

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

ORDER DENYING  
RESPONDENTS' MOTION  
FOR LEAVE TO FILE  
AMENDED ANSWER

Hon. Parlen L. McKenna

On May 4, 2016, Respondents filed a Motion for Leave to File an Amended Answer. Respondents seek to modify the language in paragraphs 29 and 30 of the Answer for consistency with paragraphs 54 and 64. Respondents have raised this issue with Bureau counsel, but have not received the Bureau's consent to amend the pleading. Respondents claim that the Bureau will not be prejudiced by the amendment because no further discovery will be necessary; that it will not delay the proceedings; and that the amendment would not involve new claims or defenses.

The Bureau filed its response on May 18, 2016 objecting to the amendment. The Bureau states that it would be prejudiced if Respondents were permitted to amend the Answer because discovery has already closed and there are no exceptional circumstances warranting amendment. Moreover, Respondents raised the issue of amending the Answer with the Bureau's counsel in mid-March, but did not file their motion until early May. The Bureau also states that Respondents have never contended "that their original

Answer is factually incorrect.” Put simply, Respondents “want to change their Answer because it is damaging.” Opposition at 1-2.

Respondents filed a Reply on May 25, 2016, arguing that the Bureau has asserted no undue prejudice by the grant of its Motion and that the liberal standard of allowing amendments to pleadings should apply. Respondents also state that “[u]nless leave to amend their Answer is granted, Respondents will be held to an inconsistent response, half of which the Bureau cherry-picks for its purposes while ignoring the other parts of the Answer.” Reply at 4.

The CFPB’s Rule of Practice 202(a) allows a party to amend a pleading “with the opposing party’s written consent or leave of the hearing officer.” 12 C.F.R. § 1081.202(a). Here, the Bureau did not give written consent to the amendment and Respondents have sought leave herein. The commentary to Rule 202 states that the standard for permitting amendments of pleadings is liberal, but is not without “limit for amendments that are unduly prejudicial.” 77 Fed. Reg. 39058-01, 39069 (June 29, 2012).

The original language found in the Answer is as follows:

29. Respondents admit that unless a consumer contacted Integrity Advance to change the terms of the loan – through one of several available means –Integrity Advance renewed the consumer’s loan. Respondents deny the allegations contained in paragraph 29 of the Notice.<sup>1</sup>

30. Respondents admit that \$50 would be automatically applied to a consumer’s loan principal after four loan renewals, unless a consumer contacted Integrity Advance – through one of several available means – to change the terms of payment. Respondents deny the remaining allegations contained in paragraph 30 of the Notice.

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<sup>1</sup> I assume Respondents intended to state that they deny the *remaining* allegations contained in this paragraph.

Respondents propose to remove the following phrase from paragraph 29: "to change the terms of the loan." Respondents propose to remove the following phrase from paragraph 30: "to change the terms of payment."

Respondents claim that the language regarding changing the terms of the loan or changing the terms of payment is inconsistent with the rest of the Answer, and that the Bureau has "taken and characterized the language at issue far beyond the answer Respondents intended to provide." Respondents do not argue that the original language in paragraphs 29 and 30 was the result of mistake, neglect, or a scrivener's error. They simply argue that they now view the language of various paragraphs in the Answer as inconsistent, and believe the Bureau has unfairly seized upon this particular language.

Here, the language Respondents wish to amend is in the nature of an admission that Integrity Advance changed terms of customers' loans after inception. However, whether Integrity Advance's conduct truly involved changing loan terms in violation of consumer financial protection laws is a question of material fact. I have not deemed the language in the Answer as a binding judicial admission. The drafting of pleadings is not "a game of skill in which one misstep by counsel may be decisive to the outcome."

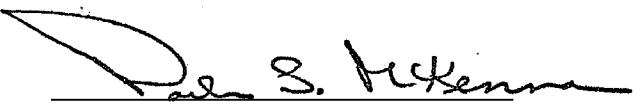
*United States v. Hougham*, 364 U.S. 310, 317 (1960), quoting *Conley v. Gibson*, 355 U.S. 41, 48 (1957). However, Respondents requested and received an extension of time to file their Answer and have also been aware for several months that the Bureau intended to use the responses to paragraphs 29 and 30 against them. This weighs against allowing an amendment at this late date, when I am considering the parties' cross-motions for summary disposition and the hearing is set to commence in approximately eight weeks.

The Bureau has relied on Respondents' Answer in a number of pleadings, including potentially dispositive motion practice, and it appears to play an important role in their prosecution of this case. "Where the motion to amend does not demonstrate that the prior answers were the product of mistake, typographical error, or neglect, leave to retract that which was admitted, following dispositive motion practice, may be prejudicial to the opposing party." *Arista Records, Inc. v. Flea World, Inc.*, 356 F. Supp. 2d 411, 421 (D.N.J. 2005). The Bureau's currently-pending Motion for Summary Disposition relies on paragraphs 29 and 30 of the Answer, and the Bureau would clearly be prejudiced if I now granted Respondents leave to amend.

**ORDER**

Respondents' Motion for Leave to File an Amended Answer is **DENIED**.

**IT IS SO ORDERED.**



Hon. Parlen L. McKenna  
Administrative Law Judge  
United States Coast Guard

Done and dated on this 27<sup>th</sup> day in May, 2016 at  
Alameda, California.

**CERTIFICATE OF SERVICE**

I hereby certify that I have served the forgoing ***Order Denying Respondent's Motion For Leave To File Amended Answer*** (2015-CFPB-0029) upon the following parties and entities in this proceeding as indicated in the manner described below:

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Done and dated this 27<sup>th</sup> day of May, 2016  
Alameda, California.



Cindy June Melendres  
Paralegal Specialist to the  
Hon. Parlen L. McKenna