

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 II of III)

13 Washington, D.C.
14 Wednesday, July 20, 2016

15
16 BEFORE:

17 HONORABLE PARLEN L. McKENNA, ADMINISTRATIVE LAW JUDGE
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APPEARANCES:**For the Agency:**

Alusheyi J. Wheeler, Esquire
Wendy J. Weinberg, Esquire
Vivian W. Chum, Esquire
Craig A. Cowie, Esquire

For the Respondent:

Allyson B. Baker, Esquire
Peter S. Frechette, Esquire
Danielle R. Foley, Esquire
Andrew T. Hernacki, Esquire
Hillary S. Profita, Esquire
Venable, LLP, Washington, D.C. 20004

On Behalf of Mr. Edward Foster

Gerald S. Sachs, Esquire

ALSO PRESENT:

For the Administrative Law Judge:
Heather MacClintock, Esquire
Lauren S. Staiti, Esquire

Jeannie A. Milio, RPR
Official Court Reporter
ALJ Office, Baltimore, Maryland 21202-4022

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

ENFORCEMENT COUNSEL'S WITNESSES:

	DIRECT	CROSS	REDIRECT	RECROSS
Edward Foster	II-5	II-46	--	--
James Carnes	II-48	II-62	II-86	II-99
Robert Hughes	II-110	--	--	--
Joseph Baressi	II-165	II-183	II-192	--

ENFORCEMENT COUNSEL	IDENTIFICATION	ADMITTED
Exhibit No. 81	--	II-122
Exhibit No. 102	II-156	II-162

P R O C E E D I N G S

JUDGE McKENNA: Back on the record.

Pursuant to agreement of the parties, we will break on Mr. Carnes's testimony and we will telephonically contact Mr. Foster for his testimony in this proceeding.

Proceed.

MR. WHEELER: Thank you, Your Honor.
Enforcement Counsel calls Edward Foster.

(Attorney advisor calls Edward Foster via conference call.)

MR. FOSTER: Hello. This is Edward Foster.

MS. MACCLINTOCK: Good morning, Mr. Foster.
We are calling from the matter of Integrity Advance.
I'm going to turn you over to Mr. Wheeler.

THE WITNESS: Okay.

JUDGE McKENNA: All right. Do the parties recognize the voice of the individual on the phone?

MR. CARNES: Yes.

MR. SACHS: Mr. Foster, just so that you're aware. This is Gerry Sachs, your attorney. I'm in the room.

THE WITNESS: Okay. Thank you.

JUDGE McKENNA: Could you please stand, raise your right hand.

1 THE WITNESS: I'm doing so.

2 EDWARD FOSTER

3 A witness produced on call of Enforcement
4 Counsel, having first been duly sworn, was examined
5 and testified as follows:

6 JUDGE McKENNA: All right. Please be seated.

7 Mr. Wheeler.

8 MR. WHEELER: Thank you, Your Honor. Good
9 morning, Mr. Foster. Can you hear me?

10 THE WITNESS: Yes, I can.

11 DIRECT EXAMINATION

12 BY MR. WHEELER:

13 Q. All right. Mr. Foster, do you recall having
14 your deposition taken in this matter?

15 A. Yes, I do.

16 Q. And do you remember that you sat in the
17 conference room and answered questions?

18 A. Yes, I do.

19 Q. And I asked you some questions and my
20 colleague, Ms. Weinberg, asked you some questions?

21 A. Yes, I do recall that when I last met you --
22 both of you, yes, I do.

23 Q. And you were represented by Allyson Baker that
24 day?

25 A. Yes, that's correct.

1 Q. And you were under oath at that time?

2 A. Yes, I was.

3 Q. And you understood that being under oath meant
4 that you had to be truthful, correct?

5 A. That's correct.

6 Q. And you were truthful that day in your
7 answers?

8 A. Yes, I was.

9 Q. Mr. Foster are you familiar with a company
10 called Integrity Advance?

11 A. Yes, I am.

12 Q. What is Integrity Advance?

13 A. Integrity Advance is a Delaware limited
14 liability company that had offices in Delaware and was
15 owned by a parent company called Hayfield Investment
16 Partners.

17 Q. Did you work for Integrity Advance?

18 A. So what I would -- to clarify that, Integrity
19 Advance had no employees; however, there were
20 individuals that worked for the parent company Hayfield
21 Investment Partners that performed duties and jobs when
22 necessary for the benefit of Integrity Advance.

23 Q. Did you perform a job and duties to benefit
24 Integrity Advance?

25 A. Yes, I did.

1 Q. And how long did you do that?

2 A. Since inception of Integrity Advance.

3 Q. When was the inception of Integrity Advance?

4 A. I actually do not recall.

5 Q. Would it have been in 2008?

6 A. That sounds correct or in the ballpark for
7 sure.

8 Q. So how long did you perform services for
9 Integrity Advance?

10 A. So since inception through well actually even
11 after the sale in December of 2012, so in a wind down
12 capacity, sometime into 2013.

13 Q. What was the business of Integrity Advance?

14 A. Integrity's primary business was to make
15 short-term loans, short-term high dollar -- I'm sorry.
16 I apologize. Short-term low dollar loans to consumers
17 predominantly through the Internet.

18 Q. Who hired you to provide services for
19 Integrity Advance?

20 A. The president and CEO, James Carnes.

21 Q. What did Mr. Carnes tell you about Integrity
22 Advance before you were hired to perform services for
23 the company?

24 A. So I want to remind everybody that my, both
25 prior to my actual, and again, I was never hired by

1 Integrity Advance, I was hired by Hayfield Investment
2 Partners and its company that served as the manager of
3 Hayfield called Willowbrook Partners, my predominant
4 roles were general counsel. Therefore our discussions
5 about both my hiring as general counsel and discussions
6 around what you just asked that involve attorney/client
7 privilege, I cannot speak to.

8 Q. When you started providing services to
9 Integrity Advance, did you have a job title?

10 A. For Integrity Advance I served as the
11 executive vice president, general counsel, I believe
12 secretary and assistant treasurer as well.

13 Q. What were your duties in that position?

14 A. Predominantly to provide legal counsel to
15 Integrity Advance.

16 Q. Did you also have business functions in
17 addition to your legal functions?

18 A. Specifically for Integrity Advance those were
19 not spelled out so to speak, but all of us from time to
20 time helped out with matters that required attention
21 from time to time whether they were HR or
22 administrative or something, but it was not what I
23 would call an official job duty of the general counsel.

24 Q. Could you estimate how much of your time was
25 spent on legal matters and how much was spent on

1 business matters?

2 A. Well, time period would be somewhat relevant,
3 but at no time -- I mean the vast, vast majority 90
4 percent would have been spent on legal matters.

5 Q. In your position as executive vice president
6 did you receive a salary?

7 A. I never received any compensation from
8 Integrity Advance.

9 Q. Did you receive a salary in connection with
10 the services you were providing to Hayfield?

11 A. Again, not from Hayfield Investment Partners.
12 Both Jim Carnes and myself were employed by Willowbrook
13 Partners.

14 Q. Did you receive a salary from Willowbrook
15 Partners?

16 A. Yes, I did.

17 Q. Who set that salary?

18 A. The president, Mr. Carnes.

19 Q. When you were executive vice president of
20 Integrity Advance who did you report to?

21 A. In that capacity I would have reported to the
22 president of Integrity Advance.

23 Q. And that's Mr. Carnes?

24 A. That's correct, yes.

25 Q. When you were executive vice president, how

1 often did you talk to Mr. Carnes?

2 A. So I think to clarify and make sure everybody
3 is on the same page, it's important to recognize that
4 both time periods and then that the office in Kansas
5 City was the office of Willowbrook Partners and
6 Hayfield Investment Partners, the parent company that
7 owned and operated about 20 different subsidiaries
8 including Integrity Advance.

9 So I need really some more specificity when
10 you say that because my job for Hayfield Investment
11 Partners and Willowbrook was to report to Mr. Carnes,
12 no matter what the matter was about.

13 Q. How often did you talk to Mr. Carnes about
14 Integrity Advance business when you were executive vice
15 president?

16 A. That would have varied depending on the year.
17 Obviously, early on during setup and formation that
18 would have been more often, daily I would say when
19 Mr. Carnes was in the office.

20 As time went by and near the end, like
21 everybody else in the office, in Kansas City, the time
22 spent on Integrity Advance matters became a very small
23 percentage of time spent on things.

24 Q. So if you could specify the time period. You
25 said as time went on people spent less time on

1 Integrity Advance. When would that time period be that
2 people would be spending less time on Integrity
3 Advance?

4 A. So obviously 2008, formation year, would have
5 been the most time by anybody, and every year that went
6 by it would have waned. Certainly by 2010, '11, '12,
7 '13 the time spent on Integrity Advance matters from
8 the Kansas City office would have been a minority,
9 probably a small minority of people's time?

10 Q. You mentioned that there was an office in
11 Kansas City?

12 A. Yes, the Kansas City metro area, correct.

13 Q. Is that the office where you worked?

14 A. Yes, it was.

15 Q. Did you work there on a daily basis?

16 A. Other than travel, yes.

17 Q. Did Mr. Carnes work out of that office on a
18 daily basis?

19 A. That was his main and only office, but
20 Mr. Carnes did travel and had other matters outside the
21 office as well. So again depending on the time period
22 Mr. Carnes spent a lot of time out of the office.

23 Q. At some point you were promoted; is that
24 correct?

25 A. I did receive a promotion for Hayfield

1 Investment Partners.

2 Q. And what was that promotion?

3 A. I added the title of chief operating officer
4 to my roles and responsibilities.

5 Q. When did that happen?

6 A. I'm sorry, Hayfield Investment Partners and to
7 answer your other question that happened I believe in
8 June of 2010.

9 Q. Weren't you also the chief operating officer
10 of Integrity Advance?

11 A. I don't -- my recollection is Integrity
12 Advance never elected any officers other than the ones
13 I already spoke to.

14 Q. Did you continue receiving a salary in your
15 position as chief operating officer?

16 A. From Hayfield Investment Partners? Yes.

17 Q. Was it a higher salary?

18 A. I recall I did receive a raise, I believe.

19 Q. Who decided on the amount of your raise?

20 A. Mr. Carnes.

21 Q. And I assume in your new role you continued to
22 report to Mr. Carnes?

23 A. That's correct.

24 Q. Did Integrity Advance have something called a
25 dashboard?

1 A. We used dashboards for many of our businesses,
2 and I recall that Integrity Advance had a dashboard for
3 its operations, yes.

4 Q. Could you explain what that is?

5 A. It would have been a web page that could be
6 refreshed to update it from time to time, that would
7 display the number of applications that the Integrity
8 Advance technology system or platform would be
9 reviewing or receiving and then follow those through
10 the process and show how many were looked at, how many
11 were scored and then purchased, how many were then
12 e-signed, how many were converted to loans and
13 ultimately how many loans were made on any given time
14 period.

15 Q. Did you have access to this dashboard system?

16 A. Yes, I did.

17 Q. Did Mr. Carnes have access to the dashboard
18 system?

19 MS. BAKER: Objection. Calls for speculation.

20 BY MR. WHEELER:

21 Q. As far as you know?

22 JUDGE McKENNA: I will allow it, if he knows.

23 Answer the question if you know.

24 THE WITNESS: I would be shocked if Mr. Carnes
25 did not have access to it.

1 BY MR. WHEELER:

2 Q. Did you and Mr. Carnes ever discuss the
3 information that was contained in the dashboard system?

4 MS. BAKER: Objection to the extent it calls
5 for privileged communications.

6 MR. WHEELER: I'm not asking for contents,
7 Your Honor, just did they discuss it.

8 JUDGE McKENNA: Yes. To the extent --
9 sustained.

10 THE WITNESS: I think I can answer that there
11 would have been times we discussed the contents of the
12 dashboard.

13 BY MR. WHEELER:

14 Q. How often?

15 MS. BAKER: Same objection/warning.

16 JUDGE McKENNA: All right. You have a
17 continuing objection.

18 Mr. Foster, you still remember how to be an
19 attorney, correct?

20 THE WITNESS: Yes, I do, Your Honor.

21 JUDGE McKENNA: All right. Excellent.

22 MS. BAKER: And Mr. Foster this is Allyson
23 Baker on behalf of Integrity Advance.

24 THE WITNESS: Yes, Ms. Baker, thank you. And
25 I do understand and appreciate my obligation to

1 continue to honor the attorney/client privilege in any
2 matters that would be covered by that, not to disclose
3 those in any capacity. I think I can comfortably
4 answer that that was not a regular or daily discussion
5 between -- in our office.

6 BY MR. WHEELER:

7 Q. Could you estimate how often?

8 A. You're specifically asking between Mr. Carnes
9 and myself? Weekly.

10 Q. Mr. Foster, during your time providing
11 services to Integrity Advance, did you become familiar
12 with the company's loan product?

13 A. Yes, I did.

14 Q. Did Integrity Advance charge a fee for its
15 loans?

16 A. Yes, it did.

17 Q. What was the amount of that fee?

18 A. My recollection is that for first time
19 customers the fee was \$30 per \$100 borrowed. And for
20 returning customers that were classified as VIP because
21 they had successfully paid back the loan, they received
22 a discounted rate. I believe it a 20 percent discount.
23 So \$24 per \$100.

24 Q. Did those fee rates change over time?

25 A. I don't believe so, no.

1 Q. If a consumer took a loan with Integrity
2 Advance and didn't contact the company prior to their
3 next pay date, what would happen?

4 A. So that calls for speculation because those
5 matters were handled specifically by the call centers
6 on a day-to-day basis. If you want me to discuss the
7 content of the contract and what their options are, I
8 might be able to speak to that.

9 Q. What were the consumer's options under the
10 contract?

11 MS. BAKER: I want to just object to this line
12 of questions to the extent it is calling for
13 speculation. I also want to object to the extent that
14 Mr. Foster is being asked to disclose mental
15 impressions that he would have had as an attorney
16 representing a company and/or information he would
17 have received in connection with that representation.
18 That would all be protected from disclosure by
19 privilege.

20 MR. WHEELER: The function of the contract is
21 not a privilege, Your Honor.

22 JUDGE McKENNA: Your objection is overruled,
23 number one. And I have a question, Mr. Sachs.

24 So, who are you objecting -- who are you
25 representing now?

1 MS. BAKER: Who am I representing?

2 I'm objecting on behalf of the company because
3 the privilege that Mr. Foster has belongs to Integrity
4 Advance. I'm their attorney. So my objection to
5 questions is on behalf of Respondents and specifically
6 with respect to privilege, it's on behalf of the
7 company because the company is the entity that holds
8 the privilege, not Mr. Foster.

9 So to the extent he is being asked to disclose
10 communications that would waive that privilege or
11 impede that privilege, it's my responsibility as
12 counsel for the company to prevent that from
13 happening.

14 To that's the capacity in which I am
15 objecting. I am not Mr. Foster's attorney.

16 MR. SACHS: And I'm representing Mr. Foster.

17 If I could sit in-between the government and
18 respondent maybe I would do that.

19 JUDGE McKENNA: That's all right. I just
20 wanted to find out who's on first. So now what I want
21 to do is, the question specifically related to the
22 terms of the contract. There is no impressions. It's
23 straight and so Mr. Foster, you understand what you
24 were asked?

25 THE WITNESS: I believe I'm being asked what

1 the contents of the contract that was available
2 publically to consumers provided as options to them
3 from Integrity Advance.

4 Is that an accurate reflection of the
5 question?

6 JUDGE McKENNA: Yes.

7 MR. WHEELER: Yes.

8 THE WITNESS: So yes, I believe I can answer
9 that without waiving attorney/client privilege because
10 that contract has been produced and it was publically
11 available.

12 That contract had to comply with Delaware law,
13 which provided most of the details of what that
14 product could do, what it needed to offer the consumer
15 when operating under the license received from the
16 Delaware banking department. And by law the customer
17 could either at time of first due date could pay the
18 loan in full, could make a partial paydown of
19 principal or could extend that loan as well.

20 BY MR. WHEELER:

21 Q. Under the terms of the contract, if the
22 consumer did not contact Integrity Advance in advance
23 of their next pay date after they took the loan, what
24 would happen?

25 A. My recollection of the terms of the contract

1 that the provisions for that if Integrity Advance did
2 not receive communications from the customer that they
3 wanted to do anything but let it roll over, the loan
4 would roll over.

5 Q. And when you say roll over, what do you mean?

6 A. Depending on where in the cycle it was, that
7 would be to extend the loan for an additional period, I
8 believe typically two weeks. And the customer would
9 owe the finance charges that had accrued on that loan
10 through the due date.

11 How many rollovers could a consumer have on
12 their loan?

13 MS. BAKER: Objection. Vague.

14 JUDGE McKENNA: Overruled.

15 THE WITNESS: My recollection is up to three
16 rollovers, with no principal pay down, any after that
17 would require, I believe, a minimum of \$50 of
18 principal pay down.

19 BY MR. WHEELER:

20 Q. Who designed the loan renewal and auto work
21 out process?

22 A. As I stated before, the vast majority of that,
23 what the product looked like and how it functioned was
24 defined by Delaware law.

25 Q. Did Delaware law require Integrity Advance to

1 roll over consumer loans?

2 A. I don't have the statutes in front of me, my
3 recollection though it was an option that had to be
4 offered to the customer.

5 Q. Was it required to be a default option under
6 Delaware law?

7 A. I don't recall.

8 Q. Whose decision was it to implement the
9 rollover and workout process we have been discussing?

10 A. I don't know that it was anyone's decision.
11 That was the standard product that was offered in the
12 industry by almost all online lenders is my
13 understanding.

14 Q. Did Integrity Advance ever consider using a
15 different renewal and work out process?

16 MS. BAKER: Objection to the extent it calls
17 for privileged communications or disclosure of any
18 work product that Mr. Foster would have learned of or
19 have been a participant in in connection with his role
20 as general counsel.

21 JUDGE McKENNA: Duly noted.

22 THE WITNESS: Could you repeat the question?

23 BY MR. WHEELER:

24 Q. Did Integrity Advance ever consider using a
25 different renewal and work out process?

1 MS. BAKER: Same objection.

2 THE WITNESS: Yeah, I can't answer that
3 question to the extent it involved communications that
4 would have been legal in nature.

5 BY MR. WHEELER:

6 Q. I'm not asking about the specifics of the
7 communications. I'm asking did it ever happen? Was it
8 ever considered?

9 MS. BAKER: Same objection.

10 THE WITNESS: I don't recall.

11 JUDGE McKENNA: The objection is overruled.
12 It's sustained as to the legal issue.

13 All right.

14 I'm troubled somewhat, Mr. Foster, as to your
15 answer to the question. There would appear to me to
16 be an answer that doesn't involve a violation of
17 attorney/client privilege; am I incorrect there?

18 THE WITNESS: No.

19 JUDGE McKENNA: Would you answer the question?
20 Keeping in mind Ms. Baker's admonition.

21 THE WITNESS: Sure. I cannot speak to any
22 discussions that took place between myself and
23 Mr. Carnes or anybody else within Integrity Advance
24 that involved matters about the product and any legal
25 advice around that.

1 BY MR. WHEELER:

2 Q. So I guess that answer confused me a little
3 bit. Are you saying you are not aware of any
4 discussions about using a different loan process; is
5 that your testimony?

6 MS. BAKER: I'm just going to lodge for the
7 record the same objection.

8 JUDGE McKENNA: Duly noted.

9 Same ruling.

10 THE WITNESS: I cannot answer matters that
11 would be protected by the attorney/client privileged
12 communications.

13 MR. SACHS: By disclosing whether there did
14 occur any type of discussion based on a subject
15 matter, disclosing the subject matter of that
16 conversation would be protected by attorney/client
17 privilege.

18 So while I think Mr. Foster wants to answer
19 your questions he is having trouble because the
20 attorney/client privilege would protect the contents
21 of any conversation he may have had with his client
22 and to the extent he admits or denies having
23 conversations about something, a subject matter, that
24 would disclose the subject matter that was discussed.

25 MR. WHEELER: I disagree with that, Your

1 Honor.

2 I'm not asking for the contents of the
3 discussion, who said what, what was discussed. I'm
4 just asking was that ever a topic of discussion.

5 MR. SACHS: And again, Your Honor, I would
6 caution my client, that disclosing the topic of a
7 conversation would by its nature disclose the contents
8 or potential contents of that conversation.

9 MS. BAKER: And Your Honor, on behalf of the
10 company, our position would be that that information
11 is protected from disclosure to the extent it's even
12 an issue.

13 In other words, to the extent he served as
14 general counsel and he said he had conversations that
15 had to do with options, he was wearing his lawyer hat.
16 That would be information that he was providing to his
17 client or receiving from his client in connection with
18 his role as an attorney. That is protected from
19 disclosure by attorney/client privilege.

20 JUDGE McKENNA: He was also COO and the
21 question arises, you know, was this -- was this legal
22 advice or was this executive advice?

23 And you can't hide behind the attorney/client
24 privilege and play hide and seek.

25 MS. BAKER: Your Honor, the question hasn't

1 specified a timeline.

2 I think the testimony has established he
3 wasn't COO the entirety of the company's existence.
4 Mr. Wheeler's question has no time associated with it.
5 So if that's the capacity in which Mr. Foster is
6 answering the question as COO, I think the foundation
7 needs to be laid for that line of questions.

8 JUDGE McKENNA: I agree.

9 MR. WHEELER: I believe Mr. Foster testified
10 that he had business responsibilities in addition to
11 legal responsibilities throughout his time at
12 Integrity Advance.

13 JUDGE McKENNA: I think that's correct. You
14 understand what we are getting at, Mr. Foster?

15 THE WITNESS: Yes, I do.

16 JUDGE McKENNA: Proceed Mr. Wheeler.

17 Reassert your question. Put a timeframe on
18 it, and put a job title on it.

19 BY MR. WHEELER:

20 Q. Mr. Foster, in 2008, when you were executive
21 vice president, were you a part of any discussions
22 about Integrity Advance using a different loan process
23 than the one we discussed earlier?

24 MS. BAKER: Same objection.

25 JUDGE McKENNA: Duly noted.

1 And the question would subsume that you're not
2 asked to violate the attorney/client privilege, so we
3 are not talking about that issue.

4 THE WITNESS: Understood.

5 At no time would I have ever discussed, to the
6 extent it would have ever happened, that I would have
7 ever discussed matters about the product or any of the
8 products that would not have involved a legal
9 discussion and therefore, are protected by the
10 attorney/client privilege.

11 JUDGE McKENNA: Thank you. That puts a seal
12 on the envelope.

13 BY MR. WHEELER:

14 Q. Mr. Foster, did Integrity Advance ever try to
15 project the number of loans it might originate?

16 A. I don't recall.

17 Q. Do you recall Integrity Advance ever trying to
18 project how much revenue it might generate?

19 A. I don't recall Integrity Advance ever
20 preparing projections on its performance.

21 Q. So your testimony is Integrity Advance never
22 tried to plan out how much revenue it might generate or
23 how many loans it might originate?

24 A. I believe there that were some projections
25 prepared by Hayfield Investment Partners that -- how it

1 may financially perform and that would have taken into
2 consideration Integrity Advance performance, that's
3 what I recall.

4 Q. Were you involved in those Hayfield
5 projections?

6 A. I do not recall being involved in those
7 detailed projections.

8 Q. Do you recall reviewing those projections?

9 JUDGE McKENNA: And that's as EVP.

10 THE WITNESS: Right. I do not recall
11 reviewing those as EVP.

12 BY MR. WHEELER:

13 Q. We have talked a little bit about the loan
14 agreement, Mr. Foster, who wrote Integrity Advance's
15 loan agreement?

16 A. I'm sorry. My pause is I'm trying to make
17 sure that anything I am discussing about that -- trying
18 to determine what is protected by the attorney/client
19 privilege.

20 I think what I safely can say is that no one
21 at the Hayfield group of companies, including myself
22 or Mr. Carnes, were consumer lawyers or experts in
23 consumer law. So the strategy of the company was to
24 always have highly compensated, highly acknowledged
25 and reputable consumer law counsel, outside counsel,

1 to provide the counsel and guidance on those matters.

2 Q. So is it your testimony that outside counsel
3 wrote the loan agreement?

4 A. I don't believe that would be violating the
5 attorney/client privilege to say that all agreements
6 were written by outside counsel.

7 Q. Did you review the loan agreement that outside
8 counsel drafted?

9 MS. BAKER: I'm just going to caution you --

10 JUDGE McKENNA: I understand. And the next
11 question is the one that will be problematic for you
12 possibly.

13 MS. BAKER: Can I just register for the record
14 --

15 JUDGE McKENNA: Yes.

16 MS. BAKER: -- my concern?

17 I just want to caution you, Mr. Foster, to not
18 disclose communications that would be a violation of
19 the -- or disclose the attorney/client privileged
20 communications, violation of any privilege.

21 THE WITNESS: Yes, I acknowledge and recognize
22 that.

23 Any answering of that question about loan
24 agreements and legal advice from outside counsel would
25 involve discussions that would infringe upon the

1 attorney/client privilege.

2 BY MR. WHEELER:

3 Q. Mr. Foster, I'm not asking about discussions.
4 I'm asking did you review the loan agreement that
5 outside counsel drafted?

6 MS. BAKER: And I would give the same
7 admonition to the extent it was done in his capacity
8 as general counsel. Whether or not he did something
9 would be a disclosure of privilege and work product.

10 MR. WHEELER: I'm just asking did he review
11 it. Not did he do anything to it. Just did he review
12 it?

13 JUDGE McKENNA: Did he review it as executive
14 vice president?

15 THE WITNESS: I did not review any contracts
16 as executive vice president.

17 BY MR. WHEELER:

18 Q. Did you review it as general counsel?

19 MS. BAKER: Same objection and admonition.

20 JUDGE McKENNA: Duly noted.

21 THE WITNESS: That would be discussions that
22 for me to talk about here would be violating the
23 attorney/client privilege.

24 BY MR. WHEELER:

25 Q. Again, I'm not asking about discussions. I

1 was asking did you review it as general counsel?

2 MS. BAKER: Same admonition and objection.

3 THE WITNESS: Again, I believe any discussions
4 or testimony involving that subject matter would
5 violate the attorney/client privilege.

6 JUDGE McKENNA: Can we move on?

7 MR. WHEELER: Yes, Your Honor.

8 BY MR. WHEELER:

9 Q. Mr. Foster, to your knowledge did Mr. Carnes
10 ever review the loan agreement?

11 MS. BAKER: Same objection and admonition to
12 the extent that --

13 JUDGE McKENNA: Sustained.

14 MS. BAKER: Thank you.

15 THE WITNESS: I cannot answer that question
16 without violating the attorney/client privilege.

17 BY MR. WHEELER:

18 Q. Mr. Foster, did Integrity Advance receive
19 consumer complaints?

20 A. Yes, Integrity Advance did receive consumer
21 complaints.

22 Q. Did someone at Integrity Advance have the
23 responsibility for monitoring those complaints?

24 A. Yes.

25 Q. Who was that?

1 A. The first -- it was a multi-faceted, I would
2 say or multi-layer. Obviously, from the call center
3 the initial people that took the phone call, the CSRs
4 had ability to receive and resolve those complaints.
5 If they felt that they could not or needed escalation,
6 it would escalate, it's my understanding, to a manager
7 in the call center.

8 And then beyond that ultimately to, I believe,
9 the person that was in charge of collections, what we
10 called collections and workouts. And then if it needed
11 further attention, it could not be resolved beyond
12 that, it came to the attention of the legal group in
13 Kansas City.

14 JUDGE McKENNA: All right.

15 A. And then ultimately my responsibility because
16 the legal group reported to me.

17 JUDGE McKENNA: For the record. CSR stands
18 for call center representative?

19 THE WITNESS: Customer service representative.
20 Thank you. I apologize for using that acronym.

21 BY MR. WHEELER:

22 Q. Did Integrity Advance track these complaints
23 in any sort of way?

24 A. Yes.

25 Q. How so?

1 A. I recall reviewing a spread sheet that was
2 tracked by the call center as to the complaint and the
3 status.

4 Q. Did you ever discuss consumer complaints with
5 Mr. Carnes?

6 MS. BAKER: I would object to that question to
7 the extent it calls for the disclosure of privileged
8 communications, and also issue the same admonition.
9 Mr. Foster, it's Allyson Baker on behalf of the
10 company, Integrity Advance.

11 THE WITNESS: Right. Yes and I agree that by
12 the time it would have reached me, my review of any of
13 those matters would have been in a legal nature and
14 any of my discussions with Mr. Carnes would have been
15 legal in nature, and commenting or providing testimony
16 on that would be a violation of the attorney/client
17 privilege.

18 BY MR. WHEELER:

19 Q. Did Integrity Advance receive written
20 complaints in addition to complaints lodged over the
21 phone?

22 A. Yes.

23 Q. How were those complaints tracked?

24 A. Sorry. Could you repeat that question. I
25 didn't catch the end of that. How were they --

1 Q. I'm sorry. I was asking how were those
2 complaints tracked, the written complaints?

3 A. I don't recall if they were tracked any
4 differently.

5 Q. Mr. Foster, are you familiar with the term
6 remotely created check?

7 A. Yes, I am.

8 Q. What is a remotely created check?

9 A. So I am not an expert in this matter. My
10 familiarity is that it is a process permitted by the
11 federal banking system that any business or person that
12 is given the correct authority or proper authority can
13 create a, what is called a check draft or check
14 instrument, and present it to the -- sorry, present it
15 for payment to the individual's financial institution
16 for payment.

17 Q. Did Integrity Advance use remotely created
18 checks?

19 A. Yes.

20 Q. Under what circumstances?

21 A. The specifics were handled by the call center
22 on a day-to-day basis. I recall what the contract
23 terms said.

24 Q. Earlier in your testimony you mentioned
25 Hayfield Investment Partners, correct?

1 A. Yes, I did.

2 Q. And would it be correct to say that Hayfield
3 was the parent company of Integrity Advance?

4 A. Yes, that would be accurate.

5 Q. Were you one of the partners of Hayfield?

6 A. I had an ownership in Hayfield Investment
7 Partners.

8 Q. What was that ownership percentage?

9 A. It varied throughout the time period because
10 some of my incentive compensation was additional equity
11 in the company, and I believe it would have started at
12 1 and a half percent and ended up at 3.3 percent or so.

13 Q. Mr. Foster, did -- excuse me, did Integrity
14 Advance generate profits?

15 A. Yes, Integrity Advance at times did generate
16 financial profits.

17 Q. Were those profits distributed to the parent
18 company Hayfield?

19 A. I do recall profits being distributed from
20 Integrity Advance to the parent Hayfield Investment
21 Partners.

22 Q. Could you explain that process?

23 A. Could you clarify? I really don't -- I'm not
24 sure what you are asking with what process.

25 Q. Well, you said profits were distributed to

1 Hayfield, correct.

2 A. Yes.

3 Q. So who would make that decision to distribute
4 profits?

5 A. Up to Hayfield Investment Partners?

6 Q. Yes.

7 A. That would have been done by the legal manager
8 of Integrity Advance.

9 Q. Does that mean you?

10 A. No.

11 Q. Who was the legal manager of Integrity
12 Advance?

13 A. Hayfield Investment Partners.

14 Q. So who at Hayfield Investment Partners would
15 decide to distribute profits from Integrity Advance to
16 Hayfield?

17 A. The instructions would have had to have been
18 done by the president, but what went into the decision
19 on whether or not to have those profits distributed
20 from Integrity Advance to Hayfield Investment Partners
21 may have involved discussions with other owners as
22 well.

23 Q. When you refer to the president, you meant
24 James Carnes?

25 A. Correct.

1 Q. Were you personally involved in discussions
2 about distributions of profits from Integrity Advance
3 to Hayfield?

4 A. As a minority owner, that would not have been
5 something that was part of any decision making. I
6 would have been made aware of it after the decision was
7 already made.

8 Q. Do you have knowledge of the amounts of
9 Integrity Advance profits that were distributed to
10 Hayfield?

11 A. I do not have knowledge of exact amounts that
12 were distributed, no.

13 Q. Mr. Foster, did any of the lawyers
14 representing Mr. Carnes contact you in advance of your
15 testimony?

16 A. Yes.

17 Q. Who contacted you?

18 A. Allyson Baker.

19 Q. When did Ms. Baker contact you?

20 A. We had a brief conversation last night.

21 Q. Any other times you talked to Ms. Baker in
22 advance of your testimony?

23 A. Previous -- any previous discussions that
24 would have occurred before last night, would have been
25 in Ms. Baker's representation of the company and in my

1 role as general counsel for Integrity Advance.

2 Q. I'm not asking for contents. I'm just asking
3 did you have prior conversations with Ms. Baker aside
4 from the one you mentioned?

5 A. Yes.

6 Q. And when was that?

7 A. From time to time since I was, you know,
8 continued to keep the role of general counsel of
9 Integrity Advance, I would have discussions that were
10 updates on this matter from time to time.

11 MS. BAKER: And if I could just caution you,
12 this is Ms. Baker. To the extent, you know, you can
13 discuss the fact of the conversation, but you cannot
14 disclose the nature of those contents or the topics of
15 discussion. And I say that in my capacity as counsel
16 for Integrity Advance in this matter.

17 THE WITNESS: Thank you. I understand.

18 BY MR. WHEELER:

19 Q. I want to go back a little bit. Earlier you
20 testified that over time people spent less time on
21 Integrity Advance matters; do you recall that
22 testimony?

23 A. I do.

24 Q. And I believe you testified that people spent
25 the most time on Integrity Advance in 2008. And it

1 sort of waned after that; was that your testimony?

2 A. Yes, that's -- yes.

3 Q. Is that because after 2008 Integrity Advance's
4 loan process was established?

5 A. I would say that was due to a number of
6 things. That certainly, your question of that it was
7 established and being operated on a day-to-day basis
8 through the call center and its office in Delaware, but
9 in addition, Hayfield Investment Partners I think as I
10 previously stated had over 20 subsidiaries and several
11 lines of business completely unrelated to Integrity
12 Advance that required the vast majority of people's
13 time in the Kansas City office to concentrate on.

14 Q. Would it be fair to say that once Integrity
15 Advance was established you just needed to deal with
16 problems that arose?

17 A. So can you specify, are you speaking about me,
18 personally, the office or -- and time period?

19 Q. Let's start with you personally.

20 A. Okay. With respect to Integrity Advance, the,
21 as I think I previously said, testified, you know more
22 than 90 plus percent of my time in my personal
23 involvement with Integrity Advance would have been
24 legal in nature, that personally did not -- okay. So
25 now you're asking, I apologize, about problems to the

1 extent legal matters or complaints could be determined
2 as problems. The answer would be yes.

3 Q. Did Integrity Advance's loan product change
4 over time?

5 A. I don't recall a significant change in the
6 product.

7 Q. Did Integrity Advance's loan agreement change
8 over time?

9 A. My recollection is, in fact, I'm sorry, it's
10 not my recollection, I feel confident that the
11 company's outside counsel reviewed the agreement of
12 Integrity Advance on a regular basis as did the
13 Delaware Banking Commission through its annual
14 licensing process and the exams it received all
15 reviewed the agreement.

16 And to the extent that there was advice and
17 guidance given that would require a change, I feel
18 confident that the company would have followed that
19 advice and counsel from the outside.

20 Q. So is it your recollection that the loan
21 agreement changed?

22 A. There would have been some changes in the loan
23 agreement over time.

24 Q. Would you classify those changes as
25 significant?

1 A. As to the loan product itself, no.

2 Q. Are you familiar with loan agreement templates
3 that Integrity Advance used?

4 A. Can you define what you mean by a template?

5 Q. Essentially a loan agreement that wasn't
6 filled out. Sort of like the base application and loan
7 agreement but without a consumer's information.
8 Something that could be filled in by a consumer.

9 A. Yes, then I am familiar and remember that
10 template, yes.

11 Q. Do you remember who approved the use of the
12 template?

13 MS. BAKER: I just want to caution Mr. Foster
14 to the extent that that question could be answered or
15 must be answered by disclosing the contents of a
16 communication that would have otherwise been
17 privileged, please don't disclose that privileged
18 information.

19 MR. WHEELER: The fact that a loan agreement
20 template was approved is not protected information.

21 MS. BAKER: That's my admonition and objection
22 to this question.

23 If it can be answered otherwise.

24 THE WITNESS: Yes. So I think I would say is
25 that you asked me that I recall similar or if not the

1 exact question as to the loan agreement itself, and I
2 would say whatever I answered to that loan agreement
3 would apply to the template.

4 And I don't recall what I answered to be
5 honest, even in the last few minutes.

6 BY MR. WHEELER:

7 Q. Well, what's your recollection right now about
8 who approved the loan agreement template?

9 MS. BAKER: Same admonition and objection.

10 MR. SACHS: Your Honor, if it's easier, we
11 could have the court reporter read back Mr. Foster's
12 previous testimony with regards to the loan agreement.
13 Since he's stated -- -

14 JUDGE McKENNA: I don't think that will be
15 necessary based upon the answer that is going to be
16 forthcoming.

17 Answer the question or don't.

18 THE WITNESS: Sorry, Your Honor. I apologize.
19 I can't remember at this point what I -- with respect
20 to attorney/client privilege, what I answered about
21 that question on the loan agreement.

22 And my testimony is that whatever testimony I
23 gave earlier today with respect to the loan agreement,
24 would not have changed with respect to the template
25 itself.

1 JUDGE McKENNA: Mr. Wheeler, what do you want
2 to do? Do you want to read it back or do you want to
3 move on?

4 MR. WHEELER: I would rather the witness
5 answer the question now. I mean, he's still under
6 oath. He can testify now about who --

7 JUDGE McKENNA: All right. That's fine. He
8 can testify now.

9 So, court reporter would you please read back
10 his prior answer?

11 THE COURT REPORTER: It's going to take me a
12 minute to find it.

13 JUDGE McKENNA: I understand.

14 (Whereupon, a brief recess was had.)

15 JUDGE McKENNA: Back on the record.

16 MR. SACHS: Mr. Foster, are you on the phone?

17 THE WITNESS: Yes, I am.

18 JUDGE McKENNA: We are on the record.

19 Jeannie, can you read back the answer.

20 (Whereupon, the requested portion of the
21 testimony was read back by the reporter.)

22 BY MR. WHEELER:

23 Q. Mr. Foster, Integrity Advance was a business,
24 right?

25 A. Yes.

1 Q. And it had one product, right?

2 A. Yes. That's correct.

3 Q. That was a consumer loan?

4 A. Correct.

5 Q. And that consumer loan was formed by a loan
6 agreement?

7 A. Correct.

8 Q. And that loan agreement was based on a
9 template, right?

10 A. The -- so again our, you know, the vast
11 majority of customers applied online. So to the extent
12 you referred to a template as a blank application and
13 agreement that was presented -- actually, let me
14 rephrase that because it was the application that was
15 presented to the customer to fill out. After an
16 application was approved, they are re-presented then
17 with documents that included a now auto filled out
18 application of the information they had provided and
19 then agreements that were based on the template that
20 would have included all of the appropriate information
21 not only personal information that they gave, but then
22 the terms of their loan.

23 Q. Mr. Foster, someone had to approve that
24 template, right?

25 A. Yes.

1 Q. Who approved the template?

2 MS. BAKER: I'm going to the give the same
3 objection and admonition.

4 MR. WHEELER: Your Honor, this is a business
5 decision. This company was a business. They had a
6 loan product.

7 THE WITNESS: So.

8 MR. WHEELER: And who approved the template
9 for that loan agreement that's a business decision.
10 It has nothing to do with anything legal.

11 JUDGE McKENNA: The objection is duly noted.

12 THE WITNESS: So any of my involvement in the
13 template or agreement itself would not have been in a
14 business capacity it would a been in a legal capacity
15 and protected by the attorney/client privilege.

16 BY MR. WHEELER:

17 Q. Mr. Foster, who approved the loan agreement
18 template? That's a business decision. I'm not asking
19 for any legal advice you provided. I'm asking who
20 approved the loan agreement template.

21 MS. BAKER: I make the same admonition, just
22 for the record.

23 MR. SACHS: I'll object as well, Your Honor.

24 JUDGE McKENNA: What's the basis?

25 MR. SACHS: My client has answered the

1 question at least twice now. And asserted that he,
2 when he looked at any template, it was exclusively in
3 an attorney role, not in a business --

4 MR. WHEELER: I'm not asking him --

5 JUDGE McKENNA: That's enough. I figured it
6 out. Please answer the question, and that question
7 would be answered by an individual.

8 THE WITNESS: Could you repeat the question to
9 make sure I understand what you guys are requesting
10 me?

11 BY MR. WHEELER:

12 Q. Who approved the loan agreement template that
13 Integrity Advance used?

14 A. To the extent I have any knowledge about who
15 approved it for use, would have been in my capacity as
16 legal counsel for the company and protected by the
17 attorney/client privilege.

18 Q. That is the same nonanswer, Mr. Foster.

19 Who approved the loan agreement template?

20 MS. BAKER: I -- just -- you've noted it?

21 JUDGE McKENNA: Yes, ma'am.

22 MS. BAKER: Thank you.

23 THE WITNESS: I believe I already answered
24 that question.

25 MR. WHEELER: I don't think you did.

1 JUDGE McKENNA: All right. He's not going to
2 answer it, so let's move on.

3 There is a thing called adverse inference.

4 BY MR. WHEELER:

5 Q. Mr. Foster, a little earlier we talked about
6 profits that Integrity Advance generated being
7 distributed to Hayfield; do you recall that testimony?

8 A. I do.

9 Q. And you testified that Integrity Advance
10 profits were distributed to Hayfield?

11 A. Yes, I did.

12 Q. Were there Integrity Advance profits that were
13 not distributed to Hayfield?

14 A. Yes.

15 Q. Could you describe that?

16 A. So I guess it comes down to a definition of
17 gross profit/net profit, I'm not a financial person,
18 but Integrity Advance made money, and it had to pay its
19 vendors and third-party contractors some of that money
20 and lead providers before it could be distributed to
21 Hayfield Investment Partners.

22 Q. So were there -- once Integrity Advance paid
23 vendors and contractors, were there additional profits
24 that were not distributed to Hayfield?

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

1 MR. WHEELER: No further questions, Your
2 Honor.

3 MS. BAKER: Good morning, Mr. Foster. It's
4 Allyson Baker.

5 THE WITNESS: Good morning.

6 CROSS EXAMINATION

7 BY MS. BAKER:

8 Q. Mr. Foster, you testified before in response
9 to questions that Mr. Wheeler asked you about
10 relational amount of time that you spent on Integrity
11 Advance affairs in your capacity as both executive vice
12 president, COO, and general counsel, and I'm wondering
13 if you can give me roughly, a rough percentage of time
14 that you would have spent on Integrity Advance affairs
15 in 2008 in the capacity of also working for other
16 Hayfield companies?

17 A. Yes. I understand the question.

18 So in all of my personal capacities for
19 Hayfield Investment Partners estimating that in 2008,
20 say 70 percent of time would have been spent on
21 Integrity Advance matters, legal or otherwise, and that
22 would have diminished as time went by.

23 Q. Same question for 2009, a rough percentage?

24 A. Closer to 50 percent or less.

25 Q. Same question for 2010, a rough percentage?

1 A. My recollection is that by 2010 Integrity
2 Advance was running independently very well by the call
3 center and office in Delaware, and the time spent by
4 myself would have been, you know, sub 50 percent, 25/30
5 percent.

6 Q. Same question for 2011, please?

7 A. Similar. Maybe by then dropping even below 25
8 percent.

9 Q. Same question for 2012?

10 A. By 2012 it would have been significantly less
11 than that even, 10 to 20 percent.

12 Q. And I think you testified earlier, Mr. Foster,
13 that you continued to work with the business until its
14 formal wind down in 2013; is that right?

15 A. Integrity Advance I continued to serve as
16 executive vice president, general counsel, secretary
17 and I believe assistant treasurer.

18 Q. And in 2013 roughly what percentage of your
19 time was spent on specifically Integrity Advance's
20 business?

21 A. Less than five percent.

22 MS. BAKER: Thank you for your time. No
23 further questions.

24 JUDGE McKENNA: Anything further on direct?

25 MR. WHEELER: Nothing further, Your Honor.

1 JUDGE McKENNA: All right. Thank you,
2 Mr. Foster. You have a nice day.

3 THE WITNESS: Thank you very much. You have a
4 nice day as well.

5 JUDGE McKENNA: Now where were we?

6 (To Mr. Carnes) You're still under oath, sir.
7 You understand that?

8 MR. CARNES: I do.

9 JUDGE McKENNA: All right.

10 DIRECT EXAMINATION (continuing.)

11 BY MR. WHEELER:

12 Q. I still have a few additional questions,
13 Mr. Carnes.

14 Did Integrity Advance charge a fee to
15 consumers who took loans?

16 A. Yes.

17 Q. What was that fee?

18 A. It was as Mr. Foster described, \$30 per
19 hundred borrowed for new customers. And \$24 per
20 hundred borrowed for returning customers.

21 Q. Did that change over time?

22 A. No.

23 Q. Who decided on the fee amount?

24 A. It was an industry standard. Everybody
25 charged the same thing.

1 Q. But who made the decision that Integrity
2 Advance would charge the industry standard?

3 A. I think as a -- you know, I really don't
4 remember who made the decision. I mean, we were
5 forming the company, prior companies we had charged the
6 same amount, and that was just used.

7 Q. But you had authority over Integrity Advance,
8 right?

9 A. I did have authority over Integrity Advance.

10 Q. And you were the CEO?

11 A. De facto CEO of Integrity Advance, yes.

12 Q. So is it fair to say that you at least
13 approved the fee structure of Integrity Advance's
14 loans?

15 A. Approved being, again, stamp of approval, no.
16 I didn't say, I approve this. But I knew that they
17 were being used and I could have changed it if I wanted
18 to.

19 Q. So if a new consumer took a \$100 loan --

20 JUDGE McKENNA: A what? One hundred?

21 MR. WHEELER: Yes. A loan of \$100.

22 BY MR. WHEELER:

23 Q. And they called Integrity Advance and said
24 they wanted to pay off their loan prior to their next
25 pay date, how much would that consumer pay?

1 A. One hundred and thirty dollars. You said a
2 new consumer, correct?

3 Q. Correct.

4 And that represents the principal and a \$30
5 finance charge?

6 A. Yes, sir.

7 Q. One finance charge?

8 A. Yes.

9 Q. For that consumer, is \$130 would have appeared
10 on their loan agreement?

11 A. Yes.

12 Q. Is that something you understood when you were
13 the CEO of Integrity Advance?

14 MS. BAKER: Objection. Vague.

15 JUDGE McKENNA: Overruled. I don't know how
16 you can call that vague.

17 THE WITNESS: Are you saying, did I understand
18 that on the -- in the TILA box that it said, sum of
19 payments was \$130.

20 BY MR. WHEELER:

21 Q. For a fictional consumer who had a \$100 loan,
22 a new consumer, yes.

23 THE COURT REPORTER: I'm sorry?

24 BY MR. WHEELER:

25 Q. Yes. For a new consumer. The fictional

1 consumer we're discussing, who had \$100 loan, do you
2 understand that their TILA disclosure would say \$130?

3 A. Yes.

4 JUDGE McKENNA: Mr. Wheeler?

5 MR. WHEELER: Yes.

6 JUDGE McKENNA: Could you string those words
7 together a little slower?

8 MR. WHEELER: I'll do my best, Your Honor.

9 JUDGE McKENNA: I mean, only if you want to
10 have a record.

11 MR. WHEELER: An actual record of this
12 proceeding?

13 JUDGE McKENNA: Yeah.

14 MR. WHEELER: I will try again.

15 BY MR. WHEELER:

16 Q. We were talking about a new consumer who took
17 a \$100 loan, that consumer, you testified would be --
18 receive a \$30 finance charge, correct?

19 A. Yes.

20 Q. And that TILA disclosure that consumers would
21 receive would say \$130, correct?

22 A. Correct.

23 Q. And you -- that's something you understood
24 when you were CEO of Integrity Advance?

25 A. Correct.

1 MS. BAKER: I just have an objection to the
2 use of that understood, it's vague.

3 I have said that before.

4 JUDGE McKENNA: All right. Duly noted.
5 Overruled.

6 BY MR. WHEELER:

7 Q. [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
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MS. BAKER: Your Honor, to the extent we are discussing confidential proprietary information that concerns an entity that is not party to this case, so I would ask that the last question/answer and this line of questions be filed under seal in accordance with what Your Honor did yesterday as to the Hayfield Financials.

JUDGE McKENNA: Granted.

MS. BAKER: Thank you. And I don't know if there's anyone in this courtroom who is not from either the Office of Enforcement. I know the folks from our side. But I would ask that they be asked to

1 leave the room.

2 JUDGE McKENNA: Voir dire them.

3 MS. BAKER: I don't want to do that.

4 But I will trust that Office of Enforcement
5 Counsel will identify anyone in the audience who is
6 not from their office and ask them to leave during
7 this line of questions out of respect for the fact
8 that it's now under seal.

9 JUDGE McKENNA: Granted.

10 MS. BAKER: Thank you.

11 MR. COWIE: Your Honor, everyone in the room
12 is -- this is Craig Cowie -- everyone in the room is
13 either an attorney with the Office of Enforcement or
14 working with the attorneys for the Office of
15 Enforcement on this matter.

16 MS. BAKER: Your Honor, yesterday there were
17 two individuals, I don't want to point them out, but
18 there were two individuals sitting here now who were
19 asked to leave the room because they were not part of
20 the Office of Enforcement.

21 MR. COWIE: That was Ms. Baker's
22 characterization of their role, which was incorrect.
23 They are, in fact, assisting the Office of Enforcement
24 with this matter, and they are properly subject to
25 information that is under seal in this case. They

1 should not be excluded.

2 MS. BAKER: Your Honor, that was not my
3 characterization. I don't know who they are. So the
4 Office of Enforcement made a decision to ask them to
5 leave yesterday and that needs to be the case today as
6 well.

7 JUDGE McKENNA: No, it doesn't need to be the
8 case today. What we will do is we will backup. And
9 we will have them indicate who these people are, so
10 that we can make a determination on whether they
11 should be here or not.

12 And I think that what we want to do is start
13 out by making an appearance.

14 MR. COWIE: Sure. I have made an appearance
15 before in this matter. This is Craig Cowie, on behalf
16 of the Office of Enforcement. We have Mr. Marlow, who
17 is a paralegal working with the Office of Enforcement.
18 Ms. Warrell, is an attorney with the Office of
19 Enforcement.

20 Zack Watkins, is a summer intern with the
21 Office of Enforcement. These two people I believe are
22 summer associates at Ms. Baker's firm.

23 Mr. Bloom and Ms. Kelly, thank you. I
24 apologize. Work in the bureau's research and markets
25 division and they are assisting us with this

1 investigation -- oh, I'm sorry. Did I get the
2 wrong -- oh, the data team, right. They are in our TI
3 department and they are assisting us with this
4 investigation. And Ms. Buchko is also an attorney for
5 the Office of Enforcement.

6 JUDGE McKENNA: Just a second.

7 All right. So before you speak on the issue,
8 Mr. Wheeler, do you take the position that as Bureau
9 employees that they are bound by confidentiality?

10 MR. WHEELER: I do, Your Honor.

11 JUDGE McKENNA: All right. Is it your desire
12 that they remain in?

13 MR. WHEELER: That would be my desire, yes.

14 JUDGE McKENNA: And what is the predicate for
15 that.

16 MR. WHEELER: The fact that they have been
17 assisting us with this matter.

18 JUDGE McKENNA: And if they left is that going
19 to inhibit your ability to -- for them to perform
20 their job function?

21 MR. WHEELER: In general, yes, I mean, frankly
22 I don't have a lot of questions about Stevens. So I
23 think we've had a long argument about almost nothing,
24 but -- so the answer to your question is: I think
25 them not being in the room for questions about Stevens

1 and distributions, probably doesn't hurt us. But in
2 general, yes, we would like to have them in the room
3 in general.

4 MS. BAKER: Your Honor, if I could just make a
5 note for the record. I'm a little unclear as to who
6 the parties are in this matter. It is Enforcement
7 Counsel or is it the Consumer Financial Protection
8 Bureau? Because if it's Enforcement Counsel, then it
9 should only be folks who are affiliated with that
10 office. And Mr. Cowie, who I know is a lawyer in that
11 office, you know, has spoken on behalf of and
12 introduced these different individuals.

13 If it's the whole CFPB, then I'm definitely
14 confused because this matter goes up to the director
15 of the CFPB, who by that definition would be an
16 employee and a party to this case.

17 So I'm uncertain as to how the Office of
18 Enforcement is defining who the party is in this case.
19 And that's the purpose of -- that's why I'm not clear.
20 Either everybody comes in, and this process is
21 undefined or it's the case that Enforcement Counsel is
22 the party to this matter, that's how they've defined
23 themselves and everybody who is affiliated with the
24 Office of Enforcement, of course, is a party.

25 But it shouldn't be the case that the Bureau

1 gets an expansive definition of who its interests are,
2 in connection with this proceeding. So that's what
3 I'm not clear of, Your Honor.

4 JUDGE McKENNA: I understand what you are
5 saying.

6 First of all, if you're asserting that Richard
7 Cordray is a party to this proceeding, you are wrong.

8 MS. BAKER: I'm not, Your Honor. That's what
9 I'm trying to understand.

10 JUDGE McKENNA: All right. So that's point
11 one.

12 He is the decider.

13 MS. BAKER: Right.

14 JUDGE McKENNA: All right. So we get that out
15 of the way.

16 Now under the APA, as I'm sure you're aware,
17 the parties to the proceeding are allowed to use
18 technical experts as long as they are not in the
19 decision-making chain.

20 MS. BAKER: Your Honor, that's my
21 understanding as well. But my question is a little
22 bit and it's really a question I'm asking of you
23 because I can't directly ask opposing counsel, but I'm
24 not clear as to who the parties are in this matter as
25 the bureau understands it.

1 I'm happy to take their definition, but they
2 haven't used one consistently and that's my concern.
3 And it's one that's relevant because we're discussing
4 -- or as Mr. Wheeler just represented we are about to
5 discuss confidential proprietary information
6 concerning parties that are not definitively parties
7 to this case.

8 And what I'm trying to understand is --

9 JUDGE McKENNA: Individuals who are not
10 parties?

11 MS. BAKER: Well, a private equity firm that's
12 not a party to this case and Hayfield Investment,
13 which is not a party to this case. And their
14 proprietary confidential financial information is
15 about to become maybe potentially responsive to some
16 questions and the Protective Order in this case
17 contemplates coverage of the parties.

18 And all I want to understand is --

19 MR. WHEELER: Just for the record, a party --

20 MS. BAKER: -- who Mr. Wheeler believes are
21 the parties?

22 MR. WHEELER: I have a copy of the Protective
23 Order. The party includes: The Bureau, officers,
24 directors, employees, Bureau contractors, et cetera.
25 That's the way we defined it in the Protective Order.

1 MS. BAKER: Again, Your Honor, that doesn't
2 really explain to me who the parties are to this case.

3 I mean, is it Mr. Wheeler's position that
4 everybody employed by the CFPB is a party to this
5 case?

6 MR. WHEELER: We're not asking for everyone at
7 the CFPB to come and sit in the gallery.

8 JUDGE McKENNA: All right. I think that this
9 is much to do about nothing. But I'm not going to
10 have an issue where I don't need to have an issue.

11 MS. BAKER: Thank you, Your Honor.

12 JUDGE McKENNA: So would you please leave the
13 room?

14 How is that?

15 MR. WHEELER: Could you read back the last
16 question and answer? I frankly forgot where we were.

17 (Whereupon, the requested portion of the
18 testimony was read back by the reporter.)

19 BY MR. WHEELER:

20 Q. Mr. Carnes, when you speak of the private
21 equity fund, was that called Stevens?

22 A. It was called Stevens Capital Partners.

23 MR. WHEELER: Mr. Jefferson, could we see, I
24 think it's Exhibit -- it's the Hayfield chart, it's 67.

25 THE WITNESS: Sixty-seven you said?

1 MR. WHEELER: Sixty-seven or sixty-five. I
2 think it's 67. Yeah, this is it.

3 BY MR. WHEELER:

4 Q. So I just want to be clear in this Exhibit 67,
5 where is Stevens represented?

6 A. By SI Hayfield on the left top second box from
7 the top, 41.8251 percent.

8 Q. And your recollection is that's an accurate
9 representation of Stevens' interest in Hayfield?

10 A. At that time.

11 Q. What would that time be?

12 A. Like I said yesterday, I think this was
13 produced sometime near the end of operations.

14 Q. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1

2

3

4

5

6

MR. WHEELER: No further questions, Your Honor.

8

JUDGE McKENNA: Thank you.

9

And are there going to be any exhibits that are going to come in that you are going to proffer based off of this witness?

10

11

12

MR. WHEELER: No additional exhibits with this witness, Your Honor.

13

14

JUDGE McKENNA: All right. Thank you.

15

MS. BAKER: Your Honor, you mean in addition to what was introduced yesterday?

16

17

JUDGE McKENNA: Yeah.

18

MS. BAKER: Okay.

19

Good morning, Mr. Carnes.

20

MR. CARNES: Good morning.

21

CROSS EXAMINATION

22

BY MS. BAKER:

23

Q. Mr. Carnes, yesterday you testified at length about the nature of the business interests that were owned by the Hayfield companies; do you recall that

24

25

1 testimony?

2 A. Yes.

3 Q. And I believe you also testified that you were
4 the CEO of those businesses; do you recall that
5 testimony?

6 A. I recall that I said I was CEO of Hayfield,
7 which by de facto would have been CEO of the child
8 companies.

9 Q. If I could ask you, please, to go back to what
10 has been marked as Enforcement Counsel Exhibit Number
11 67 in the binder over there. As you know, the tab 67,
12 if you flip to that tab you will get to this exhibit.

13 A. Okay.

14 Q. Thank you. This document is a copy of the
15 Hayfield corporate structure, I believe it was admitted
16 into evidence. Is this a true, a correct copy of
17 Hayfield's corporate structure to the best of your
18 understanding?

19 A. It is.

20 Q. To the best of your understanding, what
21 timeframe would this document reflect?

22 A. Like I said yesterday, near the end of
23 operations of Hayfield.

24 Q. Which would be around what year --

25 A. 2012.

1 Q. -- or years?

2 Having said that, does this document more or
3 less reflect all of the -- the fact that there were
4 numerous business interests owned by Hayfield between
5 2008 and 2013 or '12?

6 A. Yes.

7 Q. So how is this document different than -- what
8 makes this document specific to 2012, if you will,
9 versus all of those other years?

10 A. Well, it would have looked different in two
11 ways. You know, if you produced this document when
12 Hayfield was formed, you would have different
13 percentages on the top of ownership and not all of the
14 boxes would exist on the bottom.

15 Q. How many different business interests are
16 below -- and let me ask you this: The boxes below the
17 Hayfield Investment Partners, big shaded gray box,
18 those reflect different business interests that
19 Hayfield had at the time of, say, call it 2012; is that
20 fair to say?

21 A. Yes.

22 Q. Okay. How many different business interests
23 would you count or can you count for us?

24 A. Define a business interest.

25 Q. Each of these little boxes. So if you will

1 there is a gray box and then there are little spokes.

2 A. I count 14 boxes.

3 Q. Fourteen boxes.

4 And each of those boxes, is it fair to say
5 represent a distinct business interest or company that
6 Hayfield Investment Partners at one point or another
7 has had -- has been the umbrella business for?

8 A. Yes.

9 Q. Can you tell me for 2008, and we established
10 for the record that you were involved with the
11 Integrity Advance business, you agree that we have
12 established that?

13 A. We have established that.

14 Q. Okay. Can you tell me for 2008 the per -- the
15 relative percentage of time that you spent on Integrity
16 Advance vis-a-vis these other 13 boxes?

17 A. To the extent that my time was spent on
18 Hayfield, it was spent in 2008 primarily on Integrity
19 Advance.

20 Q. And primarily means what? What is a rough
21 percentage?

22 A. Well, Integrity Advance started lending in
23 2008 and I believe in May, I think. And so there would
24 have been some preparation up to May to start lending
25 and then after May continue to lend. There were

1 businesses also during the wind down stage leading up
2 to and after May, so call it two-thirds of my time
3 would have a been Integrity and one-third would have
4 been the wind down of what we were getting out of.

5 Q. I see. So about 66 percent of the time that
6 you spent on Hayfield business units or enterprises was
7 spent on Integrity Advance in 2008?

8 A. Yes.

9 Q. Okay. Now before we continue, I want to ask
10 you this: You noted that -- or you suggested that you
11 spent time on other business efforts other than
12 Hayfield; is that right?

13 A. That's correct.

14 Q. What -- if you could just give us some rough
15 allocation of time between Hayfield business efforts
16 and other business efforts in the universe of time that
17 you spent on professional endeavors in 2008.

18 A. 2008, I probably spent 75 percent of my time
19 on Hayfield and 25 percent of my time on other things.

20 Q. Now I want to ask you the same question for
21 2009 or the same series of questions.

22 JUDGE McKENNA: Just one second. Excuse me.

23 MS. BAKER: Of course.

24 JUDGE McKENNA: So would that be 75 percent
25 you said for Hayfield, and so that would be 75 percent

1 of two-thirds?

2 THE WITNESS: It would be two-thirds of 75
3 percent would be 50 percent spent on Integrity.

4 JUDGE McKENNA: There you go.

5 MS. BAKER: Thank you, Your Honor. That's a
6 great question.

7 BY MS. BAKER:

8 Q. So 66 percent of 75 percent as you and Your
9 Honor just determined is 50 percent of your total
10 professional time was spent on Integrity Advance in
11 2008?

12 A. For 2008.

13 Q. Same question for --

14 A. Roughly, again.

15 Q. Roughly.

16 A. This is rough estimate to the best of my
17 ability.

18 Q. For 2009 same questions.

19 With respect to the Hayfield family of
20 companies, what percentage of total time did you spend
21 of the time you devoted to Hayfield business units on
22 Integrity Advance operations?

23 A. Again, it waned over time in 2000 -- it was
24 two-thirds in '08, '09 might have been 50 percent, 10
25 was probably less than that and by 11 it was a very

1 small percentage.

2 JUDGE McKENNA: And during all of those
3 periods of time, was the percentage of your time on
4 Hayfield still at the 75 percent level?

5 THE WITNESS: It varied over time depending on
6 the needs of Hayfield and the needs of the other
7 businesses, they were up and down. Generally I would
8 say that I spent somewhere between --

9 JUDGE McKENNA: For 09?

10 THE WITNESS: Let's say '09 was probably 70
11 percent maybe.

12 JUDGE McKENNA: '10?

13 THE WITNESS: Sixty.

14 JUDGE McKENNA: '11?

15 THE WITNESS: Fifty.

16 JUDGE McKENNA: '12?

17 THE WITNESS: Eighty or ninety.

18 JUDGE McKENNA: Who should I send the bill to?

19 MS. BAKER: Thank you, Your Honor. You were
20 following my line of questions. That's where I was
21 going.

22 BY MS. BAKER:

23 Q. I just want to make sure we do have a clear
24 record. The answers you just gave to Judge McKenna
25 concerned the amount of percentage of time total of all

1 of your professional endeavors that you spent just on
2 Hayfield, so --

3 A. Right.

4 Q. -- is that right, Mr. Carnes?

5 A. That's correct.

6 Q. So 70 percent about in 2009, 60 percent in
7 2010, 50 percent of your time in 2011 and then 80 or 90
8 percent of your time in 2012?

9 A. That's correct.

10 Q. And of that, let's go back and just make sure
11 we have a precise accounting of the time that you spent
12 on Integrity Advance specifically.

13 So for 2009 I believe you said that you spent
14 of the Hayfield total, 50 percent of that time on
15 Integrity Advance; is that right?

16 A. Yes.

17 Q. And same question for 2010 of the 60 percent
18 Hayfield total, so of the Hayfield total, what
19 percentage of time approximately did you spend on
20 Integrity Advance?

21 A. I'm going to guess 25 percent.

22 Q. So 25 percent of 60 percent of your total
23 business endeavors?

24 A. Yes.

25 Q. Okay. And same question for 2011, what

1 percentage of time roughly did you spend on Integrity
2 Advance of all of the Hayfield time that you spent in
3 your professional endeavors?

4 A. Probably 15 percent.

5 Q. Fifteen percent?

6 So 15 percent of 50 percent of your
7 professional endeavors roughly was spent on Integrity
8 Advance business operations in 2011?

9 A. By then the company it was a well running unit
10 and didn't need a lot of attention.

11 Q. Same question for 2012. What percentage of
12 time did you spend of the Hayfield business time that
13 you spent in your professional endeavors, what
14 percentage of time did you spend in 2012 on Integrity
15 Advance business operations?

16 A. Similar to '11.

17 Q. So about 15 percent?

18 A. Good guess.

19 Q. And I think we have heard testimony and you
20 have been in the room for this testimony, the company
21 -- when did the company wind down?

22 A. Hayfield closed the transaction with EZ Corp,
23 December 20th of 2012, from that point on we were
24 contractually obligated to do certain things through
25 that sale agreement. One of which was to wind down

1 Integrity, and we had until the end of June to
2 completely wind Integrity down. So we could no longer
3 make loans. It was in merely wind down mode.

4 Q. So the end of June of 2013?

5 A. '13, yes.

6 Q. So I'm going to ask you same questions that
7 I've asked you, just for 2013, as well. Of the total
8 time that you spent on professional endeavors in 2013,
9 what percentage was allocated to Hayfield, roughly?

10 A. At that point I was fully employed by EZ Corp,
11 and it was -- the assets that they purchased from
12 Hayfield had been transferred. So other than things
13 like dealing with this matter, I had very little
14 involvement at all in Hayfield other than overseeing
15 the wind down of the assets that were remaining.

16 Q. So what would you estimate is the percentage?

17 A. Of my total time? Again, you take Hayfield
18 and mix. And now, you know we're saying my total
19 business time was probably spent on this maybe five or
20 ten percent.

21 Q. Of Hayfield?

22 A. Yes. Well -- yes. For the first half of '13,
23 and then post -- or in the second half of '13 the only
24 thing I had to do with Hayfield or Integrity Advance
25 was things relating to this matter.

1 Q. And then with respect to the time you would
2 have spent on Integrity Advance, of that five to ten
3 percent you spent on Hayfield, what percentage would
4 have been spent on Integrity Advance?

5 A. At that point that was one of the assets that
6 wasn't purchased and so it was probably, you know, half
7 of -- half or more of that -- roughly half.

8 Q. So roughly half of five to ten percent?

9 A. Yes.

10 Q. Now you mentioned before the EZ Corp
11 transaction, and we heard some testimony at the end of
12 yesterday about that, did that transaction involve a
13 purchase of Integrity Advance assets?

14 A. Again, it was very restrictive. It just -- it
15 just purchased the customer list, in a subset of
16 states.

17 Q. So if you had to, and I understand this is --
18 I'm asking you this questions based on your estimates,
19 understanding it happened a few years ago. If you had
20 to kind of give a percentage of the total assets that
21 EZ Corp purchased from Hayfield, what percentage would
22 be allocated to Integrity Advance specifically?

23 A. I don't think it would be fair to venture a
24 guess because I didn't put the value on it that they
25 did.

1 Q. But they purchased a relatively small number
2 of assets?

3 A. Of what -- the big picture of what they
4 purchased was, it was a very small piece of what they
5 got.

6 Q. And "it" being Integrity Advance assets?

7 A. Yes.

8 Q. If I could ask you please to go back to that
9 binder in front of you, and go back to tabs, please, to
10 what has been previously admitted and marked as
11 Enforcement Counsel Exhibit 65.

12 Do you see that?

13 A. I do.

14 Q. Mr. Carnes, I think you offered some limited
15 testimony about this document yesterday, do you recall
16 that testimony?

17 A. Vaguely.

18 Q. One of the things I believe you said yesterday
19 is that all of the people on this org chart were able
20 to come speak with you; is that right?

21 Meaning everyone below Mr. Foster, for
22 example, were able to come into your office and talk to
23 you at a point in time?

24 JUDGE McKENNA: Give me the exhibit number
25 again, please.

1 MS. BAKER: Sure. Absolutely, Your Honor,
2 it's Exhibit No. 65 in Enforcement Counsel's binder.
3 And so if you go to tab 65, it's the document
4 immediately behind it.

5 JUDGE McKENNA: Right.

6 THE WITNESS: I generally had an open-door
7 policy that allowed, you know, anybody that wanted to
8 pop in and say something, to do so.

9 In the case of this chart, George Davis would
10 have to hop on a plane to do it, but everybody else
11 was in the same office.

12 BY MS. BAKER:

13 Q. And did any of the people on this chart and
14 let me be specific, I'm talking about any name in a
15 little box other than your name, did any of these
16 people on this chart ever ask you or talk to you about
17 your understanding of the scripts that the call center
18 representatives used in connection with the loans?

19 A. No.

20 Q. Mr. Carnes, did you ever review any of those
21 call center scripts that the call center
22 representatives used in connection with the loans?

23 A. No.

24 Q. Did you ever revise any of those call center
25 scripts that the call center representatives used in

1 connection with the loans?

2 MR. WHEELER: Objection, Your Honor,
3 relevance.

4 JUDGE McKENNA: Overruled.

5 THE WITNESS: I did not revise any scripts.

6 BY MS. BAKER:

7 Q. Did you ever edit any call center scripts that
8 call center representative used in connection with the
9 loans?

10 A. No, I never saw them.

11 Q. Mr. Carnes, were you involved in drafting any
12 part of any loan agreement that a consumer used in
13 connection with a loan in this matter?

14 A. No.

15 Q. Were you involved in revising any part of any
16 loan agreement that a consumer would have had in
17 connection with a loan made by Integrity Advance?

18 A. No.

19 Q. Were you ever involved in revising any
20 language to any disclosure in that loan agreement?

21 A. No.

22 Q. Did you ever revise or edit any other language
23 in the loan agreement that was used in connection with
24 any loan that was made to a consumer by Integrity
25 Advance?

1 A. No.

2 Q. And you testified earlier, I believe, or you
3 heard testimony that there were versions of this loan
4 agreement?

5 A. Yes.

6 Q. Did you ever as to any version of any loan
7 agreement make edits or revisions to the language in
8 that loan agreement?

9 A. No.

10 Q. Did you ever as to any version of any loan
11 agreement make edits or revisions to any disclosure in
12 the loan agreement?

13 A. No.

14 MS. BAKER: Court's indulgence for a moment,
15 please.

16 JUDGE McKENNA: Sure.

17 BY MS. BAKER:

18 Q. Mr. Carnes, if I could ask you please to turn
19 to, in Enforcement Counsel -- the binder in front of
20 you or maybe it's the other binder, what was previously
21 marked and entered into evidence as Exhibit 18.

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED] [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED] [REDACTED]

25 [REDACTED] [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 Q. Mr. Carnes, do you have an understanding of
24 how many Integrity Advance customers came to Integrity
25 Advance via its website?

1 A. Customers, so you mean people who obtained a
2 loan?

3 Q. Well, who were initially introduced to the
4 company through a website as opposed to through lead
5 generation, which we discussed yesterday?

6 A. So in the beginning of the company in 2008,
7 there was a small percentage of consumers that would
8 come back to the website. By the time that 2012
9 happened, we had well over half, maybe even two-thirds
10 of business we did were from consumers coming back for
11 a second or Nth loan, from after paying off their first
12 loan.

13 Q. And I'm sorry what percentage?

14 A. By the time 2012 happened, I don't know the
15 percentage from '08, but it jumped up in '09 and
16 continued to rise in 2012 or in 2012 I want to say, I'm
17 going to ballpark it at about two-thirds of business we
18 did was to people who came back after having a first
19 loan.

20 Q. And they might have come back through the
21 website?

22 A. They generally almost always came back through
23 the website or called us.

24 Q. But as to new customers, what's your sense of
25 percentages for each of those years 2008, uniquely new

1 customers to the company?

2 A. Coming to their website?

3 Q. Yes, coming through the website?

4 A. Again, it was small in 2008, I couldn't --

5 Q. If you know.

6 A. I don't know the number exactly. I just know
7 it was a smaller percentage knowing that 2009 it was
8 significantly higher and by the time we finished, it
9 was roughly, again, I don't remember off -- exactly
10 what it was, but call it 60/65 percent of the consumers
11 that we lent to by 2012 were coming back for a second
12 or more loan.

13 Q. I think you testified yesterday that you had
14 an understanding that Integrity Advance had a lending
15 license from the State of Delaware?

16 A. That's correct.

17 Q. Do you have any high level understanding of
18 what that entailed or what that meant?

19 A. I have a high level, I know that in the
20 beginning to obtain a lending license there is a
21 lending license application that gets filled out. I
22 know that I was asked to fill out some of that with
23 regard to myself. There were financials I think I had
24 to submit for myself. There were -- it was a, you
25 know, application. So you had all kinds of blanks to

1 fill in. Most of the application and its components
2 were orchestrated by Mr. Foster in conjunction with
3 outside counsel is who wrote the loan agreements that
4 were submitted to the State for their approval along
5 with all of the application information as well.
6 That's my understanding of it.

7 Q. And that's to obtain the license?

8 A. To obtain a lending license, yes.

9 Q. Do you have an understanding as to whether
10 that license was ever renewed?

11 A. I do. It was renewed -- it was granted in
12 2008, I believe. And then renewed in '9, '10, '11 and
13 '12.

14 Q. And do you have any understanding, and I
15 understand you are not a lawyer, but do you have any
16 understanding of what might have been involved in that
17 renewal process? Just at a high level.

18 MR. WHEELER: Objection, Your Honor. It calls
19 for speculation.

20 JUDGE McKENNA: He will answer if he knows.

21 THE WITNESS: So in a renewal process, again,
22 it was a -- the State sent a checklist out of
23 documents that needed to be submitted. I think
24 yesterday I pointed out some of the financial
25 statements that were partial year, were submitted as

1 part of that application or renewal process.

2 Any changes to -- originally you submitted a
3 business plan, they requested any changes to the
4 business plan be submitted. Again, it was a few
5 blanks I had to fill out, but primarily orchestrated
6 by Mr. Foster and outside counsel.

7 I do know we received our approvals to
8 continue to lend each year, and we posted the license
9 on our website, I believe.

10 BY MS. BAKER:

11 Q. Yesterday, Mr. Carnes, we heard some testimony
12 about lead generation agreements; do you recall that
13 testimony?

14 A. I do.

15 Q. Why were you involved with signing at least
16 two of -- I think it was three lead generation
17 agreements that were executed with another business on
18 behalf of Integrity Advance?

19 A. I was a CEO, as a standard practice of
20 business I would sign documents from time to time.
21 They would be signed by other officers of the company.
22 I think there are examples in here of Madsen signing
23 agreements. Mr. Foster signed agreements. The company
24 had numerous third party vendor arrangements over the
25 years. And it might have been signed because I might

1 have had a relationship with the person on the other
2 side. It might have been signed because I was the only
3 one in the office that day. It might have been signed
4 -- I don't know. I mean, as a CEO, you sign
5 agreements.

6 Q. Was it also the case that Mr. Madsen signed
7 lead generation agreements?

8 A. Absolutely. In fact, I would say he signed
9 predominantly most of them.

10 Q. Does lead generation have anything to do with
11 the consumer facing loan agreements that were executed
12 by customers of Integrity Advance?

13 A. No. Lead generation has to do with the
14 application that the consumer sees and then once the
15 consumer fills out the application, hits the submit
16 button, it would -- if we would approve the loan on the
17 backside, we would then redirect the consumer's website
18 to our documents. So in that case they would only see
19 our documents.

20 Q. So it had nothing whatsoever to do with loan
21 agreements?

22 A. Nothing whatsoever to do with loan agreements.

23 Q. And is that the same for any disclosure that
24 would have been in a loan agreement as you understand
25 what that is?

1 A. Yes, that would be the same.

2 Q. Did the lead generators that you entered into
3 a contract with ever revise or edit any of the loan
4 agreements to your knowledge?

5 A. No. It wasn't under their purview or control.

6 Q. Mr. Carnes, do you have any understanding, I
7 think you testified briefly about this yesterday, any
8 understanding of whether or not Integrity Advance used
9 what we have discussed here and called RCC's or
10 remotely created checks?

11 A. We did.

12 Q. You did. And what's that understanding --
13 what's your understanding based on?

14 A. It was a business practice I know we employed.

15 Q. Do you have an understanding as to how
16 frequently remotely created checks were used by
17 Integrity Advance and we can -- and by a timeline, I
18 mean 2008 until 2012 when the company stopped making
19 loans?

20 A. In relative terms, they were very sparsely
21 used.

22 Q. And when you say, relative terms, can you
23 maybe attach a percentage to that of the total universe
24 of loans made by the company during its existence?

25 A. I would say it's well under one percent and

1 was only used in the case where the consumer revoked
2 their authorization to ACH their checking account, and
3 through numerous calls and e-mails refused to contact
4 with us and to setup alternate payment arrangements,
5 which we would take any kind of payment arrangement
6 that wasn't cash. And that would set off the string of
7 events that would set their account for an RCC to be
8 created and submitted. But again, very very few
9 instances comparing -- if you look at the number of
10 payments that were made overall, there were very very
11 few that got -- that went down that path.

12 Q. Were there other ways to make a payment on a
13 loan if ACH authorization had been revoked by a
14 customer?

15 A. Many ways, and in fact, if a consumer would
16 just contact us to tell us they wanted to pay us, it
17 would stop the process of the RCC.

18 Q. And how do you know that, Mr. Carnes?

19 A. Because I know that that's how it worked.

20 Q. Mr. Carnes, can you tell us what your highest
21 level of education is?

22 A. I have a bachelor degree in mathematics and
23 economics.

24 Q. From what institution?

25 A. University of Kansas.

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

2 JUDGE McKENNA: Redirect.

3 REDIRECT EXAMINATION

4 BY MR. WHEELER:

5 Q. Mr. Carnes, did Integrity Advance loan in all
6 50 states?

7 A. No.

8 Q. Why not?

9 MS. BAKER: Objection. Calls for speculation.

10 THE WITNESS: We lent in the states --

11 JUDGE McKENNA: Overruled.

12 THE WITNESS: We lent in the states that our
13 attorneys told us that we should be lending in.

14 MS. BAKER: Objection. May I just counsel
15 Mr. Carnes?

16 JUDGE McKENNA: Yes, you may.

17 MS. BAKER: To the extent that any other
18 questions call for the disclosure of communications,
19 what your attorneys told you, please don't disclose
20 that.

21 Thank you. And if the record could be
22 stricken as to that response.

23 JUDGE McKENNA: Do you have an answer that
24 excludes the attorney part of it?

25 THE WITNESS: No, I'm sorry, Your Honor. I

1 don't.

2 MS. BAKER: Ongoing admonition, please be
3 mindful of that, Mr. Carnes. Thank you.

4 THE WITNESS: I will.

5 JUDGE McKENNA: All right. You want to read
6 that back to me?

7 (Whereupon, the requested portion of the
8 testimony was read back by the Court Reporter.)

9 MS. BAKER: Your Honor, it's -- I don't want
10 to -- we can just allow Mr. Wheeler to continue his
11 exam. I have just admonished my client to be mindful
12 of the attorney/client privilege.

13 JUDGE McKENNA: Do you withdraw your motion?

14 MS. BAKER: I can withdraw my motion. That's
15 fine. Thank you, Your Honor.

16 JUDGE McKENNA: Thank you.

17 BY MR. WHEELER:

18 Q. Did the number of states that Integrity
19 Advance loaned in decrease over time?

20 MS. BAKER: Same admonition.

21 JUDGE McKENNA: You don't have to involve the
22 attorney to answer.

23 BY MR. WHEELER:

24 Q. It's a factual question. Did the number of
25 states Integrity Advance loaned in decrease over

1 time --

2 A. Yes.

3 Q. -- over the course of its operations?

4 Do you remember how many states Integrity
5 Advance loaned in in 2012.

6 A. I don't.

7 Q. Was it more or less than 25?

8 A. I don't recall.

9 MS. BAKER: Your Honor, to the extent
10 Mr. Wheeler is going to continue with this line of
11 questions, I'm going to object on relevance grounds.
12 It's not relevant to any of the matters that are
13 pertinent to the proceedings here.

14 MR. WHEELER: I'm moving on anyway, Your
15 Honor.

16 JUDGE McKENNA: All right.

17 BY MR. WHEELER:

18 Q. Mr. Carnes, you've testified that you were the
19 at least de facto CEO of Integrity Advance?

20 A. Yes.

21 Q. And you were the president?

22 A. You know, it's funny that title is on there.
23 I never called myself president ever, I was always a
24 CEO and that document I think was produced at your
25 request, and they put that on there. But I was the CEO

1 of the company.

2 Q. And you were the CEO of Hayfield?

3 A. Yes.

4 Q. And all of the subsidiaries of Hayfield?

5 A. Yes.

6 MR. WHEELER: Can we look at Exhibit 65?

7 BY MR. WHEELER:

8 Q. So I understand that you provided services to
9 other Hayfield entities aside from Integrity Advance,
10 correct?

11 A. We have gone through those percentages, yes.

12 Q. And I believe Mr. Foster testified that he
13 provided services to other Hayfield entities?

14 A. Yes.

15 Q. What about other -- the other people here?
16 Did Ms. Schaller provide services to other Hayfield
17 entities?

18 A. Yes.

19 Q. Could you estimate what percentage of her time
20 was spent on Integrity Advance versus other Hayfield
21 companies?

22 A. Again, I don't know. I don't know. I'm sure
23 it would vary over time as well.

24 Q. What about Mr. Pickett, did he spend time on
25 other Hayfield enterprises?

1 A. Yes.

2 Q. Would your answer be the same for all of these
3 individuals?

4 A. No.

5 Q. Who did not provide services to other Hayfield
6 entities?

7 A. George Davis.

8 Q. Anyone else?

9 A. No.

10 Q. And I assume if I asked you for percentages on
11 how much time these individuals spent on Hayfield
12 versus Integrity, you would not be able to help me with
13 that?

14 A. It would vary over time and you would have to
15 ask them. I couldn't speculate.

16 JUDGE McKENNA: I have a question. Regarding
17 Stephanie Schaller.

18 THE WITNESS: Yes.

19 JUDGE McKENNA: What is a VP of decision
20 science?

21 THE WITNESS: It's a -- like head of
22 analytics.

23 JUDGE McKENNA: And what is the job functions
24 that person was doing?

25 THE WITNESS: Statistical analysis and

1 modeling.

2 BY MR. WHEELER:

3 Q. Mr. Carnes, how many people worked for
4 Hayfield in 2008?

5 A. Beginning or end?

6 Q. At the beginning of 2008?

7 A. Zero.

8 Q. How many people worked for Hayfield by the end
9 of 2008?

10 A. I'm going to guess six.

11 Q. What about 2009, how many people worked for
12 Hayfield in 2009?

13 A. I'm going to tell you this is all going to be
14 guessing.

15 Q. You were the CEO, so...

16 A. Right. This is seven years ago and I --

17 JUDGE McKENNA: Well, just a second.

18 All right. I don't want to get into this.

19 Please be seated. All right. To the best of
20 your recollection, understanding that there might be a
21 significant standard deviation. Okay?

22 THE WITNESS: Okay. 2009 might be 15.

23 BY MR. WHEELER:

24 Q. What about for 2010, how many employees of
25 Hayfield?

1 A. Twenty-five.

2 Q. What about for 2011?

3 A. Something similar to that, somewhere between
4 20 and 30 for the rest of the time?

5 Q. So you would say 20 to 30 or 2011?

6 A. '12. And '12.

7 Q. And 2012?

8 A. It was stopped -- it was folded in December of
9 2012.

10 Q. Mr. Carnes, we talked yesterday about the loan
11 agreement and the loan agreement template; do you
12 recall that?

13 A. I do.

14 Q. Who authorized Integrity Advance to use the
15 loan agreement template?

16 A. I don't understand the question.

17 Q. Integrity Advance had a loan agreement
18 template, correct?

19 A. Yes.

20 Q. And they would use that template to create
21 loan agreements; is that right?

22 A. Yes.

23 Q. Who authorized the use of that loan agreement
24 template?

25 JUDGE McKENNA: Are you talking about a

1 regulatory entity?

2 MR. WHEELER: No. I'm asking in a business
3 sense, who in the business authorized Integrity
4 Advance to use the loan agreement template?

5 JUDGE McKENNA: Who within the company either
6 Hayfield or Integrity Advance?

7 MR. WHEELER: Yes.

8 MS. BAKER: Let me just make an admonition to
9 the extent you can answer this question without
10 disclosing any privileged communications.

11 THE WITNESS: By the mere fact of the business
12 process we used, and a loan agreement template was
13 necessary. So it wasn't an approval or a decision to
14 use a template, it was necessary. We had to.

15 BY MR. WHEELER:

16 Q. Right, but someone had to approve that.
17 Someone had to say, yes, we're going to use this
18 template?

19 MS. BAKER: Same admonition.

20 BY MR. WHEELER:

21 Q. I mean the template didn't create itself and
22 get implemented on its own.

23 JUDGE McKENNA: Well, just a second.

24 There was a question and an answer earlier
25 that in prior businesses that you were running that

1 you had used a similar or the same template for
2 lending; is that correct?

3 THE WITNESS: There were different templates
4 and they were created by the outside counsel.

5 JUDGE McKENNA: At different times?

6 THE WITNESS: At different times.

7 JUDGE McKENNA: All right. And so then when
8 it came to the creation of Integrity Advance, was that
9 just a kind of a spillover affect as to the template
10 that you were using?

11 MS. BAKER: I just want to make that
12 admonition.

13 JUDGE McKENNA: I gotcha.

14 MS. BAKER: Thank you.

15 THE WITNESS: I can answer the question, but
16 I'm going to have to talk about the -- how the
17 attorneys approached doing that. I don't know if
18 that's privileged or not.

19 JUDGE McKENNA: No. No, you can't.

20 THE WITNESS: Well, the only way I can answer
21 is to talk about how the attorneys did that.

22 JUDGE McKENNA: All right. So, what's your
23 position on that subject?

24 MS. BAKER: Your Honor, to the extent that my
25 client can say, you know, the fact that a lawyer

1 looked at something isn't privileged. What the lawyer
2 might have told him about the something the lawyer
3 looked at is.

4 And to the extent that Mr. Carnes or anyone
5 else sought counsel, the fact that he sought counsel
6 is not privilege. The contents of the request for
7 counsel are. Does that --

8 JUDGE McKENNA: Within those parameters, can
9 you enlighten us?

10 THE WITNESS: How about I say I will tell you
11 that with Integrity Advance specifically, we hired
12 outside counsel to create and give us loan documents
13 that conformed with the Delaware and federal law.
14 Once they gave us those documents, we took them and
15 through our IT department, implemented them into our
16 loan management system to use to lend to consumers.

17 JUDGE McKENNA: Were your subordinates in
18 Hayfield overseeing that process?

19 THE WITNESS: Yes.

20 JUDGE McKENNA: And did that process ever come
21 up to you through a briefing?

22 MS. BAKER: Same admonition. To the extent
23 you can answer that question without disclosing the
24 contents of that briefing or the fact that you had a
25 briefing with specific topic matters, you can answer

1 that question.

2 THE WITNESS: I believe we went through this
3 line of questioning yesterday with Mr. Wheeler, and it
4 went something to the effect of, you know, did you
5 approve the loan documents and I said, well, I didn't
6 expressly approve the loan documents.

7 I said that this is my recollection of what I
8 said, I said that in the process of having a outside
9 attorney firm write them and deliver them to us, I
10 knew that they would be put into the loan management
11 system and that was not expressly approved. It was --
12 it happened and as a course of being CEO I knew it was
13 happening, and I didn't prevent it. But there would
14 be a tacit approval in that senses.

15 JUDGE McKENNA: Thank you.

16 BY MR. WHEELER:

17 Q. And I assume as CEO you would have had
18 authority to stop Integrity Advance from using --

19 JUDGE McKENNA: Asked and answered.

20 BY MR. WHEELER:

21 Q. Did you ever personally discuss the Integrity
22 Advance loan agreement with your Delaware regulator?

23 A. No.

24 Q. Are you aware of discussions that other people
25 at Integrity Advance had about the loan agreement with

1 your Delaware regulator?

2 A. I wasn't primarily responsible for the audits
3 that they did on a regular basis, and so I wasn't privy
4 to all of those conversations.

5 Q. How did Integrity Advance withdraw money from
6 consumer's accounts?

7 A. Generally via the automated clearing house
8 system of the federal reserve.

9 Q. Any other ways?

10 A. Through RCC's.

11 Q. Anything else?

12 A. Well, consumers who revoked authorization,
13 some would actually -- the ones who would talk to us or
14 we could get ahold of, some of them would send us a
15 physical check, a check they wrote on their account, so
16 that would be a way, where they actually -- they
17 created their own check and sent it to us.

18 Some of them would pay, and this is in general
19 in collections not just revoked authorization, but
20 somebody might pay with a debit card or a credit card.
21 I don't know if that counts in your -- somebody might
22 pay with a PayPal account. Somebody might pay with a
23 Western Union or a money gram order. We accepted all
24 forms of payments besides cash that we could think of.

25 Q. Ms. Baker asked you a little bit about

1 remotely created checks; do you recall that?

2 A. I do.

3 Q. And I believe you testified that there were
4 efforts made to call consumers after they revoked ACH
5 authorization?

6 A. Yes, sir.

7 Q. Was there a policy on a certain number of
8 calls that would be made?

9 A. I'm sure there was some sort of systematic way
10 the collection center would approach that. I couldn't
11 tell you exactly what it was. But I know at a very
12 high level a number of calls and e-mails were sent.
13 The e-mails were mainly out of the system, but I'm sure
14 that they were being called as well.

15 Q. And I assume you don't have knowledge of
16 whether or not there was a policy on a particular
17 number of e-mails that might be generated?

18 MS. BAKER: Objection, relevance.

19 JUDGE McKENNA: Overruled.

20 THE WITNESS: I don't know. I don't know
21 exactly how many e-mails were generated.

22 BY MR. WHEELER:

23 Q. Did you personally make any calls to consumers
24 after they revoked ACH authorization?

25 A. No.

1 Q. Did you personally send any e-mails to
2 consumers after they revoked ACH authorization?

3 A. No.

4 MR. WHEELER: One second, Your Honor.

5 JUDGE McKENNA: Yes.

6 MR. WHEELER: No further questions, Your
7 Honor.

8 JUDGE McKENNA: Anything further, Ms. Baker?

9 MS. BAKER: Yes, thank you.

10 RECROSS-EXAMINATION

11 BY MS. BAKER:

12 Q. Mr. Carnes, you just testified that consumers
13 could send Integrity Advance a physical check, pay with
14 a debit or credit card, pay with PayPal account, et
15 cetera?

16 A. Uh-huh.

17 Q. And were those payments acceptable forms when
18 an ACH authorization was revoked?

19 A. Yes.

20 MS. BAKER: No further questions. Thank you.

21 JUDGE McKENNA: Anything further within the
22 scope of the cross?

23 MR. WHEELER: No, Your Honor.

24 JUDGE McKENNA: All right.

25 You are excused. Thank you, Mr. Carnes.

1 Off the record.

2 (Whereupon, a lunch recess was had from 11:55
3 a.m. to 12:49 p.m.)

4 JUDGE McKENNA: Back on the record.

5 MS. CHUM: Good afternoon, Your Honor.

6 JUDGE McKENNA: Hi.

7 MS. CHUM: Vivian Chum on behalf of
8 Enforcement Counsel.

9 How are you?

10 JUDGE McKENNA: Good, thank you.

11 I want to throw a little bit of a hook at you.
12 I would like, since the next couple of witnesses, I
13 presume, are going to the -- at least have some effect
14 on the issue of recoupment/sanctions; is that correct?

15 MS. CHUM: Yes, Your Honor.

16 JUDGE McKENNA: Well, so what I would like,
17 since I'm not a person who is familiar with this part
18 of the law for the CFPB, to have a short tutorial from
19 the government and from Respondent's counsel.

20 So I don't know who is going to do that.

21 MS. CHUM: Yes, Your Honor. I will on behalf
22 of the government.

23 Just to give you a general overview of the
24 damages we are seeking in this matter --

25 JUDGE McKENNA: Well, first I want to know

1 what authority you have and what can you request and
2 then what you are requesting.

3 MS. CHUM: Your Honor, our authority for the
4 TILA and EFTA claims, as you know, go back to the
5 authority that the FTC had under the FTC Act and as to
6 the claims under the CFPA and UDAAP claims those come
7 from Title 10 of the Dodd-Frank Act.

8 JUDGE McKENNA: And they authorize?

9 MS. CHUM: And that, Your Honor -- Court's
10 indulgence. If you may allow me to just simply pull
11 up my cheat-sheet on that because I did not anticipate
12 discussing that.

13 JUDGE McKENNA: Sure. Sure.

14 This is just like moot court.

15 Basically, when we look at the regs in the
16 statute, it wasn't at all clear as to how this was
17 going to play out as far as recoupment, damages,
18 sanctions in the event that some of the charges have
19 been found proven.

20 MS. CHUM: Yes, Your Honor, I misspoke
21 earlier. Now that I have this in front of me and I'm
22 looking right at it. Our relief under the CFPA as it
23 pertains to TILA and EFTA claims is under 12 USC 5565.

24 Our relief under the CFPA as it pertains to
25 TILA and EFTA claims is derived from 12 USC section

1 5565.

2 The Court has jurisdiction there to grant any
3 appropriate legal or equitable relief with respect to
4 a violation of federal consumer financial law
5 including a violation of a rule or order prescribed
6 under a federal consumer financial law.

7 Because the FTC could obtain equitable relief
8 including disgorgement and restitution under section
9 13(b) of the FTC Act prior to July 21st, 2011.

10 The Bureau could equally obtain such relief
11 and would find it proper under the CFPA and thus that
12 would have no retroactive effect on Respondents.

13 That is as to the TILA and EFTA claims.

14 More generally, our relief as to UDAAP claims
15 that's the deception and unfairness claims and CFPA
16 also derive from 12 U.S.C. 5565.

17 And that, of course, for those claims we focus
18 on loans that originate on or after July 21st, 2011.
19 That is the transfer date.

20 JUDGE McKENNA: Right.

21 All right. So now you are going to get into
22 the part that you were --

23 MS. CHUM: Yes.

24 JUDGE McKENNA: All right. So if you could
25 just allow Ms. Baker to, if you would like, Ms. Baker.

1 MS. BAKER: I would, Your Honor.

2 JUDGE McKENNA: I don't want to force you to
3 do anything.

4 MS. BAKER: Thank you. Ms. Chum, would it be
5 easier if I just speak from here? So you don't have
6 to move your materials?

7 MS. CHUM: Sure.

8 MS. BAKER: Your Honor, a few points. Our
9 position is that to the extent the CFPB is -- that the
10 Office of Enforcement is entitled to any relief in
11 this matter as to TILA as to a finding concerning
12 TILA, the Truth in Lending Act, as to a finding
13 concerning the Electronic Fund Transfer Act and as to
14 any findings concerning deception and/or unfairness
15 under the CFP Acts prohibitions against UDAAP, unfair,
16 deceptive or abusive acts or practices the office of
17 -- and any civil money penalties under 5565, which is
18 the provision of the Dodd-Frank Act that Ms. Chum has
19 cited, the CFPB can only seek that monetary relief for
20 conduct that post dates July 21st, 2011 and here is
21 why.

22 The Federal Trade Commission Act that the CFPB
23 appears to be relying on for the importing of TILA and
24 EFTA damages, does not, in fact, apply here for two
25 reasons. First of all, it doesn't apply because

1 section 13(b) of the Federal Trade Commission Act only
2 enables the FTC to get monetary relief in federal
3 district court. There is absolutely no monetary
4 relief provided in the administrative law forum of the
5 Federal Trade Commission Act.

6 So the way it works, is that the Federal Trade
7 Commission brings a case in the administrative forum
8 as to liability, and if liability is found, the FTC
9 must then go to district court to get any monetary
10 relief.

11 JUDGE McKENNA: Do they find monetary relief
12 and then ask the district court to enforce it?

13 MS. BAKER: No. Your Honor.

14 JUDGE McKENNA: So you have a de novo?

15 MS. BAKER: I don't know if it's de novo as to
16 liability, but my understanding is it's de novo as to
17 penalties. Meaning that the question of damages,
18 monetary relief, as it relates to any finding of the
19 Truth In Lending Act, the Electronic Fund Transfer Act
20 or section 5 of the Federal Trade Commission Act, of
21 course not relevant here, would only be allowed in
22 district court.

23 The FTC does not get upon monetary relief in
24 its administrative forum. So for the CFPB to be
25 relying on that is a problem.

1 Now number 2, even if that wasn't the case,
2 reliance on the Federal Trade Commission Act does not
3 indeed apply here and let me give you the analytical
4 reasons. There are two analytical reasons why that's
5 the case.

6 The first reason is the Doctrine of
7 Retroactivity. The Doctrine of Retroactivity is very
8 clear that to the extent you seek any kind of
9 liability or monetary relief under a statute, you
10 cannot seek it for conduct that predates the date of
11 that statute.

12 Landgraf Doctrine is very specific. It
13 delineates two different kinds of conduct, conduct
14 that's purely administrative. So if a lawsuit was
15 purely administrative in the way it changed a rule, it
16 wouldn't apply.

17 But this is not administrative. This has to
18 do with findings of liability and findings of monetary
19 relief. And Landgraf Doctrine, which is the doctrine
20 that governs the whole retroactivity analysis that
21 we've briefed a fair amount in this matter, governs
22 this, and it expressly precludes using or importing
23 the Federal Trade Commission Act into this matter for
24 purposes of retroactively applying the Consumer
25 Financial Protection Act's 1065 provision, to -- or 12

1 U.S.C. 1056 to obtain monetary relief in this matter.

2 Number 2, even if, the Federal Trade
3 Commission Act, there wasn't a retroactivity argument
4 as I said before, the way that the Federal Trade
5 Commission Act applies to a TILA or EFTA claim, it's
6 back to the first argument, is that you cannot get
7 monetary relief in the administrative forum.

8 So the only way the Bureau can get monetary
9 relief in this matter is for conduct that post-dates
10 the implementation and effective date of its act. And
11 that's for TILA and EFTA.

12 For unfairness and deception, I think we all
13 agree that the only relevant timeframe that we are
14 looking at is July 21st, 2011 to the time that the
15 company stopped doing business. And, of course, our
16 position is that there is no liability and that the
17 company, neither Respondent, should be found liable.

18 But I'm arguing, of course, in the alternative
19 to respond to Your Honor's request.

20 Now as for civil money penalties, footnote II
21 of the Enforcement Counsel's pre-hearing statement
22 already concedes that -- and the footnote is on page 8
23 of their pre-trial statement -- it already concedes
24 that civil money penalties should be calculated from
25 the transfer date until the date that Respondent's

1 unlawful acts ceased.

2 Now I want to make one more point, Your Honor.
3 In the Enforcement Counsel's Opposition to our Motion
4 for Summery Disposition in this matter, they make
5 something very clear. They make it very clear that
6 the sole basis through which they are seeking any
7 monetary relief in this matter is through the
8 mechanism of the CFP Act, 12 U.S.C. 5565. So let me
9 summarize again all of these different points.

10 The only way that they are getting monetary
11 relief by their own acknowledgement -- for the Court's
12 record that's page 29 of their opposition brief -- the
13 only way that they are getting any monetary relief in
14 this matter is through the CFP Act, number one.
15 Number 2, the CFP Act does not enable them to import
16 the FTC Act regime for TILA and EFTA to get damages
17 that predate July 21st. Two reasons: Retroactivity
18 Doctrine prohibits it and the Federal Trade Commission
19 Act 13(b) doesn't allow the FTC to get administrative
20 monetary relief.

21 As to conduct -- as to UDAAP, unfair or
22 deceptive, we have already agreed and acknowledged
23 that that only concerns conduct that postdates July
24 21st. And as to any civil money penalty, footnote II
25 of their brief covers that.

1 So that's our position in this matter, Your
2 Honor.

3 JUDGE McKENNA: Thank you, very much.

4 MS. CHUM: Your Honor, as you know, we
5 respectfully disagree and I believe this has been
6 briefed previously, and much of this ground has
7 already been covered.

8 JUDGE McKENNA: Well, it never hurts to repeat
9 it.

10 So that's fine.

11 You can start with your witnesses.

12 MS. CHUM: Yes, Your Honor.

13 Enforcement Counsel calls Mr. Robert Hughes to
14 the stand.

15 JUDGE McKENNA: Good afternoon, Mr. Hughes.

16 ROBERT HUGHES,

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

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

22 THE WITNESS: It's Robert Jackson Hughes,
23 H-U-G-H-E-S.

24 JUDGE McKENNA: And I think we're going to
25 have a couple of problems with you. Number one, you

1 are going to have to speak up.

2 THE WITNESS: Sure.

3 JUDGE McKENNA: And you can talk closer to
4 that mic and we will see if that works.

5 THE WITNESS: Okay. Is this good?

6 JUDGE McKENNA: No.

7 THE WITNESS: Oh sorry. Which mic?

8 JUDGE McKENNA: All right. You are going to
9 speak --

10 THE WITNESS: Try again.

11 JUDGE McKENNA: That's better.

12 THE WITNESS: Is that too loud.

13 JUDGE McKENNA: All right. And so we will
14 proceed now.

15 THE WITNESS: Okay. Thank you.

16 MS. FOLEY: Your Honor, Danielle Foley, for
17 the Respondents. Just one housekeeping matter. We
18 have Dr. Xiaoling Ang, who we have prepared to be a
19 rebuttal witness to Mr. Hughes's testimony. She is in
20 the courtroom today. We wanted to just advise of that
21 and see if there's any issue with her being here. We
22 wanted her to hear his testimony so that she can be
23 prepared to rebut it.

24 MS. CHUM: Your Honor, the government would
25 request the rule on witness exclusion in this case.

1 MS. BAKER: That hasn't been invoked the
2 entirety of this trial. You have to invoke
3 sequestration at the beginning.

4 MS. FOLEY: And in order for her to fairly
5 rebut his testimony, she has to hear today. He has
6 not been deposed. We only have a declaration and some
7 summary exhibits.

8 JUDGE McKENNA: All right.

9 MS. CHUM: Your Honor, my understanding is
10 that there have been no other witnesses in this
11 courtroom that -- other than Mr. Carnes, who is a
12 party.

13 JUDGE McKENNA: All right. And she just came
14 in now?

15 MS. FOLEY: Yes. She has just been in the
16 courtroom now.

17 JUDGE McKENNA: All right. So I'm going to do
18 it the slow way. So I'm going to sequester the
19 witness, and then you can brief her as a predicate to
20 any questions that you have.

21 MS. FOLEY: All right. Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. CHUM:

24 Q. Mr. Hughes, would you please tell me where do
25 you work?

1 A. Consumer Financial Protection Bureau.

2 Q. What department do you work for in the Bureau?

3 A. I'm within the data science group within
4 technology and innovation, I'm sorry.

5 Q. You're a data scientist at the CFPB?

6 A. Yes.

7 Q. How long have you held that position?

8 A. About a year and a half. About another year
9 and a half before that I was in the same department as
10 a data architect.

11 Q. What are your duties as a data scientist at
12 the CFPB?

13 A. Data analysis.

14 Q. What were your duties as a data architect?

15 A. They were largely the same. There was a
16 little bit more of an information management component,
17 but generally it was a data analysis function that I
18 performed under both.

19 Q. Including the years that you have spent at the
20 CFPB, how many years in total of experience in data
21 analysis do you have?

22 A. Probably a little over 20.

23 Q. Could you describe that experience?

24 A. Sure. So it's -- that's been a consistent
25 theme throughout my career. I had a consulting company

1 for probably about ten years where I performed data
2 analysis as my primary job. I did the same as a risk
3 analyst for electricity options, in a job around 1998,
4 '99.

5 And it's been a component of pretty much every
6 job I have had in my professional career.

7 Q. As a data scientist at the CFPB, have you
8 reviewed data sets of consumer financial information?

9 A. Yes.

10 Q. How many data sets of such information have
11 you reviewed?

12 A. At least 50. It's difficult to get an exact
13 number on that.

14 Q. And what kind of observations are you tasked
15 with making in the course of your review of these data
16 sets of consumer financial information?

17 A. It's pretty wide ranging, but generally
18 aggregate information, totals of consumer's spending
19 patterns, generally we will look at transaction level
20 and account level data to reach whatever conclusion
21 research markets, enforcement, whoever is looking for
22 it.

23 Q. What tools have you used to review and make
24 observations about data sets of consumer financial
25 information?

1 A. There have been quite a few, but I would say
2 my primary day-to-day tools are R, just the letter R,
3 which is a statistical language and SQL, S-Q-L
4 structured query language.

5 JUDGE McKENNA: Ms. Chum?

6 MS. CHUM: Yes, Your Honor.

7 JUDGE McKENNA: Do you have other witnesses,
8 technical witnesses in the courtroom?

9 MS. CHUM: They are not witnesses, Your Honor.

10 JUDGE McKENNA: They are not going to be
11 witnesses?

12 MS. CHUM: They are not going to be
13 testifying, Your Honor.

14 MS. BAKER: Your Honor, I believe, though,
15 that we've heard before that they are affiliated with
16 Mr. Hughes and what he's doing, and I would ask that
17 they be sequestered as well to the extent that they
18 could be used to facilitate any rebuttal testimony
19 that he may be asked to provide.

20 JUDGE McKENNA: They are not testifying.

21 MS. BAKER: I understand, Your Honor. But
22 they could still be used in the capacity of him
23 testifying at later time. We have heard a fair amount
24 of conversation earlier about how they are not part of
25 the Office of Enforcement. And if we're going to

1 sequester people, we should sequester people, all of
2 them except the parties in the case. I believe that's
3 what Ms. Chum actually asked for.

4 She didn't invoke sequestration because you
5 can't invoke that halfway through trial. I think what
6 she invoked was the statement that to the extent there
7 are people in this room who are not parties to this
8 case, they should not be allowed in this room.

9 MS. CHUM: Your Honor, as you stated, these
10 data scientists are not going to be testifying, and a
11 plain reading of the rule on witnesses is that
12 witnesses who will be testifying should not be hearing
13 the testimony of other witnesses prior to their
14 testimony. And for that reason, we request that the
15 data scientists be permitted to remain, but
16 ultimately --

17 JUDGE McKENNA: All right. I'm going to
18 overrule the objection.

19 MR. HERNACKI: Your Honor, based on your
20 overruling of our objection, we ask that Ms. Ang, Dr.
21 Ang, our rebuttal witness to Mr. Hughes, we ask that
22 her assistant, who is not a witness in this case be
23 allowed to come back in and observe in the same
24 fashion as the CFPB's data scientists.

25 JUDGE McKENNA: All right.

1 MR. HERNACKI: Thank you. With the Court's
2 indulgence I will go get him.

3 JUDGE McKENNA: All right.

4 Why don't you bring your expert in too.

5 MR. HERNACKI: All right. Thank you, Your
6 Honor.

7 JUDGE McKENNA: I'm going to reverse myself.

8 MS. BAKER: Thank you, Your Honor.

9 MS. CHUM: A point of clarification, Your
10 Honor. May I just to get a better understanding, in
11 reversing yourself, are you also indicating that
12 Mr. Hughes and our data scientists may remain in the
13 courtroom should Ms. Ang be permitted to testify?

14 JUDGE McKENNA: Yes.

15 MS. CHUM: Thank you, Your Honor.

16 JUDGE McKENNA: No objection to that?

17 MS. BAKER: No, of course not.

18 JUDGE McKENNA: Just wanted to get it on the
19 record.

20 (Whereupon, Dr. Ang and her assistant returned
21 to the gallery.)

22 MS. CHUM: Permission to proceed, Your Honor.

23 JUDGE McKENNA: Yes.

24 BY MS. CHUM:

25 Q. You were just discussing SQL, can you spell

1 that again? Spell it for us.

2 A. It's S-Q-L for structured query language.

3 Q. What exactly is SQL?

4 A. It's a very basic language for data analysis
5 and organization.

6 Q. How long have you been using SQL to view data
7 sets?

8 A. About 20 years.

9 Q. And what are your reasons for using SQL?

10 A. It was just a simple straight forward tool for
11 dealing with the data set that was provided. And it
12 provides us reproducible code.

13 Q. Mr. Hughes, as a data scientists at the CFPB
14 were you assigned to review financial consumer data in
15 this matter?

16 A. Yes.

17 Q. Would you please describe the size of the
18 Integrity Advance data set?

19 MS. FOLEY: Objection. Lack of foundation.

20 BY MS. CHUM:

21 Q. Would you please describe -- did you review a
22 data set from the consumer -- from Integrity Advance?

23 A. Yes.

24 Q. Would you just generally describe that data
25 set?

1 A. It was approximately 5.3 million records of
2 transaction level data.

3 Q. And are Exhibits 95 and 101 the data sets that
4 you relied on? I believe those are Excel sheets or
5 large access data that would not fit in that -- in
6 those folders there?

7 A. Yes. The ones that are reviewed with those
8 numbers earlier today, were the two data sets.

9 JUDGE McKENNA: You need to speak up.

10 THE WITNESS: I'm sorry.

11 JUDGE McKENNA: That's all right.

12 BY MS. CHUM:

13 Q. Did you make observations about those data
14 sets?

15 A. Yes.

16 Q. And what tools did you use to do so?

17 A. Again, SQL.

18 Q. Did you use any other materials in the review
19 of the consumer transaction data sets?

20 A. I used a couple of reference materials.

21 MS. CHUM: Mr. Jefferson, would you pull up
22 Exhibit 80?

23 BY MS. CHUM:

24 Q. I'm directing your attention to Exhibit 80 and
25 if you -- if it's easier for you, Mr. Hughes, that

1 exhibit will be in those folders there.

2 What is this, Mr. Hughes?

3 MS. FOLEY: Objection, lack of foundation.

4 JUDGE McKENNA: Overruled.

5 THE WITNESS: That appears to be the data
6 dictionary that was provided at the outset. I'm
7 sorry. I wasn't speaking into the microphone. That
8 appears to be the data dictionary that was provided by
9 Integrity Advance.

10 BY MS. CHUM:

11 Q. And is the previously admitted Exhibit 80 data
12 dictionary a fair and accurate representation of what
13 you used?

14 A. Yes.

15 Q. Mr. Hughes, I'm now directing your attention
16 to Exhibit 79. If you would start on page 2.

17 MS. FOLEY: Objection, Your Honor. This
18 document is not in evidence.

19 MS. CHUM: Your Honor, we hope to lay a
20 foundation and admit this into evidence eventually,
21 but at this point we are not moving this into
22 evidence.

23 MS. FOLEY: I'm not sure who they intend to
24 use to lay a foundation with this document. Clearly
25 this witness is not a person who created the document

1 or has any independent knowledge of its creation.

2 MS. CHUM: Your Honor, you have already
3 generally stated in a prior order that this document
4 appears to be, section 7.9 appears to be a reliable
5 document given that Respondent's own brief, I believe
6 a footnote, footnote III on page 4 of their brief in
7 response to your questions pertaining to the subpoena
8 for the data sets associated with Mr. Hughes's
9 testimony included a reference to 7.9.

10 JUDGE McKENNA: And we discussed this document
11 earlier and it was up on the screen, the objection is
12 overruled.

13 BY MS. CHUM:

14 Q. Mr. Hughes, do you recognize this document?

15 A. It's really small.

16 Q. You can look at it in your own -- Number 79 in
17 your binder.

18 A. Okay. Is that page 3 on the screen?

19 Q. Yes, I'm just asking you to --

20 A. Yes.

21 Q. Do you recognize this document?

22 A. Yes, I recognize that document.

23 Q. What is this document, Exhibit 79?

24 A. The TranDotCom Solutions Loan Management
25 System operations manual.

1 Q. Did you rely on Exhibits 79, the TranDot
2 manual section 7.9 in reviewing the data sets provided
3 by Integrity Advance by Respondents?

4 A. Yes.

5 Q. What was your basis for relying on section 7.9
6 of the TranDot manual Exhibit 79?

7 A. It was provided to me as a further data
8 dictionary for payment types, payment modes and
9 statuses of individual transaction records.

10 JUDGE McKENNA: By whom?

11 THE WITNESS: I believe that was by our
12 litigation support team.

13 JUDGE McKENNA: Provided that to you?

14 THE WITNESS: Yes. It may have been my
15 attorney's via the litigation support team, but it was
16 given to me as the manual for the system for the data
17 that I was reviewing.

18 JUDGE McKENNA: All right. Proceed.

19 MS. CHUM: Your Honor, we request that Exhibit
20 79 be admitted into evidence.

21 MS. FOLEY: Objection, Your Honor. Lack of
22 foundation.

23 MS. CHUM: Your Honor, as you previously
24 acknowledged, Respondents replied to Bureau's response
25 to the February 8th, 2016 order requiring the Bureau

1 to submit additional information states in part that
2 section 7.9 of a Loan Management System operations
3 manual may serve as a data dictionary for interpreting
4 data in CFPB 003126, which is a portion of the data
5 set on which Mr. Hughes relied.

6 JUDGE McKENNA: Okay. So are you proposing to
7 proffer the whole exhibit or does that just cover 7.9?

8 MS. CHUM: Just 7.9, Your Honor.

9 JUDGE McKENNA: And that's everything in this?

10 MS. CHUM: Yes. That's just the -- 7.9
11 includes values and descriptors among which Mr. Hughes
12 relied on.

13 MS. FOLEY: Okay. Your Honor, just for point
14 of clarification so the record is clear, I believe the
15 excerpt of section 7.9 is Exhibit 81.

16 But we have been discussing the larger Exhibit
17 79, which is the entire manual, which what I'm
18 understanding today Mr. Hughes has not testified that
19 he's relied upon anything other than section 7.9.

20 So I'm not sure which exhibit Ms. Chum is
21 actually seeking to admit at this point.

22 MS. CHUM: That may be my error. Allow me to
23 just double check, Your Honor.

24 Court's indulgence.

25 (Pause.)

1 MS. CHUM: Your Honor, that was my error. I
2 would request that Exhibit 81, which is section 7.9 of
3 the Loan Management System operations manual, be moved
4 into evidence.

5 MS. FOLEY: And our same objections, Your
6 Honor. As this witness cannot lay the foundation for
7 the exhibit. He was not employed by TranDotCom or any
8 other company that is familiar with it.

9 JUDGE McKENNA: I'm going to overrule the
10 objection and admit it.

11 (Whereupon, Enforcement Counsel's

12 Exhibit No. 81 admitted into evidence.)

13 BY MS. CHUM:

14 Q. Mr. Hughes, how did you in the course of
15 reviewing the Integrity Advance data sets, how did you
16 use the data dictionary, Exhibit 80 and Exhibit 81 the
17 TranDot manual section 7.9?

18 A. In the transaction level data there were three
19 fields that referred to the type of transaction. Those
20 were: Payment type, payment mode, and status flag. I
21 used those to interpret the type of payment, refund, et
22 cetera that represented the underlying transaction.

23 Q. When you say transaction level data, what do
24 you mean by transaction?

25 A. So it's event level data. So a transaction

1 could be --

2 THE COURT REPORTER: It's what?

3 THE WITNESS: I'm sorry. Event level data.

4 JUDGE McKENNA: Speak into the mic.

5 THE WITNESS: So as opposed to account level
6 data, which would be information specific to the
7 account. For instance, open date, close date, name of
8 person associated with it. Transaction level data
9 would be information specific to the transaction or
10 event, such as a payment, a refund, a charge.

11 BY MS. CHUM:

12 Q. And in this specific Integrity Advance data
13 what -- can you just broadly describe the different
14 types of transactions represented in the data?

15 A. So some examples would be an ACH payment, a
16 renewal record, a check, and those would be associated
17 with analysis.

18 Q. So in more concrete terms, can you explain
19 what information that data set would contain? What
20 could you glean about a loan from that data set?

21 A. Transactions that had taken place against that
22 loan. So, for instance, a renewal record would
23 indicate that the loan had been renewed, an ACH record
24 would indicate that a payment had gone against the loan
25 via the ACH network. A check payment would indicate a

1 check payment, et cetera.

2 JUDGE McKENNA: Mr. Hughes?

3 THE WITNESS: Yes?

4 JUDGE McKENNA: Court reporter is having
5 trouble hearing you. And that mic can't be turned up
6 any more because you get feedback. So it's not doing
7 its job.

8 THE WITNESS: Okay.

9 JUDGE McKENNA: All right. So I'm going to
10 give you two choices, either you have a 20 percent
11 increase in decibel level or you stand.

12 THE WITNESS: Okay.

13 JUDGE McKENNA: I know you don't want to
14 stand.

15 THE WITNESS: I will go for the decibel level.

16 JUDGE McKENNA: Thank you.

17 MS. CHUM: Do you want to move your mic back
18 towards you?

19 THE WITNESS: Okay. I thought it wasn't
20 really working at all.

21 JUDGE McKENNA: It aids somewhat, but it's --

22 THE WITNESS: I'm sorry, I'm getting over a
23 cold, so...

24 BY MS. CHUM:

25 Q. I'm going to now direct your attention to

1 what's been marked and previously admitted into
2 evidence as Exhibit 97?

3 MS. CHUM: Mr. Jefferson, would you pull up
4 Exhibit 97?

5 BY MS. CHUM:

6 Q. Would you take a moment to review Exhibit 97,
7 Mr. Hughes?

8 (Pause.)

9 BY MS. CHUM:

10 Q. Have you looked at all five pages of Exhibit
11 97, Mr. Hughes?

12 A. Yes.

13 Q. Have you seen this exhibit before?

14 A. Yes.

15 Q. Describe for us what Exhibit 97 is.

16 MS. FOLEY: Objection. Lack of foundation.

17 JUDGE McKENNA: Overruled.

18 THE WITNESS: This is a number of aggregate
19 computations that the data science team performed on
20 the transaction level data provided.

21 JUDGE McKENNA: Provided by Respondents?

22 THE WITNESS: Yes.

23 BY MS. CHUM:

24 Q. Did you yourself or people under your
25 direction create these charts with the numbers in these

1 particular charts?

2 A. Yes.

3 Q. Is Exhibit 97 a fair and accurate
4 representation of the charts that summarize numbers
5 that you derived from the transaction level data
6 produced by Integrity Advance in response to
7 subpoena -- a subpoena for all consumer transaction
8 data?

9 A. Yes, it is.

10 Q. Directing your attention now to page 1 of
11 Exhibit 97. Mr. Hughes, were you able to make
12 observations about the number of loans and consumers in
13 the Integrity Advance data bases?

14 A. I'm sorry. Could you repeat that?

15 Q. Were you able to make observations about the
16 number of loans and consumers in the Integrity Advance
17 data bases?

18 A. Yes, we were.

19 Q. Is page 1 of Exhibit 97 a fair and accurate
20 summary of numbers that you obtained from the Integrity
21 Advance data set that shows the number of loans
22 originated by Integrity Advance and the number of
23 consumers serviced by Integrity Advance?

24 A. Yes, it was -- yes, it is a fair and accurate
25 representation. I'm sorry.

1 Q. How many loans in total are represented in the
2 Integrity Advance consumer financial data?

3 MS. FOLEY: Objection. Form.

4 JUDGE McKENNA: Pardon me?

5 MS. FOLEY: Objection, lack of foundation.
6 It's also not representing what's on the document on
7 the screen.

8 JUDGE McKENNA: You want to rephrase or lay a
9 foundation?

10 BY MS. CHUM:

11 Q. Directing your attention to line 2 of the
12 first page of Exhibit 97, in title overview of
13 Integrity Advance loans and consumers, what was the
14 total number of loans that Integrity Advance
15 originated?

16 A. Three hundred, four thousand, two hundred
17 twenty-seven.

18 Q. How many Integrity Advance loans were
19 originated on or after July 21st, 2011?

20 A. Eighty-two thousand nine hundred and eighty.

21 Q. How did you know that?

22 A. We looked at a unique identifier for those
23 loans and this is the number of unique -- number of
24 distinct unique identifiers for those loans.

25 Q. Did you look at how many Integrity Advance

1 loans had a first transaction date occurring on or
2 after August 13, 2011?

3 A. Yes, we did.

4 Q. Why did you look at the loans with the first
5 transactions as opposed to originations that occurred
6 on or after August 13, 2011?

7 MS. FOLEY: Object to the question. There has
8 been no evidence that there's anything about
9 organizations in the data set, which is a predicate to
10 the question she just asked.

11 JUDGE McKENNA: Rephrase.

12 BY MS. CHUM:

13 Q. Focussing your attention on the transaction
14 data that you reviewed, you had earlier testified that
15 you did look at loans that had a first transaction date
16 that occurred on or after August 13, 2011.

17 A. Correct.

18 Q. Why did you do that?

19 A. Because according to the model contract, the
20 first payment could at the -- with the longest delay
21 happen 23 days after origination. And the date you
22 just stated was 23 days following July 21st, 2011.

23 Q. So by looking at the August 13th, first
24 transaction date, were you able to make a conservative
25 estimate of loans that originated on or after July

1 21st, 2011?

2 A. Yes. And that was the 82,980. That would be
3 the minimum number of loans that were originated on or
4 after that date.

5 Q. Now how many -- what -- Mr. Hughes, for all
6 Integrity Advance loans that the company originated
7 with consumers, how many loans were there for which
8 Integrity Advance obtained money above a total of
9 payments?

10 MS. FOLEY: I'm going to object to the
11 question, a total of payments is vague and ambiguous
12 and undefined.

13 JUDGE McKENNA: Do you understand the
14 question, Mr. Hughes?

15 THE WITNESS: Yes, I do.

16 JUDGE McKENNA: Overruled. Answer the
17 question.

18 THE WITNESS: The number of total loans in
19 excess of that amount was 209,899.

20 JUDGE McKENNA: In excess of what amount?

21 THE WITNESS: The total of payments.

22 JUDGE McKENNA: All right. Is that money
23 above principal plus one finance fee?

24 THE WITNESS: Yes, it is.

25 BY MS. CHUM:

1 Q. And Mr. Hughes, did you make a determination
2 of the number of loans for which Integrity Advance
3 obtained money above total of payments for loans that
4 originated on or after July 21st, 2011 using your same
5 mechanism of determining the origination date of July
6 21st, 2011?

7 A. Yes, I did. That was 56,473 loans.

8 Q. And Mr. Hughes, in total how many consumers
9 did Integrity Advance originate loans with?

10 A. One hundred and eighty thousand, three hundred
11 seventy-nine.

12 Q. And how many did Integrity Advance -- how many
13 consumers did Integrity Advance originate loans with on
14 or after July 21st, 2011 using the same assumptions you
15 did regarding the August 13, 2011 transaction date?

16 A. Fifty-four thousand one hundred and thirty.

17 Q. Mr. Hughes, just asking you generally about
18 the Integrity Advance data sets, from those data sets
19 were you able to determine the first date on which
20 Integrity Advance processed a payment transaction for a
21 loan?

22 A. Yes.

23 Q. What was that first date?

24 MS. FOLEY: Do you mean in general?

25 Objection, it's vague.

1 Do you mean in general, a specific time or for
2 a specific loan?

3 BY MS. CHUM:

4 Q. The first transaction that ever occurred in
5 the data set, what was that first date?

6 A. In the data set provided?

7 I'd like to refer back to -- sorry. My
8 original declaration for that. I believe it was June
9 2008.

10 Q. Do you have in your possession your first
11 declaration if you would like to take a look at it to
12 refresh your recollection and then --

13 MR. FRECHETTE: Peter Frechette for the
14 Respondents.

15 I'm not sure if we've seen that binder that he
16 has with him. I just want to make sure that we know
17 what he is looking at.

18 JUDGE McKENNA: Ms. Chum, has the respondent
19 seen that?

20 MS. CHUM: Yes. It's simply his declaration
21 which he has -- which is admitted into evidence as --

22 MS. FOLEY: Your Honor, if I may, there are a
23 number of papers in the binder. I can see them from
24 here. I have not been shown a copy of the binder nor
25 had an opportunity to review the binder. I'm not sure

1 what else is --

2 I would just say there is a binder that
3 Mr. Hughes brought with him up to the stand, I don't
4 know if there is anything more than the declaration.
5 He's taken something out of it. There are other
6 papers remaining in the binder.

7 I don't have a representation of what's in
8 there. I know no work papers --

9 JUDGE McKENNA: He's not looking at the
10 others. He is looking at his declaration, which is
11 admitted into evidence.

12 MS. FOLEY: That's fine. If he's going to
13 refer to anything else, I would like to make an
14 objection at this point that we've not seen what else
15 he has up here.

16 JUDGE McKENNA: I understand. And you
17 understand the admonitions directed to you?

18 THE WITNESS: Yes, Your Honor.

19 JUDGE McKENNA: All right.

20 What is the exhibit number?

21 MS. CHUM: That is Exhibit 72, the declaration
22 of Robert J Hughes.

23 THE WITNESS: Yes, I'm sorry. I was off by a
24 month, May 2008 was the -- I'm sorry. May 2008 was
25 the first transaction in that data set.

1 BY MS. CHUM:

2 Q. And would you put that document back in your
3 folder and close the folder, please. And to the extent
4 that you refer to anything in the folder, if you could
5 just -- I will ask if you need your recollection
6 refreshed, and I will ask that you explain to me what
7 it is that would refresh your recollection and we can
8 discuss that.

9 A. Yes.

10 Q. And generally do you remember the last month
11 and year for which Integrity Advance processed a
12 payment transaction for the loan -- for a loan?

13 A. I would have to refer back. I believe it was
14 July 2013.

15 JUDGE McKENNA: All right. I'm going to give
16 you permission to utilize that document. Take it out.
17 Close the binder.

18 THE WITNESS: Yes. July 9, 2013.

19 BY MS. CHUM:

20 Q. Mr. Hughes, is that the same declaration that
21 you were looking at before?

22 A. I'm sorry. This is actually two separate
23 declarations, both by me.

24 One the date is May 10th, 2016 and the other
25 the date is May 25th, 2016.

1 JUDGE McKENNA: And are both of those admitted
2 into evidence?

3 MS. CHUM: No, Your Honor. Only the first
4 declaration from which he testified to the May 2008 is
5 admitted into evidence. But to the extent that
6 Mr. Hughes can use anything to refresh his
7 recollection, I believe that is appropriate. But, I
8 would ask --

9 JUDGE McKENNA: Well, have opposing counsel
10 seen it?

11 MS. CHUM: Yes, it is a document that has been
12 filed with our prior briefs.

13 MS. FOLEY: It's not on their exhibit list,
14 Your Honor. We were aware he would be using it or
15 referring to it. No one sought to move it into
16 evidence. If he is going to use it to refresh his
17 recollection, we would like to have a copy of it and
18 I'd also like to know if there are any notations on
19 it, I would like to have those published.

20 JUDGE McKENNA: Are there any notations on it?

21 THE WITNESS: I circled the date, May 25th,
22 2016, other than that, no.

23 JUDGE McKENNA: All right.

24 So can you provide them with a copy?

25 MS. CHUM: Your Honor, it's already filed.

1 JUDGE McKENNA: I understand.

2 MS. CHUM: I can provide another copy to them
3 as needed.

4 JUDGE McKENNA: Right now?

5 MS. CHUM: Yes, please provide -- if you could
6 print out a copy of --

7 MS. FOLEY: We may be able to find it, Your
8 Honor. So they don't have to print out a copy. Tell
9 us the filing --

10 MS. BAKER: Do you have a docket number?

11 MS. CHUM: I don't know the docket number off
12 the top of my head.

13 MS. FOLEY: Do you know what it was filed in
14 conjunction with? I'm just trying to get to the
15 document as fast as possible.

16 MS. CHUM: I believe it was filed in
17 connection with our Motion for Summary Disposition,
18 perhaps our reply to Respondent's Motion for Summary
19 Disposition or in connection to our own Motion for
20 Summary Disposition as an attachment.

21 MS. CHUM: And Mr. Hughes, as I stated, before
22 you look at anything, would you please tell me what it
23 is that -- what it is that would refresh your
24 recollection.

25 THE WITNESS: Yes.

1 MS. CHUM: Thank you.

2 JUDGE McKENNA: Off the record.

3 (Pause.)

4 JUDGE McKENNA: Back on the record.

5 BY MS. CHUM:

6 Q. Mr. Hughes, turning your attention now to page
7 2 of Exhibit 97.

8 JUDGE McKENNA: And for the record, you gave
9 Respondents a copy of the second declaration?

10 MS. CHUM: Yes, Your Honor.

11 JUDGE McKENNA: All right. Thank you.

12 BY MS. CHUM:

13 Q. Mr. Hughes, were you able to make observations
14 from the Integrity Advance data sets about the loan
15 payments made by consumers to Integrity Advance?

16 A. Yes, I was.

17 Q. Is page 2 of Exhibit 97 a fair and accurate
18 summary of numbers you obtained from the Integrity
19 Advance data set that shows loan payments made by
20 consumers to Integrity Advance?

21 A. Yes.

22 Q. How much did consumers pay to Integrity
23 Advance in total for all of the 304,227 loans in the
24 data set?

25 JUDGE McKENNA: Made up of what?

1 BY MS. CHUM:

2 Q. Mr. Hughes, can you explain --

3 JUDGE McKENNA: That would be principal,
4 finance fees and additional fees, correct?

5 MS. CHUM: Yes, Your Honor.

6 JUDGE McKENNA: Thank you.

7 Can you answer the question?

8 THE WITNESS: Two hundred seventy-three
9 million, nine hundred twenty-six thousand four hundred
10 seven and 60 cents.

11 BY MS. CHUM:

12 Q. Did you also look at a total paid above loan
13 principal?

14 A. Yes, I did.

15 Q. What is the total paid above loan principal
16 made up of?

17 A. Finance fees and additional fees.

18 Q. And what was that total that consumers paid
19 above loan principal?

20 A. One hundred eighty-one million, nine hundred
21 fifty-seven thousand eight hundred sixty seven and
22 ninety-five cents.

23 Q. And Mr. Hughes, earlier you testified to an
24 understanding of total of payments, what is your
25 understanding of total of payments?

1 A. The principal plus a single finance fee.

2 Q. Did you determine from the Integrity Advance
3 data set the total paid above the total of payments by
4 consumers to Integrity Advance?

5 A. Yes, I did.

6 Q. What was that total?

7 A. One hundred thirty-three million, four hundred
8 twenty-two thousand eight hundred thirty-eight and
9 eighty-three cents.

10 Q. Now Mr. Hughes, did you determine of the total
11 paid to Integrity Advance by consumers how much above
12 the principal was paid by ACH?

13 JUDGE McKENNA: Are you referring to an
14 exhibit, the next page or --

15 MS. CHUM: No, Your Honor. I'm just asking
16 the witness without an exhibit.

17 JUDGE McKENNA: All right.

18 THE WITNESS: I believe we did.

19 BY MS. CHUM:

20 Q. And what was that total?

21 A. I would need to look back to remember that
22 exact number.

23 Q. What is it that would refresh your
24 recollection?

25 A. I'm not sure. I could --

1 JUDGE McKENNA: What do you need to look at to
2 refresh your recollection?

3 THE WITNESS: I'm hoping that this will be in
4 one of the documents we created.

5 BY MS. CHUM:

6 Q. Mr. Hughes, do you recall you and your data
7 team recently determining how much above the principal
8 was paid by ACH of the total paid by Integrity
9 Advance -- paid to Integrity Advance by consumers?
10 Specifically isolating the total above principal paid
11 by ACH?

12 A. Yes. I'm -- I recall doing that. I don't see
13 it right in front of me.

14 JUDGE McKENNA: All right.

15 THE WITNESS: This second.

16 JUDGE McKENNA: So. Here's what's going to
17 happen.

18 Mr. Hughes, you're going to look and see if
19 you can't find the document. If you do, and you have
20 the number, then you will answer Ms. Chum's question
21 and you will give notice to Respondents as to what
22 document you are looking at.

23 And if they don't have it, then your counsel
24 will provide it to them. All right?

25 THE WITNESS: Yes.

1 JUDGE McKENNA: So, proceed.

2 THE WITNESS: Okay. Thank you.

3 BY MS. CHUM:

4 Q. And Mr. Hughes, just because I know that
5 you're very much into your position, do you just
6 remember generally that number?

7 JUDGE McKENNA: We're not going generally.

8 MS. CHUM: Okay. Thank you.

9 BY MS. CHUM:

10 Q. Turning now to page 3 --

11 JUDGE McKENNA: Just a second.

12 He's trying --

13 MS. CHUM: Oh, I'm sorry. I thought this was.

14 MS. FOLEY: If it would be helpful, should we
15 go off the record?

16 JUDGE McKENNA: Sure. Why don't we take a
17 10-minute break.

18 (Whereupon, a brief recess was had.)

19 JUDGE McKENNA: Back on the record.

20 Mr. Hughes, don't runaway.

21 THE WITNESS: Okay.

22 JUDGE McKENNA: Proceed.

23 BY MS. CHUM:

24 Q. Mr. Hughes, do you recall the questions that
25 -- the line of questioning that was pending when we

1 went off the record?

2 A. I do.

3 Q. So you had stated you did not recall the total
4 paid to Integrity Advance by consumers above the
5 principal that was paid by ACH; is there anything that
6 would refresh your recollection?

7 A. I'm sure there would be. I don't see anything
8 in front of me. I do have a percentage of payments
9 that were made via ACH which could serve as a proxy for
10 that.

11 Q. Okay. Moving on.

12 Turning now to page 3 of Exhibit 97. Would
13 you turn with me, Mr. Hughes, to that?

14 A. Yes.

15 Q. Mr. Hughes, were you able to make observations
16 from the Integrity Advance data set about loan payments
17 made by consumers to Integrity Advance on loans that
18 originated on or after July 21st, 2011?

19 A. Yes.

20 Q. And to determine whether loans originated on
21 or after July 21st, 2011, did you use the same
22 methodology of looking at transactions that occurred on
23 August 13th, 2011 or later?

24 A. Yes.

25 Q. Is this page 3 of Exhibit 97 a fair and

1 accurate summary of the numbers that you obtained from
2 the Integrity Advance data set about that particular
3 matter?

4 A. Yes.

5 Q. Did you determine a total paid, i.e.,
6 principal plus finance fees and additional fees paid by
7 consumers to Integrity Advance on loans that originated
8 on or after July 21st, 2011?

9 A. Yes, \$80,305,622.40.

10 Q. And of that amount, how much of that total was
11 above total of payments?

12 A. Thirty-eight million, seven hundred
13 ninety-five thousand, five hundred eighty-four and
14 twelve cents.

15 Q. Mr. Hughes, I'm now directing your attention
16 to what's been marked and previously admitted as
17 Exhibit 100, would you turn to that, please,
18 Mr. Hughes?

19 Mr. Hughes, have you seen this exhibit before?

20 A. Yes.

21 Q. Describe for me what is Exhibit 100?

22 MS. FOLEY: Objection. Lack of foundation.

23 JUDGE McKENNA: She's trying to lay one.

24 MS. FOLEY: She has not yet established that
25 he actually knows what's here.

1 JUDGE McKENNA: That's overruled.

2 THE WITNESS: This is a listing of
3 transactions on loan number 54158546.

4 BY MS. CHUM:

5 Q. Did you yourself or people under your
6 direction create this chart and validate the numbers in
7 this chart?

8 A. Yes.

9 Q. Is Exhibit 100 a fair and accurate
10 representation of a summary of information that you
11 were able to obtain about consumer 2129265 -- 92653 for
12 transactions associated with loan number 54158546?

13 A. Yes.

14 MS. CHUM: Mr. Jefferson, would you focus on
15 the first six lines of this document?

16 JUDGE McKENNA: Excuse me, who?

17 MS. CHUM: Mr. Tory Jefferson, our trial
18 director.

19 JUDGE McKENNA: Okay.

20 BY MS. CHUM:

21 Q. Mr. Hughes, in the first five transactions
22 listed here, for lines one through five, what did the
23 consumer pay on the \$500 loan?

24 A. There are five separate payments made towards
25 finance charges of \$150 dollars each.

1 Q. So none of the first five payments to
2 Integrity Advance on \$500 loan went towards the \$500
3 principal?

4 A. No.

5 Q. Was there any significance to the total that
6 had been paid on the loan by February 15th, 2012?

7 MS. FOLEY: Objection, vague. Significance to
8 whom?

9 JUDGE McKENNA: Overruled.

10 THE WITNESS: That was the first date at which
11 the total amount paid to date exceeded the \$500
12 principal and \$150 original finance fee.

13 BY MS. CHUM:

14 Q. So the sum of that principal and one finance
15 fee on that \$500 loan was \$650?

16 A. Yes.

17 Q. And from February 15th, 2012 on the amounts
18 paid exceeded the sum of the finance fee -- of one
19 finance fee and principal?

20 A. The cumulative amounts paid exceeded it, yes.

21 Q. Now what happened in that sixth transaction
22 which follows the February 15, 2012 transaction that
23 brought the total cost to \$750 dollars?

24 A. I'm sorry, could you restate that or just
25 repeat that I mean?

1 Q. Mr. Hughes, what did the consumer pay in the
2 sixth transaction to Integrity Advance?

3 A. That would be \$50 dollars toward principal and
4 \$150 toward finance charge, bringing the total amount
5 paid up to \$950 cumulatively.

6 Q. Mr. Hughes, now directing your attention to
7 the lines seven through nine, the bottom half of
8 Exhibit 100, would you explain just generally the
9 transactions for lines seven through nine?

10 A. In line seven there was an attempted ACH
11 transaction for \$185 dollars. The NACHA return code
12 was R07. And the explanation of that code is
13 authorization revoked by customer. The total amount
14 paid does not change because the transaction failed.

15 Q. And what happened -- so, what day was that on?

16 A. March 14th, 2012.

17 Q. And what happened on line eight, the next
18 transaction that's dated April 2nd, 2012?

19 A. There is an RCC transaction for \$400 toward
20 principal and \$120 toward finance charge, bringing the
21 total up to \$1,470 of cumulative payments.

22 Q. And what happened on that same day on April
23 2nd, 2012 as looking at line 9?

24 A. There was an attempted \$210 withdrawal and the
25 return code via ACH was R01 or insufficient funds.

1 Q. And directing your attention to what's been
2 marked as Exhibit 82 and previously admitted,
3 Mr. Hughes have you seen this document before?

4 A. Yes.

5 Q. What is this document?

6 A. It says the operating rules and guidelines.
7 Complete guide to the rules governing the ACH network.

8 MS. CHUM: And Mr. Jefferson, would you turn
9 to page the next page, please?

10 BY MS. CHUM:

11 Q. Mr. Hughes, did you use NACHA return codes
12 table section 4.2 from the official NACHA manual in
13 reviewing the Integrity Advance data set?

14 A. Yes, I did.

15 Q. How did you use this exhibit?

16 A. I referenced the return codes to determine the
17 return codes that indicated that a consumer did not
18 want further ACH withdrawals.

19 Q. Did you focus on specific NACHA return codes
20 in your review of the data?

21 A. Yes, I did.

22 Q. Which return codes did you focus on?

23 A. R07, R08 and R10 all appear to indicate
24 revocation by the customer of one form of another.

25 Q. More specifically, what does R07 indicate?

1 A. R07 is authorization revoked by customer.

2 Q. R08?

3 A. Payment stopped.

4 Q. And R10?

5 A. Customer advises unauthorized, improper,
6 ineligible or part of an incomplete transaction.

7 Q. Turning back to Exhibit 100 focusing on line
8 seven, given your reliance on the NACHA codes, is it
9 your testimony, Mr. Hughes, that after Integrity
10 Advance had used its ACH authorization to withdraw \$950
11 from consumer's account, the consumer revoked Integrity
12 Advance's ACH authorization?

13 A. Yes.

14 Q. And now focusing on lines eight and nine of
15 the document, Mr. Hughes, is it your testimony that
16 following the consumer's withdrawal of ACH
17 authorization, Integrity Advance submitted two RCC's on
18 the consumer's account? One for a total of \$520?

19 A. On April 12th there's an RCC for \$520. Four
20 hundred dollars towards principal and \$120 toward
21 finance charge.

22 Q. And is it your testimony that there was an
23 additional attempt to withdraw \$210 dollars by
24 Integrity Advance from the consumer's account?

25 A. Yes, also on April 2nd, 2012.

1 Q. And did you rely on the NACHA return codes to
2 determine that the consumer then had insufficient funds
3 in his or her bank account?

4 A. Yes.

5 Q. Directing your attention back to Exhibit 97,
6 Mr. Hughes, I'm now going to direct you to page 4 of
7 Exhibit 97.

8 JUDGE McKENNA: What is the exhibit number?

9 MS. CHUM: Exhibit 97, Your Honor.

10 BY MS. CHUM:

11 Q. Mr. Hughes, were you able to make observations
12 from the Integrity Advance data set about Integrity
13 Advance's use of RCC's on consumers who had revoked
14 Integrity Advance's ACH authorization or stopped
15 Integrity Advance's ACH withdrawals?

16 A. Yes, Integrity Advance provided a second data
17 set which listed all transactions that were RCC's.

18 Q. Is that second data set Exhibit 95? I believe
19 that's an Excel sheet.

20 A. Yes.

21 Q. Have you seen this chart before?

22 A. Yes.

23 Q. Did you personally or direct others to create
24 this chart?

25 MS. FOLEY: Objection, compound.

1 JUDGE McKENNA: Overruled.

2 THE WITNESS: Yes.

3 BY MS. CHUM:

4 Q. Is page four of Exhibit 97 a fair and accurate
5 summary of the numbers you obtained from the Integrity
6 Advance data sets about Integrity Advance's use of
7 RCC's on consumers who had revoked Integrity Advance's
8 ACH authorization or stopped ACH withdrawals?

9 A. Yes.

10 Q. Mr. Hughes, were you able to determine from
11 Integrity Advance's data set instances where Integrity
12 Advance attempted to withdraw funds by RCC from a
13 consumer's account after -- strike that.

14 Mr. Hughes, for all RCC's in the Integrity
15 Advance data set, how many RCC's were used?

16 A. Three thousand five hundred forty-five.

17 Q. And how many loans does that represent?

18 A. Two thousand twenty-four.

19 Q. And what was the number of RCC's used to
20 obtain funds from consumers who had already paid the
21 total of payments?

22 A. One thousand eight hundred and twenty-six.

23 Q. And how many -- what is the number of RCC's
24 followed by attempts by Integrity Advance --

25 Mr. Hughes, what was the number of RCC's that were

1 followed by attempts by Integrity Advance to withdraw
2 additional money from consumer's bank accounts that led
3 to insufficient funds?

4 A. Five hundred and eleven.

5 Q. And did you look at RCC's that occurred in the
6 Integrity Advance data set on or after July 21st, 2011?

7 A. Yes.

8 Q. How many RCC's were used after consumers had
9 revoked Integrity Advance's ACH authorization or
10 stopped Integrity Advance's ACH withdrawals on or after
11 July 21st, 2011?

12 A. I'm sorry. Could you repeat that?

13 Q. How many RCC's were used on or after July
14 21st, 2011 on consumers who had revoked Integrity
15 Advance's ACH authorization or stopped Integrity
16 Advance's ACH withdrawals?

17 A. I'm sorry. Could you repeat that one more
18 time?

19 JUDGE McKENNA: Which block are you talking
20 about?

21 BY MS. CHUM:

22 Q. Directing your attention to the first line of
23 column two.

24 Mr. Hughes, what was the number of RCC's used
25 on or after July 21st, 2011 on consumers who had

1 revoked Integrity Advance's ACH authorization or
2 stopped Integrity Advance's ACH withdrawals?

3 A. One thousand, two hundred seventy-one.

4 Q. And how many loans does that represent?

5 A. Five hundred eighty-seven.

6 Q. And how many RCC's were used on or after July
7 21st, 2011 to obtain funds from consumers who had
8 already paid the total of payments and who had revoked
9 IA's ACH authorization or stopped Integrity Advance's
10 ACH withdrawals?

11 A. Six hundred and two.

12 Q. And how many RCC's were followed by attempts
13 by Integrity Advance to withdrawal additional money
14 from consumer's bank accounts with insufficient funds
15 on or after July 21st, 2011, where the consumers had
16 revoked or stopped ACH?

17 A. One hundred seventy-one.

18 Q. So, in total, Mr. Hughes, how much did
19 Integrity Advance obtain by RCC after a consumer had
20 either revoked ACH authorization or put a stop on
21 ACH's?

22 A. Eight hundred thirty-nine thousand, eight
23 hundred seventy-nine dollars and fifty cents.

24 Q. Turning your attention now to page four of
25 Exhibit 97 -- or page five.

1 Mr. Hughes, have you seen this chart before?

2 A. Yes.

3 Q. Did you yourself create this chart or was this
4 chart created under your direction?

5 A. Yes.

6 Q. Were you able to make observations from
7 Integrity Advance's data set about RCC's used by
8 Integrity Advance on or after July 21st, 2011 to
9 withdraw funds from consumers who had revoked or
10 stopped ACH withdrawals?

11 A. Yes.

12 Q. Is this chart, page five of Exhibit 97 a fair
13 and accurate summary of those numbers?

14 A. Yes, it is.

15 Q. What was the total amount obtained by RCC by
16 Integrity Advance on or after July 21st, 2011 to
17 withdraw funds from consumers who had revoked Integrity
18 Advance's ACH authorization or stopped Integrity
19 Advance's ACH withdrawals?

20 A. Two hundred sixty-five thousand four hundred
21 fifty-two dollars and fifty cents.

22 Q. And of that amount, what was the total amount
23 obtained by RCC after the consumer had already paid the
24 total of payments?

25 A. One hundred fifteen thousand, twenty-four

1 dollars and fifty cents.

2 JUDGE McKENNA: What do you mean total of
3 payments?

4 THE WITNESS: Total of payments as described
5 on page one of the same exhibit, which is principal
6 plus a single finance fee.

7 BY MS. CHUM:

8 Q. Mr. Hughes, going forward, when I ask you
9 about total of payments, will the meaning of total of
10 payments remain the same?

11 A. Yes.

12 Q. Thank you.

13 Mr. Hughes, I'm now going to direct your
14 attention to a demonstrative, which Enforcement Counsel
15 wishes to mark as Exhibit 102.

16 MS. FOLEY: We haven't seen this, Your Honor.
17 We don't have a copy.

18 I'd like to see it before it gets marked.

19 JUDGE McKENNA: I think you would.

20 MS. FOLEY: Thank you.

21 JUDGE McKENNA: When was this prepared?

22 MS. CHUM: Your Honor, this was prepared
23 yesterday in response to --

24 MS. FOLEY: Do you have a copy?

25 JUDGE McKENNA: Off the record.

1 (Pause.)

2 JUDGE McKENNA: Back on the record.

3 Have the Respondents had a chance to look at
4 this document?

5 MS. FOLEY: We have, Your Honor, and we object
6 to its introduction today. We are in Enforcement
7 Counsel's case in chief. Exhibits were due and
8 exchanged weeks ago. I believe it was July 6. It is
9 today, right now as his testimony is going on, we were
10 given this document for the first time where
11 Enforcement Counsel purports to have a witness who
12 performed numerous brand new calculations, we have not
13 been provided the source code or the underlying
14 calculations that support these calculations.

15 We object that it is unduly prejudicial to
16 allow it in at this time without giving us any
17 opportunity to review it or the materials underlying
18 it and being expected to cross-examine the witness on
19 short notice.

20 JUDGE McKENNA: Those are all good points.

21 Are these numbers predicated on numbers from
22 exhibits that are already in the record?

23 THE WITNESS: Yes, these are all based on the
24 two data sets from Integrity Advance. I don't recall
25 the numbers off the top of my head. I think 95 and --

1 MS. CHUM: The data sets exhibits are 95 and
2 101, Your Honor.

3 JUDGE McKENNA: All right.

4 MS. CHUM: And Your Honor --

5 JUDGE McKENNA: So are you moving this at this
6 time?

7 MS. CHUM: Not at this time, Your Honor.

8 Your Honor, we are using this as a
9 demonstrative at this time.

10 JUDGE McKENNA: Just marked for purposes of
11 identification.

12 MS. CHUM: Yes, it's marked for purposes of
13 identification.

14 JUDGE McKENNA: All right. So before we go
15 any further on this, if it's proffered, then I will
16 give -- I'm going to admit it. I'm going to give
17 Respondents five days to tell me how they want to
18 proceed. If you have a rebuttal exhibit, you can use
19 that. If you want to recall this witness to
20 cross-examine him after you have had an opportunity to
21 review it, I will look favorably on it and I also will
22 look favorably on any suggested avenues that you might
23 wish to take. All right?

24 MS. FOLEY: Thank you, Your Honor.

25 MS. CHUM: And Your Honor, if I may, just to

1 kind of, as you had said before, prime the pump to
2 explain to you why we were running these numbers
3 yesterday based on the data sets, it is my
4 understanding that we were put on notice yesterday
5 that you were interested in one-time customers of
6 Integrity Advance as well as first time loans.

7 So we wanted to provide you with the numbers
8 that you had indicated to Mr. Wheeler that you were
9 interested in and we were not aware of that until
10 yesterday.

11 JUDGE McKENNA: Well, that's very good. Thank
12 you. I'm interested in a lot of these numbers and so
13 we will see how this works out.

14 Proceed.

15 (Whereupon, Enforcement Counsel's
16 Exhibit No. 102 marked for identification.)

17 BY MS. CHUM:

18 Q. Mr. Hughes, have you seen Exhibit 102 before?

19 A. Yes.

20 Q. What is it?

21 A. It's a table of accounts of customers and
22 amounts paid looked at two different ways. One for
23 loans originated throughout the data set, and the other
24 for loans originated July 21st, 2011 or later.

25 Q. Did you yourself or people under your

1 direction create this chart?

2 A. Yes.

3 Q. And what is a first-time loan?

4 JUDGE McKENNA: All right. Just a second.

5 And this is predicated on Exhibits 97 --

6 BY MS. CHUM:

7 Q. Mr. Hughes, did the values you derived from
8 this in this chart base -- are these values based on
9 exhibits -- the data sets provided by Integrity Advance
10 Exhibit 95 and 101?

11 A. Yes.

12 Q. Mr. Hughes, would you explain what a
13 first-time loan is.

14 A. If an individual customer took out multiple
15 loans, the first-time loan would be the first loan that
16 that customer took out.

17 Q. Would a first-time loan also include loans
18 from customers -- first-time loans of customers who did
19 not take out multiple loans?

20 A. Yes, it would be the first loan any customer
21 took out whether or not there were multiple loans.

22 Q. What is a one-time loan?

23 A. That refers to a loan taken out by a customer
24 who took out no other loans.

25 Q. Is Exhibit 102 a fair and accurate summary of

1 numbers that you observed from the transaction data
2 produced by Integrity Advance concerning first-time and
3 one-time loans?

4 A. Yes.

5 Q. Mr. Hughes, focusing on loans that originated
6 between May 2008 and July 2013, how many one-time
7 customers were there with Integrity Advance?

8 A. One hundred twenty-two thousand, five hundred
9 eighty-one.

10 Q. And you recall your definition of total of
11 payments, what was the number of first-time loans that
12 paid more than the total of payments?

13 A. One hundred sixteen thousand eight hundred and
14 nineteen.

15 Q. What was the number of one-time loans that
16 paid more than the total of payments?

17 A. Sixty-eight thousand seven hundred and
18 twenty-five.

19 Q. How much money was paid to Integrity Advance
20 by consumers above the total of payments via first-time
21 loans?

22 A. Sixty-nine million, six hundred twenty-eight
23 thousand six hundred eighty and one cent.

24 Q. And how much was paid to Integrity Advance by
25 customers above the total of payments via one-time

1 loans?

2 A. Thirty-nine million nine hundred eighteen
3 thousand seven hundred sixteen and seventy-eight cents.

4 Q. And how much was paid to Integrity Advance by
5 consumers above the principal via -- strike that.

6 First, what were the monies above principal
7 that you looked at when you -- for money paid to IA by
8 consumers above the principal via first-time loans?

9 THE COURT REPORTER: I'm sorry. I couldn't
10 hear it.

11 BY MS. CHUM:

12 Q. Mr. Hughes, did you look at the money paid to
13 Integrity Advance by consumers above the principal via
14 first-time loans?

15 A. Yes.

16 Q. And what were those monies categorized as?

17 A. Finance charges and fees.

18 Q. What was the total money paid to Integrity
19 Advance by consumers above the principal via first-time
20 loans?

21 A. Ninety-nine million, one hundred sixty-one
22 thousand, two hundred twelve and 89 cents.

23 Q. And same question for one-time loans?

24 A. Sixty-three million, five hundred and
25 fifty-three thousand, two hundred sixty-six and

1 twenty-three cents.

2 Q. And what was the money paid to Integrity
3 Advance by consumers, the principal plus the finance
4 charges and additional fees via first-time loans?

5 A. One hundred forty-three million, one hundred
6 eighty four thousand eight hundred fifty-nine and
7 eighty-two cents.

8 Q. Same question for one-time loans?

9 A. Eighty-six million, one hundred forty-one
10 thousand, seven hundred seventy-three and twenty cents.

11 Q. Mr. Hughes, did you look at loans that
12 originated on or after July 21st, 2011 for this
13 particular set of first-time and one-time loans for all
14 first-time and one-time loans?

15 A. Yes.

16 Q. And in determining that the loans originated
17 on or after July 21st, 2011 did you make the same
18 assumptions you made previously such that you looked
19 only at first transactions that occurred on or after
20 August 13th, 2011?

21 A. Yes.

22 Q. For the loans that originated on or after July
23 21st, 2011 how many one-time customers were there?

24 A. Twenty-eight thousand and one.

25 Q. What was the number of first-time loans that

1 paid more than the total of payments?

2 A. Twenty thousand four hundred and
3 seventy-eight.

4 Q. And what was the number of one-time loans that
5 paid more than total of payments?

6 A. Fourteen thousand six hundred ninety-two.

7 Q. What was the money paid to Integrity Advance
8 by consumers above the total of payments via first-time
9 loans?

10 A. Twelve million, two hundred fifty thousand
11 five hundred forty-four and twenty-eight cents.

12 Q. What was the money paid to Integrity Advance
13 by consumers above the total of payments via one-time
14 loans?

15 A. Eight million, nine hundred ninety-nine
16 thousand nine hundred sixty-four and forty-five cents.

17 Q. And you're testifying to loans that originated
18 on or after July 21st, 2011?

19 A. Yes.

20 Q. And still remaining and testifying about loans
21 originated on or after July 21st, 2011, what was the
22 money paid to Integrity Advance by consumers above the
23 principal via first-time loans?

24 A. Eighteen million, two hundred twenty-one
25 thousand five hundred eighty-eight dollars and

1 ninety-seven cents.

2 Q. And the same question for one-time loans.

3 A. Fourteen million, two hundred seventeen
4 thousand, one hundred fifty-five dollars and
5 ninety-five cents.

6 Q. What was the money paid to Integrity Advance
7 by consumers via first-time loans, the total money,
8 principal, plus finance charge and additional fees?

9 A. Twenty-six million, three hundred seventeen
10 thousand, three hundred eighty-five dollars and
11 ninety-nine cents.

12 Q. The same question for one-time loans?

13 A. Nineteen million, four hundred fifty-eight
14 thousand, nine hundred sixty-six dollars and one cent.

15 MS. CHUM: Your Honor, at this time
16 Enforcement Counsel would request that the exhibit
17 marked as 102 for good cause shown pursuant to rule
18 215(c) be admitted into evidence.

19 JUDGE McKENNA: Objection duly noted and
20 overruled. So admitted.

21 And Respondents will have five days to notify
22 me how they wish to proceed to rebut.

23 (Whereupon, Enforcement Counsel's
24 Exhibit No. 102 admitted into evidence.)

25 MS. CHUM: Thank you, Your Honor.

1 No further questions.

2 JUDGE McKENNA: Just one moment.

3 All right. Does that conclude your direct?

4 MS. CHUM: Yes, that concludes Enforcement
5 Counsel's direct. Thank you, Your Honor.

6 JUDGE McKENNA: Thank you.

7 Cross-examination?

8 MS. FOLEY: Your Honor, in light of brand new
9 Exhibit 102 and the new calculations here, we would
10 request a recess to conduct his cross-examination
11 tomorrow, so that we can have the rest of the
12 afternoon, perhaps we can do I think they have one
13 more witness, Mr. Baressi, in lieu of doing the
14 cross-examination, which would give us tonight to
15 consider how we would like to proceed.

16 JUDGE McKENNA: Any objections?

17 MR. WHEELER: No objection, Your Honor.

18 JUDGE McKENNA: All right. That sounds like a
19 reasonable request.

20 MS. FOLEY: Thank you, Your Honor.

21 JUDGE McKENNA: You can step down. I don't
22 want you to feel uncomfortable.

23 THE WITNESS: Thanks.

24 MS. FOLEY: I'm not sure if it's necessary,
25 Your Honor, but just maybe an admonition to the

1 witness that he's still under oath.

2 He is still in the courtroom.

3 JUDGE McKENNA: Did he leave?

4 MS. FOLEY: Oh, no, he's still in the
5 courtroom.

6 JUDGE McKENNA: Do you understand that?

7 THE WITNESS: Yes.

8 JUDGE McKENNA: All right.

9 MS. CHUM: Your Honor, the government calls --
10 Enforcement Counsel calls Joseph Baressi.

11 JUDGE McKENNA: Spell the last name.

12 MS. CHUM: B-A-R-E-S-S-I.

13 JUDGE McKENNA: B as in boy?

14 MS. CHUM: Yes.

15 JUDGE McKENNA: Go ahead.

16 MS. CHUM: I believe that --

17 JUDGE McKENNA: B --

18 MS. CHUM: B, as in boy, A-R-E-S-S-I.

19 JUDGE McKENNA: Thank you.

20 Mr. Hughes, you will remain under oath
21 tonight.

22 THE WITNESS: Yes, Your Honor.

23 JUDGE McKENNA: Off the record.

24 (Pause.)

25 JUDGE McKENNA: All right. Back on the

1 record.

2 JOSEPH BARESSI,

3 A witness produced on call of Enforcement
4 Counsel, having first been duly sworn, was examined
5 and testified as follows:

6 JUDGE McKENNA: Please be seated. State your
7 full name and spell it for the record.

8 THE WITNESS: Joseph Phillip Baressi, III,
9 J-O-S-E-P-H P-H-I-L-L-I-P B-A-R-E-S-S-I.

10 JUDGE McKENNA: Thank you.

11 Proceed.

12 BY MS. CHUM:

13 Q. Mr. Baressi, you work in the Consumer
14 Financial Protection Bureau's regulations office?

15 A. Correct.

16 Q. How long have you worked at the CFPB?

17 A. Just over three years.

18 Q. What are your responsibilities in the
19 regulations office?

20 A. I work primarily on writing rules,
21 regulations, I also respond to certain inquiries that
22 we get from the public.

23 Q. Before joining the CFPB's regulations office,
24 were you with the federal reserve board as a financial
25 services project leader?

1 A. I was. I was with the federal reserve board
2 as a financial services project leader for about 12
3 years.

4 Q. What are your responsibilities -- what were
5 your responsibilities as a financial services project
6 leader at the federal reserve board?

7 A. I was also there responsible for writing
8 certain rules and regulations, particularly there with
9 respect to check clearing processes and I was also part
10 of a team responsible for overseeing the payment
11 processing operations of the reserve banks, the federal
12 reserve banks.

13 Q. What degrees do you hold, Mr. Baressi?

14 A. I have an economics degree from Harvard and a
15 law degree from Georgetown.

16 Q. Mr. Baressi, do you have first-hand knowledge
17 and experience with remotely created checks?

18 A. Yes, I do. I worked on formulating
19 regulations and policy with respect to those checks and
20 I was also involved with those checks through the check
21 clearing operations of the federal reserve banks.

22 MS. BAKER: Your Honor, if I could just ask is
23 the witness being qualified to be an expert in this
24 matter? And if so, I would object to his being
25 proffered as an expert given that expert depositions

1 and expert discovery in this matter closed a number of
2 months ago.

3 JUDGE McKENNA: All right. Do you wish to
4 voir dire?

5 MS. BAKER: Well, Your Honor, I'm just asking
6 or my query is to whether or not he's being offered
7 for expert testimony. I'm not clear as to the scope
8 of his proffered testimony. And Ms. Chum appears to
9 be qualifying him and I'm not sure what she's
10 qualifying him for if he's not an expert. It's not
11 that I doubt his qualifications.

12 JUDGE McKENNA: All right. Let's find out.

13 MS. CHUM: Your Honor, if I may?

14 JUDGE McKENNA: Yes, you may.

15 MS. CHUM: Mr. Baressi is not being offered as
16 an expert. He will be offering general knowledge
17 testimony on what RCC's are and how they work, not
18 opinion testimony. And he will not opine about the
19 specifics of Integrity Advance's use of RCC's.

20 The way RCC's function as a product has not
21 been an issue in this case, but in keeping with Your
22 Honor's request on July 1st, 2016 in the order
23 granting in part and denying in part the Bureau's
24 Motion for Summary Disposition, Enforcement Counsel
25 seeks to supplement the record with some additional

1 information to assist Your Honor in making a
2 determination as it pertains to RCC's and better
3 understanding RCC's.

4 MS. BAKER: Thank you. That's helpful to the
5 extent that his testimony is relegated to the scope
6 that Ms. Chum just described, I have no objection to
7 it. To the extent it goes beyond that and exceeds
8 that and he becomes proffered as an expert either by
9 deliberateness or inadvertentness, I will object on
10 those grounds.

11 JUDGE McKENNA: You will let me know?

12 MS. BAKER: Yes, Your Honor, I will let you
13 know.

14 Thank you.

15 JUDGE McKENNA: Thank you.

16 BY MS. CHUM:

17 Q. And Mr. Baressi, you were speaking briefly
18 about your -- the basis of your knowledge and
19 experience. Again, tell me what was the basis of your
20 knowledge and experience at the Federal Reserve as it
21 pertains to remotely created checks?

22 A. Well, the first time that remotely created
23 checks became a policy matter, we received -- we were
24 receiving inquiries, you know, from the public and also
25 from Congress, actually, about remotely created checks

1 and the risks associated with them.

2 Q. What time was that? What time period was
3 that?

4 A. I would say that was around 2004/2005.

5 Q. And what was the period of time that you were
6 at the Federal Reserve?

7 A. From 2000 until 2013.

8 Q. So is it fair to say from 2004/2005 through
9 2013 you were -- you had experience with remotely
10 created checks?

11 A. Yes.

12 Q. Did you continue to have experience with
13 remotely created checks while at the regulations office
14 of the CFPB?

15 A. Somewhat, yes.

16 Q. Can you expand on that?

17 A. Sure. The rule makings I'm working on right
18 now are not directly related to remotely created checks
19 so I do sometimes get involved in RCC matters, but not
20 regularly.

21 Q. And Mr. Baressi, could you explain what are
22 remotely created checks?

23 A. In essence, a remotely created check, commonly
24 known as a demand draft, is a check that is not signed
25 by the consumer. Instead it is a check that is created

1 by the payee.

2 Q. Are remotely created checks also referred to
3 as RCC's or check drafts as well as demand drafts?

4 A. Yes.

5 Q. In your experience, how well understood are
6 RCC's by consumers?

7 A. I don't think consumers understand them. I
8 think consumers just are hoping to get goods and
9 services or hopefully understand that they are getting
10 goods or services or a loan, but I don't think
11 consumers understand remotely created checks.

12 Q. And what is it specifically that consumers
13 struggle to understand about remotely created checks?

14 MS. BAKER: Objection. This calls for
15 speculation. He hasn't proffered any testimony that
16 would suggest he knows what consumers think or that
17 he's undertaken a consumer survey. He is being asked
18 to speculate.

19 JUDGE McKENNA: Sustained.

20 BY MS. CHUM:

21 Q. Do you have a basis for knowledge about
22 consumer understanding for RCC's?

23 A. Yes. I would say, yes, I do.

24 Q. What is the basis of that knowledge?

25 A. Facts that I came to learn while thinking

1 about policies and regulations to regulate remotely
2 created checks at the Federal Reserve.

3 Q. And where did those facts come from?

4 A. From typically from the Federal Reserve Banks
5 and things they were seeing happening in the check
6 clearing network.

7 Q. And what were -- what was the Federal Reserve
8 Bank seeing happening at the check -- with the check
9 clearing network?

10 MS. BAKER: Objection. Foundation and vague.

11 JUDGE McKENNA: Overruled.

12 THE WITNESS: The Federal Reserve was seeing
13 significant rates of unauthorized returns and frequent
14 returns of remotely created checks.

15 JUDGE McKENNA: What do you mean unauthorized
16 returns?

17 THE WITNESS: Consumers, the consumers on
18 whom's accounts the RCC's were drawn were asserting
19 that the payments were not authorized and the RCC's
20 were bouncing back and forth, forward clearing, return
21 clearing in the check network.

22 BY MS. CHUM:

23 Q. Mr. Baressi, could you walk us through step by
24 step how an RCC is authorized, created and cashed?

25 A. Sure. In the course of a phone conversation

1 or on the Internet, like at a website, a consumer will
2 provide his routing number and account number. The
3 payee uses that routing number and account number to
4 create a demand draft, to create a remotely created
5 check.

6 Q. So by providing just a routing number and
7 account number, does that payee get authorization to
8 create remotely created checks on behalf of the
9 consumer?

10 A. Not necessarily.

11 It's not clear what the payee is getting in
12 terms of authorization from the consumer. I guess I
13 would say no, routing number and account number do not
14 constitute authorization from the consumer.

15 Q. So how does a payee get authorization to
16 create the remotely created checks?

17 MS. BAKER: Objection. Is he being asked for
18 a legal conclusion? Authorization is a legal term and
19 I think the way we've used it in the context of this
20 matter and certainly Ms. Chum's explanation for his
21 testimony suggests that that's what this is. So I
22 would like a clarification. It seems like it's
23 calling for legal testimony.

24 JUDGE McKENNA: Right. Is it what you are
25 requesting?

1 MS. CHUM: No, Your Honor, I'm just asking for
2 nuts and bolts description of like what actually goes
3 on between a consumer and a payee and the bank.

4 JUDGE McKENNA: Would you envision that there
5 would be a separate document where the customer would
6 grant the payee authority to transmit an RCC?

7 THE WITNESS: Short answer is yes. What I
8 would envision is a separate document where the
9 consumer authorizes the payee to initiate debits
10 pulling money out of the consumer's account.

11 (Cellphone ringing.)

12 THE WITNESS: Sorry about that.

13 JUDGE McKENNA: I will have to confiscate
14 that.

15 BY MS. CHUM:

16 Q. And once that authorization is received, can a
17 payee continue to obtain RCC's from a consumer?

18 A. The short answer is yes. If there is an
19 authorization, like I was trying to describe just
20 previously, a document or a web page where the consumer
21 says I authorize you, payee, to take money out of my
22 account. Once that has happened, the consumer cannot
23 control RCC's taking money out of his or her account.

24 Q. So who is it that actually creates the RCC?

25 A. The payee.

1 Q. Is the consumer involved after that
2 authorization in the creation of the RCC's?

3 A. No.

4 Q. Who determines how much to take out via RCC?

5 A. The payee.

6 Q. And is the consumer directly involved in that
7 decision?

8 A. No.

9 Q. Who instructs the consumer's bank to make the
10 payment to the payee?

11 A. That is actually a relatively involved
12 process. The payee, as with a typical check, I mean
13 you can think of it as a typical check, but the payee
14 deposits the RCC into the check clearing system, i.e.,
15 the Federal Reserve Banks, the Federal Reserve Banks
16 deliver the check from the payee's bank to the
17 consumer's bank.

18 And this is happening, in general, in high
19 volumes and high frequency on that kind of thing and
20 the consumer's bank simply responds to the high volume
21 number of instructions, i.e., remotely created checks,
22 that are received from the Federal Reserve Banks.

23 Q. And are consumers directly involved in that
24 process?

25 A. They are not involved, no.

1 Q. So does a consumer have to sign an RCC the way
2 that a consumer would sign a check?

3 A. No, the consumer does not sign an RCC.

4 Q. And I think you testified that a consumer does
5 not have to authorize an RCC each time that one is used
6 to withdraw money from the consumer's account?

7 A. Correct.

8 Q. So why is the payee able to create an RCC
9 without the consumer's involvement?

10 JUDGE McKENNA: That's stating something that
11 is not in evidence because the consumer as he
12 testified to, made an authorization for RCC's and
13 subsequent to that, the consumer has no involvement.

14 That's your testimony?

15 THE WITNESS: Well, I would like to clarify a
16 bit.

17 JUDGE McKENNA: Go right ahead.

18 THE WITNESS: Consumers are, what I would in
19 general -- a consumer is hopefully authorizing debits
20 to his or her account. You know, the payee is going
21 to be taking money out of the consumer's account. The
22 consumer is authorizing that.

23 I do not think a typical, reasonable consumer
24 is authorizing remotely created check usage to
25 accomplish that. They are expecting it to be an

1 electronic payment.

2 BY MS. CHUM:

3 Q. So does an RCC look like a check?

4 A. Except for the fact that there is no signature
5 where you would typically expect to see a person's
6 signature.

7 Q. How does a consumer know that an RCC is being
8 used on them?

9 MS. BAKER: Objection. Calls for speculation.

10 JUDGE McKENNA: I will allow it.

11 THE WITNESS: Typically, a consumer would not
12 know that an RCC is being used until the consumer
13 reviews his or her periodic statement and sees it.

14 BY MS. CHUM:

15 Q. How is an RCC identifiable in a periodic
16 statement?

17 A. It would be one of the transactions listed on
18 the periodic statement. It would typically be listed
19 in the check sort of section of the periodic statement,
20 but it would have a random number. You know, instead
21 of going through checks 100, 101, 102 in your
22 checkbook, this will be check 5,004 coming out of
23 nowhere.

24 Q. And in that statement, it wouldn't actually
25 say RCC or demand draft?

1 A. It would not.

2 Q. It would just be a random number?

3 A. Yes. The main identification of it would be a
4 number, a random number.

5 Q. How are RCC's disputed by consumers?

6 A. The consumer reviews his or her periodic
7 statement, sees a debit on there that the consumer
8 doesn't believe that he or she authorized, consumer
9 calls his or her bank and asserts that there was an
10 unauthorized payment pulling money out of the
11 consumer's account.

12 Q. In your knowledge and experience is disputing
13 an RCC more difficult or easier for a consumer than
14 disputing a check?

15 A. It's typically more difficult than disputing
16 an ACH debit or a card transaction or something like
17 that.

18 Q. Or a check?

19 A. Or a regular check, yes.

20 Q. How is it more difficult than disputing an
21 ACH, a credit card, debit card or a check?

22 MS. BAKER: Objection, foundation.

23 JUDGE McKENNA: I will allow it.

24 THE WITNESS: With a check, the consumer --
25 which is sort of the most direct comparison -- with a

1 check the consumer, in theory, signs the check and
2 there is a series of checks coming out of the
3 consumer's checkbook.

4 And so, the consumer can do something like
5 say, look, that is not my signature on that check. I
6 did not write that check. With an RCC, the sort of by
7 definition the consumer cannot do that, cannot make
8 clear that the consumer did not authorize that check
9 because there is no signature on that check.

10 BY MS. CHUM:

11 Q. Relying on your knowledge and experience, are
12 you aware of companies relying on RCC's once a consumer
13 has put a stop on ACH's or withdrawn ACH
14 authorization --

15 A. Yeah.

16 Q. -- by a payee?

17 A. Yes.

18 Q. In what instances have companies relied on
19 RCC's once a consumer puts a stop on ACH's?

20 MS. BAKER: Objection. Calls for speculation.

21 JUDGE McKENNA: I will allow it.

22 THE WITNESS: The ACH network has two central
23 operators, the reserve banks and an operator named
24 EPN, who monitor the ACH network for red-flag type
25 activity. Like a significantly high number of

1 unauthorized return rates.

2 So in the ACH network, it is difficult for
3 payees to continue debiting a consumer's account after
4 the consumer has said that the debits are
5 unauthorized. The check network through which
6 remotely created checks travel, does not have those
7 two operators monitoring the network.

8 So when payees are concerned about setting off
9 alarm bells because of too high unauthorized return
10 rates, they will -- if they are bad intentioned, they
11 might shift to using the check network to abate
12 detection in the ACH network.

13 Q. Are there any other significant differences
14 between RCC's and ACH's?

15 A. In my opinion, yes.

16 MS. BAKER: Objection. His opinion. Again, I
17 mean, this was subject to my initial admonition, this
18 witness isn't being proffered for his opinion.

19 JUDGE McKENNA: Correct. All right. Do you
20 have personal knowledge?

21 THE WITNESS: I would say I have direct
22 professional knowledge, yes.

23 JUDGE McKENNA: All right. Answer the
24 question. Not your opinion.

25 MS. BAKER: Your Honor, that's pretty much

1 what an expert witness does. Which is they impose
2 their professional knowledge on a set of facts or
3 hypotheticals that have been presented to them.

4 JUDGE McKENNA: And laymen do also.

5 MS. BAKER: And is he being offered as a lay
6 opinion witness?

7 JUDGE McKENNA: He hasn't been qualified as an
8 expert, so there's one or the other.

9 MS. BAKER: So. I -- okay. Well, I guess I
10 would ask that this Court request that the CFPB
11 clarify precisely what he's being offered for in light
12 of this line of questions.

13 JUDGE McKENNA: They indicated that already,
14 that it's his knowledge and he is not being offered as
15 an expert.

16 MS. BAKER: Thank you, Your Honor.

17 THE WITNESS: In the ACH network when an
18 unauthorized debit is returned it always goes back to
19 its point of origination, which makes tracking of
20 unauthorized returns in the ACH network more feasible.

21 In the check network, when a check is
22 returned, it does not always go back to the bank into
23 which it was deposited.

24 So for example, an RCC deposited into bank A
25 if returned as unauthorized might go back to bank B.

1 That can make tracking the unauthorized return
2 rates of unauthorized RCC's very difficult.

3 JUDGE McKENNA: How would it go to bank B?

4 THE WITNESS: The payee --

5 JUDGE McKENNA: If the account is in bank A,
6 right?

7 THE WITNESS: The payee's account is in bank
8 A. And then the payee would typically also have an
9 account at bank B.

10 JUDGE McKENNA: So you are talking about not
11 taking the money out of the account, it's what happens
12 regarding the payee.

13 THE WITNESS: Right and so bank A, the payee's
14 -- first bank, bank A isn't aware that that RCC got
15 returned because it went back to bank B instead of
16 bank A.

17 JUDGE McKENNA: RCC's are legal, correct?

18 THE WITNESS: Yes, in most circumstances.

19 BY MS. CHUM:

20 Q. Are there certain risks in your knowledge and
21 experience to consumers associated with RCC's?

22 MS. BAKER: Objection. Calls for speculation,
23 asking him his opinion. And I'm going to object to
24 this ongoing exam as relevance.

25 JUDGE McKENNA: Sustained.

1 MS. BAKER: Thank you.

2 BY MS. CHUM:

3 Q. Are RCC's harder to stop than ACH's?

4 JUDGE McKENNA: You just asked that question,
5 didn't you?

6 MS. CHUM: Are there fewer protections
7 associated with RCC's than ACH's?

8 MS. BAKER: Same objection, speculation and
9 vague.

10 JUDGE McKENNA: To the extent he knows, I will
11 allow him to answer.

12 THE WITNESS: I would answer that question,
13 yes, federal law provides --

14 MS. BAKER: Objection. He is offering legal
15 testimony.

16 JUDGE McKENNA: He can cite what the law is
17 without giving a legal opinion.

18 MS. BAKER: Your Honor, I agree except it
19 sounded like he was giving a legal opinion.

20 JUDGE McKENNA: All right.

21 Don't give a legal opinion.

22 THE WITNESS: Well, federal law provides
23 protections for electronic payments that are not
24 applicable to checks.

25 MS. BAKER: Objection. That's a legal

1 opinion, and I would ask that that testimony be
2 stricken from the record.

3 JUDGE McKENNA: I'm going to deny your request
4 and overrule your objection.

5 BY MS. CHUM:

6 Q. Mr. Baressi, in your knowledge and experience,
7 have RCC's been banned in specific circumstances?

8 A. The FTC has banned RCC's in telemarketing.

9 JUDGE McKENNA: But they haven't been banned
10 regarding short-term loans; is that correct?

11 THE WITNESS: Correct.

12 BY MS. CHUM:

13 Q. What are the public policy implications
14 halting the use of RCC's on consumers after those
15 consumers have overpaid a payee and already stopped
16 that payee from withdrawing money from their accounts
17 by ACH?

18 JUDGE McKENNA: Sustained.

19 MS. BAKER: Thank you, Your Honor.

20 MS. CHUM: That concludes Enforcement
21 Counsel's direct, Your Honor.

22 JUDGE McKENNA: Thank you. Cross-examination.

23 CROSS-EXAMINATION

24 BY MS. BAKER:

25 Q. Good afternoon, Mr. Baressi. Am I pronouncing

1 your last name correctly?

2 A. Baressi.

3 Q. Baressi, thank you. Sorry about that.

4 Mr. Baressi, you have testified that you
5 worked at the Federal Reserve Board for 13 years?

6 A. Twelve years and some number of months, yes.

7 Q. We will call it 13.

8 A. Okay.

9 Q. And when you worked at the Federal Reserve
10 Board you were in the rule making office?

11 A. I was in the division of reserve bank
12 operations and payment systems. It wasn't named the
13 rule making office.

14 JUDGE McKENNA: Was that OGC?

15 THE WITNESS: No, it was not the OGC either.
16 That's the legal division.

17 JUDGE McKENNA: Right. But you're a lawyer.

18 THE WITNESS: Yes.

19 BY MS. BAKER:

20 Q. You didn't work in the feds supervision
21 division, did you?

22 A. I did not.

23 Q. You've never supervised or been involved in a
24 field examination as a supervisor -- as an examiner of
25 a payday company?

1 A. I have never examined a payday company.

2 Q. And you, I think, testified just now that you
3 currently work in the rule making office at the
4 Consumer Financial Protection Bureau; is that right?

5 A. The Office of Regulations, yes.

6 Q. Yes. I'm being colloquial in calling it the
7 rule-making office for purposes of this, but I do know
8 it's called the Office of Regulations.

9 A. Okay.

10 Q. But thank you. I appreciate the
11 clarification.

12 A. Sure.

13 Q. You don't work in the consumer response unit
14 there, do you?

15 A. I do not.

16 Q. So you don't have any first-hand knowledge of
17 consumer complaints that could come into the CFPB
18 concerning RCC's. And by first-hand knowledge I mean
19 involvement with responding to the way the consumer
20 response unit responds?

21 A. I do not believe I have ever actively
22 participated in responding to a consumer complaint
23 about an RCC at the CFPB.

24 Q. And have you with the Fed?

25 A. Yes.

1 Q. And in what capacity? Was there a consumer
2 response unit at the Federal Reserve Board that you
3 worked with?

4 A. No, the Federal Reserve did not have a
5 consumer response unit. I would say the public affairs
6 office.

7 Q. But the Federal Reserve doesn't have a unit
8 that has a consumer complaint intake operation akin to
9 that at the CFPB?

10 A. Correct.

11 JUDGE McKENNA: So how did you get involved at
12 the Board?

13 THE WITNESS: Consumers would call the Federal
14 Reserve, like the main number, and say please help.
15 And then Federal Reserve staff would ultimately get
16 ahold of me.

17 BY MS. BAKER:

18 Q. And the consumers who called and said, please
19 help, they didn't call you directly?

20 A. Correct.

21 Q. And did you, when you responded to a consumer
22 complaint in that instance, did you go back and
23 subpoena bank records to ascertain the way the bank had
24 processed the payment?

25 A. No.

1 Q. Why not?

2 A. Well, the way you phrased your question,
3 subpoenaing records was not typically necessary.

4 Q. And why is that?

5 A. Relevant documents were usually available
6 without a subpoena.

7 Q. What kind of relevant documents would you,
8 Mr. Baressi, have looked at in connection with
9 responding to consumer who called up and said, quote,
10 "please help?"

11 A. A periodic statement showing the debit, an
12 image. You know, like when you log onto your bank,
13 like Wells Fargo or Citi and you can click and you pull
14 up the check image. A consumer would e-mail an image
15 of a remotely created check and say I never authorized
16 this thing.

17 Q. And did you also look at any of the NACHA
18 codes that were associated with that transaction?

19 A. I did look at return reason codes, yes,
20 because these are RCC's they did not go through the ACH
21 network and so did not have NACHA codes.

22 Q. And did you ever, when you were asked to help
23 with consumers, did you ever go back to the merchant
24 who had initiated the remotely created check and ask
25 that merchant for background information as to how or

1 why that RCC was initiated?

2 A. I don't believe I did actually.

3 Q. Have you ever done that?

4 A. No.

5 Q. Now remotely created checks, I think you
6 testified in response to Judge McKenna's question that
7 they are legal right now?

8 A. Yes, correct.

9 Q. And do you have an understanding as to whether
10 are not remotely created checks were legal in 2008?

11 A. I do.

12 Q. And were they?

13 A. Yes.

14 Q. And same question for 2009, do you have that
15 understanding?

16 A. Yes.

17 Q. And were they legal?

18 A. Yes.

19 Q. Same question for 2010, do you have an
20 understanding as to whether or not RCC's were illegal?

21 A. Yes.

22 Q. And were they legal?

23 A. Yes.

24 Q. Same question for 2011, do you know if RCC's
25 were legal?

1 A. Yes.

2 Q. And were they in fact legal?

3 A. Yes.

4 Q. Okay. 2012 same question, I'm just going to
5 short it -- shortcut it, were RCC's legal?

6 A. RCC's were legal, yes.

7 Q. Were legal. Lawful?

8 A. Yes, in 2012.

9 Q. And they were lawful in 2013 as well?

10 A. Yes.

11 Q. And do know if there are commercial
12 enterprises that use remotely created checks in
13 commercial -- in the commercial context as opposed to
14 the consumer context?

15 A. You mean the payor is a commercial entity?

16 Q. Yes?

17 A. A business?

18 I'm not as familiar with that.

19 Q. So sitting here today you don't know if that's
20 a common practice or not?

21 A. I would say correct. I do not know if that's
22 a common practice.

23 Q. Do you know if RCC's for example are used in
24 the context of, for example, mutual funds that want to
25 debit an account for purposes of payment?

1 A. Whose account?

2 Q. Well, I'm asking if you know if mutual funds
3 at times use remotely created checks to establish a
4 mechanism through which payment might be made into the
5 fund by say an investor?

6 MR. CHUM: Objection, relevance.

7 I'm not sure how this --

8 JUDGE McKENNA: I will allow it.

9 THE WITNESS: I am not familiar with that, no.

10 BY MS. BAKER:

11 Q. And do you know if large banks, for example,
12 use remotely created checks from time to time?

13 A. I would -- I guess the short answer is no.
14 But we might be conflating different things that I
15 would not label a remotely created checks.

16 Q. Well, let me ask you this: Is it possible
17 that there are bill payment systems that are in use
18 through, say, a personal banking account that are
19 maintained or housed at a large bank and we can
20 stipulate large bank is a 1025 institution.

21 Is it -- do you have an understanding as to
22 whether or not those banks from time to time would use
23 a mechanism of remotely created check to ensure a
24 consumer made a payment to an entity, call it a
25 utility?

1 A. Yes, I do, in fact, now that I know of what
2 you are talking about. Those are not remotely created
3 checks.

4 Q. And what are those?

5 A. Those are checks that the consumer instructs
6 the consumer's bank to create and typically mail to the
7 payee.

8 Q. Does the consumer sign those checks?

9 A. No.

10 Q. So how is that different than what you've
11 described?

12 A. The consumer's bank is in charge of creating
13 that check.

14 Q. The consumer's bank is in charge of creating
15 the check. So the distinction is whether or not the
16 consumer's bank is in charge of creating that check as
17 opposed to another merchant?

18 A. As opposed to the payee's bank. That is a
19 distinction, yes.

20 Q. What are some other distinctions?

21 A. Who is benefiting from the check. With a
22 remotely created check the same party that is
23 benefitting from the check, creates the check.

24 Q. And I'm not sure I follow in terms of who's
25 benefitting from the check; what do you mean?

1 A. Who gets the money from the check. The payee
2 gets the money from the check and creates the remotely
3 created check.

4 Q. So I want to make sure I understand. Is your
5 testimony that remotely created checks are specifically
6 defined as checks that are remotely created by the
7 enterprise that is paying itself; is that your
8 testimony?

9 A. That is an existing definition of remotely
10 created checks, yes.

11 Q. Okay. Now in this matter, I think you
12 testified that you didn't do anything particular to the
13 company at issue here, Integrity Advance; is that
14 right?

15 A. Correct.

16 MS. BAKER: Okay. No further questions.

17 JUDGE McKENNA: Thank you.

18 REDIRECT EXAMINATION

19 BY MS. CHUM:

20 Q. Mr. Baressi, you just testified that RCC's
21 were legal from 2008 to I believe you said 2013, yes?

22 JUDGE McKENNA: And that they are legal today.

23 BY MS. CHUM:

24 Q. And that they are legal today.

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MS. BAKER: Thank you.

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JUDGE McKENNA: You're welcome.

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The objection to the question is sustained.

13

The objection to the line of cross -- direct

14

examination is sustained.

15

And so you can move onto your next subject.

16

MS. CHUM: I have no further questions, Your

17

Honor.

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JUDGE McKENNA: All right.

19

MS. BAKER: Nothing further, thank you.

20

THE WITNESS: I'm done?

21

JUDGE McKENNA: Yes, sir.

22

MR. WHEELER: Your Honor, Enforcement Counsel

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would request that we recess for the day given that

24

Respondents asked for time to consider Enforcement

25

Exhibit 102 and then we can conclude -- they can

1 conduct their cross-examination of Mr. Hughes. We can
2 redirect. And that should be our last witness. Your
3 Honor.

4 JUDGE McKENNA: All right.

5 Off the record.

6 (The proceedings adjourned at 3:20 p.m.)


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REPORTER'S CERTIFICATE

I, Jeannie A. Milio, Registered Professional Reporter, an Official Court Reporter for the United States Coast Guard, do hereby certify that I stenographically recorded the proceedings in Consumer Financial Protection Bureau versus Integrity Advance, LLC and James R. Carnes, File No. 2015-CFPB-0029, held on July 20, 2016, at 9:30 a.m. (ET), at the FERC Building, 888 First St., N.E., Washington, DC, before the Honorable Parlen L. McKenna.

I further certify that the page numbers II-1 through II-196 constitute an official transcript of the proceedings as transcribed by me from my stenographic notes to the within typewritten matter in a complete and accurate manner.

In witness whereof, I have affixed my signature this 1st day of September, 2016.



Jeannie A. Milio, RPR
Official Court Reporter