UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029

In the Matter of: **INTEGRITY ADVANCE, LLC and JAMES R. CARNES,** **Respondents.**	**RESPONDENTS' STATEMENT OF DISPUTED FACTS IN OPPOSITION TO ENFORCEMENT COUNSEL'S MOTION FOR SUMMARY DISPOSITION**

RESPONDENTS' STATEMENT OF DISPUTED FACTS IN OPPOSITION TO ENFORCEMENT COUNSEL'S MOTION FOR SUMMARY DISPOSITION

Pursuant to 12 C.F.R. § 1081.212(d)(2), Respondents Integrity Advance, LLC and James R. Carnes ("Respondents") hereby submit the following statement of disputed material facts as to which a genuine dispute exists. The facts set forth herein are disputed solely for purposes of opposing Enforcement Counsel's Motion for Summary Disposition (Dkt. 275), and the inclusion of any fact in this statement is without waiver or prejudice to Respondents' right to contend that any issue or fact is undisputed in connection with Respondents' Motion for Summary Disposition (Dkt. 272). Respondents dispute the following facts alleged in Enforcement Counsel's Statement of Material Facts in Support of its Motion for Summary Disposition ("EC's Facts") (Dkt. 277):[1]

1. Respondents dispute Paragraph 13 of EC's Facts. Enforcement Counsel's statement that "Carnes was a director and officer of Integrity Advance charged with managerial

[1] Respondents address only the material factual disputes in this Statement. Respondents' failure to dispute an alleged fact in this Statement is not an admission of that alleged fact.

responsibility for Integrity Advance" is a legal conclusion and cannot be asserted as an undisputed fact. *See* 12 U.S.C. § 5481(c)(i) (defining "related person" as "any director, officer, or employee charged with managerial responsibility for, or controlling shareholder of, or agent for, [a] covered person"). As support for the assertion, the Bureau cites only sources acknowledging Carnes's role as *de facto* President and CEO. Dkt. 21 (Answer) ¶ 6; Dkt. 88C (Ex. 3, Carnes Test.) at 32:15-17. Enforcement Counsel's citations do not establish that Carnes had "managerial responsibility," which remains a disputed fact.

2. Respondents dispute Paragraphs 14-17, 39-40 of EC's Facts. Enforcement Counsel seeks to establish that Carnes exercised day-to-day management of Integrity Advance, that he supervised all "Integrity Advance employees," and that Carnes exercised control over all company decisions, but the facts on which Enforcement Counsel relies are in dispute. Carnes was the CEO of Hayfield Investment Partners ("HIP"), the parent company for approximately thirty entities including Integrity Advance. Dkt. 273 (Resp'ts' Facts) ¶ 92. The individuals called by the CFPB as witnesses (Edward Foster, Bruce Andonian, Timothy Madsen) testified that they were all employed by HIP. *Id.* ¶¶ 74, 80, 87. Though Carnes led HIP, there were multiple layers in the chain of command as individuals reported up through management, eventually to Foster and finally to Carnes. *See* EC-EX-065, EC-EX-068 at 32:4-14, EC-EX-069 at 21:23-22:1-5 (cited in ¶ 15 of EC's Facts). Additionally, Integrity Advance outsourced certain key functions to experienced third parties, and Mr. Carnes did not supervise those individuals. For example, Integrity Advance contracted with a third party call center to administer the loans on a day to day basis, including handling consumer complaints. Dkt. 273 (Resp'ts' Facts) ¶¶ 43-45. Integrity Advance also retained outside counsel to create the Loan Agreement and ensure it complied with the law, and Mr. Carnes did not supervise the outside counsel. Dkt. 273 (Resp'ts'

Facts) ¶¶ 39-41, 99. Further, Mr. Carnes testified that, for the time period at issue (July 21, 2011 to December 2012, when Integrity Advance ceased offering loans), he spent only a small minority of his time on Integrity Advance – less than 15%. Dkt. 273 (Resp'ts' Facts) ¶¶ 95-96. Therefore, he could not have been responsible for the day to day business decisions of Integrity Advance. Thus, it is not accurate to state that Carnes "supervised all Integrity Advance employees," that he exercised day-to-day management over all of Integrity Advance's business, that he made all of Integrity Advance's business decisions, or that he bore the responsibility for ensuring Integrity Advance complied with the law.

3. Respondents dispute Paragraph 57 of EC's Facts. Enforcement Counsel's assertion that "Carnes was ultimately responsible for approving everything related to Integrity Advance's business when Integrity Advance's loan agreement was created and first used in 2008," ignores evidence that Carnes did not directly consult with, let alone supervise, the outside counsel that were retained to create Integrity Advance's Loan Agreement. *See* Dkt. 273 (Resp'ts' Facts) ¶¶ 41, 99.

4. Respondents dispute Paragraph 60 of EC's Facts. The fees that Integrity Advance charged customers did change over time. For example, when a consumer applied for a second loan from Integrity Advance—which many consumers did, *see* Dkt. 273 ¶ 50—he or she was treated as a "VIP" customer and the cost of loan was lower than it would be for a new applicant. *See* Dkt. 274A (Ex. 2 to Zack Decl., Carnes Dep. Tr.) at 162:9-24.

5. Respondents dispute Paragraph 61 of EC's Facts. While Carnes stated at his investigational hearing that "the product never changed," Dkt. 102A (Frechette Decl. ¶ 2, Ex. 1, Carnes Test.) at 22:12, he also stated that Integrity Advance had "attorneys that were paid to keep up with changes in the law" and that "[t]hings got changed over time to comply with

whatever laws were being changed over time . . . ." *See* Dkt. 102B (Frechette Decl. ¶ 2, Ex. 1, Carnes Test.) at 216:17-23.

6. Respondents dispute Paragraph 63 of EC's Facts. Enforcement Counsel misconstrues the meaning of the call center manual which provided instructions regarding what should be said to potential applicants before they applied for Integrity Advance loans. The manual states: "It is our policy not to disclose cost information until you apply for a loan. We provide that information in the loan packet. Should you decide you do not wish to take the loan; you are under no obligation to do so." EC's Facts ¶ 63 (citing EC-EX-078). As the manual states, Integrity Advance provided cost information during the loan process, and loan applicants were not obligated to take out a loan simply because they applied.

7. Respondents dispute the references in Paragraphs 70-72, 75, 79, 81-82, 85, and 90-92 of EC's Facts to consumers being allegedly required to "change the terms" of their loans to prevent their loans from being renewed. Enforcement Counsel takes language from Respondents Answer (which Respondents previously sought to amend to avoid confusion) out of context to suggest that auto-renewal was the "default" option under the Loan Agreement. However, as per the clear and conspicuous terms of the Loan Agreement, consumers were required to choose a payment option—selecting to either pay the loan in full on the payment Due Date, or renew the loan, thus incurring a new finance charge. Dkt. 273 (Resp'ts' Facts) ¶ 12; *see also id.* ¶¶ 13, 21.

8. Respondents dispute Paragraphs 70-72 of EC's Facts. The auto-renewal provision was only triggered when consumers failed to abide by their contractual obligation to select their Payment Option three days before the Payment Due Date or otherwise failed to repay their loan in full on the Payment Due Date. *See* Dkt. 273 (Resp'ts' Facts) ¶¶ 12-13 (requiring

consumer to contact Integrity Advance and either pay the loan in full or renew the loan, thus incurring a new finance charge); *id.* ¶ 21 ("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 . . . ."); Dkt. 102B (Frechette Decl. ¶ 2, Ex. 1, Carnes. Test.) at 225:13-15 (noting that Integrity Advance "allowed customers to call the day before the due date and pay down or payoff" their loan).

9. Respondents dispute the references to "default payment options" in Paragraphs 73-75, 85-86, 90-93, and 116 of EC's Facts. The term "default payment option" is Enforcement Counsel's improper characterization of the facts and has no support in the cited exhibits. Neither the Loan Agreement nor any other Integrity Advance document cited by Enforcement Counsel refer to the auto-renewal or auto-workout provisions as "default payment options." *See generally* Dkt. 88D (Ex. 7, Integrity Advance Nov. 25, 2013 Interrog. Resp.) at 9 (indicating the consumers' selection of a payment option, not the auto-renewal or auto-workout provision, was the "default process").

10. Respondents dispute Paragraph 75 of EC's Facts. Under the terms of the Loan Agreement, the auto-renewal provision applied only if a consumer failed to select their Payment Option or otherwise failed to repay the loan in full on the Payment Due Date. *See* Dkt. 273 (Resp'ts' Facts) ¶¶ 12-13, 21; Dkt. 102B (Frechette Decl. ¶ 2, Ex. 1, Carnes. Test.) at 225:13-15 (noting that Integrity Advance "allowed customers to call the day before the due date and pay down or payoff" their loan).

11. Respondents dispute Paragraph 76 of EC's Facts. In signing the Loan Agreement and ACH authorization, consumers did, in fact, "affirmatively direct[]" Integrity Advance to debit their accounts pursuant to the Loan Agreement, including the auto-renewal and auto-

workout provisions, though consumers were also provided the option to pay by other means. Dkt. 273 (Resp'ts' Facts) ¶¶ 6, 13, 21-22, 63, 65-60, 69-70.

12. Respondents dispute Paragraph 77 of EC's Facts. Enforcement Counsel's characterization that "when Integrity Advance auto-renewed a loan it would debit an amount equal to the first finance charge from the consumer's account" ignores the fact that customers could, and did, choose, to renew their loans (and thus would have agreed to Integrity Advance debiting an amount equal to the finance charge owed at the time from the consumer's account).

13. Respondents dispute Paragraph 78 of EC's Facts. Enforcement Counsel's characterization that "the payment of the finance charge by an auto-renewed consumer would not reduce the principal amount owed by the consumer" ignores the fact that the payment of interest or finance charges on any kind of loan (such as a mortgage) does not reduce the principal owed on the loan. Enforcement Counsel also misleadingly suggests that payments by an auto-renewed consumer would never reduce the principal of the loan. However, a loan could only be renewed up to four times, after which a portion of the consumer's payment would be automatically applied to reducing the principal of the loan. *See* Dkt. 273 (Resp'ts' Facts) ¶ 21.

14. Respondents dispute Paragraph 79 of EC's Facts. Consumers could contact Integrity Advance at any time prior to the fourth Renewal Payment Due Date to set up repayment options other than the auto-workout provision. Dkt. 273 (Resp'ts' Facts) ¶ 21 ("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."). Even Enforcement Counsel's cited exhibit indicates the lack of any timing requirement. Dkt. 88D (Ex. 7, Integrity Advance Nov. 25, 2013 Interrog. Resp.) at 9 ("If a customer failed to contact the Company after the fourth renewal, Company had the option to put the customer into an auto-

workout status."). Enforcement Counsel's statement also incorrectly implies that all renewals were auto-renewals and ignores the fact that consumers could, and did, choose to renew their loans.

15. Respondents dispute Paragraph 85 of EC's Facts. Under the Loan Agreement, consumers were required to select a Payment Option. Dkt. 273 (Resp'ts' Facts) ¶¶ 12-13, 21. Only if consumers did not select a Payment Option and did not repay their loan in full on the Payment Due Date would the auto-renew provision take effect. *Id.* ¶ 21 (stating "[I]f 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 . . . ."); Dkt. 102B (Frechette Decl. ¶ 2, Ex. 1, Carnes. Test.) at 225:13-15 (noting that Integrity Advance "allowed customers to call the day before the due date and pay down or payoff" their loan). Enforcement Counsel's factual allegation does not address this, and its cited exhibits in no way disprove a consumer's ability to repay his or her loan in full on the Payment Due Date and foreclose the possibility that the loan would be renewed. *See* Dkt. 273 (Resp'ts' Facts) ¶¶ 12-13; *see also* Dkt. 88D (Ex. 7, Integrity Advance Nov. 25, 2013 Interrog. Resp.) at 9 (stating that "[o]therwise, *if a customer took no action*, a customer was auto-renewed . . . .") (emphasis added).

16. Respondents dispute Paragraph 86 of EC's Facts. The term "default repayment schedule" is inaccurate because the renewal of the loan, including an auto-renewal upon a customer's failure to pay and failure to select a payment option, extended the deadline for repayment and nothing in the Loan Agreement indicated to consumers that a renewal was part of a "repayment schedule." *See* Dkt. 273 (Resp'ts' Facts) ¶¶ 12-13, 21. Unless consumers chose to

renew the loan or allowed the loan to automatically renew past the Payment Due Date, consumers were bound to the Schedule of Payments set out in the TILA Box. *See id.*

17. Respondents dispute Paragraphs 87-88 of EC's Facts. The sections of the Answer cited by Enforcement Counsel demonstrate that the TILA Box disclosure was based on consumers' initial (and only) legal obligation—a repayment in full on the Payment Due Date. *See* Dkt. 21 (Answer) ¶¶ 26, 31. Consumers who opted to renew their loans paid an additional finance charge. *See* Dkt. 273 (Resp'ts' Facts) ¶¶ 12-13, 21. Similarly, consumers who did not select a payment option and did not repay their loan in full on the Payment Due Date, thereby allowing the loan to renew, paid an additional finance charge. *See id.* However, Enforcement Counsel provides no information on what these consumers actually paid.

18. Respondents dispute Paragraphs 89-92 of EC's Facts. The auto-renewal provision took effect only when the consumer failed to select a payment option or otherwise failed to repay the loan in full on the Payment Due Date. *See* Dkt. 273 (Resp'ts' Facts) ¶¶ 12-13, 21.

19. Respondents dispute Paragraph 93 of EC's Facts. Enforcement Counsel's characterization that some consumers "did not understand how the default payment option of Integrity Advance's contract worked" is misleading and speculative. The CFPB has offered no evidence of what any consumers may have "understood." *See* Dkt. 273 (Resp'ts' Facts) ¶ 24 (CFPB's own expert, Dr. Manoj Hastak, testified that he "didn't talk to any customers, and [he] didn't rely on complaints either" and that "the complaints are not representatives of the customers of Integrity Advance, and so they're just a small sampling of individuals who had a problem with Integrity Advance . . ." and were, thus, not "representative in any way" of a

"typical consumer"); *id.* ¶ 73 (noting that "[t]he CFPB did not present testimony from a single consumer at the prior hearing").

20. Respondents dispute Paragraph 94 of EC's Facts. Only one of the complaints cited by Enforcement Counsel post-date July 21, 2011. *See* Dkt. 88E (Ex. 20, Consumer Complaint dated Jan. 20, 2012). The other three complaints cited are irrelevant and inadmissible because the CFPB cannot recover for conduct predating July 21, 2011.

21. Respondents dispute Paragraph 95 of EC's Facts. Carnes did not know all of the disclosures that were in the Loan Agreement or how they were presented in the Loan Agreement, as the document was created by outside counsel and Carnes merely "flipp[ed] through it." Dkt. 273 (Resp'ts' Facts) ¶¶ 39-41, 97-99. Further, Carnes was not a consumer finance regulation expert. Dkt. 273 (Resp'ts' Facts) ¶ 39.

22. Respondents dispute Paragraphs 97-99 of EC's Facts. This recitation ignores the fact that the Loan Agreement disclosed the obligation to pay in full or select payment option, and ignores the fact that auto-renewal was clearly explained in the Loan Agreement. Dkt. 273 (Resp'ts' Facts) ¶¶ 12-13, 21. Further, if a consumer paid his or her loan in full on the Payment Due Date, his or her loan would not be renewed.

23. Respondents dispute Paragraphs 102-103 of EC's Facts. The testimony that Enforcement Counsel cites does not support the allegation that consumers would pay more than "what had been disclosed" or that "Carnes understood that most Integrity Advance consumers would make higher repayments than what the company disclosed." The line of questioning concerns only the narrow question of whether "consumers who had rollovers" paid more than their initial legal obligation disclosed in the TILA Box. *See* Dkt. 88C (Ex. 3, Carnes Test.) at 245:10-17. Moreover, Enforcement Counsel's statement ignores that the Loan Agreement

clearly and conspicuously disclosed that a consumer would incur additional fees if his or her loan was renewed. *See* Dkt. 273 (Resp'ts' Facts) ¶ 17 (special notice stating in all capital letters "ADDITIONAL FEES MAY ACCRUE IF THE LOAN IS REFINANCED OR "ROLLED OVER"); *id.* ¶ 21 (explaining the auto-renewal and auto-workout procedures directly below the TILA box).

24. Respondents dispute Paragraph 104 of EC's Facts. Enforcement Counsel's statement that "consumers who did not contact the company would have their loans renewed repeatedly" ignores that, as per the clear terms of the Loan Agreement, a consumer's loan could only be renewed up to four times. *See* Dkt. 273 (Resp'ts' Facts) ¶ 21. It also ignores the fact that consumers could choose to repay the loan on the Payment Due Date as scheduled. *Id.* ¶¶ 12-13

25. Respondents dispute the allegation in Paragraph 105 of EC's Facts that "Carnes knew that some consumers had not understood that their first four auto-renewal payments would not reduce loan principal." As is evident from Enforcement Counsel's own exhibit, Carnes testified only that he was aware of some complaints. *See* Dkt. 88C (Ex. 3, Carnes Test.) at 243:1-12. Further, on a day-to-day basis, complaints were handled by the call center not Carnes. *See* Dkt. 273 (Resp'ts' Facts) ¶¶ 45-47. Awareness of the presence of some complaints, however, is not knowledge of what consumers "understood." *See* Dkt. 88C (Ex. 3, Carnes Test.) at 244:3-4 (Carnes testifying that he "wasn't tracking complaints"); Dkt. 273 (Resp'ts' Facts) ¶ 24 (CFPB's own expert, Dr. Manoj Hastak, testifying that he "didn't talk to any customers, and [he] didn't rely on complaints either" and that "the complaints are not representatives of the customers of Integrity Advance, and so they're just a small sampling of individuals who had a problem with Integrity Advance . . ." and were, thus, not "representative in any way" of a

"typical consumer"). Further, the high customer return rate indicated that customers understood the Loan Agreement and were satisfied with it. *Id.* ¶¶ 48-53.

26. Respondents dispute Paragraph 107 of EC's Facts. Carnes testified that he did not draft, revise, or edit the Integrity Advance's Loan Agreement or discuss the loan agreement template with its drafters (legal counsel from an outside law firm) or Integrity Advance personnel. Dkt. 273 (Resp'ts' Facts) ¶¶ 97-99. He further testified that he did not recall Integrity Advance's in-house counsel, Mr. Foster, ever explaining Integrity Advance's loan agreement to him, and that he did not recall specific conversations with Integrity Advance personnel about the loan agreement. *Id.*

27. Respondents dispute Paragraph 110 of EC's Facts. Enforcement Counsel's restitution figure fails to account for Integrity Advance's many repeat customers. Using Enforcement Counsel's calculation method, but excluding repeat customers, would result in consumers allegedly having paid $8,999,964.45 more than was disclosed in the Loan Agreement.

28. Respondents dispute the allegation in Paragraph 111 of EC's Facts that "Integrity Advance did not provide consumers with full unified versions of their loan agreement until after they had agreed to the loan." The allegation is not supported by Enforcement Counsel's own cited exhibit. *See* Dkt. 88C (Ex. 3, Carnes Test.) at 213:11-13 (testifying that "[t]he application and loan agreement would appear online similar to what you have printed out once they filled it out and approved – if they were approved"). Moreover, the allegation fundamentally misconstrues the process of an online loan application, in which the online view as the consumer is filling out the application and reviewing the agreement is necessarily different than the ultimate end product produced once a finalized Loan Agreement is printed out. *See id.* at 212:17-22.

29. Respondents dispute the allegation in Paragraph 113 of EC's Facts that "consumers could not receive initial approval of an online application without signing the ACH agreement." Enforcement Counsel cherry picks seven lines from Edward Foster's investigational hearing transcript, *see* Dkt 88D, Ex. 6, Foster Test. 84:1-7, but omits the clarification in the subsequent lines where Foster indicates that consumers could apply for a loan without signing the ACH authorization. *See* Dkt. 91 (Profita Decl. ¶ 6, Ex. 5, Foster Test.) at 84:8-256,85: 1-18. Moreover, Enforcement Counsel itself has alleged that 95% of consumers that obtained loans with Integrity Advance signed the ACH authorization, meaning that 5% of consumers received loans without signing the authorization. Dkt. 1 ¶ 41. *See* Dkt. 87D at 3, ¶ 8. Additionally, the CFPB introduced evidence from its own employee, Robert Hughes, that 98.5% of initial loan repayments were made by electronic means. Dkt. 87D at 3, ¶ 8. If some percentage of loan recipients *did not* provide Integrity Advance with electronic access to their bank accounts or repay the loan via electronic means, then—by definition—it was not a condition for a loan.

30. Respondents dispute Paragraph 116 of EC's Facts. Enforcement Counsel omits the language from the Loan Agreement's ACH authorization clearly stating that "[y]ou 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." *See* Dkt. 273 (Resp'ts' Facts) ¶ 63. Respondents' also dispute the characterization of renewals as the "default payment plan" for the reasons stated in Paragraph 9 above.

31. Respondents dispute Paragraph 118 of EC's Facts. The Loan Agreement expressly provided that consumers could "repay [their] 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." *See* Dkt. 273 (Resp'ts' Facts) ¶ 63; *see also id.* ¶ 66 (Carnes testifying that "Integrity Advance "accepted all forms of payments beside cash that [the Company] could think of"). Further, Enforcement Counsel's allegation is not supported by its own cited exhibits. *See* Dkt. 88C (Ex. 3, Carnes Test.) at 217: 13-17 ("[I] think – I can't remember exactly how that was worded, but I think if they didn't give us authorization, they had to provide some kind of payment system so we could get paid back. I don't know what that meant. I mean, I don't really remember."); Dkt. 88D (Ex. 6, Foster Test.) at 85: 4-13 ("My understanding of the process would have been that if that individual met every other underwriting criteria and thresholds, et cetera, including all the other signatures, and could arrange for a different form of payment they could have been approved for a loan.").

32. Respondents dispute Paragraph 119 of EC's Facts. Consumers could receive a loan without signing the ACH authorization form. Dkt. 273 (Resp'ts' Facts) ¶ 64. Moreover, Enforcement Counsel itself has alleged that 95% of consumers that obtained loans with Integrity Advance signed the ACH authorization, meaning that 5% of consumers received loans without signing the authorization. Dkt. 1 ¶ 41. *See* Dkt. 87D at 3, ¶ 8. Additionally, the CFPB introduced evidence from its own employee, Robert Hughes, that 98.5% of initial loan repayments were made by electronic means. Dkt. 87D at 3, ¶ 8. If some percentage of loan recipients *did not* provide Integrity Advance with electronic access to their bank accounts or repay the loan via electronic means, then—by definition—it was not a condition for a loan.

33. Respondents dispute Paragraph 125 of EC's Facts. The exhibit consists only of a "TranDotCom Solutions Loan Management System Operations Manual," a proprietary document of TranDotCom Solutions LLC, for use in conjunction with the company's loan management system. *See* Dkt. 88E (Ex. 34, Loan Mgmt. Sys. Ops. Manual) at 1–3. The TranDotCom manual

was not written by Respondents, and Enforcement Counsel provides no facts to show whether the manual was ever used by Respondents, and, if so, how it may have been used.

34. Respondents dispute Paragraph 128 of EC's Facts. Enforcement Counsel ignores that the ACH authorization form required consumers to sign and/or initial at various places throughout the document, including only a few lines below the demand draft provision. *See* Dkt. 274A at 6-7.

35. Respondents dispute Paragraphs 129-130 of EC's Facts. The demand draft provision clearly stated that consumers were agreeing to "authorize [Integrity Advance] 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." Dkt. 273 (Resp'ts' Facts) ¶ 72 (emphasis added).

36. Respondents dispute Paragraphs 131-132 of EC's Facts. Of the complaints Enforcement Counsel cites, only one post-dates July 21, 2011. *See* Dkt. 88E (Ex. 30, Consumer Complaint dated Aug. 3, 2011). Moreover, only one consumer explicitly states that she revoked her ACH authorization, and that complaint is irrelevant and inadmissible because it predates July 21, 2011—a time period for which the CFPB cannot maintain a claim. *See* Dkt. 88E (Ex. 23, Consumer Complaint dated July 18, 2010). Additionally, the CFPB's own expert acknowledged that consumer complaints do not equate to violations of the law. *See* Dkt. 273 (Resp'ts' Facts) ¶ 24 (Dr. Hastak testifying that "the complaints are not representatives of the customers of Integrity Advance, and so they're just a small sampling of individuals who had a problem with Integrity Advance . . ." and were, thus, not "representative in any way" of a "typical consumer").

37. Respondents dispute Paragraph 137 of EC's Facts. Carnes did not "know" that RCCs were used weekly, as he testified merely that "I can't remember exactly. . . I didn't see them printed weekly, but they were probably printed weekly." Hr'g Tr. I-236:13-15. Further,

RCCs were not used "regularly," but instead were used in less than 1% of loans after other options had been exhausted. Dkt. 273 (Resp'ts' Facts) ¶ 61-62.

Dated: June 4, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June 2020, I caused a copy of the foregoing Respondents' Statement of Disputed Facts in Opposition to Enforcement Counsel's Motion for Summary Disposition to be filed by electronic transmission (email) with the Office of Administrative Adjudication (CFPB_electronic_filings@cfpb.gov), and served by email on opposing counsel at the following addresses:

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