

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

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| ADMINISTRATIVE PROCEEDING |) | RESPONDENTS’ REPLY IN |
| File No. 2015-CFPB-0029 |) | SUPPORT OF ITS MOTION |
| |) | TO STRIKE |
| In the matter of: |) | |
| |) | |
| INTEGRITY ADVANCE, LLC and |) | |
| JAMES R. CARNES |) | |
| _____ |) | |

**RESPONDENTS’ REPLY IN SUPPORT OF ITS MOTION TO STRIKE
ENFORCEMENT COUNSEL’S CONTROVERTED ISSUES OF FACT
AND JUSTIFICATION FOR ITS REJECTED PROPOSED STIPULATIONS**

The Bureau all but admits that its response to the Court’s March 9, 2016 Order (Order) exceeds the scope of the Order. The Bureau acknowledges on the first page of its opposition that “[t]he 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.’” Opp’n at 1 (citing Order at 1). Respondents aver that the Court’s instruction to “be comprehensive in . . . attempts to achieve stipulations of fact,” Order at 1–2, was not an instruction to argue *nearly all* issues of law and facts potentially germane to this proceeding. That is nonetheless what the Bureau has attempted to do.

The Bureau forwarded 184 proposals to which Respondents could not stipulate.¹ A third of these proposals do not even address factual issues, but rather represent questions of law to

¹ Enforcement Counsel’s “withdrawal” of twelve of its proposed stipulations, *after* the parties had finalized their respective proposals, serves to highlight Enforcement Counsel’s improper approach to the joint stipulation process. If Respondent were not prejudiced by this untimely action, as Enforcement Counsel asserts, Opp’n at 2 n.1, it is only because the “withdrawn” proposals are so clearly questions of law that Respondents needed to provide only cursory objections.

which Respondents could not stipulate. There is no better example of this than paragraph 1 of Enforcement Counsel’s “Justifications,” wherein the purported justification for the proposed fact stipulation is the identical set of statutes cited in the proposed fact stipulation, as noted below:

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.*

As another example, it is inappropriate for Enforcement Counsel to request that Respondents stipulate that the various elements of the Bureau’s unfair, deceptive, or abusive acts or practices (UDAAP) claims are met. *See, e.g.*, Justifications ¶¶ 79–89. It is the exclusive province of the Court to render conclusions of law, and the Bureau’s request that Respondents stipulate as to what the law says is clearly beyond the intent of the Court’s request that the parties stipulate as to specific facts.

Moreover, whether the Bureau sufficiently stated a claim under UDAAP is not at issue in the Respondent’s Motion to Dismiss. The Bureau’s attempt to address the elements of UDAAP through a proposed stipulation, creates confusion, not clarity and exceeds the scope of the Court’s order, as well.

Respondents explained their inability to stipulate to the Bureau’s proposals in each instance. The Bureau’s contention that Respondents “failed to do so” is completely without basis. Whereas Respondents sought to comply with the Order, the Bureau greatly exceeded it. The Bureau’s defense, that providing “Justifications” in support of its proposals is the same as factual and legal support for its objections to Respondents’ proposals, *see* Opp’n at 4, is illogical. The latter provides a clear and reasonable approach to narrowing the facts at issue; the former

(the “Justifications” approach) essentially constitutes a motion for summary disposition—as the Bureau itself argues.

Enforcement Counsel asserts that “[t]here 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.”² Opp’n at 4.

Respondents agree, and, thus, respectfully request that the Court, as an alternative to striking Enforcement Counsel’s Justifications, accept the Bureau’s filing as a motion for summary disposition and allow Respondents twenty days to file a brief in opposition, as allowed under Rule 212. 12 C.F.R. § 1081.212. Otherwise, the Bureau will get two bites at the apple, by its own admission. The scheduling order in this proceeding, as amended, currently provides for motions for summary disposition to be filed on or by May 2. Order Modifying Scheduling Order at 1. If Enforcement Counsel’s “justifications” stand, and the Bureau files an additional motion for summary disposition by May 2, the Bureau will have received two opportunities to brief these issues before the Court, to the clear prejudice of the Respondents.

The Bureau’s contention that the *potential* admissibility of evidence that it claims supports the proposed stipulations of fact somehow allows the Bureau to enter such evidence into this proceeding is mistaken. As the Bureau agrees, its “Justifications” are to be treated as a motion for summary disposition. A motion for summary disposition requires a “statement of the material facts as to which the moving party contends there is no genuine issue.” 12 C.F.R. § 1081.212(c)(2). The Bureau’s “Justifications” must therefore be stricken unless Respondents

² The Bureau’s proposals to which Respondents did not stipulate are not “pleadings” as the Bureau seems to suggest. *See* Opp’n at 4–5. The proposals and “justifications” do not constitute allegations to which Respondents responded in their Answer and their Motion to Dismiss. *See* 12 C.F.R. § 1081.212.

are given sufficient time to respond to the “Justifications” as a *de facto* motion for summary disposition.

Conclusion

For the reasons stated above, Respondents respectfully request that the Court grant Respondents’ Motion to Strike.³ In the alternative, Respondents respectfully request that the Court accept the Bureau’s filing as a motion for summary disposition and allow Respondents twenty days to respond.

Respectfully submitted,

Dated: April 14, 2016

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³ Respondents clarify that they request, pursuant to the Order, that the Court strike Enforcement Counsel’s Justifications and any exhibits used solely to support the “justifications”; to the extent that Ex. A and Exhs. 6, 7, 10, 11, and 13 support Enforcement Counsel’s objection to a proposed stipulation forwarded by Respondents, they are not included in the Respondents’ Motion to Strike.

CERTIFICATION OF SERVICE

I hereby certify that on the 14th day of April, 2016, I caused a copy of the foregoing Answer to be filed by electronic transmission (e-mail) with the U.S. Coast Guard Hearing Docket Clerk (aljdocketcenter@uscg.mil), Heather L. MacClintock (Heather.L.MacClintock@uscg.mil) and Administrative Law Judge Parlen L. McKenna (cindy.j.melendres@uscg.mil), and served by electronic mail on the following parties who have consented to electronic service:

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