

**UNITED STATES OF AMERICA**  
**Before the**  
**CONSUMER FINANCIAL PROTECTION BUREAU**

**ADMINISTRATIVE PROCEEDING**  
**File No. 2015-CFPB-0029**

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	)	
<b>In the Matter of:</b>	)	<b>RESPONDENTS’ STATEMENT OF</b>
	)	<b>UNDISPUTED FACTS IN SUPPORT</b>
	)	<b>OF THEIR MOTION TO DISMISS</b>
<b>INTEGRITY ADVANCE, LLC and</b>	)	<b>AND/OR FOR SUMMARY</b>
<b>JAMES R. CARNES,</b>	)	<b>DISPOSITION ON GROUNDS</b>
	)	<b>LIMITED TO OCTOBER 28, 2019</b>
	)	<b>ORDER</b>
<b>Respondents.</b>	)	
	)	
	)	

**RESPONDENTS’ STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF  
THEIR MOTION TO DISMISS AND/OR FOR SUMMARY DISPOSITION  
ON GROUNDS LIMITED TO OCTOBER 28, 2019 ORDER**

Pursuant to 12 C.F.R. §§ 1081.212(d)(2) and Administrative Law Judge Christine L. Kirby’s October 28, 2019 Order, Respondents Integrity Advance, LLC and James R. Carnes (“Respondents”) hereby submit the following statement of material facts as to which there is no genuine issue in support of their Motion to Dismiss and/or for Summary Disposition on Grounds Limited to October 28, 2019 Order.<sup>1</sup> There is no genuine issue as to the following facts:

1. Integrity Advance was a short-term, small-dollar lender that was licensed by the Delaware Office of State Bank Commissioner at all relevant times. Parties’ Joint Stipulation of Facts, Dkt. 56 (Mar. 23, 2016) (“2016 Joint Stipulation”) ¶¶ 8, 11, 13, 14-15.
2. Integrity Advance began offering loans to consumers on May 15, 2008. 2016 Joint Stipulation ¶ 8.

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<sup>1</sup> Consistent with ALJ Kirby’s October 28, 2019 Order, the following statement of facts pertains only to those facts material to the issues identified in the Order. Respondents reserve all rights to identify additional material facts in connection with any potential future motion(s) for summary disposition filed by the parties.

3. Integrity Advance ceased offering loans to consumers in December 2012. 2016 Joint Stipulation ¶ 10.

4. On January 19, 2012, Richard Cordray, the former Director of the Consumer Financial Protection Bureau (“CFPB”), delivered remarks at a “Payday Loan Field Hearing” in Birmingham, Alabama. Remarks by Richard Cordray at the Payday Loan Field Hearing in Birmingham, AL (Jan. 19, 2012) (“Cordray Remarks”), <https://www.consumerfinance.gov/about-us/newsroom/remarks-by-richard-cordray-at-the-payday-loan-field-hearing-in-birmingham-al/>.

5. In that speech, then-Director Cordray publicly declared, *inter alia*, that the CFPB had “launched [its] examination program” and would be “giving payday lenders much more attention.” Cordray Remarks.

6. On January 20, 2012, the CFPB and the Federal Trade Commission (“FTC”) entered into a Memorandum of Understanding (“MOU”), in which both agencies agreed to, *inter alia*, “coordinate law enforcement activities” and share consumer complaint information through the FTC’s Sentinel Network. Memorandum of Understanding Between the Consumer Financial Protection Bureau and the Federal Trade Commission (Jan. 20, 2012), at 3, 10, <https://www.ftc.gov/system/files/120123ftc-cfpb-mou.pdf>.

7. The MOU established a “strong and comprehensive framework for coordination and cooperation” between the CFPB and the FTC. Memorandum of Understanding Creates Framework for Strong Coordination and Cooperation (Jan. 23, 2012), [https://www.ftc.gov/news-events/press-releases/2012/01/federal-trade-commission-consumer-financial-protection-bureau](https://www.ftc.gov/news-events/press-releases/2012/01/federal-trade-commission-consumer-financial-protection-bureau;);

8. The Office of Enforcement maintains various internal policies and procedures that Enforcement staff members are directed to follow. Office of Enforcement Policies and

Procedures Manual (May 5, 2017) (“Enforcement Manual”),

[https://files.consumerfinance.gov/f/documents/201710\\_cfpb\\_enforcement-policies-and-procedures-memo\\_version-3.0.pdf](https://files.consumerfinance.gov/f/documents/201710_cfpb_enforcement-policies-and-procedures-memo_version-3.0.pdf).

9. According to the Enforcement Manual, before a formal “investigation” is launched, employees are directed to conduct a “research matter” for purposes of “gather[ing] basic information and preliminarily evaluat[ing] the potential for successful enforcement of suspected violations of federal consumer financial law . . . .” Enforcement Manual at 34.

10. As stated in the Manual, “[t]he primary purpose of a research matter is to collect and analyze easily obtainable information in order to . . . [d]etermine whether the relevant conduct likely violates federal consumer financial law and the Bureau likely has jurisdiction.” Enforcement Manual at 35.

11. Among other things, CFPB employees are directed to gather evidence through “non-identifiable internet searching, review of consumer complaints, media sources, legal research, and contact with other law enforcement agencies and consumers.” Enforcement Manual at 37.

12. The Manual states that “[r]esearch matters should generally be open for no longer than two months, during which period Staff should spend a limited amount of time determining whether the issues identified warrant opening an investigation.” Enforcement Manual at 36.

13. When the employee’s “initial research” reveals, among other things, “a plausible set of facts that, if proven, would amount to a violation of one or more federal consumer financial laws,” the matter then proceeds to the “investigation” phase. Enforcement Manual at 37.

14. As part of its production under 12 C.F.R. § 1081.206 (“Rule 206”), Enforcement Counsel produced to Respondents a PDF indicating that an individual in the Office of Enforcement searched the FTC’s Sentinel database of consumer complaints for the term “Integrity Advance” on March 29, 2012. *See* Joint Update on Fact Development Regarding Statute of Limitations Issue, Dkt. 234 (Sept. 11, 2019) (“Joint Update”) at 3 ¶ 1.

15. The PDF produced by Enforcement Counsel indicates that the user logged in to the Sentinel database at the time of the search on March 29, 2012 was “Kara Miller,” an attorney in the Office of Enforcement. Joint Update at 3 ¶ 1; *see also* Ex. A to the Declaration of Richard J. Zack in Support of Respondents’ Motion to Dismiss and/or for Summary Disposition on Grounds Limited to October 28, 2019 Order (“Zack Decl.”).

16. As part of its Rule 206 production, Enforcement Counsel produced to Respondents another PDF containing additional consumer complaints regarding Integrity Advance that were printed out from the Sentinel database on August 14, 2012. *See* Ex. B to Zack Decl.

17. Enforcement Counsel eventually sent a civil investigative demand (“CID”) for document requests and interrogatories to Integrity Advance, but did not do so until January 7, 2013. Joint Update at 3 ¶ 3.

18. The CFPB and Integrity Advance entered into tolling agreements on June 2, 2014, and on March 16, 2015. June 2, 2014 Tolling Agreement, Dkt. 200; March 16, 2015 Tolling Agreement, Dkt. 201.

19. Neither of those tolling agreements apply to Mr. Carnes. *See* June 2, 2014 Tolling Agreement, Dkt. 200; March 16, 2015 Tolling Agreement, Dkt. 201.

20. Enforcement Counsel filed a Notice of Charges against Integrity Advance and Mr. Carnes on November 18, 2015. 2016 Joint Stipulation ¶ 18.

21. On July 11, 2016, the CFPB moved to withdraw Count IV with prejudice, with the agreement of Respondents, “in the interests of judicial economy and narrowing the issues for trial.” The CFPB stated that the “consumer harm caused by the deceptive loan agreement is co-extensive with the harm Enforcement Counsel would allege in continuing to assert the Count IV unfairness claim.” Dkt. 127.

22. On July 12, 2016, the former ALJ granted the motion, and Count IV was dismissed with prejudice. Dkt. 133.

Respectfully submitted,

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*Counsel for Respondents Integrity Advance  
LLC and James R. Carnes*

Dated: November 15, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of November 2019, I caused a copy of the foregoing Respondents' Statement of Undisputed Facts in Support of their Motion To Dismiss and/or for Summary Disposition on Grounds Limited to October 28, 2019 Order to be filed by electronic transmission (email) with the Office of Administrative Adjudication (CFPB\_electronic\_filings@cfpb.gov), and served by email on opposing counsel at the following addresses:

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