

# EXHIBIT 1

APPLICATION (Integrity Advance, LLC)

FORM #1

Loan #: 30609072

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we ("we" or "us" refers to "Integrity Advance, LLC") will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying document.

**NOTICE: WE ARE REQUIRED BY LAW TO ADOPT PROCEDURES TO REQUEST AND RETAIN IN OUR RECORDS INFORMATION NECESSARY TO VERIFY YOUR IDENTITY**

**PERSONAL INFORMATION**

Name	
Address	
Date of Birth	
Home Phone	

**EMPLOYMENT INFORMATION**

Employer	
Pay Period	
Length of Service	
Supervisor	

**BANK INFORMATION**

Type of Account: Checking	
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**REFERENCE INFORMATION**

1	
2	

By typing your name and clicking "I Agree" below, you are electronically signing this Application. By electronically signing and submitting this Application, you certify that all of the information provided above is true, complete and correct and provided to us for the purpose of inducing us to make the loan for which you are applying and you acknowledge receiving a fully completed copy of this Application and accompanying documents. This Application will be deemed incomplete and will not be processed by us unless agreed by you below. By electronically signing below you also agree that we may obtain and use information about you from third parties, including consumer reports, to evaluate your application and to review your account for as long as you owe any amount to us.

Signature: (X) \_\_\_\_\_

Date: 3/24/2009

**COVERED BORROWER IDENTIFICATION STATEMENT:**

Federal law provides important protections to active duty members of the Armed Forces and their dependents. To ensure that these protections are provided to eligible applicants, we require you to select and electronically sign ONE of the following statements as applicable:

**PLEASE SELECT ONE OF THE FOLLOWING STATEMENTS:**

**I AM a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer, or such member serving on Active National Guard duty.**

**I AM a dependent of a member of the Armed Forces on active duty as described above, because I am the member's spouse, the member's child under the age of eighteen years old, or I am an individual for whom the member provided more than one-half of my financial support for 180 days immediately preceding today's date.**

**I AM NOT a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer (or a dependent of such a member).**

Signature: (X) \_\_\_\_\_

**WARNING: IT IS IMPORTANT TO FILL OUT THIS FORM ACCURATELY. KNOWINGLY MAKING A FALSE STATEMENT ON A CREDIT APPLICATION IS A CRIME.**



**LOAN AGREEMENT****FORM #2 Loan #:**  
**30609072**

Disbursement Date: <u>3/25/2009</u> Payment Date: <u>4/10/2009</u>	<b>Loan #: 30609072</b>
(Integrity Advance, LLC) 300 Creek View Road Suite 102 Newark, DE 19711 Phone: (800) 505-6073	NAME: [REDACTED] ADDRESS: [REDACTED] CITY: [REDACTED] STATE: [REDACTED] PHONE: [REDACTED]

In this Loan Agreement (hereinafter, the "Loan Agreement") the words "you", "your" and "I" mean the borrower who has electronically signed it. The words "we", "us" and "our" mean Integrity Advance, LLC ("Lender"), a licensed lender of payday loans regulated by the Delaware State Bank Commissioner.

**FEDERAL TRUTH IN LENDING DISCLOSURES**

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate. <b>684.38%</b>	The dollar amount the credit will cost you. <b>\$150.00</b>	The amount of credit provided to you or on your behalf. <b>\$500.00</b>	The amount you will have paid after you have made all payments as scheduled. <b>\$650.00</b>

Your Payment Schedule will be: One (1) payment of **\$650.00** due on **4/10/2009** ("Payment Due Date").

Security: You are giving a security interest in the ECheck/ACH Authorization.

Prepayment: If you pay off early, you will be entitled to a refund of the unearned portion of the finance charge.

See the terms of the Loan Agreement below for any additional information about nonpayment, default, and prepayment refunds.

**Itemization of Amount Financed:** Amount given to you directly: **\$500.00**. Amount paid on Loan#: **30609072** with us: **\$650.00**.

**PAYMENT OPTIONS:** You must select your payment option at least three (3) business days prior to your Payment Due Date by contacting us at (800) 505-6073. At that time, you may choose:

(a) **Payment in full:** You may pay the Total of Payments shown above, plus any accrued fees, to satisfy your loan in full. When you contact us and choose this option, we will debit Your Bank Account (defined below) for the Total of Payments plus any accrued fees, in accordance with the ACH Authorization below; OR

(b) **Renewal:** You may renew your loan (that is, extend the Payment Due Date of your loan until your next Pay Date<sup>1</sup>) by authorizing us to debit Your Bank Account for the amount of the Finance Charge, plus any accrued fees. If you choose this option, your new Payment Due Date will be your next Pay Date<sup>1</sup>, and the rest of the terms of the Loan Agreement will continue to apply.

**AUTO-RENEWAL:** If you fail to contact us to confirm your Payment Option at least three (3) business days prior to any Payment Due Date, or otherwise fail to pay the loan in full on any Pay Date, Lender may automatically renew your loan as described under (b) above, and debit Your Bank Account on the Payment Due Date or thereafter for the Finance Charge and any accrued fees. Your new Payment Due Date will be your next Pay Date<sup>1</sup>, and the rest of the terms of the Loan Agreement will continue to apply. You must contact us at least three (3) business days prior to your new Payment Due Date to confirm your payment option for the Renewal. If you fail to contact us, or otherwise fail to pay the loan in full on your new Payment Due Date, we may automatically renew the loan until your next Pay Date<sup>1</sup>. After your initial loan payment, you may obtain up to four (4) Renewals. All terms of the Loan Agreement continue to apply to Renewals. All Renewals are subject to Lender's approval. Under Delaware law, if you qualify, we may allow you to enter into up to four (4) Renewals, also known as a "refinancing" or a "rollover". The full outstanding balance shall be due upon completion of the term of all Renewals, unless you qualify for Auto-Workout, as described below.

**AUTO-WORKOUT.** Unless you contact us to confirm your option for Payment in Full prior to your Fourth Renewal Payment Due Date, your loan will automatically be placed into a Workout Payment Plan. Under the Workout Payment Plan, Your Bank Account will automatically be debited on your Pay Date<sup>1</sup> for accrued finance charges plus a principal payment of \$50.00, until all amounts owed hereunder are paid in full. This does not limit any of Lender's other rights under the terms of the Loan Agreement. All Workout Payment Plans are subject to Lender's approval.

**DISBURSEMENT:** In order to complete your transaction with us, you must electronically sign the Loan Agreement by clicking the "I Agree" button at the end of the Loan Agreement, as well as all other "I Agree" buttons that appear within the Loan Agreement and related documents that appear below. We will then approve or deny your application and the Loan Agreement. If the Loan Agreement is approved, we will use commercially reasonable efforts to effect a credit entry by depositing the proceeds from the Loan Agreement into the bank account listed below in the ECheck/ACH Authorization ("Your Bank Account") on the Disbursement Date. Unavoidable delays as a result of bank holidays, the processing schedule of your individual bank, the untimely receipt of pay stubs, if such pay stubs are required, inadvertent processing errors, "acts of God", and/or "acts of terror" may extend the time for the deposit. You will have the



option of rescinding the loan and this Loan Agreement in accordance with the "RESCISSION" provision listed below, which describes, among other things, the time and manner within which notice of rescission must be given to be effective. Failure to give such notice as and when set out in the "RESCISSION" provision will be deemed to constitute acceptance by you of the delayed disbursement date.

**YOUR PROMISE TO PAY:** You promise to pay us the Total of Payments according to the terms of our disclosures set forth below on the Payment Due Date and all other amounts owed to us under the Loan Agreement. You grant us a security interest in your ECheck/ACH Authorization in the amount of the Total of Payments (the "ECheck/ACH") which we may negotiate on the Payment Due Date or thereafter. All payments will be applied first to interest and fees and then to principal. Both the amount of interest charged and rate thereof are set forth respectively in the Finance Charge and Annual Percentage Rate disclosures in the Loan Agreement. Pursuant to the ECheck/ACH Authorization, you have directed us to initiate one or more ECheck/ACH debit entries to Your Bank Account for the amounts owed to us under the Loan Agreement on the Payment Due Date or thereafter and for certain fees that may be assessed in the event of dishonor when presentment is made to your bank on your ECheck/ACH Authorization.

**CONSENT TO ELECTRONIC COMMUNICATIONS:** The following terms and conditions govern electronic communications in connection with the Loan Agreement and the transaction evidenced hereby (the "Consent"). By electronically signing the Loan Agreement by clicking the "I AGREE" button and entering your name below, you are confirming that you have agreed to the terms and conditions of the Consent and that you have downloaded or printed a copy of this Consent for your records. You agree that:

Â· Any disclosure, notice, record or other type of information that is provided to you in connection with your transaction with us, including but not limited to, the Loan Agreement, this Consent, the Truth in Lending disclosures set forth above, change-in-term notices, fee and transaction information, statements, delayed disbursement letters, notices of adverse action, state mandated brochures and disclosures, and transaction information (â€œCommunicationsâ€), may be sent to you electronically by posting the information at our web site, [www.IAdvanceCash.com](http://www.IAdvanceCash.com), or by sending it to you by e-mail.

Â· We will not be obligated to provide any Communication to you in paper form unless you specifically request us to do so.

Â· You may obtain a copy of any Communication by contacting us at 300 Creek View Road, Suite 102, Newark, DE 19711, or by calling us at (800) 505-6073. You also can withdraw your consent to ongoing electronic communications in the same manner, and ask that they be sent to you in paper or non-electronic form. If you choose to receive Communications in paper or non-electronic form, we may elect to terminate the Loan Agreement and demand payment of the amount then due by the date of your withdrawal of consent; or by the expiration of any minimum term mandated by law, whichever is later.

Â· You agree to provide us with your current e-mail address for notices at the address or phone number indicated above. If your e-mail address changes, you must send us a notice of the new address by writing to us or sending us an e-mail, using secure messaging, at least five (5) days before the change.

Â· In order to receive electronic communications in connection with this transaction, you will need a working connection to the Internet. Your browser must support the Secure Sockets Layer (SSL) protocol. SSL provides a secure channel to send and receive data over the Internet. Microsoft Internet Explorer 6 and above supports this feature. You will also need either a printer connected to your computer to print disclosures/notices or sufficient hard drive space available to save the information (e.g., 1 megabyte or more). You must have your own Internet service provider.

Â· You hereby provide us with your express consent to receive SMS messages from us.

Â· We may amend (add to, delete or change) the terms of this consent to electronic communication by providing you with advance notice.

By entering your name and today's date and clicking the "I Agree" button below, you are electronically signing this document and confirming that: (1) your system meets the requirements set forth above; (2) you agree to receive Communications electronically; and (3) you are able to access and print or store information presented at this website.

**SECURITY.** Pursuant to Comment 2(a)(25) of the Federal Reserve Board Official Staff Commentary to Regulation Z 226.2, we have disclosed to you that our interest in the ECHECK/ACH Authorization Agreement is a security interest for Truth-in-Lending purposes only, because federal and Delaware law do not clearly address whether our interest in the ECHECK/ACH Authorization Agreement is a "security interest."

**RESCISSION:** You may rescind future payment obligations under the Loan Agreement, without cost or finance charges, no later than 5:00 p.m. Eastern time of the next business day immediately following the Disbursement Date ("Rescission Deadline"). To rescind future payment obligations on this loan, you must inform us in writing, by or before the Rescission Deadline, either by email to [info@iadvancecash.com](mailto:info@iadvancecash.com) or by fax to (800)-581-8148, that you want to cancel the future payment obligations on this loan and that you authorize us to effect a debit entry to Your Bank Account for the principal amount of the Loan Agreement. In the event that we timely receive your written notice of rescission on or before the Rescission Deadline but before the loan proceeds have been credited to Your Bank Account, we will not effect a debit entry to Your Bank Account and both ours and your obligations under the Loan Agreement will be rescinded. In the event that we timely receive your written notice of rescission on or before the Rescission Deadline but after the loan proceeds have been credited to Your Bank Account, we will effect a debit to Your Bank Account for the principal amount of the Loan Agreement. If we receive payment of the principal amount via the debit, ours and your obligations under the Loan Agreement will be rescinded. If we do not receive payment of the principal amount via the debit, then the Loan Agreement will remain in full force and effect.

**SPECIAL NOTICE:**



(1) THIS LOAN IS DESIGNED AS A SHORT-TERM CASH FLOW SOLUTION AND NOT DESIGNED AS A SOLUTION FOR LONGER TERM FINANCIAL PROBLEMS.

(2) ADDITIONAL FEES MAY ACCRUE IF THE LOAN IS REFINANCED OR "ROLLED OVER".

(3) CREDIT COUNSELING SERVICES ARE AVAILABLE TO CONSUMERS WHO ARE EXPERIENCING FINANCIAL PROBLEMS.

BY ENTERING YOUR NAME AND TODAY'S DATE AND CLICKING THE "I AGREE" BUTTON BELOW, YOU ARE ELECTRONICALLY SIGNING THE LOAN AGREEMENT AND AGREEING TO ALL THE TERMS OF THE LOAN AGREEMENT. YOU ALSO ACKNOWLEDGE RECEIPT OF A FULLY COMPLETED COPY OF THE LOAN AGREEMENT AND THE SCHEDULE OF CHARGES AND FEES BELOW.

A PAYDAY LOAN IS NOT INTENDED TO MEET LONG-TERM FINANCIAL NEEDS

#### **SCHEDULE OF CHARGES AND FEES**

According to the Commissioner's Regulation 2203, Section 1.0, Notification, every licensee shall furnish to every applicant a copy of the Itemized Schedule of Charges and Fees at the time when such application is made. As per the aforementioned Commissioner's Regulation 2203, Section 1.0, Notification, please review the itemized schedule of charges and fees below to better understand the charges and fees associated with your loan.

The APR, or Annual Percentage Rate, is the term for the effective interest rate that the borrower will pay on a loan to the lender in a standardized way. This is to show the total cost of credit to the consumer, expressed as an annual percentage of the amount of credit lent to the borrower. While APR is intended to make it easier to compare lenders and loan options, it can seem complicated to those that are not aware of its implications.

There is no account set up fee and, when scheduled payments are made, there are no additional fees outside the principal amount borrowed and the interest that accumulates on the amount borrowed. When comparing interest rates among companies, please note that some companies may charge set up fees, application fees, or other such charges while we do not charge for these services.

#### **OTHER FEES**

NSF FEE:\$25.00

#### **VIP CUSTOMER FEES**

DAYS	APR	LOAN AMOUNT											
		\$100.00	\$150.00	\$200.00	\$250.00	\$300.00	\$350.00	\$400.00	\$450.00	\$500.00	\$550.00	\$600.00	\$650.00
23	380.87%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
22	398.18%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
21	417.14%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
20	438.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
19	461.05%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
18	486.67%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
17	515.29%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
16	547.50%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
15	584.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
14	625.71%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
13	673.85%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
12	730.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
11	796.36%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
10	876.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
9	973.33%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
8	1095.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00

#### **STANDARD LOAN FEES (NEW CUSTOMERS AND NON-VIP CUSTOMERS)**

DAYS	APR	LOAN AMOUNT								
		\$100.00	\$150.00	\$200.00	\$250.00	\$300.00	\$350.00	\$400.00	\$450.00	
23	476.09%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	
22	497.73%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	
21	521.43%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	
20	547.50%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	
19	576.32%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	
18	608.33%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	
17	644.12%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	
16	684.38%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	
15	730.00%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	
14	782.14%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	
13	842.31%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	
12	912.50%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	
11	995.45%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	
10	1095.00%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	
9	1216.67%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	
8	1368.75%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	

Printed Name: \_\_\_\_\_

Signature: (X) \_\_\_\_\_

Date: 3/24/2009

The term "Pay Date" 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.

**RIGHT TO CANCEL: YOU MAY CANCEL THIS LOAN WITHOUT COST OR FURTHER OBLIGATION TO US, IF YOU DO SO BY THE END OF BUSINESS ON THE BUSINESS DAY AFTER 3/24/2009.** To cancel, you may call us at (800) 505-6073 to alert us of your intention to cancel. Alternatively, you may print this page, complete the information in this box, sign and fax it to us at (800)-581-8148. If you follow these procedures but there are insufficient funds available in Your Bank Account to enable us to reverse the transfer of loan proceeds at the time we effect an ACH debit entry of Your Bank Account, your cancellation will not be effective and you will be required to pay the loan and our charges on the scheduled maturity date.

Signature: (X) \_\_\_\_\_

Date: \_\_\_\_\_



**ACH AUTHORIZATION (Integrity Advance, LLC)**  
**READ VERY CAREFULLY BEFORE INITIALING OR SIGNING**

**FORM #2b**

**Loan #: 30609072**

**ACH AUTHORIZATION :** You hereby voluntarily authorize us, and our successors and assigns, to initiate an automatic credit and debit entry

**YOUR BANK ACCOUNT INFO:**

Name:		Bank Name:
Address:		Transit ABA Number:
City, State Zip:		Checking Account Number:
Phone:		
Amount:	\$650.00	
Payment Due Date:	4/10/2009	

This ACH Authorization is a part of and relates to the Loan Agreement dated 3/24/2009 (the "Loan Agreement"). The words "you", "your" and "I" mean the borrower who has electronically signed it. The words "we", "us" and "our" mean Integrity Advance, LLC ("Lender"), a licensed lender of payday loans regulated by the Delaware State Bank Commissioner. You hereby voluntarily authorize us, and our successors and assigns, to initiate automatic credit and debit entries to Your Bank Account in accordance with the Loan Agreement. You agree that we will initiate a credit entry to Your Bank Account for the Amount Financed on or about the Disbursement Date.

You also authorize us to initiate an ACH debit entry to Your Bank Account:

- (a) for the Total of Payments plus any accrued fees on the Payment Due Date, or on any subsequent Renewal Payment Due Date, if you contact us at least three (3) business days prior to such date and select Payment Option (a) in the Loan Agreement (Pay in full);
- (b) for the Finance Charge plus any accrued fees on the Payment Due Date, or on any subsequent Renewal Payment Due Date, if you contact us at least three (3) business days prior to such date and select Payment Option (b) in the Loan Agreement (RENEWAL), or if you fail to contact us to confirm your payment option;
- (c) for the accrued finance charges and fees, plus \$50.00 on each Pay Date<sup>1</sup> after the fourth (4<sup>th</sup>) Renewal Payment Due Date, until all amounts owed under the Loan Agreement are paid in full; and
- (d) for any accrued Returned Payment charges, subject to the Loan Agreement.

You agree that we may re-initiate a debit entry for the same amount if the ACH debit entry is dishonored or payment is returned for any reason. The ACH Authorizations set forth in the Loan Agreement are to remain in full force and effect for this transaction until your indebtedness to us for the Total of Payments, plus any other charges or fees incurred and described in the Loan Agreement, is fully satisfied. You may only revoke the above authorizations by contacting us directly. If 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.



If a payment is returned unpaid, you authorize us to make a one-time electronic fund transfer from Your Bank Account to collect a fee of \$25. You voluntarily authorize us, and our successor and assigns, to initiate a debit entry to Your Bank Account for payment of this fee. You further authorize us to initiate debit entries as necessary to recoup the outstanding loan balance whenever an ACH transaction is returned to us for any reason. You understand and agree that this ACH authorization is provided for your convenience, and that you have authorized repayment of your loan by ACH debits voluntarily. You agree that you may repay your indebtedness through other means, including by providing timely payment via cashiers check or money order directed to: Integrity Advance, 300 Creek View Road, Suite 102, Newark, DE 19711.

You authorize us to verify all of the information that you have provided, including past and/or current information. You agree that the ACH Authorization herein is for repayment of a single payment loan, or for single payment of finance charges for Renewals, and that these entries shall not recur at substantially regular intervals. If there is any missing or erroneous information in or with your loan application regarding your bank, bank routing and transit number, or account number, then you authorize us to verify and correct such information.

If your payment is returned to us by your financial institution due to insufficient funds or a closed account, you agree that we may recover court costs and reasonable attorney's fees incurred by us.

Signature: (X) \_\_\_\_\_

Date: 3/24/2009

**In addition, you also agree to the following:**

1. I understand that you are licensed in the State of Delaware and operate your business within the State of Delaware. I understand that I could have traveled to Delaware to apply for a loan at your office in Delaware but I have chosen to apply for this loan via the internet, telephone and/or fax for my own convenience.
2. I understand that no binding contract between myself and you will be formed until my application is received by you in Delaware and is approved by your underwriting department, also located in Delaware.
3. I understand that if my application is approved funds will be transferred to me from our bank account in Delaware and the contract will not be completely performed until I have repaid the loan in full, along with any fees, and my payment is received by you in Delaware or is deposited electronically into our bank Account in Delaware.

X \_\_\_\_\_ Initial here only if you have read, agree to, and understand the statements, policies and procedures listed above.

4. I acknowledge that I have received and read the Integrity Advance Privacy Policy.

5. I understand that I may make choices regarding the way that the Integrity Advance family of companies uses and shares my information. I acknowledge the following notice regarding those choices:

- The Integrity Advance family of companies is providing this notice.
- Federal law gives you the right to limit some but not all marketing from the Integrity Advance Companies. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from the Integrity Advance Companies.
- You may limit the Integrity Advance affiliated companies, from marketing their products or services to you based on your personal information that they receive from other Integrity Advance companies. This information includes your income, your account history, and your credit history, report, or score.
- Your choice to limit marketing offers from the Integrity Advance companies will apply until you tell us to change your choice.
- If you have already made a choice to limit marketing offers from the Integrity Advance companies, you do not need to act again.
- To limit our sharing of information with Third Parties and Affiliated Companies, and/or to limit marketing offers from Affiliated Companies, contact us:
  - ♦ Electronically, by clicking submitting our online opt-out form
  - ♦ By Mail or Fax: By printing out and completing the Mail or Fax opt-out form and sending the form to: 300 Creek View Road, Suite 102, Newark, DE 19711 or via Fax to 302-861-1717.

I certify that I have received, read and understood this notice regarding my Opt-out choices.



X ☐ Initial here only if you have read, agree to, and understand the statements, policies and procedures listed above.

6. I understand that the Loan Agreement and any subsequent agreements between myself and you are subject to Delaware law, that I agree to be bound by such law, and acknowledge that, in the event of a bona fide dispute between myself and you, that Delaware law shall exclusively apply to such disputes, regardless of where any proceedings are held.

7. I understand that submitting false information to induce you to grant me a loan, i.e., a false social security number, false identification, altered bank statements, etc., constitutes fraud and may subject me to criminal penalties. I further acknowledge that you have disclosed your policy that you will report such instances of fraud to the appropriate law enforcement agencies.

8. I understand if I prefer to pay all or part of the loan amount, rather than accept the refinancing, I can call you at (800) 505-6073 at least three (3) business days before my payment is due.

9. I understand and accept if I default on my loan and I do not cooperate with you on repaying my debt, including the original loan amount and all fees that may apply, you may submit my name to a collection agency and report the incident to a consumer reporting agency database, such as Teletrack and/or CL Verify, which may negatively impact my ability to write checks and to receive loans or advances from other companies.

10. I understand and accept if my account is turned over to a third party collection agency and they are unable to collect the amount owed you, the collection agency will then pursue every action granted to them under the law, including but not limited to wage garnishment.

X ☐ Initial here only if you have read, agree to, and understand the statements, policies and procedures listed above.

☐ The term "Pay Date" 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.

## ARBITRATION PROVISION

## FORM #3

(Integrity Advance, LLC) Loan #: 30609072

Borrower's Name:

Date: 3/24/2009

Borrower: PLEASE READ AND COMPLETE THE FOLLOWING:

**DEFAULT, GOVERNING LAW, ASSIGNMENT AND EXECUTION.** You will be in default if you do not pay us the amounts you owe us under the Loan Agreement. The Application, Loan Agreement, and ACH Authorization, will be governed by the laws of the State of Delaware. This Arbitration Provision is governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16 ("FAA"). We may assign or transfer the Loan Agreement or any of our rights hereunder. If the Loan Agreement is consummated, then you agree that the electronically signed Loan Agreement, ACH Authorization, and Arbitration Provision we receive from you will be considered the original executed Loan Agreement, ACH Authorization, and Arbitration Provision, respectively, which are binding and enforceable as to both parties.

**WAIVER OF JURY TRIAL AND ARBITRATION PROVISION.** Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator") for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. We have a policy of arbitrating all disputes with customers which cannot be resolved in a small claims tribunal, including the scope and validity of this Arbitration Provision and any right you may have to participate in an alleged class action.

### THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS:

1. For purposes of this Waiver of Jury Trial and Arbitration Provision, the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to the Loan Agreement, the information you gave us before entering into the Loan Agreement, including the customer information application, and/or any past agreement or agreements between you and us; (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (j) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

2. You acknowledge and agree that by entering into this Arbitration Provision:

(a) **YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;**



(b) YOU ARE GIVING UP YOUR RIGHT TO HAVE A COURT, OTHER THAN A SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and  
 (c) YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.

3. Except as provided in Paragraph 6 below, all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. **THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.**

4. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Regardless of who demands arbitration, you shall have the right to select any of the following arbitration organizations to administer the arbitration: the American Arbitration Association (1-800-778-7879) <http://www.adr.org> or JAMS (1-800-352-5267) <http://www.jamsadr.com>. The parties may also agree to select an arbitrator who resides within your federal judicial district who is an attorney, retired judge, or arbitrator registered and in good standing with an arbitration association, and arbitrate in accordance with such arbitrator's rules. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Arbitration Provision, including the limitations on the arbitrator below. You may obtain a copy of the rules and procedures by contacting the arbitration organization listed above.

5. Regardless of who demands arbitration, at your request we will advance your portion of the arbitration expenses, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the FAA, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitration hearing will be conducted in the county of your residence. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, then you will not be responsible for reimbursing us for your portion of the Arbitration Fees, and we will reimburse you for any Arbitration Fees you have previously paid. If the arbitrator does not render a decision or an award in your favor resolving the dispute, then the arbitrator shall require you to reimburse us for the Arbitration Fees we have advanced, not to exceed the amount which would have been assessed as court costs if the dispute had been resolved by a state court with jurisdiction, less any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award may be filed with any court having jurisdiction.

6. All parties, including related third parties, shall retain the right to seek adjudication in a small claims tribunal in the county of your residence for disputes within the scope of such tribunal's jurisdiction. Any dispute, which cannot be adjudicated within the jurisdiction of a small claims tribunal, shall be resolved by binding arbitration. Any appeal of a judgment from a small claims tribunal shall be resolved by binding arbitration.

7. This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA. If a final non-appealable judgment of a court having jurisdiction over this transaction finds, for any reason, that the FAA does not apply to this transaction, then our agreement to arbitrate shall be governed by the arbitration law of the State of Delaware.

8. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. This Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. This Arbitration Provision continues in full force and effect, even if your obligations have been paid or discharged through bankruptcy. This Arbitration Provision survives any cancellation, termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing. If any of this Arbitration Provision is held invalid, the remainder shall remain in effect.

9. **OPT-OUT PROCESS.** You may choose to opt out of the Arbitration Provision, but only by following the process set forth below. If you do not wish to be subject to this Arbitration Provision, then you must notify us in writing within sixty (60) calendar days of the date of this Arbitration Provision at the following address: Integrity Advance, 300 Creek View Road, Suite 102, Newark, DE 19711. Your written notice must include your name, address, account number or social security number, the date of this Arbitration Provision, and a statement that you wish to opt out of this Arbitration Provision. If you choose to opt out, then your choice will apply only to the Application, Loan Agreement, ACH Authorization, and Arbitration Provisions submitted by you in this transaction.

By entering your name and clicking the "I Agree" button below, you are electronically signing and agreeing to all the terms of the Loan Agreement, the Arbitration Provision, and the ACH Authorization (the "Loan Documents") and providing or confirming your electronic signature on all of the Loan Documents, and you are expressly consenting to receive SMS messages from us. You agree that your electronic signature has the full force and effect of your physical signature and that it binds you to the Loan Documents in the same manner a physical signature would do so. By electronically signing below, you also acknowledge that all of the Loan Documents were filled in before you did so and you have read, understand, and agree to all of the terms of the Loan Documents, including the provision entitled "**WAIVER OF JURY TRIAL AND ARBITRATION PROVISION**" and the **Privacy Policy** and Covered Borrower Identification Statement. You agree that your right to file suit against us for any claim or dispute regarding the Loan Documents or your relationship with us is limited by the **WAIVER OF JURY TRIAL AND ARBITRATION PROVISION**. You also agree that all information you provided to us prior to or during the completion of the Loan Documents is complete and accurate. You represent that you are not a debtor under any proceeding in bankruptcy and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code.

Printed Name \_\_\_\_\_



Signature: (X) \_\_\_\_\_ Date: 3/24/2009

### Electronic Signature Information

eSignature Field	eSignature Value
Application Signature:	
Loan Note Signature:	
Loan Note Supplement Initials 1:	
Loan Note Supplement Initials 2:	
Loan Note Supplement Initials 3:	
Loan Note Supplement Signature:	
ACH Authorization Signature:	
Non Military Signature:	

# EXHIBIT 2



COPY

CONSUMER FINANCIAL PROTECTION BUREAU

In the matter of: )  
INTEGRITY ADVANCE, )  
a corporation. )

-----)

Tuesday, June 17, 2014

Venable, LLP  
575 7th Street, Northwest  
Washington, D.C.

CONFIDENTIAL COMMERCIAL INFORMATION

The above-entitled matter came on for  
investigational hearing, pursuant to notice, at 9:31  
a.m.

Carnes

Integrity Advance

6/17/2014

1 APPEARANCES:

2

3 ON BEHALF OF THE CONSUMER FINANCIAL PROTECTION BUREAU:

4 ALUSHEYI J. WHEELER, ESQ.

5 WENDY J. WEINBERG, ESQ.

6 Consumer Finance Protection Bureau

7 1700 G Street, Northwest

8 Washington, D.C. 20006-4702

9 202-435-7786 Fax: 202-435-7722

10 Email: alusheyi.wheeler@cfpb.gov

11

12 ON BEHALF OF INTEGRITY ADVANCE AND THE WITNESS:

13 ALLYSON B. BAKER, ESQ.

14 Venable, LLP

15 575 Seventh Street, Northwest

16 Washington, D.C. 20004

17 202-344-4708 Fax: 202-344-8300

18 Email: Abaker@Venable.com

19

20

21

22

23

24

25



Carnes

Integrity Advance

6/17/2014

1 P R O C E E D I N G S

2 - - - - -

3 Whereupon--

4 JAMES CARNES

5 a witness, called for examination, having been first  
6 duly sworn, was examined and testified as follows:

7 EXAMINATION

8 BY MR. WHEELER:

9 Q. Good morning.

10 A. Good morning.

11 Q. My name is Alusheyi Wheeler, and I'm an attorney  
12 with the Consumer Financial Protection Bureau. Today,  
13 along with my colleague Wendy Weinberg, we'll be  
14 conducting an investigational hearing. As your attorney  
15 has probably explained to you, an investigational  
16 hearing is similar to a deposition in that I'll ask  
17 questions, and you'll provide answers under the oath  
18 that you just took a second ago.

19 There are a couple of differences between this  
20 process and a deposition. One, generally the only  
21 objections allowed are to privilege and to protect your  
22 Constitutional rights generally, so you have to answer  
23 almost every question we ask you.

24 Because the hearing is being transcribed by the  
25 court reporter, there are a couple of sort of ground

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1 what their -- do a budget for them, for instance, which  
2 is kind of almost what you're saying, What's your  
3 mortgage payment, what's your car payment, what's your  
4 rent and whatever payments, and how much money are you  
5 bringing in, how much can you afford to borrow.

6 We weren't a financial counselor. We were just  
7 trying to make an online payday loan. We were only  
8 trying to make a decision in seconds, not half an hour.

9 Q. What was Integrity Advance's typical fee?

10 A. We only -- at the end we were talking about  
11 experimenting with different fees, but for the majority  
12 of the company's life, it was \$30 per hundred for a new  
13 customer, and \$24 for a hundred for a returning  
14 customer.

15 Q. For a returning customer to receive that lower  
16 rate, would they have had to pay it off their prior  
17 loan?

18 A. Yes.

19 Q. Who selected those fee amounts?

20 A. I don't even know. I don't know. I'm sure I  
21 was part of it. We discussed it. We discussed how much  
22 to offer customers, and as a group we came up with that  
23 it's a 20 percent discount, which was easy to market and  
24 advertise.

25 Q. Did Integrity Advance ever loan to customers who



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1 MS. BAKER: Is this part of a larger document?

2 MS. WEINBERG: Yes, it is.

3 MS. BAKER: So this is an excerpt of a larger  
4 document?

5 MS. WEINBERG: Yes.

6 MS. BAKER: Okay.

7 (Whereupon, Exhibit Number 22 was marked for  
8 identification.)

9 THE WITNESS: Okay.

10 BY MS. WEINBERG:

11 Q. So I assume that sometimes --

12 MS. BAKER: Have you had a chance to look  
13 through that?

14 THE WITNESS: Yes.

15 BY MS. WEINBERG:

16 Q. Can you explain what this document signifies  
17 about lead generators and what happens with leads?

18 A. Well, it doesn't signify anything about lead  
19 generator.

20 Q. What happens on Integrity Advance's side with  
21 leads.

22 A. Let's finish the story. The consumer gets the  
23 loan document, the application and the loan document in  
24 front of them on their browser. They have -- there's  
25 eight spots on that loan document for them to sign, and

Carnes

Integrity Advance

6/17/2014

1 we want to make eight spots because we really want them  
2 to understand the product they're getting because a lot  
3 of our competition have one signature, and we have  
4 eight. Their eyes are stopping every time they have to  
5 stop at the document so they're at least glancing at the  
6 terms, because otherwise if you have one, they scroll to  
7 the bottom and sign it, and lots of people -- we make  
8 them scroll. We make them scroll through it, sign eight  
9 times. Then they hit submit. Our systems time and date  
10 stamp --

11 Q. Can I talk to you there for one second? Let's  
12 look at an actual loan because I think it might be  
13 helpful.

14 A. Yes.

15 Q. Under tab 11, and this is -- again it will be  
16 one document, but it's -- I guess 23. It's an  
17 application and loan agreement for Chadidra Barnes.

18 A. 027472?

19 Q. 027472 that goes through 478?

20 MS. BAKER: And this is Exhibit 23, so it's  
21 INTEGRITY027472 to INTEGRITY027479. Is that the correct  
22 Bates numbers for this document?

23 (Whereupon, Exhibit Number 23 was marked for  
24 identification.)

25 MS. WEINBERG: Yes.



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1 or whatever happened, happened, but every consumer that  
2 got a loan was called and talked to so we understood  
3 what the product was and what they were getting. We  
4 explained how the procedure worked, how the pay down and  
5 payoff procedure worked, how the components of the loans  
6 worked. We asked, Do you have any questions, and then  
7 we would hang up, but this is all looking at pending  
8 application.

9 Q. Can you specifically --

10 MS. BAKER: Before you ask another question, can  
11 we take a five-minute break? I don't want to have a  
12 question pending when we take a break.

13 MS. WEINBERG: Yeah, go ahead.

14 (Whereupon, a brief recess was taken.)

15 BY MS. WEINBERG:

16 Q. I think at the break we were about to talk about  
17 Exhibit 22; is that right, which is the document that  
18 talks about following up on leads so you were about to  
19 explain that.

20 A. Explain what, document 22?

21 MS. WEINBERG: Yes.

22 MS. BAKER: Again you've had a chance to look at  
23 this document?

24 THE WITNESS: Yes. So the document basically  
25 describes how you pull up a pending application and what

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6/17/2014

1 you do for a first pass, a second pass and so forth.

2 BY MS. WEINBERG:

3 Q. What is a first pass? What does that mean?

4 A. The first pass would be the first time you try  
5 to call the applicant which hopefully is within ten  
6 minutes of the application being submitted if it's  
7 during working hours.

8 Q. Is this only for applications that were not  
9 filled out correctly?

10 A. No, this is for people you want to give loans  
11 to.

12 Q. So everyone who applied?

13 A. Everyone who applied got a call and talked to.

14 Q. And would this only apply to people who had  
15 applied for a loan or would it also be people who lead  
16 generators had sent you information about but who had  
17 not actually filled out the application?

18 A. I don't understand.

19 Q. So there must be -- were there some people where  
20 the lead generator said Jane Doe, same woman, is a good  
21 prospect but you never get a completed application by  
22 Jane Doe?

23 A. They only send complete applications.

24 Q. Okay. And is the application that they filled  
25 out -- would that be an Integrity Advance application or



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1 signatures?

2 A. Yes.

3 Q. Did Integrity automatically send out copies of  
4 the loan agreement to the customers?

5 A. Yes. They would Email a copy of the PDF to the  
6 customer along with a welcome page. One of the things  
7 we gave to you in the material that was provided in  
8 terms of customer communication was a welcome page that  
9 explained the terms of the loan and had the loan  
10 agreement attached.

11 MS. WEINBERG: Just off the record for just one  
12 minute.

13 (Discussion off the record.)

14 BY MS. WEINBERG:

15 Q. So I would like to talk a little bit more about  
16 ACHs. Could you describe -- first of all, what was the  
17 process for setting up the payment due date, just the  
18 date?

19 A. So the consumer would fill out their  
20 application, and they would give us their -- it came to  
21 us in a variety of ways from the lead provider. It  
22 would either have specific dates, and our system would  
23 reverse engineer what they were or they would actually  
24 have, I get paid on semi monthly payments on the 1st and  
25 the 15th or biweekly on Fridays or whatever it was.

Carnes

Integrity Advance

6/17/2014

1 Q. That they attempted to call Integrity to pay off  
2 their loan in advance of the automatic rollover and had  
3 difficulty doing so.

4 A. No.

5 Q. You're not aware of these?

6 A. I'm aware that there are complaints out there  
7 that people said that, but there again, there are -- one  
8 common complaint that people -- that consumers would  
9 have to try to get out of paying what they owed or  
10 paying less was to say, I didn't understand I was being  
11 -- that these payments weren't going towards principal  
12 and that they were going toward interest only.

13 Those were people who were trying to say that we  
14 misled them somehow, which we didn't. We went every  
15 mile to get them to understand the agreement that they  
16 had in front of them and they signed, from signing eight  
17 places, the welcome letter, the calls, the payment  
18 reminder Emails that would go out between pay dates that  
19 would alert them that a payment was coming, what to do  
20 to payoff or pay down your loan, all those things to  
21 make sure the consumer understood it.

22 So the common complaint was they would call and  
23 say, Well, I didn't understand it. They had their head  
24 buried in the sand and not listen to anything we gave  
25 them or talked to them on the phone. We answered the



# EXHIBIT 3

Dear CUSTOMER\_FIRST\_NAME,

CONGRATULATIONS! Your loan for LOAN\_AMOUNT has been approved. This email confirms your loan has been processed. It will be sent to your bank tonight and the funds will be available to you within 1 to 2 business days. Your first due date will be LOAN\_DUE\_DATE.

Remember you have 3 options of paying the loan back:

1) **YOU CAN LET THE LOAN AUTOMATICALLY RENEW.** All renewals are on your pay dates. After the **first** initial payment, the next 4 renewals will only require payment of the finance charge. Starting with the 5th renewal, in addition to the finance charge, we will also take out \$50 of principal. This will continue until the loan is repaid in full, unless of course you select either option 2 or 3 below. **NOTE: PLEASE REMEMBER, YOU CAN SELECT OPTIONS 2 OR 3 AT ANYTIME DURING YOUR LOAN REPAYMENT PROCESS**

2) **PAY THE LOAN DOWN IN PART.** If you want to increase your payment so you pay the loan back faster, you may do so in any amount (\$50 increments required) which will bring down the principal of your loan. Just call us 3 business days in advance of your pay date so we can make the change.

3) **PAY THE LOAN IN FULL.** Once again, just call us 3 business days in advance so we may make the change on your account. If you pay your loan off before your next pay date, you only pay the finance charge for the days the loan remains unpaid.

Thank You and Have a Great Day!

Integrity Advance

Cust Svc: (800) 505-6073

Fax: (800) 581-8148

[www.iadvancecash.com](http://www.iadvancecash.com)

Monday - Thursday 8am-8pm, ET

Friday 8am - 6pm, ET

Saturday 9am- 5pm, ET



# EXHIBIT 4

**YOUR LOAN IS DUE ON [4]**

Dear [0],

Your loan from Integrity Advance, LLC is due on [4].

Payment as of today is as follows:

• Finance Amount [3]

See option 1 below to determine if any additional principle will be applied.

Thank you for being a Integrity Advance customer. You have 3 convenient options for paying your loan back.

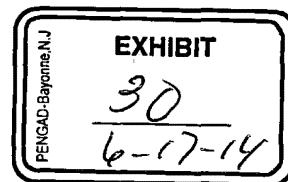
1. **YOU CAN LET THE LOAN AUTOMATICALLY RENEW.** All renewals are on your pay dates. After the initial payment, the next 4 renewals will only require payment of the finance charge. Starting with the 5th renewal, in addition to the finance charge, we will also take out \$50 of principle This will continue until the loan is repaid in full, unless of course you select either option 2 or 3 below. **NOTE: PLEASE REMEMBER, YOU CAN SELECT OPTIONS 2 OR 3 AT ANYTIME DURING YOUR LOAN REPAYMENT PROCESS**
2. **PAY THE LOAN DOWN IN PART.** If you want to increase your payment so you pay the loan back faster, you may do so in any amount (\$50 increments required), which will bring down the principal of your loan. Just call us 2 business days in advance of your pay date so we can make the change.
3. **PAY THE LOAN IN FULL.** Once again, just call us 2 business days in advance so we may make the change on your account. If you pay your loan off before your next pay date, you only pay the finance charge for the days the loan remains unpaid.

Based on the option you have chosen, please make sure the money is available in the bank account listed in your application on [4] to avoid incurring any additional fees.

If you have any questions or need any further assistance, we are here to help. Do not hesitate to contact us by email at [info@iadvancecash.com](mailto:info@iadvancecash.com) or by calling 800-505-6073

Sincerely,

Customer Service





# EXHIBIT 5

COPY

1 CONSUMER FINANCIAL PROTECTION BUREAU

2

3 In the matter of: )

4 Integrity Advance, )

5 a corporation. )

6

7 CONFIDENTIAL COMMERCIAL INFORMATION AND  
8 PROTECTED FROM DISCLOSURE UNDER EXEMPTION 4 OF  
9 THE FREEDOM OF INFORMATION ACT

10

11 Tuesday, June 24, 2014

12

13 Consumer Financial Protection Bureau  
14 1750 Pennsylvania Avenue, N.W.  
15 Washington, D.C.

16

17

18 The investigational hearing testimony of  
19 EDWARD NICHOLAS FOSTER commenced, pursuant to  
20 notice, at 9:31 a.m.

21

22

23

24

25



Foster

Integrity Advance

6/24/2014

1 A P P E A R A N C E S

2

3 ON BEHALF OF THE CONSUMER FINANCIAL PROTECTION

4 BUREAU:

5 ALUSHEYI WHEELER, ATTORNEY AT LAW

6 WENDY WEINBERG, ATTORNEY AT LAW

7 1700 G Street, N.W.

8 Washington, D.C. 20552

9 202.435.7000

10

11 ON BEHALF OF THE WITNESS:

12 ALLYSON BAKER, ATTORNEY AT LAW

13 VENABLE LLP

14 575 7th Street, N.W.

15 Washington, D.C. 20004

16 202.344.4000

17

18

19

20

21

22

23

24

25

Foster

Integrity Advance

6/24/2014

1 C O N T E N T S

2

3 EDWARD NICHOLAS FOSTER EXAMINATION

4 BY MR. WHEELER 5

5 BY MS. WEINBERG 93

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Foster

Integrity Advance

6/24/2014

1 P R O C E E D I N G S

2 Whereupon--

3

4 EDWARD NICHOLAS FOSTER

5 a witness, called for examination, having been  
6 first duly sworn, was examined and testified as  
7 follows:

8 EXAMINATION BY COUNSEL FOR CFPB

9 BY MR. WHEELER:

10 Q. Good morning.

11 A. Good morning.

12 Q. My name is Alusheyi Wheeler and  
13 I'm an attorney with the Consumer Financial  
14 Protection Bureau. Today I, along with my  
15 colleague, Wendy Weinberg, will be conducting an  
16 investigational hearing. And as your counsel  
17 probably explained to you, that will consist of  
18 I and Wendy asking you questions you providing  
19 questions under oath. The process is similar to  
20 a deposition if you've ever had your deposition  
21 taken.

22 A couple of ground rules we should  
23 start off with. As you can see, the hearing is  
24 being transcribed by a court reporter. So we  
25 have to make every effort not to speak over each

Foster

Integrity Advance

6/24/2014

1 Let's say the application signature was missing.

2 What would happen?

3 A. Again, a bit open ended on a  
4 number of things, but certainly without all  
5 signatures showing up as being completed there  
6 can be no provisional approval or final approval  
7 of an application.

8 Q. Would your statement also apply to  
9 the ACH authorization signature?

10 A. There would be no provisional or  
11 initial approval of the application without  
12 additional contact with the customer, certainly  
13 on that matter.

14 Q. So would there be any way for a  
15 consumer to apply for a loan through Integrity  
16 Advance without signing an ACH authorization?

17 A. Yes.

18 Q. How so?

19 A. As a follow up -- part of the  
20 process with one or more of these being  
21 incomplete, there would be phone calls made by a  
22 customer service representative to the applicant  
23 discussing many matters, one of which would have  
24 been the signatures, specifically on the ACH  
25 authorization there would be a question as to



Foster

Integrity Advance

6/24/2014

1 are you -- you know, are you going to sign that,  
2 do you want to sign that, why have you not  
3 signed that, or any of these.

4 Q. So if our hypothetical consumer  
5 said I don't want to sign the ACH authorization  
6 form, what would have happened?

7 A. My understanding of the process  
8 would have been that if that individual met  
9 every other underwriting criteria and  
10 thresholds, et cetera, including all the other  
11 signatures, and could arrange for a different  
12 form of payment they could have been approved  
13 for a loan.

14 Q. What forms of payment did  
15 Integrity Advance accept?

16 A. My recollection is Integrity  
17 Advance accepted checks, money orders, credit  
18 cards, debit cards. Those are the main ones.

19 Q. Do you know what percentage of  
20 consumers would have paid in one of those other  
21 methods and not ACH?

22 A. I do not know that percentage.

23 Q. Would it have been more than  
24 5 percent?

25 MS. BAKER: Caution you not to

# EXHIBIT 6



**SUBJECT TO PROTECTIVE ORDER IN 2015-CFPB-0029**

Transcript of **Manoj Hastak. Ph.D.**

**Date:** March 11, 2016

**Case:** Integrity Advance, LLC and James R. Carnes, In the matter of

Planet Depos  
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UNITED STATES OF AMERICA

Before the

CONSUMER FINANCIAL PROTECTION BUREAU

- - - - -x

ADMINISTRATIVE PROCEEDING :

File No. 2015-CFPB-0029 :

In the matter of: :

INTEGRITY ADVANCE, LLC and :

JAMES R. CARNES. :

- - - - -x

Deposition of MANOJ HASTAK, PH.D.

Washington, D.C.

Friday, March 11, 2016

9:45 a.m.

SUBJECT TO PROTECTIVE ORDER IN 2015-CFPB-0029

Job No.: 106250

Pages: 1 - 289

Reported by: Karen Young

Deposition of Manoj Hastak, Ph.D.

Conducted on March 11, 2016

2

1 Deposition of MANOJ HASTAK, PH.D., held at the  
2 offices of:

3 VENABLE LLP  
4 575 Seventh Street, Northwest  
5 Washington, D.C. 20004  
6 (20) 344-4000  
7  
8  
9  
10

11 Pursuant to Notice, before Karen Young,  
12 Notary Public of the District of Columbia.  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

A P P E A R A N C E S

ON BEHALF OF THE CONSUMER

FINANCIAL PROTECTION BOARD:

WENDY J. WEINBERG, ESQUIRE

VIVIAN W. CHUM, ESQUIRE

ALUSHEYI J. WHEELER, ESQUIRE

CONSUMER FINANCIAL PROTECTION BUREAU

1700 G Street, Northwest

Washington, D.C. 20006-4702

(202) 435-7688



1 ON BEHALF OF INTEGRITY ADVANCE, LLC and

2 JAMES R. CARNES:

3 ALLYSON B. BAKER, ESQUIRE

4 PETER FRECHETTE, ESQUIRE

5 VENABLE LLP

6 575 Seventh Street, Northwest

7 Washington, D.C. 20004

8 (202) 344-4000

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10 HILLARY S. PROFITA, ESQUIRE

11 VENABLE LLP

12 Rockefeller Center

13 1270 Avenue of the Americas

14 New York, New York 10020

15 (212) 307-5500

16

17

18

19

20

21

22

P R O C E E D I N G S

MANOJ HASTAK, PH.D.,

having been duly sworn, was examined as follows:

- - -

EXAMINATION BY COUNSEL FOR INTEGRITY ADVANCE, LLC

and JAMES R. CARNES.

BY MS. BAKER:

Q Good morning, Dr. Hastak. Am I pronouncing  
your last name correctly?

A Very close, thank you.

Q Would you want to correct me so I pronounce  
it --

A It's Hastak.

Q Hastak.

A Yes.

Q Thank you, Dr. Hastak. Can you please  
spell your full name for the record before we begin?

A M-A-N-O-J. That's the first name,  
H-A-S-T-A-K. That's the last name.

Q Thank you. My name is Allyson Baker. I'm  
an attorney representing respondents in this matter,  
and I'll be taking your deposition today in this

1 interpret this as meaning that the terms and  
2 conditions that have been set forth in the loan  
3 agreement will apply, and one of the terms that's  
4 stated in the loan agreement is the cost in the TIL  
5 box, so that's something that consumers could take as  
6 possibly applying.

7 Q I want to make sure I understand, but it's  
8 -- it's your testimony that you didn't rely on an  
9 understanding that customers had in writing this  
10 sentence.

11 A No, I have -- certainly didn't talk to any  
12 customers, and I didn't rely on the complaints  
13 either. The complaints simply validated the  
14 possibility that people may have made this inference.

15 Q Why did you not rely on the complaints?

16 A Well, the complaints are not  
17 representatives of the customers of Integrity  
18 Advance, and so they're just a small sampling of  
19 individuals who had a problem with Integrity Advance,  
20 so I don't take that as -- I don't take that as  
21 representative in any way of what a -- what a typical  
22 consumer, if you will, might -- might take.



1 loan was renewed.

2 A No, I don't know that.

3 Q And so if there were instances where  
4 customers did not pay additional fees, would it be  
5 correct to then use the phrase "will accrue"?

6 A If it was the case that for some customers,  
7 there were no additional fees or costs, then "will  
8 accrue" would be wrong. "May accrue" would be --  
9 would be correct.

10 Q You said earlier that in your -- your  
11 understanding of customer complaints was that they  
12 were not representative of Integrity Advance  
13 customers. Do you recall that testimony?

14 A Yes.

15 Q Why do you believe that to be the case?

16 A Because there is a very small fraction of  
17 customers who complain, and so while complaints  
18 provide useful information, you can't generalize from  
19 the complaints to the entire customer base. Customer  
20 -- complainers are not a random sample, if you will,  
21 of all the customers of any company.

22 Q What's the basis for that statement that

# EXHIBIT 7



STATE OF DELAWARE  
**OFFICE OF THE STATE BANK COMMISSIONER**  
555 E. LOOCKERMAN STREET, SUITE 210  
DOVER, DELAWARE 19901

WEB: [BANKING.DELAWARE.GOV](http://BANKING.DELAWARE.GOV)

TELEPHONE: (302) 739-4235  
FAX: (302) 739-2356

December 28, 2010

Mr. Edward Foster  
EVP, General Counsel  
Integrity Advance, LLC  
300 Creekview Road  
Suite 102  
Newark, DE 19711

Dear Mr. Foster:

Your application for renewal of your Licensed Lender License has been received by this office.

After review of said application, I am happy to inform you that Integrity Advance, LLC has been granted renewal for licensure under Chapter 22, Title 5, Del.C.

Enclosed you will find Licensed License Number(s) 010197 for the term January 1, 2011 through December 31, 2011 .

In accordance with 2206, Title 5, Del.C., please post the license(s) in a prominent place at the address which appears on the license.

Should you have any questions, or problems, please feel free to contact the Licensing Division at the number listed above.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Quinn Miller".

E. Quinn Miller  
Investigative Supervisor

EQM/clh  
Enclosures(s)





STATE OF DELAWARE  
**OFFICE OF THE STATE BANK COMMISSIONER**  
555 E. LOOCKERMAN STREET, SUITE 210  
DOVER, DELAWARE 19901

WEB: BANKING-DELAWARE.GOV

TELEPHONE: (302) 739-4235  
FAX: (302) 739-2356

License No. **010197**  
Renewal

**Chapter 22 Licensed Lender License**

To all persons whom these presents may concern:

Whereas:

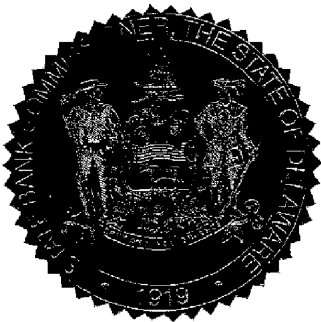
Integrity Advance, LLC has made application to The State Bank Commissioner of this state in the manner and form prescribed for a licensee to engage in a lending business, and has complied with the statutory requirements necessary for the issuance of this license as set forth in Section 2206, 5 Del.C., Chapter 22.

Now, therefore know Ye: that this license is granted to the said:

**Integrity Advance, LLC**  
**300 Creekview Road**  
**Suite 102**  
**Newark, DE 19711**

To transact business in this state until *December 31, 2011*, subject to the provisions of the laws of Delaware.

Issued under my hand and seal, this day, December 28, 2010, in Dover, Delaware.



  
\_\_\_\_\_  
State Bank Commissioner

# EXHIBIT 8

UNITED STATES OF AMERICA  
Before the  
CONSUMER FINANCIAL PROTECTION BUREAU

---

In the Matter of :  
: Administrative Proceeding  
INTEGRITY ADVANCE, LLC : File No. 2015-CFPB-0029  
and JAMES R. CARNES, :  
Respondent. :

---

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS  
HEARING (Volume I of III)

Washington, D.C.  
Tuesday, July 19, 2016

BEFORE:

HONORABLE PARLEN L. MCKENNA, ADMINISTRATIVE LAW JUDGE

**APPEARANCES:**

**For the Agency:**

Alusheyi J. Wheeler, Esquire  
Wendy J. Weinberg, Esquire  
Vivian W. Chum, Esquire  
Craig A. Cowie, Esquire

**For the Respondent:**

Allyson B. Baker, Esquire  
Peter S. Frechette, Esquire  
Danielle R. Foley, Esquire  
Andrew T. Hernacki, Esquire  
Hillary S. Profita, Esquire  
Venable, LLP, Washington, D.C. 20004

**On Behalf of Mr. Edward Foster**

Gerald S. Sachs, Esquire

**ALSO PRESENT:**

For the Administrative Law Judge:  
Heather MacClintock, Esquire  
Lauren S. Staiti, Esquire  
Sally Gessner, Official Court Reporter

Jeannie A. Milio, RPR  
Official Court Reporter  
ALJ Office, Baltimore, Maryland 21202-4022



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## ENFORCEMENT COUNSEL'S EXHIBITS: ADMITTED INTO EVIDENCE

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P R O C E E D I N G S

JUDGE McKENNA: Come to order.

Call the case in the matter of Integrity Advance, LLC and James R. Carnes, this proceeding is before the Consumer Financial Protection Bureau. My name is Parlen L. McKenna and I'm the judge assigned to hear and decide this case. I will take appearances starting with the government.

MR. WHEELER: Alusheyi Wheeler on behalf of Enforcement Counsel, Your Honor.

MS. CHUM: Good morning, Your Honor. Vivian Chum on behalf of Enforcement Counsel.

MS. WEINBERG: Wendy Weinberg on behalf Enforcement Counsel.

JUDGE MCKENNA: For the Respondents.

MS. BAKER: Allyson Baker on behalf of the Respondents. Good morning, Your Honor.

JUDGE McKENNA: Good morning.

MR. HERNACKI: Good morning, Your Honor. Andrew Hernacki on behalf of Respondents.

JUDGE McKENNA: Spell it.

MR. HERNACKI: H-E-R-N-A-C-K-I.

JUDGE MCKENNA: Thank you.

MS. FOLEY: Good morning, Your Honor. Danielle Foley, F-O-L-E-Y on behalf of Respondents.

1 MS. PROFITA: Good morning, Your Honor.  
2 Hillary Profita on behalf of Respondents,  
3 P-R-O-F-I-T-A.

4 MR. FRECHETTE: Good morning. Peter Frechette  
5 on behalf of Respondents, F-R-E-C-H-E-T-T-E.

6 JUDGE MCKENNA: F-R-E?

7 MR. FRECHETTE: C-H-E-T-T-E.

8 JUDGE MCKENNA: Great.

9 Prior to going on the record, the parties and  
10 myself discussed the issue of how are we going to  
11 resolve Mr. Foster, Mr. Edward Foster, to facilitate  
12 his testimony. And Enforcement Counsel indicated that  
13 they wish to do him telephonically. Mr. Foster's  
14 attorney is present here. And would you like to make  
15 an appearance?

16 MR. SACHS: Gerald Sachs on behalf of  
17 Mr. Foster, limited appearance just for that purpose.

18 JUDGE MCKENNA: All right. S-A-C-H-S?

19 MR. SACHS: Exactly, Your Honor.

20 JUDGE MCKENNA: Did you get that?

21 COURT REPORTER: Yes.

22 JUDGE MCKENNA: So Respondent's counsel had  
23 no objection to that approach. What is the issue  
24 regarding the deposition?

25 MR. WHEELER: The issue, Your Honor?

1 JUDGE McKENNA: Yeah, what are you doing with  
2 the deposition, Mr. Foster's deposition?

3 MR. WHEELER: I believe it was admitted into  
4 evidence.

5 JUDGE McKENNA: Okay.

6 MS. BAKER: Your Honor, if I may address that,  
7 Allyson Baker, our position is that we will stipulate  
8 that his deposition would come into evidence provided  
9 he not have to testify, but to have him testify and  
10 also have his deposition in evidence seems cumulative.

11 JUDGE McKENNA: All right. Duly noted.

12 All right. Since the deposition is already  
13 admitted, then the question would be are you  
14 indicating at this point that you want to object --  
15 re-assert your objection to Mr. Foster testifying?

16 MS. BAKER: Well, I didn't originally --

17 JUDGE McKENNA: One or the other.

18 MS. BAKER: -- proffer an objection, but I  
19 will proffer an objection now because frankly, to  
20 admit in its entirety the transcript of an  
21 investigational hearing usually is done in court only  
22 when a witness is not available to testify. It is not  
23 an admission of a party opponent, and so it seems  
24 unnecessary and cumulative, to have both an  
25 investigational hearing transcript admitted and also



1 to have testimony from a witness. It's actually  
2 hearsay unless that witness is unavailable to testify.

3 So that's our position and as I have said  
4 before we will stipulate that the entire deposition  
5 comes into evidence in the event Mr. Foster cannot  
6 testify, but if he is going to be testifying, then to  
7 admit his transcript into evidence as well is just  
8 mere hearsay.

9 JUDGE McKENNA: Well --

10 MS. BAKER: The entirety of it, Your Honor.

11 JUDGE McKENNA: Right. But hearsay is  
12 admissible in these proceedings, number one. Number  
13 two, that when Mr. Foster is called, did you give this  
14 deposition, is this a true and correct copy of what  
15 you testified to during the investigational --  
16 investigation, and if he says yes, then he can adopt  
17 it.

18 So I'm going to deny the objection. And I  
19 would invite you to reassert if things start to go  
20 awry from your perspective.

21 MS. BAKER: Thank you, Your Honor.

22 Your Honor, may I ask for a point of  
23 clarification? Is it the Court's position that  
24 hearsay no matter comes in? Or is it the Court's  
25 position that hearsay is not in and of itself a factor

1 in excluding a piece of evidence if it is otherwise  
2 probative in the Court's decision making?

3 I read the rules to not have hearsay be in and of  
4 itself a per se gatekeeper prohibiting the admission  
5 of evidence, but I don't believe that hearsay -- just  
6 because something is hearsay doesn't mean it comes in  
7 automatically. And that's my question here, I mean,  
8 I'm a little bit unclear about how that rule --

9 JUDGE MCKENNA: All right.

10 MS. BAKER: -- is playing itself out in this  
11 instance.

12 JUDGE MCKENNA: And I'm sure that you know how  
13 squishy that subject is. So what -- the position that  
14 I normally take is that I allow hearsay in except in  
15 the most egregious cases of three times removed  
16 hearsay. And then the question really is what is the  
17 reliability of what is being asserted. And that is a  
18 gauge, but that gauge is usually employed on the back  
19 end not the front end.

20 All of this goes to weight, and so that's -- I  
21 hope that answers your question.

22 MS. BAKER: Thank you, Your Honor, it does.

23 JUDGE MCKENNA: All right. Anything further  
24 before we have opening statements?

25 MR. WHEELER: Not on behalf of Enforcement

1 Counsel, Your Honor.

2 MS. BAKER: No, thank you.

3 JUDGE McKENNA: All right. Thank you.

4 MR. WHEELER: I'm not sure this is on, do you  
5 need this on?

6 COURT REPORTER: That would be my preference.

7 MR. WHEELER: I don't know if I -- anyone  
8 knows where the --

9 (Brief discussion regarding microphone.)

10 MR. WHEELER: I'll just do my best to project.

11 **OPENING STATEMENT BY MR. WHEELER:**

12 MR. WHEELER: Good morning, again, Your Honor.

13 My name is Alusheyi Wheeler on behalf of  
14 Enforcement Counsel. As you know, Your Honor,  
15 Integrity Advance was an online payday lender that  
16 provided loans to consumers. The consumer took those  
17 loans they received --

18 JUDGE McKENNA: Louder.

19 MR. WHEELER: Louder? Okay. When consumers  
20 took those loans, they received a disclosure, a Truth  
21 in Lending Act Disclosure. That disclosure suggested  
22 that the consumer had taken a single payment loan.  
23 The APR, the finance charge, and the total of payments  
24 were all calculated in that disclosure assuming the  
25 loan would be repaid in a single payment.

1 But, as you know, Your Honor, unless the  
2 consumer called Integrity Advance in advance of their  
3 next payday, the loan would be rolled over repeatedly  
4 by Integrity Advance. Depending on the size of the  
5 loan, that could result in the consumer paying  
6 hundreds or even thousands more than what was in the  
7 disclosure.

8 Now Your Honor has already ruled that this  
9 disclosure violated the Truth in Lending Act, and was  
10 deceptive. The question here is whether Respondent  
11 Carnes in his role as CEO of Integrity Advance engaged  
12 in this deceptive practice along with the company.

13 Your Honor, recently the Ninth Circuit in CFPB  
14 v Gordon held that an individual can be held liable  
15 under the CFPA if, and I quote, "One, he participated  
16 directly in the deceptive acts or had authority to  
17 control them. And two, he had knowledge of the  
18 misrepresentations, was recklessly indifferent to the  
19 truth or falsity of the misrepresentations or was  
20 aware of the high probability of fraud along with an  
21 intentional avoidance of the truth."

22 Your Honor, we will present evidence here in  
23 this trial, that Respondent Carnes meets the standard.  
24 He was an active and involved CEO who knew about  
25 Integrity Advance's practices.



1           Your Honor, you are going to hear from  
2 individuals who used to work for Integrity Advance and  
3 you are going to hear from Mr. Carnes himself. And  
4 that testimony and the accompanying exhibits will show  
5 that Mr. Carnes founded Integrity Advance, was the  
6 CEO, as CEO was the ultimate corporate decision maker,  
7 he effectively owned the company. He hired people to  
8 help run the company. He was in the office every day,  
9 had regular meetings about Integrity Advance business.  
10 He signed contracts and agreements on behalf of  
11 Integrity Advance, and he approved the contents of  
12 Integrity Advance's website.

13           In addition, Your Honor, the evidence will  
14 show that Mr. Carnes knew how Integrity Advance's  
15 loans worked. He knew that the contract called for  
16 automatic rollovers. He knew that the contract  
17 disclosed a single payment loan, and he knew that most  
18 consumers would pay more than what had been disclosed.

19           Your Honor, Integrity Advance was not a large  
20 company. The organizational chart that Respondents  
21 produced to us contains eleven people. This was a  
22 small group of people all working in the same office.  
23 Mr. Carnes was there every day running this operation  
24 actively. Your Honor, Mr. Carnes is legally  
25 responsible for Integrity Advance's deceptive loan

1 agreement.

2 I want to turn now to remotely created checks.  
3 As you are aware, Your Honor, Enforcement Counsel has  
4 asserted that Respondents unfairly used remotely  
5 created checks to debit consumer accounts. And I  
6 might refer to remotely created checks as RCC's. I  
7 want to begin with a little background on this topic,  
8 though, Your Honor.

9 Most of us are familiar with standard checks.  
10 You open up a bank account. Your bank sends you a  
11 checkbook in the mail. When you want to pay someone,  
12 you write out the check. You put in an amount. You  
13 sign it, and you hand it over to a company or a  
14 person. That company or person takes the check to  
15 their bank and cashes or deposits it.

16 Your Honor, you are going to hear testimony  
17 from Joseph Baressi who works at the Bureau, has been  
18 working on remotely created checks for years. And he  
19 is going to talk about how remotely created checks are  
20 actually very different. Remotely created checks  
21 don't come out of a consumer's bank account, and they  
22 aren't signed by the consumer.

23 In fact, with just a consumer's bank account  
24 number and their bank routing number, a company can  
25 print a remotely created check out of thin air and

1 take that check to their bank, just like any other  
2 check, and use it to deposit into their account, use  
3 that to draw out of the consumer's account. The  
4 consumer is not part of the transaction whatsoever.  
5 And a company can do this repeatedly, Your Honor,  
6 without the consumer knowing.

7 Now this is something that many consumers  
8 don't realize is even possible. But despite that, I  
9 want to show you how Respondents sought authorization  
10 for this.

11 Can we please see Exhibit 63, and let's go to  
12 page 9.

13 So Your Honor, this is one the templates that  
14 Integrity Advance used for their loan agreements.

15 Are we on page nine?

16 MR. JEFFERSON: Um-hmm.

17 MR. WHEELER: All right. Can you highlight  
18 the language?

19 So this is the language that Respondents used.  
20 And it reads: "You authorized us to prepare and submit  
21 one or more checks drawn on your bank account so long  
22 as amounts are owed to us under the loan agreement."  
23 That's it, Your Honor. It doesn't mention remotely  
24 created checks. It doesn't use any of the other terms  
25 associated with this product like demand draft or

1 check draft. It doesn't say anything about the  
2 consumer will not have to see the check, will not have  
3 to sign the check, will not have to provide  
4 authorization for this check.

5 And, of course, Your Honor, as we just saw,  
6 this is one clause, in one sentence, on page nine of a  
7 fifteen page agreement. Clearly, Your Honor, there is  
8 no effort here by Respondents to really inform  
9 consumers what they were authorizing with this  
10 language.

11 I think it's also important, Your Honor, to  
12 understand when Respondents used remotely created  
13 checks.

14 Integrity Advance conducted most of its  
15 business using the ACH network, which is how most  
16 electronic money transactions are accomplished, and  
17 that's not in dispute. They would push loan funds to  
18 consumers using ACH and then withdraw payments from  
19 consumer accounts using ACH. But when consumers  
20 wanted to block this, when consumers affirmatively  
21 went to their bank and said, please stop Integrity  
22 Advance from withdrawing money from my account, that's  
23 when Integrity Advance used these remotely created  
24 checks.

25 Your Honor, a practice is legally unfair when

1 it causes or is likely to cause substantial injury to  
2 consumers. The injury is not reasonably avoidable,  
3 and the injury is not outweighed by countervailing  
4 benefits to consumers or to competition. Your Honor,  
5 the evidence here will clearly support an unfairness  
6 finding. The evidence will show that consumers  
7 endured substantial injury by having these RCC's drawn  
8 against their accounts.

9           You are going to hear testimony from a Bureau  
10 data scientist about -- they are going to walk you  
11 through a specific example of how Respondents used  
12 these RCC's on a consumer after that consumer had  
13 blocked the ACH authorization at their bank. The data  
14 will also show that Respondents used RCC's over one  
15 thousand times to withdraw over \$250,000 from consumer  
16 accounts. This injury that consumers suffered was not  
17 reasonably avoidable. As we just saw, the  
18 authorization is opaque and hidden deep in a loan  
19 agreement.

20           Finally, Your Honor, there is no plausible  
21 argument that this practice benefitted consumers or  
22 benefitted competition. When consumers are trying to  
23 block access to their account, having money drawn out  
24 anyway, clearly doesn't help them.

25           Finally, Your Honor, Enforcement Counsel is



1 requesting broad relief in this matter, including  
2 disgorgement, restitution, damages and equitable  
3 relief. As I mentioned, we are going to hear from a  
4 Bureau data scientist who has summarized the payment  
5 level data the Respondents produced in this matter.  
6 He is going to testify about the number of loans  
7 Integrity Advance originated and the amounts paid by  
8 consumers, and that shows that thousands of consumers  
9 paid millions and millions of dollars above and beyond  
10 what was disclosed in their loan agreements. Finally,  
11 he is also going to testify about the exact amounts of  
12 -- that Respondents took using remotely created  
13 checks.

14 In closing, Your Honor, I think it's important  
15 to remember that Integrity Advance originated over  
16 three hundred thousand loans during the time it was in  
17 operation. Each of those loan agreements, each of  
18 those three hundred thousand loan agreements had a  
19 TILA violation. Each one of those three hundred  
20 thousand loan agreements was deceptive, it didn't  
21 reflect the actual cost of the loan that those  
22 consumers had taken.

23 JUDGE McKENNA: What happens if one of their  
24 customers paid off their loan, called them up three  
25 days before and paid it off, is that a TILA violation?

1 MR. WHEELER: Yes, Your Honor. At -- when the  
2 loan agreement was given to consumers, given that they  
3 were -- those consumers were receiving a multi-payment  
4 loan and, but had a single payment loan disclosed,  
5 that was still a TILA violation, and, I believe, that  
6 is what you held in your order.

7 JUDGE McKENNA: Yeah, all right. Well, I'm  
8 going to want to dig into some of this, especially the  
9 issue of recoupment, and penalties. Because I don't  
10 think it's fair to Respondents if this matter,  
11 recoupment or the penalty is to be handled in globo.  
12 So we'll see where we go from there. Just want to  
13 make sure that everything is laid out properly.

14 MR. WHEELER: I understand, Your Honor.

15 JUDGE McKENNA: Okay.

16 MR. WHEELER: Thank you. I have nothing  
17 further.

18 **OPENING STATEMENT BY MS. BAKER:**

19 MS. BAKER: Good morning, Allyson Baker for  
20 Respondents. Can you hear me okay? Thank you.

21 So, Your Honor, the CFPB's Office of  
22 Enforcement has the burden in this matter. And that  
23 is critical to remember. They have the burden, first,  
24 of making a prima facie case, and then they,  
25 ultimately have the burden of showing by a

1 preponderance of the evidence three things:  
2 Mr. Carnes is liable for deceptive conduct; the  
3 company and Mr. Carnes are liable for unfairness  
4 relating from or concerning the use of remotely  
5 created checks; and that their damages calculation is  
6 complete, adequate, and conforms to the law.

7 Your Honor is not going to see evidence of any  
8 of those things today and this week that enable the  
9 Bureau to meet its burden.

10 Here is what the evidence will not show. The  
11 evidence will not show that Mr. Carnes was liable for  
12 any of the deceptive conduct relating to the TILA  
13 disclosures or any other disclosure in the loan  
14 agreement. Your Honor will hear testimony that  
15 Mr. Carnes never drafted an agreement, never wrote an  
16 agreement, never edited an agreement, never revised an  
17 agreement. He never wrote a loan disclosure. He  
18 never revised a loan disclosure. He never edited a  
19 loan disclosure. He never had any input into what was  
20 in a loan disclosure. You will hear evidence about  
21 that.

22 You will also hear evidence that Mr. Carnes  
23 never wrote a script that a call center representative  
24 used to describe the loan. He never revised a script.  
25 He never even reviewed a script. He never edited a

1 script. He never had any input into those scripts.  
2 You will hear evidence about that.

3 The Bureau has acknowledged in its pre-trial  
4 statement, indeed, the very standard that this Court  
5 must deploy in rendering a decision as to whether or  
6 not Mr. Carnes is liable for deception. Specifically,  
7 on page five of its pre-trial statement it says the  
8 following: "Respondent Carnes was fully aware of how  
9 Integrity Advance's loan product operated, and that  
10 that loan product did not align with the company's  
11 loan agreement disclosures."

12 That is patently incorrect.

13 That second part, evidence will show  
14 Mr. Carnes had no knowledge, whatsoever, of what was  
15 in the loan agreement disclosures and how they,  
16 whether they did or did not align with the way the  
17 loan operated.

18 And in the absence of that evidence, the  
19 Bureau cannot meet its prima facie case, let alone its  
20 final burden of showing that Mr. Carnes is liable for  
21 deceptive conduct in this matter. And the Bureau by  
22 its own statements here on page five has acknowledged  
23 that that is the standard at issue in this matter as  
24 to Mr. Carnes and deception.

25 The evidence will also show that Integrity

1 Advance was licensed with the State of Delaware. It  
2 obtained a lending license in 2008. That license was  
3 renewed in '09, in 2010, in 2011, in 2012, and indeed  
4 it was renewed for purposes of continuing to lend into  
5 2013, although as Your Honor knows the company stopped  
6 making loans in December of 2012, and shuttered in  
7 June of 2013.

8 What the evidence will show, and you will hear  
9 a little later this week from Ms. Quinn Miller, who is  
10 the chief investigator for the Delaware Banking  
11 Commission's nonbank compliance program, what you will  
12 hear Ms. Miller talk about is the licensing regime in  
13 that state. And that state had a licensing regime and  
14 still does for small dollar short-term lenders or  
15 payday lenders.

16 Among other things, that licensing regime  
17 requires that the State examine for compliance with  
18 the consumer finance laws the actual loan agreements  
19 that were used with consumers, concerning the very  
20 loans at issue in this case.

21 And you will hear that by virtue of the fact  
22 that the company was consistently re-licensed every  
23 year, it was found to be in per se compliance with  
24 those laws. Because the statute itself says that if  
25 you are not in compliance with those laws, your



1 license does not get renewed.

2 You will also hear Mr. Carnes testify that he  
3 understood that his company had a Delaware lending  
4 license. And that that in and of itself was renewed  
5 each year and that that fact also meant that the  
6 company was in compliance with the law in the state  
7 where it was licensed.

8 Now what else you will hear or perhaps won't  
9 hear is about remotely created checks. Remotely  
10 created checks are legal. They were legal in 2008.  
11 They were legal in 2009. They were legal in 2010.  
12 They were legal in 2011. They were legal in 2012.  
13 And they were legal in 2013. They are not illegal.

14 And you will hear evidence that suggests that  
15 they were not illegal and they are still not illegal.  
16 Now the Bureau wants to put on, before this Court,  
17 evidence about a telemarketing sales rule which was  
18 recently passed last year and I have a few thoughts on  
19 that which Your Honor will hear about as well from  
20 their witness.

21 First of all, the telemarketing sales rule  
22 would never have applied to this company. And second  
23 of all, the telemarketing sales rule change happened  
24 last year, not six years ago when this company was in  
25 operation.

1 Now the evidence will also show the following:  
2 The evidence will show that the company did not engage  
3 in any unfair conduct as to the use of RCC's. It will  
4 show that there was no cognizable consumer harm, let  
5 alone substantial consumer injury, which is the legal  
6 standard that has be an applied when looking at the  
7 unfairness doctrine. In fact, what Your Honor will  
8 learn is that fewer than one percent of the consumers  
9 who had Integrity Advance loans ever had a remotely  
10 created check created.

11 And Your Honor will see the numbers that  
12 support that. The Court will also see that RCC's were  
13 a so-called payment choice of last resort. And what  
14 we mean by that is, specifically, remotely created  
15 checks were used only in instances when a consumer  
16 could not be reached, had reneged on the  
17 authorization, and was essentially deciding not to  
18 repay the loan that had been made to him or her. And  
19 it was a very small number of instances when remotely  
20 created checks were used. And Your Honor will see  
21 that and hear that as well.

22 Now finally, it's very important that we  
23 discuss with a great amount of granularity, the issue  
24 of damages in this matter. And Your Honor, what the  
25 CFPB is proposing is that they put on the stand an

1 information technology specialist to discuss with  
2 granularity the issue of damages in this matter.

3 Your Honor, they have not proffered a damages  
4 expert. They have not proffered an economist. They  
5 have not proffered anybody who is equipped to talk  
6 with any specificity about how consumers could have  
7 been harmed, were they harmed, and what those numbers  
8 actually mean.

9 What the evidence will show is as follows:  
10 Mr. Hughes's calculation does not account for  
11 instances of actual potential consumer harm. He does  
12 not properly account for monetary relief, and he does  
13 not properly delineate instances when consumers chose  
14 to repeat -- repeatedly renew their loans and take out  
15 first, second, third, fourth loans. So the concept of  
16 deception can't apply to a consumer who decided to  
17 take out a second loan, a third loan, a fourth loan.  
18 And to a consumer who had renewed that loan repeatedly  
19 the first time, the second time, the third time, the  
20 fourth time, et cetera, his numbers do not granularly  
21 describe that.

22 And so what the Bureau has proposed is a very  
23 large number that doesn't actually conform to what the  
24 law of restitution requires. The law of restitution  
25 is very clear. You have to show consumer injury. It

1 has to be causally linked to the alleged conduct, and  
2 you cannot unjustly enrich consumers.

3 And all of the evidence that we have seen so  
4 far, and that we will see this week from the CFPB  
5 fails to establish in accordance with the law of  
6 restitution what the rightful amount of damages in  
7 this matter should be.

8 Now what the evidence also will not show is  
9 how this calculation should happen from July 21st,  
10 2011 forward. But it's curious because in the CFPB's  
11 pre-trial statement in this matter, footnote II, they  
12 acknowledge that, in fact, calculations of damages can  
13 only occur for conduct that post-dates July 21st,  
14 2011.

15 And their footnote, specifically, says "Civil  
16 money penalties should be calculated from the transfer  
17 date until the date Respondent's unlawful practice  
18 ceased". And the reason that footnote is a very  
19 important point here is because the Bureau has  
20 acknowledged that to the extent they are seeking any  
21 kind of monetary relief under the Consumer Financial  
22 Protection Act, which is the only mechanism through  
23 which they are seeking monetary relief, they can only  
24 do so for conduct that postdates July 21, 2011.

25 And here is why. Before the CFPA the -- TILA

1 did not provide for anything other than statutory  
2 damages, which they have not sought in this matter.  
3 Before the CFPA, the Electronic Fund Transfer Act did  
4 not provide for statutory -- anything but statutory  
5 damages, which they have not sought in this matter.  
6 Before the CFPA, there was no deception under which  
7 they could proceed. Before the CFPA there was no  
8 basis for alleging unfairness under which they could  
9 proceed. And before the CFPA there was no basis for  
10 obtaining civil money penalties.

11 The overwhelming majority of conduct alleged  
12 in this matter occurred before the CFPA. Your Honor  
13 cannot consider as a matter of law any conduct that  
14 predates July 21st, 2011 in determining any kind of  
15 monetary relief in this matter and footnote II on page  
16 eight of their Pre-trial Statement spells that out.

17 So to sum, the evidence will not show that  
18 Mr. Carnes was liable for any deceptive conduct in  
19 this matter. The evidence will not show that  
20 Mr. Carnes and the company were liable for any unfair  
21 conduct as to the creation and use of remotely created  
22 checks. And the evidence will show that the Bureau's  
23 proposed monetary relief in this matter does not  
24 conform to the laws of restitution or to the Consumer  
25 Financial Protection Act. Thank you.



1 JUDGE McKENNA: Um-hmm. Mr. Wheeler, pursuant  
2 to the allowance that I gave, you have five minutes,  
3 and then you will have five minutes. If you choose to  
4 take it.

5 MR. WHEELER: That's okay, Your Honor. We  
6 will proceed.

7 JUDGE McKENNA: All right. So that's it.  
8 All right. Proceed.

9 MS. WEINBERG: Your Honor, Wendy Weinberg,  
10 Enforcement Counsel. I'd like to call Mr. Madsen.  
11 Can I get him from the adjoining room?

12 JUDGE McKENNA: Yes.

13 (Witness takes the stand.)

14 JUDGE McKENNA: Please stand. Raise your  
15 right hand.

16 **TIMOTHY ALLEN MADSEN,**

17 A witness produced on call of the Enforcement  
18 Counsel, having first been duly sworn, was examined  
19 and testified as follows:

20 THE WITNESS: I do.

21 JUDGE McKENNA: Please be seated. State your  
22 full name for the record.

23 THE WITNESS: Timothy Allen Madsen.

24 JUDGE MCKENNA: All right. Proceed.

25 MS. WEINBERG: Good morning, Mr. Madsen.

1 COURT REPORTER: If the witness could spell  
2 his name, please.

3 JUDGE MCKENNA: M-A-D-S-E-N.

4 **DIRECT EXAMINATION**

5 BY MS. WEINBERG:

6 Q. Good morning, Your Honor. Good morning  
7 Mr. Madsen. First, are you here voluntarily or are you  
8 here pursuant to a subpoena?

9 A. Subpoena.

10 Q. Did you ever work for Integrity Advance?

11 A. I worked for the company that operated  
12 Integrity Advance.

13 Q. Okay. And what company was that?

14 A. HIP Financial.

15 Q. What does that stand for?

16 COURT REPORTER: I'm sorry, I can't hear.

17 JUDGE MCKENNA: Ms. Weinberg, you are going to  
18 have to really up your game.

19 MS. WEINBERG: Okay. Then I'm going to grab  
20 my water.

21 COURT REPORTER: Did the witness say, TIP  
22 Financial? Just repeat your answer, please.

23 JUDGE MCKENNA: So now -- that is not -- that  
24 microphone is not working.

25 THE WITNESS: I'll speak up then.

1 JUDGE MCKENNA: That's good.

2 THE WITNESS: Hayfield Investment Partners.

3 BY MS. WEINBERG:

4 Q. When did you start your employment with  
5 Hayfield Investment Partners?

6 A. August of 2008.

7 Q. And what was the position that you held?

8 A. Vice president of marketing.

9 Q. Can you describe your duties there as they  
10 related to Integrity Advance?

11 A. I was in charge of managing the relationships  
12 and the purchase of leads for Integrity Advance  
13 portfolio.

14 Q. What do you mean by leads?

15 A. Consumer who were applying online to receive a  
16 payday loan.

17 Q. So what were your job duties in terms of --

18 JUDGE MCKENNA: Well, just you are going to  
19 have to come up an octave level significantly higher.

20 THE WITNESS: Okay.

21 BY MS. WEINBERG:

22 Q. Can you be more specific about your job  
23 duties?

24 A. I dealt with all of the lead providers that we  
25 had relationships with, I managed the purchase of the

1 leads and set up the campaigns that distinguish what  
2 types of consumer we were able to work with.

3 And then I managed the leads internally inside  
4 of Integrity Advance with our call center and making  
5 sure that they performed well.

6 Q. And how long were you in that position?

7 A. Was it -- four years, five years almost.

8 Q. Why did you leave?

9 A. I just -- change in business directions, we  
10 were purchased by EZ Corp and there was a change in  
11 needs for head count, so we had a mutual agreement to  
12 separate.

13 Q. So then, is it fair to say you left when  
14 Integrity Advance stopped doing business under that  
15 name?

16 MS. BAKER: Objection, foundation.

17 JUDGE McKENNA: Sustained.

18 BY MS. WEINBERG:

19 Q. Was Integrity Advance still in business when  
20 you left the company?

21 A. No.

22 Q. Where were the offices that you worked from?

23 A. Westwood, Kansas.

24 Q. And who else worked from that office?

25 A. Mr. Carnes, Ed Foster all of our IT team, all

1 of our analytics teams, finance.

2 Q. Was there any management for Integrity Advance  
3 that worked out of a different location?

4 A. Not to my knowledge, no.

5 Q. Who hired you for your position?

6 A. Mr. Carnes and Mr. Foster.

7 Q. And do you know who made the final decision as  
8 to your employment?

9 A. I couldn't speculate.

10 Q. Were you hired directly from the company or  
11 through a headhunter?

12 A. Headhunter.

13 Q. And do you know who was communicating with the  
14 -- with that headhunter?

15 A. I don't recall.

16 Q. How often were you in the office?

17 A. Every day.

18 Q. How often was Mr. Carnes in the office?

19 A. The same, I mean barring vacations or business  
20 travel.

21 Q. And what sort of hours was Mr. Carnes in the  
22 office?

23 A. General business hours, you know, everybody  
24 was there generally from 8:30 in the morning until 5:30  
25 in the evening.



1 Q. Was Mr. Carnes in the office longer hours or  
2 shorter hours than most of the other employees?

3 A. I think it depended on the needs of the  
4 business and we all had hours that would fluctuate  
5 based on what was needed at the time.

6 Q. Did you talk directly to Mr. Carnes about  
7 Integrity Advance's business?

8 A. I did.

9 Q. What types of things did you talk to  
10 Mr. Carnes about?

11 A. Ah generally we discussed the behavior of the  
12 lead purchase systems that we had in place, how well  
13 they were performing, our different partners, and any  
14 adjustments that we need to make sure that it backed  
15 out for us what it needed to from a business  
16 perspective.

17 Q. What type of adjustments are you talking  
18 about?

19 A. If we were needing volume, would we pay more  
20 for a lead to compete with our -- with other people who  
21 were trying to purchase leads. Did we need to make  
22 adjustments to underwriting in order to purchase more  
23 leads, and volume or performance on the back end.

24 Q. And who was making decisions about the payment  
25 per lead?

1 A. Generally I had input on lead purchases within  
2 parameters, and then any time we decided to make a  
3 large change, Jim and I would discuss that.

4 Q. And who set the parameters?

5 A. Jim and I.

6 JUDGE MCKENNA: And Jim, you mean  
7 Mr. Carnes?

8 THE WITNESS: Mr. Carnes, yes.

9 BY MS. WEINBERG:

10 Q. And when there was a change to the amount that  
11 you would pay for a lead beyond the parameters that you  
12 set, who would make that change --

13 A. Ultimately.

14 Q. -- decision?

15 A. Ultimately Mr. Carnes would give the approval  
16 to change outside of our normal parameters.

17 Q. And you also mentioned changes in  
18 underwriting. If there were changes -- could you  
19 describe what you mean by changes in underwriting?

20 A. So in our campaign we would have various  
21 structures on what we were willing to, you know, what  
22 the rules were around the campaign, around the type of  
23 consumer that we were able to purchase.

24 And whenever we would run into issues with  
25 poor performance from the default or conversion

1 standpoint, or potentially where the, where we needed  
2 to make an adjustment to open up what we were willing  
3 to look at so that we could purchase more leads from a  
4 volume need, we would make adjustments to the scores on  
5 particular campaigns.

6 Q. And scores meaning credit scores of the  
7 consumers?

8 A. A related type of scoring, yes.

9 Q. Okay.

10 COURT REPORTER: I'm sorry?

11 THE WITNESS: A related type of scoring.

12 BY MS. WEINBERG:

13 Q. And who would make decisions about those sorts  
14 of changes on the scoring?

15 A. It depended on how severe we were making the  
16 change. If it was a couple points and it was within  
17 some, some of the parameters that we felt comfortable  
18 with, I would make that.

19 If it was something that was going to depart  
20 from what we had been doing as a historical business  
21 direction, then I would consult with Mr. Carnes.

22 Q. Finally, you also discussed -- you also  
23 mentioned relationships with lead vendors, lead -- the  
24 leads, I'm sorry?

25 A. Lead providers.

1 Q. Lead providers.

2 A. Yes.

3 Q. And could you discuss what Mr. Carnes' role  
4 was in your relationships with the lead providers?

5 A. Ah yeah --

6 MS. BAKER: Objection, foundation.

7 JUDGE McKENNA: Can you rephrase?

8 BY MS. WEINBERG:

9 Q. Did Mr. Carnes have a role in your  
10 relationship with the lead providers?

11 A. General role. He was introduced or had  
12 knowledge of several of them because of his previous  
13 relationships. Outside of that it was on an  
14 introductory basis by myself, you know, letting  
15 Mr. Carnes meet those folks or those folks meet  
16 Mr. Carnes.

17 Q. And then who made the ultimate decision if you  
18 were switching lead providers?

19 A. I handled the lead providers.

20 Q. Did Mr. Carnes set the parameters for  
21 obtaining a new lead provider?

22 A. What do you mean parameters? Help me out.

23 Q. Did he say, we don't want to pay more than  
24 this, or we are looking for those sort of performance  
25 standards?

1           A.    So as it related to what we paid providers,  
2   yeah, we would have a top end that was approved, and  
3   Jim and I would work together on that and determine  
4   what that might be.  Ultimately, Jim would make that  
5   call.  As far as who we worked with, you know, Jim  
6   trusted me to make that decision.

7           JUDGE McKENNA:  Who did you report to?

8           THE WITNESS:  I think on the organizational  
9   chart I ended up working for Mr. Foster, Edward Foster.  
10  I interacted with Mr. Carnes daily.

11          JUDGE McKENNA:  Who did your performance  
12  evaluations?

13          THE WITNESS:  I think the one that I had, that  
14  I can recall was with Mr. Foster.

15          JUDGE McKENNA:  Proceed.

16          MS. WEINBERG:  Oh, I'm sorry.  Okay.

17  BY MS. WEINBERG:

18          Q.    Thank you, Your Honor.  That's exactly where I  
19  was going.  So you said you talked to Mr. Carnes daily,  
20  did you have to make appointments to speak to  
21  Mr. Carnes?

22          A.    Not as a general rule, it was, I'd knock on  
23  his door and ask if he had a couple of minutes.

24          Q.    And so, is it your testimony that these  
25  conversations with him would take place in his office?



1 A. Yeah, I mean we'd have conversations in his  
2 office or mine.

3 Q. And these conversations were the daily  
4 conversations that you were referring to earlier?

5 MS. BAKER: Objection, foundation.

6 JUDGE McKENNA: Overruled.

7 THE WITNESS: You know, again, we were a small  
8 business so, you know, operating a small business we  
9 would converse as needed, so, if I caught him walking  
10 by my office and I had a question, or I needed to walk  
11 into his I was able to do that, and vice versa. If he  
12 had a question, he would have no problem walking by my  
13 office and asking a question.

14 BY MS. WEINBERG:

15 Q. And how often did you talk to Mr. Foster?

16 A. Generally daily, yeah.

17 Q. Did you think -- is it your testimony that you  
18 spoke to Mr. Carnes more or Mr. Foster more?

19 A. I never kept track of how often I was speaking  
20 with either.

21 Q. And what type of things did you talk to  
22 Mr. Foster about?

23 A. Similar items, generally with Mr. Foster I  
24 probably would have more legal conversations with him,  
25 as he was our general counsel for the majority of the

1 time that I was employed there.

2 Q. And who did you talk to about administrative  
3 items like your salary and your benefits?

4 A. It didn't really come up very often.

5 Q. Okay. How would you characterize the  
6 difference in the types of items that you talked to  
7 Mr. Carnes about as opposed to Mr. Foster?

8 A. Well, again I think with Mr. Foster it was  
9 more focused around legal, where we were at, needs  
10 around agreements, or adjustments to language that may  
11 need to be put out on some of our websites or  
12 communications with consumers. With Mr. Carnes we  
13 discussed more around the lead purchases, you know,  
14 what was happening volume-wise and performance of  
15 those.

16 Q. I would like to show you Exhibit 65, the  
17 organizational chart for Integrity Advance. It's  
18 pretty small -- there we go, that's better, can you see  
19 that?

20 A. Yes.

21 Q. If not, there's books --

22 A. No, I'm fine.

23 Q. -- that are next to you that might make it...

24 A. No, I'm fine.

25 Q. So your testimony previously was that you

1 spoke to Mr. Carnes on a daily basis. So, is it fair  
2 to say that, although you technically reported to  
3 Mr. Foster, you actually also worked directly with  
4 Mr. Carnes?

5 MS. BAKER: Objection, foundation and  
6 mischaracterizes witness's prior testimony.

7 JUDGE McKENNA: Overruled.

8 THE WITNESS: Could you repeat the question,  
9 please?

10 BY MS. WEINBERG:

11 Q. Would it be fair to say that while this is a  
12 technically accurate chart, it does not reflect your  
13 daily interactions?

14 JUDGE McKENNA: Well, first of all, you have  
15 to ask him if this is an accurate chart.

16 MS. WEINBERG: Thank you, Your Honor.

17 BY MS. WEINBERG:

18 Q. Mr. Madsen, is this a technically accurate  
19 chart of the reporting structure of Integrity Advance?

20 A. At one time, yes.

21 Q. And what time was that?

22 A. After about the first year or two after I had  
23 started there, I don't remember exactly when Mr. Foster  
24 became COO.

25 But when I left the company or when the

1 company was sold, that is the structure that was in  
2 place.

3 Q. And what was the structure before Mr. Foster  
4 started working --

5 A. Edward was EVP and general counsel and then I  
6 reported to Jim directly. We were, four of us in the  
7 office at the time.

8 Q. And at that time --

9 JUDGE McKENNA: Jim?

10 THE WITNESS: Mr. Carnes, I'm sorry.

11 BY MS. WEINBERG:

12 Q. And at that time did everybody, the four of  
13 you, report directly to Mr. Carnes?

14 A. I can only speak from my own reporting  
15 structure.

16 Q. After Mr. Foster started employment, is it  
17 fair to say that while this chart is technically  
18 accurate, you also worked directly with Mr. Carnes?

19 A. Yes, that's fair.

20 Q. Okay. Do you know if other management  
21 employees also passed formal -- bypassed the formal  
22 chain of command to speak directly with Mr. Carnes?

23 MS. BAKER: Objection, foundation.

24 JUDGE McKENNA: Overruled.

25 THE WITNESS: I want to clarify, I wouldn't

1 consider anything bypassing any formal chain of  
2 command. A small company, we interacted with  
3 everybody as needed to support the business.

4 BY MS. WEINBERG:

5 Q. Do you know if any of the other management  
6 employees spoke directly with Mr. Carnes about  
7 Integrity Advance business?

8 A. Well, anecdotally I saw Mr. Carnes speak with  
9 all employees at various times, I can't speak to the  
10 nature of their conversations.

11 Q. And were those conversations in Mr. Carnes'  
12 office?

13 A. Yes I, I mean not all conversations were held  
14 in Mr. Carnes' office, but I saw Mr. Carnes speak with  
15 people in their offices, in his office, in the hallway,  
16 in the break room. It was a small company, we  
17 interacted.

18 Q. And where was your office in relation to  
19 Mr. Carnes' office?

20 A. Next to his, adjacent.

21 Q. Okay.

22 JUDGE McKENNA: Where was Mr. Foster's office?

23 THE WITNESS: His was adjacent, but down the  
24 hallway. There was a -- there was kind of a wall  
25 in-between the two offices.

1 JUDGE McKENNA: They wanted to keep the lawyer  
2 away from the rest of the people?

3 THE WITNESS: Most people try to do that.

4 MS. WEINBERG: Brave of you to make a lawyer  
5 joke in a room full of lawyers.

6 BY MS. WEINBERG:

7 Q. Did Integrity Advance handle its customer  
8 service function directly through the office in which  
9 you worked?

10 MS. BAKER: Objection, foundation.

11 JUDGE McKENNA: State it again.

12 BY MS. WEINBERG:

13 Q. Did Integrity Advance handle its customer  
14 service function, meaning were consumers talked to  
15 directly, and were the applications processed directly  
16 through the office in which you worked?

17 MS. BAKER: Same objection, Your Honor.

18 JUDGE McKENNA: All right. Overruled. Answer  
19 it if you know the answer to it.

20 THE WITNESS: Can you clarify when you say  
21 consumer support? It's very broad.

22 BY MS. WEINBERG:

23 Q. Did Integrity Advance use a call center?

24 A. Yes.

25 Q. To speak directly with its customers?



1 A. Yes.

2 Q. And where was that call center?

3 A. We had one call center there in Overland Park,  
4 Kansas that we used for quite some time. And then,  
5 eventually it was transitioned to a call center in  
6 Delaware, I believe it was.

7 Q. And when did that happen?

8 A. I don't recall the exact year.

9 Q. And what, what activities did the call center  
10 undertake for Integrity Advance?

11 A. Generally they spoke with our consumers as  
12 they, they work the leads that came into the system  
13 that we utilized. They would reach out to the  
14 consumer, they would try to help them with the process  
15 of completing their, their loan.

16 COURT REPORTER: I'm sorry, I didn't hear the  
17 end of that.

18 THE WITNESS: They would work with the  
19 consumers over the phone to help them complete their  
20 loan.

21 JUDGE McKENNA: All right. Now the call  
22 center, were they outgoing calls from the call center  
23 to the lead, or were customers calling into the call  
24 center, or both?

25 THE WITNESS: Both.

1 JUDGE McKENNA: And any -- one way or the  
2 other was utilized more?

3 THE WITNESS: It was slanted probably more to  
4 outbound.

5 JUDGE McKENNA: Out from the call center?

6 THE WITNESS: From the call center to the  
7 consumer.

8 JUDGE McKENNA: All right.

9 BY MS. WEINBERG:

10 Q. Do you know who arranged to hire the call  
11 centers?

12 A. That was a decision that was made, I would  
13 assume, by Mr. Carnes.

14 Q. Okay. Did Integrity Advance monitor the  
15 performance of the call centers?

16 A. Generally, yes.

17 Q. And how did they do that?

18 A. We had reporting that we had access to, that  
19 we could see the performance of the leads that we were  
20 purchasing in real-time.

21 We would look at reports over a period of time  
22 to determine different metrics and KPI's, and then, I  
23 would interact with the call center throughout the day  
24 to make sure that we were staffed properly and they  
25 weren't running into any kind of issues with the

1 quality of the leads that we were purchasing.

2 Q. You said that you would look at the leads, the  
3 metrics, and did you say CPI's?

4 A. KPI's, key performance indicators.

5 Q. KPI?

6 A. Key performance indicators.

7 Q. Key performance indicators. Okay. Thank you.

8 And how were you able to see that information?

9 A. We had a, we had a report that we had access  
10 to and we had a dashboard that we eventually developed  
11 to be able to see it in real-time.

12 Q. And was that on a TranDot platform?

13 A. I utilized the TranDot report quite often,  
14 yes.

15 Q. And was that where you saw the dashboard?

16 A. The dashboard was an internal system that we  
17 had related to some different systems that we built,  
18 internally developed?

19 Q. And what could you see in the dashboard?

20 MS. BAKER: Your Honor, I'm going to object to  
21 this line of questions on relevance grounds. I'm not  
22 sure how this is related to any of the remaining  
23 matters in this matter for Your Honor's disposition.

24 JUDGE MCKENNA: And the answer is?

25 MS. WEINBERG: I believe Mr. Madsen's

1 testimony will show that Mr. Carnes was monitoring the  
2 daily performance of the call centers through the  
3 TranDot system.

4 JUDGE McKENNA: And that is an irrelevant  
5 issue?

6 MS. BAKER: I believe it is not relevant, Your  
7 Honor.

8 JUDGE McKENNA: All right. Overruled.

9 MS. WEINBERG: Court reporter, could you read  
10 back the last question that I asked prior to the break?

11 COURT REPORTER: And what could you see in the  
12 dashboard?

13 A. We could see the number of leads that we had  
14 been presented, the number of leads that we had  
15 accepted or declined. So from there we could see a  
16 purchase rate, as well as we could see then the number  
17 of leads that were converting into loans to determine  
18 what the conversion rate of those leads were into loans  
19 and consumers.

20 BY MS. WEINBERG:

21 Q. Is there anything else that you could see in  
22 the dashboard?

23 A. No, I think that covers the dashboard itself.

24 Q. Could you see the default rates on the loans  
25 through the dashboard?

1 A. I don't believe being able to see that on the  
2 dashboard, we could see that through the TranDot  
3 system.

4 Q. Okay. And what else could you see in the  
5 TranDot system?

6 A. I mean a number of things: We could see the  
7 number of consumers that were signing their loan  
8 documents; we could see the number of consumers who  
9 were defaulting; and we could see, obviously, some of  
10 the same information that I described earlier, the  
11 conversion rates, and volume of leads coming in; we  
12 could see returning customers, the number of returning  
13 customers coming back to us and taking out new loans.

14 Q. And do you know how the call centers came to  
15 use the TranDot system?

16 A. I was -- well, can you clarify that question?

17 Q. Was the TranDot system provided by the call  
18 centers, or was it provided by Integrity Advance to the  
19 call centers?

20 A. It was provided by Integrity Advance.

21 Q. Did they have any choice in using the TranDot  
22 system?

23 A. No.

24 Q. So you've mentioned two different monitoring  
25 systems, the TranDot system and the dashboard, do you

1 know if Mr. Carnes ever reviewed the performance  
2 through the TranDot system?

3 A. I can't speak to exactly where he reviewed  
4 performance, but we had discussions on performance. We  
5 were looking at it closely, the two of us.

6 Q. And what type of performance?

7 JUDGE McKENNA: Just a second -- so the answer  
8 would be yes?

9 THE WITNESS: Generally, I would assume that  
10 yes, he was looking at that the same as I was.

11 JUDGE McKENNA: Proceed.

12 BY MS. WEINBERG:

13 Q. And what specific topics about performance did  
14 you discuss with Mr. Carnes?

15 A. Lead volume conversion rates, long-term  
16 performance of any particular sources that we had.

17 Q. Sources meaning the lead generators?

18 A. Lead providers.

19 Q. Okay. Did you also discuss default rates with  
20 him?

21 A. Yeah, we had that discussion.

22 Q. And how often did you have these conversations  
23 with him about conversion rates?

24 A. I can't speak to just conversion rates. It  
25 was as needed, as the business required us to review



1 performance, if there was a metric that was out of line  
2 and we were, you know, depending on the ability to  
3 assess the reason myself or in the cases where Jim may  
4 have notice it and he was asking for some  
5 clarification. So, it may not have been daily, but it  
6 was, you know, something that we had on a relatively  
7 regular basis, conversation.

8 Q. Can you be more specific about regular basis?

9 A. I would be speculating on anything specific to  
10 conversions. It was something that I looked at daily.  
11 And, you know, in the -- as problems came up I would  
12 have conversations, so it could be, depending on the  
13 situation it may have been something that we had  
14 several times a day, or it may have been something that  
15 we only talked about once a week.

16 Q. Okay. And did you specifically talk about the  
17 results that you were seeing -- that you could see in  
18 the dashboard when you had these conversations with  
19 Mr. Carnes about conversions?

20 A. That would have been part of the conversation.

21 Q. And in those conversations, would you be  
22 reporting results from the dashboard or would  
23 Mr. Carnes be bringing those results to you?

24 A. Both conversations would have been had at  
25 various times. I couldn't give you a percentage as to

1 one or the other.

2 Q. And other than conversations about  
3 conversions, did you have any other conversations with  
4 him about the performance of the loans or the  
5 performance of the call centers?

6 A. Generally we would have performance  
7 conversations. Ah, you know, depending on the  
8 circumstance, the loans may have been the topic or, you  
9 know, the call center performance didn't come up very  
10 often, it was a pretty well oiled machine and it  
11 handled itself quite well.

12 Q. And what would you talk about, about the  
13 loans?

14 A. If we were seeing an increase in first payment  
15 defaults, or long-term default rates. We may have to  
16 suggest looking at underwriting a little bit  
17 differently, if we were not seeing the volume of leads  
18 that were -- that we were needing to meet our goals  
19 that we had set, then we may have to discuss various  
20 ways to purchase more leads. Whether it was to change  
21 what we were going to pay or open up underwriting,  
22 change some campaign structures or various  
23 conversations.

24 Q. And how often would you have conversations  
25 with him on that general topic?

1 MS. BAKER: Objection, vague.

2 JUDGE McKENNA: Overruled?

3 THE WITNESS: You know, we -- the general  
4 topic, I mean that would, you know, I couldn't put a  
5 time on it. I couldn't put a number of conversations  
6 because, again it was, you know, as the needs of  
7 business dictated.

8 BY MS. WEINBERG:

9 Q. Would you say it was daily?

10 A. If we were to have a conversation about the  
11 business during the day, it would have been around one  
12 of those general topics.

13 JUDGE McKENNA: What -- give me the general  
14 topics.

15 THE WITNESS: Conversion rates, performance,  
16 first payment defaults.

17 JUDGE McKENNA: Call center performance?

18 THE WITNESS: Call center, like I said,  
19 performance didn't come up very often.

20 JUDGE McKENNA: Well, you said you were  
21 talking performance, what does that mean?

22 THE WITNESS: Generally my conversations would  
23 have been around the performance of the leads that we  
24 were purchasing.

25 JUDGE McKENNA: Okay. So you wanted to make

1 sure that you were getting a good bang for your buck?

2 THE WITNESS: That is fair statement, yes.

3 BY MS. WEINBERG:

4 Q. Who was the primary decision maker at  
5 Integrity Advance?

6 A. I would say, ultimately, any large decision  
7 would have been made by Mr. Carnes.

8 Q. And what is your basis for saying that he was  
9 the primary decision maker?

10 A. I can only speak from my own interactions, but  
11 if I had a decision that needed to be made that was  
12 outside of the traditional way that we handle a lead  
13 provider, or a payout, or things related to that, I  
14 would consult with Mr. Carnes and we would -- and he  
15 would give the direction that he would want to take.

16 Q. Were you involved in any meetings that did not  
17 involve your particular marketing area?

18 A. I don't recall being in any meetings that  
19 didn't have some relation to what I was doing.

20 Q. All right.

21 A. Or I was in meetings where we would have  
22 several people from different functionalities (sic) in  
23 the company, we'd get together and discuss an issue.  
24 And if it was something that I may be impacted by, I  
25 was included in that meeting so I could give my

1 feedback if it was needed.

2 Q. Did Mr. Carnes' role as primary decision maker  
3 change over the period of time in which you worked for  
4 Integrity Advance?

5 A. I can only speak to the -- you know, from the  
6 perspective of what I was interacting with, and  
7 generally we had the same conversations for the entire  
8 time I was there.

9 Q. Could you describe Mr. Carnes' style as a  
10 manager?

11 A. You know, I think, you know, I have always  
12 considered Jim to be a good boss. He was, he was easy  
13 to work with, easy to communicate with. I always felt  
14 him to be fair, and you know, was never opposed to  
15 helping out if you had a concern or if there was an  
16 issue that you weren't able to solve.

17 You know, generally he'd, he operated a small  
18 internet company, as president or CEO the same way as I  
19 would expect from any other president or CEO, he was  
20 involved when he needed to be, and he gave you room to  
21 work when you needed it from that perspective as well.

22 Q. Have you had any contact with Mr. Carnes or  
23 his counsel in the last year?

24 A. I spoke with his counsel last week, and I have  
25 spoke with Mr. Carnes, off and on for the last several

1 years.

2 Q. Have you spoken to Mr. Carnes about your  
3 testimony today?

4 A. No.

5 Q. Did you speak with Mr. Carnes' counsel about  
6 your testimony today?

7 A. We spoke last week related to this, yes.

8 Q. And how long was this discussion?

9 A. Maybe thirty minutes.

10 Q. And what did they discuss with you?

11 A. Just generally asked me about my role with the  
12 company.

13 Q. And did they give you advice on your testimony  
14 today?

15 A. None.

16 MS. WEINBERG: No further questions -- excuse  
17 me --

18 BY MS. WEINBERG:

19 Q. Mr. Madsen, you said at the beginning the  
20 office had only four people, can you tell me who those  
21 people were?

22 A. When I first started working there, it was  
23 Mr. Carnes, Mr. Foster, a gentleman by the same name of  
24 Hassan Shahin.

25 JUDGE McKENNA: Spell it.



1 THE WITNESS: Hassan Shahin was his name.

2 JUDGE McKENNA: And?

3 THE WITNESS: H -- I'm sorry --

4 JUDGE McKENNA: Spell it.

5 THE WITNESS: I'm sorry, I will try,

6 H-A-S-S-A-N S-H-A-H-I-N.

7 JUDGE McKENNA: Thank you.

8 THE WITNESS: And then there was an office  
9 receptionist and I don't recall her name, I feel bad  
10 about that.

11 BY MS. WEINBERG:

12 Q. You're saying Mr. Foster was there in the very  
13 beginning?

14 A. Yes.

15 Q. Okay.

16 A. He was our EVP and general counsel.

17 Q. And for what period of time was it only the  
18 four?

19 A. We added a head of finance -- (cough) excuse  
20 me -- a head of finance in October or November of 2008.  
21 And then, from that point on we added, what you saw on  
22 the board there, and a few others that may have come  
23 and gone during that period.

24 Q. At what time period -- do you need to see the  
25 org chart again -- what period of time would all of

1 those people that were on the org chart, that Exhibit  
2 65 that you saw before, have been employed?

3 A. I would have to take a look at it again. I  
4 can't recall everybody they had.

5 Q. Could you put up 65, please?

6 A. Okay. From, from left Stephanie Schaller  
7 would have came on probably in middle to the end of  
8 2009 if I recall. Chris Pickett around, either that  
9 same time, or maybe the spring of 2010. George Davis  
10 was already employed in Delaware when I came on.

11 Mr. Peck came on in that October timeframe I  
12 mentioned earlier, 2008. Hassan was already on when I  
13 was hired and then Bruce came on, I want to think 2010,  
14 or early 2011. I don't recall the times.

15 Q. Okay. I would also like to show you Exhibit  
16 79, and if it's easier for you it's in the book as  
17 well. But have you ever seen the -- this document from  
18 Management System Operations Manual for TranDot?

19 A. I don't recall that, specifically. Depending  
20 upon what is inside of it, I may have seen pieces of it  
21 related to reporting or things of that nature.

22 Q. And can you scroll through the document? Can  
23 you go to 7.9 specifically?

24 MS. BAKER: Your Honor, this has not been  
25 admitted into evidence yet. Is she asking the witness

1 questions about it before it's even been admitted,  
2 other than the mere foundation laying questions?

3 JUDGE McKENNA: Right.

4 MS. WEINBERG: I'm hoping to move it into  
5 evidence after he examines it and can tell me whether  
6 he has seen it before or not.

7 JUDGE McKENNA: All right. So the answer is  
8 yes, and they will move it.

9 MS. BAKER: Okay.

10 JUDGE McKENNA: And then you will have the  
11 opportunity to object.

12 MS. BAKER: Thank you, Your Honor.

13 JUDGE McKENNA: Please identify the --

14 THE WITNESS: This is section 7.9 of the  
15 TranDot manual.

16 BY MS. WEINBERG:

17 Q. Have you ever seen this before?

18 A. No, I have not.

19 Q. Okay. What sections of the manual -- you said  
20 you may have seen some sections of it -- which  
21 sections?

22 A. You know, the only thing that I could think of  
23 that I would have seen, it would more than likely have  
24 been an excerpt of it, would have been a posting specs  
25 that I gave to our lead providers. I don't recall

1 seeing that, that file or that document.

2 Q. And could you, I think that I'm going to ask  
3 you to look at the hard copy of 79, Exhibit 79, it  
4 might be easier for you to -- which binder am I looking  
5 at here?

6 Well, actually, it is binder two.

7 MS. BAKER: Your Honor, I'm going to -- Your  
8 Honor, I'm going to object to this whole line of  
9 questions. He just testified he has never seen this  
10 document before. It's about a four hundred page  
11 document and he just said he has never seen it, and  
12 Ms. Weinberg is continuing to ask him questions about  
13 it.

14 JUDGE McKENNA: Well, I thought that he said  
15 that he had seen a portion or portions of it.

16 MS. BAKER: I thought he said he had never  
17 seen this document before, Your Honor.

18 JUDGE McKENNA: All right.

19 THE WITNESS: I'll clarify. I don't recall  
20 seeing that document, based on the page at the  
21 beginning that said the TranDot -- whatever that was.

22 Just being able to deduce what would be inside  
23 something like that, I may have seen an excerpt of it  
24 that was made up in the specs that we gave to our  
25 third party publisher so that they could present leads

1 to us. And that is a pure assumption at that point.

2 I'm making an educated guess.

3 JUDGE MCKENNA: All right.

4 MS. BAKER: Your Honor, he can't even  
5 authenticate this document, let alone attest to its  
6 contents. I would object to this entire line of  
7 questions and ask that we move on, thank you.

8 MS. WEINBERG: Your Honor, he needs to at  
9 least look at it before he can attest whether or not  
10 he has seen it before.

11 JUDGE MCKENNA: Well, I understand. The  
12 objection is overruled. It is going to go to weight,  
13 and we will just proceed and see how this goes.

14 BY MS. WEINBERG:

15 Q. Okay. Could you just flip through Exhibit 79,  
16 which is in binder two. Let me know, you know, take  
17 your time.

18 A. Just, you know, glancing through the table of  
19 contents here, I don't think I have ever seen this  
20 document in its current condition.

21 Q. Okay. Thank you. One final question, you  
22 testified that you attended meetings with Mr. Carnes  
23 where topics other than marketing were discussed, can  
24 you tell me what topics were discussed at those  
25 meetings?

1           A.    Um, you know, I was probably involved with  
2   some IT conversations around, you know, changes to the  
3   website. I can't recall if Jim would have been in  
4   those. The only ones that I can recall that Jim would  
5   have been involved with would have been underwriting  
6   conversations where I would have been listening in to  
7   be able to speak up if I anticipated any negative  
8   effect on our lead purchases based discussions that  
9   were being suggested by our analytics department.

10          Q.   And who else would have been involved in those  
11   meetings concerning underwriting?

12          A.   Stephanie Schaller and --

13          Q.   And I'm talking about meetings where  
14   Mr. Carnes was present.

15          A.   Yeah, I'm trying to recall, I mean, I can only  
16   -- I can maybe think of a couple, mainly Stephanie  
17   Schaller.

18          Q.   And in those meetings who was making the  
19   decisions about the underwriting?

20          A.   Mr. Carnes.

21          Q.   And what were the decisions about underwriting  
22   that he was making?

23          A.   Suggestions for tests potentially, different  
24   data providers to use in the underwriting decisions,  
25   that is all I can recall.



1 Q. What kind of tests are you referring to?

2 A. AB testing, does this underwriting model work  
3 better than that underwriting model. It depended on  
4 the needs of the business at that time.

5 Q. Just to be clear, when you say underwriting,  
6 what are you referring to?

7 A. It would have included credit scoring or the  
8 make-up of an internal credit score that we had  
9 utilizing third-party data sources to be able to make  
10 better credit decisions, whether it was trying to solve  
11 for poor default rates or conversion rates, it could --  
12 and it depended -- it could vary based on the needs at  
13 that time.

14 Q. Okay. So broadly speaking, is it fair to say  
15 that in underwriting you are talking about whether or  
16 not Integrity Advance wants to provide a loan to a  
17 customer?

18 A. Correct.

19 MS. WEINBERG: Okay. No further questions.

20 JUDGE McKENNA: All right. You can sit. I  
21 have some questions.

22 **COURT'S EXAMINATION**

23 BY JUDGE McKENNA:

24 Q. As you, you started out your testimony and you  
25 mentioned the TranDotCom system.

1 A. Um-hmm.

2 Q. I assume, based upon that you were very  
3 familiar with it; is that correct?

4 A. I was very familiar with a portion of it  
5 related to the purchase and the performance of the  
6 leads that we were buying. So I could tell the leads  
7 that were going into the system and whether or not they  
8 were converting. I had reporting inside the TranDot  
9 system that I was able to look at to determine whether  
10 or not we were making good purchase decisions or not.

11 Q. So which portion of Exhibit 79 encompassed  
12 your familiarity?

13 A. It would have been section 7, reporting.

14 COURT REPORTER: Recording or --

15 JUDGE McKENNA: Reporting?

16 THE WITNESS: Reporting.

17 BY JUDGE McKENNA:

18 Q. All right. Now the TranDotCom, this is a  
19 private company?

20 A. Correct.

21 Q. For profit?

22 A. I don't know their business structure but they  
23 were a business that we worked with that provided a  
24 software solution.

25 Q. So in other words, Integrity Advance purchased

1 their product?

2 A. We had a business relationship with them. I  
3 don't know the structure. I -- ah, it would have  
4 either been a, a purchase of the software or a per use  
5 license.

6 Q. All right. And who entered into that  
7 agreement?

8 A. That was done before I came on.

9 Q. All right. And you do not know who  
10 effectuated that relationship?

11 A. I have never been told who made that ultimate  
12 decision.

13 Q. All right. What about section eight? Did you  
14 utilize that section?

15 A. I have never seen that information, no. I  
16 don't recall ever seeing anything specific around that  
17 that I utilized.

18 Q. Six?

19 A. I did not deal with that section either.

20 Q. Five, and its subsets?

21 A. This all appears to be the utilization of the  
22 system itself that would have been handled -- or when I  
23 say utilization from the operational usage for managing  
24 the loans and I would not have had any interaction with  
25 that part, that would have been done through the call

1 center.

2 COURT REPORTER: Been through what?

3 THE WITNESS: A call center.

4 BY JUDGE McKENNA:

5 Q. And the call center reported to whom?

6 A. I dealt with the interactions between the call  
7 center and Integrity Advance.

8 Q. So then wouldn't you have utilized the  
9 material for five?

10 A. No, I was not in -- involved with the actual  
11 functionality of the system. I was just the  
12 intermediary between our company and theirs.

13 Q. Who was?

14 A. In charge of how they utilized it? It -- the  
15 -- both call centers that we worked with had used this  
16 system in the past so I had no interaction or  
17 instruction on how to use the system. They already  
18 knew how to do it.

19 Q. Did you ever have any discussions with  
20 Mr. Carnes regarding that issue?

21 A. I don't recall any, no.

22 JUDGE McKENNA: All right. Thank you.  
23 Anything further before you --

24 MS. WEINBERG: I just -- yeah.

25 JUDGE MCKENNA: -- cross.

1 MS. WEINBERG: Yes, please, just one question.

2 BY MS. WEINBERG:

3 Q. You said that you dealt with the interactions  
4 between the call center and Integrity Advance, did  
5 Mr. Carnes also deal with the call center?

6 A. He had communications with the call centers.

7 Q. And do you know what the topics of those  
8 conversations were?

9 A. I can't speak to any conversations I wasn't  
10 privy to.

11 Q. How do you know that he spoke with the call  
12 centers?

13 A. Well, call centers were -- the first call  
14 center, Clearvox was in effect prior to me coming on to  
15 the business, so I know there were interactions there.  
16 When the decision was made to move to the other call  
17 center, you know, Jim was involved with the selection  
18 of that call center in determining what the process  
19 would be to swap between one and the other.

20 Q. And after Jim was involved in the decision to  
21 swap to a new call center, do you know if he was  
22 involved in whether he had any conversations with the  
23 call center subsequent to the move to the call center  
24 being hired?

25 A. Ah, you know, the only time I can think of any

1 conversations he would have had is if I was out of the  
2 office and something needed to be handled, you know,  
3 because of an issue from a lead performance basis he  
4 may reach out.

5 Q. Did the call center ever indicate to you that  
6 they had received a call from Mr. Carnes regarding  
7 conversions?

8 A. Ah --

9 MS. BAKER: Objection, vague.

10 JUDGE McKENNA: Overruled.

11 THE WITNESS: I can't recall if I ever, I  
12 mean, it's possible, but I don't recall an exact  
13 conversation. It's been many years.

14 BY MS. WEINBERG:

15 Q. Do you recall any other topics of conversation  
16 that you had with the call center that indicated that  
17 they had spoken with Mr. Carnes?

18 MS. BAKER: Same objection, which call center?

19 JUDGE McKENNA: Number two? Either?

20 THE WITNESS: I don't recall any particular  
21 topics, no.

22 MS. WEINBERG: Okay. Thank you.

23 MS. BAKER: Your Honor, would the Court take  
24 notice of the fact that Exhibit 79 is dated March  
25 2008, which is a date before the company came into



1 existence. Integrity Advance?

2 JUDGE McKENNA: Duly noted.

3 MS. BAKER: Thank you.

4 **CROSS-EXAMINATION**

5 BY MS. BAKER:

6 Q. Good morning, Mr. Madsen.

7 A. Good morning.

8 Q. You testified earlier that you worked for HIP  
9 Financial; is that right?

10 A. Yes.

11 Q. Can you describe for us what HIP financial  
12 was?

13 A. I don't know the exact structure. I  
14 understood it to be a, like a holding company or the  
15 parent company for the different entities that we had.

16 Q. So it's the case that you didn't just work for  
17 or provide services to Integrity Advance in connection  
18 with HIP Financial?

19 A. I was involved with most all the different  
20 businesses that HIP financial was involved with.

21 Q. And do you have an understanding as to whether  
22 or not Mr. Carnes, during time that you were employed  
23 by HIP Financial, also worked with all of the other  
24 companies that were part of the HIP Financial umbrella?

25 A. Yeah, that was my understanding, yes.

1 Q. You spoke before about three specific general  
2 topics, if you will, that you discussed with  
3 Mr. Carnes, conversion rates, performance of leads,  
4 first payment defaults, and then generally lead  
5 generation; is that right?

6 A. Yes.

7 Q. And when you spoke with Mr. Carnes about  
8 conversion rates, conversion rates do not concern the  
9 language or disclosures of a loan agreement, do they?

10 A. Not as a rule, no.

11 Q. And performance of leads does not concern the  
12 language or disclosure in a loan agreement, does it?

13 A. No.

14 Q. And first payment defaults does not concern  
15 the language of a loan disclosure, does it?

16 A. No.

17 Q. And in general, lead generation doesn't  
18 concern the language of a loan agreement or a loan  
19 disclosure?

20 A. Not in general, no.

21 Q. It's fair to say you never talked to  
22 Mr. Carnes about the language of a loan agreement?

23 A. Ah no, we never discussed that conversation --  
24 we never had that conversation.

25 Q. Fair to say you never spoke with Mr. Carnes

1 about the language of the loan disclosures that were  
2 part of the loan agreement?

3 A. Ah, no.

4 JUDGE MCKENNA: Ah no, meaning yes?

5 THE WITNESS: So we, we never had that  
6 conversation.

7 JUDGE MCKENNA: Okay.

8 BY MS. BAKER:

9 Q. Now you testified before that you assume, you  
10 assumed that Mr. Carnes was looking at the same  
11 dashboard of information that you were looking at?

12 A. Correct.

13 Q. And you assumed that, you don't know that for  
14 certain?

15 A. Ah --

16 JUDGE MCKENNA: The question is do you know  
17 that for certain. Not you don't know that for certain.

18 BY MS. BAKER:

19 Q. Do you know that for certain?

20 A. You know, I would say, you know there was,  
21 there were probably times when Jim would have pointed  
22 out something that he saw on the dashboard to me.

23 Q. But, you don't know the frequency with which  
24 Mr. Carnes reviewed that dashboard?

25 A. I do not know the frequency.

1 Q. You also don't know whether or not Mr. Carnes  
2 frequently spoke with call centers?

3 A. No, I do not.

4 MS. BAKER: No further questions, thank you.

5 Thank you, Mr. Madsen.

6 JUDGE McKENNA: Anything further,  
7 Ms. Weinberg?

8 MS. WEINBERG: No, Your Honor.

9 JUDGE McKENNA: All right. Thank you. You  
10 are excused.

11 THE WITNESS: Thank you.

12 JUDGE McKENNA: We will take a break. Start  
13 back at 11:30.

14 (A brief recess was taken.)

15 JUDGE McKENNA: Back on the record.

16 (Witness takes the stand.)

17 JUDGE McKENNA: You can remain standing  
18 please. Please raise your right hand.

19 **BRUCE ANDONIAN,**

20 A witness produced on call of the Enforcement  
21 Counsel, having first been duly sworn, was examined  
22 and testified as follows:

23 THE WITNESS: I do.

24 JUDGE McKENNA: All right. Please be seated.  
25 State and spell your name.

1 THE WITNESS: Bruce Andonian, B-R-U-C-E  
2 Andonian, A-N-D-O-N-I-A-N.

3 JUDGE McKENNA: Proceed.

4 **DIRECT EXAMINATION**

5 BY MS. WEINBERG:

6 Q. Mr. Andonian -- is this on -- can you hear me?

7 Are you here voluntarily or pursuant to a  
8 subpoena?

9 A. I was subpoenaed.

10 Q. Did you ever work for Integrity Advance?

11 A. I did.

12 Q. What position did you hold?

13 A. Director of software development.

14 Q. And what were your job duties as director of  
15 software development?

16 A. I managed a team of six developers, between  
17 one and six, as we built the team out, oversaw the  
18 software development for the different products that  
19 Willowbrook maintained.

20 Q. And was one of the products that Willowbrook  
21 maintained the Integrity Advance website?

22 A. It was.

23 Q. Were there other products?

24 A. The Empower product --

25 Q. That related to Integrity Advance?

1 A. No, not that I'm aware of.

2 Q. And how long did you hold that position?

3 A. Two years, four months.

4 Q. From when to when?

5 A. February 2011 through May of 2013.

6 Q. And why did you leave?

7 A. The company was sold to EZ Corp, and I wasn't  
8 comfortable with the management there.

9 Q. Were you formerly employed by Integrity  
10 Advance?

11 A. I was employed by Willowbrook Partners and the  
12 check that I would receive was from Hayfield?

13 Q. Just Hayfield?

14 A. I don't remember the full name.

15 Q. Okay.

16 A. It was Hayfield, they called it HIP, so those  
17 three initials.

18 Q. And where were the offices that you worked out  
19 of for Integrity Advance?

20 A. They are at the corner of State Line and 43rd  
21 Way.

22 Q. In what city?

23 A. I don't recall.

24 Q. What state?

25 A. It was in Kansas.

1 Q. Okay. And what other management employees for  
2 Integrity Advance worked out of that location?

3 A. You want the management staff?

4 Q. Yes. And if you --

5 A. I reported to Edward Foster, and then Jim  
6 Carnes was over him, and then Tim Madsen, and I don't  
7 remember his, his title, and I don't remember the other  
8 managers that were there.

9 Q. Okay. Could you pull up the organizational  
10 chart again? I want to show you what was submitted by  
11 Integrity Advance as an organizational chart of  
12 employees. And I ask you to look at it, and tell me if  
13 it refreshes your recollection about who worked in the  
14 Integrity Advance offices.

15 A. Could we dim the lights? I can't really read  
16 it.

17 Q. You can actually see it in your book as well,  
18 which would be easier, it's Exhibit 65.

19 JUDGE MCKENNA: For what time period are you  
20 proffering this?

21 MS. WEINBERG: Well, he said that he started  
22 working there in February 2011. So I will start by  
23 asking him if those employees were there in February  
24 2011, and ask him if they remained.

25 THE WITNESS: Exhibit 65?



1 BY MS. WEINBERG:

2 Q. Sixty-five.

3 A. Where do you see the exhibit number?

4 Q. There are tabs on the --

5 A. Okay.

6 Q. And there are two separate volumes. So you  
7 may not be in the right -- that looks correct.

8 It -- that looks correct.

9 And were those employees there when you  
10 started working in February 2011?

11 A. Chris Pickett was not, and the rest were.

12 Q. And were all of those employees there when you  
13 ceased working for Integrity Advance in May of 2013?

14 A. Hassan was not there when we stopped.

15 Q. And did all of those employees work out of the  
16 Kansas office?

17 A. All but George Davis.

18 Q. And where did Mr. Davis work?

19 A. I'm not sure.

20 Q. Can you describe -- did Mr. Carnes have an  
21 office in the location where you worked in Integrity  
22 Advance?

23 A. He did.

24 Q. Can you describe that office physically?

25 A. It was in the corner office. It was a large

1 office, about the size of this room. His desk was  
2 against the far wall as you walked in, there was a  
3 conference room -- a conference table directly as you  
4 walked in with a whiteboard, and then there was a TV on  
5 the left side as you walked in.

6 Q. And how did the size of Mr. Carnes' office  
7 compare with the size of other employee's offices at  
8 that location?

9 MS. BAKER: Objection, relevance.

10 JUDGE McKENNA: I will allow it.

11 THE WITNESS: It was probably twice as large.

12 BY MS. WEINBERG:

13 Q. Okay. How often were you in the office?

14 A. I was in the office every day except when it  
15 was the weekend and when I was on vacation.

16 Q. And how often was Mr. Carnes in the office?

17 A. I would say just as much.

18 Q. And what hours did you work?

19 A. Our office hours were 8:30 to 5:30 and until  
20 5:00 on Fridays.

21 Q. And what hours was Mr. Carnes in the office?

22 A. I would say roughly the same amount of time,  
23 or same timeframe.

24 Q. Did you ever talk to Mr. Carnes one on one  
25 about Integrity Advance's business?

1 A. Yes.

2 Q. How often?

3 A. I would say at least once a month, maybe twice  
4 a month.

5 Q. And what types of things would you talk to him  
6 about?

7 A. When Jim would talk to me about Integrity  
8 Advance, it was because something wasn't working  
9 properly. So it was if the data base was running slow  
10 or if we weren't accepting leads or the conversion rate  
11 was low and there would be an investigation on why that  
12 was happening.

13 Q. And would you bring those matters to his  
14 attention or would he bring them to your attention?

15 A. He would bring them to me.

16 Q. Did you ever attend meetings with other people  
17 where Mr. Carnes was present?

18 A. We had a weekly IT meeting --

19 Q. And -- I'm sorry. Go ahead.

20 A. Edward was, Edward Foster and Nigel  
21 Drinkwater, myself, and Jim.

22 Q. Who is Nigel Drinkwater?

23 A. He is the project manager for Willowbrook  
24 Partners.

25 Q. And where were these weekly meetings held?

1 A. In Jim's office.

2 Q. And who ran the weekly meetings?

3 A. I would say Jim ran the meetings.

4 Q. And who set the agenda for the weekly  
5 meetings?

6 A. The agenda was set by a list of tasks that  
7 needed to happen for the week, and then we would  
8 present those to Ed and Jim and they would go through  
9 them in looking at things that they would accept or  
10 deny and then gave priorities to those tasks.

11 Q. And do you know who was setting the priorities  
12 for the tasks?

13 A. Most of the time it was Jim.

14 Q. And what topics did you discuss at these  
15 weekly meetings?

16 A. The different products that we ran out of  
17 Willowbrook Partners, which was the Empower --

18 Q. And specifically, I'm sorry, what topics  
19 related to Integrity Advance did you discuss at these  
20 meetings?

21 A. There wasn't a lot of Integrity Advance topics  
22 on our task list. But if there was a state that we  
23 wanted to remove or if we wanted to change a figure on  
24 one of the credit scores.

25 Q. And why would you remove a state?

1           A.    I would remove a state because Jim told me to  
2   remove a state.  I'm not sure on the whys and hows, or  
3   I know how, but I didn't know why.

4           Q.    And you said a change in credit score, can you  
5   say a little bit more what you meant by that?

6           A.    So, we used a third-party system, and we would  
7   send out -- the person that was asking for the loan  
8   would send out their information to a credit bureau and  
9   it would return a number.  Depending on that number  
10   that you got back, we would either accept the lead or  
11   deny the lead.

12          Q.    So the number that you got back was the credit  
13   score?

14          A.    Correct.

15          Q.    Would that be accurate to say?

16          A.    Correct.

17          Q.    And who made the decisions about what credit  
18   score to accept?

19          A.    There -- that system was in place before I got  
20   there, so the numbers are already set.  And then Jim  
21   would come into my office and he would either reduce  
22   the number or increase the number.

23          Q.    And did he say why he was reducing on  
24   increasing the number?

25          A.    It was usually because they had an analytics

1 meeting and they wanted to change the number for  
2 whatever reason, I'm not sure on the reasons.

3 Q. And then Jim would direct you to make the  
4 change?

5 A. Correct.

6 Q. Did you discuss any other topics directly with  
7 Mr. Carnes, or at these meetings related to Integrity  
8 Advance's business?

9 A. Not that I recall.

10 Q. Other than the weekly meetings that you had,  
11 did you attend any other meetings where Mr. Carnes was  
12 present?

13 A. The monthly meetings, I believe they were  
14 monthly, they were either monthly or quarterly, they  
15 were company meetings.

16 Q. And who was present at these meetings?

17 A. Most of the employees.

18 JUDGE McKENNA: Which company?

19 THE WITNESS: It was Willowbrook Partners, so  
20 it was a -- we would discuss all the different  
21 products that was in Willowbrook. So it was Empower,  
22 Go Cash, Integrity, they were all lumped together in  
23 that meeting.

24 BY MS. WEINBERG:

25 Q. Other than the people who were on the org

1 chart which you looked at in your book, which is  
2 Exhibit 65, were there other people at that meeting?

3 A. It was all the employees. So I had six  
4 developers that were under me. There were other  
5 analytical people that were there, a couple marketing  
6 people. So it was the entire company.

7 Q. And what company were you talking about when  
8 you say the entire company?

9 A. Willowbrook.

10 Q. Okay. And other than that, all of the people  
11 on the org chart were also present at those meetings?

12 A. Most, Greg Davis wasn't at a lot of them.

13 Q. And who ran those meeting?

14 A. Ed Foster and Jim Carnes.

15 Q. And who would take the lead in the meeting?

16 A. Jim Carnes.

17 Q. And what topics were discussed at these  
18 monthly meetings?

19 A. They were high level topics about the health  
20 of the company, the direction of the industries.

21 JUDGE McKENNA: Which company?

22 THE WITNESS: All of the companies.

23 JUDGE McKENNA: So can you give us a breakdown  
24 of Willowbrook?

25 THE WITNESS: I'm not sure if I understand the



1 question.

2 JUDGE McKENNA: The different entities  
3 contained therein.

4 THE WITNESS: So Willowbrook had a -- Empower,  
5 which was a prepaid debit card. Go Cash was a state  
6 modeled lending platform.

7 JUDGE McKENNA: Which did what?

8 THE WITNESS: It made payday loans for State  
9 of Texas and a couple of other states that were there.

10 JUDGE McKENNA: Separate and apart from  
11 Integrity Advance?

12 THE WITNESS: Correct.

13 JUDGE McKENNA: Separate company?

14 THE WITNESS: Correct.

15 JUDGE McKENNA: All right.

16 THE WITNESS: And then the Integrity Advance,  
17 and then we started a company in England, which I  
18 don't remember the name of that company. It was Zap  
19 Cash or something like that. But all of those  
20 companies would be discussed in that company meeting,  
21 all of those different products would be discussed.

22 JUDGE McKENNA: All right. Who ran  
23 Willowbrook?

24 THE WITNESS: Jim did, Jim ran Willowbrook.

25 JUDGE McKENNA: And what about Hayfield?

1 THE WITNESS: I don't know, I don't know those  
2 -- how the company was structured where Hayfield came  
3 from. But that is what was on my check was Hayfield.

4 JUDGE McKENNA: Proceed.

5 BY MS. WEINBERG:

6 Q. Could you pull up Exhibit 67? And this is  
7 also in your book -- so have you had a moment to look  
8 at that?

9 A. Yes, ma'am.

10 Q. And when you said there were other companies,  
11 does this refresh your recollection about any of the  
12 other companies that were discussed at these monthly  
13 meetings?

14 A. Yes. So the -- Zap Cash, and Integrity  
15 Advance, HIP Financial -- I don't recognize the Blue  
16 Ocean, Cornerstone would be the Empower product, Go  
17 Cash and they had Go Cash UK.

18 Q. Okay. And who was the decision maker at these  
19 meetings?

20 A. For which meetings, the --

21 Q. For the meetings, the monthly meetings that  
22 you had at -- in the Integrity Advance office.

23 A. I don't know if there were any decisions being  
24 made. It was more of an informal or informational. We  
25 would just talk about the health of the company and the

1 direction that we were moving towards.

2 Q. And generally speaking, who was the decision  
3 maker for Integrity Advance's business decisions?

4 A. It would be Jim.

5 Q. And did this --

6 JUDGE McKENNA: What did you say?

7 THE WITNESS: Jim Carnes.

8 BY MS. WEINBERG:

9 Q. And did this change over the time that you  
10 worked at Integrity Advance or Willowbrook?

11 A. No.

12 MS. WEINBERG: No further questions.

13 JUDGE McKENNA: Cross-examination.

14 **CROSS-EXAMINATION**

15 BY MS. BAKER:

16 Q. Good morning, Mr. Andonian.

17 A. Good morning.

18 Q. You testified that you were employed by  
19 Willowbrook; is that right?

20 A. That was the company I assumed I was working  
21 for.

22 Q. When exactly were you hired to work there?

23 A. It was -- for Willowbrook it was February  
24 2011.

25 Q. And when you were hired, who did you meet with

1 during that interview process, who specifically  
2 interviewed you for that position?

3 A. It was a lady named Amy and I don't recall her  
4 last name, Hassan and then Edward Foster.

5 Q. And do you have an understanding as to why you  
6 were hired to work at Willowbrook?

7 A. It was to develop a software development team  
8 for the Empower card.

9 Q. And did there come a time when in connection  
10 with your working at Willowbrook you were asked to also  
11 provide a service or two to Integrity Advance?

12 A. Yes, Hassan had gone on vacation and there was  
13 a change. I don't remember what the change was that  
14 needed to happen to the Integrity Advance system, to  
15 the website and so Edward asked me to make a change to  
16 that website.

17 Q. And do you recall when in the continuum of  
18 when you worked for Willowbrook were you asked to first  
19 do some amount of work for Integrity Advance?

20 A. It was kind of gradual, so the longer I was  
21 there the more work that I think Jim felt comfortable  
22 giving me, better understood the website and how the  
23 company worked.

24 Q. You say Jim felt comfortable giving you, what  
25 is the basis of your assessment of Mr. Carnes' comfort

1 level?

2 A. Just being more familiar with my skills.

3 Q. And was it Mr. Carnes who specifically asked  
4 you to work on the Integrity Advance website when  
5 Hassan went on vacation?

6 A. No, it was Edward.

7 Q. Now you testified that you participated in  
8 weekly IT meetings; do you recall that testimony?

9 A. Yes, ma'am.

10 Q. And those weekly IT meetings were for the  
11 Willowbrook family of companies?

12 A. It was.

13 Q. And what percentage of time during those  
14 weekly IT meetings, and when we say IT, we mean  
15 information technology.

16 A. Correct.

17 Q. What percentage of time during those weekly IT  
18 meetings, approximately, were spent discussing any  
19 aspect of Integrity Advance's business?

20 A. It was a very small amount. If I had to put  
21 numbers, I would say less than ten percent.

22 Q. In all -- of all of the time that you worked  
23 there, from February '11 until 2012?

24 A. Correct.

25 Q. Okay. Now you said you also attended monthly

1 or quarterly meetings?

2 A. Correct.

3 Q. And those monthly or quarterly meetings, and  
4 you don't recall which they were, if they were every  
5 three months or every month?

6 A. I don't, I'm sorry.

7 Q. And at those meetings, I think you testified  
8 that the companies that were discussed were part of the  
9 Willowbrook or Hayfield family of companies?

10 A. They were.

11 Q. Is that -- and the exhibit that was shown to  
12 you before, Mr. Andonian, Exhibit 67, that is the  
13 exhibit that reflects those family of companies?

14 A. As far as I know, yes.

15 Q. And to the best of your recollection, what  
16 percentage of time during those monthly or quarterly  
17 meetings was spent discussing any aspect of Integrity  
18 Advance's business?

19 A. Very small amount.

20 Q. And if you had to put a minute on it, assuming  
21 it's an hour long meeting, what -- how many minutes  
22 would you say were spent?

23 A. I would say less than five minutes.

24 Q. Less than five minutes, okay. I think you  
25 testified earlier that you generally worked a

1 forty-hour work week?

2 A. It was thirty-nine and a half.

3 Q. Let's call it forty. And you went on  
4 vacation?

5 A. I did.

6 Q. How many -- would you say you took about a  
7 couple of weeks off each year?

8 A. Yeah, I think we had two weeks of vacation,  
9 two or three weeks.

10 Q. So it is fair to say that you worked for the  
11 Willowbrook companies for about two years?

12 A. Correct.

13 Q. And over those two years you worked fifty,  
14 fifty weeks each year would you say?

15 A. Yes, ma'am.

16 Q. And so it's fair to say if you worked forty  
17 hours a week and you worked fifty weeks a year you  
18 worked about two thousand hours each year?

19 A. Yes, ma'am.

20 Q. Okay. And you just testified that at each of  
21 these assuming monthly meetings you spent no more than  
22 five minutes discussing Integrity Advance. So if you  
23 multiply five by twelve you get sixty minutes; is that  
24 right?

25 A. If you say so. If you've done the math, yes,



1 ma'am.

2 Q. I have done the math, yes, and you are in  
3 trouble if I have done the math.

4 That is one hour; is that right?

5 A. That sounds about right.

6 Q. So one hour each year, so two hours. So one  
7 hour in the first year and one hour the second year?

8 A. You are talking about Integrity Advance?

9 Q. Yes.

10 A. Yes, ma'am.

11 Q. And you just testified that you worked  
12 approximately four thousand hours for the Willowbrook  
13 companies; is that right?

14 A. Yes, ma'am.

15 Q. So two hours out of four thousand hours is the  
16 time that you spent in those monthly meetings, assuming  
17 they were even monthly, hearing about Integrity  
18 Advance?

19 A. Right.

20 Q. And when you heard about Integrity Advance,  
21 were you hearing about information or issues that you  
22 were working on specifically as to that company?

23 A. No.

24 Q. Did you ever have a conversation with  
25 Mr. Carnes about the language in a loan agreement?

1 A. Never.

2 Q. Did you have ever have a conversation with  
3 Mr. Carnes about the disclosures in a loan agreement?

4 A. No, ma'am.

5 Q. Did you ever have a conversation with  
6 Mr. Carnes about edits or revisions to any loan  
7 agreement?

8 A. No, ma'am.

9 Q. Did you ever have a conversation with  
10 Mr. Carnes about any edits or revisions to a loan  
11 disclosure?

12 A. No, ma'am.

13 Q. Did you ever have a conversation with  
14 Mr. Carnes about the language in a script that was used  
15 by a call service center representative?

16 A. No, ma'am.

17 Q. Did you ever have a conversation with  
18 Mr. Carnes where any language or revisions to that kind  
19 of script that might have been used by a call center  
20 representative?

21 A. No, ma'am.

22 MS. BAKER: Thank you, Mr. Andonian.

23 JUDGE McKENNA: Redirect?

24 MS. WEINBERG: Just a couple of questions,  
25 Your Honor.

**REDIRECT EXAMINATION**

BY MS. WEINBERG:

Q. Mr. Andonian, you said that you had one-on-one meetings with Mr. Carnes?

A. Yes, ma'am.

Q. And typically how long would those last?

A. I would say less than a minute most of them.

Q. And how often were those one minute meetings occurring?

A. It would, it would only happen if something needed to be changed on the website or something was going wrong with the website, so that, that happened very seldomly. I would say once a month, the database, there was something wrong with the database and he would come and inform me that I needed to work on that database. Or he would come in and say there is a state that needs to be removed. Those were about the length of the conversations, I want you to remove this state, yes, sir, and I would go remove the state.

Q. And what about your conversations about analytics?

A. I'm sorry?

Q. I think you testified that you spoke with him about analytics.

A. I did not have any conversations with Jim

1 about analytics.

2 Q. Okay. And would it be fair to say that the  
3 Integrity Advance website remained fairly static other  
4 than those changes that you mentioned during the time  
5 that you were there?

6 A. Yes, ma'am.

7 Q. And would it be fair to say that is the reason  
8 that you didn't need to speak to him frequently about  
9 the website?

10 A. If there was nothing wrong, there was nothing  
11 to talk about.

12 Q. And if there was a problem with the website or  
13 with the software, would you speak to Mr. Carnes about  
14 that?

15 A. Yes, ma'am.

16 Q. Okay. Thank you.

17 A. Thank you.

18 MS. BAKER: Nothing further, Your Honor.  
19 Thank you.

20 JUDGE McKENNA: Thank you.

21 THE WITNESS: Thank you.

22 JUDGE MCKENNA: You are excused.

23 We will break for lunch. We are going to move  
24 to another courtroom that is more commodious. And so  
25 we will start at 1:00.

1 Off the record.

2 (A luncheon recess was taken.)

3 JUDGE McKENNA: Call your next witness,  
4 Mr. Wheeler.

5 MR. WHEELER: Your Honor, before we get  
6 started, I thought it would be good time to talk about  
7 what we are doing. We thought it might make sense to  
8 call Mr. Foster first thing tomorrow morning, but we  
9 didn't know what time you wanted to start in the  
10 morning.

11 JUDGE McKENNA: Right. I thought you were  
12 informed that we were going to start at 9:30.

13 MR. SACHS: Your Honor, I have not spoken to  
14 my client to confirm he is available. I don't  
15 anticipate any issues with that. So I expect we would  
16 be able to start at 9:30, but I do need to confirm  
17 with my client. Which I can send via e-mail.

18 JUDGE McKENNA: Whatever. We have a bunch of  
19 witnesses, and if we want to interpose one over  
20 another, it all gets done. Right?

21 MS. BAKER: Yeah, Your Honor, I have a couple  
22 of questions, housekeeping matters, actually. I just  
23 want to understand the mechanics of how Mr. Foster's  
24 testimony is going to be presented to the Court  
25 tomorrow. Is it going to be via telephone?

1 Is there a speaker phone in the courtroom?

2 (Attorney advisor indicating.)

3 MS. BAKER: So that is how he is going to

4 be --

5 JUDGE MCKENNA: Okay.

6 MS. BAKER: And then is the expectation that

7 if there was a witness who is going in the afternoon

8 if his testimony gets carried over to tomorrow morning

9 that his testimony will be put aside?

10 JUDGE MCKENNA: I can do that.

11 MS. BAKER: I leave that to counsel for the

12 CFPB.

13 MR. WHEELER: I don't think that is going to

14 be a problem, Your Honor. I prefer to finish up a

15 witness before we start with Mr. Foster if it delays

16 him by a little bit of time.

17 JUDGE MCKENNA: You guys are in control of the

18 proceedings except when you are not. All right. So,

19 and then I will get a stipulation from you, when

20 Mr. Foster does testify if you can talk to Mr. Sachs

21 to make sure that you can stipulate that Mr. Foster is

22 on the other end of the line, and is who he says he

23 is.

24 MS. BAKER: Your Honor, we will do the best we

25 can to provide that stipulation, keeping in mind that

1 myself and my client are not voice experts.

2 JUDGE McKENNA: Right.

3 MS. BAKER: So presumably we will be able to  
4 do that, but I don't want to misrepresent to the Court  
5 anything more than my own ability, so thank you.

6 JUDGE McKENNA: All right. No problem.

7 Proceed. Who is your next witness?

8 MR. WHEELER: Enforcement Counsel calls James  
9 Carnes, Your Honor.

10 **JAMES R. CARNES,**

11 A witness produced on call of the Enforcement  
12 Counsel, having first been duly sworn, was examined  
13 and testified as follows:

14 THE WITNESS: I do.

15 JUDGE MCKENNA: Please be seated, state your  
16 full name for the record, spell your last name.

17 THE WITNESS: My name is James Robert Carnes,  
18 C-A-R-N-E-S.

19 JUDGE McKENNA: Proceed.

20 **DIRECT EXAMINATION**

21 BY MR. WHEELER:

22 Q. Good afternoon, Mr. Carnes. Are you familiar  
23 with the company called Integrity Advance?

24 A. I am.

25 Q. What is Integrity Advance?



1 A. It was a company that made short-term loans  
2 over the internet.

3 Q. Were you one of the founders of the company?

4 A. I am.

5 Q. And you were the CEO of Integrity Advance,  
6 correct?

7 A. Integrity Advance didn't have any job titles,  
8 but I was the CEO of the parent company, so the de  
9 facto CEO of Integrity Advance.

10 JUDGE McKENNA: And which parent company?

11 THE WITNESS: That would be Hayfield, Hayfield  
12 Investment Partners.

13 BY MR. WHEELER:

14 Q. You testified that Integrity Advance made  
15 loans, correct?

16 A. Yes, sir.

17 Q. And those loans were made to consumers?

18 A. Yes, sir.

19 Q. Did the company offer any other products?

20 JUDGE McKENNA: Which company?

21 MR. WHEELER: Integrity Advance.

22 THE WITNESS: No.

23 BY MR. WHEELER:

24 Q. I'm sorry you said no?

25 A. No.

1 Q. Did the loans that Integrity Advance  
2 originated create a revenue?

3 A. Yes.

4 Q. Did they create profits?

5 A. Yes.

6 Q. Did Integrity Advance have any other source of  
7 revenue other than consumer loans?

8 A. No.

9 Q. Let's look at Exhibit 65, please.

10 JUDGE McKENNA: Fifty-five?

11 MR. WHEELER: Sixty-five, Your Honor that's in  
12 the first binder.

13 JUDGE McKENNA: Yep.

14 BY MR. WHEELER:

15 Q. Mr. Carnes, I'm showing you what has been  
16 admitted into evidence as Enforcement Counsel Exhibit  
17 65, do you recognize this document?

18 A. I do.

19 Q. What is it?

20 A. It's a flow chart that says IADV reporting  
21 structure. This would have been the org chart of the  
22 parent Hayfield, I guess for purposes of this  
23 investigation they put IADV on it.

24 COURT REPORTER: What was that?

25 JUDGE McKENNA: Would you speak up a little.

1 THE WITNESS: Sure.

2 JUDGE MCKENNA: That's good.

3 BY MR. WHEELER:

4 Q. Would it be fair to call this an  
5 organizational chart of people who provided services to  
6 Integrity Advance?

7 A. Yes.

8 Q. And this appears accurate to you?

9 A. Yes.

10 Q. And this lists you as the president, correct?

11 A. It does.

12 Q. And it lists Mr. Edward Foster as executive  
13 vice president, COO, and general counsel?

14 A. That's correct.

15 Q. Did you hire Mr. Foster?

16 A. I did.

17 Q. When did you hire Mr. Foster?

18 A. I can't remember the month, but it was  
19 sometime in the middle part of 2006.

20 Q. Could you describe that process.

21 A. The process of hiring him?

22 Q. Yes.

23 A. I knew Mr. Foster for -- previously, and was  
24 looking for somebody who had his background and  
25 expertise. I had worked with Mr. Foster before at an

1 internet company in 2000 and 2001. And I thought his  
2 internet company experience would be appropriate for  
3 what we were doing.

4 Q. And when you said appropriate for what you  
5 were doing, what were you doing at that time?

6 A. Making loans over the internet.

7 Q. And was that through Integrity Advance?

8 A. No.

9 Q. What was that through?

10 A. Prior to Integrity Advance there were a couple  
11 of companies that we had, that also made loans through  
12 the internet that were not Integrity Advance.

13 JUDGE McKENNA: They were what?

14 THE WITNESS: They were not Integrity Advance.

15 BY MR. WHEELER:

16 Q. When did Integrity Advance form?

17 A. To my best recollection it was the articles of  
18 the formation were filed with the State sometime in  
19 2007, I believe, and went from there.

20 Q. And do you remember when after Integrity  
21 Advance was formed that Mr. Foster started providing  
22 services to Integrity Advance?

23 A. It would have been all through the, throughout  
24 the formation of Integrity Advance he was there prior  
25 to when it became, before it was formed.

1 Q. Going back to Exhibit 65. It shows Mr. Madsen  
2 as vice president of marketing, correct?

3 A. Yes.

4 Q. Did you hire Mr. Madsen?

5 A. It was a joint effort of Edward and myself to  
6 hire him, yes.

7 Q. And it shows here that Mr. Andonian was  
8 director of IT; do you see that?

9 A. I do.

10 Q. Did you hire Mr. Andonian?

11 A. I didn't specifically, I don't recall  
12 interviewing Mr. Andonian, but I, I obviously hired him  
13 or instructed somebody else to hire him.

14 Q. What about Mr. Andrew Peck, he is listed as  
15 vice president of finance did you hire him?

16 A. I did.

17 Q. What about Stephanie Schaller vice president  
18 of decision science, did you hire her?

19 A. I did, with -- Mr. Foster and I were both  
20 together on that hire.

21 Q. And Christopher Pickett is listed as vice  
22 president of legal affairs, did you hire Mr. Pickett?

23 A. No, Edward Foster did.

24 Q. And George Davis is listed as Delaware office  
25 manager, did you hire Mr. Davis?

1 A. I did.

2 Q. And then I, I always forget how to pronounce  
3 this name -- Hassan Shahin, is that how you pronounce  
4 it?

5 A. Yes, sir.

6 Q. Did you hire Mr. Shahin?

7 A. I did.

8 Q. And Mary Anne Reece is listed as controller,  
9 did you hire Ms. Reece?

10 A. No.

11 Q. Who hired her?

12 A. Andrew Peck.

13 Q. And, last person, Mark -- is that Rondeau?

14 A. Yes.

15 Q. Did you hire Mr. Rondeau?

16 A. Mr. Rondeau had worked at a company with  
17 Edward and I prior, the one I just referred to, and so  
18 it was a combination between Edward and I.

19 Q. Of the people who appear in this org chart,  
20 where did they work, physically?

21 A. With the exception of George Davis, they all  
22 worked at our office in Westwood, Kansas. Well, we  
23 were actually in Kinsey, Missouri for a short period of  
24 time before Mr. Madsen, Mr. Peck, and that's all. And  
25 then the rest were all hired when we moved to Westwood,

1 Kansas.

2 Q. But is it your testimony that -- so Integrity  
3 Advance, the office moved at some point, correct?

4 A. Yes, correct.

5 Q. But, (coughs) excuse me, is it your testimony  
6 that this group of people always worked together in the  
7 same office?

8 A. Like I said, some of them worked -- a few -- a  
9 subset of that group worked together at a prior office  
10 and then when we moved to the new office, the rest of  
11 the group got hired.

12 Q. And you worked in that office as well?

13 A. I did.

14 Q. Did Integrity Advance have a parent company?

15 A. Yes.

16 Q. And what was the name of that parent company?

17 A. Hayfield Investments Partners.

18 Q. Did you found Hayfield Investment Partners?

19 A. I did.

20 Q. Can you please see Exhibit 67? Mr. Carnes,  
21 I'm showing you what has been admitted into evidence as  
22 Enforcement Counsel Exhibit 67; do you recognize this  
23 document?

24 A. I do.

25 Q. What is it?



1 A. It's a Hayfield Investment Partners corporate  
2 structure.

3 Q. Is this document accurate?

4 A. It is, it changed over time, but it -- I think  
5 the -- I think this is accurate as of the last time it  
6 was published.

7 Q. Do you remember when that was?

8 A. It would have been near the -- sometime in  
9 2012, I think.

10 Q. So you see the box sort of in the middle  
11 toward the top that says Hayfield Investment Partners,  
12 LLC, do you see that?

13 A. I do.

14 Q. The entities that appear above that box, would  
15 I be correct in characterizing those entities as owners  
16 of Hayfield Investment Partners?

17 A. You would.

18 Q. And do all of the boxes below the Hayfield  
19 Investment Partners box represent subsidiaries of  
20 Hayfield?

21 A. They do.

22 Q. And that is your name at the name where it  
23 says James Carnes, correct?

24 A. That's correct.

25 Q. And that refers to you?

1 A. Yes, it does.

2 Q. What does the one hundred percent signify  
3 there in the box with your name?

4 A. Well, that would signify that I own one  
5 hundred percent of Willowbrook Marketing which owned  
6 fifty --

7 COURT REPORTER: I can't hear you, sir.

8 THE WITNESS: That would signify I own a  
9 hundred percent of Willowbrook Marketing, which owned  
10 50.3802 percent of Hayfield Investment Partners.

11 JUDGE McKENNA: Excuse me just a second, is  
12 the mic working?

13 THE WITNESS: Well --

14 JUDGE McKENNA: Tap it.

15 THE WITNESS: Yeah.

16 JUDGE MCKENNA: All right. So pull it a  
17 little closer to you. That is better.

18 THE WITNESS: Is that better?

19 COURT REPORTER: Yes.

20 JUDGE McKENNA: And now in a real deep  
21 voice --

22 BY MR. WHEELER:

23 Q. So Mr. Carnes, you testified that you owned  
24 one hundred percent of Willowbrook Marketing?

25 A. Yes.

1 Q. And that Willowbrook Marketing owned 50.38  
2 percent of Hayfield Investment Partners?

3 A. Correct.

4 Q. Were you the CEO of Willowbrook Marketing?

5 A. Willowbrook Marketing had no officers.

6 Q. Did it have any employees?

7 A. No.

8 Q. Is it fair to say that you had control over  
9 Willowbrook Marketing?

10 A. Yes.

11 Q. The other ownership entities that appear above  
12 the Hayfield Investment Partners box, did you have an  
13 ownership interest in any of those entities?

14 A. The other ones outside of Willowbrook  
15 Marketing you are speaking of?

16 Q. Yes, so is that --

17 A. The SI Hayfield.

18 Q. HC One, Edward Foster?

19 A. Correct.

20 Q. Those boxes?

21 A. Correct, yes. I had no ownership in any of  
22 those boxes.

23 JUDGE McKENNA: What about just above that,  
24 see attached list for details of owners, one hundred  
25 percent of SI Hayfield, LLC, whose -- were you in that

1 hundred percent.

2 THE WITNESS: No, I was only the hundred  
3 percent owner of Willowbrook Marketing which was 50.3  
4 percent owner of Hayfield. The rest were other people.

5 BY MR. WHEELER:

6 Q. Did the ownership percentage that Willowbrook  
7 Marketing held of Hayfield, did that change over time?

8 A. Yes.

9 Q. Was it ever the case that Willowbrook  
10 Marketing owned less than fifty percent of Hayfield  
11 Investment Partners?

12 A. No.

13 Q. And you were the CEO of Hayfield; is that  
14 correct?

15 A. Yes.

16 Q. So is it fair to say that you managed all of  
17 the entities that appear below the Hayfield box, all of  
18 the subsidiaries?

19 MS. BAKER: Objection, foundation,  
20 speculation.

21 JUDGE McKENNA: All right. Rephrase.

22 BY MR. WHEELER:

23 Q. You have testified that the entities below the  
24 Hayfield Investment Partner's box were subsidiaries of  
25 Hayfield, correct?

1 A. Correct.

2 Q. And you have testified that you were the CEO  
3 of Hayfield?

4 A. Correct.

5 Q. But by virtue of you being the CEO of  
6 Hayfield, did you manage the other subsidiaries under  
7 the Hayfield box?

8 A. What do you mean manage?

9 Q. Did you have control over them?

10 A. I would, I was the CEO of Hayfield, I'm de  
11 facto CEO of everything, every box you see up there  
12 below Hayfield.

13 Q. I want to focus on HIP Financial. Do you see  
14 that on the left side?

15 A. I do.

16 Q. What was HIP Financial?

17 A. It was our human resource company where  
18 people's paychecks would come from.

19 Q. Let's go back to Exhibit 65 for a second. So  
20 did HIP Financial pay everyone who appears on this  
21 organizational chart?

22 A. No.

23 Q. Who did it pay?

24 A. Everybody below Edward Foster.

25 Q. So who did you receive your compensation from?

1 A. When I was compensated as a salary it was from  
2 a company called Willowbrook Partners -- no, I'm sorry,  
3 Willowbrook Managers, Willowbrook Managers.

4 Q. Did you own Willowbrook Managers?

5 A. I owned the majority of it.

6 Q. Do you remember the percentage?

7 A. Not off the top of my head.

8 Q. What about Mr. Foster, who paid Mr. Foster's  
9 compensation?

10 A. Same.

11 MS. BAKER: Objection, foundation.

12 BY MR. WHEELER:

13 Q. Did Mr. Foster receive compensation?

14 A. Yes.

15 Q. And which entity paid his compensation?

16 A. Well, when?

17 Q. Well, at any time. So, from the beginning of  
18 his time working at Hayfield.

19 A. Working at Hayfield?

20 Q. Well, you testified that he started out  
21 working for Hayfield, correct?

22 A. No.

23 Q. I'm sorry, when you first hired Mr. Foster,  
24 what entity was he working for?

25 A. I can't recall which one of the entities paid

1 his salary before this, but I know that it was, well,  
2 when you see this chart it was, by this time Hayfield  
3 had been created, and Willowbrook Managers that paid  
4 Mr. Foster and myself, to the extent I was getting a  
5 salary.

6 Q. Was there a time when you were not receiving a  
7 salary?

8 A. Yes.

9 Q. When was that?

10 A. Early in the formation of the company.

11 Q. At what point did you start receiving a  
12 salary?

13 A. I can't remember exactly.

14 Q. Were you receiving a salary by 2009?

15 A. Yes.

16 Q. What was that salary?

17 (No audible response.)

18 Q. What was that salary you were receiving?

19 A. You mean how much?

20 Q. Yes.

21 A. I don't remember.

22 Q. Was it two hundred and fifty thousand dollars?

23 MS. BAKER: Objection, calls for speculation.

24 JUDGE McKENNA: I will allow it.

25 THE WITNESS: It was somewhere around, I'm



1 guessing, somewhere around a couple hundred thousand  
2 dollars.

3 JUDGE McKENNA: All right. Do you have  
4 information or was that pulled out of whole cloth?

5 MR. WHEELER: No, it was not pulled out of  
6 whole cloth, Your Honor. Mr. Carnes had testified to  
7 that during his investigational hearing.

8 JUDGE McKENNA: All right.

9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]

13 JUDGE McKENNA: So the proper approach, if an  
14 old man can interject --

15 MR. WHEELER: Please, Your Honor.

16 JUDGE McKENNA: -- would be to refresh his  
17 recollection.

18 MR. WHEELER: One second. Your Honor.

19 (Brief pause.)

20 MR. WHEELER: We can come back to that, Your  
21 Honor. If that's -- with your permission.

22 JUDGE McKENNA: Yes, that would be fine.

23 MR. WHEELER: I just don't see it right this  
24 second.

25 JUDGE McKENNA: I just don't want to get

1 Ms. Baker beating me up.

2 MR. WHEELER: I understand. No one wants to  
3 be beat up by Ms. Baker.

4 BY MR. WHEELER:

5 Q. Let's go back to Exhibit 67.

6 So Mr. Carnes, you have testified that the  
7 entities under the Hayfield Investment Partners box  
8 were subsidiaries, which of these subsidiaries was the  
9 most profitable?

10 MS. BAKER: Objection, vague question.

11 JUDGE McKENNA: How is it vague?

12 MS. BAKER: What time, Your Honor?

13 JUDGE McKENNA: There you go, what time?

14 BY MR. WHEELER:

15 Q. Over the course of Hayfield's existence, which  
16 of these entities was most profitable? Which of the  
17 subsidiaries was most profitable?

18 A. Can you define most profitable, please?

19 Q. Did any of the subsidiaries create profit?

20 A. In what way?

21 Q. Did they have revenue above expenses?

22 A. Yes.

23 Q. Which ones?

24 A. Integrity Advance, Zip Cash, at one point Blue  
25 Ocean, and then Go Cash.

1 JUDGE McKENNA: Did you say Go Cash?

2 THE WITNESS: Yes, sir.

3 BY MR. WHEELER:

4 Q. So during the course of Hayfield's existence  
5 of those entities that you just named that have  
6 profits, which one was the most profitable?

7 A. Again, do you mean operating profits, or  
8 profits through a sale, or -- because those are two  
9 different things.

10 Q. Operating profits.

11 A. Integrity Advance had the most operating  
12 profits.

13 Q. To the extent that Integrity Advance generated  
14 profits, were those distributed to Hayfield?

15 A. Yes.

16 Q. How did that process work?

17 A. What do you mean how did it work? You move  
18 money from one company to another, you mean that?

19 Q. Is that what would happen?

20 A. Yes.

21 Q. Who would decide to move money from one  
22 company to another?

23 A. It would be a collective decision between  
24 Andrew Peck, our vice president of finance, Mr. Foster,  
25 and myself.

1 Q. Given that you were the CEO would you have the  
2 ultimate decision making power on that decision?

3 A. Yes.

4 Q. You have testified that Integrity Advance was  
5 the most profitable of the profit making entities that  
6 we see on this Exhibit 67, correct?

7 A. From an operating perspective, yes?

8 Q. Yes, from an operating perspective? Do you  
9 know what percentage of the profits Integrity Advance  
10 would have generated?

11 A. I do not.

12 Q. Would it be over fifty percent?

13 MS. BAKER: Objection, vague, and foundation.

14 MR. WHEELER: Your Honor, this witness was the  
15 CEO of Hayfield.

16 JUDGE MCKENNA: I mean, how is that vague if  
17 either he knows or he doesn't?

18 MS. BAKER: Well, he is asking him for  
19 percentages and we are talking about a timeline that  
20 hasn't been defined by any questions that Mr. Wheeler  
21 has asked this witness in the last five minutes.

22 MR. WHEELER: I asked him about the whole  
23 period that Hayfield existed and I have said that a  
24 couple of times.

25 JUDGE MCKENNA: That is true. Overruled if

1 you can answer it.

2 THE WITNESS: I'm sorry. Could you repeat the  
3 question?

4 BY MR. WHEELER:

5 Q. The question was: What percentage of  
6 Hayfield's profits were generated by Integrity Advance?

7 A. It varied over time.

8 Q. How so?

9 A. Well, in the foundation, the forming of a  
10 company there is -- you don't have any profits, and  
11 then as the company grows, the profits grow and then as  
12 you wind the company down the profits shrink and go  
13 away.

14 Q. So let's take 2010. By that point Integrity  
15 Advance had been running, correct?

16 A. Correct.

17 Q. In 2010 would Integrity Advance have generated  
18 the majority of Hayfields profits?

19 A. I don't, I don't have that information in  
20 front of me.

21 Q. Mr. Carnes, you recall that you were deposed  
22 in this matter, correct?

23 A. I do.

24 Q. And you were in an office at Venable?

25 A. That's correct.

1 Q. And I was there and my colleague Ms. Weinberg?

2 A. That's correct.

3 Q. And, we asked you questions?

4 A. That's correct.

5 Q. Do you remember that?

6 And you were represented by counsel.

7 Ms. Baker?

8 A. That's correct.

9 Q. And you were under oath that day?

10 A. That's correct.

11 Q. And you answered truthfully that day, correct?

12 A. Absolutely.

13 Q. So I want to turn to your transcript from that  
14 day, and it's Exhibit 68, although you don't  
15 necessarily need to turn to it. I think it is -- and I  
16 am just going to read from this.

17 JUDGE MCKENNA: Yes, hold on one second.

18 MS. BAKER: Permission to approach the  
19 witness.

20 Just to make sure he has the right exhibit.

21 JUDGE MCKENNA: Sure -- I think that's  
22 appropriate.

23 MS. BAKER: It is Exhibit 68?

24 MR. WHEELER: Is it 68?

25 MS. BAKER: Yes.

1 THE WITNESS: What page?

2 MR. WHEELER: Exhibit 68.

3 THE WITNESS: What page?

4 MR. WHEELER: It's on page 92.

5 MS. BAKER: Thank you, Your Honor.

6 THE WITNESS: Ninety-two?

7 MR. WHEELER: Correct.

8 BY MR. WHEELER:

9 Q. Okay. So I'm going to read starting at line  
10 nineteen. (Reads)

11 "Question: Okay. So is it fair to say in  
12 2010 the most significant portion of Hayfield's profits  
13 or revenue came from Integrity?

14 Ms. Baker: Can you define significant?

15 Ms. Weinberg: I'm using the word that he just  
16 used.

17 The Witness: Okay, we use profits and  
18 revenues. Those are drastically different concepts.

19 Ms. Weinberg: Let's stick with profits.

20 Answer: Yes.

21 Question: Significant, does that mean more  
22 than fifty percent?

23 Answer: Yes.

24 More than seventy-five percent?

25 Answer: Yes."

1 BY MR. WHEELER:

2 Q. Do you see that, Mr. Carnes?

3 A. I do.

4 Q. And that was your testimony that day?

5 A. That is.

6 Q. And was that truthful testimony?

7 A. Yes.

8 Q. What about for 2011, did Integrity Advance  
9 generate most of Hayfield's profits in 2011?

10 A. Yes.

11 Q. Would it be more than 75 percent?

12 A. I, like I said, I don't have that in front of  
13 me, I mean, I obviously testified that it was. This  
14 was two years ago and that, and these were referring to  
15 things that were four years prior to that, I'm trying  
16 to recall everything so I can be a hundred percent  
17 truthful.

18 And I, like I said, I was more -- this was  
19 closer to the time that I was looking at the stuff and  
20 I may even have looked at some of our other exhibits,  
21 so yeah, I would say this is true.

22 Q. And would your answer be the same for 2012?  
23 That Integrity Advance likely generated most of  
24 Hayfield's profits?

25 A. Operating profits?



1 Q. Yes, operating profits.

2 A. Yes.

3 Q. Did Integrity Advance use lead generators or  
4 lead aggregators?

5 A. Yes.

6 Q. And you are familiar with those terms?

7 A. I am.

8 Q. What do those companies do? What does that  
9 refer to?

10 A. You want me to define it?

11 Q. What is your understanding of what a lead  
12 generator does?

13 A. A lead generator would be a company who has  
14 some methodology of contacting a consumer, getting the  
15 consumer to take an offer, fill out an application, and  
16 sell the data.

17 Q. And Integrity Advance would buy leads from  
18 companies like this; is that correct?

19 A. Yes.

20 Q. And the lead is the consumer's information?

21 A. Yes.

22 JUDGE McKENNA: It's a potential client?

23 THE WITNESS: Yes, potential, exactly.

24 BY MR. WHEELER:

25 Q. Do you remember how many lead generators

1 Integrity Advance used?

2 A. I don't, at any one point it could have been  
3 fifteen, it varied over time.

4 Q. Do you remember how much Integrity Advance  
5 would pay for a lead?

6 MS. BAKER: Objection, foundation, vague.

7 JUDGE McKENNA: All right. So how is it  
8 vague?

9 MS. BAKER: Mr. Carnes has just testified  
10 about a company that was in business for four and a  
11 half years.

12 JUDGE McKENNA: All right.

13 MS. BAKER: He's being asked questions with no  
14 timeline or parameters.

15 JUDGE McKENNA: All right. He --

16 MS. BAKER: There is no foundation for the  
17 question that is being asked.

18 JUDGE McKENNA: He did give a timeframe. It  
19 was during the whole time that they were operational.

20 MS. BAKER: I did not hear Mr. Wheeler give  
21 that timeframe for this line of questions, Your Honor.

22 JUDGE McKENNA: It's assumed therein, at least  
23 that is the way I took it. But since you are confused  
24 about it, so, would you please --

25 MR. WHEELER: Of course, Your Honor.

1 JUDGE McKENNA: -- direct a timeline. And  
2 then please be ready to if you have another because I  
3 want to get it right.

4 BY MR. WHEELER:

5 Q. During the entire time that Integrity Advance  
6 operated in providing consumer loans, Integrity Advance  
7 purchased leads, correct?

8 A. That's correct -- well, wait. What is the  
9 first thing that you said?

10 Q. During the entire time Integrity Advance was  
11 making consumer loans.

12 A. Yes.

13 Q. How much did Integrity Advance pay for those  
14 leads?

15 A. It varied greatly.

16 Q. How so?

17 A. It varied over the time that it was in  
18 business. The price of leads, in general, rose. And  
19 then, I'm talking about the price of the highest  
20 quality lead. Beneath that there were, you could,  
21 there -- you could buy leads at any price level you  
22 wanted. And so, we would buy all over the price  
23 structure of what was offered.

24 Q. What was the lowest amount you remember  
25 Integrity Advance paying for a lead?

1 MS. BAKER: Same objection, Your Honor.

2 JUDGE McKENNA: Overruled.

3 THE WITNESS: I don't recall, specifically,  
4 but I would -- ten dollars, something like that.

5 JUDGE McKENNA: All right. And what timeframe  
6 are we talking about there?

7 THE WITNESS: I think we are talking about the  
8 whole timeframe it was in business, and the lowest we  
9 ever paid, I think, is ten, around ten dollars.

10 JUDGE McKENNA: That would be toward the start  
11 of operations?

12 THE WITNESS: No, it was --

13 JUDGE McKENNA: Because you said the price  
14 increased over time.

15 THE WITNESS: The price of the -- so there  
16 was, in the business there was a term called first  
17 look. And first look is where the lead came to you as  
18 a lender first before it went to any other lender.  
19 The price of that first look went up over time.

20 The leads that were sold beneath that would go  
21 down -- now, I think we paid as low as ten dollars. I  
22 don't recall exactly when we were doing the ten dollar  
23 piece, but I think it was somewhere in there. And  
24 there were people who were paying less, but you would  
25 buy it at different price points throughout, from the

1 top down to whatever that bottom level was, which my  
2 recollection was ten dollars.

3 JUDGE MCKENNA: Thank you.

4 BY MR. WHEELER:

5 Q. Mr. Carnes, do you remember what the top level  
6 would have been for leads?

7 A. I don't, I couldn't tell you the top level by  
8 year, no.

9 Q. Do you remember the amount. Like what was the  
10 highest Integrity Advance ever paid for leads, highest  
11 amount?

12 A. Highest they ever paid?

13 Q. Yes.

14 A. That was really Mr. Madsen's deal. And I  
15 didn't, I wasn't really too involved in that. I think  
16 maybe two hundred dollars, I don't know.

17 Q. You testified about the fact that certain  
18 leads were first look, that is the term you used?

19 A. Yes.

20 Q. So if Integrity Advance bought a lead that was  
21 first look, you would have been the first company to  
22 see that lead, correct?

23 A. That is correct.

24 Q. So I'm assuming that Integrity Advance would  
25 pay more for a first look lead?

1 A. Any company would pay more for a first look  
2 lead.

3 Q. Other than the first look, are there other  
4 things that would differentiate the price of leads that  
5 would make one lead more valuable than another?

6 A. Yeah.

7 MS. BAKER: Same objection, Your Honor.

8 JUDGE McKENNA: Thank you. Overruled.

9 BY MR. WHEELER:

10 Q. The question was: Are there things, other  
11 things that would make, differentiate the price of a  
12 lead?

13 A. Yes.

14 Q. And what are those things?

15 A. Whether or not a consumer had direct deposit  
16 of their paycheck into their checking account or not.  
17 Differentiate, that was a big differentiator.

18 JUDGE McKENNA: And why is that?

19 THE WITNESS: If a consumer doesn't have  
20 direct deposit and getting paid by a paper check, they  
21 would have to march the paper check into their bank to  
22 deposit it, to use it. And you are then trying to  
23 figure out what day to setup a -- your automated  
24 clearing house debit of their account. And it is not  
25 easy to do because you don't know what day they are

1 going to walk it into the bank.

2 JUDGE McKENNA: And if they decide they do not  
3 want to walk it into the bank, they can stiff you  
4 then; is that correct?

5 THE WITNESS: That's correct.

6 BY MR. WHEELER:

7 Q. Are there other factors that contribute to the  
8 price of a lead other than whether or not the consumer  
9 received direct deposit?

10 A. Yes.

11 Q. And what are those?

12 A. I'm not sure I can give you a complete list,  
13 but there are things such as a savings account versus a  
14 checking account, if they have -- that would make a  
15 difference.

16 Q. Which one was more valuable?

17 A. Checking account, because not all savings  
18 accounts are ACHable.

19 Q. Any other factors that you can think of right  
20 now?

21 A. Ah, not really.

22 Q. Let's pull up Exhibit 53. Mr. Carnes, I'm  
23 showing you what has been marked as Enforcement Counsel  
24 Exhibit 53. Do you recognize this document?

25 A. Uh-huh.

1 Q. What is it?

2 A. It's a lead purchase agreement.

3 Q. And who was that lead purchase agreement  
4 between?

5 A. It appears to be between T3 Leads and  
6 Integrity Advance.

7 Q. Do you recall that Integrity Advance had a  
8 contract with T3 leads?

9 A. Yes.

10 Q. Please turn to page 5. And I know it is a  
11 little fuzzy, but on the bottom left-hand side, under  
12 where it says Integrity Advance, LLC, is that your  
13 signature?

14 A. Yes.

15 JUDGE McKENNA: Talking about page six?

16 MR. WHEELER: I thought it was page five,  
17 although --

18 MS. BAKER: I have page seven.

19 THE WITNESS: It actually looks like page  
20 seven of the agreement and was like page six of the  
21 exhibit, page six of your exhibit. It is page seven of  
22 the document.

23 BY MR. WHEELER:

24 Q. Okay. But you have testified that is your  
25 signature, correct?



1 A. That is my signature.

2 Q. Integrity Advance did have a contract with T3  
3 Leads, correct?

4 A. That is correct.

5 MR. WHEELER: Your Honor, I would ask that  
6 Enforcement Counsel Exhibit 53 be admitted into  
7 evidence.

8 JUDGE MCKENNA: Any objection?

9 MS. BAKER: No objection.

10 JUDGE MCKENNA: Just a second. Exhibit 53  
11 admitted into evidence. All right. We are going  
12 through this process, as I indicated to both counsel,  
13 for all of the deferred rulings. And then I also want  
14 to make sure that we have the proper foundation laid  
15 for the ones that were admitted except for those that  
16 no objection was lodged.

17 (Lead Purchase Agreement was  
18 admitted into evidence as  
19 Enforcement Counsel Exhibit No. 53.)

20 MR. WHEELER: I'm sorry. Just so I'm clear,  
21 Your Honor, I remember in your order there was  
22 somewhere that you held off on admitting or not  
23 admitting them.

24 JUDGE MCKENNA: Right. You have that.

25 MR. WHEELER: And we have that list. When you

1 say something additional as to exhibits which you  
2 deemed admitted?

3 JUDGE McKENNA: That is correct, maybe. I  
4 want to go through them. I will do that with my staff  
5 mostly, and then if I find any issues where I engaged  
6 in a mala prohibita, then I will correct it.

7 MR. WHEELER: Okay.

8 JUDGE McKENNA: All right?

9 MR. WHEELER: All right. Thank you, Your  
10 Honor.

11 JUDGE McKENNA: So admitted on fifty-three.

12 MS. BAKER: Your Honor, I'm sorry. Your  
13 Honor, if I can just make a statement about Exhibit  
14 53. I just want to put the Court on notice that it's  
15 our position that documents that predate September 21,  
16 2011 have limited relevance to this particular matter,  
17 as it related to Mr. Carnes. Having said that, we  
18 will allow this document to be moved into evidence.

19 JUDGE McKENNA: Duly noted.

20 MS. BAKER: Thank you.

21 MR. WHEELER: Obviously, we disagree, Your  
22 Honor, but I don't know that that is worth arguing  
23 right now.

24 BY MR. WHEELER:

25 Q. Mr. Carnes, did you negotiate this agreement

1 with T3 Leads?

2 A. I don't recall if Mr. Madsen negotiated it or  
3 I would have or some combination of the two. I'm sure  
4 Mr. Foster looked through it. I didn't sign anything  
5 he didn't look at. I don't know who was involved in  
6 the actual negotiation.

7 Q. Do you recall when Mr. Madsen started working  
8 for Integrity Advance?

9 A. He just said it was 2008.

10 Q. Let's look at Exhibit 54.

11 A. He was actually working for HIP Financial.

12 JUDGE McKENNA: All right. Where are you now?

13 MR. WHEELER: Exhibit 54, Your Honor,  
14 Enforcement Counsel Exhibit 54.

15 JUDGE McKENNA: Okay.

16 BY MR. WHEELER:

17 Q. Mr. Carnes, I'm showing you what's been marked  
18 as Enforcement Counsel Exhibit 54, do you recognize  
19 this document?

20 A. It appears to be a lead purchase agreement  
21 between Integrity Advance and Partner Weekly.

22 COURT REPORTER: Between Integrity Advance  
23 and whom?

24 THE WITNESS: Partner Weekly.

25 JUDGE McKENNA: You will need to get a little

1 closer to that mic.

2 THE WITNESS: Sorry. Partner Weekly.

3 BY MR. WHEELER:

4 Q. And on the first page there, where it says Jim  
5 Carnes, does that refer to you?

6 A. Yes.

7 Q. Do you recall that Integrity Advance had a  
8 contract with Partner Weekly?

9 A. I do.

10 Q. And would you please turn to page seven? And  
11 on the bottom right-hand side, under where it says  
12 Integrity Advance LLC/DBA, is that your signature?

13 A. That is my signature.

14 MR. WHEELER: Your Honor, I ask that  
15 Enforcement Counsel Exhibit 54 be admitted into  
16 evidence.

17 JUDGE McKENNA: Objections?

18 MS. BAKER: Yes, Your Honor, I do object on  
19 relevance grounds for purposes I just said before.  
20 It's not relevant to the question here of deceptive  
21 conduct as it concerns Mr. Carnes. The Deception  
22 Doctrine post-dates July 21, 2011. This document is  
23 dated June 22, 2008.

24 MR. WHEELER: Your Honor, this document goes  
25 to Mr. Carnes' role in the company, including when the

1 company was formed. There is -- his role running this  
2 company throughout its timeframe is relevant to  
3 whether or not he is liable for the deceptive  
4 contract.

5 JUDGE McKENNA: All right. I will admit it  
6 and it will go to weight.

7 (Lead purchase agreement

8 was admitted into evidence as

9 Enforcement Counsel Exhibit No. 54.)

10 MS. BAKER: Your Honor, if I may note, Your  
11 Honor issued a Motion in Limine ruling last week on  
12 the question of whether or not this Court would be  
13 re-hearing issues that had already been decided by  
14 this Court. And I understand Your Honor's ruling to  
15 be that no evidence will be introduced into the record  
16 that went only to issues previously ruled on. This  
17 would be such an issue.

18 Because the only issues left for this Court  
19 concern conduct that post-dates July 21, 2011. So  
20 this is an issue -- this is a piece of evidence that  
21 goes to issues that Your Honor has already ruled on.  
22 Mainly conduct, that could, arguably, potentially  
23 pre-date that timeline, thank you.

24 MR. WHEELER: Your Honor, this document goes  
25 to Mr. Carnes' involvement with his company and his

1 role in running his company that is one of the issues  
2 we are here to decide.

3 JUDGE MCKENNA: All right. Parties can make  
4 arguments. I made my ruling.

5 MS. BAKER: Thank you.

6 BY MR. WHEELER:

7 Q. Mr. Carnes did you negotiate this contract  
8 with Partner Weekly?

9 A. Again, I would give you the same answer as the  
10 last agreement, I don't know who negotiated between  
11 Mr. Madsen, Mr. Foster or myself. I signed it.

12 Q. Did Integrity Advance ever hire a company to  
13 assist it with debt collection?

14 A. Like a collections company? Define debt  
15 collection.

16 Q. Do you remember a company named Integrity  
17 Financial Partners?

18 A. I do.

19 Q. Did Integrity Advance have a contract with  
20 that company?

21 A. Yes, we did.

22 Q. Let's look at Exhibit 85. Mr. Carnes, I'm  
23 showing you what has been marked as Enforcement Counsel  
24 Exhibit 85, do you recognize this document?

25 A. I do.

1 Q. What is it?

2 A. It is an agreement between Integrity Financial  
3 Partners and Integrity Advance for collection work they  
4 were doing for us at the time.

5 Q. Will you turn to page five, please? And on  
6 the bottom left-hand side under where it says Hayfield  
7 Investment Partners and Willowbrook Partners, do you  
8 see that, Mr. Carnes?

9 A. I do.

10 Q. And is that your signature?

11 A. It is.

12 MR. WHEELER: Your Honor, I ask that  
13 Enforcement Counsel Exhibit 85 be admitted into  
14 evidence.

15 JUDGE McKENNA: Objection?

16 MS. BAKER: Yes, Your Honor.

17 JUDGE McKENNA: Same objection.

18 MS. BAKER: Different objections in addition  
19 to the same objection.

20 JUDGE MCKENNA: Okay.

21 MS. BAKER: First of all, this agreement  
22 concerns companies that are not just Integrity  
23 Advance. I also object because that agreement  
24 concerns conduct that has never been an issue in this  
25 matter. And I, moreover, object because it goes

1 against Your Honor's ruling in the Motion in Limine.  
2 Which expressly precluded the introduction of evidence  
3 that goes to any other issues other than those that  
4 are before this Court right now.

5 JUDGE McKENNA: Correct.

6 MS. BAKER: And this goes to conduct that  
7 predates July 21, 2011. The only issues before this  
8 Court right now at this hearing go to conduct that  
9 post-dates that time. You have deception and  
10 unfairness on the table for ruling, those are  
11 doctrines for the CFPB's own acknowledgment that only  
12 concern conduct that post-dates July 21, 2011.

13 It was the CFPB's very Motion in Limine on  
14 which Your Honor ruled. It was not a Motion in Limine  
15 that we brought. And now they are using the ruling  
16 that they sought against us in a way that is  
17 profoundly unfair, Your Honor.

18 JUDGE McKENNA: All right.

19 MR. WHEELER: Your Honor, the same response as  
20 last time. This goes to Mr. Carnes' role in running  
21 this company. His role in running this company is  
22 relevant to this proceeding. And to Ms. Baker's --

23 JUDGE McKENNA: Relevant to this proceeding or  
24 to the remaining issues?

25 MR. WHEELER: It is relevant to the remaining



1 issue, whether or not Mr. Carnes was actively running  
2 Integrity Advance such that this can be held liable  
3 for the deceptive loan agreement.

4 MS. BAKER: Your Honor, my understanding of  
5 the issue before the Court is whether or not  
6 Mr. Carnes engaged in deceptive conduct and the  
7 question of deceptive conduct concerns conduct that  
8 post-dates by this Court's prior ruling, July 21,  
9 2011. So whether Mr. Carnes executed an agreement  
10 that predates that time is not relevant to the issues  
11 remaining for this Court's disposition. And that was,  
12 in fact, Your Honor's ruling in the Motion in Limine  
13 that was ruled on last week.

14 MR. WHEELER: Your Honor, in your Summary  
15 Disposition Order, you stated that it was unclear what  
16 the precise nature of Mr. Carnes' role was. So that  
17 is what we are attempting to do, to present evidence  
18 that shows what his role was in running Integrity  
19 Advance.

20 Just because something happened before the transfer  
21 date does not mean it is not relevant to Mr. Carnes'  
22 role in running Integrity Advance.

23 JUDGE McKENNA: Doesn't mean it's not, and  
24 doesn't mean it does, or is.

25 MR. WHEELER: It doesn't necessarily mean it

1 is. But Your Honor, I would submit that Mr. Carnes'  
2 role in signing these agreements speaks to his role as  
3 CEO of Integrity Advance.

4 JUDGE McKENNA: All right. I'm going to  
5 overrule the objection, but that does not mean that it  
6 is going to be an accorded undue weight or any weight  
7 depending upon my review of the record.

8 MR. WHEELER: I understand, Your Honor.

9 JUDGE McKENNA: All right.

10 MS. BAKER: Thank you, Your Honor.

11 JUDGE McKENNA: So admitted.

12 (Enforcement Counsel Exhibit

13 No. 85 was admitted into evidence.)

14 JUDGE MCKENNA: Proceed.

15 BY MR. WHEELER:

16 Q. Mr. Carnes, did Integrity Advance use third  
17 parties to handle consumer calls?

18 A. Yes.

19 Q. Do you remember the names of those third  
20 parties?

21 A. This is one of them, Integrity Financial  
22 Partners. You saying inbound or outbound or what?

23 Q. Either one.

24 A. A company called Centrinex, I believe. I  
25 don't know if they were Integrity or not, I can't

1 remember when that changed, but Clearvox, we had a  
2 relationship with a company called Clearvox that at  
3 some point changed. I'm sorry, Centrinex that at some  
4 point changed --

5 COURT REPORTER: I'm sorry, sir, I can't  
6 understand you.

7 JUDGE MCKENNA: Spell it, please.

8 THE WITNESS: We had a relationship with a  
9 company called Centrinex, C-E-N-T-R-I-N-E-X. That we  
10 changed at some point to a company called Clearvox,  
11 C-L-E-A-R-V-O-X. So I don't know if -- I don't know  
12 in the formation of Integrity when that was, but  
13 somewhere in there. And then Integrity Financial  
14 Partners, and then later on a company called Worldwide  
15 Analytics, I believe.

16 BY MR. WHEELER:

17 Q. So you mentioned Clearvox was one of the  
18 companies that you, that Integrity Advance worked with?

19 A. That's correct.

20 Q. Do you remember the services that Clearvox  
21 provided?

22 A. Clearvox provided call center services for  
23 inbound and outbound customer service. At some point  
24 they might -- may have provided some collection  
25 services, but I can't remember -- well, this was -- I

1 can't remember when it changed to Integrity Financial  
2 Partners, it was sometime around that timeframe though.

3 Q. Did Integrity Advance pay fees to Clearvox?

4 A. Yes.

5 Q. Is it fair to say that, in the relationship  
6 between Clearvox and Integrity Advance, Integrity  
7 Advance were the clients?

8 A. Yes.

9 Q. Since Integrity Advance was the client, did  
10 Clearvox generally implement Integrity Advance's  
11 directions?

12 MS. BAKER: Objection, calls for speculation.

13 MR. WHEELER: I don't believe it calls for  
14 speculation, Your Honor. I mean, the witness was the  
15 CEO of Integrity Advance, he testified about Clearvox  
16 providing services. I'm asking did Clearvox generally  
17 implement Integrity Advance's instructions.

18 JUDGE McKENNA: Overruled.

19 THE WITNESS: They were a call center that had  
20 experience in the loan process. And there wasn't  
21 really a lot of detailed direction on what they were  
22 doing because they already knew. Does that answer  
23 your question?

24 BY MR. WHEELER:

25 Q. Did Clearvox develop Integrity Advance's loan

1 agreement?

2 A. No.

3 Q. Did Clearvox develop Integrity Advance's loan  
4 product?

5 A. No.

6 Q. You testified Integrity Advance also used a  
7 vendor called Centrinex?

8 A. I can't remember if Integrity Advance used  
9 them or there was a prior company that used them. But,  
10 we had a relationship at some level, at some point with  
11 a company called Centrinex, yes.

12 Q. Do you remember the services that Centrinex  
13 provided?

14 A. Similar to that of Clearvox.

15 Q. Did Centrinex develop Integrity Advance's loan  
16 agreement?

17 MS. BAKER: Objection. I'm going to object to  
18 this line of questions on foundation grounds. The  
19 witness has just testified that he is not certain that  
20 they even had a relationship. Perhaps Mr. Wheeler can  
21 first establish that before he is asked to answer  
22 questions.

23 JUDGE McKENNA: Sustained.

24 BY MR. WHEELER:

25 Q. Did Integrity Advance have a relationship with

1 Centrinex?

2 A. Like I just testified, I don't remember when  
3 we -- Centrinex changed to Clearvox, whether it was --  
4 it was around the time Integrity was formed, but I  
5 can't remember if they did some work at Integrity or  
6 not. Again, this was eight years ago.

7 Q. I understand. Did --

8 JUDGE McKENNA: Was that a different company  
9 or they changed their name?

10 THE WITNESS: They -- um, it was a different  
11 company, had some of the similar ownership, but  
12 different company.

13 BY MR. WHEELER:

14 Q. Did Centrinex develop a loan agreement for  
15 Integrity Advance?

16 A. No.

17 Q. Did Centrinex develop a loan product for  
18 Integrity Advance?

19 A. No.

20 Q. You testified that Integrity Advance also used  
21 a company called Worldwide Analytics?

22 A. Yes.

23 Q. What services did Worldwide Analytics provide?

24 A. The same as Clearvox.

25 Q. Which is?

1 A. Inbound/outbound call center support for  
2 consumers.

3 Q. Did Worldwide Analytics develop Integrity  
4 Advance's loan agreement?

5 A. No.

6 Q. Did Worldwide Analytics develop Integrity  
7 Advance's loan product?

8 A. No.

9 Q. Did Integrity Advance maintain bank accounts?

10 A. Yes.

11 Q. Do you remember how many bank of accounts  
12 Integrity Advance maintained?

13 A. When?

14 Q. Over the course of its existence, do you  
15 remember how many it maintained?

16 A. Not exactly, a handful I would guess.

17 Q. More than five?

18 MS. BAKER: Objection, calls for speculation.

19 JUDGE McKENNA: I agree, you need to nail that  
20 down a little more, I mean timeframes, when are you  
21 talking about?

22 BY MR. WHEELER:

23 Q. Actually, let's turn to Exhibit 55, but don't  
24 put it up, though. Your Honor, this exhibit needs to  
25 be under seal because it contains PII.

1 A. Fifty-five, you say?

2 Q. Yes, fifty-five.

3 MS. BAKER: If I may just ask the Court and  
4 Mr. Wheeler as a housekeeping matter, is it your  
5 intention to ultimately move this, if this gets moved  
6 into evidence, redacted?

7 MR. WHEELER: If we were to file this  
8 document, we would certainly redact it.

9 MS. BAKER: Thank you.

10 MR. WHEELER: We would file an under seal  
11 version, and a redacted version.

12 MS. BAKER: Thank you.

13 JUDGE McKENNA: Hold on a second.

14 MR. WHEELER: Just let me know.

15 JUDGE McKENNA: All right.

16 BY MR. WHEELER:

17 Q. Mr. Carnes, I'm showing you what has been  
18 marked as Enforcement Counsel Exhibit 55, do you  
19 recognize this document?

20 A. It appears to be a bank signature card.

21 Q. Did Integrity Advance have an account with  
22 First Bank of Lewisburg?

23 A. They did.

24 Q. If you turn to the second page at the top  
25 where it says James R. Carnes, does that refer to you?



1 A. Yes, it would.

2 MR. WHEELER: Your Honor, I ask that  
3 Enforcement Counsel Exhibit 55 be admitted into  
4 evidence.

5 JUDGE MCKENNA: Subject to redaction.

6 MR. WHEELER: Yes.

7 JUDGE MCKENNA: And under seal.

8 MR. WHEELER: Yes, Your Honor.

9 JUDGE MCKENNA: Objection?

10 MS. BAKER: Yes, Your Honor, this document --  
11 well, to the extent it concerns Integrity Advance, and  
12 I'm not, I guess some of it does, some of it does not,  
13 appears to be dated July 30th, 2008.

14 JUDGE MCKENNA: Okay.

15 MS. BAKER: So nearly three years before the  
16 conduct at issue for this hearing. So we object on  
17 those grounds. Again, this could only go to issues  
18 that have already been resolved by Your Honor in the  
19 ruling that you rendered at the beginning of this  
20 month, per the CFPB's Motion in Limine that they  
21 brought.

22 JUDGE MCKENNA: I disagree.

23 MS. BAKER: Well, I'm registering my  
24 objection, Your Honor.

25 JUDGE MCKENNA: And I respect that. All

1 right. Any other points of objection on this  
2 particular exhibit?

3 MS. BAKER: Well, that is it, Your Honor.

4 JUDGE McKENNA: Okay.

5 MS. BAKER: That and it's not signed, so there  
6 is no authentication.

7 JUDGE McKENNA: Well, then you need to discuss  
8 that with Mr. Carnes on the authentication issue.

9 MR. WHEELER: Mr. Carnes, you remember --

10 JUDGE McKENNA: And he said, did he have an  
11 account with them, yes?

12 MS. BAKER: It's not a signed copy. How do we  
13 know this is a document that was actually used.

14 JUDGE McKENNA: All right. Go ahead.

15 BY MR. WHEELER:

16 Q. Your Honor -- excuse me, Mr. Carnes, did you  
17 sign a signature card for First Bank of Lewisburg?

18 A. Yes.

19 Q. And you recall doing that?

20 A. Yes.

21 Q. Do you have any reason to believe that this,  
22 what you are looking at, is not an accurate copy of  
23 what you signed?

24 A. Well, clearly I didn't sign this one.

25 Q. But do you have any reason to believe this

1 copy is somehow different from what you signed?

2 A. I have no reason to believe that it is  
3 different.

4 JUDGE McKENNA: All right. So admitted.

5 (Enforcement Counsel Exhibit

6 No. 55 was admitted into evidence.)

7 BY MR. WHEELER:

8 Q. Mr. Carnes, how did Integrity Advance use this  
9 account with First Bank of Lewisburg?

10 A. As a checking account.

11 Q. Do you know if this account is still open?

12 A. It is.

13 Q. Do you know how much money is in this account?

14 A. De minimis amount.

15 Q. Something under one hundred thousand dollars,  
16 is that a fair statement?

17 A. Something in the neighborhood of a hundred  
18 dollars.

19 Q. You testified that Integrity Advance had  
20 multiple accounts; is that correct?

21 A. Yes.

22 Q. Are any of the other accounts still open?

23 A. No.

24 Q. So this account at First Bank of Lewisburg is  
25 the only account that Integrity Advance maintained that

1 is still open?

2 A. Correct.

3 Q. [REDACTED]

4 [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED] [REDACTED]

7 [REDACTED]

8 [REDACTED] [REDACTED]

9 [REDACTED] [REDACTED]

10 [REDACTED]

11 [REDACTED] [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

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19 [REDACTED]

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16 [REDACTED]

17 [REDACTED]

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20 [REDACTED]

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10 MS. BAKER: Your Honor, I would ask that this  
11 line of questions concerning Hayfield, in particular,  
12 be put under seal. It's proprietary and asking  
13 questions about a party -- an entity that is not a  
14 party to this case is wholly inappropriate.

15 JUDGE McKENNA: All right. I will grant that.

16 MS. BAKER: Thank you.

17 MR. WHEELER: Your Honor --

18 JUDGE McKENNA: So how do you want to handle  
19 that? Do you want to clear the courtroom? Or --

20 MS. BAKER: Yes, Your Honor.

21 MR. WHEELER: I mean, I do have further  
22 questions that involve Hayfield, so...

23 JUDGE McKENNA: Right.

24 MS. BAKER: Your Honor, to be specific, my  
25 request is as it concerns any financial information

1 concerning Hayfield in the present. And so to the  
2 extent Mr. Wheeler has questions that he is going to  
3 continue to ask my client about how much money is in  
4 their bank account, I would ask that this Court put  
5 that part of that proceeding under seal and, in fact,  
6 clear the courtroom, thank you.

7 MR. WHEELER: Your Honor, I don't have a  
8 problem with the courtroom being cleared. Just so you  
9 know --

10 JUDGE McKENNA: You do not have a problem?

11 MR. WHEELER: I do not have a problem with the  
12 courtroom being cleared.

13 JUDGE McKENNA: Right, right, I don't either.

14 MR. WHEELER: I don't intend to ask any more  
15 questions about Hayfield's current finances. I do  
16 want to talk about some of their tax returns which are  
17 from the past, I don't know Ms. Baker's position on  
18 that.

19 MS. BAKER: I will say that same thing as to  
20 tax returns. They are proprietary confidential  
21 information, and to the extent he is going to examine  
22 anyone about them, I would ask that the judge keep  
23 that provision, that portion of the transcript under  
24 seal, and clear the courtroom, thank you.

25 JUDGE McKENNA: Um-hmm.



1 MR. WHEELER: I don't have any objection to  
2 that, Your Honor.

3 JUDGE MCKENNA: All right. Your motion is  
4 granted.

5 MS. BAKER: Thank you.

6 JUDGE MCKENNA: All right. So now parties can  
7 say, do you want Mr. Foster's attorney to leave?

8 MS. BAKER: I don't care if Mr. Foster's  
9 attorney stays here, but it is proprietary  
10 information.

11 JUDGE MCKENNA: No, I'm mean --

12 MS. BAKER: Yeah.

13 JUDGE MCKENNA: -- but, yeah, I'm going to let  
14 -- you can look, and both sides, can start saying  
15 well, who has to leave, I mean, I don't know these  
16 people.

17 MS. BAKER: Neither do I, Your Honor.

18 JUDGE MCKENNA: All right.

19 MS. BAKER: I only know the two individuals  
20 sitting there and I know the -- I know Ms. Morris. I  
21 don't know anybody else, and Mr. Kelly. So, I don't  
22 know who else is in the courtroom who maybe should not  
23 be here.

24 JUDGE MCKENNA: All right. Government  
25 attorneys will stay, right? Or do you want

1 Mr. Wheeler -- off of the record.

2 (Brief recess.)

3 JUDGE MCKENNA: So everyone that is in the  
4 courtroom now, both parties are agreeable that they  
5 can stay; is that correct?

6 MS. BAKER: I have no reason to think that  
7 Enforcement Counsel's misrepresenting who all of these  
8 individuals are. The only two that I know are not the  
9 part of the CFPB are the two summer associates sitting  
10 in the front and Mr. Sachs. But if they tell me  
11 everyone else is a CFPB affiliated attorney, then I  
12 have no problem with them staying. I would argue  
13 though, if they are not part of Enforcement Counsel,  
14 then they are not party to this case. They should not  
15 be in the room.

16 JUDGE MCKENNA: All right. Any --

17 MS. BAKER: So anyone else from the CFPB who  
18 is not part of the Enforcement Office should be asked  
19 to leave the room.

20 MR. WHEELER: So we do have two data  
21 scientists here, Your Honor. I mean, I would submit  
22 that they are a part of the Bureau. Also we have had  
23 to share information with them to help develop our  
24 case, so I don't think there is a reason to bar them  
25 from the courtroom, but obviously --

1 JUDGE McKENNA: Are they dealing with these  
2 issues?

3 MR. WHEELER: No. They are not dealing with  
4 these issues, Your Honor.

5 JUDGE McKENNA: Res ipsa loquitur, right.

6 MR. WHEELER: What's that?

7 JUDGE McKENNA: Res ipsa loquitur, all right.

8 MR. WHEELER: Sorry.

9 MS. BAKER: Yes, thank you.

10 MR. WHEELER: I think they are having the time  
11 of their life, Your Honor. Everyone else here from  
12 CFPB is part of Enforcement Counsel.

13 JUDGE McKENNA: All right. And the interns  
14 have all signed nondisclosure agreements that are  
15 going to hear this?

16 MS. BAKER: Yes, Your Honor, I believe that  
17 they are subject to attorney/client privilege and work  
18 product and everything else that goes along with being  
19 part of the various teams. I don't want to speak for  
20 CFPB's intern, but I can speak for our summer  
21 associates.

22 UNKNOWN MALE VOICE: We are all in agreement.

23 MS. BAKER: Yes, thank you.

24 JUDGE McKENNA: All right. Proceed.

25 BY MR. WHEELER:

1 Q. All right. Thank you, Your Honor. So, let's  
2 look at Enforcement Counsel Exhibit 55, and you can put  
3 that up since we have now cleared the courtroom. And  
4 this should also be under seal, Your Honor, it contains  
5 PII.

6 A. That's the one we just looked at, right?

7 Q. I'm sorry, yeah, you are right, 45, excuse me.

8 A. Forty-five?

9 Q. Forty-five, yes. Do you have it, Your Honor?

10 JUDGE McKENNA: I do.

11 BY MR. WHEELER:

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MS. BAKER: Thank you.

JUDGE McKENNA: All right?

MR. WHEELER: Let's look at Exhibit 91.

THE WITNESS: Ninety-one?

MR. WHEELER: Ninety-one, yes.

JUDGE McKENNA: If anyone has needs, wants to  
take a break at any time they may do so.

MR. WHEELER: This will be a fine time to take

1 a break, Your Honor.

2 JUDGE MCKENNA: What did you say?

3 MR. WHEELER: This would be a fine time to  
4 take a break with your permission, Your Honor.

5 JUDGE MCKENNA: Sure, yeah, right. How long  
6 do you want?

7 MS. BAKER: I'll defer to Mr. Carnes, since he  
8 is the witness on the stand.

9 THE WITNESS: I don't care.

10 JUDGE MCKENNA: Okay. One minute.

11 All right. Off the record. We will take a  
12 ten-minute break.

13 (A ten minute recess was taken.)

14 JUDGE MCKENNA: Back on the record.

15 Ms. Baker?

16 MS. BAKER: Yes.

17 JUDGE MCKENNA: Could you please read 10.303  
18 (d)(4) into the record.

19 MS. BAKER: Yes, sir, Your Honor. What is it  
20 I'm reading? I'm sorry.

21 JUDGE MCKENNA: You are reading that reg,  
22 (d)4.

23 MS. BAKER: (D)4, oh, (reads) "As Respondents  
24 are in the best position to determine the nature of  
25 documents generated" --

1 COURT REPORTER: Ma'am --

2 JUDGE MCKENNA: Ah, yeah, slow down.

3 MS. BAKER: -- "By such Respondent and which  
4 come from their own files, the burden of proof is on  
5 the Respondents to introduce evidence to rebut a  
6 presumption that such documents are authentic, and  
7 kept in the regular course of business."

8 Um, okay. What I'm, I guess I'm not clear as  
9 to why I was --

10 JUDGE MCKENNA: Just thought that might have  
11 some relevance as to what we are doing here. Why  
12 don't you grab the binder and then we will --

13 MS. BAKER: Your Honor, may I just make a  
14 statement --

15 JUDGE MCKENNA: Yes.

16 MS. BAKER: -- in response to that?

17 JUDGE MCKENNA: Sure.

18 MS. BAKER: I think that with respect to  
19 documents that have been produced in this -- in the  
20 investigation phase, that is a very fair statement.  
21 However, that doesn't mean that something that isn't  
22 signed is per se authentic.

23 And I, I think we did make that representation  
24 and I would also note that --

25 JUDGE MCKENNA: Yes, you did.



1 MS. BAKER: -- this is an investigation that  
2 started three and a half years ago, and, when the  
3 Bureau received documents that were not signed and  
4 authenticated, it could have asked us for copies that  
5 were. And of course, I wasn't counsel at the time,  
6 but I would argue that if they are intending to  
7 introduce something in an evidentiary record that some  
8 of that burden is on them, as they are the plaintiffs  
9 in this matter moving forward.

10 So, I do respect the rule and I understand the  
11 rule.

12 JUDGE McKENNA: They are the complainant.

13 MS. BAKER: They are the complainant, Your  
14 Honor, that's right. But they have -- I think we  
15 agree they have the burden of making their case. We  
16 don't have the burden of rebutting their case until  
17 they have made a prima facie case in the first  
18 instance.

19 And I would argue that that has to do, in part,  
20 with the way evidence gets admitted into the record.  
21 So I understand the rule, but I also understand that  
22 if you are going to introduce evidence into the  
23 record, evidence that you have had in your possession,  
24 custody or control for almost four years, it might be  
25 incumbent upon them as well as us to make sure there

1 are signed copies of documents.

2 That would be our position.

3 JUDGE McKENNA: I understand.

4 MS. BAKER: Thank you.

5 JUDGE McKENNA: Thank you.

6 MS. BAKER: Thank you, Your Honor.

7 JUDGE MCKENNA: Mr. Wheeler?

8 MR. WHEELER: Yes, thank you, Your Honor.

9 BY MR. WHEELER:

10 Q. Mr. Carnes, I wanted to go back, just very  
11 quickly, to something we covered before the break. You  
12 recall we were talking about your salary?

13 A. Yes.

14 Q. I wanted to point your attention to Exhibit  
15 68, which is your investigational hearing transcript  
16 again.

17 A. Okay.

18 Q. And --

19 JUDGE McKENNA: Just a second, six-eight?

20 MR. WHEELER: Six-eight, yes, Your Honor, and  
21 page 96.

22 JUDGE McKENNA: Six-eight, page what?

23 MR. WHEELER: Ninety-six, Your Honor.

24 THE WITNESS: Okay.

25 JUDGE McKENNA: Ninety-six --

1 THE WITNESS: I think it is --

2 JUDGE McKENNA: -- and that would be the one  
3 at the top of the page or --

4 MR. WHEELER: At the bottom of ninety-six,  
5 Your Honor.

6 JUDGE McKENNA: All right.

7 MR. WHEELER: And I'm just going to read a  
8 short portion.

9 JUDGE McKENNA: Okay.

10 MR. WHEELER: If you are ready.

11 JUDGE McKENNA: Ready.

12 MR. WHEELER: Okay. So starting on line  
13 twenty-two. (Reads).

14 "Question: And what was your salary in 2010  
15 from Willowbrook?

16 Answer: I can't recall. I think it was two  
17 hundred and fifty thousand dollars."

18 JUDGE McKENNA: If you are going to read it  
19 you need to read it exactly.

20 MR. WHEELER: I'm sorry. I apologize.

21 MS. BAKER: Your Honor, I'm a little unclear  
22 as to what this line of questions is. This document  
23 has been admitted into evidence. What is the purpose  
24 of this line of questions as it relates to Mr. Carnes's  
25 testimony?

1 JUDGE McKENNA: I understand.

2 MR. WHEELER: I am just seeking to refresh his  
3 recollection about his salary. He testified to it  
4 during the investigational hearing.

5 JUDGE MCKENNA: All right.

6 MS. BAKER: Your Honor, I thought he already  
7 testified that he wasn't disputing what was in this  
8 document.

9 JUDGE McKENNA: Well, let's move on.

10 BY MR. WHEELER:

11 Q. Right. I mean -- Mr. Carnes, is it your  
12 recollection that your salary was two hundred fifty  
13 thousand dollars?

14 A. Like I said before in this courtroom and like  
15 this document said, I can't recall exactly. I think it  
16 was two hundred fifty thousand dollars. It's a very  
17 accurate representation.

18 JUDGE McKENNA: That was kind of an asked and  
19 answered situation.

20 BY MR. WHEELER:

21 Q. Do you recall that your salary changed over  
22 time?

23 A. I don't believe it did.

24 Q. [REDACTED]

25 [REDACTED]

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MS. BAKER: Your Honor, may I address something, relating to the rule (d)4 that you asked me to read before? That rule presupposes that documents that were produced in response to a query made during an investigation are presumptively accurate. And I think that that is a fair presumption given the context of this matter.

What I don't know is what answer -- what question was asked that elicited the production of these documents. And it may be that what was produced was never represented or intended to be represented as an actual tax return filed with the IRS.

And I'm still not clear as to whether or not this document is authentic and I maintain that same objection as to the prior one. And I understand the (d)4 rule. But what I don't have is the context for the document production itself.

JUDGE McKENNA: All right. Duly noted and you



1 have the opportunity to submit the original. The  
2 signed copy that was submitted to the IRS.

3 MS. BAKER: Okay. Well, thank you, Your  
4 Honor. And when we do that, as I think we noted, we  
5 would like to request that all testimony about an  
6 unauthenticated document be stricken from the record.  
7 We will renew that request at the time that we make  
8 that submission.

9 JUDGE MCKENNA: Thank you.

10 MS. BAKER: Thank you, Your Honor.

11 JUDGE MCKENNA: Thank you.

12 MR. WHEELER: Your Honor, I ask that  
13 Enforcement Counsel Exhibit 91 be admitted into  
14 evidence.

15 JUDGE MCKENNA: Same multiple objections?

16 MS. BAKER: Yes, Your Honor, objection. Thank  
17 you.

18 JUDGE MCKENNA: All right. So admitted.

19 (HIP 2012 Tax Return was admitted  
20 into evidence as Enforcement Counsel  
21 Exhibit No. 91.)

22 MR. WHEELER: So we need to turn to page  
23 fifty-two, sorry.

24 JUDGE MCKENNA: Fifty-two of 91?

25 MR. WHEELER: Yes, page fifty-two of Exhibit

1 91.

2 MS. BAKER: Mr. Wheeler -- or may I address  
3 Mr. Wheeler?

4 JUDGE MCKENNA: Yes.

5 MS. BAKER: Could you, for the record, state  
6 specifically what Bates number you are talking about  
7 because it's not clear.

8 MR. WHEELER: There should be page, page  
9 number.

10 MS. BAKER: Where are the page -- oh.

11 JUDGE MCKENNA: At the bottom of the page.

12 THE WITNESS: Are you talking about the one  
13 that says, EC-EX-091-052, is that correct?

14 MR. WHEELER: Yeah, I don't --

15 MS. BAKER: The copy that we have, which is  
16 the document disk that was provided to us doesn't have  
17 that. And that is okay. I just need to know what  
18 page we are on.

19 MR. WHEELER: Yeah.

20 MS. BAKER: Thank you.

21 JUDGE MCKENNA: That is good.

22 MR. WHEELER: Do you have it now or do you  
23 need me to --

24 MS. BAKER: Can you please just tell us.

25 MR. WHEELER: Yeah. Fifty-two. I lost track

1 of what -- the numbers. Page fifty-two, Exhibit 91.

2 JUDGE McKENNA: Off the record.

3 (Brief recess.)

4 JUDGE McKENNA: Back on the record.

5 MR. WHEELER: So the page is INTEG 000402.

6 MS. BAKER: Thank you.

7 BY MR. WHEELER:

8 Q. Mr. Carnes, you are on the correct page now?

9 A. Yes, I am.

10 Q. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

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16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

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Q. Let's take a look at Exhibit 87. Mr. Carnes, I'm showing you what's been marked as Enforcement Counsel Exhibit 87. Do you recognize this document?

A. Appears to be an e-mail chain that I was on.

Q. So in the middle of the first page, I believe, your name appears, do you believe that's -- that refers to you?

A. Yes.

Q. The e-mail address that is there, is that an e-mail address that you used in February of 2011?

A. Yes.

Q. Do you have any doubt -- do you have any reason to doubt that that e-mail exchange occurred?

A. No.

MR. WHEELER: Your Honor, I ask that Enforcement Counsel Exhibit 87 be admitted into evidence.

MS. BAKER: Objection, Your Honor. It's an e-mail exchange that appears to have occurred before July 21, 2011. And its relevance is questionable.

JUDGE McKENNA: Okay. Res gestae and the relevance will be determined when I render my decision.

1 So objection is overruled. Eighty-seven is admitted  
2 into evidence.

3 (Enforcement Counsel Exhibit No. 87  
4 was admitted into evidence.)

5 BY MR. WHEELER:

6 Q. Mr. Carnes, do you remember this e-mail?

7 A. No.

8 Q. There seems to be a discussion in the e-mail  
9 about a -- well, the subject is "re:fraud," that you  
10 had written about. Do you remember what this is about?

11 A. I vaguely recall what it was about. I think  
12 it was about some -- one or more employees of Clearvox  
13 impersonating consumers and stealing funds, that is  
14 what I believe it is about.

15 Q. Can you explain what you were instructing  
16 Mr. Foster to do with this e-mail you sent on Friday  
17 February 25th, 2011?

18 A. So what we had found out that had happened  
19 because some consumers called in, was that an employee  
20 of Clearvox had taken the approved loan application  
21 from within the loan system and changed the account  
22 number to send the money -- the person wanted the loan,  
23 the consumer wanted the loan. So the employee changed  
24 the account number to send the money to themselves.  
25 Went back in the next day and changed the account

1 number back to what the consumer had given us so that  
2 the payments would then be debited out of consumer's  
3 account without ever receiving a loan.

4 And you can see here I said, we take care of  
5 the customers who have not had -- who have payment  
6 debits to their account, but never seen a loan. Refund  
7 any fees and bank charges they had. We need to search  
8 the ACH credit files for two weeks before and after, so  
9 forth. And they -- we alerted the police that came and  
10 I believe arrested the offending employee.

11 That is my recollection of that.

12 Q. Let's look at Exhibit 88. Mr. Carnes, I'm  
13 showing you what has been marked as Enforcement Counsel  
14 Exhibit 88, do you recognize it?

15 A. It's an e-mail from eight years ago. Yeah, I  
16 see it's from me. I'm in the stream.

17 Q. Do you have any reason to doubt that this  
18 e-mail exchange occurred?

19 A. I don't.

20 Q. And that is your e-mail address that appears?

21 A. It is.

22 MR. WHEELER: Your Honor, I ask that  
23 Enforcement Counsel Exhibit 88 be moved into evidence.

24 MS. BAKER: Objection, relevance, Your Honor.

25 It is dated November of 2008. It's not clear

1 it concerns Integrity Advance, and it is as to conduct  
2 that predates July 21st. Thank you.

3 JUDGE McKENNA: Thank you. Objection  
4 overruled. Eighty-eight is hereby admitted into  
5 evidence.

6 (E-mail was admitted into evidence as  
7 Enforcement Counsel Exhibit No. 88.)

8 BY MR. WHEELER:

9 Q. Mr. Carnes, in the middle of the first page of  
10 this exhibit you see where you sent an e-mail, and it  
11 reads that, "clearly call backs on day two and three  
12 are the problem," do you see that?

13 A. I do.

14 Q. Do you know what you meant by that?

15 A. Only from reading the rest of the e-mail  
16 stream.

17 JUDGE McKENNA: Pardon me?

18 THE WITNESS: Only from reading the rest of  
19 the e-mail stream that it appears from reading this  
20 that the call logs that were sent to Tim -- he  
21 apparently noticed a problem somehow, sent it to me to  
22 look at. And it's -- and I must have looked at it and  
23 said something about the callbacks, they are not  
24 happening like they should on days two and three.

25 And I forward that on, obviously to the top of



1 the e-mail.

2 COURT REPORTER: To what?

3 THE WITNESS: To the people on the top of the  
4 e-mail, Herb C. and Matt Kirk.

5 JUDGE McKENNA: So, what is the context of  
6 callbacks on day two and three?

7 THE WITNESS: So the contract that we had with  
8 the call center would say okay -- they -- when a lead  
9 comes in, we purchase the lead, they are supposed to  
10 get to that lead within "X" minutes to try to get  
11 ahold of the consumer. And then if they can't, then  
12 it goes into a callback procedure. So they want to  
13 try to get them an hour later, maybe four hours later.

14 And then there are several calls that would be  
15 made on day two, the day after we got the application  
16 and then day three is when we give up on in it if we  
17 haven't gotten ahold of them by -- and there might  
18 only be one call on day three.

19 By day three if they hadn't gotten, if they  
20 don't answer, if they have not got ahold of them, we  
21 move on from the application.

22 BY MR. WHEELER:

23 Q. Let's move to Exhibit 42. Mr. Carnes, I'm  
24 showing you what has been marked as Enforcement Counsel  
25 Exhibit 42; do you recognize this document?

1 A. I think you showed it to me in my deposition.

2 Q. What is this document?

3 A. Or Ms. Weinberg might have.

4 Q. I'm sorry?

5 A. Or Ms. Weinberg might have. Somebody showed  
6 it to me in my deposition, that was the only time I've  
7 seen this.

8 Q. What is this document?

9 A. It appears to be an income statement for  
10 Integrity Advance from January to September of 2010.

11 Q. And is there a balance sheet on the second  
12 page as well?

13 A. There is.

14 Q. Did Integrity Advance customarily generate  
15 income statements?

16 A. Yes.

17 Q. Did Integrity Advance customarily generate  
18 balance sheets?

19 A. Yes.

20 Q. Would documents like these be kept in the  
21 normal course of business?

22 A. Yes.

23 MR. WHEELER: Your Honor, I ask that Exhibit  
24 42, excuse me, Enforcement Exhibit 42 be admitted into  
25 evidence.

1 MS. BAKER: Objection.

2 JUDGE McKENNA: Basis?

3 MS. BAKER: Relevance. It predates July 21,  
4 2011. And in the corner, top of the document it says  
5 unaudited. Which means it not necessarily a final  
6 statement of the company's income for even these  
7 limited amounts of time.

8 JUDGE McKENNA: Okay.

9 MS. BAKER: And it's also the other foundation  
10 element is it hasn't been established as to who created  
11 this document, so I'm not sure the witness --

12 MR. WHEELER: Your Honor, the witness was CEO  
13 of the company. He has testified that documents like  
14 this were kept in the normal course of business. This  
15 was something that was also produced by Respondents.

16 JUDGE McKENNA: It was produced by Respondents  
17 pursuant to your investigation?

18 MR. WHEELER: That is correct, Your Honor.  
19 That is correct.

20 JUDGE McKENNA: All right. And so that is  
21 where you got it?

22 MR. WHEELER: That is correct.

23 JUDGE McKENNA: All right. Objection is  
24 overruled.

25 (P&L was admitted into evidence as

1 Enforcement Counsel Exhibit No. 42.)

2 MS. BAKER: Your Honor, if I could, just --

3 JUDGE McKENNA: On the same basis which I  
4 ruled on the last one.

5 MS. BAKER: If -- Your Honor, if I could make  
6 a standing objection to this idea that because  
7 Respondents have produced documents they are somehow  
8 per se authentic. The (d)4 rule doesn't provide for  
9 that, what the (d)4 rule says, as I understand it, is  
10 that if a document is produced in response a specific  
11 query, it is presumptively authentic and responsive to  
12 that query. Not that the document is used in the  
13 ordinary course of business that it is authentic, that  
14 it was created by the witness testifying about it being  
15 it. It's an unaudited version of something is that I  
16 don't know what it is, it could be a draft.

17 And, to admit it into evidence without that  
18 requisite foundation is quite prejudicial to our case.

19 JUDGE McKENNA: Okay. That is your position  
20 and if you are right, then you have a very easy path  
21 to reversal. I disagree with you. I'm older than  
22 you. So maybe I'm so old that, you know, I don't know  
23 what I'm talking about. But in any event, that is my  
24 ruling, and we will proceed.

25 BY MR. WHEELER:

1 Q. Let's move to Exhibit 43.

2 A. Is that going to be sealed by the way?

3 JUDGE MCKENNA: What did you say?

4 THE WITNESS: I asked that -- are these  
5 sealed?

6 MR. WHEELER: No.

7 THE WITNESS: Can they be?

8 MS. BAKER: We can move to have them sealed.  
9 I think the courtroom is still cleared so that is a  
10 request we will make, Your Honor.

11 MR. WHEELER: I don't see any reason to seal  
12 these documents, Your Honor. This doesn't fall under  
13 the Protective Order. Integrity Advance is out of  
14 business. So I'm unclear what their other income or  
15 balance sheets -- how is that being in the public  
16 record somehow damaging?

17 MS. BAKER: It says subject to protective  
18 order in the document that was produced for the  
19 exhibit.

20 MR. WHEELER: I think we put that -- I'm not  
21 sure we did it, but I think that is on everything.  
22 But that doesn't mean that the document is actually  
23 covered by the Protective Order. I think. If that  
24 distinction makes sense.

25 JUDGE MCKENNA: What is the basis for the --

1 to put it under the Protective Order? I mean it's not  
2 PII.

3 MS. BAKER: Well, Your Honor, initially, going  
4 back a ways, when we negotiated the Protective Order  
5 we agreed that we would -- I'm sorry. My voice is --  
6 initially when we negotiated the Protective Order,  
7 Your Honor, we agreed, we being Respondent's counsel,  
8 that we would revisit this question of whether or not  
9 financial information was subject to the Protective  
10 Order and being under seal.

11 And we have requested that -- we have repeated  
12 that position a number of times in filings with the  
13 Court as well as in conversations with Enforcement  
14 Counsel. And frankly, this is financial information  
15 the disclosure of which serves no purpose. The public  
16 disclosure of which serves no obvious purpose. There  
17 is no prejudice to anybody by having this limited set  
18 of documents maintained under seal.

19 And it is confidential proprietary  
20 information. It's confidential financial information  
21 and it is not necessarily information that was readily  
22 accessible to everybody at the time it was rendered.

23 MR. WHEELER: Your Honor, my recollection is  
24 we had an agreement that we would discuss furthering  
25 the Protective Order.

1 JUDGE McKENNA: That is what she said.

2 MR. WHEELER: Yeah, I mean we -- we never  
3 agreed we would treat information like this as  
4 protected. I believe in your Order, there was a  
5 deadline by which we were supposed to work out this  
6 issue. I don't believe Respondents counsel ever got  
7 in touch with us. It was, she was the one with the  
8 interest in protecting this information. I don't  
9 believe she contacted us, so the Protective Order  
10 doesn't cover this information.

11 JUDGE McKENNA: Yeah, that note relevant to  
12 anything you are discussing here?

13 MR. WHEELER: Well, it was relevant to what  
14 Ms. Baker said. I still don't think, I mean these  
15 proceedings are presumptively public. I don't think  
16 there is any good reason to seal these documents.  
17 Like I said earlier, the company is out of business.  
18 This is -- there isn't PII in there like you pointed  
19 out.

20 JUDGE McKENNA: Mr. Carnes?

21 THE WITNESS: Yes.

22 JUDGE McKENNA: In deference to you, and with  
23 counsel's permission, I would like to know why you  
24 would like to have this exhibit for Integrity Advance  
25 be put under seal.

1 Is that all right, counsel?

2 MS. BAKER: Thank you, Your Honor.

3 THE WITNESS: I would just say that any  
4 financial information that I provided would be  
5 private. I don't think it's -- and I mean, I could  
6 say, if it is something like would be something that I  
7 -- okay my tax returns, these are P&L's.

8 JUDGE McKENNA: Okay. But they are separate  
9 from your tax returns.

10 THE WITNESS: Even the P&L's -- because there  
11 are -- right, these are P&L statements of the company  
12 why would that need to be public?

13 JUDGE McKENNA: Well, yeah, no, the -- I think  
14 it's the inverse. Why would it need to be private?

15 THE WITNESS: I would think it's -- like my  
16 attorney said, confidential information that I would  
17 like to keep confident -- confidential.

18 JUDGE McKENNA: All right. Any other basis?

19 THE WITNESS: No. Confidential.

20 JUDGE McKENNA: All right. I'm -- yeah?

21 MS. BAKER: I just wanted to correct the  
22 record, Mr. Wheeler misstated something. I did, in  
23 fact, get in touch with him about expanding the  
24 Protective Order. The way that our record moved it  
25 didn't conform to the original schedule, so admittedly



1 I maybe got in touch with him three weeks later than I  
2 was supposed to, for which I apologize.

3 But I did get in touch with him and I did seek  
4 to expand the Protective Order and I was met with we  
5 are not going to do that. And that, I believe was  
6 also brought to Your Honor's attention in subsequent  
7 filing. So it's not accurate to say this is the first  
8 time we brought this issue up, it's not the second or  
9 third either.

10 JUDGE MCKENNA: Well, I can attest that you've  
11 been busy.

12 MS. BAKER: Thank you, Your Honor.

13 JUDGE MCKENNA: Okay. Well, at this point I'm  
14 not going to put it under seal. However, I'm going to  
15 take it under advisement and I'm going to make a  
16 decision as to what I want to do with it, and that  
17 will show up in my D and O.

18 MS. BAKER: Thank you, Your Honor.

19 JUDGE MCKENNA: Okay. And I am mindful of  
20 your request. I just don't know whether it's  
21 appropriate that I do so. If we were talking about  
22 your tax returns or something, it wouldn't be a  
23 question. So, I want to think on it.

24 THE WITNESS: I would only add that there are  
25 things like, you know, these kinds of documents would

1 be used to create a tax return.

2 So in essence all of this is out there, a tax  
3 attorney could almost recreate the tax return if you  
4 really had all of this information.

5 JUDGE McKENNA: You would have to have a lot  
6 of information.

7 THE WITNESS: Right. I also don't know what  
8 road we are going down here and how much of this stuff  
9 is going to be put out there and unsealed.

10 JUDGE McKENNA: All right. Duly noted.  
11 Forty-two has been admitted into evidence not under  
12 seal at this time.

13 MR. WHEELER: Thank you, Your Honor.

14 BY MR. WHEELER:

15 Q. Let's look at Exhibit 43. Mr. Carnes, I'm  
16 showing you what's been marked as Enforcement Exhibit  
17 43. Do you recognize this document?

18 A. As much as I recognized the other ones, yes.

19 Q. What is this document?

20 A. Huh?

21 Q. What is this document?

22 A. Appears to be an income statement for  
23 Integrity Advance from January to October of 2011.

24 Q. Is there a balance sheet as well?

25 A. There is, in the back.

1 Q. And you have testified that Integrity Advance  
2 typically generated income statements?

3 A. Yes, I have.

4 Q. Okay. And you have testified that Integrity  
5 Advance typically generated balance sheets?

6 A. Yes, I have.

7 Q. And you have testified that documents like  
8 this were kept in the normal course of business?

9 A. Yes, they were.

10 MR. WHEELER: Your Honor, I ask that  
11 Enforcement Counsel Exhibit 43 be admitted into  
12 evidence.

13 JUDGE McKENNA: Same objection?

14 MS. BAKER: Relevance, but Your Honor, I just  
15 want to renew our request that this be filed under seal  
16 as well.

17 JUDGE McKENNA: Right. That is included in  
18 all of that.

19 MS. BAKER: Thank you, Your Honor.

20 JUDGE McKENNA: All right. Exhibit 43 is  
21 admitted into evidence and a determination will be made  
22 as to whether it will be under seal.

23 (P&L was admitted into evidence as

24 Enforcement Counsel Exhibit No. 43.)

25 BY MR. WHEELER:

1 Q. Let's turn to Exhibit 44.

2 Mr. Carnes, I'm showing you what has been  
3 marked Enforcement Counsel Exhibit 44. Do you  
4 recognize this document?

5 A. As much as I recognize the other ones.

6 JUDGE McKENNA: All right. One way you can  
7 handle this is, are your answers the same for Exhibit  
8 43? Will all your answers be the same?

9 THE WITNESS: Yes.

10 JUDGE MCKENNA: All right. Anything else on  
11 that?

12 MR. WHEELER: I ask that Enforcement Counsel  
13 Exhibit 44 be admitted into evidence, Your Honor.

14 JUDGE McKENNA: Subject to the same, objection  
15 and request for under seal?

16 MS. BAKER: And one more objection, also --  
17 the same objection as before, authenticity, and  
18 foundation. So, foundation, authenticity, relevance,  
19 and, of course Your Honor, we renew our motion.

20 JUDGE McKENNA: All right. Any other  
21 questions regarding those objections?

22 MR. WHEELER: No, Your Honor.

23 JUDGE McKENNA: That need to be illuminated?

24 MR. WHEELER: Not from me, Your Honor.

25 JUDGE McKENNA: All right. That's fine.

1 MR. WHEELER: Did you admit Exhibit 44?

2 JUDGE McKENNA: No, I didn't.

3 MR. WHEELER: Okay.

4 JUDGE McKENNA: But I'm going to.

5 MR. WHEELER: Appreciate that.

6 JUDGE McKENNA: Forty-four is hereby admitted  
7 into evidence and I will make a determination as to  
8 whether it's under seal or not. Your objection is  
9 duly noted.

10 (P&L was admitted into evidence as  
11 Enforcement Counsel Exhibit No. 44.)

12 MS. BAKER: Thank you, Your Honor.

13 JUDGE McKENNA: You're very welcome.

14 BY MR. WHEELER:

15 Q. Turn to Exhibit 15, Enforcement Counsel  
16 Exhibit 15.

17 A. One-five?

18 Q. Enforcement Counsel Exhibit 15, one-five.

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(Enforcement Counsel Exhibit

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No. 16 was admitted into evidence.)

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MR. WHEELER: Let's go to Exhibit 17.

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JUDGE MCKENNA: Let's take a ten-minute break,  
and I mean ten minutes, not fifteen/twenty.

9

MR. WHEELER: Understood, Your Honor. Thank  
you.

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(A ten-minute recess was taken.)

12

JUDGE MCKENNA: Back on the record.

13

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MS. BAKER: Your Honor, if I may make a  
suggestion. To the extent Mr. Wheeler is intending to  
go through and introduce Exhibits 18, 19, 20, 21, et  
cetera, and they are all Hayfield Investment Partners  
consolidated income statements that is the next part  
of his proffering.

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We will stipulate that he can do so, subject to  
our objections, subject to the motion that they be  
filed under seal. Without requiring that he go  
through that piece by piece by piece as to each  
exhibit. Now having said that, I don't know if that  
is what he is intending to do, but it appears to be.

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MR. WHEELER: That is what I'm intending to

1 do, Your Honor. I'm happy to move them, or attempt to  
2 move them into evidence, you know, in a group if that  
3 would please Your Honor.

4 JUDGE MCKENNA: All right. So --

5 THE WITNESS: Please real quick, tell me which  
6 ones for the group?

7 MR. WHEELER: So, we did 16, I believe, before  
8 the break.

9 JUDGE MCKENNA: Right.

10 MR. WHEELER: So it's 17 through 40.

11 MS. BAKER: And if I may note for the record,  
12 that they are distinct, different types of financial  
13 statements, that is right.

14 MR. WHEELER: I believe 17 through 40 should  
15 all be income statements, but they are for separate,  
16 you know, they go through the months.

17 COURT REPORTER: There is what?

18 MR. WHEELER: They go through, month by month,  
19 sorry.

20 JUDGE MCKENNA: Go by month.

21 MS. BAKER: Well, 39 and 40 are different, but  
22 they are consolidated income statements, but they are  
23 not monthly.

24 MR. WHEELER: You are correct.

25 MS. BAKER: Yes.

1 MR. WHEELER: You are right.

2 MS. BAKER: We will agree not that they are  
3 not objectionable and that should be admitted into  
4 evidence, but we will agree that he doesn't have to go  
5 through and do what he has been doing with each of the  
6 documents in the interest of time.

7 But our position remains that they should not  
8 be admitted into evidence, they are neither relevant,  
9 there is no foundation, they are not clearly authentic  
10 and it is not clear, as I said before, how they  
11 connect to the purpose of Mr. Carnes' testimony here.

12 JUDGE McKENNA: Great.

13 MS. BAKER: And also request that they be  
14 filed under seal.

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
2 All right. So I want to thank you for  
3 speeding things up and now I want to slow them down.  
4 Ms. Baker raised the legitimate question just now and  
5 so I want to -- I want to know how the Hayfield income  
6 statements and consolidated statements, how they  
7 relate to -- I assume that there is an issue of  
8 recoupment and there is an issue of penalties.

9 MR. WHEELER: Yes, Your Honor.

10 JUDGE McKENNA: But is it -- are you  
11 attempting to say that because the Hayfield income  
12 statement for January 2011 -- how are you tying that  
13 into Integrity Advance and to Mr. Carnes, I know there  
14 is an exhibit that just over fifty percent --

15 MR. WHEELER: Your Honor, I believe --

16 JUDGE McKENNA: -- he had control.

17 MR. WHEELER: Right. I mean, I think that is  
18 -- there are sort of two separate issues there. But  
19 these exhibits, Mr. Carnes has testified that  
20 Integrity Advance had generated profits, those profits  
21 were passed through to Hayfield. He has also  
22 testified that Hayfield generated -- Integrity Advance  
23 generated the majority of Hayfield's profits. So in  
24 the interest of making a more complete record for  
25 damages purposes, Your Honor, we thought those

1 exhibits were worth having in the record.

2 JUDGE McKENNA: Right. But how am I going to  
3 use them?

4 MR. WHEELER: Well, that would be -- will  
5 depend on how Your Honor decides on damages.

6 JUDGE McKENNA: All right. Well, let's just  
7 say if you have a consolidated income statement from  
8 Hayfield, how does that transition over to the  
9 recoupment?

10 MR. WHEELER: Your Honor, I believe that given  
11 the testimony that at least the majority, if not the  
12 vast majority, of that income would have been  
13 generated by Integrity Advance.

14 JUDGE McKENNA: Yeah, but you have to render  
15 the subjective to numeric. I mean, you can't say that  
16 out of the net income of one million twenty thousand,  
17 five, seven, nine, that the majority of that came from  
18 Integrity Advance and therefore I want the  
19 recoupment/fines, assuming there is culpability, I  
20 want the majority of this brought back.

21 Well, what is a majority.

22 MR. WHEELER: I can't say, specifically, Your  
23 Honor.

24 JUDGE McKENNA: Are you going to?

25 MR. WHEELER: I don't believe we have that,

1 you know, exact information. I mean, like I said,  
2 it's just an effort on our part just to make the  
3 record as full as possible. Like I said, we believe  
4 that most of this income was Integrity Advance income,  
5 but I can't tell you exactly to the dollar amount, you  
6 know, how much was from Integrity Advance and how much  
7 was from other sources.

8 JUDGE McKENNA: So how am I going to write the  
9 order that the majority of the income from Hayfield is  
10 going to be recouped?

11 MR. WHEELER: I mean, Your Honor, I think our  
12 damages theory is actually a little different. I  
13 mean, we are going to get into this, but --

14 JUDGE McKENNA: I hope so, yeah. That's why  
15 I'm --

16 MR. WHEELER: But not with Mr. Carnes, but --

17 JUDGE McKENNA: You know, when you get to be  
18 my age you remember how you prime the pump? Okay.  
19 Well, that's what I'm doing. And so that's not going  
20 to cut it.

21 MR. WHEELER: I understand, Your Honor.

22 JUDGE McKENNA: So Ms. Baker is absolutely  
23 correct that there has to be numerics involved here,  
24 and a chain. And so, and a failure to do so will  
25 cause a problem.



1 MR. WHEELER: I understand, Your Honor.

2 JUDGE MCKENNA: All right.

3 MR. WHEELER: We plan to --

4 JUDGE MCKENNA: I take it that you don't,  
5 disagree with my postulation of how I'm going to make  
6 a determination, assuming culpability as to how you  
7 get to recoupment and how you get to a fine?

8 MR. WHEELER: Yes, Your Honor, I mean, we are  
9 going to be talking about numbers tomorrow. As I said  
10 in my opening we have had a data scientists look at  
11 the numbers from Respondents that just relates to  
12 Integrity Advance payments data. And it would provide  
13 numbers that I think -- I know we are going to argue  
14 support the basis of the damages we are seeking in  
15 this matter.

16 JUDGE MCKENNA: All right. And you're mindful  
17 if your scientist comes in and says that on the --  
18 that there were two hundred and fifty thousand dollars  
19 in fees generated from checks that were created --

20 MR. WHEELER: Um-hmm.

21 JUDGE MCKENNA: -- then, he is going to  
22 breakdown what portion of that amount involved a  
23 violation. Whatever you are talking about, I mean  
24 this is not going to be a global assessment that  
25 everything that was taken in is recoupable. You got

1 that word.

2 COURT REPORTER: Yes.

3 JUDGE McKENNA: Good.

4 MR. WHEELER: I mean, so we -- I mean,  
5 obviously, we will talk about this more.

6 JUDGE McKENNA: I hope so. Well, I'm going to  
7 get you going.

8 MR. WHEELER: I mean, as to remotely created  
9 checks, Your Honor, it is our position, Your Honor,  
10 that everything that was taken via remotely created  
11 checks was unfair and should be recouped.

12 As to TILA and deception, I mean, I understand  
13 your point. And I don't believe our position is that  
14 every single dollar should be recouped for those  
15 violations.

16 JUDGE McKENNA: Okay. And so you know that  
17 you are going to have to tie in Hayfield, Integrity  
18 Advance, and assuming that Mr. Carnes is involved, how  
19 that flows, how those three entities flow, right,  
20 Mr. Carnes?

21 THE WITNESS: Yes.

22 JUDGE McKENNA: Thank you.

23 MR. WHEELER: So my understanding of the  
24 payments data Respondents provided is that it just  
25 represents Integrity Advance payments data. So I

1 don't think we will have the same issue of mixing  
2 Integrity Advance payments with other Hayfield company  
3 payments.

4 JUDGE McKENNA: Okay. So what is the  
5 relevance of the Hayfield information?

6 MR. WHEELER: Again, Your Honor, I was just  
7 trying to create a fuller record. Obviously, we don't  
8 know what damages theory you would adopt, so we were  
9 just trying to, you know, provide you with information  
10 you need.

11 JUDGE McKENNA: Will I have one by the  
12 morning. Okay. All right. You can go back to work  
13 now.

14 MR. WHEELER: Okay. I didn't realize I had  
15 stopped.

16 So I guess between all of that I lost track of  
17 17 through 40, what --

18 JUDGE McKENNA: All right. So --

19 MS. BAKER: I believe that it, Your Honor, if  
20 I may address the Court, I believe it was Exhibit 17  
21 through 38 that were noted as single month  
22 consolidated income statements. To which we said we  
23 note our objections, relevance, authenticity,  
24 foundation, we move to keep them under seal, but we  
25 were also in the interest of time trying to preclude,

1 prevent Mr. Wheeler from having to go through that  
2 process each time.

3 JUDGE McKENNA: Seriatim.

4 MS. BAKER: Yeah, exactly. I do not know if  
5 that is the same for Exhibits 39 and 40.

6 JUDGE McKENNA: All right. Well, let's just  
7 go up through 38. So --

8 MR. WHEELER: I mean, my questions would be  
9 the same for 39 and 40.

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

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MR. WHEELER: Thank you, Your Honor.

BY MR. WHEELER:

1 Q. Mr. Carnes, you have testified that you were  
2 the CEO of Integrity Advance, right?

3 A. Like I said, I was the CEO of Hayfield, and by  
4 virtue of being the CEO of Hayfield, I was the de facto  
5 CEO of Integrity Advance.

6 Q. So is it fair to say you were in charge of  
7 Integrity Advance?

8 A. As any CEO is in charge, yes.

9 Q. Is it fair to say you had ultimate say over  
10 policies and procedures?

11 A. Yes.

12 Q. You remember before we looked at the Integrity  
13 Advance organizational chart? It's Exhibit 65.

14 A. Yes.

15 Q. Do you recall that?

16 A. Yes.

17 Q. And you testified that this group of  
18 individuals worked in an office together in the Kansas  
19 City area?

20 A. Again, with the exception of George Davis,  
21 that would be correct.

22 Q. And you testified that you worked in that  
23 office too, right?

24 A. I did.

25 Q. And you were there every day?

1 A. To the extent I wasn't on vacation or doing  
2 something else, trade show or et cetera, I was there.

3 Q. And as we look at this exhibit and you see  
4 that Edward Foster is between you and some of the other  
5 employees; do you see that?

6 A. I do.

7 Q. Were you accessible to the employees under  
8 Edward Foster?

9 A. Define accessible.

10 MS. BAKER: Objection, vague.

11 BY MR. WHEELER:

12 Q. If Mr. -- let's say Ms. Schaller, if she  
13 wanted to come talk to you, was she allowed to do that?

14 A. Yes.

15 Q. Did she do that?

16 A. From time to time possibly.

17 Q. What about Mr. Madsen, did you meet with him  
18 one on one?

19 A. Mr. Madsen's testimony this morning was  
20 correct on how much we would meet.

21 Q. So that is yes, you did meet with him?

22 A. Yes, very short meetings, you know, very short  
23 conversations, a minute or less on an infrequent, you  
24 know, random basis.

25 Q. So I guess my question is, did, this suggests

1 a chain of command and, did people have to follow that  
2 chain of command or it sounds that like they could come  
3 talk to you directly if they had issues; is that a fair  
4 statement?

5 MS. BAKER: Objection, foundation, leading the  
6 witness.

7 JUDGE MCKENNA: Sustained. While you are  
8 recapitulating what you want to put together, I have a  
9 couple of questions.

10 **COURT'S EXAMINATION**

11 BY JUDGE MCKENNA:

12 Q. So you indicated that as to the VP of legal  
13 affairs, that Mr. Foster hired him?

14 A. Yes, that's correct.

15 Q. All right. Would that be subject to your  
16 approval since he is hiring a vice president?

17 A. Yeah, Mr. Foster came to me and said, hey, I  
18 think we have a great candidate for a lawyer, and I had  
19 promoted Mr. Foster so he was, his responsibilities --  
20 we needed somebody to take over what he used to do.

21 And he knew Mr. Pickett from somewhere, I'm  
22 not sure where and he said, I have a great candidate.  
23 Do you mind if I hire him? And I said, he is going to  
24 work for you, you do what you want to do. Hire him.

25 Q. All right. And so what about the comptroller,



1 and the director of IT operations?

2 A. The comptroller, Mary Anne Reece was hired by  
3 Andrew Peck. Again with -- I had gave them permission  
4 that we needed to fill that spot because we need a  
5 comptroller to produce all of those financial  
6 statements, et cetera.

7 And so he found her somehow. I'm not sure,  
8 but there may have been a recruiter. I don't know.

9 Mr. Rondeau was, again, at a company that  
10 Edward Foster and I worked at in 2000 -- well, I was  
11 there in 2000 and 2001 for a short period of time. And  
12 so we both had knowledge of Mr. Rondeau, and Mr. Foster  
13 suggested that we hire him and I agreed.

14 Q. All right. How come Mr. Andonian was not  
15 under the vice president of technology or conversely  
16 that Mark Rondeau was not under the director of IT?

17 A. As far as Rondeau, why he was on this org  
18 chart where he is at, I don't -- I can't tell you the  
19 answer to that, I don't know. He's -- I think he  
20 probably did more, specifically, for Hassan than he did  
21 for Bruce.

22 As you remember Bruce's testimony this morning.  
23 Bruce has very, very little to do with Integrity  
24 Advance. Hassan was the primary IT person for that  
25 company. And that is why there was not really a reason

1 for Bruce to report to Hassan. Hassan also had a thick  
2 language barrier, in terms of his accent and he --  
3 Bruce didn't understand him very well.

4 JUDGE McKENNA: All right. Thank you. You  
5 ready?

6 MR. WHEELER: Yes.

7 JUDGE McKENNA: All right.

8 **DIRECT EXAMINATION (cont.)**

9 BY MR. WHEELER:

10 Q. Mr. Carnes, were all of the people who  
11 appeared on this exhibit allowed to come talk to you?

12 A. Yes.

13 Q. This shows Mr. Foster as executive vice  
14 president, chief operating officer, and general  
15 counsel, right?

16 A. Correct.

17 Q. What did he do in that role?

18 A. The role was those three things. Executive  
19 vice president was somebody who, the role of that was  
20 to be a signer on an accounts, you could sign  
21 documents, could use, you know he was a number two  
22 person in the company.

23 General counsel, I think speaks for itself what  
24 he did, you know he did -- he was this charge all of  
25 the legal affairs of the company, made sure all the

1 contracts got read by himself or Mr. Pickett,  
2 interfacing with our counsel outside counsel. Those  
3 sorts of things.

4 And then when he was promoted as chief  
5 operating officer I gave him the responsibility of  
6 having all of those people report to him. And he was,  
7 as part of his job had meetings with each group.

8 And there were more people in the org chart  
9 than this org chart shows, but at any rate, he was to  
10 meet with each group and talk about what they were  
11 doing, I think on a weekly basis and if there were  
12 issues they would be brought to my attention.

13 Q. How often did you talk to Mr. Foster?

14 A. Daily.

15 Q. Did you talk to him daily about Integrity  
16 Advance business?

17 A. No.

18 Q. How often would you say you talked about  
19 Integrity Advance business?

20 A. Whenever it needed to be talked about.

21 JUDGE McKENNA: Non-responsive.

22 THE WITNESS: How often did I talk to him?

23 BY MR. WHEELER:

24 Q. About Integrity Advance business.

25 A. Like times per week?

1 Q. Yes.

2 A. It varied greatly over time from one time per  
3 week or zero times per week, to maybe ten times per  
4 week and I'm guessing I wasn't keeping track.

5 Q. Is it fair to say you and Mr. Foster spoke  
6 regularly about Integrity Advance business?

7 MS. BAKER: Objection foundation.

8 JUDGE McKENNA: Sustained. I think that he  
9 gave you the best estimate of how much he talked with  
10 Mr. Foster about Integrity Advance. And I think it's  
11 really difficult because at different points in time  
12 depending upon problems, would it be fair to say that  
13 if there was a problem, that you and Mr. Foster were  
14 talking about it.

15 THE WITNESS: If it was a significant problem,  
16 absolutely. If it was a problem that Mr. Foster could  
17 handle on his own, and I and I didn't need to be  
18 brought into the loop that is what he was there to do.

19 JUDGE McKENNA: Go ahead.

20 BY MR. WHEELER:

21 Q. You just talked about so if something was a  
22 significant enough problem you would be brought into  
23 the loop, can you can you give us any flavor for what a  
24 significant enough problem might be?

25 MS. BAKER: Objection vague.

1 JUDGE McKENNA: I'm going to allow it.

2 THE WITNESS: Mr. Madsen or Mr. Andonian this  
3 morning gave you a great example of something I might  
4 be brought in the loop, or our data base become very  
5 slow for some reasons and was causing us problems in  
6 approving consumers, that is something that I would be  
7 brought into the database so I would be aware, because  
8 that would a reaching effects throughout the rest of  
9 the business.

10 BY MR. WHEELER:

11 Q. Did Integrity Advance have a website?

12 A. Yes.

13 Q. Were some loans originated directly on  
14 Integrity Advance's website?

15 A. I need you to explain what you are trying to  
16 -- yeah, I don't understand what you are trying to ask.

17 Q. Could a consumer go to Integrity Advance's  
18 website, directly and obtain a payday loan?

19 A. They could go to Integrity Advance's website  
20 and apply for a payday loan.

21 JUDGE McKENNA: And not go through a lead?

22 THE WITNESS: Yes.

23 BY MR. WHEELER:

24 Q. Did you approve the contents of Integrity  
25 Advance's website?

1           A.    I don't -- you -- did I approve the contents?  
2   Yeah, I mean I guess I was ultimately responsible being  
3   the CEO, but I don't know that I ever even read the  
4   contents of each, in it -- each actual link. Like our  
5   privacy policy, for instance, was given us to us by  
6   outside counsel and that is not something that I would  
7   go through and read. I assume they figured out what  
8   they should be -- we should be saying.

9           Q.    So, do you remember approving the contents of  
10   the website?

11           MS. BAKER:  Objection asked and answered.

12           JUDGE McKENNA:  No, it wasn't.

13           THE WITNESS:  I did approve the contents of  
14   the website. I mean, I, you know to the -- at a high  
15   level.

16   BY MR. WHEELER:

17           Q.    Mr. Carnes, are you familiar with the term  
18   rollover in the payday loan context?

19           A.    I am.

20           Q.    What is a rollover?

21           A.    It is what you would call a renewal. A  
22   renewal is something that is part of the Delaware  
23   statute where a consumer would extend the due date of  
24   their loan, and pay interest or interest -- a  
25   combination of interest and principal.

1 Q. When a consumer took a loan with Integrity  
2 Advance and didn't call Integrity Advance before their  
3 next pay date, it's true that their loan would be  
4 rolled over, renewed correct?

5 MS. BAKER: Objection leading.

6 JUDGE McKENNA: I will allow it.

7 THE WITNESS: Restate the question, please.

8 BY MR. WHEELER:

9 Q. When a consumer took a loan with Integrity  
10 Advance and did not call the company before their next  
11 payday, was their loan rolled over or renewed?

12 A. They could have called, they could have  
13 e-mailed, they could have -- and it could be on their  
14 financial payments, so there are -- in some ways it  
15 wouldn't be and some ways it would be.

16 Q. So let's assume the consumer takes their loan,  
17 they haven't made a single payment yet their -- if they  
18 didn't make a call to Integrity Advance their loan  
19 would be would renewed by Integrity Advance, isn't that  
20 right?

21 MS. BAKER: Objection, leading the witness.

22 JUDGE McKENNA: This is not Mr. Wheeler's  
23 client. And Mr. Carnes is perfectly capable of  
24 answering questions that, that are posed to him by  
25 government counsel. So, on these types of questions,

1 I'm going to allow it. So you want to repeat it?

2 THE WITNESS: Could you read it back, please?

3 Thank you.

4 COURT REPORTER: When the consumer took a loan  
5 with Integrity Advance and didn't call Integrity  
6 Advance before their next pay date, it's true that  
7 their loan would be rolled over, renewed, correct?

8 Oh, I'm sorry, you answered.

9 JUDGE MCKENNA: Well, part of it.

10 COURT REPORTER: Okay --

11 JUDGE MCKENNA: Assuming that the customer did  
12 nothing, what would happen?

13 THE WITNESS: Assuming they didn't call or  
14 e-mail, and it was their first payment, as Mr. Wheeler  
15 pointed out, they would be renewed. And they would  
16 pay, if it was first payment they would pay an  
17 interest payment and their loan would be extended.

18 To their next payday which was either two  
19 weeks or if they were paid semi-monthly it would be to  
20 their next semi-monthly pay date.

21 JUDGE MCKENNA: And if they did nothing on the  
22 next one, the next payday, would the same happen?

23 THE WITNESS: Yes.

24 JUDGE MCKENNA: And how many times would that  
25 go on before you would go to workout?



1 THE WITNESS: Pursuant to Delaware law it goes  
2 five times, if there is a regular payment, four  
3 payments, and then it goes to workout after that.

4 JUDGE MCKENNA: Proceed.

5 BY MR. WHEELER:

6 Q. Mr. Carnes, this process of renewal and auto  
7 work-out you just described, is this something you  
8 understood when you were the CEO of Integrity Advance?

9 A. I don't understand.

10 JUDGE MCKENNA: Were you familiar with this  
11 process?

12 THE WITNESS: Sure, it was our product.

13 BY MR. WHEELER:

14 Q. Who designed the product?

15 A. The State of Delaware.

16 Q. You are saying the State of Delaware designed  
17 the payday loan product?

18 A. I am.

19 Q. So I understand, I understand that your  
20 testimony that is the pay -- that Delaware allowed this  
21 pay date loan product?

22 A. It was one hundred percent conforming to their  
23 exact statute.

24 Q. Right. But Delaware didn't make you form  
25 Integrity Advance?

1 A. No.

2 Q. And they didn't tell you, you had to give a  
3 payday loan exactly like this?

4 A. If we wanted to lend in their State we had to  
5 give a loan substantially similar to, to that the loan  
6 we gave. There was, maybe, some flexibility in the  
7 terms but very little.

8 Q. What flexibility was there?

9 A. I'm not a lawyer. I wouldn't be confident  
10 commenting on that.

11 Q. Is it your testimony that the State of  
12 Delaware required you to rollover, required Integrity  
13 Advance to rollover consumer loans?

14 A. I don't know that they required it.

15 Q. So who at Integrity Advance decided that  
16 Integrity Advance's loan product would rollover if a  
17 consumer didn't call?

18 A. Again it was part of the process of working  
19 with the State of Delaware, and our consumer lending  
20 license within that State as to how the product was  
21 created.

22 Q. But you had ultimate authority over this  
23 product, right?

24 A. I had ultimate authority over the company and  
25 making sure that it complied with the Delaware law I

1 had.

2 Q. And Delaware wasn't requiring you to make the  
3 loans rollover?

4 A. I don't know what they required.

5 Q. Do you know what percentage of Integrity  
6 Advance's loans experienced renewals or rollovers?

7 A. Can you be a little more specific?

8 Q. I don't know, I mean do you know the  
9 percentage?

10 A. Like, that experienced one rollover.

11 Q. Experiences, yes, even one rollover.

12 A. One or more?

13 Q. One or more, yes, sorry.

14 A. I think that the best estimate which you would  
15 also find in my testimony prior, would be about ninety  
16 percent.

17 Q. So your testimony today is that roughly ninety  
18 percent of Integrity Advance loans experienced at least  
19 one rollover?

20 A. That is my understanding.

21 JUDGE McKENNA: Do you have a different  
22 figure?

23 MR. WHEELER: No, Your Honor.

24 BY MR. WHEELER:

25 Q. Is that something you understood when you were

1 the CEO of Integrity Advance?

2 MS. BAKER: Objection, foundation, and vague  
3 speculation.

4 JUDGE McKENNA: All right. Your objection is  
5 duly noted. We are going to rephrase. And so, go  
6 ahead and rephrase and lay your foundation.

7 BY MR. WHEELER:

8 Q. You have just testified that here today you  
9 understand that ninety percent of Integrity Advance's  
10 loans experienced at least one renewal, correct?

11 A. I said it was my belief that approximately  
12 ninety percent did.

13 Q. So --

14 A. I didn't testify that exactly ninety did, no.  
15 So I just want to be clear.

16 Q. Do you think it's significantly different than  
17 ninety percent?

18 A. Again, it's a guess and I think that is what  
19 is right.

20 Q. So, my question is, did you have that same  
21 understanding when you were CEO of Integrity Advance?  
22 That somewhere in the neighborhood of ninety percent of  
23 Integrity Advance loans were -- experienced at least  
24 one renewal?

25 MS. BAKER: Same objection, foundation,

1 speculation, vague.

2 JUDGE McKENNA: Overruled.

3 MS. BAKER: Well, what time are we talking  
4 about?

5 MR. WHEELER: At any time when he was chief  
6 executive officer or president and running Integrity  
7 Advance.

8 JUDGE McKENNA: All right. So, if you are  
9 talking about time, then you can subdivide it by year.  
10 Or you can say, that it didn't materially change in all  
11 of those years.

12 THE WITNESS: It wasn't something that was on  
13 the radar of -- or my radar to think about, to -- the  
14 number you are asking.

15 BY MR. WHEELER:

16 Q. But did you have an understanding that most  
17 consumer loans were going to experience a renewal?

18 MS. BAKER: Asked and answered.

19 JUDGE McKENNA: Overruled.

20 THE WITNESS: I did, I just told you that  
21 ninety percent likely did experience a rollover.

22 JUDGE McKENNA: You know that now, but did you  
23 know that then? And then means at any time during the  
24 time that Integrity Advance was in business, and if  
25 there is a time period where you didn't know that, you

1 can so delineate.

2 THE WITNESS: At the time Integrity Advance  
3 integrity was in business I don't recall seeing that  
4 number anywhere.

5 BY MR. WHEELER:

6 Q. More generally, leaving aside the ninety  
7 percent number, did you have an understanding that the  
8 majority of Integrity Advance's loans would experience  
9 at least one rollover or renewal?

10 A. Yes.

11 JUDGE MCKENNA: All right. Is that now or  
12 then?

13 THE WITNESS: That is now and then. The other  
14 one is now, the ninety percent is something that came  
15 to light, I think, through this process. Because I  
16 don't know that I really thought about it back then.

17 BY MR. WHEELER:

18 Q. So I guess just so we are clear, when you were  
19 running Integrity Advance you didn't have a ninety  
20 percent number in your head?

21 A. No.

22 Q. But you had an understanding that the majority  
23 of Integrity Advance loans would experience at least  
24 one renewal or rollover?

25 A. Yes.

1 Q. Mr. Carnes, did you ever review Integrity  
2 Advance's loan agreement?

3 A. Define review.

4 Q. Have you ever seen an Integrity Advance loan  
5 agreement?

6 A. I have seen one.

7 Q. In what context?

8 A. Preparing for this trial.

9 Q. Did you ever see an Integrity Advance loan  
10 agreement in 2008 when Integrity Advance was being  
11 formed and started loaning?

12 A. Did I ever see one?

13 Q. Yes, did you see one?

14 A. Possibly.

15 Q. Did you ever see a template for an Integrity  
16 Advance loan agreement back in 2008?

17 A. That is what -- that would have been all that  
18 I would have seen, if I had saw something. I wouldn't  
19 have actually seen a loan agreement.

20 Q. Do you know who would have created an  
21 Integrity Advance loan template?

22 A. Our outside counsel company, in association --  
23 working with Mr. Foster.

24 Q. Who was that?

25 A. Who was our outside counsel?

1 Q. Yes.

2 A. A woman named Claudia Calloway, and a woman  
3 named Christina Gregorian, G-R-E-G-O-R-I-A-N, I  
4 believe, who are now at Kattan Law Firm. I don't  
5 believe I know where the -- or I can't remember the  
6 name of the law firm they were at then.

7 Q. And it was your testimony that they -- they  
8 wrote the loan agreement template?

9 A. Yes.

10 Q. Did you ever talk to them about the loan  
11 agreement template?

12 A. I did not.

13 Q. And you testified that you believe you  
14 reviewed the loan agreement template? Was that your  
15 testimony?

16 MS. BAKER: Objection, it misstates prior  
17 testimony, Your Honor.

18 JUDGE McKENNA: Does it misstate your  
19 testimony?

20 THE WITNESS: Explain -- I don't understand  
21 that -- what you are saying. I may have flipped  
22 through a loan agreement, your concept of review I'm  
23 not sure what it means. I'm not lawyer, I may have  
24 looked through a template that's -- that would be the  
25 extent of my knowledge of a loan agreement.



1 JUDGE MCKENNA: So to that point.

2 MS. BAKER: That was my point. Thank you,  
3 Your Honor.

4 JUDGE MCKENNA: All right.

5 BY MR. WHEELER:

6 Q. As CEO did you have to approve the loan  
7 agreement template?

8 A. Again as CEO you are ultimately approving  
9 everything and I -- that is something that I have had  
10 and have no knowledge about, and relied on outside  
11 counsel, as well as Mr. Foster to take care of that.

12 Q. But is it your testimony that you had to  
13 approve the loan agreement template?

14 MS. BAKER: Objection, asked and answered.

15 JUDGE MCKENNA: Well, misstated too, misstated  
16 his testimony.

17 MS. BAKER: Yes, Your Honor, it misstates his  
18 testimony as well. Thank you.

19 JUDGE MCKENNA: All right. So you -- you got  
20 to just backup a little bit all right. So, Mr. Carnes  
21 testified that he was the CEO and as the CEO he is  
22 responsible for everything. And that he reviewed the  
23 template at the time that it was being prepared. Is  
24 that correct, Mr. Carnes?

25 THE WITNESS: I probably didn't do -- when it

1 was being prepared it was more, you know. And I don't  
2 even recall flipping through it, but I could have  
3 flipped throughout at some point after it had been  
4 prepared that it was going to be put into action.  
5 Between attorneys doing -- preparing it and between it  
6 going into action.

7 JUDGE MCKENNA: And did Mr. Foster explain to  
8 you what the process was going to be?

9 MS. BAKER: Your Honor, if I could just --

10 JUDGE MCKENNA: You can object if you want.

11 MS. BAKER: -- interject. To the extent that  
12 calls for the disclosure of privileged communications  
13 that my client might have had with Mr. Foster who was  
14 advising him in him in is in context as wearing his  
15 general counsel hat I will instruct my client not  
16 waive that privilege at this time, thank you.

17 JUDGE MCKENNA: Okay.

18 MS. BAKER: And let me just make sure my  
19 client understands. To the extent he can answer that  
20 question, without disclosing information that you  
21 would have received or either because you asked for it  
22 or because it was given to you, in the context of  
23 Mr. Foster giving you legal counsel, if you answer,  
24 that question you will potentially you could  
25 potentially waive privilege.

1 MR. WHEELER: Your Honor, to the extent that  
2 Mr. Carnes is relying on advice of counsel defense and  
3 saying that counsel advised him of his loan agreement  
4 he can't assert that and then claim attorney/client  
5 privilege. I know he has, it's his counsel. But I  
6 think the case law is pretty clear, Your Honor, that  
7 an advice of counsel defense waves privilege.

8 So, if that's his testimony that he relied on  
9 Mr. Foster then those communications aren't  
10 privileged, or the privilege doesn't apply here.

11 MS. BAKER: Your Honor, I don't think that has  
12 been his testimony I think his testimony has not been  
13 I relied on counsel his testimony has been that is  
14 what I hired lawyers to do, not that they told me to  
15 do something that, as understand defense of counsel  
16 reliance on counsel defense it's I did something  
17 because my lawyers told me it was okay to do.

18 That's not what Mr. Carnes has testified to  
19 here at all if Mr. Carnes wrote a loan agreement and  
20 said my lawyers told me it was okay to write this loan  
21 agreement that would be a reliance on counsel defense.  
22 That is analytically distinct for from what Mr. Carnes  
23 testified to, he has not waived privilege nor has he  
24 even put that at issue here.

25 JUDGE MCKENNA: All right. So at the time

1 that at the time that the template was being prepared  
2 what position did positions did Mr. Foster hold?

3 THE WITNESS: That would have been in 2008,  
4 and he would have been executive vice president and  
5 general counsel.

6 JUDGE McKENNA: Okay. And without going into  
7 the specifics of advice that he might have given you,  
8 since he was the executive vice president in addition  
9 to being general counsel, would he have explained to  
10 you the context of that template?

11 THE WITNESS: I don't recall him explaining  
12 the content of the template to me.

13 JUDGE McKENNA: In 2007?

14 THE WITNESS: Or eight.

15 JUDGE McKENNA: All right. Go ahead.

16 BY MR. WHEELER:

17 Q. Mr. Carnes, could Mr. Foster have -- we were  
18 are talking about loan agreement template and a loan  
19 agreement template that Integrity Advance used to  
20 generate loan agreements, could Mr. Foster have  
21 approved the use of a loan agreement template without  
22 your approval?

23 A. Again, it was -- we hired an outside counsel  
24 to come up with the loan agreement. We trusted that  
25 that was the best thing to do and we used it. I don't

1 know, you know there was no stamp, I wasn't stamping my  
2 approval on it. I just assumed that they knew what  
3 they were doing.

4 Q. Was it true --

5 A. As did Mr. Foster. Mr. Foster is not an  
6 attorney that is a regulatory attorney either.

7 Q. But isn't it true that they had your approval  
8 to implement this loan agreement?

9 MS. BAKER: Objection, asked and answered.

10 JUDGE McKENNA: I will allow it.

11 THE WITNESS: Did they have my approval to use  
12 the loan agreement? Yes.

13 BY MR. WHEELER:

14 Q. And do you recall specific conversations that  
15 you had with people at Integrity Advance about the loan  
16 agreement?

17 A. No.

18 Q. You have testified that Integrity Advance only  
19 had one product, right?

20 A. Yes.

21 Q. And that was a consumer loan?

22 A. Yes.

23 Q. And that consumer loan was implemented by a  
24 loan agreement?

25 A. Yes.

1 Q. And you testified that Integrity Advance made  
2 money?

3 A. Yes.

4 Q. And had profits?

5 A. Yes.

6 Q. And you were the CEO?

7 A. Yes.

8 Q. But you're saying you never had conversations  
9 about the loan agreement?

10 JUDGE McKENNA: He didn't say he never had  
11 them. He said he doesn't recall any.

12 BY MR. WHEELER:

13 Q. Is that true, sir, you don't recall?

14 A. I don't recall having conversations about the  
15 loan agreement itself.

16 Q. Were there any complaints that you received  
17 about Integrity Advance's loan product?

18 A. Complaints never rose to my level, so I don't  
19 know.

20 Q. So you were unaware personally of any  
21 complaints?

22 A. I wasn't aware of complaints.

23 Q. Mr. Carnes, you are aware that the Consumer  
24 Financial Protection Bureau sent a civil investigative  
25 demand to Integrity Advance?

1 A. Yes.

2 Q. And you're aware that CID, if I can shorten  
3 it, contained a list of questions or interrogatories?

4 A. Yes.

5 Q. Did you participate in Integrity Advance's  
6 response to those interrogatories?

7 A. I did not write them, I read through them.  
8 Actually there was several, I believe.

9 MS. BAKER: If I can just caution you to the  
10 extent that you would be disclosing conversations or  
11 communications you might have had with counsel who  
12 prepared those for you. Please do not disclose those  
13 communications. If you can answer Mr. Wheeler's  
14 question without doing that, please do so.

15 THE WITNESS: I believe there were several  
16 interrogatories that we submitted, the first one I  
17 don't think I even read or looked at very closely, and  
18 the subsequent one or two, however many there were, I  
19 did look at.

20 BY MR. WHEELER:

21 Q. Let's look at Exhibit 70.

22 MR. WHEELER: Are you ready, Your Honor?

23 JUDGE McKENNA: Uh-huh.

24 MR. WHEELER: Okay. My apologies.

25 BY MR. WHEELER:

1 Q. Mr. Carnes, I'm showing you what has been  
2 marked as Enforcement Counsel Exhibit 70. Do you  
3 recognize this document?

4 A. I do.

5 Q. What is it?

6 A. It appears to be something to you and  
7 Mrs. Weinberg about the response.

8 Q. Is this a document you reviewed before it was  
9 produced to the Bureau?

10 A. I can't remember.

11 Q. Take a second to look at it, if that helps.

12 A. I think this may have been the one that I  
13 didn't see before it went to the bureau. Is this the  
14 first one?

15 Q. I believe it's the second one. I think there  
16 was one on October 25th also that was the first one if  
17 that helps.

18 A. It doesn't.

19 Q. Mr. Carnes, are you familiar with remotely  
20 created checks?

21 A. I am.

22 Q. What is a remotely created check?

23 A. Check that is created remotely.

24 Q. Did Integrity Advance create remotely created  
25 checks?



1 A. They did.

2 Q. For what purpose?

3 A. Collecting consumer debt.

4 Q. How did Integrity Advance create remotely  
5 created checks?

6 A. On a -- our software had a package, or a  
7 module within it that printed it.

8 Q. Did you ever print one personally?

9 A. No.

10 Q. Did you ever see them printed?

11 A. Yes.

12 Q. How often?

13 A. I can't remember exactly, but probably weekly,  
14 they were printed. I didn't see them weekly, but they  
15 were probably printed weekly.

16 Q. And you said it was as software package that  
17 allowed you to print them so I assume that was located  
18 in the office in the Kansas City area?

19 A. It was in the cloud.

20 Q. But the printer was in the Kansas City area  
21 office?

22 A. Yes.

23 Q. Mr. Carnes, does Hayfield still exist?

24 A. Yes.

25 Q. In what capacity?

1 MS. BAKER: Objection asked and answered.

2 JUDGE McKENNA: I will allow it.

3 THE WITNESS: In wind down mode.

4 BY MR. WHEELER:

5 Q. At some point, were large portions of Hayfield  
6 sold?

7 A. Yes.

8 Q. And could you describe that?

9 A. In 2012, December, the company -- publicly  
10 traded company called EZ Corp bought certain assets of  
11 Hayfield.

12 Q. Which assets did they buy?

13 A. The laundry list?

14 Q. As best you can remember.

15 A. It's a public, publicly available document I  
16 wouldn't want to go guess and try to tell you  
17 everything they bought, because I would leave things  
18 out.

19 Q. Did Integrity -- excuse me, did EZ Corp buy  
20 Integrity Advance?

21 A. No.

22 Q. Did it buy any piece of Integrity Advance or  
23 anything owned by Integrity Advance?

24 A. A small customer list of a subset of Integrity  
25 Advance states.

1 Q. You said Integrity Advance states?

2 A. Of state, a customer list of some states that  
3 Integrity Advance lent to.

4 Q. Do you know how many consumer names are on  
5 those lists?

6 A. I don't.

7 Q. You said it was small though?

8 A. Yes.

9 Q. Do you have sense of what -- you when you said  
10 small, do you have any sense of what you meant by that?

11 A. It was a limited number of states and it was  
12 consumers that were VIP consumers with Integrity. It  
13 was just a list of them.

14 Q. As part of the sale, did EZ Corp purchase  
15 Hayfield's computer servers?

16 A. I believe so, I'm not positive, but I believe  
17 so.

18 Q. Would those servers that you think EZ Corp  
19 purchased have housed Integrity Advance's operations?

20 A. No.

21 Q. What servers did Integrity Advance use?

22 A. They were servers in a different location.

23 Q. Did you receive any compensation as a result  
24 of Hayfield being sold to EZ Corp?

25 MS. BAKER: Objection, relevance.

1 JUDGE McKENNA: I will allow it.

2 THE WITNESS: I did.

3 BY MR. WHEELER:

4 Q. And what was that compensation you received?

5 A. It was paid out over time, and it was  
6 approximately -- you mean what part that I received?

7 Q. Yes?

8 A. Approximately twenty-five million dollars.

9 MS. BAKER: Your Honor, if I could move that  
10 portion to be placed under seal. I don't believe that  
11 that is part of the publicly available document that  
12 concerns this transaction. So just that last question  
13 and answer. And, if -- I don't believe it does concern  
14 this transaction and obviously if it ultimately does,  
15 we will withdraw that motion.

16 JUDGE McKENNA: Which transaction?

17 MS. BAKER: The EZ Corp transaction that  
18 Mr. Carnes and Mr. Wheeler are discussing.

19 JUDGE McKENNA: So, if it falls under the  
20 protective order?

21 MS. BAKER: Your Honor, the order, the  
22 agreement that manifests that deal, as Mr. Carnes just  
23 testified, is available online. It's a public  
24 document. It was part of a publicly traded  
25 transaction. I don't believe the testimony that he

1 just provided is publicly available information. So I  
2 believe it is confidential and proprietary. I would  
3 request that that portion of it, this question -- the  
4 last question and last answer be filed under seal along  
5 with the other documents that we have agreed be moved  
6 into the record under seal. Thank you.

7 JUDGE MCKENNA: What is your position?

8 MR. WHEELER: No objection, Your Honor.

9 JUDGE MCKENNA: Before I rule on that, does --  
10 is the -- this sale agreement between EZ Corp and  
11 Integrity Advance, or Hayfield -- it's with Hayfield?

12 THE WITNESS: Yes.

13 JUDGE MCKENNA: All right. And so, that is  
14 a publicly available document that lists the total  
15 amount paid by EZ Corp for Hayfield without subdivision  
16 down to your level?

17 THE WITNESS: I can't remember how low it  
18 subdivides it. I know that it was -- it has the whole  
19 big picture deal in there. I don't know that I-- it's  
20 an SEC document and they are very fine printed and I  
21 have, again, skimmed through it. But I can't remember  
22 if it tells the granular level or not.

23 JUDGE MCKENNA: Ms. Baker, you need to look  
24 that over and see whether that is contained in there or  
25 not and discuss it with Mr. Wheeler.

1 And I will reserve ruling on whether to place  
2 that under seal. And I want to know why it's important  
3 that that question and answer be placed under seal, you  
4 can answer it or Mr. Carnes can answer it.

5 MS. BAKER: Well, assuming that that is not  
6 publicly available, we will confirm that this evening,  
7 Your Honor, and be prepared to answer your question  
8 tomorrow. And confer with Mr. Wheeler as well. But  
9 assuming it's not publicly available information and I  
10 do not think it is, but I want to confirm that. It's  
11 Mr. Carnes personal financials that are not public.  
12 His personal financial information is not publicly  
13 available information. Nor should it be.

14 Nor is there any reason compelling public  
15 interest to make it publicly available. There is no  
16 establishing liability as to him. And even if Your  
17 Honor ultimately found that, there is no connection  
18 between Hayfield and Integrity Advance in a way that  
19 would justify disclosing that information into the  
20 public.

21 And it's quite proprietary and confidential  
22 for all of the reasons that none of us would want our  
23 bank accounts or financial statements out there in the  
24 public for the reasons that tax returns are not per se  
25 publicly available documents. It would be the same

1 issue as Mr. Carnes' answer to Mr. Wheeler's last  
2 question.

3 JUDGE MCKENNA: All right. Now you have a  
4 context and texture.

5 MR. WHEELER: Yeah.

6 JUDGE MCKENNA: So, what do you say now?

7 MR. WHEELER: I mean, Your Honor, I mean, I  
8 don't agree this is his personal financial  
9 information. I mean, the fact that he received a  
10 certain amount of money, some number of years ago, I  
11 mean, that doesn't let me know how much money he has  
12 right now. I mean, he could have spent it all. He  
13 could have, you know, invested it and made billions of  
14 dollars.

15 I don't think the fact that he received a  
16 certain amount of money a long time ago really gives  
17 us an insight into his personal financial information.  
18 Also, Mr. Carnes is also a party to this case.

19 JUDGE MCKENNA: Well, what I would like to  
20 know is what the basic terms of the sale agreement  
21 are, total amount of money and the breakdown of who  
22 received what.

23 MS. BAKER: Yes, Your Honor.

24 JUDGE MCKENNA: And whether that follows the  
25 organizational and ownership chart that we looked at

1 earlier.

2 MS. BAKER: Your Honor, are you asking us to  
3 provide that information to the Court? Or are you  
4 asking Mr. Wheeler to provide that since he is the one  
5 who -- this is his question of this witness and he  
6 apparently thinks this is relevant to their case, so  
7 I'm not sure whether --

8 JUDGE McKENNA: Well, he didn't ask that  
9 question. I did.

10 MS. BAKER: I understand.

11 JUDGE McKENNA: And so if you just humor me  
12 just a little bit, I don't want a lot of information.  
13 I just want some information from you. Since you have  
14 kind of cabined what you want to be disclosed, and I  
15 want to know how, how that affects the overall  
16 transaction.

17 MS. BAKER: Your Honor, if I, I just want a  
18 point of clarification just to make sure we provide  
19 Your Honor with --

20 JUDGE McKENNA: So that would be Exhibit 50.

21 MS. BAKER: Your Honor.

22 MR. WHEELER: I'm not -- I'm not sure that is  
23 the whole agreement. I, when I checked it in advance  
24 of trial, it -- I mean, we are happy to bring a copy  
25 of the full agreement tomorrow.



1 MS. BAKER: Your Honor, my understanding is  
2 that is a mere fraction of the agreement. It was very  
3 large.

4 MR. WHEELER: Yeah, it's pretty long.

5 THE WITNESS: It's a phone book.

6 MR. WHEELER: Yeah.

7 MS. BAKER: Um --

8 MR. WHEELER: And that was sort of our  
9 mistake, Your Honor. I thought we had the full  
10 exhibit. But what is in the exhibit book is a portion  
11 of it.

12 JUDGE McKENNA: Well, I still want to know --  
13 I want a breakdown. And then going back to my  
14 admonition to you, Mr. Wheeler, I want to know how all  
15 of this, these pieces fit together, if at all.

16 Because you are going to be assuming that  
17 culpability is found as to Mr. Carnes, which I'm not  
18 anywhere near making such a finding at this stage. I  
19 want to know how much and who, and does it track that  
20 ownership chart as to the distribution.

21 Do you know that, do you know the answer to  
22 that?

23 THE WITNESS: I can answer, I think, what you  
24 are trying to get. So and it's mostly disclosed  
25 publicly. I don't think some of the details are

1 disclosed publicly. Um -- so the --

2 JUDGE McKENNA: Wait a second, I want to make  
3 sure -- I don't want you saying something that your  
4 counsel doesn't like.

5 MS. BAKER: Thank you, Your Honor, to the  
6 extent Mr. Carnes is answering the question that isn't  
7 publicly available information about a transaction, I  
8 would just ask that question and answer be filed under  
9 seal. But certainly, Your Honor is permitted to ask.  
10 I mean, we don't have an objection to the question per  
11 se just that it be maintained under seal, thank you.

12 JUDGE McKENNA: All right. Same ruling that  
13 I'm going to look into it and make a determination.

14 MS. BAKER: Thank you.

15 JUDGE McKENNA: So just go ahead.

16 THE WITNESS: So the transaction was over a  
17 three-year period, paid out over a three-year period  
18 and it was, there were in the beginning a lot of  
19 expenses in the deal such as attorney's were very  
20 expensive. We had an investment bank that facilitated  
21 the deal which was expensive, expensive like millions  
22 of dollars.

23 We had some employees that had phantom stock  
24 that got money. And after all of that was paid, there  
25 was a complicated breakdown with our investment bank

1 partner that had a basis, that got made up first.  
2 Actually as I think about it, I should restate my -- I  
3 didn't get about twenty-five million, I got twenty --  
4 something less, oh, somewhere between twenty and  
5 twenty-three million, maybe, closer to twenty.

6 But at any rate, they -- you paid all of this  
7 stuff, and then once all of the preferences were made  
8 up, then it went exactly to the percentages that were  
9 on the chart 65, or whatever he showed. I got 50.8,  
10 whatever it was, and SI Hayfield got 41 something, and  
11 EZ -- you know, the other two interests got their  
12 share, being Mr. Foster and Mr. Bunting.

13 COURT REPORTER: And Mr. Who?

14 THE WITNESS: Bunting, B-U-N-T-I-N-G.

15 MS. BAKER: Your Honor, if I could just note  
16 an objection to the line of questions -- not that Your  
17 Honor is asking -- but that has precipitated this  
18 whole conversation, relevance. This is a case about  
19 Integrity Advance. Mr. Carnes testified that almost  
20 no assets from that company were sold in connection  
21 with this transaction. It remains unclear as to how  
22 any aspect of that transaction is at issue in this  
23 matter and should be brought into evidence in this  
24 matter.

25 JUDGE McKENNA: Okay. You might be right.

1 And that will be reflected if I so find in the  
2 decision. So, I'm just -- just getting the whole  
3 picture painted. And then we will see where we go.

4 MS. BAKER: Well, I'm making these for the  
5 record, of course, Your Honor.

6 JUDGE McKENNA: I understand.

7 MS. BAKER: Thank you.

8 THE WITNESS: Did that answer your question?

9 JUDGE McKENNA: Yes.

10 BY MR. WHEELER:

11 Q. Mr. Carnes, you have testified that EZ Corp  
12 bought some part of Integrity Advance's customer list?

13 A. Yes.

14 Q. But did not buy the company, itself?

15 A. No.

16 Q. Do you know why that was?

17 A. They --

18 MS. BAKER: Objection, calls for speculation.

19 JUDGE McKENNA: You can answer if you know.

20 THE WITNESS: They structured the whole thing  
21 as an asset deal, not a company deal and I'm not, I'm  
22 not a lawyer so I don't know the rationale for doing  
23 that. But the asset deal was particularly -- there  
24 was interest in certain assets, Hayfield assets is  
25 what they bought.

1 BY MR. WHEELER:

2 Q. Can we take a look at Exhibit 67 one more  
3 time. So I just want to clear something up, because  
4 I'm not sure it's clear from prior testimony. We have  
5 talked about Willowbrook Marketing, which appears on  
6 this chart, right?

7 A. Correct.

8 Q. And then there was also an entity called  
9 Willowbrook Partners?

10 A. Yes.

11 Q. And that doesn't appear here, right?

12 A. No.

13 Q. And what was the purpose of Willowbrook  
14 Partners?

15 A. Willowbrook Partners was created to be the  
16 management company of Hayfield Partners, Investment  
17 Partners.

18 Q. And did you own Willowbrook Partners?

19 A. Mr. Foster and I owned it.

20 Q. What were the respective percentages?

21 A. I can't recall exactly, but something along  
22 the lines of one was 98 and a half and 1 and a half.

23 Q. So you owned roughly 98 and a half?

24 A. I believe so.

25 Q. Did Hayfield pay any sort of fee to

1 Willowbrook Partners?

2 MS. BAKER: Objection, relevance. This is  
3 pretty far afield.

4 MR. WHEELER: Just trying to clear up the  
5 record on various entities, Your Honor. I mean, he was  
6 the CEO of Hayfield.

7 JUDGE McKENNA: I will allow it.

8 MS. BAKER: If I can just make a record.

9 JUDGE McKENNA: Sure.

10 MS. BAKER: There is only one company that is  
11 a Respondent in this matter, Integrity Advance. And to  
12 this day and we are now five o'clock at night, so it's  
13 eight hours. Mr. Wheeler has not yet made the  
14 connection between Hayfield, Willowbrook, and Integrity  
15 Advance such as to justify this ongoing line of  
16 questions. So I just want to make that record, thank  
17 you.

18 JUDGE McKENNA: Thank you. Seven hours less  
19 lunch.

20 MS. BAKER: Fair enough.

21 MR. WHEELER: Okay. Thank you, Your Honor.

22 BY MR. WHEELER:

23 Q. Do you remember the question?

24 A. Ah, the question was something about  
25 Willowbrook Partners being the manager of Hayfield.

1 Q. Yes, and did Hayfield -- did Willowbrook  
2 Partners receive any sort of fee for managing Hayfield?

3 A. Yes.

4 Q. Could you describe that?

5 A. It was a fee that came out to pay Mr. Foster's  
6 salary, my salary, rent in the office, internet  
7 service, et cetera, office supplies, what have you,  
8 kind of expenses.

9 JUDGE MCKENNA: How much more do you have?

10 MR. WHEELER: I'm almost done, Your Honor. I  
11 know we are --

12 JUDGE MCKENNA: I know you are.

13 MR. WHEELER: What's that?

14 JUDGE MCKENNA: I said, I know you are.

15 MR. WHEELER: I see we are past 5:00. Just a  
16 couple more.

17 BY MR. WHEELER:

18 Q. You also mentioned Willowbrook Management?

19 A. Yes.

20 Q. And just could you remind us what Willowbrook  
21 Management did?

22 A. Wholly owned by Willowbrook Partners and that  
23 was the company from which Mr. Foster and I got paid  
24 our salaries out of.

25 Q. So did you own Willowbrook Management as well?

1 A. Again, Willowbrook Management was wholly owned  
2 by Willowbrook Partners, so I effectively owned 98 and  
3 a half percent.

4 Q. You testified earlier that the percentage of  
5 Hayfield that Willowbrook owns did fluctuate some over  
6 time?

7 A. Yes.

8 Q. Do you remember what the highest percentage  
9 was, the highest percentage of Hayfield that  
10 Willowbrook owned during Hayfield's existence?

11 A. I don't recall exactly what it was, but it  
12 was, you know, call it three or four. Somewhere  
13 between three and four percentage points higher than  
14 what is represented on this chart.

15 Q. What about the lowest amount, do you recall  
16 that?

17 A. It is, the lowest amount is represented in the  
18 chart.

19 Q. And that is 50.38 percent?

20 A. Yes.

21 MR. WHEELER: Take a quick break, Your Honor,  
22 just to confer, but I think I am almost done.

23 JUDGE McKENNA: All right. Well, I think we  
24 can stop. You can have redirect after the cross, so we  
25 will just call it an evening.



1 We will start at 9:30.

2 Off the record.

3 (The proceedings adjourned at 5:20 p.m.)

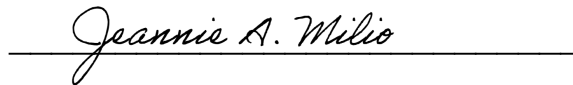
4 ---

1 REPORTER'S CERTIFICATE.  
2

3 I, Jeannie A. Milio, Registered Professional  
4 Reporter, an Official Court Reporter for the United  
5 States Coast Guard, do hereby certify that I  
6 stenographically recorded the proceedings in Consumer  
7 Financial Protection Bureau versus Integrity Advance,  
8 LLC and James R. Carnes, File No. 2015-CFPB-0029, held  
9 on July 19, 2016, at 9:30 a.m. (ET), at the FERC  
10 Building, 888 First St., N.E., Washington, DC, before  
11 the Honorable Parlen L. McKenna.

12 I further certify that the page numbers I-1  
13 through I-253 constitute an official transcript of the  
14 proceedings as transcribed by me from my stenographic  
15 notes to the within typewritten matter in a complete  
16 and accurate manner.

17 In witness whereof, I have affixed my signature  
18 this 1st day of September, 2016.  
19  
20  
21

22   
23 Jeannie A. Milio, RPR  
24 Official Court Reporter  
25

# EXHIBIT 9

1 UNITED STATES OF AMERICA

2 Before the

3 CONSUMER FINANCIAL PROTECTION BUREAU

4  
5 In the Matter of :  
6 : Administrative Proceeding  
7 INTEGRITY ADVANCE, LLC : File No. 2015-CFPB-0029  
8 and JAMES R. CARNES, :  
9 Respondent. :  
10

11 REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS  
12 HEARING (Volume II of III)

13 Washington, D.C.  
14 Wednesday, July 20, 2016

15  
16 BEFORE:

17 HONORABLE PARLEN L. McKENNA, ADMINISTRATIVE LAW JUDGE  
18  
19  
20  
21  
22  
23  
24  
25

**APPEARANCES:**

**For the Agency:**

Alusheyi J. Wheeler, Esquire  
Wendy J. Weinberg, Esquire  
Vivian W. Chum, Esquire  
Craig A. Cowie, Esquire

**For the Respondent:**

Allyson B. Baker, Esquire  
Peter S. Frechette, Esquire  
Danielle R. Foley, Esquire  
Andrew T. Hernacki, Esquire  
Hillary S. Profita, Esquire  
Venable, LLP, Washington, D.C. 20004

**On Behalf of Mr. Edward Foster**

Gerald S. Sachs, Esquire

**ALSO PRESENT:**

For the Administrative Law Judge:  
Heather MacClintock, Esquire  
Lauren S. Staiti, Esquire

Jeannie A. Milio, RPR  
Official Court Reporter  
ALJ Office, Baltimore, Maryland 21202-4022

## T A B L E O F C O N T E N T S

**ENFORCEMENT COUNSEL'S WITNESSES:**

	DIRECT	CROSS	REDIRECT	RECROSS
Edward Foster	II-5	II-46	--	--
James Carnes	II-48	II-62	II-86	II-99
Robert Hughes	II-110	--	--	--
Joseph Baressi	II-165	II-183	II-192	--

<b>ENFORCEMENT COUNSEL</b>	<b>IDENTIFICATION</b>	<b>ADMITTED</b>
Exhibit No. 81	--	II-122
Exhibit No. 102	II-156	II-162

P R O C E E D I N G S

JUDGE McKENNA: Back on the record.

Pursuant to agreement of the parties, we will break on Mr. Carnes's testimony and we will telephonically contact Mr. Foster for his testimony in this proceeding.

Proceed.

MR. WHEELER: Thank you, Your Honor.  
Enforcement Counsel calls Edward Foster.

(Attorney advisor calls Edward Foster via conference call.)

MR. FOSTER: Hello. This is Edward Foster.

MS. MACCLINTOCK: Good morning, Mr. Foster.  
We are calling from the matter of Integrity Advance.  
I'm going to turn you over to Mr. Wheeler.

THE WITNESS: Okay.

JUDGE McKENNA: All right. Do the parties recognize the voice of the individual on the phone?

MR. CARNES: Yes.

MR. SACHS: Mr. Foster, just so that you're aware. This is Gerry Sachs, your attorney. I'm in the room.

THE WITNESS: Okay. Thank you.

JUDGE McKENNA: Could you please stand, raise your right hand.

1 THE WITNESS: I'm doing so.

2 EDWARD FOSTER

3 A witness produced on call of Enforcement  
4 Counsel, having first been duly sworn, was examined  
5 and testified as follows:

6 JUDGE McKENNA: All right. Please be seated.

7 Mr. Wheeler.

8 MR. WHEELER: Thank you, Your Honor. Good  
9 morning, Mr. Foster. Can you hear me?

10 THE WITNESS: Yes, I can.

11 DIRECT EXAMINATION

12 BY MR. WHEELER:

13 Q. All right. Mr. Foster, do you recall having  
14 your deposition taken in this matter?

15 A. Yes, I do.

16 Q. And do you remember that you sat in the  
17 conference room and answered questions?

18 A. Yes, I do.

19 Q. And I asked you some questions and my  
20 colleague, Ms. Weinberg, asked you some questions?

21 A. Yes, I do recall that when I last met you --  
22 both of you, yes, I do.

23 Q. And you were represented by Allyson Baker that  
24 day?

25 A. Yes, that's correct.



1 Q. And you were under oath at that time?

2 A. Yes, I was.

3 Q. And you understood that being under oath meant  
4 that you had to be truthful, correct?

5 A. That's correct.

6 Q. And you were truthful that day in your  
7 answers?

8 A. Yes, I was.

9 Q. Mr. Foster are you familiar with a company  
10 called Integrity Advance?

11 A. Yes, I am.

12 Q. What is Integrity Advance?

13 A. Integrity Advance is a Delaware limited  
14 liability company that had offices in Delaware and was  
15 owned by a parent company called Hayfield Investment  
16 Partners.

17 Q. Did you work for Integrity Advance?

18 A. So what I would -- to clarify that, Integrity  
19 Advance had no employees; however, there were  
20 individuals that worked for the parent company Hayfield  
21 Investment Partners that performed duties and jobs when  
22 necessary for the benefit of Integrity Advance.

23 Q. Did you perform a job and duties to benefit  
24 Integrity Advance?

25 A. Yes, I did.

1 Q. And how long did you do that?

2 A. Since inception of Integrity Advance.

3 Q. When was the inception of Integrity Advance?

4 A. I actually do not recall.

5 Q. Would it have been in 2008?

6 A. That sounds correct or in the ballpark for  
7 sure.

8 Q. So how long did you perform services for  
9 Integrity Advance?

10 A. So since inception through well actually even  
11 after the sale in December of 2012, so in a wind down  
12 capacity, sometime into 2013.

13 Q. What was the business of Integrity Advance?

14 A. Integrity's primary business was to make  
15 short-term loans, short-term high dollar -- I'm sorry.  
16 I apologize. Short-term low dollar loans to consumers  
17 predominantly through the Internet.

18 Q. Who hired you to provide services for  
19 Integrity Advance?

20 A. The president and CEO, James Carnes.

21 Q. What did Mr. Carnes tell you about Integrity  
22 Advance before you were hired to perform services for  
23 the company?

24 A. So I want to remind everybody that my, both  
25 prior to my actual, and again, I was never hired by

1 Integrity Advance, I was hired by Hayfield Investment  
2 Partners and its company that served as the manager of  
3 Hayfield called Willowbrook Partners, my predominant  
4 roles were general counsel. Therefore our discussions  
5 about both my hiring as general counsel and discussions  
6 around what you just asked that involve attorney/client  
7 privilege, I cannot speak to.

8 Q. When you started providing services to  
9 Integrity Advance, did you have a job title?

10 A. For Integrity Advance I served as the  
11 executive vice president, general counsel, I believe  
12 secretary and assistant treasurer as well.

13 Q. What were your duties in that position?

14 A. Predominantly to provide legal counsel to  
15 Integrity Advance.

16 Q. Did you also have business functions in  
17 addition to your legal functions?

18 A. Specifically for Integrity Advance those were  
19 not spelled out so to speak, but all of us from time to  
20 time helped out with matters that required attention  
21 from time to time whether they were HR or  
22 administrative or something, but it was not what I  
23 would call an official job duty of the general counsel.

24 Q. Could you estimate how much of your time was  
25 spent on legal matters and how much was spent on

1 business matters?

2 A. Well, time period would be somewhat relevant,  
3 but at no time -- I mean the vast, vast majority 90  
4 percent would have been spent on legal matters.

5 Q. In your position as executive vice president  
6 did you receive a salary?

7 A. I never received any compensation from  
8 Integrity Advance.

9 Q. Did you receive a salary in connection with  
10 the services you were providing to Hayfield?

11 A. Again, not from Hayfield Investment Partners.  
12 Both Jim Carnes and myself were employed by Willowbrook  
13 Partners.

14 Q. Did you receive a salary from Willowbrook  
15 Partners?

16 A. Yes, I did.

17 Q. Who set that salary?

18 A. The president, Mr. Carnes.

19 Q. When you were executive vice president of  
20 Integrity Advance who did you report to?

21 A. In that capacity I would have reported to the  
22 president of Integrity Advance.

23 Q. And that's Mr. Carnes?

24 A. That's correct, yes.

25 Q. When you were executive vice president, how

1 often did you talk to Mr. Carnes?

2 A. So I think to clarify and make sure everybody  
3 is on the same page, it's important to recognize that  
4 both time periods and then that the office in Kansas  
5 City was the office of Willowbrook Partners and  
6 Hayfield Investment Partners, the parent company that  
7 owned and operated about 20 different subsidiaries  
8 including Integrity Advance.

9 So I need really some more specificity when  
10 you say that because my job for Hayfield Investment  
11 Partners and Willowbrook was to report to Mr. Carnes,  
12 no matter what the matter was about.

13 Q. How often did you talk to Mr. Carnes about  
14 Integrity Advance business when you were executive vice  
15 president?

16 A. That would have varied depending on the year.  
17 Obviously, early on during setup and formation that  
18 would have been more often, daily I would say when  
19 Mr. Carnes was in the office.

20 As time went by and near the end, like  
21 everybody else in the office, in Kansas City, the time  
22 spent on Integrity Advance matters became a very small  
23 percentage of time spent on things.

24 Q. So if you could specify the time period. You  
25 said as time went on people spent less time on

1 Integrity Advance. When would that time period be that  
2 people would be spending less time on Integrity  
3 Advance?

4 A. So obviously 2008, formation year, would have  
5 been the most time by anybody, and every year that went  
6 by it would have waned. Certainly by 2010, '11, '12,  
7 '13 the time spent on Integrity Advance matters from  
8 the Kansas City office would have been a minority,  
9 probably a small minority of people's time?

10 Q. You mentioned that there was an office in  
11 Kansas City?

12 A. Yes, the Kansas City metro area, correct.

13 Q. Is that the office where you worked?

14 A. Yes, it was.

15 Q. Did you work there on a daily basis?

16 A. Other than travel, yes.

17 Q. Did Mr. Carnes work out of that office on a  
18 daily basis?

19 A. That was his main and only office, but  
20 Mr. Carnes did travel and had other matters outside the  
21 office as well. So again depending on the time period  
22 Mr. Carnes spent a lot of time out of the office.

23 Q. At some point you were promoted; is that  
24 correct?

25 A. I did receive a promotion for Hayfield

1 Investment Partners.

2 Q. And what was that promotion?

3 A. I added the title of chief operating officer  
4 to my roles and responsibilities.

5 Q. When did that happen?

6 A. I'm sorry, Hayfield Investment Partners and to  
7 answer your other question that happened I believe in  
8 June of 2010.

9 Q. Weren't you also the chief operating officer  
10 of Integrity Advance?

11 A. I don't -- my recollection is Integrity  
12 Advance never elected any officers other than the ones  
13 I already spoke to.

14 Q. Did you continue receiving a salary in your  
15 position as chief operating officer?

16 A. From Hayfield Investment Partners? Yes.

17 Q. Was it a higher salary?

18 A. I recall I did receive a raise, I believe.

19 Q. Who decided on the amount of your raise?

20 A. Mr. Carnes.

21 Q. And I assume in your new role you continued to  
22 report to Mr. Carnes?

23 A. That's correct.

24 Q. Did Integrity Advance have something called a  
25 dashboard?

1 A. We used dashboards for many of our businesses,  
2 and I recall that Integrity Advance had a dashboard for  
3 its operations, yes.

4 Q. Could you explain what that is?

5 A. It would have been a web page that could be  
6 refreshed to update it from time to time, that would  
7 display the number of applications that the Integrity  
8 Advance technology system or platform would be  
9 reviewing or receiving and then follow those through  
10 the process and show how many were looked at, how many  
11 were scored and then purchased, how many were then  
12 e-signed, how many were converted to loans and  
13 ultimately how many loans were made on any given time  
14 period.

15 Q. Did you have access to this dashboard system?

16 A. Yes, I did.

17 Q. Did Mr. Carnes have access to the dashboard  
18 system?

19 MS. BAKER: Objection. Calls for speculation.

20 BY MR. WHEELER:

21 Q. As far as you know?

22 JUDGE McKENNA: I will allow it, if he knows.

23 Answer the question if you know.

24 THE WITNESS: I would be shocked if Mr. Carnes  
25 did not have access to it.



1 BY MR. WHEELER:

2 Q. Did you and Mr. Carnes ever discuss the  
3 information that was contained in the dashboard system?

4 MS. BAKER: Objection to the extent it calls  
5 for privileged communications.

6 MR. WHEELER: I'm not asking for contents,  
7 Your Honor, just did they discuss it.

8 JUDGE McKENNA: Yes. To the extent --  
9 sustained.

10 THE WITNESS: I think I can answer that there  
11 would have been times we discussed the contents of the  
12 dashboard.

13 BY MR. WHEELER:

14 Q. How often?

15 MS. BAKER: Same objection/warning.

16 JUDGE McKENNA: All right. You have a  
17 continuing objection.

18 Mr. Foster, you still remember how to be an  
19 attorney, correct?

20 THE WITNESS: Yes, I do, Your Honor.

21 JUDGE McKENNA: All right. Excellent.

22 MS. BAKER: And Mr. Foster this is Allyson  
23 Baker on behalf of Integrity Advance.

24 THE WITNESS: Yes, Ms. Baker, thank you. And  
25 I do understand and appreciate my obligation to

1 continue to honor the attorney/client privilege in any  
2 matters that would be covered by that, not to disclose  
3 those in any capacity. I think I can comfortably  
4 answer that that was not a regular or daily discussion  
5 between -- in our office.

6 BY MR. WHEELER:

7 Q. Could you estimate how often?

8 A. You're specifically asking between Mr. Carnes  
9 and myself? Weekly.

10 Q. Mr. Foster, during your time providing  
11 services to Integrity Advance, did you become familiar  
12 with the company's loan product?

13 A. Yes, I did.

14 Q. Did Integrity Advance charge a fee for its  
15 loans?

16 A. Yes, it did.

17 Q. What was the amount of that fee?

18 A. My recollection is that for first time  
19 customers the fee was \$30 per \$100 borrowed. And for  
20 returning customers that were classified as VIP because  
21 they had successfully paid back the loan, they received  
22 a discounted rate. I believe it a 20 percent discount.  
23 So \$24 per \$100.

24 Q. Did those fee rates change over time?

25 A. I don't believe so, no.

1 Q. If a consumer took a loan with Integrity  
2 Advance and didn't contact the company prior to their  
3 next pay date, what would happen?

4 A. So that calls for speculation because those  
5 matters were handled specifically by the call centers  
6 on a day-to-day basis. If you want me to discuss the  
7 content of the contract and what their options are, I  
8 might be able to speak to that.

9 Q. What were the consumer's options under the  
10 contract?

11 MS. BAKER: I want to just object to this line  
12 of questions to the extent it is calling for  
13 speculation. I also want to object to the extent that  
14 Mr. Foster is being asked to disclose mental  
15 impressions that he would have had as an attorney  
16 representing a company and/or information he would  
17 have received in connection with that representation.  
18 That would all be protected from disclosure by  
19 privilege.

20 MR. WHEELER: The function of the contract is  
21 not a privilege, Your Honor.

22 JUDGE McKENNA: Your objection is overruled,  
23 number one. And I have a question, Mr. Sachs.

24 So, who are you objecting -- who are you  
25 representing now?

1 MS. BAKER: Who am I representing?

2 I'm objecting on behalf of the company because  
3 the privilege that Mr. Foster has belongs to Integrity  
4 Advance. I'm their attorney. So my objection to  
5 questions is on behalf of Respondents and specifically  
6 with respect to privilege, it's on behalf of the  
7 company because the company is the entity that holds  
8 the privilege, not Mr. Foster.

9 So to the extent he is being asked to disclose  
10 communications that would waive that privilege or  
11 impede that privilege, it's my responsibility as  
12 counsel for the company to prevent that from  
13 happening.

14 To that's the capacity in which I am  
15 objecting. I am not Mr. Foster's attorney.

16 MR. SACHS: And I'm representing Mr. Foster.

17 If I could sit in-between the government and  
18 respondent maybe I would do that.

19 JUDGE McKENNA: That's all right. I just  
20 wanted to find out who's on first. So now what I want  
21 to do is, the question specifically related to the  
22 terms of the contract. There is no impressions. It's  
23 straight and so Mr. Foster, you understand what you  
24 were asked?

25 THE WITNESS: I believe I'm being asked what

1 the contents of the contract that was available  
2 publically to consumers provided as options to them  
3 from Integrity Advance.

4 Is that an accurate reflection of the  
5 question?

6 JUDGE McKENNA: Yes.

7 MR. WHEELER: Yes.

8 THE WITNESS: So yes, I believe I can answer  
9 that without waiving attorney/client privilege because  
10 that contract has been produced and it was publically  
11 available.

12 That contract had to comply with Delaware law,  
13 which provided most of the details of what that  
14 product could do, what it needed to offer the consumer  
15 when operating under the license received from the  
16 Delaware banking department. And by law the customer  
17 could either at time of first due date could pay the  
18 loan in full, could make a partial paydown of  
19 principal or could extend that loan as well.

20 BY MR. WHEELER:

21 Q. Under the terms of the contract, if the  
22 consumer did not contact Integrity Advance in advance  
23 of their next pay date after they took the loan, what  
24 would happen?

25 A. My recollection of the terms of the contract

1 that the provisions for that if Integrity Advance did  
2 not receive communications from the customer that they  
3 wanted to do anything but let it roll over, the loan  
4 would roll over.

5 Q. And when you say roll over, what do you mean?

6 A. Depending on where in the cycle it was, that  
7 would be to extend the loan for an additional period, I  
8 believe typically two weeks. And the customer would  
9 owe the finance charges that had accrued on that loan  
10 through the due date.

11 How many rollovers could a consumer have on  
12 their loan?

13 MS. BAKER: Objection. Vague.

14 JUDGE McKENNA: Overruled.

15 THE WITNESS: My recollection is up to three  
16 rollovers, with no principal pay down, any after that  
17 would require, I believe, a minimum of \$50 of  
18 principal pay down.

19 BY MR. WHEELER:

20 Q. Who designed the loan renewal and auto work  
21 out process?

22 A. As I stated before, the vast majority of that,  
23 what the product looked like and how it functioned was  
24 defined by Delaware law.

25 Q. Did Delaware law require Integrity Advance to

1 roll over consumer loans?

2 A. I don't have the statutes in front of me, my  
3 recollection though it was an option that had to be  
4 offered to the customer.

5 Q. Was it required to be a default option under  
6 Delaware law?

7 A. I don't recall.

8 Q. Whose decision was it to implement the  
9 rollover and workout process we have been discussing?

10 A. I don't know that it was anyone's decision.  
11 That was the standard product that was offered in the  
12 industry by almost all online lenders is my  
13 understanding.

14 Q. Did Integrity Advance ever consider using a  
15 different renewal and work out process?

16 MS. BAKER: Objection to the extent it calls  
17 for privileged communications or disclosure of any  
18 work product that Mr. Foster would have learned of or  
19 have been a participant in in connection with his role  
20 as general counsel.

21 JUDGE McKENNA: Duly noted.

22 THE WITNESS: Could you repeat the question?

23 BY MR. WHEELER:

24 Q. Did Integrity Advance ever consider using a  
25 different renewal and work out process?

1 MS. BAKER: Same objection.

2 THE WITNESS: Yeah, I can't answer that  
3 question to the extent it involved communications that  
4 would have been legal in nature.

5 BY MR. WHEELER:

6 Q. I'm not asking about the specifics of the  
7 communications. I'm asking did it ever happen? Was it  
8 ever considered?

9 MS. BAKER: Same objection.

10 THE WITNESS: I don't recall.

11 JUDGE McKENNA: The objection is overruled.  
12 It's sustained as to the legal issue.

13 All right.

14 I'm troubled somewhat, Mr. Foster, as to your  
15 answer to the question. There would appear to me to  
16 be an answer that doesn't involve a violation of  
17 attorney/client privilege; am I incorrect there?

18 THE WITNESS: No.

19 JUDGE McKENNA: Would you answer the question?  
20 Keeping in mind Ms. Baker's admonition.

21 THE WITNESS: Sure. I cannot speak to any  
22 discussions that took place between myself and  
23 Mr. Carnes or anybody else within Integrity Advance  
24 that involved matters about the product and any legal  
25 advice around that.



1 BY MR. WHEELER:

2 Q. So I guess that answer confused me a little  
3 bit. Are you saying you are not aware of any  
4 discussions about using a different loan process; is  
5 that your testimony?

6 MS. BAKER: I'm just going to lodge for the  
7 record the same objection.

8 JUDGE McKENNA: Duly noted.

9 Same ruling.

10 THE WITNESS: I cannot answer matters that  
11 would be protected by the attorney/client privileged  
12 communications.

13 MR. SACHS: By disclosing whether there did  
14 occur any type of discussion based on a subject  
15 matter, disclosing the subject matter of that  
16 conversation would be protected by attorney/client  
17 privilege.

18 So while I think Mr. Foster wants to answer  
19 your questions he is having trouble because the  
20 attorney/client privilege would protect the contents  
21 of any conversation he may have had with his client  
22 and to the extent he admits or denies having  
23 conversations about something, a subject matter, that  
24 would disclose the subject matter that was discussed.

25 MR. WHEELER: I disagree with that, Your

1 Honor.

2 I'm not asking for the contents of the  
3 discussion, who said what, what was discussed. I'm  
4 just asking was that ever a topic of discussion.

5 MR. SACHS: And again, Your Honor, I would  
6 caution my client, that disclosing the topic of a  
7 conversation would by its nature disclose the contents  
8 or potential contents of that conversation.

9 MS. BAKER: And Your Honor, on behalf of the  
10 company, our position would be that that information  
11 is protected from disclosure to the extent it's even  
12 an issue.

13 In other words, to the extent he served as  
14 general counsel and he said he had conversations that  
15 had to do with options, he was wearing his lawyer hat.  
16 That would be information that he was providing to his  
17 client or receiving from his client in connection with  
18 his role as an attorney. That is protected from  
19 disclosure by attorney/client privilege.

20 JUDGE McKENNA: He was also COO and the  
21 question arises, you know, was this -- was this legal  
22 advice or was this executive advice?

23 And you can't hide behind the attorney/client  
24 privilege and play hide and seek.

25 MS. BAKER: Your Honor, the question hasn't

1 specified a timeline.

2 I think the testimony has established he  
3 wasn't COO the entirety of the company's existence.  
4 Mr. Wheeler's question has no time associated with it.  
5 So if that's the capacity in which Mr. Foster is  
6 answering the question as COO, I think the foundation  
7 needs to be laid for that line of questions.

8 JUDGE McKENNA: I agree.

9 MR. WHEELER: I believe Mr. Foster testified  
10 that he had business responsibilities in addition to  
11 legal responsibilities throughout his time at  
12 Integrity Advance.

13 JUDGE McKENNA: I think that's correct. You  
14 understand what we are getting at, Mr. Foster?

15 THE WITNESS: Yes, I do.

16 JUDGE McKENNA: Proceed Mr. Wheeler.

17 Reassert your question. Put a timeframe on  
18 it, and put a job title on it.

19 BY MR. WHEELER:

20 Q. Mr. Foster, in 2008, when you were executive  
21 vice president, were you a part of any discussions  
22 about Integrity Advance using a different loan process  
23 than the one we discussed earlier?

24 MS. BAKER: Same objection.

25 JUDGE McKENNA: Duly noted.

1 And the question would subsume that you're not  
2 asked to violate the attorney/client privilege, so we  
3 are not talking about that issue.

4 THE WITNESS: Understood.

5 At no time would I have ever discussed, to the  
6 extent it would have ever happened, that I would have  
7 ever discussed matters about the product or any of the  
8 products that would not have involved a legal  
9 discussion and therefore, are protected by the  
10 attorney/client privilege.

11 JUDGE McKENNA: Thank you. That puts a seal  
12 on the envelope.

13 BY MR. WHEELER:

14 Q. Mr. Foster, did Integrity Advance ever try to  
15 project the number of loans it might originate?

16 A. I don't recall.

17 Q. Do you recall Integrity Advance ever trying to  
18 project how much revenue it might generate?

19 A. I don't recall Integrity Advance ever  
20 preparing projections on its performance.

21 Q. So your testimony is Integrity Advance never  
22 tried to plan out how much revenue it might generate or  
23 how many loans it might originate?

24 A. I believe there that were some projections  
25 prepared by Hayfield Investment Partners that -- how it

1 may financially perform and that would have taken into  
2 consideration Integrity Advance performance, that's  
3 what I recall.

4 Q. Were you involved in those Hayfield  
5 projections?

6 A. I do not recall being involved in those  
7 detailed projections.

8 Q. Do you recall reviewing those projections?

9 JUDGE McKENNA: And that's as EVP.

10 THE WITNESS: Right. I do not recall  
11 reviewing those as EVP.

12 BY MR. WHEELER:

13 Q. We have talked a little bit about the loan  
14 agreement, Mr. Foster, who wrote Integrity Advance's  
15 loan agreement?

16 A. I'm sorry. My pause is I'm trying to make  
17 sure that anything I am discussing about that -- trying  
18 to determine what is protected by the attorney/client  
19 privilege.

20 I think what I safely can say is that no one  
21 at the Hayfield group of companies, including myself  
22 or Mr. Carnes, were consumer lawyers or experts in  
23 consumer law. So the strategy of the company was to  
24 always have highly compensated, highly acknowledged  
25 and reputable consumer law counsel, outside counsel,

1 to provide the counsel and guidance on those matters.

2 Q. So is it your testimony that outside counsel  
3 wrote the loan agreement?

4 A. I don't believe that would be violating the  
5 attorney/client privilege to say that all agreements  
6 were written by outside counsel.

7 Q. Did you review the loan agreement that outside  
8 counsel drafted?

9 MS. BAKER: I'm just going to caution you --

10 JUDGE McKENNA: I understand. And the next  
11 question is the one that will be problematic for you  
12 possibly.

13 MS. BAKER: Can I just register for the record  
14 --

15 JUDGE McKENNA: Yes.

16 MS. BAKER: -- my concern?

17 I just want to caution you, Mr. Foster, to not  
18 disclose communications that would be a violation of  
19 the -- or disclose the attorney/client privileged  
20 communications, violation of any privilege.

21 THE WITNESS: Yes, I acknowledge and recognize  
22 that.

23 Any answering of that question about loan  
24 agreements and legal advice from outside counsel would  
25 involve discussions that would infringe upon the

1 attorney/client privilege.

2 BY MR. WHEELER:

3 Q. Mr. Foster, I'm not asking about discussions.  
4 I'm asking did you review the loan agreement that  
5 outside counsel drafted?

6 MS. BAKER: And I would give the same  
7 admonition to the extent it was done in his capacity  
8 as general counsel. Whether or not he did something  
9 would be a disclosure of privilege and work product.

10 MR. WHEELER: I'm just asking did he review  
11 it. Not did he do anything to it. Just did he review  
12 it?

13 JUDGE McKENNA: Did he review it as executive  
14 vice president?

15 THE WITNESS: I did not review any contracts  
16 as executive vice president.

17 BY MR. WHEELER:

18 Q. Did you review it as general counsel?

19 MS. BAKER: Same objection and admonition.

20 JUDGE McKENNA: Duly noted.

21 THE WITNESS: That would be discussions that  
22 for me to talk about here would be violating the  
23 attorney/client privilege.

24 BY MR. WHEELER:

25 Q. Again, I'm not asking about discussions. I

1 was asking did you review it as general counsel?

2 MS. BAKER: Same admonition and objection.

3 THE WITNESS: Again, I believe any discussions  
4 or testimony involving that subject matter would  
5 violate the attorney/client privilege.

6 JUDGE McKENNA: Can we move on?

7 MR. WHEELER: Yes, Your Honor.

8 BY MR. WHEELER:

9 Q. Mr. Foster, to your knowledge did Mr. Carnes  
10 ever review the loan agreement?

11 MS. BAKER: Same objection and admonition to  
12 the extent that --

13 JUDGE McKENNA: Sustained.

14 MS. BAKER: Thank you.

15 THE WITNESS: I cannot answer that question  
16 without violating the attorney/client privilege.

17 BY MR. WHEELER:

18 Q. Mr. Foster, did Integrity Advance receive  
19 consumer complaints?

20 A. Yes, Integrity Advance did receive consumer  
21 complaints.

22 Q. Did someone at Integrity Advance have the  
23 responsibility for monitoring those complaints?

24 A. Yes.

25 Q. Who was that?



1           A.    The first -- it was a multi-faceted, I would  
2 say or multi-layer. Obviously, from the call center  
3 the initial people that took the phone call, the CSRs  
4 had ability to receive and resolve those complaints.  
5 If they felt that they could not or needed escalation,  
6 it would escalate, it's my understanding, to a manager  
7 in the call center.

8           And then beyond that ultimately to, I believe,  
9 the person that was in charge of collections, what we  
10 called collections and workouts. And then if it needed  
11 further attention, it could not be resolved beyond  
12 that, it came to the attention of the legal group in  
13 Kansas City.

14           JUDGE McKENNA: All right.

15           A.    And then ultimately my responsibility because  
16 the legal group reported to me.

17           JUDGE McKENNA: For the record. CSR stands  
18 for call center representative?

19           THE WITNESS: Customer service representative.  
20 Thank you. I apologize for using that acronym.

21 BY MR. WHEELER:

22           Q.    Did Integrity Advance track these complaints  
23 in any sort of way?

24           A.    Yes.

25           Q.    How so?

1           A.    I recall reviewing a spread sheet that was  
2 tracked by the call center as to the complaint and the  
3 status.

4           Q.    Did you ever discuss consumer complaints with  
5 Mr. Carnes?

6           MS. BAKER: I would object to that question to  
7 the extent it calls for the disclosure of privileged  
8 communications, and also issue the same admonition.  
9 Mr. Foster, it's Allyson Baker on behalf of the  
10 company, Integrity Advance.

11           THE WITNESS: Right. Yes and I agree that by  
12 the time it would have reached me, my review of any of  
13 those matters would have been in a legal nature and  
14 any of my discussions with Mr. Carnes would have been  
15 legal in nature, and commenting or providing testimony  
16 on that would be a violation of the attorney/client  
17 privilege.

18 BY MR. WHEELER:

19           Q.    Did Integrity Advance receive written  
20 complaints in addition to complaints lodged over the  
21 phone?

22           A.    Yes.

23           Q.    How were those complaints tracked?

24           A.    Sorry. Could you repeat that question. I  
25 didn't catch the end of that. How were they --

1 Q. I'm sorry. I was asking how were those  
2 complaints tracked, the written complaints?

3 A. I don't recall if they were tracked any  
4 differently.

5 Q. Mr. Foster, are you familiar with the term  
6 remotely created check?

7 A. Yes, I am.

8 Q. What is a remotely created check?

9 A. So I am not an expert in this matter. My  
10 familiarity is that it is a process permitted by the  
11 federal banking system that any business or person that  
12 is given the correct authority or proper authority can  
13 create a, what is called a check draft or check  
14 instrument, and present it to the -- sorry, present it  
15 for payment to the individual's financial institution  
16 for payment.

17 Q. Did Integrity Advance use remotely created  
18 checks?

19 A. Yes.

20 Q. Under what circumstances?

21 A. The specifics were handled by the call center  
22 on a day-to-day basis. I recall what the contract  
23 terms said.

24 Q. Earlier in your testimony you mentioned  
25 Hayfield Investment Partners, correct?

1 A. Yes, I did.

2 Q. And would it be correct to say that Hayfield  
3 was the parent company of Integrity Advance?

4 A. Yes, that would be accurate.

5 Q. Were you one of the partners of Hayfield?

6 A. I had an ownership in Hayfield Investment  
7 Partners.

8 Q. What was that ownership percentage?

9 A. It varied throughout the time period because  
10 some of my incentive compensation was additional equity  
11 in the company, and I believe it would have started at  
12 1 and a half percent and ended up at 3.3 percent or so.

13 Q. Mr. Foster, did -- excuse me, did Integrity  
14 Advance generate profits?

15 A. Yes, Integrity Advance at times did generate  
16 financial profits.

17 Q. Were those profits distributed to the parent  
18 company Hayfield?

19 A. I do recall profits being distributed from  
20 Integrity Advance to the parent Hayfield Investment  
21 Partners.

22 Q. Could you explain that process?

23 A. Could you clarify? I really don't -- I'm not  
24 sure what you are asking with what process.

25 Q. Well, you said profits were distributed to

1 Hayfield, correct.

2 A. Yes.

3 Q. So who would make that decision to distribute  
4 profits?

5 A. Up to Hayfield Investment Partners?

6 Q. Yes.

7 A. That would have been done by the legal manager  
8 of Integrity Advance.

9 Q. Does that mean you?

10 A. No.

11 Q. Who was the legal manager of Integrity  
12 Advance?

13 A. Hayfield Investment Partners.

14 Q. So who at Hayfield Investment Partners would  
15 decide to distribute profits from Integrity Advance to  
16 Hayfield?

17 A. The instructions would have had to have been  
18 done by the president, but what went into the decision  
19 on whether or not to have those profits distributed  
20 from Integrity Advance to Hayfield Investment Partners  
21 may have involved discussions with other owners as  
22 well.

23 Q. When you refer to the president, you meant  
24 James Carnes?

25 A. Correct.

1 Q. Were you personally involved in discussions  
2 about distributions of profits from Integrity Advance  
3 to Hayfield?

4 A. As a minority owner, that would not have been  
5 something that was part of any decision making. I  
6 would have been made aware of it after the decision was  
7 already made.

8 Q. Do you have knowledge of the amounts of  
9 Integrity Advance profits that were distributed to  
10 Hayfield?

11 A. I do not have knowledge of exact amounts that  
12 were distributed, no.

13 Q. Mr. Foster, did any of the lawyers  
14 representing Mr. Carnes contact you in advance of your  
15 testimony?

16 A. Yes.

17 Q. Who contacted you?

18 A. Allyson Baker.

19 Q. When did Ms. Baker contact you?

20 A. We had a brief conversation last night.

21 Q. Any other times you talked to Ms. Baker in  
22 advance of your testimony?

23 A. Previous -- any previous discussions that  
24 would have occurred before last night, would have been  
25 in Ms. Baker's representation of the company and in my

1 role as general counsel for Integrity Advance.

2 Q. I'm not asking for contents. I'm just asking  
3 did you have prior conversations with Ms. Baker aside  
4 from the one you mentioned?

5 A. Yes.

6 Q. And when was that?

7 A. From time to time since I was, you know,  
8 continued to keep the role of general counsel of  
9 Integrity Advance, I would have discussions that were  
10 updates on this matter from time to time.

11 MS. BAKER: And if I could just caution you,  
12 this is Ms. Baker. To the extent, you know, you can  
13 discuss the fact of the conversation, but you cannot  
14 disclose the nature of those contents or the topics of  
15 discussion. And I say that in my capacity as counsel  
16 for Integrity Advance in this matter.

17 THE WITNESS: Thank you. I understand.

18 BY MR. WHEELER:

19 Q. I want to go back a little bit. Earlier you  
20 testified that over time people spent less time on  
21 Integrity Advance matters; do you recall that  
22 testimony?

23 A. I do.

24 Q. And I believe you testified that people spent  
25 the most time on Integrity Advance in 2008. And it

1 sort of waned after that; was that your testimony?

2 A. Yes, that's -- yes.

3 Q. Is that because after 2008 Integrity Advance's  
4 loan process was established?

5 A. I would say that was due to a number of  
6 things. That certainly, your question of that it was  
7 established and being operated on a day-to-day basis  
8 through the call center and its office in Delaware, but  
9 in addition, Hayfield Investment Partners I think as I  
10 previously stated had over 20 subsidiaries and several  
11 lines of business completely unrelated to Integrity  
12 Advance that required the vast majority of people's  
13 time in the Kansas City office to concentrate on.

14 Q. Would it be fair to say that once Integrity  
15 Advance was established you just needed to deal with  
16 problems that arose?

17 A. So can you specify, are you speaking about me,  
18 personally, the office or -- and time period?

19 Q. Let's start with you personally.

20 A. Okay. With respect to Integrity Advance, the,  
21 as I think I previously said, testified, you know more  
22 than 90 plus percent of my time in my personal  
23 involvement with Integrity Advance would have been  
24 legal in nature, that personally did not -- okay. So  
25 now you're asking, I apologize, about problems to the



1 extent legal matters or complaints could be determined  
2 as problems. The answer would be yes.

3 Q. Did Integrity Advance's loan product change  
4 over time?

5 A. I don't recall a significant change in the  
6 product.

7 Q. Did Integrity Advance's loan agreement change  
8 over time?

9 A. My recollection is, in fact, I'm sorry, it's  
10 not my recollection, I feel confident that the  
11 company's outside counsel reviewed the agreement of  
12 Integrity Advance on a regular basis as did the  
13 Delaware Banking Commission through its annual  
14 licensing process and the exams it received all  
15 reviewed the agreement.

16 And to the extent that there was advice and  
17 guidance given that would require a change, I feel  
18 confident that the company would have followed that  
19 advice and counsel from the outside.

20 Q. So is it your recollection that the loan  
21 agreement changed?

22 A. There would have been some changes in the loan  
23 agreement over time.

24 Q. Would you classify those changes as  
25 significant?

1 A. As to the loan product itself, no.

2 Q. Are you familiar with loan agreement templates  
3 that Integrity Advance used?

4 A. Can you define what you mean by a template?

5 Q. Essentially a loan agreement that wasn't  
6 filled out. Sort of like the base application and loan  
7 agreement but without a consumer's information.  
8 Something that could be filled in by a consumer.

9 A. Yes, then I am familiar and remember that  
10 template, yes.

11 Q. Do you remember who approved the use of the  
12 template?

13 MS. BAKER: I just want to caution Mr. Foster  
14 to the extent that that question could be answered or  
15 must be answered by disclosing the contents of a  
16 communication that would have otherwise been  
17 privileged, please don't disclose that privileged  
18 information.

19 MR. WHEELER: The fact that a loan agreement  
20 template was approved is not protected information.

21 MS. BAKER: That's my admonition and objection  
22 to this question.

23 If it can be answered otherwise.

24 THE WITNESS: Yes. So I think I would say is  
25 that you asked me that I recall similar or if not the

1 exact question as to the loan agreement itself, and I  
2 would say whatever I answered to that loan agreement  
3 would apply to the template.

4 And I don't recall what I answered to be  
5 honest, even in the last few minutes.

6 BY MR. WHEELER:

7 Q. Well, what's your recollection right now about  
8 who approved the loan agreement template?

9 MS. BAKER: Same admonition and objection.

10 MR. SACHS: Your Honor, if it's easier, we  
11 could have the court reporter read back Mr. Foster's  
12 previous testimony with regards to the loan agreement.  
13 Since he's stated -- -

14 JUDGE McKENNA: I don't think that will be  
15 necessary based upon the answer that is going to be  
16 forthcoming.

17 Answer the question or don't.

18 THE WITNESS: Sorry, Your Honor. I apologize.  
19 I can't remember at this point what I -- with respect  
20 to attorney/client privilege, what I answered about  
21 that question on the loan agreement.

22 And my testimony is that whatever testimony I  
23 gave earlier today with respect to the loan agreement,  
24 would not have changed with respect to the template  
25 itself.

1 JUDGE McKENNA: Mr. Wheeler, what do you want  
2 to do? Do you want to read it back or do you want to  
3 move on?

4 MR. WHEELER: I would rather the witness  
5 answer the question now. I mean, he's still under  
6 oath. He can testify now about who --

7 JUDGE McKENNA: All right. That's fine. He  
8 can testify now.

9 So, court reporter would you please read back  
10 his prior answer?

11 THE COURT REPORTER: It's going to take me a  
12 minute to find it.

13 JUDGE McKENNA: I understand.

14 (Whereupon, a brief recess was had.)

15 JUDGE McKENNA: Back on the record.

16 MR. SACHS: Mr. Foster, are you on the phone?

17 THE WITNESS: Yes, I am.

18 JUDGE McKENNA: We are on the record.

19 Jeannie, can you read back the answer.

20 (Whereupon, the requested portion of the  
21 testimony was read back by the reporter.)

22 BY MR. WHEELER:

23 Q. Mr. Foster, Integrity Advance was a business,  
24 right?

25 A. Yes.

1 Q. And it had one product, right?

2 A. Yes. That's correct.

3 Q. That was a consumer loan?

4 A. Correct.

5 Q. And that consumer loan was formed by a loan  
6 agreement?

7 A. Correct.

8 Q. And that loan agreement was based on a  
9 template, right?

10 A. The -- so again our, you know, the vast  
11 majority of customers applied online. So to the extent  
12 you referred to a template as a blank application and  
13 agreement that was presented -- actually, let me  
14 rephrase that because it was the application that was  
15 presented to the customer to fill out. After an  
16 application was approved, they are re-presented then  
17 with documents that included a now auto filled out  
18 application of the information they had provided and  
19 then agreements that were based on the template that  
20 would have included all of the appropriate information  
21 not only personal information that they gave, but then  
22 the terms of their loan.

23 Q. Mr. Foster, someone had to approve that  
24 template, right?

25 A. Yes.

1 Q. Who approved the template?

2 MS. BAKER: I'm going to the give the same  
3 objection and admonition.

4 MR. WHEELER: Your Honor, this is a business  
5 decision. This company was a business. They had a  
6 loan product.

7 THE WITNESS: So.

8 MR. WHEELER: And who approved the template  
9 for that loan agreement that's a business decision.  
10 It has nothing to do with anything legal.

11 JUDGE McKENNA: The objection is duly noted.

12 THE WITNESS: So any of my involvement in the  
13 template or agreement itself would not have been in a  
14 business capacity it would a been in a legal capacity  
15 and protected by the attorney/client privilege.

16 BY MR. WHEELER:

17 Q. Mr. Foster, who approved the loan agreement  
18 template? That's a business decision. I'm not asking  
19 for any legal advice you provided. I'm asking who  
20 approved the loan agreement template.

21 MS. BAKER: I make the same admonition, just  
22 for the record.

23 MR. SACHS: I'll object as well, Your Honor.

24 JUDGE McKENNA: What's the basis?

25 MR. SACHS: My client has answered the

1 question at least twice now. And asserted that he,  
2 when he looked at any template, it was exclusively in  
3 an attorney role, not in a business --

4 MR. WHEELER: I'm not asking him --

5 JUDGE McKENNA: That's enough. I figured it  
6 out. Please answer the question, and that question  
7 would be answered by an individual.

8 THE WITNESS: Could you repeat the question to  
9 make sure I understand what you guys are requesting  
10 me?

11 BY MR. WHEELER:

12 Q. Who approved the loan agreement template that  
13 Integrity Advance used?

14 A. To the extent I have any knowledge about who  
15 approved it for use, would have been in my capacity as  
16 legal counsel for the company and protected by the  
17 attorney/client privilege.

18 Q. That is the same nonanswer, Mr. Foster.

19 Who approved the loan agreement template?

20 MS. BAKER: I -- just -- you've noted it?

21 JUDGE McKENNA: Yes, ma'am.

22 MS. BAKER: Thank you.

23 THE WITNESS: I believe I already answered  
24 that question.

25 MR. WHEELER: I don't think you did.

1 JUDGE McKENNA: All right. He's not going to  
2 answer it, so let's move on.

3 There is a thing called adverse inference.

4 BY MR. WHEELER:

5 Q. Mr. Foster, a little earlier we talked about  
6 profits that Integrity Advance generated being  
7 distributed to Hayfield; do you recall that testimony?

8 A. I do.

9 Q. And you testified that Integrity Advance  
10 profits were distributed to Hayfield?

11 A. Yes, I did.

12 Q. Were there Integrity Advance profits that were  
13 not distributed to Hayfield?

14 A. Yes.

15 Q. Could you describe that?

16 A. So I guess it comes down to a definition of  
17 gross profit/net profit, I'm not a financial person,  
18 but Integrity Advance made money, and it had to pay its  
19 vendors and third-party contractors some of that money  
20 and lead providers before it could be distributed to  
21 Hayfield Investment Partners.

22 Q. So were there -- once Integrity Advance paid  
23 vendors and contractors, were there additional profits  
24 that were not distributed to Hayfield?

25 A. No, not that I'm aware of.



1 MR. WHEELER: No further questions, Your  
2 Honor.

3 MS. BAKER: Good morning, Mr. Foster. It's  
4 Allyson Baker.

5 THE WITNESS: Good morning.

6 CROSS EXAMINATION

7 BY MS. BAKER:

8 Q. Mr. Foster, you testified before in response  
9 to questions that Mr. Wheeler asked you about  
10 relational amount of time that you spent on Integrity  
11 Advance affairs in your capacity as both executive vice  
12 president, COO, and general counsel, and I'm wondering  
13 if you can give me roughly, a rough percentage of time  
14 that you would have spent on Integrity Advance affairs  
15 in 2008 in the capacity of also working for other  
16 Hayfield companies?

17 A. Yes. I understand the question.

18 So in all of my personal capacities for  
19 Hayfield Investment Partners estimating that in 2008,  
20 say 70 percent of time would have been spent on  
21 Integrity Advance matters, legal or otherwise, and that  
22 would have diminished as time went by.

23 Q. Same question for 2009, a rough percentage?

24 A. Closer to 50 percent or less.

25 Q. Same question for 2010, a rough percentage?

1 A. My recollection is that by 2010 Integrity  
2 Advance was running independently very well by the call  
3 center and office in Delaware, and the time spent by  
4 myself would have been, you know, sub 50 percent, 25/30  
5 percent.

6 Q. Same question for 2011, please?

7 A. Similar. Maybe by then dropping even below 25  
8 percent.

9 Q. Same question for 2012?

10 A. By 2012 it would have been significantly less  
11 than that even, 10 to 20 percent.

12 Q. And I think you testified earlier, Mr. Foster,  
13 that you continued to work with the business until its  
14 formal wind down in 2013; is that right?

15 A. Integrity Advance I continued to serve as  
16 executive vice president, general counsel, secretary  
17 and I believe assistant treasurer.

18 Q. And in 2013 roughly what percentage of your  
19 time was spent on specifically Integrity Advance's  
20 business?

21 A. Less than five percent.

22 MS. BAKER: Thank you for your time. No  
23 further questions.

24 JUDGE McKENNA: Anything further on direct?

25 MR. WHEELER: Nothing further, Your Honor.

1 JUDGE McKENNA: All right. Thank you,  
2 Mr. Foster. You have a nice day.

3 THE WITNESS: Thank you very much. You have a  
4 nice day as well.

5 JUDGE McKENNA: Now where were we?

6 (To Mr. Carnes) You're still under oath, sir.  
7 You understand that?

8 MR. CARNES: I do.

9 JUDGE McKENNA: All right.

10 DIRECT EXAMINATION (continuing.)

11 BY MR. WHEELER:

12 Q. I still have a few additional questions,  
13 Mr. Carnes.

14 Did Integrity Advance charge a fee to  
15 consumers who took loans?

16 A. Yes.

17 Q. What was that fee?

18 A. It was as Mr. Foster described, \$30 per  
19 hundred borrowed for new customers. And \$24 per  
20 hundred borrowed for returning customers.

21 Q. Did that change over time?

22 A. No.

23 Q. Who decided on the fee amount?

24 A. It was an industry standard. Everybody  
25 charged the same thing.

1 Q. But who made the decision that Integrity  
2 Advance would charge the industry standard?

3 A. I think as a -- you know, I really don't  
4 remember who made the decision. I mean, we were  
5 forming the company, prior companies we had charged the  
6 same amount, and that was just used.

7 Q. But you had authority over Integrity Advance,  
8 right?

9 A. I did have authority over Integrity Advance.

10 Q. And you were the CEO?

11 A. De facto CEO of Integrity Advance, yes.

12 Q. So is it fair to say that you at least  
13 approved the fee structure of Integrity Advance's  
14 loans?

15 A. Approved being, again, stamp of approval, no.  
16 I didn't say, I approve this. But I knew that they  
17 were being used and I could have changed it if I wanted  
18 to.

19 Q. So if a new consumer took a \$100 loan --

20 JUDGE McKENNA: A what? One hundred?

21 MR. WHEELER: Yes. A loan of \$100.

22 BY MR. WHEELER:

23 Q. And they called Integrity Advance and said  
24 they wanted to pay off their loan prior to their next  
25 pay date, how much would that consumer pay?

1 A. One hundred and thirty dollars. You said a  
2 new consumer, correct?

3 Q. Correct.

4 And that represents the principal and a \$30  
5 finance charge?

6 A. Yes, sir.

7 Q. One finance charge?

8 A. Yes.

9 Q. For that consumer, is \$130 would have appeared  
10 on their loan agreement?

11 A. Yes.

12 Q. Is that something you understood when you were  
13 the CEO of Integrity Advance?

14 MS. BAKER: Objection. Vague.

15 JUDGE McKENNA: Overruled. I don't know how  
16 you can call that vague.

17 THE WITNESS: Are you saying, did I understand  
18 that on the -- in the TILA box that it said, sum of  
19 payments was \$130.

20 BY MR. WHEELER:

21 Q. For a fictional consumer who had a \$100 loan,  
22 a new consumer, yes.

23 THE COURT REPORTER: I'm sorry?

24 BY MR. WHEELER:

25 Q. Yes. For a new consumer. The fictional

1 consumer we're discussing, who had \$100 loan, do you  
2 understand that their TILA disclosure would say \$130?

3 A. Yes.

4 JUDGE McKENNA: Mr. Wheeler?

5 MR. WHEELER: Yes.

6 JUDGE McKENNA: Could you string those words  
7 together a little slower?

8 MR. WHEELER: I'll do my best, Your Honor.

9 JUDGE McKENNA: I mean, only if you want to  
10 have a record.

11 MR. WHEELER: An actual record of this  
12 proceeding?

13 JUDGE McKENNA: Yeah.

14 MR. WHEELER: I will try again.

15 BY MR. WHEELER:

16 Q. We were talking about a new consumer who took  
17 a \$100 loan, that consumer, you testified would be --  
18 receive a \$30 finance charge, correct?

19 A. Yes.

20 Q. And that TILA disclosure that consumers would  
21 receive would say \$130, correct?

22 A. Correct.

23 Q. And you -- that's something you understood  
24 when you were CEO of Integrity Advance?

25 A. Correct.

1 MS. BAKER: I just have an objection to the  
2 use of that understood, it's vague.

3 I have said that before.

4 JUDGE McKENNA: All right. Duly noted.  
5 Overruled.

6 BY MR. WHEELER:

7 Q. [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
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MS. BAKER: Your Honor, to the extent we are discussing confidential proprietary information that concerns an entity that is not party to this case, so I would ask that the last question/answer and this line of questions be filed under seal in accordance with what Your Honor did yesterday as to the Hayfield Financials.

JUDGE McKENNA: Granted.

MS. BAKER: Thank you. And I don't know if there's anyone in this courtroom who is not from either the Office of Enforcement. I know the folks from our side. But I would ask that they be asked to



1 leave the room.

2 JUDGE McKENNA: Voir dire them.

3 MS. BAKER: I don't want to do that.

4 But I will trust that Office of Enforcement  
5 Counsel will identify anyone in the audience who is  
6 not from their office and ask them to leave during  
7 this line of questions out of respect for the fact  
8 that it's now under seal.

9 JUDGE McKENNA: Granted.

10 MS. BAKER: Thank you.

11 MR. COWIE: Your Honor, everyone in the room  
12 is -- this is Craig Cowie -- everyone in the room is  
13 either an attorney with the Office of Enforcement or  
14 working with the attorneys for the Office of  
15 Enforcement on this matter.

16 MS. BAKER: Your Honor, yesterday there were  
17 two individuals, I don't want to point them out, but  
18 there were two individuals sitting here now who were  
19 asked to leave the room because they were not part of  
20 the Office of Enforcement.

21 MR. COWIE: That was Ms. Baker's  
22 characterization of their role, which was incorrect.  
23 They are, in fact, assisting the Office of Enforcement  
24 with this matter, and they are properly subject to  
25 information that is under seal in this case. They

1 should not be excluded.

2 MS. BAKER: Your Honor, that was not my  
3 characterization. I don't know who they are. So the  
4 Office of Enforcement made a decision to ask them to  
5 leave yesterday and that needs to be the case today as  
6 well.

7 JUDGE McKENNA: No, it doesn't need to be the  
8 case today. What we will do is we will backup. And  
9 we will have them indicate who these people are, so  
10 that we can make a determination on whether they  
11 should be here or not.

12 And I think that what we want to do is start  
13 out by making an appearance.

14 MR. COWIE: Sure. I have made an appearance  
15 before in this matter. This is Craig Cowie, on behalf  
16 of the Office of Enforcement. We have Mr. Marlow, who  
17 is a paralegal working with the Office of Enforcement.  
18 Ms. Warrell, is an attorney with the Office of  
19 Enforcement.

20 Zack Watkins, is a summer intern with the  
21 Office of Enforcement. These two people I believe are  
22 summer associates at Ms. Baker's firm.

23 Mr. Bloom and Ms. Kelly, thank you. I  
24 apologize. Work in the bureau's research and markets  
25 division and they are assisting us with this

1 investigation -- oh, I'm sorry. Did I get the  
2 wrong -- oh, the data team, right. They are in our TI  
3 department and they are assisting us with this  
4 investigation. And Ms. Buchko is also an attorney for  
5 the Office of Enforcement.

6 JUDGE McKENNA: Just a second.

7 All right. So before you speak on the issue,  
8 Mr. Wheeler, do you take the position that as Bureau  
9 employees that they are bound by confidentiality?

10 MR. WHEELER: I do, Your Honor.

11 JUDGE McKENNA: All right. Is it your desire  
12 that they remain in?

13 MR. WHEELER: That would be my desire, yes.

14 JUDGE McKENNA: And what is the predicate for  
15 that.

16 MR. WHEELER: The fact that they have been  
17 assisting us with this matter.

18 JUDGE McKENNA: And if they left is that going  
19 to inhibit your ability to -- for them to perform  
20 their job function?

21 MR. WHEELER: In general, yes, I mean, frankly  
22 I don't have a lot of questions about Stevens. So I  
23 think we've had a long argument about almost nothing,  
24 but -- so the answer to your question is: I think  
25 them not being in the room for questions about Stevens

1 and distributions, probably doesn't hurt us. But in  
2 general, yes, we would like to have them in the room  
3 in general.

4 MS. BAKER: Your Honor, if I could just make a  
5 note for the record. I'm a little unclear as to who  
6 the parties are in this matter. It is Enforcement  
7 Counsel or is it the Consumer Financial Protection  
8 Bureau? Because if it's Enforcement Counsel, then it  
9 should only be folks who are affiliated with that  
10 office. And Mr. Cowie, who I know is a lawyer in that  
11 office, you know, has spoken on behalf of and  
12 introduced these different individuals.

13 If it's the whole CFPB, then I'm definitely  
14 confused because this matter goes up to the director  
15 of the CFPB, who by that definition would be an  
16 employee and a party to this case.

17 So I'm uncertain as to how the Office of  
18 Enforcement is defining who the party is in this case.  
19 And that's the purpose of -- that's why I'm not clear.  
20 Either everybody comes in, and this process is  
21 undefined or it's the case that Enforcement Counsel is  
22 the party to this matter, that's how they've defined  
23 themselves and everybody who is affiliated with the  
24 Office of Enforcement, of course, is a party.

25 But it shouldn't be the case that the Bureau

1 gets an expansive definition of who its interests are,  
2 in connection with this proceeding. So that's what  
3 I'm not clear of, Your Honor.

4 JUDGE McKENNA: I understand what you are  
5 saying.

6 First of all, if you're asserting that Richard  
7 Cordray is a party to this proceeding, you are wrong.

8 MS. BAKER: I'm not, Your Honor. That's what  
9 I'm trying to understand.

10 JUDGE McKENNA: All right. So that's point  
11 one.

12 He is the decider.

13 MS. BAKER: Right.

14 JUDGE McKENNA: All right. So we get that out  
15 of the way.

16 Now under the APA, as I'm sure you're aware,  
17 the parties to the proceeding are allowed to use  
18 technical experts as long as they are not in the  
19 decision-making chain.

20 MS. BAKER: Your Honor, that's my  
21 understanding as well. But my question is a little  
22 bit and it's really a question I'm asking of you  
23 because I can't directly ask opposing counsel, but I'm  
24 not clear as to who the parties are in this matter as  
25 the bureau understands it.

1 I'm happy to take their definition, but they  
2 haven't used one consistently and that's my concern.  
3 And it's one that's relevant because we're discussing  
4 -- or as Mr. Wheeler just represented we are about to  
5 discuss confidential proprietary information  
6 concerning parties that are not definitively parties  
7 to this case.

8 And what I'm trying to understand is --

9 JUDGE McKENNA: Individuals who are not  
10 parties?

11 MS. BAKER: Well, a private equity firm that's  
12 not a party to this case and Hayfield Investment,  
13 which is not a party to this case. And their  
14 proprietary confidential financial information is  
15 about to become maybe potentially responsive to some  
16 questions and the Protective Order in this case  
17 contemplates coverage of the parties.

18 And all I want to understand is --

19 MR. WHEELER: Just for the record, a party --

20 MS. BAKER: -- who Mr. Wheeler believes are  
21 the parties?

22 MR. WHEELER: I have a copy of the Protective  
23 Order. The party includes: The Bureau, officers,  
24 directors, employees, Bureau contractors, et cetera.  
25 That's the way we defined it in the Protective Order.

1 MS. BAKER: Again, Your Honor, that doesn't  
2 really explain to me who the parties are to this case.

3 I mean, is it Mr. Wheeler's position that  
4 everybody employed by the CFPB is a party to this  
5 case?

6 MR. WHEELER: We're not asking for everyone at  
7 the CFPB to come and sit in the gallery.

8 JUDGE McKENNA: All right. I think that this  
9 is much to do about nothing. But I'm not going to  
10 have an issue where I don't need to have an issue.

11 MS. BAKER: Thank you, Your Honor.

12 JUDGE McKENNA: So would you please leave the  
13 room?

14 How is that?

15 MR. WHEELER: Could you read back the last  
16 question and answer? I frankly forgot where we were.

17 (Whereupon, the requested portion of the  
18 testimony was read back by the reporter.)

19 BY MR. WHEELER:

20 Q. Mr. Carnes, when you speak of the private  
21 equity fund, was that called Stevens?

22 A. It was called Stevens Capital Partners.

23 MR. WHEELER: Mr. Jefferson, could we see, I  
24 think it's Exhibit -- it's the Hayfield chart, it's 67.

25 THE WITNESS: Sixty-seven you said?

1 MR. WHEELER: Sixty-seven or sixty-five. I  
2 think it's 67. Yeah, this is it.

3 BY MR. WHEELER:

4 Q. So I just want to be clear in this Exhibit 67,  
5 where is Stevens represented?

6 A. By SI Hayfield on the left top second box from  
7 the top, 41.8251 percent.

8 Q. And your recollection is that's an accurate  
9 representation of Stevens' interest in Hayfield?

10 A. At that time.

11 Q. What would that time be?

12 A. Like I said yesterday, I think this was  
13 produced sometime near the end of operations.

14 Q. [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]



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MR. WHEELER: No further questions, Your Honor.

8

JUDGE McKENNA: Thank you.

9

And are there going to be any exhibits that are going to come in that you are going to proffer based off of this witness?

10

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MR. WHEELER: No additional exhibits with this witness, Your Honor.

13

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JUDGE McKENNA: All right. Thank you.

15

MS. BAKER: Your Honor, you mean in addition to what was introduced yesterday?

16

17

JUDGE McKENNA: Yeah.

18

MS. BAKER: Okay.

19

Good morning, Mr. Carnes.

20

MR. CARNES: Good morning.

21

CROSS EXAMINATION

22

BY MS. BAKER:

23

Q. Mr. Carnes, yesterday you testified at length

24

about the nature of the business interests that were

25

owned by the Hayfield companies; do you recall that

1 testimony?

2 A. Yes.

3 Q. And I believe you also testified that you were  
4 the CEO of those businesses; do you recall that  
5 testimony?

6 A. I recall that I said I was CEO of Hayfield,  
7 which by de facto would have been CEO of the child  
8 companies.

9 Q. If I could ask you, please, to go back to what  
10 has been marked as Enforcement Counsel Exhibit Number  
11 67 in the binder over there. As you know, the tab 67,  
12 if you flip to that tab you will get to this exhibit.

13 A. Okay.

14 Q. Thank you. This document is a copy of the  
15 Hayfield corporate structure, I believe it was admitted  
16 into evidence. Is this a true, a correct copy of  
17 Hayfield's corporate structure to the best of your  
18 understanding?

19 A. It is.

20 Q. To the best of your understanding, what  
21 timeframe would this document reflect?

22 A. Like I said yesterday, near the end of  
23 operations of Hayfield.

24 Q. Which would be around what year --

25 A. 2012.

1 Q. -- or years?

2 Having said that, does this document more or  
3 less reflect all of the -- the fact that there were  
4 numerous business interests owned by Hayfield between  
5 2008 and 2013 or '12?

6 A. Yes.

7 Q. So how is this document different than -- what  
8 makes this document specific to 2012, if you will,  
9 versus all of those other years?

10 A. Well, it would have looked different in two  
11 ways. You know, if you produced this document when  
12 Hayfield was formed, you would have different  
13 percentages on the top of ownership and not all of the  
14 boxes would exist on the bottom.

15 Q. How many different business interests are  
16 below -- and let me ask you this: The boxes below the  
17 Hayfield Investment Partners, big shaded gray box,  
18 those reflect different business interests that  
19 Hayfield had at the time of, say, call it 2012; is that  
20 fair to say?

21 A. Yes.

22 Q. Okay. How many different business interests  
23 would you count or can you count for us?

24 A. Define a business interest.

25 Q. Each of these little boxes. So if you will

1 there is a gray box and then there are little spokes.

2 A. I count 14 boxes.

3 Q. Fourteen boxes.

4 And each of those boxes, is it fair to say  
5 represent a distinct business interest or company that  
6 Hayfield Investment Partners at one point or another  
7 has had -- has been the umbrella business for?

8 A. Yes.

9 Q. Can you tell me for 2008, and we established  
10 for the record that you were involved with the  
11 Integrity Advance business, you agree that we have  
12 established that?

13 A. We have established that.

14 Q. Okay. Can you tell me for 2008 the per -- the  
15 relative percentage of time that you spent on Integrity  
16 Advance vis-a-vis these other 13 boxes?

17 A. To the extent that my time was spent on  
18 Hayfield, it was spent in 2008 primarily on Integrity  
19 Advance.

20 Q. And primarily means what? What is a rough  
21 percentage?

22 A. Well, Integrity Advance started lending in  
23 2008 and I believe in May, I think. And so there would  
24 have been some preparation up to May to start lending  
25 and then after May continue to lend. There were

1 businesses also during the wind down stage leading up  
2 to and after May, so call it two-thirds of my time  
3 would have a been Integrity and one-third would have  
4 been the wind down of what we were getting out of.

5 Q. I see. So about 66 percent of the time that  
6 you spent on Hayfield business units or enterprises was  
7 spent on Integrity Advance in 2008?

8 A. Yes.

9 Q. Okay. Now before we continue, I want to ask  
10 you this: You noted that -- or you suggested that you  
11 spent time on other business efforts other than  
12 Hayfield; is that right?

13 A. That's correct.

14 Q. What -- if you could just give us some rough  
15 allocation of time between Hayfield business efforts  
16 and other business efforts in the universe of time that  
17 you spent on professional endeavors in 2008.

18 A. 2008, I probably spent 75 percent of my time  
19 on Hayfield and 25 percent of my time on other things.

20 Q. Now I want to ask you the same question for  
21 2009 or the same series of questions.

22 JUDGE McKENNA: Just one second. Excuse me.

23 MS. BAKER: Of course.

24 JUDGE McKENNA: So would that be 75 percent  
25 you said for Hayfield, and so that would be 75 percent

1 of two-thirds?

2 THE WITNESS: It would be two-thirds of 75  
3 percent would be 50 percent spent on Integrity.

4 JUDGE McKENNA: There you go.

5 MS. BAKER: Thank you, Your Honor. That's a  
6 great question.

7 BY MS. BAKER:

8 Q. So 66 percent of 75 percent as you and Your  
9 Honor just determined is 50 percent of your total  
10 professional time was spent on Integrity Advance in  
11 2008?

12 A. For 2008.

13 Q. Same question for --

14 A. Roughly, again.

15 Q. Roughly.

16 A. This is rough estimate to the best of my  
17 ability.

18 Q. For 2009 same questions.

19 With respect to the Hayfield family of  
20 companies, what percentage of total time did you spend  
21 of the time you devoted to Hayfield business units on  
22 Integrity Advance operations?

23 A. Again, it waned over time in 2000 -- it was  
24 two-thirds in '08, '09 might have been 50 percent, 10  
25 was probably less than that and by 11 it was a very

1 small percentage.

2 JUDGE McKENNA: And during all of those  
3 periods of time, was the percentage of your time on  
4 Hayfield still at the 75 percent level?

5 THE WITNESS: It varied over time depending on  
6 the needs of Hayfield and the needs of the other  
7 businesses, they were up and down. Generally I would  
8 say that I spent somewhere between --

9 JUDGE McKENNA: For 09?

10 THE WITNESS: Let's say '09 was probably 70  
11 percent maybe.

12 JUDGE McKENNA: '10?

13 THE WITNESS: Sixty.

14 JUDGE McKENNA: '11?

15 THE WITNESS: Fifty.

16 JUDGE McKENNA: '12?

17 THE WITNESS: Eighty or ninety.

18 JUDGE McKENNA: Who should I send the bill to?

19 MS. BAKER: Thank you, Your Honor. You were  
20 following my line of questions. That's where I was  
21 going.

22 BY MS. BAKER:

23 Q. I just want to make sure we do have a clear  
24 record. The answers you just gave to Judge McKenna  
25 concerned the amount of percentage of time total of all

1 of your professional endeavors that you spent just on  
2 Hayfield, so --

3 A. Right.

4 Q. -- is that right, Mr. Carnes?

5 A. That's correct.

6 Q. So 70 percent about in 2009, 60 percent in  
7 2010, 50 percent of your time in 2011 and then 80 or 90  
8 percent of your time in 2012?

9 A. That's correct.

10 Q. And of that, let's go back and just make sure  
11 we have a precise accounting of the time that you spent  
12 on Integrity Advance specifically.

13 So for 2009 I believe you said that you spent  
14 of the Hayfield total, 50 percent of that time on  
15 Integrity Advance; is that right?

16 A. Yes.

17 Q. And same question for 2010 of the 60 percent  
18 Hayfield total, so of the Hayfield total, what  
19 percentage of time approximately did you spend on  
20 Integrity Advance?

21 A. I'm going to guess 25 percent.

22 Q. So 25 percent of 60 percent of your total  
23 business endeavors?

24 A. Yes.

25 Q. Okay. And same question for 2011, what



1 percentage of time roughly did you spend on Integrity  
2 Advance of all of the Hayfield time that you spent in  
3 your professional endeavors?

4 A. Probably 15 percent.

5 Q. Fifteen percent?

6 So 15 percent of 50 percent of your  
7 professional endeavors roughly was spent on Integrity  
8 Advance business operations in 2011?

9 A. By then the company it was a well running unit  
10 and didn't need a lot of attention.

11 Q. Same question for 2012. What percentage of  
12 time did you spend of the Hayfield business time that  
13 you spent in your professional endeavors, what  
14 percentage of time did you spend in 2012 on Integrity  
15 Advance business operations?

16 A. Similar to '11.

17 Q. So about 15 percent?

18 A. Good guess.

19 Q. And I think we have heard testimony and you  
20 have been in the room for this testimony, the company  
21 -- when did the company wind down?

22 A. Hayfield closed the transaction with EZ Corp,  
23 December 20th of 2012, from that point on we were  
24 contractually obligated to do certain things through  
25 that sale agreement. One of which was to wind down

1 Integrity, and we had until the end of June to  
2 completely wind Integrity down. So we could no longer  
3 make loans. It was in merely wind down mode.

4 Q. So the end of June of 2013?

5 A. '13, yes.

6 Q. So I'm going to ask you same questions that  
7 I've asked you, just for 2013, as well. Of the total  
8 time that you spent on professional endeavors in 2013,  
9 what percentage was allocated to Hayfield, roughly?

10 A. At that point I was fully employed by EZ Corp,  
11 and it was -- the assets that they purchased from  
12 Hayfield had been transferred. So other than things  
13 like dealing with this matter, I had very little  
14 involvement at all in Hayfield other than overseeing  
15 the wind down of the assets that were remaining.

16 Q. So what would you estimate is the percentage?

17 A. Of my total time? Again, you take Hayfield  
18 and mix. And now, you know we're saying my total  
19 business time was probably spent on this maybe five or  
20 ten percent.

21 Q. Of Hayfield?

22 A. Yes. Well -- yes. For the first half of '13,  
23 and then post -- or in the second half of '13 the only  
24 thing I had to do with Hayfield or Integrity Advance  
25 was things relating to this matter.

1 Q. And then with respect to the time you would  
2 have spent on Integrity Advance, of that five to ten  
3 percent you spent on Hayfield, what percentage would  
4 have been spent on Integrity Advance?

5 A. At that point that was one of the assets that  
6 wasn't purchased and so it was probably, you know, half  
7 of -- half or more of that -- roughly half.

8 Q. So roughly half of five to ten percent?

9 A. Yes.

10 Q. Now you mentioned before the EZ Corp  
11 transaction, and we heard some testimony at the end of  
12 yesterday about that, did that transaction involve a  
13 purchase of Integrity Advance assets?

14 A. Again, it was very restrictive. It just -- it  
15 just purchased the customer list, in a subset of  
16 states.

17 Q. So if you had to, and I understand this is --  
18 I'm asking you this questions based on your estimates,  
19 understanding it happened a few years ago. If you had  
20 to kind of give a percentage of the total assets that  
21 EZ Corp purchased from Hayfield, what percentage would  
22 be allocated to Integrity Advance specifically?

23 A. I don't think it would be fair to venture a  
24 guess because I didn't put the value on it that they  
25 did.

1 Q. But they purchased a relatively small number  
2 of assets?

3 A. Of what -- the big picture of what they  
4 purchased was, it was a very small piece of what they  
5 got.

6 Q. And "it" being Integrity Advance assets?

7 A. Yes.

8 Q. If I could ask you please to go back to that  
9 binder in front of you, and go back to tabs, please, to  
10 what has been previously admitted and marked as  
11 Enforcement Counsel Exhibit 65.

12 Do you see that?

13 A. I do.

14 Q. Mr. Carnes, I think you offered some limited  
15 testimony about this document yesterday, do you recall  
16 that testimony?

17 A. Vaguely.

18 Q. One of the things I believe you said yesterday  
19 is that all of the people on this org chart were able  
20 to come speak with you; is that right?

21 Meaning everyone below Mr. Foster, for  
22 example, were able to come into your office and talk to  
23 you at a point in time?

24 JUDGE McKENNA: Give me the exhibit number  
25 again, please.

1 MS. BAKER: Sure. Absolutely, Your Honor,  
2 it's Exhibit No. 65 in Enforcement Counsel's binder.  
3 And so if you go to tab 65, it's the document  
4 immediately behind it.

5 JUDGE McKENNA: Right.

6 THE WITNESS: I generally had an open-door  
7 policy that allowed, you know, anybody that wanted to  
8 pop in and say something, to do so.

9 In the case of this chart, George Davis would  
10 have to hop on a plane to do it, but everybody else  
11 was in the same office.

12 BY MS. BAKER:

13 Q. And did any of the people on this chart and  
14 let me be specific, I'm talking about any name in a  
15 little box other than your name, did any of these  
16 people on this chart ever ask you or talk to you about  
17 your understanding of the scripts that the call center  
18 representatives used in connection with the loans?

19 A. No.

20 Q. Mr. Carnes, did you ever review any of those  
21 call center scripts that the call center  
22 representatives used in connection with the loans?

23 A. No.

24 Q. Did you ever revise any of those call center  
25 scripts that the call center representatives used in

1 connection with the loans?

2 MR. WHEELER: Objection, Your Honor,  
3 relevance.

4 JUDGE McKENNA: Overruled.

5 THE WITNESS: I did not revise any scripts.

6 BY MS. BAKER:

7 Q. Did you ever edit any call center scripts that  
8 call center representative used in connection with the  
9 loans?

10 A. No, I never saw them.

11 Q. Mr. Carnes, were you involved in drafting any  
12 part of any loan agreement that a consumer used in  
13 connection with a loan in this matter?

14 A. No.

15 Q. Were you involved in revising any part of any  
16 loan agreement that a consumer would have had in  
17 connection with a loan made by Integrity Advance?

18 A. No.

19 Q. Were you ever involved in revising any  
20 language to any disclosure in that loan agreement?

21 A. No.

22 Q. Did you ever revise or edit any other language  
23 in the loan agreement that was used in connection with  
24 any loan that was made to a consumer by Integrity  
25 Advance?

1 A. No.

2 Q. And you testified earlier, I believe, or you  
3 heard testimony that there were versions of this loan  
4 agreement?

5 A. Yes.

6 Q. Did you ever as to any version of any loan  
7 agreement make edits or revisions to the language in  
8 that loan agreement?

9 A. No.

10 Q. Did you ever as to any version of any loan  
11 agreement make edits or revisions to any disclosure in  
12 the loan agreement?

13 A. No.

14 MS. BAKER: Court's indulgence for a moment,  
15 please.

16 JUDGE McKENNA: Sure.

17 BY MS. BAKER:

18 Q. Mr. Carnes, if I could ask you please to turn  
19 to, in Enforcement Counsel -- the binder in front of  
20 you or maybe it's the other binder, what was previously  
21 marked and entered into evidence as Exhibit 18.

22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED] [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED] [REDACTED]

25 [REDACTED] [REDACTED]



1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
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5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 Q. Mr. Carnes, do you have an understanding of  
24 how many Integrity Advance customers came to Integrity  
25 Advance via its website?

1 A. Customers, so you mean people who obtained a  
2 loan?

3 Q. Well, who were initially introduced to the  
4 company through a website as opposed to through lead  
5 generation, which we discussed yesterday?

6 A. So in the beginning of the company in 2008,  
7 there was a small percentage of consumers that would  
8 come back to the website. By the time that 2012  
9 happened, we had well over half, maybe even two-thirds  
10 of business we did were from consumers coming back for  
11 a second or Nth loan, from after paying off their first  
12 loan.

13 Q. And I'm sorry what percentage?

14 A. By the time 2012 happened, I don't know the  
15 percentage from '08, but it jumped up in '09 and  
16 continued to rise in 2012 or in 2012 I want to say, I'm  
17 going to ballpark it at about two-thirds of business we  
18 did was to people who came back after having a first  
19 loan.

20 Q. And they might have come back through the  
21 website?

22 A. They generally almost always came back through  
23 the website or called us.

24 Q. But as to new customers, what's your sense of  
25 percentages for each of those years 2008, uniquely new

1 customers to the company?

2 A. Coming to their website?

3 Q. Yes, coming through the website?

4 A. Again, it was small in 2008, I couldn't --

5 Q. If you know.

6 A. I don't know the number exactly. I just know  
7 it was a smaller percentage knowing that 2009 it was  
8 significantly higher and by the time we finished, it  
9 was roughly, again, I don't remember off -- exactly  
10 what it was, but call it 60/65 percent of the consumers  
11 that we lent to by 2012 were coming back for a second  
12 or more loan.

13 Q. I think you testified yesterday that you had  
14 an understanding that Integrity Advance had a lending  
15 license from the State of Delaware?

16 A. That's correct.

17 Q. Do you have any high level understanding of  
18 what that entailed or what that meant?

19 A. I have a high level, I know that in the  
20 beginning to obtain a lending license there is a  
21 lending license application that gets filled out. I  
22 know that I was asked to fill out some of that with  
23 regard to myself. There were financials I think I had  
24 to submit for myself. There were -- it was a, you  
25 know, application. So you had all kinds of blanks to

1 fill in. Most of the application and its components  
2 were orchestrated by Mr. Foster in conjunction with  
3 outside counsel is who wrote the loan agreements that  
4 were submitted to the State for their approval along  
5 with all of the application information as well.  
6 That's my understanding of it.

7 Q. And that's to obtain the license?

8 A. To obtain a lending license, yes.

9 Q. Do you have an understanding as to whether  
10 that license was ever renewed?

11 A. I do. It was renewed -- it was granted in  
12 2008, I believe. And then renewed in '9, '10, '11 and  
13 '12.

14 Q. And do you have any understanding, and I  
15 understand you are not a lawyer, but do you have any  
16 understanding of what might have been involved in that  
17 renewal process? Just at a high level.

18 MR. WHEELER: Objection, Your Honor. It calls  
19 for speculation.

20 JUDGE McKENNA: He will answer if he knows.

21 THE WITNESS: So in a renewal process, again,  
22 it was a -- the State sent a checklist out of  
23 documents that needed to be submitted. I think  
24 yesterday I pointed out some of the financial  
25 statements that were partial year, were submitted as

1 part of that application or renewal process.

2 Any changes to -- originally you submitted a  
3 business plan, they requested any changes to the  
4 business plan be submitted. Again, it was a few  
5 blanks I had to fill out, but primarily orchestrated  
6 by Mr. Foster and outside counsel.

7 I do know we received our approvals to  
8 continue to lend each year, and we posted the license  
9 on our website, I believe.

10 BY MS. BAKER:

11 Q. Yesterday, Mr. Carnes, we heard some testimony  
12 about lead generation agreements; do you recall that  
13 testimony?

14 A. I do.

15 Q. Why were you involved with signing at least  
16 two of -- I think it was three lead generation  
17 agreements that were executed with another business on  
18 behalf of Integrity Advance?

19 A. I was a CEO, as a standard practice of  
20 business I would sign documents from time to time.  
21 They would be signed by other officers of the company.  
22 I think there are examples in here of Madsen signing  
23 agreements. Mr. Foster signed agreements. The company  
24 had numerous third party vendor arrangements over the  
25 years. And it might have been signed because I might

1 have had a relationship with the person on the other  
2 side. It might have been signed because I was the only  
3 one in the office that day. It might have been signed  
4 -- I don't know. I mean, as a CEO, you sign  
5 agreements.

6 Q. Was it also the case that Mr. Madsen signed  
7 lead generation agreements?

8 A. Absolutely. In fact, I would say he signed  
9 predominantly most of them.

10 Q. Does lead generation have anything to do with  
11 the consumer facing loan agreements that were executed  
12 by customers of Integrity Advance?

13 A. No. Lead generation has to do with the  
14 application that the consumer sees and then once the  
15 consumer fills out the application, hits the submit  
16 button, it would -- if we would approve the loan on the  
17 backside, we would then redirect the consumer's website  
18 to our documents. So in that case they would only see  
19 our documents.

20 Q. So it had nothing whatsoever to do with loan  
21 agreements?

22 A. Nothing whatsoever to do with loan agreements.

23 Q. And is that the same for any disclosure that  
24 would have been in a loan agreement as you understand  
25 what that is?

1 A. Yes, that would be the same.

2 Q. Did the lead generators that you entered into  
3 a contract with ever revise or edit any of the loan  
4 agreements to your knowledge?

5 A. No. It wasn't under their purview or control.

6 Q. Mr. Carnes, do you have any understanding, I  
7 think you testified briefly about this yesterday, any  
8 understanding of whether or not Integrity Advance used  
9 what we have discussed here and called RCC's or  
10 remotely created checks?

11 A. We did.

12 Q. You did. And what's that understanding --  
13 what's your understanding based on?

14 A. It was a business practice I know we employed.

15 Q. Do you have an understanding as to how  
16 frequently remotely created checks were used by  
17 Integrity Advance and we can -- and by a timeline, I  
18 mean 2008 until 2012 when the company stopped making  
19 loans?

20 A. In relative terms, they were very sparsely  
21 used.

22 Q. And when you say, relative terms, can you  
23 maybe attach a percentage to that of the total universe  
24 of loans made by the company during its existence?

25 A. I would say it's well under one percent and

1 was only used in the case where the consumer revoked  
2 their authorization to ACH their checking account, and  
3 through numerous calls and e-mails refused to contact  
4 with us and to setup alternate payment arrangements,  
5 which we would take any kind of payment arrangement  
6 that wasn't cash. And that would set off the string of  
7 events that would set their account for an RCC to be  
8 created and submitted. But again, very very few  
9 instances comparing -- if you look at the number of  
10 payments that were made overall, there were very very  
11 few that got -- that went down that path.

12 Q. Were there other ways to make a payment on a  
13 loan if ACH authorization had been revoked by a  
14 customer?

15 A. Many ways, and in fact, if a consumer would  
16 just contact us to tell us they wanted to pay us, it  
17 would stop the process of the RCC.

18 Q. And how do you know that, Mr. Carnes?

19 A. Because I know that that's how it worked.

20 Q. Mr. Carnes, can you tell us what your highest  
21 level of education is?

22 A. I have a bachelor degree in mathematics and  
23 economics.

24 Q. From what institution?

25 A. University of Kansas.



1 MS. BAKER: No further questions, thank you.

2 JUDGE McKENNA: Redirect.

3 REDIRECT EXAMINATION

4 BY MR. WHEELER:

5 Q. Mr. Carnes, did Integrity Advance loan in all  
6 50 states?

7 A. No.

8 Q. Why not?

9 MS. BAKER: Objection. Calls for speculation.

10 THE WITNESS: We lent in the states --

11 JUDGE McKENNA: Overruled.

12 THE WITNESS: We lent in the states that our  
13 attorneys told us that we should be lending in.

14 MS. BAKER: Objection. May I just counsel  
15 Mr. Carnes?

16 JUDGE McKENNA: Yes, you may.

17 MS. BAKER: To the extent that any other  
18 questions call for the disclosure of communications,  
19 what your attorneys told you, please don't disclose  
20 that.

21 Thank you. And if the record could be  
22 stricken as to that response.

23 JUDGE McKENNA: Do you have an answer that  
24 excludes the attorney part of it?

25 THE WITNESS: No, I'm sorry, Your Honor. I

1 don't.

2 MS. BAKER: Ongoing admonition, please be  
3 mindful of that, Mr. Carnes. Thank you.

4 THE WITNESS: I will.

5 JUDGE McKENNA: All right. You want to read  
6 that back to me?

7 (Whereupon, the requested portion of the  
8 testimony was read back by the Court Reporter.)

9 MS. BAKER: Your Honor, it's -- I don't want  
10 to -- we can just allow Mr. Wheeler to continue his  
11 exam. I have just admonished my client to be mindful  
12 of the attorney/client privilege.

13 JUDGE McKENNA: Do you withdraw your motion?

14 MS. BAKER: I can withdraw my motion. That's  
15 fine. Thank you, Your Honor.

16 JUDGE McKENNA: Thank you.

17 BY MR. WHEELER:

18 Q. Did the number of states that Integrity  
19 Advance loaned in decrease over time?

20 MS. BAKER: Same admonition.

21 JUDGE McKENNA: You don't have to involve the  
22 attorney to answer.

23 BY MR. WHEELER:

24 Q. It's a factual question. Did the number of  
25 states Integrity Advance loaned in decrease over

1 time --

2 A. Yes.

3 Q. -- over the course of its operations?

4 Do you remember how many states Integrity  
5 Advance loaned in in 2012.

6 A. I don't.

7 Q. Was it more or less than 25?

8 A. I don't recall.

9 MS. BAKER: Your Honor, to the extent  
10 Mr. Wheeler is going to continue with this line of  
11 questions, I'm going to object on relevance grounds.  
12 It's not relevant to any of the matters that are  
13 pertinent to the proceedings here.

14 MR. WHEELER: I'm moving on anyway, Your  
15 Honor.

16 JUDGE McKENNA: All right.

17 BY MR. WHEELER:

18 Q. Mr. Carnes, you've testified that you were the  
19 at least de facto CEO of Integrity Advance?

20 A. Yes.

21 Q. And you were the president?

22 A. You know, it's funny that title is on there.  
23 I never called myself president ever, I was always a  
24 CEO and that document I think was produced at your  
25 request, and they put that on there. But I was the CEO

1 of the company.

2 Q. And you were the CEO of Hayfield?

3 A. Yes.

4 Q. And all of the subsidiaries of Hayfield?

5 A. Yes.

6 MR. WHEELER: Can we look at Exhibit 65?

7 BY MR. WHEELER:

8 Q. So I understand that you provided services to  
9 other Hayfield entities aside from Integrity Advance,  
10 correct?

11 A. We have gone through those percentages, yes.

12 Q. And I believe Mr. Foster testified that he  
13 provided services to other Hayfield entities?

14 A. Yes.

15 Q. What about other -- the other people here?  
16 Did Ms. Schaller provide services to other Hayfield  
17 entities?

18 A. Yes.

19 Q. Could you estimate what percentage of her time  
20 was spent on Integrity Advance versus other Hayfield  
21 companies?

22 A. Again, I don't know. I don't know. I'm sure  
23 it would vary over time as well.

24 Q. What about Mr. Pickett, did he spend time on  
25 other Hayfield enterprises?

1 A. Yes.

2 Q. Would your answer be the same for all of these  
3 individuals?

4 A. No.

5 Q. Who did not provide services to other Hayfield  
6 entities?

7 A. George Davis.

8 Q. Anyone else?

9 A. No.

10 Q. And I assume if I asked you for percentages on  
11 how much time these individuals spent on Hayfield  
12 versus Integrity, you would not be able to help me with  
13 that?

14 A. It would vary over time and you would have to  
15 ask them. I couldn't speculate.

16 JUDGE McKENNA: I have a question. Regarding  
17 Stephanie Schaller.

18 THE WITNESS: Yes.

19 JUDGE McKENNA: What is a VP of decision  
20 science?

21 THE WITNESS: It's a -- like head of  
22 analytics.

23 JUDGE McKENNA: And what is the job functions  
24 that person was doing?

25 THE WITNESS: Statistical analysis and

1 modeling.

2 BY MR. WHEELER:

3 Q. Mr. Carnes, how many people worked for  
4 Hayfield in 2008?

5 A. Beginning or end?

6 Q. At the beginning of 2008?

7 A. Zero.

8 Q. How many people worked for Hayfield by the end  
9 of 2008?

10 A. I'm going to guess six.

11 Q. What about 2009, how many people worked for  
12 Hayfield in 2009?

13 A. I'm going to tell you this is all going to be  
14 guessing.

15 Q. You were the CEO, so...

16 A. Right. This is seven years ago and I --

17 JUDGE McKENNA: Well, just a second.

18 All right. I don't want to get into this.

19 Please be seated. All right. To the best of  
20 your recollection, understanding that there might be a  
21 significant standard deviation. Okay?

22 THE WITNESS: Okay. 2009 might be 15.

23 BY MR. WHEELER:

24 Q. What about for 2010, how many employees of  
25 Hayfield?

1 A. Twenty-five.

2 Q. What about for 2011?

3 A. Something similar to that, somewhere between  
4 20 and 30 for the rest of the time?

5 Q. So you would say 20 to 30 or 2011?

6 A. '12. And '12.

7 Q. And 2012?

8 A. It was stopped -- it was folded in December of  
9 2012.

10 Q. Mr. Carnes, we talked yesterday about the loan  
11 agreement and the loan agreement template; do you  
12 recall that?

13 A. I do.

14 Q. Who authorized Integrity Advance to use the  
15 loan agreement template?

16 A. I don't understand the question.

17 Q. Integrity Advance had a loan agreement  
18 template, correct?

19 A. Yes.

20 Q. And they would use that template to create  
21 loan agreements; is that right?

22 A. Yes.

23 Q. Who authorized the use of that loan agreement  
24 template?

25 JUDGE McKENNA: Are you talking about a

1 regulatory entity?

2 MR. WHEELER: No. I'm asking in a business  
3 sense, who in the business authorized Integrity  
4 Advance to use the loan agreement template?

5 JUDGE McKENNA: Who within the company either  
6 Hayfield or Integrity Advance?

7 MR. WHEELER: Yes.

8 MS. BAKER: Let me just make an admonition to  
9 the extent you can answer this question without  
10 disclosing any privileged communications.

11 THE WITNESS: By the mere fact of the business  
12 process we used, and a loan agreement template was  
13 necessary. So it wasn't an approval or a decision to  
14 use a template, it was necessary. We had to.

15 BY MR. WHEELER:

16 Q. Right, but someone had to approve that.  
17 Someone had to say, yes, we're going to use this  
18 template?

19 MS. BAKER: Same admonition.

20 BY MR. WHEELER:

21 Q. I mean the template didn't create itself and  
22 get implemented on its own.

23 JUDGE McKENNA: Well, just a second.

24 There was a question and an answer earlier  
25 that in prior businesses that you were running that



1 you had used a similar or the same template for  
2 lending; is that correct?

3 THE WITNESS: There were different templates  
4 and they were created by the outside counsel.

5 JUDGE McKENNA: At different times?

6 THE WITNESS: At different times.

7 JUDGE McKENNA: All right. And so then when  
8 it came to the creation of Integrity Advance, was that  
9 just a kind of a spillover affect as to the template  
10 that you were using?

11 MS. BAKER: I just want to make that  
12 admonition.

13 JUDGE McKENNA: I gotcha.

14 MS. BAKER: Thank you.

15 THE WITNESS: I can answer the question, but  
16 I'm going to have to talk about the -- how the  
17 attorneys approached doing that. I don't know if  
18 that's privileged or not.

19 JUDGE McKENNA: No. No, you can't.

20 THE WITNESS: Well, the only way I can answer  
21 is to talk about how the attorneys did that.

22 JUDGE McKENNA: All right. So, what's your  
23 position on that subject?

24 MS. BAKER: Your Honor, to the extent that my  
25 client can say, you know, the fact that a lawyer

1 looked at something isn't privileged. What the lawyer  
2 might have told him about the something the lawyer  
3 looked at is.

4 And to the extent that Mr. Carnes or anyone  
5 else sought counsel, the fact that he sought counsel  
6 is not privilege. The contents of the request for  
7 counsel are. Does that --

8 JUDGE McKENNA: Within those parameters, can  
9 you enlighten us?

10 THE WITNESS: How about I say I will tell you  
11 that with Integrity Advance specifically, we hired  
12 outside counsel to create and give us loan documents  
13 that conformed with the Delaware and federal law.  
14 Once they gave us those documents, we took them and  
15 through our IT department, implemented them into our  
16 loan management system to use to lend to consumers.

17 JUDGE McKENNA: Were your subordinates in  
18 Hayfield overseeing that process?

19 THE WITNESS: Yes.

20 JUDGE McKENNA: And did that process ever come  
21 up to you through a briefing?

22 MS. BAKER: Same admonition. To the extent  
23 you can answer that question without disclosing the  
24 contents of that briefing or the fact that you had a  
25 briefing with specific topic matters, you can answer

1 that question.

2 THE WITNESS: I believe we went through this  
3 line of questioning yesterday with Mr. Wheeler, and it  
4 went something to the effect of, you know, did you  
5 approve the loan documents and I said, well, I didn't  
6 expressly approve the loan documents.

7 I said that this is my recollection of what I  
8 said, I said that in the process of having a outside  
9 attorney firm write them and deliver them to us, I  
10 knew that they would be put into the loan management  
11 system and that was not expressly approved. It was --  
12 it happened and as a course of being CEO I knew it was  
13 happening, and I didn't prevent it. But there would  
14 be a tacit approval in that senses.

15 JUDGE McKENNA: Thank you.

16 BY MR. WHEELER:

17 Q. And I assume as CEO you would have had  
18 authority to stop Integrity Advance from using --

19 JUDGE McKENNA: Asked and answered.

20 BY MR. WHEELER:

21 Q. Did you ever personally discuss the Integrity  
22 Advance loan agreement with your Delaware regulator?

23 A. No.

24 Q. Are you aware of discussions that other people  
25 at Integrity Advance had about the loan agreement with

1 your Delaware regulator?

2 A. I wasn't primarily responsible for the audits  
3 that they did on a regular basis, and so I wasn't privy  
4 to all of those conversations.

5 Q. How did Integrity Advance withdraw money from  
6 consumer's accounts?

7 A. Generally via the automated clearing house  
8 system of the federal reserve.

9 Q. Any other ways?

10 A. Through RCC's.

11 Q. Anything else?

12 A. Well, consumers who revoked authorization,  
13 some would actually -- the ones who would talk to us or  
14 we could get ahold of, some of them would send us a  
15 physical check, a check they wrote on their account, so  
16 that would be a way, where they actually -- they  
17 created their own check and sent it to us.

18 Some of them would pay, and this is in general  
19 in collections not just revoked authorization, but  
20 somebody might pay with a debit card or a credit card.  
21 I don't know if that counts in your -- somebody might  
22 pay with a PayPal account. Somebody might pay with a  
23 Western Union or a money gram order. We accepted all  
24 forms of payments besides cash that we could think of.

25 Q. Ms. Baker asked you a little bit about

1 remotely created checks; do you recall that?

2 A. I do.

3 Q. And I believe you testified that there were  
4 efforts made to call consumers after they revoked ACH  
5 authorization?

6 A. Yes, sir.

7 Q. Was there a policy on a certain number of  
8 calls that would be made?

9 A. I'm sure there was some sort of systematic way  
10 the collection center would approach that. I couldn't  
11 tell you exactly what it was. But I know at a very  
12 high level a number of calls and e-mails were sent.  
13 The e-mails were mainly out of the system, but I'm sure  
14 that they were being called as well.

15 Q. And I assume you don't have knowledge of  
16 whether or not there was a policy on a particular  
17 number of e-mails that might be generated?

18 MS. BAKER: Objection, relevance.

19 JUDGE McKENNA: Overruled.

20 THE WITNESS: I don't know. I don't know  
21 exactly how many e-mails were generated.

22 BY MR. WHEELER:

23 Q. Did you personally make any calls to consumers  
24 after they revoked ACH authorization?

25 A. No.

1 Q. Did you personally send any e-mails to  
2 consumers after they revoked ACH authorization?

3 A. No.

4 MR. WHEELER: One second, Your Honor.

5 JUDGE McKENNA: Yes.

6 MR. WHEELER: No further questions, Your  
7 Honor.

8 JUDGE McKENNA: Anything further, Ms. Baker?

9 MS. BAKER: Yes, thank you.

10 RE CROSS-EXAMINATION

11 BY MS. BAKER:

12 Q. Mr. Carnes, you just testified that consumers  
13 could send Integrity Advance a physical check, pay with  
14 a debit or credit card, pay with PayPal account, et  
15 cetera?

16 A. Uh-huh.

17 Q. And were those payments acceptable forms when  
18 an ACH authorization was revoked?

19 A. Yes.

20 MS. BAKER: No further questions. Thank you.

21 JUDGE McKENNA: Anything further within the  
22 scope of the cross?

23 MR. WHEELER: No, Your Honor.

24 JUDGE McKENNA: All right.

25 You are excused. Thank you, Mr. Carnes.

1 Off the record.

2 (Whereupon, a lunch recess was had from 11:55  
3 a.m. to 12:49 p.m.)

4 JUDGE McKENNA: Back on the record.

5 MS. CHUM: Good afternoon, Your Honor.

6 JUDGE McKENNA: Hi.

7 MS. CHUM: Vivian Chum on behalf of  
8 Enforcement Counsel.

9 How are you?

10 JUDGE McKENNA: Good, thank you.

11 I want to throw a little bit of a hook at you.  
12 I would like, since the next couple of witnesses, I  
13 presume, are going to the -- at least have some effect  
14 on the issue of recoupment/sanctions; is that correct?

15 MS. CHUM: Yes, Your Honor.

16 JUDGE McKENNA: Well, so what I would like,  
17 since I'm not a person who is familiar with this part  
18 of the law for the CFPB, to have a short tutorial from  
19 the government and from Respondent's counsel.

20 So I don't know who is going to do that.

21 MS. CHUM: Yes, Your Honor. I will on behalf  
22 of the government.

23 Just to give you a general overview of the  
24 damages we are seeking in this matter --

25 JUDGE McKENNA: Well, first I want to know

1 what authority you have and what can you request and  
2 then what you are requesting.

3 MS. CHUM: Your Honor, our authority for the  
4 TILA and EFTA claims, as you know, go back to the  
5 authority that the FTC had under the FTC Act and as to  
6 the claims under the CFPA and UDAAP claims those come  
7 from Title 10 of the Dodd-Frank Act.

8 JUDGE McKENNA: And they authorize?

9 MS. CHUM: And that, Your Honor -- Court's  
10 indulgence. If you may allow me to just simply pull  
11 up my cheat-sheet on that because I did not anticipate  
12 discussing that.

13 JUDGE McKENNA: Sure. Sure.

14 This is just like moot court.

15 Basically, when we look at the regs in the  
16 statute, it wasn't at all clear as to how this was  
17 going to play out as far as recoupment, damages,  
18 sanctions in the event that some of the charges have  
19 been found proven.

20 MS. CHUM: Yes, Your Honor, I misspoke  
21 earlier. Now that I have this in front of me and I'm  
22 looking right at it. Our relief under the CFPA as it  
23 pertains to TILA and EFTA claims is under 12 USC 5565.

24 Our relief under the CFPA as it pertains to  
25 TILA and EFTA claims is derived from 12 USC section



1 5565.

2 The Court has jurisdiction there to grant any  
3 appropriate legal or equitable relief with respect to  
4 a violation of federal consumer financial law  
5 including a violation of a rule or order prescribed  
6 under a federal consumer financial law.

7 Because the FTC could obtain equitable relief  
8 including disgorgement and restitution under section  
9 13(b) of the FTC Act prior to July 21st, 2011.

10 The Bureau could equally obtain such relief  
11 and would find it proper under the CFPA and thus that  
12 would have no retroactive effect on Respondents.

13 That is as to the TILA and EFTA claims.

14 More generally, our relief as to UDAAP claims  
15 that's the deception and unfairness claims and CFPA  
16 also derive from 12 U.S.C. 5565.

17 And that, of course, for those claims we focus  
18 on loans that originate on or after July 21st, 2011.  
19 That is the transfer date.

20 JUDGE McKENNA: Right.

21 All right. So now you are going to get into  
22 the part that you were --

23 MS. CHUM: Yes.

24 JUDGE McKENNA: All right. So if you could  
25 just allow Ms. Baker to, if you would like, Ms. Baker.

1 MS. BAKER: I would, Your Honor.

2 JUDGE McKENNA: I don't want to force you to  
3 do anything.

4 MS. BAKER: Thank you. Ms. Chum, would it be  
5 easier if I just speak from here? So you don't have  
6 to move your materials?

7 MS. CHUM: Sure.

8 MS. BAKER: Your Honor, a few points. Our  
9 position is that to the extent the CFPB is -- that the  
10 Office of Enforcement is entitled to any relief in  
11 this matter as to TILA as to a finding concerning  
12 TILA, the Truth in Lending Act, as to a finding  
13 concerning the Electronic Fund Transfer Act and as to  
14 any findings concerning deception and/or unfairness  
15 under the CFP Acts prohibitions against UDAAP, unfair,  
16 deceptive or abusive acts or practices the office of  
17 -- and any civil money penalties under 5565, which is  
18 the provision of the Dodd-Frank Act that Ms. Chum has  
19 cited, the CFPB can only seek that monetary relief for  
20 conduct that post dates July 21st, 2011 and here is  
21 why.

22 The Federal Trade Commission Act that the CFPB  
23 appears to be relying on for the importing of TILA and  
24 EFTA damages, does not, in fact, apply here for two  
25 reasons. First of all, it doesn't apply because

1 section 13(b) of the Federal Trade Commission Act only  
2 enables the FTC to get monetary relief in federal  
3 district court. There is absolutely no monetary  
4 relief provided in the administrative law forum of the  
5 Federal Trade Commission Act.

6 So the way it works, is that the Federal Trade  
7 Commission brings a case in the administrative forum  
8 as to liability, and if liability is found, the FTC  
9 must then go to district court to get any monetary  
10 relief.

11 JUDGE McKENNA: Do they find monetary relief  
12 and then ask the district court to enforce it?

13 MS. BAKER: No. Your Honor.

14 JUDGE McKENNA: So you have a de novo?

15 MS. BAKER: I don't know if it's de novo as to  
16 liability, but my understanding is it's de novo as to  
17 penalties. Meaning that the question of damages,  
18 monetary relief, as it relates to any finding of the  
19 Truth In Lending Act, the Electronic Fund Transfer Act  
20 or section 5 of the Federal Trade Commission Act, of  
21 course not relevant here, would only be allowed in  
22 district court.

23 The FTC does not get upon monetary relief in  
24 its administrative forum. So for the CFPB to be  
25 relying on that is a problem.

1 Now number 2, even if that wasn't the case,  
2 reliance on the Federal Trade Commission Act does not  
3 indeed apply here and let me give you the analytical  
4 reasons. There are two analytical reasons why that's  
5 the case.

6 The first reason is the Doctrine of  
7 Retroactivity. The Doctrine of Retroactivity is very  
8 clear that to the extent you seek any kind of  
9 liability or monetary relief under a statute, you  
10 cannot seek it for conduct that predates the date of  
11 that statute.

12 Landgraf Doctrine is very specific. It  
13 delineates two different kinds of conduct, conduct  
14 that's purely administrative. So if a lawsuit was  
15 purely administrative in the way it changed a rule, it  
16 wouldn't apply.

17 But this is not administrative. This has to  
18 do with findings of liability and findings of monetary  
19 relief. And Landgraf Doctrine, which is the doctrine  
20 that governs the whole retroactivity analysis that  
21 we've briefed a fair amount in this matter, governs  
22 this, and it expressly precludes using or importing  
23 the Federal Trade Commission Act into this matter for  
24 purposes of retroactively applying the Consumer  
25 Financial Protection Act's 1065 provision, to -- or 12

1 U.S.C. 1056 to obtain monetary relief in this matter.

2 Number 2, even if, the Federal Trade  
3 Commission Act, there wasn't a retroactivity argument  
4 as I said before, the way that the Federal Trade  
5 Commission Act applies to a TILA or EFTA claim, it's  
6 back to the first argument, is that you cannot get  
7 monetary relief in the administrative forum.

8 So the only way the Bureau can get monetary  
9 relief in this matter is for conduct that post-dates  
10 the implementation and effective date of its act. And  
11 that's for TILA and EFTA.

12 For unfairness and deception, I think we all  
13 agree that the only relevant timeframe that we are  
14 looking at is July 21st, 2011 to the time that the  
15 company stopped doing business. And, of course, our  
16 position is that there is no liability and that the  
17 company, neither Respondent, should be found liable.

18 But I'm arguing, of course, in the alternative  
19 to respond to Your Honor's request.

20 Now as for civil money penalties, footnote II  
21 of the Enforcement Counsel's pre-hearing statement  
22 already concedes that -- and the footnote is on page 8  
23 of their pre-trial statement -- it already concedes  
24 that civil money penalties should be calculated from  
25 the transfer date until the date that Respondent's

1 unlawful acts ceased.

2 Now I want to make one more point, Your Honor.  
3 In the Enforcement Counsel's Opposition to our Motion  
4 for Summery Disposition in this matter, they make  
5 something very clear. They make it very clear that  
6 the sole basis through which they are seeking any  
7 monetary relief in this matter is through the  
8 mechanism of the CFP Act, 12 U.S.C. 5565. So let me  
9 summarize again all of these different points.

10 The only way that they are getting monetary  
11 relief by their own acknowledgement -- for the Court's  
12 record that's page 29 of their opposition brief -- the  
13 only way that they are getting any monetary relief in  
14 this matter is through the CFP Act, number one.  
15 Number 2, the CFP Act does not enable them to import  
16 the FTC Act regime for TILA and EFTA to get damages  
17 that predate July 21st. Two reasons: Retroactivity  
18 Doctrine prohibits it and the Federal Trade Commission  
19 Act 13(b) doesn't allow the FTC to get administrate  
20 monetary relief.

21 As to conduct -- as to UDAAP, unfair or  
22 deceptive, we have already agreed and acknowledged  
23 that that only concerns conduct that postdates July  
24 21st. And as to any civil money penalty, footnote II  
25 of their brief covers that.

1 So that's our position in this matter, Your  
2 Honor.

3 JUDGE McKENNA: Thank you, very much.

4 MS. CHUM: Your Honor, as you know, we  
5 respectfully disagree and I believe this has been  
6 briefed previously, and much of this ground has  
7 already been covered.

8 JUDGE McKENNA: Well, it never hurts to repeat  
9 it.

10 So that's fine.

11 You can start with your witnesses.

12 MS. CHUM: Yes, Your Honor.

13 Enforcement Counsel calls Mr. Robert Hughes to  
14 the stand.

15 JUDGE McKENNA: Good afternoon, Mr. Hughes.

16 ROBERT HUGHES,

17 A witness produced on call of Enforcement  
18 Counsel, having first been duly sworn, was examined  
19 and testified as follows:

20 JUDGE McKENNA: Please be seated. State your  
21 full name for the record.

22 THE WITNESS: It's Robert Jackson Hughes,  
23 H-U-G-H-E-S.

24 JUDGE McKENNA: And I think we're going to  
25 have a couple of problems with you. Number one, you

1 are going to have to speak up.

2 THE WITNESS: Sure.

3 JUDGE McKENNA: And you can talk closer to  
4 that mic and we will see if that works.

5 THE WITNESS: Okay. Is this good?

6 JUDGE McKENNA: No.

7 THE WITNESS: Oh sorry. Which mic?

8 JUDGE McKENNA: All right. You are going to  
9 speak --

10 THE WITNESS: Try again.

11 JUDGE McKENNA: That's better.

12 THE WITNESS: Is that too loud.

13 JUDGE McKENNA: All right. And so we will  
14 proceed now.

15 THE WITNESS: Okay. Thank you.

16 MS. FOLEY: Your Honor, Danielle Foley, for  
17 the Respondents. Just one housekeeping matter. We  
18 have Dr. Xiaoling Ang, who we have prepared to be a  
19 rebuttal witness to Mr. Hughes's testimony. She is in  
20 the courtroom today. We wanted to just advise of that  
21 and see if there's any issue with her being here. We  
22 wanted her to hear his testimony so that she can be  
23 prepared to rebut it.

24 MS. CHUM: Your Honor, the government would  
25 request the rule on witness exclusion in this case.



1 MS. BAKER: That hasn't been invoked the  
2 entirety of this trial. You have to invoke  
3 sequestration at the beginning.

4 MS. FOLEY: And in order for her to fairly  
5 rebut his testimony, she has to hear today. He has  
6 not been deposed. We only have a declaration and some  
7 summary exhibits.

8 JUDGE McKENNA: All right.

9 MS. CHUM: Your Honor, my understanding is  
10 that there have been no other witnesses in this  
11 courtroom that -- other than Mr. Carnes, who is a  
12 party.

13 JUDGE McKENNA: All right. And she just came  
14 in now?

15 MS. FOLEY: Yes. She has just been in the  
16 courtroom now.

17 JUDGE McKENNA: All right. So I'm going to do  
18 it the slow way. So I'm going to sequester the  
19 witness, and then you can brief her as a predicate to  
20 any questions that you have.

21 MS. FOLEY: All right. Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. CHUM:

24 Q. Mr. Hughes, would you please tell me where do  
25 you work?

1 A. Consumer Financial Protection Bureau.

2 Q. What department do you work for in the Bureau?

3 A. I'm within the data science group within  
4 technology and innovation, I'm sorry.

5 Q. You're a data scientist at the CFPB?

6 A. Yes.

7 Q. How long have you held that position?

8 A. About a year and a half. About another year  
9 and a half before that I was in the same department as  
10 a data architect.

11 Q. What are your duties as a data scientist at  
12 the CFPB?

13 A. Data analysis.

14 Q. What were your duties as a data architect?

15 A. They were largely the same. There was a  
16 little bit more of an information management component,  
17 but generally it was a data analysis function that I  
18 performed under both.

19 Q. Including the years that you have spent at the  
20 CFPB, how many years in total of experience in data  
21 analysis do you have?

22 A. Probably a little over 20.

23 Q. Could you describe that experience?

24 A. Sure. So it's -- that's been a consistent  
25 theme throughout my career. I had a consulting company

1 for probably about ten years where I performed data  
2 analysis as my primary job. I did the same as a risk  
3 analyst for electricity options, in a job around 1998,  
4 '99.

5 And it's been a component of pretty much every  
6 job I have had in my professional career.

7 Q. As a data scientist at the CFPB, have you  
8 reviewed data sets of consumer financial information?

9 A. Yes.

10 Q. How many data sets of such information have  
11 you reviewed?

12 A. At least 50. It's difficult to get an exact  
13 number on that.

14 Q. And what kind of observations are you tasked  
15 with making in the course of your review of these data  
16 sets of consumer financial information?

17 A. It's pretty wide ranging, but generally  
18 aggregate information, totals of consumer's spending  
19 patterns, generally we will look at transaction level  
20 and account level data to reach whatever conclusion  
21 research markets, enforcement, whoever is looking for  
22 it.

23 Q. What tools have you used to review and make  
24 observations about data sets of consumer financial  
25 information?

1           A.    There have been quite a few, but I would say  
2 my primary day-to-day tools are R, just the letter R,  
3 which is a statistical language and SQL, S-Q-L  
4 structured query language.

5           JUDGE McKENNA:   Ms. Chum?

6           MS. CHUM:   Yes, Your Honor.

7           JUDGE McKENNA:   Do you have other witnesses,  
8 technical witnesses in the courtroom?

9           MS. CHUM:   They are not witnesses, Your Honor.

10          JUDGE McKENNA:   They are not going to be  
11 witnesses?

12          MS. CHUM:   They are not going to be  
13 testifying, Your Honor.

14          MS. BAKER:   Your Honor, I believe, though,  
15 that we've heard before that they are affiliated with  
16 Mr. Hughes and what he's doing, and I would ask that  
17 they be sequestered as well to the extent that they  
18 could be used to facilitate any rebuttal testimony  
19 that he may be asked to provide.

20          JUDGE McKENNA:   They are not testifying.

21          MS. BAKER:   I understand, Your Honor.   But  
22 they could still be used in the capacity of him  
23 testifying at later time.   We have heard a fair amount  
24 of conversation earlier about how they are not part of  
25 the Office of Enforcement.   And if we're going to

1 sequester people, we should sequester people, all of  
2 them except the parties in the case. I believe that's  
3 what Ms. Chum actually asked for.

4 She didn't invoke sequestration because you  
5 can't invoke that halfway through trial. I think what  
6 she invoked was the statement that to the extent there  
7 are people in this room who are not parties to this  
8 case, they should not be allowed in this room.

9 MS. CHUM: Your Honor, as you stated, these  
10 data scientists are not going to be testifying, and a  
11 plain reading of the rule on witnesses is that  
12 witnesses who will be testifying should not be hearing  
13 the testimony of other witnesses prior to their  
14 testimony. And for that reason, we request that the  
15 data scientists be permitted to remain, but  
16 ultimately --

17 JUDGE McKENNA: All right. I'm going to  
18 overrule the objection.

19 MR. HERNACKI: Your Honor, based on your  
20 overruling of our objection, we ask that Ms. Ang, Dr.  
21 Ang, our rebuttal witness to Mr. Hughes, we ask that  
22 her assistant, who is not a witness in this case be  
23 allowed to come back in and observe in the same  
24 fashion as the CFPB's data scientists.

25 JUDGE McKENNA: All right.

1 MR. HERNACKI: Thank you. With the Court's  
2 indulgence I will go get him.

3 JUDGE McKENNA: All right.

4 Why don't you bring your expert in too.

5 MR. HERNACKI: All right. Thank you, Your  
6 Honor.

7 JUDGE McKENNA: I'm going to reverse myself.

8 MS. BAKER: Thank you, Your Honor.

9 MS. CHUM: A point of clarification, Your  
10 Honor. May I just to get a better understanding, in  
11 reversing yourself, are you also indicating that  
12 Mr. Hughes and our data scientists may remain in the  
13 courtroom should Ms. Ang be permitted to testify?

14 JUDGE McKENNA: Yes.

15 MS. CHUM: Thank you, Your Honor.

16 JUDGE McKENNA: No objection to that?

17 MS. BAKER: No, of course not.

18 JUDGE McKENNA: Just wanted to get it on the  
19 record.

20 (Whereupon, Dr. Ang and her assistant returned  
21 to the gallery.)

22 MS. CHUM: Permission to proceed, Your Honor.

23 JUDGE McKENNA: Yes.

24 BY MS. CHUM:

25 Q. You were just discussing SQL, can you spell

1 that again? Spell it for us.

2 A. It's S-Q-L for structured query language.

3 Q. What exactly is SQL?

4 A. It's a very basic language for data analysis  
5 and organization.

6 Q. How long have you been using SQL to view data  
7 sets?

8 A. About 20 years.

9 Q. And what are your reasons for using SQL?

10 A. It was just a simple straight forward tool for  
11 dealing with the data set that was provided. And it  
12 provides us reproducible code.

13 Q. Mr. Hughes, as a data scientists at the CFPB  
14 were you assigned to review financial consumer data in  
15 this matter?

16 A. Yes.

17 Q. Would you please describe the size of the  
18 Integrity Advance data set?

19 MS. FOLEY: Objection. Lack of foundation.

20 BY MS. CHUM:

21 Q. Would you please describe -- did you review a  
22 data set from the consumer -- from Integrity Advance?

23 A. Yes.

24 Q. Would you just generally describe that data  
25 set?

1 A. It was approximately 5.3 million records of  
2 transaction level data.

3 Q. And are Exhibits 95 and 101 the data sets that  
4 you relied on? I believe those are Excel sheets or  
5 large access data that would not fit in that -- in  
6 those folders there?

7 A. Yes. The ones that are reviewed with those  
8 numbers earlier today, were the two data sets.

9 JUDGE McKENNA: You need to speak up.

10 THE WITNESS: I'm sorry.

11 JUDGE McKENNA: That's all right.

12 BY MS. CHUM:

13 Q. Did you make observations about those data  
14 sets?

15 A. Yes.

16 Q. And what tools did you use to do so?

17 A. Again, SQL.

18 Q. Did you use any other materials in the review  
19 of the consumer transaction data sets?

20 A. I used a couple of reference materials.

21 MS. CHUM: Mr. Jefferson, would you pull up  
22 Exhibit 80?

23 BY MS. CHUM:

24 Q. I'm directing your attention to Exhibit 80 and  
25 if you -- if it's easier for you, Mr. Hughes, that



1 exhibit will be in those folders there.

2 What is this, Mr. Hughes?

3 MS. FOLEY: Objection, lack of foundation.

4 JUDGE McKENNA: Overruled.

5 THE WITNESS: That appears to be the data  
6 dictionary that was provided at the outset. I'm  
7 sorry. I wasn't speaking into the microphone. That  
8 appears to be the data dictionary that was provided by  
9 Integrity Advance.

10 BY MS. CHUM:

11 Q. And is the previously admitted Exhibit 80 data  
12 dictionary a fair and accurate representation of what  
13 you used?

14 A. Yes.

15 Q. Mr. Hughes, I'm now directing your attention  
16 to Exhibit 79. If you would start on page 2.

17 MS. FOLEY: Objection, Your Honor. This  
18 document is not in evidence.

19 MS. CHUM: Your Honor, we hope to lay a  
20 foundation and admit this into evidence eventually,  
21 but at this point we are not moving this into  
22 evidence.

23 MS. FOLEY: I'm not sure who they intend to  
24 use to lay a foundation with this document. Clearly  
25 this witness is not a person who created the document

1 or has any independent knowledge of its creation.

2 MS. CHUM: Your Honor, you have already  
3 generally stated in a prior order that this document  
4 appears to be, section 7.9 appears to be a reliable  
5 document given that Respondent's own brief, I believe  
6 a footnote, footnote III on page 4 of their brief in  
7 response to your questions pertaining to the subpoena  
8 for the data sets associated with Mr. Hughes's  
9 testimony included a reference to 7.9.

10 JUDGE McKENNA: And we discussed this document  
11 earlier and it was up on the screen, the objection is  
12 overruled.

13 BY MS. CHUM:

14 Q. Mr. Hughes, do you recognize this document?

15 A. It's really small.

16 Q. You can look at it in your own -- Number 79 in  
17 your binder.

18 A. Okay. Is that page 3 on the screen?

19 Q. Yes, I'm just asking you to --

20 A. Yes.

21 Q. Do you recognize this document?

22 A. Yes, I recognize that document.

23 Q. What is this document, Exhibit 79?

24 A. The TranDotCom Solutions Loan Management  
25 System operations manual.

1 Q. Did you rely on Exhibits 79, the TranDot  
2 manual section 7.9 in reviewing the data sets provided  
3 by Integrity Advance by Respondents?

4 A. Yes.

5 Q. What was your basis for relying on section 7.9  
6 of the TranDot manual Exhibit 79?

7 A. It was provided to me as a further data  
8 dictionary for payment types, payment modes and  
9 statuses of individual transaction records.

10 JUDGE McKENNA: By whom?

11 THE WITNESS: I believe that was by our  
12 litigation support team.

13 JUDGE McKENNA: Provided that to you?

14 THE WITNESS: Yes. It may have been my  
15 attorney's via the litigation support team, but it was  
16 given to me as the manual for the system for the data  
17 that I was reviewing.

18 JUDGE McKENNA: All right. Proceed.

19 MS. CHUM: Your Honor, we request that Exhibit  
20 79 be admitted into evidence.

21 MS. FOLEY: Objection, Your Honor. Lack of  
22 foundation.

23 MS. CHUM: Your Honor, as you previously  
24 acknowledged, Respondents replied to Bureau's response  
25 to the February 8th, 2016 order requiring the Bureau

1 to submit additional information states in part that  
2 section 7.9 of a Loan Management System operations  
3 manual may serve as a data dictionary for interpreting  
4 data in CFPB 003126, which is a portion of the data  
5 set on which Mr. Hughes relied.

6 JUDGE McKENNA: Okay. So are you proposing to  
7 proffer the whole exhibit or does that just cover 7.9?

8 MS. CHUM: Just 7.9, Your Honor.

9 JUDGE McKENNA: And that's everything in this?

10 MS. CHUM: Yes. That's just the -- 7.9  
11 includes values and descriptors among which Mr. Hughes  
12 relied on.

13 MS. FOLEY: Okay. Your Honor, just for point  
14 of clarification so the record is clear, I believe the  
15 excerpt of section 7.9 is Exhibit 81.

16 But we have been discussing the larger Exhibit  
17 79, which is the entire manual, which what I'm  
18 understanding today Mr. Hughes has not testified that  
19 he's relied upon anything other than section 7.9.

20 So I'm not sure which exhibit Ms. Chum is  
21 actually seeking to admit at this point.

22 MS. CHUM: That may be my error. Allow me to  
23 just double check, Your Honor.

24 Court's indulgence.

25 (Pause.)

1 MS. CHUM: Your Honor, that was my error. I  
2 would request that Exhibit 81, which is section 7.9 of  
3 the Loan Management System operations manual, be moved  
4 into evidence.

5 MS. FOLEY: And our same objections, Your  
6 Honor. As this witness cannot lay the foundation for  
7 the exhibit. He was not employed by TranDotCom or any  
8 other company that is familiar with it.

9 JUDGE McKENNA: I'm going to overrule the  
10 objection and admit it.

11 (Whereupon, Enforcement Counsel's

12 Exhibit No. 81 admitted into evidence.)

13 BY MS. CHUM:

14 Q. Mr. Hughes, how did you in the course of  
15 reviewing the Integrity Advance data sets, how did you  
16 use the data dictionary, Exhibit 80 and Exhibit 81 the  
17 TranDot manual section 7.9?

18 A. In the transaction level data there were three  
19 fields that referred to the type of transaction. Those  
20 were: Payment type, payment mode, and status flag. I  
21 used those to interpret the type of payment, refund, et  
22 cetera that represented the underlying transaction.

23 Q. When you say transaction level data, what do  
24 you mean by transaction?

25 A. So it's event level data. So a transaction

1 could be --

2 THE COURT REPORTER: It's what?

3 THE WITNESS: I'm sorry. Event level data.

4 JUDGE McKENNA: Speak into the mic.

5 THE WITNESS: So as opposed to account level  
6 data, which would be information specific to the  
7 account. For instance, open date, close date, name of  
8 person associated with it. Transaction level data  
9 would be information specific to the transaction or  
10 event, such as a payment, a refund, a charge.

11 BY MS. CHUM:

12 Q. And in this specific Integrity Advance data  
13 what -- can you just broadly describe the different  
14 types of transactions represented in the data?

15 A. So some examples would be an ACH payment, a  
16 renewal record, a check, and those would be associated  
17 with analysis.

18 Q. So in more concrete terms, can you explain  
19 what information that data set would contain? What  
20 could you glean about a loan from that data set?

21 A. Transactions that had taken place against that  
22 loan. So, for instance, a renewal record would  
23 indicate that the loan had been renewed, an ACH record  
24 would indicate that a payment had gone against the loan  
25 via the ACH network. A check payment would indicate a

1 check payment, et cetera.

2 JUDGE McKENNA: Mr. Hughes?

3 THE WITNESS: Yes?

4 JUDGE McKENNA: Court reporter is having  
5 trouble hearing you. And that mic can't be turned up  
6 any more because you get feedback. So it's not doing  
7 its job.

8 THE WITNESS: Okay.

9 JUDGE McKENNA: All right. So I'm going to  
10 give you two choices, either you have a 20 percent  
11 increase in decibel level or you stand.

12 THE WITNESS: Okay.

13 JUDGE McKENNA: I know you don't want to  
14 stand.

15 THE WITNESS: I will go for the decibel level.

16 JUDGE McKENNA: Thank you.

17 MS. CHUM: Do you want to move your mic back  
18 towards you?

19 THE WITNESS: Okay. I thought it wasn't  
20 really working at all.

21 JUDGE McKENNA: It aids somewhat, but it's --

22 THE WITNESS: I'm sorry, I'm getting over a  
23 cold, so...

24 BY MS. CHUM:

25 Q. I'm going to now direct your attention to

1 what's been marked and previously admitted into  
2 evidence as Exhibit 97?

3 MS. CHUM: Mr. Jefferson, would you pull up  
4 Exhibit 97?

5 BY MS. CHUM:

6 Q. Would you take a moment to review Exhibit 97,  
7 Mr. Hughes?

8 (Pause.)

9 BY MS. CHUM:

10 Q. Have you looked at all five pages of Exhibit  
11 97, Mr. Hughes?

12 A. Yes.

13 Q. Have you seen this exhibit before?

14 A. Yes.

15 Q. Describe for us what Exhibit 97 is.

16 MS. FOLEY: Objection. Lack of foundation.

17 JUDGE McKENNA: Overruled.

18 THE WITNESS: This is a number of aggregate  
19 computations that the data science team performed on  
20 the transaction level data provided.

21 JUDGE McKENNA: Provided by Respondents?

22 THE WITNESS: Yes.

23 BY MS. CHUM:

24 Q. Did you yourself or people under your  
25 direction create these charts with the numbers in these



1 particular charts?

2 A. Yes.

3 Q. Is Exhibit 97 a fair and accurate  
4 representation of the charts that summarize numbers  
5 that you derived from the transaction level data  
6 produced by Integrity Advance in response to  
7 subpoena -- a subpoena for all consumer transaction  
8 data?

9 A. Yes, it is.

10 Q. Directing your attention now to page 1 of  
11 Exhibit 97. Mr. Hughes, were you able to make  
12 observations about the number of loans and consumers in  
13 the Integrity Advance data bases?

14 A. I'm sorry. Could you repeat that?

15 Q. Were you able to make observations about the  
16 number of loans and consumers in the Integrity Advance  
17 data bases?

18 A. Yes, we were.

19 Q. Is page 1 of Exhibit 97 a fair and accurate  
20 summary of numbers that you obtained from the Integrity  
21 Advance data set that shows the number of loans  
22 originated by Integrity Advance and the number of  
23 consumers serviced by Integrity Advance?

24 A. Yes, it was -- yes, it is a fair and accurate  
25 representation. I'm sorry.

1 Q. How many loans in total are represented in the  
2 Integrity Advance consumer financial data?

3 MS. FOLEY: Objection. Form.

4 JUDGE McKENNA: Pardon me?

5 MS. FOLEY: Objection, lack of foundation.  
6 It's also not representing what's on the document on  
7 the screen.

8 JUDGE McKENNA: You want to rephrase or lay a  
9 foundation?

10 BY MS. CHUM:

11 Q. Directing your attention to line 2 of the  
12 first page of Exhibit 97, in title overview of  
13 Integrity Advance loans and consumers, what was the  
14 total number of loans that Integrity Advance  
15 originated?

16 A. Three hundred, four thousand, two hundred  
17 twenty-seven.

18 Q. How many Integrity Advance loans were  
19 originated on or after July 21st, 2011?

20 A. Eighty-two thousand nine hundred and eighty.

21 Q. How did you know that?

22 A. We looked at a unique identifier for those  
23 loans and this is the number of unique -- number of  
24 distinct unique identifiers for those loans.

25 Q. Did you look at how many Integrity Advance

1 loans had a first transaction date occurring on or  
2 after August 13, 2011?

3 A. Yes, we did.

4 Q. Why did you look at the loans with the first  
5 transactions as opposed to originations that occurred  
6 on or after August 13, 2011?

7 MS. FOLEY: Object to the question. There has  
8 been no evidence that there's anything about  
9 organizations in the data set, which is a predicate to  
10 the question she just asked.

11 JUDGE McKENNA: Rephrase.

12 BY MS. CHUM:

13 Q. Focussing your attention on the transaction  
14 data that you reviewed, you had earlier testified that  
15 you did look at loans that had a first transaction date  
16 that occurred on or after August 13, 2011.

17 A. Correct.

18 Q. Why did you do that?

19 A. Because according to the model contract, the  
20 first payment could at the -- with the longest delay  
21 happen 23 days after origination. And the date you  
22 just stated was 23 days following July 21st, 2011.

23 Q. So by looking at the August 13th, first  
24 transaction date, were you able to make a conservative  
25 estimate of loans that originated on or after July

1 21st, 2011?

2 A. Yes. And that was the 82,980. That would be  
3 the minimum number of loans that were originated on or  
4 after that date.

5 Q. Now how many -- what -- Mr. Hughes, for all  
6 Integrity Advance loans that the company originated  
7 with consumers, how many loans were there for which  
8 Integrity Advance obtained money above a total of  
9 payments?

10 MS. FOLEY: I'm going to object to the  
11 question, a total of payments is vague and ambiguous  
12 and undefined.

13 JUDGE McKENNA: Do you understand the  
14 question, Mr. Hughes?

15 THE WITNESS: Yes, I do.

16 JUDGE McKENNA: Overruled. Answer the  
17 question.

18 THE WITNESS: The number of total loans in  
19 excess of that amount was 209,899.

20 JUDGE McKENNA: In excess of what amount?

21 THE WITNESS: The total of payments.

22 JUDGE McKENNA: All right. Is that money  
23 above principal plus one finance fee?

24 THE WITNESS: Yes, it is.

25 BY MS. CHUM:

1 Q. And Mr. Hughes, did you make a determination  
2 of the number of loans for which Integrity Advance  
3 obtained money above total of payments for loans that  
4 originated on or after July 21st, 2011 using your same  
5 mechanism of determining the origination date of July  
6 21st, 2011?

7 A. Yes, I did. That was 56,473 loans.

8 Q. And Mr. Hughes, in total how many consumers  
9 did Integrity Advance originate loans with?

10 A. One hundred and eighty thousand, three hundred  
11 seventy-nine.

12 Q. And how many did Integrity Advance -- how many  
13 consumers did Integrity Advance originate loans with on  
14 or after July 21st, 2011 using the same assumptions you  
15 did regarding the August 13, 2011 transaction date?

16 A. Fifty-four thousand one hundred and thirty.

17 Q. Mr. Hughes, just asking you generally about  
18 the Integrity Advance data sets, from those data sets  
19 were you able to determine the first date on which  
20 Integrity Advance processed a payment transaction for a  
21 loan?

22 A. Yes.

23 Q. What was that first date?

24 MS. FOLEY: Do you mean in general?

25 Objection, it's vague.

1 Do you mean in general, a specific time or for  
2 a specific loan?

3 BY MS. CHUM:

4 Q. The first transaction that ever occurred in  
5 the data set, what was that first date?

6 A. In the data set provided?

7 I'd like to refer back to -- sorry. My  
8 original declaration for that. I believe it was June  
9 2008.

10 Q. Do you have in your possession your first  
11 declaration if you would like to take a look at it to  
12 refresh your recollection and then --

13 MR. FRECHETTE: Peter Frechette for the  
14 Respondents.

15 I'm not sure if we've seen that binder that he  
16 has with him. I just want to make sure that we know  
17 what he is looking at.

18 JUDGE McKENNA: Ms. Chum, has the respondent  
19 seen that?

20 MS. CHUM: Yes. It's simply his declaration  
21 which he has -- which is admitted into evidence as --

22 MS. FOLEY: Your Honor, if I may, there are a  
23 number of papers in the binder. I can see them from  
24 here. I have not been shown a copy of the binder nor  
25 had an opportunity to review the binder. I'm not sure

1 what else is --

2 I would just say there is a binder that  
3 Mr. Hughes brought with him up to the stand, I don't  
4 know if there is anything more than the declaration.  
5 He's taken something out of it. There are other  
6 papers remaining in the binder.

7 I don't have a representation of what's in  
8 there. I know no work papers --

9 JUDGE McKENNA: He's not looking at the  
10 others. He is looking at his declaration, which is  
11 admitted into evidence.

12 MS. FOLEY: That's fine. If he's going to  
13 refer to anything else, I would like to make an  
14 objection at this point that we've not seen what else  
15 he has up here.

16 JUDGE McKENNA: I understand. And you  
17 understand the admonitions directed to you?

18 THE WITNESS: Yes, Your Honor.

19 JUDGE McKENNA: All right.

20 What is the exhibit number?

21 MS. CHUM: That is Exhibit 72, the declaration  
22 of Robert J Hughes.

23 THE WITNESS: Yes, I'm sorry. I was off by a  
24 month, May 2008 was the -- I'm sorry. May 2008 was  
25 the first transaction in that data set.

1 BY MS. CHUM:

2 Q. And would you put that document back in your  
3 folder and close the folder, please. And to the extent  
4 that you refer to anything in the folder, if you could  
5 just -- I will ask if you need your recollection  
6 refreshed, and I will ask that you explain to me what  
7 it is that would refresh your recollection and we can  
8 discuss that.

9 A. Yes.

10 Q. And generally do you remember the last month  
11 and year for which Integrity Advance processed a  
12 payment transaction for the loan -- for a loan?

13 A. I would have to refer back. I believe it was  
14 July 2013.

15 JUDGE McKENNA: All right. I'm going to give  
16 you permission to utilize that document. Take it out.  
17 Close the binder.

18 THE WITNESS: Yes. July 9, 2013.

19 BY MS. CHUM:

20 Q. Mr. Hughes, is that the same declaration that  
21 you were looking at before?

22 A. I'm sorry. This is actually two separate  
23 declarations, both by me.

24 One the date is May 10th, 2016 and the other  
25 the date is May 25th, 2016.



1 JUDGE McKENNA: And are both of those admitted  
2 into evidence?

3 MS. CHUM: No, Your Honor. Only the first  
4 declaration from which he testified to the May 2008 is  
5 admitted into evidence. But to the extent that  
6 Mr. Hughes can use anything to refresh his  
7 recollection, I believe that is appropriate. But, I  
8 would ask --

9 JUDGE McKENNA: Well, have opposing counsel  
10 seen it?

11 MS. CHUM: Yes, it is a document that has been  
12 filed with our prior briefs.

13 MS. FOLEY: It's not on their exhibit list,  
14 Your Honor. We were aware he would be using it or  
15 referring to it. No one sought to move it into  
16 evidence. If he is going to use it to refresh his  
17 recollection, we would like to have a copy of it and  
18 I'd also like to know if there are any notations on  
19 it, I would like to have those published.

20 JUDGE McKENNA: Are there any notations on it?

21 THE WITNESS: I circled the date, May 25th,  
22 2016, other than that, no.

23 JUDGE McKENNA: All right.

24 So can you provide them with a copy?

25 MS. CHUM: Your Honor, it's already filed.

1 JUDGE McKENNA: I understand.

2 MS. CHUM: I can provide another copy to them  
3 as needed.

4 JUDGE McKENNA: Right now?

5 MS. CHUM: Yes, please provide -- if you could  
6 print out a copy of --

7 MS. FOLEY: We may be able to find it, Your  
8 Honor. So they don't have to print out a copy. Tell  
9 us the filing --

10 MS. BAKER: Do you have a docket number?

11 MS. CHUM: I don't know the docket number off  
12 the top of my head.

13 MS. FOLEY: Do you know what it was filed in  
14 conjunction with? I'm just trying to get to the  
15 document as fast as possible.

16 MS. CHUM: I believe it was filed in  
17 connection with our Motion for Summary Disposition,  
18 perhaps our reply to Respondent's Motion for Summary  
19 Disposition or in connection to our own Motion for  
20 Summary Disposition as an attachment.

21 MS. CHUM: And Mr. Hughes, as I stated, before  
22 you look at anything, would you please tell me what it  
23 is that -- what it is that would refresh your  
24 recollection.

25 THE WITNESS: Yes.

1 MS. CHUM: Thank you.

2 JUDGE McKENNA: Off the record.

3 (Pause.)

4 JUDGE McKENNA: Back on the record.

5 BY MS. CHUM:

6 Q. Mr. Hughes, turning your attention now to page  
7 2 of Exhibit 97.

8 JUDGE McKENNA: And for the record, you gave  
9 Respondents a copy of the second declaration?

10 MS. CHUM: Yes, Your Honor.

11 JUDGE McKENNA: All right. Thank you.

12 BY MS. CHUM:

13 Q. Mr. Hughes, were you able to make observations  
14 from the Integrity Advance data sets about the loan  
15 payments made by consumers to Integrity Advance?

16 A. Yes, I was.

17 Q. Is page 2 of Exhibit 97 a fair and accurate  
18 summary of numbers you obtained from the Integrity  
19 Advance data set that shows loan payments made by  
20 consumers to Integrity Advance?

21 A. Yes.

22 Q. How much did consumers pay to Integrity  
23 Advance in total for all of the 304,227 loans in the  
24 data set?

25 JUDGE McKENNA: Made up of what?

1 BY MS. CHUM:

2 Q. Mr. Hughes, can you explain --

3 JUDGE McKENNA: That would be principal,  
4 finance fees and additional fees, correct?

5 MS. CHUM: Yes, Your Honor.

6 JUDGE McKENNA: Thank you.

7 Can you answer the question?

8 THE WITNESS: Two hundred seventy-three  
9 million, nine hundred twenty-six thousand four hundred  
10 seven and 60 cents.

11 BY MS. CHUM:

12 Q. Did you also look at a total paid above loan  
13 principal?

14 A. Yes, I did.

15 Q. What is the total paid above loan principal  
16 made up of?

17 A. Finance fees and additional fees.

18 Q. And what was that total that consumers paid  
19 above loan principal?

20 A. One hundred eighty-one million, nine hundred  
21 fifty-seven thousand eight hundred sixty seven and  
22 ninety-five cents.

23 Q. And Mr. Hughes, earlier you testified to an  
24 understanding of total of payments, what is your  
25 understanding of total of payments?

1 A. The principal plus a single finance fee.

2 Q. Did you determine from the Integrity Advance  
3 data set the total paid above the total of payments by  
4 consumers to Integrity Advance?

5 A. Yes, I did.

6 Q. What was that total?

7 A. One hundred thirty-three million, four hundred  
8 twenty-two thousand eight hundred thirty-eight and  
9 eighty-three cents.

10 Q. Now Mr. Hughes, did you determine of the total  
11 paid to Integrity Advance by consumers how much above  
12 the principal was paid by ACH?

13 JUDGE McKENNA: Are you referring to an  
14 exhibit, the next page or --

15 MS. CHUM: No, Your Honor. I'm just asking  
16 the witness without an exhibit.

17 JUDGE McKENNA: All right.

18 THE WITNESS: I believe we did.

19 BY MS. CHUM:

20 Q. And what was that total?

21 A. I would need to look back to remember that  
22 exact number.

23 Q. What is it that would refresh your  
24 recollection?

25 A. I'm not sure. I could --

1 JUDGE McKENNA: What do you need to look at to  
2 refresh your recollection?

3 THE WITNESS: I'm hoping that this will be in  
4 one of the documents we created.

5 BY MS. CHUM:

6 Q. Mr. Hughes, do you recall you and your data  
7 team recently determining how much above the principal  
8 was paid by ACH of the total paid by Integrity  
9 Advance -- paid to Integrity Advance by consumers?  
10 Specifically isolating the total above principal paid  
11 by ACH?

12 A. Yes. I'm -- I recall doing that. I don't see  
13 it right in front of me.

14 JUDGE McKENNA: All right.

15 THE WITNESS: This second.

16 JUDGE McKENNA: So. Here's what's going to  
17 happen.

18 Mr. Hughes, you're going to look and see if  
19 you can't find the document. If you do, and you have  
20 the number, then you will answer Ms. Chum's question  
21 and you will give notice to Respondents as to what  
22 document you are looking at.

23 And if they don't have it, then your counsel  
24 will provide it to them. All right?

25 THE WITNESS: Yes.

1 JUDGE McKENNA: So, proceed.

2 THE WITNESS: Okay. Thank you.

3 BY MS. CHUM:

4 Q. And Mr. Hughes, just because I know that  
5 you're very much into your position, do you just  
6 remember generally that number?

7 JUDGE McKENNA: We're not going generally.

8 MS. CHUM: Okay. Thank you.

9 BY MS. CHUM:

10 Q. Turning now to page 3 --

11 JUDGE McKENNA: Just a second.

12 He's trying --

13 MS. CHUM: Oh, I'm sorry. I thought this was.

14 MS. FOLEY: If it would be helpful, should we  
15 go off the record?

16 JUDGE McKENNA: Sure. Why don't we take a  
17 10-minute break.

18 (Whereupon, a brief recess was had.)

19 JUDGE McKENNA: Back on the record.

20 Mr. Hughes, don't runaway.

21 THE WITNESS: Okay.

22 JUDGE McKENNA: Proceed.

23 BY MS. CHUM:

24 Q. Mr. Hughes, do you recall the questions that  
25 -- the line of questioning that was pending when we

1 went off the record?

2 A. I do.

3 Q. So you had stated you did not recall the total  
4 paid to Integrity Advance by consumers above the  
5 principal that was paid by ACH; is there anything that  
6 would refresh your recollection?

7 A. I'm sure there would be. I don't see anything  
8 in front of me. I do have a percentage of payments  
9 that were made via ACH which could serve as a proxy for  
10 that.

11 Q. Okay. Moving on.

12 Turning now to page 3 of Exhibit 97. Would  
13 you turn with me, Mr. Hughes, to that?

14 A. Yes.

15 Q. Mr. Hughes, were you able to make observations  
16 from the Integrity Advance data set about loan payments  
17 made by consumers to Integrity Advance on loans that  
18 originated on or after July 21st, 2011?

19 A. Yes.

20 Q. And to determine whether loans originated on  
21 or after July 21st, 2011, did you use the same  
22 methodology of looking at transactions that occurred on  
23 August 13th, 2011 or later?

24 A. Yes.

25 Q. Is this page 3 of Exhibit 97 a fair and



1 accurate summary of the numbers that you obtained from  
2 the Integrity Advance data set about that particular  
3 matter?

4 A. Yes.

5 Q. Did you determine a total paid, i.e.,  
6 principal plus finance fees and additional fees paid by  
7 consumers to Integrity Advance on loans that originated  
8 on or after July 21st, 2011?

9 A. Yes, \$80,305,622.40.

10 Q. And of that amount, how much of that total was  
11 above total of payments?

12 A. Thirty-eight million, seven hundred  
13 ninety-five thousand, five hundred eighty-four and  
14 twelve cents.

15 Q. Mr. Hughes, I'm now directing your attention  
16 to what's been marked and previously admitted as  
17 Exhibit 100, would you turn to that, please,  
18 Mr. Hughes?

19 Mr. Hughes, have you seen this exhibit before?

20 A. Yes.

21 Q. Describe for me what is Exhibit 100?

22 MS. FOLEY: Objection. Lack of foundation.

23 JUDGE McKENNA: She's trying to lay one.

24 MS. FOLEY: She has not yet established that  
25 he actually knows what's here.

1 JUDGE McKENNA: That's overruled.

2 THE WITNESS: This is a listing of  
3 transactions on loan number 54158546.

4 BY MS. CHUM:

5 Q. Did you yourself or people under your  
6 direction create this chart and validate the numbers in  
7 this chart?

8 A. Yes.

9 Q. Is Exhibit 100 a fair and accurate  
10 representation of a summary of information that you  
11 were able to obtain about consumer 2129265 -- 92653 for  
12 transactions associated with loan number 54158546?

13 A. Yes.

14 MS. CHUM: Mr. Jefferson, would you focus on  
15 the first six lines of this document?

16 JUDGE McKENNA: Excuse me, who?

17 MS. CHUM: Mr. Tory Jefferson, our trial  
18 director.

19 JUDGE McKENNA: Okay.

20 BY MS. CHUM:

21 Q. Mr. Hughes, in the first five transactions  
22 listed here, for lines one through five, what did the  
23 consumer pay on the \$500 loan?

24 A. There are five separate payments made towards  
25 finance charges of \$150 dollars each.

1 Q. So none of the first five payments to  
2 Integrity Advance on \$500 loan went towards the \$500  
3 principal?

4 A. No.

5 Q. Was there any significance to the total that  
6 had been paid on the loan by February 15th, 2012?

7 MS. FOLEY: Objection, vague. Significance to  
8 whom?

9 JUDGE McKENNA: Overruled.

10 THE WITNESS: That was the first date at which  
11 the total amount paid to date exceeded the \$500  
12 principal and \$150 original finance fee.

13 BY MS. CHUM:

14 Q. So the sum of that principal and one finance  
15 fee on that \$500 loan was \$650?

16 A. Yes.

17 Q. And from February 15th, 2012 on the amounts  
18 paid exceeded the sum of the finance fee -- of one  
19 finance fee and principal?

20 A. The cumulative amounts paid exceeded it, yes.

21 Q. Now what happened in that sixth transaction  
22 which follows the February 15, 2012 transaction that  
23 brought the total cost to \$750 dollars?

24 A. I'm sorry, could you restate that or just  
25 repeat that I mean?

1 Q. Mr. Hughes, what did the consumer pay in the  
2 sixth transaction to Integrity Advance?

3 A. That would be \$50 dollars toward principal and  
4 \$150 toward finance charge, bringing the total amount  
5 paid up to \$950 cumulatively.

6 Q. Mr. Hughes, now directing your attention to  
7 the lines seven through nine, the bottom half of  
8 Exhibit 100, would you explain just generally the  
9 transactions for lines seven through nine?

10 A. In line seven there was an attempted ACH  
11 transaction for \$185 dollars. The NACHA return code  
12 was R07. And the explanation of that code is  
13 authorization revoked by customer. The total amount  
14 paid does not change because the transaction failed.

15 Q. And what happened -- so, what day was that on?

16 A. March 14th, 2012.

17 Q. And what happened on line eight, the next  
18 transaction that's dated April 2nd, 2012?

19 A. There is an RCC transaction for \$400 toward  
20 principal and \$120 toward finance charge, bringing the  
21 total up to \$1,470 of cumulative payments.

22 Q. And what happened on that same day on April  
23 2nd, 2012 as looking at line 9?

24 A. There was an attempted \$210 withdrawal and the  
25 return code via ACH was R01 or insufficient funds.

1 Q. And directing your attention to what's been  
2 marked as Exhibit 82 and previously admitted,  
3 Mr. Hughes have you seen this document before?

4 A. Yes.

5 Q. What is this document?

6 A. It says the operating rules and guidelines.  
7 Complete guide to the rules governing the ACH network.

8 MS. CHUM: And Mr. Jefferson, would you turn  
9 to page the next page, please?

10 BY MS. CHUM:

11 Q. Mr. Hughes, did you use NACHA return codes  
12 table section 4.2 from the official NACHA manual in  
13 reviewing the Integrity Advance data set?

14 A. Yes, I did.

15 Q. How did you use this exhibit?

16 A. I referenced the return codes to determine the  
17 return codes that indicated that a consumer did not  
18 want further ACH withdrawals.

19 Q. Did you focus on specific NACHA return codes  
20 in your review of the data?

21 A. Yes, I did.

22 Q. Which return codes did you focus on?

23 A. R07, R08 and R10 all appear to indicate  
24 revocation by the customer of one form of another.

25 Q. More specifically, what does R07 indicate?

1 A. R07 is authorization revoked by customer.

2 Q. R08?

3 A. Payment stopped.

4 Q. And R10?

5 A. Customer advises unauthorized, improper,  
6 ineligible or part of an incomplete transaction.

7 Q. Turning back to Exhibit 100 focusing on line  
8 seven, given your reliance on the NACHA codes, is it  
9 your testimony, Mr. Hughes, that after Integrity  
10 Advance had used its ACH authorization to withdraw \$950  
11 from consumer's account, the consumer revoked Integrity  
12 Advance's ACH authorization?

13 A. Yes.

14 Q. And now focusing on lines eight and nine of  
15 the document, Mr. Hughes, is it your testimony that  
16 following the consumer's withdrawal of ACH  
17 authorization, Integrity Advance submitted two RCC's on  
18 the consumer's account? One for a total of \$520?

19 A. On April 12th there's an RCC for \$520. Four  
20 hundred dollars towards principal and \$120 toward  
21 finance charge.

22 Q. And is it your testimony that there was an  
23 additional attempt to withdraw \$210 dollars by  
24 Integrity Advance from the consumer's account?

25 A. Yes, also on April 2nd, 2012.

1 Q. And did you rely on the NACHA return codes to  
2 determine that the consumer then had insufficient funds  
3 in his or her bank account?

4 A. Yes.

5 Q. Directing your attention back to Exhibit 97,  
6 Mr. Hughes, I'm now going to direct you to page 4 of  
7 Exhibit 97.

8 JUDGE McKENNA: What is the exhibit number?

9 MS. CHUM: Exhibit 97, Your Honor.

10 BY MS. CHUM:

11 Q. Mr. Hughes, were you able to make observations  
12 from the Integrity Advance data set about Integrity  
13 Advance's use of RCC's on consumers who had revoked  
14 Integrity Advance's ACH authorization or stopped  
15 Integrity Advance's ACH withdrawals?

16 A. Yes, Integrity Advance provided a second data  
17 set which listed all transactions that were RCC's.

18 Q. Is that second data set Exhibit 95? I believe  
19 that's an Excel sheet.

20 A. Yes.

21 Q. Have you seen this chart before?

22 A. Yes.

23 Q. Did you personally or direct others to create  
24 this chart?

25 MS. FOLEY: Objection, compound.

1 JUDGE McKENNA: Overruled.

2 THE WITNESS: Yes.

3 BY MS. CHUM:

4 Q. Is page four of Exhibit 97 a fair and accurate  
5 summary of the numbers you obtained from the Integrity  
6 Advance data sets about Integrity Advance's use of  
7 RCC's on consumers who had revoked Integrity Advance's  
8 ACH authorization or stopped ACH withdrawals?

9 A. Yes.

10 Q. Mr. Hughes, were you able to determine from  
11 Integrity Advance's data set instances where Integrity  
12 Advance attempted to withdraw funds by RCC from a  
13 consumer's account after -- strike that.

14 Mr. Hughes, for all RCC's in the Integrity  
15 Advance data set, how many RCC's were used?

16 A. Three thousand five hundred forty-five.

17 Q. And how many loans does that represent?

18 A. Two thousand twenty-four.

19 Q. And what was the number of RCC's used to  
20 obtain funds from consumers who had already paid the  
21 total of payments?

22 A. One thousand eight hundred and twenty-six.

23 Q. And how many -- what is the number of RCC's  
24 followed by attempts by Integrity Advance --  
25 Mr. Hughes, what was the number of RCC's that were



1 followed by attempts by Integrity Advance to withdraw  
2 additional money from consumer's bank accounts that led  
3 to insufficient funds?

4 A. Five hundred and eleven.

5 Q. And did you look at RCC's that occurred in the  
6 Integrity Advance data set on or after July 21st, 2011?

7 A. Yes.

8 Q. How many RCC's were used after consumers had  
9 revoked Integrity Advance's ACH authorization or  
10 stopped Integrity Advance's ACH withdrawals on or after  
11 July 21st, 2011?

12 A. I'm sorry. Could you repeat that?

13 Q. How many RCC's were used on or after July  
14 21st, 2011 on consumers who had revoked Integrity  
15 Advance's ACH authorization or stopped Integrity  
16 Advance's ACH withdrawals?

17 A. I'm sorry. Could you repeat that one more  
18 time?

19 JUDGE MCKENNA: Which block are you talking  
20 about?

21 BY MS. CHUM:

22 Q. Directing your attention to the first line of  
23 column two.

24 Mr. Hughes, what was the number of RCC's used  
25 on or after July 21st, 2011 on consumers who had

1 revoked Integrity Advance's ACH authorization or  
2 stopped Integrity Advance's ACH withdrawals?

3 A. One thousand, two hundred seventy-one.

4 Q. And how many loans does that represent?

5 A. Five hundred eighty-seven.

6 Q. And how many RCC's were used on or after July  
7 21st, 2011 to obtain funds from consumers who had  
8 already paid the total of payments and who had revoked  
9 IA's ACH authorization or stopped Integrity Advance's  
10 ACH withdrawals?

11 A. Six hundred and two.

12 Q. And how many RCC's were followed by attempts  
13 by Integrity Advance to withdrawal additional money  
14 from consumer's bank accounts with insufficient funds  
15 on or after July 21st, 2011, where the consumers had  
16 revoked or stopped ACH?

17 A. One hundred seventy-one.

18 Q. So, in total, Mr. Hughes, how much did  
19 Integrity Advance obtain by RCC after a consumer had  
20 either revoked ACH authorization or put a stop on  
21 ACH's?

22 A. Eight hundred thirty-nine thousand, eight  
23 hundred seventy-nine dollars and fifty cents.

24 Q. Turning your attention now to page four of  
25 Exhibit 97 -- or page five.

1 Mr. Hughes, have you seen this chart before?

2 A. Yes.

3 Q. Did you yourself create this chart or was this  
4 chart created under your direction?

5 A. Yes.

6 Q. Were you able to make observations from  
7 Integrity Advance's data set about RCC's used by  
8 Integrity Advance on or after July 21st, 2011 to  
9 withdraw funds from consumers who had revoked or  
10 stopped ACH withdrawals?

11 A. Yes.

12 Q. Is this chart, page five of Exhibit 97 a fair  
13 and accurate summary of those numbers?

14 A. Yes, it is.

15 Q. What was the total amount obtained by RCC by  
16 Integrity Advance on or after July 21st, 2011 to  
17 withdraw funds from consumers who had revoked Integrity  
18 Advance's ACH authorization or stopped Integrity  
19 Advance's ACH withdrawals?

20 A. Two hundred sixty-five thousand four hundred  
21 fifty-two dollars and fifty cents.

22 Q. And of that amount, what was the total amount  
23 obtained by RCC after the consumer had already paid the  
24 total of payments?

25 A. One hundred fifteen thousand, twenty-four

1 dollars and fifty cents.

2 JUDGE McKENNA: What do you mean total of  
3 payments?

4 THE WITNESS: Total of payments as described  
5 on page one of the same exhibit, which is principal  
6 plus a single finance fee.

7 BY MS. CHUM:

8 Q. Mr. Hughes, going forward, when I ask you  
9 about total of payments, will the meaning of total of  
10 payments remain the same?

11 A. Yes.

12 Q. Thank you.

13 Mr. Hughes, I'm now going to direct your  
14 attention to a demonstrative, which Enforcement Counsel  
15 wishes to mark as Exhibit 102.

16 MS. FOLEY: We haven't seen this, Your Honor.  
17 We don't have a copy.

18 I'd like to see it before it gets marked.

19 JUDGE McKENNA: I think you would.

20 MS. FOLEY: Thank you.

21 JUDGE McKENNA: When was this prepared?

22 MS. CHUM: Your Honor, this was prepared  
23 yesterday in response to --

24 MS. FOLEY: Do you have a copy?

25 JUDGE McKENNA: Off the record.

1 (Pause.)

2 JUDGE McKENNA: Back on the record.

3 Have the Respondents had a chance to look at  
4 this document?

5 MS. FOLEY: We have, Your Honor, and we object  
6 to its introduction today. We are in Enforcement  
7 Counsel's case in chief. Exhibits were due and  
8 exchanged weeks ago. I believe it was July 6. It is  
9 today, right now as his testimony is going on, we were  
10 given this document for the first time where  
11 Enforcement Counsel purports to have a witness who  
12 performed numerous brand new calculations, we have not  
13 been provided the source code or the underlying  
14 calculations that support these calculations.

15 We object that it is unduly prejudicial to  
16 allow it in at this time without giving us any  
17 opportunity to review it or the materials underlying  
18 it and being expected to cross-examine the witness on  
19 short notice.

20 JUDGE McKENNA: Those are all good points.

21 Are these numbers predicated on numbers from  
22 exhibits that are already in the record?

23 THE WITNESS: Yes, these are all based on the  
24 two data sets from Integrity Advance. I don't recall  
25 the numbers off the top of my head. I think 95 and --

1 MS. CHUM: The data sets exhibits are 95 and  
2 101, Your Honor.

3 JUDGE McKENNA: All right.

4 MS. CHUM: And Your Honor --

5 JUDGE McKENNA: So are you moving this at this  
6 time?

7 MS. CHUM: Not at this time, Your Honor.

8 Your Honor, we are using this as a  
9 demonstrative at this time.

10 JUDGE McKENNA: Just marked for purposes of  
11 identification.

12 MS. CHUM: Yes, it's marked for purposes of  
13 identification.

14 JUDGE McKENNA: All right. So before we go  
15 any further on this, if it's proffered, then I will  
16 give -- I'm going to admit it. I'm going to give  
17 Respondents five days to tell me how they want to  
18 proceed. If you have a rebuttal exhibit, you can use  
19 that. If you want to recall this witness to  
20 cross-examine him after you have had an opportunity to  
21 review it, I will look favorably on it and I also will  
22 look favorably on any suggested avenues that you might  
23 wish to take. All right?

24 MS. FOLEY: Thank you, Your Honor.

25 MS. CHUM: And Your Honor, if I may, just to

1 kind of, as you had said before, prime the pump to  
2 explain to you why we were running these numbers  
3 yesterday based on the data sets, it is my  
4 understanding that we were put on notice yesterday  
5 that you were interested in one-time customers of  
6 Integrity Advance as well as first time loans.

7 So we wanted to provide you with the numbers  
8 that you had indicated to Mr. Wheeler that you were  
9 interested in and we were not aware of that until  
10 yesterday.

11 JUDGE McKENNA: Well, that's very good. Thank  
12 you. I'm interested in a lot of these numbers and so  
13 we will see how this works out.

14 Proceed.

15 (Whereupon, Enforcement Counsel's

16 Exhibit No. 102 marked for identification.)

17 BY MS. CHUM:

18 Q. Mr. Hughes, have you seen Exhibit 102 before?

19 A. Yes.

20 Q. What is it?

21 A. It's a table of accounts of customers and  
22 amounts paid looked at two different ways. One for  
23 loans originated throughout the data set, and the other  
24 for loans originated July 21st, 2011 or later.

25 Q. Did you yourself or people under your

1 direction create this chart?

2 A. Yes.

3 Q. And what is a first-time loan?

4 JUDGE McKENNA: All right. Just a second.

5 And this is predicated on Exhibits 97 --

6 BY MS. CHUM:

7 Q. Mr. Hughes, did the values you derived from  
8 this in this chart base -- are these values based on  
9 exhibits -- the data sets provided by Integrity Advance  
10 Exhibit 95 and 101?

11 A. Yes.

12 Q. Mr. Hughes, would you explain what a  
13 first-time loan is.

14 A. If an individual customer took out multiple  
15 loans, the first-time loan would be the first loan that  
16 that customer took out.

17 Q. Would a first-time loan also include loans  
18 from customers -- first-time loans of customers who did  
19 not take out multiple loans?

20 A. Yes, it would be the first loan any customer  
21 took out whether or not there were multiple loans.

22 Q. What is a one-time loan?

23 A. That refers to a loan taken out by a customer  
24 who took out no other loans.

25 Q. Is Exhibit 102 a fair and accurate summary of



1 numbers that you observed from the transaction data  
2 produced by Integrity Advance concerning first-time and  
3 one-time loans?

4 A. Yes.

5 Q. Mr. Hughes, focusing on loans that originated  
6 between May 2008 and July 2013, how many one-time  
7 customers were there with Integrity Advance?

8 A. One hundred twenty-two thousand, five hundred  
9 eighty-one.

10 Q. And you recall your definition of total of  
11 payments, what was the number of first-time loans that  
12 paid more than the total of payments?

13 A. One hundred sixteen thousand eight hundred and  
14 nineteen.

15 Q. What was the number of one-time loans that  
16 paid more than the total of payments?

17 A. Sixty-eight thousand seven hundred and  
18 twenty-five.

19 Q. How much money was paid to Integrity Advance  
20 by consumers above the total of payments via first-time  
21 loans?

22 A. Sixty-nine million, six hundred twenty-eight  
23 thousand six hundred eighty and one cent.

24 Q. And how much was paid to Integrity Advance by  
25 customers above the total of payments via one-time

1 loans?

2 A. Thirty-nine million nine hundred eighteen  
3 thousand seven hundred sixteen and seventy-eight cents.

4 Q. And how much was paid to Integrity Advance by  
5 consumers above the principal via -- strike that.

6 First, what were the monies above principal  
7 that you looked at when you -- for money paid to IA by  
8 consumers above the principal via first-time loans?

9 THE COURT REPORTER: I'm sorry. I couldn't  
10 hear it.

11 BY MS. CHUM:

12 Q. Mr. Hughes, did you look at the money paid to  
13 Integrity Advance by consumers above the principal via  
14 first-time loans?

15 A. Yes.

16 Q. And what were those monies categorized as?

17 A. Finance charges and fees.

18 Q. What was the total money paid to Integrity  
19 Advance by consumers above the principal via first-time  
20 loans?

21 A. Ninety-nine million, one hundred sixty-one  
22 thousand, two hundred twelve and 89 cents.

23 Q. And same question for one-time loans?

24 A. Sixty-three million, five hundred and  
25 fifty-three thousand, two hundred sixty-six and

1 twenty-three cents.

2 Q. And what was the money paid to Integrity  
3 Advance by consumers, the principal plus the finance  
4 charges and additional fees via first-time loans?

5 A. One hundred forty-three million, one hundred  
6 eighty four thousand eight hundred fifty-nine and  
7 eighty-two cents.

8 Q. Same question for one-time loans?

9 A. Eighty-six million, one hundred forty-one  
10 thousand, seven hundred seventy-three and twenty cents.

11 Q. Mr. Hughes, did you look at loans that  
12 originated on or after July 21st, 2011 for this  
13 particular set of first-time and one-time loans for all  
14 first-time and one-time loans?

15 A. Yes.

16 Q. And in determining that the loans originated  
17 on or after July 21st, 2011 did you make the same  
18 assumptions you made previously such that you looked  
19 only at first transactions that occurred on or after  
20 August 13th, 2011?

21 A. Yes.

22 Q. For the loans that originated on or after July  
23 21st, 2011 how many one-time customers were there?

24 A. Twenty-eight thousand and one.

25 Q. What was the number of first-time loans that

1 paid more than the total of payments?

2 A. Twenty thousand four hundred and  
3 seventy-eight.

4 Q. And what was the number of one-time loans that  
5 paid more than total of payments?

6 A. Fourteen thousand six hundred ninety-two.

7 Q. What was the money paid to Integrity Advance  
8 by consumers above the total of payments via first-time  
9 loans?

10 A. Twelve million, two hundred fifty thousand  
11 five hundred forty-four and twenty-eight cents.

12 Q. What was the money paid to Integrity Advance  
13 by consumers above the total of payments via one-time  
14 loans?

15 A. Eight million, nine hundred ninety-nine  
16 thousand nine hundred sixty-four and forty-five cents.

17 Q. And you're testifying to loans that originated  
18 on or after July 21st, 2011?

19 A. Yes.

20 Q. And still remaining and testifying about loans  
21 originated on or after July 21st, 2011, what was the  
22 money paid to Integrity Advance by consumers above the  
23 principal via first-time loans?

24 A. Eighteen million, two hundred twenty-one  
25 thousand five hundred eighty-eight dollars and

1 ninety-seven cents.

2 Q. And the same question for one-time loans.

3 A. Fourteen million, two hundred seventeen  
4 thousand, one hundred fifty-five dollars and  
5 ninety-five cents.

6 Q. What was the money paid to Integrity Advance  
7 by consumers via first-time loans, the total money,  
8 principal, plus finance charge and additional fees?

9 A. Twenty-six million, three hundred seventeen  
10 thousand, three hundred eighty-five dollars and  
11 ninety-nine cents.

12 Q. The same question for one-time loans?

13 A. Nineteen million, four hundred fifty-eight  
14 thousand, nine hundred sixty-six dollars and one cent.

15 MS. CHUM: Your Honor, at this time  
16 Enforcement Counsel would request that the exhibit  
17 marked as 102 for good cause shown pursuant to rule  
18 215(c) be admitted into evidence.

19 JUDGE McKENNA: Objection duly noted and  
20 overruled. So admitted.

21 And Respondents will have five days to notify  
22 me how they wish to proceed to rebut.

23 (Whereupon, Enforcement Counsel's  
24 Exhibit No. 102 admitted into evidence.)

25 MS. CHUM: Thank you, Your Honor.

1 No further questions.

2 JUDGE McKENNA: Just one moment.

3 All right. Does that conclude your direct?

4 MS. CHUM: Yes, that concludes Enforcement  
5 Counsel's direct. Thank you, Your Honor.

6 JUDGE McKENNA: Thank you.

7 Cross-examination?

8 MS. FOLEY: Your Honor, in light of brand new  
9 Exhibit 102 and the new calculations here, we would  
10 request a recess to conduct his cross-examination  
11 tomorrow, so that we can have the rest of the  
12 afternoon, perhaps we can do I think they have one  
13 more witness, Mr. Baressi, in lieu of doing the  
14 cross-examination, which would give us tonight to  
15 consider how we would like to proceed.

16 JUDGE McKENNA: Any objections?

17 MR. WHEELER: No objection, Your Honor.

18 JUDGE McKENNA: All right. That sounds like a  
19 reasonable request.

20 MS. FOLEY: Thank you, Your Honor.

21 JUDGE McKENNA: You can step down. I don't  
22 want you to feel uncomfortable.

23 THE WITNESS: Thanks.

24 MS. FOLEY: I'm not sure if it's necessary,  
25 Your Honor, but just maybe an admonition to the

1 witness that he's still under oath.

2 He is still in the courtroom.

3 JUDGE McKENNA: Did he leave?

4 MS. FOLEY: Oh, no, he's still in the  
5 courtroom.

6 JUDGE McKENNA: Do you understand that?

7 THE WITNESS: Yes.

8 JUDGE McKENNA: All right.

9 MS. CHUM: Your Honor, the government calls --  
10 Enforcement Counsel calls Joseph Baressi.

11 JUDGE McKENNA: Spell the last name.

12 MS. CHUM: B-A-R-E-S-S-I.

13 JUDGE McKENNA: B as in boy?

14 MS. CHUM: Yes.

15 JUDGE McKENNA: Go ahead.

16 MS. CHUM: I believe that --

17 JUDGE McKENNA: B --

18 MS. CHUM: B, as in boy, A-R-E-S-S-I.

19 JUDGE McKENNA: Thank you.

20 Mr. Hughes, you will remain under oath  
21 tonight.

22 THE WITNESS: Yes, Your Honor.

23 JUDGE McKENNA: Off the record.

24 (Pause.)

25 JUDGE McKENNA: All right. Back on the

1 record.

2 JOSEPH BARESSI,

3 A witness produced on call of Enforcement  
4 Counsel, having first been duly sworn, was examined  
5 and testified as follows:

6 JUDGE McKENNA: Please be seated. State your  
7 full name and spell it for the record.

8 THE WITNESS: Joseph Phillip Baressi, III,  
9 J-O-S-E-P-H P-H-I-L-L-I-P B-A-R-E-S-S-I.

10 JUDGE McKENNA: Thank you.

11 Proceed.

12 BY MS. CHUM:

13 Q. Mr. Baressi, you work in the Consumer  
14 Financial Protection Bureau's regulations office?

15 A. Correct.

16 Q. How long have you worked at the CFPB?

17 A. Just over three years.

18 Q. What are your responsibilities in the  
19 regulations office?

20 A. I work primarily on writing rules,  
21 regulations, I also respond to certain inquiries that  
22 we get from the public.

23 Q. Before joining the CFPB's regulations office,  
24 were you with the federal reserve board as a financial  
25 services project leader?



1           A.    I was. I was with the federal reserve board  
2 as a financial services project leader for about 12  
3 years.

4           Q.    What are your responsibilities -- what were  
5 your responsibilities as a financial services project  
6 leader at the federal reserve board?

7           A.    I was also there responsible for writing  
8 certain rules and regulations, particularly there with  
9 respect to check clearing processes and I was also part  
10 of a team responsible for overseeing the payment  
11 processing operations of the reserve banks, the federal  
12 reserve banks.

13          Q.    What degrees do you hold, Mr. Baressi?

14          A.    I have an economics degree from Harvard and a  
15 law degree from Georgetown.

16          Q.    Mr. Baressi, do you have first-hand knowledge  
17 and experience with remotely created checks?

18          A.    Yes, I do. I worked on formulating  
19 regulations and policy with respect to those checks and  
20 I was also involved with those checks through the check  
21 clearing operations of the federal reserve banks.

22               MS. BAKER: Your Honor, if I could just ask is  
23 the witness being qualified to be an expert in this  
24 matter? And if so, I would object to his being  
25 proffered as an expert given that expert depositions

1 and expert discovery in this matter closed a number of  
2 months ago.

3 JUDGE McKENNA: All right. Do you wish to  
4 voir dire?

5 MS. BAKER: Well, Your Honor, I'm just asking  
6 or my query is to whether or not he's being offered  
7 for expert testimony. I'm not clear as to the scope  
8 of his proffered testimony. And Ms. Chum appears to  
9 be qualifying him and I'm not sure what she's  
10 qualifying him for if he's not an expert. It's not  
11 that I doubt his qualifications.

12 JUDGE McKENNA: All right. Let's find out.

13 MS. CHUM: Your Honor, if I may?

14 JUDGE McKENNA: Yes, you may.

15 MS. CHUM: Mr. Baressi is not being offered as  
16 an expert. He will be offering general knowledge  
17 testimony on what RCC's are and how they work, not  
18 opinion testimony. And he will not opine about the  
19 specifics of Integrity Advance's use of RCC's.

20 The way RCC's function as a product has not  
21 been an issue in this case, but in keeping with Your  
22 Honor's request on July 1st, 2016 in the order  
23 granting in part and denying in part the Bureau's  
24 Motion for Summary Disposition, Enforcement Counsel  
25 seeks to supplement the record with some additional

1 information to assist Your Honor in making a  
2 determination as it pertains to RCC's and better  
3 understanding RCC's.

4 MS. BAKER: Thank you. That's helpful to the  
5 extent that his testimony is relegated to the scope  
6 that Ms. Chum just described, I have no objection to  
7 it. To the extent it goes beyond that and exceeds  
8 that and he becomes proffered as an expert either by  
9 deliberateness or inadvertentness, I will object on  
10 those grounds.

11 JUDGE McKENNA: You will let me know?

12 MS. BAKER: Yes, Your Honor, I will let you  
13 know.

14 Thank you.

15 JUDGE McKENNA: Thank you.

16 BY MS. CHUM:

17 Q. And Mr. Baressi, you were speaking briefly  
18 about your -- the basis of your knowledge and  
19 experience. Again, tell me what was the basis of your  
20 knowledge and experience at the Federal Reserve as it  
21 pertains to remotely created checks?

22 A. Well, the first time that remotely created  
23 checks became a policy matter, we received -- we were  
24 receiving inquiries, you know, from the public and also  
25 from Congress, actually, about remotely created checks

1 and the risks associated with them.

2 Q. What time was that? What time period was  
3 that?

4 A. I would say that was around 2004/2005.

5 Q. And what was the period of time that you were  
6 at the Federal Reserve?

7 A. From 2000 until 2013.

8 Q. So is it fair to say from 2004/2005 through  
9 2013 you were -- you had experience with remotely  
10 created checks?

11 A. Yes.

12 Q. Did you continue to have experience with  
13 remotely created checks while at the regulations office  
14 of the CFPB?

15 A. Somewhat, yes.

16 Q. Can you expand on that?

17 A. Sure. The rule makings I'm working on right  
18 now are not directly related to remotely created checks  
19 so I do sometimes get involved in RCC matters, but not  
20 regularly.

21 Q. And Mr. Baressi, could you explain what are  
22 remotely created checks?

23 A. In essence, a remotely created check, commonly  
24 known as a demand draft, is a check that is not signed  
25 by the consumer. Instead it is a check that is created

1 by the payee.

2 Q. Are remotely created checks also referred to  
3 as RCC's or check drafts as well as demand drafts?

4 A. Yes.

5 Q. In your experience, how well understood are  
6 RCC's by consumers?

7 A. I don't think consumers understand them. I  
8 think consumers just are hoping to get goods and  
9 services or hopefully understand that they are getting  
10 goods or services or a loan, but I don't think  
11 consumers understand remotely created checks.

12 Q. And what is it specifically that consumers  
13 struggle to understand about remotely created checks?

14 MS. BAKER: Objection. This calls for  
15 speculation. He hasn't proffered any testimony that  
16 would suggest he knows what consumers think or that  
17 he's undertaken a consumer survey. He is being asked  
18 to speculate.

19 JUDGE McKENNA: Sustained.

20 BY MS. CHUM:

21 Q. Do you have a basis for knowledge about  
22 consumer understanding for RCC's?

23 A. Yes. I would say, yes, I do.

24 Q. What is the basis of that knowledge?

25 A. Facts that I came to learn while thinking

1 about policies and regulations to regulate remotely  
2 created checks at the Federal Reserve.

3 Q. And where did those facts come from?

4 A. From typically from the Federal Reserve Banks  
5 and things they were seeing happening in the check  
6 clearing network.

7 Q. And what were -- what was the Federal Reserve  
8 Bank seeing happening at the check -- with the check  
9 clearing network?

10 MS. BAKER: Objection. Foundation and vague.

11 JUDGE McKENNA: Overruled.

12 THE WITNESS: The Federal Reserve was seeing  
13 significant rates of unauthorized returns and frequent  
14 returns of remotely created checks.

15 JUDGE McKENNA: What do you mean unauthorized  
16 returns?

17 THE WITNESS: Consumers, the consumers on  
18 whom's accounts the RCC's were drawn were asserting  
19 that the payments were not authorized and the RCC's  
20 were bouncing back and forth, forward clearing, return  
21 clearing in the check network.

22 BY MS. CHUM:

23 Q. Mr. Baressi, could you walk us through step by  
24 step how an RCC is authorized, created and cashed?

25 A. Sure. In the course of a phone conversation

1 or on the Internet, like at a website, a consumer will  
2 provide his routing number and account number. The  
3 payee uses that routing number and account number to  
4 create a demand draft, to create a remotely created  
5 check.

6 Q. So by providing just a routing number and  
7 account number, does that payee get authorization to  
8 create remotely created checks on behalf of the  
9 consumer?

10 A. Not necessarily.

11 It's not clear what the payee is getting in  
12 terms of authorization from the consumer. I guess I  
13 would say no, routing number and account number do not  
14 constitute authorization from the consumer.

15 Q. So how does a payee get authorization to  
16 create the remotely created checks?

17 MS. BAKER: Objection. Is he being asked for  
18 a legal conclusion? Authorization is a legal term and  
19 I think the way we've used it in the context of this  
20 matter and certainly Ms. Chum's explanation for his  
21 testimony suggests that that's what this is. So I  
22 would like a clarification. It seems like it's  
23 calling for legal testimony.

24 JUDGE McKENNA: Right. Is it what you are  
25 requesting?

1 MS. CHUM: No, Your Honor, I'm just asking for  
2 nuts and bolts description of like what actually goes  
3 on between a consumer and a payee and the bank.

4 JUDGE McKENNA: Would you envision that there  
5 would be a separate document where the customer would  
6 grant the payee authority to transmit an RCC?

7 THE WITNESS: Short answer is yes. What I  
8 would envision is a separate document where the  
9 consumer authorizes the payee to initiate debits  
10 pulling money out of the consumer's account.

11 (Cellphone ringing.)

12 THE WITNESS: Sorry about that.

13 JUDGE McKENNA: I will have to confiscate  
14 that.

15 BY MS. CHUM:

16 Q. And once that authorization is received, can a  
17 payee continue to obtain RCC's from a consumer?

18 A. The short answer is yes. If there is an  
19 authorization, like I was trying to describe just  
20 previously, a document or a web page where the consumer  
21 says I authorize you, payee, to take money out of my  
22 account. Once that has happened, the consumer cannot  
23 control RCC's taking money out of his or her account.

24 Q. So who is it that actually creates the RCC?

25 A. The payee.



1 Q. Is the consumer involved after that  
2 authorization in the creation of the RCC's?

3 A. No.

4 Q. Who determines how much to take out via RCC?

5 A. The payee.

6 Q. And is the consumer directly involved in that  
7 decision?

8 A. No.

9 Q. Who instructs the consumer's bank to make the  
10 payment to the payee?

11 A. That is actually a relatively involved  
12 process. The payee, as with a typical check, I mean  
13 you can think of it as a typical check, but the payee  
14 deposits the RCC into the check clearing system, i.e.,  
15 the Federal Reserve Banks, the Federal Reserve Banks  
16 deliver the check from the payee's bank to the  
17 consumer's bank.

18 And this is happening, in general, in high  
19 volumes and high frequency on that kind of thing and  
20 the consumer's bank simply responds to the high volume  
21 number of instructions, i.e., remotely created checks,  
22 that are received from the Federal Reserve Banks.

23 Q. And are consumers directly involved in that  
24 process?

25 A. They are not involved, no.

1 Q. So does a consumer have to sign an RCC the way  
2 that a consumer would sign a check?

3 A. No, the consumer does not sign an RCC.

4 Q. And I think you testified that a consumer does  
5 not have to authorize an RCC each time that one is used  
6 to withdraw money from the consumer's account?

7 A. Correct.

8 Q. So why is the payee able to create an RCC  
9 without the consumer's involvement?

10 JUDGE McKENNA: That's stating something that  
11 is not in evidence because the consumer as he  
12 testified to, made an authorization for RCC's and  
13 subsequent to that, the consumer has no involvement.

14 That's your testimony?

15 THE WITNESS: Well, I would like to clarify a  
16 bit.

17 JUDGE McKENNA: Go right ahead.

18 THE WITNESS: Consumers are, what I would in  
19 general -- a consumer is hopefully authorizing debits  
20 to his or her account. You know, the payee is going  
21 to be taking money out of the consumer's account. The  
22 consumer is authorizing that.

23 I do not think a typical, reasonable consumer  
24 is authorizing remotely created check usage to  
25 accomplish that. They are expecting it to be an

1 electronic payment.

2 BY MS. CHUM:

3 Q. So does an RCC look like a check?

4 A. Except for the fact that there is no signature  
5 where you would typically expect to see a person's  
6 signature.

7 Q. How does a consumer know that an RCC is being  
8 used on them?

9 MS. BAKER: Objection. Calls for speculation.

10 JUDGE McKENNA: I will allow it.

11 THE WITNESS: Typically, a consumer would not  
12 know that an RCC is being used until the consumer  
13 reviews his or her periodic statement and sees it.

14 BY MS. CHUM:

15 Q. How is an RCC identifiable in a periodic  
16 statement?

17 A. It would be one of the transactions listed on  
18 the periodic statement. It would typically be listed  
19 in the check sort of section of the periodic statement,  
20 but it would have a random number. You know, instead  
21 of going through checks 100, 101, 102 in your  
22 checkbook, this will be check 5,004 coming out of  
23 nowhere.

24 Q. And in that statement, it wouldn't actually  
25 say RCC or demand draft?

1 A. It would not.

2 Q. It would just be a random number?

3 A. Yes. The main identification of it would be a  
4 number, a random number.

5 Q. How are RCC's disputed by consumers?

6 A. The consumer reviews his or her periodic  
7 statement, sees a debit on there that the consumer  
8 doesn't believe that he or she authorized, consumer  
9 calls his or her bank and asserts that there was an  
10 unauthorized payment pulling money out of the  
11 consumer's account.

12 Q. In your knowledge and experience is disputing  
13 an RCC more difficult or easier for a consumer than  
14 disputing a check?

15 A. It's typically more difficult than disputing  
16 an ACH debit or a card transaction or something like  
17 that.

18 Q. Or a check?

19 A. Or a regular check, yes.

20 Q. How is it more difficult than disputing an  
21 ACH, a credit card, debit card or a check?

22 MS. BAKER: Objection, foundation.

23 JUDGE McKENNA: I will allow it.

24 THE WITNESS: With a check, the consumer --  
25 which is sort of the most direct comparison -- with a

1 check the consumer, in theory, signs the check and  
2 there is a series of checks coming out of the  
3 consumer's checkbook.

4 And so, the consumer can do something like  
5 say, look, that is not my signature on that check. I  
6 did not write that check. With an RCC, the sort of by  
7 definition the consumer cannot do that, cannot make  
8 clear that the consumer did not authorize that check  
9 because there is no signature on that check.

10 BY MS. CHUM:

11 Q. Relying on your knowledge and experience, are  
12 you aware of companies relying on RCC's once a consumer  
13 has put a stop on ACH's or withdrawn ACH  
14 authorization --

15 A. Yeah.

16 Q. -- by a payee?

17 A. Yes.

18 Q. In what instances have companies relied on  
19 RCC's once a consumer puts a stop on ACH's?

20 MS. BAKER: Objection. Calls for speculation.

21 JUDGE McKENNA: I will allow it.

22 THE WITNESS: The ACH network has two central  
23 operators, the reserve banks and an operator named  
24 EPN, who monitor the ACH network for red-flag type  
25 activity. Like a significantly high number of

1 unauthorized return rates.

2 So in the ACH network, it is difficult for  
3 payees to continue debiting a consumer's account after  
4 the consumer has said that the debits are  
5 unauthorized. The check network through which  
6 remotely created checks travel, does not have those  
7 two operators monitoring the network.

8 So when payees are concerned about setting off  
9 alarm bells because of too high unauthorized return  
10 rates, they will -- if they are bad intentioned, they  
11 might shift to using the check network to abate  
12 detection in the ACH network.

13 Q. Are there any other significant differences  
14 between RCC's and ACH's?

15 A. In my opinion, yes.

16 MS. BAKER: Objection. His opinion. Again, I  
17 mean, this was subject to my initial admonition, this  
18 witness isn't being proffered for his opinion.

19 JUDGE McKENNA: Correct. All right. Do you  
20 have personal knowledge?

21 THE WITNESS: I would say I have direct  
22 professional knowledge, yes.

23 JUDGE McKENNA: All right. Answer the  
24 question. Not your opinion.

25 MS. BAKER: Your Honor, that's pretty much

1 what an expert witness does. Which is they impose  
2 their professional knowledge on a set of facts or  
3 hypotheticals that have been presented to them.

4 JUDGE McKENNA: And laymen do also.

5 MS. BAKER: And is he being offered as a lay  
6 opinion witness?

7 JUDGE McKENNA: He hasn't been qualified as an  
8 expert, so there's one or the other.

9 MS. BAKER: So. I -- okay. Well, I guess I  
10 would ask that this Court request that the CFPB  
11 clarify precisely what he's being offered for in light  
12 of this line of questions.

13 JUDGE McKENNA: They indicated that already,  
14 that it's his knowledge and he is not being offered as  
15 an expert.

16 MS. BAKER: Thank you, Your Honor.

17 THE WITNESS: In the ACH network when an  
18 unauthorized debit is returned it always goes back to  
19 its point of origination, which makes tracking of  
20 unauthorized returns in the ACH network more feasible.

21 In the check network, when a check is  
22 returned, it does not always go back to the bank into  
23 which it was deposited.

24 So for example, an RCC deposited into bank A  
25 if returned as unauthorized might go back to bank B.

1 That can make tracking the unauthorized return  
2 rates of unauthorized RCC's very difficult.

3 JUDGE McKENNA: How would it go to bank B?

4 THE WITNESS: The payee --

5 JUDGE McKENNA: If the account is in bank A,  
6 right?

7 THE WITNESS: The payee's account is in bank  
8 A. And then the payee would typically also have an  
9 account at bank B.

10 JUDGE McKENNA: So you are talking about not  
11 taking the money out of the account, it's what happens  
12 regarding the payee.

13 THE WITNESS: Right and so bank A, the payee's  
14 -- first bank, bank A isn't aware that that RCC got  
15 returned because it went back to bank B instead of  
16 bank A.

17 JUDGE McKENNA: RCC's are legal, correct?

18 THE WITNESS: Yes, in most circumstances.

19 BY MS. CHUM:

20 Q. Are there certain risks in your knowledge and  
21 experience to consumers associated with RCC's?

22 MS. BAKER: Objection. Calls for speculation,  
23 asking him his opinion. And I'm going to object to  
24 this ongoing exam as relevance.

25 JUDGE McKENNA: Sustained.



1 MS. BAKER: Thank you.

2 BY MS. CHUM:

3 Q. Are RCC's harder to stop than ACH's?

4 JUDGE McKENNA: You just asked that question,  
5 didn't you?

6 MS. CHUM: Are there fewer protections  
7 associated with RCC's than ACH's?

8 MS. BAKER: Same objection, speculation and  
9 vague.

10 JUDGE McKENNA: To the extent he knows, I will  
11 allow him to answer.

12 THE WITNESS: I would answer that question,  
13 yes, federal law provides --

14 MS. BAKER: Objection. He is offering legal  
15 testimony.

16 JUDGE McKENNA: He can cite what the law is  
17 without giving a legal opinion.

18 MS. BAKER: Your Honor, I agree except it  
19 sounded like he was giving a legal opinion.

20 JUDGE McKENNA: All right.

21 Don't give a legal opinion.

22 THE WITNESS: Well, federal law provides  
23 protections for electronic payments that are not  
24 applicable to checks.

25 MS. BAKER: Objection. That's a legal

1 opinion, and I would ask that that testimony be  
2 stricken from the record.

3 JUDGE McKENNA: I'm going to deny your request  
4 and overrule your objection.

5 BY MS. CHUM:

6 Q. Mr. Baressi, in your knowledge and experience,  
7 have RCC's been banned in specific circumstances?

8 A. The FTC has banned RCC's in telemarketing.

9 JUDGE McKENNA: But they haven't been banned  
10 regarding short-term loans; is that correct?

11 THE WITNESS: Correct.

12 BY MS. CHUM:

13 Q. What are the public policy implications  
14 halting the use of RCC's on consumers after those  
15 consumers have overpaid a payee and already stopped  
16 that payee from withdrawing money from their accounts  
17 by ACH?

18 JUDGE McKENNA: Sustained.

19 MS. BAKER: Thank you, Your Honor.

20 MS. CHUM: That concludes Enforcement  
21 Counsel's direct, Your Honor.

22 JUDGE McKENNA: Thank you. Cross-examination.

23 CROSS-EXAMINATION

24 BY MS. BAKER:

25 Q. Good afternoon, Mr. Baressi. Am I pronouncing

1 your last name correctly?

2 A. Baressi.

3 Q. Baressi, thank you. Sorry about that.

4 Mr. Baressi, you have testified that you  
5 worked at the Federal Reserve Board for 13 years?

6 A. Twelve years and some number of months, yes.

7 Q. We will call it 13.

8 A. Okay.

9 Q. And when you worked at the Federal Reserve  
10 Board you were in the rule making office?

11 A. I was in the division of reserve bank  
12 operations and payment systems. It wasn't named the  
13 rule making office.

14 JUDGE McKENNA: Was that OGC?

15 THE WITNESS: No, it was not the OGC either.  
16 That's the legal division.

17 JUDGE McKENNA: Right. But you're a lawyer.

18 THE WITNESS: Yes.

19 BY MS. BAKER:

20 Q. You didn't work in the feds supervision  
21 division, did you?

22 A. I did not.

23 Q. You've never supervised or been involved in a  
24 field examination as a supervisor -- as an examiner of  
25 a payday company?

1 A. I have never examined a payday company.

2 Q. And you, I think, testified just now that you  
3 currently work in the rule making office at the  
4 Consumer Financial Protection Bureau; is that right?

5 A. The Office of Regulations, yes.

6 Q. Yes. I'm being colloquial in calling it the  
7 rule-making office for purposes of this, but I do know  
8 it's called the Office of Regulations.

9 A. Okay.

10 Q. But thank you. I appreciate the  
11 clarification.

12 A. Sure.

13 Q. You don't work in the consumer response unit  
14 there, do you?

15 A. I do not.

16 Q. So you don't have any first-hand knowledge of  
17 consumer complaints that could come into the CFPB  
18 concerning RCC's. And by first-hand knowledge I mean  
19 involvement with responding to the way the consumer  
20 response unit responds?

21 A. I do not believe I have ever actively  
22 participated in responding to a consumer complaint  
23 about an RCC at the CFPB.

24 Q. And have you with the Fed?

25 A. Yes.

1 Q. And in what capacity? Was there a consumer  
2 response unit at the Federal Reserve Board that you  
3 worked with?

4 A. No, the Federal Reserve did not have a  
5 consumer response unit. I would say the public affairs  
6 office.

7 Q. But the Federal Reserve doesn't have a unit  
8 that has a consumer complaint intake operation akin to  
9 that at the CFPB?

10 A. Correct.

11 JUDGE McKENNA: So how did you get involved at  
12 the Board?

13 THE WITNESS: Consumers would call the Federal  
14 Reserve, like the main number, and say please help.  
15 And then Federal Reserve staff would ultimately get  
16 ahold of me.

17 BY MS. BAKER:

18 Q. And the consumers who called and said, please  
19 help, they didn't call you directly?

20 A. Correct.

21 Q. And did you, when you responded to a consumer  
22 complaint in that instance, did you go back and  
23 subpoena bank records to ascertain the way the bank had  
24 processed the payment?

25 A. No.

1 Q. Why not?

2 A. Well, the way you phrased your question,  
3 subpoenaing records was not typically necessary.

4 Q. And why is that?

5 A. Relevant documents were usually available  
6 without a subpoena.

7 Q. What kind of relevant documents would you,  
8 Mr. Baressi, have looked at in connection with  
9 responding to consumer who called up and said, quote,  
10 "please help?"

11 A. A periodic statement showing the debit, an  
12 image. You know, like when you log onto your bank,  
13 like Wells Fargo or Citi and you can click and you pull  
14 up the check image. A consumer would e-mail an image  
15 of a remotely created check and say I never authorized  
16 this thing.

17 Q. And did you also look at any of the NACHA  
18 codes that were associated with that transaction?

19 A. I did look at return reason codes, yes,  
20 because these are RCC's they did not go through the ACH  
21 network and so did not have NACHA codes.

22 Q. And did you ever, when you were asked to help  
23 with consumers, did you ever go back to the merchant  
24 who had initiated the remotely created check and ask  
25 that merchant for background information as to how or

1 why that RCC was initiated?

2 A. I don't believe I did actually.

3 Q. Have you ever done that?

4 A. No.

5 Q. Now remotely created checks, I think you  
6 testified in response to Judge McKenna's question that  
7 they are legal right now?

8 A. Yes, correct.

9 Q. And do you have an understanding as to whether  
10 are not remotely created checks were legal in 2008?

11 A. I do.

12 Q. And were they?

13 A. Yes.

14 Q. And same question for 2009, do you have that  
15 understanding?

16 A. Yes.

17 Q. And were they legal?

18 A. Yes.

19 Q. Same question for 2010, do you have an  
20 understanding as to whether or not RCC's were illegal?

21 A. Yes.

22 Q. And were they legal?

23 A. Yes.

24 Q. Same question for 2011, do you know if RCC's  
25 were legal?

1 A. Yes.

2 Q. And were they in fact legal?

3 A. Yes.

4 Q. Okay. 2012 same question, I'm just going to  
5 short it -- shortcut it, were RCC's legal?

6 A. RCC's were legal, yes.

7 Q. Were legal. Lawful?

8 A. Yes, in 2012.

9 Q. And they were lawful in 2013 as well?

10 A. Yes.

11 Q. And do know if there are commercial  
12 enterprises that use remotely created checks in  
13 commercial -- in the commercial context as opposed to  
14 the consumer context?

15 A. You mean the payor is a commercial entity?

16 Q. Yes?

17 A. A business?

18 I'm not as familiar with that.

19 Q. So sitting here today you don't know if that's  
20 a common practice or not?

21 A. I would say correct. I do not know if that's  
22 a common practice.

23 Q. Do you know if RCC's for example are used in  
24 the context of, for example, mutual funds that want to  
25 debit an account for purposes of payment?



1 A. Whose account?

2 Q. Well, I'm asking if you know if mutual funds  
3 at times use remotely created checks to establish a  
4 mechanism through which payment might be made into the  
5 fund by say an investor?

6 MR. CHUM: Objection, relevance.

7 I'm not sure how this --

8 JUDGE McKENNA: I will allow it.

9 THE WITNESS: I am not familiar with that, no.

10 BY MS. BAKER:

11 Q. And do you know if large banks, for example,  
12 use remotely created checks from time to time?

13 A. I would -- I guess the short answer is no.  
14 But we might be conflating different things that I  
15 would not label a remotely created checks.

16 Q. Well, let me ask you this: Is it possible  
17 that there are bill payment systems that are in use  
18 through, say, a personal banking account that are  
19 maintained or housed at a large bank and we can  
20 stipulate large bank is a 1025 institution.

21 Is it -- do you have an understanding as to  
22 whether or not those banks from time to time would use  
23 a mechanism of remotely created check to ensure a  
24 consumer made a payment to an entity, call it a  
25 utility?

1 A. Yes, I do, in fact, now that I know of what  
2 you are talking about. Those are not remotely created  
3 checks.

4 Q. And what are those?

5 A. Those are checks that the consumer instructs  
6 the consumer's bank to create and typically mail to the  
7 payee.

8 Q. Does the consumer sign those checks?

9 A. No.

10 Q. So how is that different than what you've  
11 described?

12 A. The consumer's bank is in charge of creating  
13 that check.

14 Q. The consumer's bank is in charge of creating  
15 the check. So the distinction is whether or not the  
16 consumer's bank is in charge of creating that check as  
17 opposed to another merchant?

18 A. As opposed to the payee's bank. That is a  
19 distinction, yes.

20 Q. What are some other distinctions?

21 A. Who is benefiting from the check. With a  
22 remotely created check the same party that is  
23 benefitting from the check, creates the check.

24 Q. And I'm not sure I follow in terms of who's  
25 benefitting from the check; what do you mean?

1 A. Who gets the money from the check. The payee  
2 gets the money from the check and creates the remotely  
3 created check.

4 Q. So I want to make sure I understand. Is your  
5 testimony that remotely created checks are specifically  
6 defined as checks that are remotely created by the  
7 enterprise that is paying itself; is that your  
8 testimony?

9 A. That is an existing definition of remotely  
10 created checks, yes.

11 Q. Okay. Now in this matter, I think you  
12 testified that you didn't do anything particular to the  
13 company at issue here, Integrity Advance; is that  
14 right?

15 A. Correct.

16 MS. BAKER: Okay. No further questions.

17 JUDGE McKENNA: Thank you.

18 REDIRECT EXAMINATION

19 BY MS. CHUM:

20 Q. Mr. Baressi, you just testified that RCC's  
21 were legal from 2008 to I believe you said 2013, yes?

22 JUDGE McKENNA: And that they are legal today.

23 BY MS. CHUM:

24 Q. And that they are legal today.

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MS. BAKER: Thank you.

JUDGE McKENNA: You're welcome.

The objection to the question is sustained.

The objection to the line of cross -- direct examination is sustained.

And so you can move onto your next subject.

MS. CHUM: I have no further questions, Your Honor.

JUDGE McKENNA: All right.

MS. BAKER: Nothing further, thank you.

THE WITNESS: I'm done?

JUDGE McKENNA: Yes, sir.

MR. WHEELER: Your Honor, Enforcement Counsel would request that we recess for the day given that Respondents asked for time to consider Enforcement Exhibit 102 and then we can conclude -- they can

1 conduct their cross-examination of Mr. Hughes. We can  
2 redirect. And that should be our last witness. Your  
3 Honor.

4 JUDGE McKENNA: All right.

5 Off the record.

6 (The proceedings adjourned at 3:20 p.m.)


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## REPORTER'S CERTIFICATE

I, Jeannie A. Milio, Registered Professional Reporter, an Official Court Reporter for the United States Coast Guard, do hereby certify that I stenographically recorded the proceedings in Consumer Financial Protection Bureau versus Integrity Advance, LLC and James R. Carnes, File No. 2015-CFPB-0029, held on July 20, 2016, at 9:30 a.m. (ET), at the FERC Building, 888 First St., N.E., Washington, DC, before the Honorable Parlen L. McKenna.

I further certify that the page numbers II-1 through II-196 constitute an official transcript of the proceedings as transcribed by me from my stenographic notes to the within typewritten matter in a complete and accurate manner.

In witness whereof, I have affixed my signature this 1st day of September, 2016.

  
\_\_\_\_\_  
Jeannie A. Milio, RPR  
Official Court Reporter

# EXHIBIT 10



1 UNITED STATES OF AMERICA

2 Before the

3 CONSUMER FINANCIAL PROTECTION BUREAU

4  
5 In the Matter of :  
6 : Administrative Proceeding  
7 INTEGRITY ADVANCE, LLC : File No. 2015-CFPB-0029  
8 and JAMES R. CARNES, :  
9 Respondent. :

10  
11 REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS  
12 HEARING (Volume III of III)

13 Washington, D.C.  
14 Thursday, July 21, 2016

15  
16 BEFORE:

17 HONORABLE PARLEN L. McKENNA, ADMINISTRATIVE LAW JUDGE  
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1 **APPEARANCES:**

2 **For the Agency:**

3 Alusheyi J. Wheeler, Esquire  
4 Wendy J. Weinberg, Esquire  
5 Vivian W. Chum, Esquire  
6 Craig A. Cowie, Esquire

7 **For the Respondent:**

8 Allyson B. Baker, Esquire  
9 Peter S. Frechette, Esquire  
10 Danielle R. Foley, Esquire  
11 Andrew T. Hernacki, Esquire  
12 Christine E. White, Esquire  
13 Venable, LLP, Washington, D.C. 20004

14 **ALSO PRESENT:**

15 For the Administrative Law Judge:  
16 Heather MacClintock, Esquire  
17 Lauren S. Staiti, Esquire

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22  
23 Jeannie A. Milio, RPR  
24 Official Court Reporter  
25 ALJ Office, Baltimore, Maryland 21202-4022

## T A B L E O F C O N T E N T S

**ENFORCEMENT COUNSEL'S WITNESSES:**

	DIRECT	CROSS	REDIRECT	RECROSS
Robert Hughes	--	III-4	III-35	III-43

## Motion for Directed Ruling as to Liability

By Ms. Baker III-50

By Mr. Wheeler III-54

**RESPONDENT'S WITNESSES:**

	DIRECT	CROSS	REDIRECT
Xiaoling Ang	III-64	III-154	III-166
Elizabeth Quinn Miller	III-116	III-144	--

## EXHIBITS: For the Respondent ADMITTED INTO EVIDENCE

Exhibit No. 19	III-75
Exhibit No. 20	III-80
Exhibit No. 21	III-84
Exhibit No. 22	III-91
Exhibit No. 23	III-98
Exhibit No. 24	III-106

## Closing Arguments

By Ms. Weinberg III-179

By Ms. Baker III-191

By Ms. Weinberg III-203

P R O C E E D I N G S

JUDGE MCKENNA: Back on the record.

Mr. Hughes, you understand you are still under  
oath?

THE WITNESS: Yes, Your Honor.

JUDGE MCKENNA: All right. You want to --

THE WITNESS: Yes.

JUDGE MCKENNA: There you go.

THE WITNESS: Thanks.

JUDGE MCKENNA: Proceed.

MS. FOLEY: Thank you, Your Honor.

Good morning, Mr. Hughes.

THE WITNESS: Good morning.

CROSS-EXAMINATION

BY MS. FOLEY:

Q. You work for the CFPB, correct?

A. Yes.

Q. Your title is data scientist?

A. Yes.

Q. You are not an economist?

A. No.

Q. Not a psychologist?

A. No.

Q. Not an expert in consumer behavior?

A. No.

1 Q. Now you made a number of assumptions in  
2 performing your calculations in this case, didn't you?

3 A. Yes.

4 Q. Did somebody tell to you make these  
5 assumptions?

6 A. Um, no.

7 Q. So all of the assumptions that you made about  
8 the data set that you reviewed in this case are  
9 assumptions you made on your own?

10 A. I think that's fairly broad. I can't think of  
11 any that I was told to make, but I couldn't entirely  
12 rule out the possibility that, for instance, someone  
13 said you can assume that the, for instance, ACH, the  
14 NACHA documents is actually the NACHA document that is  
15 the one that is published on the web.

16 I mean, I think there is the possibility of  
17 some bizarre (inaudible word) case there, but generally  
18 the assumptions that I made were based on the data  
19 itself.

20 Q. All right. Let's talk --

21 JUDGE MCKENNA: Were there any collaborations  
22 between you and others within CFPB?

23 THE WITNESS: Yes.

24 JUDGE MCKENNA: On those assumptions?

25 THE WITNESS: Yes, so I mean, we discussed

1 what assumptions could reliably be made from the data.  
2 I worked with other data scientists I discussed what  
3 the data looked like with a forensic accountant and  
4 had requests from attorneys for specific information.

5 JUDGE McKENNA: Okay. Thank you.

6 BY MS. FOLEY:

7 Q. How many other people -- how many other data  
8 scientists did you work with?

9 A. I think it was limited to two, the way we work  
10 in general is very collaboratively so it's possible  
11 that others were involved marginally but primarily with  
12 two other data scientists.

13 Q. And you mentioned a forensic accountant, who  
14 was that?

15 A. Tim Hanson.

16 Q. Is Mr. Hanson also employed by the CFPB?

17 A. Yes.

18 Q. And with -- what did you discuss with  
19 Mr. Hanson?

20 A. I don't think I could go into detail about  
21 that, that was months ago, and it was in early stages  
22 of our first attempts to understand the data set.

23 Q. Did Mr. Hanson provide you information on  
24 which you relied to perform your calculations in this  
25 case?

1 A. No.

2 Q. Now let's talk about some of the assumptions  
3 that you made. You assumed that loans originated at  
4 the time of the first transaction you observed in the  
5 data set, correct?

6 A. For some of the calculations, we had to make  
7 that assumption, based on the fact that we did not  
8 actually have the date of origination in that data set.  
9 Origination was not one of the events that was provided  
10 in the transaction table.

11 COURT REPORTER: Table?

12 THE WITNESS: Yeah, I'm sorry, in the file of  
13 transactions. In some of the calculations, we assumed  
14 that the origination date was up to twenty-three days  
15 prior to the date of the first transaction.

16 BY MS. FOLEY:

17 Q. And your assumption of that for some  
18 calculations you did, are talking about the  
19 calculations for loans that originated on or after July  
20 21st, 2011?

21 A. Yes.

22 Q. And your assumption for those calculations for  
23 loans that originated on or after July 21st, 2011 the  
24 decision use that August 13th date as a start date for  
25 the loan, or the origination date was that an

1 assumption you chose to make or did somebody else  
2 instruct you to make that?

3 A. No one instructed me to make that, we  
4 discussed what the broadest -- what the most  
5 conservative possible assumption would be in that case.

6 Q. And who was the, "we" you discussed that with?

7 A. I don't remember exactly who I talked to, it's  
8 entirely possible that it was that it was the full case  
9 team.

10 Q. Meaning Enforcement Counsel?

11 A. Yes.

12 Q. I think you mentioned that you reviewed a  
13 model loan?

14 A. Yes.

15 Q. Yesterday? Did you actually review an actual  
16 loan document?

17 A. I have seen quite a few loan documents.

18 Q. When you made the assumptions to use that  
19 August 13th, 2011 start date, was that something you  
20 determined based on reviewing the model loan agreement?

21 A. I had seen that in the loan agreement where it  
22 -- I can't remember the exact text but it was saying  
23 your next pay date -- it might not have actually been  
24 those words -- but I think it was saying within -- I  
25 don't remember the exact wording but it -- there was



1 something there that indicated that it should be within  
2 twenty-three days.

3 Q. But the decision to use that date was a  
4 decision you reached with Enforcement Counsel?

5 A. It's something I discussed with Enforcement  
6 Counsel.

7 Q. Did they tell you to use that date?

8 A. I don't think I was ever instructed to use any  
9 date. We, we came up with the assumptions that we were  
10 completely comfortable with. It was in discussion  
11 with, with them, but if they had mentioned a date that  
12 we didn't think was supported by the evidence we would  
13 not have gone with it.

14 Q. Okay. But if your conclusion that using the  
15 August 13, 2011 date as a proxy for loans that  
16 originated on or after July 21, 2011 is an incorrect  
17 assumption to use, then your calculations about the  
18 loans that originated on or after July 21, 2011 were  
19 wrong.

20 A. That would depend on a lot of things. If the  
21 date were earlier or later.

22 Q. It would change --

23 A. -- the number would change in different ways  
24 it's -- I thought it was a, the most conservative way  
25 to look at the data.

1 Q. But if you change the starting date, that  
2 would likely change your calculations right?

3 A. Yes.

4 Q. July 21, 2011. Now in the -- in your  
5 testimony yesterday and the -- some of the exhibits  
6 that you discussed with enforcement counsel, you used a  
7 phrase called total of payments do you remember that?

8 A. Yes.

9 Q. And total of payments is basically what you  
10 think would have been disclosed in the TILA box in each  
11 loan agreement?

12 A. Yes.

13 Q. Okay. Now you didn't actually look at each  
14 and every single loan agreement to find that TILA box  
15 amount, right?

16 A. Correct.

17 Q. Instead you made assumptions about the -- what  
18 the total payments in the TILA box was represented in  
19 the data?

20 A. This was also based on reviewing quite a few  
21 loan documents. For instance, I looked at fifty  
22 randomly selected loan documents and compared the  
23 numbers in the TILA boxes to the data in our data set  
24 corresponding with the assumptions that we had made.

25 JUDGE McKENNA: And the results?

1 THE WITNESS: All of them matched.

2 BY MS. FOLEY:

3 Q. When you say fifty, you mean fifty actual loan  
4 agreements?

5 A. Yes.

6 Q. Out of three hundred thousand plus loan  
7 agreements that were made between consumers and  
8 Integrity Advance?

9 A. Yes, I mean there were many different reasons  
10 to believe that that was the case, that the -- that our  
11 assumptions were correct. The --looking at the fifty  
12 was the belt and suspenders approach, we just wanted  
13 some actual real world validation of our assumptions.

14 Q. Okay. Now one of the other things you looked  
15 at in the data you talked about renewal loans is that  
16 right?

17 A. Yes.

18 Q. You defined renewal loans as all loans that  
19 were rolled over?

20 A. Yes.

21 Q. So that would basically be your attempt to  
22 assess the loans that were not paid in full on the  
23 first payment date?

24 A. I wouldn't characterize it that way. There  
25 may be a fairly significant overlap between your

1 categorization and ours.

2 Q. If a loan was paid off in full on the first  
3 date you would call that a renewal loan?

4 A. I called a renewal loan a loan on which we saw  
5 in our code a transaction starting off the chain of  
6 transactions for that loan.

7 Q. And focussing on the renewed loans, you  
8 assumed that the initial renewal records indicated the  
9 principal paid, is that correct?

10 A. The principal that was rolled over indicated  
11 the principal, yes.

12 Q. I'm sorry, did you assume that --

13 A. The renewal record indicated the principal --  
14 on renewed loans, the R record the amount on the R  
15 record indicated the principal.

16 Q. So the initial R record you assumed was a  
17 principal borrowed?

18 A. Yes.

19 Q. And you assumed that the initial payment  
20 record following the renewal indicates the finance  
21 charge for the loan?

22 A. Yes.

23 Q. And those are important assumptions for your  
24 calculations correct?

25 A. For a subset of the calculations, yes.

1 Q. You also assumed that the principal borrowed,  
2 plus the initial payment record following the renewal,  
3 together equaled the payment amount that would have  
4 been disclosed by Integrity Advance as the total  
5 payments in the TILA box is that right?

6 A. Our assumptions were more to evaluate what was  
7 borrowed and what an initial charge was than it -- that  
8 was the primary intent of those assumptions. I think  
9 for some of the calculations, yes, we were looking at  
10 the TILA boxes for validation.

11 Q. Mr. Hughes, do you have your May 10th, 2016  
12 declaration with you here today? And if you don't --  
13 you have your own copy? And for the record I believe  
14 this has been marked as Enforcement Counsel Exhibit 72?

15 A. Yes.

16 Q. Can you please turn to paragraph 19 of your  
17 declaration?

18 A. Yes.

19 Q. It says, "I have assumed that the principal  
20 borrowed, plus initial payment record following the  
21 renewal, together equal the amount that that" there's a  
22 double that, "would have been disclosed by Respondents  
23 as the 'quote total of payments' in the TILA box," did  
24 you read that correctly?

25 A. Yes, yes.

1 Q. So the total of payments that would have been  
2 in the TILA box is an important number in your  
3 calculations that you provided, correct?

4 A. I suppose, yes.

5 Q. It was important to get that number right?

6 A. I would say it was important to get all of the  
7 numbers right.

8 Q. And if your calculation of the total payments  
9 that would have been disclosed in the TILA box is wrong,  
10 then likely your calculation of the total paid above  
11 the total of payments would be wrong too.

12 A. That would follow. I would caution, though,  
13 that we could very well be slightly incorrect by being  
14 conservative.

15 Q. Okay, but if the -- if you start with your  
16 total payment, you subtracted the total of payments  
17 that would have been in the TILA box?

18 A. Right.

19 Q. To arrive at your calculation of the total  
20 payments above the TILA box, is that an accurate  
21 description?

22 A. On an individual basis, it was not an  
23 aggregate difference minus -- it -- there was it was  
24 not a difference of two aggregates it was the  
25 difference on an individual loan basis.

1 Q. So if your assumptions on an individual loan  
2 basis is wrong, your assumptions on the aggregate  
3 number is going to be wrong as well, isn't it?

4 A. Yes.

5 Q. And none of the exhibits we saw yesterday  
6 during your testimony -- did we actually see your  
7 calculations of the total payments you assert would  
8 have been disclosed in the TILA boxes, did we?

9 A. I'm sorry could you repeat that?

10 Q. In none of the exhibits that you were shown  
11 yesterday did we see the actual numbers you calculated  
12 would have been the total payments in the TILA boxes?

13 A. I'm not certain, no.

14 Q. Let's look at Enforcement Counsel Exhibit 97.  
15 And take a look at page two -- and we will put one on  
16 the screen so you can follow. Our Elmo here needs a  
17 minute to warm up. Mr. Hughes do you recognize this  
18 document?

19 A. Yes.

20 Q. Now did you actually prepare this or did  
21 somebody else in your office prepare it?

22 A. I believe someone else prepared this actual  
23 document.

24 Q. Okay. And now let me ask you a question --

25 MS. CHUM: Judge --

1 MS. FOLEY: I'm sorry.

2 MS. CHUM: -- allow him to finish his  
3 response, please.

4 MS. FOLEY: That was the end of -- my question  
5 was: Did you prepare it?

6 JUDGE McKENNA: And he has a right to answer.

7 THE WITNESS: Any document that was prepared  
8 on this case was prepared at my direction and validated  
9 by me as well. Sometimes I did initial calculations  
10 and others validated them, and sometimes others did  
11 initial calculations and I validated them.

12 BY MS. FOLEY:

13 Q. Okay, looking at page two of Enforcement  
14 Counsel Exhibit 97. We see total paid is the top box,  
15 correct?

16 A. I'm just grabbing my own copy.

17 Q. Sure can you see the screen? Or --

18 A. Yeah I can just see this one a little better,  
19 yes.

20 Q. And on the bottom we see total paid above  
21 total of payments right?

22 A. Yes.

23 Q. And there is nothing on this calculation that  
24 tells you what the difference between the total paid  
25 and total of payments actually is, that number is not



1 reflected on this document is it?

2 A. Well that number wouldn't mean a whole lot  
3 anyway, because as I said we, we calculated it by  
4 looking at the different -- anything we calculated, we  
5 calculate by looking at the difference on an individual  
6 account basis rather than simply taking two aggregate  
7 numbers and subtracting them.

8 Q. Okay. But yes or no, the total of payments is  
9 not in this document?

10 A. Yes.

11 JUDGE MCKENNA: Yes, it's not.

12 THE WITNESS: Yes, it's not I'm sorry.

13 BY MS. FOLEY:

14 Q. Now in calculating amounts paid by consumers  
15 you included only records that met certain criteria  
16 correct?

17 A. Yes.

18 Q. Okay. Did you choose those parameters  
19 yourself, or did someone instruct you to use them?

20 A. We chose them ourselves. It was definitely  
21 after discussion with, with the case team to inform  
22 what we were looking at. But the final decision was  
23 ours.

24 Q. Okay. The parameters included only records  
25 that had a payment mode field of ACH cash or check is

1 that correct?

2 A. Yes.

3 Q. And in calculating amounts paid by consumers  
4 you included only payments that were designated as NSF  
5 payment, charge-off payments, or standard payment type?

6 A. That sounds correct.

7 Q. And you only included records that met the  
8 first two criteria we discussed, that were marked as  
9 cleared?

10 A. Yes.

11 Q. And you also only included records for  
12 payments that were not void, is that correct?

13 A. Correct.

14 Q. Did it include any other records?

15 A. No, those were, we felt, the most conservative  
16 way to look at payments that were conceivably other  
17 payments that were excluded. But that would have come  
18 up with a larger number.

19 Q. Now your total paid amount that you calculated  
20 also includes fees that Integrity Advance calculated --  
21 charged?

22 A. Um, that's entirely possible.

23 Q. If we look again the Enforcement Counsel  
24 Exhibit 97, page two.

25 A. Finance fees plus additional fees.

1 Q. Okay.

2 A. Yes.

3 Q. Do those additional fees -- does that include  
4 NSF fees?

5 A. Yes, I believe it does.

6 Q. And NSF fees means fees assessed because there  
7 were insufficient funds to cover the charge?

8 A. Yes.

9 Q. It includes NSF fees even if the NSF occurred  
10 on the first payment due date for the loan?

11 A. It likely would, I didn't restrict by that,  
12 yeah.

13 Q. And turning to Enforcement Counsel Exhibit 100  
14 that we looked at yesterday. Put it up on the screen  
15 for us all. This, I believe, is also in your binder,  
16 Mr. Hughes, if it's easier for you to see it.

17 A. Okay.

18 Q. Do you recognize this document?

19 A. Yes.

20 Q. Did you create this one?

21 A. No, someone else in the data science team  
22 created this. However, I did validate it, and was  
23 aware of it.

24 Q. Okay. Looking down at line seven, the March  
25 14th, 2012 entry, do you see that?

1 A. Yes.

2 Q. I believe you testified yesterday this shows  
3 Integrity Advance attempted an ACH but the transaction  
4 failed, do you remember that testimony?

5 A. Yes.

6 Q. And by transaction failed it means Integrity  
7 Advance did not actually get a payment in that  
8 transaction?

9 A. That was my interpretation, yes.

10 Q. Now you don't know if between March 14th,  
11 2012, and April 2nd, 2012 Integrity Advance tried to  
12 reach out and contact this customer, do you?

13 A. There was nothing in the transaction data set  
14 that indicated that, no.

15 Q. So unless it was in the transaction data set,  
16 you have no idea what attempts Integrity Advance may  
17 have made to contact this customer?

18 A. That was outside the scope of the analysis I  
19 was asked to perform.

20 Q. You didn't make any independent investigation  
21 outside of the data set?

22 A. No.

23 Q. You didn't talk to any consumer?

24 A. That would be --

25 Q. Outside the data set?

1 A. -- very unusual, yes.

2 Q. Okay. And you don't know why --

3 JUDGE McKENNA: The answer is no?

4 THE WITNESS: No, I'm sorry, no. I did not  
5 talk to any consumer.

6 BY MS. FOLEY:

7 Q. And sitting here today, you don't know why the  
8 consumer may have revoked the ACH authorization?

9 A. No.

10 Q. I think we also talked yesterday about some  
11 calculations you performed regarding the number of  
12 instances that you observed Integrity Advance used  
13 remotely created checks, remember that testimony?

14 A. Yes.

15 Q. And I believe you described your calculations  
16 as being uses of remotely created checks to take money  
17 out of the customer's account after the customers had  
18 revoked or otherwise blocked ACH debits from the  
19 account, do you recall that testimony?

20 A. That sounds right.

21 Q. And to determine whether a customer had  
22 revoked or otherwise blocked ACH debits you used  
23 certain ACH codes?

24 A. Yes.

25 Q. Did you choose those ACH codes or did someone

1 tells you tell you to use them?

2 A. Same as previously, it would -- I certainly  
3 discussed it with the case team. But we independently  
4 looked at the NACHA handbook for things that we were  
5 comfortable met that description based on the  
6 description in the handbook.

7 Q. Okay. And just to be clear, when you say the  
8 case team, you mean with Enforcement Counsel?

9 A. Yes.

10 Q. All right. One of the ACH codes you used was  
11 R 08 is that correct?

12 A. Yes.

13 Q. Do you need to look at something to refresh  
14 your recollection? You can turn to your declaration if  
15 it helps?

16 A. I was turning to the NACHA Handbook.

17 Q. Okay. So that is exhibit 82? Please do feel  
18 free to turn to exhibit 82?

19 A. Okay. Yes.

20 Q. All right, does this refresh your recollection  
21 that you used code R 08?

22 A. Yes.

23 Q. And code R 08, said payment stopped?

24 A. Yes, and the description says the receiver has  
25 placed a stop payment order on this debit entry.

1 Q. Right. It doesn't tell you why the customer  
2 may have stopped the payment does it?

3 A. No.

4 Q. No notes or comments in the data set that  
5 would tell us why the customer may have stopped the  
6 payment?

7 A. No.

8 Q. And you didn't do any independent  
9 investigation into why the customer may have stopped  
10 the payment, did you?

11 A. No.

12 Q. Possible the customer just chose to renege on  
13 its obligations to pay?

14 A. I didn't do any investigation, into --

15 JUDGE McKENNA: Well, but that was the  
16 question. She asked you a question.

17 THE WITNESS: Is it possible?

18 JUDGE McKENNA: Yes.

19 THE WITNESS: Um, I have no idea of anything  
20 about that, I -- yes, that would be possible.

21 BY MS. FOLEY:

22 Q. Mr. Hughes, are you relying on anything in  
23 your binder, your personal binder you brought up today?

24 A. The NACHA codes.

25 Q. Is that -- Your Honor I can't see it from here

1 but it looks different than the copy I have? I can't  
2 tell what else is in that binder.

3 A. I'm sorry. It's printed four on a page.

4 Q. Okay. Can you tell us what else is in your  
5 binder, we haven't seen this yet. I know yesterday we  
6 understand there was a copy of your declaration, and  
7 another declaration that wasn't in the exhibit list. I  
8 would like to see what else is in the binder.

9 MS. CHUM: Objection.

10 JUDGE MCKENNA: Well --

11 MS. CHUM: Relevance, he has only --

12 JUDGE MCKENNA: Just a second. If he is using  
13 something, then you have a right to know what he is  
14 using. If he says that he only used the NACHA  
15 handbook, then that's all you have a right to see.

16 MS. FOLEY: That is fine, Your Honor, but I  
17 can't tell if that's the same copy that is in evidence.

18 JUDGE MCKENNA: All right. So you may  
19 approach.

20 MS. FOLEY: Thank you, Your Honor. I can't  
21 read that.

22 JUDGE MCKENNA: That would be problematic.

23 THE WITNESS: Barely -- it's --

24 MS. FOLEY: Thank you. Honestly, the print is  
25 too small for me to read and compare the exact text,



1 but it appears to be the excerpt of the NACHA code,  
2 that's exhibit --

3 JUDGE McKENNA: At my age I can sympathize  
4 with you.

5 MS. FOLEY: Thank you, it's getting harder  
6 every day.

7 BY MS. FOLEY:

8 Q. All right. Mr. Hughes, is there anything else  
9 in your binder you have consulted in your testimony  
10 this morning?

11 A. No.

12 ~~MR. FRECHETTE: Objection, Your Honor.~~  
13 ~~Forgive, me but Ms. Weinberg just looked at the~~  
14 ~~witness, shook her head no, before the witness~~  
15 ~~answered that question. That is highly inappropriate~~  
16 ~~and I object.~~

17 ~~JUDGE McKENNA: Well, I didn't see it, number~~  
18 ~~one, and if you did it, please don't do it again~~  
19 ~~because that is inappropriate.~~

20 ~~MS. WEINBERG: Yeah, I -- I wasn't looking at~~  
21 ~~the witness. I may have been shaking my head, but I~~  
22 ~~certainly was not trying to direct his testimony.~~

23 ~~JUDGE McKENNA: Well, all right. We are all~~  
24 ~~officers of the court, so we will conduct ourselves~~  
25 ~~accordingly. You want to ask additional questions on~~

1 ~~that point?—~~

2 ~~BY MS. FOLEY:—~~

3 Q. ~~Did you look at Ms. Weinberg before you—~~  
4 ~~answered?—~~

5 A. ~~No.—~~

6 BY MS. FOLEY:

7 Q. Now turning back to the RCC calculations, the  
8 remotely created checks, regardless of why the customer  
9 may have stopped a payment, you included all entries  
10 that showed an ACH code 8 for stop payments in your  
11 calculations?

12 A. I'm sorry could you repeat that?

13 Q. Sure.

14 A. I just lost track of part of what you were  
15 saying.

16 Q. Regardless of why a customer may have stopped  
17 a payment, you included all entries that you saw, I  
18 believe, you said in -- I'm not sure which exhibit it  
19 was, but on the spread sheet you referred to yesterday  
20 that showed an ACH code 8 for stop payments?

21 A. Yes.

22 Q. And some of the calculations you testified  
23 about yesterday regarding the use of remotely created  
24 checks were calculations of the totals that Integrity  
25 Advance collected using remotely created checks in the

1 time period after July 21, 2011, do you remember that  
2 testimony?

3 A. Yes.

4 Q. And your calculations were of the number of  
5 remotely created checks that Integrity Advance used  
6 after July 21, 2011?

7 A. That sounds correct.

8 Q. You did not limit your calculations to the  
9 number of remotely created checks Integrity Advance  
10 used for loans that were originated on or after July  
11 21, 2011 did you?

12 A. I'm not sure, I would have to refer back.

13 Q. Can we please have exhibit, Enforcement  
14 Counsel Exhibit 97 slide four, or page four. Do you  
15 recognize this exhibit, Mr. Hughes?

16 A. Yes, I do.

17 Q. Now did you create this one?

18 A. No. Again, it was created by the data science  
19 team. I either created the numbers or validated the  
20 numbers but I probably did not create the actual table.

21 Q. Okay. The title of this exhibit says Overview  
22 of the Integrity Advance's use of RCC's on consumers  
23 who had revoked IA's ACH authorization, or stopped IA's  
24 ACH withdrawals? Did I read that correctly?

25 A. Yes.

1 Q. And the far right column says,  
2 "RCC on or after July 11, 2011," did I read that  
3 correctly?

4 A. Yes.

5 Q. And nowhere in here does it say a footnote  
6 that you are limiting your calculations to loans that  
7 were actually originated on or after July 21, 2011,  
8 does it?

9 A. No, that was our general assumption so I, my  
10 guess would be that this was a calculation based on  
11 that. But --

12 Q. You don't know what --

13 A. But that detail I don't know off the top of my  
14 head.

15 Q. You don't know sitting here today, one way or  
16 the other?

17 A. No.

18 Q. And turning to Enforcement Counsel Exhibit 97  
19 slide five. Where you calculate total amounts obtained  
20 by RCC on after July 21, 2011, this also doesn't say  
21 you have limited it to loans that were actually  
22 originated on or after July 21, 2011 does it?

23 A. Correct.

24 Q. And looking at the data set you reviewed you  
25 were able to determine that many customers took out

1 more than one loan from Integrity Advance, didn't they?

2 A. Yes.

3 Q. You didn't provide us any numbers or  
4 calculations here of how many customers took out more  
5 than two loans from Integrity Advance did you?

6 A. I don't think so.

7 Q. No calculations about how many customers took  
8 out more than five loans?

9 A. No.

10 Q. No calculation about how many customers may  
11 have taken out more than ten loans over time?

12 A. No.

13 Q. And now, if you turn to the new exhibit we saw  
14 yesterday, Enforcement Counsel Exhibit 102.

15 A. Just to be clear I'm grabbing this from the  
16 notebook.

17 Q. From your notebook that you brought, or  
18 from --

19 A. Yes, from mine because I don't have the  
20 updated exhibits up here.

21 Q. Would you mind just holding it up so we all  
22 see it's the same document. Thank you. Now the first  
23 line, Mr. Hughes, the first line is the number of  
24 one-time customers, is that correct?

25 A. Yes.

1 Q. Okay. And those are customers who took out  
2 only one loan with Integrity Advance?

3 A. Yes.

4 Q. So those are essentially the non-repeat  
5 customers?

6 A. Yes.

7 Q. You didn't show anywhere on this document the  
8 difference between the total number of customers and  
9 the one-time customers?

10 A. No.

11 Q. And going down to the fifth line, the one-time  
12 loans, it says in box money paid to IA by consumers  
13 above the "total of payments" via one-time loans. We  
14 just said the one times, did I read that correctly  
15 first?

16 A. Yes.

17 Q. Okay. And we just said the one-time loans  
18 that is the non-repeat customers?

19 A. Yes.

20 Q. So to get to this number you started with the  
21 total paid by the consumers above the total of  
22 payments? Or in other words, above the TILA box?

23 A. Um, yes.

24 Q. Okay. And so your calculations of what the  
25 total of payments would have been matters for this

1 calculation, doesn't it?

2 A. Yes.

3 Q. And you excluded the amounts paid above the  
4 TILA box by repeat customers? That is the flip-side.

5 A. Right, we didn't look at repeat customers for  
6 one-time loans.

7 Q. So the remainder, you calculated this 39.9  
8 million dollar number?

9 A. Yes.

10 Q. Okay. And so if your calculation of the total  
11 payments is wrong, then this 39.9 million number is  
12 likely wrong as well, isn't it?

13 A. Yes.

14 Q. Okay. And the same for the fourth line, money  
15 paid to IA by consumers above the total of payments via  
16 first time loans?

17 A. Correct.

18 Q. Did you read that correctly?

19 A. Yes.

20 Q. And similarly with the calculation you did for  
21 the fifth line you start with the total paid by  
22 consumers above total of payments that would have been  
23 in the TILA box?

24 A. Yes.

25 Q. Okay --

1 JUDGE McKENNA: Excuse me, who are the  
2 individuals that just came in?

3 UNIDENTIFIED MALE VOICE: We are with the  
4 CFPB.

5 JUDGE McKENNA: All of you?

6 UNIDENTIFIED MALE VOICE: Yes, sir.

7 JUDGE McKENNA: Okay. Thank you.

8 BY MS. FOLEY:

9 Q. And so again for calculation four -- for line  
10 four, the total of payments matters, your calculations  
11 of the total payments matters for your calculations of  
12 this 69.6 million dollars represented here?

13 A. Yes.

14 Q. And if your calculations of the total of  
15 payments is wrong, the 69.6 million dollar number here  
16 is wrong as well?

17 A. Yes.

18 MS. FOLEY: Your Honor if I may just have a  
19 moment to confer with counsel.

20 JUDGE McKENNA: Yes, you may.

21 (Brief pause.)

22 MS. FOLEY: Your Honor, no further questions.  
23 I did just want to put on the record yesterday  
24 afternoon when we saw Exhibit 102. We requested the  
25 source code for this document, and we convened court



1 -- when we recessed a little after 3:00.

2 At roughly 8:00 last night we received a  
3 document that was represented to us was the source  
4 code. We, unfortunately, were unable to use it, it  
5 appeared to be incomplete. We moved forward anyway  
6 with our cross-examination today. We would like the  
7 complete version, reserve our right about it. We did  
8 move forward and were able to, obviously,  
9 cross-examine Mr. Hughes this morning.

10 I don't know what may happen on redirect but,  
11 I obviously want to put that on the record, and  
12 reserve our rights if anything comes up furthermore  
13 with this.

14 MS. CHUM: Your Honor, of course I'm not a  
15 data scientist, but our data scientists have pulled  
16 the source code and they have cross checked, and  
17 validated that this -- with the -- another individual  
18 who was here, Ms. Nicole Kelly -- that this was the  
19 source code that was used. For this particular -- for  
20 this chart, so --

21 MS. FOLEY: I can only tell Your Honor that we  
22 were not able to replicate the calculations based on  
23 what was given from a high level perspective, because  
24 I'm not a data scientist, it appeared to point to  
25 reference paths that were not observable to us from

1 what was provided.

2 JUDGE McKENNA: All right. Here is the  
3 solution. Your request to have the Agency give you  
4 sufficient information so that you can replicate is  
5 granted. And you do reserve your right, and have the  
6 right to recall Mr. Hughes if you have additional  
7 questions based upon your analysis of the exhibit,  
8 based upon those -- a full and complete set of source  
9 codes.

10 MS. FOLEY: Thank you, Your Honor.

11 JUDGE McKENNA: And then you, you can move to  
12 -- to have an opportunity to cure any potential  
13 problems that exist as a result of that exhibit.

14 MS. FOLEY: Thank you. No further questions.

15 MS. CHUM: Your Honor, if I may.

16 JUDGE McKENNA: Can you speak up?

17 MS. CHUM: Your Honor, if I may, I don't  
18 foresee us having any additional source code as we  
19 have provided, and I'm representing that my  
20 understanding is that we have provided all of the  
21 source code already.

22 JUDGE McKENNA: Well, what you can do is you  
23 can take Mr. Hughes or another data scientist who  
24 might be more familiar with it and sit down with  
25 Respondent's experts so that they fully understand and

1 can replicate how you came up with the numbers, it's  
2 quite simple.

3 MS. CHUM: Yes, Your Honor.

4 JUDGE MCKENNA: And I would suggest that that  
5 happen this afternoon after we conclude so that I will  
6 still be around -- and if there is any problems.

7 MS. CHUM: Certainly.

8 JUDGE MCKENNA: We can resolve them very fast.

9 MS. CHUM: Yes, Your Honor, thank you.

10 JUDGE MCKENNA: Thank you and you can do your  
11 redirect.

12 **REDIRECT EXAMINATION**

13 BY MS. CHUM:

14 Q. Mr. Hughes, good morning.

15 A. Morning.

16 Q. Is it your understanding that the transaction  
17 data that you received was the transaction data for all  
18 transactions, for all consumers of Integrity Advance?

19 A. That was, yes.

20 Q. So that would include the principal paid and  
21 the first, and the first finance fee?

22 A. Yes.

23 Q. In other words the transaction data would  
24 include the total of payments?

25 A. Yes it should. Or rather, what we determined

1 to be an accurate proxy for those numbers, as  
2 disclosed.

3 Q. Now earlier you testified that you had made an  
4 assumption as to when a loan originated, based upon the  
5 transaction data?

6 A. Yes.

7 Q. And you had to do that where you were asked to  
8 limit your numbers, your values, to loans that  
9 originated on or after July 21, 2011?

10 A. Yes.

11 Q. And you did that in every instance, you made  
12 that -- an assumption, the same assumption in every  
13 instance where you had to limit your values to those  
14 that originated on or after July 21, 2011?

15 A. I believe we made that assumptions in all  
16 cases, yes.

17 Q. And you had testified that that assumption, I  
18 believe you testified that it was that you added -- you  
19 looked at transactions that happened twenty-three days  
20 after July 21, 2011 to make an assumption that the loan  
21 originated on or after July 21, 2011?

22 A. Yes, I believe we looked at initial  
23 transactions for individual accounts that occurred  
24 twenty-three days or more following July 21, 2011, yes.

25 Q. And you repeatedly testified that that was a

1 very conservative approach can you explain further why  
2 that was conservative?

3 MS. FOLEY: I'm just going to object to the  
4 extent she is characterizing the testimony, it is what  
5 it is.

6 JUDGE McKENNA: All right. It is sustained.  
7 You heard the question without the qualifier and you  
8 may answer.

9 THE WITNESS: We believed that that was a  
10 conservative estimate because it could have been less  
11 than twenty-three days. The first payment could have  
12 been less than twenty-three days following loan  
13 origination.

14 JUDGE McKENNA: Which would have what effect?  
15 It would eliminate it?

16 THE WITNESS: Yes, we would effectively be  
17 looking at a smaller -- we effectively looked at the  
18 smallest data set of responsive records.

19 MS. CHUM:

20 Q. So by being conservative, was the total number  
21 of consumers you look at in your analysis smaller or  
22 larger than it would been if you were less  
23 conservative?

24 A. Smaller.

25 Q. And were the dollar values that you assessed

1 in exhibits 97 and 102, smaller or larger than they  
2 could have been if you had been, if you had not been  
3 conservative?

4 A. They were smaller than they would have  
5 otherwise been.

6 Q. You also testified that you relied on  
7 something called an R code?

8 A. Yes.

9 Q. Again, what was that? What was an R code?

10 A. That was a return code, as specified in the  
11 NACHA manual. Oh, I'm sorry, the R code in the actual  
12 data set would be the -- I can't remember whether it  
13 was payment mode or payment type, but yes --

14 Q. Is there some -- go ahead, sorry.

15 A. Yes, the code indicates that that is a  
16 renewal, I'm sorry, there were multiple R codes kicked  
17 around here.

18 Q. And for clarification, I'm asking about the R  
19 code that opposing counsel asked about relating to the  
20 data, not the R codes in the NACHA manual?

21 A. Okay. Yes, R indicated renewal.

22 Q. And where did you obtain that information?

23 A. That was both in the data dictionary and in  
24 7.9 of the TranDotCom manual.

25 Q. And earlier you testified that you only looked

1 at data that met certain criteria, do you recall that?

2 A. Yes.

3 Q. Why did you do that?

4 A. There were certain types that didn't indicate  
5 payments, so if we were calculating payments, if a  
6 payment was either void or failed, it would not  
7 indicate an actual payment by the customer.

8 Q. And you testified you only looked at cleared  
9 payments?

10 A. Yes.

11 Q. Why did you do that?

12 A. For the same reason if the payment didn't  
13 clear it was effectively not made, or potentially not  
14 made, so, to be conservative we only looked at the  
15 cleared payments.

16 Q. And you did not look at void payments?

17 A. Correct.

18 Q. Why did you do that?

19 A. Same reason, to be conservative, we did not  
20 believe that the void payments were definitely made.

21 Q. So if you had included void payments and I  
22 assumed that they were definitely paid, would the  
23 number of consumers and the values assessed be larger  
24 or smaller?

25 A. It would have been larger.

1 Q. You had testified about the NSF and charge-off  
2 fees as well?

3 A. Yes.

4 Q. Do you recall? And what is it again that you  
5 did with those?

6 A. We restricted to a subset of payment types, as  
7 you just mentioned.

8 Q. And why did you do that?

9 A. Again, to be conservative, the meaning of some  
10 other payment codes did not appear to reflect actual  
11 payments, and so we did not include them.

12 Q. And you had testified that you included all  
13 NSF fees or--

14 A. There was a payment type of NSF I can't  
15 remember exactly what it was called, NSF payment  
16 perhaps, that was included.

17 Q. And do you know whether that was a -- do you  
18 know the approximate value or the specific value of the  
19 amount that you included?

20 A. You mean the, like the total of NSF fees as it  
21 went to the grand totals?

22 Q. Yes.

23 A. I don't. I know that it was not a substantial  
24 portion of the number, but I don't know the exact  
25 number off the top of my head.



1 Q. Now you were asked earlier about your use of  
2 the NACHA Handbook, and now we are talking about R  
3 codes in the NACHA handbook?

4 A. Sure.

5 Q. Would you turn with me to exhibit 82 the NACHA  
6 Handbook?

7 A. Okay.

8 Q. Mr. Hughes, you testified that you relied only  
9 on R 7, R 8 and R 10. Is that correct?

10 A. Yes, for the calculations of RCC's following  
11 revocations.

12 Q. Now Mr. Hughes, if you had -- first of all  
13 were there other R codes other than R 7, R 8, and R 10  
14 in the data sets that you received from Integrity  
15 Advance?

16 A. Yes.

17 Q. If you had included other R codes, other types  
18 of revocations in your analysis, and looked at RCC's  
19 that occurred after a larger set of instances of R  
20 codes, would the number of RCC's have been larger or  
21 smaller?

22 MS. FOLEY: Objection, Your Honor. She is  
23 characterizing the R codes as saying that every single  
24 R code would be a revocation. That is plainly not what  
25 the document said.

1 MS. CHUM: Let me restate any question.

2 JUDGE McKENNA: Please.

3 MS. CHUM:

4 Q. Now if you had looked at all of the R codes  
5 that occurred in the Integrity Advance data set, and  
6 then looked at subsequent RCC's that occurred after  
7 those R codes would the number of RCC's that occurred  
8 after the R codes have been larger or smaller?

9 A. Larger.

10 Q. And if you had looked at the total paid to  
11 Integrity Advance following an R code via RCC on or  
12 after July 21, 2011, would that value have been larger  
13 or smaller if you had looked at all of the R codes?

14 A. That would have been larger as well.

15 Q. Now yesterday you recall we talked briefly  
16 about the ACH's the value associated with ACH's that  
17 occurred above principal?

18 A. Yes.

19 Q. Do you, today, recall the amount that  
20 consumers paid to Integrity Advance above the principal  
21 via ACH for all loans?

22 A. I don't know the exact number off the top of  
23 my head, it would be approximately ninety-eight percent  
24 of the total number I believe.

MS. CHUM: Court's indulgence.

1 (Pause.)

2 MS. CHUM: Nothing further, Your Honor. Thank  
3 you.

4 JUDGE McKENNA: Thank you.

5 MS. FOLEY: I will be brief Your Honor.

6 **RECROSS EXAMINATION**

7 BY MS. FOLEY:

8 Q. Mr. Hughes, did you talk to anybody last night  
9 about this case?

10 A. No, I talked to two other data scientists, in  
11 the process of producing the source code.

12 Q. So you talked to two other data scientists  
13 about this case last night?

14 MS. CHUM: Objection, mischaracterizes the  
15 testimony.

16 JUDGE McKENNA: And your point?

17 MS. FOLEY: Well, yesterday -- he gave some  
18 number in his last answer which was the question he  
19 struggled to have an answer for on the stand yesterday,  
20 and I was looking for what refreshed his recollection.  
21 Or on what he based that answer?

22 JUDGE McKENNA: All right. Then you can ask  
23 that question but you can't sit there and say, make  
24 assertions that kind of indicate that he was doing  
25 something wrong since he was effectively trying to

1 comply with your request to get you the data codes.

2 MS. FOLEY: That is fine, and I'm not trying  
3 to imply to something else, I'm just trying to just get  
4 to the question I asked. Which was different than what  
5 he answered.

6 THE WITNESS: I did not discuss what you are  
7 talking about anyway. My ninety-eight percent  
8 assumption that I just referred to was, was something  
9 that I believe I saw in the source code or in one of my  
10 documents yesterday. Ninety-eight percent is  
11 approximately the proportion of ACH transactions  
12 overall of valid payments.

13 COURT REPORTER: Of what payment?

14 THE WITNESS: I'm sorry, I said valid  
15 payments, but I mean payments that cleared.

16 MS. FOLEY:

17 Q. And when Ms. Chum was asking you about the  
18 NACHA return codes, the -- you had access to all of the  
19 transactions that were produced and to the extent any  
20 of them had an R code you had the full access to see  
21 what those R codes were?

22 A. Yes.

23 Q. So you could have chosen to use other R codes?

24 A. Yes.

25 Q. You didn't include any waived payment codes in

1 your analysis, did you?

2 A. No.

3 Q. Did you look at the amount of payments that  
4 Integrity Advance may have just waived, and told the  
5 customer they didn't need to pay?

6 A. I'm not sure what you are talking about by  
7 waived codes, are you referring to payment type?

8 Q. Yes, I am. If you turn to the --

9 A. I'm just going to refer to the data  
10 dictionary.

11 Q. I was just going to turn you there?

12 A. Which one is that?

13 Q. It's exhibit 80, Enforcement Counsel Exhibit  
14 80 page two.

15 A. No. We did not look at waived codes, rather  
16 we did not include those in the calculations that we  
17 are discussing today.

18 Q. Nor did you do any independent calculate of  
19 the amount this may have been waived?

20 A. I can't say we definitely didn't because we  
21 did a lot of general top line analysis of the data set  
22 as a first pass. But I don't recall any numbers from  
23 that and there was nothing from that, that became part  
24 of these calculations.

25 Q. You didn't present any calculations here about

1 the amounts that were waived?

2 A. No.

3 Q. And just to be clear, on the August 13th, 2011  
4 date that you used that is just an estimate, right?  
5 That was just a proxy you used to come up with what  
6 loans were originated on or after July 21, 2011?

7 A. Yes.

8 MS. FOLEY: No further questions, Your Honor.

9 JUDGE McKENNA: All right. Anything further?

10 MS. CHUM: Court's indulgence.

11 (Brief pause.)

12 MR. WHEELER: Your Honor this might be a good  
13 time for a quick recess, request your indulgence.

14 JUDGE McKENNA: Certainly.

15 MR. WHEELER: Thank you Your Honor.

16 (Brief recess.)

17 JUDGE McKENNA: Back on the record. Did we  
18 come to a resolution?

19 MS. FOLEY: Yes, Your Honor in terms of the  
20 data exchange we met outside and we have agreed upon  
21 exactly what will be exchanged and both sides are  
22 working to get that done.

23 JUDGE McKENNA: Great, and how that is going  
24 to interplay with cross-examination.

25 MS. FOLEY: I don't have any more questions,

1 Ms. Chum might have -- we would not in any way delay  
2 the remainder of the trial. We would just reserve the  
3 right to see that and if necessary, recall Mr. Hughes.

4 JUDGE MCKENNA: That is fine, granted. Any  
5 preliminary matters before Ms. Chum starts?

6 MS. CHUM: Your Honor, we would reserve the  
7 right to recall Dr. Ang as well, pending the exchange  
8 of data.

9 JUDGE MCKENNA: Oh, okay.

10 ~~MS. BAKER: Your Honor, I have a preliminary~~  
11 ~~matter. Unfortunately, there was a slight exchange~~  
12 ~~before concerning Ms. Weinberg. And we would like to~~  
13 ~~have that entire exchange stricken from the record if~~  
14 ~~that is okay with Your Honor, thank you.~~

15 ~~JUDGE MCKENNA: Do you understand~~

16 ~~MS. BAKER: And after I can go through and~~  
17 ~~specify with particularity what exactly I'm talking~~  
18 ~~about. I just, in the interest of time.~~

19 ~~JUDGE MCKENNA: Yes, yes that's your~~  
20 ~~motion is granted.~~

21 ~~MS. BAKER: Thank you, thank you.~~  
22 ~~(Court speaking with court reporter regarding~~  
23 ~~particulars of motion.)~~

24 ~~JUDGE MCKENNA: But, counsel on both sides can~~  
25 ~~point out which part they want to omit.~~

1 MS. BAKER: ~~Thank you, Your Honor.~~

2 MS. CHUM: Enforcement Counsel has no further  
3 questions.

4 JUDGE McKENNA: All right.

5 MS. CHUM: Thank you, Your Honor.

6 MS. FOLEY: I have nothing further at this  
7 time.

8 JUDGE McKENNA: Unfortunately, Mr. Hughes, you  
9 are going to be excused.

10 THE WITNESS: All right, thanks.

11 MS. CHUM: And just to clarify, now at this  
12 point Mr. Hughes is no longer under oath, so that he  
13 can be a part of this data discussion as needed?

14 JUDGE MCKENNA: Is that what you would like?

15 MS. CHUM: I defer to my data scientists. I  
16 think that would be their preference.

17 JUDGE McKENNA: Any objections?

18 MS. FOLEY: And that's -- just to clarify that  
19 is about the data that we have agreed to exchange?

20 MS. CHUM: Yes.

21 MS. FOLEY: I have no objection to him being  
22 part of that discussion.

23 JUDGE McKENNA: All right, great.

24 MS. CHUM: Thank you, Your Honor.

25 JUDGE McKENNA: There is a possibility that he



1 would be recalled, telephonically, I presume.

2 MS. FOLEY: I think it depends on what time of  
3 day but possibly.

4 JUDGE MCKENNA: Well, if it's not this day, is  
5 what I'm saying, I'm --

6 MS. FOLEY: Understood, Your Honor. It will  
7 be telephonically, we understand.

8 JUDGE MCKENNA: I'm flying home.

9 MS. FOLEY: Understood.

10 JUDGE MCKENNA: All right. So Mr. Wheeler...

11 MR. WHEELER: Enforcement Counsel rests, Your  
12 Honor.

13 JUDGE MCKENNA: You rest?

14 MR. WHEELER: Yes.

15 JUDGE MCKENNA: All right.

16 MS. BAKER: Your Honor we have a motion.  
17 Permission to hand out our Motion. It's a Motion for  
18 a Directed Ruling.

19 If I may.

20 JUDGE MCKENNA: Yes, you may.

21 MS. BAKER: Thank you. We are going to give  
22 you copies of just a short brief.

23 JUDGE MCKENNA: You are forcing me to get my  
24 glasses.

25 Proceed.

1 MS. BAKER: Your Honor, we have provided the  
2 Court and Enforcement Counsel with a copy of a Motion,  
3 and a Memo in Support of that Motion. It's a  
4 relatively short memorandum and I will make a brief  
5 argument summarizing it, and ask that Your Honor  
6 consider the Motion before we begin our case in chief.

7 We -- Respondents move for a directed ruling  
8 as to liability in this matter, and specifically,  
9 liability as to Mr. Carnes as it concerns the  
10 outstanding deception cause of action remaining in  
11 this matter.

12 And specifically, as to Mr. Carnes and  
13 Integrity Advance as it concerns the question of  
14 whether or not the use of remotely created checks  
15 gives rise to a claim of unfair conduct under the  
16 unfair -- the prohibitions against unfair, deceptive,  
17 and/or, abusive acts or practices of the CFPB.  
18 And specifically, the standard under the rules of  
19 practice for this Court, is that there has to be  
20 sufficient evidence in the record to support a  
21 reliable -- that has to be -- it has to be evidence  
22 that is reliable, probative, and substantial.  
23 So there has to be enough evidence in the record to  
24 support, as a prima facie matter, a finding of  
25 liability. And on appeal, of course, or as this goes

1 up to the director of the agency, and then possibly  
2 past him, there has to be enough evidence to support,  
3 and substantial evidence is specifically the standard,  
4 there has to be enough evidence to support a finding  
5 of liability.

6 Your Honor, we don't believe that there is  
7 enough evidence in the record to support a finding of  
8 liability specifically as to Mr. Carnes.

9 What Your Honor has heard so far is that Mr. Carnes  
10 was a CEO, that he was the CEO of one of many  
11 companies, that the relative, the relevant points in  
12 time he didn't even spend fifty percent of his time on  
13 Integrity Advance.

14 Your Honor, has heard a great deal of  
15 testimony about what Mr. Carnes did not do. He was  
16 not involved in writing any loan agreement, reviewing  
17 any loan agreement, writing any loan disclosure,  
18 reviewing any loan disclosure, indeed Mr. Carnes  
19 testified, as did Mr. Foster yesterday that that was  
20 something outside counsel looked at, and that, in  
21 fact, that was why outside counsel was retained, at  
22 least as to that issue.

23 So it's very clear that the standard that this  
24 Court has to consider, and indeed it's the standard  
25 that the CFPB annunciated at the beginning of this

1 case, is a standard that is not met in this instance.  
2 And specifically, the case I cite here is CFPB versus  
3 Gordon, a recent 9th Circuit case that Mr. Wheeler  
4 cited at the beginning of this trial, is the standard  
5 that concerns whether or not there is a finding of  
6 liability as to a related person, as to an individual.

7 And I had noted in that case there was a  
8 finding of liability. And here is why. The  
9 individual in that case edited and modified scripts.  
10 The individual in that case was charged with, and in  
11 fact, did make sure that all of the advertising and  
12 marketing of the financial services product, which was  
13 at issue, was lawful.

14 The individual in that case actually made sure  
15 that the final decisions that were made, specific  
16 granular documents and information were put out to  
17 consumers were, in fact, written by him, revised by  
18 him, reviewed by him.

19 That is the standard in the Gordon case, that  
20 the CFPB cited at the beginning of this case, in its  
21 opening statement. That is clearly not what happened  
22 here there is absolutely no evidence that the Bureau  
23 has put into the record at this time in its case in  
24 chief to support a finding of liability as to  
25 Mr. Carnes for deception or unfairness.

1 Now the remotely created checks argument that  
2 the CFPB has attempted to make, is that the mere  
3 existence of a remotely created check was per se  
4 unfair. But what Your Honor hasn't heard is, you  
5 haven't heard any evidence to substantial injury. In  
6 fact, what you heard yesterday was testimony that  
7 fewer than one percent of any transactions resulted in  
8 the use of a remotely created check, and at that it  
9 was a last resort.

10 And at that it was only because a consumer  
11 didn't contact Integrity Advance, choose not to use a  
12 credit card, chose not to pay by PayPal. There were a  
13 hundred other different ways, or numerous other  
14 different ways that a consumer could have paid. And  
15 so that is certainly not the reasonably avoidable  
16 standard that unfairness mandates as to RCC's.

17 And there's absolutely no evidence in the  
18 record that they were not reasonably avoidable, and  
19 that there was substantial injury caused as a result  
20 of the use of remotely created checks. That is the  
21 unfairness prong for that. The remaining cause, there  
22 is no evidence that supports a finding of liability as  
23 to the company.

24 Certainly no evidence that supports a finding  
25 of liability for RCC's as to Mr. Carnes. And for

1 those reasons, Your Honor, Respondents move for a  
2 directed ruling as to liability at this time.  
3 And we believe the only outstanding issue in this  
4 matter that this Court should hear concerns the  
5 question of any monetary relief. And that's we --  
6 that is how we think the rest of the proceeding should  
7 go, thank you Your Honor.

8 JUDGE MCKENNA: Thank you.

9 MR. WHEELER: Your Honor as an initial matter  
10 there is no provision in the CFPB adjudication rules  
11 for a directed verdict. In fact, even in the federal  
12 rules the Rule 50 only applies to the jury trials, and  
13 obviously, this is not a jury trial. So Your Honor, I  
14 would argue their Motion should be, not even be  
15 considered because it's not proper.

16 In the alternative, obviously Your Honor we  
17 have never read this, we just received it two minutes  
18 ago as you saw, we would like an opportunity to  
19 respond in writing, because Respondent's have had an  
20 opportunity to write up their position.

21 Obviously I disagree with Ms. Baker. You  
22 heard a lot of testimony during this proceeding about  
23 how involved Mr. Carnes was, particularly in setting  
24 up this company, how much he knew about what the  
25 company did. He also testified that he knew how the

1 disclosures looked, he knew that the loan rolled over  
2 by default, and he knew that most people rolled over.

3 And that is the essence of the deception that  
4 we have alleged, Your Honor. And that you found in  
5 your Order, that the loan disclosed one way but  
6 actually worked in a different way.

7 JUDGE McKENNA: All right. Since you are  
8 going -- you want to respond by writing, I have this  
9 to say. I haven't read the pleading, I haven't read  
10 the transcript of testimony, and I haven't fully  
11 digested all of the exhibits.

12 So I think it would be irresponsible for me to  
13 rule on your Motion I'm going to take it under  
14 advisement. And so that is my ruling as to that  
15 issue.

16 How many days do you need to respond?

17 MR. WHEELER: About five days, Your Honor. I  
18 mean, in the alternative, I mean, we were planning --  
19 we assumed there would be a post-trial briefing in  
20 this in this matter, so --

21 JUDGE McKENNA: You can do it that way.

22 MR. WHEELER: That would be my preference,  
23 just conduct it with the post-trial briefing that we  
24 were going to do, regardless.

25 JUDGE McKENNA: And I was thinking that, do

1 the parties want to skip closing arguments since you  
2 are going to be submitting briefs?

3 MS. BAKER: Your Honor, our preference would  
4 be to have a closing argument.

5 JUDGE MCKENNA: All right.

6 MR. WHEELER: We would too, Your Honor.

7 JUDGE MCKENNA: Okay. How much time would you  
8 need to illuminate everything?

9 MS. BAKER: Your Honor, I anticipate probably  
10 twenty minutes to half an hour. And that would be the  
11 upper end of that. I do speak quickly, Your Honor, so  
12 I may be able to do it more quickly than that. But I  
13 just want to --

14 JUDGE MCKENNA: And you have a very easy to  
15 understand octave level.

16 MS. BAKER: Thank you.

17 JUDGE MCKENNA: Ms. Chum?

18 MS. CHUM: (No audible response.)

19 JUDGE MCKENNA: All right, so twenty minutes  
20 apiece. If someone wishes to reserve five minutes for  
21 rebuttal, they may do so. Thirty days from a receipt  
22 of transcript, opening briefs. Fifteen days  
23 thereafter for closing, for reply briefs.

24 MR. WHEELER: Thank you, Your Honor.

25 MS. BAKER: Your Honor, I just want a point of



1 clarification, are you deferring ruling on our Motion  
2 or are you denying our Motion?

3 JUDGE MCKENNA: I'm deferring ruling on the  
4 Motion.

5 MS. BAKER: Okay. Thank you.

6 JUDGE MCKENNA: But I anticipate that I will  
7 handle it through the decision and order.

8 MS. BAKER: I see so, is it the case, Your  
9 Honor, that the parties will be briefing this, or are  
10 you asking that we brief this as part of our  
11 post-trial briefing?

12 JUDGE MCKENNA: I think that post-trial  
13 briefing would be the -- an appropriate way to go.  
14 Now my lawyer tells me that the Agency rules provide  
15 thirty days from the close of the hearing.

16 And I respond -- hm?

17 LAW CLERK: It's thirty days from the receipt  
18 of transcript.

19 (Court speaking with law clerks.)

20 JUDGE MCKENNA: All right.

21 MR. WHEELER: Thank you, Your Honor.

22 JUDGE MCKENNA: Yeah.

23 MS. BAKER: Thank you, Your Honor.

24 JUDGE MCKENNA: All right. So at this time,  
25 do you have a witness you wish to call?

MS. FOLEY: Yes, Your Honor Respondents call Dr. Ang.

2 JUDGE MCKENNA: Good morning.

3 THE WITNESS: Good morning, Sir.

4 JUDGE MCKENNA: Please raise your right hand.

5 DOCTOR XIAOLING LIM ANG,

6 A witness produced on call of the Respondent,  
7 having first been duly sworn, was examined and  
8 testified as follows:

9 THE WITNESS: Yes, Your Honor.

10 JUDGE MCKENNA: Please be seated.

11 MS. CHUM: Your Honor, may I just state for  
12 the record that notice of Ms. Ang's testimony was only  
13 given to us one day before the beginning of trial.  
14 And Rule 215 calls for, I believe, ten-day notice.  
15 And I just want to put that out there for the record.

16 JUDGE MCKENNA: All right. And what do you  
17 want me to do about it?

18 MS. CHUM: Ah --

19 JUDGE MCKENNA: You just can't put something  
20 out there with without a request.

21 MS. CHUM: Well I assume you will permit Dr.  
22 Ang to testify but I just want to put it out there  
23 that we would request that Dr. Ang not be permitted to  
24 testify on those grounds, that we were not given fair  
25 notice.

1 And that the exchange of the witness list and  
2 the exhibit list had occurred per your schedule. And  
3 that, that was the witness list that we relied on.

4 JUDGE MCKENNA: Okay. And I think that  
5 everyone knows how I operate now. The way I operate  
6 is that I will protect your due process rights.

7 You will have the same right that Respondents  
8 had to recall Mr. Hughes. So I will give you five  
9 days to make a determination of if you're prejudiced  
10 and if so how to cure it through either exhibits,  
11 additional cross-examination... Is that clear  
12 bilaterally?

13 MS. FOLEY: Your Honor, to state for the  
14 record, she is a rebuttal witness.

15 JUDGE MCKENNA: Pardon me?

16 MS. FOLEY: She -- Dr. Ang is a rebuttal  
17 witness to Mr. Hughes. She was disclosed -- I have  
18 lost track of time -- more than a week ago, roughly,  
19 or approximately a week ago. It has been no surprise  
20 that we needed to pull somebody together in light of  
21 the new exhibits they included from Mr. Hughes, 97 in  
22 particular.

23 JUDGE MCKENNA: Even without those, it -- all  
24 right. So, you said one day before hearing.

25 MS. CHUM: Yes, Your Honor and Exhibit 97 and

1 Exhibit 100 were produced on the day that the exhibits  
2 were due those were not new exhibits.

3 MS. FOLEY: They were, the first time we saw  
4 them is when exhibits were disclosed, and then we  
5 realized they were going to be new exhibits and  
6 testimony from someone who only had a declaration  
7 submitted on Summary Disposition. That's the first  
8 time we were aware he was going to testify at trial.

9 JUDGE MCKENNA: All right well --

10 MS. FOLEY: Meaning -- yeah that's all I am --

11 JUDGE MCKENNA: -- all of that is resolvable  
12 through my ruling. So, everyone be happy.

13 MS. FOLEY: I'm going to give you a set in  
14 advance so you have some to look at. Demonstrative  
15 that we will be using. Do you have a set for the  
16 Court Andrew? Do you need another set, I think we can  
17 get Your Honor a copy if you'd like another set.

18 JUDGE MCKENNA: Thank you, all right --

19 MS. CHUM: For the record Your Honor we have  
20 just been handed six new exhibits marked exhibits 19,  
21 through 24, and we have never seen these before. And  
22 we would request additional copies of these.

23 MS. FOLEY: Sure we have copies and we will  
24 hand them to you.

25 MS. CHUM: And time to review these exhibits

1 Your Honor.

2 JUDGE MCKENNA: Yes you, do you want a break  
3 now.

4 MS. CHUM: Yes, Your Honor.

5 JUDGE MCKENNA: All right, so we will break  
6 for lunch. Come back at 12:00. And before we go off  
7 the record, could you give me the spelling of your  
8 name.

9 THE WITNESS: Yes, Your Honor X-I.

10 JUDGE MCKENNA: Pardon me?

11 THE WITNESS: X, as in, x-ray.

12 JUDGE MCKENNA: Um-hmm.

13 THE WITNESS: I-A-O-L-I-N-G. The middle  
14 name is L-I-M and last name is A-N-G.

15 MS. CHUM: And Your Honor we would like to  
16 know whether these exhibits were based on the same  
17 source code -- source -- exhibits 95 and 101 that were  
18 provided to us by Integrity Advance. Or whether they  
19 were placed --

20 MS. FOLEY: You mean the transactional  
21 database?

22 MR. WHEELER: Yeah.

23 MS. CHUM: Yes.

24 MS. FOLEY: I just want to make sure because  
25 you said source code, you threw me off.

1 MS. CHUM: I'm sorry, the transactional  
2 database.

3 MS. FOLEY: Yeah, you will see in the  
4 footnotes it tells you exactly what the sources are.  
5 There is nothing surprising it's the same data that  
6 Mr. Hughes had access to and testified about, and  
7 these are in response to his testimony given.  
8 And you have all of the source code for these already,  
9 and I think there is some additional things we have  
10 agreed to exchange which we will provide.

11 JUDGE McKENNA: All right. While you were  
12 outside, did you clarify the source code issue?

13 MS. CHUM: Yes, Your Honor.

14 MS. FOLEY: Yes.

15 JUDGE McKENNA: Everybody is happy?

16 MS. FOLEY: With what we have agreed upon, I  
17 am satisfied.

18 MS. CHUM: Yes, we will both be exchanging  
19 materials.

20 JUDGE McKENNA: All right. Well, that is  
21 good. So now let me see just a second. I want to  
22 modify my ruling about breaking. Why don't you do  
23 your direct, and then we will break.

24 MS. FOLEY: Sure.

25 (Attorneys conferring about exhibit copies.)

MS. FOLEY: May I proceed?

2 JUDGE MCKENNA: Yes, you --

3 MS. CHUM: Your Honor if they could just very  
4 quickly photocopy these, so that we can --

5 JUDGE MCKENNA: Pardon me?

6 MS. CHUM: Your Honor, if they could just very  
7 quickly --

8 MS. FOLEY: Okay. We got them, we got them  
9 hold on.

10 MS. CHUM: So that we have five sets.

11 MS. FOLEY: I don't have five sets, but we  
12 will give you at least one more, I can deliver that.  
13 Okay, here why don't you --

14 JUDGE MCKENNA: This approach is not going to  
15 cause you a problem, is it, Mr. Wheeler?

16 MR. WHEELER: No, Your Honor, I just want to  
17 make sure that we had enough, that, you know --

18 JUDGE MCKENNA: No, I'm talking about taking  
19 the direct because it's a little early to break for  
20 lunch.

21 MR. WHEELER: No, no, that is fine Your Honor.

22 JUDGE MCKENNA: All right, just wanted to make  
23 sure.

24 Back on the record.

25 MS. FOLEY: Good morning, Dr. Ang.

1 DR. XIAOLING LIM ANG

2 DIRECT EXAMINATION

3 BY MS. FOLEY:

4 Q. Good morning.

5 Are you currently employed?

6 A. Yes, I am.

7 Q. Where do you work?

8 A. Edgeworth Economics.

9 Q. How long have you worked with Edgeworth?

10 A. Since November 2015.

11 Q. Prior to joining Edgeworth, were you employed?

12 A. Yes, I was.

13 Q. Where were you employed?

14 A. The Office of Research at the CFPB.

15 Q. How long were you at the Office of Research at  
16 the CFPB?

17 A. Just over four years.

18 Q. And what did you do at the CFPB?

19 A. I was a research economist, which meant that I  
20 did cost benefit analysis which involved both the  
21 application of economic theory as well as empirical  
22 analysis.

23 Q. Did your work involve empirical analysis of  
24 loan level data sets?

25 A. Yes, it did.



1 Q. Were you present for Mr. Hughes's testimony?

2 A. Yes, I was.

3 Q. Have you reviewed Mr. Hughes's calculations?

4 A. Yes, I have.

5 Q. Have you reviewed the transaction data set

6 Mr. Hughes relied upon?

7 A. Yes, I have.

8 Q. Based upon your observation of Mr. Hughes's

9 testimony, and your review of the data set, do you have

10 an understanding of the criteria Mr. Hughes used to

11 calculate the amount paid by customers?

12 A. Yes, I do.

13 Q. And what is your understanding based upon?

14 A. My understanding is based upon both reading

15 the declaration, and applying it to the data, and

16 matching, or attempting to match rather, the accounts

17 and the dollar amounts listed in Exhibit 97.

18 Q. And when you say the declaration, are you

19 referring to Mr. Hughes's declaration in this case?

20 A. Yes, ma'am, Exhibit 72.

21 Q. Thank you. All right, using the description

22 in Mr. Hughes's declaration, were you able to replicate

23 Mr. Hughes's calculations of the amounts paid by

24 customers?

25 A. No, I was not.

1 Q. Do you have an understanding of why you were  
2 not able to do so?

3 A. Yes, I do.

4 Q. And what is your understanding?

5 A. So if you will indulge me and turn to exhibit  
6 72.

7 Q. Okay. Let's -- do you have it in right in  
8 front of you? It's in -- there is a book of  
9 Respondent's exhibits?

10 A. Yes, I do. So, if you take a look at page  
11 four, and focus on paragraph 16. It states in 16 B  
12 that the records that were included were designated as  
13 NSF payment, charge off payment, or standard payment  
14 type.

15 However while replicating I realized that  
16 Mr. Hughes also included the payment type renewal.  
17 Which you can see if you take peek at Enforcement  
18 Counsel's Exhibit 80.

19 Q. And I'm sorry, you say Exhibit 80, that's the  
20 data dictionary you are referring to?

21 A. Yes, ma'am.

22 Q. Okay. So I will just stop you there, so, you  
23 looked at what, paragraph 16 of Mr. Hughes's  
24 declaration?

25 A. Yes, and um --

1 Q. Let me just make sure we are all on the same  
2 page. So you tried to replicate his numbers using the  
3 parameters identified in paragraphs A through D of  
4 paragraph 16?

5 A. That is correct.

6 Q. And the R payment you just described, renewal,  
7 would have fallen in the same line as paragraph B with  
8 the NSF payment, charge-off payment, or standard  
9 payment?

10 A. Yes, it would.

11 Q. Okay. Was there anything else that you  
12 observed based on Mr. Hughes's description of  
13 parameters in paragraph 16 that you observed there was  
14 anything different from what he actually used?

15 A. Yes.

16 Q. What was that?

17 A. In 16 D he states that he excluded  
18 transactions that were void; however, he also excludes  
19 an additional status flag, which is transactions that  
20 were returned.

21 Q. And then once you understood the discrepancy  
22 between Mr. Hughes's description and what was actually  
23 used, were you able to replicate his calculations of  
24 the total number of Integrity Advance customers?

25 A. Yes, I was.

1 Q. Were you able to replicate then his  
2 calculations of the total number of loans?

3 A. Yes, I was.

4 Q. Were you able to replicate his calculations of  
5 the total amounts consumers paid?

6 A. Yes, I was.

7 Q. Did you review Mr. Hughes's calculations of  
8 total paid above total of payments?

9 A. Yes, I did.

10 Q. Do you have an understanding of what  
11 Mr. Hughes was referring to when he used the phrase  
12 total of payments?

13 A. Yes, I do.

14 Q. And what is your understanding of that phrase?

15 A. My understanding is that total of payments  
16 represents the sum of the original principal and one  
17 finance charge.

18 Q. And do you understand that that is what he  
19 described as what would have been disclosed in the TILA  
20 box in the loan agreements?

21 A. Yes, that is my understanding.

22 Q. So when Mr. Hughes calculated the total paid  
23 above the total of payments, what do you understand  
24 that calculation to represent?

25 A. I understand that to represent the difference

1 in all dollars paid by consumers by an individual  
2 consumer to Integrity Advance, minus his estimate of  
3 the amount that would have been disclosed in the TILA  
4 box.

5 Q. So it's the amount, it's his estimate of the  
6 amount the consumer paid above the TILA box disclosure?

7 A. That is correct.

8 Q. Did you make any observations about  
9 Mr. Hughes's calculations of the total amount consumers  
10 paid above the TILA box disclosures?

11 A. Yes, I did.

12 Q. And what is your observation?

13 A. That his calculation is an under estimate --  
14 or an overestimate, pardon me, and overstatement of the  
15 total paid above total of payments.

16 Q. And is that using the same parameters that  
17 Mr. Hughes used in his calculations, the same criteria?

18 A. Yes, in terms of what was actually implemented  
19 as well as following the methodology outlined in his  
20 declaration.

21 Q. So why is Mr. Hughes calculations of the  
22 amounts consumers paid above total payment overstated?

23 A. Because his calculations of the TILA amount is  
24 too low.

25 Q. So his calculations of total of payments is

1 too low?

2 A. That is correct.

3 Q. Why does that matter?

4 A. It matters because to get the total paid above  
5 the total of payments, you must subtract the total of  
6 payments from the total amount paid, which we both  
7 agree on.

8 Q. So basically, if his number is too small, then  
9 when you subtract it from the larger number the  
10 remainder is too big?

11 A. Exactly, yes ma'am.

12 Q. Okay. So using Mr. -- Enforcement Counsel's  
13 Exhibit 97 slide 2 --  
14 (Counsel speaking with projectionist regarding the  
15 exhibit displayed.)

16 Is it your testimony that the bottom line  
17 where it says, total paid above total of payments at  
18 133 million dollars that that is wrong?

19 A. Yes.

20 Q. Okay. And if we look at page 3 of Exhibit 97.  
21 Where -- let's give it a minute to warm up -- where  
22 Mr. Hughes calculated the total paid above total of  
23 payments in the bottom line, thirty-eight million  
24 dollars, seven hundred ninety-five thousand, so that is  
25 incorrect, that is your testimony?

1 A. That is incorrect, or you are correct, I  
2 believe that number is incorrect.

3 Q. Thank you for fixing my grammar. Did you  
4 prepare a document to show your analysis that we just  
5 described?

6 A. Yes, I did.

7 Q. And can you turn to what has been marked as  
8 Respondent's Exhibit 19, it's the first page I handed  
9 to counsel this morning.

10 (Counsel conferring about exhibit copies.)

11 MS. FOLEY: Do you have a copy Dr. Ang?

12 THE WITNESS: I do.

13 BY MS. FOLEY:

14 Q. Okay. Do you recognize this document Dr. Ang?

15 A. I do.

16 Q. Did you prepare it?

17 A. Yes, I did.

18 Q. And what is this document?

19 A. This documents is a comparison of the CFPB's  
20 estimates, and my adjusted calculations.

21 Q. So based upon -- can you walk us through your  
22 calculations and how you reached your conclusion.

23 Is that -- your conclusion line here is the  
24 "CFPB overstates total paid above total of payments" on  
25 the bottom line, I apologize my Elmo is not

1 cooperating.

2 A. Yes, it is.

3 Q. And so, can you walk us through your  
4 calculation for the period of time of all loans please?

5 A. Absolutely, so, if you take a look at the top  
6 row, which looks at total paid, principal, plus finance  
7 fees, plus additional fees, my calculations of total  
8 paid using Mr. Hughes's parameters matches exactly  
9 down to the penny.

10 Q. So that is the line, the first line that you  
11 just described the total paid principal plus finance  
12 fees plus additional fees?

13 A. Yes.

14 Q. Okay. And your number is the same as Mr.  
15 Hughes's number on this document correct?

16 A. Yes, it is.

17 Q. And you used the same parameters that  
18 Mr. Hughes implemented to reach this total?

19 A. That is correct.

20 Q. Okay. Then what does your line, "Total of  
21 payments" reflect?

22 A. "Total of payments" reflects my implementation  
23 of my understanding of Mr. Hughes's declaration in  
24 terms of assigning finance charges and principal  
25 borrowed, to a given loan.



1 Q. And your calculation of this amount is a 150  
2 million?

3 A. That is correct.

4 Q. Compared to Mr. Hughes's calculations of 140.5  
5 million?

6 A. Yes, it is.

7 Q. Okay. And then what is -- I'm going to try to  
8 make this a little bigger so everyone can see it, there  
9 we go -- and then please tell us what the third line of  
10 exhibit 19 shows?

11 A. The third line of exhibit 19 is the result of  
12 subtracting our respective total of payment amounts  
13 from the total paid. And so what I find is that the  
14 CFPB's calculation is 133.4 million dollars, compared  
15 to my calculation of 123.8 million dollars. So these  
16 two numbers do not match.

17 Q. And what is the difference Dr. Ang?

18 A. The difference is 9.6 million dollars?

19 Q. And whose is larger?

20 A. So the CFPB's calculation is larger and this  
21 is, this 9.6 million dollars is their overstatement of  
22 the total paid above the total of payments.

23 Q. Thank you. You performed the same  
24 calculation, Dr. Ang for -- regarding Mr. Hughes  
25 calculation for the time -- for loans originated on or

1 after July 21, 2011?

2 A. That is correct.

3 Q. Okay. And based upon your analysis, by how  
4 much was Mr. Hughes's total paid above total payments  
5 overstated?

6 A. His total paid above total of payments was  
7 overstated by 2.6 million dollars.

8 MS. FOLEY: Your Honor, Respondents move  
9 Exhibit 19 into evidence.

10 JUDGE MCKENNA: Any objections.

11 MS. CHUM: Court's indulgence. Only to the  
12 extent that we were just provided this document.

13 JUDGE MCKENNA: Well, I have already given you  
14 an opportunity to cure any problems, so --

15 MS. CHUM: Yes.

16 MS. FOLEY: Dr. Ang did you do anything --

17 JUDGE MCKENNA: Just a second I'm not done.

18 MS. FOLEY: Oh, I'm sorry Your Honor.

19 JUDGE MCKENNA: I might be old, but I'm slow,  
20 all right. So admitted, Exhibit 19.

21 (Respondent's Exhibit No. 19 was  
22 admitted into evidence.)

23 JUDGE MCKENNA: Proceed.

24 MS. FOLEY: Thank you, Your Honor.

25 BY MS. FOLEY:

1 Q. Dr. Ang, did you do anything to confirm your  
2 calculations were correct?

3 A. Yes, I did.

4 Q. What did you do?

5 A. So I had my calculations validated and matched  
6 numerically by an experienced colleague.

7 Q. That is your standard practice?

8 A. Yes, it is.

9 Q. In the transaction level data set that you  
10 reviewed, could you observe if a customer took out more  
11 than one loan over time?

12 A. Yes, I could.

13 Q. Based upon your observations did you calculate  
14 the number of customers who took out two or more loans  
15 with Integrity Advance over time?

16 A. Yes, I did.

17 Q. Did you calculate the number of customers who  
18 took out five or more loans with Integrity Advance?

19 A. Yes, I did.

20 Q. Did you calculate the number of customers who  
21 took out ten or more loans with Integrity Advance?

22 A. Yes, I did.

23 Q. Did you calculate the number of customers who  
24 took out twenty or more loans with Integrity Advance?

25 A. Yes, I did.

1 Q. Did you prepare a document to reflect the  
2 number of -- reflect these calculations?

3 A. Yes, I did.

4 Q. Okay. Dr. Ang --

5 JUDGE McKENNA: What exhibit number is this?

6 MS. FOLEY: It's Respondent's Exhibit 20 Your  
7 Honor.

8 MS. FOLEY: Dr. Ang do you recognize  
9 Respondents Exhibit 20?

10 THE WITNESS: Yes, I do.

11 BY MS. FOLEY:

12 Q. Did you prepare this document?

13 A. Yes, I did.

14 Q. Please tell us what this -- Respondent's  
15 Exhibit 20 is?

16 A. This exhibit displays the number of customers  
17 who take out a given number of loans or higher. So, if  
18 you take a look at the first row, two or more loans  
19 means that customer has 2,3,4,5 up to 45 loans taken  
20 out with Integrity Advance over the period May 2008  
21 through May 2013.

22 Q. Let me stop you there. What was the highest  
23 number of loans you observed a customer took out from  
24 Integrity Advance?

25 A. Forty-five.

1 Q. And so you if you can just walk us across the  
2 line, two or more, it says, "number of loans two or  
3 more," what was your calculation of the total number of  
4 these repeat customers starting in May 2008 forward?

5 A. Fifty-seven thousand seven hundred  
6 ninety-eight.

7 Q. And you calculated the repeat customers who  
8 had two or more loans for the period originated on or  
9 after July 21, 2011?

10 A. Yes, I did.

11 Q. And what number -- how many repeat customers  
12 were there who had two or more loans originated on or  
13 after July 21, 2011?

14 JUDGE McKENNA: You mean three or more?

15 MS. FOLEY: I was just going to finish the two  
16 or more for the 2011 period.

17 JUDGE MCKENNA: Oh, okay, fine.

18 MS. FOLEY: Okay. I was reading right across  
19 the line here.

20 THE WITNESS: Twenty-six thousand, one hundred  
21 twenty-nine.

22 BY MS. FOLEY:

23 Q. Thank you, Dr. Ang. If we skip down to the  
24 row that says, "Five or more."

25 (Speaking with projectionist regarding

1 displayed exhibits.)

2 BY MS. FOLEY:

3 Q. I think this might make it a little easier for  
4 everyone to see. If we look at the line, "Five or more  
5 loans" can you tell us what that means Dr. Ang?

6 A. Yes, that means that for the period starting  
7 in May 2008, eight thousand four hundred forty-seven  
8 customers took out five or more loans so 5, 6, 7 and so  
9 forth.

10 Q. And for -- if we look at the period for loans  
11 originated on or after July 21, 2011 did you calculate  
12 the number of customers who had five or more loans  
13 during that period?

14 A. Yes, I did.

15 Q. And what is your calculation?

16 A. Six thousand, five hundred twenty-seven.

17 Q. And if we could just look at the line where it  
18 says, "Twenty or more," can you explain to us what is  
19 represented on that line?

20 A. Yes, so for the period May 2008 through May  
21 2013, seventy-two customers took out twenty or more  
22 loans. When we restrict attention to the loans that  
23 were originated on or after July 21st, 2011, those  
24 loans -- seventy customers, took out a loan after on or  
25 after that date. And those particular customers had

1 twenty or more loans.

2 JUDGE McKENNA: So there were only two before  
3 that date?

4 THE WITNESS: So when we considered the  
5 customers who are repeat customers we are looking at  
6 the number of loans they took out over the entire time  
7 period. So, there are only two who took out twenty or  
8 more loans, between May 2008 through July 21st, 2011,  
9 as Mr. Hughes defines it in his sample restrictions.

10 JUDGE MCKENNA: So the answer to my question  
11 is yes.

12 THE WITNESS: Yes. Yes, sir.

13 JUDGE McKENNA: Thank you.

14 BY MS. FOLEY:

15 Q. Dr. Ang, did you also calculate the percentage  
16 of customers who were repeat customers?

17 A. Yes, I did.

18 Q. And did you prepare a document reflecting the  
19 percentage -- your calculations of the percentage of  
20 repeat customers?

21 A. Yes, I did.

22 Q. I'm going to show you what's been marked --  
23 Your Honor before I move forward, I would like to offer  
24 Respondents Exhibit 20 into evidence, please?

25 JUDGE McKENNA: Any objections.

1 MS. CHUM: No, Your Honor.

2 JUDGE MCKENNA: So admitted.

3 (Respondent's Exhibit No. 20  
4 was admitted into evidence.)

5 JUDGE MCKENNA: Are we going to 21 now?

6 MS. FOLEY: Yes, sir.

7 BY MS. FOLEY:

8 Q. Dr. Ang, directing your attention to what's  
9 been marked as Respondent's Exhibit 21 do you recognize  
10 this document?

11 A. Yes, I do.

12 Q. Did you prepare it?

13 A. Yes, I did.

14 Q. Please explain to us what this Exhibit 21  
15 shows?

16 A. This puts repeat customers in context relative  
17 to all customers, in terms of the count of customers,  
18 count of loans, and payments made by repeat customers  
19 relative to all customers.

20 Q. Okay. So focusing at the top category I see  
21 the categories, are they the bold, customers, loans,  
22 and payments?

23 A. Yes, ma'am.

24 Q. If we if he focus on top category of customers  
25 did you calculate the percentage of repeat customers



1 for, let's start with the period May 2008 forward?

2 A. Yes, I did.

3 Q. And what is the percentage of repeat customers  
4 for that time period?

5 A. Thirty-two percent.

6 Q. And that is reflected in this Column, B, "All  
7 loans?"

8 A. Yes, it is.

9 Q. And did you also calculate the percentage of  
10 repeat customers who had loans originated on or after  
11 July 21, 2011?

12 A. Yes, I did.

13 Q. And is that reflected on Exhibit 21?

14 A. Yes, it is.

15 Q. And what that is percentage?

16 A. Forty-eight percent.

17 Q. Turning to the second category where it says,  
18 "Loans," can you tell us what is reflected in this  
19 category?

20 A. Yes, this is the total number of loans made to  
21 repeat customers, relative to the total number of loans  
22 made overall.

23 Q. And did you calculate the percentage of loans  
24 to repeat customers for the time period May 2008  
25 forward?

1 A. Yes, I did.

2 Q. And is that reflected on this document?

3 A. Yes, it is.

4 Q. And what was percentage of loans to repeat  
5 customers in that time period?

6 A. Sixty percent.

7 Q. Did you also calculate the percentage of loans  
8 to repeat customers in the time period of July -- for  
9 loans originated on or after July 21, 2011?

10 A. Yes, I did.

11 Q. And what was that percentage?

12 A. Sixty-six percent.

13 Q. There is a third category on this document  
14 that says, "Payments," please explain to us what that  
15 represents?

16 A. Sure, so the total paid by customers is the  
17 same line that we saw in both the exhibit 19, as well  
18 as Enforcement Counsel's I believe Exhibit 97. Where  
19 Mr. Hughes and I match on our total paid by customers,  
20 so roughly 273.9 million for all loans. And 80.3  
21 million for loans originated on or after July 21, 2011.

22 Q. I'm going to stop you there Dr. Ang when you  
23 say you and Mr. Hughes match do you mean you were able  
24 to replicate his number?

25 A. Yes down to the cent.

1 Q. Okay. And using Mr. Hughes's calculation, the  
2 total paid by customers did you calculate the  
3 percentage of those payments that were from repeat  
4 customers?

5 A. Yes, I did.

6 Q. And from the time period May 2008 forward,  
7 what was that percentage?

8 A. Sixty-nine percent.

9 Q. And that is reflected down at the bottom of  
10 column B on Exhibit 21?

11 Yes?

12 You have to answer audibly. And did you  
13 perform the same calculation for the percentage of  
14 total payments from repeat customers for loans  
15 originated on or after July 21, 2011?

16 A. Yes, I did.

17 Q. And what is that percentage?

18 A. Seventy-six percent.

19 MS. FOLEY: Your Honor, Respondents offer  
20 Exhibit 21 into evidence.

21 JUDGE McKENNA: Objection?

22 MS. CHUM: Your Honor, I would simply, just  
23 for point of clarification, was the source code that  
24 we received yesterday evening around 10:30 or so, did  
25 that include the source code for these new exhibits.

1 MS. FOLEY: Yes.

2 MS. CHUM: Thank you.

3 JUDGE McKENNA: No objection?

4 MS. CHUM: No objection, Your Honor.

5 JUDGE McKENNA: Thank you.

6 (Respondent's Exhibit No. 21  
7 was admitted into evidence.)

8 BY MS. FOLEY:

9 Q. Turning to Enforcement Counsel's Exhibit 102.  
10 Dr. Ang did you have an opportunity to review  
11 Enforcement Counsel's Exhibit 102?

12 A. Yes, I have.

13 Q. And if you look down at the fourth line,  
14 "Money paid to IA by consumers above the total of  
15 payments via first time loans," do you see that line?

16 A. Yes, I do.

17 Q. Have you had the opportunity to review  
18 Mr. Hughes's calculations of the money paid to  
19 Integrity Advance by consumers above the total of  
20 payments via first time loans?

21 A. Yes, I have.

22 Q. Do you have an understanding of what  
23 Mr. Hughes was referring to when he used first time  
24 loans here?

25 A. Yes.

1 Q. And what is your understanding?

2 A. It is the first loan that any customer takes  
3 out whether they are a one-time customer or a repeat  
4 customer.

5 Q. And did you make any observations of about  
6 Mr. Hughes's calculations regarding the amounts paid by  
7 -- paid to Integrity Advance by consumers above the  
8 total of payments via first time loans?

9 A. Yes, I did.

10 Q. And what were your observations?

11 A. I observed that that amount is overstated.

12 Q. Is that -- did he overstate the amount for  
13 both loans originated between May 28 -- loans  
14 originated after May 2008 as well as for loans  
15 originated on or after July 21, 2011?

16 A. Yes, he did.

17 Q. Do you have an understanding of why these,  
18 Mr. Hughes's calculations are overstated?

19 A. Yes, I do.

20 MS. CHUM: Calls for speculation.

21 JUDGE McKENNA: Pardon me?

22 MS. CHUM: Objection, calls for speculation.

23 JUDGE McKENNA: Overruled.

24 BY MS. FOLEY:

25 Q. And what is that understanding, Dr. Ang?

1 A. My understanding is that the amount he  
2 calculates as the total of payments is too low.

3 Q. And the result? And what happens because his  
4 total of payments is too low?

5 A. If his total of payments is too low then the  
6 total paid minus total of payments is too high.

7 Q. And Dr. Ang, how did you conclude that  
8 Mr. Hughes's amount of the total of payments was  
9 understated?

10 A. I did this by running independent calculations  
11 attempting to replicate Mr. Hughes's analysis.

12 Q. Were you able to replicate his analysis?

13 A. No, I was not.

14 Q. Did you take any steps after that to validate  
15 that your analysis was correct?

16 A. Yes, of course.

17 Q. And I think you told us one of the steps you  
18 took was to have a colleague run the calculations as  
19 well.

20 A. Yes.

21 Q. Did you do anything else?

22 A. Yes.

23 Q. What did you do?

24 A. So, this may be a bit of a lengthy  
25 explanation. So, as an empiricist one the first things

1 to do when you get data is to think about how it  
2 relates to underlying data generating process. So,  
3 where does the data come from, what does it describe.

4 So we know that these are transactions from  
5 Integrity Advance for this particular product which has  
6 particular features. So, we know that interest is not  
7 capitalized on these loans, instead interest is,  
8 basically included in the finance charge.

9 So, essentially, the principal paid should  
10 never get bigger than for a given loan. Because  
11 interest isn't capitalizing so how could it get bigger?  
12 Similarly, the finance charge is linked to the  
13 principal amount. So, it is proportional. One  
14 possible way that it could be proportional is it could  
15 be thirty dollars per one hundred dollars. So the  
16 finance charge and the principal amount go in lock  
17 step.

18 So if the principal can't get any bigger  
19 neither can the finance charge.

20 Q. And you when you say the principal can get  
21 bigger, you mean for a given loan?

22 A. Yes, ma'am. And so, if the principal can't  
23 get any bigger for a given loan and finance charge  
24 can't get any bigger for a given loan, then it seems  
25 odd that when we -- when I sum across all loans that

1 the net total of payments as -- as described by the  
2 CFPB, is larger in my calculations than they are in the  
3 CFPB calculations. This defies our sense of how,  
4 basically, addition works.

5 Q. So when you basically add it up -- can you  
6 walk us through? Did you sample the data?

7 A. Yes.

8 Q. To you test your theory?

9 A. I looked at individual loan records.

10 Q. And what did you do, just so we all  
11 understand, when you looked at the individual loan  
12 records?

13 A. We took a look at where payments occurred, and  
14 what the ordering of payments was. And we, basically,  
15 just reviewed several records to understand the way  
16 that those records are populated.

17 Q. Turning back to your observations about  
18 Mr. Hughes's calculation regarding money paid to  
19 Integrity Advance by consumers above the total of  
20 payments via first time loans, did you prepare any  
21 documents to show your calculations that you describe  
22 how you determined that Mr. Hughes's number was too  
23 big?

24 A. Yes, I did.

25 Q. Can I have -- Respondents Exhibit 22 I'm going



1 to put on the screen. Dr. Ang do you recognize  
2 Respondents Exhibit 22?

3 A. Yes, I do.

4 Q. And can you tell us please what is  
5 Respondent's Exhibit 22?

6 A. It is a comparison of the CFPB's calculations  
7 to my adjusted calculations. Of the total paid above  
8 total of payments for what they call first time loans.

9 Q. And you prepared this document?

10 A. Yes, I did.

11 Q. Okay. And if you look at the concluding line  
12 here, "CFPB overstates total paid above total of  
13 payments for first time loans," do you see that line,  
14 Dr. Ang?

15 A. Yes, I do.

16 Q. And please tell us what that line reflects?

17 A. That reflects the amount by which the CFPB  
18 overstates the difference between total paid above  
19 total of payments. For this particular set of loans.

20 And the overstatement for the period 2008  
21 through 2013 is approximately 7.1 million dollars.

22 Q. And that is the number reflected in "Column C"  
23 under "Adjusted?"

24 A. Yes, it is.

25 Q. Okay. And did you run the same calculation

1 for loans originated on or after July 21, 2011?

2 A. Yes, I did.

3 Q. And what did you conclude about Mr. Hughes's  
4 calculations for that period of time?

5 A. That his total paid above total of payments  
6 was overstated by approximately 1.8 million dollars.

7 Q. Okay. And focusing on the period of time for  
8 loans originated on or after July 21, 2011, the 1.8  
9 million dollar difference, can you walk us through how  
10 did you conclude that Mr. Hughes's number was  
11 overstated by that amount?

12 A. So the first step, was to start from the  
13 baseline of the calculation of total paid above total  
14 of payments and as you have seen from exhibit 19,  
15 we've, I demonstrated that Mr. Hughes's calculations  
16 are an overstatement. So, I start from the baseline of  
17 my adjusted calculations on exhibit 19.

18 Then, I compute the total paid above total of  
19 payments for all second or higher loans for returning  
20 or repeat customers.

21 So if you think about what happens when you  
22 exclude all second or higher loans for repeat  
23 customers, what you have left is the first loans for  
24 repeat customers and the first loans for all one-time  
25 borrowers.

1 And so, when you take the difference I get a  
2 total paid above total of payments for first time loans  
3 of approximately 10.4 million dollars.

4 MS. FOLEY: Your Honor, we move Respondent's  
5 Exhibit 22 into evidence.

6 JUDGE McKENNA: Objections?

7 MS. CHUM: No, Your Honor.

8 JUDGE McKENNA: So admitted.

9 (Respondent's Exhibit No. 22

10 was admitted into evidence.)

11 MS. FOLEY: If I may have Respondent's Exhibit  
12 102, please.

13 MS. CHUM: Which exhibit?

14 MS. FOLEY: Respondent's Exhibit 102, put that  
15 back up. I'm sorry, that's right, Enforcement  
16 Counsel's Exhibit 102, this is not Respondent's  
17 exhibit for the record.

18 BY MS. FOLEY:

19 Q. If we look at the fifth box down. Which is  
20 money paid to Integrity Advance by consumers above the  
21 total of payments via one-time loans, do you see where  
22 I am?

23 A. Yes, ma'am.

24 Q. Dr. Ang, did you review Mr. Hughes's  
25 calculations for that amount for these -- for the --

1 sorry, for money paid to Integrity Advance by consumers  
2 above the total of payments via one-time loans?

3 A. Yes, I did.

4 Q. And did you make any observations about  
5 Mr. Hughes's calculations?

6 A. Yes, I did.

7 Q. And what observations did you make?

8 A. The -- Mr. Hughes's calculations are  
9 overstated.

10 Q. So turning to the second row for loans  
11 originated after May 2008, Mr. Hughes calculation was  
12 39.9 million dollars?

13 A. Yes, it was.

14 Q. And your observation is that is overstated?

15 A. Yes, it is.

16 Q. And your observation is the same if we go over  
17 one column for loans originated on or after July 21st,  
18 your observation is that Mr. Hughes's calculation of  
19 roughly 8.99 million dollars is overstated?

20 A. Yes. His calculation is also overstated in  
21 this case.

22 Q. And do you have an understanding of why his  
23 calculations are overstated?

24 A. Yes, I do.

25 Q. And what is your understanding?

1 A. My understanding is that he under calculated  
2 the amount in the TILA box.

3 Q. Okay. And that as a function of under  
4 counting the amount in the TILA box, what would happen?

5 A. That would be subtracting too small of a  
6 number from the total paid by these consumers.

7 Q. And focusing on your methodology to sort of  
8 validate that, your calculations were correct. You  
9 started, you said you looked at some sample loans in  
10 the data set?

11 A. Yes, I did.

12 Q. And you analyzed the records?

13 A. Yes, I did.

14 Q. And you used Mr. Hughes's methods and  
15 parameters to look at those loan records?

16 A. Yes, as they were understood from the  
17 declaration.

18 Q. And then explain, what did you see happening  
19 with the TILA amounts as you reviewed the calc -- or  
20 the total for each of those loans as you looked at the  
21 records using Mr. Hughes's method?

22 A. So when I looked at the TILA amounts I noticed  
23 that there were a variety of principal amounts, and a  
24 variety of finance charges. And that, chronologically,  
25 both of those values were declining. I also realized

1 that in just kind of good data hygiene practices I took  
2 a look at what the data dictionary said and matched it  
3 out to what was in the field.

4 So I think that something that was central to  
5 my review of the data, initially, was the fact that if  
6 you look at Ms. -- the exhibit that Ms. Chum brought up  
7 yesterday, I believe this is Enforcement Counsel's  
8 Exhibit 80 again.

9 Q. So, just stop right there, Doctor, and you are  
10 looking at the data dictionary?

11 A. Yes, I am. So the different amounts  
12 attributable to different parts or different payments  
13 potentially made by consumers are compartmentalized  
14 into their own separate fields.

15 Q. Okay. And can you tell us, are you referring  
16 to a specific page, or part of an exhibit?

17 A. Yes, I am at the bottom of page two of exhibit  
18 80.

19 Q. Is this the right page we are looking at?

20 A. Yes, it is.

21 Q. So -- I explain on the -- okay.

22 A. So, as you can see the principal paid has its  
23 own variable, the finance charge has -- paid, has its  
24 own variable, and the fees charged has its own  
25 variable. So, every type of payment, basically, stays

1 in its own lane. It does -- so we know what payment or  
2 attempted payment is a principal attempt for payment,  
3 and which payment or attempt is a finance charge  
4 payment or attempt.

5 And as I discussed earlier, given the  
6 characteristics of the product those can't get any  
7 smaller, over time. So --

8 Q. You mean -- I'm sorry, if someone pays off the  
9 principal the number should go down?

10 A. Oh, sorry, those can get smaller, they can't  
11 get any bigger over time.

12 Q. Okay. So what did you observe in the data --  
13 did you observe something in the actual data that was  
14 different than what you expected regarding the  
15 principal shouldn't get bigger over time?

16 A. No, I did not.

17 MS. FOLEY: Just a moment, Your Honor, if I  
18 may?

19 BY MS. FOLEY:

20 Q. When you attempted to use Mr. Hughes's  
21 methodology, looking at your sample, did the --did you  
22 observe that the principal numbers in the sample loans  
23 actually got bigger over time as compared to smaller  
24 over time?

25 A. So we did not receive turn over, so we

1 followed his directions as they were laid out in his  
2 declaration. And we did not observe, to the best of my  
3 knowledge, the principal getting bigger over time.

4 Q. And again, what told you there was an error in  
5 Mr. Hughes's methodology?

6 A. The fact that we, that I could take a  
7 principal record from a given loan, and a finance  
8 charge record for a given loan, and that those could be  
9 bigger when aggregated up in my calculations, than they  
10 were in his calculations.

11 Q. All right.

12 JUDGE MCKENNA: How much more will you have  
13 with this witness?

14 MS. FOLEY: Probably ten minutes, Your Honor.

15 JUDGE MCKENNA: Proceed.

16 MS. FOLEY: Okay. Thank you, Your Honor.

17 BY MS. FOLEY:

18 Q. Turning back to your observations regarding  
19 Mr. Hughes's calculation of the total paid above total  
20 payments for one-time loans, did you prepare a document  
21 laying out your calculations?

22 A. Yes, I did.

23 Q. Okay. I'm putting in front of you -- or I'm  
24 putting up on the screen Respondent's Exhibit 23. Do  
25 you recognize this document, Dr. Ang?



1 A. Yes, I do.

2 Q. And please tell us what Respondent's Exhibit  
3 23 is?

4 A. This represents the contrast between the  
5 CFPB's calculations and my adjusted calculations of  
6 total paid above total of payments for one-time loans.

7 Q. And what was your conclusion regarding -- when  
8 you say CFPB you are referring to Mr. Hughes's  
9 calculations?

10 A. Yes, I am.

11 Q. And what was your observation about the amount  
12 by which Mr. Hughes's calculations overstated the total  
13 paid above total of payments for one-time loans?

14 A. For the period from May 2008 through May 2013,  
15 I find that the CFPB overstates total paid above total  
16 of payments or, I apologize -- Mr. Hughes overstates  
17 total paid above total payments by approximately 7.6  
18 million dollars.

19 And when we -- when I focus loans originated  
20 on or after July 21, 2011, that overstatement is  
21 approximately 2 million dollars.

22 Q. Okay. And those are reflected in this bottom  
23 line of the chart, that I'm now pointing to, which is  
24 the fourth line down. And the numbers you were reading  
25 period May 2008 forward is the 7 million, five hundred

1 sixty-four, eight hundred and three dollars,  
2 seventy-one cents?

3 A. That is correct.

4 Q. Okay. And the number for your calculating of  
5 the amount by which Mr. Hughes's calculations was  
6 overstated is the one million nine hundred sixty-six  
7 thousand four hundred eighteen dollars and fifteen cent  
8 number reflected in the bottom of column E, is that  
9 correct?

10 A. That is correct.

11 Q. Your Honor we move Respondent's Exhibit 23  
12 into evidence?

13 JUDGE McKENNA: Objections?

14 MS. CHUM: No objection.

15 JUDGE McKENNA: So admitted.

16 (Respondent's Exhibit No. 23  
17 was admitted into evidence.)

18 BY MS. FOLEY:

19 Q. Dr. Ang, did you perform any calculations  
20 making adjustments to total amounts paid over the TILA  
21 box disclosures based on an exclusion of another set of  
22 repeat customers loans?

23 A. Yes, I did.

24 Q. And what calculation was that?

25 A. It was a calculation of total paid above total

1 of payments for a group -- for where I exclude second  
2 or higher loans for repeat customers whose first loan  
3 was a renewal loan.

4 Q. And what do you mean by renewal loan?

5 A. By renewal loan, I mean a loan that has more  
6 than one transaction, or not transaction, I apologize  
7 for that misstatement. More than one application  
8 number in the data associated with that loan.

9 And I realize, Your Honor, that sounds  
10 confusing because application number sounds like it  
11 associates one per loan. But, in fact, every  
12 interaction that is associated with a payment being due  
13 is uniquely identified by the -- a variable called  
14 application number.

15 So, I'm not misspeaking when I say that, it's  
16 just essentially, the way the variable is named.

17 Q. Okay. And when -- did you prepare a document  
18 reflecting your calculations?

19 A. Yes, I did.

20 Q. Okay. Can you put on the screen Respondent's  
21 Exhibit 24.

22 JUDGE McKENNA: All right, just one second.

23 BY MS. FOLEY:

24 Q. If you go to line two of Respondent's Exhibit  
25 24.

1 So a repeat customer whose first loans were  
2 renewal loans, does that mean that they were the repeat  
3 customer, or are you talking about a rollover?

4 A. So it's a little bit of a combination. The  
5 first cut is that this is restrict -- this exclusion is  
6 restricted to customers who have more than one loan.

7 And with --

8 Q. Dr. Ang, I'm sorry -- is that repeat  
9 customers, when you say that --

10 A. Yes, it is.

11 Q. -- more than one loan?

12 A. And once we look at repeat customers, there  
13 are two types of repeat customers. One, the type that  
14 rolls over their first loan. And two, the type of  
15 customer who pays down their first loan in one payment.

16 JUDGE McKENNA: Pays it off?

17 THE WITNESS: Exactly. So we are only  
18 excluding the loans that are the loans attributable to  
19 customers who have more than one loan and rolled over  
20 that first loan. So, put another way, the customers  
21 that we are including are the customers who had only  
22 one loan as well as the repeat customers who paid down  
23 their first loan.

24 JUDGE McKENNA: Off the record.

25 (Brief recess was had.)

1 JUDGE McKENNA: Back on the record.

2 Proceed.

3 BY MS. FOLEY:

4 Q. Dr. Ang, sorry -- looking at Respondent's  
5 Exhibit 24, can you walk us through your calculation if  
6 we look at the time period for all loans, if we start  
7 with the total paid above total payments for all  
8 customers, and you adjust that to exclude the loans  
9 which are repeat customers whose first loans were  
10 renewal loans?

11 MS. CHUM: Objection. My understanding is  
12 that as a rebuttal witness --

13 JUDGE McKENNA: You have to speak up.

14 MS. CHUM: Objection on the grounds that this  
15 is beyond the scope of Mr. Hughes's direct, and  
16 Dr. Ang has been brought on as a rebuttal witness.

17 JUDGE McKENNA: That's --

18 MS. CHUM: These are new numbers that do not  
19 go to numbers that Mr. Hughes presented in his direct.

20 JUDGE McKENNA: I understand, and I'm going to  
21 allow it.

22 Mr. Hughes, have you been reviewing  
23 Respondent's recently distributed exhibits?

24 MR. HUGHES: Ah, yes.

25 JUDGE McKENNA: All right. During lunch I

1 want you to go over the transcript of the part that  
2 you missed because when we come back, both of you are  
3 going to be up here, and we are going to have -- see  
4 if there is any disagreement so that it's on the  
5 record, and it's clear. That is a little bit unusual,  
6 but that is me. Okay?

7 MS. CHUM: Your Honor, given that we received  
8 these documents just now, these new exhibits, my  
9 understanding is that it will take quite some time for  
10 the data scientists, for our data science team to  
11 review all of the numbers and to go through the source  
12 code.

13 I am not confident that we will be able to run  
14 all of these numbers and to understand them within the  
15 time that it will take for lunch, unless it's a very,  
16 very long lunch.

17 JUDGE McKENNA: All right. We can, we can  
18 recess, and I will get my way at a later date.

19 MS. CHUM: Thank you, Your Honor.

20 MS. FOLEY: I mean, Your Honor, just for the  
21 record, this is one additional calculation, the source  
22 code was provided last night, underlying it. She's  
23 walked through her methodology. I'm not sure that we  
24 need hours to, to take the time, I understand that is  
25 what Ms. Chum is representing. But I would foresee

1 that we finish up the direct, and take a break, and  
2 have cross.

3 MS. CHUM: Your Honor, there are six new  
4 documents here that Mr. Hughes has just seen for the  
5 first time.

6 JUDGE McKENNA: Do you want to postpone cross?

7 MS. CHUM: Yes, Your Honor.

8 JUDGE McKENNA: Beyond lunch.

9 MS. CHUM: Yes, Your Honor.

10 JUDGE McKENNA: All right. And -- hi.

11 MS. BAKER: Your Honor, we have another  
12 witness who is here, who we expect to put on the stand  
13 after Dr. Ang. And out of respect for her schedule, I  
14 don't want to make her have to come back tomorrow  
15 because she has come back from Delaware.

16 So, I think, assuming that is okay with my  
17 colleague, I would ask that she be permitted to  
18 testify today, at some point, even if we recess today.

19 Which is what I understand Ms. Chum to be  
20 proposing.

21 JUDGE McKENNA: Oh, yeah, well we would take  
22 that witness.

23 MS. BAKER: Thank you, is that okay with you?

24 MS. FOLEY: That is -- of course.

25 MS. BAKER: Okay. Thank you. I just want to,

1 out of respect for her, not make her come back here,  
2 since she is out of town.

3 JUDGE MCKENNA: I'm in agreement.

4 MS. BAKER: Thank you.

5 JUDGE MCKENNA: All right. So what I want  
6 you to do is to, over the lunch hour, determine how  
7 much time you will need to review the numbers, run  
8 your own numbers and source codes, and determine  
9 whether there is any disputes, not just numeric, but  
10 schematically.

11 If both sides agree that a certain methodology  
12 is appropriate, and that the numbers correspond, then  
13 it would obviate the need for me to get both experts  
14 together. And for those of you who haven't tried that  
15 before, it's a lot of fun.

16 Okay. Proceed.

17 BY MS. FOLEY:

18 Q. Thank you, Your Honor. Dr. Ang -- I lost  
19 track of where we were -- if could you just please tell  
20 us, what was your calculation if you remove -- if you  
21 exclude all loans to repeat customers whose first loans  
22 were renewal loans from your adjusted total paid above  
23 the total payments for all customers.

24 JUDGE MCKENNA: And before you answer that,  
25 would you explain your answer to my question so that



1 Mr. Hughes can hear it, because that is pivotal as to  
2 what is included in that second line.

3 THE WITNESS: Absolutely, so excluding all  
4 loans to repeat customers whose first loans were  
5 renewal loans, means that I am excluding loans that are  
6 attributable to consumers who are repeat customers, so  
7 that is the first distinction in that excluded group.

8 And the further distinction in that excluded  
9 group that is the excluded group is limited to  
10 customers who have rolled over their first loan.  
11 So put another way, the customers in the included group  
12 are: One time borrowers, or one time customers, and  
13 that also includes repeat customers who paid down their  
14 first loan.

15 JUDGE McKENNA: Paid off?

16 THE WITNESS: Paid off their loan in one  
17 payment.

18 BY MS. FOLEY:

19 Q. And Dr. Ang, when you exclude that group from  
20 the total paid above total of payments for the period  
21 of May 2008 forward, what does that result, what is the  
22 total paid above total payments for that group?

23 A. Approximately 39.9 million dollars.

24 Q. And for the period of time with loans  
25 originated on or after July 21, 2011, what is the

1 calculation for that group?

2 A. It's just under 10 million dollars, it's nine  
3 million nine hundred eighty-nine thousand five hundred  
4 sixty-four dollars and fifty-four cents.

5 MS. BAKER: Your Honor Respondents offer  
6 exhibit 24 into evidence.

7 JUDGE MCKENNA: Any objections?

8 MS. CHUM: No objection.

9 JUDGE MCKENNA: So admitted.

10 (Respondent's Exhibit No. 24  
11 was admitted into evidence.)

12 JUDGE MCKENNA: Is there a 25?

13 MS. FOLEY: There is not a 25. If you have a  
14 25 please let me know.

15 JUDGE MCKENNA: I have a tab.

16 MS. FOLEY: Okay. No there is not an Exhibit  
17 25.

18 Your Honor, no further questions at this time.

19 JUDGE MCKENNA: All right. So let the record  
20 reflect that I'm taking that tab out.

21 So under my calculations, we have addressed  
22 all of Respondent's Exhibits 1 through 24.

23 MS. FOLEY: I'm not sure.

24 MS. BAKER: Your Honor, we have a witness who  
25 we expect to be putting on the stand, as I said,

1 through whom we will be we will be introducing a  
2 couple of exhibits.

3 JUDGE MCKENNA: More?

4 MS. BAKER: No, Your Honor, they are contained  
5 within the numbers you just described. In fact, I  
6 think there is only, the only exhibits that we have  
7 affirmatively moved into evidence during this  
8 proceeding, just now and have addressed, are the ones  
9 that Ms. Foley addressed.

10 JUDGE MCKENNA: Right, but then in my order --

11 MS. BAKER: Yes.

12 JUDGE MCKENNA: -- I admitted --

13 MS. BAKER: Yes, Your Honor, you have  
14 admitted, if that is the question, yes. Your Honor  
15 has admitted all of those exhibits. We have not yet  
16 addressed all of those exhibits.

17 JUDGE MCKENNA: Right.

18 MS. BAKER: Yes.

19 JUDGE MCKENNA: And you are at liberty to do  
20 so.

21 MS. BAKER: Thank you.

22 JUDGE MCKENNA: And I encourage you to do  
23 so.

24 MS. BAKER: Thank you, Your Honor.

25 JUDGE MCKENNA: I was trying to speed things

1 up a little bit I don't know whether I did.

2 MS. BAKER: Thank you. We will be using  
3 several of those exhibits in the afternoon. Thank  
4 you.

5 JUDGE McKENNA: Great.

6 MS. WEINBERG: Your Honor, just a point of  
7 clarification. Are these any of the exhibits that  
8 were withdrawn by Respondent's or are these the  
9 exhibits that were already admitted?

10 MS. BAKER: No, they are not exhibits that  
11 have been withdrawn. These withdrawn exhibits are  
12 withdrawn.

13 MS. WEINBERG: Thank you.

14 MS. BAKER: These are exhibits that have been  
15 admitted into evidence.

16 JUDGE McKENNA: Okay. One o'clock. Before  
17 you leave, I would like to take care of the striking.

18 MS. BAKER: Yes.

19 JUDGE MCKENNA: So that, that gets done. And  
20 off the record.

21 (Lunch recess was had from 12:18 p.m. - 1:07  
22 p.m.)

23 JUDGE McKENNA: Back on the record.

24 Does Enforcement Counsel take the position  
25 that -- or is -- do any of the exhibits break out the,

1 for the first-time payment, let's say that someone  
2 borrows a hundred dollars and there is a thirty dollar  
3 fee that's attached to that, all right.

4 Does the company -- does Enforcement Counsel  
5 think that that is a violation if the --

6 LAW CLERK: I'm sorry I was just listening to  
7 you.

8 JUDGE McKENNA: All right. Do you think it's  
9 a violation if there is NSF, and they didn't call, and  
10 they didn't pay, and they attempted to charge that  
11 account thirty dollars and it's NSF.

12 MR. WHEELER: And the consumer hasn't -- has  
13 paid nothing on the loan?

14 JUDGE McKENNA: Correct.

15 MR. WHEELER: I think our position is that  
16 that would not be a violation. I think we have been  
17 -- our position that is payments made above the total  
18 of payments represents damages to the consumer.

19 JUDGE MCKENNA: Well that would be above what  
20 is in the box?

21 MR. WHEELER: I thought your hypothetical that  
22 is the consumer had paid nothing.

23 JUDGE McKENNA: Paid nothing.

24 MR. WHEELER: Right, so the only thing is  
25 that --

1 JUDGE MCKENNA: And so there would be an  
2 attempt to take thirty dollars out, he owes that  
3 thirty because he didn't pay off the loan.

4 And then he owes a hundred and thirty more, so  
5 it's a hundred and sixty total, right?

6 (Brief pause.)

7 MR. WHEELER: I guess I'm not a hundred  
8 percent sure, Your Honor, I mean, I think we are -- I  
9 mean, I think we are -- our concern is with amounts  
10 paid to -- in excess of a total of payments.

11 JUDGE MCKENNA: Well, in that case, if they  
12 called on day fifty-five, said I want to pay it off,  
13 the pay off would be a hundred and sixty, wouldn't it.

14 MR. WHEELER: Ah --

15 JUDGE MCKENNA: Well, yeah, well there is the  
16 rollover fee of thirty, plus there is the NSF fee, I  
17 guess there is another one included in that.

18 MR. WHEELER: That you are saying to be  
19 another NSF fee.

20 JUDGE MCKENNA: Well, you have the rollover  
21 fee.

22 MR. WHEELER: Right.

23 JUDGE MCKENNA: How much is the NSF fee,  
24 thirty. So, am I correct then it would be a hundred  
25 and ninety that the person would owe? You have thirty

1 dollars for the initial loan, plus a hundred, so that  
2 is a hundred and thirty.

3 And then they didn't pay it off within the  
4 thirty days, so you got a rollover fee that brings it  
5 up to a hundred and sixty.

6 And then there is -- when the company tried to  
7 get the thirty dollars, and there was NSF on that,  
8 then that would make it a hundred and ninety, right?

9 MR. WHEELER: In your hypothetical at this  
10 point the consumer has paid nothing?

11 JUDGE McKENNA: Paid nothing.

12 MR. WHEELER: I guess I'm unsure the answer to  
13 your question.

14 JUDGE McKENNA: Well, you take the position  
15 that the rollover fee, the thirty dollars would be a  
16 violation, because it's above what is in the box.  
17 But, what about the NSF fee?

18 MR. WHEELER: I mean, yeah, I mean I think our  
19 position is that all amounts paid over total of  
20 payments represents a violation.

21 JUDGE McKENNA: But the agreement was that the  
22 customer knew that he was going to have to pay at the  
23 end of the month.

24 MR. WHEELER: True, I mean, I think  
25 practically, that the volume of NSF fees is pretty

1 small, given the volume of payments that we are  
2 talking about. I don't think that is going to  
3 radically change the numbers.

4 JUDGE McKENNA: Well.

5 MR. WHEELER: I guess I'm, you know, I'm  
6 trying to think through it. You know, obviously, I  
7 wasn't, you know, prepared to address your question.

8 JUDGE McKENNA: All right. Well, do you need  
9 to think through it? And I wanted to know whether  
10 there are numbers in the record that kind of  
11 identify -- so that is --

12 MR. WHEELER: I mean, I think it's a number  
13 that we could calculate, Your Honor.

14 JUDGE McKENNA: All right.

15 MR. WHEELER: To sort of, I guess, subtract  
16 out, if it is something you want us to subtract out,  
17 NSF fees.

18 JUDGE McKENNA: And --

19 MR. WHEELER: I don't know if we have  
20 generated that, sorry.

21 (Court conferring with law clerks.)

22 JUDGE McKENNA: Okay. So I guess that's what  
23 I would like to know. It just didn't seem appropriate  
24 to me that if they were, if they contract to have a  
25 loan and they know that they are supposed to pay it



1 off in X date, and they don't and then the company  
2 debits them thirty dollars to roll it over.

3 Then in addition to that they go over and put  
4 it -- NSF charge the NSF charge seems to me to be an  
5 appropriate charge that the company made against that  
6 consumer.

7 MR. WHEELER: I think I understand your  
8 question, Your Honor.

9 JUDGE McKENNA: All right. Now Ms. Baker  
10 probably disagrees with me.

11 MR. CARNES: We agree with you.

12 MR. WHEELER: Yeah, I think --

13 MR. CARNES: We completely agree with you.

14 JUDGE McKENNA: All right. And at some point  
15 in time, well right now is probably a good a time as  
16 any. I want to -- if you take the Order that deals  
17 with the CFPB Enforcement Counsel's exhibits. So are  
18 you, are you not proffering 46 through 52?

19 MR. WHEELER: I believe that is correct, Your  
20 Honor, we don't intend to proffer any additional  
21 exhibits, that looks correct.

22 JUDGE McKENNA: Well, I just want it on the  
23 record since you've rested, I mean that has to be your  
24 answer, but...

25 All right. And 70 and 71.

1 MR. WHEELER: We don't intend to proffer  
2 those, Your Honor.

3 JUDGE MCKENNA: Same for 74?

4 MR. WHEELER: Same answer, Your Honor.

5 JUDGE MCKENNA: Seventy-seven through 79?

6 MR. WHEELER: Oh, maybe. It's just you  
7 admitted 81 yesterday, correct?

8 JUDGE MCKENNA: I thought that I just said 77  
9 through 79?

10 MR. WHEELER: Oh, yes, but so 79, I'm sorry.  
11 Seventy-nine is a large document and 81 is a subset.

12 JUDGE MCKENNA: Yes.

13 MR. WHEELER: So I was just clarifying that 81  
14 was admitted yesterday, right?

15 JUDGE MCKENNA: Yes.

16 MR. WHEELER: Okay. So we are not intending  
17 to proffer 77 through 79.

18 JUDGE MCKENNA: Okay. So we have 83, 84, 86,  
19 and 89 and 90, that would seem to do it, are we in  
20 agreement?

21 MR. WHEELER: Yes, Your Honor.

22 JUDGE MCKENNA: All right. Good. That is  
23 done. Call your next witness.

24 MS. BAKER: Your Honor we call Ms. Miller,  
25 Ms. Quinn Miller. And if I may approach the witness

1 stand just to tidy it up a bit before she takes it.

2 JUDGE MCKENNA: Of course.

3 MS. BAKER: Thank you, Your Honor.

4 (Witness takes the stand.)

5 JUDGE MCKENNA: Have you done this before?

6 THE WITNESS: No.

7 JUDGE MCKENNA: It's a lot of fun.

8 THE WITNESS: So I understand.

9 JUDGE MCKENNA: Okay. Please stand, raise  
10 your right hand.

11 THE WITNESS: Sure.

12 **ELIZABETH QUINN MILLER,**

13 A witness produced on call of the Respondents,  
14 having first been duly sworn, was examined and  
15 testified as follows:

16 THE WITNESS: Yes.

17 JUDGE MCKENNA: Please be seated. State your  
18 full name for the record.

19 THE WITNESS: Elizabeth Quinn Miller.

20 JUDGE MCKENNA: Proceed.

21 MS. BAKER: Thank you, Your Honor.

22 **DIRECT EXAMINATION**

23 BY MS. BAKER:

24 Q. Good afternoon, Ms. Miller. Could you please  
25 tell us your current place of employment?

1 A. I work for the Office of the State Bank  
2 Commissioner of the State of Delaware.

3 Q. What is your position in that office?

4 A. Investigative supervisor.

5 Q. And is there a particular unit that you work  
6 in, meaning bank versus non-depository?

7 A. Non-depository.

8 Q. And what is a non-depository?

9 A. A non-depository is a financial business,  
10 certain types of financial businesses that do not take  
11 deposits, do not function as banks.

12 Q. Would a short-term small dollar lender or  
13 payday lender be in the category of non-depository  
14 institution?

15 A. Yes.

16 Q. And so you work in the capacity of overseeing  
17 those types of institutions?

18 A. Define overseeing.

19 Q. Fair enough. What do you do with respect to  
20 those types of institutions?

21 A. My staff investigates license applications,  
22 and handles consumer complaints.

23 Q. And how long have you had your current  
24 position?

25 A. In September it will be twenty-seven years.

1 Q. And before then, what did you do?

2 A. I was in retail banking.

3 Q. You were in retail banking. Were you in  
4 retail banking in the Commissioner's Office?

5 A. No, I mean I worked for banks.

6 Q. I understand. And for how long did you work  
7 for banks?

8 A. I don't know, maybe a decade.

9 Q. And if you can just tell us approximately how  
10 many different banks you worked for?

11 A. Maybe four.

12 Q. What did you do for those different banks,  
13 just generally?

14 A. Generally, a little bit of everything. I ran  
15 the ATM system for one, I was a branch manager, I made  
16 mortgage loans, I started out in credit card customer  
17 service.

18 Q. Can you tell us your highest level of  
19 education?

20 A. I have a four year degree.

21 Q. And what is your degree in?

22 A. Psychology and communications.

23 Q. That is a Bachelor of Arts or Bachelor of  
24 Science?

25 A. Bachelor of Arts.

1 Q. And what do -- how -- can you give us a list  
2 of all of your current job duties, and presumably have  
3 you had the same job duties for the last twenty-seven  
4 years?

5 JUDGE McKENNA: Just current right now.

6 MS. BAKER: Current is fine, thank you.

7 THE WITNESS: I supervise a staff of about  
8 ten, review final recommendations on license  
9 applications, pick up the slack wherever necessary,  
10 review final recommendations on consumer complaint  
11 resolution.

12 JUDGE McKENNA: Could you speak up.

13 THE WITNESS: Certainly, resolve complaints,  
14 it all mashes in together, that is why it's hard to  
15 list.

16 BY MS. BAKER:

17 Q. Thank you. This is a good list, thank you.

18 And is it fair to say that this -- these  
19 groups of tasks or duties you just described, so  
20 supervising staff of ten, reviewing final  
21 recommendations of license applications, resolving  
22 consumer complaints, that list has been or has  
23 comprised your job duties for the last five years?

24 A. Yes.

25 Q. Would you say that would be true for the last

1 ten years?

2 A. Yes.

3 Q. So going back to, call it 2006?

4 A. Yes.

5 Q. Okay. You said that you review the final  
6 recommendations for license applications.

7 A. From any investigators.

8 Q. From your investigators.

9 A. Part of my staff.

10 Q. The ten folks that you supervise.

11 A. Right, some of them are clerical, but yes, all  
12 of the investigators are in that staff.

13 Q. How many investigators are there?

14 A. When we are fully staffed, it would be six or  
15 seven.

16 Q. You said that you review the final  
17 recommendations that they make concerning applications  
18 for licenses, in a non-depository unit, is that right?

19 A. Yes.

20 Q. What is that process of renewing those license  
21 recommendations entailing?

22 A. Renewing or ensuring?

23 Q. I'm sorry, reviewing the request for  
24 applications that you are involved in reviewing.

25 Excuse me. What is involved in your task of

1 reviewing those recommendations?

2 A. Going over all of the information that has  
3 been presented with the application, reading the  
4 investigators analysis of it and their recommendation,  
5 and seeing if I agree.

6 Q. And obviously, without going into any  
7 specifics, can you give us a sense of instances or what  
8 might trigger an instance when you would not agree with  
9 a recommendation to accept a license?

10 A. There have been times when I have had  
11 questions because of my review. I would go back to the  
12 investigator, tell them what my questions are and they  
13 proceed to continue to investigate.

14 Q. And again, I'm sensitive to the confidential  
15 nature of what you do, so if you can give me a high  
16 level understanding of an instance, for example, of  
17 when you might have said to the investigator, as you  
18 just represented, please go back and do more?

19 A. Let's see, sometimes it happens in financials,  
20 the balance sheets and the profit and loss statements I  
21 may pick up something that they missed. I may not  
22 agree, they may think there is enough there and I may  
23 think there isn't.

24 Sometimes I have questions about the  
25 principles. I want to know something about their



1 experience that maybe I don't see in front of me. That  
2 kind of thing.

3 Q. And when you say principal, just so we are  
4 clear, you mean?

5 A. Executives, people who run the business that  
6 is applying for the license.

7 Q. Thank you, Ms. Miller. Your office, it sounds  
8 like from your description, is charged with licensing  
9 what we described before as short-term small dollar  
10 lenders; is that right?

11 A. Yes.

12 Q. How many, such, approximately, how much such  
13 license lenders does your office over -- have licenses  
14 for right now?

15 A. That particular type of license lenders in  
16 general?

17 Q. I am -- thank you -- as to short-term small  
18 dollar lenders, how many such entities, approximately,  
19 would you say are licensed in the state of Delaware at  
20 the moment?

21 A. Fifteen or twenty.

22 Q. And if I could ask you to go back in time a  
23 little bit, and we will go back in time incrementally.  
24 Starting with 2013, about how many were licensed,  
25 short-term small dollar lenders?

1 A. I honestly don't know.

2 Q. Would it be more than today, or less than  
3 today?

4 A. Probably more, I'm not sure when the reporting  
5 requirements came in, third party reporting  
6 requirements. Probably more.

7 Q. I'm going to ask you the same questions, going  
8 back to 2008 and to the best of your ability if you can  
9 try to approximate, and I understand it's an  
10 approximation, and I'm calling on memory of going back  
11 a number of years, I understand that. But if you can  
12 do your best to give me a rough approximate of how many  
13 licensed short-term small dollar lenders you believe  
14 were in the state of Delaware in the year 2012?

15 MS. WEINBERG: Your Honor, I don't see the  
16 relevance of this line of questioning.

17 THE WITNESS: I have no idea.

18 JUDGE McKENNA: Overruled. All right. Let me  
19 try and do it this way. What were the reporting  
20 requirements?

21 THE WITNESS: I'm not exactly sure when it  
22 came into effect, but, and it wasn't our idea. The  
23 legislature decided that short-term small dollar  
24 lenders needed to report their loans to, I think the  
25 company is called Veritech, I have nothing to do with

1 that system, but I do know that it's happening. It's  
2 fairly burdensome to the lender. So if they didn't  
3 want to do it, they got out.

4 JUDGE McKENNA: And so that had a --

5 THE WITNESS: It had a negative impact on the  
6 numbers.

7 JUDGE McKENNA: Right.

8 THE WITNESS: Right.

9 JUDGE McKENNA: And, do you remember year that  
10 was done?

11 THE WITNESS: No, I don't. If I, when I get  
12 back I could look it up. But, it's been fairly  
13 recently, I don't know if it's been more than five  
14 years, I kind of doubt it but I would have to check.

15 JUDGE McKENNA: All right. You could give it  
16 to Ms. Baker, and she can get it into the record.

17 MS. BAKER: Thank you, Your Honor. And thank  
18 you Ms. Miller.

19 BY MS. BAKER:

20 Q. I want to make sure I understand, I believe  
21 there is a website link or a link on the website for  
22 your office that has a list, it's like a registration  
23 list, and it appears to be operated by this third party  
24 vendor, Veritech, is that --

25 A. It could be.

1 Q. Okay. I -- it sounds like it might be the  
2 same thing that you are referencing. Going back to the  
3 line of questions to the best of your ability, and if  
4 you don't recall you don't recall, how many licensed  
5 short term small dollar lenders, approximately, do you  
6 think might have been in the state of Delaware in 2011?

7 A. I don't know.

8 Q. Okay. I'm going to ask you for the other  
9 years as well, you may or may not remember same for  
10 2010?

11 A. I'm sorry, I just --

12 Q. Okay.

13 A. I don't memorize the numbers year by year.

14 Q. Thank you. I appreciate that. In connection  
15 with a short-term small dollar lender obtaining a  
16 license in the State of Delaware, can you walk us  
17 through the steps that are involved in that process?

18 A. I can walk you through the steps of any  
19 lender.

20 Q. And would it be different for short-term,  
21 small dollar lender?

22 A. They use the same application.

23 Q. Okay.

24 A. There is an application, they submit it with  
25 the information that is called for, along with an

1 investigation fee. We take the application now, this  
2 is not, of course for anybody except mortgage  
3 companies, but you are not involved in mortgage  
4 companies, right.

5 We take the application, we go through all of  
6 the information, if we have questions we go back to  
7 them, back and -- it's a lot of back and forth. Once  
8 we have everything that the application calls for and  
9 that we need to consider, my investigator writes up  
10 their recommendation and it comes to me, and I review  
11 it.

12 Q. Now you said everything that the application  
13 calls for and you qualified this at the beginning by  
14 noting this is what any lender who is a non-depository,  
15 and is licensed, or seeking a license in the State of  
16 Delaware would need to complete, can you give us detail  
17 about the types of things that an application for that  
18 kind of license in your State requires?

19 A. We ask for financials, a balance sheet and a  
20 profit and loss. We ask for, of course, all the  
21 basics, address and all of that. We ask for business  
22 references, we ask for the personal information, I say  
23 personal information, it's name, position, resumes,  
24 personal financial statements which is basically just a  
25 balance sheet for the principles, the executives that

1 run the business.

2 We -- if they are going to have more than one  
3 location, we ask them about managers of the other  
4 locations. We ask various informational questions like  
5 have any of their people ever been arrested -- ah, not  
6 arrested but convicted, anybody go by an alias other  
7 than married/maiden we don't worry about that.

8 Have they ever had like a license revoked,  
9 something like that.

10 Q. Anything else?

11 A. That is basically it.

12 Q. If you were processing an application for a  
13 lender would your office also seek some kind of copy of  
14 the loan agreement?

15 A. Yes, we do. We try to get the loan contract  
16 so we can have it on file we do not approve the  
17 contract. Although, I know to look for certain things  
18 that I might come up with questions about the contract.  
19 But we don't actually rubber stamp it, and say it's  
20 perfect, we don't approve it that way.

21 JUDGE McKENNA: Do you ever make them change.

22 THE WITNESS: It depends on what I see. Once  
23 in a great while, I -- it hasn't been often. I look  
24 for things like the fed boxes.

25 JUDGE McKENNA: Federal.

1 THE WITNESS: Right the four fed boxes where  
2 they put the APR and all of that. And there are a  
3 couple of things in our statute that I know need to be  
4 in there, and they are usually right there with the  
5 fed boxes right on the front. I can look for those  
6 and make sure that, that part of our statute is being  
7 adhered to.

8 JUDGE McKENNA: And what are they?

9 THE WITNESS: The most important one is if the  
10 interest on the loan is calculated more or less up  
11 front like, pre-computed and the loan gets paid off  
12 early, they need to tell the consumer that they may be  
13 entitled to a refund of some of that interest. It's  
14 supposed to be pro-rated if that happens.

15 BY MS. BAKER:

16 Q. Ms. Miller, the application process that you  
17 have just described, and the specifics of what the  
18 application calls for, to use your language that you  
19 just delineated for us, that is current that is  
20 currently what State of Delaware looks for?

21 A. Um-hmm, yes.

22 Q. Was that the case, has that been the case for  
23 the last five years?

24 A. Yes.

25 Q. Has it been the case for the last ten years?

1 A. Yes.

2 Q. So going back to 2006?

3 A. Yes.

4 Q. So -- and that would include looking at the  
5 loan agreement itself as well?

6 A. Yes.

7 Q. In connection with -- excuse me Court's  
8 indulgence. There is some feedback that I'm hearing  
9 here, and I'm a little concerned it might be affecting  
10 the quality of the recording. No? Okay, and you can  
11 hear me fine?

12 A. Yes.

13 Q. Okay. Thank you. In connection with the  
14 licensing process does your office also engage in  
15 supervisory examinations?

16 A. That is not for me to comment on.

17 Q. Okay. So you -- the fact of it you can't even  
18 acknowledge?

19 A. I am not -- we have an examination section in  
20 the office.

21 Q. Okay. That is --

22 A. That is all I can say.

23 Q. I understand that. And that is all I'm going  
24 to ask you. I understand and let me make sure the  
25 record is clear about this. So I'm going to ask you a



1 couple of questions to clear the record up.

2           There is such an office in your office, but  
3 the fact of an exam of an entity cannot be disclosed  
4 and the contents of exams cannot be disclosed either,  
5 both because they are subject to confidential  
6 supervisory privileges maintained by your office. Is  
7 that --

8           A. That is my understanding. I am not the expert  
9 in that field.

10          Q. Okay. I'm going to -- just so the record is  
11 clear, that is my understanding of your -- why you are  
12 couching your conversation the way you are; is that  
13 fair Ms. Miller?

14          A. Yes.

15          Q. Okay. Thank you. Are there ever instances  
16 when a licensed entity, a deposit, a non-depository  
17 lender seeks to renew its license?

18          A. Every year.

19          Q. And can you explain to us what that process  
20 involves?

21          A. It's an abbreviated application, reiteration  
22 of some of the original information, reiteration of  
23 some of the original questions that we want to be sure  
24 we have current information on. We have discovered  
25 some things through renewal like, oh they have a new

1 vice president, or something like that.

2 But we do this every fall, and they send in the  
3 abbreviated application, the fee, and it gets reviewed,  
4 and we review them, you know unless we see some  
5 horrendous problem, but at renewal that is highly  
6 unlikely.

7 Q. Why do you say that?

8 A. Because it doesn't -- it hasn't happened.

9 Q. It's never happened that at renewal you have  
10 seen a scenario where you have chosen not to renew a  
11 license?

12 A. I have never had that situation come up.

13 Q. And do you have a sense of why that is?

14 A. No.

15 Q. You talk about an abbreviated application, and  
16 I gather, are you are calling it abbreviated in  
17 contrast to the more comprehensive application that is  
18 filled out at the time a license is initially sought;  
19 is that right?

20 A. Yes.

21 Q. Can you explain to us what the contents of an  
22 abbreviated application are for license renewal?

23 A. I think the biggest difference is that we  
24 don't ask for all lot of personal information, again,  
25 of anybody that is running the business that we already

1 have on file.

2 Q. Everything else is more or less the same?

3 A. Pretty much.

4 Q. Okay? If a lender, a non-depository lender  
5 who has a license that your office is charged with  
6 either granting or renewing makes a change to its loan  
7 application, is that something that your office sees,  
8 that new loan or loan agreement? I'm sorry. Does your  
9 office see that new loan agreement?

10 A. I don't believe we have a requirement that  
11 says they have to submit that.

12 Q. So at what point would your office be involved  
13 in looking at a loan agreement once a license has been  
14 granted?

15 A. I would assume, not being the expert in this  
16 area, that it would come up at examination, but I'm not  
17 the one to ask about that.

18 Q. Okay. Thank you. Now the abbreviated  
19 application process that you just described in  
20 connection with seeking a license, a renewal of a  
21 license, has that been more or less the way that  
22 licenses get renewed in your office for the last five  
23 years?

24 A. Yes.

25 Q. Same question as to the last ten years?

1 A. Yes.

2 Q. Going back to 2006?

3 A. Yes.

4 Q. Okay. Have there ever been any instances  
5 where your office has revoked a non-depository lending  
6 license?

7 A. Yes.

8 Q. Can you give us a sense of when that might  
9 happen?

10 A. When a surety bond is cancelled and not  
11 resolved by the licensee within the time limit.

12 Q. Any other reason?

13 A. Not that I can recall right now. I believe  
14 they have all been because of the bond.

15 Q. And I understand you have -- you have  
16 qualified your, the scope of your expertise and  
17 knowledge with respect to your testimony here today.  
18 But do you know if, for example, noncompliance with a  
19 type supervisory directive could result in revocation  
20 of a license?

21 MS. WEINBERG: Objection, she has already testified that  
22 this is outside the scope of her knowledge.

23 JUDGE McKENNA: Overruled.

24 THE WITNESS: I can't comment on that.

25 BY MS. BAKER:

1 Q. You can't comment on it?

2 A. On supervisory.

3 Q. If I told you that the statute describing your  
4 office had that provision would you have any reason to  
5 doubt it?

6 MS. WEINBERG: Objection, Your Honor. She is  
7 not here as a legal expert, and she has already said  
8 that she doesn't know about the --

9 JUDGE McKENNA: All right. Were you in the  
10 courtroom the last couple of days, ma'am?

11 MS. WEINBERG: I think so.

12 JUDGE McKENNA: Yeah, and you heard me tell  
13 Ms. Baker? Seriatim. Overruled. Overruled.

14 Well, I treat everybody the same, so if you  
15 want to make an objection, you can make a continuing  
16 objection, but I'm going to let her make her case to  
17 the best of her ability.

18 MS. WEINBERG: Thank you, Your Honor.

19 MS. BAKER: Ms. Court Reporter, may I ask to  
20 read back the last question I asked Ms. Miller.

21 Thank you.

22 COURT REPORTER: If I told you that the  
23 statute describing your office had that provision,  
24 would you have any reason to doubt it?

25 MS. BAKER: And did you hear her re-read?

THE WITNESS: Yes.

2 BY MS. BAKER:

3 Q. And that provision being the description I  
4 said of noncompliance with a type of supervisory  
5 directive letter?

6 A. If it's in the statute, I would have no reason  
7 to doubt that, you telling me, that might be another  
8 question.

9 Q. No, I'm just, if I said to you it was in the  
10 statute you wouldn't doubt the statute?

11 A. I would not doubt the statute.

12 Q. Thank you. Do you have an understanding of  
13 what a rollover is in the context of a short-term small  
14 dollar loan?

15 A. Yes.

16 Q. What is your understanding, Ms. Miller?

17 A. That a consumer took out a short-term small  
18 dollar loan, and rather than pay it all off at  
19 maturity, they pay the interest and the principal of  
20 the loan, more or less I guess a good word for it is  
21 renews.

22 Q. And do you have an understanding about whether  
23 or not the State of Delaware has a requirement that  
24 there be a maximum number of renewals before principal  
25 is paid in the instance of a short-term small dollar

1 loan?

2 A. I think, the statute says four.

3 Q. And?

4 A. But I would have to check that.

5 Q. Okay. And four, would it be four rollovers  
6 before a principal has to be paid down in some amount?

7 A. I believe so. I would have to look at 2235.

8 Q. I have that statute with me, may I approach  
9 the witness and refresh her recollection?

10 JUDGE MCKENNA: Yes.

11 MS. BAKER: I actually have copies for the  
12 whole courtroom. So I will do that, if that is okay,  
13 pass those out.

14 Permission to approach the witness, Your  
15 Honor.

16 JUDGE MCKENNA: Granted.

17 MS. BAKER: Thank you. Ms. Miller, here you  
18 go.

19 THE WITNESS: Thank you.

20 MS. WEINBERG: Your Honor.

21 JUDGE MCKENNA: Yes?

22 MS. WEINBERG: If I may be heard. I don't see  
23 anything on this documents that indicates the  
24 effective date of this.

25 MS. BAKER: I --

1 MS. WEINBERG: The law that was in effect at  
2 the time that Integrity Advance was in operation.

3 MS. BAKER: Your Honor, I have that as well.

4 JUDGE McKENNA: Okay.

5 MS. BAKER: I, unfortunately only have a copy.  
6 But I'm happy to represent to the Court, and I can  
7 pass this up to Your Honor as well, that this  
8 provision was approved July 9th, 2002 by the State of  
9 Delaware according to the Delaware banking code. And  
10 if you would like, Your Honor, I can publish this to  
11 the Court, not to enter as an exhibit but for purposes  
12 of refreshing the witness's recollection, and also  
13 responding to Ms. Weinberg's question. But with the  
14 Court's indulgence we will need to make copies.

15 JUDGE McKENNA: All right. I don't think we  
16 need to do that now. Is that same statute materially  
17 the same now?

18 MS. BAKER: Um, the provision that we are  
19 discussing Your Honor is.

20 BY MS. BAKER:

21 Q. And specifically Ms. Miller, if I can take  
22 your attention to 2235 large A, Short-term consumer  
23 loans, do you see where I am?

24 A. Yes.

25 Q. Section A 2.



1 A. Yes.

2 MS. BAKER: And, Your Honor that is, in fact,  
3 what I understand to have been promulgated by the  
4 legislature in 2002.

5 JUDGE MCKENNA: Thank you. I mean, other  
6 provisions of the code as well but that particular  
7 provision. And, and Ms. Miller upon reading this,  
8 does this refresh your recollection?

9 THE WITNESS: It's nice to know I was right.

10 BY MS. BAKER:

11 Q. You were right. Okay. Thank you.

12 And I'm going to read it into the record. It  
13 says "No licensee," and a licensee would be a short  
14 term small dollar lender who has a non-depository  
15 license in the State of Delaware?

16 A. Correct.

17 MS. WEINBERG: And where are you reading?

18 MS. BAKER: I am reading from two -- 2235A,  
19 short-term consumer loan subpart of subpart small A,  
20 subpart 2.

21 JUDGE MCKENNA: Okay. Thank you.

22 MS. BAKER: Sure.

23 BY MS. BAKER:

24 Q. It says, "No licensee shall make more than  
25 four rollovers of an existing short-term consumer loan.

1 A licensee may following not more than the maximum  
2 allowable number of rollovers, enter into a workout  
3 agreement with the borrower, or take such other actions  
4 as are lawful to collect any outstanding an unpaid  
5 indebtedness," is what you are referring to? That  
6 provision we were just discussing about four rollovers?

7 A. Oh, when I mentioned 2235 A, yes.

8 Q. Okay. Thank you. Ms. Miller, you have in  
9 front of you a small black, well it's not super-small,  
10 but it's smaller than the two white binders next to  
11 you, you have in front of a black binder, right next to  
12 your right arm if you can turn it to tab 11 please?

13 A. I warn you I don't have my reading glasses on.

14 Q. Okay. Well, thank you.

15 MS. BAKER: And Your Honor, it's Respondents  
16 Exhibit 11, and I believe you should have a copy of  
17 our exhibit binder.

18 JUDGE McKENNA: Yes.

19 BY MS. BAKER:

20 Q. Ms. Miller, I have in front of me a letter  
21 that appears to be dated December 28th, 2010. Do you  
22 see that?

23 A. Yes.

24 Q. And it appears that, it looks like you signed  
25 this letter, is that right?

1 A. My signature may have been put in there.

2 Q. But, but --

3 A. And I'm familiar with the letter.

4 Q. And it's -- and you are E. Quinn Miller?

5 A. Yes.

6 Q. Investigative supervisor? So, it is fair to  
7 say this letter would have been sent from your office?

8 A. Yes.

9 Q. And do you see that this letter concerns the  
10 renewal of a licensed lender license for Integrity  
11 Advance LLC?

12 A. Yes.

13 MS. BAKER: Your Honor, I'm move to admit  
14 Respondent's Exhibit 11 into the record. It may  
15 already be admitted.

16 MS. WEINBERG: No objection, Your Honor.

17 JUDGE McKENNA: It's already admitted.

18 BY MS. BAKER:

19 Q. And if I could just read the second paragraph  
20 and third paragraph, mindful that you said you don't  
21 have your reading glasses, so I will read it into the  
22 record. And you can tell me if you think that there is  
23 any reason to believe that what I'm reading isn't --  
24 wouldn't be correct, Ms. Miller.

25 It says, "After review of said application, I

1 am happy to inform you that Integrity Advance, LLC has  
2 been granted renewal for licensure under Chapter 22,  
3 Title V, Delaware code?"

4 Is Chapter 22, Title V, Delaware code -- I  
5 know you are not an attorney, but is that the lending  
6 license code?

7 A. That is the License Lenders Act.

8 Q. So is it fair to say that that is what this is  
9 referencing, in the -- the license for a lending  
10 license in the State of Delaware is renewed?

11 A. Yes, yes.

12 Q. And then it says, "Enclosed you will find  
13 licensed -- license number for the term January 1, 2011  
14 through December 31, 2011", do you see that, maybe?

15 A. Yes I'm looking at the wording in the middle  
16 of that, I'm going to get them to change that.

17 Q. So, is it your understanding that this letter  
18 dated at the end of 2010 is confirming that Integrity  
19 Advance has a lending license renewed for the year  
20 2011?

21 A. From the date of letter, yes, that's correct.

22 Q. And it also says, in the letter, it says that  
23 your license has been renewed, or it references a  
24 license number granted for the term January 1, 2011,  
25 through December 31th, 2011 so that would be the year

1 2011?

2 A. That would be the year 2011.

3 Q. Now you previously, a few minutes ago  
4 testified about the license renewal process, do you  
5 have any reason to think that as it relates to this  
6 business, that would have been any different than the  
7 process you described?

8 A. No.

9 Q. And is it fair to say that if this business  
10 was renewing a license, it would have initially had an  
11 application in for a license at an earlier time?

12 A. Yes.

13 Q. And is it fair to say, or do you have any  
14 reason to think that the application process that would  
15 have been associated with granting Integrity Advance an  
16 initial license would be any different than what you  
17 just described earlier in your testimony?

18 A. No.

19 Q. Ms. Miller, if I can ask you to flip the page  
20 to the next document please, behind tab 12. And this  
21 is Respondent's Exhibit Number 12? And I have what  
22 appears to be a letter dated January 5th, 2012, do you  
23 see that Ms. Miller?

24 A. Kind of.

25 Q. Take my word for it, that it's January 5,

1 2012?

2 A. Yes.

3 Q. Thank you. And at the bottom it looks like it  
4 says, "Sincerely, E. Quinn Miller, Investigative  
5 Supervisor", would that be you?

6 A. Yes.

7 Q. And it looks like, again, this letter concerns  
8 application for Integrity Advance, LLC, do you see  
9 that? That's not, and I'm referencing the second full  
10 paragraph on this page?

11 A. It would appear to reference an application  
12 for renewal.

13 Q. Exactly.

14 A. Right.

15 Q. Thank you and then the business at issue is  
16 Integrity Advance?

17 A. Yes.

18 MS. BAKER: Your Honor, I move this exhibit  
19 into evidence formally, I think it's already in.

20 JUDGE McKENNA: It's already in.

21 MS. BAKER: Thank you.

22 JUDGE McKENNA: All of your exhibits are in  
23 that have been tendered to me.

24 MS. BAKER: Thank you.

25 BY MS. BAKER:

1 Q. Now Ms. Miller, if I can just read the second  
2 paragraph of this letter, it says, "After review of  
3 said application I'm happy to inform you that Integrity  
4 Advance, LLC has been granted renewal for licensure  
5 under Chapter 22 Title V." And do you sort of see  
6 that?

7 A. Yes.

8 Q. And again, same question, it's fair to say  
9 that this addresses or this concerns the provision of  
10 the code that enables a non-depository lender to have a  
11 license in the State of Delaware?

12 A. Yes.

13 Q. For lending purposes?

14 A. Yes.

15 Q. Third paragraph, "Enclosed you will find  
16 licensed -- license number for the term January 1, 2012  
17 through December 31st, 2012." Do you see that  
18 paragraph?

19 A. Yes.

20 Q. And is your understanding that this paragraph  
21 is essentially renewing Integrity Advance's license to  
22 lend in the State of Delaware for the year 2012?

23 A. Yes.

24 Q. And you testified a few minutes ago that you  
25 went through the process involved in renewing a loan

1 application, in the non-depository unit that you work  
2 in, do you recall that testimony? Renewing a loan --

3 A. You mean a loan application?

4 Q. I'm sorry, a loan application, forgive me, a  
5 license application, do you recall that testimony?

6 A. Yes.

7 Q. And do you have any reason to think that that  
8 renewal process would not be applicable here as well,  
9 would not have been followed?

10 A. No.

11 JUDGE McKENNA: Given the fact that these are  
12 admitted, are there -- is that the last one?

13 MS. BAKER: That is the last exhibit I was  
14 going to introduce through Ms. Miller, yes.

15 JUDGE McKENNA: All right. Thank you.

16 MS. BAKER: No further questions, thank you.

17 **CROSS-EXAMINATION**

18 BY MS. WEINBERG:

19 Q. Good afternoon, Ms. Miller. How often are  
20 applications for licenses by payday lenders or short  
21 term dollar lenders denied by your office?

22 A. I do not recall ever denying one.

23 Q. Okay. You mentioned that your office handles  
24 consumer complaints?

25 A. Yes.



1 Q. Do you recall ever receiving consumer  
2 complaints against Integrity Advance?

3 A. I do not recall.

4 Q. I want to focus my questions for just the time  
5 period from 2008 to 2013, so that there is no confusion  
6 in the record, every question that I'm about to ask  
7 you, if you can look back to that time period, to try  
8 to answer the question, if you can.

9 Okay, and I'm looking for the entire period if  
10 there is any change in your testimony during that  
11 entire period, I would ask you to tell me.

12 Is that doable or do you want me to go through  
13 it year by year?

14 (No audible response.)

15 All right. Let's give it a whirl.

16 JUDGE MCKENNA: You have to say -- you have to  
17 answer.

18 THE WITNESS: I will try.

19 BY MS. WEINBERG:

20 Q. Okay. From that period, from 2008 to 2013,  
21 did Delaware require short term lenders to  
22 automatically rollover their customer's loans?

23 A. No.

24 Q. So, a short term lender could comply with  
25 Delaware law, and require payment in full at a next, at

1 the pay at the next payday of the consumer?

2 A. Yes.

3 Q. Okay. Did -- again the same period -- did  
4 Delaware require payday lenders to offer the option of  
5 rollovers?

6 A. No.

7 Q. So a lender could comply with Delaware law  
8 without offering the option of rollovers, is that  
9 correct?

10 A. Yes.

11 JUDGE McKENNA: And under what auspices would  
12 that procedure be, paying off at the end of the term?

13 MS. WEINBERG: All right. I'm just asking  
14 if --

15 JUDGE McKENNA: I'm asking you. If you say  
16 did Delaware require, then the question -- and she  
17 says no, then there would be some set of circumstances  
18 that that no would apply to.

19 Because if they didn't pay it off during term,  
20 then the answer might be that the rollover provisions  
21 would kick in; is that correct?

22 THE WITNESS: We permitted them, we did not  
23 require them.

24 JUDGE MCKENNA: All right. And so if they had  
25 a loan, it went to term, they didn't pay it off, then

1 the lender could either attempt to get full payment or  
2 they could roll it over?

3 THE WITNESS: Correct.

4 JUDGE McKENNA: And under Delaware law, you  
5 couldn't roll it over more than four times?

6 THE WITNESS: Correct.

7 JUDGE McKENNA: All right.

8 BY MS. WEINBERG:

9 Q. Ms. Miller, just to clarify, was the ability  
10 for a consumer to rollover their loan required by  
11 Delaware law or is that something that some lenders put  
12 in as an option in their loan agreement?

13 A. I can't speak for all of the loan agreements.  
14 I can tell you that we permitted that option, we didn't  
15 prohibit it in the statute, nor did we require it.

16 Q. And when you are talking about "it," you are  
17 talking about rollovers?

18 A. Rollovers.

19 Q. Did Delaware law, again 2008 to 2013, require  
20 the use of certain loan agreements between short-term  
21 lenders and their customers?

22 A. We did not have a specific loan agreement put  
23 together just for short-term lenders, no.

24 Q. And did short term lenders in Delaware during  
25 that time period use different loan agreements?

1 A. They would have had to adhere to certain  
2 federal standards, as I mentioned earlier, I always  
3 looked for the fed boxes, things like that.

4 Of course I'm not an expert in that, but I do  
5 know certain things. There are certain rules that all  
6 lenders need to follow. But we did not give anybody a  
7 blue print, or a form, or anything like that. They  
8 sent us their form.

9 Q. Did Delaware set the fees that payday lenders  
10 could charge?

11 A. No.

12 Q. Did all of the payday lenders that were  
13 licensed by your office during this time period charge  
14 the same fees to their customers?

15 A. I would have to research that to be sure, but  
16 I don't believe so.

17 Q. Did your office provide a loan agreement for  
18 Integrity Advance to use with its customers?

19 A. No.

20 Q. Did your office tell Integrity Advance that  
21 they had to use a particular agreement?

22 A. No.

23 Q. Did your office look for compliance with  
24 Electronic Funds Transfer Act a federal law?

25 A. No.

1 Q. Did your office look to see whether contracts  
2 were clear and conspicuous as defined by the Truth in  
3 Lending Act?

4 MS. BAKER: I'm going to object, on the  
5 grounds that they are -- these questions are very  
6 specific legal conclusions that Ms. Weinberg appears to  
7 be seeking from this witness who hasn't been proffered  
8 as a legal expert.

9 JUDGE McKENNA: I understand, overruled.

10 THE WITNESS: Are you talking about in the  
11 licensing application process?

12 BY MS. WEINBERG:

13 Q. As part of -- only as -- only sticking with  
14 your duties, your office --

15 A. Okay. Um-hmm.

16 Q. -- and the licensing. So and also again, I  
17 just want to cabin you to 2008 to 2013.

18 A. Okay. Not specifically.

19 Q. Okay. And when you say that your office  
20 looked at the fed box, can you be more specific about  
21 what you meant by that phrase?

22 A. Actually, I said I look at the fed box.

23 Q. Oh, I'm sorry, thank you for the correction.

24 A. It happens to be knowledge that I happen to  
25 have.

1 Q. So --

2 A. I look to see that the num -- that they are  
3 disclosing the numbers that they are supposed to. And  
4 that's in a separate area, basically, that is it, very  
5 basic.

6 Q. And when you say that they are disclosing the  
7 numbers that they are supposed to, are you saying --

8 A. The annual percentage rate, the total of  
9 payments, things like that.

10 Q. And were you checking to see if their  
11 calculations were correct based on the numbers in those  
12 boxes.

13 A. That we did with small term -- short-term  
14 small dollar lenders, yes.

15 Q. And is that what you meant by checking the  
16 numbers in the box?

17 A. No.

18 Q. What did you mean?

19 A. I, that -- I was just eyeballing the form when  
20 I said that. But we did check the APR's.

21 Q. So when you said checking the federal box you  
22 were -- you meant you were eyeballing the forms to see  
23 if there was a Truth in Lending box that was separate?

24 A. Yes.

25 Q. And that was what you meant by looking at the

1 fed box?

2 A. Yes.

3 Q. And that was the extent of your office's  
4 review?

5 A. It was the extent of my review. We didn't  
6 specifically ask them or, you know, have anything in  
7 our application about do you have your fed boxes.

8 That kind of thing, I just happen to know some  
9 things to look for, and sometimes you can catch a  
10 problem and it saves everybody a lot of time.

11 Q. Did your office, the licensing office, then  
12 look at -- in granting a license look for compliance  
13 with federal law other than seeing if there was a fed  
14 box?

15 A. The only thing we did was check the annual  
16 percentage rate.

17 Q. And what do you mean you checked it?

18 A. We had them submit a couple of Truth in  
19 Lending forms, usually the front page of the loan  
20 contract, with numbers filled in, make believe  
21 customers that we could run through a program that we  
22 had from the Office of the Comptroller of the currency.  
23 And that program will tell you whether or not the APR  
24 is within tolerance.

25 Q. So then is it fair to say that your

1 examination of the fed box would be to take the numbers  
2 supplied by the company and see if their calculation of  
3 the APR was correct as determined by running it through  
4 a calculator from another -- from a federal agency?

5 MS. BAKER: Objection that mischaracterizes  
6 the witness's testimony, the use of the word  
7 examination.

8 MS. WEINBERG: Your review, excuse me. Thank  
9 you.

10 THE WITNESS: My investigators running the  
11 annual percentage rate through the program is  
12 something my investigators do automatically, I mean,  
13 they know that is part of the investigation. Me  
14 eyeballing the contract, that is just me looking at  
15 the contract.

16 BY MS. WEINBERG:

17 Q. And did your office, or you in reviewing the  
18 application review what numbers should be in the fed  
19 box other than the calculation that you testified that  
20 you reviewed?

21 A. By what numbers -- I'm sorry I don't  
22 understand.

23 Q. Did your office look at what should be  
24 included as the total of payments other than looking to  
25 see what was a mathematically correct calculation based



1 on the numbers that were in the Truth in Lending box?

2 A. The only math we did on that was for the APR,  
3 we didn't try to figure anything else.

4 Q. Okay. Thank you that is helpful.

5 MS. WEINBERG: No further questions, thank  
6 you.

7 JUDGE MCKENNA: All right.

8 MS. BAKER: No further questions, thank you  
9 Ms. Miller.

10 JUDGE MCKENNA: Thank you, very much.

11 THE WITNESS: Thank you. Your Honor?

12 JUDGE MCKENNA: Yes?

13 THE WITNESS: May I leave?

14 JUDGE MCKENNA: No. You have to stay around  
15 until tomorrow.

16 THE WITNESS: You are paying my hotel bill?

17 JUDGE MCKENNA: You may leave.

18 THE WITNESS: Thank you.

19 MS. BAKER: Thank you.

20 JUDGE MCKENNA: Off the record.

21 (Brief recess.)

22 MS. CHUM: Good afternoon, Your Honor.

23 JUDGE MCKENNA: Back on the record.

24 All right. Dr. Ang, you want to resume the  
25 stand?

(Witness takes the stand.)

JUDGE McKENNA: As I understand it, Mr. Wheeler, you are going to do a preliminary cross and then you are going to notify the Court in five days of whether you want to submit any rebuttal documents to Dr. Ang's exhibits and whether you want to do further cross on her.

MR. WHEELER: Yes, Your Honor, thank you.

JUDGE McKENNA: All right.

MS. CHUM: Good afternoon, Dr. Ang.

THE WITNESS: Good afternoon, Ms. Chum.

**DOCTOR XIAOLING LIM ANG**

**CROSS-EXAMINATION**

BY MS. CHUM:

Q. Earlier today, you testified that you looked at samples to validate numbers, you recall that?

A. Yes.

Q. I believe you stated you looked at loan level data?

A. So, I believe that that was a separate question, that wasn't relative to this analysis, this -- that was a more global question about my previous experience.

Q. So --

A. Could you please clarify?

1 Q. Let's just go back here. Did you confine your  
2 analysis in this matter to data submitted as  
3 Enforcement Counsel Exhibit 95 and Exhibit 101?

4 A. Yes, in fact, it was confined to Exhibit 101.

5 Q. And do you recall if you used the term loan  
6 records?

7 A. Perhaps, I don't, I don't recall precisely.

8 Q. You stated that you looked at loan records?

9 A. Well all of these records are loan records.  
10 Aren't they.

11 Q. I just want to understand what you mean by  
12 loan records?

13 A. Any records, are any line of data in a data  
14 set about loans.

15 Q. So when you refer to loan records, did you  
16 refer to -- were you meaning that you were looking at  
17 lines of transaction data in Exhibit 101?

18 A. Well, in this case yes, loan records can be  
19 anything from an origination file, to a transaction  
20 file, to basically any form of data kept on loans.

21 Q. But in this case, you confined your review of  
22 loan records to records in Exhibit 101?

23 A. Correct.

24 Q. Ms. Ang -- Dr. Ang, do you agree that total of  
25 payments is equivalent to the principal plus the first

1 finance charge of every loan associated with a  
2 consumer?

3 MS. FOLEY: Objection, vague.

4 JUDGE McKENNA: Overruled.

5 THE WITNESS: So the total of payments, as  
6 Mr. Hughes as has defined it in his analysis, yes, is  
7 the principal plus the finance charge. However, I  
8 would caveat that by the fact that we are talking  
9 about a replication of Mr. Hughes's analysis. And so  
10 we are speaking in the very narrow confines of that  
11 context.

12 BY MS. CHUM:

13 Q. So you take no -- do you take any position as  
14 to a definition of total of payments?

15 MS. FOLEY: Objection.

16 THE WITNESS: That was not within the scope of  
17 my assignment.

18 BY MS. CHUM:

19 Q. I'm turning now to your -- to Respondent's  
20 Exhibit 19. Do you have that in front of Dr. Ang?

21 A. Yes, I do.

22 Q. Let's look at the total paid, that first line.

23 A. Yes.

24 Q. Where it says, "principal plus final fees plus  
25 additional fees."

1           When you calculated the total paid, in that  
2 first row on Exhibit 19, you included all payments made  
3 by a consumer?

4           A. I did to replicate Mr. Hughes's analysis.

5           Q. And that number includes payments made by any  
6 consumers who paid over the life of the loan less than  
7 the amount of the principal plus the first finance  
8 charge?

9           A. It does, but once again it is parallel with  
10 Mr. Hughes's analysis.

11          Q. So let's look at the second line.

12          A. Okay.

13          Q. The total of payments.

14          A. Uh-huh.

15          Q. Do you see how -- do you see with me, that the  
16 CFPB's number you have put here, one hundred forty  
17 million five hundred three thousand five hundred  
18 sixty-eight and seventy-seven cents, and the adjusted  
19 -- the Respondent's is one hundred fifty million one  
20 hundred fourteen thousand thirty-six dollars and  
21 forty-seven cents?

22          A. Yes.

23          Q. Okay. When you calculated the total of  
24 payments, you summed the amount of the principal lent,  
25 plus the total amount of the first finance charge

1 charged to every loan, and that is for your  
2 calculation?

3 A. Yes.

4 Q. So for your calculation a person who did not  
5 pay back the principal, plus the first finance charge,  
6 was their loan included in your calculation of total  
7 payments owed in the -- in line two?

8 A. So, I would say that it depends. There are  
9 two class of consumers that we can think of in that  
10 case, we can think of the people who have made zero  
11 payments, and people who have made a positive payment,  
12 but not necessarily a full payment, or a payment larger  
13 than the TILA box amount.

14 The -- the consumers who did make less than  
15 what could be considered the TILA box amount were still  
16 included in that calculation. And as you can see from  
17 our footnotes, basically, we don't really have any  
18 guidance to compare what is in the CFPB's estimate to  
19 ours. There were no footnotes that clarified this on  
20 the CFPB's exhibits.

21 Q. So let me just get this clear, you did not  
22 include consumers who did not make any payment?

23 A. That is correct.

24 Q. But you did include consumers who made a  
25 payment towards their loan, but who paid less than the

1 total of payments?

2 A. Yes.

3 Q. Okay, so is the total of payments that you  
4 calculated the amount that the consumers owed, or the  
5 amount that they actually paid?

6 A. Could you please clarify?

7 Q. What was your -- when you -- when you  
8 calculated your total of payments what did you consider  
9 to be a total of payments?

10 A. I followed Mr. Hughes's lead, and took --  
11 wait, total of payments, sorry, I was thinking of total  
12 paid. This terminology is a little bit confusing, and  
13 I apologize to Your Honor, we just followed the CFPB's  
14 lead in this. So, for total of payments we considered  
15 the -- what we assumed Mr. Hughes meant in his  
16 declaration, by the first record being the principal,  
17 and the subsequent record and we caveated this with  
18 taking a positive record because, missing values are  
19 also coded as zeros in our data --

20 COURT REPORTER: What, I'm sorry, what is coded  
21 as zeros?

22 THE WITNESS: Missing values are also coded as  
23 zeros, so we took the first nonzero value of the  
24 finance charge as our finance charge.

25 BY MS. CHUM:

1 Q. All right. Going back to the second line, and  
2 you had said that you included consumers who paid less  
3 than the total of payments in that one hundred fifty  
4 million number. So when you subtracted -- okay, did  
5 you subtract the total of payments from total paid to  
6 get to line three of exhibit 19?

7 A. Yes.

8 Q. And when you subtracted the total of payments,  
9 from the total paid, to get to line three, you included  
10 -- so you included people who had not paid the  
11 principal plus one finance charge?

12 A. Yes but not people who did not pay at all.

13 Q. So for people who had paid less than the total  
14 of payments, if a new customer had a hundred dollar  
15 loan, you would have included a hundred and thirty for  
16 that customer in line two if they had a thirty dollar  
17 finance fee, even if they had not paid the total of  
18 payments?

19 A. I'm sorry, I'm confused as to what you mean by  
20 thirty dollar finance fee. Is that paid by the  
21 consumer? Can you please clarify, Ms. Chum?

22 Q. Okay let's say a new consumer has a hundred  
23 dollar loan?

24 A. Okay.

25 Q. And the finance fee on top of that hundred



1 dollar loan was the thirty dollars?

2 A. Okay. So that is loan contract?

3 Q. Yes, and the total of payments per what our  
4 understanding of total payments is is that hundred  
5 dollar loan principal plus the thirty dollars to equal  
6 a hundred thirty dollars.

7 A. Are you telling me or asking me?

8 Q. Is that correct?

9 A. Yes.

10 Q. So if the -- a consumer had only paid sixty  
11 dollars on that loan, you still would have subtracted a  
12 hundred and thirty dollars out of the total, you still  
13 would have assumed that that customer who had paid  
14 sixty dollars had actually paid a hundred thirty  
15 dollars?

16 A. I would not have assumed they paid a hundred  
17 and thirty dollars, I would have assumed they paid  
18 sixty dollars.

19 Q. So in assessing the total of payments --

20 A. Um-hmm.

21 Q. -- you would have assessed sixty dollars  
22 towards the total of payments and not a hundred thirty  
23 dollars in line two, of Exhibit 19; is that correct?

24 A. Sorry, can we start this again?

25 I would appreciate greater precision around

1 the language. Can you please repose the question,  
2 Ms. Chum?

3 THE WITNESS: I'm sorry Your Honor, I'm just  
4 confused by the way the questions were asked --  
5 MS. CHUM:

6 Q. All right. In looking at line three, "the  
7 total paid above the total of payments" you simply  
8 subtracted the total paid, that is line one, from the  
9 second line, total of payments; is that correct?

10 A. No, that is not correct then we would have a  
11 negative 123.8 million.

12 Q. Let me miss -- restate. You simply subtracted  
13 the total paid two hundred -- you subtracted the total  
14 of payments from the total paid?

15 A. Yes.

16 Q. For a positive 123.8 million?

17 A. Yes, that is correct.

18 Q. In your total of payments you included  
19 consumers who had actually -- you included loans that  
20 -- where consumers had paid less than what we have  
21 designated as total of payments on a loan?

22 A. That is correct.

23 JUDGE McKENNA: In other words, they didn't  
24 pay it off.

25 MS. CHUM: Yes, so they didn't --

1 BY MS. WEINBERG:

2 Q. Is that correct?

3 THE COURT REPORTER: Pay it off or pay it all?

4 JUDGE McKENNA: Pay it off. There was still a  
5 residual.

6 THE WITNESS: Yes, but a nonzero residual.

7 MS. CHUM:

8 Q. So the total paid, line one, would have been  
9 sixty dollars?

10 A. Okay.

11 Q. For that one consumer.

12 And total of payments, line two, you would  
13 have put as a hundred and thirty dollars?

14 A. Yes.

15 Q. But in line two, for that consumer who paid  
16 sixty dollars, did you assume that the consumer's total  
17 of payments there would have been a hundred and thirty  
18 dollars?

19 A. Yes.

20 Q. So you would have over counted when you  
21 subtracted the hundred thirty dollars from the total  
22 paid?

23 A. What would I be over counting? Negative  
24 numbers are also valid values.

25 Q. Dr. Ang, what do you think that you -- that

1 Mr. Hughes did that was incorrect in calculating his --  
2 the total of payments?

3 A. So, I can't speak to what Mr. Hughes has done,  
4 precisely, because we received turnover at 8:00 p.m.  
5 last night, which seemed kind of odd because we have  
6 had the exhibits for a while.

7 But, what I can say is that when we were  
8 vetting the data, when we were doing our analysis, it  
9 seemed odd to us that this number didn't seem  
10 compatible with what we understand the loan product to  
11 be.

12 At least in the proportionality, and we did  
13 run it separate ways. We did run it only with positive  
14 net differences between the payments, and we still  
15 ended up with numbers that are larger than his for the  
16 total of payments, and therefore smaller than his for  
17 the difference of total paid minus total of payments.

18 Q. Dr. Ang, would you turn with me now to  
19 Respondent's Exhibit 24?

20 A. Sure.

21 Q. Okay. Look with me now to the second line  
22 which reads, "excluding all loans to repeat customers  
23 whose first loans were renewal loans?"

24 A. Okay.

25 Q. Do you see that?

1 A. Yes, I do.

2 Q. Did you calculate that number by summing up  
3 the amounts paid above the total of payments for all  
4 loans of returning consumers who rolled over their  
5 first loan?

6 JUDGE McKENNA: Who rolled over or ruled over?

7 MS. CHUM: Rolled over.

8 THE WITNESS: Um, yes, I did.

9 MS. CHUM:

10 Q. Did you include those consumers first loan in  
11 that total?

12 A. I did. Ah the -- to be clear, exhibit 24 line  
13 two clearly states, "Excluding all loans to repeat  
14 customers whose first loans were renewal loans."

15 JUDGE McKENNA: All right. We are going to  
16 take a ten minute break, so I can do some temperature  
17 work.

18 (Brief recess.)

19 JUDGE McKENNA: Back on the record.

20 MS. CHUM:

21 Q. Doctor, directing your attention again to  
22 Respondent's Exhibit 24.

23 Did you derive the third line, the total paid  
24 above total of payments for one time loan and repeat  
25 borrowers by subtracting the second line from the first

1 line.

2 A. Yes, I did.

3 MS. CHUM: No further questions.

4 JUDGE McKENNA: Okay. Anything further?

5 MS. FOLEY: Very briefly, Your Honor.

6 JUDGE McKENNA: Sure.

7 **REDIRECT EXAMINATION**

8 BY MS. FOLEY:

9 Q. Dr. Ang, your analysis was based on a  
10 replication of Mr. Hughes's calculations, correct?

11 A. That's correct.

12 Q. And you are not here endorsing Mr. Hughes's  
13 calculation of 273,926,407.60 as the right starting  
14 place are you?

15 A. No, I am not.

16 MS. FOLEY: Nothing further.

17 JUDGE McKENNA: All right. Anything further?

18 MS. CHUM: No further questions, Your Honor.

19 JUDGE McKENNA: All right. Thank you.

20 THE WITNESS: Thank you very much.

21 JUDGE McKENNA: Nice to meet you.

22 THE WITNESS: Nice to meet you as well.

23 JUDGE McKENNA: All right. We have already  
24 set out the briefing schedules. We are going to get  
25 some additional pleadings. We might have some more

1 proceedings, depending upon how the thing ends up  
2 being structured, probably is going to be telephonic.  
3 If we need to get both experts together in a panel,  
4 and then I want to be sitting there.

5 So any other issues before I talk to counsel?

6 MS. BAKER: Your Honor, we have two additional  
7 motions that we would like to make. And we can make  
8 them now or we can make them after you speak with me.

9 JUDGE McKENNA: No. You can make them now.

10 MS. BAKER: I'm going to make one motion and  
11 my colleague, Mr. Frechette is going to make another.

12 The first motion that we would like to renew  
13 is the motion to strike Mr. Baressi's testimony from  
14 yesterday. And I know Your Honor noted my objections.  
15 But the reason we are formally seeking to have his  
16 testimony struck is because notwithstanding the fact  
17 that Your Honor was able to hear him and make any  
18 credibility determinations on the grounds that Your  
19 Honor would make from hearing a witness like that,  
20 this is a record that goes up to the director of this  
21 agency and may go up further to the DC circuit. And  
22 we would like his testimony struck for the following  
23 three reasons: First of all, Mr. Baressi is neither a  
24 lay opinion witness nor an expert witness and there  
25 are no real rules for the rules of adjudication in

1 this court and so we ask that Your Honor consider the  
2 federal rules of evidence as a good a guidance as any.  
3 And Rule 701, which governs the proffering of lay  
4 opinion is very clear that if a lay opinion witness is  
5 offered, that person cannot be proffering opinions  
6 that come solely from his or her technical or  
7 professional expertise.

8 JUDGE McKENNA: Or a world expertise, Kumho  
9 Tire.

10 MS. BAKER: Well, Kumho Tire concerns Daubert  
11 motions for 702 experts. That's right, Your Honor,  
12 and that's my next argument. Thank you. That's  
13 precisely the argument, which is you can't proffer a  
14 lay opinion witness and say this person is offering a  
15 lay opinion and the basis for that opinion comes only  
16 from that person's professional expertise. That's  
17 called an expert witness.

18 And Mr. Baressi was not proffered as an expert  
19 witness in this matter. And the Office of Enforcement  
20 has been on notice since November that this is an  
21 argument that they intend to make about remotely  
22 created checks, so they certainly had adequate  
23 opportunity to proffer any expert that they would have  
24 wanted to proffer as to that issue.

25 JUDGE McKENNA: Yeah, but you know what they



1 said in Kumho Tire about when you proffer a witness  
2 who is a lay witness, you know, he can give testimony  
3 which crosses the line through his personal  
4 experience, and so, you know, but I will take your  
5 motion under advisement.

6 MS. BAKER: Well, thank you, Your Honor. I  
7 understand Kumho Tire. I also understand Daubert,  
8 which is a case that I understand maybe comes a little  
9 after Kumho Tire.

10 JUDGE McKENNA: I thought it was the opposite.

11 MS. BAKER: Or maybe it is the opposite, but  
12 they are often read together as Your Honor knows, and  
13 in Daubert, of course, the argument is that if someone  
14 is proffered as an expert, they have to actually offer  
15 testimony that would meaningfully assist the finder of  
16 fact in a way that that finder of fact may not  
17 otherwise have the requisite expertise at his or her  
18 hands. I don't even think we get there here.

19 JUDGE McKENNA: Maybe not. That's why it  
20 didn't cite Daubert because it was modified by Kumho  
21 Tire and it specifically deals with that subject  
22 versus where you have Daubert is a little more  
23 constrictive.

24 MS. BAKER: And I appreciate that. Thank you,  
25 Your Honor. Nevertheless, we still seek to strike his

1 testimony.

2 JUDGE McKENNA: And I will take it under  
3 advisement.

4 MS. BAKER: The last reason we seek to strike  
5 his testimony is that it's really unduly prejudicial  
6 and had de minimis probative value, frankly. There  
7 was very little that he said that this Court could not  
8 have taken notice of from the articles that were  
9 proffered as evidence into the record.

10 He merely offered an opinion of what he thinks  
11 about remotely created checks and whether or not they  
12 have the potential to harm consumers. That's not an  
13 opinion that even derives from the work he did, the  
14 payments work he did, it was more from other work that  
15 he did in connection with that. And at the end of the  
16 day, I think what came out of his testimony, embedded  
17 in his testimony was the potential for fraud. But  
18 that's not what's before this Court.

19 And a product that is per se legal --

20 JUDGE McKENNA: And I don't take it that way.

21 MS. BAKER: And I know Your Honor doesn't take  
22 it that way and I appreciate the comments Your Honor  
23 made yesterday. And so that was the reason for my  
24 preface in making this motion, if I thought that you,  
25 Your Honor, were the final decider of this matter, I

1 would frankly not renew my motion because I respect  
2 Your Honor's ability to make those determinations.

3 But unfortunately, this matter will likely be  
4 reviewed almost on a de novo basis solely on the  
5 papers, and solely on the record without having the  
6 benefit of somebody who can hear in the courtroom in  
7 real-time the testimony of Mr. Baressi from yesterday.

8 And my concern is that on that record, his  
9 testimony is both improper because it's not lay  
10 opinion. It's not properly before this Court as  
11 expert opinion. And it's also extraordinarily  
12 prejudicial to this matter. And the probative value  
13 that it could potentially offer a finder of fact is  
14 far outweighed by the prejudice and bias that was  
15 embedded in his testimony.

16 And so for those three reasons, we renew or  
17 motion to strike his entire testimony from the record,  
18 as well as any direct and cross that was elicited as a  
19 result of that.

20 Thank you, Your Honor.

21 JUDGE McKENNA: Thank you.

22 MS. CHUM: Your Honor, may the government  
23 respond?

24 JUDGE McKENNA: Yes, you may.

25 MS. CHUM: As discussed yesterday, and first,

1 Enforcement Counsel does not agree with the  
2 characterization -- respondent's characterization of  
3 Mr. Baressi's testimony. As you stated on July 1st,  
4 2016 in your Order, you -- the record must be  
5 supplemented with additional information about RCC's.  
6 That was when Enforcement Counsel became aware that  
7 Your Honor would like additional information about  
8 RCC's generally.

9 As you know, Mr. Baressi did not testify about  
10 the application of RCC's to this specific case. He  
11 simply provided information that has not been at  
12 issue, not been contested in this case. The  
13 information that Mr. Baressi offered is not  
14 controversial and as Your Honor knows in this  
15 administrative proceeding, pursuant to Rule 213, in  
16 granting partial summary judgment, you have the right  
17 to direct further proceedings in this action. And  
18 more generally pursuant to rule 102, you have the  
19 right to regulate the course of this proceeding.

20 And in requesting additional information about  
21 RCC's generally you did just that. And Enforcement  
22 Counsel provided general information, not as applied  
23 to Integrity Advance, but general uncontroverted  
24 information about RCC's through the testimony of  
25 Mr. Baressi.

1 So Enforcement Counsel would ask that you not  
2 grant respondent's motion. Thank you.

3 JUDGE McKENNA: Thank you.

4 Another motion?

5 MS. BAKER: May I briefly reply to Ms. Chum?

6 JUDGE McKENNA: Certainly.

7 MS. BAKER: Thank you, Your Honor. And we do  
8 have one more motion as well.

9 JUDGE McKENNA: I understand that.

10 MS. BAKER: Your Honor, I note for the record  
11 that Your Honor pursuant to his Order -- to your Order  
12 from a couple of weeks ago, has already admitted into  
13 the record as evidence in this matter, two specific  
14 exhibits proffered by Enforcement Counsel.

15 One is Exhibit No. 94, an examination of  
16 remotely created checks by somebody who presumptively  
17 has some knowledge of that. That's already in this  
18 record. So Mr. Baressi has not added any knowledge  
19 that is not presumptively already in the record. In  
20 addition, I also note that it appears that Exhibit No.  
21 98, which I'm not sure has been moved into evidence,  
22 but I believe was also moved into evidence per your  
23 Order although I will seek confirmation of that, but  
24 that exhibit, a guide for remotely created checks  
25 again that would seem to respond to the queries that

1 Your Honor made in his Order granting Summary  
2 Disposition in this matter but seeking additional  
3 information about RCC's.

4 Mr. Baressi's testimony is cumulative as well.  
5 There is certainly nothing that he added yesterday  
6 that I would imagine those two articles don't add and  
7 help enhance your understanding of this process and  
8 this particular payment mechanism. And I still  
9 believe that the testimony that was elicited from him  
10 yesterday was highly prejudicial especially the last  
11 couple of questions that were asked on redirect which  
12 implied that this was used by fraudsters as a way to  
13 evade payments -- or to evade being tracked by the  
14 payment system, and that testimony is extremely  
15 prejudicial and there is no probative value.

16 And somebody reading this record who doesn't  
17 have the benefit of listening in real-time to that  
18 witness would not be able to necessarily make the same  
19 credibility determinations that Your Honor was able to  
20 make yesterday.

21 JUDGE McKENNA: All right. Off the record.

22 (Whereupon, a brief discussion was had off the  
23 record.)

24 MR. FRECHETTE: Your Honor, Enforcement  
25 Counsel, similar to Respondents, submitted a list of

1 exhibits before the hearing, and as we have gone  
2 through and now sort of towards the end of the hearing  
3 they haven't used all of the exhibits that were on the  
4 list, even though some of the those exhibits were  
5 admitted per Your Honor's Order, Respondents move to  
6 reexamine the relevance of exhibits that Enforcement  
7 Counsel has not used in its case in chief or as  
8 rebuttal exhibit.

9 Rule 303 requires irrelevant or immaterial  
10 evidence not be admitted and so since Enforcement  
11 Counsel has not used those exhibits, which I have a  
12 list that we could read into the record, we would  
13 request that they be stricken from the record as  
14 evidence.

15 JUDGE McKENNA: So what you are saying to me,  
16 Mr. Frechette, is, Your Honor, in your desire to  
17 shorten the proceeding and look at the proffer, the  
18 objection, if any, and the legal rationale, and when I  
19 review all of that and I make a determination that I'm  
20 going to admit it, then you're saying, well, the  
21 groundwork that you laid to shorten the hearing was  
22 all screwed up. And then you're saying that we don't  
23 want those exhibits in. So I set it up so that  
24 Enforcement Counsel didn't do it in the way that it's  
25 normally done.

1 I don't like engaging in historic unproductive  
2 colloquies. All right. Now a couple of your exhibits  
3 were admitted, and you didn't address them.

4 MS. BAKER: We will stipulate that they would  
5 also not be admitted into evidence.

6 JUDGE McKENNA: Well, I'm not going to do  
7 that. So if you don't want to withdraw your Motion  
8 and go with the way things are, then I'm going to go  
9 and we are going to stay here and we are going to  
10 backfill every one of their exhibits that were  
11 admitted by me, prior to the hearing.

12 MR. FRECHETTE: One point of clarification is  
13 the motion is not that Enforcement Counsel needs to go  
14 through the process of laying a foundation and  
15 authenticating these documents, these exhibits, it's  
16 rather that Your Honor took that step, but then  
17 Enforcement Counsel did not use the exhibits that Your  
18 Honor had admitted in any way in this proceeding  
19 questioning whether they are relevant or material to  
20 Enforcement Counsel --

21 JUDGE McKENNA: That's a good point. The fact  
22 of the matter is that they can brief and it's in  
23 evidence.

24 MR. FRECHETTE: Yes, Your Honor. One moment  
25 of Court's indulgence to confer.



1 JUDGE McKENNA: Sure. I'm not in a hurry.

2 MR. FRECHETTE: Your Honor, I would like to  
3 keep the motion on the record, but we will rest at  
4 this time.

5 JUDGE McKENNA: All right.

6 So if that's the case, we will take a  
7 five-minute recess. And then we will come back and  
8 Enforcement Counsel will go through each exhibit that  
9 I had admitted, as to doing it according to Hoyle,  
10 because I'm not going to have an -- I'm not going to  
11 have a manufactured error sitting out there because I  
12 wanted to do something that speeded this process up.

13 MR. WHEELER: Your Honor, there is a precedent  
14 PHH, a prior Bureau case, where it was held that  
15 Enforcement Counsel didn't have to use exhibits for  
16 them to be a part of the record.

17 JUDGE McKENNA: Right. But there's a problem  
18 there too, isn't there?

19 MR. WHEELER: What would that problem be?

20 JUDGE McKENNA: It is on appeal.

21 MR. WHEELER: I don't think that issue is on  
22 appeal.

23 JUDGE McKENNA: Well, the case is on appeal.

24 MR. WHEELER: Right. I don't think the  
25 admission of exhibits was part of the appeal.

1 MS. BAKER: Your Honor, if I can clarify, our  
2 motion is as follows, and Your Honor can deny the  
3 motion, but we would just like to make the motion for  
4 the record.

5 Our position is that to the extent exhibits  
6 were pre-admitted into the record in anticipation that  
7 they are relevant and that they would be introduced or  
8 used in some fashion with a witness put forward by  
9 either party, presumptively that's why they were put  
10 on an exhibit list. To the extent they were admitted  
11 into the record, not used by a witness, or not  
12 introduced through a witness who was presented in  
13 either case, we would argue that by necessity their  
14 relevance to the case in chief of either party that  
15 was argued before Your Honor would be in question.

16 That's the argument. Not to make Enforcement  
17 Counsel go through the drill of introducing each piece  
18 of evidence and if that's what Your Honor's proposing,  
19 then we will withdraw our motion because that's not  
20 our intent.

21 JUDGE McKENNA: I set them up. I set  
22 Enforcement Counsel up because I did not want to have  
23 them to go through what I call gobbledygook rigmarole.

24 MS. BAKER: We will withdraw our motion Your  
25 Honor.

1 JUDGE McKENNA: All right.

2 MS. BAKER: Thank you.

3 JUDGE McKENNA: That's fine.

4 JUDGE McKENNA: All right. So off the record.

5 (Whereupon a brief recess was had.)

6 JUDGE McKENNA: Back on the record.

7 **CLOSING ARGUMENTS BY MS. WEINBERG:**

8 Good afternoon, Your Honor. Based on Your  
9 Honor's request, we would like to go first and address  
10 the amount of damages that we are seeking in this  
11 matter.

12 Under Count One, which was the Truth in  
13 Lending Act, we are seeking \$133,422,838.83.

14 What this represents is the amounts paid above  
15 the total of payment amount that was disclosed in the  
16 TILA box for the entire period that Integrity Advance  
17 was in business.

18 Your Honor, I should have said I want to  
19 reserve five minutes for rebuttal in my closing. So I  
20 wont try and keep my eye on the clock.

21 For Count Two, which is the related Consumer  
22 Financial Protection Act Count to the Truth in Lending  
23 Act Count we would be seeking \$38,795,584.12 cents.

24 JUDGE McKENNA: And you want to correspond  
25 that to an exhibit?

1 MS. WEINBERG: Exhibit 97, page 3.

2 JUDGE McKENNA: And One is page 2?

3 MS. WEINBERG: The first, the 133 was 97, page  
4 2. The second is 97 page 3.

5 JUDGE McKENNA: Thank you.

6 MS. WEINBERG: Our Count Three, which is our  
7 deception count, is amounts paid over the disclosed --  
8 the amount that was disclosed in the total of payments  
9 box post-transfer date. And that is the same number  
10 that I just mentioned for Count Two, that's the  
11 \$38,795,584.12.

12 Count Four was withdrawn by Enforcement  
13 Counsel.

14 Count Five is the Electronic Funds Transfer  
15 Act Count, and we would have been seeking disgorgement  
16 in this matter and would reserve the right to do so in  
17 future cases. But in this particular case, we think  
18 that the relief largely overlaps the relief that we  
19 are seeking under Counts One, Two and Three. So we  
20 are not seeking a separate finding for relief under  
21 our Electronic Funds Transfer Act counts, which are  
22 Counts Five and Count Six.

23 For Count Seven, which is remotely created  
24 checks, we are seeking the total amount paid by  
25 consumers after the transfer date, July 21st, 2011 and

1 that number is \$265,452.50. That figure can be found  
2 in Exhibit 97, page 5.

3 For civil monetary penalties, from July 21st,  
4 2011 until December 31st, 2013, there are 530 days.  
5 We will note that this is a conservative calculation  
6 of the penalties and the days that would be due under  
7 this because evidence also indicated that Integrity  
8 Advance provided loan to consumers through May of  
9 2013.

10 Nonetheless, relying on the 530 day figure,  
11 the penalties can be assessed up to \$5,437 per day at  
12 the first tier penalty, which is what we would be  
13 seeking here. That is the lowest tier penalties.  
14 There are higher amount for second and third tier  
15 penalties.

16 JUDGE McKENNA: Do you have a penalty  
17 schedule?

18 MS. WEINBERG: I do. The citation, which I  
19 can provide Your Honor for the current schedule, it  
20 has recently been amended. It was originally \$5,000  
21 is 12 CFR Section 1083.1. And that reflects the  
22 current schedule for civil monetary penalties.

23 So assessing penalties in that amount for 530  
24 days, would be \$2,881,610 per practice. We are  
25 alleging that there are three practices here for which

1 the Court should award civil monetary penalties. The  
2 first has to do with the violations in the loan  
3 agreements that the Court has already found in Counts  
4 One through Three.

5 The second has to do with the violations under  
6 the Electronic Funds Transfer Act and the third has to  
7 do with violations, we are asking the Court, of  
8 course, also to find that the --

9 JUDGE McKENNA: Is this a joint and several  
10 situation?

11 MS. WEINBERG: We are seeking individual  
12 liability against Mr. Carnes and I will be addressing  
13 Mr. Carnes' liability.

14 JUDGE McKENNA: That wasn't what I asked. I  
15 asked that when you are seeking damages against  
16 Integrity Advance, is Mr. Carnes a joint and several?

17 MS. WEINBERG: He is not responsible for all  
18 of the damages on all of the counts. We are not  
19 saying that he is responsible under the Truth in  
20 Lending Act.

21 JUDGE McKENNA: Okay. And so, well, the  
22 company --

23 MS. WEINBERG: Has no money.

24 JUDGE McKENNA: -- basically doesn't exist any  
25 more.

1 MS. WEINBERG: Exactly, Your Honor.

2 JUDGE McKENNA: Like in NOAA proceedings, each  
3 one is jointly several, so the fact that a company is  
4 not around is irrelevant. Or if you have two  
5 respondents, then they are joint and severally liable.  
6 If you can't get it from one, you get it from the  
7 other.

8 I just am asking what is the legal effect of  
9 what you are asking for here?

10 MS. WEINBERG: Well, we are happy to spell  
11 this out in more detail in our brief.

12 JUDGE McKENNA: That would be fine. You have  
13 been put on notice.

14 MS. WEINBERG: Thank you, Your Honor. So I  
15 will just --

16 JUDGE McKENNA: Continue.

17 MS. WEINBERG: Try to get through this part  
18 quickly, given our time limitation and say that we are  
19 seeking civil money penalties for three separate  
20 practices, Counts One through Three, is one practice.  
21 The Electronic Funds Transfer Act is a second  
22 practice. And the remotely created checks is a third  
23 practice.

24 So we would be seeking a total of \$8,644,830  
25 in civil money penalties, plus we would be seeking

1 injunctive relief, which we will layout in much  
2 greater detail in our post trial briefing.

3 So I would like to turn now to the other main  
4 issue that is before the Court for its final decision.  
5 Obviously RCC's remain, but I would like to move first  
6 to address Mr. Carnes's liability and time allowing we  
7 will move onto RCC's.

8 So the first thing that we need to do in  
9 looking at whether or not Mr. Carnes is liable for the  
10 violations that have been found, and that we are  
11 asking the Court to further find against his company  
12 in the activities that they undertook, is when can an  
13 individual be held liable?

14 I'm going to start with the cases that  
15 Respondents have cited. FTC versus Freecom and FTC  
16 versus Commerce Planet. And what those cases hold is  
17 that there are two, three main paths to finding an  
18 individual liable.

19 One is when that individual had actual  
20 knowledge. Another is when you can effectively find  
21 that that individual had knowledge based on his  
22 pervasive role and authority in the company. And a  
23 third is when the individual was reckless in terms of  
24 an awareness of a high probability of fraud, and an  
25 intentional avoidance of the truth.



1 In fact, although Respondents have repeatedly  
2 argued in this matter that Mr. Carnes had to actually  
3 see the loan agreement and actually approve all of the  
4 language, that is not the standard that the cases  
5 uphold.

6 As I have said, there's three ways, three  
7 different ways without an individual having to  
8 actually look at the language in an agreement, and  
9 say, yes, this is exactly what I want it to say. And  
10 I would -- we will set out many cases in our briefing,  
11 but I just want to point to one case that we pointed  
12 to in our pre-trial briefing, which was FTC versus  
13 Five Star. And in that case the Court held that not  
14 only was the owner of the company liable for the  
15 violations and for restitution for the violations, but  
16 the owners wife was liable even though she had argued  
17 that she had nothing to do with deceptive marketing  
18 materials that were in issue in that case and  
19 performed only ministerial tasks for the organization.  
20 But she was found to have the requisite knowledge  
21 because of her preparation of filings and responses to  
22 state regulators.

23 So let's look at the first avenue, actual  
24 knowledge. What do we know about what Mr. Carnes  
25 actually knew?

1 He knew that the loans rolled over. He  
2 testified in detail about how the product worked. He  
3 knew that most consumers would experience rollovers.  
4 At the same time, he knew that the loans disclosed the  
5 cost as if it would be paid in full in just one  
6 payment.

7 That is the essence of our deception claim.  
8 That is the essence of our TILA claim. He was aware  
9 of those factors.

10 Mr. Carnes has testified that he simply relied  
11 on the advice of counsel and he tried to distance  
12 himself from the actual content of the loan agreement.  
13 But when Mr. Foster was on the stand, he didn't say  
14 that Mr. Carnes had never asked about the loan  
15 agreement. He simply repeatedly invoked attorney  
16 client privilege.

17 Your Honor indicated that adverse inference  
18 was appropriate in this instance given the  
19 evasiveness.

20 JUDGE McKENNA: No, I didn't. No, I didn't.

21 I said -- I raised the issue of an adverse  
22 inference. I didn't say that I was going to invoke  
23 it.

24 MS. WEINBERG: Well, Enforcement Counsel would  
25 urge you.

1 JUDGE McKENNA: I want to think about that  
2 one.

3 MS. WEINBERG: Well, since you were just  
4 considering it, Enforcement Counsel would urge you to  
5 adopt it. We think it is appropriate under these  
6 circumstances.

7 Mr. Foster and Mr. Carnes had to talk about  
8 the loan agreement. It was Integrity Advance's only  
9 product. It defies reason to think that the two  
10 executives in a company who offered one product and  
11 had only one document that was consumer facing never  
12 talked about the content of that document.

13 So let's look at the second avenue for finding  
14 Mr. Carnes liable. And that's from his pervasive role  
15 and authority to control the activities of Integrity  
16 Advance.

17 We know that Mr. Carnes was the CEO of  
18 Integrity Advance for each and every year that he  
19 operated. We know that for each and every year that  
20 Integrity Advance was in operation he was the key  
21 decision maker. We heard that from Mr. Carnes  
22 himself. We heard it from Mr. Madsen. We heard it  
23 from Mr. Andonian.

24 Mr. Carnes said that he had the ultimate  
25 authority over Integrity Advance business. We heard

1 repeated testimony that all large decisions had to go  
2 through Mr. Carnes. These facts are not in dispute.

3 Even the org chart that was supplied by  
4 Integrity Advance all points to Mr. Carnes. Everyone  
5 reported ultimately to Mr. Carnes for him to make  
6 decisions. Nor did this change when Mr. Foster became  
7 COO.

8 Mr. Carnes was the signatory on Integrity  
9 Advance's bank account. He hired most of the  
10 employees. He controlled the distributions of funds  
11 to HIP, the other company that he controlled.

12 But most importantly he conceded that he had  
13 the authority to control what loan agreement Integrity  
14 Advance used.

15 He had a pervasive role and pervasive  
16 authority over Integrity Advance's business practices.

17 Mr. Carnes was not a remote CEO who couldn't  
18 know what was going on in his company. He was in the  
19 weeds of the operation of his company. He was in the  
20 same physical space as everyone except for the  
21 individual who we have talked about who was in  
22 Delaware.

23 He had daily talks with Mr. Madsen and other  
24 key staff. He was monitoring the business of  
25 Integrity Advance on a minute level, watching

1 conversions, watching follow-ups from calls which we  
2 saw from the e-mail that was admitted. He ran  
3 meetings. He set the agenda for meetings. He would  
4 even go up to Mr. Andonian and tell him to make minute  
5 adjustments in credit scores in terms of --

6 JUDGE McKENNA: Cutoff levels.

7 MS. WEINBERG: -- cutoff levels for what they  
8 would accept in terms of their customer base.

9 JUDGE McKENNA: Right.

10 MS. WEINBERG: If the data base was slow,  
11 Mr. Carnes was dealing with it. If Mr. Carnes wanted  
12 a state off of the website, he would drop by  
13 Mr. Andonian's desk and tell him to have it done, to  
14 take care of it.

15 That particular example provides insight into  
16 Mr. Carnes's testimony about the loan agreement.

17 When it came to compliance with the law, he  
18 was hand's on. He walked towards the issue, not away  
19 from it. We can expect that that behavior would be  
20 consistent throughout and would include his control  
21 and oversight over the loan agreement itself.

22 Mr. Carnes also testified with incredible  
23 command of the details about the operations of  
24 Integrity Advance. He knew the lowest and highest  
25 amounts that were paid for leads. He knew the number

1 of lead generators used. He knew details about a  
2 random incident of fraud at a call center that  
3 happened many years ago.

4 He knew the percentage of total transactions  
5 that occurred through remotely created checks. Yet  
6 somehow with the loan agreement he has no knowledge  
7 and no involvement.

8 His testimony was simply not credible on this  
9 point.

10 The other thing to note about the product is  
11 that the product did not change, the loan agreement  
12 did not change significantly over the time that  
13 Integrity Advance was in operation. Yet we know from  
14 Mr. Madsen's testimony that when Integrity Advance  
15 started its operation there were only four employees.  
16 There were only four employees involved in setting it  
17 up.

18 It was Mr. Carnes, Mr. Foster, Mr. Shahin, who  
19 is VP of technology and a receptionist.

20 JUDGE McKENNA: Your five minutes is up now.

21 MS. WEINBERG: Okay. Thank you, Your Honor.

22 JUDGE McKENNA: You're going to reserve?

23 MS. WEINBERG: I wanted to reserve five  
24 minutes rebuttal.

25 JUDGE McKENNA: There you go.

1 MS. WEINBERG: And that was 15?

2 JUDGE McKENNA: Yeah.

3 MS. WEINBERG: Okay. Thank you, Your Honor.

4 MS. BAKER: Good afternoon. Your Honor.

5 **CLOSING ARGUMENTS BY MS. BAKER:**

6 Listening to Ms. Weinberg speak earlier or a  
7 few minutes ago about the monetary relief that the  
8 CFPB is seeking from Respondents was the first time I  
9 had ever heard those numbers. And I note that as the  
10 first sentence of my closing argument because I think  
11 that's emblematic of the case that has not been put on  
12 here the last few days.

13 I began my opening a couple of days ago by  
14 telling this Court what it would not hear. I close by  
15 reminding this Court of what it did not hear.

16 The CFPB's enforcement office filed in its  
17 pre-hearing statement an acknowledgement of what it  
18 needs to show with respect to deception as it concerns  
19 Mr. Carnes.

20 Specifically, top of page 5, responding Carnes  
21 was fully aware of how Integrity Advance's loan  
22 product operated and how that did not align with the  
23 company's loan agreement disclosures.

24 Your Honor, this Court has not been presented  
25 with any evidence that Mr. Carnes was not aware of how

1 that did not align with the company's loan agreement  
2 disclosures.

3 There is simply no evidence in the record,  
4 even circumstantial evidence, let alone direct  
5 evidence that Mr. Carnes had that knowledge.

6 Now the Office of Enforcement put on several  
7 witnesses to try to establish that knowledge to no  
8 avail. They opened with a Mr. Madsen, who, as Your  
9 Honor heard, was responsible for overseeing the  
10 company's efforts with respect to lead generation.

11 And as Your Honor noted during Mr. Madsen's  
12 examination, lead generation concerned essentially the  
13 bringing in of customers or would be customers into  
14 the business. Mr. Madsen testified that he never had  
15 a conversation with Mr. Carnes about the loan  
16 agreement or any loan disclosures and, in fact,  
17 Mr. Madsen himself never had anything to do with the  
18 loan agreement or any loan agreement disclosures.

19 You heard testimony from Mr. Andonian, who was  
20 essentially an IT specialist who was responsible for  
21 supervising the IT activities of the Hayfield family  
22 of companies, which I will talk about in a moment, and  
23 what you heard from Mr. Andonian is that he worked  
24 about 4,000 hours for Hayfield family of companies  
25 between '11 and '12 and of those 4,000, he spent no



1 more than two hours total talking about or working on  
2 Integrity Advance related matters in meetings. You  
3 heard that testimony.

4 And at that, none of those conversations to  
5 which he was privy had anything to do with the loan  
6 agreement or loan disclosures which Enforcement  
7 Counsel acknowledged was the salient issue before this  
8 Court with respect to Mr. Carnes's potential liability  
9 for deceptive conduct.

10 Now you also heard testimony from Mr. Foster,  
11 who was the COO of the company starting in 2010. He  
12 was the executive vice president of the company. He  
13 was there at its -- and the general counsel. He was  
14 there at its formation. And in fact what Mr. Foster  
15 clearly testified to was two things: Mr. Carnes was  
16 frequently traveling and out of office and that  
17 Mr. Carnes was also while he was in the office, very  
18 engaged and involved in not just Integrity Advance,  
19 but a number of other business interests as well.

20 Now all of this is a long way of saying that  
21 Mr. Carnes does not run from the fact that he was in  
22 fact a hands on CEO. Indeed he established on the  
23 stand that he was quite proud of that. Enforcement  
24 Counsel showed him on his direct an e-mail that  
25 suggested that he knew about fraud.

1           What Mr. Carnes responded to in that e-mail  
2           was three things: He said pay the consumer back, make  
3           sure this doesn't happen again, and run it down.

4           That's what you heard, Your Honor. You heard  
5           somebody who was concerned with making sure the  
6           company got it right, but he did not look at or review  
7           any of the loan agreement or loan disclosures and  
8           there's absolutely no evidence in the record to  
9           suggest that he did.

10          Now you also heard a fair amount of testimony  
11          about the work of the Hayfield businesses. In fact,  
12          we spent a lot of time listening to Enforcement  
13          Counsel engage Mr. Carnes on Hayfield. Hayfield, as  
14          Your Honor knows, was an umbrella company that had  
15          about 14 other business lines associated with it.

16          And Mr. Carnes testified that particularly in  
17          the years 2011 and 2012, which are the years at issue  
18          with respect to deception, he spent approximately  
19          seven and a half percent of his professional time at  
20          the company working on business for the company.

21          If Your Honor recalls, he said 15 percent of  
22          50 percent, which was about seven and a half percent.

23          So this is not the situation or the facts that  
24          Ms. Weinberg is trying to paint of somebody who just  
25          must have known about the details of legalese in a

1 loan agreement that he specifically noted in his  
2 testimony he engaged outside counsel to draft.

3 Now perhaps even more critically earlier today  
4 we heard the testimony from a Ms. Quinn Miller and  
5 Ms. Quinn Miller is the chief investigator of the  
6 non-depository institution's unit of the banking  
7 commissioner in the state of Delaware.

8 And Ms. Miller told us two things: She told  
9 us that she herself regularly examined the loan  
10 agreements that were affixed to the license  
11 applications that came through her office and that  
12 come through her office and she examined them for a  
13 couple of things.

14 She said, I looked at the TIL box and she said  
15 I know that. And she said she also examined that work  
16 of her investigators to make sure that when those  
17 licenses were either accepted or renewed, that all of  
18 the I's were dotted and all the T's were crossed.

19 She's about as credible a witness as I've ever  
20 heard. And she was very earnest and honest in telling  
21 us what she did. You also heard testimony from her  
22 that under the State of Delaware law it was legal in  
23 2008, 2009, 2010, 2011, 2012 just as it is now, to  
24 have a loan product that enabled four rollovers before  
25 there was a principal paydown.

1           You heard her talk about that. And in fact,  
2 we refreshed her recollection with the law itself and  
3 she acknowledged it, and she remembered it and that is  
4 also in the record.

5           Mr. Carnes testified that he was aware that  
6 his company was licensed in the state of Delaware, and  
7 that he understood at a high level, his words high  
8 level, what that meant insofar as each year that loan  
9 -- that license was renewed. He testified to that.  
10 And we heard testimony today acknowledging that, in  
11 fact, in 2011 and 2012 as two examples, the lending  
12 license for the Integrity Advance company was renewed  
13 in the State of Delaware.

14           Now we have heard a fair amount about monetary  
15 relief today. And I note that what we have heard  
16 mostly is from an information technology specialist or  
17 data scientist who was given a set of queries by the  
18 Office of Enforcement and essentially ran data numbers  
19 at their request.

20           Now I have no doubt that Mr. Hughes intended  
21 to do the job he was asked to do. You also heard a  
22 substantial amount of testimony from Dr. Ang, who is a  
23 Ph.D. economist, who previously worked at the CFPB,  
24 that, in fact, what Mr. Hughes did was quite flawed.

25           It was flawed in two significant ways:

1 Mr. Hughes calculated a number called total payments.  
2 And the idea behind Mr. Hughes's calculations is this:  
3 The assumption being that consumers are presumptively  
4 harmed because they were paying more than what the TIL  
5 box disclosed. And so his working assumption is that  
6 that amount is the amount that should be given back  
7 to, or that's the argument that's now been made by  
8 counsel, that that number is what should be given back  
9 to consumers on a theory that they were harmed.

10 There's a couple of problems with that  
11 argument. First of all, that argument ignores the  
12 fact that we also heard testimony from Dr. Ang today  
13 that between 2011 and 2012, 66 percent of the loans  
14 that were made were for repeat customers. That means  
15 the customers came back another time, for a second  
16 loan, a third loan, a fourth loan, a fifth loan, et  
17 cetera.

18 If a customer chose to come back to take out  
19 another loan, there is no consumer injury as a matter  
20 of law. There is no consumer injury.

21 Which means that the numbers that we heard  
22 from Mr. Hughes and were apparently, although not  
23 clearly synthesized a few minutes ago, are in fact  
24 numbers that do not adequately reflect consumer harm,  
25 assuming there is any consumer harm. And Your Honor,

1 we do not by discussing these numbers suggest that  
2 there is any consumer harm, but I do want to just  
3 briefly address Dr. Ang's analysis for purposes of  
4 closing and then I want to also talk about the  
5 analytical route that this Court should not adopt in  
6 looking at any numbers.

7 So Dr. Ang explained that if you took all of  
8 the monies that were paid over the TIL box and you  
9 took out of that category any consumer who took out  
10 more than one loan, the number that you would end up  
11 with is 7,033,546.

12 That is nowhere near the number we've heard  
13 today. That's her testimony. That's Exhibit 23.

14 But more importantly than that testimony,  
15 which is a significant counterpoint to Mr. Hughes's  
16 testimony, more importantly than that, there is a  
17 problem with this entire analysis. The CFPB's Office  
18 of Enforcement has failed to make a damages showing.  
19 They have offered no evidence into the record of  
20 causation.

21 They have failed to show that even if there  
22 was deceptive conduct, there was one consumer harmed.  
23 Your Honor has not heard from anyone consumers. Your  
24 Honor has not been shown a consumer survey. Your  
25 Honor wasn't even presented during this entire trial

1 of three days with even one consumer complaint. Not  
2 even one consumer complaint.

3 There is absolutely no evidence in the record  
4 of any consumer harmed whatsoever. Let alone  
5 \$133,000,000 worth of consumer harm.

6 Now there's another problem with this  
7 analysis. The \$133,000,000 number presupposes that  
8 the Consumer Financial Protection Bureau's Consumer  
9 Financial Protection Act enables the agency to go all  
10 the way back to the beginning of time that this  
11 company started doing business.

12 And as we discussed the other day, that is as  
13 a matter of law incorrect. They cannot retroactively  
14 apply the Consumer Financial Protection Act or any  
15 component part of TILA to obtain restitution on those  
16 grounds. So that number as a matter of law can't  
17 stand.

18 JUDGE McKENNA: Did you wish to reserve?

19 MS. BAKER: I will continue with my argument,  
20 Your Honor.

21 JUDGE McKENNA: Five minutes.

22 MS. BAKER: Thank you.

23 Now I want to talk briefly about some of the  
24 flaws in Mr. Hughes's testimony, as revealed by his  
25 testimony. Two in particular. What Dr. Ang testified

1 about was that the problem with Mr. Hughes's analysis  
2 is that the number over the TIL box that he used  
3 neglected -- there was a problem when she ran those  
4 numbers. And the problem that she articulated when  
5 she ran those numbers is that the loan product at  
6 issue never had an instance when the principal or  
7 finance charge would have gone up as you got farther  
8 in time.

9 It was always the case that the principal  
10 would either stay the same or go down. But when she  
11 analyzed some of that data she noted discrepancies  
12 that precluded her from adopting the aggregate numbers  
13 that he came up with. That's a flaw in his analysis  
14 that she discussed.

15 The other flaw in his analysis goes more to  
16 his calculation of remotely created checks that came  
17 out today on his cross-examination. One of the things  
18 that's noteworthy and it speaks to the lack of  
19 consumer -- the lack of evidence in the record about  
20 consumer harm, is that there was no evidence submitted  
21 as to why any consumer might have withdrawn their  
22 authorization and triggered creation of a remotely  
23 created check in the first instance. And the fact  
24 that he made a number of assumptions in his  
25 calculation which were put up on a chart underscores



1 that.

2 Now I want to note something that Ms. Weinberg  
3 requested of this Court. Ms. Weinberg requested that  
4 this Court take notice of the CFPB's request for an  
5 adverse inference and as Your Honor undoubtably knows,  
6 there is lots of case that precludes a court from  
7 taking an adverse inference from the assertion of the  
8 attorney/client privilege. And we can certainly brief  
9 this in more detail if Your Honor would like, but I  
10 note for just for the beginning starting argument  
11 there is a number of cases that effectively say that  
12 the assertion of an attorney/client privilege by a  
13 company or an individual does not lead to an adverse  
14 inference. And it cannot lead to an adverse  
15 inference. A company cannot be penalized because it  
16 merely protects its rights and its privileges. And  
17 the request for an adverse inference is counter to  
18 law.

19 Now there were a number of other misstatements  
20 in the record that Ms. Weinberg made. She talked  
21 about the standard for finding liability. She said  
22 actual knowledge.

23 It's clear Mr. Carnes had no actual knowledge  
24 of what the loan language or disclosure said. She  
25 affectively described a standard of constructive

1 knowledge. It's pretty clear he had no constructive  
2 knowledge of what the loan agreement or the loan  
3 disclosure said. He himself told this Court that that  
4 was not something he was apprised of or aware of.

5 She also described another standard of a high  
6 probability of fraud or recklessness, although I  
7 didn't hear her enunciate that a great deal.

8 Obviously, the fact that you heard so much testimony  
9 from how important it was to Mr. Carnes to get it  
10 right when he could get it right discounts that third  
11 prong as well.

12 But there is something else that I think is  
13 important to establish here. Implicit in the CFPB's  
14 argument is that if you're a hand's on CEO and you  
15 care about your employees, and you don't shut the door  
16 in their face when they come talk to you, that you  
17 must be liable for everything your outside counsel  
18 does. That can't be the law. That can't be the law,  
19 Your Honor, thank you.

20 JUDGE McKENNA: Thank you.

21 Ms. Weinberg.

22 MS. BAKER: Your Honor, do I have any time  
23 left?

24 JUDGE McKENNA: I'm going to give you some  
25 time. You can have five.

1 MS. WEINBERG: Your Honor, under the rules I  
2 just note that Enforcement Counsel is supposed to have  
3 the final rebuttal in this matter.

4 JUDGE McKENNA: Okay. All right.

5 MS. BAKER: That's fine.

6 JUDGE McKENNA: All right. You should know  
7 that.

8 **REBUTTAL CLOSING ARGUMENTS BY MS. WEINBERG:**

9 I have only five minutes, so I'm going to try  
10 and be brief and just hit a few points.

11 Respondents have argued that there was no  
12 consumer harm. I think that we have to bring this  
13 case back to the consumers who were harmed. I think  
14 that if you asked any of the consumers whose funds  
15 were taken in amounts higher than the amounts that  
16 they expected whether they were harmed, they would  
17 uniformly say yes. Monetary harm in all of the case  
18 law is found to be harm. And I have no idea how  
19 Respondents are arguing otherwise.

20 I also just want to return to what Ms. Miller  
21 testified to. Contrary to respondent's  
22 characterization, Ms. Miller said that their review of  
23 the TIL box was virtually nonexistent. They looked at  
24 an APR calculation. They were not looking for  
25 compliance with federal law. They were doing some

1 math.

2 And contrary to Mr. Carnes' testimony, they  
3 did not provide her -- they did not provide Integrity  
4 Advance with a loan agreement. She was, I think,  
5 stupefied by the suggestion that they would.

6 I also want to address very briefly  
7 respondent's repeated arguments about retroactivity.  
8 The CFPB is not trying to enforce a retroactive  
9 remedy. The remedy that we are seeking could have  
10 been obtained by the FTC for TILA and EFTA violations  
11 prior to the CFPB's existence. And the remedies that  
12 the CFPB are seeking are available because the FTC  
13 could have sought that relief.

14 Respondents are fond of quoting Landgraf;  
15 however, Landgraf supports Enforcement Counsel's  
16 position on this, as well as Hughes Aircraft Company v  
17 U.S., which is 520 U.S. 939 another supreme court case  
18 from 1997. And I, in the interest of time I just want  
19 to read one quote which is that statutes merely  
20 addressing which court shall have jurisdiction to  
21 entertain a particular cause of action can fairly be  
22 said merely to regulate the secondary conduct of  
23 litigation and not the underlying primary conduct of  
24 the parties.

25 In other words, if what they did was illegal

1 before, it doesn't matter that it's the CFPB that is  
2 now enforcing it.

3 JUDGE McKENNA: Let me ask you a question: Is  
4 there contained in the statute, the regulations or the  
5 caselaw that the fact that people were charged above  
6 the TILA box that there is strict liability?

7 MS. WEINBERG: The only case that I know that  
8 is directly on point is FTC versus AMG.

9 JUDGE McKENNA: And the answer to my question  
10 is?

11 MS. WEINBERG: I am trying to recall now  
12 whether the individual was held liable in that case  
13 and I cannot remember if that was an issue in that  
14 case. But we will certainly brief that in our  
15 post-trial briefing.

16 JUDGE McKENNA: You can look at NOAA caselaw  
17 on strict liability. It has some interesting  
18 application.

19 MS. WEINBERG: For my final point and my  
20 remaining minute or whatever it is that I have left.  
21 I just want to return to RCC's because I think it's  
22 interesting, there is no dispute that Respondents used  
23 RCC's. And there is no dispute as to when they used  
24 them.

25 They used them specifically when consumers had

1 affirmatively told the company through their  
2 revocation of the ACH authorization, that they were  
3 not authorizing the company to take any more money  
4 from their accounts. The company knew that. Yet they  
5 used this mechanism to take money from consumers under  
6 those circumstances.

7 And I think it's instructive given the  
8 extremity of the remedy that they were invoking on  
9 their own behalf, to look at how they disclosed this  
10 remedy to consumers. There is no headings in the loan  
11 agreement that point to this. There is no bold  
12 language that points to this. It's not front and  
13 center on any page. It's not even near where any  
14 consumer signed. Instead, it's part of a sentence in  
15 the middle of a paragraph pertaining to something else  
16 in language which is unclear, to be generous.

17 Under these circumstances, we think that the  
18 use of RCC's was unfair. What we have to show for  
19 unfairness was a substantial injury. And here  
20 consumers lost funds when they thought that they had  
21 protected themselves from revoking the ACH  
22 authorization. It was not reasonably avoidable. And  
23 there were no benefits.

24 Thank you, Your Honor.

25 JUDGE McKENNA: All right. We will stand

1 adjourned. I will wait to receive paper. I  
2 understand that counsel when they get a hard copy of  
3 the transcript will try and work out any deletions.

4 How long will you need to file a motion to  
5 correct the transcript?

6 MS. BAKER: For Mr. Baressi?

7 JUDGE McKENNA: Everybody, everything.

8 MS. BAKER: Oh, for everything or just for --  
9 well, for Mr. Baressi, we would ask for -- we can  
10 probably file an opening brief on that within three  
11 days of receiving the transcript. In terms of  
12 correcting the transcript.

13 JUDGE McKENNA: Well, I don't think that's  
14 going to be necessary unless -- there are two avenues  
15 here: One is just to get rid of some particular  
16 sentences that you had -- question and answer that you  
17 had talked about. That's number one. And I think  
18 that that can be handled between counsel.

19 The second thing is the motion to strike the  
20 entire testimony direct and cross, that's a separate  
21 issue and you can put that in your brief.

22 MS. BAKER: Thank you, Your Honor.

23 JUDGE McKENNA: Rather than make it a separate  
24 item but as to the sentence, let me know early.

25 MS. BAKER: We will, Your Honor, thank you.

1 JUDGE McKENNA: All right. And how long are  
2 you going to need for a motion to correct the entire  
3 transcript?

4 MS. BAKER: We can -- I'm going to propose  
5 Mr. Wheeler and I maybe go back to our office and talk  
6 about this and apprise the Court. I mean, I don't  
7 have a sense of how long that transcript is going to  
8 be.

9 MR. WHEELER: Yeah, do we have any sense of  
10 how long the transcript will take?

11 JUDGE McKENNA: All right, well, see the deal  
12 here is that we have deadlines.

13 I have deadlines. So I have to put  
14 corresponding deadlines on you, and my general  
15 inclination in watching the administrative process and  
16 the deadline on regulations historically was manana,  
17 and that is under the assumption that somebody was  
18 trying to do their due diligence and get it done as  
19 fast as they could get it done.

20 So the regulations require that I have to give  
21 the director notice if I'm not going to be able to get  
22 my decision out within 300 days from assignment.

23 So I'm going to try and do it right before  
24 doing it fast.

25 MR. WHEELER: I appreciate that, Your Honor.



1 MS. BAKER: For correcting the transcript  
2 assuming we get it in two weeks, would a week after  
3 that for any corrections, and we could probably even  
4 agree to file a join submission to the extent we are  
5 talking about errata sheet type --

6 JUDGE McKENNA: Yes. Five calendar days.

7 MS. BAKER: Maybe seven calendar days, would  
8 that be okay, Your Honor? I'm mindful of everyone's  
9 schedules.

10 Does that work for Mr. Wheeler?

11 MR. WHEELER: That's fine with me, Your Honor.

12 JUDGE McKENNA: All right.

13 Okay. Thank you. Everyone was a pleasure to  
14 interact with for the last three days and I want to  
15 thank you for that.

16 MR. WHEELER: Thank you, Your Honor.

17 (The proceedings concluded at 4:30 p.m.)

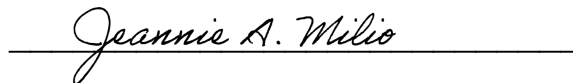
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1 REPORTER'S CERTIFICATE.  
2

3 I, Jeannie A. Milio, Registered Professional  
4 Reporter, an Official Court Reporter for the United  
5 States Coast Guard, do hereby certify that I  
6 stenographically recorded the proceedings in Consumer  
7 Financial Protection Bureau versus Integrity Advance,  
8 LLC and James R. Carnes, File No. 2015-CFPB-0029, held  
9 on July 21, 2016, at 9:30 a.m. (ET), at the FERC  
10 Building, 888 First St., N.E., Washington, DC, before  
11 the Honorable Parlen L. McKenna.

12 I further certify that the page numbers III-1  
13 through III-210 constitute an official transcript of  
14 the proceedings as transcribed by me from my  
15 stenographic notes to the within typewritten matter in  
16 a complete and accurate manner.

17 In witness whereof, I have affixed my signature  
18 this 1st day of September, 2016.  
19  
20  
21

22   
23 Jeannie A. Milio, RPR  
24 Official Court Reporter  
25

# EXHIBIT 11

# Exhibit A

**Integrity Advance: Evaluation of Select  
Disclosures in the Loan Agreement**

**Report Prepared for the Consumer Financial Protection Bureau**

**Manoj Hastak, Ph.D.**

**February 11, 2016**

## SUMMARY OF QUALIFICATIONS AND EXPERIENCE

### Credentials and Expertise

I am a Professor in the Department of Marketing at the Kogod School of Business, American University, in Washington, D.C. I have been a faculty member at American University for twenty-six (26) years, and served as chair of the Marketing Department between 2001 and 2004. During my academic career, I have taught undergraduate and graduate courses in principles of marketing, consumer behavior, consumer information processing, advertising and promotion management, and database marketing. My *curriculum vitae*, included in Appendix A, contains a complete description of my professional background and publications.

I received my Ph.D. in Business Administration from the Pennsylvania State University in 1984. I also have a Masters in Business Administration from the Indian Institute of Management (Ahmedabad, India) and a Bachelor of Science degree, with a concentration in Physics and Mathematics, from the Birla Institute of Technology and Science (Pilani, India).

I have published extensively in scholarly marketing publications including the *Journal of Consumer Research*, *Journal of Public Policy & Marketing*, *Journal of Advertising*, *Journal of Business Research*, and *Psychology & Marketing*. I am a two-time recipient (2003 and 2011) of the Thomas C. Kinnear award for the best article published in the *Journal of Public Policy & Marketing* over a three-year period. I am an Associate Editor of the *Journal of Public Policy & Marketing*, and a former member of the editorial board of the journal *Psychology & Marketing*. I have served as organizer and chair for numerous prestigious academic conferences including the Marketing and Public Policy Conference (2007) and the Society for Consumer Psychology Conference (1999). I have served as a reviewer for a number of peer-review journals including *Journal of Consumer Research*, *Journal of Public Policy & Marketing*, *Journal of Advertising*,

and *Journal of Marketing Research*. In addition, I have given numerous presentations on topics relating to consumer perception and comprehension of advertising and marketing communications at national and international conferences as well as for regulatory agencies such as the Federal Trade Commission.

I have served as a consultant on consumer information processing, advertising communication, deceptive advertising and labeling, and research methodology issues for a number of federal agencies (e.g., the Federal Trade Commission, the U.S. Department of Justice, the Food and Drug Administration, the Department of Housing and Urban Development, the Consumer Financial Protection Bureau, and the Bureau of Alcohol, Tobacco, and Firearms) as well as for several law firms. In these capacities, I have developed and conducted numerous consumer research studies designed to assess consumer reactions to, perceptions of, and experiences with advertisements and other promotional materials. Many of these studies have dealt with the communication effects of disclosures and disclaimers in advertising and promotional material.

Based on my knowledge, experience, education, and training, I consider myself to be an expert in marketing research, in consumer behavior, in consumer response to advertising and other promotional materials, and in measuring advertising deception.

#### **Prior Testimony**

Within the last four years, I have testified as an expert at trial or by deposition in the following matters:

*FTC and State of Colorado v. Dalbey et al*, Civil Action No. 11-cv-1396-RBJ-KLM.

Deposition, April 30, 2013



### **Compensation**

For my work in this case, I am being compensated at the rate of \$450 per hour. My compensation is not contingent on the outcome of the case.

### **Materials Considered in Forming Opinions**

The list of materials that I have considered in forming my opinion is contained in Appendix D.

### **Opinion**

Integrity Advance is a company that originated payday loans in amounts ranging from \$100 through \$1000 to borrowers. The company relied on lead generators to help it secure loan applications from potential customers. If an application was approved, Integrity Advance directed the borrower (via a call or e-mail) to its website to read and sign the Loan Agreement. The Loan Agreement was a multi-page (approximately 9 page) document that laid out the terms and conditions of the loan, ACH authorization, and arbitration agreement. Once the Loan Agreement was signed (electronically), the company deposited funds into the customer's account and generally e-mailed a copy of the Loan Agreement document.

In this report, I analyze the Loan Agreement document that Integrity Advance customers read and signed online and that was later generally provided to them via e-mail. My analysis focuses on two similar versions of the Loan Agreement (Form #2) used by Integrity Advance between May 2008 and December 2012. Appendices B and C contain copies of these loan documents as issued to actual consumers. The documents are labeled Version A and Version B. My analysis is centered on version A, but I discuss differences



between the two versions as appropriate. Note that the differences between the two versions are small and my conclusions apply to both versions.

In particular, I address three issues:

(1) The Truth in Lending (“TIL”) disclosure in the Loan Agreement specifies finance charges and a total payment amount under the assumption that the loan would be paid in full on the (first) payment due date. Subsequent disclosures in the Loan Agreement indicate that there is also an option to “renew” the loan and pay over time. How clearly does the Loan Agreement document disclose that costs (fees and charges) associated with the loan are significantly higher if borrowers renew the loan (either actively or by default) rather than paying it off in full?

(2) The Loan Agreement states that borrowers should affirmatively inform Integrity Advance whether they intend to renew their loan or pay it off in full at least 3 business days prior to the payment due date. Failure to contact Integrity Advance leads to automatic renewal of the loan with associated (higher) fees and charges. Stated differently, the default option is renewal of the loan. What is the effect of this default option on borrower choice (either active or implicit)?

(3) The ACH authorization (included as a part of the Loan Agreement) allows Integrity Advance to create remotely created checks and use these to debit borrower accounts. How clearly is this provision disclosed to borrowers?

#### **Issue #1: The Loan Cost Disclosures**

Key cost-related disclosures were presented in the Loan Agreement in five locations:

(a) the TIL box (including some information presented right below the TIL box) on page 1 of the Loan Agreement (Form 2), (b) three paragraphs presented right after this information, (c) a section labeled "Special Notice" starting on approximately page 3 of the Loan Agreement, (d) a section entitled "Schedule of Charges and Fees" presented right after the section labeled "Special Notice", and (e) three paragraphs (marked as (a), (b), and (c)) starting approximately on page 5 in a section labeled "ACH Authorization Form 2b".

Near the top of the first page, the Loan Agreement showed the Truth in Lending disclosures for the loan followed by some additional information. For example, the Loan Agreement in Appendix B showed the following:

FEDERAL TRUTH IN LENDING DISCLOSURES			
ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate. 684.38%	The dollar amount the credit will cost you. \$150.00	The amount of credit provided to you or on your behalf. \$500.00	The amount you will have paid after you have made all payments as scheduled. \$650.00
Your Payment Schedule will be: One (1) payment of \$650.00 due on 4/10/2009 ("Payment Due Date"). Security: You are giving a security interest in the ECHECK/ACH Authorization. Prepayment: If you pay off early, you will be entitled to a refund of the unearned portion of the finance charge. See the terms of the Loan Agreement below for any additional information about nonpayment, default, and nonpayment refunds.			

Itemization of Amount Financed: Amount given to you directly: \$500.00 . Amount paid on Loan#: 30609072 with us: \$650.00.

The finance charge shown in the TIL box was calculated under the assumption that the loan would be completely paid off in a single payment coinciding with the first payday following loan origination.

Immediately below the TIL box, the Loan Agreement provided five sentences (four sentences in a box and an additional sentence below). Two of these sentences repeated the "Amount Financed" and the "Total of Payments" shown in the TIL box. The remaining



sentences mentioned the ACH authorization, informed the borrower about a prepayment option, and directed them to terms of the Loan Agreement below for any additional information about nonpayment, default, and prepayment refunds<sup>1</sup>.

Next, the Loan Agreement contained a series of paragraphs providing additional information about payment options and terms and conditions of the loan. The first three paragraphs, which started approximately in the middle of the first page of the Loan Agreement and continued to near the end of that page, contained information intended to qualify claims in the TIL box about the loan payment schedule as well as the finance charges:

**PAYMENT OPTIONS:** You must select your payment option at least three (3) business days prior to your Payment Due Date by contacting us at (800) 505-6073. At that time, you may choose:

(a) **Payment in full:** You may pay the Total of Payments shown above, plus any accrued fees, to satisfy your loan in full. When you contact us and choose this option, we will debit Your Bank Account (defined below) for the Total of Payments plus any accrued fees, in accordance with the ACH Authorization below; OR

(b) **Renewal:** You may renew your loan (that is, extend the Payment Due Date of your loan until your next Pay Date<sup>1</sup>) by authorizing us to debit Your Bank Account for the amount of the Finance Charge, plus any accrued fees. If you choose this option, your new Payment Due Date will be your next Pay Date<sup>1</sup>, and the rest of the terms of the Loan Agreement will continue to apply.

**AUTO-RENEWAL:** If you fail to contact us to confirm your Payment Option at least three (3) business days prior to any Payment Due Date, or otherwise fail to pay the loan in full on any Pay Date, Lender may automatically renew your loan as described under (b) above, and debit Your Bank Account on the Payment Due Date or thereafter for the Finance Charge and any accrued fees. Your new Payment Due Date will be your next Pay Date<sup>1</sup>, and the rest of the terms of the Loan Agreement will continue to apply. You must contact us at least three (3) business days prior to your new Payment Due Date to confirm your payment option for the Renewal. If you fail to contact us, or otherwise fail to pay the loan in full on your new Payment Due Date, we may automatically renew the loan until your next Pay Date<sup>1</sup>. After your initial loan payment, you may obtain up to four (4) Renewals. All terms of the Loan Agreement continue to apply to Renewals. All Renewals are subject to Lender's approval. Under Delaware law, if you qualify, we may allow you to enter into up to four (4) Renewals, also known as a "refinancing" or a "rollover". The full outstanding balance shall be due upon completion of the term of all Renewals, unless you qualify for Auto-Workout, as described below.

**AUTO-WORKOUT.** Unless you contact us to confirm your option for Payment in Full prior to your Fourth Renewal Payment Due Date, your loan will automatically be placed into a Workout Payment Plan. Under the Workout Payment Plan, Your Bank Account will automatically be debited on your Pay Date<sup>1</sup> for accrued finance charges plus a principal payment of \$50.00, until all amounts owed hereunder are paid in full. This does not limit any of Lender's other rights under the terms of the Loan Agreement. All Workout Payment Plans are subject to Lender's approval.

Much later in the Loan Agreement, (starting approximately on page 3), a section entitled "Special Notice" was presented:

<sup>1</sup> Version B of the Loan Agreement contained four (rather than five) sentences of information below the TIL box. Furthermore, none of these sentences were in a box, and only one sentence repeated "Amount Financed" and the "Total of Payments" shown in the TIL box.

**SPECIAL NOTICE:**

**(1) THIS LOAN IS DESIGNED AS A SHORT-TERM CASH FLOW SOLUTION AND NOT DESIGNED AS A SOLUTION FOR LONGER TERM FINANCIAL PROBLEMS.**

**(2) ADDITIONAL FEES MAY ACCRUE IF THE LOAN IS REFINANCED OR "ROLLED OVER",**

**(3) CREDIT COUNSELING SERVICES ARE AVAILABLE TO CONSUMERS WHO ARE EXPERIENCING FINANCIAL PROBLEMS.**

**BY ENTERING YOUR NAME AND TODAY'S DATE AND CLICKING THE "I AGREE" BUTTON BELOW, YOU ARE ELECTRONICALLY SIGNING THE LOAN AGREEMENT AND AGREEING TO ALL THE TERMS OF THE LOAN AGREEMENT. YOU ALSO ACKNOWLEDGE RECEIPT OF A FULLY COMPLETED COPY OF THE LOAN AGREEMENT AND THE SCHEDULE OF CHARGES AND FEES BELOW.**

**A PAYDAY LOAN IS NOT INTENDED TO MEET LONG-TERM FINANCIAL NEEDS**

The second item in this section informed borrowers that refinancing the loan could result in additional fees.

Next, a section labeled "Schedule of Charges and Fees" was presented (on page 3).

This section contained several fine print paragraphs followed by two tables entitled "VIP Customer Fees" and "Standard Loan Fees":



**SCHEDULE OF CHARGES AND FEES**

According to the Commission's Regulation 2203, Section 1.0, Notification, every licensee shall furnish to every applicant a copy of the Itemized Schedule of Charges and Fees at the time when such application is made. As per the aforementioned Commission's Regulation 2203, Section 1.0, Notification, please review the itemized schedule of charges and fees below to better understand the charges and fees associated with your loan.

The APR, or Annual Percentage Rate, is the term for the effective interest rate that the borrower will pay on a loan to the lender in a standardized way. This is to show the total cost of credit to the consumer, expressed as an annual percentage of the amount of credit lent to the borrower. While APR is intended to make it easier to compare lenders and loan options, it can seem complicated to those that are not aware of its implications.

There is no account set up fee and, when scheduled payments are made, there are no additional fees outside the principal amount borrowed and the interest that accumulates on the amount borrowed. When comparing interest rates among companies, please note that some companies may charge set up fees, application fees, or other such charges while we do not charge for these services.

**OTHER FEES**

NSF FEE: \$25.00

**VIP CUSTOMER FEES**

DAYS	APR	LOAN AMOUNT											
		\$100.00	\$150.00	\$200.00	\$250.00	\$300.00	\$350.00	\$400.00	\$450.00	\$500.00	\$550.00	\$600.00	\$650.00
23	380.87%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
22	388.14%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
21	417.14%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
20	438.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
19	461.05%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
18	486.87%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
17	516.29%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
16	547.50%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
15	584.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
14	625.71%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
13	673.86%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
12	730.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
11	796.36%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
10	876.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
9	973.33%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
8	1095.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00

**STANDARD LOAN FEES (NEW CUSTOMERS AND NON-VIP CUSTOMERS)**

DAYS	APR	LOAN AMOUNT											
		\$100.00	\$150.00	\$200.00	\$250.00	\$300.00	\$350.00	\$400.00	\$450.00	\$500.00	\$550.00	\$600.00	\$650.00
23	476.00%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00	\$165.00	\$180.00	\$195.00
22	497.73%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00	\$165.00	\$180.00	\$195.00
21	521.43%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00	\$165.00	\$180.00	\$195.00
20	547.60%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00	\$165.00	\$180.00	\$195.00
19	576.32%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00	\$165.00	\$180.00	\$195.00
18	606.33%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00	\$165.00	\$180.00	\$195.00
17	644.12%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00	\$165.00	\$180.00	\$195.00
16	684.38%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00	\$165.00	\$180.00	\$195.00
15	730.00%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00	\$165.00	\$180.00	\$195.00
14	782.14%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00	\$165.00	\$180.00	\$195.00
13	842.31%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00	\$165.00	\$180.00	\$195.00
12	912.50%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00	\$165.00	\$180.00	\$195.00
11	995.45%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00	\$165.00	\$180.00	\$195.00
10	1095.00%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00	\$165.00	\$180.00	\$195.00
9	1216.67%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00	\$165.00	\$180.00	\$195.00
8	1368.75%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00	\$165.00	\$180.00	\$195.00

Finally, a section labeled "ACH Authorization" was presented on pages 5-7. The following information was presented approximately a third of the way through this section (toward the bottom of page 5):

You also authorize us to initiate an ACH debit entry to Your Bank Account:

- (a) for the Total of Payments plus any accrued fees on the Payment Due Date, or on any subsequent Renewal Payment Due Date, if you contact us at least three (3) business days prior to such date and select Payment Option (a) in the Loan Agreement (Pay in full);
- (b) for the Finance Charge plus any accrued fees on the Payment Due Date, or on any subsequent Renewal Payment Due Date, if you contact us at least three (3) business days prior to such date and select Payment Option (b) in the Loan Agreement (RENEWAL), or if you fail to contact us to confirm your payment option;
- (c) for the accrued finance charges and fees, plus \$50.00 on each Pay Date<sup>1</sup> after the fourth (4<sup>th</sup>) Renewal Payment Due Date, until all amounts owed under the Loan Agreement are paid in full; and
- (d) for any accrued Returned Payment charges, subject to the Loan Agreement.

### Evaluation of Loan Cost Disclosures

In this section, I evaluate the disclosures presented in the Loan Agreement that were highlighted in the last section. I rely primarily on Federal Trade Commission (FTC) guidelines on making disclosures and disclaimers clear and conspicuous in an on-line environment (e.g., on-line ads or web pages)<sup>2</sup>. These guidelines emphasize several key factors in assessing the likelihood that a disclosure in a document or promotional material will be noticed and comprehended by readers. These factors include: (a) Prominence (whether the disclosure is prominent enough for borrowers to notice it and read it); (b)

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<sup>2</sup> The FTC first issued written guidance for on-line disclosures in 2000 and recently updated it in 2013. See Federal Trade Commission (2013), “.com Disclosures: How to Make Effective Disclosures in Digital Advertising.” [available at <http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>]. The FTC also issued a report that dealt (partly) with the use of disclosures in negative options plans. See Federal Trade Commission (2009), “Negative Options: A Report by the Staff of FTC’s Division of Enforcement.” [Available at <http://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf>]. For peer-reviewed articles that discuss application of the FTC guidelines to off-line and on-line disclosures, see Hastak (2004), and Hoy and Lwin (2007). The FTC has also held and continues to hold numerous workshops around the country that emphasize the importance of clear and conspicuous disclosures (see Hoy and Lwin 2007 for details). Note that my analysis is applicable regardless of whether borrowers encounter the Loan Agreement in an on-line or off-line environment.



Placement (whether the disclosure is presented in an area where consumers are likely to look); (c) Proximity (whether the disclosure is located in close proximity to the claim being qualified); (d) Avoidability (whether specific techniques have been used to increase the likelihood that consumers will look at the disclosure); (e) Clarity (whether the disclosure is presented in easy to understand language); and (f) Repetition (whether the disclosure is repeated to increase the likelihood of exposure).

(a) Prominence

The TIL box and the disclosures presented in the box are quite prominent. The headline above the TIL box is in bold upper case and in very large font. All four headlines within the box are bolded. Two of these headlines are in uppercase font that is larger than other text on the page while two headlines are in lower case font that is as large as other text on the page. In addition, the box makes this information stand out making it likely borrowers will attend to it and process it. Finally, the two sentences below the TIL box that repeat the “Amount Financed” and “Total of Payments” shown in the TIL box also have key terms and dollar amounts bolded to enhance prominence<sup>3</sup>.

The cost disclosures in the three qualifying disclosure paragraphs are far less prominent. Specific mentions of cost terms (total payment, accrued fees, finance charges, and principal payment) are buried in the text contained in each of the three paragraphs in regular font size. Furthermore, the fact that the three disclosure paragraphs are a part of a long series

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<sup>3</sup>Version B of the Loan Agreement has one sentence (rather than two) that repeats “Amount Financed” and the “Total of Payments” shown in the TIL box, and key terms and dollar amounts are not bolded.

(over a dozen) of similar looking disclosure paragraphs in the Loan Agreement detracts from their prominence and hence the prominence of disclosures embedded within the paragraphs.

The sentence on “additional fees” in the section labeled “Special Notice” is in bold upper case font thus increasing its prominence. Unfortunately, this sentence is placed among several sentences (approximately a half page) that are all presented in uppercase bold font, and this decreases its prominence and noticeability.

The section entitled “Schedule of Charges and Fees” has a prominent heading in bold upper case and large font. Unfortunately, the heading comes at the end of approximately half a page of text that is all bold uppercase and large font, and this detracts from the prominence of the headline. Immediately following the heading is approximately half a page of text with references to cost-related concepts (APR, set up fees, additional fees, etc.) in small print that is not very prominent. Finally, there are two tables entitled “VIP Customer Fees” and “Standard Loan Fees.” These titles are underlined and in uppercase thus increasing their prominence. The entries in the tables are in a font similar to the font used in much of the document. The top row of each table and the first two columns (labeled “Days” and “APR”) are bolded making them stand out from the rest of the table.

Finally, the information presented in the section labeled “ACH Authorization” is not at all presented in a way to make it prominent. It blends into the presentation of other information in the section.

(b) Placement

The TIL box (and following sentences) is placed near the top of the first page of the



Loan Agreement. The three qualifying disclosure paragraphs are positioned in the bottom half of the first page. This less advantageous placements suggests that the qualifying paragraphs are less likely to be noticed and read than the TIL disclosures. The sentence on “additional fees,” the section entitled “Schedule of Charges and Fees,” and the information presented in the section labeled “ACH Authorization” all enjoy an even less favorable placement, appearing on pages 3-5 (approximately) of the Loan Agreement.

(c) Proximity

Since the cost information in the three disclosure paragraphs and in the section entitled “Schedule of Charges and Fees” is intended to qualify the statements made in the TIL box about finance charges and total payments, it is important that this information is placed in close proximity to the TIL box and ‘linked’ to the cost statements therein. Unfortunately, the three paragraphs are separated from the TIL box by the four or five statements that take up almost a third of the page, while the sentence on “additional fees,” the section entitled “Schedule of Charges and Fees,” and the information presented in the section labeled “ACH Authorization” are all separated from the TIL box by several pages and multiple unrelated disclosures. More importantly, there is nothing in the document to show a ‘connection’ between cost information presented in the TIL box and the cost-related terms embedded in the three disclosure paragraphs or presented in any of the other disclosures. For example, a statement right below the TIL box indicating that the total payments and finance charges will be significantly higher if the “Renewal” option is selected and pointing to the “Payment Options” paragraph below (along with improving the clarity of this paragraph)

would help borrowers ‘link’ the information in the TIL box with the qualifying information that follows. There is nothing in the Loan Agreement that ties the disclosures to the claims they are supposed to qualify.

(d) Avoidability

When borrowers first read the Loan Agreement online, they are required to initial at several places to indicate their agreement with sections of the agreement and also sign on the last page of the agreement. Having borrowers initial in several places increases the likelihood that they notice and read more of the agreement than would happen otherwise. However, the first time borrowers are asked to sign the Loan Agreement is on page 4. This is after the section on “Schedule of Charges and Fees” and well after the sentence on “additional fees,” and the cost disclosures in the TIL box and the following disclosure paragraphs. The second time borrowers are asked to sign (initial) is on page 6 part way through the section on ACH authorization, and almost half a page after the cost information presented in this section. Thus, it is unlikely that having borrowers initial/sign the Loan Agreement in multiple places would significantly increase their attention to key disclosures related to the cost of the loan.

(e) Clarity

The TIL disclosure box provides information on the APR, finance charge, amount financed, and total payments. The finance charge, amount financed, and total payments are presented in relatively simple, easy to understand language, and are likely to be comprehended by borrowers who notice and attend to this information. The one potential for confusion occurs in the way information about “Total of Payments” is explained. The



sentence under this heading says: "The amount you would have paid after you have made all payments as scheduled." However, the payment schedule associated with the total payment stated in the TIL box involves a single payment and not multiple payments. Thus, borrowers could incorrectly comprehend that they could make multiple payments and still only be responsible for the total payment amount provided in the TIL box.

The amount financed and the total of payments are also presented quite clearly in the two sentences (one sentence for Version B of the Loan Agreement) that follow the TIL box, although the terms used to describe them are different ("Amount Financed" is referred to as "Amount given to you directly," and "Total of Payments" is referred to as "Amount paid on Loan #:xxxxxxx with us").

The three qualifying disclosure paragraphs tell borrowers that they must choose between two payment options ("payment in full" or "renewal") at least three business days prior to their due date. Borrowers are further told that under the "payment in full" option, their bank account would be debited for "... the Total of Payments plus any accrued fees...", while under the "Renewal" or "Auto-Renewal" options their bank account would be debited "... for the amount of the finance charge plus any accrued fees," and under the "Auto-Workout" option their bank account would be debited "...for accrued finance charges plus a principle payment of \$50, until all amounts owed hereunder are paid in full." The presumption appears to be that borrowers would automatically recognize that they would face additional finance charges under the "Renewal/Auto-Renewal/Auto-Workout" options and thus the total cost of the loan would be higher than what is indicated in the TIL box, but

this is not made explicitly clear to them.

The last sentence in the first qualifying paragraph (under the “Renewal” option) adds to the potential for miscommunication and confusion. It states: “If you choose this option, your new Payment Due Date will be your next pay date, and the rest of the terms of the Loan Agreement will continue to apply.” Borrowers reading this language could reasonably assume that “rest of the terms” refers to the total payment and cost information provided in the TIL box. In other words, borrowers could incorrectly infer that choosing this option does not change their total payment amount. The potential for making this faulty inference is further exacerbated by language used in the TIL disclosure box under the heading “Total of Payments.” The sentence under this heading says: “The amount you would have paid after you have made all payments as scheduled.” By using the plural (payments) rather than the singular (payment), this language could reinforce the take-away that total payments remain the same even if multiple payments under the “renewal” option are selected.

The second qualifying disclosure paragraph (captioned “Auto-Renewal”) tells borrowers that if they fail to choose between the “payment in full” or “renewal” options outlined in the first qualifying disclosure, they may be automatically assigned to the “renewal” option. Again, however, by repeating the phrase “...rest of the terms of the Loan Agreement will continue to apply” and another similar phrase: “All terms of the Loan Agreement continue to apply to Renewals” without alerting borrowers to potential changes in their total payments, the disclosure may reinforce the take-away that total payments remain as specified in the TIL box.



The third qualifying disclosure paragraph (captioned “Auto-Workout”) tells borrowers what would happen after four loan renewals. However, as with the first and second qualifying disclosure paragraphs, there is no specific language to indicate that the total payments due on the loan increase with each renewal until the entire principle has been paid back.

In sum, the three qualifying disclosure paragraphs do not clearly explain the implications of loan renewal for the total cost and total loan payments. To the contrary, by repeatedly emphasizing that “the rest of the terms of the Loan Agreement will continue to apply,” the disclosures may reinforce the take-away that their total payments would be as indicated in the TIL disclosure box.

The sentence on “additional fees” in the section labeled “Special Notice” states that the borrower may be responsible for additional fees if the loan is refinanced or rolled over. This sentence has the potential to signal to borrowers that refinancing the loan may result in additional costs. Note, however, that no information is provided about the amount of these additional charges, so its utility is limited. Also, by stating that additional fees “may accrue...” rather than ‘will accrue...,’ the sentence introduces unnecessary ambiguity about whether or not additional costs will be incurred by the borrower.

The section entitled “Schedule of Charges and Fees” has two tables entitled “VIP Customer Fees” and “Standard Loan Fees” that appear, at first glance, to provide concrete information on how fees and other charges vary as a function of loan amount and duration. Unfortunately, the information in these tables is confusing and is not accompanied by any

text that would help the reader understand its implications. The tables provide APRs for different loan amounts for loans from 8 to 23 days in duration. It shows that the APR is higher for a loan of shorter duration. A consumer might understand this table to suggest that the longer that they have a loan, the less expensive it is – an incorrect inference. Rather, the figures appear to be based upon single payment loans. My understanding is that most consumers did not have such loans. In sum, it is not clear what the data in these tables are and how they relate to loan costs based on different repayment schedules.

Finally, the information presented in the section labeled “ACH Authorization” repeats some of the information presented earlier in the three qualifying paragraphs that immediately follow the TIL box. Specifically, borrowers are told that they are authorizing Integrity Advance to initiate ACH debit entries for the total of payments and any accrued fees, or the finance charges plus any accrued fees, or the finance charges plus fees plus \$50 depending on their particular choice/situation (i.e., “Payment in Full” vs. “Renewal/Auto-Renewal” vs. “Auto-Workout”), and that the ACH debits would continue until all amounts owed under the Loan Agreement are paid in full. Again, the presumption appears to be that borrowers would automatically recognize that they would face additional finance charges under the “Renewal/Auto-Renewal/Auto-Workout” options and thus the total cost of the loan would be higher than what is indicated in the TIL box, but this is not made explicitly clear to them.

**(f) Repetition**

The amount financed and total payment amount is presented in the TIL disclosure box and repeated just below the box in two sentences (one sentence for Version B of the



Loan Agreement). This repetition is likely to increase the likelihood that borrowers will notice and read these charges, which are associated with paying off the loan in a single payment.

There is also some repetition of ideas conveyed in the three qualifying disclosure paragraphs. Specifically, the information presented in the section labeled “ACH Authorization” repeats some of the information presented earlier in the three qualifying paragraphs by re-informing borrowers they may be charged for either the total of payments and any accrued fees, or the finance charges plus any accrued fees, or the finance charges plus fees plus \$50 depending on their particular choice/situation (i.e., “Payment in Full” vs. “Renewal/Auto-Renewal” vs. “Auto-Workout”). This repetition increases the chances that borrowers will notice and process this information. Furthermore, the phrase “...rest of the terms of the Loan Agreement will continue to apply” is first mentioned in the first qualifying disclosure paragraph and is repeated twice in the second qualifying disclosure paragraph (once with exactly the same language and once more with slightly different language: “All terms of the Loan Agreement continue to apply to Renewals”). This increases the likelihood that borrowers will read and process this information. Unfortunately, as discussed earlier in the section on “Clarity”, repetition of this idea is likely to mislead borrowers by reinforcing the take-away that total payments remain as specified in the TIL box.

#### Summary Assessment of Cost Disclosures

Overall, the disclosures provided in the Loan Agreement do not communicate to borrowers in a clear and conspicuous manner that costs (fees and charges) associated with

their loan would be significantly higher if they renew the loan (either actively or by default) rather than paying it off in full.

The cost information in the three qualifying disclosure paragraphs is not very prominent. Furthermore, the disclosures are not placed close to the TIL disclosure that they are supposed to qualify, and there is nothing to indicate to the reader that there is a 'connection' between the disclosures. Finally, the qualifying disclosures are not clear in communicating to borrowers that choosing the "Renewal" option will lead to higher costs than those stated in the TIL disclosure box. On the contrary, the phrase "... rest of the terms of the Loan Agreement will continue to apply" which is repeated in the first and second qualifying disclosures could easily communicate to borrowers instead that loan costs and total payments for the "Renewal" option are as stated and emphasized in the TIL box.

The sentence on "additional fees" in the section labeled "Special Notice" has the potential to communicate that the borrower may be responsible for additional fees if the loan is refinanced. Unfortunately, the poor prominence and placement of this sentence and its lack of proximity to the TIL box suggests that it will not be very effective in qualifying the cost information presented in the TIL box. Additionally, as I have previously noted, this section states that such fees "may accrue" not that they will necessarily accrue.

The section entitled "Schedule of Charges and Fees" also does not provide cost information associated with the "Renewal" option in a clear and conspicuous manner (assuming it does contain this information). The section is placed towards the middle of a lengthy, dense document, and there is nothing to indicate that the information presented in



the section is related to or qualifies the payment and cost information presented in the TIL box. Perhaps most importantly, the information in the two tables presented here is difficult to comprehend, and has the potential to suggest incorrect inferences.

Finally, while the information presented in the section labeled “ACH Authorization” repeats some of the information presented earlier in the three qualifying paragraphs, it suffers from lack of prominence, placement, proximity, and clarity.

#### **Issue #2: Default Option**

As written, the Integrity Advance Loan Agreement envisions two repayment scenarios: consumers can pay off their loan in full on the first date it is due; or they can renew it (up to four times) and then proceed with the work out option. Additionally, the agreement states that borrowers must affirmatively inform Integrity Advance about their choice (via a phone call) at least 3 business days prior to the payment due date. Failure to contact Integrity Advance typically leads to automatic renewal of the loan with associated (higher) fees and charges. Stated differently, the default option is renewal of the loan.

Defaults have a significant and large impact on behavior. Given a choice between two options, people often choose to do nothing and hence get assigned to the default option. Consequently, changing the default option significantly affects choice outcomes. Default effects have been studied and documented in a variety of contexts including organ donation, enrollment in 401(K) plans, and renewal of gym memberships.<sup>4</sup>

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<sup>4</sup>See, for example, Della Vigna, Stefano and Ulrike Malmendier (2006), “Paying Not to Go to the Gym,” *American Economic Review*, 96 (3), 694-719; Johnson, Eric J. and Daniel G. Goldstein (2003), “Do Defaults Save Lives?” *Science*, 302 (5649), 1338-39; Madrian,

There are two implications of this literature to the present situation. First, since “renewal” (as opposed to “payment in full”) was the default option in the Loan Agreement, one would expect a large proportion of borrowers to end up with this option, but this would not necessarily mean that many or most of them chose the option actively. Second, since the majority of consumers did end up with the default option, the TIL disclosure that Integrity Advance provided to them was inaccurate. A better approach to facilitate consumer understanding might be to communicate clearly to borrowers upfront (near, or as a part of the TIL disclosure) that their costs and total payment amounts would vary depending on how many times they renewed the loan, and to present charges and total payments under several scenarios (e.g., payment in full, 2 renewals, 4 renewals + auto workout).<sup>5</sup> By presenting this information early on and emphasizing the fact that borrowers have a choice, the Loan Agreement would be providing important information in a unified manner rather than in a fragmented manner (in the TIL box and later in qualifying disclosures), and would thus increase the likelihood that borrowers would comprehend the loan terms and their choices.

### **Issue #3: The Agreement for Remotely Created Checks**

Starting at approximately page 5, the Loan Agreement document contains a section entitled “ACH Authorization.” This section is about 2 pages long. The main purpose of the

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Brigitte C. and Dennis F. Shea (2001), “The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior,” *Quarterly Journal of Economics*, 116 (4), 1149-87 ; and Smith, N. Craig, Daniel G. Goldstein, and Eric J. Johnson (2013), “Choice Without Awareness: Ethical and Policy Implications of Defaults,” *Journal of Public Policy & Marketing*, 32 (2), 159-172.

<sup>5</sup> The intent here is not to indicate what would be compliant under TILA, but rather what would make the disclosures easier for consumers to understand and better reflect reality.



section appears to be to receive authorization from the borrower for Integrity Advance to withdraw funds from the borrower's bank account in amounts and at times as agreed to in the Loan Agreement. However, a paragraph that appears approximately half-way through this section (at the bottom of page 5), grants Integrity Advance powers that are separate and distinct from their ability to utilize ACH withdrawals:

You agree that we may re-initiate a debit entry for the same amount if the ACH debit entry is dishonored or payment is returned for any reason. The ACH Authorizations set forth in the Loan Agreement are to remain in full force and effect for this transaction until your indebtedness to us for the Total of Payments, plus any other charges or fees incurred and described in the Loan Agreement, is fully satisfied. You may only revoke the above authorizations by contacting us directly. If 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.

This portion of the paragraph authorizes Integrity Advance to create remotely created checks and use these to debit borrower accounts in the instance that the borrower blocks or revokes ACH authorization (e.g., by instructions to their bank).

#### Evaluation of The Agreement for Remotely Created Checks

I evaluate the paragraph shown above from the ACH authorization (giving Integrity Advance permission to create remotely created checks and use these to debit borrower accounts) using the FTC guidelines on making disclosures and disclaimers clear and conspicuous. As noted earlier, these guidelines emphasize several key factors in assessing the likelihood that a disclosure will be noticed and comprehended by readers: (a) Prominence, (b) Clarity, (c) Proximity, (d) Placement, (e) Avoidability, and (f) Repetition.

##### (a) Prominence

The title for the section on ACH authorization is in bold upper case and large font. In addition, there is a line in bold uppercase large font that says "READ VERY CAREFULLY BEFORE INITIALING OR SIGNING." This statement plus the bold headline is likely to

draw attention to the section on ACH authorization. Unfortunately, the paragraph of focal interest here is not presented in a prominent manner – it appears in normal font, ‘blends’ with other text, and is buried in the middle of the (2 page) section.

(b) Placement

The section on ACH authorization is placed after four pages of a very dense document. Furthermore, the paragraph of interest is placed towards the middle of the 2-page section making it even less conspicuous than information placed near the (relatively prominent) title of the section.

(c) Proximity

Since the paragraph of interest is not intended to directly qualify a claim or statement made elsewhere in the document, proximity is not relevant to my analysis.

(d) Avoidability

Borrowers are required to sign approximately half way through the section on ACH authorization. Having borrowers sign increases the likelihood that they might read more of the information in the section than would happen otherwise. Unfortunately, the signature comes almost a third of a page after the key paragraph. Asking borrowers to initial or sign right after the key paragraph would have been a more effective strategy for increasing the likelihood that they might notice and read the information therein.

(e) Repetition

The information presented in the paragraph of interest is not repeated elsewhere in the Loan Agreement document.

(f) Clarity

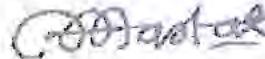
The following statement is included towards the end of the paragraph of interest: "If you revoke your authorization, you agree to provide us with another form of payment acceptable to us and you authorize us to prepare and submit one or more checks drawn on Your Bank Account so long as amounts are owed to us under the Loan Agreement." For consumers who already understand how remotely created checks work, this statement seems fairly clear. However, for consumers who do not understand this (and that may be the majority of consumers), this statement fails to explain either that the company could write these checks without notifying the consumer when they create such checks or that they could do so without the consumer's signature. Further, that sentence ends with the phrase: "...so long as amounts are owed to us under the Loan Agreement." As noted earlier, borrowers could reasonably read this as referring to the "Total of Payments" specified in the TIL box earlier in the Loan Agreement. This interpretation may be further reinforced by the sentence included towards the beginning of the paragraph: "The ACH Authorizations set forth in the Loan Agreement are to remain in full force and effect for this transaction until your indebtedness to us for the Total of Payments, plus any other charges or fees incurred and described in the Loan Agreement, is fully satisfied." Consequently, even if borrowers happen to notice and read this paragraph, they could come away with the impression that the ACH authorization (as well as the authorization to remotely create and submit checks) is only in force until the "Total of Payments" specified in the TIL box have been made.



Summary Assessment of Authorization to Create Remotely Created Checks

In my opinion, the paragraph (in the ACH Authorization) that seeks authority for Integrity Advance to create remotely created checks and use these to debit borrower accounts is neither clear nor conspicuous, and is unlikely to be noticed, read, or correctly understood by borrowers. Specifically, it is placed inconspicuously in a section that follows five pages of dense text, the central idea of the paragraph is not repeated elsewhere, and the language in the paragraph has the potential to confuse and misdirect borrowers rather than illuminate them.

Executed on this 11<sup>th</sup> day of February, 2016



Manoj Hastak, Ph.D.

# Appendix A





December 2015

**CURRICULUM VITAE**  
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**Education:**

- 1984: Doctor of Philosophy in Business Administration, Pennsylvania State University.  
Minors in Statistics and Social/Cognitive Psychology.
- 1977: Master of Business Administration, Indian Institute of Management, Ahmedabad  
(India).
- 1975: Bachelor of Science, Birla Institute of Technology and Science, Pilani (India).  
Concentration in Physics and Mathematics.

**Academic Positions:**

- Current Professor of Marketing, Kogod School of Business, American University,  
Washington D.C.
- 2001- 2004 Chair, Department of Marketing, Kogod School of Business, American University
- 1995- 1996 Visiting Scholar, Federal Trade Commission, Bureau of Consumer  
Protection, Division of Advertising Practices, Washington D.C.
- 1993- 2010 Associate Professor of Marketing (with tenure), American University
- 1989- 1993 Assistant Professor of Marketing, American University
- 1984- 1989 Assistant Professor of Business Administration, University of Illinois at  
Urbana-Champaign

**Consulting Experience:**

- 1995-  
Present In-house consultant and resident expert at the Federal Trade Commission on cases and research projects involving deception, ad communication, disclosure, and other consumer perception issues.
- Intermittent Consultant to numerous agencies and organizations on research projects on product advertising and labeling issues such as deceptive advertising, corrective advertising, advertising disclosures, and consumer comprehension of health, nutrition, financial and environmental information. Clients include the Food and Drug Administration, Department of Justice, Bureau of Alcohol, Tobacco, and Firearms, Department of Housing and Urban Development, Consumer Financial Protection Bureau, Future of Privacy Forum, and the Public Utilities Commission of the State of Nevada
- Intermittent Consultant/Expert Witness for law firms in a number of cases involving deceptive advertising/labeling, disclosures, and consumer perception issues.

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**Research in Progress:**

"Clear Disclosure of Information Sharing Practices by Financial Institutions: Implications for Comprehension and Choice," Manuscript Preparation in progress. (With Alan Levy of the FDA)

"Effects of Consumer Testimonials in Advertising on Audience Perceptions of Efficacy and Typicality Claims." Manuscript preparation in progress. Target: Journal of Marketing. (With Michael Mazis).

"Developing Mandatory Energy Labels that do not Mislead Consumers: Lessons from Consumer Research at the Federal Trade Commission." Manuscript preparation in progress. Target: Journal of Public Policy & Marketing. (With James Hilger and Janis Pappalardo of the FTC)

"Effects of Change in Involvement Between Ad Exposure and Brand Evaluation on Brand Evaluation Processes." Manuscript preparation in progress. Target: Journal of Consumer Psychology.

"Are 'Up To' Claims in Advertising Deceptive and Can They be Corrected Through Disclosures?" Collecting additional data to extend findings from one of my earlier papers

**Conference and Professional Presentations:**

"The CFPB Integrated Mortgage Disclosure Project: Quantitative Study," Marketing & Public Policy Conference, Washington, D.C. June 2015.

"Two Decades of Involvement with the FTC: Contributions to Research, Policy Making, and Litigation," American Marketing Association Annual Conference, San Francisco, CA. August 2014

"Three Decades of Marketing Academic Input at the FTC," Marketing & Public Policy Conference, Boston, MA. June 2014

"Policy Challenges at the FTC: Opportunities for Research Contributions," Marketing & Public Policy Doctoral Consortium, University of Massachusetts, Amherst. June 2014



- "Copy-testing Issues in Litigation," Federal Trade Commission Workshop, Washington DC. February 2014
- "Use of Consumer Surveys in Litigation," Federal Trade Commission Workshop, Washington DC. February 2014
- "Arc Tensile Claims in Advertising Deceptive? An Empirical Investigation of Energy Savings Claims," presented at the International Conference on Research in Advertising," Zagreb, Croatia. June 2013.
- "Designing Disclosures based on Consumer Testing," presented at the joint FTC-CFPB Workshop entitled Life of a Debt: Data Integrity in Debt Collection, Washington D.C. June 2013.
- "Consumer Perception of "Up To" Claims in Advertising," presented at the 2013 Marketing & Public Policy Conference, Washington D.C. June 2013
- "What Do Online Behavioral Advertising Disclosures Communicate to Users?" presented at the 2012 ACM workshop on Privacy in the Electronic Society (WPES) Raleigh, NC, October 2012.
- "Changes in Involvement Over Time: Implications for Advertising Induced Brand Evaluation Processes," presented at the International Conference on Research in Advertising," Stockholm, Sweden. June 2012.
- "Noticing the Notice and Understanding What it Means," presented at the 5th Annual Privacy Law Scholars (PLS) Conference, George Washington University Law School, Washington D.C. June 2012.
- "Clear Disclosure: Comprehension and Choice," presented at the 2012 Marketing & Public Policy Conference, Atlanta, GA. June 2012
- "Assessing Consumer Perceptions of Modified Risk Tobacco Product Advertising and Labeling Claims and Associated Disclosures," presented at the FDA workshop on modified risk tobacco products, Washington D.C. August 2011.
- "Communication Efficacy of Layered Disclosures About Online Behavioral Advertising," presented at the 2011 Marketing & Public Policy Conference, Washington D.C. June 2011
- "Communicating With Consumers: How to Improve Mortgage Loan Disclosures." Participant in Invited Panel. U.S. Department of Treasury, Washington D.C. December 2010.
- "Can Front-of-Package Nutrition Claims Help Low Literate Consumers Assess Product Healthfulness?" presented at the 2010 Marketing & Public Policy Conference, Denver,



CO. June 2010

"Can You Understand What This Privacy Notice Says? A Report on the GLB Interagency Research Project," presented at the 2010 Marketing & Public Policy Conference, Denver, CO. June 2010

"Future of Privacy Forum "Icon"Survey: Comprehension of Behavioral Advertising Disclosures," presented at the Federal Trade Commission, Washington DC. January 2010.

"Effects of Decision Structure, Stakes, and Information Provision in a Fraud Case," presented at Association for Public Policy Analysis and Management Conference, Washington DC. November 2009.

"Consumer Surveys: When and How to Create a Litigation Survey," presented at the Federal Trade Commission Litigation Seminar, Washington DC. September 2009.

"Developing Mandatory Energy Labels that do not Mislead Consumers: Lessons from Consumer Research at the Federal Trade Commission," presented at the 2009 Marketing & Public Policy Conference, Washington DC. May 2009

"Exploring the Effects of Decision Structure, Stakes, and Information Provision in a Fraud Case," presented at the 2009 Marketing & Public Policy Conference, Washington DC. May 2009.

"Facilitating the Usage of Nutritional Information by Low-Literate Consumers," Presented at the Association for Consumer Research Asia-Pacific Conference, Hyderabad, India. January 2009.

"Effects of Consumer Testimonials in Advertising on Audience Perceptions of Efficacy and Typicality Claims," presented at the 2008 Marketing & Public Policy Conference, Philadelphia, PA. June 2008.

"Database Marketing Applications for the Emerging Retail Sector in India," invited address at MERC School of Business and Retail Management (Pune, India). July 2007

Delivered opening remarks at the 2007 Marketing and Public Policy Conference, Washington DC., June 2007.

"Developing Regulatory Disclosures through Consumer Testing," presented at the 2007 Marketing & Public Policy Conference, Washington DC., June 2007.

"Understanding and Facilitating the Usage of Nutritional Labels by Low Literate Consumers," presented at the 2006 Marketing & Public Policy Conference, Long Beach, CA. June 2006.

- "Data Mining in Direct Marketing: A comparison of RFM, CHAID, and Logistic Regression," presented at the Consumer Personality and Research Conference, Dubrovnik, Croatia. September 2005.
- "The Effectiveness of "Opt-Out" Disclosures in Pre-Screened Credit card Offers," presented at the 2005 Marketing & Public Policy Conference, Washington D.C., May 2005.
- "Regulation of the Rent-to-Own Industry: Implications of the Wisconsin Settlement with Rent-A-Center," Presented at the 2004 Marketing & Public Policy Conference, Salt Lake City UT., May 2004.
- "Copy-testing and Consumer Research," presented at the Federal Trade Commission, Washington D.C., August 2003
- "Empirical Evidence on the Determinants of Rent-to-Own Use and Purchase Behavior," presented at the 2003 Marketing & Public Policy Conference, Washington DC., May 2003.
- "Copy-testing and Consumer Research," presented at the Federal Trade Commission, Washington D.C., August 2002
- "Truthful but Misleading Claims in Advertising and Labeling," presented at the 2002 Marketing & Public Policy Conference, Atlanta, GA. June 2002.
- "Use of Survey Research in Public Policy Decisions," presented at the 2001 Marketing & Public Policy Conference, Washington D.C. June 2001.
- "Marketing Academics at the Federal Trade Commission (1995-present)," presented at the 2001 Marketing & Public Policy Conference, Washington D.C. June 2001.
- "Assessment of Customer experience with Rent-to-Own," presented at the Twenty-Second Annual Research Conference of the Association for Public Policy Analysis and Management, Seattle, WA. November 2000.
- "Copy-testing and Consumer Research," presented at the Advertising Training Seminar sponsored by the Federal Trade Commission, Washington D.C. August 2000.
- "An Empirical Examination of Customer Experience with Rent-to-Own Transactions," presented at the 2000 Marketing & Public Policy Conference, Washington D.C. June 2000.
- "Research Methodology at the FTC," presented at MSI-sponsored conference on Current Developments at the FTC and FDA, Washington D.C. June 2000.
- "Facilitating the Use of Nutrition Information through Summary Information," presented at the Advertising, Consumer Psychology, and Health Conference, Columbus, OH., May 1997.



- "Consumer Interpretation of "Recyclable" and "Please Recycle" Claims on Product Labels," presented at the 1997 Marketing & Public Policy Conference, Boston MA, May 1997.
- "The Effects of Health Claims on Consumer Interpretation of FDA-Mandated Nutrition Disclosures: A Mall-intercept Study," presented at the 1997 Marketing & Public Policy Conference, Boston MA. May 1997
- "Are Daily Reference Values Really Enough? Facilitating the Use of Nutrition Information Through Summary Information," presented at the 1997 Marketing and Public Policy Conference, Boston MA. May 1997.
- "Consumers, Interpretation of Alternative Environmental Claims," presented at the special AMA conference on Environmental Marketing Claims and Decision Making: Consumer, Market, and Regulatory Issues, San Diego, CA., August 1996.
- "Consumer Perception of "Made in USA" Claims in Advertising and on Product Labels," presented at the Federal Trade Commission "Made in USA" Workshop, Washington D.C., March 1996.
- "Can Disadvantaged Consumers Interpret Nutrition Information in the Presence of a Health Claim? A Laboratory Investigation," presented at the special AMA conference on Consumer and Market Implications of Information Provision: The Case of the Nutrition Labeling and Education Act of 1990, Washington D.C., August 1995.
- "Facilitating and Inhibiting Effects of Brand Cues on Recall, Consideration Sets and Choice," presented at the 22nd International Research Seminar in Marketing, La Londe les Maures, France, June 1995.
- "Effects of the New FDA Rules for Food Labels on Disadvantaged Consumers," presented at the 22nd Annual Conference of the Association for Consumer Research, Boston, Mass., October 1994.
- "Effects of Involvement on On-line Brand Evaluations," presented at the 22nd Annual Conference of the Association for Consumer Research, Boston, Mass., October 1994.
- "Consumer Comprehension of Environmental Claims," presented at the Conference on Environmental Consumerism, Georgetown University, Washington D.C., July 1994.
- "Consumer Comprehension of Environmental Advertising Claims," presented at the 1994 Marketing & Public Policy conference, Washington D.C., May 1994.
- "Health Claims in the Presence of Consistent and Inconsistent Nutrient Information: A Laboratory Investigation," presented at the 21st Annual Conference of the Association for Consumer Research, Nashville, Tenn., October 1993.

- "The Effect of Health Claims on Consumer Judgments About the Healthfulness of Food: A Laboratory Experiment," presented at the Federal Trade Commission (Bureau of Economics), Washington D.C., July 1993.
- "Effects of the New FDA Rules for Food Labels on Disadvantaged Consumers," presented at the 1993 Marketing and Public Policy conference, East Lansing, MI., May 1993.
- "Facilitating and Inhibiting Effects of Brand Cues on Recall, Consideration Sets, and Choice," presented at the 20th Annual Conference of the Association for Consumer Research, Vancouver, B.C., October 1992.
- "Confirmatory Bias in the Processing of Health Information in Labels," presented at the 1992 Marketing and Public Policy conference, Washington D.C., May 1992.
- "Representation of Product Information in Memory: Some Experimental Evidence," presented at the 19th Annual Conference of the Association for Consumer Research, Chicago, IL, October 1991.
- "Judgment Updating Strategies: Effect of New Information on Existing Product Evaluations" presented at the 17th Annual Conference of the Association for Consumer Research, New Orleans LA, October 1989.
- "Mediators of Message Sidedness Effects on Cognitive Structure for Involved and Uninvolved Audiences", presented at the 17th Annual Conference of the Association for Consumer Research, New Orleans LA, October 1989.
- "Multiattribute Judgments Under Uncertainty: A Conjoint Measurement Approach", presented at the 17th Annual Conference of the Association for Consumer Research, New Orleans LA, October 1989.
- "Consumer Decision Making Under Uncertainty: A Conjoint Analysis Approach," presented at the 1989 Marketing Science Conference, Duke University, March 1989.
- "Source Credibility Effects in Advertising: Assessment of Mediating Processes," presented at the 1988 Conference of the American Academy of Advertising, Chicago IL, April 1988.
- "Simultaneous Effects of Country Image and Price Variables on Quality Perception; An Information Integration Perspective," presented at the 15th International Marketing Congress, New Delhi India, December 1987.
- "A Comparison of Cognitive Structure and Cognitive Response Approaches for Measuring Advertising Effects on Product Attribute Beliefs," presented at the 1986 Annual Convention of the American Psychological Association, Washington DC, August 1986.



"Alternative Perspectives on Attitude Formation and Change in an Advertising Context," presented at the 12th Annual Conference of the Association for Consumer Research, Washington DC., October 1984.

"Representation of Product Hazards in Consumer Memory," presented at the 9th Annual Conference of the Association for Consumer Research, St. Louis, Mo, October 1981.

"Consumer Response to Deals: A Discussion of Theoretical Perspectives," presented at the 8th Annual Conference of the Association for Consumer Research, San Francisco, CA, October 1980.

"On the Validity of Research Methods in Consumer Dealing Activity: An Analysis of Timing Issues," presented at the 1979 AMA Educators' Conference, Chicago, IL, August 1979.

**Doctoral Dissertation:**

"Assessing the Role of Brand- and Advertisement -Related Cognitive Responses as Mediators of Communication Effects on Cognitive Structure." Professor Jerry C. Olson, Thesis Advisor.

**Professional Service:**

Associate Editor, Journal of Public Policy & Marketing, (Academic Refereed Journal), 2013-present. (Member of Editorial Review Board 2006-present).

Member of the Editorial Review Board for Psychology & Marketing (Academic Refereed Journal), 1994-1996.

Organizer and Co-Chair, Marketing & Public Policy Conference. Washington D.C. 2007.

Chair, Societal, Public Policy and Ethical Issues track, American Marketing Association Summer Marketing Educators' Conference. San Francisco, CA. 2005.

Organizer and Co-Chair, Annual Conference of the Society for Consumer Psychology. St. Petersburg, FL. 1999.

**Occasional Reviewer for:**

Journal of Consumer Research

Journal of Marketing Research

Journal of Consumer Affairs

Association for Consumer Research Conference

Association for Consumer Research Asia-Pacific Conference

American Marketing Association Summer and Winter Conference

American Psychological Association Conference

Academy of Marketing Science World Marketing Congress  
Academy of Marketing Science Conference  
Marketing and Public Policy Conference

Organizer and Co-Chair of session entitled "Developing Transparent Disclosures via Consumer-Centric Research: The CFPB Integrated Mortgage Disclosure Project," Washington D.C. June 2015

Chair of Session entitled "Live Long and Prosper", International Conference on Research in Advertising, Zagreb, Croatia. June 2013.

Organizer and Chair of session entitled "What is the FTC Up To? Research and FTC Guidance on "Up To" Claims in Advertising," Marketing & Public Policy Conference, Washington D.C. June 2013

Organizer and Co-Chair of session entitled "Controversies Surrounding Online Behavioral Advertising: Consumer, Industry, and Regulatory Perspectives" Marketing & Public Policy Conference, Washington D.C. June 2011

Organizer and Co-Chair of session entitled "Role of Qualitative and Quantitative Consumer Research in Policy Development at Federal Agencies: Two Case Studies," Marketing & Public Policy Conference, Denver, CO. June 2010

Organizer and Co-Chair of session entitled "Effects of Front-of-Package Health and Nutrition Claims on Consumer Comprehension of Product Healthfulness," Marketing & Public Policy Conference, Denver, CO. June 2010

Organizer and Co-Chair of session entitled "A two decade perspective on changing FTC priorities, initiatives, and impact," Marketing & Public Policy Conference, Washington D.C. May 2009.

Organizer and Co-Chair of session entitled "Consumer Testimonials in Advertising: Assessment of the FTC Endorsement Guides," Marketing & Public Policy Conference, Philadelphia, PA. June 2008.

Organizer and Chair of session entitled "Financial/Credit Issues and Disadvantaged Consumers," Marketing and Public Policy Conference, Washington DC., May 2003.

Organizer and Co-Chair, session on "Deceptive Advertising and Labeling: Causes and Cures," Marketing and Public Policy Conference, Atlanta GA, May 2002.

Chair, session on "Brand Extensions and Associations," 28<sup>th</sup> Annual Conference of the Association for Consumer Research, Salt Lake City, UT, October 2000.

Organizer and Co-Chair of session entitled "Health Claims and Consumer Behavior", Marketing



and Public Policy Conference, Boston MA, May 1997.

Chair, session entitled "Advertising Effects on Consumer Memory and Response", 22nd International Research Seminar in Marketing, La Londe les Maures, France, June 1995.

Discussant, session on "Adolescent Compulsive Consumption," 22nd Annual Conference of the Association for Consumer Research, Boston MA, October 1994.

Invited participant in the Workshop on "Nutrition Labeling Regulations" organized by the Marketing Science Institute, Washington DC., January 1994.

Member of the Board of Directors, American Marketing Association Metropolitan Washington Chapter, 1993-94.

Organizer and Co-Chair (with John Lynch Jr.) of session entitled "New Directions in Research on Memory Based and Mixed Judgments," at the 17th Annual Conference of the Association for Consumer Research, New Orleans LA, October 1989.

Discussant, session on "Elaboration and Emotion in Information Processing," 15th Annual Conference of the Association for Consumer Research, Boston MA, October 1987.

Session Chair at the Paul D. Converse Marketing Symposium, University of Illinois at Urbana-Champaign, May 1986.

Session Chair at the Stellner Symposium on Theories of Marketing Practice, University of Illinois at Urbana-Champaign, May 1985.

#### **Honors and Awards:**

Two time recipient of the Thomas C. Kinnear award for the best article published in the *Journal of Public Policy & Marketing* over a three year period (2003 and 2011).

Kogod School of Business, Faculty Award for Outstanding Research, 2009

Award from the Federal Trade Commission in recognition of outstanding contributions in producing the Commission's Report on the Marketing of Violent Entertainment to Children. October 2000.

Award from the Federal Trade Commission in recognition of outstanding contributions to the Privacy Initiative. October 1998.

Recipient of a research grant for \$5980 from the Marketing Science Institute (MSI), Cambridge, Mass. to investigate "Role of Fairness in Service Quality Evaluation in the Automobile Service Industry." 1996 (with Amiya K. Basu and Saad Andaleeb).

Honorable mention in the MSI Research Competition "Using Marketing to Serve Society" sponsored by the Marketing Science Institute, Cambridge, Mass., 1993. (With Gary T. Ford, Anusree Mitra, and Debra J. Ringold).

Research grant from the Marketing Science Institute (MSI) to fund research on the effects of health claims in food advertising and labeling on consumers, 1993. (With Gary T. Ford, Anusree Mitra, and Ringold).

Named to the University of Illinois list of excellent teachers, 1986, 1989.

American Marketing Association Doctoral Consortium Fellow, 1981.

Alpha Mu Alpha Honorary Marketing Society.

Beta Gamma Sigma Honorary Society

President's gold medal for achieving the highest grade point average in the College of Science, Birla Institute of Technology and Science, Pilani, India, 1975.

National Science Talent Scholarship and Certificate of Merit, India. 1972-1975.

**Teaching Experience:**

Undergraduate: Principles of Marketing, Consumer Behavior, Advertising and Promotion Management

Graduate: Buyer Behavior, Advanced Seminar in Consumer Information Processing, Database Marketing



# Appendix B



**APPLICATION (Integrity Advance, LLC)****FORM #1****Loan #: 30609072**

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we ("we" or "us" refers to "Integrity Advance, LLC") will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying document.

**NOTICE: WE ARE REQUIRED BY LAW TO ADOPT PROCEDURES TO REQUEST AND RETAIN IN OUR RECORDS INFORMATION NECESSARY TO VERIFY YOUR IDENTITY**

**PERSONAL INFORMATION**

Name	
Address	
Date	
Home	

**EMPLOYMENT INFORMATION**

Employer	
Pay Period	
Length of Supervision	

**BANK INFORMATION**

Type of Account: Checking	
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**REFERENCE INFORMATION**

1	
2	

By typing your name and clicking "I Agree" below, you are electronically signing this Application. By electronically signing and submitting this Application, you certify that all of the information provided above is true, complete and correct and provided to us for the purpose of inducing us to make the loan for which you are applying and you acknowledge receiving a fully completed copy of this Application and accompanying documents. This Application will be deemed incomplete and will not be processed by us unless agreed by you below. By electronically signing below you also agree that we may obtain and use information about you from third parties, including consumer reports, to evaluate your application and to review your account for as long as you owe any amount to us.

Signature: (X) \_\_\_\_\_

Date: 3/24/2009

**COVERED BORROWER IDENTIFICATION STATEMENT:**

Federal law provides important protections to active duty members of the Armed Forces and their dependents. To ensure that these protections are provided to eligible applicants, we require you to select and electronically sign ONE of the following statements as applicable:

**PLEASE SELECT ONE OF THE FOLLOWING STATEMENTS:**

**I AM a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer, or such member serving on Active National Guard duty.**

**I AM a dependent of a member of the Armed Forces on active duty as described above, because I am the member's spouse, the member's child under the age of eighteen years old, or I am an individual for whom the member provided more than one-half of my financial support for 180 days immediately preceding today's date.**

**I AM NOT a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer (or a dependent of such a member).**

Signature: (X) \_\_\_\_\_

**WARNING: IT IS IMPORTANT TO FILL OUT THIS FORM ACCURATELY. KNOWINGLY MAKING A FALSE STATEMENT ON A CREDIT APPLICATION IS A CRIME.**



**LOAN AGREEMENT****FORM #2**    **Loan #:**  
**30609072**

Disbursement Date: <u>3/25/2009</u> Payment Date: <u>4/10/2009</u>	<b>Loan #: 30609072</b>
(Integrity Advance, LLC) 300 Creek View Road Suite 102 Newark, DE 19711 Phone: (800) 505-6073	NAME: [REDACTED] ADDRESS: [REDACTED] CITY: [REDACTED] STATE: [REDACTED] PHONE: [REDACTED]

In this Loan Agreement (hereinafter, the "Loan Agreement") the words "you", "your" and "I" mean the borrower who has electronically signed it. The words "we", "us" and "our" mean Integrity Advance, LLC ("Lender"), a licensed lender of payday loans regulated by the Delaware State Bank Commissioner.

**FEDERAL TRUTH IN LENDING DISCLOSURES**

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate. <b>684.38%</b>	The dollar amount the credit will cost you. <b>\$150.00</b>	The amount of credit provided to you or on your behalf. <b>\$500.00</b>	The amount you will have paid after you have made all payments as scheduled. <b>\$650.00</b>

Your Payment Schedule will be: One (1) payment of \$650.00 due on 4/10/2009 ("Payment Due Date").

Security: You are giving a security interest in the ECheck/ACH Authorization.

Prepayment: If you pay off early, you will be entitled to a refund of the unearned portion of the finance charge.

See the terms of the Loan Agreement below for any additional information about nonpayment, default, and prepayment refunds.

Itemization of Amount Financed: Amount given to you directly: **\$500.00** . Amount paid on Loan#: **30609072** with us: **\$650.00**.

**PAYMENT OPTIONS:** You must select your payment option at least three (3) business days prior to your Payment Due Date by contacting us at (800) 505-6073. At that time, you may choose:

(a) **Payment in full:** You may pay the Total of Payments shown above, plus any accrued fees, to satisfy your loan in full. When you contact us and choose this option, we will debit Your Bank Account (defined below) for the Total of Payments plus any accrued fees, in accordance with the ACH Authorization below; OR

(b) **Renewal:** You may renew your loan (that is, extend the Payment Due Date of your loan until your next Pay Date<sup>1</sup>) by authorizing us to debit Your Bank Account for the amount of the Finance Charge, plus any accrued fees. If you choose this option, your new Payment Due Date will be your next Pay Date<sup>1</sup>, and the rest of the terms of the Loan Agreement will continue to apply.

**AUTO-RENEWAL:** If you fail to contact us to confirm your Payment Option at least three (3) business days prior to any Payment Due Date, or otherwise fail to pay the loan in full on any Pay Date, Lender may automatically renew your loan as described under (b) above, and debit Your Bank Account on the Payment Due Date or thereafter for the Finance Charge and any accrued fees. Your new Payment Due Date will be your next Pay Date<sup>1</sup>, and the rest of the terms of the Loan Agreement will continue to apply. You must contact us at least three (3) business days prior to your new Payment Due Date to confirm your payment option for the Renewal. If you fail to contact us, or otherwise fail to pay the loan in full on your new Payment Due Date, we may automatically renew the loan until your next Pay Date<sup>1</sup>. After your initial loan payment, you may obtain up to four (4) Renewals. All terms of the Loan Agreement continue to apply to Renewals. All Renewals are subject to Lender's approval. Under Delaware law, if you qualify, we may allow you to enter into up to four (4) Renewals, also known as a "refinancing" or a "rollover". The full outstanding balance shall be due upon completion of the term of all Renewals, unless you qualify for Auto-Workout, as described below.

**AUTO-WORKOUT.** Unless you contact us to confirm your option for Payment in Full prior to your Fourth Renewal Payment Due Date, your loan will automatically be placed into a Workout Payment Plan. Under the Workout Payment Plan, Your Bank Account will automatically be debited on your Pay Date<sup>1</sup> for accrued finance charges plus a principal payment of \$50.00, until all amounts owed hereunder are paid in full. This does not limit any of Lender's other rights under the terms of the Loan Agreement. All Workout Payment Plans are subject to Lender's approval.

**DISBURSEMENT:** In order to complete your transaction with us, you must electronically sign the Loan Agreement by clicking the "I Agree" button at the end of the Loan Agreement, as well as all other "I Agree" buttons that appear within the Loan Agreement and related documents that appear below. We will then approve or deny your application and the Loan Agreement. If the Loan Agreement is approved, we will use commercially reasonable efforts to effect a credit entry by depositing the proceeds from the Loan Agreement into the bank account listed below in the ECheck/ACH Authorization ("Your Bank Account") on the Disbursement Date. Unavoidable delays as a result of bank holidays, the processing schedule of your individual bank, the untimely receipt of pay stubs, if such pay stubs are required, inadvertent processing errors, "acts of God", and/or "acts of terror" may extend the time for the deposit. You will have the



option of rescinding the loan and this Loan Agreement in accordance with the "RESCISSION" provision listed below, which describes, among other things, the time and manner within which notice of rescission must be given to be effective. Failure to give such notice as and when set out in the "RESCISSION" provision will be deemed to constitute acceptance by you of the delayed disbursement date.

**YOUR PROMISE TO PAY:** You promise to pay us the Total of Payments according to the terms of our disclosures set forth below on the Payment Due Date and all other amounts owed to us under the Loan Agreement. You grant us a security interest in your ECheck/ACH Authorization in the amount of the Total of Payments (the "ECheck/ACH") which we may negotiate on the Payment Due Date or thereafter. All payments will be applied first to interest and fees and then to principal. Both the amount of interest charged and rate thereof are set forth respectively in the Finance Charge and Annual Percentage Rate disclosures in the Loan Agreement. Pursuant to the ECheck/ACH Authorization, you have directed us to initiate one or more ECheck/ACH debit entries to Your Bank Account for the amounts owed to us under the Loan Agreement on the Payment Due Date or thereafter and for certain fees that may be assessed in the event of dishonor when presentment is made to your bank on your ECheck/ACH Authorization.

**CONSENT TO ELECTRONIC COMMUNICATIONS:** The following terms and conditions govern electronic communications in connection with the Loan Agreement and the transaction evidenced hereby (the "Consent"). By electronically signing the Loan Agreement by clicking the "I AGREE" button and entering your name below, you are confirming that you have agreed to the terms and conditions of the Consent and that you have downloaded or printed a copy of this Consent for your records. You agree that:

Â- Any disclosure, notice, record or other type of information that is provided to you in connection with your transaction with us, including but not limited to, the Loan Agreement, this Consent, the Truth in Lending disclosures set forth above, change-in-term notices, fee and transaction information, statements, delayed disbursement letters, notices of adverse action, state mandated brochures and disclosures, and transaction information (â€œCommunicationsâ€), may be sent to you electronically by posting the information at our web site, [www.IAdvanceCash.com](http://www.IAdvanceCash.com), or by sending it to you by e-mail.

Â- We will not be obligated to provide any Communication to you in paper form unless you specifically request us to do so.

Â- You may obtain a copy of any Communication by contacting us at 300 Creek View Road, Suite 102, Newark, DE 19711, or by calling us at (800) 505-6073. You also can withdraw your consent to ongoing electronic communications in the same manner, and ask that they be sent to you in paper or non-electronic form. If you choose to receive Communications in paper or non-electronic form, we may elect to terminate the Loan Agreement and demand payment of the amount then due by the date of your withdrawal of consent, or by the expiration of any minimum term mandated by law, whichever is later.

Â- You agree to provide us with your current e-mail address for notices at the address or phone number indicated above. If your e-mail address changes, you must send us a notice of the new address by writing to us or sending us an e-mail, using secure messaging, at least five (5) days before the change.

Â- In order to receive electronic communications in connection with this transaction, you will need a working connection to the Internet. Your browser must support the Secure Sockets Layer (SSL) protocol. SSL provides a secure channel to send and receive data over the Internet. Microsoft Internet Explorer 6 and above supports this feature. You will also need either a printer connected to your computer to print disclosures/notices or sufficient hard drive space available to save the information (e.g., 1 megabyte or more). You must have your own Internet service provider.

Â- You hereby provide us with your express consent to receive SMS messages from us.

Â- We may amend (add to, delete or change) the terms of this consent to electronic communication by providing you with advance notice.

By entering your name and today's date and clicking the "I Agree" button below, you are electronically signing this document and confirming that: (1) your system meets the requirements set forth above; (2) you agree to receive Communications electronically; and (3) you are able to access and print or store information presented at this website.

**SECURITY.** Pursuant to Comment 2(a)(25) of the Federal Reserve Board Official Staff Commentary to Regulation Z 226.2, we have disclosed to you that our interest in the ECHECK/ACH Authorization Agreement is a security interest for Truth-in-Lending purposes only, because federal and Delaware law do not clearly address whether our interest in the ECHECK/ACH Authorization Agreement is a "security interest."

**RESCISSION:** You may rescind future payment obligations under the Loan Agreement, without cost or finance charges, no later than 5:00 p.m. Eastern time of the next business day immediately following the Disbursement Date ("Rescission Deadline"). To rescind future payment obligations on this loan, you must inform us in writing, by or before the Rescission Deadline, either by email to [info@iadvancecash.com](mailto:info@iadvancecash.com) or by fax to (800)-581-8148, that you want to cancel the future payment obligations on this loan and that you authorize us to effect a debit entry to Your Bank Account for the principal amount of the Loan Agreement. In the event that we timely receive your written notice of rescission on or before the Rescission Deadline but before the loan proceeds have been credited to Your Bank Account, we will not effect a debit entry to Your Bank Account and both ours and your obligations under the Loan Agreement will be rescinded. In the event that we timely receive your written notice of rescission on or before the Rescission Deadline but after the loan proceeds have been credited to Your Bank Account, we will effect a debit to Your Bank Account for the principal amount of the Loan Agreement. If we receive payment of the principal amount via the debit, ours and your obligations under the Loan Agreement will be rescinded. If we do not receive payment of the principal amount via the debit, then the Loan Agreement will remain in full force and effect.

**SPECIAL NOTICE:**



(1) THIS LOAN IS DESIGNED AS A SHORT-TERM CASH FLOW SOLUTION AND NOT DESIGNED AS A SOLUTION FOR LONGER TERM FINANCIAL PROBLEMS.

(2) ADDITIONAL FEES MAY ACCRUE IF THE LOAN IS REFINANCED OR "ROLLED OVER".

(3) CREDIT COUNSELING SERVICES ARE AVAILABLE TO CONSUMERS WHO ARE EXPERIENCING FINANCIAL PROBLEMS.

BY ENTERING YOUR NAME AND TODAY'S DATE AND CLICKING THE "I AGREE" BUTTON BELOW, YOU ARE ELECTRONICALLY SIGNING THE LOAN AGREEMENT AND AGREEING TO ALL THE TERMS OF THE LOAN AGREEMENT. YOU ALSO ACKNOWLEDGE RECEIPT OF A FULLY COMPLETED COPY OF THE LOAN AGREEMENT AND THE SCHEDULE OF CHARGES AND FEES BELOW.

A PAYDAY LOAN IS NOT INTENDED TO MEET LONG-TERM FINANCIAL NEEDS

#### SCHEDULE OF CHARGES AND FEES

According to the Commissioner's Regulation 2203, Section 1.0, Notification, every licensee shall furnish to every applicant a copy of the Itemized Schedule of Charges and Fees at the time when such application is made. As per the aforementioned Commissioner's Regulation 2203, Section 1.0, Notification, please review the itemized schedule of charges and fees below to better understand the charges and fees associated with your loan.

The APR, or Annual Percentage Rate, is the term for the effective interest rate that the borrower will pay on a loan to the lender in a standardized way. This is to show the total cost of credit to the consumer, expressed as an annual percentage of the amount of credit lent to the borrower. While APR is intended to make it easier to compare lenders and loan options, it can seem complicated to those that are not aware of its implications.

There is no account set up fee and, when scheduled payments are made, there are no additional fees outside the principal amount borrowed and the interest that accumulates on the amount borrowed. When comparing interest rates among companies, please note that some companies may charge set up fees, application fees, or other such charges while we do not charge for these services.

#### OTHER FEES

NSF FEE:\$25.00

#### VIP CUSTOMER FEES

DAYS	APR	LOAN AMOUNT											
		\$100.00	\$150.00	\$200.00	\$250.00	\$300.00	\$350.00	\$400.00	\$450.00	\$500.00	\$550.00	\$600.00	\$650.00
23	380.87%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
22	398.18%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
21	417.14%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
20	438.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
19	461.05%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
18	486.67%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
17	515.29%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
16	547.50%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
15	584.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
14	625.71%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
13	673.85%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
12	730.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
11	796.36%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
10	876.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
9	973.33%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00
8	1095.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00

#### STANDARD LOAN FEES (NEW CUSTOMERS AND NON-VIP CUSTOMERS)

DAYS	APR	LOAN AMOUNT							
		\$100.00	\$150.00	\$200.00	\$250.00	\$300.00	\$350.00	\$400.00	\$450.00
23	476.09%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
22	497.73%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
21	521.43%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
20	547.50%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
19	576.32%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
18	608.33%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
17	644.12%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
16	684.38%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
15	730.00%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
14	782.14%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
13	842.31%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
12	912.50%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
11	995.45%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
10	1095.00%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
9	1216.67%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
8	1368.75%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00

Printed Name: \_\_\_\_\_

Signature: (X) \_\_\_\_\_

Date: 3/24/2009

The term "Pay Date" 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.

**RIGHT TO CANCEL: YOU MAY CANCEL THIS LOAN WITHOUT COST OR FURTHER OBLIGATION TO US, IF YOU DO SO BY THE END OF BUSINESS ON THE BUSINESS DAY AFTER 3/24/2009.** To cancel, you may call us at (800) 505-6073 to alert us of your intention to cancel. Alternatively, you may print this page, complete the information in this box, sign and fax it to us at (800)-581-8148. If you follow these procedures but there are insufficient funds available in Your Bank Account to enable us to reverse the transfer of loan proceeds at the time we effect an ACH debit entry of Your Bank Account, your cancellation will not be effective and you will be required to pay the loan and our charges on the scheduled maturity date.

Signature: (X) \_\_\_\_\_

Date: \_\_\_\_\_



**ACH AUTHORIZATION (Integrity Advance, LLC)**  
**READ VERY CAREFULLY BEFORE INITIALING OR SIGNING**

**FORM #2b**

**Loan #: 30609872**

**ACH AUTHORIZATION :** You hereby voluntarily authorize us, and our successors and assigns, to initiate an automatic credit and debit entry

**YOUR BANK ACCOUNT INFO:**

Name:		Bank Name:
Address:		Transit ABA Number:
City, State Zip:		Checking Account Number:
Phone:		
Amount:	\$650.00	
Payment Due Date:	4/10/2009	

This ACH Authorization is a part of and relates to the Loan Agreement dated 3/24/2009 (the "Loan Agreement"). The words "you", "your" and "I" mean the borrower who has electronically signed it. The words "we", "us" and "our" mean Integrity Advance, LLC ("Lender"), a licensed lender of payday loans regulated by the Delaware State Bank Commissioner. You hereby voluntarily authorize us, and our successors and assigns, to initiate automatic credit and debit entries to Your Bank Account in accordance with the Loan Agreement. You agree that we will initiate a credit entry to Your Bank Account for the Amount Financed on or about the Disbursement Date.

You also authorize us to initiate an ACH debit entry to Your Bank Account:

- (a) for the Total of Payments plus any accrued fees on the Payment Due Date, or on any subsequent Renewal Payment Due Date, if you contact us at least three (3) business days prior to such date and select Payment Option (a) in the Loan Agreement (Pay in full);
- (b) for the Finance Charge plus any accrued fees on the Payment Due Date, or on any subsequent Renewal Payment Due Date, if you contact us at least three (3) business days prior to such date and select Payment Option (b) in the Loan Agreement (RENEWAL), or if you fail to contact us to confirm your payment option;
- (c) for the accrued finance charges and fees, plus \$50.00 on each Pay Date<sup>1</sup> after the fourth (4<sup>th</sup>) Renewal Payment Due Date, until all amounts owed under the Loan Agreement are paid in full; and
- (d) for any accrued Returned Payment charges, subject to the Loan Agreement.

You agree that we may re-initiate a debit entry for the same amount if the ACH debit entry is dishonored or payment is returned for any reason. The ACH Authorizations set forth in the Loan Agreement are to remain in full force and effect for this transaction until your indebtedness to us for the Total of Payments, plus any other charges or fees incurred and described in the Loan Agreement, is fully satisfied. You may only revoke the above authorizations by contacting us directly. If 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.



If a payment is returned unpaid, you authorize us to make a one-time electronic fund transfer from Your Bank Account to collect a fee of \$25. You voluntarily authorize us, and our successor and assigns, to initiate a debit entry to Your Bank Account for payment of this fee. You further authorize us to initiate debit entries as necessary to recoup the outstanding loan balance whenever an ACH transaction is returned to us for any reason. You understand and agree that this ACH authorization is provided for your convenience, and that you have authorized repayment of your loan by ACH debits voluntarily. You agree that you may repay your indebtedness through other means, including by providing timely payment via cashier's check or money order directed to: Integrity Advance, 300 Creek View Road, Suite 102, Newark, DE 19711.

You authorize us to verify all of the information that you have provided, including past and/or current information. You agree that the ACH Authorization herein is for repayment of a single payment loan, or for single payment of finance charges for Renewals, and that these entries shall not recur at substantially regular intervals. If there is any missing or erroneous information in or with your loan application regarding your bank, bank routing and transit number, or account number, then you authorize us to verify and correct such information.

If your payment is returned to us by your financial institution due to insufficient funds or a closed account, you agree that we may recover court costs and reasonable attorney's fees incurred by us.

Signature: (X) \_\_\_\_\_

Date: 3/24/2009

In addition, you also agree to the following:

1. I understand that you are licensed in the State of Delaware and operate your business within the State of Delaware. I understand that I could have traveled to Delaware to apply for a loan at your office in Delaware but I have chosen to apply for this loan via the internet, telephone and/or fax for my own convenience.
2. I understand that no binding contract between myself and you will be formed until my application is received by you in Delaware and is approved by your underwriting department, also located in Delaware.
3. I understand that if my application is approved funds will be transferred to me from our bank account in Delaware and the contract will not be completely performed until I have repaid the loan in full, along with any fees, and my payment is received by you in Delaware or is deposited electronically into our bank Account in Delaware.

X \_\_\_\_\_ Initial here only if you have read, agree to, and understand the statements, policies and procedures listed above.

4. I acknowledge that I have received and read the Integrity Advance Privacy Policy.

5. I understand that I may make choices regarding the way that the Integrity Advance family of companies uses and shares my information. I acknowledge the following notice regarding those choices:

- The Integrity Advance family of companies is providing this notice.
- Federal law gives you the right to limit some but not all marketing from the Integrity Advance Companies. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from the Integrity Advance Companies.
- You may limit the Integrity Advance affiliated companies, from marketing their products or services to you based on your personal information that they receive from other Integrity Advance companies. This information includes your income, your account history, and your credit history, report, or score.
- Your choice to limit marketing offers from the Integrity Advance companies will apply until you tell us to change your choice.
- If you have already made a choice to limit marketing offers from the Integrity Advance companies, you do not need to act again.
- To limit our sharing of information with Third Parties and Affiliated Companies, and/or to limit marketing offers from Affiliated Companies, contact us:
  - ♦ Electronically, by clicking submitting our online opt-out form
  - ♦ By Mail or Fax: By printing out and completing the Mail or Fax opt-out form and sending the form to: 300 Creek View Road, Suite 102, Newark, DE 19711 or via Fax to 302-861-1717.

I certify that I have received, read and understood this notice regarding my Opt-out choices.



X Initial here only if you have read, agree to, and understand the statements, policies and procedures listed above.

6. I understand that the Loan Agreement and any subsequent agreements between myself and you are subject to Delaware law, that I agree to be bound by such law, and acknowledge that, in the event of a bona fide dispute between myself and you, that Delaware law shall exclusively apply to such disputes, regardless of where any proceedings are held.

7. I understand that submitting false information to induce you to grant me a loan, i.e., a false social security number, false identification, altered bank statements, etc., constitutes fraud and may subject me to criminal penalties. I further acknowledge that you have disclosed your policy that you will report such instances of fraud to the appropriate law enforcement agencies.

8. I understand if I prefer to pay all or part of the loan amount, rather than accept the refinancing, I can call you at (800) 505-6073 at least three (3) business days before my payment is due.

9. I understand and accept if I default on my loan and I do not cooperate with you on repaying my debt, including the original loan amount and all fees that may apply, you may submit my name to a collection agency and report the incident to a consumer reporting agency database, such as Teletrack and/or CL Verify, which may negatively impact my ability to write checks and to receive loans or advances from other companies.

10. I understand and accept if my account is turned over to a third party collection agency and they are unable to collect the amount owed you, the collection agency will then pursue every action granted to them under the law, including but not limited to wage garnishment.

X Initial here only if you have read, agree to, and understand the statements, policies and procedures listed above.

[1] The term "Pay Date" 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.

## ARBITRATION PROVISION

FORM #3

(Integrity Advance, LLC) Loan #: 30609072

Borrower's Name:

Date: 3/24/2009

Borrower: PLEASE READ AND COMPLETE THE FOLLOWING:

**DEFAULT, GOVERNING LAW, ASSIGNMENT AND EXECUTION.** You will be in default if you do not pay us the amounts you owe us under the Loan Agreement. The Application, Loan Agreement, and ACH Authorization, will be governed by the laws of the State of Delaware. This Arbitration Provision is governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16 ("FAA"). We may assign or transfer the Loan Agreement or any of our rights hereunder. If the Loan Agreement is consummated, then you agree that the electronically signed Loan Agreement, ACH Authorization, and Arbitration Provision we receive from you will be considered the original executed Loan Agreement, ACH Authorization, and Arbitration Provision, respectively, which are binding and enforceable as to both parties.

**WAIVER OF JURY TRIAL AND ARBITRATION PROVISION.** Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator") for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. We have a policy of arbitrating all disputes with customers which cannot be resolved in a small claims tribunal, including the scope and validity of this Arbitration Provision and any right you may have to participate in an alleged class action.

**THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS:**

1. For purposes of this Waiver of Jury Trial and Arbitration Provision, the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to the Loan Agreement, the information you gave us before entering into the Loan Agreement, including the customer information application, and/or any past agreement or agreements between you and us; (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (j) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

2. You acknowledge and agree that by entering into this Arbitration Provision:

(a) **YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;**



(b) YOU ARE GIVING UP YOUR RIGHT TO HAVE A COURT, OTHER THAN A SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and

(c) YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.

3. Except as provided in Paragraph 6 below, all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. **THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.**

4. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Regardless of who demands arbitration, you shall have the right to select any of the following arbitration organizations to administer the arbitration: the American Arbitration Association (1-800-778-7879) <http://www.adr.org> or JAMS (1-800-352-5267) <http://www.jamsadr.com>. The parties may also agree to select an arbitrator who resides within your federal judicial district who is an attorney, retired judge, or arbitrator registered and in good standing with an arbitration association, and arbitrate in accordance with such arbitrator's rules. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Arbitration Provision, including the limitations on the arbitrator below. You may obtain a copy of the rules and procedures by contacting the arbitration organization listed above.

5. Regardless of who demands arbitration, at your request we will advance your portion of the arbitration expenses, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the FAA, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitration hearing will be conducted in the county of your residence. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, then you will not be responsible for reimbursing us for your portion of the Arbitration Fees, and we will reimburse you for any Arbitration Fees you have previously paid. If the arbitrator does not render a decision or an award in your favor resolving the dispute, then the arbitrator shall require you to reimburse us for the Arbitration Fees we have advanced, not to exceed the amount which would have been assessed as court costs if the dispute had been resolved by a state court with jurisdiction, less any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award may be filed with any court having jurisdiction.

6. All parties, including related third parties, shall retain the right to seek adjudication in a small claims tribunal in the county of your residence for disputes within the scope of such tribunal's jurisdiction. Any dispute, which cannot be adjudicated within the jurisdiction of a small claims tribunal, shall be resolved by binding arbitration. Any appeal of a judgment from a small claims tribunal shall be resolved by binding arbitration.

7. This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA. If a final non-appealable judgment of a court having jurisdiction over this transaction finds, for any reason, that the FAA does not apply to this transaction, then our agreement to arbitrate shall be governed by the arbitration law of the State of Delaware.

8. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. This Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. This Arbitration Provision continues in full force and effect, even if your obligations have been paid or discharged through bankruptcy. This Arbitration Provision survives any cancellation, termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing. If any of this Arbitration Provision is held invalid, the remainder shall remain in effect.

9. **OPT-OUT PROCESS.** You may choose to opt out of the Arbitration Provision, but only by following the process set forth below. If you do not wish to be subject to this Arbitration Provision, then you must notify us in writing within sixty (60) calendar days of the date of this Arbitration Provision at the following address: Integrity Advance, 300 Creek View Road, Suite 102, Newark, DE 19711. Your written notice must include your name, address, account number or social security number, the date of this Arbitration Provision, and a statement that you wish to opt out of this Arbitration Provision. If you choose to opt out, then your choice will apply only to the Application, Loan Agreement, ACH Authorization, and Arbitration Provisions submitted by you in this transaction.

By entering your name and clicking the "I Agree" button below, you are electronically signing and agreeing to all the terms of the Loan Agreement, the Arbitration Provision, and the ACH Authorization (to the Loan Documents) and providing or confirming your electronic signature on all of the Loan Documents, and you are expressly consenting to receive SMS messages from us. You agree that your electronic signature has the full force and effect of your physical signature and that it binds you to the Loan Documents in the same manner a physical signature would do so. By electronically signing below, you also acknowledge that all of the Loan Documents were filled in before you did so and you have read, understand, and agree to all of the terms of the Loan Documents, including the provision entitled "**WAIVER OF JURY TRIAL AND ARBITRATION PROVISION**" and the Privacy Policy and Covered Borrower Identification Statement. You agree that your right to file suit against us for any claim or dispute regarding the Loan Documents or your relationship with us is limited by the **WAIVER OF JURY TRIAL AND ARBITRATION PROVISION**. You also agree that all information you provided to us prior to or during the completion of the Loan Documents is complete and accurate. You represent that you are not a debtor under any proceeding in bankruptcy and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code.

Printed Name \_\_\_\_\_



Signature: (X) \_\_\_\_\_ Date: 3/24/2009 \_\_\_\_\_

Electronic Signature Information

eSignature Field	eSignature Value
Application Signature:	
Loan Note Signature:	
Loan Note Supplement Initials 1:	
Loan Note Supplement Initials 2:	
Loan Note Supplement Initials 3:	
Loan Note Supplement Signature:	
ACH Authorization Signature:	
Non Military Signature:	

# Appendix C



**APPLICATION (Integrity Advance, LLC) FORM #1 Loan #: 53649938**

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. *What this means for you:* When you open an account, we ("we" or "us" refers to "Integrity Advance, LLC") will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying document.

**NOTICE: WE ARE REQUIRED BY LAW TO ADOPT PROCEDURES TO REQUEST AND RETAIN IN OUR RECORDS INFORMATION NECESSARY TO VERIFY YOUR IDENTITY**

**PERSONAL INFORMATION**

Name:	Social Security Number:	
Address:	City:	State: Zip:
Date of Birth:	Length at Address: Yrs Mths	Email Address:
Home Phone:	Cell Phone:	Fax Number:

**EMPLOYMENT INFORMATION**

Employer:	Month Net Income:	Work Phone:
Pay Period: SemiMonthly	Next Pay Date:	2nd Pay Date:
Length of Employment:	Length of Employment:	
Supervisor's Name:	Supervisor or HR Phone:	

**BANK INFORMATION**

Type of Account: Checking	Routing Number:	Account Number:
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**REFERENCE INFORMATION**

1	Phone Number:	Relationship:
2	Phone Number:	Relationship:

By typing your name and clicking "I Agree" below, you are electronically signing this Application. By electronically signing and submitting this Application, you certify that all of the information provided above is true, complete and correct and provided to us for the purpose of inducing us to make the loan for which you are applying and you acknowledge receiving a fully completed copy of this Application and accompanying documents. This Application will be deemed incomplete and will not be processed by us unless agreed by you below. By electronically signing below you also agree that we may obtain and use information about you from third parties, including consumer reports, to evaluate your application and to review your account for as long as you owe any amount to us.

**COVERED BORROWER IDENTIFICATION STATEMENT:**

Federal law provides important protections to active duty members of the Armed Forces and their dependents. To ensure that these protections are provided to eligible applicants, we require you to select and electronically sign ONE of the following statements as applicable:

I AM a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer, or such member serving on Active National Guard duty.

I AM a dependent of a member of the Armed Forces on active duty as described above, because I am the member's spouse, the member's child under the age of eighteen years old, or I am an individual for whom the member provided more than one-half of my financial support for 180 days immediately preceding today's date.

I AM NOT a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer (or a dependent of such a member).

**WARNING: IT IS IMPORTANT TO FILL OUT THIS FORM ACCURATELY. KNOWINGLY MAKING A FALSE STATEMENT ON A CREDIT APPLICATION IS A CRIME.**

**LOAN AGREEMENT FORM #2 Loan #: 53649938**

Disbursement Date: 11/3/2011

Payment Date: 11/15/2011

Loan #: 53649938

(Integrity Advance, LLC) 300 Creek View Road Suite 102  
Newark, DE 19711 Phone: (800) 505-6073

NAME:

STATE:

In this Loan Agreement (hereinafter, the "Loan Agreement") the words "you", "your" and "I" mean the borrower who has electronically signed it. The words "we", "us" and "our" mean Integrity Advance, LLC ("Lender"), a licensed lender of payday loans regulated by the Delaware State Bank Commissioner.

**FEDERAL TRUTH IN LENDING DISCLOSURES**

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ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate. 730%	The dollar amount the credit will cost you. \$120.00	The amount of credit provided to you or on your behalf. \$500.00	The amount you will have paid after you have made all payments as scheduled. \$620.00

**Security:** You are giving a security interest in the ACH Authorization.

**Prepayment:** If you pay off early, you will be entitled to a refund of the unearned portion of the finance charge.

See the terms of the Loan Agreement below for any additional information about nonpayment, default, and prepayment refunds.

Itemization of Amount Financed: Amount given to you directly: \$500.00. Amount paid on Loan#: 53649938 with us: \$620.00.

**PAYMENT OPTIONS:** You must select your payment option at least three (3) business days prior to your Payment Due Date by contacting us at (800) 505-6073. At that time, you may choose:

(a) **Payment in full:** You may pay the Total of Payments shown above, plus any accrued fees, to satisfy your loan in full. When you contact us and choose this option, we will debit Your Bank Account (defined below in the ACH Authorization) for the Total of Payments plus any accrued fees, in accordance with the ACH Authorization below; OR

(b) **Renewal:** You may renew your loan (that is, extend the Payment Due Date of your loan until your next Pay Date\*) by authorizing us to debit Your Bank Account for the amount of the Finance Charge, plus any accrued fees. If you choose this option, your new Payment Due Date will be your next Pay Date, and the rest of the terms of the Loan Agreement will continue to apply.

\* 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.

**AUTO-RENEWAL:** If you fail to contact us to confirm your Payment Option at least three (3) business days prior to any Payment Due Date, or otherwise fail to pay the loan in full on any Pay Date, Lender may automatically renew your loan as described under (b) above, and debit Your Bank Account on the Payment Due Date or thereafter for the Finance Charge and any accrued fees. Your new Payment Due Date will be your next Pay Date, and the rest of the terms of the Loan Agreement will continue to apply. You must contact us at least three (3) business days prior to your new Payment Due Date to confirm your payment option for the Renewal. If you fail to contact us, or otherwise fail to pay the loan in full on your new Payment Due Date, we may automatically renew the loan until your next Pay Date. After your initial loan payment, you may obtain up to four (4) Renewals. All terms of the Loan Agreement continue to apply to Renewals. All Renewals are subject to Lender's approval. Under Delaware law, if you qualify, we may allow you to enter into up to four (4) Renewals, also known as a "refinancing" or a "rollover". The full outstanding balance shall be due upon completion of the term of all Renewals, unless you qualify for Auto-Workout, as described below.

**AUTO-WORKOUT:** Unless you contact us to confirm your option for Payment in Full prior to your Fourth Renewal Payment Due Date, your loan will automatically be placed into an Auto-Workout payment plan. Under the Auto-Workout payment plan, Your Bank Account will automatically be debited on your Pay Date for accrued finance charges plus a principal payment of \$50.00, until all amounts owed hereunder are paid in full. This does not limit any of Lender's other rights under the terms of the Loan Agreement. All Auto-Workout payment plans are subject to Lender's approval.

**DISBURSEMENT:** In order to complete your transaction with us, you must electronically sign the Loan Agreement by clicking the "I Agree" button at the end of the Loan Agreement, as well as all other "I Agree" buttons that appear within the Loan Agreement and related documents that appear below. We will then approve or deny your application and the Loan Agreement. If the Loan Agreement is approved, we will use commercially reasonable efforts to affect a credit entry by depositing the proceeds from the Loan Agreement into Your Bank Account on the Disbursement Date. Unavoidable delays as a result of bank holidays, the processing schedule of your individual bank, the untimely receipt of pay stubs, if such pay stubs are required, inadvertent processing errors, "acts of God", and/or "acts of terror" may extend the time for the deposit. You will have the option of rescinding the loan and this Loan Agreement in accordance with the "RESCISSION" provision listed below, which describes, among other things, the time and manner within which notice of rescission must be given to be effective. Failure to give such notice as and when set out in the "RESCISSION" provision will be deemed to constitute acceptance by you of the delayed disbursement date.

**YOUR PROMISE TO PAY:** You promise to pay us the Total of Payments according to the terms of our disclosures set forth below on the Payment Due Date and all other amounts owed to us under the Loan Agreement. You grant us a security interest in your ACH Authorization (defined below) in the amount of the Total of Payments which we may negotiate on the Payment Due Date or thereafter. All payments will be applied first to interest and fees and then to principal. Both the amount of interest charged and rate thereof are set forth respectively in the Finance Charge and Annual Percentage Rate disclosures in the Loan Agreement. Pursuant to the ACH Authorization, you have directed us to initiate one or more ECheck/ACH (collectively "ACH") automatic credit debit entries to Your Bank Account for the amounts owed to us under the Loan Agreement on the Payment Due Date or thereafter and for certain fees that may be assessed in the event of dishonor when presentment is made to your bank on your ACH Authorization.

**CONSENT TO ELECTRONIC COMMUNICATIONS:** The following terms and conditions govern electronic communications in connection with the Loan Agreement and the transaction evidenced hereby (the "Consent"). By electronically signing the Loan Agreement by clicking the "I AGREE" button and entering your name below, you are confirming that you have agreed to the terms and conditions of the Consent and that you have downloaded or printed a copy of this Consent for your records. You agree that:

- Any disclosure, notice, record or other type of information that is provided to you in connection with your transaction with us, including but not limited to, the Loan Agreement, this Consent, the Truth in Lending disclosures set forth above, change-in-term notices, fee and transaction information, statements, delayed disbursement letters, notices of adverse action, state mandated



- brochures and disclosures, and transaction information (â€œCommunicationsâ€), may be sent to you electronically by posting the information at our web site, [www.IAdvanceCash.com](http://www.IAdvanceCash.com), or by sending it to you by e-mail.
- We will not be obligated to provide any Communication to you in paper form unless you specifically request us to do so.
  - You may obtain a copy of any Communication by contacting us at 300 Creek View Road, Suite 102, Newark, DE 19711, or by calling us at (800) 505-6073. You also can withdraw your consent to ongoing electronic communications in the same manner, and ask that they be sent to you in paper or non-electronic form. If you choose to receive Communications in paper or non-electronic form, we may elect to terminate the Loan Agreement and demand payment of the amount then due by the date of your withdrawal of consent; or by the expiration of any minimum term mandated by law, whichever is later.
  - You agree to provide us with your current e-mail address for notices at the address or phone number indicated above. If your e-mail address changes, you must send us a notice of the new address by writing to us or sending us an e-mail, using secure messaging, at least five (5) days before the change.
  - In order to receive electronic communications in connection with this transaction, you will need a working connection to the Internet. Your browser must support the Secure Sockets Layer ("SSL") protocol. SSL provides a secure channel to send and receive data over the Internet. Microsoft Internet Explorer 6 and above supports this feature. You will also need either a printer connected to your computer to print disclosures/notices or sufficient hard drive space available to save the information (e.g., 1 megabyte or more). You must have your own Internet service provider.
  - You hereby provide us with your express consent to receive SMS messages from us via any of the phone numbers provided to us.
  - We may amend (add to, delete or change) the terms of this Consent to electronic communication by providing you with advance notice in accordance with applicable law.

By entering your name and today's date and clicking the "I Agree" button below, you are electronically signing this document and confirming that: (1) your system meets the requirements set forth above; (2) you agree to receive Communications electronically; and (3) you are able to access and print or store information presented at this website.

**SECURITY:** Pursuant to Comment 2(a)(25) of the Federal Reserve Board Official Staff Commentary to Regulation Z 226.2, we have disclosed to you that our interest in the ACH Authorization is a security interest for Truth-in-Lending purposes only, because federal and Delaware law do not clearly address whether our interest in the ACH Authorization is a "security interest."

**RESCISSION:** You may rescind future payment obligations under the Loan Agreement, without cost or finance charges, no later than 5:00 p.m. Eastern time of the next business day immediately following the Disbursement Date ("Rescission Deadline"). To rescind future payment obligations on this loan, you must inform us in writing, by or before the Rescission Deadline, either by email to [info@iadvancecash.com](mailto:info@iadvancecash.com) or by fax to (800)-581-8148, that you want to cancel the future payment obligations on this loan and that you authorize us to effect a debit entry to Your Bank Account for the principal amount of the Loan Agreement. In the event that we timely receive your written notice of rescission on or before the Rescission Deadline but before the loan proceeds have been credited to Your Bank Account, we will not affect a debit entry to Your Bank Account and both ours and your obligations under the Loan Agreement will be rescinded. In the event that we timely receive your written notice of rescission on or before the Rescission Deadline but after the loan proceeds have been credited to Your Bank Account, we will affect a debit to Your Bank Account for the principal amount of the Loan Agreement. If we receive payment of the principal amount via the debit, ours and your obligations under the Loan Agreement will be rescinded. If we do not receive payment of the principal amount via the debit, then the Loan Agreement will remain in full force and effect.

**ASSIGNMENT:** This Agreement may not be assigned by you. We may assign or transfer this Agreement and our related rights and obligations without notice to you and your consent is not required if we make such an assignment or transfer.

**DEFAULT:** You will be in default under this Agreement if you do not pay us what you owe us when due or your chosen payment method is stopped, denied or otherwise dishonored.

**REFUSED INSTRUMENT CHARGE:** If your payment method is stopped, denied or otherwise dishonored, then you agree to pay us a non-sufficient funds (â€œNSFâ€) fee of \$25.

**GOVERNING LAW:** The laws of the State of Delaware will govern this Agreement. However, any dispute arising out of this Loan Agreement and any renewal thereof will be subject to the ARBITRATION PROVISION, which is governed by the Federal Arbitration Act.

#### SPECIAL NOTICE:

(1) THIS LOAN IS DESIGNED AS A SHORT-TERM CASH FLOW SOLUTION AND NOT DESIGNED AS A SOLUTION FOR LONGER TERM FINANCIAL PROBLEMS.

(2) ADDITIONAL FEES MAY ACCRUE IF THE LOAN IS REFINANCED OR "ROLLED OVER".

(3) CREDIT COUNSELING SERVICES ARE AVAILABLE TO CONSUMERS WHO ARE EXPERIENCING FINANCIAL PROBLEMS.

BY ENTERING YOUR NAME AND TODAY'S DATE AND CLICKING THE "I AGREE" BUTTON BELOW, YOU ARE ELECTRONICALLY SIGNING THE LOAN AGREEMENT AND AGREEING TO ALL THE TERMS OF THE LOAN AGREEMENT. YOU ALSO ACKNOWLEDGE RECEIPT OF A FULLY COMPLETED COPY OF THE LOAN AGREEMENT AND THE SCHEDULE OF CHARGES AND FEES BELOW.

#### SCHEDULE OF CHARGES AND FEES

A PAYDAY LOAN IS NOT INTENDED TO MEET LONG-TERM FINANCIAL NEEDS

According to the Commissioner's Regulation 2203, Section 1.0, Notification, every licensee shall furnish to every applicant a copy of the Itemized Schedule of Charges and Fees at the time when such application is made. As per the aforementioned Commissioner's Regulation 2203, Section 1.0, Notification, please review the itemized schedule of charges and fees below to better understand the charges



and fees associated with your loan.

The APR, or Annual Percentage Rate, is the term for the effective interest rate that the borrower will pay on a loan to the lender in a standardized way. This is to show the total cost of credit to the consumer, expressed as an annual percentage of the amount of credit lent to the borrower. While APR is intended to make it easier to compare lenders and loan options, it can seem complicated to those that are not aware of its implications.

There is no account set up fee and, when scheduled payments are made, there are no additional fees outside the principal amount borrowed and the interest that accumulates on the amount borrowed. When comparing interest rates among companies, please note that some companies may charge set up fees, application fees, or other such charges while we do not charge for these services.

## OTHER FEES

**NSF FEE:**\$25.00

## VIP CUSTOMER FEES

### LOAN AMOUNT

DAYS	APR	\$100.00	\$150.00	\$200.00	\$250.00	\$300.00	\$350.00	\$400.00	\$450.00	\$500.00	\$550.00	\$600.00	\$650.00	\$700.00
23	380.87%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00	\$168.00
22	398.18%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00	\$168.00
21	417.14%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00	\$168.00
20	438.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00	\$168.00
19	461.05%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00	\$168.00
18	486.67%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00	\$168.00
17	515.29%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00	\$168.00
16	547.50%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00	\$168.00
15	584.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00	\$168.00
14	625.71%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00	\$168.00
13	673.85%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00	\$168.00
12	730.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00	\$168.00
11	796.36%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00	\$168.00
10	876.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00	\$168.00
9	973.33%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00	\$168.00
8	1095.00%	\$24.00	\$36.00	\$48.00	\$60.00	\$72.00	\$84.00	\$96.00	\$108.00	\$120.00	\$132.00	\$144.00	\$156.00	\$168.00

## STANDARD LOAN FEES (NEW CUSTOMERS AND NON-VIP CUSTOMERS)

### LOAN AMOUNT

DAYS	APR	\$100.00	\$150.00	\$200.00	\$250.00	\$300.00	\$350.00	\$400.00	\$450.00	\$500.00
23	476.09%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00
22	497.73%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00
21	521.43%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00
20	547.50%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00
19	576.32%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00
18	608.33%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00
17	644.12%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00
16	684.38%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00
15	730.00%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00
14	782.14%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00
13	842.31%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00
12	912.50%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00
11	995.45%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00
10	1095.00%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00
9	1216.67%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00
8	1368.75%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00	\$150.00

**RIGHT TO CANCEL: YOU MAY CANCEL THIS LOAN WITHOUT COST OR FURTHER OBLIGATION TO US, IF YOU DO SO BY THE END OF BUSINESS ON THE BUSINESS DAY AFTER 11/2/2011.** To cancel, you may call us at (800) 505-6073 to alert us of your intention to cancel. Alternatively, you may print this page, complete the information in this box, sign and fax it to us at (800)-581-8148. If you follow these procedures but there are insufficient funds available in Your Bank Account to enable us to reverse the transfer of loan proceeds at the time we effect an ACH debit entry of Your Bank Account, your cancellation will not be effective and you will be required to pay the loan and our charges on the scheduled maturity date.

Signature: (X) \_\_\_\_\_ Date: \_\_\_\_\_

## ACH AUTHORIZATION (Integrity Advance, LLC) FORM #2b Loan #: 53649938 READ VERY CAREFULLY BEFORE INITIALING OR SIGNING

**ACH AUTHORIZATION:** You hereby voluntarily authorize us, and our successors and assigns, to initiate an ACH entry to Your Bank Account as described below:

"YOUR BANK ACCOUNT" INFO:



Amount: \$620.00  
 Payment Due Date: 11/15/2011

This ACH Authorization is a part of and relates to the Loan Agreement dated 11/2/2011 (the "Loan Agreement"). The words "you", "your" and "I" mean the borrower who has electronically signed it. The words "we", "us" and "our" mean Integrity Advance, LLC ("Lender"), a licensed lender of payday loans regulated by the Delaware State Bank Commissioner. You hereby voluntarily authorize us, and our successors and assigns, to initiate automatic credit and debit entries to Your Bank Account in accordance with the Loan Agreement. You agree that we will initiate a credit entry to Your Bank Account for the Amount Financed on or about the Disbursement Date. You agree that we may initiate a debit entry to Your Bank Account up to two additional times after our first presentation and re-initiate a debit entry for the same amount if the ACH is dishonored.

You also authorize us to initiate an ACH debit entry to Your Bank Account:

(a) for the Total of Payments plus any accrued fees on the Payment Due Date, or on any subsequent Renewal Payment Due Date, if you contact us at least three (3) business days prior to such date and select Payment Option (a) in the Loan Agreement (Pay in full);

(b) for the Finance Charge plus any accrued fees on the Payment Due Date, or on any subsequent Renewal Payment Due Date, if you contact us at least three (3) business days prior to such date and select Payment Option (b) in the Loan Agreement (RENEWAL), or if you fail to contact us to confirm your payment option;

(c) for the accrued finance charges and fees, plus \$50.00 on each Pay Date after the fourth (4th) Renewal Payment Due Date, until all amounts owed under the Loan Agreement are paid in full; and

(d) for any accrued NSF Fees, subject to the Loan Agreement.

The ACH Authorizations set forth in the Loan Agreement are to remain in full force and effect for this transaction until your indebtedness to us for the Total of Payments, plus any other charges or fees incurred and described in the Loan Agreement, is fully satisfied. You may only revoke the above authorizations by contacting us directly. If 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.

You further authorize us to initiate two additional debit entries as necessary to recoup the outstanding loan balance whenever an ACH transaction is returned to us for any reason. You understand and agree that this ACH Authorization is provided for your convenience, and that you have authorized repayment of your loan by ACH debits voluntarily. You agree that you may repay your indebtedness through other means, including by providing timely payment via cashiers check or money order directed to: Integrity Advance, 300 Creek View Road, Suite 102, Newark, DE 19711.

You authorize us to verify all of the information that you have provided, including past and/or current information. You agree that the ACH Authorization herein is for repayment of a single payment loan, or for single payment of finance charges for Renewals, and that these entries shall not recur at substantially regular intervals. If there is any missing or erroneous information in or with your loan application regarding your bank, bank routing and transit number, or account number, then you authorize us to verify and correct such information.

If your payment is returned to us by your financial institution due to insufficient funds or a closed account, you agree that we may recover court costs and reasonable attorney's fees incurred by us.

In addition, you also agree to the following:

1. I understand that you are licensed in the State of Delaware and operate your business within the State of Delaware. I understand that I could have traveled to Delaware to apply for a loan at your office in Delaware but I have chosen to apply for this loan via the internet, telephone and/or fax for my own convenience.
2. I understand that no binding contract between myself and you will be formed until my application is received by you in Delaware and is approved by your underwriting department, also located in Delaware.
3. I acknowledge that I have received, read, understand, and agree to the Integrity Advance Privacy Policy.
4. I understand that the Loan Agreement and any subsequent agreements between myself and you are subject to Delaware law, that I agree to be bound by such law, and acknowledge that, in the event of a bona fide dispute between myself and you, that Delaware law shall exclusively apply to such disputes, regardless of where any proceedings are held.
5. I understand that submitting false information to induce you to grant me a loan (i.e., a false social security number, false identification, altered bank statements, etc.) constitutes fraud and may subject me to criminal penalties. I further acknowledge that you have disclosed your policy that you will report such instances of fraud to the appropriate law enforcement agencies.
6. I understand if I prefer to pay all or part of the loan amount, I can call you at (800) 505-6073 at least three (3) business days before my payment is due.
7. I understand and accept if I default on my loan and I do not cooperate with you on repaying my debt, including the original loan amount and all fees that may apply, you may submit my name to a collection agency and report the incident to a consumer reporting agency database, such as Teletrack and/or CL Verify, which may negatively impact my ability to write checks and to receive loans or advances.



from other companies.

8. I understand and accept if my account is turned over to a third party collection agency and they are unable to collect the amount owed you, the collection agency will then pursue every action granted to them under the law, including but not limited to wage garnishment.

## ARBITRATION PROVISION

### FORM #3

(Integrity Advance, LLC) Loan #: 53649938

**Borrower: PLEASE READ AND COMPLETE THE FOLLOWING:**

**DEFAULT, GOVERNING LAW, ASSIGNMENT AND EXECUTION.** You will be in default if you do not pay us the amounts you owe us under the Loan Agreement. The Application, Loan Agreement, and ACH Authorization, will be governed by the laws of the State of Delaware. This Arbitration Provision is governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16 ("FAA"). We may assign or transfer the Loan Agreement or any of our rights hereunder. If the Loan Agreement is consummated, then you agree that the electronically signed Loan Agreement, ACH Authorization, and Arbitration Provision we receive from you will be considered the original executed Loan Agreement, ACH Authorization, and Arbitration Provision, respectively, which are binding and enforceable as to both parties.

**WAIVER OF JURY TRIAL AND ARBITRATION PROVISION.** Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator") for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. We have a policy of arbitrating all disputes with customers which cannot be resolved in a small claims tribunal, including the scope and validity of this Arbitration Provision and any right you may have to participate in an alleged class action.

### **THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS:**

1. For purposes of this Waiver of Jury Trial and Arbitration Provision, the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to the Loan Agreement, the information you gave us before entering into the Loan Agreement, including the customer information application, and/or any past agreement or agreements between you and us; (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (j) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

2. You acknowledge and agree that by entering into this Arbitration Provision:

**(a) YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;**

**(b) YOU ARE GIVING UP YOUR RIGHT TO HAVE A COURT, OTHER THAN A SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and**

**(c) YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.**

3. Except as provided in Paragraph 6 below, all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. **THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.**

4. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Regardless of who demands arbitration, you shall have the right to select any of the following arbitration organizations to administer the arbitration: the American Arbitration Association (1-800-778-7879) <http://www.adr.org> or JAMS (1-800-352-5267) <http://www.jamsadr.com>. The parties may also agree to select an arbitrator who resides within your federal judicial district who is an attorney, retired judge, or arbitrator registered and in good standing with an arbitration association, and arbitrate in accordance with such arbitrator's rules. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Arbitration Provision, including the limitations on the arbitrator below. You may obtain a copy of the rules and procedures by contacting the arbitration organization listed above.



5. Regardless of who demands arbitration, at your request we will pay, or reimburse you for, your portion of the arbitration expenses, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the FAA, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitration hearing will be conducted in the county of your residence. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award may be filed with any court having jurisdiction. If, after finding in your favor in any respect on the merits of your claim, the arbitrator issues you an award that is greater than the value of our last written settlement offer made before an arbitrator was selected, then we will: (i) pay you the amount of the award or \$7,500 ("the alternative payment"), whichever is greater; and (ii) pay your attorney the amount of attorneys' fees, and reimburse any expenses (including expert witness fees and costs) that your attorney reasonably incurs for investigating, preparing, and pursuing your claim in arbitration ("the attorney fees"). If we did not make a written offer to settle the dispute before an arbitrator was selected, you and your attorney will be entitled to receive the alternative payment and the attorney fees, respectively, if the arbitrator awards you any relief on the merits. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses, and the alternative payment and the attorney fees at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits. The right to attorneys' fees and expenses discussed in the preceding sentences supplements any right to attorneys' fees and expenses you may have under applicable law. Thus, if you would be entitled to a larger amount under the applicable law, this provision does not preclude the arbitrator from awarding you that amount. However, you may not recover duplicative awards of attorneys' fees or costs. Although under some laws we may have a right to an award of attorneys' fees and expenses if we prevail, we agree that we will not seek such an award.

6. All parties, including related third parties, shall retain the right to seek adjudication in a small claims tribunal in the county of your residence for disputes within the scope of such tribunal's jurisdiction. Any dispute, which cannot be adjudicated within the jurisdiction of a small claims tribunal, shall be resolved by binding arbitration. Any appeal of a judgment from a small claims tribunal shall be resolved by binding arbitration.

7. This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA. If a final non-appealable judgment of a court having jurisdiction over this transaction finds, for any reason, that the FAA does not apply to this transaction, then our agreement to arbitrate shall be governed by the arbitration law of the State of Delaware.

8. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. This Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. This Arbitration Provision continues in full force and effect, even if your obligations have been paid or discharged through bankruptcy. This Arbitration Provision survives any cancellation, termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing. If any of this Arbitration Provision is held invalid, the remainder shall remain in effect.

9. **OPT-OUT PROCESS.** You may choose to opt out of the Arbitration Provision, but only by following the process set forth below. If you do not wish to be subject to this Arbitration Provision, then you must notify us in writing within sixty (60) calendar days of the date of this Arbitration Provision at the following address: Integrity Advance, 300 Creek View Road, Suite 102, Newark, DE 19711. Your written notice must include your name, address, account number or social security number, the date of this Arbitration Provision, and a statement that you wish to opt out of this Arbitration Provision. If you choose to opt out, then your choice will apply only to the Application, Loan Agreement, ACH Authorization, and Arbitration Provisions submitted by you in this transaction.

*By entering your name and clicking the "I Agree" button below, you are electronically signing and agreeing to all the terms of the Loan Agreement, the Arbitration Provision, and the ACH Authorization (to the Loan Documents) and providing or confirming your electronic signature on all of the Loan Documents, and you are expressly consenting to receive SMS messages from us. You agree that your electronic signature has the full force and effect of your physical signature and that it binds you to the Loan Documents in the same manner a physical signature would do so. By electronically signing below, you also acknowledge that all of the Loan Documents were filled in before you did so and you have read, understood, and agree to all of the terms of the Loan Documents, including the provision entitled "**WAIVER OF JURY TRIAL AND ARBITRATION PROVISION**" and the **Privacy Policy** and **Covered Borrower Identification Statement**. You agree that your right to file suit against us for any claim or dispute regarding the Loan Documents or your relationship with us is limited by the **WAIVER OF JURY TRIAL AND ARBITRATION PROVISION**. You also agree that all information you provided to us prior to or during the completion of the Loan Documents is complete and accurate. You represent that you are not a debtor under any proceeding in bankruptcy and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code.*

Printed Name: \_\_\_\_\_

Signature: (X) \_\_\_\_\_ Date: 11/2/2011



# Appendix D





**Dr. Manoj Hastak – List of Documents and Materials Considered**

The following lists the data, materials, and other information considered in connection with the forgoing expert report.

- Notice of Charges Seeking Disgorgement, Other Equitable Relief, and Civil Money Penalties, *In re Integrity Advance, LLC and James R. Carnes* (proceeding # 2015-CFPB-0029)
- Integrity Advance's and James Carnes' Response to the Bureau's Discretionary Notice and Opportunity to Respond and Advise (NORA) Process, Nov. 13, 2014
- Integrity Advance Loan Application Forms (CFPB000683-CFPB000697)
- Loan Application Forms, Loan #54148642 (CFPB033705-CFPB033711) (REDACTED)
- Integrity Advance Loan Application Form (CFPB000796-CFPB000798)
- Narrative Responses to January 7, 2013 Civil Investigative Demand Issued to Integrity Advance, LLC (CFPB035835-CFPB035850)
- Loan Application Forms, Loan #46340151 (CFPB002537-CFPB002553) (REDACTED)
- Loan Application Forms, Loan #50484872 (CFPB005658-CFPB005674) (REDACTED)
- Form # 1 Easy Application (CFPB000574- CFPB000575)
- Form #2 Loan Agreement – Faxless (CFPB000640-CFPB000645)
- Form #2b Faxless ACH Authorization (CFPB000796- CFPB000798)
- Better Business Bureau Complaints (CFPB036490-CFPB037833)
- Completed Consumer Loan Applications (CFPB001696- CFPB001710, CFPB002336- CFPB002350, CFPB002929- CFPB002943, CFPB003184- CFPB003200, CFPB003645- CFPB003661, CFPB004308- CFPB004322, CFPB004343- CFPB004357, CFPB004371- CFPB004387, CFPB004371- CFPB004387, CFPB004703- CFPB004717, CFPB004848-CFPB004862, CFPB005740- CFPB005756, CFPB006401- CFPB006415, CFPB006490- CFPB006506, CFPB006829- CFPB006845, CFPB030698- CFPB030707, CFPB033325-CFPB033331)



# EXHIBIT 12

**EXPERT REPORT OF DR. NATHAN NOVEMSKY**

**I. QUALIFICATIONS.**

1. I am a Professor of Marketing at the School of Management, Yale University. I also have an affiliated appointment as a Professor of Psychology at the Department of Psychology, Yale University. A copy of my curriculum vitae, which includes a complete list of my publications, is attached as Appendix A. I hold a Ph.D. and Master's degree in Psychology from Princeton University, and a Bachelor's degree from Wesleyan University in Psychology, Math and Physics.

2. My field of expertise is consumer decision making, consumer experiences, consumer information processing, marketing research, and consumer psychology. Most of my research has focused on buyers' purchasing behavior, the effect of available information and product characteristics (such as brand name, price, and features), consumer's beliefs and attitudes, and marketing activities (such as promotions, advertising) on buying decisions and on consumer experiences.

3. At Yale University I have taught MBA and executive MBA courses on Marketing Management, covering such topics as buyer behavior, developing marketing strategies, building brand equity, advertising, sales promotions, and retailing. I also taught an MBA course Consumer Behavior, focusing on all aspects of how consumers make decisions and how information and marketing activities influence consumers' decisions and experiences. I have taught an MBA course applying Behavioral Science to decision making. In addition, I have guided and supervised many MBA student teams in their work on company and industry projects dealing with a variety of markets.

4. I have taught several doctoral courses on Behavioral Decision Making, one focusing on Judgment and one focusing on Choice. I also have taught in various executive education programs, including a program I jointly developed that applies Behavioral Science to marketing activities and marketing research.



5. I have published articles in the leading journals in consumer behavior as well as in psychology, including the Journal of Consumer Research, the Journal of Marketing Research, the Journal of Consumer Psychology, Psychological Science, Organizational Behavior and Human Decision Processes, and the Journal of Behavioral Decision Making.

6. I have conducted, supervised, or evaluated hundreds of surveys, including many related to consumer behavior and information processing, customer satisfaction, branding, consumer experiences, and advertising-related issues. I served on editorial boards of all the leading journals in consumer behavior, including the Journal of Consumer Research, Journal of Marketing Research, and the Journal of Consumer Psychology. I am also a frequent reviewer of articles submitted to journals in other fields, such as psychology, decision making, and economics. As a reviewer, I am asked to evaluate the research of scholars wishing to publish their articles in leading scholarly journals.

7. I have also worked as a consultant for many organizations on a variety of marketing and buyer behavior topics, often with a focus on how to communicate with consumers. And I have served as an expert and a consultant to experts in prior litigations involving various marketing and buyer behavior issues, consumer confusion, false advertising, branding, and other areas. I am being compensated at the rate of \$450 an hour. My compensation is not contingent on any of the opinions reached in this case or the outcome of the litigation.

8. I was asked by counsel for Integrity Advance to evaluate the report of Dr. Manoj Hastak.

9. In connection with preparation of this report, I reviewed the documents listed in Appendix D. To the extent additional information or opinions become available to me, I reserve the right to review such information and opinions and to supplement or amend

my opinions as necessary.

## **II. SUMMARY OF CONCLUSIONS REGARDING THE DISCLOSURE OF LOAN RENEWAL COSTS**

10. Dr. Hastak addresses three issues in his report. I organize my report around these three issues. He describes the first issue as follows:

“How clearly does the Loan Agreement document disclose that the costs (fees and charges) associated with the loan are significantly higher if borrowers renew the loan (either actively or by default) rather than paying it off in full?”  
See Report of Dr. Manoj Hastak (“Hastak Report”) at 5.

11. Dr. Hastak’s first major conclusion is that the costs of renewing the loan were not disclosed in a clear and conspicuous manner. This conclusion is relevant only to the extent it implies consumers do not realize that they will incur fees if they renew their loans, so I will focus on this latter issue.

12. Dr. Hastak provides no empirical analysis (such as a consumer survey) of consumers’ understanding (or lack thereof) with regard to the fees associated with renewal of their loans. To the extent his report provides conclusions about consumers’ understanding that loan renewal will involve higher fees, they are completely speculative.

13. Moreover, Dr. Hastak does not address the relevance of renewal cost disclosures for consumers taking out a loan. He provides no empirical support for the idea that consumers find this information relevant in the first instance when taking out a loan. There are at least two lines of consumer behavior research that directly suggest that consumers may not be considering renewal at all when taking out an initial loan.<sup>1</sup>

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<sup>1</sup> Frederick, S., Loewenstein, G., & O'donoghue, T. (2002). Time discounting and time preference: A critical review. *Journal of economic literature*, 40(2), 351-401; Berman, J., Tran, A., Lynch, J. & Zauberman, G., (in press). Expense Neglect in Forecasting Personal Finances. *Journal of Marketing Research*.

Accordingly, the need for actual empirical support of the claim that renewal costs are in fact considered at all when deciding to take out a loan is particularly important in assessing Integrity Advance customers' understanding of cost disclosures. There is also at least one past study that directly examines consumers' considerations when taking out a payday loan. This study found that consumers were more concerned with a quick and easy process for borrowing money than cost when choosing a payday loan.<sup>2</sup>

### **III. OPINIONS REGARDING THE DISCLOSURE OF RENEWAL COSTS**

14. Dr. Hastak never tested scientifically using the standard practices of the field of consumer behavior as to the claims made in his report about consumers' understanding of the loan agreement provided by Integrity Advance. Consumer understanding of the loan agreement is extremely context dependent. That understanding can be affected by consumers' current thoughts, momentary goals, mindset, level of depletion, level of distraction, and many other factors that behavioral science has uncovered. Without a direct empirical assessment of consumers' understanding, such as with a consumer survey, any claims about that understanding are speculative.

15. Hypotheses or ideas regarding consumers' understanding of the loan agreement could be based on prior research and general expertise and experience, but these hypotheses need to be tested to be considered valid, as would be expected when submitting such ideas to a peer-reviewed journal for publication in the field of consumer behavior. Without such tests, these ideas would not be accepted by the field of consumer behavior.<sup>3</sup>

16. Many of the ideas Dr. Hastak puts forward are one of several possible interpretations of how consumers' understand the loan agreement and make loan related

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<sup>2</sup> Lawrence, E. C., & Elliehausen, G. (2008). A comparative analysis of payday loan customers. *Contemporary Economic Policy*, 26(2), 299-316.

<sup>3</sup> Calder, B. J., & Tybout, A. M. (1987). What consumer research is... *Journal of Consumer Research*, 14(1), 136.

decisions. There are generally other equally plausible assertions that could be made based on existing consumer behavior research and my expertise and experience. Such possibilities are discussed in this report. In the absence of empirical support for one idea over another, each idea is simply one among several competing ideas. In my experience, such situations are exactly those that call for empirical investigation to understand which of several competing ideas is more descriptive of a particular situation. Without such data, there is no way to know which idea describes consumers' actual understanding and decision-making process.

17. In his deposition, Dr. Hastak appears to agree that a consumer survey is the best way to understand these situations. He stated, "So there were several reasons for doing the empirical analysis. One is that empirical data provides -- a well done study, provides the best evidence that you can get in terms of how consumers would process certain information. The other was that consumer testing is often useful in a situation where different interest groups, different agencies, consumer groups, industry, have different views of what might be the best document or notice in this case. Data can help address those issues." *See* Deposition of Dr. Manoj Hastak ("Hastak Dep.") at 88:18 – 89:5.

18. Dr. Hastak references FTC guidelines when making his assessment of the disclosures in the loan agreement. These guidelines highlight several dimensions as important to consider when making disclosures to consumers, including clarity, proximity, and prominence. However, the guidelines do not seem to suggest any particular standards about how much is enough for each dimension of disclosure. In fact, it would be very difficult to come up with standards for how much is enough of any of these dimensions because the same level of these dimensions could have different effects that depend on the context. For example, it is impossible to say how much proximity is exactly enough proximity to generate any particular level of consumer understanding because that understanding is so dependent on many other factors, including the factors listed in paragraph 14 of this report. Indeed, Dr. Hastak does not provide claims about how much is the right amount of any of these dimensions is lacking in the loan



agreement.

19. The FTC guidelines also offer no guidance about how many consumers might be confused if a disclosure is found to be lacking on any of these dimensions. Dr. Hastak makes no claims about how many consumers might be confused or misled by any aspects of the loan agreement. He also provides no empirical analysis of how many consumers would be confused by the disclosures contained in the loan agreement.

20. The FTC guidelines provide no guidance about how many consumers would have a better understanding if disclosures were modified along certain dimensions. And Dr. Hastak provides no empirical support for the idea that any consumers – much less how many – would have a better understanding, if any changes were made.

21. Underlying Dr. Hastak's report is the assumption that loan renewal costs have an influence in the first instance on consumers' decision making when evaluating the loan agreement. The main support I can find for this assumption is Dr. Hastak's reference to the notion that costs are generally important to consumers. *See* Hastak Dep. 99:2-17. I have encountered many examples of consumers ignoring seemingly important information,<sup>4</sup> and it is my experience that not all costs are considered by consumers, especially costs that are not immediate and certain.<sup>5</sup> Since renewal costs are neither immediate nor certain (because consumers may not renew the loan), these costs may not be considered by consumers during their loan origination decision. Accordingly, because of the existence of an equally plausible alternative to Dr. Hastak's untested assumption, any assertion that these costs are considered at all by consumers in this particular context demands empirical support. Nonetheless, Dr. Hastak provides no data to support his untested assumption that consumers consider renewal costs at all when taking out a loan.

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<sup>4</sup> Hsee, C. K. (1996). The evaluability hypothesis: An explanation for preference reversals between joint and separate evaluations of alternatives. *Organizational behavior and human decision processes*, 67(3).

<sup>5</sup> Frederick, S., Novemsky, N., Wang, J., Dhar, R., & Nowlis, S. (2009). Opportunity cost neglect. *Journal of Consumer Research*, 36(4), 553-561.

22. Furthermore, there are two bodies of research in consumer behavior and related fields that cast doubt on the idea that renewal costs have an impact on the original decision to take a loan. The first body of research finds that consumer decision making is driven much more by costs and benefits that are immediate compared to benefits that are further away in time.<sup>6</sup> To the extent that consumers are focused on solving their immediate cash flow problems and not focused on costs that will be realized several pay cycles later, they may not consider renewal costs important for their loan origination decision.

23. The second body of research in consumer behavior and related fields that also casts doubt on the idea that consumers find renewal costs relevant when making the loan origination decision shows that consumers are often extremely optimistic about their future. In particular, some studies find that people believe they will have more financial slack in the future than they do today.<sup>7</sup> Therefore, even if consumers are considering the future when thinking about their loan, they may be optimistic that they will be able to pay their loan off in full at their first due date. Accordingly, they may not consider the potential renewal costs of the loan.

24. These two bodies of research, along with the fact that renewal costs are neither immediate nor certain, provide a competing perspective on the question of whether loan renewal costs impact consumers' decisions to initiate payday loans. As discussed above, a situation where there are competing ideas about consumer behavior are situations where data, such as a consumer survey, are required to shed light on which idea actually describes consumer behavior in this particular situation. Unfortunately, Dr. Hastak provides no such data, leaving competing ideas unresolved.

25. My reading of Dr. Hastak's report is that he further assumes that a better understanding of the renewal costs would not only affect consumers' decision making

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<sup>6</sup> Frederick, S., Loewenstein, G., & O'donoghue, T. (2002). Time discounting and time preference: A critical review. *Journal of economic literature*, 40(2), 351-401.

<sup>7</sup> Berman, J., Tran, A., Lynch, J. & Zauberman, G., (in press). Expense Neglect in Forecasting Personal Finances. *Journal of Marketing Research*.

about taking out a loan, but more specifically it would dissuade consumers from getting loans from Integrity Advance. As with his other ideas, there exist competing ideas that might apply in this particular context. For instance, it could be that consumers find the loan renewal option, despite its costs, not to be a deterrent to accepting Integrity Advance's offering. Indeed, there are several observations that support this idea. The first such observation involves the decision to renew the loan. Before making that decision consumers receive more disclosures about the cost of renewal. Customers receive a welcome e-mail (See Appendix B), a reminder e-mail (Appendix C) and they receive a phone call from Integrity Advance.

26. Customers receive a welcome e-mail once their loan is approved. The welcome e-mail (Appendix B) describes the three payment options available to customers and how to execute each option, including renewal as one of the options. They are also reminded that they can choose to pay off the loan at any time. This information is prominent within the email message and constitutes the majority of the information contained in that message. This information is repeated in a reminder e-mail that is sent shortly before the first payment due date. These two email messages clearly bear on customer's knowledge at the time they choose to renew their loan.

27. Customers also receive a phone call from Integrity Advance. During that call, consumers had the opportunity to ask any questions they had about costs of the loan including renewal costs. If there were confused about renewal costs after examining the loan agreement, this phone call would have been an opportunity to clear up those confusions.

28. Dr. Hastak provides no analysis of these e-mail messages or the phone call despite his own acknowledgment that the phone call could have facilitated consumers' understanding of the renewal costs. *See* Hastak Dep. 93:9-20.

29. There are two possible beliefs consumers can hold when facing the renewal decision. First, they might correctly believe that extending the duration of the loan

requires additional finance charges. Second, consumers might believe that Integrity Advance is offering to extend their loan to up to four times its original length without charging additional fees. This belief defies research showing that consumers often understand when they purchase a product or service that they are in an exchange relationship with the firm supplying the product or service.<sup>8</sup> They pay a price in exchange for the benefits of the product or service. *Id.* When consumers receive additional benefits they expect to pay for them. *Id.* Consumers' belief that their loan is being extended to five times its original length without additional fees contradicts this general expectation. Since the notion that consumers expect to pay for additional benefits, such as a loan extension, in marketplace contexts has empirical support, to be confident that any number of consumers – least of all most of them – indeed believe the loan extension comes without additional costs would require direct empirical support. Otherwise, this is just a hypothesis that contradicts previous empirical research, but has no empirical support of its own. Indeed, there is no empirical support in Dr. Hastak's report for the idea that consumers believe that loan extensions are free. Therefore, the relevant empirical analysis contradicts this particular hypothesis.

30. The fact that more than 85% of consumers choose to renew their loans despite receiving these e-mail messages reminding them when their loan is due and how to execute each of the possible payment options is further support for the idea that consumers prefer renewal to paying off the loan even after receiving these additional disclosures. If the renewal option is a valuable aspect of the loan, it is unlikely that some altered version of a disclosure of the renewal costs in the loan agreement would serve to dissuade interested customers from taking out a loan.

31. A second observation that supports the idea that loan renewals may be valuable to consumers is the large percentage of customers who take out additional loans after completing payment of their initial loan. In 2011, Integrity Advance issued 65,036 loans to 46,154 unique customers. *See* CFPB035849. Therefore at least 29% of their

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<sup>8</sup> Aggarwal, P. (2004). The effects of brand relationship norms on consumer attitudes and behavior. *Journal of consumer research*, 31(1), 87-101.

business involved customers who already completed payment of a prior loan. *Id.* Similarly in 2012, Integrity Advance issued 56,161 loans to 41,015 unique customers, meaning at least 27% of their loans were to customers who already completed payment on a prior loan. *See* CFPB035850. These repeat customers either understood that loan renewal involved substantial costs because they choose not to renew their first loans with Integrity Advance or (more likely given that the vast majority of loans are renewed) they did renew them and experienced exactly how renewal works and what the costs are. Given that all these customers came back with yet more information about loan renewal and its associated costs suggests that these (and possibly other) customers find the Integrity Advance offering complete with its renewal option and its associated renewal costs to be an attractive offering.

32. Another observation that supports the idea that consumers are satisfied with the disclosed loan renewal costs focuses on the fact that most Integrity Advance customers come through a lead generation website. This means they have the opportunity to consider more than one provider when choosing a loan. When a customer chooses Integrity Advance it suggests that they either are not finding disclosures about renewal costs a critical piece of information for making their loan provider decision or they find Integrity Advance's offering complete with disclosures about renewal costs sufficiently attractive to end up choosing Integrity Advance as their loan provider.

33. To summarize, there are multiple observations that suggest that consumers do not find the renewal costs to be a reason not to choose Integrity Advance as their loan provider: a) they were informed about renewal by multiple e-mail messages that highlighted only the repayment options and still renewed at a very high rate; b) they received a phone call where they had the opportunity to ask questions about renewal costs; c) many customers completely paid off their Integrity Advance loans including renewals and chose to reengage with Integrity Advance for additional payday loans; and d) most customers sign up through a lead generation website suggesting they are either satisfied by or not sufficiently interested to be dissuaded by Integrity Advance's renewal cost disclosure. To assume that consumers would be dissuaded from taking out loans

from Integrity Advance by better knowledge of loan renewal costs in light of all these observations certainly should require empirical support that includes direct examination of consumers' actual understanding of renewal costs and of their decision making process. Such empirical support is not contained in Dr. Hastak's report.

34. Dr. Hastak suggests that renewal costs be made more prominent in the loan agreement throughout his report. However, when presenting information to consumers, especially financial information about a complicated product, like a payday loan, not every piece of information can be made maximally prominent. There are trade-offs in making some information prominent. For example, studies of consumer behavior show that consumers have limits for how much information they will process.<sup>9</sup> When there is too much information, consumers tend to disengage and not even process the information presented, a process termed "information overload." Indeed, Dr. Hastak seems to concur that making too much information prominent actually inhibits consumers' ability to process that information. *See* Hastak Dep. 106:12-15.

35. Both regulatory requirements and consumer decision making drive the decision to make certain information prominent. Given the research described above at ¶¶ 21-23, renewal costs may not be the information consumers are interested in understanding or using for their loan origination decision. As a result, it is not clear that better consumer understanding will result from making renewal cost information more prominent. Therefore, empirical support of improved consumer understanding is necessary to substantiate claims that higher prominence of renewal cost information will improve consumers' overall understanding of their loans.

36. Dr. Hastak claims that the renewal cost information is not displayed prominently. He provides no data to support the idea that with the current disclosure, consumers are not aware of the fees associated with loan renewal. He also makes no

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<sup>9</sup> Jacoby, J., Speller, D. E., & Berning, C. K.. (1974). Brand Choice Behavior as a Function of Information Load: Replication and Extension. *Journal of Consumer Research*, 1(1), 33-42.

claims about how many consumers might be uninformed as a result of the current level of prominence.

37. Dr. Hastak does not provide any empirical support for the idea that consumers' understanding would change if the cost information were displayed more prominently. He makes no claims about how much prominence is sufficient based on FTC guidelines that he is using for his assessment. He also makes no claims about how many consumers would be better informed if certain specific changes in prominence were made.

38. Dr. Hastak claims that the renewal cost information is not placed close enough to the TIL disclosure box for consumers to understand renewal costs. He provides no data to support the idea that with the current distance between the renewal cost information and the TIL disclosure box, consumers are not aware of the renewal fees. He also makes no claims about how many consumers might be uninformed as a result of the distance between the renewal fees and the TIL disclosure box. Without such data, it is impossible to know the impact of proximity on consumers' understanding, since the effect of proximity will vary by context.

39. Dr. Hastak does not provide any empirical analysis that consumers' understanding would change if the distance between the renewal costs and the TIL disclosure box were decreased. Without such analysis, it is impossible to know the impact of changes in distance on consumers' understanding because any impact of proximity will vary by context. Further, Dr. Hastak makes no claims about how much of a decrease is sufficient based on the FTC guidelines. He also makes no claims about how many consumers would be better informed if the distance were reduced by some specific amount.

40. Dr. Hastak claims the renewal cost disclosures are not clear because they include the phrase "...rest of the terms of the Loan Agreement will continue to apply." Dr. Hastak suggests that consumers interpret this phrase to mean their total finance

charge would continue to be the one shown in the TIL box. While Dr. Hastak is providing one possible consumer interpretation of this phrase, another possible interpretation is that consumers interpreted this phrase as it was intended. In other words, consumers' understood that for each pay period that they have not paid off their loan, they will be assessed the same finance charge in accordance with the terms of the loan. However, Dr. Hastak provides no empirical analysis of how consumers interpret this statement. Therefore, there is no basis to decide which of these competing ideas actually describes consumers' understanding in this situation.

41. Dr. Hastak states that the renewal cost disclosure in the section labeled "Special Notice" has poor prominence and placement and therefore "suggests" it will not be very effective in communicating cost information. *See* Hastak Report at 20. Specifically, he says, "poor prominence and placement...suggests that it will not be very effective in qualifying cost information presented in the TIL box." *Id.* Since Dr. Hastak makes no claims about how many consumers would be affected by this disclosure, nor about whether the prominence and placement of this disclosure are responsible for any specific effect on consumers' understanding, it is not clear what to take away from this analysis. There is not even a clear statement in Dr. Hastak's report that this disclosure will not inform consumers that there are fees for loan renewal. Empirical analysis could be used to clarify whether this disclosure is or is not communicating anything about loan renewal fees. However, since Dr. Hastak provides no such analysis, it is difficult to draw any conclusions from his analysis of this section.

42. Furthermore, without empirical analysis, there is no way to know whether changing the prominence and placement of this disclosure will enhance any or all consumers' understanding of the renewal costs. Nor is there any way to know how much of a change in prominence and placement would be sufficient to change the effect of this disclosure on consumers' understanding.

43. Dr. Hastak also makes reference to the section entitled "Schedule of Charges and Fees." He states that some of the information is "difficult to comprehend,



and has the potential to suggest incorrect inferences.” *See* Hastak Report at 21. This language communicates the speculative nature of Dr. Hastak’s claims which seem to be based largely on his impression when reading the disclosure. He provides no data to support his conclusions about this disclosure. My impression was that the information was presented clearly in this section of the agreement, but I recognize this is no basis for claims about consumers’ understanding of that information.<sup>10</sup> I will note that Dr. Hastak, when examining this section of the loan agreement during his deposition, also came to better understand the information that he had previously claimed to be difficult to comprehend and potentially misleading. *See* Hastak Dep. 171:18-172:3. This suggests personal impressions are likely to change and are not a good basis for inferences about consumer understanding. This is another situation where there are competing ideas, and an empirical investigation is needed to differentiate the validity of those ideas.

#### **IV. OPINIONS REGARDING DEFAULT RENEWAL**

44. Dr. Hastak’s second major conclusion is that “since renewal was the default option in the Loan Agreement, one would expect a large proportion of borrowers to end up with this option, but this would not necessarily mean that many or most of them chose the option actively.” *See* Hastak Report at 22.

45. We know that a large proportion of borrowers do indeed renew their loans, and I concur with Dr. Hastak’s uncertainty as to the number of these renewals that are the result of renewal being the default option. There are many studies of default effects, including some I have conducted myself, and the absolute magnitude of default effects varies quite widely by the particulars of the decision and its context.<sup>11</sup> Dr. Hastak provides no data regarding the number of consumers who are affected by renewal being the default option.

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<sup>10</sup> Daneman, M., & Carpenter, P. A. (1980). Individual differences in working memory and reading. *Journal of verbal learning and verbal behavior*, 19(4), 450-466.

<sup>11</sup> Jachimowicz, J. M., Duncan, S., & Weber, E. U. (2016). Default-Switching: The Hidden Cost of Defaults. *Available at SSRN 2727301*.

46. It is important to note that some default must be chosen for the eventuality that consumers do not contact Integrity Advance prior to their loan due date. A default of pay-in-full would carry potential harm to consumers because it would result in a potentially unexpected debit of the entire loan amount on consumers' bank account. This could be more costly to consumers than the default of renewing the loan. Dr. Hastak provides no empirical analysis of the costs and benefits of different defaults, so it is impossible to determine which default is better for consumers.

47. Dr. Hastak provides no empirical analysis to suggest that consumers are not aware that renewal is the default option. So, to the extent the default may be swaying some consumers to renew their loans, it is not clear that this is happening without their consent, or against their preference for another option. In my experience, default effects are most pronounced when the decision maker does not have a strong preference for a particular course of action.<sup>12</sup>

48. In his discussion of default renewals, Dr. Hastak recommends that the loan agreement spell out multiple repayment scenarios, including the fees for no renewals, two renewals, and four renewals + workout. As discussed above, more information is not always better because it can cause information overload and lead consumers to disengage and detract from their understanding.<sup>13</sup> To be confident that more information would indeed enhance understanding requires data regarding consumers' understanding with and without that additional information. Dr. Hastak does not provide such data.

## **V. OPINIONS REGARDING AUTHORIZATION FOR REMOTELY CREATED CHECKS**

49. Dr. Hastak's third major conclusion is that the Authorization for Remotely

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<sup>12</sup> Simonson, Itamar, Thomas Kramer, and Maia J. Young. "Effect propensity." *Organizational Behavior and Human Decision Processes* 95.2 (2004): 156-174.

<sup>13</sup> Jacoby, J., Speller, D. E., & Berning, C. K.. (1974). Brand Choice Behavior as a Function of Information Load: Replication and Extension. *Journal of Consumer Research*, 1(1), 33-42.

Created Checks is “unlikely to be noticed, read, or correctly understood by borrowers.” *See* Hastak Report at 26. There is no data provided about how many consumers read this disclosure and there is no empirical analysis provided about what consumers understand from this disclosure.

50. Moreover, there is no data provided to suggest that consumers consider this authorization important when agreeing to take out the loan. Note that remotely created checks are only relevant when consumers have blocked the very ACH authorization that they are granting by agreeing to accept this loan. Consumers are not likely to be thinking about what happens if they choose to revoke the ACH authorization at the very moment they are choosing to grant that same authorization. Therefore, the relevance of the remotely created check disclosure to consumers’ loan origination decisions especially demands empirical support.

51. In his deposition, Dr. Hastak claims that consumers understand that their authorization will be required for each remotely created check. *See* Hastak Dep. 261:17-22. This conclusion is not apparent from my reading of the loan agreement. Therefore such a claim about consumer understanding requires empirical support from direct examination of consumers’ understanding. However, Dr. Hastak provides no such empirical support.

Executed on March 25, 2016 in New Haven, Connecticut.

A rectangular box containing a handwritten signature in dark ink. The signature appears to be "Nathan Novemsky" written in a cursive, slightly slanted style. Below the signature, there is a horizontal line.

Nathan Novemsky Ph.D.

# EXHIBIT 13

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "INTEGRITY ADVANCE, LLC", FILED IN THIS OFFICE ON THE SECOND DAY OF JULY, A.D. 2007, AT 5:14 O'CLOCK P.M.



4382363 8100

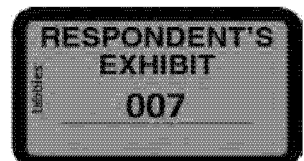
070775510

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5811270

DATE: 07-02-07



CONFIDENTIAL

SUBJECT TO PROTECTIVE ORDER IN 2015-CFPB-0029

INTEG000006

CFPB000171

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 05:14 PM 07/02/2007  
FILED 05:14 PM 07/02/2007  
SRV 070775510 - 4382363 FILE

CERTIFICATE OF FORMATION

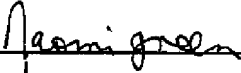
OF

INTEGRITY ADVANCE, LLC

1. The name of the limited liability company is Integrity Advance, LLC.

2. The address of its registered office in the State of Delaware is: Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation of Integrity Advance, LLC this 2<sup>nd</sup> day of July, 2007.

  
\_\_\_\_\_  
Naomi Green/ Organizer

DE003 - 1/13/05 C T System Online

# EXHIBIT 14

**INTEGRITY ADVANCE  
COUNTS OF REPEAT CUSTOMERS<sup>1</sup> BY NUMBER OF LOANS**

<b>Number of Loans</b> [a]	<b>Number of Repeat Customers</b>	
	<b>All Repeat Customers</b> [b]	<b>Originated On or After July 21, 2011<sup>2</sup></b> [c]
2 or More	57,798	26,129
3 or More	27,002	16,094
4 or More	14,538	10,155
5 or More	8,447	6,527
6 or More	5,092	4,148
7 or More	3,231	2,698
10 or More	1,039	926
15 or More	228	215
20 or More <sup>3</sup>	72	70

Notes:

<sup>1</sup> Repeat customers are customers with more than one loan over time. Loans are uniquely identified by original application number.

<sup>2</sup> A repeat customer is included in column [c] if he has at least one loan originated after July 21, 2011. In order to be consistent with the CFPB counts of customers and loans (EC-EX-097), a loan is classified as originated on or after July 21, 2011 if the first record for the loan is dated on or after August 13, 2011.

<sup>3</sup> Customers had up to 45 loans.

Source:

Integrity Advance Payment Data (EC-EX-101).





# EXHIBIT 15

**INTEGRITY ADVANCE  
REPEAT CUSTOMERS<sup>1</sup> RELATIVE TO ALL CUSTOMERS**

	All Loans	Originated On or After July 21, 2011 <sup>2</sup>
[a]	[b]	[c]
<b>Customers</b>		
Total Number of Customers	180,379	54,130
Number of Repeat Customers	57,798	26,129
Percent Repeat Customers	32%	48%
<b>Loans</b>		
Total Number of Loans	304,227	82,980
Total Number of Loans to Repeat Customers	181,646	54,979
Percent of Loans to Repeat Customers	60%	66%
<b>Payments</b>		
Total Paid by Customers	\$273,926,407.60	\$80,305,622.40
Total Paid by Repeat Customers	\$187,786,791.03	\$60,846,765.14
Percent of Total Payments from Repeat Customers	69%	76%

Notes:

<sup>1</sup> Repeat customers are customers with more than one loan over time. Loans are identified uniquely by original application number.

<sup>2</sup> In order to be consistent with the CFPB counts of customers and loans (EC-EX-097), a loan is classified as originated on or after July 21, 2011 if the first record for the loan is dated on or after August 13, 2011.

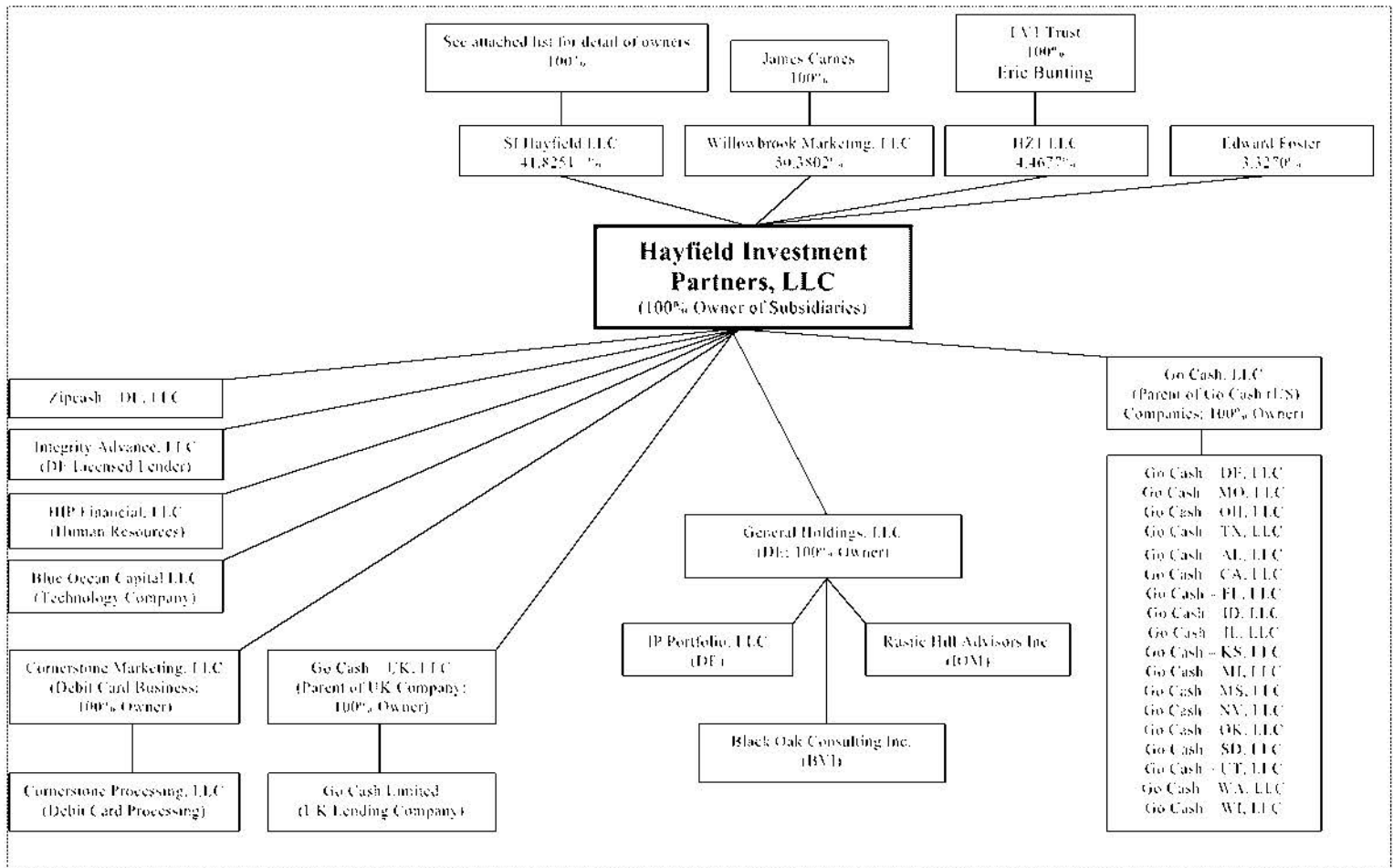
Source:

Integrity Advance Payment Data (EC-EX-101).



# EXHIBIT 16

**HAYFIELD CORPORATE STRUCTURE**



***CONFIDENTIAL INFORMATION OF HAYFIELD INVESTMENT PARTNERS, LLC***

# EXHIBIT 17

## OVERVIEW OF INTEGRITY ADVANCE (IA) LOANS AND CONSUMERS

	<b>All Integrity Advance Loans</b>	<b>Integrity Advance Loans Originated on or After July 21, 2011</b>
<b>Total Number of Consumers</b>	180,379	54,130
<b>Total Number of Loans</b>	304,227	82,980
<b>Number of Loans For which IA Obtained Money Above ‘Total of Payments’</b> (money above principal + 1 finance fee)	209,899	56,473

\*From transaction data produced by Integrity Advance to Enforcement  
Counsel pursuant to February 19, 2016 subpoena for data

## LOAN PAYMENTS MADE BY CONSUMERS TO INTEGRITY ADVANCE

<b>Total Paid</b> (principal + finance fees + additional fees)	\$273,926,407.60
<b>Total Paid Above Loan Principal</b> (finance fees + additional fees)	\$181,957,867.95
<b>Total Paid Above 'Total of Payments'</b>	\$133,422,838.83

\*From transaction data produced by Integrity Advance to Enforcement  
Counsel pursuant to February 19, 2016 subpoena for data

## **LOAN PAYMENTS MADE BY CONSUMERS TO INTEGRITY ADVANCE ON LOANS ORIGINATED ON OR AFTER JULY 21, 2011**

<b>Total Paid</b> (principal + finance fees + additional fees)	\$80,305,622.40
<b>Total Paid Above 'Total of Payments'</b>	\$38,795,584.12

\*From transaction data produced by Integrity Advance to Enforcement  
Counsel pursuant to February 19, 2016 subpoena for data



# OVERVIEW OF INTEGRITY ADVANCE'S USE OF RCCS ON CONSUMERS WHO HAD REVOKED IA's ACH AUTHORIZATION OR STOPPED IA's ACH WITHDRAWALS

	All RCCs	RCCs on or After July 21, 2011
Number of RCCs Used	3,545	1,271
Number of Loans Where RCCs Used	2,024	587
Number of RCCs Used to Obtain Funds from Consumers Who Had Already Paid 'Total of Payments'	1,826	602
Number of RCCs Followed by Attempt(s) by IA to Withdraw Additional Money from Consumers' Bank Accounts With 'Insufficient Funds'	511	171

<b>TOTAL OBTAINED BY INTEGRITY ADVANCE VIA RCC FOLLOWING ACH STOP OR REVOCATION</b>	<b>\$839,879.50</b>
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\*From transaction data produced by Integrity Advance to Enforcement  
Counsel pursuant to February 19, 2016 subpoena for data

**RCCs BY INTEGRITY ADVANCE ON OR AFTER JULY  
21, 2011 TO WITHDRAW FUNDS FROM  
CONSUMERS WHO HAD REVOKED IA's ACH  
AUTHORIZATION OR STOPPED IA's ACH  
WITHDRAWALS**

<b>Total Amount Obtained by RCC</b>	\$265,452.50
<b>Total Amount Obtained by RCC After Consumer Had Already Paid 'Total of Payments'</b>	\$115,024.50

\*From transaction data produced by Integrity Advance to Enforcement  
Counsel pursuant to February 19, 2016 subpoena for data