

1 UNITED STATES OF AMERICA

2 Before the

3 CONSUMER FINANCIAL PROTECTION BUREAU

4
5 In the Matter of :
6 : Administrative Proceeding
7 INTEGRITY ADVANCE, LLC : File No. 2015-CFPB-0029
8 and JAMES R. CARNES, :
9 Respondent. :

10
11 REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
12 HEARING (Volume I of III)

13
14 Washington, D.C.
15 Tuesday, July 19, 2016

16 BEFORE:

17 HONORABLE PARLEN L. McKENNA, ADMINISTRATIVE LAW JUDGE

1 APPEARANCES:**2 For the Agency:**

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4 Wendy J. Weinberg, Esquire

5 Vivian W. Chum, Esquire

6 Craig A. Cowie, Esquire

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9 Peter S. Frechette, Esquire

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11 Andrew T. Hernacki, Esquire

12 Hillary S. Profita, Esquire

13 Venable, LLP, Washington, D.C. 20004

14 On Behalf of Mr. Edward Foster

15 Gerald S. Sachs, Esquire

16 ALSO PRESENT:

17 For the Administrative Law Judge:

18 Heather MacClintock, Esquire

19 Lauren S. Staiti, Esquire

20 Sally Gessner, Official Court Reporter

21 Jeannie A. Milio, RPR

22 Official Court Reporter

23 ALJ Office, Baltimore, Maryland 21202-4022

T A B L E O F C O N T E N T S

Page

OPENING STATEMENTS

By Mr. Wheeler

I-9

By Ms. Baker

I-17

ENFORCEMENT COUNSEL WITNESSES:

	DIRECT	CROSS	REDIRECT
Timothy Madsen	I-27	I-66	--
Bruce Andonian	I-70	I-82	I-89
James R. Carnes	I-93	--	--

ENFORCEMENT COUNSEL'S EXHIBITS: ADMITTED INTO EVIDENCE

Exhibit No. 15 I-195

Exhibit No. 16 I-198

Exhibit Nos. 17-38 I-208

Exhibit Nos. 39-40 I-208

Exhibit No. 41 I-197

Exhibit No. 42 I-183

Exhibit No. 43 I-190

Exhibit No. 44 I-192

Exhibit No. 45 I-160

Exhibit No. 53 I-124

Exhibit No. 54 I-128

Exhibit No. 55 I-142

Exhibit No. 85 I-133

Exhibit No. 87 I-177

Exhibit No. 88 I-179

Exhibit No. 91 I-172

P R O C E E D I N G S

JUDGE McKENNA: Come to order.

Call the case in the matter of Integrity Advance, LLC and James R. Carnes, this proceeding is before the Consumer Financial Protection Bureau. My name is Parlen L. McKenna and I'm the judge assigned to hear and decide this case. I will take appearances starting with the government.

MR. WHEELER: Alusheyi Wheeler on behalf of Enforcement Counsel, Your Honor.

MS. CHUM: Good morning, Your Honor. Vivian Chum on behalf of Enforcement Counsel.

MS. WEINBERG: Wendy Weinberg on behalf Enforcement Counsel.

JUDGE MCKENNA: For the Respondents.

MS. BAKER: Allyson Baker on behalf of the Respondents. Good morning, Your Honor.

JUDGE McKENNA: Good morning.

MR. HERNACKI: Good morning, Your Honor. Andrew Hernacki on behalf of Respondents.

JUDGE McKENNA: Spell it.

MR. HERNACKI: H-E-R-N-A-C-K-I.

JUDGE MCKENNA: Thank you.

MS. FOLEY: Good morning, Your Honor. Danielle Foley, F-O-L-E-Y on behalf of Respondents.

1 MS. PROFITA: Good morning, Your Honor.
2 Hillary Profita on behalf of Respondents,
3 P-R-O-F-I-T-A.

4 MR. FRECHETTE: Good morning. Peter Frechette
5 on behalf of Respondents, F-R-E-C-H-E-T-T-E.

6 JUDGE MCKENNA: F-R-E?

7 MR. FRECHETTE: C-H-E-T-T-E.

8 JUDGE MCKENNA: Great.

9 Prior to going on the record, the parties and
10 myself discussed the issue of how are we going to
11 resolve Mr. Foster, Mr. Edward Foster, to facilitate
12 his testimony. And Enforcement Counsel indicated that
13 they wish to do him telephonically. Mr. Foster's
14 attorney is present here. And would you like to make
15 an appearance?

16 MR. SACHS: Gerald Sachs on behalf of
17 Mr. Foster, limited appearance just for that purpose.

18 JUDGE MCKENNA: All right. S-A-C-H-S?

19 MR. SACHS: Exactly, Your Honor.

20 JUDGE MCKENNA: Did you get that?

21 COURT REPORTER: Yes.

22 JUDGE MCKENNA: So Respondent's counsel had
23 no objection to that approach. What is the issue
24 regarding the deposition?

25 MR. WHEELER: The issue, Your Honor?

1 JUDGE McKENNA: Yeah, what are you doing with
2 the deposition, Mr. Foster's deposition?

3 MR. WHEELER: I believe it was admitted into
4 evidence.

5 JUDGE McKENNA: Okay.

6 MS. BAKER: Your Honor, if I may address that,
7 Allyson Baker, our position is that we will stipulate
8 that his deposition would come into evidence provided
9 he not have to testify, but to have him testify and
10 also have his deposition in evidence seems cumulative.

11 JUDGE McKENNA: All right. Duly noted.

12 All right. Since the deposition is already
13 admitted, then the question would be are you
14 indicating at this point that you want to object --
15 re-assert your objection to Mr. Foster testifying?

16 MS. BAKER: Well, I didn't originally --

17 JUDGE McKENNA: One or the other.

18 MS. BAKER: -- proffer an objection, but I
19 will proffer an objection now because frankly, to
20 admit in its entirety the transcript of an
21 investigational hearing usually is done in court only
22 when a witness is not available to testify. It is not
23 an admission of a party opponent, and so it seems
24 unnecessary and cumulative, to have both an
25 investigational hearing transcript admitted and also

1 to have testimony from a witness. It's actually
2 hearsay unless that witness is unavailable to testify.

3 So that's our position and as I have said
4 before we will stipulate that the entire deposition
5 comes into evidence in the event Mr. Foster cannot
6 testify, but if he is going to be testifying, then to
7 admit his transcript into evidence as well is just
8 mere hearsay.

9 JUDGE McKENNA: Well --

10 MS. BAKER: The entirety of it, Your Honor.

11 JUDGE McKENNA: Right. But hearsay is
12 admissible in these proceedings, number one. Number
13 two, that when Mr. Foster is called, did you give this
14 deposition, is this a true and correct copy of what
15 you testified to during the investigational --
16 investigation, and if he says yes, then he can adopt
17 it.

18 So I'm going to deny the objection. And I
19 would invite you to reassert if things start to go
20 awry from your perspective.

21 MS. BAKER: Thank you, Your Honor.

22 Your Honor, may I ask for a point of
23 clarification? Is it the Court's position that
24 hearsay no matter comes in? Or is it the Court's
25 position that hearsay is not in and of itself a factor

1 in excluding a piece of evidence if it is otherwise
2 probative in the Court's decision making?

3 I read the rules to not have hearsay be in and of
4 itself a per se gatekeeper prohibiting the admission
5 of evidence, but I don't believe that hearsay -- just
6 because something is hearsay doesn't mean it comes in
7 automatically. And that's my question here, I mean,
8 I'm a little bit unclear about how that rule --

9 JUDGE MCKENNA: All right.

10 MS. BAKER: -- is playing itself out in this
11 instance.

12 JUDGE MCKENNA: And I'm sure that you know how
13 squishy that subject is. So what -- the position that
14 I normally take is that I allow hearsay in except in
15 the most egregious cases of three times removed
16 hearsay. And then the question really is what is the
17 reliability of what is being asserted. And that is a
18 gauge, but that gauge is usually employed on the back
19 end not the front end.

20 All of this goes to weight, and so that's -- I
21 hope that answers your question.

22 MS. BAKER: Thank you, Your Honor, it does.

23 JUDGE MCKENNA: All right. Anything further
24 before we have opening statements?

25 MR. WHEELER: Not on behalf of Enforcement

1 Counsel, Your Honor.

2 MS. BAKER: No, thank you.

3 JUDGE McKENNA: All right. Thank you.

4 MR. WHEELER: I'm not sure this is on, do you
5 need this on?

6 COURT REPORTER: That would be my preference.

7 MR. WHEELER: I don't know if I -- anyone
8 knows where the --

9 (Brief discussion regarding microphone.)

10 MR. WHEELER: I'll just do my best to project.

11 **OPENING STATEMENT BY MR. WHEELER:**

12 MR. WHEELER: Good morning, again, Your Honor.

13 My name is Alusheyi Wheeler on behalf of
14 Enforcement Counsel. As you know, Your Honor,
15 Integrity Advance was an online payday lender that
16 provided loans to consumers. The consumer took those
17 loans they received --

18 JUDGE McKENNA: Louder.

19 MR. WHEELER: Louder? Okay. When consumers
20 took those loans, they received a disclosure, a Truth
21 in Lending Act Disclosure. That disclosure suggested
22 that the consumer had taken a single payment loan.
23 The APR, the finance charge, and the total of payments
24 were all calculated in that disclosure assuming the
25 loan would be repaid in a single payment.

1 But, as you know, Your Honor, unless the
2 consumer called Integrity Advance in advance of their
3 next payday, the loan would be rolled over repeatedly
4 by Integrity Advance. Depending on the size of the
5 loan, that could result in the consumer paying
6 hundreds or even thousands more than what was in the
7 disclosure.

8 Now Your Honor has already ruled that this
9 disclosure violated the Truth in Lending Act, and was
10 deceptive. The question here is whether Respondent
11 Carnes in his role as CEO of Integrity Advance engaged
12 in this deceptive practice along with the company.

13 Your Honor, recently the Ninth Circuit in CFPB
14 v Gordon held that an individual can be held liable
15 under the CFPA if, and I quote, "One, he participated
16 directly in the deceptive acts or had authority to
17 control them. And two, he had knowledge of the
18 misrepresentations, was recklessly indifferent to the
19 truth or falsity of the misrepresentations or was
20 aware of the high probability of fraud along with an
21 intentional avoidance of the truth."

22 Your Honor, we will present evidence here in
23 this trial, that Respondent Carnes meets the standard.
24 He was an active and involved CEO who knew about
25 Integrity Advance's practices.

1 Your Honor, you are going to hear from
2 individuals who used to work for Integrity Advance and
3 you are going to hear from Mr. Carnes himself. And
4 that testimony and the accompanying exhibits will show
5 that Mr. Carnes founded Integrity Advance, was the
6 CEO, as CEO was the ultimate corporate decision maker,
7 he effectively owned the company. He hired people to
8 help run the company. He was in the office every day,
9 had regular meetings about Integrity Advance business.
10 He signed contracts and agreements on behalf of
11 Integrity Advance, and he approved the contents of
12 Integrity Advance's website.

13 In addition, Your Honor, the evidence will
14 show that Mr. Carnes knew how Integrity Advance's
15 loans worked. He knew that the contract called for
16 automatic rollovers. He knew that the contract
17 disclosed a single payment loan, and he knew that most
18 consumers would pay more than what had been disclosed.

19 Your Honor, Integrity Advance was not a large
20 company. The organizational chart that Respondents
21 produced to us contains eleven people. This was a
22 small group of people all working in the same office.
23 Mr. Carnes was there every day running this operation
24 actively. Your Honor, Mr. Carnes is legally
25 responsible for Integrity Advance's deceptive loan

1 agreement.

2 I want to turn now to remotely created checks.
3 As you are aware, Your Honor, Enforcement Counsel has
4 asserted that Respondents unfairly used remotely
5 created checks to debit consumer accounts. And I
6 might refer to remotely created checks as RCC's. I
7 want to begin with a little background on this topic,
8 though, Your Honor.

9 Most of us are familiar with standard checks.
10 You open up a bank account. Your bank sends you a
11 checkbook in the mail. When you want to pay someone,
12 you write out the check. You put in an amount. You
13 sign it, and you hand it over to a company or a
14 person. That company or person takes the check to
15 their bank and cashes or deposits it.

16 Your Honor, you are going to hear testimony
17 from Joseph Baressi who works at the Bureau, has been
18 working on remotely created checks for years. And he
19 is going to talk about how remotely created checks are
20 actually very different. Remotely created checks
21 don't come out of a consumer's bank account, and they
22 aren't signed by the consumer.

23 In fact, with just a consumer's bank account
24 number and their bank routing number, a company can
25 print a remotely created check out of thin air and

1 take that check to their bank, just like any other
2 check, and use it to deposit into their account, use
3 that to draw out of the consumer's account. The
4 consumer is not part of the transaction whatsoever.
5 And a company can do this repeatedly, Your Honor,
6 without the consumer knowing.

7 Now this is something that many consumers
8 don't realize is even possible. But despite that, I
9 want to show you how Respondents sought authorization
10 for this.

11 Can we please see Exhibit 63, and let's go to
12 page 9.

13 So Your Honor, this is one the templates that
14 Integrity Advance used for their loan agreements.

15 Are we on page nine?

16 MR. JEFFERSON: Um-hmm.

17 MR. WHEELER: All right. Can you highlight
18 the language?

19 So this is the language that Respondents used.
20 And it reads: "You authorized us to prepare and submit
21 one or more checks drawn on your bank account so long
22 as amounts are owed to us under the loan agreement."
23 That's it, Your Honor. It doesn't mention remotely
24 created checks. It doesn't use any of the other terms
25 associated with this product like demand draft or

1 check draft. It doesn't say anything about the
2 consumer will not have to see the check, will not have
3 to sign the check, will not have to provide
4 authorization for this check.

5 And, of course, Your Honor, as we just saw,
6 this is one clause, in one sentence, on page nine of a
7 fifteen page agreement. Clearly, Your Honor, there is
8 no effort here by Respondents to really inform
9 consumers what they were authorizing with this
10 language.

11 I think it's also important, Your Honor, to
12 understand when Respondents used remotely created
13 checks.

14 Integrity Advance conducted most of its
15 business using the ACH network, which is how most
16 electronic money transactions are accomplished, and
17 that's not in dispute. They would push loan funds to
18 consumers using ACH and then withdraw payments from
19 consumer accounts using ACH. But when consumers
20 wanted to block this, when consumers affirmatively
21 went to their bank and said, please stop Integrity
22 Advance from withdrawing money from my account, that's
23 when Integrity Advance used these remotely created
24 checks.

25 Your Honor, a practice is legally unfair when

1 it causes or is likely to cause substantial injury to
2 consumers. The injury is not reasonably avoidable,
3 and the injury is not outweighed by countervailing
4 benefits to consumers or to competition. Your Honor,
5 the evidence here will clearly support an unfairness
6 finding. The evidence will show that consumers
7 endured substantial injury by having these RCC's drawn
8 against their accounts.

9 You are going to hear testimony from a Bureau
10 data scientist about -- they are going to walk you
11 through a specific example of how Respondents used
12 these RCC's on a consumer after that consumer had
13 blocked the ACH authorization at their bank. The data
14 will also show that Respondents used RCC's over one
15 thousand times to withdraw over \$250,000 from consumer
16 accounts. This injury that consumers suffered was not
17 reasonably avoidable. As we just saw, the
18 authorization is opaque and hidden deep in a loan
19 agreement.

20 Finally, Your Honor, there is no plausible
21 argument that this practice benefitted consumers or
22 benefitted competition. When consumers are trying to
23 block access to their account, having money drawn out
24 anyway, clearly doesn't help them.

25 Finally, Your Honor, Enforcement Counsel is

1 requesting broad relief in this matter, including
2 disgorgement, restitution, damages and equitable
3 relief. As I mentioned, we are going to hear from a
4 Bureau data scientist who has summarized the payment
5 level data the Respondents produced in this matter.
6 He is going to testify about the number of loans
7 Integrity Advance originated and the amounts paid by
8 consumers, and that shows that thousands of consumers
9 paid millions and millions of dollars above and beyond
10 what was disclosed in their loan agreements. Finally,
11 he is also going to testify about the exact amounts of
12 -- that Respondents took using remotely created
13 checks.

14 In closing, Your Honor, I think it's important
15 to remember that Integrity Advance originated over
16 three hundred thousand loans during the time it was in
17 operation. Each of those loan agreements, each of
18 those three hundred thousand loan agreements had a
19 TILA violation. Each one of those three hundred
20 thousand loan agreements was deceptive, it didn't
21 reflect the actual cost of the loan that those
22 consumers had taken.

23 JUDGE McKENNA: What happens if one of their
24 customers paid off their loan, called them up three
25 days before and paid it off, is that a TILA violation?

1 MR. WHEELER: Yes, Your Honor. At -- when the
2 loan agreement was given to consumers, given that they
3 were -- those consumers were receiving a multi-payment
4 loan and, but had a single payment loan disclosed,
5 that was still a TILA violation, and, I believe, that
6 is what you held in your order.

7 JUDGE McKENNA: Yeah, all right. Well, I'm
8 going to want to dig into some of this, especially the
9 issue of recoupment, and penalties. Because I don't
10 think it's fair to Respondents if this matter,
11 recoupment or the penalty is to be handled in globo.
12 So we'll see where we go from there. Just want to
13 make sure that everything is laid out properly.

14 MR. WHEELER: I understand, Your Honor.

15 JUDGE McKENNA: Okay.

16 MR. WHEELER: Thank you. I have nothing
17 further.

18 **OPENING STATEMENT BY MS. BAKER:**

19 MS. BAKER: Good morning, Allyson Baker for
20 Respondents. Can you hear me okay? Thank you.

21 So, Your Honor, the CFPB's Office of
22 Enforcement has the burden in this matter. And that
23 is critical to remember. They have the burden, first,
24 of making a prima facie case, and then they,
25 ultimately have the burden of showing by a

1 preponderance of the evidence three things:
2 Mr. Carnes is liable for deceptive conduct; the
3 company and Mr. Carnes are liable for unfairness
4 relating from or concerning the use of remotely
5 created checks; and that their damages calculation is
6 complete, adequate, and conforms to the law.

7 Your Honor is not going to see evidence of any
8 of those things today and this week that enable the
9 Bureau to meet its burden.

10 Here is what the evidence will not show. The
11 evidence will not show that Mr. Carnes was liable for
12 any of the deceptive conduct relating to the TILA
13 disclosures or any other disclosure in the loan
14 agreement. Your Honor will hear testimony that
15 Mr. Carnes never drafted an agreement, never wrote an
16 agreement, never edited an agreement, never revised an
17 agreement. He never wrote a loan disclosure. He
18 never revised a loan disclosure. He never edited a
19 loan disclosure. He never had any input into what was
20 in a loan disclosure. You will hear evidence about
21 that.

22 You will also hear evidence that Mr. Carnes
23 never wrote a script that a call center representative
24 used to describe the loan. He never revised a script.
25 He never even reviewed a script. He never edited a

1 script. He never had any input into those scripts.
2 You will hear evidence about that.

3 The Bureau has acknowledged in its pre-trial
4 statement, indeed, the very standard that this Court
5 must deploy in rendering a decision as to whether or
6 not Mr. Carnes is liable for deception. Specifically,
7 on page five of its pre-trial statement it says the
8 following: "Respondent Carnes was fully aware of how
9 Integrity Advance's loan product operated, and that
10 that loan product did not align with the company's
11 loan agreement disclosures."

12 That is patently incorrect.

13 That second part, evidence will show
14 Mr. Carnes had no knowledge, whatsoever, of what was
15 in the loan agreement disclosures and how they,
16 whether they did or did not align with the way the
17 loan operated.

18 And in the absence of that evidence, the
19 Bureau cannot meet its prima facie case, let alone its
20 final burden of showing that Mr. Carnes is liable for
21 deceptive conduct in this matter. And the Bureau by
22 its own statements here on page five has acknowledged
23 that that is the standard at issue in this matter as
24 to Mr. Carnes and deception.

25 The evidence will also show that Integrity

1 Advance was licensed with the State of Delaware. It
2 obtained a lending license in 2008. That license was
3 renewed in '09, in 2010, in 2011, in 2012, and indeed
4 it was renewed for purposes of continuing to lend into
5 2013, although as Your Honor knows the company stopped
6 making loans in December of 2012, and shuttered in
7 June of 2013.

8 What the evidence will show, and you will hear
9 a little later this week from Ms. Quinn Miller, who is
10 the chief investigator for the Delaware Banking
11 Commission's nonbank compliance program, what you will
12 hear Ms. Miller talk about is the licensing regime in
13 that state. And that state had a licensing regime and
14 still does for small dollar short-term lenders or
15 payday lenders.

16 Among other things, that licensing regime
17 requires that the State examine for compliance with
18 the consumer finance laws the actual loan agreements
19 that were used with consumers, concerning the very
20 loans at issue in this case.

21 And you will hear that by virtue of the fact
22 that the company was consistently re-licensed every
23 year, it was found to be in per se compliance with
24 those laws. Because the statute itself says that if
25 you are not in compliance with those laws, your

1 license does not get renewed.

2 You will also hear Mr. Carnes testify that he
3 understood that his company had a Delaware lending
4 license. And that that in and of itself was renewed
5 each year and that that fact also meant that the
6 company was in compliance with the law in the state
7 where it was licensed.

8 Now what else you will hear or perhaps won't
9 hear is about remotely created checks. Remotely
10 created checks are legal. They were legal in 2008.
11 They were legal in 2009. They were legal in 2010.
12 They were legal in 2011. They were legal in 2012.
13 And they were legal in 2013. They are not illegal.

14 And you will hear evidence that suggests that
15 they were not illegal and they are still not illegal.
16 Now the Bureau wants to put on, before this Court,
17 evidence about a telemarketing sales rule which was
18 recently passed last year and I have a few thoughts on
19 that which Your Honor will hear about as well from
20 their witness.

21 First of all, the telemarketing sales rule
22 would never have applied to this company. And second
23 of all, the telemarketing sales rule change happened
24 last year, not six years ago when this company was in
25 operation.

1 Now the evidence will also show the following:
2 The evidence will show that the company did not engage
3 in any unfair conduct as to the use of RCC's. It will
4 show that there was no cognizable consumer harm, let
5 alone substantial consumer injury, which is the legal
6 standard that has be an applied when looking at the
7 unfairness doctrine. In fact, what Your Honor will
8 learn is that fewer than one percent of the consumers
9 who had Integrity Advance loans ever had a remotely
10 created check created.

11 And Your Honor will see the numbers that
12 support that. The Court will also see that RCC's were
13 a so-called payment choice of last resort. And what
14 we mean by that is, specifically, remotely created
15 checks were used only in instances when a consumer
16 could not be reached, had reneged on the
17 authorization, and was essentially deciding not to
18 repay the loan that had been made to him or her. And
19 it was a very small number of instances when remotely
20 created checks were used. And Your Honor will see
21 that and hear that as well.

22 Now finally, it's very important that we
23 discuss with a great amount of granularity, the issue
24 of damages in this matter. And Your Honor, what the
25 CFPB is proposing is that they put on the stand an

1 information technology specialist to discuss with
2 granularity the issue of damages in this matter.

3 Your Honor, they have not proffered a damages
4 expert. They have not proffered an economist. They
5 have not proffered anybody who is equipped to talk
6 with any specificity about how consumers could have
7 been harmed, were they harmed, and what those numbers
8 actually mean.

9 What the evidence will show is as follows:
10 Mr. Hughes's calculation does not account for
11 instances of actual potential consumer harm. He does
12 not properly account for monetary relief, and he does
13 not properly delineate instances when consumers chose
14 to repeat -- repeatedly renew their loans and take out
15 first, second, third, fourth loans. So the concept of
16 deception can't apply to a consumer who decided to
17 take out a second loan, a third loan, a fourth loan.
18 And to a consumer who had renewed that loan repeatedly
19 the first time, the second time, the third time, the
20 fourth time, et cetera, his numbers do not granularly
21 describe that.

22 And so what the Bureau has proposed is a very
23 large number that doesn't actually conform to what the
24 law of restitution requires. The law of restitution
25 is very clear. You have to show consumer injury. It

1 has to be causally linked to the alleged conduct, and
2 you cannot unjustly enrich consumers.

3 And all of the evidence that we have seen so
4 far, and that we will see this week from the CFPB
5 fails to establish in accordance with the law of
6 restitution what the rightful amount of damages in
7 this matter should be.

8 Now what the evidence also will not show is
9 how this calculation should happen from July 21st,
10 2011 forward. But it's curious because in the CFPB's
11 pre-trial statement in this matter, footnote II, they
12 acknowledge that, in fact, calculations of damages can
13 only occur for conduct that post-dates July 21st,
14 2011.

15 And their footnote, specifically, says "Civil
16 money penalties should be calculated from the transfer
17 date until the date Respondent's unlawful practice
18 ceased". And the reason that footnote is a very
19 important point here is because the Bureau has
20 acknowledged that to the extent they are seeking any
21 kind of monetary relief under the Consumer Financial
22 Protection Act, which is the only mechanism through
23 which they are seeking monetary relief, they can only
24 do so for conduct that postdates July 21, 2011.

25 And here is why. Before the CFPA the -- TILA

1 did not provide for anything other than statutory
2 damages, which they have not sought in this matter.
3 Before the CFPA, the Electronic Fund Transfer Act did
4 not provide for statutory -- anything but statutory
5 damages, which they have not sought in this matter.
6 Before the CFPA, there was no deception under which
7 they could proceed. Before the CFPA there was no
8 basis for alleging unfairness under which they could
9 proceed. And before the CFPA there was no basis for
10 obtaining civil money penalties.

11 The overwhelming majority of conduct alleged
12 in this matter occurred before the CFPA. Your Honor
13 cannot consider as a matter of law any conduct that
14 predates July 21st, 2011 in determining any kind of
15 monetary relief in this matter and footnote II on page
16 eight of their Pre-trial Statement spells that out.

17 So to sum, the evidence will not show that
18 Mr. Carnes was liable for any deceptive conduct in
19 this matter. The evidence will not show that
20 Mr. Carnes and the company were liable for any unfair
21 conduct as to the creation and use of remotely created
22 checks. And the evidence will show that the Bureau's
23 proposed monetary relief in this matter does not
24 conform to the laws of restitution or to the Consumer
25 Financial Protection Act. Thank you.

1 JUDGE McKENNA: Um-hmm. Mr. Wheeler, pursuant
2 to the allowance that I gave, you have five minutes,
3 and then you will have five minutes. If you choose to
4 take it.

5 MR. WHEELER: That's okay, Your Honor. We
6 will proceed.

7 JUDGE McKENNA: All right. So that's it.
8 All right. Proceed.

9 MS. WEINBERG: Your Honor, Wendy Weinberg,
10 Enforcement Counsel. I'd like to call Mr. Madsen.
11 Can I get him from the adjoining room?

12 JUDGE McKENNA: Yes.

13 (Witness takes the stand.)

14 JUDGE McKENNA: Please stand. Raise your
15 right hand.

16 **TIMOTHY ALLEN MADSEN,**

17 A witness produced on call of the Enforcement
18 Counsel, having first been duly sworn, was examined
19 and testified as follows:

20 THE WITNESS: I do.

21 JUDGE McKENNA: Please be seated. State your
22 full name for the record.

23 THE WITNESS: Timothy Allen Madsen.

24 JUDGE MCKENNA: All right. Proceed.

25 MS. WEINBERG: Good morning, Mr. Madsen.

1 COURT REPORTER: If the witness could spell
2 his name, please.

3 JUDGE MCKENNA: M-A-D-S-E-N.

4 **DIRECT EXAMINATION**

5 BY MS. WEINBERG:

6 Q. Good morning, Your Honor. Good morning
7 Mr. Madsen. First, are you here voluntarily or are you
8 here pursuant to a subpoena?

9 A. Subpoena.

10 Q. Did you ever work for Integrity Advance?

11 A. I worked for the company that operated
12 Integrity Advance.

13 Q. Okay. And what company was that?

14 A. HIP Financial.

15 Q. What does that stand for?

16 COURT REPORTER: I'm sorry, I can't hear.

17 JUDGE MCKENNA: Ms. Weinberg, you are going to
18 have to really up your game.

19 MS. WEINBERG: Okay. Then I'm going to grab
20 my water.

21 COURT REPORTER: Did the witness say, TIP
22 Financial? Just repeat your answer, please.

23 JUDGE MCKENNA: So now -- that is not -- that
24 microphone is not working.

25 THE WITNESS: I'll speak up then.

1 JUDGE MCKENNA: That's good.

2 THE WITNESS: Hayfield Investment Partners.

3 BY MS. WEINBERG:

4 Q. When did you start your employment with
5 Hayfield Investment Partners?

6 A. August of 2008.

7 Q. And what was the position that you held?

8 A. Vice president of marketing.

9 Q. Can you describe your duties there as they
10 related to Integrity Advance?

11 A. I was in charge of managing the relationships
12 and the purchase of leads for Integrity Advance
13 portfolio.

14 Q. What do you mean by leads?

15 A. Consumer who were applying online to receive a
16 payday loan.

17 Q. So what were your job duties in terms of --

18 JUDGE MCKENNA: Well, just you are going to
19 have to come up an octave level significantly higher.

20 THE WITNESS: Okay.

21 BY MS. WEINBERG:

22 Q. Can you be more specific about your job
23 duties?

24 A. I dealt with all of the lead providers that we
25 had relationships with, I managed the purchase of the

1 leads and set up the campaigns that distinguish what
2 types of consumer we were able to work with.

3 And then I managed the leads internally inside
4 of Integrity Advance with our call center and making
5 sure that they performed well.

6 Q. And how long were you in that position?

7 A. Was it -- four years, five years almost.

8 Q. Why did you leave?

9 A. I just -- change in business directions, we
10 were purchased by EZ Corp and there was a change in
11 needs for head count, so we had a mutual agreement to
12 separate.

13 Q. So then, is it fair to say you left when
14 Integrity Advance stopped doing business under that
15 name?

16 MS. BAKER: Objection, foundation.

17 JUDGE McKENNA: Sustained.

18 BY MS. WEINBERG:

19 Q. Was Integrity Advance still in business when
20 you left the company?

21 A. No.

22 Q. Where were the offices that you worked from?

23 A. Westwood, Kansas.

24 Q. And who else worked from that office?

25 A. Mr. Carnes, Ed Foster all of our IT team, all

1 of our analytics teams, finance.

2 Q. Was there any management for Integrity Advance
3 that worked out of a different location?

4 A. Not to my knowledge, no.

5 Q. Who hired you for your position?

6 A. Mr. Carnes and Mr. Foster.

7 Q. And do you know who made the final decision as
8 to your employment?

9 A. I couldn't speculate.

10 Q. Were you hired directly from the company or
11 through a headhunter?

12 A. Headhunter.

13 Q. And do you know who was communicating with the
14 -- with that headhunter?

15 A. I don't recall.

16 Q. How often were you in the office?

17 A. Every day.

18 Q. How often was Mr. Carnes in the office?

19 A. The same, I mean barring vacations or business
20 travel.

21 Q. And what sort of hours was Mr. Carnes in the
22 office?

23 A. General business hours, you know, everybody
24 was there generally from 8:30 in the morning until 5:30
25 in the evening.

1 Q. Was Mr. Carnes in the office longer hours or
2 shorter hours than most of the other employees?

3 A. I think it depended on the needs of the
4 business and we all had hours that would fluctuate
5 based on what was needed at the time.

6 Q. Did you talk directly to Mr. Carnes about
7 Integrity Advance's business?

8 A. I did.

9 Q. What types of things did you talk to
10 Mr. Carnes about?

11 A. Ah generally we discussed the behavior of the
12 lead purchase systems that we had in place, how well
13 they were performing, our different partners, and any
14 adjustments that we need to make sure that it backed
15 out for us what it needed to from a business
16 perspective.

17 Q. What type of adjustments are you talking
18 about?

19 A. If we were needing volume, would we pay more
20 for a lead to compete with our -- with other people who
21 were trying to purchase leads. Did we need to make
22 adjustments to underwriting in order to purchase more
23 leads, and volume or performance on the back end.

24 Q. And who was making decisions about the payment
25 per lead?

1 A. Generally I had input on lead purchases within
2 parameters, and then any time we decided to make a
3 large change, Jim and I would discuss that.

4 Q. And who set the parameters?

5 A. Jim and I.

6 JUDGE MCKENNA: And Jim, you mean
7 Mr. Carnes?

8 THE WITNESS: Mr. Carnes, yes.

9 BY MS. WEINBERG:

10 Q. And when there was a change to the amount that
11 you would pay for a lead beyond the parameters that you
12 set, who would make that change --

13 A. Ultimately.

14 Q. -- decision?

15 A. Ultimately Mr. Carnes would give the approval
16 to change outside of our normal parameters.

17 Q. And you also mentioned changes in
18 underwriting. If there were changes -- could you
19 describe what you mean by changes in underwriting?

20 A. So in our campaign we would have various
21 structures on what we were willing to, you know, what
22 the rules were around the campaign, around the type of
23 consumer that we were able to purchase.

24 And whenever we would run into issues with
25 poor performance from the default or conversion

1 standpoint, or potentially where the, where we needed
2 to make an adjustment to open up what we were willing
3 to look at so that we could purchase more leads from a
4 volume need, we would make adjustments to the scores on
5 particular campaigns.

6 Q. And scores meaning credit scores of the
7 consumers?

8 A. A related type of scoring, yes.

9 Q. Okay.

10 COURT REPORTER: I'm sorry?

11 THE WITNESS: A related type of scoring.

12 BY MS. WEINBERG:

13 Q. And who would make decisions about those sorts
14 of changes on the scoring?

15 A. It depended on how severe we were making the
16 change. If it was a couple points and it was within
17 some, some of the parameters that we felt comfortable
18 with, I would make that.

19 If it was something that was going to depart
20 from what we had been doing as a historical business
21 direction, then I would consult with Mr. Carnes.

22 Q. Finally, you also discussed -- you also
23 mentioned relationships with lead vendors, lead -- the
24 leads, I'm sorry?

25 A. Lead providers.

1 Q. Lead providers.

2 A. Yes.

3 Q. And could you discuss what Mr. Carnes' role
4 was in your relationships with the lead providers?

5 A. Ah yeah --

6 MS. BAKER: Objection, foundation.

7 JUDGE McKENNA: Can you rephrase?

8 BY MS. WEINBERG:

9 Q. Did Mr. Carnes have a role in your
10 relationship with the lead providers?

11 A. General role. He was introduced or had
12 knowledge of several of them because of his previous
13 relationships. Outside of that it was on an
14 introductory basis by myself, you know, letting
15 Mr. Carnes meet those folks or those folks meet
16 Mr. Carnes.

17 Q. And then who made the ultimate decision if you
18 were switching lead providers?

19 A. I handled the lead providers.

20 Q. Did Mr. Carnes set the parameters for
21 obtaining a new lead provider?

22 A. What do you mean parameters? Help me out.

23 Q. Did he say, we don't want to pay more than
24 this, or we are looking for those sort of performance
25 standards?

1 A. So as it related to what we paid providers,
2 yeah, we would have a top end that was approved, and
3 Jim and I would work together on that and determine
4 what that might be. Ultimately, Jim would make that
5 call. As far as who we worked with, you know, Jim
6 trusted me to make that decision.

7 JUDGE McKENNA: Who did you report to?

8 THE WITNESS: I think on the organizational
9 chart I ended up working for Mr. Foster, Edward Foster.
10 I interacted with Mr. Carnes daily.

11 JUDGE McKENNA: Who did your performance
12 evaluations?

13 THE WITNESS: I think the one that I had, that
14 I can recall was with Mr. Foster.

15 JUDGE McKENNA: Proceed.

16 MS. WEINBERG: Oh, I'm sorry. Okay.

17 BY MS. WEINBERG:

18 Q. Thank you, Your Honor. That's exactly where I
19 was going. So you said you talked to Mr. Carnes daily,
20 did you have to make appointments to speak to
21 Mr. Carnes?

22 A. Not as a general rule, it was, I'd knock on
23 his door and ask if he had a couple of minutes.

24 Q. And so, is it your testimony that these
25 conversations with him would take place in his office?

1 A. Yeah, I mean we'd have conversations in his
2 office or mine.

3 Q. And these conversations were the daily
4 conversations that you were referring to earlier?

5 MS. BAKER: Objection, foundation.

6 JUDGE McKENNA: Overruled.

7 THE WITNESS: You know, again, we were a small
8 business so, you know, operating a small business we
9 would converse as needed, so, if I caught him walking
10 by my office and I had a question, or I needed to walk
11 into his I was able to do that, and vice versa. If he
12 had a question, he would have no problem walking by my
13 office and asking a question.

14 BY MS. WEINBERG:

15 Q. And how often did you talk to Mr. Foster?

16 A. Generally daily, yeah.

17 Q. Did you think -- is it your testimony that you
18 spoke to Mr. Carnes more or Mr. Foster more?

19 A. I never kept track of how often I was speaking
20 with either.

21 Q. And what type of things did you talk to
22 Mr. Foster about?

23 A. Similar items, generally with Mr. Foster I
24 probably would have more legal conversations with him,
25 as he was our general counsel for the majority of the

1 time that I was employed there.

2 Q. And who did you talk to about administrative
3 items like your salary and your benefits?

4 A. It didn't really come up very often.

5 Q. Okay. How would you characterize the
6 difference in the types of items that you talked to
7 Mr. Carnes about as opposed to Mr. Foster?

8 A. Well, again I think with Mr. Foster it was
9 more focused around legal, where we were at, needs
10 around agreements, or adjustments to language that may
11 need to be put out on some of our websites or
12 communications with consumers. With Mr. Carnes we
13 discussed more around the lead purchases, you know,
14 what was happening volume-wise and performance of
15 those.

16 Q. I would like to show you Exhibit 65, the
17 organizational chart for Integrity Advance. It's
18 pretty small -- there we go, that's better, can you see
19 that?

20 A. Yes.

21 Q. If not, there's books --

22 A. No, I'm fine.

23 Q. -- that are next to you that might make it...

24 A. No, I'm fine.

25 Q. So your testimony previously was that you

1 spoke to Mr. Carnes on a daily basis. So, is it fair
2 to say that, although you technically reported to
3 Mr. Foster, you actually also worked directly with
4 Mr. Carnes?

5 MS. BAKER: Objection, foundation and
6 mischaracterizes witness's prior testimony.

7 JUDGE McKENNA: Overruled.

8 THE WITNESS: Could you repeat the question,
9 please?

10 BY MS. WEINBERG:

11 Q. Would it be fair to say that while this is a
12 technically accurate chart, it does not reflect your
13 daily interactions?

14 JUDGE McKENNA: Well, first of all, you have
15 to ask him if this is an accurate chart.

16 MS. WEINBERG: Thank you, Your Honor.

17 BY MS. WEINBERG:

18 Q. Mr. Madsen, is this a technically accurate
19 chart of the reporting structure of Integrity Advance?

20 A. At one time, yes.

21 Q. And what time was that?

22 A. After about the first year or two after I had
23 started there, I don't remember exactly when Mr. Foster
24 became COO.

25 But when I left the company or when the

1 company was sold, that is the structure that was in
2 place.

3 Q. And what was the structure before Mr. Foster
4 started working --

5 A. Edward was EVP and general counsel and then I
6 reported to Jim directly. We were, four of us in the
7 office at the time.

8 Q. And at that time --

9 JUDGE McKENNA: Jim?

10 THE WITNESS: Mr. Carnes, I'm sorry.

11 BY MS. WEINBERG:

12 Q. And at that time did everybody, the four of
13 you, report directly to Mr. Carnes?

14 A. I can only speak from my own reporting
15 structure.

16 Q. After Mr. Foster started employment, is it
17 fair to say that while this chart is technically
18 accurate, you also worked directly with Mr. Carnes?

19 A. Yes, that's fair.

20 Q. Okay. Do you know if other management
21 employees also passed formal -- bypassed the formal
22 chain of command to speak directly with Mr. Carnes?

23 MS. BAKER: Objection, foundation.

24 JUDGE McKENNA: Overruled.

25 THE WITNESS: I want to clarify, I wouldn't

1 consider anything bypassing any formal chain of
2 command. A small company, we interacted with
3 everybody as needed to support the business.

4 BY MS. WEINBERG:

5 Q. Do you know if any of the other management
6 employees spoke directly with Mr. Carnes about
7 Integrity Advance business?

8 A. Well, anecdotally I saw Mr. Carnes speak with
9 all employees at various times, I can't speak to the
10 nature of their conversations.

11 Q. And were those conversations in Mr. Carnes'
12 office?

13 A. Yes I, I mean not all conversations were held
14 in Mr. Carnes' office, but I saw Mr. Carnes speak with
15 people in their offices, in his office, in the hallway,
16 in the break room. It was a small company, we
17 interacted.

18 Q. And where was your office in relation to
19 Mr. Carnes' office?

20 A. Next to his, adjacent.

21 Q. Okay.

22 JUDGE McKENNA: Where was Mr. Foster's office?

23 THE WITNESS: His was adjacent, but down the
24 hallway. There was a -- there was kind of a wall
25 in-between the two offices.

1 JUDGE McKENNA: They wanted to keep the lawyer
2 away from the rest of the people?

3 THE WITNESS: Most people try to do that.

4 MS. WEINBERG: Brave of you to make a lawyer
5 joke in a room full of lawyers.

6 BY MS. WEINBERG:

7 Q. Did Integrity Advance handle its customer
8 service function directly through the office in which
9 you worked?

10 MS. BAKER: Objection, foundation.

11 JUDGE McKENNA: State it again.

12 BY MS. WEINBERG:

13 Q. Did Integrity Advance handle its customer
14 service function, meaning were consumers talked to
15 directly, and were the applications processed directly
16 through the office in which you worked?

17 MS. BAKER: Same objection, Your Honor.

18 JUDGE McKENNA: All right. Overruled. Answer
19 it if you know the answer to it.

20 THE WITNESS: Can you clarify when you say
21 consumer support? It's very broad.

22 BY MS. WEINBERG:

23 Q. Did Integrity Advance use a call center?

24 A. Yes.

25 Q. To speak directly with its customers?

1 A. Yes.

2 Q. And where was that call center?

3 A. We had one call center there in Overland Park,
4 Kansas that we used for quite some time. And then,
5 eventually it was transitioned to a call center in
6 Delaware, I believe it was.

7 Q. And when did that happen?

8 A. I don't recall the exact year.

9 Q. And what, what activities did the call center
10 undertake for Integrity Advance?

11 A. Generally they spoke with our consumers as
12 they, they work the leads that came into the system
13 that we utilized. They would reach out to the
14 consumer, they would try to help them with the process
15 of completing their, their loan.

16 COURT REPORTER: I'm sorry, I didn't hear the
17 end of that.

18 THE WITNESS: They would work with the
19 consumers over the phone to help them complete their
20 loan.

21 JUDGE McKENNA: All right. Now the call
22 center, were they outgoing calls from the call center
23 to the lead, or were customers calling into the call
24 center, or both?

25 THE WITNESS: Both.

1 JUDGE McKENNA: And any -- one way or the
2 other was utilized more?

3 THE WITNESS: It was slanted probably more to
4 outbound.

5 JUDGE McKENNA: Out from the call center?

6 THE WITNESS: From the call center to the
7 consumer.

8 JUDGE McKENNA: All right.

9 BY MS. WEINBERG:

10 Q. Do you know who arranged to hire the call
11 centers?

12 A. That was a decision that was made, I would
13 assume, by Mr. Carnes.

14 Q. Okay. Did Integrity Advance monitor the
15 performance of the call centers?

16 A. Generally, yes.

17 Q. And how did they do that?

18 A. We had reporting that we had access to, that
19 we could see the performance of the leads that we were
20 purchasing in real-time.

21 We would look at reports over a period of time
22 to determine different metrics and KPI's, and then, I
23 would interact with the call center throughout the day
24 to make sure that we were staffed properly and they
25 weren't running into any kind of issues with the

1 quality of the leads that we were purchasing.

2 Q. You said that you would look at the leads, the
3 metrics, and did you say CPI's?

4 A. KPI's, key performance indicators.

5 Q. KPI?

6 A. Key performance indicators.

7 Q. Key performance indicators. Okay. Thank you.

8 And how were you able to see that information?

9 A. We had a, we had a report that we had access
10 to and we had a dashboard that we eventually developed
11 to be able to see it in real-time.

12 Q. And was that on a TranDot platform?

13 A. I utilized the TranDot report quite often,
14 yes.

15 Q. And was that where you saw the dashboard?

16 A. The dashboard was an internal system that we
17 had related to some different systems that we built,
18 internally developed?

19 Q. And what could you see in the dashboard?

20 MS. BAKER: Your Honor, I'm going to object to
21 this line of questions on relevance grounds. I'm not
22 sure how this is related to any of the remaining
23 matters in this matter for Your Honor's disposition.

24 JUDGE MCKENNA: And the answer is?

25 MS. WEINBERG: I believe Mr. Madsen's

1 testimony will show that Mr. Carnes was monitoring the
2 daily performance of the call centers through the
3 TranDot system.

4 JUDGE McKENNA: And that is an irrelevant
5 issue?

6 MS. BAKER: I believe it is not relevant, Your
7 Honor.

8 JUDGE McKENNA: All right. Overruled.

9 MS. WEINBERG: Court reporter, could you read
10 back the last question that I asked prior to the break?

11 COURT REPORTER: And what could you see in the
12 dashboard?

13 A. We could see the number of leads that we had
14 been presented, the number of leads that we had
15 accepted or declined. So from there we could see a
16 purchase rate, as well as we could see then the number
17 of leads that were converting into loans to determine
18 what the conversion rate of those leads were into loans
19 and consumers.

20 BY MS. WEINBERG:

21 Q. Is there anything else that you could see in
22 the dashboard?

23 A. No, I think that covers the dashboard itself.

24 Q. Could you see the default rates on the loans
25 through the dashboard?

1 A. I don't believe being able to see that on the
2 dashboard, we could see that through the TranDot
3 system.

4 Q. Okay. And what else could you see in the
5 TranDot system?

6 A. I mean a number of things: We could see the
7 number of consumers that were signing their loan
8 documents; we could see the number of consumers who
9 were defaulting; and we could see, obviously, some of
10 the same information that I described earlier, the
11 conversion rates, and volume of leads coming in; we
12 could see returning customers, the number of returning
13 customers coming back to us and taking out new loans.

14 Q. And do you know how the call centers came to
15 use the TranDot system?

16 A. I was -- well, can you clarify that question?

17 Q. Was the TranDot system provided by the call
18 centers, or was it provided by Integrity Advance to the
19 call centers?

20 A. It was provided by Integrity Advance.

21 Q. Did they have any choice in using the TranDot
22 system?

23 A. No.

24 Q. So you've mentioned two different monitoring
25 systems, the TranDot system and the dashboard, do you

1 know if Mr. Carnes ever reviewed the performance
2 through the TranDot system?

3 A. I can't speak to exactly where he reviewed
4 performance, but we had discussions on performance. We
5 were looking at it closely, the two of us.

6 Q. And what type of performance?

7 JUDGE McKENNA: Just a second -- so the answer
8 would be yes?

9 THE WITNESS: Generally, I would assume that
10 yes, he was looking at that the same as I was.

11 JUDGE McKENNA: Proceed.

12 BY MS. WEINBERG:

13 Q. And what specific topics about performance did
14 you discuss with Mr. Carnes?

15 A. Lead volume conversion rates, long-term
16 performance of any particular sources that we had.

17 Q. Sources meaning the lead generators?

18 A. Lead providers.

19 Q. Okay. Did you also discuss default rates with
20 him?

21 A. Yeah, we had that discussion.

22 Q. And how often did you have these conversations
23 with him about conversion rates?

24 A. I can't speak to just conversion rates. It
25 was as needed, as the business required us to review

1 performance, if there was a metric that was out of line
2 and we were, you know, depending on the ability to
3 assess the reason myself or in the cases where Jim may
4 have notice it and he was asking for some
5 clarification. So, it may not have been daily, but it
6 was, you know, something that we had on a relatively
7 regular basis, conversation.

8 Q. Can you be more specific about regular basis?

9 A. I would be speculating on anything specific to
10 conversions. It was something that I looked at daily.
11 And, you know, in the -- as problems came up I would
12 have conversations, so it could be, depending on the
13 situation it may have been something that we had
14 several times a day, or it may have been something that
15 we only talked about once a week.

16 Q. Okay. And did you specifically talk about the
17 results that you were seeing -- that you could see in
18 the dashboard when you had these conversations with
19 Mr. Carnes about conversions?

20 A. That would have been part of the conversation.

21 Q. And in those conversations, would you be
22 reporting results from the dashboard or would
23 Mr. Carnes be bringing those results to you?

24 A. Both conversations would have been had at
25 various times. I couldn't give you a percentage as to

1 one or the other.

2 Q. And other than conversations about
3 conversions, did you have any other conversations with
4 him about the performance of the loans or the
5 performance of the call centers?

6 A. Generally we would have performance
7 conversations. Ah, you know, depending on the
8 circumstance, the loans may have been the topic or, you
9 know, the call center performance didn't come up very
10 often, it was a pretty well oiled machine and it
11 handled itself quite well.

12 Q. And what would you talk about, about the
13 loans?

14 A. If we were seeing an increase in first payment
15 defaults, or long-term default rates. We may have to
16 suggest looking at underwriting a little bit
17 differently, if we were not seeing the volume of leads
18 that were -- that we were needing to meet our goals
19 that we had set, then we may have to discuss various
20 ways to purchase more leads. Whether it was to change
21 what we were going to pay or open up underwriting,
22 change some campaign structures or various
23 conversations.

24 Q. And how often would you have conversations
25 with him on that general topic?

1 MS. BAKER: Objection, vague.

2 JUDGE McKENNA: Overruled?

3 THE WITNESS: You know, we -- the general
4 topic, I mean that would, you know, I couldn't put a
5 time on it. I couldn't put a number of conversations
6 because, again it was, you know, as the needs of
7 business dictated.

8 BY MS. WEINBERG:

9 Q. Would you say it was daily?

10 A. If we were to have a conversation about the
11 business during the day, it would have been around one
12 of those general topics.

13 JUDGE McKENNA: What -- give me the general
14 topics.

15 THE WITNESS: Conversion rates, performance,
16 first payment defaults.

17 JUDGE McKENNA: Call center performance?

18 THE WITNESS: Call center, like I said,
19 performance didn't come up very often.

20 JUDGE McKENNA: Well, you said you were
21 talking performance, what does that mean?

22 THE WITNESS: Generally my conversations would
23 have been around the performance of the leads that we
24 were purchasing.

25 JUDGE McKENNA: Okay. So you wanted to make

1 sure that you were getting a good bang for your buck?

2 THE WITNESS: That is fair statement, yes.

3 BY MS. WEINBERG:

4 Q. Who was the primary decision maker at
5 Integrity Advance?

6 A. I would say, ultimately, any large decision
7 would have been made by Mr. Carnes.

8 Q. And what is your basis for saying that he was
9 the primary decision maker?

10 A. I can only speak from my own interactions, but
11 if I had a decision that needed to be made that was
12 outside of the traditional way that we handle a lead
13 provider, or a payout, or things related to that, I
14 would consult with Mr. Carnes and we would -- and he
15 would give the direction that he would want to take.

16 Q. Were you involved in any meetings that did not
17 involve your particular marketing area?

18 A. I don't recall being in any meetings that
19 didn't have some relation to what I was doing.

20 Q. All right.

21 A. Or I was in meetings where we would have
22 several people from different functionalities (sic) in
23 the company, we'd get together and discuss an issue.
24 And if it was something that I may be impacted by, I
25 was included in that meeting so I could give my

1 feedback if it was needed.

2 Q. Did Mr. Carnes' role as primary decision maker
3 change over the period of time in which you worked for
4 Integrity Advance?

5 A. I can only speak to the -- you know, from the
6 perspective of what I was interacting with, and
7 generally we had the same conversations for the entire
8 time I was there.

9 Q. Could you describe Mr. Carnes' style as a
10 manager?

11 A. You know, I think, you know, I have always
12 considered Jim to be a good boss. He was, he was easy
13 to work with, easy to communicate with. I always felt
14 him to be fair, and you know, was never opposed to
15 helping out if you had a concern or if there was an
16 issue that you weren't able to solve.

17 You know, generally he'd, he operated a small
18 internet company, as president or CEO the same way as I
19 would expect from any other president or CEO, he was
20 involved when he needed to be, and he gave you room to
21 work when you needed it from that perspective as well.

22 Q. Have you had any contact with Mr. Carnes or
23 his counsel in the last year?

24 A. I spoke with his counsel last week, and I have
25 spoke with Mr. Carnes, off and on for the last several

1 years.

2 Q. Have you spoken to Mr. Carnes about your
3 testimony today?

4 A. No.

5 Q. Did you speak with Mr. Carnes' counsel about
6 your testimony today?

7 A. We spoke last week related to this, yes.

8 Q. And how long was this discussion?

9 A. Maybe thirty minutes.

10 Q. And what did they discuss with you?

11 A. Just generally asked me about my role with the
12 company.

13 Q. And did they give you advice on your testimony
14 today?

15 A. None.

16 MS. WEINBERG: No further questions -- excuse
17 me --

18 BY MS. WEINBERG:

19 Q. Mr. Madsen, you said at the beginning the
20 office had only four people, can you tell me who those
21 people were?

22 A. When I first started working there, it was
23 Mr. Carnes, Mr. Foster, a gentleman by the same name of
24 Hassan Shahin.

25 JUDGE McKENNA: Spell it.

1 THE WITNESS: Hassan Shahin was his name.

2 JUDGE McKENNA: And?

3 THE WITNESS: H -- I'm sorry --

4 JUDGE McKENNA: Spell it.

5 THE WITNESS: I'm sorry, I will try,

6 H-A-S-S-A-N S-H-A-H-I-N.

7 JUDGE McKENNA: Thank you.

8 THE WITNESS: And then there was an office
9 receptionist and I don't recall her name, I feel bad
10 about that.

11 BY MS. WEINBERG:

12 Q. You're saying Mr. Foster was there in the very
13 beginning?

14 A. Yes.

15 Q. Okay.

16 A. He was our EVP and general counsel.

17 Q. And for what period of time was it only the
18 four?

19 A. We added a head of finance -- (cough) excuse
20 me -- a head of finance in October or November of 2008.
21 And then, from that point on we added, what you saw on
22 the board there, and a few others that may have come
23 and gone during that period.

24 Q. At what time period -- do you need to see the
25 org chart again -- what period of time would all of

1 those people that were on the org chart, that Exhibit
2 65 that you saw before, have been employed?

3 A. I would have to take a look at it again. I
4 can't recall everybody they had.

5 Q. Could you put up 65, please?

6 A. Okay. From, from left Stephanie Schaller
7 would have came on probably in middle to the end of
8 2009 if I recall. Chris Pickett around, either that
9 same time, or maybe the spring of 2010. George Davis
10 was already employed in Delaware when I came on.

11 Mr. Peck came on in that October timeframe I
12 mentioned earlier, 2008. Hassan was already on when I
13 was hired and then Bruce came on, I want to think 2010,
14 or early 2011. I don't recall the times.

15 Q. Okay. I would also like to show you Exhibit
16 79, and if it's easier for you it's in the book as
17 well. But have you ever seen the -- this document from
18 Management System Operations Manual for TranDot?

19 A. I don't recall that, specifically. Depending
20 upon what is inside of it, I may have seen pieces of it
21 related to reporting or things of that nature.

22 Q. And can you scroll through the document? Can
23 you go to 7.9 specifically?

24 MS. BAKER: Your Honor, this has not been
25 admitted into evidence yet. Is she asking the witness

1 questions about it before it's even been admitted,
2 other than the mere foundation laying questions?

3 JUDGE McKENNA: Right.

4 MS. WEINBERG: I'm hoping to move it into
5 evidence after he examines it and can tell me whether
6 he has seen it before or not.

7 JUDGE McKENNA: All right. So the answer is
8 yes, and they will move it.

9 MS. BAKER: Okay.

10 JUDGE McKENNA: And then you will have the
11 opportunity to object.

12 MS. BAKER: Thank you, Your Honor.

13 JUDGE McKENNA: Please identify the --

14 THE WITNESS: This is section 7.9 of the
15 TranDot manual.

16 BY MS. WEINBERG:

17 Q. Have you ever seen this before?

18 A. No, I have not.

19 Q. Okay. What sections of the manual -- you said
20 you may have seen some sections of it -- which
21 sections?

22 A. You know, the only thing that I could think of
23 that I would have seen, it would more than likely have
24 been an excerpt of it, would have been a posting specs
25 that I gave to our lead providers. I don't recall

1 seeing that, that file or that document.

2 Q. And could you, I think that I'm going to ask
3 you to look at the hard copy of 79, Exhibit 79, it
4 might be easier for you to -- which binder am I looking
5 at here?

6 Well, actually, it is binder two.

7 MS. BAKER: Your Honor, I'm going to -- Your
8 Honor, I'm going to object to this whole line of
9 questions. He just testified he has never seen this
10 document before. It's about a four hundred page
11 document and he just said he has never seen it, and
12 Ms. Weinberg is continuing to ask him questions about
13 it.

14 JUDGE McKENNA: Well, I thought that he said
15 that he had seen a portion or portions of it.

16 MS. BAKER: I thought he said he had never
17 seen this document before, Your Honor.

18 JUDGE McKENNA: All right.

19 THE WITNESS: I'll clarify. I don't recall
20 seeing that document, based on the page at the
21 beginning that said the TranDot -- whatever that was.

22 Just being able to deduce what would be inside
23 something like that, I may have seen an excerpt of it
24 that was made up in the specs that we gave to our
25 third party publisher so that they could present leads

1 to us. And that is a pure assumption at that point.
2 I'm making an educated guess.

3 JUDGE MCKENNA: All right.

4 MS. BAKER: Your Honor, he can't even
5 authenticate this document, let alone attest to its
6 contents. I would object to this entire line of
7 questions and ask that we move on, thank you.

8 MS. WEINBERG: Your Honor, he needs to at
9 least look at it before he can attest whether or not
10 he has seen it before.

11 JUDGE MCKENNA: Well, I understand. The
12 objection is overruled. It is going to go to weight,
13 and we will just proceed and see how this goes.

14 BY MS. WEINBERG:

15 Q. Okay. Could you just flip through Exhibit 79,
16 which is in binder two. Let me know, you know, take
17 your time.

18 A. Just, you know, glancing through the table of
19 contents here, I don't think I have ever seen this
20 document in its current condition.

21 Q. Okay. Thank you. One final question, you
22 testified that you attended meetings with Mr. Carnes
23 where topics other than marketing were discussed, can
24 you tell me what topics were discussed at those
25 meetings?

1 A. Um, you know, I was probably involved with
2 some IT conversations around, you know, changes to the
3 website. I can't recall if Jim would have been in
4 those. The only ones that I can recall that Jim would
5 have been involved with would have been underwriting
6 conversations where I would have been listening in to
7 be able to speak up if I anticipated any negative
8 effect on our lead purchases based discussions that
9 were being suggested by our analytics department.

10 Q. And who else would have been involved in those
11 meetings concerning underwriting?

12 A. Stephanie Schaller and --

13 Q. And I'm talking about meetings where
14 Mr. Carnes was present.

15 A. Yeah, I'm trying to recall, I mean, I can only
16 -- I can maybe think of a couple, mainly Stephanie
17 Schaller.

18 Q. And in those meetings who was making the
19 decisions about the underwriting?

20 A. Mr. Carnes.

21 Q. And what were the decisions about underwriting
22 that he was making?

23 A. Suggestions for tests potentially, different
24 data providers to use in the underwriting decisions,
25 that is all I can recall.

1 Q. What kind of tests are you referring to?

2 A. AB testing, does this underwriting model work
3 better than that underwriting model. It depended on
4 the needs of the business at that time.

5 Q. Just to be clear, when you say underwriting,
6 what are you referring to?

7 A. It would have included credit scoring or the
8 make-up of an internal credit score that we had
9 utilizing third-party data sources to be able to make
10 better credit decisions, whether it was trying to solve
11 for poor default rates or conversion rates, it could --
12 and it depended -- it could vary based on the needs at
13 that time.

14 Q. Okay. So broadly speaking, is it fair to say
15 that in underwriting you are talking about whether or
16 not Integrity Advance wants to provide a loan to a
17 customer?

18 A. Correct.

19 MS. WEINBERG: Okay. No further questions.

20 JUDGE McKENNA: All right. You can sit. I
21 have some questions.

22 **COURT'S EXAMINATION**

23 BY JUDGE McKENNA:

24 Q. As you, you started out your testimony and you
25 mentioned the TranDotCom system.

1 A. Um-hmm.

2 Q. I assume, based upon that you were very
3 familiar with it; is that correct?

4 A. I was very familiar with a portion of it
5 related to the purchase and the performance of the
6 leads that we were buying. So I could tell the leads
7 that were going into the system and whether or not they
8 were converting. I had reporting inside the TranDot
9 system that I was able to look at to determine whether
10 or not we were making good purchase decisions or not.

11 Q. So which portion of Exhibit 79 encompassed
12 your familiarity?

13 A. It would have been section 7, reporting.

14 COURT REPORTER: Recording or --

15 JUDGE McKENNA: Reporting?

16 THE WITNESS: Reporting.

17 BY JUDGE McKENNA:

18 Q. All right. Now the TranDotCom, this is a
19 private company?

20 A. Correct.

21 Q. For profit?

22 A. I don't know their business structure but they
23 were a business that we worked with that provided a
24 software solution.

25 Q. So in other words, Integrity Advance purchased

1 their product?

2 A. We had a business relationship with them. I
3 don't know the structure. I -- ah, it would have
4 either been a, a purchase of the software or a per use
5 license.

6 Q. All right. And who entered into that
7 agreement?

8 A. That was done before I came on.

9 Q. All right. And you do not know who
10 effectuated that relationship?

11 A. I have never been told who made that ultimate
12 decision.

13 Q. All right. What about section eight? Did you
14 utilize that section?

15 A. I have never seen that information, no. I
16 don't recall ever seeing anything specific around that
17 that I utilized.

18 Q. Six?

19 A. I did not deal with that section either.

20 Q. Five, and its subsets?

21 A. This all appears to be the utilization of the
22 system itself that would have been handled -- or when I
23 say utilization from the operational usage for managing
24 the loans and I would not have had any interaction with
25 that part, that would have been done through the call

1 center.

2 COURT REPORTER: Been through what?

3 THE WITNESS: A call center.

4 BY JUDGE McKENNA:

5 Q. And the call center reported to whom?

6 A. I dealt with the interactions between the call
7 center and Integrity Advance.

8 Q. So then wouldn't you have utilized the
9 material for five?

10 A. No, I was not in -- involved with the actual
11 functionality of the system. I was just the
12 intermediary between our company and theirs.

13 Q. Who was?

14 A. In charge of how they utilized it? It -- the
15 -- both call centers that we worked with had used this
16 system in the past so I had no interaction or
17 instruction on how to use the system. They already
18 knew how to do it.

19 Q. Did you ever have any discussions with
20 Mr. Carnes regarding that issue?

21 A. I don't recall any, no.

22 JUDGE McKENNA: All right. Thank you.
23 Anything further before you --

24 MS. WEINBERG: I just -- yeah.

25 JUDGE MCKENNA: -- cross.

1 MS. WEINBERG: Yes, please, just one question.

2 BY MS. WEINBERG:

3 Q. You said that you dealt with the interactions
4 between the call center and Integrity Advance, did
5 Mr. Carnes also deal with the call center?

6 A. He had communications with the call centers.

7 Q. And do you know what the topics of those
8 conversations were?

9 A. I can't speak to any conversations I wasn't
10 privy to.

11 Q. How do you know that he spoke with the call
12 centers?

13 A. Well, call centers were -- the first call
14 center, Clearvox was in effect prior to me coming on to
15 the business, so I know there were interactions there.
16 When the decision was made to move to the other call
17 center, you know, Jim was involved with the selection
18 of that call center in determining what the process
19 would be to swap between one and the other.

20 Q. And after Jim was involved in the decision to
21 swap to a new call center, do you know if he was
22 involved in whether he had any conversations with the
23 call center subsequent to the move to the call center
24 being hired?

25 A. Ah, you know, the only time I can think of any

1 conversations he would have had is if I was out of the
2 office and something needed to be handled, you know,
3 because of an issue from a lead performance basis he
4 may reach out.

5 Q. Did the call center ever indicate to you that
6 they had received a call from Mr. Carnes regarding
7 conversions?

8 A. Ah --

9 MS. BAKER: Objection, vague.

10 JUDGE McKENNA: Overruled.

11 THE WITNESS: I can't recall if I ever, I
12 mean, it's possible, but I don't recall an exact
13 conversation. It's been many years.

14 BY MS. WEINBERG:

15 Q. Do you recall any other topics of conversation
16 that you had with the call center that indicated that
17 they had spoken with Mr. Carnes?

18 MS. BAKER: Same objection, which call center?

19 JUDGE McKENNA: Number two? Either?

20 THE WITNESS: I don't recall any particular
21 topics, no.

22 MS. WEINBERG: Okay. Thank you.

23 MS. BAKER: Your Honor, would the Court take
24 notice of the fact that Exhibit 79 is dated March
25 2008, which is a date before the company came into

1 existence. Integrity Advance?

2 JUDGE McKENNA: Duly noted.

3 MS. BAKER: Thank you.

4 **CROSS-EXAMINATION**

5 BY MS. BAKER:

6 Q. Good morning, Mr. Madsen.

7 A. Good morning.

8 Q. You testified earlier that you worked for HIP
9 Financial; is that right?

10 A. Yes.

11 Q. Can you describe for us what HIP financial
12 was?

13 A. I don't know the exact structure. I
14 understood it to be a, like a holding company or the
15 parent company for the different entities that we had.

16 Q. So it's the case that you didn't just work for
17 or provide services to Integrity Advance in connection
18 with HIP Financial?

19 A. I was involved with most all the different
20 businesses that HIP financial was involved with.

21 Q. And do you have an understanding as to whether
22 or not Mr. Carnes, during time that you were employed
23 by HIP Financial, also worked with all of the other
24 companies that were part of the HIP Financial umbrella?

25 A. Yeah, that was my understanding, yes.

1 Q. You spoke before about three specific general
2 topics, if you will, that you discussed with
3 Mr. Carnes, conversion rates, performance of leads,
4 first payment defaults, and then generally lead
5 generation; is that right?

6 A. Yes.

7 Q. And when you spoke with Mr. Carnes about
8 conversion rates, conversion rates do not concern the
9 language or disclosures of a loan agreement, do they?

10 A. Not as a rule, no.

11 Q. And performance of leads does not concern the
12 language or disclosure in a loan agreement, does it?

13 A. No.

14 Q. And first payment defaults does not concern
15 the language of a loan disclosure, does it?

16 A. No.

17 Q. And in general, lead generation doesn't
18 concern the language of a loan agreement or a loan
19 disclosure?

20 A. Not in general, no.

21 Q. It's fair to say you never talked to
22 Mr. Carnes about the language of a loan agreement?

23 A. Ah no, we never discussed that conversation --
24 we never had that conversation.

25 Q. Fair to say you never spoke with Mr. Carnes

1 about the language of the loan disclosures that were
2 part of the loan agreement?

3 A. Ah, no.

4 JUDGE MCKENNA: Ah no, meaning yes?

5 THE WITNESS: So we, we never had that
6 conversation.

7 JUDGE MCKENNA: Okay.

8 BY MS. BAKER:

9 Q. Now you testified before that you assume, you
10 assumed that Mr. Carnes was looking at the same
11 dashboard of information that you were looking at?

12 A. Correct.

13 Q. And you assumed that, you don't know that for
14 certain?

15 A. Ah --

16 JUDGE MCKENNA: The question is do you know
17 that for certain. Not you don't know that for certain.

18 BY MS. BAKER:

19 Q. Do you know that for certain?

20 A. You know, I would say, you know there was,
21 there were probably times when Jim would have pointed
22 out something that he saw on the dashboard to me.

23 Q. But, you don't know the frequency with which
24 Mr. Carnes reviewed that dashboard?

25 A. I do not know the frequency.

1 Q. You also don't know whether or not Mr. Carnes
2 frequently spoke with call centers?

3 A. No, I do not.

4 MS. BAKER: No further questions, thank you.

5 Thank you, Mr. Madsen.

6 JUDGE McKENNA: Anything further,
7 Ms. Weinberg?

8 MS. WEINBERG: No, Your Honor.

9 JUDGE McKENNA: All right. Thank you. You
10 are excused.

11 THE WITNESS: Thank you.

12 JUDGE McKENNA: We will take a break. Start
13 back at 11:30.

14 (A brief recess was taken.)

15 JUDGE McKENNA: Back on the record.

16 (Witness takes the stand.)

17 JUDGE McKENNA: You can remain standing
18 please. Please raise your right hand.

19 **BRUCE ANDONIAN,**

20 A witness produced on call of the Enforcement
21 Counsel, having first been duly sworn, was examined
22 and testified as follows:

23 THE WITNESS: I do.

24 JUDGE McKENNA: All right. Please be seated.
25 State and spell your name.

1 THE WITNESS: Bruce Andonian, B-R-U-C-E
2 Andonian, A-N-D-O-N-I-A-N.

3 JUDGE McKENNA: Proceed.

4 **DIRECT EXAMINATION**

5 BY MS. WEINBERG:

6 Q. Mr. Andonian -- is this on -- can you hear me?

7 Are you here voluntarily or pursuant to a
8 subpoena?

9 A. I was subpoenaed.

10 Q. Did you ever work for Integrity Advance?

11 A. I did.

12 Q. What position did you hold?

13 A. Director of software development.

14 Q. And what were your job duties as director of
15 software development?

16 A. I managed a team of six developers, between
17 one and six, as we built the team out, oversaw the
18 software development for the different products that
19 Willowbrook maintained.

20 Q. And was one of the products that Willowbrook
21 maintained the Integrity Advance website?

22 A. It was.

23 Q. Were there other products?

24 A. The Empower product --

25 Q. That related to Integrity Advance?

1 A. No, not that I'm aware of.

2 Q. And how long did you hold that position?

3 A. Two years, four months.

4 Q. From when to when?

5 A. February 2011 through May of 2013.

6 Q. And why did you leave?

7 A. The company was sold to EZ Corp, and I wasn't
8 comfortable with the management there.

9 Q. Were you formerly employed by Integrity
10 Advance?

11 A. I was employed by Willowbrook Partners and the
12 check that I would receive was from Hayfield?

13 Q. Just Hayfield?

14 A. I don't remember the full name.

15 Q. Okay.

16 A. It was Hayfield, they called it HIP, so those
17 three initials.

18 Q. And where were the offices that you worked out
19 of for Integrity Advance?

20 A. They are at the corner of State Line and 43rd
21 Way.

22 Q. In what city?

23 A. I don't recall.

24 Q. What state?

25 A. It was in Kansas.

1 Q. Okay. And what other management employees for
2 Integrity Advance worked out of that location?

3 A. You want the management staff?

4 Q. Yes. And if you --

5 A. I reported to Edward Foster, and then Jim
6 Carnes was over him, and then Tim Madsen, and I don't
7 remember his, his title, and I don't remember the other
8 managers that were there.

9 Q. Okay. Could you pull up the organizational
10 chart again? I want to show you what was submitted by
11 Integrity Advance as an organizational chart of
12 employees. And I ask you to look at it, and tell me if
13 it refreshes your recollection about who worked in the
14 Integrity Advance offices.

15 A. Could we dim the lights? I can't really read
16 it.

17 Q. You can actually see it in your book as well,
18 which would be easier, it's Exhibit 65.

19 JUDGE MCKENNA: For what time period are you
20 proffering this?

21 MS. WEINBERG: Well, he said that he started
22 working there in February 2011. So I will start by
23 asking him if those employees were there in February
24 2011, and ask him if they remained.

25 THE WITNESS: Exhibit 65?

1 BY MS. WEINBERG:

2 Q. Sixty-five.

3 A. Where do you see the exhibit number?

4 Q. There are tabs on the --

5 A. Okay.

6 Q. And there are two separate volumes. So you
7 may not be in the right -- that looks correct.

8 It -- that looks correct.

9 And were those employees there when you
10 started working in February 2011?

11 A. Chris Pickett was not, and the rest were.

12 Q. And were all of those employees there when you
13 ceased working for Integrity Advance in May of 2013?

14 A. Hassan was not there when we stopped.

15 Q. And did all of those employees work out of the
16 Kansas office?

17 A. All but George Davis.

18 Q. And where did Mr. Davis work?

19 A. I'm not sure.

20 Q. Can you describe -- did Mr. Carnes have an
21 office in the location where you worked in Integrity
22 Advance?

23 A. He did.

24 Q. Can you describe that office physically?

25 A. It was in the corner office. It was a large

1 office, about the size of this room. His desk was
2 against the far wall as you walked in, there was a
3 conference room -- a conference table directly as you
4 walked in with a whiteboard, and then there was a TV on
5 the left side as you walked in.

6 Q. And how did the size of Mr. Carnes' office
7 compare with the size of other employee's offices at
8 that location?

9 MS. BAKER: Objection, relevance.

10 JUDGE McKENNA: I will allow it.

11 THE WITNESS: It was probably twice as large.

12 BY MS. WEINBERG:

13 Q. Okay. How often were you in the office?

14 A. I was in the office every day except when it
15 was the weekend and when I was on vacation.

16 Q. And how often was Mr. Carnes in the office?

17 A. I would say just as much.

18 Q. And what hours did you work?

19 A. Our office hours were 8:30 to 5:30 and until
20 5:00 on Fridays.

21 Q. And what hours was Mr. Carnes in the office?

22 A. I would say roughly the same amount of time,
23 or same timeframe.

24 Q. Did you ever talk to Mr. Carnes one on one
25 about Integrity Advance's business?

1 A. Yes.

2 Q. How often?

3 A. I would say at least once a month, maybe twice
4 a month.

5 Q. And what types of things would you talk to him
6 about?

7 A. When Jim would talk to me about Integrity
8 Advance, it was because something wasn't working
9 properly. So it was if the data base was running slow
10 or if we weren't accepting leads or the conversion rate
11 was low and there would be an investigation on why that
12 was happening.

13 Q. And would you bring those matters to his
14 attention or would he bring them to your attention?

15 A. He would bring them to me.

16 Q. Did you ever attend meetings with other people
17 where Mr. Carnes was present?

18 A. We had a weekly IT meeting --

19 Q. And -- I'm sorry. Go ahead.

20 A. Edward was, Edward Foster and Nigel
21 Drinkwater, myself, and Jim.

22 Q. Who is Nigel Drinkwater?

23 A. He is the project manager for Willowbrook
24 Partners.

25 Q. And where were these weekly meetings held?

1 A. In Jim's office.

2 Q. And who ran the weekly meetings?

3 A. I would say Jim ran the meetings.

4 Q. And who set the agenda for the weekly
5 meetings?

6 A. The agenda was set by a list of tasks that
7 needed to happen for the week, and then we would
8 present those to Ed and Jim and they would go through
9 them in looking at things that they would accept or
10 deny and then gave priorities to those tasks.

11 Q. And do you know who was setting the priorities
12 for the tasks?

13 A. Most of the time it was Jim.

14 Q. And what topics did you discuss at these
15 weekly meetings?

16 A. The different products that we ran out of
17 Willowbrook Partners, which was the Empower --

18 Q. And specifically, I'm sorry, what topics
19 related to Integrity Advance did you discuss at these
20 meetings?

21 A. There wasn't a lot of Integrity Advance topics
22 on our task list. But if there was a state that we
23 wanted to remove or if we wanted to change a figure on
24 one of the credit scores.

25 Q. And why would you remove a state?

1 A. I would remove a state because Jim told me to
2 remove a state. I'm not sure on the whys and hows, or
3 I know how, but I didn't know why.

4 Q. And you said a change in credit score, can you
5 say a little bit more what you meant by that?

6 A. So, we used a third-party system, and we would
7 send out -- the person that was asking for the loan
8 would send out their information to a credit bureau and
9 it would return a number. Depending on that number
10 that you got back, we would either accept the lead or
11 deny the lead.

12 Q. So the number that you got back was the credit
13 score?

14 A. Correct.

15 Q. Would that be accurate to say?

16 A. Correct.

17 Q. And who made the decisions about what credit
18 score to accept?

19 A. There -- that system was in place before I got
20 there, so the numbers are already set. And then Jim
21 would come into my office and he would either reduce
22 the number or increase the number.

23 Q. And did he say why he was reducing on
24 increasing the number?

25 A. It was usually because they had an analytics

1 meeting and they wanted to change the number for
2 whatever reason, I'm not sure on the reasons.

3 Q. And then Jim would direct you to make the
4 change?

5 A. Correct.

6 Q. Did you discuss any other topics directly with
7 Mr. Carnes, or at these meetings related to Integrity
8 Advance's business?

9 A. Not that I recall.

10 Q. Other than the weekly meetings that you had,
11 did you attend any other meetings where Mr. Carnes was
12 present?

13 A. The monthly meetings, I believe they were
14 monthly, they were either monthly or quarterly, they
15 were company meetings.

16 Q. And who was present at these meetings?

17 A. Most of the employees.

18 JUDGE McKENNA: Which company?

19 THE WITNESS: It was Willowbrook Partners, so
20 it was a -- we would discuss all the different
21 products that was in Willowbrook. So it was Empower,
22 Go Cash, Integrity, they were all lumped together in
23 that meeting.

24 BY MS. WEINBERG:

25 Q. Other than the people who were on the org

1 chart which you looked at in your book, which is
2 Exhibit 65, were there other people at that meeting?

3 A. It was all the employees. So I had six
4 developers that were under me. There were other
5 analytical people that were there, a couple marketing
6 people. So it was the entire company.

7 Q. And what company were you talking about when
8 you say the entire company?

9 A. Willowbrook.

10 Q. Okay. And other than that, all of the people
11 on the org chart were also present at those meetings?

12 A. Most, Greg Davis wasn't at a lot of them.

13 Q. And who ran those meeting?

14 A. Ed Foster and Jim Carnes.

15 Q. And who would take the lead in the meeting?

16 A. Jim Carnes.

17 Q. And what topics were discussed at these
18 monthly meetings?

19 A. They were high level topics about the health
20 of the company, the direction of the industries.

21 JUDGE McKENNA: Which company?

22 THE WITNESS: All of the companies.

23 JUDGE McKENNA: So can you give us a breakdown
24 of Willowbrook?

25 THE WITNESS: I'm not sure if I understand the

1 question.

2 JUDGE McKENNA: The different entities
3 contained therein.

4 THE WITNESS: So Willowbrook had a -- Empower,
5 which was a prepaid debit card. Go Cash was a state
6 modeled lending platform.

7 JUDGE McKENNA: Which did what?

8 THE WITNESS: It made payday loans for State
9 of Texas and a couple of other states that were there.

10 JUDGE McKENNA: Separate and apart from
11 Integrity Advance?

12 THE WITNESS: Correct.

13 JUDGE McKENNA: Separate company?

14 THE WITNESS: Correct.

15 JUDGE McKENNA: All right.

16 THE WITNESS: And then the Integrity Advance,
17 and then we started a company in England, which I
18 don't remember the name of that company. It was Zap
19 Cash or something like that. But all of those
20 companies would be discussed in that company meeting,
21 all of those different products would be discussed.

22 JUDGE McKENNA: All right. Who ran
23 Willowbrook?

24 THE WITNESS: Jim did, Jim ran Willowbrook.

25 JUDGE McKENNA: And what about Hayfield?

1 THE WITNESS: I don't know, I don't know those
2 -- how the company was structured where Hayfield came
3 from. But that is what was on my check was Hayfield.

4 JUDGE McKENNA: Proceed.

5 BY MS. WEINBERG:

6 Q. Could you pull up Exhibit 67? And this is
7 also in your book -- so have you had a moment to look
8 at that?

9 A. Yes, ma'am.

10 Q. And when you said there were other companies,
11 does this refresh your recollection about any of the
12 other companies that were discussed at these monthly
13 meetings?

14 A. Yes. So the -- Zap Cash, and Integrity
15 Advance, HIP Financial -- I don't recognize the Blue
16 Ocean, Cornerstone would be the Empower product, Go
17 Cash and they had Go Cash UK.

18 Q. Okay. And who was the decision maker at these
19 meetings?

20 A. For which meetings, the --

21 Q. For the meetings, the monthly meetings that
22 you had at -- in the Integrity Advance office.

23 A. I don't know if there were any decisions being
24 made. It was more of an informal or informational. We
25 would just talk about the health of the company and the

1 direction that we were moving towards.

2 Q. And generally speaking, who was the decision
3 maker for Integrity Advance's business decisions?

4 A. It would be Jim.

5 Q. And did this --

6 JUDGE McKENNA: What did you say?

7 THE WITNESS: Jim Carnes.

8 BY MS. WEINBERG:

9 Q. And did this change over the time that you
10 worked at Integrity Advance or Willowbrook?

11 A. No.

12 MS. WEINBERG: No further questions.

13 JUDGE McKENNA: Cross-examination.

14 **CROSS-EXAMINATION**

15 BY MS. BAKER:

16 Q. Good morning, Mr. Andonian.

17 A. Good morning.

18 Q. You testified that you were employed by
19 Willowbrook; is that right?

20 A. That was the company I assumed I was working
21 for.

22 Q. When exactly were you hired to work there?

23 A. It was -- for Willowbrook it was February
24 2011.

25 Q. And when you were hired, who did you meet with

1 during that interview process, who specifically
2 interviewed you for that position?

3 A. It was a lady named Amy and I don't recall her
4 last name, Hassan and then Edward Foster.

5 Q. And do you have an understanding as to why you
6 were hired to work at Willowbrook?

7 A. It was to develop a software development team
8 for the Empower card.

9 Q. And did there come a time when in connection
10 with your working at Willowbrook you were asked to also
11 provide a service or two to Integrity Advance?

12 A. Yes, Hassan had gone on vacation and there was
13 a change. I don't remember what the change was that
14 needed to happen to the Integrity Advance system, to
15 the website and so Edward asked me to make a change to
16 that website.

17 Q. And do you recall when in the continuum of
18 when you worked for Willowbrook were you asked to first
19 do some amount of work for Integrity Advance?

20 A. It was kind of gradual, so the longer I was
21 there the more work that I think Jim felt comfortable
22 giving me, better understood the website and how the
23 company worked.

24 Q. You say Jim felt comfortable giving you, what
25 is the basis of your assessment of Mr. Carnes' comfort

1 level?

2 A. Just being more familiar with my skills.

3 Q. And was it Mr. Carnes who specifically asked
4 you to work on the Integrity Advance website when
5 Hassan went on vacation?

6 A. No, it was Edward.

7 Q. Now you testified that you participated in
8 weekly IT meetings; do you recall that testimony?

9 A. Yes, ma'am.

10 Q. And those weekly IT meetings were for the
11 Willowbrook family of companies?

12 A. It was.

13 Q. And what percentage of time during those
14 weekly IT meetings, and when we say IT, we mean
15 information technology.

16 A. Correct.

17 Q. What percentage of time during those weekly IT
18 meetings, approximately, were spent discussing any
19 aspect of Integrity Advance's business?

20 A. It was a very small amount. If I had to put
21 numbers, I would say less than ten percent.

22 Q. In all -- of all of the time that you worked
23 there, from February '11 until 2012?

24 A. Correct.

25 Q. Okay. Now you said you also attended monthly

1 or quarterly meetings?

2 A. Correct.

3 Q. And those monthly or quarterly meetings, and
4 you don't recall which they were, if they were every
5 three months or every month?

6 A. I don't, I'm sorry.

7 Q. And at those meetings, I think you testified
8 that the companies that were discussed were part of the
9 Willowbrook or Hayfield family of companies?

10 A. They were.

11 Q. Is that -- and the exhibit that was shown to
12 you before, Mr. Andonian, Exhibit 67, that is the
13 exhibit that reflects those family of companies?

14 A. As far as I know, yes.

15 Q. And to the best of your recollection, what
16 percentage of time during those monthly or quarterly
17 meetings was spent discussing any aspect of Integrity
18 Advance's business?

19 A. Very small amount.

20 Q. And if you had to put a minute on it, assuming
21 it's an hour long meeting, what -- how many minutes
22 would you say were spent?

23 A. I would say less than five minutes.

24 Q. Less than five minutes, okay. I think you
25 testified earlier that you generally worked a

1 forty-hour work week?

2 A. It was thirty-nine and a half.

3 Q. Let's call it forty. And you went on
4 vacation?

5 A. I did.

6 Q. How many -- would you say you took about a
7 couple of weeks off each year?

8 A. Yeah, I think we had two weeks of vacation,
9 two or three weeks.

10 Q. So it is fair to say that you worked for the
11 Willowbrook companies for about two years?

12 A. Correct.

13 Q. And over those two years you worked fifty,
14 fifty weeks each year would you say?

15 A. Yes, ma'am.

16 Q. And so it's fair to say if you worked forty
17 hours a week and you worked fifty weeks a year you
18 worked about two thousand hours each year?

19 A. Yes, ma'am.

20 Q. Okay. And you just testified that at each of
21 these assuming monthly meetings you spent no more than
22 five minutes discussing Integrity Advance. So if you
23 multiply five by twelve you get sixty minutes; is that
24 right?

25 A. If you say so. If you've done the math, yes,

1 ma'am.

2 Q. I have done the math, yes, and you are in
3 trouble if I have done the math.

4 That is one hour; is that right?

5 A. That sounds about right.

6 Q. So one hour each year, so two hours. So one
7 hour in the first year and one hour the second year?

8 A. You are talking about Integrity Advance?

9 Q. Yes.

10 A. Yes, ma'am.

11 Q. And you just testified that you worked
12 approximately four thousand hours for the Willowbrook
13 companies; is that right?

14 A. Yes, ma'am.

15 Q. So two hours out of four thousand hours is the
16 time that you spent in those monthly meetings, assuming
17 they were even monthly, hearing about Integrity
18 Advance?

19 A. Right.

20 Q. And when you heard about Integrity Advance,
21 were you hearing about information or issues that you
22 were working on specifically as to that company?

23 A. No.

24 Q. Did you ever have a conversation with
25 Mr. Carnes about the language in a loan agreement?

1 A. Never.

2 Q. Did you have ever have a conversation with
3 Mr. Carnes about the disclosures in a loan agreement?

4 A. No, ma'am.

5 Q. Did you ever have a conversation with
6 Mr. Carnes about edits or revisions to any loan
7 agreement?

8 A. No, ma'am.

9 Q. Did you ever have a conversation with
10 Mr. Carnes about any edits or revisions to a loan
11 disclosure?

12 A. No, ma'am.

13 Q. Did you ever have a conversation with
14 Mr. Carnes about the language in a script that was used
15 by a call service center representative?

16 A. No, ma'am.

17 Q. Did you ever have a conversation with
18 Mr. Carnes where any language or revisions to that kind
19 of script that might have been used by a call center
20 representative?

21 A. No, ma'am.

22 MS. BAKER: Thank you, Mr. Andonian.

23 JUDGE McKENNA: Redirect?

24 MS. WEINBERG: Just a couple of questions,
25 Your Honor.

REDIRECT EXAMINATION

BY MS. WEINBERG:

Q. Mr. Andonian, you said that you had one-on-one meetings with Mr. Carnes?

A. Yes, ma'am.

Q. And typically how long would those last?

A. I would say less than a minute most of them.

Q. And how often were those one minute meetings occurring?

A. It would, it would only happen if something needed to be changed on the website or something was going wrong with the website, so that, that happened very seldomly. I would say once a month, the database, there was something wrong with the database and he would come and inform me that I needed to work on that database. Or he would come in and say there is a state that needs to be removed. Those were about the length of the conversations, I want you to remove this state, yes, sir, and I would go remove the state.

Q. And what about your conversations about analytics?

A. I'm sorry?

Q. I think you testified that you spoke with him about analytics.

A. I did not have any conversations with Jim

1 about analytics.

2 Q. Okay. And would it be fair to say that the
3 Integrity Advance website remained fairly static other
4 than those changes that you mentioned during the time
5 that you were there?

6 A. Yes, ma'am.

7 Q. And would it be fair to say that is the reason
8 that you didn't need to speak to him frequently about
9 the website?

10 A. If there was nothing wrong, there was nothing
11 to talk about.

12 Q. And if there was a problem with the website or
13 with the software, would you speak to Mr. Carnes about
14 that?

15 A. Yes, ma'am.

16 Q. Okay. Thank you.

17 A. Thank you.

18 MS. BAKER: Nothing further, Your Honor.
19 Thank you.

20 JUDGE MCKENNA: Thank you.

21 THE WITNESS: Thank you.

22 JUDGE MCKENNA: You are excused.

23 We will break for lunch. We are going to move
24 to another courtroom that is more commodious. And so
25 we will start at 1:00.

1 Off the record.

2 (A luncheon recess was taken.)

3 JUDGE McKENNA: Call your next witness,
4 Mr. Wheeler.

5 MR. WHEELER: Your Honor, before we get
6 started, I thought it would be good time to talk about
7 what we are doing. We thought it might make sense to
8 call Mr. Foster first thing tomorrow morning, but we
9 didn't know what time you wanted to start in the
10 morning.

11 JUDGE McKENNA: Right. I thought you were
12 informed that we were going to start at 9:30.

13 MR. SACHS: Your Honor, I have not spoken to
14 my client to confirm he is available. I don't
15 anticipate any issues with that. So I expect we would
16 be able to start at 9:30, but I do need to confirm
17 with my client. Which I can send via e-mail.

18 JUDGE McKENNA: Whatever. We have a bunch of
19 witnesses, and if we want to interpose one over
20 another, it all gets done. Right?

21 MS. BAKER: Yeah, Your Honor, I have a couple
22 of questions, housekeeping matters, actually. I just
23 want to understand the mechanics of how Mr. Foster's
24 testimony is going to be presented to the Court
25 tomorrow. Is it going to be via telephone?

1 Is there a speaker phone in the courtroom?

2 (Attorney advisor indicating.)

3 MS. BAKER: So that is how he is going to

4 be --

5 JUDGE MCKENNA: Okay.

6 MS. BAKER: And then is the expectation that

7 if there was a witness who is going in the afternoon

8 if his testimony gets carried over to tomorrow morning

9 that his testimony will be put aside?

10 JUDGE MCKENNA: I can do that.

11 MS. BAKER: I leave that to counsel for the

12 CFPB.

13 MR. WHEELER: I don't think that is going to

14 be a problem, Your Honor. I prefer to finish up a

15 witness before we start with Mr. Foster if it delays

16 him by a little bit of time.

17 JUDGE MCKENNA: You guys are in control of the

18 proceedings except when you are not. All right. So,

19 and then I will get a stipulation from you, when

20 Mr. Foster does testify if you can talk to Mr. Sachs

21 to make sure that you can stipulate that Mr. Foster is

22 on the other end of the line, and is who he says he

23 is.

24 MS. BAKER: Your Honor, we will do the best we

25 can to provide that stipulation, keeping in mind that

1 myself and my client are not voice experts.

2 JUDGE McKENNA: Right.

3 MS. BAKER: So presumably we will be able to
4 do that, but I don't want to misrepresent to the Court
5 anything more than my own ability, so thank you.

6 JUDGE McKENNA: All right. No problem.

7 Proceed. Who is your next witness?

8 MR. WHEELER: Enforcement Counsel calls James
9 Carnes, Your Honor.

10 **JAMES R. CARNES,**

11 A witness produced on call of the Enforcement
12 Counsel, having first been duly sworn, was examined
13 and testified as follows:

14 THE WITNESS: I do.

15 JUDGE MCKENNA: Please be seated, state your
16 full name for the record, spell your last name.

17 THE WITNESS: My name is James Robert Carnes,
18 C-A-R-N-E-S.

19 JUDGE McKENNA: Proceed.

20 **DIRECT EXAMINATION**

21 BY MR. WHEELER:

22 Q. Good afternoon, Mr. Carnes. Are you familiar
23 with the company called Integrity Advance?

24 A. I am.

25 Q. What is Integrity Advance?

1 A. It was a company that made short-term loans
2 over the internet.

3 Q. Were you one of the founders of the company?

4 A. I am.

5 Q. And you were the CEO of Integrity Advance,
6 correct?

7 A. Integrity Advance didn't have any job titles,
8 but I was the CEO of the parent company, so the de
9 facto CEO of Integrity Advance.

10 JUDGE McKENNA: And which parent company?

11 THE WITNESS: That would be Hayfield, Hayfield
12 Investment Partners.

13 BY MR. WHEELER:

14 Q. You testified that Integrity Advance made
15 loans, correct?

16 A. Yes, sir.

17 Q. And those loans were made to consumers?

18 A. Yes, sir.

19 Q. Did the company offer any other products?

20 JUDGE McKENNA: Which company?

21 MR. WHEELER: Integrity Advance.

22 THE WITNESS: No.

23 BY MR. WHEELER:

24 Q. I'm sorry you said no?

25 A. No.

1 Q. Did the loans that Integrity Advance
2 originated create a revenue?

3 A. Yes.

4 Q. Did they create profits?

5 A. Yes.

6 Q. Did Integrity Advance have any other source of
7 revenue other than consumer loans?

8 A. No.

9 Q. Let's look at Exhibit 65, please.

10 JUDGE McKENNA: Fifty-five?

11 MR. WHEELER: Sixty-five, Your Honor that's in
12 the first binder.

13 JUDGE McKENNA: Yep.

14 BY MR. WHEELER:

15 Q. Mr. Carnes, I'm showing you what has been
16 admitted into evidence as Enforcement Counsel Exhibit
17 65, do you recognize this document?

18 A. I do.

19 Q. What is it?

20 A. It's a flow chart that says IADV reporting
21 structure. This would have been the org chart of the
22 parent Hayfield, I guess for purposes of this
23 investigation they put IADV on it.

24 COURT REPORTER: What was that?

25 JUDGE McKENNA: Would you speak up a little.

1 THE WITNESS: Sure.

2 JUDGE MCKENNA: That's good.

3 BY MR. WHEELER:

4 Q. Would it be fair to call this an
5 organizational chart of people who provided services to
6 Integrity Advance?

7 A. Yes.

8 Q. And this appears accurate to you?

9 A. Yes.

10 Q. And this lists you as the president, correct?

11 A. It does.

12 Q. And it lists Mr. Edward Foster as executive
13 vice president, COO, and general counsel?

14 A. That's correct.

15 Q. Did you hire Mr. Foster?

16 A. I did.

17 Q. When did you hire Mr. Foster?

18 A. I can't remember the month, but it was
19 sometime in the middle part of 2006.

20 Q. Could you describe that process.

21 A. The process of hiring him?

22 Q. Yes.

23 A. I knew Mr. Foster for -- previously, and was
24 looking for somebody who had his background and
25 expertise. I had worked with Mr. Foster before at an

1 internet company in 2000 and 2001. And I thought his
2 internet company experience would be appropriate for
3 what we were doing.

4 Q. And when you said appropriate for what you
5 were doing, what were you doing at that time?

6 A. Making loans over the internet.

7 Q. And was that through Integrity Advance?

8 A. No.

9 Q. What was that through?

10 A. Prior to Integrity Advance there were a couple
11 of companies that we had, that also made loans through
12 the internet that were not Integrity Advance.

13 JUDGE McKENNA: They were what?

14 THE WITNESS: They were not Integrity Advance.

15 BY MR. WHEELER:

16 Q. When did Integrity Advance form?

17 A. To my best recollection it was the articles of
18 the formation were filed with the State sometime in
19 2007, I believe, and went from there.

20 Q. And do you remember when after Integrity
21 Advance was formed that Mr. Foster started providing
22 services to Integrity Advance?

23 A. It would have been all through the, throughout
24 the formation of Integrity Advance he was there prior
25 to when it became, before it was formed.

1 Q. Going back to Exhibit 65. It shows Mr. Madsen
2 as vice president of marketing, correct?

3 A. Yes.

4 Q. Did you hire Mr. Madsen?

5 A. It was a joint effort of Edward and myself to
6 hire him, yes.

7 Q. And it shows here that Mr. Andonian was
8 director of IT; do you see that?

9 A. I do.

10 Q. Did you hire Mr. Andonian?

11 A. I didn't specifically, I don't recall
12 interviewing Mr. Andonian, but I, I obviously hired him
13 or instructed somebody else to hire him.

14 Q. What about Mr. Andrew Peck, he is listed as
15 vice president of finance did you hire him?

16 A. I did.

17 Q. What about Stephanie Schaller vice president
18 of decision science, did you hire her?

19 A. I did, with -- Mr. Foster and I were both
20 together on that hire.

21 Q. And Christopher Pickett is listed as vice
22 president of legal affairs, did you hire Mr. Pickett?

23 A. No, Edward Foster did.

24 Q. And George Davis is listed as Delaware office
25 manager, did you hire Mr. Davis?

1 A. I did.

2 Q. And then I, I always forget how to pronounce
3 this name -- Hassan Shahin, is that how you pronounce
4 it?

5 A. Yes, sir.

6 Q. Did you hire Mr. Shahin?

7 A. I did.

8 Q. And Mary Anne Reece is listed as controller,
9 did you hire Ms. Reece?

10 A. No.

11 Q. Who hired her?

12 A. Andrew Peck.

13 Q. And, last person, Mark -- is that Rondeau?

14 A. Yes.

15 Q. Did you hire Mr. Rondeau?

16 A. Mr. Rondeau had worked at a company with
17 Edward and I prior, the one I just referred to, and so
18 it was a combination between Edward and I.

19 Q. Of the people who appear in this org chart,
20 where did they work, physically?

21 A. With the exception of George Davis, they all
22 worked at our office in Westwood, Kansas. Well, we
23 were actually in Kinsey, Missouri for a short period of
24 time before Mr. Madsen, Mr. Peck, and that's all. And
25 then the rest were all hired when we moved to Westwood,

1 Kansas.

2 Q. But is it your testimony that -- so Integrity
3 Advance, the office moved at some point, correct?

4 A. Yes, correct.

5 Q. But, (coughs) excuse me, is it your testimony
6 that this group of people always worked together in the
7 same office?

8 A. Like I said, some of them worked -- a few -- a
9 subset of that group worked together at a prior office
10 and then when we moved to the new office, the rest of
11 the group got hired.

12 Q. And you worked in that office as well?

13 A. I did.

14 Q. Did Integrity Advance have a parent company?

15 A. Yes.

16 Q. And what was the name of that parent company?

17 A. Hayfield Investments Partners.

18 Q. Did you found Hayfield Investment Partners?

19 A. I did.

20 Q. Can you please see Exhibit 67? Mr. Carnes,
21 I'm showing you what has been admitted into evidence as
22 Enforcement Counsel Exhibit 67; do you recognize this
23 document?

24 A. I do.

25 Q. What is it?

1 A. It's a Hayfield Investment Partners corporate
2 structure.

3 Q. Is this document accurate?

4 A. It is, it changed over time, but it -- I think
5 the -- I think this is accurate as of the last time it
6 was published.

7 Q. Do you remember when that was?

8 A. It would have been near the -- sometime in
9 2012, I think.

10 Q. So you see the box sort of in the middle
11 toward the top that says Hayfield Investment Partners,
12 LLC, do you see that?

13 A. I do.

14 Q. The entities that appear above that box, would
15 I be correct in characterizing those entities as owners
16 of Hayfield Investment Partners?

17 A. You would.

18 Q. And do all of the boxes below the Hayfield
19 Investment Partners box represent subsidiaries of
20 Hayfield?

21 A. They do.

22 Q. And that is your name at the name where it
23 says James Carnes, correct?

24 A. That's correct.

25 Q. And that refers to you?

1 A. Yes, it does.

2 Q. What does the one hundred percent signify
3 there in the box with your name?

4 A. Well, that would signify that I own one
5 hundred percent of Willowbrook Marketing which owned
6 fifty --

7 COURT REPORTER: I can't hear you, sir.

8 THE WITNESS: That would signify I own a
9 hundred percent of Willowbrook Marketing, which owned
10 50.3802 percent of Hayfield Investment Partners.

11 JUDGE McKENNA: Excuse me just a second, is
12 the mic working?

13 THE WITNESS: Well --

14 JUDGE McKENNA: Tap it.

15 THE WITNESS: Yeah.

16 JUDGE MCKENNA: All right. So pull it a
17 little closer to you. That is better.

18 THE WITNESS: Is that better?

19 COURT REPORTER: Yes.

20 JUDGE McKENNA: And now in a real deep
21 voice --

22 BY MR. WHEELER:

23 Q. So Mr. Carnes, you testified that you owned
24 one hundred percent of Willowbrook Marketing?

25 A. Yes.

1 Q. And that Willowbrook Marketing owned 50.38
2 percent of Hayfield Investment Partners?

3 A. Correct.

4 Q. Were you the CEO of Willowbrook Marketing?

5 A. Willowbrook Marketing had no officers.

6 Q. Did it have any employees?

7 A. No.

8 Q. Is it fair to say that you had control over
9 Willowbrook Marketing?

10 A. Yes.

11 Q. The other ownership entities that appear above
12 the Hayfield Investment Partners box, did you have an
13 ownership interest in any of those entities?

14 A. The other ones outside of Willowbrook
15 Marketing you are speaking of?

16 Q. Yes, so is that --

17 A. The SI Hayfield.

18 Q. HC One, Edward Foster?

19 A. Correct.

20 Q. Those boxes?

21 A. Correct, yes. I had no ownership in any of
22 those boxes.

23 JUDGE McKENNA: What about just above that,
24 see attached list for details of owners, one hundred
25 percent of SI Hayfield, LLC, whose -- were you in that

1 hundred percent.

2 THE WITNESS: No, I was only the hundred
3 percent owner of Willowbrook Marketing which was 50.3
4 percent owner of Hayfield. The rest were other people.

5 BY MR. WHEELER:

6 Q. Did the ownership percentage that Willowbrook
7 Marketing held of Hayfield, did that change over time?

8 A. Yes.

9 Q. Was it ever the case that Willowbrook
10 Marketing owned less than fifty percent of Hayfield
11 Investment Partners?

12 A. No.

13 Q. And you were the CEO of Hayfield; is that
14 correct?

15 A. Yes.

16 Q. So is it fair to say that you managed all of
17 the entities that appear below the Hayfield box, all of
18 the subsidiaries?

19 MS. BAKER: Objection, foundation,
20 speculation.

21 JUDGE McKENNA: All right. Rephrase.

22 BY MR. WHEELER:

23 Q. You have testified that the entities below the
24 Hayfield Investment Partner's box were subsidiaries of
25 Hayfield, correct?

1 A. Correct.

2 Q. And you have testified that you were the CEO
3 of Hayfield?

4 A. Correct.

5 Q. But by virtue of you being the CEO of
6 Hayfield, did you manage the other subsidiaries under
7 the Hayfield box?

8 A. What do you mean manage?

9 Q. Did you have control over them?

10 A. I would, I was the CEO of Hayfield, I'm de
11 facto CEO of everything, every box you see up there
12 below Hayfield.

13 Q. I want to focus on HIP Financial. Do you see
14 that on the left side?

15 A. I do.

16 Q. What was HIP Financial?

17 A. It was our human resource company where
18 people's paychecks would come from.

19 Q. Let's go back to Exhibit 65 for a second. So
20 did HIP Financial pay everyone who appears on this
21 organizational chart?

22 A. No.

23 Q. Who did it pay?

24 A. Everybody below Edward Foster.

25 Q. So who did you receive your compensation from?

1 A. When I was compensated as a salary it was from
2 a company called Willowbrook Partners -- no, I'm sorry,
3 Willowbrook Managers, Willowbrook Managers.

4 Q. Did you own Willowbrook Managers?

5 A. I owned the majority of it.

6 Q. Do you remember the percentage?

7 A. Not off the top of my head.

8 Q. What about Mr. Foster, who paid Mr. Foster's
9 compensation?

10 A. Same.

11 MS. BAKER: Objection, foundation.

12 BY MR. WHEELER:

13 Q. Did Mr. Foster receive compensation?

14 A. Yes.

15 Q. And which entity paid his compensation?

16 A. Well, when?

17 Q. Well, at any time. So, from the beginning of
18 his time working at Hayfield.

19 A. Working at Hayfield?

20 Q. Well, you testified that he started out
21 working for Hayfield, correct?

22 A. No.

23 Q. I'm sorry, when you first hired Mr. Foster,
24 what entity was he working for?

25 A. I can't recall which one of the entities paid

1 his salary before this, but I know that it was, well,
2 when you see this chart it was, by this time Hayfield
3 had been created, and Willowbrook Managers that paid
4 Mr. Foster and myself, to the extent I was getting a
5 salary.

6 Q. Was there a time when you were not receiving a
7 salary?

8 A. Yes.

9 Q. When was that?

10 A. Early in the formation of the company.

11 Q. At what point did you start receiving a
12 salary?

13 A. I can't remember exactly.

14 Q. Were you receiving a salary by 2009?

15 A. Yes.

16 Q. What was that salary?

17 (No audible response.)

18 Q. What was that salary you were receiving?

19 A. You mean how much?

20 Q. Yes.

21 A. I don't remember.

22 Q. Was it two hundred and fifty thousand dollars?

23 MS. BAKER: Objection, calls for speculation.

24 JUDGE McKENNA: I will allow it.

25 THE WITNESS: It was somewhere around, I'm

1 guessing, somewhere around a couple hundred thousand
2 dollars.

3 JUDGE McKENNA: All right. Do you have
4 information or was that pulled out of whole cloth?

5 MR. WHEELER: No, it was not pulled out of
6 whole cloth, Your Honor. Mr. Carnes had testified to
7 that during his investigational hearing.

8 JUDGE McKENNA: All right.

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 JUDGE McKENNA: So the proper approach, if an
14 old man can interject --

15 MR. WHEELER: Please, Your Honor.

16 JUDGE McKENNA: -- would be to refresh his
17 recollection.

18 MR. WHEELER: One second. Your Honor.

19 (Brief pause.)

20 MR. WHEELER: We can come back to that, Your
21 Honor. If that's -- with your permission.

22 JUDGE McKENNA: Yes, that would be fine.

23 MR. WHEELER: I just don't see it right this
24 second.

25 JUDGE McKENNA: I just don't want to get

1 Ms. Baker beating me up.

2 MR. WHEELER: I understand. No one wants to
3 be beat up by Ms. Baker.

4 BY MR. WHEELER:

5 Q. Let's go back to Exhibit 67.

6 So Mr. Carnes, you have testified that the
7 entities under the Hayfield Investment Partners box
8 were subsidiaries, which of these subsidiaries was the
9 most profitable?

10 MS. BAKER: Objection, vague question.

11 JUDGE McKENNA: How is it vague?

12 MS. BAKER: What time, Your Honor?

13 JUDGE McKENNA: There you go, what time?

14 BY MR. WHEELER:

15 Q. Over the course of Hayfield's existence, which
16 of these entities was most profitable? Which of the
17 subsidiaries was most profitable?

18 A. Can you define most profitable, please?

19 Q. Did any of the subsidiaries create profit?

20 A. In what way?

21 Q. Did they have revenue above expenses?

22 A. Yes.

23 Q. Which ones?

24 A. Integrity Advance, Zip Cash, at one point Blue
25 Ocean, and then Go Cash.

1 JUDGE McKENNA: Did you say Go Cash?

2 THE WITNESS: Yes, sir.

3 BY MR. WHEELER:

4 Q. So during the course of Hayfield's existence
5 of those entities that you just named that have
6 profits, which one was the most profitable?

7 A. Again, do you mean operating profits, or
8 profits through a sale, or -- because those are two
9 different things.

10 Q. Operating profits.

11 A. Integrity Advance had the most operating
12 profits.

13 Q. To the extent that Integrity Advance generated
14 profits, were those distributed to Hayfield?

15 A. Yes.

16 Q. How did that process work?

17 A. What do you mean how did it work? You move
18 money from one company to another, you mean that?

19 Q. Is that what would happen?

20 A. Yes.

21 Q. Who would decide to move money from one
22 company to another?

23 A. It would be a collective decision between
24 Andrew Peck, our vice president of finance, Mr. Foster,
25 and myself.

1 Q. Given that you were the CEO would you have the
2 ultimate decision making power on that decision?

3 A. Yes.

4 Q. You have testified that Integrity Advance was
5 the most profitable of the profit making entities that
6 we see on this Exhibit 67, correct?

7 A. From an operating perspective, yes?

8 Q. Yes, from an operating perspective? Do you
9 know what percentage of the profits Integrity Advance
10 would have generated?

11 A. I do not.

12 Q. Would it be over fifty percent?

13 MS. BAKER: Objection, vague, and foundation.

14 MR. WHEELER: Your Honor, this witness was the
15 CEO of Hayfield.

16 JUDGE MCKENNA: I mean, how is that vague if
17 either he knows or he doesn't?

18 MS. BAKER: Well, he is asking him for
19 percentages and we are talking about a timeline that
20 hasn't been defined by any questions that Mr. Wheeler
21 has asked this witness in the last five minutes.

22 MR. WHEELER: I asked him about the whole
23 period that Hayfield existed and I have said that a
24 couple of times.

25 JUDGE MCKENNA: That is true. Overruled if

1 you can answer it.

2 THE WITNESS: I'm sorry. Could you repeat the
3 question?

4 BY MR. WHEELER:

5 Q. The question was: What percentage of
6 Hayfield's profits were generated by Integrity Advance?

7 A. It varied over time.

8 Q. How so?

9 A. Well, in the foundation, the forming of a
10 company there is -- you don't have any profits, and
11 then as the company grows, the profits grow and then as
12 you wind the company down the profits shrink and go
13 away.

14 Q. So let's take 2010. By that point Integrity
15 Advance had been running, correct?

16 A. Correct.

17 Q. In 2010 would Integrity Advance have generated
18 the majority of Hayfields profits?

19 A. I don't, I don't have that information in
20 front of me.

21 Q. Mr. Carnes, you recall that you were deposed
22 in this matter, correct?

23 A. I do.

24 Q. And you were in an office at Venable?

25 A. That's correct.

1 Q. And I was there and my colleague Ms. Weinberg?

2 A. That's correct.

3 Q. And, we asked you questions?

4 A. That's correct.

5 Q. Do you remember that?

6 And you were represented by counsel.

7 Ms. Baker?

8 A. That's correct.

9 Q. And you were under oath that day?

10 A. That's correct.

11 Q. And you answered truthfully that day, correct?

12 A. Absolutely.

13 Q. So I want to turn to your transcript from that
14 day, and it's Exhibit 68, although you don't
15 necessarily need to turn to it. I think it is -- and I
16 am just going to read from this.

17 JUDGE MCKENNA: Yes, hold on one second.

18 MS. BAKER: Permission to approach the
19 witness.

20 Just to make sure he has the right exhibit.

21 JUDGE MCKENNA: Sure -- I think that's
22 appropriate.

23 MS. BAKER: It is Exhibit 68?

24 MR. WHEELER: Is it 68?

25 MS. BAKER: Yes.

1 THE WITNESS: What page?

2 MR. WHEELER: Exhibit 68.

3 THE WITNESS: What page?

4 MR. WHEELER: It's on page 92.

5 MS. BAKER: Thank you, Your Honor.

6 THE WITNESS: Ninety-two?

7 MR. WHEELER: Correct.

8 BY MR. WHEELER:

9 Q. Okay. So I'm going to read starting at line
10 nineteen. (Reads)

11 "Question: Okay. So is it fair to say in
12 2010 the most significant portion of Hayfield's profits
13 or revenue came from Integrity?

14 Ms. Baker: Can you define significant?

15 Ms. Weinberg: I'm using the word that he just
16 used.

17 The Witness: Okay, we use profits and
18 revenues. Those are drastically different concepts.

19 Ms. Weinberg: Let's stick with profits.

20 Answer: Yes.

21 Question: Significant, does that mean more
22 than fifty percent?

23 Answer: Yes.

24 More than seventy-five percent?

25 Answer: Yes."

1 BY MR. WHEELER:

2 Q. Do you see that, Mr. Carnes?

3 A. I do.

4 Q. And that was your testimony that day?

5 A. That is.

6 Q. And was that truthful testimony?

7 A. Yes.

8 Q. What about for 2011, did Integrity Advance
9 generate most of Hayfield's profits in 2011?

10 A. Yes.

11 Q. Would it be more than 75 percent?

12 A. I, like I said, I don't have that in front of
13 me, I mean, I obviously testified that it was. This
14 was two years ago and that, and these were referring to
15 things that were four years prior to that, I'm trying
16 to recall everything so I can be a hundred percent
17 truthful.

18 And I, like I said, I was more -- this was
19 closer to the time that I was looking at the stuff and
20 I may even have looked at some of our other exhibits,
21 so yeah, I would say this is true.

22 Q. And would your answer be the same for 2012?
23 That Integrity Advance likely generated most of
24 Hayfield's profits?

25 A. Operating profits?

1 Q. Yes, operating profits.

2 A. Yes.

3 Q. Did Integrity Advance use lead generators or
4 lead aggregators?

5 A. Yes.

6 Q. And you are familiar with those terms?

7 A. I am.

8 Q. What do those companies do? What does that
9 refer to?

10 A. You want me to define it?

11 Q. What is your understanding of what a lead
12 generator does?

13 A. A lead generator would be a company who has
14 some methodology of contacting a consumer, getting the
15 consumer to take an offer, fill out an application, and
16 sell the data.

17 Q. And Integrity Advance would buy leads from
18 companies like this; is that correct?

19 A. Yes.

20 Q. And the lead is the consumer's information?

21 A. Yes.

22 JUDGE McKENNA: It's a potential client?

23 THE WITNESS: Yes, potential, exactly.

24 BY MR. WHEELER:

25 Q. Do you remember how many lead generators

1 Integrity Advance used?

2 A. I don't, at any one point it could have been
3 fifteen, it varied over time.

4 Q. Do you remember how much Integrity Advance
5 would pay for a lead?

6 MS. BAKER: Objection, foundation, vague.

7 JUDGE McKENNA: All right. So how is it
8 vague?

9 MS. BAKER: Mr. Carnes has just testified
10 about a company that was in business for four and a
11 half years.

12 JUDGE McKENNA: All right.

13 MS. BAKER: He's being asked questions with no
14 timeline or parameters.

15 JUDGE McKENNA: All right. He --

16 MS. BAKER: There is no foundation for the
17 question that is being asked.

18 JUDGE McKENNA: He did give a timeframe. It
19 was during the whole time that they were operational.

20 MS. BAKER: I did not hear Mr. Wheeler give
21 that timeframe for this line of questions, Your Honor.

22 JUDGE McKENNA: It's assumed therein, at least
23 that is the way I took it. But since you are confused
24 about it, so, would you please --

25 MR. WHEELER: Of course, Your Honor.

1 JUDGE McKENNA: -- direct a timeline. And
2 then please be ready to if you have another because I
3 want to get it right.

4 BY MR. WHEELER:

5 Q. During the entire time that Integrity Advance
6 operated in providing consumer loans, Integrity Advance
7 purchased leads, correct?

8 A. That's correct -- well, wait. What is the
9 first thing that you said?

10 Q. During the entire time Integrity Advance was
11 making consumer loans.

12 A. Yes.

13 Q. How much did Integrity Advance pay for those
14 leads?

15 A. It varied greatly.

16 Q. How so?

17 A. It varied over the time that it was in
18 business. The price of leads, in general, rose. And
19 then, I'm talking about the price of the highest
20 quality lead. Beneath that there were, you could,
21 there -- you could buy leads at any price level you
22 wanted. And so, we would buy all over the price
23 structure of what was offered.

24 Q. What was the lowest amount you remember
25 Integrity Advance paying for a lead?

1 MS. BAKER: Same objection, Your Honor.

2 JUDGE McKENNA: Overruled.

3 THE WITNESS: I don't recall, specifically,
4 but I would -- ten dollars, something like that.

5 JUDGE McKENNA: All right. And what timeframe
6 are we talking about there?

7 THE WITNESS: I think we are talking about the
8 whole timeframe it was in business, and the lowest we
9 ever paid, I think, is ten, around ten dollars.

10 JUDGE McKENNA: That would be toward the start
11 of operations?

12 THE WITNESS: No, it was --

13 JUDGE McKENNA: Because you said the price
14 increased over time.

15 THE WITNESS: The price of the -- so there
16 was, in the business there was a term called first
17 look. And first look is where the lead came to you as
18 a lender first before it went to any other lender.
19 The price of that first look went up over time.

20 The leads that were sold beneath that would go
21 down -- now, I think we paid as low as ten dollars. I
22 don't recall exactly when we were doing the ten dollar
23 piece, but I think it was somewhere in there. And
24 there were people who were paying less, but you would
25 buy it at different price points throughout, from the

1 top down to whatever that bottom level was, which my
2 recollection was ten dollars.

3 JUDGE MCKENNA: Thank you.

4 BY MR. WHEELER:

5 Q. Mr. Carnes, do you remember what the top level
6 would have been for leads?

7 A. I don't, I couldn't tell you the top level by
8 year, no.

9 Q. Do you remember the amount. Like what was the
10 highest Integrity Advance ever paid for leads, highest
11 amount?

12 A. Highest they ever paid?

13 Q. Yes.

14 A. That was really Mr. Madsen's deal. And I
15 didn't, I wasn't really too involved in that. I think
16 maybe two hundred dollars, I don't know.

17 Q. You testified about the fact that certain
18 leads were first look, that is the term you used?

19 A. Yes.

20 Q. So if Integrity Advance bought a lead that was
21 first look, you would have been the first company to
22 see that lead, correct?

23 A. That is correct.

24 Q. So I'm assuming that Integrity Advance would
25 pay more for a first look lead?

1 A. Any company would pay more for a first look
2 lead.

3 Q. Other than the first look, are there other
4 things that would differentiate the price of leads that
5 would make one lead more valuable than another?

6 A. Yeah.

7 MS. BAKER: Same objection, Your Honor.

8 JUDGE McKENNA: Thank you. Overruled.

9 BY MR. WHEELER:

10 Q. The question was: Are there things, other
11 things that would make, differentiate the price of a
12 lead?

13 A. Yes.

14 Q. And what are those things?

15 A. Whether or not a consumer had direct deposit
16 of their paycheck into their checking account or not.
17 Differentiate, that was a big differentiator.

18 JUDGE McKENNA: And why is that?

19 THE WITNESS: If a consumer doesn't have
20 direct deposit and getting paid by a paper check, they
21 would have to march the paper check into their bank to
22 deposit it, to use it. And you are then trying to
23 figure out what day to setup a -- your automated
24 clearing house debit of their account. And it is not
25 easy to do because you don't know what day they are

1 going to walk it into the bank.

2 JUDGE McKENNA: And if they decide they do not
3 want to walk it into the bank, they can stiff you
4 then; is that correct?

5 THE WITNESS: That's correct.

6 BY MR. WHEELER:

7 Q. Are there other factors that contribute to the
8 price of a lead other than whether or not the consumer
9 received direct deposit?

10 A. Yes.

11 Q. And what are those?

12 A. I'm not sure I can give you a complete list,
13 but there are things such as a savings account versus a
14 checking account, if they have -- that would make a
15 difference.

16 Q. Which one was more valuable?

17 A. Checking account, because not all savings
18 accounts are ACHable.

19 Q. Any other factors that you can think of right
20 now?

21 A. Ah, not really.

22 Q. Let's pull up Exhibit 53. Mr. Carnes, I'm
23 showing you what has been marked as Enforcement Counsel
24 Exhibit 53. Do you recognize this document?

25 A. Uh-huh.

1 Q. What is it?

2 A. It's a lead purchase agreement.

3 Q. And who was that lead purchase agreement
4 between?

5 A. It appears to be between T3 Leads and
6 Integrity Advance.

7 Q. Do you recall that Integrity Advance had a
8 contract with T3 leads?

9 A. Yes.

10 Q. Please turn to page 5. And I know it is a
11 little fuzzy, but on the bottom left-hand side, under
12 where it says Integrity Advance, LLC, is that your
13 signature?

14 A. Yes.

15 JUDGE McKENNA: Talking about page six?

16 MR. WHEELER: I thought it was page five,
17 although --

18 MS. BAKER: I have page seven.

19 THE WITNESS: It actually looks like page
20 seven of the agreement and was like page six of the
21 exhibit, page six of your exhibit. It is page seven of
22 the document.

23 BY MR. WHEELER:

24 Q. Okay. But you have testified that is your
25 signature, correct?

1 A. That is my signature.

2 Q. Integrity Advance did have a contract with T3
3 Leads, correct?

4 A. That is correct.

5 MR. WHEELER: Your Honor, I would ask that
6 Enforcement Counsel Exhibit 53 be admitted into
7 evidence.

8 JUDGE MCKENNA: Any objection?

9 MS. BAKER: No objection.

10 JUDGE MCKENNA: Just a second. Exhibit 53
11 admitted into evidence. All right. We are going
12 through this process, as I indicated to both counsel,
13 for all of the deferred rulings. And then I also want
14 to make sure that we have the proper foundation laid
15 for the ones that were admitted except for those that
16 no objection was lodged.

17 (Lead Purchase Agreement was
18 admitted into evidence as
19 Enforcement Counsel Exhibit No. 53.)

20 MR. WHEELER: I'm sorry. Just so I'm clear,
21 Your Honor, I remember in your order there was
22 somewhere that you held off on admitting or not
23 admitting them.

24 JUDGE MCKENNA: Right. You have that.

25 MR. WHEELER: And we have that list. When you

1 say something additional as to exhibits which you
2 deemed admitted?

3 JUDGE McKENNA: That is correct, maybe. I
4 want to go through them. I will do that with my staff
5 mostly, and then if I find any issues where I engaged
6 in a mala prohibita, then I will correct it.

7 MR. WHEELER: Okay.

8 JUDGE McKENNA: All right?

9 MR. WHEELER: All right. Thank you, Your
10 Honor.

11 JUDGE McKENNA: So admitted on fifty-three.

12 MS. BAKER: Your Honor, I'm sorry. Your
13 Honor, if I can just make a statement about Exhibit
14 53. I just want to put the Court on notice that it's
15 our position that documents that predate September 21,
16 2011 have limited relevance to this particular matter,
17 as it related to Mr. Carnes. Having said that, we
18 will allow this document to be moved into evidence.

19 JUDGE McKENNA: Duly noted.

20 MS. BAKER: Thank you.

21 MR. WHEELER: Obviously, we disagree, Your
22 Honor, but I don't know that that is worth arguing
23 right now.

24 BY MR. WHEELER:

25 Q. Mr. Carnes, did you negotiate this agreement

1 with T3 Leads?

2 A. I don't recall if Mr. Madsen negotiated it or
3 I would have or some combination of the two. I'm sure
4 Mr. Foster looked through it. I didn't sign anything
5 he didn't look at. I don't know who was involved in
6 the actual negotiation.

7 Q. Do you recall when Mr. Madsen started working
8 for Integrity Advance?

9 A. He just said it was 2008.

10 Q. Let's look at Exhibit 54.

11 A. He was actually working for HIP Financial.

12 JUDGE McKENNA: All right. Where are you now?

13 MR. WHEELER: Exhibit 54, Your Honor,
14 Enforcement Counsel Exhibit 54.

15 JUDGE McKENNA: Okay.

16 BY MR. WHEELER:

17 Q. Mr. Carnes, I'm showing you what's been marked
18 as Enforcement Counsel Exhibit 54, do you recognize
19 this document?

20 A. It appears to be a lead purchase agreement
21 between Integrity Advance and Partner Weekly.

22 COURT REPORTER: Between Integrity Advance
23 and whom?

24 THE WITNESS: Partner Weekly.

25 JUDGE McKENNA: You will need to get a little

1 closer to that mic.

2 THE WITNESS: Sorry. Partner Weekly.

3 BY MR. WHEELER:

4 Q. And on the first page there, where it says Jim
5 Carnes, does that refer to you?

6 A. Yes.

7 Q. Do you recall that Integrity Advance had a
8 contract with Partner Weekly?

9 A. I do.

10 Q. And would you please turn to page seven? And
11 on the bottom right-hand side, under where it says
12 Integrity Advance LLC/DBA, is that your signature?

13 A. That is my signature.

14 MR. WHEELER: Your Honor, I ask that
15 Enforcement Counsel Exhibit 54 be admitted into
16 evidence.

17 JUDGE McKENNA: Objections?

18 MS. BAKER: Yes, Your Honor, I do object on
19 relevance grounds for purposes I just said before.
20 It's not relevant to the question here of deceptive
21 conduct as it concerns Mr. Carnes. The Deception
22 Doctrine post-dates July 21, 2011. This document is
23 dated June 22, 2008.

24 MR. WHEELER: Your Honor, this document goes
25 to Mr. Carnes' role in the company, including when the

1 company was formed. There is -- his role running this
2 company throughout its timeframe is relevant to
3 whether or not he is liable for the deceptive
4 contract.

5 JUDGE McKENNA: All right. I will admit it
6 and it will go to weight.

7 (Lead purchase agreement

8 was admitted into evidence as

9 Enforcement Counsel Exhibit No. 54.)

10 MS. BAKER: Your Honor, if I may note, Your
11 Honor issued a Motion in Limine ruling last week on
12 the question of whether or not this Court would be
13 re-hearing issues that had already been decided by
14 this Court. And I understand Your Honor's ruling to
15 be that no evidence will be introduced into the record
16 that went only to issues previously ruled on. This
17 would be such an issue.

18 Because the only issues left for this Court
19 concern conduct that post-dates July 21, 2011. So
20 this is an issue -- this is a piece of evidence that
21 goes to issues that Your Honor has already ruled on.
22 Mainly conduct, that could, arguably, potentially
23 pre-date that timeline, thank you.

24 MR. WHEELER: Your Honor, this document goes
25 to Mr. Carnes' involvement with his company and his

1 role in running his company that is one of the issues
2 we are here to decide.

3 JUDGE MCKENNA: All right. Parties can make
4 arguments. I made my ruling.

5 MS. BAKER: Thank you.

6 BY MR. WHEELER:

7 Q. Mr. Carnes did you negotiate this contract
8 with Partner Weekly?

9 A. Again, I would give you the same answer as the
10 last agreement, I don't know who negotiated between
11 Mr. Madsen, Mr. Foster or myself. I signed it.

12 Q. Did Integrity Advance ever hire a company to
13 assist it with debt collection?

14 A. Like a collections company? Define debt
15 collection.

16 Q. Do you remember a company named Integrity
17 Financial Partners?

18 A. I do.

19 Q. Did Integrity Advance have a contract with
20 that company?

21 A. Yes, we did.

22 Q. Let's look at Exhibit 85. Mr. Carnes, I'm
23 showing you what has been marked as Enforcement Counsel
24 Exhibit 85, do you recognize this document?

25 A. I do.

1 Q. What is it?

2 A. It is an agreement between Integrity Financial
3 Partners and Integrity Advance for collection work they
4 were doing for us at the time.

5 Q. Will you turn to page five, please? And on
6 the bottom left-hand side under where it says Hayfield
7 Investment Partners and Willowbrook Partners, do you
8 see that, Mr. Carnes?

9 A. I do.

10 Q. And is that your signature?

11 A. It is.

12 MR. WHEELER: Your Honor, I ask that
13 Enforcement Counsel Exhibit 85 be admitted into
14 evidence.

15 JUDGE McKENNA: Objection?

16 MS. BAKER: Yes, Your Honor.

17 JUDGE McKENNA: Same objection.

18 MS. BAKER: Different objections in addition
19 to the same objection.

20 JUDGE MCKENNA: Okay.

21 MS. BAKER: First of all, this agreement
22 concerns companies that are not just Integrity
23 Advance. I also object because that agreement
24 concerns conduct that has never been an issue in this
25 matter. And I, moreover, object because it goes

1 against Your Honor's ruling in the Motion in Limine.
2 Which expressly precluded the introduction of evidence
3 that goes to any other issues other than those that
4 are before this Court right now.

5 JUDGE McKENNA: Correct.

6 MS. BAKER: And this goes to conduct that
7 predates July 21, 2011. The only issues before this
8 Court right now at this hearing go to conduct that
9 post-dates that time. You have deception and
10 unfairness on the table for ruling, those are
11 doctrines for the CFPB's own acknowledgment that only
12 concern conduct that post-dates July 21, 2011.

13 It was the CFPB's very Motion in Limine on
14 which Your Honor ruled. It was not a Motion in Limine
15 that we brought. And now they are using the ruling
16 that they sought against us in a way that is
17 profoundly unfair, Your Honor.

18 JUDGE McKENNA: All right.

19 MR. WHEELER: Your Honor, the same response as
20 last time. This goes to Mr. Carnes' role in running
21 this company. His role in running this company is
22 relevant to this proceeding. And to Ms. Baker's --

23 JUDGE McKENNA: Relevant to this proceeding or
24 to the remaining issues?

25 MR. WHEELER: It is relevant to the remaining

1 issue, whether or not Mr. Carnes was actively running
2 Integrity Advance such that this can be held liable
3 for the deceptive loan agreement.

4 MS. BAKER: Your Honor, my understanding of
5 the issue before the Court is whether or not
6 Mr. Carnes engaged in deceptive conduct and the
7 question of deceptive conduct concerns conduct that
8 post-dates by this Court's prior ruling, July 21,
9 2011. So whether Mr. Carnes executed an agreement
10 that predates that time is not relevant to the issues
11 remaining for this Court's disposition. And that was,
12 in fact, Your Honor's ruling in the Motion in Limine
13 that was ruled on last week.

14 MR. WHEELER: Your Honor, in your Summary
15 Disposition Order, you stated that it was unclear what
16 the precise nature of Mr. Carnes' role was. So that
17 is what we are attempting to do, to present evidence
18 that shows what his role was in running Integrity
19 Advance.

20 Just because something happened before the transfer
21 date does not mean it is not relevant to Mr. Carnes'
22 role in running Integrity Advance.

23 JUDGE McKENNA: Doesn't mean it's not, and
24 doesn't mean it does, or is.

25 MR. WHEELER: It doesn't necessarily mean it

1 is. But Your Honor, I would submit that Mr. Carnes'
2 role in signing these agreements speaks to his role as
3 CEO of Integrity Advance.

4 JUDGE McKENNA: All right. I'm going to
5 overrule the objection, but that does not mean that it
6 is going to be an accorded undue weight or any weight
7 depending upon my review of the record.

8 MR. WHEELER: I understand, Your Honor.

9 JUDGE McKENNA: All right.

10 MS. BAKER: Thank you, Your Honor.

11 JUDGE McKENNA: So admitted.

12 (Enforcement Counsel Exhibit

13 No. 85 was admitted into evidence.)

14 JUDGE MCKENNA: Proceed.

15 BY MR. WHEELER:

16 Q. Mr. Carnes, did Integrity Advance use third
17 parties to handle consumer calls?

18 A. Yes.

19 Q. Do you remember the names of those third
20 parties?

21 A. This is one of them, Integrity Financial
22 Partners. You saying inbound or outbound or what?

23 Q. Either one.

24 A. A company called Centrinex, I believe. I
25 don't know if they were Integrity or not, I can't

1 remember when that changed, but Clearvox, we had a
2 relationship with a company called Clearvox that at
3 some point changed. I'm sorry, Centrinex that at some
4 point changed --

5 COURT REPORTER: I'm sorry, sir, I can't
6 understand you.

7 JUDGE MCKENNA: Spell it, please.

8 THE WITNESS: We had a relationship with a
9 company called Centrinex, C-E-N-T-R-I-N-E-X. That we
10 changed at some point to a company called Clearvox,
11 C-L-E-A-R-V-O-X. So I don't know if -- I don't know
12 in the formation of Integrity when that was, but
13 somewhere in there. And then Integrity Financial
14 Partners, and then later on a company called Worldwide
15 Analytics, I believe.

16 BY MR. WHEELER:

17 Q. So you mentioned Clearvox was one of the
18 companies that you, that Integrity Advance worked with?

19 A. That's correct.

20 Q. Do you remember the services that Clearvox
21 provided?

22 A. Clearvox provided call center services for
23 inbound and outbound customer service. At some point
24 they might -- may have provided some collection
25 services, but I can't remember -- well, this was -- I

1 can't remember when it changed to Integrity Financial
2 Partners, it was sometime around that timeframe though.

3 Q. Did Integrity Advance pay fees to Clearvox?

4 A. Yes.

5 Q. Is it fair to say that, in the relationship
6 between Clearvox and Integrity Advance, Integrity
7 Advance were the clients?

8 A. Yes.

9 Q. Since Integrity Advance was the client, did
10 Clearvox generally implement Integrity Advance's
11 directions?

12 MS. BAKER: Objection, calls for speculation.

13 MR. WHEELER: I don't believe it calls for
14 speculation, Your Honor. I mean, the witness was the
15 CEO of Integrity Advance, he testified about Clearvox
16 providing services. I'm asking did Clearvox generally
17 implement Integrity Advance's instructions.

18 JUDGE McKENNA: Overruled.

19 THE WITNESS: They were a call center that had
20 experience in the loan process. And there wasn't
21 really a lot of detailed direction on what they were
22 doing because they already knew. Does that answer
23 your question?

24 BY MR. WHEELER:

25 Q. Did Clearvox develop Integrity Advance's loan

1 agreement?

2 A. No.

3 Q. Did Clearvox develop Integrity Advance's loan
4 product?

5 A. No.

6 Q. You testified Integrity Advance also used a
7 vendor called Centrinex?

8 A. I can't remember if Integrity Advance used
9 them or there was a prior company that used them. But,
10 we had a relationship at some level, at some point with
11 a company called Centrinex, yes.

12 Q. Do you remember the services that Centrinex
13 provided?

14 A. Similar to that of Clearvox.

15 Q. Did Centrinex develop Integrity Advance's loan
16 agreement?

17 MS. BAKER: Objection. I'm going to object to
18 this line of questions on foundation grounds. The
19 witness has just testified that he is not certain that
20 they even had a relationship. Perhaps Mr. Wheeler can
21 first establish that before he is asked to answer
22 questions.

23 JUDGE McKENNA: Sustained.

24 BY MR. WHEELER:

25 Q. Did Integrity Advance have a relationship with

1 Centrinex?

2 A. Like I just testified, I don't remember when
3 we -- Centrinex changed to Clearvox, whether it was --
4 it was around the time Integrity was formed, but I
5 can't remember if they did some work at Integrity or
6 not. Again, this was eight years ago.

7 Q. I understand. Did --

8 JUDGE McKENNA: Was that a different company
9 or they changed their name?

10 THE WITNESS: They -- um, it was a different
11 company, had some of the similar ownership, but
12 different company.

13 BY MR. WHEELER:

14 Q. Did Centrinex develop a loan agreement for
15 Integrity Advance?

16 A. No.

17 Q. Did Centrinex develop a loan product for
18 Integrity Advance?

19 A. No.

20 Q. You testified that Integrity Advance also used
21 a company called Worldwide Analytics?

22 A. Yes.

23 Q. What services did Worldwide Analytics provide?

24 A. The same as Clearvox.

25 Q. Which is?

1 A. Inbound/outbound call center support for
2 consumers.

3 Q. Did Worldwide Analytics develop Integrity
4 Advance's loan agreement?

5 A. No.

6 Q. Did Worldwide Analytics develop Integrity
7 Advance's loan product?

8 A. No.

9 Q. Did Integrity Advance maintain bank accounts?

10 A. Yes.

11 Q. Do you remember how many bank of accounts
12 Integrity Advance maintained?

13 A. When?

14 Q. Over the course of its existence, do you
15 remember how many it maintained?

16 A. Not exactly, a handful I would guess.

17 Q. More than five?

18 MS. BAKER: Objection, calls for speculation.

19 JUDGE McKENNA: I agree, you need to nail that
20 down a little more, I mean timeframes, when are you
21 talking about?

22 BY MR. WHEELER:

23 Q. Actually, let's turn to Exhibit 55, but don't
24 put it up, though. Your Honor, this exhibit needs to
25 be under seal because it contains PII.

1 A. Fifty-five, you say?

2 Q. Yes, fifty-five.

3 MS. BAKER: If I may just ask the Court and
4 Mr. Wheeler as a housekeeping matter, is it your
5 intention to ultimately move this, if this gets moved
6 into evidence, redacted?

7 MR. WHEELER: If we were to file this
8 document, we would certainly redact it.

9 MS. BAKER: Thank you.

10 MR. WHEELER: We would file an under seal
11 version, and a redacted version.

12 MS. BAKER: Thank you.

13 JUDGE McKENNA: Hold on a second.

14 MR. WHEELER: Just let me know.

15 JUDGE McKENNA: All right.

16 BY MR. WHEELER:

17 Q. Mr. Carnes, I'm showing you what has been
18 marked as Enforcement Counsel Exhibit 55, do you
19 recognize this document?

20 A. It appears to be a bank signature card.

21 Q. Did Integrity Advance have an account with
22 First Bank of Lewisburg?

23 A. They did.

24 Q. If you turn to the second page at the top
25 where it says James R. Carnes, does that refer to you?

1 A. Yes, it would.

2 MR. WHEELER: Your Honor, I ask that
3 Enforcement Counsel Exhibit 55 be admitted into
4 evidence.

5 JUDGE MCKENNA: Subject to redaction.

6 MR. WHEELER: Yes.

7 JUDGE MCKENNA: And under seal.

8 MR. WHEELER: Yes, Your Honor.

9 JUDGE MCKENNA: Objection?

10 MS. BAKER: Yes, Your Honor, this document --
11 well, to the extent it concerns Integrity Advance, and
12 I'm not, I guess some of it does, some of it does not,
13 appears to be dated July 30th, 2008.

14 JUDGE MCKENNA: Okay.

15 MS. BAKER: So nearly three years before the
16 conduct at issue for this hearing. So we object on
17 those grounds. Again, this could only go to issues
18 that have already been resolved by Your Honor in the
19 ruling that you rendered at the beginning of this
20 month, per the CFPB's Motion in Limine that they
21 brought.

22 JUDGE MCKENNA: I disagree.

23 MS. BAKER: Well, I'm registering my
24 objection, Your Honor.

25 JUDGE MCKENNA: And I respect that. All

1 right. Any other points of objection on this
2 particular exhibit?

3 MS. BAKER: Well, that is it, Your Honor.

4 JUDGE McKENNA: Okay.

5 MS. BAKER: That and it's not signed, so there
6 is no authentication.

7 JUDGE McKENNA: Well, then you need to discuss
8 that with Mr. Carnes on the authentication issue.

9 MR. WHEELER: Mr. Carnes, you remember --

10 JUDGE McKENNA: And he said, did he have an
11 account with them, yes?

12 MS. BAKER: It's not a signed copy. How do we
13 know this is a document that was actually used.

14 JUDGE McKENNA: All right. Go ahead.

15 BY MR. WHEELER:

16 Q. Your Honor -- excuse me, Mr. Carnes, did you
17 sign a signature card for First Bank of Lewisburg?

18 A. Yes.

19 Q. And you recall doing that?

20 A. Yes.

21 Q. Do you have any reason to believe that this,
22 what you are looking at, is not an accurate copy of
23 what you signed?

24 A. Well, clearly I didn't sign this one.

25 Q. But do you have any reason to believe this

1 copy is somehow different from what you signed?

2 A. I have no reason to believe that it is
3 different.

4 JUDGE McKENNA: All right. So admitted.

5 (Enforcement Counsel Exhibit

6 No. 55 was admitted into evidence.)

7 BY MR. WHEELER:

8 Q. Mr. Carnes, how did Integrity Advance use this
9 account with First Bank of Lewisburg?

10 A. As a checking account.

11 Q. Do you know if this account is still open?

12 A. It is.

13 Q. Do you know how much money is in this account?

14 A. De minimis amount.

15 Q. Something under one hundred thousand dollars,
16 is that a fair statement?

17 A. Something in the neighborhood of a hundred
18 dollars.

19 Q. You testified that Integrity Advance had
20 multiple accounts; is that correct?

21 A. Yes.

22 Q. Are any of the other accounts still open?

23 A. No.

24 Q. So this account at First Bank of Lewisburg is
25 the only account that Integrity Advance maintained that

1 is still open?

2 A. Correct.

3 Q. [REDACTED]

4 [REDACTED]

5 [REDACTED] [REDACTED]

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10 MS. BAKER: Your Honor, I would ask that this
11 line of questions concerning Hayfield, in particular,
12 be put under seal. It's proprietary and asking
13 questions about a party -- an entity that is not a
14 party to this case is wholly inappropriate.

15 JUDGE McKENNA: All right. I will grant that.

16 MS. BAKER: Thank you.

17 MR. WHEELER: Your Honor --

18 JUDGE McKENNA: So how do you want to handle
19 that? Do you want to clear the courtroom? Or --

20 MS. BAKER: Yes, Your Honor.

21 MR. WHEELER: I mean, I do have further
22 questions that involve Hayfield, so...

23 JUDGE McKENNA: Right.

24 MS. BAKER: Your Honor, to be specific, my
25 request is as it concerns any financial information

1 concerning Hayfield in the present. And so to the
2 extent Mr. Wheeler has questions that he is going to
3 continue to ask my client about how much money is in
4 their bank account, I would ask that this Court put
5 that part of that proceeding under seal and, in fact,
6 clear the courtroom, thank you.

7 MR. WHEELER: Your Honor, I don't have a
8 problem with the courtroom being cleared. Just so you
9 know --

10 JUDGE McKENNA: You do not have a problem?

11 MR. WHEELER: I do not have a problem with the
12 courtroom being cleared.

13 JUDGE McKENNA: Right, right, I don't either.

14 MR. WHEELER: I don't intend to ask any more
15 questions about Hayfield's current finances. I do
16 want to talk about some of their tax returns which are
17 from the past, I don't know Ms. Baker's position on
18 that.

19 MS. BAKER: I will say that same thing as to
20 tax returns. They are proprietary confidential
21 information, and to the extent he is going to examine
22 anyone about them, I would ask that the judge keep
23 that provision, that portion of the transcript under
24 seal, and clear the courtroom, thank you.

25 JUDGE McKENNA: Um-hmm.

1 MR. WHEELER: I don't have any objection to
2 that, Your Honor.

3 JUDGE MCKENNA: All right. Your motion is
4 granted.

5 MS. BAKER: Thank you.

6 JUDGE MCKENNA: All right. So now parties can
7 say, do you want Mr. Foster's attorney to leave?

8 MS. BAKER: I don't care if Mr. Foster's
9 attorney stays here, but it is proprietary
10 information.

11 JUDGE MCKENNA: No, I'm mean --

12 MS. BAKER: Yeah.

13 JUDGE MCKENNA: -- but, yeah, I'm going to let
14 -- you can look, and both sides, can start saying
15 well, who has to leave, I mean, I don't know these
16 people.

17 MS. BAKER: Neither do I, Your Honor.

18 JUDGE MCKENNA: All right.

19 MS. BAKER: I only know the two individuals
20 sitting there and I know the -- I know Ms. Morris. I
21 don't know anybody else, and Mr. Kelly. So, I don't
22 know who else is in the courtroom who maybe should not
23 be here.

24 JUDGE MCKENNA: All right. Government
25 attorneys will stay, right? Or do you want

1 Mr. Wheeler -- off of the record.

2 (Brief recess.)

3 JUDGE MCKENNA: So everyone that is in the
4 courtroom now, both parties are agreeable that they
5 can stay; is that correct?

6 MS. BAKER: I have no reason to think that
7 Enforcement Counsel's misrepresenting who all of these
8 individuals are. The only two that I know are not the
9 part of the CFPB are the two summer associates sitting
10 in the front and Mr. Sachs. But if they tell me
11 everyone else is a CFPB affiliated attorney, then I
12 have no problem with them staying. I would argue
13 though, if they are not part of Enforcement Counsel,
14 then they are not party to this case. They should not
15 be in the room.

16 JUDGE MCKENNA: All right. Any --

17 MS. BAKER: So anyone else from the CFPB who
18 is not part of the Enforcement Office should be asked
19 to leave the room.

20 MR. WHEELER: So we do have two data
21 scientists here, Your Honor. I mean, I would submit
22 that they are a part of the Bureau. Also we have had
23 to share information with them to help develop our
24 case, so I don't think there is a reason to bar them
25 from the courtroom, but obviously --

1 JUDGE McKENNA: Are they dealing with these
2 issues?

3 MR. WHEELER: No. They are not dealing with
4 these issues, Your Honor.

5 JUDGE McKENNA: Res ipsa loquitur, right.

6 MR. WHEELER: What's that?

7 JUDGE McKENNA: Res ipsa loquitur, all right.

8 MR. WHEELER: Sorry.

9 MS. BAKER: Yes, thank you.

10 MR. WHEELER: I think they are having the time
11 of their life, Your Honor. Everyone else here from
12 CFPB is part of Enforcement Counsel.

13 JUDGE McKENNA: All right. And the interns
14 have all signed nondisclosure agreements that are
15 going to hear this?

16 MS. BAKER: Yes, Your Honor, I believe that
17 they are subject to attorney/client privilege and work
18 product and everything else that goes along with being
19 part of the various teams. I don't want to speak for
20 CFPB's intern, but I can speak for our summer
21 associates.

22 UNKNOWN MALE VOICE: We are all in agreement.

23 MS. BAKER: Yes, thank you.

24 JUDGE McKENNA: All right. Proceed.

25 BY MR. WHEELER:

1 Q. All right. Thank you, Your Honor. So, let's
2 look at Enforcement Counsel Exhibit 55, and you can put
3 that up since we have now cleared the courtroom. And
4 this should also be under seal, Your Honor, it contains
5 PII.

6 A. That's the one we just looked at, right?

7 Q. I'm sorry, yeah, you are right, 45, excuse me.

8 A. Forty-five?

9 Q. Forty-five, yes. Do you have it, Your Honor?

10 JUDGE McKENNA: I do.

11 BY MR. WHEELER:

12 Q. [REDACTED]
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Horizontal bar chart showing the percentage of respondents who believe that the current government is responsible for the economic crisis in the United States. The chart is divided into two main sections: 'Current government' and 'Previous governments'. The 'Current government' section shows a high percentage of respondents (around 80%) who believe the current government is responsible. The 'Previous governments' section shows a lower percentage of respondents (around 20%) who believe previous governments are responsible. The chart also includes a legend indicating that the bars represent the percentage of respondents who believe the government is responsible for the economic crisis.

Category	Percentage of respondents who believe the government is responsible for the economic crisis
Current government	80%
Previous governments	20%

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MS. BAKER: Thank you.

JUDGE McKENNA: All right?

MR. WHEELER: Let's look at Exhibit 91.

THE WITNESS: Ninety-one?

MR. WHEELER: Ninety-one, yes.

JUDGE McKENNA: If anyone has needs, wants to
take a break at any time they may do so.

MR. WHEELER: This will be a fine time to take

1 a break, Your Honor.

2 JUDGE MCKENNA: What did you say?

3 MR. WHEELER: This would be a fine time to
4 take a break with your permission, Your Honor.

5 JUDGE MCKENNA: Sure, yeah, right. How long
6 do you want?

7 MS. BAKER: I'll defer to Mr. Carnes, since he
8 is the witness on the stand.

9 THE WITNESS: I don't care.

10 JUDGE MCKENNA: Okay. One minute.

11 All right. Off the record. We will take a
12 ten-minute break.

13 (A ten minute recess was taken.)

14 JUDGE MCKENNA: Back on the record.

15 Ms. Baker?

16 MS. BAKER: Yes.

17 JUDGE MCKENNA: Could you please read 10.303
18 (d)(4) into the record.

19 MS. BAKER: Yes, sir, Your Honor. What is it
20 I'm reading? I'm sorry.

21 JUDGE MCKENNA: You are reading that reg,
22 (d)4.

23 MS. BAKER: (D)4, oh, (reads) "As Respondents
24 are in the best position to determine the nature of
25 documents generated" --

1 COURT REPORTER: Ma'am --

2 JUDGE MCKENNA: Ah, yeah, slow down.

3 MS. BAKER: -- "By such Respondent and which
4 come from their own files, the burden of proof is on
5 the Respondents to introduce evidence to rebut a
6 presumption that such documents are authentic, and
7 kept in the regular course of business."

8 Um, okay. What I'm, I guess I'm not clear as
9 to why I was --

10 JUDGE MCKENNA: Just thought that might have
11 some relevance as to what we are doing here. Why
12 don't you grab the binder and then we will --

13 MS. BAKER: Your Honor, may I just make a
14 statement --

15 JUDGE MCKENNA: Yes.

16 MS. BAKER: -- in response to that?

17 JUDGE MCKENNA: Sure.

18 MS. BAKER: I think that with respect to
19 documents that have been produced in this -- in the
20 investigation phase, that is a very fair statement.
21 However, that doesn't mean that something that isn't
22 signed is per se authentic.

23 And I, I think we did make that representation
24 and I would also note that --

25 JUDGE MCKENNA: Yes, you did.

1 MS. BAKER: -- this is an investigation that
2 started three and a half years ago, and, when the
3 Bureau received documents that were not signed and
4 authenticated, it could have asked us for copies that
5 were. And of course, I wasn't counsel at the time,
6 but I would argue that if they are intending to
7 introduce something in an evidentiary record that some
8 of that burden is on them, as they are the plaintiffs
9 in this matter moving forward.

10 So, I do respect the rule and I understand the
11 rule.

12 JUDGE McKENNA: They are the complainant.

13 MS. BAKER: They are the complainant, Your
14 Honor, that's right. But they have -- I think we
15 agree they have the burden of making their case. We
16 don't have the burden of rebutting their case until
17 they have made a prima facie case in the first
18 instance.

19 And I would argue that that has to do, in part,
20 with the way evidence gets admitted into the record.
21 So I understand the rule, but I also understand that
22 if you are going to introduce evidence into the
23 record, evidence that you have had in your possession,
24 custody or control for almost four years, it might be
25 incumbent upon them as well as us to make sure there

1 are signed copies of documents.

2 That would be our position.

3 JUDGE McKENNA: I understand.

4 MS. BAKER: Thank you.

5 JUDGE McKENNA: Thank you.

6 MS. BAKER: Thank you, Your Honor.

7 JUDGE MCKENNA: Mr. Wheeler?

8 MR. WHEELER: Yes, thank you, Your Honor.

9 BY MR. WHEELER:

10 Q. Mr. Carnes, I wanted to go back, just very
11 quickly, to something we covered before the break. You
12 recall we were talking about your salary?

13 A. Yes.

14 Q. I wanted to point your attention to Exhibit
15 68, which is your investigational hearing transcript
16 again.

17 A. Okay.

18 Q. And --

19 JUDGE McKENNA: Just a second, six-eight?

20 MR. WHEELER: Six-eight, yes, Your Honor, and
21 page 96.

22 JUDGE McKENNA: Six-eight, page what?

23 MR. WHEELER: Ninety-six, Your Honor.

24 THE WITNESS: Okay.

25 JUDGE McKENNA: Ninety-six --

1 THE WITNESS: I think it is --

2 JUDGE McKENNA: -- and that would be the one
3 at the top of the page or --

4 MR. WHEELER: At the bottom of ninety-six,
5 Your Honor.

6 JUDGE McKENNA: All right.

7 MR. WHEELER: And I'm just going to read a
8 short portion.

9 JUDGE McKENNA: Okay.

10 MR. WHEELER: If you are ready.

11 JUDGE McKENNA: Ready.

12 MR. WHEELER: Okay. So starting on line
13 twenty-two. (Reads).

14 "Question: And what was your salary in 2010
15 from Willowbrook?

16 Answer: I can't recall. I think it was two
17 hundred and fifty thousand dollars."

18 JUDGE McKENNA: If you are going to read it
19 you need to read it exactly.

20 MR. WHEELER: I'm sorry. I apologize.

21 MS. BAKER: Your Honor, I'm a little unclear
22 as to what this line of questions is. This document
23 has been admitted into evidence. What is the purpose
24 of this line of questions as it relates to Mr. Carnes's
25 testimony?

1 JUDGE McKENNA: I understand.

2 MR. WHEELER: I am just seeking to refresh his
3 recollection about his salary. He testified to it
4 during the investigational hearing.

5 JUDGE MCKENNA: All right.

6 MS. BAKER: Your Honor, I thought he already
7 testified that he wasn't disputing what was in this
8 document.

9 JUDGE McKENNA: Well, let's move on.

10 BY MR. WHEELER:

11 Q. Right. I mean -- Mr. Carnes, is it your
12 recollection that your salary was two hundred fifty
13 thousand dollars?

14 A. Like I said before in this courtroom and like
15 this document said, I can't recall exactly. I think it
16 was two hundred fifty thousand dollars. It's a very
17 accurate representation.

18 JUDGE McKENNA: That was kind of an asked and
19 answered situation.

20 BY MR. WHEELER:

21 Q. Do you recall that your salary changed over
22 time?

23 A. I don't believe it did.

24 Q. [REDACTED]

25 [REDACTED]

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MS. BAKER: Your Honor, may I address something, relating to the rule (d)4 that you asked me to read before? That rule presupposes that documents that were produced in response to a query made during an investigation are presumptively accurate. And I think that that is a fair presumption given the context of this matter.

What I don't know is what answer -- what question was asked that elicited the production of these documents. And it may be that what was produced was never represented or intended to be represented as an actual tax return filed with the IRS.

And I'm still not clear as to whether or not this document is authentic and I maintain that same objection as to the prior one. And I understand the (d)4 rule. But what I don't have is the context for the document production itself.

JUDGE McKENNA: All right. Duly noted and you

1 have the opportunity to submit the original. The
2 signed copy that was submitted to the IRS.

3 MS. BAKER: Okay. Well, thank you, Your
4 Honor. And when we do that, as I think we noted, we
5 would like to request that all testimony about an
6 unauthenticated document be stricken from the record.
7 We will renew that request at the time that we make
8 that submission.

9 JUDGE MCKENNA: Thank you.

10 MS. BAKER: Thank you, Your Honor.

11 JUDGE MCKENNA: Thank you.

12 MR. WHEELER: Your Honor, I ask that
13 Enforcement Counsel Exhibit 91 be admitted into
14 evidence.

15 JUDGE MCKENNA: Same multiple objections?

16 MS. BAKER: Yes, Your Honor, objection. Thank
17 you.

18 JUDGE MCKENNA: All right. So admitted.

19 (HIP 2012 Tax Return was admitted
20 into evidence as Enforcement Counsel
21 Exhibit No. 91.)

22 MR. WHEELER: So we need to turn to page
23 fifty-two, sorry.

24 JUDGE MCKENNA: Fifty-two of 91?

25 MR. WHEELER: Yes, page fifty-two of Exhibit

1 91.

2 MS. BAKER: Mr. Wheeler -- or may I address
3 Mr. Wheeler?

4 JUDGE MCKENNA: Yes.

5 MS. BAKER: Could you, for the record, state
6 specifically what Bates number you are talking about
7 because it's not clear.

8 MR. WHEELER: There should be page, page
9 number.

10 MS. BAKER: Where are the page -- oh.

11 JUDGE MCKENNA: At the bottom of the page.

12 THE WITNESS: Are you talking about the one
13 that says, EC-EX-091-052, is that correct?

14 MR. WHEELER: Yeah, I don't --

15 MS. BAKER: The copy that we have, which is
16 the document disk that was provided to us doesn't have
17 that. And that is okay. I just need to know what
18 page we are on.

19 MR. WHEELER: Yeah.

20 MS. BAKER: Thank you.

21 JUDGE MCKENNA: That is good.

22 MR. WHEELER: Do you have it now or do you
23 need me to --

24 MS. BAKER: Can you please just tell us.

25 MR. WHEELER: Yeah. Fifty-two. I lost track

1 of what -- the numbers. Page fifty-two, Exhibit 91.

2 JUDGE McKENNA: Off the record.

3 (Brief recess.)

4 JUDGE McKENNA: Back on the record.

5 MR. WHEELER: So the page is INTEG 000402.

6 MS. BAKER: Thank you.

7 BY MR. WHEELER:

8 Q. Mr. Carnes, you are on the correct page now?

9 A. Yes, I am.

10 Q. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

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16 [REDACTED]

17 [REDACTED]

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Q. Let's take a look at Exhibit 87. Mr. Carnes, I'm showing you what's been marked as Enforcement Counsel Exhibit 87. Do you recognize this document?

A. Appears to be an e-mail chain that I was on.

Q. So in the middle of the first page, I believe, your name appears, do you believe that's -- that refers to you?

A. Yes.

Q. The e-mail address that is there, is that an e-mail address that you used in February of 2011?

A. Yes.

Q. Do you have any doubt -- do you have any reason to doubt that that e-mail exchange occurred?

A. No.

MR. WHEELER: Your Honor, I ask that Enforcement Counsel Exhibit 87 be admitted into evidence.

MS. BAKER: Objection, Your Honor. It's an e-mail exchange that appears to have occurred before July 21, 2011. And its relevance is questionable.

JUDGE McKENNA: Okay. Res gestae and the relevance will be determined when I render my decision.

1 So objection is overruled. Eighty-seven is admitted
2 into evidence.

3 (Enforcement Counsel Exhibit No. 87
4 was admitted into evidence.)

5 BY MR. WHEELER:

6 Q. Mr. Carnes, do you remember this e-mail?

7 A. No.

8 Q. There seems to be a discussion in the e-mail
9 about a -- well, the subject is "re:fraud," that you
10 had written about. Do you remember what this is about?

11 A. I vaguely recall what it was about. I think
12 it was about some -- one or more employees of Clearvox
13 impersonating consumers and stealing funds, that is
14 what I believe it is about.

15 Q. Can you explain what you were instructing
16 Mr. Foster to do with this e-mail you sent on Friday
17 February 25th, 2011?

18 A. So what we had found out that had happened
19 because some consumers called in, was that an employee
20 of Clearvox had taken the approved loan application
21 from within the loan system and changed the account
22 number to send the money -- the person wanted the loan,
23 the consumer wanted the loan. So the employee changed
24 the account number to send the money to themselves.
25 Went back in the next day and changed the account

1 number back to what the consumer had given us so that
2 the payments would then be debited out of consumer's
3 account without ever receiving a loan.

4 And you can see here I said, we take care of
5 the customers who have not had -- who have payment
6 debits to their account, but never seen a loan. Refund
7 any fees and bank charges they had. We need to search
8 the ACH credit files for two weeks before and after, so
9 forth. And they -- we alerted the police that came and
10 I believe arrested the offending employee.

11 That is my recollection of that.

12 Q. Let's look at Exhibit 88. Mr. Carnes, I'm
13 showing you what has been marked as Enforcement Counsel
14 Exhibit 88, do you recognize it?

15 A. It's an e-mail from eight years ago. Yeah, I
16 see it's from me. I'm in the stream.

17 Q. Do you have any reason to doubt that this
18 e-mail exchange occurred?

19 A. I don't.

20 Q. And that is your e-mail address that appears?

21 A. It is.

22 MR. WHEELER: Your Honor, I ask that
23 Enforcement Counsel Exhibit 88 be moved into evidence.

24 MS. BAKER: Objection, relevance, Your Honor.

25 It is dated November of 2008. It's not clear

1 it concerns Integrity Advance, and it is as to conduct
2 that predates July 21st. Thank you.

3 JUDGE McKENNA: Thank you. Objection
4 overruled. Eighty-eight is hereby admitted into
5 evidence.

6 (E-mail was admitted into evidence as
7 Enforcement Counsel Exhibit No. 88.)

8 BY MR. WHEELER:

9 Q. Mr. Carnes, in the middle of the first page of
10 this exhibit you see where you sent an e-mail, and it
11 reads that, "clearly call backs on day two and three
12 are the problem," do you see that?

13 A. I do.

14 Q. Do you know what you meant by that?

15 A. Only from reading the rest of the e-mail
16 stream.

17 JUDGE McKENNA: Pardon me?

18 THE WITNESS: Only from reading the rest of
19 the e-mail stream that it appears from reading this
20 that the call logs that were sent to Tim -- he
21 apparently noticed a problem somehow, sent it to me to
22 look at. And it's -- and I must have looked at it and
23 said something about the callbacks, they are not
24 happening like they should on days two and three.

25 And I forward that on, obviously to the top of

1 the e-mail.

2 COURT REPORTER: To what?

3 THE WITNESS: To the people on the top of the
4 e-mail, Herb C. and Matt Kirk.

5 JUDGE McKENNA: So, what is the context of
6 callbacks on day two and three?

7 THE WITNESS: So the contract that we had with
8 the call center would say okay -- they -- when a lead
9 comes in, we purchase the lead, they are supposed to
10 get to that lead within "X" minutes to try to get
11 ahold of the consumer. And then if they can't, then
12 it goes into a callback procedure. So they want to
13 try to get them an hour later, maybe four hours later.

14 And then there are several calls that would be
15 made on day two, the day after we got the application
16 and then day three is when we give up on in it if we
17 haven't gotten ahold of them by -- and there might
18 only be one call on day three.

19 By day three if they hadn't gotten, if they
20 don't answer, if they have not got ahold of them, we
21 move on from the application.

22 BY MR. WHEELER:

23 Q. Let's move to Exhibit 42. Mr. Carnes, I'm
24 showing you what has been marked as Enforcement Counsel
25 Exhibit 42; do you recognize this document?

1 A. I think you showed it to me in my deposition.

2 Q. What is this document?

3 A. Or Ms. Weinberg might have.

4 Q. I'm sorry?

5 A. Or Ms. Weinberg might have. Somebody showed
6 it to me in my deposition, that was the only time I've
7 seen this.

8 Q. What is this document?

9 A. It appears to be an income statement for
10 Integrity Advance from January to September of 2010.

11 Q. And is there a balance sheet on the second
12 page as well?

13 A. There is.

14 Q. Did Integrity Advance customarily generate
15 income statements?

16 A. Yes.

17 Q. Did Integrity Advance customarily generate
18 balance sheets?

19 A. Yes.

20 Q. Would documents like these be kept in the
21 normal course of business?

22 A. Yes.

23 MR. WHEELER: Your Honor, I ask that Exhibit
24 42, excuse me, Enforcement Exhibit 42 be admitted into
25 evidence.

1 MS. BAKER: Objection.

2 JUDGE McKENNA: Basis?

3 MS. BAKER: Relevance. It predates July 21,
4 2011. And in the corner, top of the document it says
5 unaudited. Which means it not necessarily a final
6 statement of the company's income for even these
7 limited amounts of time.

8 JUDGE McKENNA: Okay.

9 MS. BAKER: And it's also the other foundation
10 element is it hasn't been established as to who created
11 this document, so I'm not sure the witness --

12 MR. WHEELER: Your Honor, the witness was CEO
13 of the company. He has testified that documents like
14 this were kept in the normal course of business. This
15 was something that was also produced by Respondents.

16 JUDGE McKENNA: It was produced by Respondents
17 pursuant to your investigation?

18 MR. WHEELER: That is correct, Your Honor.
19 That is correct.

20 JUDGE McKENNA: All right. And so that is
21 where you got it?

22 MR. WHEELER: That is correct.

23 JUDGE McKENNA: All right. Objection is
24 overruled.

25 (P&L was admitted into evidence as

1 Enforcement Counsel Exhibit No. 42.)

2 MS. BAKER: Your Honor, if I could, just --

3 JUDGE McKENNA: On the same basis which I
4 ruled on the last one.

5 MS. BAKER: If -- Your Honor, if I could make
6 a standing objection to this idea that because
7 Respondents have produced documents they are somehow
8 per se authentic. The (d)4 rule doesn't provide for
9 that, what the (d)4 rule says, as I understand it, is
10 that if a document is produced in response a specific
11 query, it is presumptively authentic and responsive to
12 that query. Not that the document is used in the
13 ordinary course of business that it is authentic, that
14 it was created by the witness testifying about it being
15 it. It's an unaudited version of something is that I
16 don't know what it is, it could be a draft.

17 And, to admit it into evidence without that
18 requisite foundation is quite prejudicial to our case.

19 JUDGE McKENNA: Okay. That is your position
20 and if you are right, then you have a very easy path
21 to reversal. I disagree with you. I'm older than
22 you. So maybe I'm so old that, you know, I don't know
23 what I'm talking about. But in any event, that is my
24 ruling, and we will proceed.

25 BY MR. WHEELER:

1 Q. Let's move to Exhibit 43.

2 A. Is that going to be sealed by the way?

3 JUDGE MCKENNA: What did you say?

4 THE WITNESS: I asked that -- are these
5 sealed?

6 MR. WHEELER: No.

7 THE WITNESS: Can they be?

8 MS. BAKER: We can move to have them sealed.
9 I think the courtroom is still cleared so that is a
10 request we will make, Your Honor.

11 MR. WHEELER: I don't see any reason to seal
12 these documents, Your Honor. This doesn't fall under
13 the Protective Order. Integrity Advance is out of
14 business. So I'm unclear what their other income or
15 balance sheets -- how is that being in the public
16 record somehow damaging?

17 MS. BAKER: It says subject to protective
18 order in the document that was produced for the
19 exhibit.

20 MR. WHEELER: I think we put that -- I'm not
21 sure we did it, but I think that is on everything.
22 But that doesn't mean that the document is actually
23 covered by the Protective Order. I think. If that
24 distinction makes sense.

25 JUDGE MCKENNA: What is the basis for the --

1 to put it under the Protective Order? I mean it's not
2 PII.

3 MS. BAKER: Well, Your Honor, initially, going
4 back a ways, when we negotiated the Protective Order
5 we agreed that we would -- I'm sorry. My voice is --
6 initially when we negotiated the Protective Order,
7 Your Honor, we agreed, we being Respondent's counsel,
8 that we would revisit this question of whether or not
9 financial information was subject to the Protective
10 Order and being under seal.

11 And we have requested that -- we have repeated
12 that position a number of times in filings with the
13 Court as well as in conversations with Enforcement
14 Counsel. And frankly, this is financial information
15 the disclosure of which serves no purpose. The public
16 disclosure of which serves no obvious purpose. There
17 is no prejudice to anybody by having this limited set
18 of documents maintained under seal.

19 And it is confidential proprietary
20 information. It's confidential financial information
21 and it is not necessarily information that was readily
22 accessible to everybody at the time it was rendered.

23 MR. WHEELER: Your Honor, my recollection is
24 we had an agreement that we would discuss furthering
25 the Protective Order.

1 JUDGE McKENNA: That is what she said.

2 MR. WHEELER: Yeah, I mean we -- we never
3 agreed we would treat information like this as
4 protected. I believe in your Order, there was a
5 deadline by which we were supposed to work out this
6 issue. I don't believe Respondents counsel ever got
7 in touch with us. It was, she was the one with the
8 interest in protecting this information. I don't
9 believe she contacted us, so the Protective Order
10 doesn't cover this information.

11 JUDGE McKENNA: Yeah, that note relevant to
12 anything you are discussing here?

13 MR. WHEELER: Well, it was relevant to what
14 Ms. Baker said. I still don't think, I mean these
15 proceedings are presumptively public. I don't think
16 there is any good reason to seal these documents.
17 Like I said earlier, the company is out of business.
18 This is -- there isn't PII in there like you pointed
19 out.

20 JUDGE McKENNA: Mr. Carnes?

21 THE WITNESS: Yes.

22 JUDGE McKENNA: In deference to you, and with
23 counsel's permission, I would like to know why you
24 would like to have this exhibit for Integrity Advance
25 be put under seal.

1 Is that all right, counsel?

2 MS. BAKER: Thank you, Your Honor.

3 THE WITNESS: I would just say that any
4 financial information that I provided would be
5 private. I don't think it's -- and I mean, I could
6 say, if it is something like would be something that I
7 -- okay my tax returns, these are P&L's.

8 JUDGE McKENNA: Okay. But they are separate
9 from your tax returns.

10 THE WITNESS: Even the P&L's -- because there
11 are -- right, these are P&L statements of the company
12 why would that need to be public?

13 JUDGE McKENNA: Well, yeah, no, the -- I think
14 it's the inverse. Why would it need to be private?

15 THE WITNESS: I would think it's -- like my
16 attorney said, confidential information that I would
17 like to keep confident -- confidential.

18 JUDGE McKENNA: All right. Any other basis?

19 THE WITNESS: No. Confidential.

20 JUDGE McKENNA: All right. I'm -- yeah?

21 MS. BAKER: I just wanted to correct the
22 record, Mr. Wheeler misstated something. I did, in
23 fact, get in touch with him about expanding the
24 Protective Order. The way that our record moved it
25 didn't conform to the original schedule, so admittedly

1 I maybe got in touch with him three weeks later than I
2 was supposed to, for which I apologize.

3 But I did get in touch with him and I did seek
4 to expand the Protective Order and I was met with we
5 are not going to do that. And that, I believe was
6 also brought to Your Honor's attention in subsequent
7 filing. So it's not accurate to say this is the first
8 time we brought this issue up, it's not the second or
9 third either.

10 JUDGE MCKENNA: Well, I can attest that you've
11 been busy.

12 MS. BAKER: Thank you, Your Honor.

13 JUDGE MCKENNA: Okay. Well, at this point I'm
14 not going to put it under seal. However, I'm going to
15 take it under advisement and I'm going to make a
16 decision as to what I want to do with it, and that
17 will show up in my D and O.

18 MS. BAKER: Thank you, Your Honor.

19 JUDGE MCKENNA: Okay. And I am mindful of
20 your request. I just don't know whether it's
21 appropriate that I do so. If we were talking about
22 your tax returns or something, it wouldn't be a
23 question. So, I want to think on it.

24 THE WITNESS: I would only add that there are
25 things like, you know, these kinds of documents would

1 be used to create a tax return.

2 So in essence all of this is out there, a tax
3 attorney could almost recreate the tax return if you
4 really had all of this information.

5 JUDGE McKENNA: You would have to have a lot
6 of information.

7 THE WITNESS: Right. I also don't know what
8 road we are going down here and how much of this stuff
9 is going to be put out there and unsealed.

10 JUDGE McKENNA: All right. Duly noted.
11 Forty-two has been admitted into evidence not under
12 seal at this time.

13 MR. WHEELER: Thank you, Your Honor.

14 BY MR. WHEELER:

15 Q. Let's look at Exhibit 43. Mr. Carnes, I'm
16 showing you what's been marked as Enforcement Exhibit
17 43. Do you recognize this document?

18 A. As much as I recognized the other ones, yes.

19 Q. What is this document?

20 A. Huh?

21 Q. What is this document?

22 A. Appears to be an income statement for
23 Integrity Advance from January to October of 2011.

24 Q. Is there a balance sheet as well?

25 A. There is, in the back.

1 Q. And you have testified that Integrity Advance
2 typically generated income statements?

3 A. Yes, I have.

4 Q. Okay. And you have testified that Integrity
5 Advance typically generated balance sheets?

6 A. Yes, I have.

7 Q. And you have testified that documents like
8 this were kept in the normal course of business?

9 A. Yes, they were.

10 MR. WHEELER: Your Honor, I ask that
11 Enforcement Counsel Exhibit 43 be admitted into
12 evidence.

13 JUDGE McKENNA: Same objection?

14 MS. BAKER: Relevance, but Your Honor, I just
15 want to renew our request that this be filed under seal
16 as well.

17 JUDGE McKENNA: Right. That is included in
18 all of that.

19 MS. BAKER: Thank you, Your Honor.

20 JUDGE McKENNA: All right. Exhibit 43 is
21 admitted into evidence and a determination will be made
22 as to whether it will be under seal.

23 (P&L was admitted into evidence as

24 Enforcement Counsel Exhibit No. 43.)

25 BY MR. WHEELER:

1 Q. Let's turn to Exhibit 44.

2 Mr. Carnes, I'm showing you what has been
3 marked Enforcement Counsel Exhibit 44. Do you
4 recognize this document?

5 A. As much as I recognize the other ones.

6 JUDGE McKENNA: All right. One way you can
7 handle this is, are your answers the same for Exhibit
8 43? Will all your answers be the same?

9 THE WITNESS: Yes.

10 JUDGE MCKENNA: All right. Anything else on
11 that?

12 MR. WHEELER: I ask that Enforcement Counsel
13 Exhibit 44 be admitted into evidence, Your Honor.

14 JUDGE McKENNA: Subject to the same, objection
15 and request for under seal?

16 MS. BAKER: And one more objection, also --
17 the same objection as before, authenticity, and
18 foundation. So, foundation, authenticity, relevance,
19 and, of course Your Honor, we renew our motion.

20 JUDGE McKENNA: All right. Any other
21 questions regarding those objections?

22 MR. WHEELER: No, Your Honor.

23 JUDGE McKENNA: That need to be illuminated?

24 MR. WHEELER: Not from me, Your Honor.

25 JUDGE McKENNA: All right. That's fine.

1 MR. WHEELER: Did you admit Exhibit 44?

2 JUDGE McKENNA: No, I didn't.

3 MR. WHEELER: Okay.

4 JUDGE McKENNA: But I'm going to.

5 MR. WHEELER: Appreciate that.

6 JUDGE McKENNA: Forty-four is hereby admitted
7 into evidence and I will make a determination as to
8 whether it's under seal or not. Your objection is
9 duly noted.

10 (P&L was admitted into evidence as
11 Enforcement Counsel Exhibit No. 44.)

12 MS. BAKER: Thank you, Your Honor.

13 JUDGE McKENNA: You're very welcome.

14 BY MR. WHEELER:

15 Q. Turn to Exhibit 15, Enforcement Counsel
16 Exhibit 15.

17 A. One-five?

18 Q. Enforcement Counsel Exhibit 15, one-five.

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(Enforcement Counsel Exhibit

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No. 16 was admitted into evidence.)

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MR. WHEELER: Let's go to Exhibit 17.

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JUDGE MCKENNA: Let's take a ten-minute break,
and I mean ten minutes, not fifteen/twenty.

9

MR. WHEELER: Understood, Your Honor. Thank
you.

10

11

(A ten-minute recess was taken.)

12

JUDGE MCKENNA: Back on the record.

13

14

MS. BAKER: Your Honor, if I may make a
suggestion. To the extent Mr. Wheeler is intending to
go through and introduce Exhibits 18, 19, 20, 21, et
cetera, and they are all Hayfield Investment Partners
consolidated income statements that is the next part
of his proffering.

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We will stipulate that he can do so, subject to
our objections, subject to the motion that they be
filed under seal. Without requiring that he go
through that piece by piece by piece as to each
exhibit. Now having said that, I don't know if that
is what he is intending to do, but it appears to be.

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MR. WHEELER: That is what I'm intending to

1 do, Your Honor. I'm happy to move them, or attempt to
2 move them into evidence, you know, in a group if that
3 would please Your Honor.

4 JUDGE MCKENNA: All right. So --

5 THE WITNESS: Please real quick, tell me which
6 ones for the group?

7 MR. WHEELER: So, we did 16, I believe, before
8 the break.

9 JUDGE MCKENNA: Right.

10 MR. WHEELER: So it's 17 through 40.

11 MS. BAKER: And if I may note for the record,
12 that they are distinct, different types of financial
13 statements, that is right.

14 MR. WHEELER: I believe 17 through 40 should
15 all be income statements, but they are for separate,
16 you know, they go through the months.

17 COURT REPORTER: There is what?

18 MR. WHEELER: They go through, month by month,
19 sorry.

20 JUDGE MCKENNA: Go by month.

21 MS. BAKER: Well, 39 and 40 are different, but
22 they are consolidated income statements, but they are
23 not monthly.

24 MR. WHEELER: You are correct.

25 MS. BAKER: Yes.

1 MR. WHEELER: You are right.

2 MS. BAKER: We will agree not that they are
3 not objectionable and that should be admitted into
4 evidence, but we will agree that he doesn't have to go
5 through and do what he has been doing with each of the
6 documents in the interest of time.

7 But our position remains that they should not
8 be admitted into evidence, they are neither relevant,
9 there is no foundation, they are not clearly authentic
10 and it is not clear, as I said before, how they
11 connect to the purpose of Mr. Carnes' testimony here.

12 JUDGE McKENNA: Great.

13 MS. BAKER: And also request that they be
14 filed under seal.

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2 All right. So I want to thank you for
3 speeding things up and now I want to slow them down.
4 Ms. Baker raised the legitimate question just now and
5 so I want to -- I want to know how the Hayfield income
6 statements and consolidated statements, how they
7 relate to -- I assume that there is an issue of
8 recoupment and there is an issue of penalties.

9 MR. WHEELER: Yes, Your Honor.

10 JUDGE McKENNA: But is it -- are you
11 attempting to say that because the Hayfield income
12 statement for January 2011 -- how are you tying that
13 into Integrity Advance and to Mr. Carnes, I know there
14 is an exhibit that just over fifty percent --

15 MR. WHEELER: Your Honor, I believe --

16 JUDGE McKENNA: -- he had control.

17 MR. WHEELER: Right. I mean, I think that is
18 -- there are sort of two separate issues there. But
19 these exhibits, Mr. Carnes has testified that
20 Integrity Advance had generated profits, those profits
21 were passed through to Hayfield. He has also
22 testified that Hayfield generated -- Integrity Advance
23 generated the majority of Hayfield's profits. So in
24 the interest of making a more complete record for
25 damages purposes, Your Honor, we thought those

1 exhibits were worth having in the record.

2 JUDGE McKENNA: Right. But how am I going to
3 use them?

4 MR. WHEELER: Well, that would be -- will
5 depend on how Your Honor decides on damages.

6 JUDGE McKENNA: All right. Well, let's just
7 say if you have a consolidated income statement from
8 Hayfield, how does that transition over to the
9 recoupment?

10 MR. WHEELER: Your Honor, I believe that given
11 the testimony that at least the majority, if not the
12 vast majority, of that income would have been
13 generated by Integrity Advance.

14 JUDGE McKENNA: Yeah, but you have to render
15 the subjective to numeric. I mean, you can't say that
16 out of the net income of one million twenty thousand,
17 five, seven, nine, that the majority of that came from
18 Integrity Advance and therefore I want the
19 recoupment/fines, assuming there is culpability, I
20 want the majority of this brought back.

21 Well, what is a majority.

22 MR. WHEELER: I can't say, specifically, Your
23 Honor.

24 JUDGE McKENNA: Are you going to?

25 MR. WHEELER: I don't believe we have that,

1 you know, exact information. I mean, like I said,
2 it's just an effort on our part just to make the
3 record as full as possible. Like I said, we believe
4 that most of this income was Integrity Advance income,
5 but I can't tell you exactly to the dollar amount, you
6 know, how much was from Integrity Advance and how much
7 was from other sources.

8 JUDGE McKENNA: So how am I going to write the
9 order that the majority of the income from Hayfield is
10 going to be recouped?

11 MR. WHEELER: I mean, Your Honor, I think our
12 damages theory is actually a little different. I
13 mean, we are going to get into this, but --

14 JUDGE McKENNA: I hope so, yeah. That's why
15 I'm --

16 MR. WHEELER: But not with Mr. Carnes, but --

17 JUDGE McKENNA: You know, when you get to be
18 my age you remember how you prime the pump? Okay.
19 Well, that's what I'm doing. And so that's not going
20 to cut it.

21 MR. WHEELER: I understand, Your Honor.

22 JUDGE McKENNA: So Ms. Baker is absolutely
23 correct that there has to be numerics involved here,
24 and a chain. And so, and a failure to do so will
25 cause a problem.

1 MR. WHEELER: I understand, Your Honor.

2 JUDGE MCKENNA: All right.

3 MR. WHEELER: We plan to --

4 JUDGE MCKENNA: I take it that you don't,
5 disagree with my postulation of how I'm going to make
6 a determination, assuming culpability as to how you
7 get to recoupment and how you get to a fine?

8 MR. WHEELER: Yes, Your Honor, I mean, we are
9 going to be talking about numbers tomorrow. As I said
10 in my opening we have had a data scientists look at
11 the numbers from Respondents that just relates to
12 Integrity Advance payments data. And it would provide
13 numbers that I think -- I know we are going to argue
14 support the basis of the damages we are seeking in
15 this matter.

16 JUDGE MCKENNA: All right. And you're mindful
17 if your scientist comes in and says that on the --
18 that there were two hundred and fifty thousand dollars
19 in fees generated from checks that were created --

20 MR. WHEELER: Um-hmm.

21 JUDGE MCKENNA: -- then, he is going to
22 breakdown what portion of that amount involved a
23 violation. Whatever you are talking about, I mean
24 this is not going to be a global assessment that
25 everything that was taken in is recoupable. You got

1 that word.

2 COURT REPORTER: Yes.

3 JUDGE McKENNA: Good.

4 MR. WHEELER: I mean, so we -- I mean,
5 obviously, we will talk about this more.

6 JUDGE McKENNA: I hope so. Well, I'm going to
7 get you going.

8 MR. WHEELER: I mean, as to remotely created
9 checks, Your Honor, it is our position, Your Honor,
10 that everything that was taken via remotely created
11 checks was unfair and should be recouped.

12 As to TILA and deception, I mean, I understand
13 your point. And I don't believe our position is that
14 every single dollar should be recouped for those
15 violations.

16 JUDGE McKENNA: Okay. And so you know that
17 you are going to have to tie in Hayfield, Integrity
18 Advance, and assuming that Mr. Carnes is involved, how
19 that flows, how those three entities flow, right,
20 Mr. Carnes?

21 THE WITNESS: Yes.

22 JUDGE McKENNA: Thank you.

23 MR. WHEELER: So my understanding of the
24 payments data Respondents provided is that it just
25 represents Integrity Advance payments data. So I

1 don't think we will have the same issue of mixing
2 Integrity Advance payments with other Hayfield company
3 payments.

4 JUDGE McKENNA: Okay. So what is the
5 relevance of the Hayfield information?

6 MR. WHEELER: Again, Your Honor, I was just
7 trying to create a fuller record. Obviously, we don't
8 know what damages theory you would adopt, so we were
9 just trying to, you know, provide you with information
10 you need.

11 JUDGE McKENNA: Will I have one by the
12 morning. Okay. All right. You can go back to work
13 now.

14 MR. WHEELER: Okay. I didn't realize I had
15 stopped.

16 So I guess between all of that I lost track of
17 17 through 40, what --

18 JUDGE McKENNA: All right. So --

19 MS. BAKER: I believe that it, Your Honor, if
20 I may address the Court, I believe it was Exhibit 17
21 through 38 that were noted as single month
22 consolidated income statements. To which we said we
23 note our objections, relevance, authenticity,
24 foundation, we move to keep them under seal, but we
25 were also in the interest of time trying to preclude,

1 prevent Mr. Wheeler from having to go through that
2 process each time.

3 JUDGE McKENNA: Seriatim.

4 MS. BAKER: Yeah, exactly. I do not know if
5 that is the same for Exhibits 39 and 40.

6 JUDGE McKENNA: All right. Well, let's just
7 go up through 38. So --

8 MR. WHEELER: I mean, my questions would be
9 the same for 39 and 40.

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MR. WHEELER: Thank you, Your Honor.

BY MR. WHEELER:

1 Q. Mr. Carnes, you have testified that you were
2 the CEO of Integrity Advance, right?

3 A. Like I said, I was the CEO of Hayfield, and by
4 virtue of being the CEO of Hayfield, I was the de facto
5 CEO of Integrity Advance.

6 Q. So is it fair to say you were in charge of
7 Integrity Advance?

8 A. As any CEO is in charge, yes.

9 Q. Is it fair to say you had ultimate say over
10 policies and procedures?

11 A. Yes.

12 Q. You remember before we looked at the Integrity
13 Advance organizational chart? It's Exhibit 65.

14 A. Yes.

15 Q. Do you recall that?

16 A. Yes.

17 Q. And you testified that this group of
18 individuals worked in an office together in the Kansas
19 City area?

20 A. Again, with the exception of George Davis,
21 that would be correct.

22 Q. And you testified that you worked in that
23 office too, right?

24 A. I did.

25 Q. And you were there every day?

1 A. To the extent I wasn't on vacation or doing
2 something else, trade show or et cetera, I was there.

3 Q. And as we look at this exhibit and you see
4 that Edward Foster is between you and some of the other
5 employees; do you see that?

6 A. I do.

7 Q. Were you accessible to the employees under
8 Edward Foster?

9 A. Define accessible.

10 MS. BAKER: Objection, vague.

11 BY MR. WHEELER:

12 Q. If Mr. -- let's say Ms. Schaller, if she
13 wanted to come talk to you, was she allowed to do that?

14 A. Yes.

15 Q. Did she do that?

16 A. From time to time possibly.

17 Q. What about Mr. Madsen, did you meet with him
18 one on one?

19 A. Mr. Madsen's testimony this morning was
20 correct on how much we would meet.

21 Q. So that is yes, you did meet with him?

22 A. Yes, very short meetings, you know, very short
23 conversations, a minute or less on an infrequent, you
24 know, random basis.

25 Q. So I guess my question is, did, this suggests

1 a chain of command and, did people have to follow that
2 chain of command or it sounds that like they could come
3 talk to you directly if they had issues; is that a fair
4 statement?

5 MS. BAKER: Objection, foundation, leading the
6 witness.

7 JUDGE MCKENNA: Sustained. While you are
8 recapitulating what you want to put together, I have a
9 couple of questions.

10 **COURT'S EXAMINATION**

11 BY JUDGE MCKENNA:

12 Q. So you indicated that as to the VP of legal
13 affairs, that Mr. Foster hired him?

14 A. Yes, that's correct.

15 Q. All right. Would that be subject to your
16 approval since he is hiring a vice president?

17 A. Yeah, Mr. Foster came to me and said, hey, I
18 think we have a great candidate for a lawyer, and I had
19 promoted Mr. Foster so he was, his responsibilities --
20 we needed somebody to take over what he used to do.

21 And he knew Mr. Pickett from somewhere, I'm
22 not sure where and he said, I have a great candidate.
23 Do you mind if I hire him? And I said, he is going to
24 work for you, you do what you want to do. Hire him.

25 Q. All right. And so what about the comptroller,

1 and the director of IT operations?

2 A. The comptroller, Mary Anne Reece was hired by
3 Andrew Peck. Again with -- I had gave them permission
4 that we needed to fill that spot because we need a
5 comptroller to produce all of those financial
6 statements, et cetera.

7 And so he found her somehow. I'm not sure,
8 but there may have been a recruiter. I don't know.

9 Mr. Rondeau was, again, at a company that
10 Edward Foster and I worked at in 2000 -- well, I was
11 there in 2000 and 2001 for a short period of time. And
12 so we both had knowledge of Mr. Rondeau, and Mr. Foster
13 suggested that we hire him and I agreed.

14 Q. All right. How come Mr. Andonian was not
15 under the vice president of technology or conversely
16 that Mark Rondeau was not under the director of IT?

17 A. As far as Rondeau, why he was on this org
18 chart where he is at, I don't -- I can't tell you the
19 answer to that, I don't know. He's -- I think he
20 probably did more, specifically, for Hassan than he did
21 for Bruce.

22 As you remember Bruce's testimony this morning.
23 Bruce has very, very little to do with Integrity
24 Advance. Hassan was the primary IT person for that
25 company. And that is why there was not really a reason

1 for Bruce to report to Hassan. Hassan also had a thick
2 language barrier, in terms of his accent and he --
3 Bruce didn't understand him very well.

4 JUDGE McKENNA: All right. Thank you. You
5 ready?

6 MR. WHEELER: Yes.

7 JUDGE McKENNA: All right.

8 **DIRECT EXAMINATION (cont.)**

9 BY MR. WHEELER:

10 Q. Mr. Carnes, were all of the people who
11 appeared on this exhibit allowed to come talk to you?

12 A. Yes.

13 Q. This shows Mr. Foster as executive vice
14 president, chief operating officer, and general
15 counsel, right?

16 A. Correct.

17 Q. What did he do in that role?

18 A. The role was those three things. Executive
19 vice president was somebody who, the role of that was
20 to be a signer on an accounts, you could sign
21 documents, could use, you know he was a number two
22 person in the company.

23 General counsel, I think speaks for itself what
24 he did, you know he did -- he was this charge all of
25 the legal affairs of the company, made sure all the

1 contracts got read by himself or Mr. Pickett,
2 interfacing with our counsel outside counsel. Those
3 sorts of things.

4 And then when he was promoted as chief
5 operating officer I gave him the responsibility of
6 having all of those people report to him. And he was,
7 as part of his job had meetings with each group.

8 And there were more people in the org chart
9 than this org chart shows, but at any rate, he was to
10 meet with each group and talk about what they were
11 doing, I think on a weekly basis and if there were
12 issues they would be brought to my attention.

13 Q. How often did you talk to Mr. Foster?

14 A. Daily.

15 Q. Did you talk to him daily about Integrity
16 Advance business?

17 A. No.

18 Q. How often would you say you talked about
19 Integrity Advance business?

20 A. Whenever it needed to be talked about.

21 JUDGE McKENNA: Non-responsive.

22 THE WITNESS: How often did I talk to him?

23 BY MR. WHEELER:

24 Q. About Integrity Advance business.

25 A. Like times per week?

1 Q. Yes.

2 A. It varied greatly over time from one time per
3 week or zero times per week, to maybe ten times per
4 week and I'm guessing I wasn't keeping track.

5 Q. Is it fair to say you and Mr. Foster spoke
6 regularly about Integrity Advance business?

7 MS. BAKER: Objection foundation.

8 JUDGE McKENNA: Sustained. I think that he
9 gave you the best estimate of how much he talked with
10 Mr. Foster about Integrity Advance. And I think it's
11 really difficult because at different points in time
12 depending upon problems, would it be fair to say that
13 if there was a problem, that you and Mr. Foster were
14 talking about it.

15 THE WITNESS: If it was a significant problem,
16 absolutely. If it was a problem that Mr. Foster could
17 handle on his own, and I and I didn't need to be
18 brought into the loop that is what he was there to do.

19 JUDGE McKENNA: Go ahead.

20 BY MR. WHEELER:

21 Q. You just talked about so if something was a
22 significant enough problem you would be brought into
23 the loop, can you can you give us any flavor for what a
24 significant enough problem might be?

25 MS. BAKER: Objection vague.

1 JUDGE McKENNA: I'm going to allow it.

2 THE WITNESS: Mr. Madsen or Mr. Andonian this
3 morning gave you a great example of something I might
4 be brought in the loop, or our data base become very
5 slow for some reasons and was causing us problems in
6 approving consumers, that is something that I would be
7 brought into the database so I would be aware, because
8 that would a reaching effects throughout the rest of
9 the business.

10 BY MR. WHEELER:

11 Q. Did Integrity Advance have a website?

12 A. Yes.

13 Q. Were some loans originated directly on
14 Integrity Advance's website?

15 A. I need you to explain what you are trying to
16 -- yeah, I don't understand what you are trying to ask.

17 Q. Could a consumer go to Integrity Advance's
18 website, directly and obtain a payday loan?

19 A. They could go to Integrity Advance's website
20 and apply for a payday loan.

21 JUDGE McKENNA: And not go through a lead?

22 THE WITNESS: Yes.

23 BY MR. WHEELER:

24 Q. Did you approve the contents of Integrity
25 Advance's website?

1 A. I don't -- you -- did I approve the contents?
2 Yeah, I mean I guess I was ultimately responsible being
3 the CEO, but I don't know that I ever even read the
4 contents of each, in it -- each actual link. Like our
5 privacy policy, for instance, was given us to us by
6 outside counsel and that is not something that I would
7 go through and read. I assume they figured out what
8 they should be -- we should be saying.

9 Q. So, do you remember approving the contents of
10 the website?

11 MS. BAKER: Objection asked and answered.

12 JUDGE McKENNA: No, it wasn't.

13 THE WITNESS: I did approve the contents of
14 the website. I mean, I, you know to the -- at a high
15 level.

16 BY MR. WHEELER:

17 Q. Mr. Carnes, are you familiar with the term
18 rollover in the payday loan context?

19 A. I am.

20 Q. What is a rollover?

21 A. It is what you would call a renewal. A
22 renewal is something that is part of the Delaware
23 statute where a consumer would extend the due date of
24 their loan, and pay interest or interest -- a
25 combination of interest and principal.

1 Q. When a consumer took a loan with Integrity
2 Advance and didn't call Integrity Advance before their
3 next pay date, it's true that their loan would be
4 rolled over, renewed correct?

5 MS. BAKER: Objection leading.

6 JUDGE McKENNA: I will allow it.

7 THE WITNESS: Restate the question, please.

8 BY MR. WHEELER:

9 Q. When a consumer took a loan with Integrity
10 Advance and did not call the company before their next
11 payday, was their loan rolled over or renewed?

12 A. They could have called, they could have
13 e-mailed, they could have -- and it could be on their
14 financial payments, so there are -- in some ways it
15 wouldn't be and some ways it would be.

16 Q. So let's assume the consumer takes their loan,
17 they haven't made a single payment yet their -- if they
18 didn't make a call to Integrity Advance their loan
19 would be would renewed by Integrity Advance, isn't that
20 right?

21 MS. BAKER: Objection, leading the witness.

22 JUDGE McKENNA: This is not Mr. Wheeler's
23 client. And Mr. Carnes is perfectly capable of
24 answering questions that, that are posed to him by
25 government counsel. So, on these types of questions,

1 I'm going to allow it. So you want to repeat it?

2 THE WITNESS: Could you read it back, please?

3 Thank you.

4 COURT REPORTER: When the consumer took a loan
5 with Integrity Advance and didn't call Integrity
6 Advance before their next pay date, it's true that
7 their loan would be rolled over, renewed, correct?

8 Oh, I'm sorry, you answered.

9 JUDGE MCKENNA: Well, part of it.

10 COURT REPORTER: Okay --

11 JUDGE MCKENNA: Assuming that the customer did
12 nothing, what would happen?

13 THE WITNESS: Assuming they didn't call or
14 e-mail, and it was their first payment, as Mr. Wheeler
15 pointed out, they would be renewed. And they would
16 pay, if it was first payment they would pay an
17 interest payment and their loan would be extended.

18 To their next payday which was either two
19 weeks or if they were paid semi-monthly it would be to
20 their next semi-monthly pay date.

21 JUDGE MCKENNA: And if they did nothing on the
22 next one, the next payday, would the same happen?

23 THE WITNESS: Yes.

24 JUDGE MCKENNA: And how many times would that
25 go on before you would go to workout?

1 THE WITNESS: Pursuant to Delaware law it goes
2 five times, if there is a regular payment, four
3 payments, and then it goes to workout after that.

4 JUDGE MCKENNA: Proceed.

5 BY MR. WHEELER:

6 Q. Mr. Carnes, this process of renewal and auto
7 work-out you just described, is this something you
8 understood when you were the CEO of Integrity Advance?

9 A. I don't understand.

10 JUDGE MCKENNA: Were you familiar with this
11 process?

12 THE WITNESS: Sure, it was our product.

13 BY MR. WHEELER:

14 Q. Who designed the product?

15 A. The State of Delaware.

16 Q. You are saying the State of Delaware designed
17 the payday loan product?

18 A. I am.

19 Q. So I understand, I understand that your
20 testimony that is the pay -- that Delaware allowed this
21 pay date loan product?

22 A. It was one hundred percent conforming to their
23 exact statute.

24 Q. Right. But Delaware didn't make you form
25 Integrity Advance?

1 A. No.

2 Q. And they didn't tell you, you had to give a
3 payday loan exactly like this?

4 A. If we wanted to lend in their State we had to
5 give a loan substantially similar to, to that the loan
6 we gave. There was, maybe, some flexibility in the
7 terms but very little.

8 Q. What flexibility was there?

9 A. I'm not a lawyer. I wouldn't be confident
10 commenting on that.

11 Q. Is it your testimony that the State of
12 Delaware required you to rollover, required Integrity
13 Advance to rollover consumer loans?

14 A. I don't know that they required it.

15 Q. So who at Integrity Advance decided that
16 Integrity Advance's loan product would rollover if a
17 consumer didn't call?

18 A. Again it was part of the process of working
19 with the State of Delaware, and our consumer lending
20 license within that State as to how the product was
21 created.

22 Q. But you had ultimate authority over this
23 product, right?

24 A. I had ultimate authority over the company and
25 making sure that it complied with the Delaware law I

1 had.

2 Q. And Delaware wasn't requiring you to make the
3 loans rollover?

4 A. I don't know what they required.

5 Q. Do you know what percentage of Integrity
6 Advance's loans experienced renewals or rollovers?

7 A. Can you be a little more specific?

8 Q. I don't know, I mean do you know the
9 percentage?

10 A. Like, that experienced one rollover.

11 Q. Experiences, yes, even one rollover.

12 A. One or more?

13 Q. One or more, yes, sorry.

14 A. I think that the best estimate which you would
15 also find in my testimony prior, would be about ninety
16 percent.

17 Q. So your testimony today is that roughly ninety
18 percent of Integrity Advance loans experienced at least
19 one rollover?

20 A. That is my understanding.

21 JUDGE McKENNA: Do you have a different
22 figure?

23 MR. WHEELER: No, Your Honor.

24 BY MR. WHEELER:

25 Q. Is that something you understood when you were

1 the CEO of Integrity Advance?

2 MS. BAKER: Objection, foundation, and vague
3 speculation.

4 JUDGE McKENNA: All right. Your objection is
5 duly noted. We are going to rephrase. And so, go
6 ahead and rephrase and lay your foundation.

7 BY MR. WHEELER:

8 Q. You have just testified that here today you
9 understand that ninety percent of Integrity Advance's
10 loans experienced at least one renewal, correct?

11 A. I said it was my belief that approximately
12 ninety percent did.

13 Q. So --

14 A. I didn't testify that exactly ninety did, no.
15 So I just want to be clear.

16 Q. Do you think it's significantly different than
17 ninety percent?

18 A. Again, it's a guess and I think that is what
19 is right.

20 Q. So, my question is, did you have that same
21 understanding when you were CEO of Integrity Advance?
22 That somewhere in the neighborhood of ninety percent of
23 Integrity Advance loans were -- experienced at least
24 one renewal?

25 MS. BAKER: Same objection, foundation,

1 speculation, vague.

2 JUDGE McKENNA: Overruled.

3 MS. BAKER: Well, what time are we talking
4 about?

5 MR. WHEELER: At any time when he was chief
6 executive officer or president and running Integrity
7 Advance.

8 JUDGE McKENNA: All right. So, if you are
9 talking about time, then you can subdivide it by year.
10 Or you can say, that it didn't materially change in all
11 of those years.

12 THE WITNESS: It wasn't something that was on
13 the radar of -- or my radar to think about, to -- the
14 number you are asking.

15 BY MR. WHEELER:

16 Q. But did you have an understanding that most
17 consumer loans were going to experience a renewal?

18 MS. BAKER: Asked and answered.

19 JUDGE McKENNA: Overruled.

20 THE WITNESS: I did, I just told you that
21 ninety percent likely did experience a rollover.

22 JUDGE McKENNA: You know that now, but did you
23 know that then? And then means at any time during the
24 time that Integrity Advance was in business, and if
25 there is a time period where you didn't know that, you

1 can so delineate.

2 THE WITNESS: At the time Integrity Advance
3 integrity was in business I don't recall seeing that
4 number anywhere.

5 BY MR. WHEELER:

6 Q. More generally, leaving aside the ninety
7 percent number, did you have an understanding that the
8 majority of Integrity Advance's loans would experience
9 at least one rollover or renewal?

10 A. Yes.

11 JUDGE MCKENNA: All right. Is that now or
12 then?

13 THE WITNESS: That is now and then. The other
14 one is now, the ninety percent is something that came
15 to light, I think, through this process. Because I
16 don't know that I really thought about it back then.

17 BY MR. WHEELER:

18 Q. So I guess just so we are clear, when you were
19 running Integrity Advance you didn't have a ninety
20 percent number in your head?

21 A. No.

22 Q. But you had an understanding that the majority
23 of Integrity Advance loans would experience at least
24 one renewal or rollover?

25 A. Yes.

1 Q. Mr. Carnes, did you ever review Integrity
2 Advance's loan agreement?

3 A. Define review.

4 Q. Have you ever seen an Integrity Advance loan
5 agreement?

6 A. I have seen one.

7 Q. In what context?

8 A. Preparing for this trial.

9 Q. Did you ever see an Integrity Advance loan
10 agreement in 2008 when Integrity Advance was being
11 formed and started loaning?

12 A. Did I ever see one?

13 Q. Yes, did you see one?

14 A. Possibly.

15 Q. Did you ever see a template for an Integrity
16 Advance loan agreement back in 2008?

17 A. That is what -- that would have been all that
18 I would have seen, if I had saw something. I wouldn't
19 have actually seen a loan agreement.

20 Q. Do you know who would have created an
21 Integrity Advance loan template?

22 A. Our outside counsel company, in association --
23 working with Mr. Foster.

24 Q. Who was that?

25 A. Who was our outside counsel?

1 Q. Yes.

2 A. A woman named Claudia Calloway, and a woman
3 named Christina Gregorian, G-R-E-G-O-R-I-A-N, I
4 believe, who are now at Kattan Law Firm. I don't
5 believe I know where the -- or I can't remember the
6 name of the law firm they were at then.

7 Q. And it was your testimony that they -- they
8 wrote the loan agreement template?

9 A. Yes.

10 Q. Did you ever talk to them about the loan
11 agreement template?

12 A. I did not.

13 Q. And you testified that you believe you
14 reviewed the loan agreement template? Was that your
15 testimony?

16 MS. BAKER: Objection, it misstates prior
17 testimony, Your Honor.

18 JUDGE McKENNA: Does it misstate your
19 testimony?

20 THE WITNESS: Explain -- I don't understand
21 that -- what you are saying. I may have flipped
22 through a loan agreement, your concept of review I'm
23 not sure what it means. I'm not lawyer, I may have
24 looked through a template that's -- that would be the
25 extent of my knowledge of a loan agreement.

1 JUDGE MCKENNA: So to that point.

2 MS. BAKER: That was my point. Thank you,
3 Your Honor.

4 JUDGE MCKENNA: All right.

5 BY MR. WHEELER:

6 Q. As CEO did you have to approve the loan
7 agreement template?

8 A. Again as CEO you are ultimately approving
9 everything and I -- that is something that I have had
10 and have no knowledge about, and relied on outside
11 counsel, as well as Mr. Foster to take care of that.

12 Q. But is it your testimony that you had to
13 approve the loan agreement template?

14 MS. BAKER: Objection, asked and answered.

15 JUDGE MCKENNA: Well, misstated too, misstated
16 his testimony.

17 MS. BAKER: Yes, Your Honor, it misstates his
18 testimony as well. Thank you.

19 JUDGE MCKENNA: All right. So you -- you got
20 to just backup a little bit all right. So, Mr. Carnes
21 testified that he was the CEO and as the CEO he is
22 responsible for everything. And that he reviewed the
23 template at the time that it was being prepared. Is
24 that correct, Mr. Carnes?

25 THE WITNESS: I probably didn't do -- when it

1 was being prepared it was more, you know. And I don't
2 even recall flipping through it, but I could have
3 flipped throughout at some point after it had been
4 prepared that it was going to be put into action.
5 Between attorneys doing -- preparing it and between it
6 going into action.

7 JUDGE MCKENNA: And did Mr. Foster explain to
8 you what the process was going to be?

9 MS. BAKER: Your Honor, if I could just --

10 JUDGE MCKENNA: You can object if you want.

11 MS. BAKER: -- interject. To the extent that
12 calls for the disclosure of privileged communications
13 that my client might have had with Mr. Foster who was
14 advising him in him in is in context as wearing his
15 general counsel hat I will instruct my client not
16 waive that privilege at this time, thank you.

17 JUDGE MCKENNA: Okay.

18 MS. BAKER: And let me just make sure my
19 client understands. To the extent he can answer that
20 question, without disclosing information that you
21 would have received or either because you asked for it
22 or because it was given to you, in the context of
23 Mr. Foster giving you legal counsel, if you answer,
24 that question you will potentially you could
25 potentially waive privilege.

1 MR. WHEELER: Your Honor, to the extent that
2 Mr. Carnes is relying on advice of counsel defense and
3 saying that counsel advised him of his loan agreement
4 he can't assert that and then claim attorney/client
5 privilege. I know he has, it's his counsel. But I
6 think the case law is pretty clear, Your Honor, that
7 an advice of counsel defense waves privilege.

8 So, if that's his testimony that he relied on
9 Mr. Foster then those communications aren't
10 privileged, or the privilege doesn't apply here.

11 MS. BAKER: Your Honor, I don't think that has
12 been his testimony I think his testimony has not been
13 I relied on counsel his testimony has been that is
14 what I hired lawyers to do, not that they told me to
15 do something that, as understand defense of counsel
16 reliance on counsel defense it's I did something
17 because my lawyers told me it was okay to do.

18 That's not what Mr. Carnes has testified to
19 here at all if Mr. Carnes wrote a loan agreement and
20 said my lawyers told me it was okay to write this loan
21 agreement that would be a reliance on counsel defense.
22 That is analytically distinct for from what Mr. Carnes
23 testified to, he has not waived privilege nor has he
24 even put that at issue here.

25 JUDGE MCKENNA: All right. So at the time

1 that at the time that the template was being prepared
2 what position did positions did Mr. Foster hold?

3 THE WITNESS: That would have been in 2008,
4 and he would have been executive vice president and
5 general counsel.

6 JUDGE McKENNA: Okay. And without going into
7 the specifics of advice that he might have given you,
8 since he was the executive vice president in addition
9 to being general counsel, would he have explained to
10 you the context of that template?

11 THE WITNESS: I don't recall him explaining
12 the content of the template to me.

13 JUDGE McKENNA: In 2007?

14 THE WITNESS: Or eight.

15 JUDGE McKENNA: All right. Go ahead.

16 BY MR. WHEELER:

17 Q. Mr. Carnes, could Mr. Foster have -- we were
18 are talking about loan agreement template and a loan
19 agreement template that Integrity Advance used to
20 generate loan agreements, could Mr. Foster have
21 approved the use of a loan agreement template without
22 your approval?

23 A. Again, it was -- we hired an outside counsel
24 to come up with the loan agreement. We trusted that
25 that was the best thing to do and we used it. I don't

1 know, you know there was no stamp, I wasn't stamping my
2 approval on it. I just assumed that they knew what
3 they were doing.

4 Q. Was it true --

5 A. As did Mr. Foster. Mr. Foster is not an
6 attorney that is a regulatory attorney either.

7 Q. But isn't it true that they had your approval
8 to implement this loan agreement?

9 MS. BAKER: Objection, asked and answered.

10 JUDGE McKENNA: I will allow it.

11 THE WITNESS: Did they have my approval to use
12 the loan agreement? Yes.

13 BY MR. WHEELER:

14 Q. And do you recall specific conversations that
15 you had with people at Integrity Advance about the loan
16 agreement?

17 A. No.

18 Q. You have testified that Integrity Advance only
19 had one product, right?

20 A. Yes.

21 Q. And that was a consumer loan?

22 A. Yes.

23 Q. And that consumer loan was implemented by a
24 loan agreement?

25 A. Yes.

1 Q. And you testified that Integrity Advance made
2 money?

3 A. Yes.

4 Q. And had profits?

5 A. Yes.

6 Q. And you were the CEO?

7 A. Yes.

8 Q. But you're saying you never had conversations
9 about the loan agreement?

10 JUDGE McKENNA: He didn't say he never had
11 them. He said he doesn't recall any.

12 BY MR. WHEELER:

13 Q. Is that true, sir, you don't recall?

14 A. I don't recall having conversations about the
15 loan agreement itself.

16 Q. Were there any complaints that you received
17 about Integrity Advance's loan product?

18 A. Complaints never rose to my level, so I don't
19 know.

20 Q. So you were unaware personally of any
21 complaints?

22 A. I wasn't aware of complaints.

23 Q. Mr. Carnes, you are aware that the Consumer
24 Financial Protection Bureau sent a civil investigative
25 demand to Integrity Advance?

1 A. Yes.

2 Q. And you're aware that CID, if I can shorten
3 it, contained a list of questions or interrogatories?

4 A. Yes.

5 Q. Did you participate in Integrity Advance's
6 response to those interrogatories?

7 A. I did not write them, I read through them.
8 Actually there was several, I believe.

9 MS. BAKER: If I can just caution you to the
10 extent that you would be disclosing conversations or
11 communications you might have had with counsel who
12 prepared those for you. Please do not disclose those
13 communications. If you can answer Mr. Wheeler's
14 question without doing that, please do so.

15 THE WITNESS: I believe there were several
16 interrogatories that we submitted, the first one I
17 don't think I even read or looked at very closely, and
18 the subsequent one or two, however many there were, I
19 did look at.

20 BY MR. WHEELER:

21 Q. Let's look at Exhibit 70.

22 MR. WHEELER: Are you ready, Your Honor?

23 JUDGE McKENNA: Uh-huh.

24 MR. WHEELER: Okay. My apologies.

25 BY MR. WHEELER:

1 Q. Mr. Carnes, I'm showing you what has been
2 marked as Enforcement Counsel Exhibit 70. Do you
3 recognize this document?

4 A. I do.

5 Q. What is it?

6 A. It appears to be something to you and
7 Mrs. Weinberg about the response.

8 Q. Is this a document you reviewed before it was
9 produced to the Bureau?

10 A. I can't remember.

11 Q. Take a second to look at it, if that helps.

12 A. I think this may have been the one that I
13 didn't see before it went to the bureau. Is this the
14 first one?

15 Q. I believe it's the second one. I think there
16 was one on October 25th also that was the first one if
17 that helps.

18 A. It doesn't.

19 Q. Mr. Carnes, are you familiar with remotely
20 created checks?

21 A. I am.

22 Q. What is a remotely created check?

23 A. Check that is created remotely.

24 Q. Did Integrity Advance create remotely created
25 checks?

1 A. They did.

2 Q. For what purpose?

3 A. Collecting consumer debt.

4 Q. How did Integrity Advance create remotely
5 created checks?

6 A. On a -- our software had a package, or a
7 module within it that printed it.

8 Q. Did you ever print one personally?

9 A. No.

10 Q. Did you ever see them printed?

11 A. Yes.

12 Q. How often?

13 A. I can't remember exactly, but probably weekly,
14 they were printed. I didn't see them weekly, but they
15 were probably printed weekly.

16 Q. And you said it was as software package that
17 allowed you to print them so I assume that was located
18 in the office in the Kansas City area?

19 A. It was in the cloud.

20 Q. But the printer was in the Kansas City area
21 office?

22 A. Yes.

23 Q. Mr. Carnes, does Hayfield still exist?

24 A. Yes.

25 Q. In what capacity?

1 MS. BAKER: Objection asked and answered.

2 JUDGE McKENNA: I will allow it.

3 THE WITNESS: In wind down mode.

4 BY MR. WHEELER:

5 Q. At some point, were large portions of Hayfield
6 sold?

7 A. Yes.

8 Q. And could you describe that?

9 A. In 2012, December, the company -- publicly
10 traded company called EZ Corp bought certain assets of
11 Hayfield.

12 Q. Which assets did they buy?

13 A. The laundry list?

14 Q. As best you can remember.

15 A. It's a public, publicly available document I
16 wouldn't want to go guess and try to tell you
17 everything they bought, because I would leave things
18 out.

19 Q. Did Integrity -- excuse me, did EZ Corp buy
20 Integrity Advance?

21 A. No.

22 Q. Did it buy any piece of Integrity Advance or
23 anything owned by Integrity Advance?

24 A. A small customer list of a subset of Integrity
25 Advance states.

1 Q. You said Integrity Advance states?

2 A. Of state, a customer list of some states that
3 Integrity Advance lent to.

4 Q. Do you know how many consumer names are on
5 those lists?

6 A. I don't.

7 Q. You said it was small though?

8 A. Yes.

9 Q. Do you have sense of what -- you when you said
10 small, do you have any sense of what you meant by that?

11 A. It was a limited number of states and it was
12 consumers that were VIP consumers with Integrity. It
13 was just a list of them.

14 Q. As part of the sale, did EZ Corp purchase
15 Hayfield's computer servers?

16 A. I believe so, I'm not positive, but I believe
17 so.

18 Q. Would those servers that you think EZ Corp
19 purchased have housed Integrity Advance's operations?

20 A. No.

21 Q. What servers did Integrity Advance use?

22 A. They were servers in a different location.

23 Q. Did you receive any compensation as a result
24 of Hayfield being sold to EZ Corp?

25 MS. BAKER: Objection, relevance.

1 JUDGE McKENNA: I will allow it.

2 THE WITNESS: I did.

3 BY MR. WHEELER:

4 Q. And what was that compensation you received?

5 A. It was paid out over time, and it was
6 approximately -- you mean what part that I received?

7 Q. Yes?

8 A. Approximately twenty-five million dollars.

9 MS. BAKER: Your Honor, if I could move that
10 portion to be placed under seal. I don't believe that
11 that is part of the publicly available document that
12 concerns this transaction. So just that last question
13 and answer. And, if -- I don't believe it does concern
14 this transaction and obviously if it ultimately does,
15 we will withdraw that motion.

16 JUDGE McKENNA: Which transaction?

17 MS. BAKER: The EZ Corp transaction that
18 Mr. Carnes and Mr. Wheeler are discussing.

19 JUDGE McKENNA: So, if it falls under the
20 protective order?

21 MS. BAKER: Your Honor, the order, the
22 agreement that manifests that deal, as Mr. Carnes just
23 testified, is available online. It's a public
24 document. It was part of a publicly traded
25 transaction. I don't believe the testimony that he

1 just provided is publicly available information. So I
2 believe it is confidential and proprietary. I would
3 request that that portion of it, this question -- the
4 last question and last answer be filed under seal along
5 with the other documents that we have agreed be moved
6 into the record under seal. Thank you.

7 JUDGE MCKENNA: What is your position?

8 MR. WHEELER: No objection, Your Honor.

9 JUDGE MCKENNA: Before I rule on that, does --
10 is the -- this sale agreement between EZ Corp and
11 Integrity Advance, or Hayfield -- it's with Hayfield?

12 THE WITNESS: Yes.

13 JUDGE MCKENNA: All right. And so, that is
14 a publicly available document that lists the total
15 amount paid by EZ Corp for Hayfield without subdivision
16 down to your level?

17 THE WITNESS: I can't remember how low it
18 subdivides it. I know that it was -- it has the whole
19 big picture deal in there. I don't know that I-- it's
20 an SEC document and they are very fine printed and I
21 have, again, skimmed through it. But I can't remember
22 if it tells the granular level or not.

23 JUDGE MCKENNA: Ms. Baker, you need to look
24 that over and see whether that is contained in there or
25 not and discuss it with Mr. Wheeler.

1 And I will reserve ruling on whether to place
2 that under seal. And I want to know why it's important
3 that that question and answer be placed under seal, you
4 can answer it or Mr. Carnes can answer it.

5 MS. BAKER: Well, assuming that that is not
6 publicly available, we will confirm that this evening,
7 Your Honor, and be prepared to answer your question
8 tomorrow. And confer with Mr. Wheeler as well. But
9 assuming it's not publicly available information and I
10 do not think it is, but I want to confirm that. It's
11 Mr. Carnes personal financials that are not public.
12 His personal financial information is not publicly
13 available information. Nor should it be.

14 Nor is there any reason compelling public
15 interest to make it publicly available. There is no
16 establishing liability as to him. And even if Your
17 Honor ultimately found that, there is no connection
18 between Hayfield and Integrity Advance in a way that
19 would justify disclosing that information into the
20 public.

21 And it's quite proprietary and confidential
22 for all of the reasons that none of us would want our
23 bank accounts or financial statements out there in the
24 public for the reasons that tax returns are not per se
25 publicly available documents. It would be the same

1 issue as Mr. Carnes' answer to Mr. Wheeler's last
2 question.

3 JUDGE MCKENNA: All right. Now you have a
4 context and texture.

5 MR. WHEELER: Yeah.

6 JUDGE MCKENNA: So, what do you say now?

7 MR. WHEELER: I mean, Your Honor, I mean, I
8 don't agree this is his personal financial
9 information. I mean, the fact that he received a
10 certain amount of money, some number of years ago, I
11 mean, that doesn't let me know how much money he has
12 right now. I mean, he could have spent it all. He
13 could have, you know, invested it and made billions of
14 dollars.

15 I don't think the fact that he received a
16 certain amount of money a long time ago really gives
17 us an insight into his personal financial information.
18 Also, Mr. Carnes is also a party to this case.

19 JUDGE MCKENNA: Well, what I would like to
20 know is what the basic terms of the sale agreement
21 are, total amount of money and the breakdown of who
22 received what.

23 MS. BAKER: Yes, Your Honor.

24 JUDGE MCKENNA: And whether that follows the
25 organizational and ownership chart that we looked at

1 earlier.

2 MS. BAKER: Your Honor, are you asking us to
3 provide that information to the Court? Or are you
4 asking Mr. Wheeler to provide that since he is the one
5 who -- this is his question of this witness and he
6 apparently thinks this is relevant to their case, so
7 I'm not sure whether --

8 JUDGE McKENNA: Well, he didn't ask that
9 question. I did.

10 MS. BAKER: I understand.

11 JUDGE McKENNA: And so if you just humor me
12 just a little bit, I don't want a lot of information.
13 I just want some information from you. Since you have
14 kind of cabined what you want to be disclosed, and I
15 want to know how, how that affects the overall
16 transaction.

17 MS. BAKER: Your Honor, if I, I just want a
18 point of clarification just to make sure we provide
19 Your Honor with --

20 JUDGE McKENNA: So that would be Exhibit 50.

21 MS. BAKER: Your Honor.

22 MR. WHEELER: I'm not -- I'm not sure that is
23 the whole agreement. I, when I checked it in advance
24 of trial, it -- I mean, we are happy to bring a copy
25 of the full agreement tomorrow.

1 MS. BAKER: Your Honor, my understanding is
2 that is a mere fraction of the agreement. It was very
3 large.

4 MR. WHEELER: Yeah, it's pretty long.

5 THE WITNESS: It's a phone book.

6 MR. WHEELER: Yeah.

7 MS. BAKER: Um --

8 MR. WHEELER: And that was sort of our
9 mistake, Your Honor. I thought we had the full
10 exhibit. But what is in the exhibit book is a portion
11 of it.

12 JUDGE McKENNA: Well, I still want to know --
13 I want a breakdown. And then going back to my
14 admonition to you, Mr. Wheeler, I want to know how all
15 of this, these pieces fit together, if at all.

16 Because you are going to be assuming that
17 culpability is found as to Mr. Carnes, which I'm not
18 anywhere near making such a finding at this stage. I
19 want to know how much and who, and does it track that
20 ownership chart as to the distribution.

21 Do you know that, do you know the answer to
22 that?

23 THE WITNESS: I can answer, I think, what you
24 are trying to get. So and it's mostly disclosed
25 publicly. I don't think some of the details are

1 disclosed publicly. Um -- so the --

2 JUDGE McKENNA: Wait a second, I want to make
3 sure -- I don't want you saying something that your
4 counsel doesn't like.

5 MS. BAKER: Thank you, Your Honor, to the
6 extent Mr. Carnes is answering the question that isn't
7 publicly available information about a transaction, I
8 would just ask that question and answer be filed under
9 seal. But certainly, Your Honor is permitted to ask.
10 I mean, we don't have an objection to the question per
11 se just that it be maintained under seal, thank you.

12 JUDGE McKENNA: All right. Same ruling that
13 I'm going to look into it and make a determination.

14 MS. BAKER: Thank you.

15 JUDGE McKENNA: So just go ahead.

16 THE WITNESS: So the transaction was over a
17 three-year period, paid out over a three-year period
18 and it was, there were in the beginning a lot of
19 expenses in the deal such as attorney's were very
20 expensive. We had an investment bank that facilitated
21 the deal which was expensive, expensive like millions
22 of dollars.

23 We had some employees that had phantom stock
24 that got money. And after all of that was paid, there
25 was a complicated breakdown with our investment bank

1 partner that had a basis, that got made up first.
2 Actually as I think about it, I should restate my -- I
3 didn't get about twenty-five million, I got twenty --
4 something less, oh, somewhere between twenty and
5 twenty-three million, maybe, closer to twenty.

6 But at any rate, they -- you paid all of this
7 stuff, and then once all of the preferences were made
8 up, then it went exactly to the percentages that were
9 on the chart 65, or whatever he showed. I got 50.8,
10 whatever it was, and SI Hayfield got 41 something, and
11 EZ -- you know, the other two interests got their
12 share, being Mr. Foster and Mr. Bunting.

13 COURT REPORTER: And Mr. Who?

14 THE WITNESS: Bunting, B-U-N-T-I-N-G.

15 MS. BAKER: Your Honor, if I could just note
16 an objection to the line of questions -- not that Your
17 Honor is asking -- but that has precipitated this
18 whole conversation, relevance. This is a case about
19 Integrity Advance. Mr. Carnes testified that almost
20 no assets from that company were sold in connection
21 with this transaction. It remains unclear as to how
22 any aspect of that transaction is at issue in this
23 matter and should be brought into evidence in this
24 matter.

25 JUDGE McKENNA: Okay. You might be right.

1 And that will be reflected if I so find in the
2 decision. So, I'm just -- just getting the whole
3 picture painted. And then we will see where we go.

4 MS. BAKER: Well, I'm making these for the
5 record, of course, Your Honor.

6 JUDGE McKENNA: I understand.

7 MS. BAKER: Thank you.

8 THE WITNESS: Did that answer your question?

9 JUDGE McKENNA: Yes.

10 BY MR. WHEELER:

11 Q. Mr. Carnes, you have testified that EZ Corp
12 bought some part of Integrity Advance's customer list?

13 A. Yes.

14 Q. But did not buy the company, itself?

15 A. No.

16 Q. Do you know why that was?

17 A. They --

18 MS. BAKER: Objection, calls for speculation.

19 JUDGE McKENNA: You can answer if you know.

20 THE WITNESS: They structured the whole thing
21 as an asset deal, not a company deal and I'm not, I'm
22 not a lawyer so I don't know the rationale for doing
23 that. But the asset deal was particularly -- there
24 was interest in certain assets, Hayfield assets is
25 what they bought.

1 BY MR. WHEELER:

2 Q. Can we take a look at Exhibit 67 one more
3 time. So I just want to clear something up, because
4 I'm not sure it's clear from prior testimony. We have
5 talked about Willowbrook Marketing, which appears on
6 this chart, right?

7 A. Correct.

8 Q. And then there was also an entity called
9 Willowbrook Partners?

10 A. Yes.

11 Q. And that doesn't appear here, right?

12 A. No.

13 Q. And what was the purpose of Willowbrook
14 Partners?

15 A. Willowbrook Partners was created to be the
16 management company of Hayfield Partners, Investment
17 Partners.

18 Q. And did you own Willowbrook Partners?

19 A. Mr. Foster and I owned it.

20 Q. What were the respective percentages?

21 A. I can't recall exactly, but something along
22 the lines of one was 98 and a half and 1 and a half.

23 Q. So you owned roughly 98 and a half?

24 A. I believe so.

25 Q. Did Hayfield pay any sort of fee to

1 Willowbrook Partners?

2 MS. BAKER: Objection, relevance. This is
3 pretty far afield.

4 MR. WHEELER: Just trying to clear up the
5 record on various entities, Your Honor. I mean, he was
6 the CEO of Hayfield.

7 JUDGE McKENNA: I will allow it.

8 MS. BAKER: If I can just make a record.

9 JUDGE McKENNA: Sure.

10 MS. BAKER: There is only one company that is
11 a Respondent in this matter, Integrity Advance. And to
12 this day and we are now five o'clock at night, so it's
13 eight hours. Mr. Wheeler has not yet made the
14 connection between Hayfield, Willowbrook, and Integrity
15 Advance such as to justify this ongoing line of
16 questions. So I just want to make that record, thank
17 you.

18 JUDGE McKENNA: Thank you. Seven hours less
19 lunch.

20 MS. BAKER: Fair enough.

21 MR. WHEELER: Okay. Thank you, Your Honor.

22 BY MR. WHEELER:

23 Q. Do you remember the question?

24 A. Ah, the question was something about
25 Willowbrook Partners being the manager of Hayfield.

1 Q. Yes, and did Hayfield -- did Willowbrook
2 Partners receive any sort of fee for managing Hayfield?

3 A. Yes.

4 Q. Could you describe that?

5 A. It was a fee that came out to pay Mr. Foster's
6 salary, my salary, rent in the office, internet
7 service, et cetera, office supplies, what have you,
8 kind of expenses.

9 JUDGE MCKENNA: How much more do you have?

10 MR. WHEELER: I'm almost done, Your Honor. I
11 know we are --

12 JUDGE MCKENNA: I know you are.

13 MR. WHEELER: What's that?

14 JUDGE MCKENNA: I said, I know you are.

15 MR. WHEELER: I see we are past 5:00. Just a
16 couple more.

17 BY MR. WHEELER:

18 Q. You also mentioned Willowbrook Management?

19 A. Yes.

20 Q. And just could you remind us what Willowbrook
21 Management did?

22 A. Wholly owned by Willowbrook Partners and that
23 was the company from which Mr. Foster and I got paid
24 our salaries out of.

25 Q. So did you own Willowbrook Management as well?

1 A. Again, Willowbrook Management was wholly owned
2 by Willowbrook Partners, so I effectively owned 98 and
3 a half percent.

4 Q. You testified earlier that the percentage of
5 Hayfield that Willowbrook owns did fluctuate some over
6 time?

7 A. Yes.

8 Q. Do you remember what the highest percentage
9 was, the highest percentage of Hayfield that
10 Willowbrook owned during Hayfield's existence?

11 A. I don't recall exactly what it was, but it
12 was, you know, call it three or four. Somewhere
13 between three and four percentage points higher than
14 what is represented on this chart.

15 Q. What about the lowest amount, do you recall
16 that?

17 A. It is, the lowest amount is represented in the
18 chart.

19 Q. And that is 50.38 percent?

20 A. Yes.

21 MR. WHEELER: Take a quick break, Your Honor,
22 just to confer, but I think I am almost done.

23 JUDGE McKENNA: All right. Well, I think we
24 can stop. You can have redirect after the cross, so we
25 will just call it an evening.

1 We will start at 9:30.

2 Off the record.

3 (The proceedings adjourned at 5:20 p.m.)

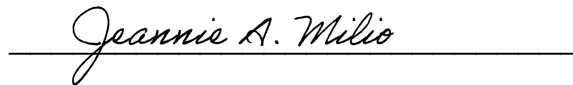
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1 REPORTER'S CERTIFICATE.
2

3 I, Jeannie A. Milio, Registered Professional
4 Reporter, an Official Court Reporter for the United
5 States Coast Guard, do hereby certify that I
6 stenographically recorded the proceedings in Consumer
7 Financial Protection Bureau versus Integrity Advance,
8 LLC and James R. Carnes, File No. 2015-CFPB-0029, held
9 on July 19, 2016, at 9:30 a.m. (ET), at the FERC
10 Building, 888 First St., N.E., Washington, DC, before
11 the Honorable Parlen L. McKenna.

12 I further certify that the page numbers I-1
13 through I-253 constitute an official transcript of the
14 proceedings as transcribed by me from my stenographic
15 notes to the within typewritten matter in a complete
16 and accurate manner.

17 In witness whereof, I have affixed my signature
18 this 1st day of September, 2016.
19
20
21

22 
23 Jeannie A. Milio, RPR
24 Official Court Reporter
25