

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CONSUMER FINANCIAL
PROTECTION BUREAU,

Plaintiff,

v.

Case No. 23-cv-2151-DDC-TJJ

JAMES R. CARNES, MELISSA C.
CARNES, JAMES R. CARNES AS CO-
TRUSTEE OF THE JAMES R. CARNES
REVOCABLE TRUST DATED FEBRUARY
10, 2010, MELISSA C. CARNES AS CO-
TRUSTEE OF THE JAMES R. CARNES
REVOCABLE TRUST DATED FEBRUARY
10, 2010, JAMES R. CARNES AS CO-
TRUSTEE OF THE MELISSA C. CARNES
REVOCABLE TRUST DATED FEBRUARY
10, 2010, and MELISSA C. CARNES AS CO-
TRUSTEE OF THE MELISSA C. CARNES
REVOCABLE TRUST DATED FEBRUARY
10, 2010,

Defendants.

STIPULATED FINAL JUDGMENT AND ORDER

The Consumer Financial Protection Bureau (Bureau) commenced this civil action on April 5, 2023 to avoid fraudulent transfers of over \$12 million from the James R. Carnes Trust (JRC Trust) to the Melissa C. Carnes Trust (MCC Trust). The Complaint alleges violations of the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3308, through fraudulent transfers made to avoid the Bureau's judgment against James R. Carnes.¹

¹ On July 30, 2021, the Court entered judgment in favor of the Bureau and against James R. Carnes for restitution in the amount of \$38,453,341.62 and for a civil penalty in the amount of \$5,000,000, in addition to the other relief set forth in the Bureau Final Order. *See CFPB v. Integrity Advance, LLC and James R. Carnes*, 21-mc-206-DDC-TJJ (D. Kan. July 30, 2021) (Judgment Enforcement Action) [Docs. 21, 22].

The Bureau and Defendants agree to entry of this Stipulated Final Judgment and Order (Order), without adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the conduct alleged in the Complaint.

Findings

1. This Court has jurisdiction over the parties and the subject matter of this action.
2. Defendants neither admit nor deny the allegations in the Complaint, except as specified in this Order. For purposes of this Order, Defendants admit the facts necessary to establish the Court's jurisdiction over them and the subject matter of this action.
3. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order and any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each Party agrees to bear its own costs and expenses, including, without limitation, attorney's fees.
4. Entry of this Order is in the public interest.

Definitions

5. The following definitions apply to this Order:
 - a. "Assets" means any legal or equitable interest in, right to, or claim to any real, personal, or intellectual property owned or controlled by, or held, in whole or in part for the benefit of, or subject to access by any Defendant, wherever located, whether in the United States or abroad. This includes, but is not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts, mail or other deliverables, shares of stock, commodities, futures, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), funds, cash, and trusts.

- b. “Bureau” means the Consumer Financial Protection Bureau.
- c. “Bureau Final Order” means the Bureau Director’s Final Order issued on January 11, 2021 against Defendants. *See* Final Order, *Integrity Advance, LLC and James R. Carnes*, CFPB No. 2015-CFPB-0029 (Jan. 11, 2021) [Dkt. 309].
- d. “Defendants” means James R. Carnes, in his individual capacity and as co-trustee of the JRC Trust and as former co-trustee of the MCC Trust, and Melissa C. Carnes, in her individual capacity and as co-trustee of the MCC Trust and as former co-trustee of the JRC Trust, and each of them by any other names by which they might be known.
- e. “Effective Date” means the date on which the Order is entered by the Court.
- f. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or their delegate.
- g. “JRC Trust” means the James R. Carnes Revocable Trust, Dated February 10, 2010.
- h. “MCC Trust” means the Melissa C. Carnes Revocable Trust, Dated February 10, 2010.

I.

Order to Pay Judgment

IT IS ORDERED that:

6. A judgment for monetary relief is entered in favor of the Bureau and against Defendants, jointly and severally, in the amount of \$12,269,072.89; however, full payment of this judgment will be suspended upon satisfaction of the obligations in Paragraphs 7 through 9 of this Section and subject to Section II [Effect of Misrepresentation or Omission of Financial Condition] and Section III [Additional Monetary Provisions].

7. Defendants grant to the Bureau all rights and claims and forfeit any rights to the frozen Assets (to the extent such Assets are not subject to non-transferability provisions, as detailed below) in accounts held in the following financial institution accounts, except as noted below:

- a. Stephens, Inc., Account Number xxx1688, in the name of the Melissa C. Carnes Revocable Trust, Dated February 10, 2010;
 - i. The forfeiture provision stated in Paragraph 7 shall not apply to an Asset within Stephens, Inc., Account Number xxx1688, that is subject to a non-transferability provision. Specifically, MCC Trust owns an interest through Stephens, Inc. in the SCP Aaron, LLC (“Retained Stephens Asset”). The MCC Trust shall retain ownership of its interest in the SCP Aaron, LLC, as well as \$500 in maintenance funds to keep the account open, which shall not be liquidated and paid to the Bureau;
- b. Morgan Stanley, Account Number xxx3717, in the name of the Melissa C. Carnes Revocable Trust, Dated February 10, 2010;
- c. Morgan Stanley, Account Number xxx9204, in the name of the Melissa C. Carnes Revocable Trust, Dated February 10, 2010;
 - i. The forfeiture provision stated in Paragraph 7 shall not apply to an Asset within Morgan Stanley, Account Number xxx9204, that is subject to a non-transferability provision. Specifically, MCC Trust owns an interest through Morgan Stanley in the Riverview SOF IV LP (“Riverview Asset”). The MCC Trust shall retain ownership of the Riverview Asset, which shall not be liquidated and paid to the Bureau;

- d. Morgan Stanley, Account Number xxx3581, in the name of the Melissa C. Carnes Revocable Trust, Dated February 10, 2010;
 - i. The forfeiture provision stated in Paragraph 7 shall not apply to an Asset within Morgan Stanley, Account Number xxx3581, that is subject to a non-transferability provision. Specifically, MCC Trust owns an interest through Morgan Stanley in the Carlyle Energy CR Opportunity II Fund (“Carlyle Asset,” together with the Riverview Asset, the “Retained Morgan Stanley Assets”). The MCC Trust shall retain ownership of the Carlyle Asset, which shall not be liquidated and paid to the Bureau;
- e. Country Club Bank, Account Number xxx5420, in the name of the Melissa C. Carnes Revocable Trust, Dated February 10, 2010.

Within 10 business days from receipt of a copy of this Order by any means, including but not limited to via facsimile or email, each of the financial institutions identified in subparagraphs (a) through (e) above shall liquidate and transfer to the Bureau or its designated agent all Assets held in the frozen accounts listed in subparagraphs (a) through (e) (other than the Retained Stephens Asset and Retained Morgan Stanley Assets) above by wire transfer according to the Bureau’s wiring instructions.

Defendants shall cooperate fully with the Bureau and each of the financial institutions and shall execute any instrument or document presented by the Bureau and take any other actions the Bureau deems necessary or appropriate to effect the transfers required by this Order.

8. Within 10 days of the Effective Date, Defendants must pay to the Bureau, by wire transfer to the Bureau or to the Bureau’s agent, and according to the Bureau’s wiring instructions, \$298,282.55, in partial satisfaction of the judgment referenced in Paragraph 6 of this

Section, which as Defendants stipulate, their counsel holds in escrow for no purpose other than payment to the Bureau.

9. Within 210 days of the Effective Date, Defendants must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, \$7,000,000.00 less the amounts paid to the Bureau according to Paragraphs 7 and 8 of this Section, in partial satisfaction of the judgment referenced in Paragraph 6 of this Section.

10. Defendants' payments made under this Order shall be credited toward and reduce the total amount owed on the Bureau's judgment against James R. Carnes in the Judgment Enforcement Action. Except as stated in this Paragraph, nothing in this Order shall be interpreted to relieve Integrity Advance, LLC or James R. Carnes of their payment obligations with respect to the judgment entered in the Judgment Enforcement Action.

11. Any funds received by the Bureau towards satisfaction of this judgment will be deposited in accordance with the Bureau Final Order that this Court enforced in the Judgment Enforcement Action.

12. Within 10 days of Defendants' satisfaction of the obligations in Paragraphs 7 through 9 of this Section and subject to compliance with Section II [Effect of Misrepresentation or Omission of Financial Condition] and Section III [Additional Monetary Provisions] of this Order, the Bureau will release and discharge the holds on frozen Assets in the following accounts held in the following financial institutions:

a. Country Club Bank

- i. Account Number xxx5618 in the name of the Carnes Family Irrevocable Trust, Dated February 10, 2010;
- ii. Account Number xxx3482, in the name of Henry Carnes; and

- iii. Account Number xxx5429, in the name of Oliver Carnes;
- b. Venmo
 - i. Account Number xxx0943, in the name of James R. Carnes;
- c. Morgan Stanley
 - i. Account Number xxx9204, in the name of the Melissa C. Carnes Revocable Trust, Dated February 10, 2010;
 - ii. Account Number xxx3581, in the name of the Melissa C. Carnes Revocable Trust, Dated February 10, 2010;
- d. Stephens, Inc.
 - i. Account Number xxx1688, in the name of the Melissa C. Carnes Revocable Trust, Dated February 10, 2010.

13. Within 10 days of Defendants' satisfaction of the obligations in Paragraphs 7 through 9 of this Section and subject to compliance with Section II [Effect of Misrepresentation or Omission of Financial Condition] and Section III [Additional Monetary Provisions] of this Order, the Bureau will release and discharge the Writ of Attachment [Doc. 36-2] on the real property located at 14 Double Eagle Way, Unit 7005, Big Sky, Montana 59716, by Order of this Court, dated July 14, 2023 [Doc. 35] and timely execute any other further documentation as is reasonably necessary to accomplish the borrowing and/or sale of the property.

14. For each year, beginning in 2023 through and until the judgment in the Judgment Enforcement action is paid in full, Defendant James R. Carnes must submit to the Bureau his signed and filed annual federal and state income tax returns and all supporting schedules, whether individually or jointly filed, within 14 days of filing.

15. The Bureau releases and discharges Defendants from all potential liability for law violations that the Bureau has or might have asserted based on the fraudulent transfers identified in the Complaint, to the extent such violations occurred before the Effective Date and the Bureau knows about them as of the Effective Date.

16. To the extent third parties require Defendants to submit a notice regarding the status of this Order so that Defendants can liquidate or borrow against their Assets to comply with Paragraph 9 of this Section, Defendants may make a request to the Bureau for a status update, and the Bureau will promptly cooperate with any such request, including as necessary providing notice of whether, based on the facts known to the Bureau at that time, it intends to bring an action against Defendants for violation of the terms of this Order.

II.

Effect of Misrepresentation or Omission Regarding Financial Condition

IT IS FURTHER ORDERED that:

17. The partial suspension of the judgment entered in Section I of this Order is expressly premised on the truthfulness, accuracy, and completeness of Defendants' sworn financial statements and supporting documents submitted to the Bureau, which Defendants assert are truthful, accurate, and complete, and which include:

- a. Financial Statement of Defendants, including the attachments, signed on January 18, 2024 and submitted to the Bureau on or about January 19, 2024;
- b. Defendants' oral testimony provided on April 3, 4, and 5, 2024 including the changes reflected in Defendants' errata sheets;

- c. Updated Financial Statement of Defendants, including the attachments, signed on June 13, 2024 and submitted to the Bureau on or about June 13, 2024, and including supplemental information submitted on June 14, 2024 and June 17, 2024; and
- d. James R. Carnes's federal and state income tax returns and all supporting schedules, submitted pursuant to Paragraph 14 of this Order.

18. If, upon motion by the Bureau, the Court determines that any Defendant has failed to disclose any material Asset or that any of their financial statements, tax returns, or oral testimony contain any material misrepresentation or omission, including materially misstating the value of any Asset, the Court shall terminate the suspension of the monetary judgment entered in Section I and without further adjudication, shall reinstate the full judgment in the amount of \$12,269,072.89, which shall be immediately due and payable, less any amounts already paid to the Bureau under Section I of this Order.

Provided, however, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court; and, provided further, that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the Bureau may initiate to enforce this Order.

19. If the Court terminates the suspension of the monetary judgment under this Section, the Bureau will be entitled to interest, computed from the date of entry of this Order, at the rate prescribed by 28 U.S.C. § 1961, as amended, on any outstanding amounts not paid on the judgment.

III.

Additional Monetary Provisions

IT IS FURTHER ORDERED that:

20. In the event of any default on Defendants' obligations to make payments under this Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of judgment to the date of payment, and will immediately become due and payable.

21. Defendants relinquish all dominion, control, and title to the funds and all other Assets transferred or paid under this Order to the fullest extent permitted by law, and no part of the funds or other Assets may be returned to Defendants.

22. The facts alleged in the Complaint will be taken as true and be given collateral estoppel effect, without further proof, in any proceeding based on the entry of the Order, or in any subsequent civil litigation by or on behalf of the Bureau, including in a proceeding to enforce its rights to any payment or monetary judgment under this Order, such as a nondischargeability complaint in any bankruptcy case.

23. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Bureau under section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and for such purposes this Order will have collateral estoppel effect against each Defendant, even in such Defendant's capacity as debtor-in-possession.

24. Defendants acknowledge that their Taxpayer Identification Numbers, which Defendants previously submitted to the Bureau, may be used for purposes of collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

25. Upon written request of a representative of the Bureau, any consumer reporting agency must furnish consumer reports to the Bureau concerning any Defendant under section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681 (b)(a)(1), which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

IV.

Notices

IT IS FURTHER ORDERED that:

26. Unless otherwise directed in writing by the Bureau, Defendants must provide all submissions, requests, communications, or other documents relating to this Order in writing, with the subject line, “*CFPB v. James R. Carnes and Melissa C. Carnes, 23-cv-2151 (D. Kan.)*” and send them by email to Enforcement_Compliance@cfpb.gov:

ATTN: Enforcement Director
Consumer Financial Protection Bureau
Office of Enforcement

V.

Cooperation with the Bureau

IT IS FURTHER ORDERED that:

27. Defendant James R. Carnes must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, each consumer who borrowed money from Integrity Advance, LLC, on or after July 21, 2011, as described in the Bureau Final Order. Defendant James R. Carnes must provide such information in his or his agents’ possession or control within 14 days of receiving a written request from the Bureau.

VII.

Retention of Jurisdiction

IT IS FURTHER ORDERED that:

28. All pending motions are hereby denied as moot.
29. The Court will retain jurisdiction of this matter for the purpose of enforcing this

Order.

IT IS SO ORDERED, this [] day of June, 2024.

DANIEL D. CRABTREE
United States District Judge