

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
)	NOTICE OF SUPPLEMENTAL
)	AUTHORITY
)	
INTEGRITY ADVANCE, LLC, and)	
JAMES R. CARNES,)	
)	
Respondents.)	
)	
)	

ENFORCEMENT COUNSEL’S NOTICE OF SUPPLEMENTAL AUTHORITY

In further support of its Answering Brief, EC Answering Br. (Oct. 5, 2020) [Dkt. 296], Enforcement Counsel submits the attached opinion from *United States v. Moseley*, No. 18-2003, 2020 WL 6437737 (2d Cir. Nov. 3, 2020).

In *Moseley*, the Second Circuit affirmed Richard Moseley, Sr.’s conviction and sentence for violating, among other things, the Truth in Lending Act (“TILA”). Moseley’s TILA conviction was predicated on the manner in which his payday lending business disclosed the “total of payments” borrowers would have to make. *Id.* at *12. That business charged borrowers a \$30 finance charge for every \$100 of the borrower’s loan amount, *id.* at *2, and its TILA disclosures included a “total of payments” disclosure reflecting “just one finance charge in addition to the loan principal amount.” *Id.* at *13. But, under the default operation of the loan

agreements, consumers would pay much more than that. As the court explained, repayment of the principal occurred only if “the borrower affirmatively acted to pay off the principal by the end of the . . . loan term” by signing and faxing a “specified separate form.” *Id.* at *2-3. Absent that, the company could indefinitely debit the finance charge from a consumer anew and “refinance” the loan without applying any payments toward a loan’s principal. *Id.* at *3.

The court upheld Moseley’s conviction for willfully and knowingly providing consumers false or inaccurate information because there was substantial evidence that the “total of payments” disclosures were inaccurate and misleading. It explained that “TILA-compliant disclosures must reveal the ‘total of payments’ under the payment schedule set *at the time of the loan disbursement*—not under an illusory payment schedule achievable only after the borrower undertakes steps described in fine print.” *Id.* at *12. It rejected Moseley’s defense that his disclosure was “as accurate as he could make it” because the total cost of the loans turned on borrowers’ post-consumption behavior. *Id.* at *13. The court explained that the disclosures were “inaccurate at the time of the initial disbursement,” and the fact that borrowers might pay varying amounts “does not somehow exempt Moseley from the obligation to disclose the potentially limitless ‘scheduled’ amount.” *Id.*

Moseley directly refutes Respondents’ arguments for avoiding liability under TILA and section 1036(a)(1)(A) of the Consumer Financial Protection Act. *See* Resps.’ Opening Appeal Br. (Sept. 3, 2020) [Dkt. 295] (“Resps. Br.”) at 18-21. Like in *Moseley*, Respondents disclosed their loans’ total of payments as the sum of the loan principal and a single finance charge, but that total of payments was achievable only if a borrower took steps described in fine print following the disclosure. *See Moseley*, 2020 WL 6437737, at *12. And, like in *Moseley*, Respondents’ loan agreements were inaccurate at the time of loan consummation because they

did not disclose a total of payments reflecting the loans' default terms. *See id.* at *13. Thus, *Moseley* further disposes of both Respondents' argument that the loans were inaccurate because of consumers' post-consummation activity and their contention that they could not disclose their loans' costs in any other way. *See* Resps. Br. at 20. Indeed, because Respondents' loan agreements included an auto-workout feature through which consumers would eventually begin repaying principal, Respondents (unlike *Moseley*) could have easily calculated and disclosed the total amount of payments consumers would have made under the loans' default terms.

Dated: November 23, 2020

Respectfully submitted,

Attorneys for Plaintiff
Bureau of Consumer Financial Protection

THOMAS G. WARD
Enforcement Director

DEBORAH MORRIS
Deputy Enforcement Director

ALUSHEYYI J. WHEELER
Assistant Litigation Deputy

/s/ Stephen C. Jacques
Stephen C. Jacques
Enforcement Attorney
stephen.jacques@cfpb.gov
202-435-7368

Benjamin J. Clark
Enforcement Attorney
benjamin.clark@cfpb.gov
202-435-7871

Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Enforcement Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of November 2020, I caused a copy of the foregoing Enforcement Counsel's Notice of Supplemental Authority to be filed by electronic transmission (email) with the Office of Administrative Adjudication (CFPB_electronic_filings@cfpb.gov), and served by email on Respondents' counsel at the following addresses:

Richard J. Zack, Esq.
richard.zack@troutman.com

Michael A. Schwartz, Esq.
michael.schwartz@troutman.com

Christen M. Tuttle, Esq.
christen.tuttle@troutman.com

Saverio S. Romeo, Esq.
saverio.romeo@troutman.com

/s/ Stephen C. Jacques
Stephen C. Jacques