

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
MOTION FOR LEAVE TO FILE
SUR-REPLY ON RESPONDENTS'
MOTION TO STRIKE

ENFORCEMENT COUNSEL'S MOTION FOR LEAVE TO FILE SUR-REPLY
ON RESPONDENTS' MOTION TO STRIKE

On April 14, 2016, Respondents filed a reply in support of their motion to strike Enforcement Counsel's submission in response to the March 9, 2016 Order. In their reply Respondents raise, for the first time, a request that the Hearing Officer convert Enforcement Counsel's filing of documents in support of its proposed stipulations into a *motion* for summary disposition. Respondents' request cites no authority, and their attempt to seek this relief in a reply brief is untimely and should be ignored. In the alternative, Enforcement Counsel request leave to file a sur-reply addressing Respondents' new request.

Although the rules governing administrative proceedings do not directly address the issue, it is well settled that a federal court should either ignore arguments raised for the first time in a reply brief or grant the non-movant leave to file a sur-reply in

response. *See, e.g., Flynn v. Veazey Constr. Corp.*, 310 F. Supp. 2d 186, 189 (D.D.C. 2004) (“If the movant raises arguments for the first time in his reply to the non-movant’s opposition, the court will either ignore those arguments in resolving the motion or provide the non-movant an opportunity to respond to those arguments by granting leave to file a sur-reply.”) (citing cases).

Respondents unquestionably raise the argument that Enforcement Counsel’s filing may be converted to a motion for summary disposition, and seek such a conversion, for the first time in their reply brief to their motion to strike the filing. Respondents appear to be asking the Hearing Officer to convert the evidence submitted in response to the March 9 Order to a motion for summary disposition and prohibit Enforcement Counsel from filing an actual motion for summary disposition as contemplated by the scheduling order. Eliminating Enforcement Counsel’s ability to file an actual motion would significantly prejudice Enforcement Counsel, and therefore the ability to file a sur-reply would be appropriate if the Hearing Officer is inclined to consider Respondents’ request. However, Enforcement Counsel respectfully suggests that ignoring Respondents’ request would be the most efficient use of the Hearing Officer’s resources.

For these reasons, Enforcement Counsel respectfully requests that the Hearing Officer ignore Respondents’ request. In the alternative, if the Hearing Officer wishes to consider these arguments, Enforcement Counsel requests leave to file a sur-reply within 10 business days of service of an order by the Hearing Officer directing them to do so.

Respectfully submitted,

Attorneys for Plaintiff
Consumer Financial Protection Bureau

ANTHONY ALEXIS
Enforcement Director

DEBORAH MORRIS
Deputy Enforcement Director

CRAIG COWIE
Assistant Litigation Deputy

/s/Alusheyi J. Wheeler

Alusheyi J. Wheeler
Wendy J. Weinberg
Vivian W. Chum
1700 G Street NW
Washington, DC 20552
Phone: (202) 435-7786
Facsimile: (202) 435-7722
Email: alusheyi.wheeler@cfpb.gov

Enforcement Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of April 2016, I caused a copy of the foregoing Enforcement Counsel's Motion for Leave to File Sur-Reply 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:

Allyson B. Baker, Esq.
ABBaker@venable.com

Peter S. Frechette, Esq.
PSFrechette@venable.com

Hillary S. Profita, Esq.
HSProfita@venable.com

Joanna P. Boyd, Esq.
JPBoyd@venable.com

Christine E. White
CEWhite@venable.com

/s/ Alusheyi J. Wheeler
Alusheyi J. Wheeler