

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING)
File No. 2015-CFPB-0029)
)
) [PROPOSED]
) **FINDINGS OF FACT**
In the matter of:)
)
INTEGRITY ADVANCE, LLC and)
JAMES R. CARNES)

[PROPOSED] FINDINGS OF FACT

Pursuant to 12 C.F.R. § 1081.305(a)(1), Respondents Integrity Advance, LLC and James R. Carnes (collectively, “Respondents”) hereby submit the following Proposed Findings of Fact:

FINDINGS OF FACT

I. Background

1. Integrity Advance, LLC was a Delaware licensed, short-term, small-dollar lender. *See* Hr’g Tr. I-93:25 – I-94:2; RX-007 – RX-014.
2. Integrity Advance was formed on July 2, 2007. RX-007. Integrity Advance is a subsidiary company to Hayfield Investment Partners (“HIP”). *Id.* at I-100:14-17.
3. EZ Corp. purchased a set of assets from HIP in December of 2012. *Id.* at I-238:9-11. EZ Corp. did not purchase Integrity Advance, *id.* at I-237:19-21, but did purchase a partial customer list from the Company, *id.* at I-237:22 – I-238:13.

4. Integrity Advance ceased offering loans in December 2012. Dkt. 111, Order Granting In Part and Denying In Part Bureau’s Mot. for Sum. Disp. and Denying Respondents’ Mot. for Sum. Disp. at 5; Hr’g Tr. II-92:8-9.

II. The Administrative Adjudication

5. On November 18, 2015, Enforcement Counsel filed a Notice of Charges (“Notice”) against Respondents Integrity Advance and James R. Carnes. Dkt. 1. Against Integrity Advance solely, the Notice claims violations of the Truth-in-Lending Act (“TILA”) (Count One) and the Electronic Fund Transfer Act (“EFTA”) (Count Five) and corresponding violations of the Consumer Financial Protection Act (“CFPA”) (Counts Two and Six). Against Integrity Advance and Mr. Carnes, the Notice claims violations of the CFPA for deceptive loan agreement disclosures (Count Three) and unfair use of remotely-created checks (Count Seven).

6. The Court granted summary disposition as to liability to Enforcement Counsel on Counts One, Two, Five, and Six. *Id.* at 44. The Court granted summary disposition as to liability to Enforcement Counsel on Count Three solely against Integrity Advance. *Id.*

7. On July 12, 2016, The Court granted Enforcement Counsel’s stipulated motion to withdraw Count Four with prejudice. Dkt. 133, Order Granting Enforcement Counsel’s Stipulated Motion to Withdraw Count IV with Prejudice

III. Mr. Carnes did not know, had no reason to know, and did not recklessly avoid knowing about any deception stemming from Integrity Advance’s loan disclosures

A. Mr. Carnes had no involvement with Integrity Advance’s loan agreement

Timothy Madsen

8. Timothy Allen Madsen worked for HIP for approximately five years (2008–2013) as Vice President of Marketing. *Id.* at I-27:10-14; I-28:4-8, I-29:6-8.

9. Mr. Madsen's job was to purchase leads¹ and manage relationships with lead providers for Integrity Advance, as well as manage leads internally and coordinate with Integrity Advance's call center regarding leads. *Id.* at I-28:9-13, 24-25; *id.* at I-29:1-5. As part of his duties, Mr. Madsen monitored lead acceptance, purchase rates, and conversion rates through a dashboard system. *Id.* at I-45:13-25. Mr. Madsen coordinated interactions between Integrity Advance and its third party call center. *Id.* at I-63:6-7.

10. Mr. Madsen's job did not involve any aspect of Integrity Advance's loan agreement. *Id.* at I-67:7-20.

11. Mr. Madsen did not draft, edit, revise, or review Integrity Advance's loan agreement. *See id.* (stating that none of Mr. Madsen's job duties involved the loan agreement).

12. Mr. Madsen discussed conversion rates, performance of leads, first payment defaults, and, generally, lead generation with Mr. Carnes as part of his job duties. *Id.* at I-67:1-6.

13. Mr. Madsen did not discuss Integrity Advance's loan agreement with Mr. Carnes. *Id.* at I-67:21-24. Mr. Madsen similarly testified that he never discussed the language of loan disclosures with Mr. Carnes. *Id.* at I-67:25 – I-68:1-6.

Bruce Andonian

14. Bruce Andonian worked for HIP for approximately two years (2011–2013) as Director of Software Development. *Id.* at I-70: 12-13, I-71:5, I-75:11-12.²

15. Mr. Andonian reported to directly to Mr. Foster, and ultimately to Mr. Carnes. *Id.* at I-72:5-6.

¹ The term "lead" refers to information relating to potential applicants for Integrity Advance loans. *See id.* at I-116:6-23.

² Willowbrook Partners owns 50.3% of HIP. EC-EX-067. Willowbrook served as the manager for HIP. *See Hr'g Tr.* II-8:2-3.

16. Mr. Andonian's job was to manage the software development team for HIP's Empower product. *Id.* at I-83:7-8. Related to Integrity Advance, Mr. Andonian's job was to address issues with Integrity Advance's website and database. *See id.* at I-89:10-16. Mr. Andonian did not begin working on the Integrity Advance website until Mr. Foster asked him to fill in for another employee. *Id.* at I-84:3-6. In conjunction with his duties, Mr. Andonian attended weekly IT meetings to discuss the different products covered under the Willowbrook/HIP umbrella. *Id.* at I-75:16-25 – I-76:1-17.³

17. Mr. Andonian did not draft, edit, revise, or review Integrity Advance's loan agreement. *See id.* at I-87:24 – I-88:12.

18. As part of his job duties, Mr. Andonian discussed with Mr. Carnes issues with Integrity Advance's website and database. Mr. Andonian testified that Mr. Carnes would be involved with Integrity Advance issues when "[s]omething wasn't working properly." *Id.* at I-75:8-9. Mr. Andonian specified that he typically discussed issues with Integrity Advance's database with Mr. Carnes when "the data base was running slow or if we weren't accepting leads or the conversion rate was low" *Id.* at I-75:7-12.

19. Mr. Andonian did not discuss the language of Integrity Advance's loan agreement, the disclosures in the loan agreement, edits, or revisions to the loan agreement or its disclosures, with Mr. Carnes. *Id.* at I-87:24 – I-88:12.

³ Integrity Advance was not the focus of the weekly IT meetings. Mr. Andonian testified that "there wasn't [sic] a lot of Integrity Advance topics on our task list." *Id.* at I-76:21-22. In fact, Integrity Advance's business took up merely five minutes out of an hour-long monthly meeting, *id.* at I-85:20-23 – equating to roughly two hours out of the total 4,000 hours that Mr. Andonian spent working on Willowbrook-related matters, *id.* at I-87:15-19 (representing 0.05% of Mr. Andonian's time at Willowbrook/HIP).

20. Mr. Andonian did not discuss scripts used by call center representatives, or edits or revisions to such scripts, with Mr. Carnes. *Id.* at I-88:13-21.

Edward Foster

21. Edward Foster worked for HIP as General Counsel, Executive Vice President, Secretary, and Assistance Treasurer. *Id.* at II-7:24 – II-8:4, II-8:10-12. In June of 2010, Mr. Foster also took on the role of Chief Operations Officer of HIP. *Id.* at II-12:3-8.

22. Relating to Integrity Advance, Mr. Foster’s job was primarily to provide corporate legal counsel to the Company. *Id.* at II-8:13-15.

23. Mr. Foster discussed all of the HIP subsidiaries with Mr. Carnes as part of his job duties. While Mr. Foster and Mr. Carnes discussed Integrity Advance more often towards the beginning of the business, the time spent on Integrity Advance matters eventually became “a very small percentage of the time spent on things.” *See id.* at II-10:2 – II-11:11.

James R. Carnes

24. Mr. Carnes worked for HIP as Chief Executive Officer. *Id.* at I-94:7-12.

25. The evidence shows that Mr. Carnes’ job focused on the external business aspects of Integrity Advance, including business relationships with vendors and customer intake (*i.e.*, lead generation and conversion), as well as troubleshooting high priority issues that rose to his attention. *See supra* ¶¶ 12, 18; *infra* ¶¶ 35–38 (discussing instances of Mr. Carnes’ specific involvement in Integrity Advance’s business).

26. Mr. Carnes’ job did not involve Integrity Advance’s loan agreement, other than possibly “flipping through it.” *See id.* at I-229:2-6.

27. Mr. Carnes did not draft, edit, or revise Integrity Advance’s loan agreement template or any version of the agreement. *Id.* at II-75:11-25, II-76:1-13.

28. Mr. Carnes did not discuss the loan agreement template with its drafters (legal counsel from an outside law firm) or Integrity Advance personnel. *Id.* at I-227:10-12. Mr. Carnes testified that he did not recall Integrity Advance’s in-house counsel, Mr. Foster, ever explaining Integrity Advance’s loan agreement to him. *Id.* at I-231:11-12. Mr. Carnes did not recall specific conversations with Integrity Advance personnel about the loan agreement. *Id.* at I-232:14-17.

29. Mr. Carnes did not discuss the Integrity Advance loan agreement with the Delaware regulator. *Id.* at II-96:21-23. Further, Mr. Carnes testified that he was not aware of any discussions the other Integrity Advance personnel may have had with the Delaware regulator. *Id.* at II-96:24 – II-974.

30. Mr. Carnes did not substantively approve of Integrity Advance’s loan agreement template or loan disclosures. *See, e.g.*, I-228:6 – I-229:6. Mr. Carnes only approved Integrity Advance’s loan agreement to the extent that he, as CEO of HIP, effectively approved everything. Mr. Carnes testified that, while, “as CEO you are ultimately approving everything”, he did not substantively review Integrity Advance’s loan agreement template and did not “stamp[] [his] approval”). *Id.* at I-228:8-9, I-232:1-3.

31. Mr. Carnes did not substantively approve of Integrity Advance’s website or website contents. *Id.* at I-216:24 – I-217:15. Mr. Carnes testified that he only approved Integrity Advance’s website “at a high level”). *Id.* at I-217:13-15.

32. Mr. Carnes did not review, edit, revise, or discuss call center scripts. *Id.* at II-74:13-25, II-75:1-9. Indeed, Mr. Carnes never saw any call center scripts. *Id.* at II-75:10.

B. Integrity Advance was only one of many companies under the HIP umbrella that demanded Mr. Carnes’ attention

33. Mr. Carnes testified that, as CEO of HIP, he was “*de facto*” CEO of Integrity Advance, *id.* at I-94:7-9, I-105:10-12, I-210:3-5, II-49:10-11, II-63:6-8, and was in charge of Integrity Advance merely to the extent that “any CEO is in charge” *Id.* at I-210:8.

34. HIP is the parent company of Integrity Advance, as well as approximately thirty other entities, at various times, EC-EX-067; Hr’g Tr. I-100:20 – I-101:21.

35. As CEO of HIP, Mr. Carnes was the “*de facto*” CEO of HIP’s subsidiary businesses. *Id.* at II-63:6-8. HIP’s subsidiaries included fourteen distinct business interests. *Id.* at II-64:22 – II-65:8.

36. In addition, Mr. Carnes’ time was also taken up by business interests outside of HIP. *See id.* at II-66:9-19.

37. Mr. Carnes’ active involvement with HIP, as well as with Integrity Advance, changed over time. Mr. Carnes spent 75% of his time on all HIP businesses in 2008, 70% in 2009, 60% in 2010, 50% in 2011, and 80–90% in 2012 (which involved HIP’s asset sale to EZ Corp.). *Id.* at II-67:8-12, II-68:23 – II-69:9.

38. Of Mr. Carnes’ time spent on HIP businesses, he focused a percentage on Integrity Advance: 66% in 2008, 50% in 2009, 25% in 2010, 15% in 2011, and 15% in 2012. *Id.* at II-67:8-12, II-69:10 – II-71:3.

39. The percentage of Mr. Carnes’ total time that was focused on Integrity Advance issues can be seen in the chart below:

Year	Time Focused on HIP	Time Focused on Integrity Advance	Total Time Focused on Integrity Advance
2008	75%	66%	49.5%
2009	70%	50%	35%
2010	60%	25%	15%
2011	50%	15%	7.5%
2012	80–90%	15%	12–13.5%

C. Mr. Carnes was involved when Integrity Advance issues rose to his attention

40. Mr. Carnes was not an absentee CEO and did not ignore problems when they arose. Mr. Carnes testified that he would discuss a “significant problem” with Mr. Foster, but that, “[i]f it was a problem that Mr. Foster could handle on his own, and I . . . didn’t need to be brought into the loop that is what he was there to do.” *Id.* at I-215:15-18. During his testimony, Mr. Andonian agreed that “if there was a problem with the website or with the software,” he would address the issue with Mr. Carnes. *Id.* at I-90:12-15.

41. Mr. Carnes testified that if Integrity Advance’s “data base [*sic*] become [*sic*] very slow for some reasons and was causing us problems in approving consumers, that is something that I would be brought into the database so I would be aware, because that would a reaching effects throughout the rest of the business.” *Id.* at I-216:4-9.

42. The evidence shows that Mr. Carnes helped resolve issues that rose to his attention. In a chain of e-mails from February 2011, Mr. Carnes responded to the fraudulent actions of a rogue employee from the third party call center by instructing Integrity Advance personnel to:

- 1) Take care of customers who had been wrongfully charged and refund any fees and bank charged the customers incurred;
- 2) Perform further investigation to uncover any other potential harm; and
- 3) Instruct the call center to alert the authorities.

EC-EX-087; Hr’g Tr. I-176:1 – I-178:11.⁴

⁴ Enforcement Counsel’s claims cannot, as a matter of law, apply to conduct prior to July 21, 2011, and Respondents generally objected to the introduction of evidence pre-dating this time period. *See, e.g.*, Dkt. 132, Resp’ts’ Omnibus Mot. in Limine to Exclude Evid. at 4–5; Hr’g Tr. I-127:17-23, I-128:18-23, I-131:6-17. Respondents specifically objected to EC-EX-087. *Id.* at I-176:21-23.

43. In another instance, Mr. Carnes provided input on a problem with the third-party call center's performance under its contract with Integrity Advance. *See* Hr'g Tr. I-178:12 – I-180:21. In an e-mail chain from November 2008, Mr. Madsen escalated an issue with lead conversion at the call center for Mr. Carnes' review and input, which Mr. Carnes provided. *Id.* at I-179:18 – I-180:21; EC-EX-088.⁵

44. Regarding Mr. Carnes' style of management, Mr. Madsen testified that Mr. Carnes "operated a small internet [*sic*] company, as president or CEO the same way as I would expect from any other president or CEO, he was involved when he needed to be, and he gave you room to work when you needed it from that perspective as well." *Id.* at I-52:17-21.

45. Mr. Carnes addressed issues that rose to his attention, but was not personally and substantively involved in every aspect of Integrity Advance's business. For instance, testimony from Mr. Carnes indicates that he could have signed agreements with vendors without actually being involved in the negotiations, knowing that such agreements were reviewed by others, including Mr. Foster. Hr'g Tr. I-122:22 – I-124:7, I-125:25 – I-126:1-6, I-129:7-11.

IV. Mr. Carnes had no reason to think that Integrity Advance's loan agreement disclosure might be found to be deceptive

A. Mr. Carnes is not a consumer financial regulation expert

46. Mr. Carnes was not, and is not, a consumer financial regulation expert. *See id.* II-26:20-23. Similarly, Mr. Foster's field was not in consumer financial regulations. *See id.* I-232:5-6.

47. Mr. Foster testified that "[n]o one at the Hayfield group of companies, including myself or Mr. Carnes, were consumer lawyers or experts in consumer law. So the strategy of the company was to always have highly compensated, highly acknowledged and reputable

⁵ Respondents objected to EC-EX-088 as pre-dating July 21, 2011. *Id.* at I-178:24 – I-179:2.

consumer law counsel, outside counsel, to provide the counsel and guidance on those matters.”

Id. at II-26:20-25 – II-27:1.

B. Integrity Advance used experienced third-parties to create and implement a compliant and industry-standard loan agreement

48. Integrity Advance hired outside counsel to create loan documents that conformed to Delaware and federal law. *Id.* at II-95:10-13; *id.* at I-227:17-21. Mr. Carnes testified that “we hired an outside counsel to come up with the loan agreement. We trusted that that was the best thing to do and we used it.” *Id.* at I-231:23-25. Mr. Carnes further testified that: “[w]e hired outside counsel to create and give us loan documents that conformed with the Delaware and federal law. Once they gave us those documents, we took them and through our IT department, implemented them into our loan management system to use to lend to consumers.” *Id.* at II-95:11-16.

49. Mr. Carnes further testified that Integrity Advance used an industry standard fee, but did not recall who, if anyone, made an affirmative decision to use the industry standard. *Id.* at II-48:23 – I-49:6.

50. Integrity Advance’s loan agreement was implemented by a third-party call center that had experience in the loan process. *Id.* at I-133:16 – I-135:23.

C. There were no signs that Integrity Advance’s loan agreement might later be found to be non-compliant or found to be misleading to consumers

51. There is no evidence that Mr. Carnes was ever alerted to the fact that the TILA disclosure on Integrity Advance’s loan agreements might be incorrect, or that the Company’s customers may have been confused about their repayment obligations.

52. Mr. Foster testified that matters dealing with repayment of Integrity Advance loans were “handled specifically by the call centers on a day-to-day basis.” *See id.* at II-16:4-6.

53. Consumer complaints were handled primarily by customer service representatives (“CSRs”) at the third-party call center, or escalated to a call center manager. *Id.* at II-30:2-7.

54. Consumer complaints that were escalated beyond the third-party call center were ultimately the responsibility of Integrity Advance’s legal group and Mr. Foster. *Id.* at II-30:15-16.

55. The evidence shows that Integrity Advance received only a *de minimis* number of complaints from consumers, which did not rise to the level of Mr. Carnes’ personal awareness. *See id.* at I-233:18-22.

56. Integrity Advance had a high rate of repeat customers. *Infra* ¶ 96.

57. Repeat customers took out a majority of the loans originated by Integrity Advance. *Infra* ¶ 98.

58. Many repeat customers took out five or more loans. *Infra* ¶ 197.

59. The evidence shows that Integrity Advance personnel, including Mr. Carnes had access to and reviewed information regarding the number of repeat customers through an Integrity Advance dashboard. *See Hr’g Tr.* I-46:6 – I-47:10. Mr. Madsen testified that “[w]e could see returning customers, the number of returning customers coming back to use and taking out new loans.” *Id.* at I-46:11-13.

60. Licensure by the Delaware Office of the State Bank Commissioner and annual renewal of Integrity Advance’s license indicated to Mr. Carnes and other HIP personnel that there were no issues with Integrity Advance’s loan agreement.

61. Mr. Foster testified that “the vast majority of that, what the [Integrity Advance loan] product looked like and how it functioned was defined by Delaware law. *Id.* at II-19:22-24.

62. The Delaware regulator's licensing process involves a review of an applicant's financial documents, business references, personal information of executives, and the applicant's loan contract. *See id.* III-125:23 – III-126:22.

63. Elizabeth Quinn Miller, Senior Investigator for the Delaware Office of the State Bank Commissioner testified that she reviewed loan contracts and paid particular attention to the “fed boxes,” (i.e. the TILA box) stating “[t]here are a couple of things in our statute that I know need to be in there, and they are usually right there in the fed boxes right on front. I can look for those and make sure that, that part of our statute is being adhered to.” *Id.* at III-126:16 – 127:18. She further testified that this has been regulator's practice going back ten years to 2006. *Id.* at III-128:1-10.

64. Ms. Miller further explained that Delaware lenders must renew their licenses annually. *Id.* at III-129:19-22.

65. Ms. Miller also indicated that lenders' loan agreement were reviewed during the examination process. *Id.* at III-131:16-21.

66. Testimony from Ms. Miller shows that Delaware law sets parameters with which loans must comply – including the number of allowed renewals. *See Hr'g Tr.* III-135:1-11, III-138:3-11.

67. Mr. Carnes had a high-level understanding that Delaware granted Integrity Advance a lending license, and renewed the license annually upon the Company's application. *Id.* at II-80:13-25, II-81:1-13. Mr. Carnes knew that Integrity Advance received approval to lend every year and “posted the license on [the company's] website.” *Id.* at II-82:7-9.

68. Mr. Carnes' understanding of Integrity Advance's compliance with the Delaware laws, licensing and review process, access to information on Integrity Advance's returning

customer rate, as well as the lack of consumer complaints that rose to his attention, and Mr. Carnes' lack of involvement in the creation or substantive review of Integrity Advance's loan agreement shows the Mr. Carnes did not have any knowledge or reason to think that Integrity Advance's loan agreement disclosure might be found to be deceptive.

V. Integrity Advance's Use of Remotely Created Checks Was Not Unfair

69. Remotely created checks ("RCCs" or "demand drafts") are legal and were legal during all relevant times Integrity Advance operated. *Id.* at II-181:17-18; II-183:6-11; II-188:5 – 189:10.

70. Remotely created checks are a legitimate payment mechanism governed by the Uniform Commercial Code (U.C.C. § 3-104(f)) and Regulation CC (12 C.F.R. § 229.2(f)).

71. Joseph Phillip Baressi, III, an attorney in the CFPB's Office of Regulations, testified that RCCs are currently lawful payment mechanisms, and were lawful at all operative times in at issue in this proceeding. Hr'g Tr. II-188:5 – II-189:10.⁶

72. RCCs have not been banned regarding short-term loans. *Id.* at II-183:10-12.

73. Integrity Advance used remotely created checks in less than one percent of all loans during the post-July 21, 2011 period. EC-EX-97 at 1, 5.

74. Integrity Advance rarely used remotely created checks and did so only after numerous attempts to contact a customer to set up alternative payment arrangements. Hr'g Tr. at II-84:7-85:12.

75. The decision to use RCCs was made by the third-party call center on a case-by-case basis. Mr. Foster testified that repayment issues were "handled specifically by the call centers on a day-to-day basis." *See id.* at II-16:4-6.

⁶ Mr. Baressi's testimony is subject to Respondents' pending motion to strike. *See* Dkt. 153, Resp'ts' Mot. to Strike Test. of Joseph Baressi (Aug. 5, 2016).

76. Use of RCCs was a last resort. Mr. Carnes testified that RCCs were “very sparsely used,” *id.* at II-84:20-21, and that “very very few [loans] . . . went down that path,” *id.* at II-85:8-11.

77. Mr. Carnes testified that of the total universe of Integrity Advance loans, RCCs were used on “well under one percent” of loans, and RCCs were only used when customers had no payment option in place and “through numerous calls and e-mails refused to contact [Integrity Advance] and set up alternate payment arrangements.” *Id.* at II-84:22 – II-85:8.

78. Integrity Advance offered many ways to repay loans in alternative to ACH withdrawal. *Id.* at II-85:15-17.

79. For example, Integrity Advance customers could pay by personal check, debit card, credit card, Paypal account, Western Union, or MoneyGram. *Id.* at II-97:12-23. Mr. Carnes testified that Integrity Advance “accepted all forms of payments beside cash that [the Company] could think of.” *Id.* at II-97:23-25.

80. Mr. Carnes testified that Integrity Advance customers could even stop the RCC process if it had been initiated by contacting Integrity Advance and informing the Company of a desired payment method. *See id.* II-85:15-17.

81. Enforcement Counsel has not identified any customer complaints relating to RCCs that post-date July 21, 2011. *See* Dkt. 88E, Ex. 24 at 48.

82. Enforcement Counsel did not conduct any independent investigation into why a customer may have placed a “stop payment” or withdrawn authorization for a particular ACH debit. In particular, Robert Hughes, Enforcement Counsel’s data scientist, testified that any investigation into actual customer interactions was “outside of the scope of the analysis he had been asked to perform.” Hr’g Tr. at III-20:2 – III-21:9.

83. Integrity Advance customers signed an ACH authorization that expressly acknowledged the possibility that Integrity Advance could use demand drafts to satisfy unpaid balances. *See, e.g.*, EC-EX-001.

84. The ACH authorization was in a separate section of the Loan Agreement, and the demand draft paragraph as located at the bottom of the first page of that authorization. *Id.*

85. The demand draft language in the ACH authorization clearly stated that customers could “provide [Integrity Advance] with another form of payment,” including, but not limited to, a cashier’s check or money order. *Id.*

86. The demand draft language included the following authorization: “[Y]ou 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.” *Id.*

VI. Mr. Carnes Did Not Know, Had No Reason to Know, and Did Not Recklessly Avoid Knowing that the Use of RCCs in Accordance with Integrity Advance’s Loan Agreement Would be Held to be Unfair

87. Regarding RCCs, Mr. Carnes knew only that RCCs were a possible repayment mechanism under Integrity Advance’s loan agreement, and that RCCs were used infrequently as a last resort repayment option. *Supra* ¶¶ 73–77.

88. Mr. Carnes did not write, edit, or revise the loan agreement, including the ACH authorization or any provisions relating to RCCs. *Supra* ¶¶ 28-33.

89. Integrity Advance’s third party call center handled customer repayment on a day-to-day basis. *Supra* ¶¶ 52, 75.

90. The evidence contains no consumer complaints regarding RCCs within the relevant timeframe for Enforcement Counsel’s CFPA claims.

91. Moreover, Mr. Carnes testified that consumer complaints did not rise to the level of his personal attention and awareness. *Supra* ¶ 55.

92. There is no evidence that Mr. Carnes knew, should have known, or recklessly avoided knowing that the use of RCCs might later be found to result in consumer unavoidable consumer injury.

VII. There Is No Evidence of Consumer Injury

93. There is no evidence that the Integrity Advance loan agreement disclosures or Integrity Advance's use of RCCs caused injury to any consumers.⁷

94. Integrity Advance required customers to repay fully their first loan before taking out a second loan. *See* Hr'g Tr. II-15:19-22. Customers taking out a second loan were repeat customers (or "VIP customers"). *See id.*

95. Thus, before Integrity Advance customers became repeat customers, they were necessarily fully informed of how the loan agreement, including rollovers, worked.

96. Since July 21, 2011, a total of 26,129 customers (48% of Integrity Advance customers since July 21, 2011) chose to take out two or more loans. *See* RX-021. More broadly, a total of 57,798 customers (32% of all Integrity Advance customers) chose to take out two or more loans. *Id.*

97. Since July 21, 2011, more than 6,527 customers chose to take out *five or more* loans and 926 customers chose to take out *ten or more loans*. *See* RX-020. More broadly, out

⁷ The first (and only) time Enforcement Counsel even discussed consumer injury was a hypothetical presumption of it during their closing argument. *See* Hr'g Tr. III-203:16-20 ("I think if you ask any of the consumers whose funds were taken in amounts higher than the amounts that they expected whether they were harmed, they would uniformly say yes.").

of all Integrity Advance customers, 8,447 customers chose to take out five or more loans and 1,039 customers chose to take out ten or more loans. *Id.*

98. Of the 82,980 loans originated on or after July 21, 2011, 66% of those loans were loans to repeat customers. *See* RX-021. More broadly, 60% of *all* Integrity Advance loans were to repeat customers. *Id.*

99. The lack of evidence of consumer injury shows that Enforcement Counsel is not entitled to equitable monetary relief against Integrity Advance or Mr. Carnes.

100. The lack of evidence of any potential future injury shows that Enforcement counsel is not entitled to injunctive relief against Integrity Advance or Mr. Carnes.

101. The evidence shows that Enforcement Counsel is not entitled to any civil money penalties against Integrity Advance.

102. The evidence shows that Enforcement Counsel is not entitled to any civil money penalties against Mr. Carnes.

Respectfully submitted,

Dated: August 29, 2016

By: /s/ Allyson B. Baker
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CERTIFICATION OF SERVICE

I hereby certify that on the 29th day of August, 2016, I caused a copy of the foregoing Proposed Findings of Fact 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 electronic mail on the following parties who have consented to electronic service:

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