

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 GRANTING
ENFORCEMENT COUNSEL'S
MOTION *IN LIMINE* TO
PRECLUDE EVIDENCE
DISPUTING ISSUES DECIDED
AND FACTS ESTABLISHED
AT SUMMARY DISPOSITION

Hon. Parlen L. McKenna

On July 8, 2016, the Consumer Financial Protection Bureau (CFPB or Bureau) filed Enforcement Counsel's Motion *In Limine* to Preclude Evidence Disputing Issues Decided and Facts Established at Summary Disposition (Motion). The Bureau also requested an expedited briefing schedule. Prior to the issuance of an expedited briefing schedule, Respondents submitted an Opposition to Enforcement Counsel's Motion *in Limine* to Preclude Evidence Disputing Issues Decided and Facts Established at Summary Disposition (Opposition).

The Bureau asks me to preclude Respondents from introducing evidence into the record to challenge the rulings in my July 1, 2016 Order Granting in Part and Denying in Part Bureau's Motion for Summary Disposition and Denying Respondents' Motion for Summary Disposition (Order). Specifically, the Bureau asserts that by not stipulating to the withdrawal of Count IV, Respondents would attempt to use Count IV as an

opportunity to enter evidence into the record to dispute previously decided claims. The Bureau argues that allowing Respondents to introduce evidence concerning issues previously ruled upon would be a waste of judicial resources, goes against established legal precedent and CFPB regulations, and furthermore, the evidence is no longer relevant. *See* 12 C.F.R. § 1081.213 and 12 C.F.R. § 1081.303.

After CFPB submitted this Motion *in Limine*, the parties filed a joint motion to withdraw Count IV which was subsequently granted by my July 12, 2016 Order Granting Stipulated Motion to Withdraw Count IV with prejudice. In that joint motion, Respondents consented to the withdrawal of Count IV. Therefore, the Bureau's argument concerning Respondents using Count IV as an opportunity to re-litigate previously decided claims is moot. However, the Bureau's overarching concern that there may be an attempt to re-litigate matters already decided still remains.

Respondents argue the Bureau's Motion should be denied because the Bureau misconstrues Respondents' position and fails to state any specific evidence to be excluded. Respondents state that they do not seek to re-litigate issues already decided during summary disposition, but do not elaborate on that assertion. Finally, Respondents assert the Bureau does not point to any proposed exhibit or witness as evidence of re-litigating previously decided issues and facts. Respondents rely on several cases stating a motion *in limine* may be denied if it is vague.

After consideration of all the parties' arguments, I am granting the Bureau's Motion. The case law is clear that a motion *in limine* may be granted concerning issues already decided in summary judgment, or in this case summary disposition. *See Bob Barker Co., Inc. v. Ferguson Safety Products, Inc.*, 2007 WL 4554012 (N.D. Cal. Dec. 4,

2007); *Ng v. Snow*, 2008 WL 5459167 (C.D. Cal Aug. 18, 2008). Although Bureau counsel does not refer to specific exhibits or witness testimony which would demonstrate an attempt by Respondents to circumvent my Order, the law is clear that issues previously decided in summary disposition cannot be re-litigated. *Id.* I find that the Bureau's request is specific enough to put the parties on notice concerning which type of evidence should not be introduced and argued at hearing.

I do note that if any exhibit is excluded, the party offering it may make an offer of proof, which becomes part of the record. *See* 12 C.F.R. § 1081.303(e)(2). The Office of Adjudication retains the excluded exhibits until the decision becomes final agency action or any judicial review is complete. 12 C.F.R. 1081.306(b).

Accordingly, Enforcement Counsel's Motion *In Limine* to Preclude Evidence Disputing Issues Decided and Facts Established at Summary Disposition is GRANTED.

SO ORDERED.



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

Done and dated this 15th day of July, 2016 at
Alameda, California.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE SERVED THE *ORDER GRANTING ENFORCEMENT COUNSEL'S MOTION IN LIMINE TO PRECLUDE EVIDENCE DISPUTING ISSUES DECIDED AND FACTS ESTABLISHED AT SUMMARY DISPOSITION* (2015-CFPB-0029) UPON THE FOLLOWING PARTIES AND ENTITIES IN THIS PROCEEDING AS INDICATED IN THE MANNER DESCRIBED BELOW:

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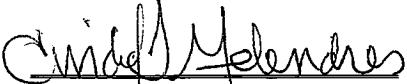
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Done and dated this 15th day in July, 2016
Alameda, California


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