UNITED STATES OF AMERICA
Before the
BUREAU OF CONSUMER FINANCIAL PROTECTION

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029

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

Pursuant to 12 C.F.R. § 1081.212(d)(2), Enforcement Counsel hereby submits the following response to Respondents' Statement of Undisputed Facts in Support of Their Motion for Summary Disposition filed on May 15, 2020, [Dkt. 273], by identifying facts alleged therein that Enforcement Counsel disputes.

1. Enforcement Counsel does not dispute the facts alleged in paragraph 1.

2. Enforcement Counsel does not dispute the facts alleged in paragraph 2.

3. Enforcement Counsel does not dispute the facts alleged in paragraph 3.

4. Enforcement Counsel does not dispute the facts alleged in paragraph 4.

5. Enforcement Counsel does not dispute the statement in paragraph 5 that Integrity Advance "used a web-based Application and Loan Agreements," but clarifies that all of Integrity Advance's loan agreement contracts with consumers, web-based or otherwise, used one of two loan templates. *See* EC SMF Exh. 1 (first loan agreement template); EC-EX-063 (second loan agreement template); EC-EX-070 at 6 (Nov. 25, 2013 Integrity Advance response to a request to produce "each version of all" disclosures and contract).[1]

[1] All evidentiary support for this Response to Respondents' Statement of Undisputed Facts, as well as for Enforcement Counsel's Statement of Material Facts filed on May 15, 2020 [Dkt. 277] ("EC SMF"), is already part of the existing record in this proceeding. *See* Scheduling Conference Order (July 24, 2019) [Dkt. 227] (defining status of the record). Rather than attaching duplicative documentary evidence to this Response, Enforcement Counsel has instead included citations to the Docket and Hearing Record as applicable. Documents that Enforcement Counsel previously submitted as evidence in support of Enforcement Counsel's Statement of Material Facts in Support of its Motion for Summary Disposition as to Liability (May 10, 2016) [Dkt. 88] are denoted using the exhibit number from that filing (e.g., EC SMF Exh. 1). Documentary evidence from the hearing is denoted as Enforcement Counsel's hearing exhibit (e.g., EC-EX-067). Certain exhibits initially provided in support of Enforcement Counsel's previous Motion for Summary Disposition were later provided as documentary exhibits for the hearing. Enforcement Counsel provided a table at the end of it May 15, 2020 Statement of Material Facts with appropriate cross-references. All citations to the transcript in this Response (i.e., "Tr.") are to the final, sealed versions of the official transcripts of the Adjudication Proceeding Hearing held on July 19, 20, and 21, 2016.

Enforcement Counsel is unaware of any evidence that supports the assertion that Integrity Advance "primarily" relied on web-based documents and is thus unable to confirm or dispute the assertion in that sentence.

6. Enforcement Counsel does not dispute paragraph 6 in that the loan agreement (Decl. of Richard J. Zack In Supp. of Respondents' Mot. for Summ. Disp. (May 15, 2020) [Dkt. 274, 274A] ("Zack Decl.") Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (first loan agreement template)), contains eight lines for consumers to sign or initial, but is unaware of any evidence that supports the assertion that Respondents actually required consumers to sign in each location in order to originate a loan. In any event, this alleged fact is irrelevant to the claims at issue in this proceeding as the loan agreement fails to disclose the costs of the default auto-renewal and auto-workout process. The limited cost disclosures that do appear in the loan agreement were not followed by lines for consumers to sign or initial. *See* EC SMF Exh. 1 at 3-4 (first loan agreement template); EC-EX-063 at 3 (second loan agreement template). The first time a signature or initial line appears in the loan agreement is after the section on "Schedule of Charges and Fees" and well after the sentence on "additional fees" and the TILA box cost disclosures. *See* EC SMF Exh. 1 at 8 (first loan agreement template); EC-EX-063 at 8 (second loan agreement template). The table in the Schedule of Charges and Fees appears to be based upon single payment loans even though Integrity Advance's loans were automatically renewed. EC SMF Exh. 1 at 6-8 (first loan agreement template); EC-EX-063 at 7 (second loan agreement template). "[T]he information in these tables is confusing and is not accompanied by any text that would help the reader understand its implications." Hastak Expert Report (Feb. 11, 2016) [Dkt. 87A] ("Hastak Rpt.") at 17-18;

see also Hastak Dep. (Mar. 11, 2016) [Dkt. 100B at Exh. 13] ("Hastak Dep.") at 159:1-20, 161:21-162:18.

7. Enforcement Counsel disputes the assertion in paragraph 7 that "before Integrity Advance extended a loan to a first-time customer, one of its representatives had a telephone conversation with the consumer to ensure that he or she understood the details of the loan, including partial pay-down and loan pay-off options" to the extent that Respondents assert that Integrity Advance *always* had a phone call with first-time consumers prior to extending a loan and to the extent that Respondents make representations about the purpose of such calls. Contrary to Respondent James Carnes's ("Carnes") testimony that "everyone who applied got a call and talked to," EC-EX-068 at 189:13, consumers complained that they did not receive any communications from Integrity Advance. *See, e.g.*, Consumer Complaints [Dkt. 100B at Exhs. 7, 8, 9]. In addition, there is no evidence in the record, and Respondents do not contend, that they used these alleged phone calls to inform consumers about the total costs of the loan under the default operation of the loan agreement, and consumers who received phone calls from Integrity Advance prior to receiving a loan were among those who complained that they did not understand the terms and cost of the loan. *See, e.g.*, Consumer Complaints [Dkt. 100B at Exhs. 10, 11, 12]; EC SMF Exh. 15 (consumer complaint); EC SMF Exh. 17 (consumer complaint); EC SMF Exh. 27 (consumer complaint).

8. The facts alleged in paragraph 8 are not material to any claim or defense because the "welcome email" was sent after a consumer had already signed the loan agreement and once the loan was approved and processed. Zack Decl. Exh. 3; Novemsky Report [Dkt. 100B at Exh. 14] ¶ 26; EC-EX-068 at 224:3-10. Furthermore, the "welcome email"

excluded key details about the loan, including the costs of the default auto-renewal and auto-workout process. Zack Decl. Exh. 3. In any event, Respondents have not proffered evidence showing that all consumers received a "welcome email," and some Integrity Advance consumers complained that they received no communications from Integrity Advance. *See, e.g.*, Consumer Complaints [Dkt. 100B at Exhs. 7, 8, 9].

9. The facts alleged in paragraph 9 are not material to any claim or defense because "routine emails that apprised customers of payment due dates and payment amounts" were sent after a consumer had already signed the loan agreement. Zack Decl. Exh. 4; Novemsky Report [Dkt. 100B at Exh. 14] ¶ 26; EC-EX-069 at 171:4-13. Furthermore, the email template referenced excluded key details about the loan including the costs of the default auto-renewal and auto-workout process. Zack Decl. Exh. 4. In any event, Respondents have not provided evidence showing that all consumers received routine emails and some Integrity Advance consumers complained that they received no communications from Integrity Advance. *See, e.g.*, Consumer Complaints [Dkt. 100B at Exhs. 7, 8, 9].

10. Enforcement Counsel does not dispute the facts alleged in paragraph 10 that Integrity Advance's loans included a finance charge, but does not agree that the loans included "a set finance charge" to the extent that this characterization implies that consumers were liable, under the terms of the loan agreement, for a single finance charge that was billed to the consumer only once. While Integrity Advance calculated each part of the TILA box assuming that the loan would be repaid in a single payment, Respondents' Answer and Affirmative Defenses (Dec. 14, 2015) [Dkt. 21] ("Ans.") ¶ 26, unless a consumer contacted Integrity Advance to change the terms of her loan, Integrity Advance auto-renewed the consumer's loan four times, thus charging the consumer five times the initial

finance charge disclosed in the TILA box during the auto-renewal process. EC-EX-070 at 9 (Nov. 25, 2013 Integrity Advance Interrogatory Response); *see also* EC SMF Exh. 1 (first loan agreement template). After four rollovers, Integrity Advance put consumers in the auto-workout process, which billed consumers $50 towards loan principal, plus a finance charge that varied based on the remaining principal, on every payment due date until the loan principal was paid off. *Id.*; *see also* EC SMF Exh. 11 (consumer payment history).

11. Enforcement Counsel does not dispute the fact alleged in paragraph 11 that Integrity Advance debited consumers for loans on their pay date, but does not agree that, after a consumer originated a loan with Integrity Advance, full repayment of the loan "was due on the consumer's next pay date." Unless a consumer contacted Integrity Advance to change the terms of her loan, Integrity Advance withdrew only an amount equal to the finance charge and auto-renewed the consumer's loan four times, then put the consumer through auto-workout, extracting money from the consumer's account every pay date potentially for months. EC-EX-070 at 9 (Nov. 25, 2013 Integrity Advance Interrogatory Response); *see also* EC SMF Exh. 1 (first loan agreement template); EC-EX-063 (second loan agreement template); EC SMF Exh. 9 (consumer payment history); EC SMF Exh. 10 (consumer payment history); EC SMF Exh. 11 (consumer payment history); EC SMF Exh. 12 (consumer payment history); EC SMF Exh. 13 (consumer payment history); EC SMF Exh. 14 (consumer payment history).

12. Enforcement Counsel disputes in paragraph 12 that "[u]nder the 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." Consumers were not required to actively "select" a payment option. By default, unless a consumer contacted Integrity Advance to change the terms of her loan, Integrity Advance auto-renewed the consumer's loan. Ans. ¶ 29; EC SMF Exh. 1 at 4 (first loan agreement template); EC SMF Exh. 16 (consumer complaint); EC SMF Exh. 17 (consumer complaint); EC SMF Exh. 18 (consumer complaint); EC SMF Exh. 20 (consumer complaint); EC SMF Exh. 21 (consumer complaint); EC SMF Exh. 22 (consumer complaint); Tr. I 219: 13-220:3 (Carnes's testimony on the default operation of Integrity Advance's loans).

13. Enforcement Counsel does not dispute that the Payment Options terms excerpted in paragraph 13 were included in the loan agreement (Zack Decl. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (first loan agreement template)), but notes that the Payment Options do not explicitly state that consumers would face additional finance charges under the renewal option or that the total cost of the loan would be higher than was disclosed in the TILA disclosures. Dr. Manoj Hastak reviewed these terms as part of his analysis of the loan agreement and concluded "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." Hastak Rpt. at 19-20.

14. Enforcement Counsel disputes in paragraph 14 that "Integrity Advance had a process that allowed a consumer who was otherwise eligible to obtain a loan to arrange for a type of payment, other than ACH authorization, including checks and money orders." To the contrary, Respondents admitted that "[c]onsumers could only receive loan proceeds by

way of an electronic deposit which was authorized by the ACH authorization form." Ans. ¶ 40. The form authorized both the deposit and the withdrawals for payments via ACH. *Id.*; *see also* EC SMF Exh. 1 at 9-11 (first loan agreement template); EC-EX-063 at 8-10 (second loan agreement template); EC-EX-005 at 9-13 (sample executed loan); EC-EX-014 at 4-6 (sample executed loan).

15. The facts alleged in paragraph 15 are not material to any claim or defense, because the Notice of Charges alleges that Integrity Advance violated TILA and Regulation Z by failing to disclose the true terms of its loans, not by failing to use proper formatting. In any case, Enforcement Counsel disputes that Respondents' TILA Box "complied with the format provided by the CFPB in 12 C.F.R. § 1026 App. G.2." Appendix G-2 has nothing to do with the format of a TILA box. Appendix H-2 contains a Loan Model Form that contains numerous data grouped together that Respondents do not include in their TILA disclosures, and therefore, to the extent that Respondents intended to assert that they complied with Appendix H-2, Enforcement Counsel disputes this fact.

16. Enforcement Counsel does not dispute that the Payment Schedule language excerpted in paragraph 16 was included in the loan agreement (Zack Decl. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (first loan agreement template)), but notes that the language was not included in all loan agreements. Integrity Advance's loan agreement contracts with consumers used one of two loan templates (EC SMF Exh. 1 and EC-EX-063). *See also* EC-EX-070 at 5 (Nov. 25, 2013 Integrity Advance Interrogatory Response) (responding to a request to produce "each version of all" disclosures and contract). One of the two templates (EC-EX-063) does not include the Payment Schedule

language. In addition, under the default operation of Integrity Advance's loan agreement, the Payment Schedule language is false.

17. Enforcement Counsel does not dispute that the Special Notice terms excerpted in paragraph 17 were included in the loan agreement (Zack Decl. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (first loan agreement template)), but notes that the Special Notice does not state that the fees will accrue. Furthermore, the statement refers to "refinanced" and "rolled over," but the loan agreement does not use those terms in the provisions regarding renewal, auto-renewal, or auto-workout. *See* EC SMF Exh. 1 at 3-4 (first loan agreement template); EC-EX-063 at 3 (second loan agreement template). Dr. Manoj Hastak reviewed the Special Notice terms as a part of his analysis of the loan agreement and concluded, "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." Hastak Rpt. at 19-20. While the Special Notice "has the potential to signal to borrowers that refinancing the loan may result in additional costs . . . 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[.]" *Id.* at 17.

18. Enforcement Counsel does not dispute that the notice excerpted in paragraph 18 was included in the loan agreement (Zack Decl. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (first loan agreement template)), but notes that the notice excerpted in

paragraph 18 is not material to any claim or defense because the statement does not address disclosure of the costs of the loans.

19. Enforcement Counsel does not dispute that the terms excerpted in paragraph 19 were included in the loan agreement (Zack Decl. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (first loan agreement template)). However, Enforcement Counsel notes that a consumer could only rescind the loan within three days of receiving the funds, as Respondents themselves point out in their brief. Resps. MSD Br. at 17.

20. Enforcement Counsel does not dispute that the terms excerpted in paragraph 20 were included in the loan agreement (Zack Decl. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (first loan agreement template)), but does dispute that the Standard Loan Fees "indicated the range of time periods in which the initial loan would be required to be repaid or renewed." The Standard Loan Fees table appears "to be based upon single payment loans," even though Integrity Advance's loans rolled over by default. Hastak Rpt. at 18. In addition, the table, which provides information about different loan amounts for loans from eight to 23 days in duration, does not capture the costs associated with the auto-renewal or auto-workout process. *Id.*; *see also* EC SMF Exh. 1 at 8 (first loan agreement template). Furthermore, "the information in these tables is confusing and is not accompanied by any text that would help the reader understand its implications." Hastak Rep. at 17-18; *see also* Hastak Dep. at 159:1-20, 161:21-162:18.

21. Enforcement Counsel does not dispute that the terms excerpted in paragraph 21 were included in the loan agreement (Zack Decl. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (first loan agreement template)), but notes that the Auto-Renewal and Auto-Workout provisions do not explicitly state that consumers would face additional

finance charges under those options or that the total cost of the loan would be higher than was disclosed in the TILA disclosures. Dr. Manoj Hastak reviewed these terms as a part of his analysis of the loan agreement and concluded, "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." Hastak Rpt. at 19-20. "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 that is not made explicitly clear to them." *Id.* at 15-16. The terms "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." *Id.* at 17.

22. Enforcement Counsel does not dispute that the portions of the sentence excerpted in paragraph 22 were included in the loan agreement (Zack Decl. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (first loan agreement template)), but disputes that the sentence, as it appears in the loan agreement, indicates that other amounts will be owed to Integrity Advance "contingent on the consumers' choices." *See* Zack Decl. Exh. 1 at 3.

23. The facts alleged in paragraph 23 are not material to any claim or defense. Any broad observations about consumers' satisfaction with the speed with which they could receive

small-dollar credit has no bearing on the manner in which Integrity Advance disclosed its loans' costs.

24. Enforcement Counsel does not dispute that Dr. Hastak testified as quoted in the excerpted testimony quoted in paragraph 24. It notes that Dr. Hastak testified that, while his expert report "did not rely on the complaints . . . , [t]he complaints . . . validated the possibility that people may have made th[e] inference" that choosing the renewal option would not change the total cost of the loan as represented in the "Total of Payments" section of the TILA box. Hastak Dep. 139:11-14; 135:1-139:10. Dr. Hastak further explained that far from being an unreliable source, "complaints provide useful information" even though "you can't generalize from the complaints to the entire customer base." *Id.* at 182:17-19.

25. Enforcement Counsel disputes paragraph 25 to the extent it suggests that Dr. Hastak's report did not opine on whether the loan agreement included disclosures that might misrepresent consumers' obligations under the agreement. Dr. Hastak provided an opinion that the fee disclosures and disclosures related to the use of remotely created checks were not clear and conspicuous. Hastak Rpt. at 19-20, 26. He opined that the loan agreement's "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," and in fact "could easily communicate to borrowers instead that loan costs and total payments for the 'Renewal' option are stated and emphasized in the TIL box." *See id.* at 20.

26. Enforcement Counsel disputes the statement in paragraph 26 that Respondents' expert, Nathan Novemsky, Ph.D., challenged Dr. Hastak's conclusions. In his deposition, Dr. Novemsky testified that he had no opinion as to whether the disclosures in Integrity

Advance's loan agreements concerning remotely created checks were clear or conspicuous. Novemsky Dep. (April 15, 2016) [Dkt. 87E] at 175:2-11.

27. The facts alleged in paragraph 27 are not material. Any reliance by Respondents' on Delaware's review of Integrity Advance's loan agreement has no relevance to any claim or defense. Also, during the period that Integrity Advance operated, the Delaware Commissioner did not require the use of particular loan agreements between non-depository lenders and their customers. Tr. III 147:22-148:11. It did not review changes to a loan application that a non-depository lender used with its customers. *Id.* 131:8-15. It did not set the fees that non-depository lenders could charge their customers. *Id.* 148:12-14. It did not require non-depository lenders to automatically roll over their customers' loans. *Id.* 145:24-146:2. It did not require short-term lenders to offer the option of rollovers. *Id.* 146:7-10. It did not review non-depository lenders' loan agreements for compliance with the Electronic Funds Transfer Act. *Id.* 149:1-3. It did not to review their loan agreements for compliance with the CFPA. Decl. of Christopher Albanese (May 25, 2016) [Dkt. 100B at Exh. 1] ("Albanese Decl.") ¶ 12. Its review of Truth in Lending compliance for non-depository lenders consisted of determining whether there was a separate Truth in Lending box in the loan agreement, Tr. III 150:24-151:2, and checking the lenders' APR calculation for mathematical correctness. *Id.* 153:5-6. The Delaware Commissioner does "not approve the loan contract" as part of the licensing process. *Id.* 126:16-24. As of the hearing, the Delaware Commissioner had never denied a non-depository lender's application for a license, *id.* 144:23-145:1, nor had it denied the renewal of a non-depository lender's license. *Id.* 129:25-130:16. Enforcement Counsel also objects to any suggestion in paragraph 27 that the Delaware regulator approved the

loan agreement or concluded that it complied with the Truth in Lending Act, the Electronic Fund Transfer Act, or the Consumer Financial Protection Act.

28. For the reasons that the facts alleged in paragraph 27 are not material, the facts alleged in paragraph 28 are not material.

29. For the reasons that the facts alleged in paragraph 27 are not material, the facts alleged in paragraph 29 are not material.

30. For the reasons that the facts alleged in paragraph 27 are not material, the facts alleged in paragraph 30 are not material.

31. For the reasons that the facts alleged in paragraph 27 are not material, the facts alleged in paragraph 31 are not material. Again, the Delaware Commissioner did not review non-depository lenders' loan agreements for compliance with the Electronic Funds Transfer Act. Tr. III 149:1-3. It did not to review their loan agreements for compliance with the CFPA. Albanese Decl. ¶ 12. Its review of Truth in Lending compliance for non-depository lenders consisted of determining whether there was a separate Truth in Lending box in the loan agreement, Tr. III 150:24-151:2, and checking the lenders' APR calculation for mathematical correctness. *Id.* 153:5-6. Enforcement Counsel objects to any suggestion in paragraph 31 that the Delaware regulator approved the loan agreement or concluded that it complied with the Truth in Lending Act, the Electronic Fund Transfer Act, or the Consumer Financial Protection Act.

32. For the reasons that the facts alleged in paragraph 27 are not material, the facts alleged in paragraph 32 are not material. Again, the Delaware Commissioner did not set the fees that non-depository lenders could charge their customers, Tr. III 148:12-14, it did not require non-depository lenders to automatically roll over their customers' loans, *id.*

145:24-146:2, and it did not require short-term lenders to offer the option of rollovers. *Id.* 146:7-10.

33. For the reasons that the facts alleged in paragraph 27 are not material, the facts alleged in paragraph 33 are not material. Again, the Delaware Commissioner does "not approve the loan contract" as part of the licensing process. Tr. III 126:16-24. Enforcement Counsel objects to any suggestion in paragraph 33 that the Delaware regulator approved the loan agreement or concluded that it complied with the Truth in Lending Act, the Electronic Fund Transfer Act, or the Consumer Financial Protection Act.

34. For the reasons that the facts alleged in paragraph 27 are not material, the facts alleged in paragraph 34 are not material. Again, the Delaware Commissioner's review of Truth in Lending compliance for non-depository lenders consisted of determining whether there was a separate Truth in Lending box in the loan agreement, Tr. III 150:24-151:2, and checking the lenders' APR calculation for mathematical correctness. *Id.* 153:5-6.

35. For the reasons that the facts alleged in paragraph 27 are not material, the facts alleged in paragraph 35 are not material.

36. For the reasons that the facts alleged in paragraph 27 are not material, the facts alleged in paragraph 36 are not material. Enforcement Counsel also notes that Ms. Miller did not testify that lenders' loan agreements were reviewed during the examination process, but instead testified that she "would assume" that a loan agreement would "come up at examination." Tr. III 131:16-21. Enforcement Counsel further objects to any suggestion in paragraph 36 that the Delaware regulator approved the loan agreement or concluded that it complied with the Truth in Lending Act, the Electronic Fund Transfer Act, or the Consumer Financial Protection Act.

37. For the reasons that the facts alleged in paragraph 27 are not material, the facts alleged in paragraph 37 are not material.

38. For the reasons that the facts alleged in paragraph 27 are not material, the facts alleged in paragraph 38 are not material. Enforcement Counsel further objects to any suggestion in paragraph 38 that the Delaware regulator approved the loan agreement or concluded that it complied with the Truth in Lending Act, the Electronic Fund Transfer Act, or the Consumer Financial Protection Act.

39. The facts alleged in paragraph 39 are immaterial to any claim or defense because no claim asserted by Enforcement Counsel requires it to prove that Respondents originally drafted the loan agreement or intentionally violated the law. Moreover, since Respondents did not waive attorney-client privilege during the prior hearing, they cannot assert that any reliance on advice of counsel was reasonable. *See, e.g.*, Tr. I 230:12-24.

40. For the reasons that the facts alleged in paragraph 39 are not material, the facts alleged in paragraph 40 are not material.

41. For the reasons that the facts alleged in paragraph 39 are not material, the facts alleged in paragraph 41 are not material. Again, since Respondents did not waive attorney-client privilege during the prior hearing, they cannot assert that any reliance on advice of counsel was reasonable. *See, e.g.*, Tr. I 230:12-24.

42. The facts alleged in paragraph 42 are immaterial to any claim or defense because no claim asserted in the Notice of Charges relates to the amount of Integrity Advance's fee.

43. Enforcement Counsel does not dispute the facts in paragraph 43. Enforcement Counsel notes that Carnes oversaw Integrity Advance's use of its call centers. He had communications with the call centers used by Integrity Advance, Tr. I 64:3-6, analyzed

call logs from the call centers used by Integrity Advance, EC-EX-088 (Carnes email); Tr. I 179:18-180:1, was involved in the decision to move Integrity Advance's business from one call center to another, Tr. I 64:13-19, and directed the resolution of alleged fraud by a call center employee. EC-EX-087 (Carnes email); Tr. I 177:3-178:3.

44. Enforcement Counsel disputes the facts in paragraph 44 to the extent that Respondents are asserting that all repayment matters were handled by call centers. Carnes testified that Integrity Advance created remotely created checks for the purposes of collecting consumer debt. Tr. I 235:24-236:3. Integrity Advance used "a package, or a module" in its software to print remotely created checks at its Kansas City office. *Id.* 236:4-7, 236:16-22. Carnes saw remotely created checks printed, and estimated they were printed on a weekly basis. *Id.* 236:10-15.

45. Enforcement Counsel does not dispute the facts in paragraph 45. Enforcement Counsel notes that Carnes oversaw Integrity Advance's use of its call centers. He had communications with the call centers used by Integrity Advance, Tr. I 64:3-6, analyzed call logs from the call centers used by Integrity Advance, EC-EX-088 (Carnes email); Tr. I 179:18-180:1, was involved in the decision to move Integrity Advance's business from one call center to another, Tr. I 64:13-19, and directed the resolution of alleged fraud by a call center employee. EC-EX-087 (Carnes email); Tr. I 177:3-178:3.

46. Enforcement Counsel does not dispute the facts in paragraph 46. Enforcement Counsel notes that Carnes oversaw Integrity Advance's use of its call centers. He had communications with the call centers used by Integrity Advance, Tr. I 64:3-6, analyzed call logs from the call centers used by Integrity Advance, EC-EX-088 (Carnes email); Tr. I 179:18-180:1, was involved in the decision to move Integrity Advance's business from

one call center to another, Tr. I 64:13-19, and directed the resolution of alleged fraud by a call center employee. EC-EX-087 (Carnes email); Tr. I 177:3-178:3. Also, Enforcement Counsel objects to any suggestion that Carnes was not aware of consumer complaints. During his investigational hearing, Carnes testified that he was "aware that there are complaints out there . . . one common complaint that people—that consumers would have to try and get out of paying what they owed or paying less was to say, I didn't understand I was being—that these payments weren't going towards principal and that they were going toward interest only . . . So the common complaint was they would call and say, Well, I didn't understand it." EC-EX-068 at 243:6-23.

47. Enforcement Counsel disputes the facts in paragraph 47. The testimony cited by Respondents does not support the assertion that there were only a *de minimis* number of complaints. Indeed, there is no evidence in the record about the total number of complaints Integrity Advance received during its operations. Enforcement Counsel also disputes the fact that Carnes was not aware of consumer complaints. During his investigational hearing, he testified that he was "aware that there are complaints out there . . . one common complaint that people—that consumers would have to try and get out of paying what they owed or paying less was to say, I didn't understand I was being—that these payments weren't going towards principal and that they were going toward interest only . . . So the common complaint was they would call and say, Well, I didn't understand it." EC-EX-068 at 243:6-23.

48. Enforcement Counsel does not dispute the facts in paragraph 48.

49. Enforcement Counsel disputes paragraph 49, which is argument and not fact. There is no evidence in the record on which to base a finding that repeat customers understood the

cost of the loans and therefore were not harmed. The fact that a consumer took out more than one loan, by itself, does not demonstrate that the consumer was not harmed or that she was "necessarily fully informed of how the loan agreements, including rollovers, worked."

50. The facts alleged in paragraph 50 are immaterial to any claim or defense because there is no evidence in the record on which to base a finding that repeat customers understood the cost of the loans and therefore were not harmed.

51. The facts alleged in paragraph 51 are immaterial to any claim or defense because there is no evidence in the record on which to base a finding that repeat customers understood the cost of the loans and therefore were not harmed.

52. The facts alleged in paragraph 52 are immaterial to any claim or defense because there is no evidence in the record on which to base a finding that repeat customers understood the cost of the loans and therefore were not harmed.

53. The facts alleged in paragraph 53 are immaterial to any claim or defense because there is no evidence in the record on which to base a finding that repeat customers understood the cost of the loans and therefore were not harmed.

54. The facts alleged in paragraph 54 are immaterial to any claim or defense because a legal payment method can still be used to violate the law.

55. The facts alleged in paragraph 55 are immaterial to any claim or defense because a legal payment method can still be used to violate the law.

56. The facts alleged in paragraph 56 are immaterial to any claim or defense because a legal payment method can still be used to violate the law.

57. The facts alleged in paragraph 57 are immaterial to any claim or defense because a legal payment method can still be used to violate the law.

58. Enforcement Counsel does not dispute paragraph 58 but notes that it is immaterial to any claim or defense because the Notice of Charges does not premise any claim on the percentage of Integrity Advance consumers who had their accounts debited by remotely created checks. Enforcement Counsel notes that Integrity Advance used remotely created checks 602 times on or after July 21, 2011, on consumers who had revoked or stopped their authorization for Integrity Advance to withdraw funds from their accounts and had already paid an amount equal to the "Total of Payments" in the TILA box in the consumers' loan agreements. Tr. II 151:6-11; EC-EX-097; *see also* EC-EX-095; EC-EX-101.

59. The facts alleged in paragraph 59 are immaterial to any claim or defense. Moreover, Enforcement Counsel objects to Respondents' characterization of its use of remotely created checks as occurring "rarely." Respondents' data show that Integrity Advance used remotely created checks on 2,024 loans after the consumer had previously revoked or otherwise blocked ACH debits from her account, and that it used remotely created checks 3,545 times after the consumer had revoked or otherwise blocked ACH debits from her account. *See* Decl. of Robert J. Hughes in Supp. of EC's May 2016 Mot. for Summ. Dispos. [Dkt. 87D] ("Hughes MSD Decl.") ¶¶ 9, 10.

60. Enforcement Counsel disputes the facts alleged in paragraph 60. Edward Foster's ("Foster") statement was not made in the context of remotely created checks and Foster specifically testified that his answer about the call centers would call for speculation. Tr. II 16:1-8. Moreover, Carnes testified that Integrity Advance created remotely created

checks for the purposes of collecting consumer debt. Tr. I 235:24-236:3. Integrity Advance used "a package, or a module" in its software to print remotely created checks at its Kansas City office. *Id.* 236:4-7, 236:16-22. Carnes saw remotely created checks printed, and estimates they were printed on a weekly basis. *Id.* 236:10-15.

61. Certain facts alleged in paragraph 61 are immaterial to any claims and defenses in this matter and are presented in an argumentative manner. The overall frequency with which Respondents used remotely created checks is immaterial to any claim or defense. Although Enforcement Counsel does not dispute that Carnes testified that Integrity Advance used remotely created checks on "very very few" loans, Tr. II 85:8-11, that characterization is at odds with the company's data. Respondents' data show that Integrity Advance used remotely created checks on 2,024 loans after the consumer had previously revoked or otherwise blocked ACH debits from her account, and that it used remotely created checks 3,545 times after the consumer had revoked or otherwise blocked ACH debits from her account. *See* Hughes MSD Decl. ¶¶ 9, 10.

62. Certain facts alleged in paragraph 62 are immaterial to any claims or defense in this matter and are presented in an argumentative manner. The overall frequency with which Respondents used remotely created checks is immaterial to any claim or defense. Enforcement Counsel does not dispute that Respondents used remotely created checks when customers had no payment option in place and did not set up alternate payments.

63. Enforcement Counsel does not dispute that the language excerpted in paragraph 63 was included in the ACH authorization section of the loan agreement (Zack Decl. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (first loan agreement template)), but notes that the language appears in the middle of paragraph, which itself is in the

middle of several paragraphs, of undistinguished disclosures:

> 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.

Zack Decl. Exh. 1 at 7.

64. Enforcement Counsel disputes paragraph 64. Although a small minority of Integrity Advance's customers may have obtained a loan without signing an ACH authorization, Respondents admitted that the only way consumers could receive loan proceeds was through an electronic deposit authorized by the ACH authorization form. Ans. ¶ 40. That form authorized both the deposit and the withdrawals for payments via ACH. *Id.*; *see also* EC SMF Exh. 1 at 9-11 (first loan agreement template); EC-EX-063 at 8-10 (second loan agreement template); EC-EX-005 at 9-13 (sample executed loan); EC-EX-014 at 4-6 (sample executed loan). Additionally, Integrity Advance's loan documents do not contain any indications that consumers could receive a loan from the company without signing the ACH authorization form. EC SMF Exh. 1 (first loan agreement template); EC-EX-063 (second loan agreement template); EC-EX-005 (sample executed loan); EC-EX-014 (sample executed loan).

65. The facts alleged in paragraph 65 are immaterial to any claim or defense because Enforcement Counsel alleges in the Notice of Charges that Integrity Advance violated EFTA by conditioning the extension of credit on a consumer pre-authorizing electronic fund transfers. The only way consumers could receive loan proceeds was through an

electronic deposit authorized by the ACH authorization. Ans. ¶ 40. That form authorized both the deposit and the withdrawals for payments via ACH. *Id.*; *see also* EC SMF Exh. 1 at 9-11 (first loan agreement template); EC-EX-063 at 8-10 (second loan agreement template); EC-EX-005 at 9-13 (sample executed loan); EC-EX-014 at 4-6 (sample executed loan). And Integrity Advance's loan documents do not contain any indications that consumers could receive a loan from the company without signing the ACH authorization form. EC SMF Exh. 1 (first loan agreement template); EC-EX-063 (second loan agreement template); EC-EX-005 (sample executed loan); EC-EX-014 (sample executed loan). Whether consumers could make payments to Integrity Advance through another method after the extension of credit is irrelevant.

66. The facts alleged in paragraph 66 are immaterial for the same reasons as the facts alleged in paragraph 65 are not material.

67. The facts alleged in paragraph 67 are not relevant to any claim or defense.

68. The first sentence of Paragraph 68 is argument, not fact. And Enforcement Counsel disputes the facts implied in that first sentence. Enforcement Counsel does not dispute the second sentence of Paragraph 68. Enforcement Counsel data scientist Robert Hughes relied on three NACHA Return Reason Codes—R07, R08, and R10— in Respondents' transaction data to determine the universe of consumers harmed by Respondents' unfair practice. Tr. II 146:11-24. These codes, respectively, indicate that ACH authorization was revoked by the customer, a stop payment order was placed by the payee, or that a customer has advised his or her bank that the ACH is unauthorized, ineligible, or incomplete. EC-EX-092 at 3-4. Enforcement Counsel defines the substantial harm caused by Respondents' unfair practice relating to remotely created checks as the amount of

money Respondents obtained using such checks on consumers who had paid the amount disclosed in the Total of Payments or more before withdrawing authorization using these codes.

69. Enforcement Counsel disputes the facts alleged in paragraph 69. The loan agreement does not expressly communicate to consumers that Integrity Advance might use remotely created checks. The language in the ACH agreement does not use the term remotely created check, demand draft, check draft or any of the other terms associated with this product. Moreover, the language does not explain to consumers that Integrity Advance could write a check drawn on their account without their knowledge, signature, or approval. *See* EC SMF Exh. 1 at 10 (first loan agreement template); EC-EX-063 at 9 (second loan agreement template); EC-EX-005 at 10-11 (sample executed loan); EC-EX-014 at 5 (sample executed loan).

70. Enforcement Counsel does not dispute paragraph 70 that the demand draft paragraph is located on the bottom of the first page of the ACH authorization in Respondents' Statement of Undisputed Facts Exhibit 1. Enforcement Counsel notes that the demand draft paragraph appears at different locations in other loan agreements. *See, e.g.,* EC SMF Exh. 1 at 10 (first loan agreement template); EC-EX-063 at 9 (second loan agreement template); EC-EX-001 through -014. Enforcement Counsel clarifies that this paragraph is placed toward the middle of the ACH authorization. *See* EC SMF Exh. 1 at 10 (first loan agreement template); EC-EX-063 at 9 (second loan agreement template); EC-EX-001 through -014; *see also* Hastak Rpt. at 24.

71. Enforcement Counsel disputes the facts alleged in paragraph 71 to the extent that the paragraph states the language in the ACH authorization is clear. The remotely created

check provision was not emphasized by any bolded, underlined, capitalized, or enlarged font. EC-EX-001 through -014; EC-EX-063. The language in the ACH authorization "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." Hastak Rpt. at 26.

72. Enforcement Counsel does not dispute the facts alleged in paragraph 72.

73. Paragraph 73 is immaterial to any claims and defenses. Enforcement Counsel objects to any implication that consumer testimony is necessary to prove any of the claims asserted in the Notice of Charges.

74. Enforcement Counsel does not dispute the facts alleged in paragraph 74.

75. Enforcement Counsel does not dispute the facts alleged in paragraph 75.

76. Enforcement Counsel disputes paragraph 76 as not supported by the testimony cited by Respondents. That testimony refers only to Timothy Madsen's ("Madsen") conversations with Carnes about the loan agreement, and does not address Madsen's job duties.

77. Enforcement Counsel disputes paragraph 77 as not supported by the testimony cited by Respondents. That testimony refers only to Madsen's conversations with Carnes about the loan agreement, and does not address Madsen's job duties.

78. Enforcement Counsel does not dispute the facts alleged in paragraph 78.

79. Enforcement Counsel does not dispute the facts alleged in paragraph 79.

80. Enforcement Counsel does not dispute the facts alleged in paragraph 80.

81. Enforcement Counsel does not dispute the facts alleged in paragraph 81.

82. Enforcement Counsel does not dispute the facts alleged in paragraph 82. It notes that once Bruce Andonian began working on Integrity Advance's website, his responsibilities relating to Integrity Advance gradually increased because "the longer I was there the more work that I think [Carnes] felt comfortable giving me, better understood the website and how the company worked." Tr. I 83:17-23.

83. Enforcement Counsel does not dispute the facts alleged in paragraph 83.

84. Enforcement Counsel does not dispute the facts alleged in paragraph 84. It notes that Andonian testified that Carnes would bring the matters included in paragraph 84 regarding Integrity Advance to his attention, rather than vice-versa. *See* Tr. I 75:5-15.

85. Enforcement Counsel does not dispute the facts alleged in paragraph 85.

86. Enforcement Counsel does not dispute the facts alleged in paragraph 86.

87. Enforcement Counsel does not dispute the facts alleged in paragraph 87.

88. Enforcement Counsel does not dispute the facts alleged in paragraph 88, but notes that Foster had business functions at Integrity Advance in addition to his legal functions. Tr. II 8:16-9:4.

89. Enforcement Counsel does not dispute the facts alleged in paragraph 89, and notes that Foster testified that, "early on during set up and formation" he would talk to Carnes about Integrity Advance business on a daily basis when Carnes was in the office. Tr. II 10:13-19.

90. Enforcement Counsel does not dispute the facts alleged in paragraph 90.

91. Enforcement Counsel does not dispute that paragraph 91 accurately reflects Carnes's testimony, but notes that his testimony that he was in charge of Integrity Advance "[a]s any CEO is in charge, yes," is at Tr. I 209:8, not Tr. I 210:8. Enforcement Counsel

clarifies that as Integrity Advance's chief executive, Carnes was the primary decision maker at Integrity Advance, Tr. I 51:4-7, 82:2-4, and had the authority to make decisions governing Integrity Advance's policies and procedures EC-EX-068 at 32:15-17. Indeed, Carnes exercised control over all company practices, policies, and procedures. *See* EC SMF ¶¶ 9-57.

92. Enforcement Counsel does not dispute the facts alleged in paragraph 92. It notes, however, that Integrity Advance was the most profitable of the Hayfield subsidiaries, contributing more than 75% of Hayfield's profits in 2010, 2011, and 2012. EC-EX-068 at 92:19-93:16; Tr. I 114:11-25, 115:8-116:2.

93. Enforcement Counsel does not dispute the facts alleged in paragraph 93.

94. Enforcement Counsel does not dispute the facts alleged in paragraph 94.

95. Enforcement Counsel does not dispute the facts alleged in paragraph 95.

96. Enforcement Counsel does not dispute the facts alleged in paragraph 96. It notes, however, that Integrity Advance was the most profitable of the Hayfield subsidiaries, contributing more than 75% of Hayfield's profits in 2010, 2011, and 2012. EC-EX-068 at 92:19-93:16; Tr. I 114:11-25, 115:8-116:2.

97. Enforcement Counsel disputes paragraph 97. As Integrity Advance's chief executive, Carnes was the primary decision maker at Integrity Advance, Tr. I 51:4-7, 82:2-4, and had the authority to make decisions governing Integrity Advance's policies and procedures. EC-EX-068 at 32:15-17. Evidence also allows for a reasonable inference that Carnes substantively approved Integrity Advance's loan agreement. At the time Integrity Advance created its loan product and loan agreement, Carnes was one of only four individuals who performed functions for Integrity Advance. Tr. I 53:19-54:23, 230:25-

231:5. In addition to Carnes, there was Foster (the company's general counsel), Hassan Shahin (an information technology specialist), and a receptionist. *Id.* 53:19-54:10. Although neither Carnes nor Foster clearly stated who decided to implement Integrity Advance's deceptive loan agreement, Carnes was the chief executive and the loan agreement formed the basis for Integrity Advance's only product, which generated more than 75% of Hayfield's revenues. *Id.* 104:13-105:12; EC-EX-068 at 92:19-93:16; Tr. I 112:8-114:25. Foster, the company's general counsel, testified that his involvement in developing the loan agreement was purely legal in nature. Tr. II 28:4-23, 43:8-44:17. Given this testimony, it can be inferred that he did not make the business decision to approve the loan product or the loan agreement. Shahin was the company's primary IT support and there is no evidence in the record that his duties extended into business decisions about the loan agreement or loan product. Tr. I 212:14-213:3. Similarly, there is no evidence to suggest that the receptionist had corporate decision-making authority. This leaves Carnes as the only person who plausibly could have reviewed and approved the loan agreement before Integrity Advance started using it with customers.

98. Enforcement Counsel does not dispute that Carnes testified that he did not draft, edit, or revise Integrity Advance's loan agreement, but notes there is no other evidence in the record to support the facts alleged in paragraph 98.

99. Enforcement Counsel does not dispute that Carnes testified that he did not discuss the loan agreement with outside counsel, that he did not recall Foster explaining the Integrity Advance loan agreement to him, and that he did not recall specific conversations with Integrity Advance personnel about the loan agreement. However, Enforcement Counsel disputes paragraph 99 to the extent that implies that Carnes did not substantively approve

the loan agreement that formed the basis for Integrity Advance's only product, which generated more than 75% of Hayfield's revenues. Tr. I 104:13-105:12; EC-EX-068 at 92:19-93:16; Tr. I 112:8-114:25. Evidence also allows for a reasonable inference that Carnes substantively approved Integrity Advance's loan agreement. At the time Integrity Advance created its loan product and loan agreement, Carnes was one of only four individuals who performed functions for Integrity Advance. Tr. I 53:19-54:23, 230:25-231:5. In addition to Carnes, there was Foster (the company's general counsel), Hassan Shahin (an information technology specialist), and a receptionist. *Id.* 53:19-54:10. Foster, the company's general counsel, testified that his involvement in developing the loan agreement was purely legal in nature. Tr. II 28:4-23, 43:8-44:17. Given this testimony, it can be inferred that he did not make the business decision to approve the loan product or the loan agreement. Shahin was the company's primary IT support and there is no evidence in the record that his duties extended into business decisions about the loan agreement or loan product. Tr. I 212:14-213:3. Similarly, there is no evidence to suggest that the receptionist had corporate decision-making authority. This leaves Carnes as the only person who plausibly could have reviewed and approved the loan agreement before Integrity Advance started using it with customers.

100. The allegations in paragraph 100 are immaterial to any claim or defense in this matter because Enforcement Counsel does not need to prove that Respondents intended to violate the law or had any particular discussions with the Delaware Commissioner. To the extent that Respondents intend this fact to suggest that the Delaware Commissioner required or approved the loan agreement, there is no such evidence in the record. During the period that Integrity Advance operated, the Delaware Commissioner did not require

the use of particular loan agreements between non-depository lenders and their customers. Tr. III 148:2-6. It did not review changes to a loan application that a non-depository lender used with its customers. *Id.* 131:8-15. It did not set the fees that non-depository lenders could charge their customers. *Id.* 148:12-14. It did not require non-depository lenders to automatically roll over their customers' loans. *Id.* 145:24-146:2. It did not require short-term lenders to offer the option of rollovers. *Id.* 146:7-10. It did not review non-depository lenders' loan agreements for compliance with the Electronic Funds Transfer Act. *Id.* 149:1-3. Its review of Truth in Lending compliance for non-depository lenders consisted of determining whether there was a separate Truth in Lending box in the loan agreement, *id.* 150:24-151:2, and checking the lenders' APR calculation for mathematical correctness. *Id.* 153:5-6. The Delaware Commissioner does "not approve the loan contract" as part of the licensing process. *Id.* 126:16-24. As of the hearing, the Delaware Commissioner had never denied a non-depository lender's application for a license, *id.* 144:23-145:1, nor had it denied the renewal of a non-depository lender's license. *Id.* 129:25-130:16.

101. Enforcement Counsel disputes the facts alleged in paragraph 101. The testimony cited indicates that Carnes ultimately approved everything as CEO, and flipped through the agreement before it was used by Integrity Advance. It does not support a finding that he did not "substantively approve" of the agreement or the use of the agreement. Moreover, as Integrity Advance's chief executive, Carnes was the primary decision maker at Integrity Advance, Tr. I 51:4-7, 82:2-4, and had the authority to make decisions governing Integrity Advance's policies and procedures EC-EX-068 at 32:15-17. Additional evidence also allows for a reasonable inference that Carnes substantively

approved Integrity Advance's loan agreement. At the time Integrity Advance created its loan product and loan agreement, Carnes was one of only four individuals who performed functions for Integrity Advance. Tr. I 53:19-54:23, 230:25-231:5. In addition to Carnes, there was Foster (the company's general counsel), Hassan Shahin (an information technology specialist), and a receptionist. *Id.* 53:19-54:10. Although neither Carnes nor Foster clearly stated who decided to implement Integrity Advance's deceptive loan agreement, Carnes was the chief executive and the loan agreement formed the basis for Integrity Advance's only product, which generated more than 75% of Hayfield's revenues. *Id.* 104:13-105:12; EC-EX-068 at 92:19-93:16; Tr. I 112:8-114:25. Foster, the company's general counsel, testified that his involvement in developing the loan agreement was purely legal in nature. Tr. II 28:4-23, 43:8-44:17. Given this testimony, it can be inferred that he did not make the business decision to approve the loan product or the loan agreement. Shahin was the company's primary IT support and there is no evidence in the record that his duties extended into business decisions about the loan agreement or loan product. Tr. I 212:14-213:3. Similarly, there is no evidence to suggest that the receptionist had corporate decision-making authority. This leaves Carnes as the only person who plausibly could have reviewed and approved the loan agreement before Integrity Advance started using it with customers. Finally, Carnes also admitted that he understood how Integrity Advance disclosed its loans as single-payment loans. Tr. II 50:21-51:3. He admitted that he understood that, by default, Integrity Advance rolled over loans repeatedly before putting them into an auto-workout. Tr. I 219:13-220:3; EC-EX-068 at 227. And he admitted that he knew most Integrity Advance customers experienced rollovers, and that those consumers who rolled over would pay more than

was disclosed in the loan agreement. Tr. I 220:5-12, 222:17-20, 225:6-10; EC-EX-068 at 245:10-25.

102. Enforcement Counsel disputes paragraph 102. In the testimony cited by Respondents, Carnes admits that he did approve of the contents of the website. Tr. I 217:13-15. Indeed, Carnes had final say over what appeared on the company's website. EC-EX-068 at 41:1-6; Tr. I 217:1-8. And he directed Andonian to make changes to Integrity Advance's website. Tr. I 77:1-3, 77:19-78:5.

103. Enforcement Counsel does not dispute that Carnes testified that he did not edit, revise, discuss, or see call center scripts, but notes there is no other evidence in the record to corroborate the testimony Respondents cite in support of the facts alleged in paragraph 103. Enforcement Counsel also notes that Carnes oversaw Integrity Advance's use of its call centers. He had communications with the call centers used by Integrity Advance, Tr. I 64:3-6, analyzed call logs from the call centers used by Integrity Advance, EC-EX-088 (Carnes email); Tr. I 179:18-180:1, was involved in the decision to move Integrity Advance's business from one call center to another, Tr. I 64:13-19, and directed the resolution of alleged fraud by a call center employee. EC-EX-087 (Carnes email); Tr. I 177:3-178:3.

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Respectfully submitted,

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