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 OPPOSITION TO RESPONDENTS' MOTION TO STRIKE ENFORCEMENT COUNSEL'S CONTROVERTED ISSUES OF FACT AND JUSTIFICATION FOR ITS REJECTED PROPOSED STIPULATIONS**

ENFORCEMENT COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION TO STRIKE 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 purpose of the required action was to "narrow the issues in dispute and clarify the positions of the parties in anticipation of the oral argument on Respondents' Motion to Dismiss." Order at 1. The parties were "encouraged to be comprehensive in their attempts to achieve joint stipulations of fact ... in order to narrow the issues." *Id.* at 1-2. The Order further instructed each party to provide objections to controverted issues of fact, "state the factual basis" for each objection, provide "relevant excerpts of ... document(s) it is relying upon[,]" and "specifically list all legal authority which supports the party's position[.]" *Id.* at 1-2.

Respondents did not endeavor to "be comprehensive in their attempts to achieve joint stipulations of fact." They proposed only 28 stipulations in contrast to 200 initially proposed by Enforcement Counsel; resulting in only 19 joint stipulated facts. Respondents filed objections to 184 proposed stipulations and, despite the Hearing Officer's explicit instructions, did not "state the factual basis" for each objection, or include any "relevant excerpts of ... documents" relied upon and, in many cases, did not "specifically list ... legal authority" in support of their positions.[1] To Enforcement Counsel's considerable surprise, Respondents refused to stipulate, *inter alia*, to facts that they had admitted in their Answer or in their sworn responses to CIDs,[2] facts taken directly from their witnesses' testimony,[3] and facts about their own operations.[4]

In deciding Respondents' motion to dismiss, the Hearing Officer must assume that all of the non-movant's well-pleaded facts are true. 12 C.F.R. § 1081.212; *Bell A. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Thus, properly pleading a fact that

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[1] Enforcement Counsel ultimately withdrew 12 of the 184 proposed stipulated facts that were the subject of Respondents' objection. Respondents are in no way prejudiced by Enforcement Counsel's decision to do so. Indeed, Respondents have not claimed to be prejudiced in any way by the withdrawal. Resp. Mot. at 2.

[2] *See, e.g.*, Respondents' Objections to Bureau's Proposed Stipulations (Resp. List ¶ 25 ("Integrity Advance presented consumers with loan documents in two formats."), Resp. List ¶ 37 ("Unless a consumer contacted Integrity Advance to change the terms of her loan, Integrity Advance auto-renewed the consumer's loan.")).

[3] *See, e.g.*, Respondents' Objections to Bureau's Proposed Stipulations (Resp. List ¶ 102 ("ACH was the primary method by which Integrity Advance consumers could pay off their loan."), Resp. List ¶ 6 ("Carnes made the final decision whether to hire all Integrity Advance employees."), Resp. List ¶ 9 ("Carnes spoke daily with Integrity Advance Chief Operating Officer Edward Foster.")).

[4] *See, e.g.*, Respondents' Objections to Bureau's Proposed Stipulations (Resp. List ¶ 25 ("Integrity Advance presented consumers with loan documents in two formats."), Resp. List ¶ 31 ("The TILA box stated the loan APR, finance charge, amount financed, and total of payments.")).

disputes one of Respondents' proposed stipulations would be sufficient to survive a motion to dismiss based on that proposed stipulation. Nonetheless, as noted above, the order requested submissions of stipulated and controverted facts, twice stressed the importance of filing comprehensive submissions of stipulated facts relevant to the motion to dismiss, and specifically requested that the parties provide exhibits supporting their objections to proposed stipulations. In an effort to be comprehensive—and to aid the Hearing Officer in narrowing the facts actually at issue—Enforcement Counsel submitted exhibits and argument supporting its proposed stipulations of fact relevant to the motion to dismiss as well as those supporting its objections to Respondents' proposed stipulations.

The Challenged Documents and Arguments Are Properly Before the Hearing Officer

Respondents provide no arguments justifying the striking of the submission or the accompanying exhibits.[5] To the extent Respondents argue that documents like these are impr0perly before the Hearing Officer, they are incorrect. There is nothing improper about putting documents and arguments before the Hearing Officer. Indeed, the rules allow either party to file a motion for summary disposition at any time after the Answer, and as part of such a filing, a party would be required to submit documents and arguments supporting its statement of undisputed facts. 12 C.F.R. § 1081.212(d)(2).

[5] Respondents requested that the Hearing Officer strike the filing in its entirety and requested that the Bureau re-file its Controverted Issues of Fact or, in the alternative, strike the Affirmative Justification portion of the filing and all accompanying exhibits, Ex. A, Ex. B, and Exhs. 1-59. Resp. Mot. at 4. However, Respondents appear to request the striking of all Enforcement Counsel's exhibits, including those used to support our objections to Respondents' proposed stipulations (Ex. A and Exhs. 6, 7, 10, 11, and 13). Respondents have offered no argument supporting the striking of those exhibits, and indeed doing so would contradict the March 9, 2016 order.

There is no distinction between the documents and arguments submitted in response to the March 9, 2016 Order and the documents and arguments that would be submitted in support of a motion for summary disposition. Nor is there a distinction between documents submitted in support of a party's objection to proposed stipulations and documents submitted in support of proposed stipulations. Additionally, Respondents' argument that the submission of these documents circumvents the evidentiary rules simply is incorrect. The Bureau's adjudication rules expressly permit the admission of investigational hearings and other such documents obtained during the Bureau's investigation so long as they meet basic standards of relevance, materiality, and reliability. 12 C.F.R. § 1081.303(b)(3).[6]

More importantly, the order directed Respondents to support their refusal to stipulate to Enforcement Counsel's proposed facts. To the extent that Respondents failed to do so and Enforcement Counsel's submission demonstrates that there is in fact no dispute as to a given fact, it is entirely proper for the Hearing Officer to consider that fact as established for purposes of determining the motion to dismiss. Indeed, the Hearing Officer must accept Enforcement Counsel's properly pleaded facts as true, and it is Respondents' burden as the movant to prove that even assuming the truth of the

[6] The Rules also state that "[e]vidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible ... solely on that basis." 12 C.F.R. § 1081.303(b)(4). Rule 303 additionally permits the admission of "transcripts of depositions, investigational hearings, prior testimony in Bureau or other proceedings, and any other form of hearsay[.]" 12 C.F.R. § 1081.303(b)(3). These evidentiary standards are by no means novel. As described in the Commentary to Rule 303, the evidentiary standards set forth in Rule 303 are "similar to those set forth in the FTC Rules, the SEC Rules, and the Uniform Rules." Rules of Practice for Adjudication Proceedings, 77 Fed. Reg. 39,059, 39,079 (June 29, 2012).

facts properly pleaded by Enforcement Counsel, the Notice of Charges fails to state a claim on which relief may be granted.

Conclusion

For all the reasons stated above, Enforcement Counsel respectfully requests that the Hearing Officer deny Respondents' motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of April 2016, I caused a copy of the foregoing Enforcement Counsel's Opposition to Respondents' Motion to Strike Enforcement Counsel's Controverted Issues of Fact and Justification for its Rejected Proposed Stipulations 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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