

UNITED STATES OF AMERICA  
Before the  
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING  
File No. 2015-CFPB-0029

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	)	
<b>In the Matter of:</b>	)	
	)	
<b>INTEGRITY ADVANCE, LLC and</b>	)	<b>RESPONDENTS' REQUEST FOR</b>
<b>JAMES R. CARNES,</b>	)	<b>ISSUANCE OF SUBPOENA</b>
	)	<b>TO THE CONSUMER FINANCIAL</b>
	)	<b>PROTECTION BUREAU FOR</b>
<b>Respondents.</b>	)	<b>PRODUCTION OF DOCUMENTS</b>
	)	
	)	
_____	)	

**RESPONDENTS' REQUEST FOR ISSUANCE OF SUBPOENA TO THE CONSUMER FINANCIAL PROTECTION BUREAU FOR PRODUCTION OF DOCUMENTS**

Pursuant to 12 C.F.R. § 1081.208 and Administrative Law Judge (“ALJ”) Christine L. Kirby’s August 16 ruling that the record requires factual development on the issue of statute of limitations, Respondents Integrity Advance LLC and James R. Carnes (“Respondents”) respectfully request that the ALJ issue the proposed subpoena attached hereto as Exhibit A. Respondents’ proposed subpoena is reasonable, seeks relevant information, and is limited in both substantive and temporal scope. The ALJ should therefore issue the subpoena. *See* 12 C.F.R. § 1081.208(d) (“The hearing officer shall promptly issue any subpoena requested pursuant to this section” unless “it appears to the hearing officer that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome”).

Substantively—and consistent with the ALJ’s August 16 ruling—Respondents seek four categories of discovery related to consumer complaints, external correspondence,

internal correspondence, and internal reports, all of which are narrowly tailored to the issue of when the CFPB “discover[ed] or a reasonably diligent plaintiff would have discovered ‘the facts constituting the [alleged] violation’” at issue in this matter. *See Merck & Co. v. Reynolds*, 559 U.S. 633, 653 (2010). As the ALJ recognized, such information is relevant to a potential statute of limitations defense under the Consumer Financial Protection Act (“CFPA”). *See* 12 U.S.C. § 5564(g)(1) (CFPA claims must be brought within three years of the “date of discovery of the violation”); *see also, e.g., Merck*, 559 U.S. at 653; *Consumer Fin. Prot. Bureau v. NDG Fin. Corp.*, No. 15-cv-5211 (CM), 2016 U.S. Dist. LEXIS 177756, at \*58 (S.D.N.Y. Dec. 2, 2016) (“The date of discovery [under the CFPA] is the date when the plaintiff ‘obtains actual knowledge of the facts giving rise to the action or notice of the facts, which in the exercise of reasonable diligence, would have led to actual knowledge.’”); *Harris v. Koenig*, 722 F. Supp. 2d 44, 55 (D.D.C. 2010) (“‘[D]ate of discovery’ means the date that a plaintiff, in the exercise of reasonable diligence, discovered or should have discovered the breach or violation.”).

Temporally, Respondents’ requested discovery is limited to the time period of July 21, 2011 to November 18, 2012. Aside from being limited, that time period is critical here—if discovery shows that the CFPB learned or should have learned of the facts constituting the alleged CFPA violations prior to November 18, 2012 (i.e. three years prior to the CFPB’s filing of charges on November 18, 2015), then those claims may be barred by the statute of limitations.

Finally, the attached subpoena is necessary because the relevant, and potentially dispositive, information Respondents seek is presently in the sole possession, custody, or control of the CFPB. There is no legitimate basis for the CFPB to refuse to turn over the requested

material.<sup>1</sup>

For the foregoing reasons, Respondents' request to issue the attached subpoena should be granted.

Respectfully submitted,

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*Counsel for Respondents Integrity Advance  
LLC and James R. Carnes*

Dated: August 23, 2019

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<sup>1</sup> To the extent that any responsive material may be subject to privilege, the CFPB can comply with the subpoena by providing Respondents with redacted documents and/or an appropriate privilege log. Such redacted documents and/or privilege log may have enough information to show when the statute of limitations began running and/or identify relevant witnesses on this issue. Furthermore, such redacted documents and/or privilege log can be used by Respondents while examining witnesses to refresh their memory and/or provide a timeline when asking the witnesses for non-privileged information. Accordingly, nothing about the proposed subpoena is intended to be oppressive or to encroach on any legitimate privilege that the CFPB may be able to assert. However, the CFPB cannot use overbroad claims of privilege, without a legitimate basis in law, to avoid producing highly relevant materials. *See Consumer Fin. Prot. Bureau v. Universal Debt Sols., LLC*, No. 1:15-CV-859-RWS, 2017 U.S. Dist. LEXIS 146222, at \*19-24 (N.D. Ga. Aug. 25, 2017) (granting motion for sanctions and dismissing claims where “the CFPB improperly relied on privilege and work product objections to prevent [a testifying] witness from answering questions about the factual bases of the CFPB’s claims”).

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23rd day of August, 2019, I caused a copy of the foregoing Request for Issuance of Subpoena to the Consumer Financial Protection Bureau for Production of Documents and the accompanying Exhibit A, to be filed by electronic transmission (e-mail) with the Office of Administrative Adjudication (CFPB\_electronic\_filings@cfpb.gov), and served by email on the following parties:

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*/s/ Saverio S. Romeo*  
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