UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029

In the Matter of: **INTEGRITY ADVANCE, LLC and JAMES R. CARNES,** **Respondents.**	**ENFORCEMENT COUNSEL'S CONTROVERTED ISSUES OF FACT AND JUSTIFICATION FOR ITS REJECTED PROPOSED STIPULATIONS**

ENFORCEMENT COUNSEL'S CONTROVERTED ISSUES OF FACT AND JUSTIFICATION FOR ITS REJECTED PROPOSED STIPULATIONS

On March 9, 2016, the Hearing Officer ordered the parties in the above-captioned proceeding to meet and confer regarding which facts could be agreed upon and stipulated to by both parties. The parties have exchanged competing proposed stipulated facts and met and conferred to decide which facts both parties could agree upon. The parties filed a Joint Stipulations of Fact earlier today reflecting the outcome of this process.

The Hearing Officer also ordered each party to create a list of controverted issues of fact that would provide factual and legal justification for that party's refusal to stipulate to any facts proposed by the other party. Enforcement Counsel has listed the Respondents' controverted proposed facts below. Although the Hearing Officer must assume the truth of facts pleaded by Enforcement Counsel (the non-movant) at the

motion to dismiss stage, *see e.g.*, *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 164 (1993), in an effort to be helpful to the Hearing Officer, Enforcement Counsel has also provided affirmative justification for each stipulation to which Respondents would not agree.

Controverted Issues of Fact Proposed by Respondents

1. Integrity Advance has never been regulated, supervised, or subject to enforcement action by a Federal banking regulator.

Enforcement Counsel Response: Integrity Advance was regulated by the Federal Reserve Board ("FRB"), a federal banking regulator, because Integrity Advance was subject to the regulations promulgated by the FRB, including Regulations Z and E, the implementing regulations for the Truth In Lending Act and the Electronic Fund Transfer Act, respectively. Also, although not a "banking" regulator, the Federal Trade Commission has long had authority to bring an enforcement action against Integrity Advance. Finally, this proposed stipulation is irrelevant to the instant matter.

2. Integrity Advance developed, revised and amended the policies and procedures governing its application process and forms, disclosures and underwriting from 2007 until December 2012.

Enforcement Counsel Response- Enforcement Counsel is not in a position to know if Integrity Advance revised and amended its policies and procedures. In response to a CID, Integrity Advance produced only two contract templates that were used to generate contracts with consumers. *See* Exh. 10, 13. The completed consumer contracts that Integrity Advance produced all appear to have been generated using the templates produced. *See, e.g.,* Exh. 6, 7. The templates and contracts produced by Integrity

Advance contain very similar language for the provisions of the contracts relevant to this matter, suggesting that the contracts changed very little over time. In particular, the default auto-renewal and auto-workout provisions operated in the same fashion in all of the contracts, and Respondents disclosed similar information related to the cost of the loans in all the contracts. *Id.*

3. Prior to Director Cordray's appointment, the Bureau had no other "Officers of the United States" appointed to it.

Enforcement Counsel Response- This proposed stipulation asserts a legal conclusion. Additionally, it is unclear what Respondents mean in stating that the Bureau had no "Officers of the United States appointed to it." At a minimum, prior to Director Cordray's appointment, the Secretary of the Treasury, an official appointed by the President, was empowered to act for the Bureau. *See* 12 U.S.C. § 5586(a). Finally, this proposed stipulation is irrelevant to the instant matter.

4. Prior to Director Cordray's appointment, the Bureau had no other Director or any other personnel appointed by the President.

Enforcement Counsel Response- As stated above, prior to Director Cordray's appointment, the Treasury Secretary, who was appointed by the President, was empowered to act for the Bureau. Also, this proposed stipulation is irrelevant to the instant matter.

5. The Bureau did not exercise any of its "newly created" authorities (in contrast to the authorities transferred from other federal banking regulators and other

agencies) under the CFPA until the President's recess appointment of Director Cordray on January 4, 2012.

Enforcement Counsel Response- It is unclear what "newly created" authorities Respondents are referring to. The Bureau exercised some "newly created" authorities before the President's recess appointment of Director Cordray on January 4, 2012, such as the authority to enter into contracts and to hire personnel. If Respondents are referring to the ability to bring enforcement actions against non-bank entities, it is true that the Bureau did not exercise that authority until after the President's recess appointment of Director Cordray. In fact, the Bureau did not bring *any* enforcement action (even pursuant to transferred authorities) until after that date. *See* Press Release, http://www.consumerfinance.gov/newsroom/cfpb-capital-one-probe/ (announcing first public enforcement action on July 18, 2012). In any event, the authority to enforce the law against non-bank entities is not a "newly created" authority because the FTC has had authority to bring enforcement actions against non-banks since well before the Bureau's creation. Finally, this proposed stipulation is irrelevant to the instant matter.

6. Integrity Advance ceased any and all offering or providing of consumer financial products or services in or before June 2013.

Enforcement Counsel Response- Enforcement Counsel is not in a position to confirm this statement. To the best of our knowledge, the conduct giving rise to the violations alleged in the Notice of Charges ceased during the Summer of 2013.

7. Respondents did not engage in any activity subject to the Bureau's regulatory or enforcement authority after June 2013.

Enforcement Counsel Response- Enforcement Counsel's response is the same here as for controverted fact number 6 above.

8. The Bureau knew or reasonably should have known of the conduct alleged in the Notice on July 21, 2011.

Enforcement Counsel Response- This statement calls for a legal conclusion. Respondents have proffered no facts to support their assertion that the Bureau knew, or reasonably should have known, of the conduct in question on or before July 21, 2011. As of that date, the Bureau had not sent a civil investigative demand, received or reviewed a single document, taken any testimony, or seen Respondents' loan agreements. Indeed, as of that date, the Bureau was not aware of Respondent Carnes's existence. Furthermore, a significant portion of the unlawful conduct alleged in the Notice occurred after this date. Respondents proffer no facts to support a claim that the Bureau knew, or reasonably should have known, of Respondents' unlawful conduct before it happened.

The Bureau also notes that this proposed stipulation is irrelevant. This proposed fact appears to allude to 12 U.S.C. § 5564(g)(1), which provides that "[e]xcept as otherwise permitted by law or equity, no action may be brought under this title more than 3 years after the date of discovery of the violation to which an action relates." As the Bureau explained in its Opposition to Respondents' Motion to Dismiss, this statute of limitations applies only to actions brought in federal district court. The above-captioned proceeding was brought as an administrative proceeding under 12 U.S.C. § 5563, and that section does not establish a statute of limitations for administrative proceedings. Further, §5564 provides that "no action may be brought under this title

more than three years after the date of discovery of the **violation** to which an action relates." 12 U.S.C. § 5564(g)(1) (emphasis added). Hence, even if this section of the statute of applied, the relevant question would not be the date the "conduct" was discovered, but rather the date on which the Bureau determined that Respondents had violated the law.

9. The Bureau knew or reasonably should have known of the alleged violations referenced in the Notice on or before January 4, 2012.

Enforcement Counsel Response- Enforcement Counsel's response is the same here as for controverted fact number 8 above.

10. The Bureau knew or reasonably should have known of the alleged violations referenced in the Notice on or before October 15, 2012.

Enforcement Counsel Response- Enforcement Counsel's response is the same here as for controverted fact number 8 above.

11. The language of the "TIL Box" disclosures (not including the information disclosed) is identical to the model form provided by the Bureau in 12 C.F.R. § 1026 (App. H) (attached hereto as Exhibit A).

Enforcement Counsel Response- Respondents have refused to stipulate that all of Integrity Advance's contracts were modeled on the two templates provided by Integrity Advance in response to a CID. Exh. 10, 13. Absent such a stipulation, Enforcement Counsel is not in a position to stipulate as to the language used in responsive contracts that were never produced. Based on the evidence in the record, all of Integrity Advance's

contracts were in the format of either Form #1, Exh. 13, or Form #2, Exh. 10. With respect to contracts modeled on those two templates, the model form includes a significant amount of language (indeed, most of the form) that is not included in Respondents' disclosures in those contracts. While the language of the four boxes at the top of the model form is the same as the language used in Respondents' "TIL Box" disclosures (not including the information disclosed about any given contract), the "TIL Box" on the H-2 model loan form is formatted differently from Respondents' "TIL Box." The model form uses a bold outline on the 'Annual Percentage Rate' and 'Finance Charge' boxes which does not appear in the completed contracts produced by Respondents. *See* Exh. 6, 7. Furthermore, it is not clear that the font and spacing in Integrity Advance's contracts is identical to the model form. In any event, this is irrelevant to the instant matter because the Bureau claims that Integrity Advance violated TILA and Regulation Z by incorrectly disclosing terms of its contracts, not by failing to include boilerplate language or to use proper formatting.

12. At the time a loan was made, a consumer only owed the amount reflected in the Loan Agreement's "TIL Box."

<u>Enforcement Counsel Response</u>- It is not clear what Respondents mean in stating that a consumer "only owed the amount" shown in the TIL Box. Regulation Z requires that a creditor, like Integrity Advance, provide disclosures that "reflect the terms of the legal obligation between the parties." 12 C.F.R. § 1026.17(c)(1). With the same caveat that applied to Controverted Fact 11, Integrity Advance's disclosures did not meet this requirement. The consumer's obligation was to pay according to the default terms. Integrity Advance designed the default terms in its contracts such that consumers' loans

would automatically renew repeatedly, absent some affirmative action by the consumer. These automatic renewals led to a series of undisclosed payments. As of loan consummation, the consumer was legally obligated to pay, and Integrity Advance would automatically deduct, this series of auto-renewal and auto-workout payments. The amounts of these finance charges and payments were not included as part of the TILA disclosure in the "TIL Box." Enforcement Counsel included an example of the payments a customer was obligated to make based under the auto-renewal and auto-workout provisions in the contract in paragraph 31 of the Notice of Charges. Respondents admitted in their Answer that the payment chart contained therein represented a possible loan payment schedule. *See* Answer ¶ 31.

13. Approximately 95% of IA's consumers signed the ACH authorization.

Enforcement Counsel Response- The evidence in the record, including primarily the information produced by Respondents, does not demonstrate the truth of this statement. Indeed, in the Notice of Charges Enforcement Counsel alleged as follows: "Consumers could only receive loan proceeds by way of an electronic deposit which was authorized by the ACH authorization form." Respondents admitted this allegation. *See* Answer ¶ 40. Additionally, in its November 25, 2013 interrogatory response, Integrity Advance responded to an inquiry reading "describe each method (e.g. electronic fund transfer (EFT), paper check) by which a consumer may obtain, secure, and pay off a loan," with the response "[p]ursuant to the terms set forth in the Loan Agreement, a consumer could obtain a loan from the Company by automated clearing house ("ACH") deposit to his or her checking account." Exh. 11 at 5. Because consumers signed a single

ACH authorization that authorized both the receipt and withdrawal of funds, the logical inference is that all of the consumers signed the ACH authorization.

14. The OIGs' Letter is the only instance when any federal government entity has publically interpreted the Bureau's authority under Section 1066(a) of the Dodd-Frank Act.

<u>Enforcement Counsel Response</u>- Enforcement Counsel is not in a position to confirm that the OIG letter referenced above is the 'only' instance where a federal government entity interpreted 12 U.S.C. § 5586(a). Also, this proposed stipulation is irrelevant to the instant matter.

Justification for The Bureau's Proposed Stipulations

Counsel for Respondents would not agree to stipulate to any information testified to during investigational hearings based on a contention that the hearing transcripts are not admissible. However, the Bureau's adjudication rules state that "if it is relevant, material, and bears satisfactory indicia of reliability … transcripts of depositions, investigational hearings, prior testimony in Bureau or other proceedings, and any other form of hearsay shall be admissible and shall not be excluded solely on the ground that they are or contain hearsay." 12 C.F.R. § 1081.303(b)(3). Additionally, counsel for Respondents would not stipulate to any fact stemming directly from a document, contending that "the document speaks for itself."

1. **The Bureau is authorized to enforce federal consumer-financial law. 12 U.S.C. §§ 5511(c)(4), 5512(a), 5563, 5564.**

   Justification: 12 U.S.C. §§ 5511(c)(4), 5512(a), 5563, 5564.

2. **Federal consumer financial law includes the Truth in Lending Act ('TILA'), 15 U.S.C. §§ 1601 et seq., and the Electronic Fund Transfer Act ('EFTA'), 15 U.S.C. §§ 1693 et seq., except with respect to Section 920 of EFTA. 12 U.S.C. § 5481(12)(C), (O), (14).**

   Justification: 12 U.S.C. § 5481 (14) defines Federal consumer financial law to include enumerated consumer laws. 12 U.S.C. § 5481(12), defines enumerated consumer laws to include EFTA and TILA.

3. **The Bureau has jurisdiction over this matter pursuant to Sections 1053 and 1055 of the Consumer Financial Protection Act ('CFPA'). 12 U.S.C. §§ 5563, 5565.**

Justification: 12 U.S.C. § 5563 authorizes the Bureau to conduct hearings and adjudication proceedings with respect to any person, to ensure or enforce compliance with the provisions of Title X, and any other Federal law that the Bureau is authorized to enforce, including an enumerated consumer law. 12 U.S.C. § 5565 sets forth the relief available in an adjudication proceeding.

4. **Under 12 U.S.C. § 5563, the Bureau may bring adjudication proceedings to enforce federal consumer financial law.**

   Justification: See above.

5. **Carnes directly or indirectly supervised all Integrity Advance employees.**

   Justification: Both Respondent Carnes and Integrity Advance Chief Operating Officer Edward Foster testified that Carnes supervised Integrity Advance employees. *See* Exh. 2 (Carnes 32: 4-9) ("Did you have people who reported directly to you? A. In the beginning everybody reported directly to me and then when we promoted Mr. Foster, people – he reported to me, and everyone else reported to him. I think we gave you an org chart that shows that."); *see also* Exh. 8 (Foster 21: 23-25; 22: 1-5). Respondents also produced an organizational chart showing Carnes as the chief executive officer of Integrity Advance. *See* Exh. 9 (CFPB 000153).

6. **Carnes made the final decision whether to hire all Integrity Advance employees.**

   Justification: Carnes testified that he made the final decision to hire all Integrity Advance employees. *See* Exh. 2 (Carnes 40: 24-25) ("Again I made the final decision to hire everybody, but he [Mark Rondeau] was generally hired by Mr.

Foster."); *see also* Exh. 8 (Foster 22: 17-18); Exh. 2 (Carnes 37: 25); Exh. 2 (Carnes 38: 1-3).

7. **Carnes worked in the office with other Integrity Advance executives on a daily basis.**

   Justification: Carnes directly testified that he was in the office with other Integrity Advance employees on a daily basis. *See* Exh. 2 (Carnes32: 2-3).

8. **Carnes had an open door policy and was accessible to any Integrity Advance employee who wanted to talk.**

   Justification: Carnes directly testified that he maintained an "open door policy." *See* Exh. 2 (Carnes 37: 11-13).

9. **Carnes spoke daily with Integrity Advance Chief Operating Officer Edward Foster.**

   Justification: Both Carnes and Foster testified that they spoke on a daily basis. Exh. 8 (Foster 22: 19-24) ("Q. Your time as COO you indicated you still reported to Mr. Carnes; correct? A. That's correct. Q. How often did you two speak? A. During that time, daily -- generally daily"); Exh. 2 (Carnes 35: 15-17) ("Q. How often do you meet with Mr. Foster? A. Daily, not always about issues, but it could be everything").

10. **Carnes met with Integrity Advance Chief Operating Officer Edward Foster "a few times a week" about Integrity Advance business**.

    Justification: Carnes testified to this directly. *See* Exh. 2 (Carnes 35: 18-21).

11. **As CEO, Carnes had the authority to make all decisions governing Integrity Advance's policies and procedures**.

Justification: Carnes confirmed in his testimony that he held ultimate decision-making authority over Integrity Advance. *See* Exh. 2 (Carnes 32: 15-17).

12. Carnes reviewed the template attached as Ex. A before it was used to generate loan contracts.

Justification: Given that Carnes exercised ultimate authority over Integrity Advance's policies and procedures as CEO of the company (see preceding paragraph), it is a reasonable inference that he reviewed and approved the only two templates used by the company. *See* Exh. 13 (Loan Agreement Template 1 (CFPB000654-655, CFPB000640-645, CFPB000796-798), CFPB000467-469).

13. Carnes approved the use of the template attached as Ex. A.

Justification: Given that Carnes exercised ultimate authority over Integrity Advance's policies and procedures as CEO of the company (see preceding paragraphs), it is a reasonable inference that he reviewed and approved the only two templates used by the company. *See* Exh. 13 (Loan Agreement Template 1 (CFPB000654-655, CFPB000640-645, CFPB000796-798), CFPB000467-469)).

14. Carnes reviewed the template attached as Ex. B before it was used to generate loan contracts.

Justification: Given that Carnes exercised ultimate authority over Integrity Advance's policies and procedures as CEO of the company (see preceding paragraphs), it is a reasonable inference that he reviewed and approved the only two templates used by the company. *See* Exh. 10 (Loan Agreement Template 2 (CFPB683-697).

15. Carnes approved the use of the template attached as Ex. B.

Justification: Given that Carnes exercised ultimate authority over Integrity Advance's policies and procedures as CEO of the company (see preceding paragraphs), it is a reasonable inference that he reviewed and approved the only two templates used by the company. *See* Exh. 10 (Loan Agreement Template 2 (CFPB683-697).

16. **Integrity Advance generated all of its contracts with consumers using either the template attached as Ex. A or the template attached as Ex. B.**

Justification: During the investigation, the Bureau propounded a request on Integrity Advance instructing it to "identify and describe each version of all application forms, disclosures, contracts, enrollment forms, sign-up agreements, and any other document provided to the consumer during the marketing, offering, provision, or sale of the product or service during the Applicable Period." In response, Integrity Advance produced the two templates attached as Exs. A and B. Integrity Advance produced no other templates or forms for its contracts. All of the completed contracts produced to the Bureau by Integrity Advance use the language of one of these two templates.

17. **Integrity Advance, either directly or through a third party vendor, serviced the loans that it originated.**

Justification: Carnes and Foster testified that Integrity Advance relied on third party vendors to service loans during investigative hearings taken by the Bureau on June 17, 2014 and June 24, 2014, respectively, although Integrity Advance's Kansas City offices did handle some consumer complaints directly. Exh. 2 (Carnes 15:1-8, 193:2-19, 197:2-25, 198: 1-21), Exh. 8 (Foster 151: 17-22, 172: 13-

22, 175:5-13). Third party vendors invoiced Integrity Advance for its services. *See, e.g.*, Exh. 14 (Invoice from Clearvox to Integrity Advance (CFPB040708)).

18. **Integrity Advance, either directly or through a third party vendor, collected money from consumers related to the loans it originated**.

Justification: In responses to the January 7, 2013 Civil Investigative Demand, Integrity Advance described the process and methods the company used to collect money from consumers who had taken out loans with Integrity Advance. Exh. 11 (Respondents' November 25, 2013 CID Response at 5, 9 (CFPB042375, CFPB042379)). In addition, Integrity Advance produced records of consumer loan and payment histories, which captured the amounts of money that Integrity Advance collected from consumers who had taken out loans. *See, e.g.*, Exh. 20 (CFPB006002), Exh. 22 (CFPB06286).

19. **A majority of Integrity Advance consumers applied for a loan with the company through an online lead generator website.**

Justification: In the company's October 25, 2013 narrative response to interrogatories in the January 7, 2013 Civil Investigative Demand, the company stated: "The Company only acquired customers through the purchase of leads from third party lead generation companies." Exh. 12 ((Respondents' October 25, 2013 CID Response at 7 (CFPB035871)). During an investigative hearing taken by the Bureau on June 17, 2014, Carnes testified that over 99% of Integrity Advance's customers were obtained through lead aggregators. Exh. 2 (Carnes 164: 1-23).

20. **The lead generator websites did not contain information about loan terms specific to Integrity Advance's loans.**

Justification: Lead generators simply direct potential consumers to lenders. They do not provide specific terms of specific loans. *See, e.g.*, *Quik Payday, Inc. v. Stork*, 549 F.3d 1302, 1304 (10th Cir. 2008) ("'lead generators[]' [is] a term used for the intermediaries that solicit consumers to take out [payday] loans."), FTC New Release, "Payday Loan Lead Generators Settle FTC Charges" 2008 WL 2503243 (lead generators "advertise payday loans on their Web sites and collect information from consumers through their online applications. The respondents then sell this 'lead' information to lenders that ultimately offer payday loans to consumers."). In investigation hearings taken by the Bureau on June 17, 2014, Carnes explained that lead generators directed consumer loan applications to various lenders, including Integrity Advance. Exh. 2 (Carnes 170:1; 171:1-23). Additionally, Carnes's testimony suggests that Respondents had limited visibility into the lead generators' representations to consumers. *See* Exh. 2 (Carnes 165: 4-20; 171: 1-23).

21. **The lead generator websites did not contain information about loan costs specific to Integrity Advance's loans.**

Justification: *See* preceding paragraph.

22. **Integrity Advance consumers did not know the APR for their loan until after they had completed an online application**.

Justification: "Respondents admit that due to loan underwriting processes consumers did not know the APR for a loan until after they had completed an online application." Answer ¶ 19.

23. **When consumers completed an application on a lead generator website, their information was forwarded to Integrity Advance**.

Justification: In a narrative response to interrogatories in the January 7, 2013 Civil Investigative Demand, Integrity Advance stated that "customers were directed to the Company by lead generators[]" and consumer information obtained by the lead generators was passed to Integrity Advance. Exh. 11 (Respondents' November 25, 2013 CID Response at 6 (CFPB042376)).

24. **Integrity Advance used the consumer's information to populate the Integrity Advance application and loan documents**.

Justification: In an interrogatory response to the January 7, 2013 Civil Investigative Demand, Integrity Advance stated that consumer information obtained by the lead generators "populated the applicable loan documents[.]" Exh. 11 (Respondents' November 25, 2013 CID Response at 6 (CFPB042376)).

25. **Integrity Advance presented consumers with loan documents in two formats**.

Justification: In a narrative response to interrogatories in the January 7, 2013 Civil Investigative Demand, Integrity Advance stated, "The loan documents are presented in two formats." Exh. 11 (Respondents' November 25, 2013 CID Response at 6 (CFPB042376)).

26. **In one format, Integrity Advance presented the completed loan documents in four individual pieces: the application, the loan agreement, the ACH authorization, and the arbitration agreement**.

Justification: In a narrative response to interrogatories in the January 7, 2013 Civil Investigative Demand, Integrity Advance stated that, in one format, the loan document is "broken into its constituent pieces and consisted of TDC Form 1 (Application), TDC Form 2(a) (Loan Agreement), TDC Form 2b (ACH

Authorization), and Form 3 (Arbitration) and were presented by prospective customers individually." Exh. 11 (Respondents' November 25, 2013 CID Response at 6 (CFPB042376)).

27. **In another format, Integrity Advance presented the application, the loan agreement, the ACH authorization, and the arbitration agreement as a single document**.

    Justification: In a narrative response to interrogatories in the January 7, 2013 Civil Investigative Demand, Integrity Advance stated, "The second format, IADV_Entire Loan Document Template, is presented as one document." Exh. 11 (Respondents' November 25, 2013 CID Response at 6 (CFPB042376)).

28. **After Integrity Advance approved the loans, it sent some Integrity Advance consumers an electronic copy of the all loan documents presented as a single document**.

    Justification: Carnes testified that consumers received the loan forms as a single document after loan consummation. Exh 2 (Carnes 180: 6-25; 181: 1-8)

29. **Not every Integrity Advance consumer received a copy of their signed loan documents**.

    Justification: Some consumers reported to the BBB that they never saw a copy of their signed loan documents. *See, e.g.* Exh. 15 (CFPB037364), Exh. 16 (CFPB036690), Exh. 17 (CFPB037492).

30. **Each completed loan agreement sent to consumers included a Truth in Lending disclosure in a box (the 'TILA box').**

    Justification: Respondents admitted in their Answer that they provided Truth in Lending disclosures to consumers. Answer ¶ 25 (Admitted: "The first page of the

six page contract contained the Truth in Lending Act disclosures in bold print in the middle of the page, outlining the loan APR, finance charge, amount financed, and total of payments."). Additionally, every contract produced by Respondents to the Bureau contains a Truth in Lending disclosure in this format.

31. **The TILA box stated the loan APR, finance charge, amount financed, and total of payments**.

    Justification: See preceding paragraph.

32. **For each loan originated by the company, Integrity Advance calculated each part of the TILA box by assuming that the loan would be repaid in a single payment**.

    Justification: Respondents admitted this fact in their Answer. *See* Answer ¶ 26 (Admitted: "Respondents admit that disclosures stated a calculation that reflected loan repayment in one payment and did not state calculations that reflected all possible loan repayment schedules.").

33. **Some Integrity Advance contracts included a statement immediately below the TILA boxes stating that the payment schedule was "one (1) payment" of a sum equal to the loan amount plus a single finance charge**.

    Justification: Respondent produced a large number of executed consumer contracts containing this language. *See, e.g.*, Exh. 6 (CFPB002136). In addition, one of the templates, Ex. A, contained this language.

34. **All Integrity advance contracts based on Ex. A included a statement immediately below the TILA boxes stating that the payment schedule was "one (1) payment" of a sum equal to the loan amount plus a single**

finance charge.

Justification: *See* preceding paragraph.

35. **Some Integrity Advance contracts contained a statement below the TILA box that read "Itemization of Amount Financed."**

    Justification: Respondent produced a large number of executed consumer contracts containing this language. *See, e.g.*, Exh. 6 (CFPB002136). In addition, one of the templates, Ex. B, contained this language.

36. **For a $500 loan to a new consumer, the itemization of amount financed would include the following language: "Amount given to you directly: $500. Amount paid on Loan# [xx] with us: $650."**

    Justification: See preceding paragraph.

37. **Unless a consumer contacted Integrity Advance to change the terms of her loan, Integrity Advance auto-renewed the consumer's loan**.

    Justification: Respondents admit in their December 11, 2015 Answer to the Notice of Charges that "unless a consumer contacted Integrity Advance to change the terms of the loan … Integrity Advance renewed the consumer's loan." Answer ¶ 29. In addition, the language in the fine print of both templates, Exs. A and B, provides that the loans will automatically renew unless the borrower contacts Integrity Advance three business days prior to the payment due date to change the payment option. Exh. 10 (CFPB000685), Exh. 13 (CFPB000641). Consumer complaints further support this fact. *See e.g.*, Exh. 31 (CFPB037335), Exh. 26 (CFPB036746), Exh. 27 (CFPB036816), Exh. 28 (CFPB037373), Exh. 40 (CFPB42496), Exh. 34 (CFPB036843).

38. **In order to prevent Integrity Advance from auto-renewing the loan, a consumer had to contact Integrity Advance three business days before the payment was due and change the payment option**.

    Justification: In a narrative response to the January 7, 2013 Civil Investigative Demand, Integrity Advance indicated that, unless a consumer contacted Integrity Advance three business days before the payment due date, the consumer was auto-renewed. Exh. 11 (Respondents' November 25, 2013 CID Response at 9 (CFPB042379)). In addition, the language in the fine print of both templates, Exs. A and B, provides that the loans will automatically renew unless the borrower contacts Integrity Advance three business days prior to the payment due date to change the payment option. Exh. 13 (CFPB000685), Exh. 10 (CFPB000641). Consumer complaints further support this fact. *See, e.g.* Exh. 40 (CFPB042496), Exh. 28 (CFPB037373). In addition, clauses in Integrity Advance's loan agreements support this fact. Exh. 10 (CFPB000685), Exh. 13 (CFPB000640).

39. **If a consumer did not contact Integrity Advance three business days prior to a payment due date to change the payment option, Integrity Advance automatically renewed the loan up to four times**.

    Justification: In their December 11, 2015 Answer to the Notice of Charges, Respondents "admit that $50 would be automatically applied to a consumer's loan principal after four loan renewals, unless a consumer contacted Integrity Advance… to change the terms of the payment." Answer ¶ 30. In addition, clauses in Integrity Advance's loan agreements support this fact. Exh. 10 (CFPB000685), Exh. 13 (CFPB000641).

40. **The default payment option in all Integrity Advance consumer contracts was the auto-renewal option**.

Justification: Each of the contracts produced by Respondents contains this provision. *See* Justification for Fact 16 (regarding the form of all Integrity Advance contracts); Exh. 10 (CFPB000685), Exh. 13 (CFPB000641). In a narrative response to the January 7, 2013 Civil Investigative Demand, Integrity Advance indicated that, unless a consumer contacted Integrity Advance three business days before the payment due date, the consumer was auto-renewed. Exh. 11 (Respondents' November 25, 2013 CID Response at 9 (CFPB042379)).

41. **After four aut0-renewals, the default payment option for all Integrity Advance consumer contracts was the auto-workout option**.

Justification: Each of the contracts produced by Respondents contains this provision. *See* Justification for Fact 16 (regarding the form of all Integrity Advance contracts); Exh. 10 (CFPB000685), Exh. 13 (CFPB000641). In a narrative response to the January 7, 2013 Civil Investigative Demand, Integrity Advance stated that "If a customer failed to contact the Company after the fourth renewal, [the] Company had the option to put the customer into an auto-workout status." Exh. 11 (Respondents' November 25, 2013 CID Response at 9 (CFPB042379)).

42. **In order to change the terms of the contract to the pay-in-full payment option, a consumer had to contact Integrity Advance three business days prior to the payment due date and change the payment option**.

Justification: Each of the contracts produced by Respondents contains this provision. *See* Justification for Fact 16 (regarding the form of all Integrity

Advance contracts); Exh. 10 (CFPB000685), Exh. 13 (CFPB000641). In a narrative response to the January 7, 2013 Civil Investigative Demand, Integrity Advance stated that "If a customer contacted the Company three (3) business days prior to the payment due date pursuant to the Loan Agreement, a payoff for the total payment plus any accrued fees could be scheduled." Exh. 11 (Respondents' November 25, 2013 CID Response at 9 (CFPB042379)). Consumer complaints also support this fact. *See, e.g.,* CFPB 27 (CFPB036816) (Consumer reported, "[I] was told that the $150 was a fee that was deducted every month unless I called to tell them I wanted to pay the loan off 'early.' If I didn't call, the fee would be charged, and I would still owe the [full initial principal of $500.").

43. **The pay-in-full payment option was never the default payment option in Integrity Advance's consumer contracts**.

Justification: Each of the contracts produced by Respondents contains this provision. *See* Justification for Fact 16 (regarding the form of all Integrity Advance contracts); Exh. 10 (CFPB000685), Exh. 13 (CFPB000641). In their December 11, 2015 Answer to the Notice of Charges, Respondents "admit that $50 would be automatically applied to a consumer's loan principal after four loan renewals, unless a consumer contacted Integrity Advance... to change the terms of the payment." Answer ¶ 30. In addition, clauses in Integrity Advance's loan agreements support this fact. Exh. 10 (CFPB000685), Exh. 13 (CFPB000641). *See also* Exh. 11 (Respondents' November 25, 2013 CID Response at 9 (CFPB042379)).

44. **When Integrity Advance auto-renewed a loan it would debit only the finance charge from the consumer's account**.

Justification: Each of the contracts produced by Respondents contains this provision. *See* Justification for Fact 16 (regarding the form of all Integrity Advance contracts); Exh. 10 (CFPB000685), Exh. 13 (CFPB000641). Integrity Advance produced consumer payment histories that support this fact. *See, e.g.*, Exh. 19 (CFPB005400), Exh. 20 (CFPB006002), Exh. 21 (CFPB006008), Exh. 22 (CFPB006286), Exh. 23 (CFPB006308), Exh. 24 (CFPB006357).

45. **The payment of the finance charge by an auto-renewed consumer would not reduce the principal amount owed by the consumer**.

Justification: Each of the contracts produced by Respondents contains this provision. *See* Justification for Fact 16 (regarding the form of all Integrity Advance contracts); Exh. 10 (CFPB000685), Exh. 13 (CFPB000641). Integrity Advance produced consumer payment histories that support this fact. *See, e.g.*, Exh. 19 (CFPB005400), Exh. 20 (CFPB006002), Exh. 21 (CFPB006008), Exh. 22 (CFPB006286), Exh. 23 (CFPB006308), Exh. 24 (CFPB006357).

46. **When Integrity Advance auto-renewed a loan it would charge the consumer another finance charge equal to the initial finance charge.**

Justification: Integrity Advance produced consumer payment histories that support this fact. *See, e.g.*, Exh. 19 (CFPB005400), Exh. 20 (CFPB006002), Exh. 21 (CFPB006008), Exh. 22 (CFPB006286), Exh. 23 (CFPB006308), Exh. 24 (CFPB006357).

47. **If a consumer did not contact Integrity Advance to change the terms of her loan, Integrity Advance would automatically renew the loan four times**.

Justification: Each of the contracts produced by Respondents contains this

provision. *See* Justification for Fact 16 (regarding the form of all Integrity Advance contracts); Exh. 10 (CFPB000685), Exh. 13 (CFPB000641). In their December 11, 2015 Answer to the Notice of Charges, Respondents "admit that $50 would be automatically applied to a consumer's loan principal after four loan renewals, unless a consumer contacted Integrity Advance… to change the terms of the payment." Answer ¶ 30. In a narrative response to the January 7, 2013 Civil Investigative Demand, Integrity Advance indicated that if a customer failed to contact the company, the loan could be renewed four times, and the consumer was debited the finance fee and any accrued fees. Exh. 11 (Respondents' November 25, 2013 CID Response at 9 (CFPB042379)). Integrity Advance produced consumer payment histories that support this fact. *See, e.g.*, Exh. 19 (CFPB005400), Exh. 20 (CFPB006002), Exh. 21 (CFPB006008), Exh. 22 (CFPB006286), Exh. 23 (CFPB006308), Exh. 24 (CFPB006357).

48. **Each renewal would include the payment, by the consumer, of the full finance charge**.

Justification: Each of the contracts produced by Respondents contains this provision. *See* Justification for Fact 16 (regarding the form of all Integrity Advance contracts); Exh. 10 (CFPB000685), Exh. 13 (CFPB000641). Integrity Advance produced consumer payment histories that support this fact. *See, e.g.*, Exh. 19 (CFPB005400), Exh. 20 (CFPB006002), Exh. 21 (CFPB006008), Exh. 22 (CFPB006286), Exh. 23 (CFPB006308), Exh. 24 (CFPB006357). *See also* Exh. 11 (Respondents' November 25, 2013 CID Response at 9 (CFPB042379)).

49. **Payment of each of these finance charges would not reduce the principal amount owed by the consumer.**

Justification: Each of the contracts produced by Respondents contain this provision. *See* Justification for Fact 16 (regarding the form of all Integrity Advance contracts); Exh. 10 (CFPB000685), Exh. 13 (CFPB000641). Integrity Advance produced consumer payment histories that support this fact. *See, e.g.*, Exh. 19 (CFPB005400), Exh. 20 (CFPB006002), Exh. 21 (CFPB006008), Exh. 22 (CFPB006286), Exh. 23 (CFPB006308), Exh. 24 (CFPB006357).

50. **After Integrity Advance auto-renewed a loan four times, if the consumer did not contact Integrity Advance three business days prior to the next payment date to change the payment option, the company would put the consumer into auto-workout status**.

Justification: Each of the contracts produced by Respondents contains this provision. *See* Justification for Fact 16 (regarding the form of all Integrity Advance contracts); Exh. 10 (CFPB000685), Exh. 13 (CFPB000641). In a narrative response to the January 7, 2013 Civil Investigative Demand, Integrity Advance stated that "If a customer failed to contact the Company after the fourth renewal, [the] Company had the option to put the customer into an auto-workout status." Exh. 11 (Respondents' November 25, 2013 CID Response at 9 (CFPB042379)).

51. **During auto-workout, Integrity Advance would debit the consumer an amount equal to a finance charge plus $50. (11/15/13 Rog response page 9).**

Justification: Each of the contracts produced by Respondents contains this provision. *See* Justification for Fact 16 (regarding the form of all Integrity Advance contracts); Exh. 10 (CFPB000685), Exh. 13 (CFPB000641). In a

narrative response to the January 7, 2013 Civil Investigative Demand, Integrity Advance stated, "In the auto-workout status, a customer was assessed the accrued finance charges and fees plus $50 on each Pay Date after the fourth (4th) renewal payment due date until all amounts owed under the Loan Agreement were paid in full." Exh. 11 (Respondents' November 25, 2013 CID Response at 9 (CFPB042379)).

52. **During auto-workout, Integrity Advance applied the $50 towards the loan principal.**

Justification: Each of the contracts contains this provision. *See* Justification for Fact 16 (regarding the form of all Integrity Advance contracts); Exh. 10 (CFPB000685), Exh. 13 (CFPB000641). Integrity Advance's narrative response to the January 7, 2013 Civil Investigative Demand and consumer loan payment histories support this fact. Exh. 11 (Respondents' November 25, 2013 CID Response at 9 (CFPB042379)). *See, also, e.g.*, Exh. 19 (CFPB005400), Exh. 20 (CFPB006002), Exh. 21 (CFPB006008), Exh. 22 (CFPB006286), Exh. 23 (CFPB006308), Exh. 24 (CFPB006357).

53. **During auto-workout, after each debit Integrity Advance charged the consumer a new finance charge based on the new principal amount**.

Justification: Integrity Advance produced consumer loan payment histories that support this fact. *See, e.g.*, Exh. 19 (CFPB005400), Exh. 23 (CFPB006308), Exh. 21 (CFPB006009).

54. **Unless a consumer changed the payment option, when a loan was in auto-workout, on each payment date Integrity Advance would debit the finance charge plus $50, apply the $50 to the loan principal, and**

charge a new finance charge until the loan principal was zero.

Justification: Each of the contracts produced by Respondents contain this provision. *See* Justification for Fact 16 (regarding the form of all Integrity Advance contracts); Exh. 10 (CFPB000685), Exh. 13 (CFPB000641). Integrity Advance's narrative response to the January 7, 2013 Civil Investigative Demand and consumer loan payment histories support this fact. Exh. 11 (Respondents' November 25, 2013 CID Response at 9 (CFPB042379)). *See also, e.g.*, Exh. 19 (CFPB005400), Exh. 20 (CFPB006002), Exh. 21 (CFPB006008), Exh. 22 (CFPB006286), Exh. 23 (CFPB006308), Exh. 24 (CFPB006357).

55. **For a new Integrity Advance consumer taking a $300 loan, Integrity Advance stated in the TILA box that the finance charge would be $90**.

    Justification: Integrity Advance charged a finance fee of $30 for every $100 borrowed for new customers. *See, e.g.* Exh. 40 (CFPB042496) (Consumer complaint indicating that "the website stated fees would be maximum $30 per 100 borrowed.") Respondents also produced contracts reflecting this arrangement. *See*, e.g., Exh. 6 (CFPB002136).

56. **For a new Integrity Advance consumer taking a $300 loan, Integrity Advance stated in the TILA box that the Total of Payments would be $390**.

    Justification: See preceding paragraph.

57. **In order to pay only $390, that consumer would have to contact Integrity Advance three business days before the payment date to change the payment option to the pay-in-full option**.

    Justification: Answer ¶ 29. In Respondents' November 25, Interrogatory

Response they admitted that if a consumer failed to contact the company three days before their payment due date, the consumers loan would be renewed automatically. *See* Exh. 11 at 9. This language is also contained in each executed contract produced to the Bureau by Respondents. *See* Exh. 6 (CFPB002136).

58. **If that consumer did not affirmatively contact Integrity Advance and allowed the default repayment schedule to occur, that consumer would make eleven payments totaling $1065**.

Justification: In the Notice of Charges, the Bureau provided a chart showing the full auto-renewal and auto workout schedule for a $300 loan given to a new Integrity Advance customer. *See* Notice at ¶ 31. The Respondents admitted in their Answer that this chart, which reflected a total repayment amount of $1065 was accurate. *See* Answer ¶ 31 ("Respondents admit that the loan repayment schedule described in paragraph 31 is one possible loan repayment schedule. . . .").

59. **Integrity Advance consumers who had their loans renewed paid more in finance charges than the amount disclosed in the TILA box**.

Justification: The chart contained in paragraph 31 of the Notice of Charges reflects this. Each of the contracts contain the default auto-renewal and auto-workout provisions, *see* Justification for Fact 16 (regarding the form of all Integrity Advance contracts); Exh. 10 (CFPB000685), Exh. 13 (CFPB000641), and Respondents admitted in their Answer, "Respondents admit that disclosures stated a calculation that reflected loan repayment in one payment and did not state calculations that reflected all possible loan repayment schedules." Answer ¶ 26.

60. **Integrity Advance consumers who had their loans renewed paid more in 'total of payments' than what was disclosed in the TILA box**.

Justification: The chart contained in paragraph 31 of the Notice of Charges reflects this. Each of the contracts contain the default auto-renewal and auto-workout provisions, *see* Justification for Fact 16 (regarding the form of all Integrity Advance contracts); Exh. 10 (CFPB000685), Exh. 13 (CFPB000641), and Respondents admitted in their Answer, "Respondents admit that disclosures stated a calculation that reflected loan repayment in one payment and did not state calculations that reflected all possible loan repayment schedules." Answer ¶ 26.

61. **Integrity Advance did not disclose to consumers their individualized payment schedule under the auto-renewal and auto-workout process**.

Justification: Respondents have not produced anything during the course of the investigation demonstrating that they provided individualized payment schedules to consumers. As addressed above, numerous consumer complaints indicate that consumers did not understand how the rollovers and payment schedule worked. Additionally, Respondents admitted in their Answer that Integrity Advance only provided single payment disclosures. *See* Respondents' Answer, ¶ 26) (Admitted: "Respondents admit that disclosures stated a calculation that reflected loan repayment in one payment and did not state calculations that reflected all possible loan repayment schedules.").

62. **Integrity Advance's consumer contracts did not state the total amount a consumer had to pay to satisfy the loan if the consumer did not**

contact Integrity Advance to change the default payment option in the contract.

Justification: See Justifications for Facts 60 and 61.

63. **Integrity Advance's consumer contracts did not state the total amount in finance charges a consumer would be charged if the consumer did not contact Integrity Advance to change the default payment option in the contract**.

Justification: See Justifications for Fact 60 and 61.

64. **Integrity Advance's consumer contracts did not state the total amount a consumer had to pay under the default auto-renewal and auto-workout payment options**.

Justification: See Justifications for Fact 60 and 61.

65. **Integrity Advance's consumer contracts did not state the total amount in finance charges that a consumer would be charged under the default auto-renewal and auto-workout payment options**.

Justification: See Justifications for Fact 60 and 61.

66. **The operation of the auto-renewal provision did not vary according to which template was used to generate a consumer's contract**.

Justification: Respondents admitted that unless a consumer contacted Integrity Advance to change the terms of the loan Integrity Advance renewed the consumer's loan. Answer ¶ 29. Each of the contracts contain the same default auto-renewal and auto-workout provisions, *see* Justification for Fact 16 (regarding the form of all Integrity Advance contracts); Exh. 10 (CFPB000685), Exh. 13 (CFPB000641).

67. **The operation of the auto-workout provision did not vary according to which template was use to generate a consumer's contract**.

Justification: Respondents admitted that "$50 would be automatically applied to a consumer's loan principal after four loan renewals, unless a consumer contacted Integrity Advance . . . to change the terms of payment." Answer ¶ 30. Each of the contracts contain the default auto-renewal and auto-workout provisions, *see* Justification for Fact 16 (regarding the form of all Integrity Advance contracts); Exh. 10 (CFPB000685), Exh. 13 (CFPB000641).

68. **Approximately 85% of Integrity Advance consumers had their loan renewed by the company**.

Justification: Carnes testified that 85-90% of consumers experienced rollovers. Exh. 2 (Carnes 227:13-16).

69. **Carnes testified under oath that 10 to 15 percent of Integrity Advance consumers repaid their loan without a rollover**.

Justification: *See* Justification for Fact 68.

70. **Some consumers did not understand how the default payment option of Integrity Advance's contract worked**.

Justification: Consumers reported to the BBB that they did not understand that the default payment option was to continue to pay finance fees that did not pay down the loan. *See, e.g.* Exh. 25 (CFPB036793) ("I assumed … they were going to continue taking 90 dolars on my pay day until the 300 dollars was paid off. Now June 2012 I am still getting 90 dollars taken out of my account and was told today that their default payment option is that you pay the finance fee of 90 dollars as an exten[s]ion[.] … I was never told the payment plans and did not

choose the exten[s]ion plan as my payment option[.]"), Exh. 30(CFPB037029) ("I called them asking why they were continuing to take money f[r]om my account when they charge $30.00 per 100.00 you receive. This would make my payback $150.00 for the 500..00 I borrower which totals a payback of 650.00. I have paid them $950.00 and they said I should have called in to make the payment and the $150.00 they kept deducting was only a fee for keeping the loan open!"), *see also* Exh. 26(CFPB036746), Exh. 27 (CFPB036816).

71. **Some consumers complained once Integrity Advance had debited their account for more than the total of payments reflected in the TILA disclosure**.

Justification: Consumers filed complaints once they realized that Integrity Advance had debited their account for more than the amount disclosed in the TILA disclosure. Exh. 31(CFOPB037335) (Requesting refund of amount above amount disclosed in the TILA box, as "the truth in lending statement on their contract, page 2 clearly statements in the Total of Payments section "The amount you will have paid after you have made all payments as scheduled $650."; I believe this is pretty clear."), (Exh. 26 (CFPB036746) ("The amount that was [loaned] to me was 300.00 according to my papers it would cost me 390.00. As of today … they have taken 500.00 out of my account and say [I] still owe them 400.00 more."), Exh. 27 (CFPB036816) (Complaining that Integrity Advance had deducted $750 on a $500 loan and stated that the consumer still owed an additional $650 when the TILA disclosure indicated that the cost of a $500 loan was $650.), Exh. 28 (CFPB037373) (Consumer stated that Integrity Advance had

taken out $1,125 on a $500 loan even though "[i]t is clearly stated in my contract that $650 is my truth in lending amount.").

72. **Carnes knew that some consumers had not understood that their first four auto-renewal payments would not reduce loan principal**.

Justification: Carnes testified during the Bureau's June 17, 2014 investigative hearing that he was a aware that a "common complaint" that consumers had was that they did not understand that auto-renewal payments "weren't going towards principal and that they were going toward interest only." Exh. 2 (Carnes 243:1-12).

73. **Integrity Advance is a creditor under the Truth in Lending Act**.

Justification: Regulation Z defines a creditor as "[a] person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract or by agreement when there is no note or contract." 12 C.F.R. § 1026.17. Integrity Advance extended credit more than 25 times in the years that it was in operation, as required by 12 C.F.R. § 226.17(v). Exh. 11 (Respondents' November 25, 2013 CID response, page 15-16).

74. **Integrity Advance extended closed-end credit under the Truth in Lending Act and Regulation Z**.

Justification: Regulation Z defines closed-end credit as credit other than "open-end credit." 12 C.F.R. § 1026.2(10). Regulation Z defines open-end credit, among other things, as credit that "is generally made available to the extent that any outstanding balance is repaid." 12 C.F.R. § 226.2(20)(iii). Integrity Advance did

not allow consumers to regain access to credit amounts by making payments towards principal.

75. **The Truth in Lending Act and Regulation Z require that creditors disclose "clearly and conspicuously" in writing "the terms of the legal obligation between the parties."**

    Justification: 12 C.F.R. § 1026.17(a), (c).

76. **The CFPA defines enumerated statues to include the Truth in Lending Act**.

    Justification: This can be found at 12 U.S.C. § 5481(12)(O).

77. **Under the CFPA, covered persons' and service providers' violations of an enumerated statute are considered violations of the CFPA**.

    Justification: This can be found at 12 U.S.C. § 5536(a)(1)(A).

78. **If Integrity Advance violated the Truth in Lending Act and Regulation Z, it also violated the CFPA**.

    Justification: 12 U.S.C. §§ 5481(12)(O), 5536(a)(1)(A).

79. **The cost of an Integrity Advance loan was material to consumers**.

    Justification: Cost is material because it affects consumers' purchasing decisions. *See, e.g.*, *F.T.C. v. NHS Systems, Inc.*, 936 F.Supp.2d 520, 532 (E.D. Penn. 2013) (Misrepresentations that included total cost "were material, as they would have affected the consumer's purchasing decision and the consumers would have justifiably relied on the information."). Integrity Advance's consumers reported that they considered what they understood to be the terms of the loan, and only subsequently discovered significantly higher costs associated with the loan. *See, e.g.*, Exh. 32 (CFPB042484) (Consumer was initially told that "payments were

$180 a month for a $600, which wound [up] being $780 with finance charges. … I wound up paying $1705 for a $600 that I actually owed $780 with the finance charges."), Exh. 40 (CFPB042496) ("I borrowed $500, the explanation on the website stated fees would be maximum $30 per 100 borrowed. I assumed $650 would be paid back. … Once it hit $750 total I was convinced it was paid. Then another $200 comes out[.]"); Exh. 29 (CFPB036611) ("I read the agreement and I read what I thought it said, $150.00 on $500.00. … After they auto drafted $750.00 out of my checking account … I called to say I over paid. I found out at that time that the $300.00 they were auto drafting … every month was a convenience fee and none of the monies drawn were applied to the $500.00 loan."); *see also* Exh. 33 (CFPB042500), Exh. 30 (CFPB037029), Exh. 31 (CFPB037335).

80. **The total amount of finance charges Integrity Advance charged consumers for a given loan was material to consumers**.

Justification: Finance charges are material to consumers, because for loans from Integrity Advance the total of the finance charges represent the total cost of the loan to the borrower. *See, e.g.*, *Steele v. Ford Motor Credit Co.*, 783 F.2d 1016, 1019-20 (11th Cir. 1986) ("[A]ny understatement of the finance charge is material because any understatement would be of some significance to a reasonable consumer. Although this proposition assumes that the finance charge is somehow more important than other required disclosures, that assumption makes sense. The finance charge is the total cost of the loan to the borrower. Although other factors might also be relevant, cost would likely be of prime importance to most reasonable consumers shopping for loans."). The number of finance charges and

the total cost associated with a payday loan are material terms of a loan contract. *See, e.g. F.T.C. v. AMG Services, Inc.* 29 F.Supp.3d 1338, 1372 (D. Nevada 2014) (The payday lenders' "representations were 'material.' . . . [T]he number of finance charges, the total amount owed, the existence of an automatic renewal plan, and the procedure for declining the renewal plan are material terms of a loan contract."). In complaints to the BBB, consumers highlighted the total amount of finance charges. *See, e.g.* Exh. 35 (CFPB036672) (After discovering "the payments I made were only "Finance Charges" and nothing went towards the principal" the consumer concluded, "$840 worth of finance charges on a 3 month $400 loan is a complete rip off."), Exh. 45 (CFPB037533) (If the total cost of the finance charges "was made clear in the beginning, I would have gone through the procedures to repay without being charged their finance fee."), Exh. 34(CFPB036843) (Reporting that customer service "informed me that I still owed $450 (on a $500 loan) and all the money I had paid were only finance charges. $600 in finance charges!").

81. **The total of payments charged by Integrity Advance for a given loan was material to consumers**.

Justification: *See* Justification for Facts 79 and 80. The number of finance charges and total amount owed are material terms of a payday loan. *F.T.C. v. AMG Services*, 29 F.Supp.3d at 1372 (Noting that consumers complained that Defendant had withdrawn more from their accounts than the loan cost). Consumers reported the high total of payments charged by Integrity Advance to the BBB. *See, e.g.* Exh. 42 (CFPB037146) ("I want to know how this isn't considered illegal that they just took $1705 for an original loan of $500?"), Exh.

36 (CFPB042452) ("Since taking out the loan, I have paid them back more than the principal loan value of 500. They have been paid $1480.00 (8 payments of 185.00)."); *see also* Exh. 37 (CFPB042456), Exh. 38 (CFPB042471), Exh. 39 (CFPB42473).

82. **Integrity Advance's contract was likely to mislead reasonable consumers as to the total finance charge that Integrity Advance would charge for a given loan**.

Justification: Each of the contracts contain the default auto-renewal and auto-workout provisions and Respondents admitted in their Answer, "Respondents admit that disclosures stated a calculation that reflected loan repayment in one payment and did not state calculations that reflected all possible loan repayment schedules." Answer ¶ 26. Although according to Carnes, Integrity Advance rolled over 85-90% of its customers' loans, the company provided its customers with contracts that only reflected the cost of repayment at the customer's next pay date. Under the contract, absent affirmative action by the customers, the consumer's obligation was to pay much more in finance charges than the amount disclosed in the Integrity Advance's TILA disclosures. This gross understatement of the likely charges for a consumer was misleading.

83. **Integrity Advance's contract was likely to mislead reasonable consumers as to the total of payments that Integrity Advance would charge for a given loan**.

Justification: See Justification for Fact 82.

84. **Consumers suffered a substantial injury when Integrity Advance debited their accounts for more money than what was disclosed in**

their TILA disclosures.

Justification: Monetary loss is an injury in fact. *See, e.g. Van Patten v. Vertical Fitness Group, LLC*, 22 F.Supp.3d 1069, 1080 (S.D. Cal. 2014) (quoting *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 325 (Sup. Ct. of Cal. 2011)) ("If a party has alleged or proven a personal, individualized loss of money or property in any nontrivial amount, he or she has also alleged or proven injury in fact."); *Tourgeman v. Collins Financial Services, Inc.*, No. 08–CV–01392 JLS (NLS), 2009 WL 6527758, at *7-8 (S.D. Cal Nov. 23, 2009 (quoting *Troyk v. Farmers Group, Inc.*, 171 Cal.App.4th 1305, 1346 (Cal.Ct.App.2009)) (internal quotation marks omitted) ("An injury to a tangible property interest, such as money, generally satisfies the 'injury in fact' element for standing. . . . [O]ut-of-pocket expenses or money spent [is] a financial harm that constitute[s an] 'injury in fact' for purposes of standing under the UCL and in federal court. . . . Since Plaintiff's legal defense fees are 'out-of-pocket expenses,' the Court concludes that he has adequately alleged an injury in fact. . . . This same allegation also satisfies the second UCL standing requirement, loss of money or property. . . . Plaintiff's alleged 'injury in fact' and 'lost money' are one and the same."). A consumer who has received something other than what she bargained for has suffered a loss. *See, e.g., In re Baycol Products Litigation*, 265 F.R.D. 453, 459 (D. Minnesota 2008) (quoting *re West Virginia Rezulin Litigation*, 214 W.Va. 52, 75 (W.V. Sup. Ct. of Appeals 2003)) ("'Loss; has been held synonymous with deprivation, detriment and injury. It is a generic and relative term . . . . Whenever a consumer has received something other than what he bargained for, he has suffered a loss of money or property. That loss is ascertainable if it is measurable even though

the precise amount of the loss is not known. . . . When a product fails to measure up, the consumer has been injured, he has suffered a loss."). Consumers reported to the BBB that they experienced financial hardship when Integrity Advance debited their accounts for more money than what was initially disclosed. *See e.g.,* Exh. 30 (CFPB037029) (After being charged well over the $150 finance fee for a $500 loan, consumer requested, "Please help me I have a family to support and can't just give my money away with nothing to show for it."); Exh. 33 (CFPB042500) (Consumer reporting that she now has a negative balance on her bank account and has been charged overdraft fees as a result of the auto loan renewals); *see also, e.g.* Exh. 32 (CFPB042484).

85. **Because the disclosures of the finance charge and total of payments in Integrity Advance's contracts with consumers are calculated by assuming that the loan will be repaid in a single payment when the default payment option in the contracts is auto-renewal followed by auto-workout, the disclosure is likely to cause substantial injury to consumers**.

Justification: Each of the contracts contain the default auto-renewal and auto-workout provisions and Respondents admitted in their Answer, "Respondents admit that disclosures stated a calculation that reflected loan repayment in one payment and did not state calculations that reflected all possible loan repayment schedules." Answer ¶ 26.

86. **That injury was not reasonably avoidable by consumers**.

Justification: *See* Justification for Fact 82. Consumers reported to the BBB that they did not understand the terms of the loan and thus could not avoid injury.

See, e.g. Exh. 25 (CFPB036793) ("I assumed … they were going to continue taking 90 dolars on my pay day until the 300 dollars was paid off. Now June 2012 I am still getting 90 dollars taken out of my account and was told today that their default payment option is that you pay the finance fee of 90 dollars as an exten[s]ion[.] … I was never told the payment plans and did not choose the exten[s]ion plan as my payment option[.]"), Exh. 30 (CFPB037029) ("I called them asking why they were continuing to take money f[r]om my account when they charge $30.00 per 100.00 you receive. This would make my payback $150.00 for the 500..00 I borrower which totals a payback of 650.00. I have paid them $950.00 and they said I should have called in to make the payment and the $150.00 they kept deducting was only a fee for keeping the loan open!"), *see also* Exh. 26 (CFPB036746), Exh. 27 (CFPB036816).

87. **Calculating the finance charge and total of payments disclosed in Integrity Advance's contracts with consumers by assuming that the loan would be repaid in a single payment when the default payment option in the contracts was auto-renewal followed by auto-workout provided no benefit to consumers**.

    Justification: Obtaining information about the cost of a loan that did not reflect the consumer's obligation could not benefit a consumer, but was instead likely to confuse the consumer.

88. **Calculating the finance charge and total of payments disclosed in Integrity Advance's contracts with consumers by assuming that the loan would be repaid in a single payment when the default payment**

option in the contracts was auto-renewal followed by auto-workout provided no benefit to competition.

Justification: To the extent that consumers were comparing the cost of different loan options, Integrity Advance's understated disclosures may have discouraged consumers from doing business with another lender.

89. **The injury to consumers caused by calculating the finance charge and total of payments in Integrity Advance's contracts with consumers by assuming that the loan will be repaid in a single payment is not outweighed by any benefit to consumers or competition**.

Justification: See justification for preceding paragraphs.

90. **As a part of the online application and approval process, Integrity Advance consumers were presented with an ACH agreement that authorized electronic ACH debits**.

Justification: "Respondents admit that consumers signed a form authorizing automatic electronic withdrawals from their accounts as one way of repaying a loan[.]" Answer ¶ 39. This fact is supported by the Integrity Advance loan templates and executed loans. Exh. 13(CFPB000796-798), Exh. 10 (CFPB000690-692); *see also, e.g.* Exh. 6 (CFPB002142-2144), Exh. 7 (CFPB033708-33709).

91. **Consumers could not receive initial approval of an online application without signing the ACH agreement**.

Justification: On June 24, 2014, during an investigative hearing, Foster testified that "without all signatures showing up as being completed there can be no provisional approval or final approval of an application." Exh. 8 (Foster, 84:1-7).

92. **Integrity Advance consumers could only receive loan proceeds by way of an electronic deposit which was authorized by the ACH authorization**.

Justification: Respondents admit in their Answer that "Consumers could only receive loan proceeds by way of an electronic deposit which was authorized by the ACH authorization form." Answer ¶ 40.

93. **The ACH authorization form authorized Integrity Advance to withdraw auto-renewal and auto-workout payments**.

Justification: This fact is supported by the Integrity Advance loan templates and executed loans. Exh. 13 (CFPB000796-798), Exh. 10 (CFPB000690-692); *see also, e.g.* Exh. 6 (CFPB002142-2144), Exh. 7 (CFPB033708-33709).

94. **Unless consumers were seven days or less from a payday at the time of loan application, Integrity Advance's contracts required payment on the consumers' next date on which the consumers received regular wages or salary from their employers (the 'Pay Date')**.

Justification: Customer's first due date cannot be less than 8 days or more than 24 days. Exh. 57 (INTEG000022). Additionally, Integrity Advance's Procedures Manual states that "[e]ach collector will work every account in a matter that's consistent with dates and actions for the frequency of the customer's pay date. Exh. 58 (INTEG 000131).

95. **When Integrity Advance auto-renewed a loan, the next payment date was the consumer's next Pay Date that was at least 14 days after the prior payment date**.

Justification: Integrity Advance's Loan Agreements included the following text

under the "Renewal" paragraph: "The term "Pay Date," as used in this Loan Agreement, refers to the next time following the Payment Due Date, that you receive regular wages or salary from your employer. Because Renewals are for at least fourteen (14) days, if you are paid weekly, your loan will not be Renewed until the next Pay Date that is at least fourteen days after the prior Payment Due Date." Exhs. 10, 13 Loan Agreement Templates 1 and 2. Also, Integrity Advance's procedures manual stated that if a consumer did not make payment arrangements, the collector "will schedule the next ACH debit on consumer's next payday and noted in the accounts as $____ **deducted on** ____, **Refi Sneak** for first returns." Exh. 58 (INTEG000131). (emphasis in original).

96. **When Integrity Advance debited a consumer whose loan was in auto-workout, the next payment date was the consumer's next Pay Date that was at least 14 days after the prior payment date**.

Justification: Integrity Advance's Loan Agreements included the following text under the "Renewal" paragraph: "The term "Pay Date," as used in this Loan Agreement, refers to the next time following the Payment Due Date, that you receive regular wages or salary from your employer. Because Renewals are for at least fourteen (14) days, if you are paid weekly, your loan will not be Renewed until the next Pay Date that is at least fourteen days after the prior Payment Due Date." Exhs. 10, 13 Loan Agreement Templates 1 and 2. Integrity Advance's Procedures Manual included a script that read in part, "For your convenience, we will not withdraw the whole amount on your payday. Instead, we will automatically refinance the loan for four pay periods, unless you instruct us

otherwise." (INTEG000122) It also provided: "Customers may refinance their loan for four consecutive paydays . . ." Exh. 58 (INTEG 000124).

97. Withdrawn.

98. Withdrawn.

99. **If a consumer was paid every two weeks, the auto-renewal and auto-workout payment dates would be every two weeks on the consumer's Pay Date**.

Justification: See preceding paragraphs.

100. **If a consumer was paid twice a month, the auto-renewal and auto-workout payment dates would be on the consumer's Pay Date**.

Justification: See preceding paragraphs.

101. **The electronic ACH withdrawals initiated by Integrity Advance during auto-renewal and auto-workout occurred at regular intervals**.

Justification: Carnes testified that Integrity Advance designed its system to automatically withdraw renewal payments on consumers' regularly occurring paydays. *See* Exh. 2 (Carnes 160: 2-4; 23-24) (" . . . our software would only take two weeks worth every two weeks . . ."); (Carnes 225:1-3) ("Q. How was the repayment date set in relation to the pay date? A. It was on the payday."); (Carnes 228: 15-17) ("Q. Were those five rollovers set up in the amount of the finance charge as part of the automated process? A. Yes ACH was the primary method by which Integrity Advance consumers could pay off their loan.").

102. **ACH was the primary method by which Integrity Advance consumers could pay off their loan**.

Justification: This fact was stated in Integrity Advance's interrogatory responses and confirmed in Carnes's investigational hearing. See Exh. 11 (Respondents' November 25, 2013 CID Response, p 5.) ("ACH debit was also the primary method of payment to make payments and to pay off a loan balance."); *See* Exh. 2 (Carnes 228: 15-17) ("Q. Were those five rollovers set up in the amount of the finance charge as part of the automated process? A. Yes ACH was the primary method by which Integrity Advance consumers could pay off their loan.").

103. **To repay in a manner other than ACH transfer, a consumer had to prove to Integrity Advance that he or she could pay by another means**.

Justification: Both Carnes and Foster testified that consumers had to illustrate the ability to repay by means other than ACH. *See* Exh. 2 (Carnes 217: 13-17). (". . . but I think if they didn't give us authorization, they had to provide some kind of payment system so we could get paid back. . . .") Exh. 8 (Foster 85: 4-13) ("My understanding of the process would have been that if that individual [who did not want to sign the ACH authorization] met every other underwriting criteria and thresholds, et cetera, including all the other signatures, and could arrange for a different form of payment they could have been approved for a loan.").

104. **Integrity Advance's loan documents do not contain any indication that consumers could receive a loan from the company without signing the ACH authorization form**.

Justification: Each of the contracts produced by Respondents contains a provision requiring consumers to authorize ACH transactions. *See* Justification for Fact 16 (regarding the form of all Integrity Advance contracts). Neither the contract templates nor the executed consumer contracts contain any language

suggesting that consumers could receive a loan without signing the ACH authorization. Exh. 13 (CFPB000640-645, CFPB000467-469, CFPB000640-645, CFPB000796-798).

105. **The ACH authorization contains the language stating that it "remain[s] in full force and effect" until a consumer's indebtedness to Integrity Advance is repaid**.

Justification: In their Answer, Respondents confirmed that this language appeared in the ACH authorization form. *See* Respondents' Answer, ¶ 45.

106. **When consumers signed the ACH authorization, they authorized Integrity Advance to debit any payments pursuant to the auto-renewal provisions in the contracts**.

Justification: Integrity Advance's loan contracts were designed such that the auto-renewal process was authorized at loan consummation. *See* Exh. 13 (CFPB 000796-98).

107. **When consumers signed the ACH authorization, they authorized Integrity Advance to debit any payments pursuant to the auto-workout provisions in the contracts**.

Justification: Integrity Advance's loan contracts were designed such that the auto-workout process was authorized at loan consummation. *See* Exh. 13 (CFPB 000796-98).

108. **The electronic fund transfers authorized by the ACH authorization were preauthorized under Regulation E. 12 C.F.R. § 1005.2(k).**

Justification: 12 C.F.R. § 1005.2(k) defines a preauthorized electronic fund transfer as an electronic fund transfer authorized in advance to recur at

substantially regular intervals. Integrity Advance only loaned to consumers who were paid on a regular interval of every other week or twice monthly.

109. **The CFPA defines enumerated statutes to include the Electronic Fund Transfer Act**.

Justification: This can be found at 12 U.S.C. § 5481(12)(C).

110. **Under the CFPA, covered persons' and service providers' violations of an enumerated statute violate the CFPA**.

Justification: This can be found at 12 U.S.C. § 5536(a)(1)(A).

111. **If Integrity Advance violated the Electronic Fund Transfer Act and Regulation E, it also violated the CFPA**.

Justification: 12 U.S.C. §§ 5481(12)(C), 5536(a)(1)(A).

112. **Integrity Advance's ACH agreement contained a provision that allowed the company to execute demand drafts on consumers' accounts**.

Justification: Integrity Advance's loan agreement templates and executed loan contracts contained a provision that allowed Integrity Advance to execute demand drafts on consumers' bank accounts. Exh. 13 (CFPB000797), Exh. 10 (CFPB000691); *see also, e.g.* Exh. 6 (CFPB002143-2144), Exh. 7 (CFPB033709). Each of the contracts produced by Respondents contains this provision. *See* Justification for Fact 16 (regarding the form of all Integrity Advance contracts).

113. **The demand draft provision stated "[i]f you revoke your authorization you agree to provide us with another form of payment acceptable to us and you authorize us to prepare and submit one or**

more checks drawn on Your Bank Account so long as amounts are owed to us under the Loan Agreement. ”

Justification: Integrity Advance's loan agreement templates and executed loans contained this language. Exh. 13 (CFPB000797), Exh. 10 (CFPB000691); *see also, e.g.* Exh. 6 (CFPB002143-2144), Exh. 7 (CFPB033709).

114. **Integrity Advance did not require consumers to sign or initial the demand draft provision separately**.

Justification: Integrity Advance's loan agreement templates and executed loans did not contain a separate provision requiring consumers to sign or initial the demand draft provision seperately. Exh. 13 (CFPB000797), Exh. 10 (CFPB000691); *see also, e.g.* Exh. 6 (CFPB002143-2144), Exh. 7 (CFPB033709).

115. **The demand draft provision does not state that the checks to be drawn on a consumer's bank account do not have to be signed by the consumer**.

Justification: Integrity Advance's loan agreement templates and executed loans did not inform consumers that checks drawn on a consumer's bank account did not have to be signed by the consumer. Exh. 13 (CFPB000797), Exh. 10 (CFPB000691); *see also, e.g.* Exh. 6 (CFPB002143-2144), Exh. 7 (CFPB033709).

116. **The demand draft provision does not state that the checks to be drawn on a consumer's bank account can be submitted without prior warning to the consumer**.

Justification: Integrity Advance's loan agreement templates and executed loans did not inform consumers that checks could be submitted without prior warning

to the consumer. Exh. 13 (CFPB000797), Exh. 10 (CFPB000691); *see also, e.g.* Exh. 6 (CFPB002143-2144), Exh. 7 (CFPB033709).

117. **Some Integrity Advance consumers withdrew the company's authorization to initiate ACH debits on their bank accounts**.

Justification: Consumers reported to the Better Business Bureau (BBB) that they withdrew Integrity Advance's authorization to initiate ACH debits. *See, e.g.* Exh. 41 (CFPB036619) ("I sent a letter to this company revoking any ACH authorization[.]"), Exh. 45 (CFPB037533) ("I put a stop payment on my account to prevent any more ACH payments."), Exh. 48 (CFPB042507) ("They took a total of $750 out of my account before I went to my bank to put a stop payment on them."); *see also* Exh. 42 (CFPB037146), Exh. 43 (CFPB037194), Exh. 44 (CFPB037293).

118. **Some of the Integrity Advance consumers withdrew the company's authorization to initiate ACH debits on their bank accounts because the company had withdrawn more than consumers believed they owed**.

Justification: Consumers reported to the BBB that they withdrew Integrity Advance's authorization to initiate ACH debits after realizing that they were being overcharged for their loans. *See, e.g.* Exh. 45 (CFPB037533) (Consumer stopped ACH debits after discovering that "[a] total of $715 had been debited from my account by then for the $300 loan." The "repayment terms were not clearly explained nor was the total number of payments. I was le[]d … to believe that a $90 dollar debit would occur as my loan payment and the total amount of the loan would be $390. There were two large unauthorized deductions … which

caused me to call and inquire about the initial $300 loan agreement. … I was informed that, I was supposed to call the company and tell them I wanted to start repaying the loan and that the $90 dollars was the finance charge …. If that was made clear in the beginning, I would have gone through the procedures to repay without being charged their finance fee.”), Exh. 47 (CFPB042445) (“I have now placed a[] block on my account and possibly may close my bank account because … they continue to take money out of my account[.] … I have paid over $1000.00 for a $500.00 loan.”), Exh. 44 (CFPB037293) (“I am paying Integrity Advance back $1300.00 for borrowing $500.00 This is predatory lending at it[]s worst. … This has been a real financial upset and I have stopped the automatic debits[.]”); *see also* Exh. 41 (CFPB 036619), Exh. 42 (CFPB037146), Exh. 43 (CFPB037194), Exh. 48 (CFPB042507).

119. **Integrity Advance used the demand draft provision to withdraw money from the accounts of some of the consumers who had withdrawn ACH authorization**.

Justification: Carnes testified during the Bureau's June 17, 2014 investigative hearing that, if a consumer revoked ACH authorization, Integrity Advance was “able to create a demand draft.” Exh. 2 (Carnes 219:7-18). In addition, consumers reported to the BBB that Integrity Advance continued to use demand drafts to withdraw money from their accounts after consumers had revoked their ACH authorization. *See, e.g.* Exh. 48 (CFPB042507) (“They took a total of $750 out of my account before I went to my bank to put a stop payment on them. … [W]ithout getting any notification from my bank or Integrity, my bank just authorized a check of $650 taken out of my account and sent it to Integrity.”),

Exh. 44 (CFPB037293) ("It was explained that I was borrowing $500.00 and at $150.00 a month for a total of $650.00 I would have this cash advance paid off. Now Integrity Advance is stating that the $650.00 I have already paid is only the finance charge and I have not paid any toward principal and my next pay day which is Jan. 15th they will be taking out $250.00 and then the money will start being applied toward principal. … This has been a real financial upset and I have stopped the automatic debits not to come out of my account from this company any longer but unfortunately my Credit Union states they have ways of getting around by using a check number which I have never given them a check number."), Exh. 46 (CFPB037548 ("I placed a stop payment on the account for debits and [Integrity Advance] submitted an electronic check that was not authorized for payment."), Exh. 41 (CFPB036619) (Integrity Advance "illegally attempted to deny my bank account for another [$]206, even though they received timely revocation of any ACH authorization AND I have LEGALLY overpaid them for the funds I received from them!"), Exh. 42 (CFPB037146) ("I contacted my bank and had them stop any payment requests from Integrity. On 4/1/10, Integrity submitted 3 unauthorized checks to my bank … for a total of $955. Their checks also caused an additional $210 in overdraft charges."), Exh. 43 (CFPB037194) ("I called them today 10/16/09 because they took out $490 from my account after [I] stopped payment from my account. They sent a check thru my account which [I] never authorized."), Exh. 45 (CFPB037533) ("I put a stop payment on my account to prevent any more ACH payments. On 5/20/09, two additional unauthorized electronic withdraw[a]ls were made from my

account … bringing the total debited from my account to $1,045 for a $300 dollar loan.").

120. **Consumers who withdrew Integrity Advance's ACH authorization suffered substantial injury when Integrity Advance debited money from their accounts using demand drafts**.

Justification: Monetary loss is an injury in fact. *See, e.g. Van Patten v. Vertical Fitness Group, LLC*, 22 F.Supp.3d 1069, 1080 (S.D. Cal. 2014) (quoting *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 325 (Sup. Ct. of Cal. 2011)) ("If a party has alleged or proven a personal, individualized loss of money or property in any nontrivial amount, he or she has also alleged or proven injury in fact."); *Tourgeman v. Collins Financial Services, Inc.*, No. 08–CV–01392 JLS (NLS), 2009 WL 6527758, at *7-8 (S.D. Cal Nov. 23, 2009 (quoting *Troyk v. Farmers Group, Inc.*, 171 Cal.App.4th 1305, 1346 (Cal.Ct.App.2009)) (internal quotation marks omitted) ("An injury to a tangible property interest, such as money, generally satisfies the 'injury in fact' element for standing. . . . [O]ut-of-pocket expenses or money spent [is] a financial harm that constitute[s an] 'injury in fact' for purposes of standing under the UCL and in federal court. . . . Since Plaintiff's legal defense fees are 'out-of-pocket expenses,' the Court concludes that he has adequately alleged an injury in fact. . . . This same allegation also satisfies the second UCL standing requirement, loss of money or property. . . . Plaintiff's alleged 'injury in fact' and 'lost money' are one and the same."). A consumer who has received something other than what she bargained for has suffered a loss. *See, e.g., In re Baycol Products Litigation*, 265 F.R.D. 453, 459 (D. Minnesota 2008) (quoting *re West Virginia Rezulin Litigation*, 214 W.Va. 52, 75 (W.V. Sup.

Ct. of Appeals 2003)) ("'Loss; has been held synonymous with deprivation, detriment and injury. It is a generic and relative term . . . . Whenever a consumer has received something other than what he bargained for, he has suffered a loss of money or property. That loss is ascertainable if it is measurable even though the precise amount of the loss is not known. . . . When a product fails to measure up, the consumer has been injured, he has suffered a loss."). Consumers reported to the BBB that they experienced financial hardship as a result of Integrity Advance's practice of using demand drafts against consumers who had revoked Integrity Advance's ACH authorization. *See, e.g.* Exh. 42 (CFPB037146) (After Integrity advance submitted three unauthorized checks to the consumer's bank, resulting in overdraft charges and total payments of $1,705 on a $500 loan, consumer reported that "Integrity Advance has wiped out my savings, put in an extreme financial risk, and have made me feel like less than a person."), Exh. 47 (CFPB042445) (After putting a block on bank account, consumer reported that Integrity Advance continued to take money out of her account, which put her "in a financial situation" as she has "paid over $1,000.00 for a $500.00 loan. … This has put me in a financial strain."), Exh. 43 (CFPB037194) (Integrity Advance took out an additional $490 even though consumer had stopped payment from her bank account and had already paid over $1,400 on a $500 loan.), Exh. 45 (CFPB037533) (Consumer stopped ACH authorization after $715 had been debited on a $300 loan, but Integrity Advance used demand drafts to take out an additional $330.), Exh. 44 (CFPB037293) (Reporting that Integrity Advance had taken $1,300 for a $500 loan by the time consumer stopped the ACH debits.), Exh. 46 (CFPB037548) (After consumer stopped ACH authorization, Integrity

Advance used demand drafts on consumer; at the time of reporting Integrity Advance had taken a total of $1,090 on a $400 loan.); *see also* Exh. 47 (CFPB042445), Exh. 48 (CFPB042507).

121. **That injury was not reasonably avoidable by consumers**.

Justification: The demand draft provision was inconspicuous in the Loan Agreement. Its language was unclear. Consumers were not required to acknowledge the provision separately. Once Integrity Advance invoked the provision, consumers had already suffered financial harm.

122. **Using demand drafts to debit consumers accounts when they have rescinded ACH authorization provides no benefit to consumers**.

Justification: By rescinding their ACH authorization consumers have stated to their bank and to Integrity Advance that they do not believe that the company is entitled to access their bank accounts.

123. **Using demand drafts to debit consumers accounts when they have rescinded ACH authorization provides no benefit to competition**.

Justification: Consumers may have chosen to use another company to obtain a loan if they had realized that Integrity Advance was able to obtain access to their bank accounts after they had revoked their ACH authorizations

124. **The injury to consumers caused by using demand drafts when they have rescinded ACH authorization is not outweighed by any benefit to consumers or competition**.

Justification: *See* preceding paragraphs.

125. **Integrity Advance's net income from January 2010 – September 2010 was $13,874,072.**

Justification- Integrity Advance produced documentation stating this figure. *See* Exh. 59 (INTEG 000211).

126. **Integrity Advance's net income from January – October 2011 was $12,109,552**.

Justification: Integrity Advance produced documentation stating this figure. *See* Exh. 51 (CFPB 000713).

127. **Integrity Advance's net income from January –October 2012, was $12,078,239**.

Justification: Integrity Advance produced documentation stating this figure. *See* Exh. 53 (CFPB 00342).

128. **In 2011, Integrity Advance originated 65,036 loans with a total principal of $29,328,900**.

Justification: Respondents provided these figures in their November 25, 2013 interrogatory response. *See* Exh. 11at 15.

129. **In 2012, Integrity Advance made originated 56,161 loans with a total principal of $25,963,800**.

Justification: Respondents provided these figures in their November 25, 2013 interrogatory response. *See* Exh. 11 at 16.

130. **In attachment 11(g) to Respondents November 25, 2013 CID response, the numbers in the "No. of Loans" column reflect new loans originated in a given "Origin Month," excluding auto-renewals and auto-workouts**.

Justification: Integrity Advance did not consider rollover to be new loans. See Exh. 10, 13 (template contracts).

131. **Carnes was a 100% owner of an entity called Willowbrook Marketing LLC**.

Justification: Respondents produced an organizational chart indicating that Carnes owned Willowbrook Marketing in its entirety. *See* Exh. 9 (CFPB 000153).

132. **In 2011, Willowbrook Marketing received a $4,208,821 distribution from Hayfield**.

Justification: Integrity Advance produced documentation stating this figure. *See* Exh. 54 (CFPB000405).

133. **In 2012, Willowbrook Marketing received a $2,229,498 distribution from Hayfield**.

Justification: Integrity Advance produced documentation stating this figure. *See* Exh. 56 (CFPB 000238).

134. **In November 2012, Hayfield entered into an asset purchase agreement with EZ Corp. Inc**.

Justification: *See* Exh. 1 (APA – CFPB036417).

135. **Under the terms of the asset purchase agreement, EZ Corp. purchased, among other things, the intellectual property and consumer lists owned by Integrity Advance**.

Justification: The asset purchase agreement explicitly states that EZ Corp. purchased these assets owned by Integrity Advance. Exh. 49 (APA page 4).

136. **The asset purchase agreement calls for at least $50,775,906 to be paid by EZ Corp. in exchange for certain Hayfield assets**.

Justification: *See* Exh. 1 (CFPB 36418-16419).

137. **After the asset purchase agreement was signed, Willowbrook Marketing received 300,000 shares of EZ Corp. stock**.

Justification: Carnes confirmed this information in his investigational hearing testimony. See Exh. 2 (Carnes 132:3-17).

138. **After the asset purchase agreement was signed, Willowbrook Marketing received between $5 million and $10 million in cash**.

Justification: Carnes confirmed this information in his investigational hearing testimony. See Exh. 2 (Carnes 133:8-25; 134:1-4).

139. **In November 2013, Willowbrook Marketing received approximately $5 million as part of a supplemental payment under the asset purchase agreement**.

Justification: Carnes testified that Willowbrook had received this supplemental payment from EZ Corp. *See* Exh. 2 (Carnes 136:3-8).

140. **In November 2014, Willowbrook Marketing received approximately $2.5 million as part of a supplemental payment under the asset purchase agreement**.

Justification: Willowbrook was scheduled to receive this as a part of a supplemental payment under the asset purchase agreement. *See* Exh. 1 (CFPB 036419).

141. **In November 2015, Willowbrook Marketing received approximately $2.5 million as part of a supplemental payment under the asset purchase agreement**.

Justification: Willowbrook was scheduled to receive this as a part of a

supplemental payment under the asset purchase agreement. *See* Exh. 1 (CFPB 036419).

142. Withdrawn

143. Withdrawn.

144. Withdrawn

145. Withdrawn.

146. Subtitle C to Title X took effect "on the designated transfer date."

Justification: 12 U.S.C. § 5531 note.

147. The designated transfer date was July 21, 2011.

Justification: 75 Fed. Reg. 57252 (September 20, 2010).

148. Withdrawn.

149. Withdrawn.

150. The Truth in Lending Act ('TILA') took effect in 1969.

Justification: Pub. L. No. 90-321 § 504(b) (1968).

151. **The Bureau has charged Integrity Advance with violations of TILA that occurred after 1969**.

Justification: The Notice of Charges alleges that Integrity Advance offered loans to consumers from May 15, 2008 through December 2012. (Notice of Charges, ¶ 12). Respondents admit this paragraph. (Respondents' Answer, ¶ 12).

152. **The provisions of TILA and its implementing regulation that the Bureau has charged Integrity Advance with violating were in effect at all times during which Integrity Advance engaged in the challenged conduct.**

Justification: [78 FR 11004, Feb. 14, 2013; 78 FR 69753, Nov. 21, 2013; 78 FR

80107, Dec. 31, 2013] Source: 76 FR 44242, July 22, 2011; 76 FR 79772, Dec. 22, 2011; 77 FR 69738, Nov. 21, 2012; 77 FR 69739, Nov. 21, 2012; 77 FR 70114, Nov. 23, 2012; 78 FR 44718, July 24, 2013; 80 FR 32687.

153. The Electronic Fund Transfer Act took effect in 1979.

Justification: Pub. L. No. 95-630, Title XXI, § 2101 (1978).

154. **The Bureau has charged Respondents with violations of EFTA that occurred after 1979.**

Justification: The Notice of Charges alleges that Integrity Advance offered loans to consumers from May 15, 2008 through December 2012. Exh____ (Notice of Charges, ¶ 12). Respondents admit this paragraph. Exh ____(Respondents' Answer, ¶ 12).

155. **The provisions of EFTA and its implementing regulation that the Bureau has charged Integrity Advance with violating were in effect at all times during which Integrity Advance engaged in the challenged conduct**.

Justification: Enacted Legislation Pub.L. 90-321, Title IX, § 902 , as added Pub.L. 95-630, Title XX, § 2001 , Nov. 10, 1978, 92 Stat. 3728.

156. **The CFPA's prohibition on unfair, deceptive, and abusive acts and practices applies to "covered persons," among others. 12 U.S.C. §§ 5531(a), 5536(a)(1).**

Justification: 12 U.S.C. § 5531 provides that "The Bureau may take any action authorized under subtitle E to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer

financial product or service, or the offering of a consumer financial product or service."

157. **The statute defines "covered person" to include "any person that engages in offering or providing a consumer financial product or service," such as "extending credit" that is "offered or provided for use by consumers primarily for personal, family, or household purposes."**

Justification: 12 U.S.C. § 5481(5), (6), (15).

158. **At the time Integrity Advance engaged in the allegedly unlawful conduct in this case, it offered loans to consumers primarily for personal, family, or household purposes.**

Justification: Integrity Advance's website featured testimonials from consumers attesting to their intended personal use of the loan. "My car payment was due and I just didn't have the money – luckily I found iAdvanceCash just in time. Thank you." Exh 57 (INTEG 000039). I needed extra money to help pay for my prescriptions. I will definately [sic] use iAdvanceCash again." Exh. 57 (INTEG 000041) Exh. 57 (INTEG INTEG000010.)

159. **At the time that Integrity Advance engaged in the allegedly unlawful conduct in this case, it was a "covered person."**

Justification: Under 12 U.S.C. § 5481(6), a covered person means any person that engages in offering or providing a consumer financial product or service.

160. **The statute provides that a "related person" "shall be deemed to mean a covered person."**

Justification: Under 12 U.S.C. § 5481(25)(B), a related person shall be deemed to

mean a covered person for all purposes of any provision of Federal consumer financial law.

161. **The statute defines "related person" to include "any director, officer, or employee charged with managerial responsibility for ... [a] covered person."**

Justification: 12 U.S.C. § 5481(25)(C)(i).

162. **Carnes was a director and officer of Integrity Advance charged with managerial responsibility for Integrity Advance.**

Justification: In Respondents' Answer, they admit that Carnes "did function as President and CEO of Integrity Advance." (Respondents' Answer, ¶ 6.) Carnes testified that he had ultimate say over the company's policies and procedures. (Exh 2 Carnes 32:15-17).

163. **Carnes is a "related person" and thus a "covered person**."

Justification: See preceding paragraphs.

164. **The definitions of "covered person" and "related person" took effect on July 22, 2010.**

Justification: 12 U.S.C. § 5301 note. Pub.L. 111-203, § 2, July 21, 2010, 124 Stat. 1386.

165. Withdrawn.

166. Withdrawn.

167. Withdrawn.

168. Withdrawn.

169. **The Bureau initiated this administrative proceeding pursuant to 12 U.S.C. § 5563.**

Justification: *See* the Notice of Charges at ¶¶ 1, 2.

170. **12 U.S.C. § 5563 does not contain a statute of limitations provision.**

Justification: *See* 12 U.S.C. § 5563.

171. **15 U.S.C. § 1607, a section of the Truth in Lending Act, is entitled "Administrative Enforcement."**

Justification: *See* 15 U.S.C. § 1607(a)(6).

172. **The Bureau is listed in 15 U.S.C. § 1607(a)(6) as an entity with the power to administratively enforce the Truth in Lending Act.**

Justification: *See* 15 U.S.C. § 1607(a)(6).

173. 15 U.S.C. § 1607 does not contain a statute of limitations provision.

Justification: *See* 15 U.S.C. § 1607(a)(6).

174. **15 U.S.C. § 1693o, a section of the Electronic Fund Transfer Act, is entitled "Administrative Enforcement."**

Justification: *See* 15 U.S.C. § 1693o.

175. **The Bureau is listed in 15 U.S.C. § 1693o(5) as an entity with the power to administratively enforce the Electronic Fund Transfer Act.**

Justification: *See* 15 U.S.C. § 1693o(5).

176. **15 U.S.C. § 1693o does not contain a statute of limitations provision.**

Justification: *See* 15 U.S.C. § 1693o.

177. **When Integrity Advance auto-renewed a loan, the terms of the loan did not change**.

Justification: As seen above, the consumer was obligated at loan consummation to pay all auto-renewal and auto-workout payments.

178. **When Integrity Advance auto-renewed a loan, Integrity Advance did not send the consumer another agreement listing the new payment date.**

Justification: The loan agreement templates do not contain forms for new disclosures after auto-renewal. *See* Exhs. 10, 13.

179. **When Integrity Advance auto-renewed a consumer's loan, Integrity Advance did not require the consumer to sign any new loan documents**.

Justification: See preceding paragraph.

180. **When Integrity Advance acted under the auto-workout provision of the contract, the terms of the loan did not change**.

Justification: As seen above, the consumer was obligated at loan consummation to pay all auto-renewal and auto-workout payments.

181. **When Integrity Advance charged consumers under the auto-workout provisions of the contract, Integrity Advance did not send the consumer another agreement listing the new payment date or the new finance charge**.

Justification: The loan agreement templates do not contain forms for new disclosures during auto-workout. *See* Exhs. 10, 13.

182. **When Integrity Advance charged consumers under the auto-workout provisions of the contract, Integrity Advance did not require**

the consumer to sign any additional loan documents.

Justification: See preceding paragraph.

183. **An Integrity Advance consumer did not have to sign any additional loan documents beyond the initial agreement for the loan to auto-renew.**

Justification: See preceding paragraphs.

184. **An Integrity Advance consumer did not have to sign any additional loan documents beyond the initial agreement for the loan to enter auto-workout.**

Justification: See preceding paragraphs.

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of March 2016, I caused a copy of the foregoing Enforcement Counsel's Controverted Issues of Fact and Justification for its Rejected Proposed Stipulations, along with the attached exhibits, to be filed by electronic transmission (e-mail) with the Office of Administrative Adjudication (CFPB_electronic_filings@cfpb.gov), the U.S. Coast Guard Hearing Docket Clerk (aljdocketcenter@uscg.mil), Administrative Law Judge Parlen L. McKenna (cindy.j.melendres@uscg.mil), Heather L. MacClintock (Heather.L.MacClintock@uscg.mil), and served by email on the Respondents' counsel at the following addresses:

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