loan with Integrity Advance shall not be excluded from the restitution calculation.
29. Respondent Integrity Advance, LLC is liable for restitution for payments collected between May 2008 through July 2013.
30. Respondent James R. Carnes is liable for restitution for payments collected on loans that originated on or after July 21, 2011.

31. Based on the violations of law found herein as well as those violations found in the Order Granting in Part and Denying in Part Bureau's Motion for Summary Disposition and Denying Respondents' Motion for Summary Disposition, Respondent Integrity Advance, LLC is liable for restitution in the amount of \$132,580,041.06, which includes all payments made from May 2008 through July 2013 that were in excess of the "Total of Payments" boxes in the TILA disclosures in the relevant loan agreements, excluding all payments denoted as refunds or rebates but including all fees charged and appropriate payments by consumers who had more than one loan with Integrity Advance, LLC.
32. Based on the violations of law found herein, Respondent James R. Carnes is liable for restitution in the amount of \$38,453,341.62, which includes all payments made on loans that were in excess of the "Total of Payments" boxes in the TILA disclosures in the relevant loan agreements, excluding all payments denoted as refunds or rebates but including all fees charged and appropriate payments by consumers who had more than one loan with Integrity Advance, LLC, for loans where the first payment was made on or after August 13, 2011.
33. Carnes's violations of the consumer financial laws warrant the imposition of a civil money penalty.
34. Integrity Advance's violations of the consumer financial laws warrant the imposition of a civil money penalty.

[PROPOSED] ORDER

By reason of the Findings of Fact and Conclusions of Law set forth above in my Recommended Decision, entry of the following order is RECOMMENDED:

It is ORDERED that, pursuant to Sections 1053 and 1055 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5563, 5565, Respondent Integrity Advance, LLC shall pay, within 10 days of entry of this order, RESTITUTION in the amount of \$132,580,041.06 and Respondent James R. Carnes shall pay RESTITUTION in the amount of \$38,453,341.62. It is further ORDERED that, of these amounts, Respondent Integrity Advance, LLC and Respondent Carnes are jointly and severally liable for RESTITUTION in the amount of \$38,453,341.62.

It is FURTHER ORDERED that, pursuant to Sections 1053 and 1055 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5563, 5565, Respondents shall pay all restitution amounts to the Consumer Financial Protection Bureau by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions. The funds received by the Bureau will be deposited into a fund or funds administered by the Bureau or to the Bureau's agent according to applicable statutes and regulations to be used for restitution to injured consumers, and for any attendant expenses for the administration of any such restitution. If the Bureau determines, in its sole discretion, that distributing restitution payments to consumers is wholly or partially impracticable or if funds remain after distribution of restitution is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Respondents

will have no right to challenge any actions that the Bureau or its representatives may take under this paragraph.

It is FURTHER ORDERED that, pursuant to Sections 1053 and 1055 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5563, 5565, and by reason of the violations of law described above, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent Integrity Advance, LLC shall, within 10 days of the entry of this order, pay a CIVIL MONEY PENALTY of \$11,743,920.00 by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

It is FURTHER ORDERED that, pursuant to Sections 1053 and 1055 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5563, 5565, and by reason of the violations of law described above, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent James R. Carnes shall, within 10 days of the entry of this order, pay a CIVIL MONEY PENALTY of \$7,829,280.00 by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

It is FURTHER ORDERED that, to preserve the deterrent effect of the civil money penalty, neither Respondent may, in any other action, argue that Respondent is entitled to, nor may Respondent benefit by, any offset or reduction of any compensatory monetary remedies imposed in that other action because of the civil money penalty paid in this action or because of any payment that the Bureau makes from the Civil Penalty Fund (Penalty Offset). If the court in such an action grants such a Penalty Offset, the Respondent must, within 30 days after entry of a final order granting the Penalty Offset, notify the Bureau, and pay the amount of the Penalty

Offset to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

It is FURTHER ORDERED that, pursuant to Sections 1053 and 1055 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5563, 5565, Respondent James R. Carnes shall provide an ACCOUNTING of all funds he received from Integrity Advance, LLC's operations, including but not limited to any funds received through his ownership of Willowbrook Marketing, LLC or its ownership interest in Hayfield Investment Partners.

It is FURTHER ORDERED that, pursuant to Sections 1053 and 1055 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5563, 5565, Respondent James R. Carnes shall DISGORGE all funds received from Integrity Advance, LLC's operations.

It is FURTHER ORDERED that, pursuant to Sections 1053 and 1055 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5563, 5565, Respondents Integrity Advance and James R. Carnes shall permanently CEASE AND DESIST from collecting, selling, or transferring any debt held by Integrity Advance.

It is FURTHER ORDERED that, pursuant to Sections 1053 and 1055 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5563, 5565, Respondents Integrity Advance and James R. Carnes are ENJOINED from future violations of Federal consumer financial law as defined in Section 1002(14) of the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5481(14).

It is FURTHER ORDERED that, pursuant to Sections 1053 and 1055 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5563, 5565, Respondents Integrity Advance and James R. Carnes shall make best efforts to cause consumer reporting agencies to permanently delete, within 20 calendar days of the entry of this Order, any trade lines or information maintained in regards to consumer loans originated by Integrity Advance.

It is FURTHER ORDERED that, pursuant to Sections 1053 and 1055 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5563, 5565, Respondents Integrity Advance and James R. Carnes shall provide all data in their possession necessary to identify and locate Integrity Advance consumers and to determine the amount of restitution to be paid to each consumer entitled to relief under this Order, shall cooperate fully to assist the Bureau in determining the identity, location, and amount due to each consumer entitled to relief under this Order, and shall respond to any other requests from the Bureau for information about relief, compliance, or any other purpose.

It is FURTHER ORDERED that within 30 days of the entry of a final judgment, consent order, or settlement in a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against either Respondent based on substantially the same facts as established in this proceeding, that Respondent must notify the Bureau of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Respondent paid or is required to pay to consumers

and describe the consumers or classes of consumers to whom that redress has been or will be paid. Respondent shall notify the Bureau:

- a. By overnight courier (not the U.S. Postal Service), as follows:

Anthony Alexis, Esq.
Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1625 Eye Street, N.W.
Washington D.C. 20006; or

- b. By first-class mail to the below address and contemporaneously by email to

Enforcement_Compliance@cfpb.gov:

Anthony Alexis, Esq.
Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington D.C. 20552

It is FURTHER ORDERED that, pursuant to Sections 1053 and 1055 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5563, 5565, Respondents shall provide all requested information in its or its agents' possession or control, submitted as a sworn statement under penalty of perjury, within 21 days of receiving a written request from the CFPB.

IT IS SO ORDERED.

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

Done and dated on this day of September, 2016 at
Alameda, California