

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029

_____)
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In the Matter of:)
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)

[Proposed] Stipulated
Protective Order

INTEGRITY ADVANCE, LLC and)
JAMES R. CARNES,)
)

Respondents.)
)
)
_____)

[PROPOSED] STIPULATED PROTECTIVE ORDER

Pursuant to 12 C.F.R. § 1081.119(c) and upon the joint stipulated motion of Integrity Advance, LLC, James R. Carnes, and Enforcement Counsel in this Administrative Proceeding, the protective order set forth in Attachment A and accompanying Non-Disclosure Certificate in Attachment B are hereby issued.

ORDERED:

Hon. Parlen L. McKenna
Administrative Law Judge
December ____, 2015

ATTACHMENT A

For the purpose of protecting the interests of the Parties in the administrative proceeding before the Consumer Financial Protection Bureau entitled *In re Integrity Advance, LLC and James R. Carnes*, File No. 2015-CFPB-0029 (Administrative Proceeding), against improper use and disclosure of Protected Material submitted or produced in connection with this Administrative Proceeding:

IT IS HEREBY ORDERED THAT this Stipulated Protective Order (Order) shall govern the handling of all Discovery Material.

1. **Definitions.** For purposes of this Order:

a. “Bureau” means the Consumer Financial Protection Bureau or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as Experts for purposes of this Administrative Proceeding.

b. “Counsel” means all counsel of record for Integrity Advance, LLC, James R. Carnes, and the Bureau, as well as their support staff.

c. “Discovery Material” means all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this Administrative Proceeding.

d. “Expert” means a person with specialized knowledge or experience in a matter pertinent to the Administrative Proceeding who has been retained by a Party or Counsel to serve as an expert witness or as a consultant in this action.

e. “Hearing Officer” means an administrative law judge or any other person duly authorized to preside over the above-captioned matter.

f. “Litigation Support Vendors” means persons or entities contracted by a Party for this litigation that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

g. “Party” means the Bureau, Integrity Advance, LLC, and James R. Carnes, including all of their officers, directors, employees, Bureau contractors, Counsel, and support staff.

h. “Producing Party” means a Party or Third Party that produces Discovery Material in this action.

i. “Protected Material” means any Discovery Material and any transcript of depositions or other pretrial or trial proceedings containing Personally Identifiable Information.

j. “Personally Identifiable Information” means: (1) any information which can be used to distinguish or trace the identity of a natural person who is not a Party, Party’s former or current employee, agent, attorney, vendor, Litigation Support Vendor, Counsel, or persons otherwise acting or who have acted on behalf of a Party, such as the individual’s name, address, email address, or other contact information, driver’s license number, Social Security number, taxpayer identification number, biometric records, financial account number, credit card or debit card number, State-issued identification number, passport number, place of birth, date of birth (other than year), any sensitive health information identifiable by individual, such as an individual’s medical records, and an individual’s name in combination with any of the aforementioned items; or (2) any information, other than name, which can be used to distinguish or trace the identity of a natural person who is a Party, such as an individual’s address where no business is

conducted, an email address used solely for personal communications, or other contact information related solely to non-business activities, driver's license number, Social Security number, taxpayer identification number, biometric records, financial account number, credit card or debit card number, State-issued identification number, passport number, place of birth, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records.

k. "Receiving Party" means a Party or Third Party that receives any Discovery Material from a Producing Party.

l. "Third Party" means any natural person, partnership, corporation, association, or other legal entity and their counsel other than the Bureau, Integrity Advance, LLC, James R. Carnes, and Counsel.

2. **Scope.** The protections conferred by this Order cover Protected Material (as defined above) and also any Discovery Material, including any Discovery Material copied, extracted, or excerpted from Protected Material. However, the protections conferred by this Order do not cover any information that is public knowledge at the time of disclosure to a Receiving Party or becomes public knowledge after its disclosure to a Receiving Party in a manner not involving a violation of this Order.

3. **Designating Discovery Material and Transcripts.** The Parties, in complying with discovery requests, disclosure requirements, any other requests for information, or other demands in this Administrative Proceeding, shall designate all such Material "SUBJECT TO PROTECTIVE ORDER IN 2015-CFPB-0029." An inadvertent failure to designate Discovery Material does not waive the protections under this Order. The Receiving Party must make reasonable efforts to assure that all

Discovery Materials are treated in accordance with the provisions of this Order.

Designation in conformity with this Order requires:

a. for information in documentary form (*e.g.*, paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix “SUBJECT TO PROTECTIVE ORDER IN 2015-CFPB-0029” to each page, or for electronic documents produced in native format, the Producing Party affix “SUBJECT TO PROTECTIVE ORDER IN 2015-CFPB-0029” to any images produced with the native document;

b. for transcripts of depositions or other pretrial or trial proceedings, that Parties ensure “SUBJECT TO PROTECTIVE ORDER IN 2015-CFPB-0029” is affixed to each page;

c. for information produced in some form other than documentary and for any other tangible items, that material be labeled “SUBJECT TO PROTECTIVE ORDER IN 2015-CFPB-0029” in a prominent place on the exterior of the container or containers in which the information or item is stored.

4. **Duration.** Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a court order otherwise directs. Final disposition shall be deemed to be the later of (a) dismissal of all claims and defenses in this action, with or without prejudice; or (b) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. Handling, Access to, and Use of Protected Material.

a. Basic Principles. Protected Material may be disclosed only to the categories of persons described in paragraph 5c of this Order. Disclosure of Protected Material to any such persons shall be only for the purposes of the preparation and hearing of this Administrative Proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Bureau may, subject to taking appropriate steps to preserve the confidentiality of such material, including taking steps to try to comply with this Order, use or disclose confidential material in a manner not inconsistent with its Rules of Practice, 12 C.F.R. Parts 1070, 1080, and 1081, or any other legal obligation imposed upon the Bureau.

b. Handling of Protected Material. Counsel are responsible for employing reasonable measures to control, consistent with this Order, duplication of, access to, and distribution of copies of Protected Material. Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order. Parties shall not duplicate any Protected Material except for use consistent with this Order.

c. Access to Protected Material. Unless otherwise ordered by the Hearing Officer, a Receiving Party may disclose Protected Material only to:

i. the Hearing Officer presiding over this Administrative Proceeding and any personnel assisting the Hearing Officer;

ii. judges and other court personnel of any court having jurisdiction over any proceedings involving this matter;

iii. stenographers engaged to transcribe depositions or other testimony conducted in this Administrative Proceeding;

- iv. Parties in this Administrative Proceeding and their Counsel;
- v. the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;
- vi. Persons retained by the Parties or Counsel to serve as Experts, Litigation Support Vendors, or to otherwise to provide assistance to Parties in connection with this Administrative Proceeding;
- vii. A witness during the course of that witness's testimony in this Administrative Proceeding or preparation of a potential witness; and
- viii. A Third Party, as necessary, to comply with a subpoena or court order in this Administrative Proceeding.

d. Non-Disclosure Certificate. The following persons must sign the "Non-Disclosure Certificate" (Exhibit B) and agree to be bound by the terms of this Order prior to viewing, accessing, being examined about, or retaining a copy of Protected Material not authored, received prior to this proceeding, or produced in this proceeding by them: i) persons retained by the Parties or Counsel to serve as Experts, Litigation Support Vendors, or to otherwise provide assistance to Parties in connection with this action; ii) witnesses who are not a Party or a representative of a Party, and iii) Third Parties. Any such persons who may have viewed or accessed Protected Material prior to issuance of this Order must sign the Non-Disclosure Certificate within five (5) business days of issuance of this Order. For a firm of Experts or Litigation Support Vendors, the requirements of this paragraph shall be deemed satisfied if one person with authority to do so signs the Non-Disclosure Certificate on behalf of the firm of Experts or Litigation Support Vendors. Non-Disclosure Certificates shall be retained by Counsel for the disclosing Party and shall be made available for *in camera* inspection upon a showing of

good cause, except that statements of any Experts shall not be made available until such time, if any, as the Party is obligated to identify such individuals.

e. Filing of Protected Material. If a Party wishes to file a document that contains Protected Material, any such document shall be maintained under seal and shall not be posted on the Bureau's website, produced in response to a request under the Freedom of Information Act, or otherwise made publicly available. The Parties shall make a good faith effort to secure a similar protective order to the extent that 1) any document that contains Protected Material is filed or lodged in any court having jurisdiction over any proceedings involving or relating to this Administrative Proceeding or to the underlying claims in this Proceeding, and 2) to the extent any transcript of any such proceeding containing Protected Material is made.

f. Where a document that contains Protected Material is maintained under seal, an expurgated copy of the document, with the Personally Identifiable Information redacted, must be filed publicly in accordance with 12 C.F.R. §§ 1081.112(e) and (f).

6. Handling of Discovery Material after Conclusion of this Administrative Proceeding.

a. Except as hereinafter provided or as agreed to by the Parties, within sixty (60) days after the conclusion of this litigation by final order (including the exhaustion of all appeals) or settlement, all originals and all copies of Discovery Material shall be returned to the Producing Party or destroyed by the Receiving Party or shall otherwise be maintained in a manner which ensures the confidentiality of the information as required by this Order, including retention of the information in conformance with federal recordkeeping requirements.

b. Insofar as the provisions of this Order restrict the disclosure and use of information produced, this Order shall continue to be binding after the final disposition of this litigation except that (a) there shall be no restriction on documents that are admitted as exhibits or filed in this Administrative Proceeding on a nonconfidential basis, and (b) any Party may seek further order of the Hearing Officer with respect to dissolution or modification of this Order.

7. Miscellaneous.

a. Modification. Nothing in this Order abridges the right of any person to seek its modification by the court. No modification by the Parties shall have force or effect of a court order unless the Hearing Officer approves the modification.

b. Right to Assert Other Objections. By stipulating to the entry of this Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Order. Similarly, no Party waives any right to object on any ground to use in evidence any of the material covered by this Order.

c. Inadvertent Disclosure of Protected Material. If a Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Order, the Party must immediately (a) notify in writing the Producing Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the Non-Disclosure Certificate. The inadvertent, unintentional, or *in camera* disclosure of Protected Material shall not,

under any circumstances, be deemed a waiver, in whole or in part, of any Party's claims of confidentiality.

d. Limitations. Nothing contained in this Order or any designation of Protected Material hereunder or any failure to make such designation shall be used or characterized by any Party as an "admission" by a Party or a Party opponent, nor shall any Party's designation of a document or information as Protected Material affect the admissibility into evidence of the document or information so designated. Moreover, nothing in this Order is intended to constitute an agreement regarding the scope of discovery.

EXHIBIT B

NON-DISCLOSURE CERTIFICATE

The undersigned hereby acknowledges that he or she has read the Stipulated Protective Order (the "Order") in the Administrative Proceeding before the Consumer Financial Protection Bureau entitled *In the Matter of Integrity Advance, LLC and James R. Carnes*, File No. 2015-CFPB-0029, understands its terms, and agrees to be bound by each of those terms. Specifically, and without limitation upon such terms, the undersigned agrees not to use or disclose any Protected Material made available to him or her, other than in accordance with the Order.

If the undersigned is signing on behalf of a firm of Experts or Litigation Support Vendors, the undersigned further states that he or she has authority to sign on behalf of the firm, and that he or she will ensure all personnel of the firm who work on this Administrative Proceeding are made aware of this Order and the firm's responsibilities hereunder.

Signature: _____

Name (type or print):

Address:

Telephone Number:

Date:

If Signing on Behalf of a Firm:

Position:

Name of Firm: