

**UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU**

**ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029**

In the Matter of:)	ENFORCEMENT COUNSEL'S RESPONSE TO RESPONDENTS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF THEIR MOTION FOR SUMMARY DISPOSITION
INTEGRITY ADVANCE, LLC and JAMES R. CARNES,)	
Respondents.)	
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**ENFORCEMENT COUNSEL'S RESPONSE TO
RESPONDENTS' STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF THEIR MOTION FOR SUMMARY DISPOSITION**

Pursuant to 12 C.F.R. §1081.212(f), Enforcement Counsel hereby submits the following response to Respondents' Statement of Undisputed Facts in Support of Their Motion for Summary Disposition (Respondents' Statement) by identifying facts alleged therein that Enforcement Counsel disputes.

1. Enforcement Counsel does not dispute the facts alleged in paragraph one of Respondents' Statement.
2. Enforcement Counsel disputes that "Integrity Advance ceased offering loans in December 2012." Respondents' full dataset of consumer transactions for all consumers who originated a loan with Integrity Advance, produced to Enforcement Counsel on April 1, 2016 (April 1 Dataset), shows that Respondents

originated loans through May 2013. Exh. 2 ¶ 5 (Hughes May 25 Decl.). Although both parties, in a Joint Stipulation submitted on March 23, 2016, stipulated that Integrity Advance ceased offering loans in December 2012, in response to Enforcement Counsel's February 19, 2016 subpoena for data, Respondents subsequently produced the April 1 Dataset, which showed otherwise. According to the April 1 Dataset Integrity Advance originated its last loan on May 13, 2013.

Id.

3. Enforcement Counsel does not dispute that Integrity Advance "used a web-based Application and Loan Agreements," but clarifies that all of Integrity Advance's loan agreement contracts with consumers, web-based or otherwise, used one of two loan templates (EC SMF Exh. 1 and EC SMF Exh. 2). *See also* EC SMF Exh. 7 at 5-6 (November 25, 2013 Integrity Advance Response, CFPB042375-76) (responding to a request to produce "each version of all" disclosures and contracts). Enforcement Counsel is unaware of any evidence that supports the assertion that Integrity Advance "primarily" relied on web-based documents and is thus unable to confirm or dispute the assertion in that sentence.
4. Enforcement Counsel does not dispute that the Loan Agreement (Resp. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (Loan Agreement Template)) contains eight lines for consumers to signature or initial, but is unaware of any evidence that supports the assertion that Respondents actually required consumers to sign in each location in order to originate a loan. In any event, this alleged fact is irrelevant to the claims at issue in this proceeding as the loan agreement fails to disclose the costs of the default auto-renewal and auto-workout process. The limited cost disclosures that do appear in the loan

agreement were not followed by lines for consumers to sign or initial. EC MSD Exh. A at 14 (Hastak Report, CFPB042533). The first time a signature or initial line appears in the Loan Agreement is on page four, after the section on “Schedule of Charges and Fees” and well after the sentence on “additional fees” and the TILA box cost disclosures. *Id.* The table appears “to be based upon single payment loans” when most consumers did not have such loans. *Id.* at 18 (Hastak Report, CFPB042537). “[T]he information in these tables is confusing and is not accompanied by any text that would help the reader understand its implications.” *Id.* at 17-18 (Hastak Report, CFPB042536-37); *see also* Exh. 13 (Hastak 159:1-20, 161:21-162:18).

5. Enforcement Counsel disputes that “before Integrity Advance extended a loan to a first-time customer, one of its representatives had a telephone conversation with the consumer to ensure that he or she understood the details of the loan, including partial pay-down and loan pay-off options” to the extent that Respondents assert that Integrity Advance *always* had a phone call with first-time consumers prior to extending a loan and to the extent that Respondents make representations about the purpose of such calls. Contrary to Carnes’ testimony that “everyone who applied got a call and talked to” (EC SMF Exh. 3 (Carnes 189:13), consumers complained that they did not receive any communications from Integrity Advance. *See, e.g.* Exh. 7 (Consumer Complaint, CFPB036637); Exh. 8 (Consumer Complaint, CFPB036650); Exh. 9 (Consumer Complaint, CFPB036690). In addition, there is no evidence in the record that Respondents told consumers the total costs of the loan under the default operation of the loan agreement, and consumers who received phone calls from

Integrity Advance prior to receiving a loan were among those who complained that they did not understand the terms and cost of the loan. *See, e.g.* EC SMF Exh. 15 (Consumer Complaint, CFPB036793); Exh. 10 (Consumer Complaint, CFPB036696); Exh. 11 (Consumer Complaint, CFPB036698); Exh. 12 (Consumer Complaint, CFPB036828); EC SMF Exh. 27 (Consumer Complaint, CFPB037533); EC SMF Exh. 17 (Consumer Complaint, CFPB036816).

Respondents have not asserted that any phone calls to consumers from Integrity Advance prior to loan origination included a discussion of the costs of the default auto-renewal and auto-workout program. In addition, consumers complained that Integrity Advance's customer service representatives made it very difficult to change payment options. *See, e.g.* Exh. 6 (Consumer Complaint, CFPB036734); Exh. 5 (Consumer Complaint, CFPB037472); EC SMF Exh. 17 (Consumer Complaint, CFPB036816).

6. The facts alleged in paragraph six of Respondents' Statement are not material to any claim or defense because the "welcome email" was sent after a consumer had already signed the Loan Agreement and once the loan was approved and processed. Resp. Exh. 3; Exh. 14 ¶ 26 (Novemsky Report); EC SMF Exh. 3 (Carnes 224:3-10). Furthermore, the "welcome email" excluded key details about the loan, including the costs of the default auto-renewal and auto-workout process. Resp. Exh. 3. In any event, Respondents have not proffered evidence showing that all consumers received a "welcome email," and some Integrity Advance consumers complained that they received no communications from Integrity Advance. *See, e.g.* Exh. 7 (Consumer Complaint, CFPB036637); Exh. 8

(Consumer Complaint, CFPB036650); Exh. 9 (Consumer Complaint, CFPB036690).

7. The facts alleged in paragraph seven of Respondents' Statement are not material to any claim or defense because "routine emails that apprised customers of payment due dates and payment amounts" were sent after a consumer had already signed the Loan Agreement. Resp. Exh. 4; Exh. 14 ¶ 26 (Novemsky Report); EC SMF Exh. 6 (Foster 171:4-13). Furthermore, the email template referenced excluded key details about the loan including the costs of the default auto-renewal and auto-workout process. Resp. Exh. 4. In any event, Respondents have not provided evidence showing that all consumers received routine emails and some Integrity Advance consumers complained that they received no communications from Integrity Advance. *See, e.g.* Exh. 7 (Consumer Complaint, CFPB036637); Exh. 8 (Consumer Complaint, CFPB036650); Exh. 9 (Consumer Complaint, CFPB036690).
8. Enforcement Counsel does not dispute that Integrity Advance's loans included a finance charge, but does not agree that the loans included "a set finance charge" to the extent that this characterization implies that consumers were liable, under the terms of the Loan Agreement, for a single finance charge that was billed to the consumer only once. While Integrity Advance calculated each part of the TILA box assuming that the loan would be repaid in a single payment (Answer ¶ 26), unless a consumer contacted Integrity Advance to change the terms of her loan, Integrity Advance auto-renewed the consumer's loan four times, thus charging the consumer five times the initial finance charge disclosed in the TILA box during the auto-renewal process. EC SMF Exh. 7 at 9 (November 25, 2013

Interrogatory Response, CFPB042376); *see also* EC SMF Exh. 1 (Loan Agreement Template). After four rollovers, Integrity Advance put consumers in the auto-workout process, which billed consumers \$50 towards loan principal, plus a finance charge that varied based on the remaining principal, on every payment due date until the loan principal was paid off. *Id.*; *see also* EC SMF Exh. 9 (Consumer Payment History, CFPB005400); EC SMF Exh. 10 (Consumer Payment History, CFPB006002); EC SMF Exh. 11 (Consumer Payment History, CFPB006008); EC SMF Exh. 12 (Consumer Payment History, CFPB006286); EC SMF Exh. 13 (Consumer Payment History, CFPB006308); EC SMF Exh. 14 (Consumer Payment History, CFPB006357).

9. Enforcement Counsel does not dispute that Integrity Advance debited consumers for loans on their pay date, but does not agree that, after a consumer originated a loan with Integrity Advance, full repayment of the loan “was due on the consumer’s next pay date.” Unless a consumer contacted Integrity Advance to change the terms of her loan, Integrity Advance withdrew only an amount equal to the finance charge and auto-renewed the consumer’s loan four times, then put the consumer through auto-workout, extracting money from the consumer’s account every pay date potentially for months. EC SMF Exh. 7 at 9 (November 25, 2013 Interrogatory Response, CFPB042376); *see also* EC SMF Exh. 1 (Loan Agreement Template); EC SMF Exh. 2 (Loan Agreement Template); EC SMF Exh. 9 (Consumer Payment History, CFPB005400); EC SMF Exh. 10 (Consumer Payment History, CFPB006002); EC SMF Exh. 11 (Consumer Payment History, CFPB006008); EC SMF Exh. 12 (Consumer Payment History, CFPB006286); EC

SMF Exh. 13 (Consumer Payment History, CFPB006308); EC SMF Exh. 14 (Consumer Payment History, CFPB006357).

10. Enforcement Counsel disputes that “[u]nder the terms of the Loan Agreement, consumers were required to choose a payment option—selecting to either pay the loan in full on the payment Due Date, or renew the loan, thus incurring a new finance charge.” Consumers were not required to actively “select” a payment option. By default, unless a consumer contacted Integrity Advance to change the terms of her loan, Integrity Advance auto-renewed the consumer’s loan. Answer ¶ 29; EC SMF Exh. 1 at 4 (Loan Agreement Template, CFPB000641); EC SMF Exh. 16 (Consumer Complaint, CFPB036746); EC SMF Exh. 17 (Consumer Complaint, CFPB036816); EC SMF Exh. 18 (Consumer Complaint, CFPB037373); EC SMF Exh. 20 (Consumer Complaint, CFPB037335); EC SMF Exh. 21 (Consumer Complaint, CFPB036843); EC SMF Exh. 22 (Consumer Complaint, CFPB037492).

11. Enforcement Counsel does not dispute that the Payment Options terms excerpted in paragraph 11 were included in the Loan Agreement (Resp. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (Loan Agreement Template)), but notes that, in spite of these terms, which were considered in Dr. Manoj Hastak’s analysis of the Loan Agreement, “the disclosures provided in the Loan Agreement do not communicate to borrowers in a clear and conspicuous manner that costs (fees and charges) associated with their loan would be significantly higher if they renew the loan (either actively or by default) rather than paying it off in full.” EC MSD Exh. A at 19-20 (Hastak Report, CFPB042538-39). “The presumption appears to be that borrowers would automatically recognize that they would face

additional finance charges under the ‘Renewal/Auto-Rewal/Auto-Workout’ options and thus the total cost of the loan would be higher than what is indicated in the TIL box, but that is not made explicitly clear to them.” *Id.* at 15-16 (Hastak Report, CFPB042534-35).

12. Enforcement Counsel disputes that “Integrity Advance had a process that allowed a consumer who was otherwise eligible to obtain a loan to arrange for a type of payment, other than ACH authorization, including checks and money orders.” Respondents point only to self-serving testimony from Respondent Carnes to support this claim. To the contrary, Respondents admitted that “[c]onsumers could only receive loan proceeds by way of an electronic deposit which was authorized by the ACH authorization form.” Ans. ¶ 40. The form authorized both the deposit and the withdrawals for payments via ACH. *Id.*; see also EC SMF Exh. 1 (Loan Agreement Template, CFPB000796-98); EC SMF Exh. 2 (Loan Agreement Template, CFPB000690-92); EC SMF Exh. 4 (Sample Executed Loan, CFPB002142-46); EC SMF Exh. 5 (Sample Executed Loan, CFPB033708-10).

13. The facts alleged in paragraph 13 are not material to any claim or defense, because Enforcement Counsel claims that Integrity Advance violated TILA and Regulation Z by incorrectly disclosing terms of its contracts, not by failing to use proper formatting. In any case, Enforcement Counsel disputes that Respondents’ TILA Box “complied with the format provided by the CFPB in 12 C.F.R. § 1026 App. G.2.” Appendix G-2 has nothing to do with the format of a TILA box. Appendix H-2 contains a Loan Model Form that contains numerous data grouped together that Respondents do not include in their TILA disclosures, and

therefore, to the extent that Respondents intended to assert that they complied with Appendix H-2, Enforcement Counsel disputes this fact.

14. Enforcement Counsel does not dispute that the Payment Schedule language excerpted in paragraph 14 was included in the Loan Agreement (Resp. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (Loan Agreement Template)), but notes that the language was not included in all loan agreements. Integrity Advance's loan agreement contracts with consumers used one of two loan templates (EC SMF Exh. 1 and EC SMF Exh. 2). *See also* EC SMF Exh. 7 at 5-6 (November 25, 2013 Integrity Advance Response, CFPB042375-76) (responding to a request to produce "each version of all" disclosures and contract). One of the two templates (EC SMF Exh. 2) does not include the Payment Schedule language.
15. Enforcement Counsel does not dispute that the Special Notice terms excerpted in paragraph 15 were included in the Loan Agreement (Resp. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (Loan Agreement Template)), but notes that in spite of these terms, which were considered in Dr. Manoj Hastak's analysis of the Loan Agreement, "the disclosures provided in the Loan Agreement do not communicate to borrowers in a clear and conspicuous manner that costs (fees and charges) associated with their loan would be significantly higher if they renew the loan (either actively or by default) rather than paying it off in full." EC MSD Exh. A at 19-20 (Hastak Report, CFPB042538-39). While the Special Notice "has the potential to signal to borrowers that refinancing the loan may result in additional costs ... no information is provided about the amount of these additional charges, so its utility is limited. Also, by stating that additional fees

‘may accrue...’ rather than ‘will accrue...,’ the sentence introduces unnecessary ambiguity[.]” *Id.* at 17 (Hastak Report, CFPB042536). Furthermore, the statement refers to “refinanced” and “rolled over,” but the loan agreement does not use these terms in the provisions regarding renewal, auto-renewal, or auto-workout.

16. Enforcement Counsel does not dispute that the notice excerpted in paragraph 16 was included in the Loan Agreement (Resp. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (Loan Agreement Template)), but notes that in spite of the notice, which was considered in Dr. Manoj Hastak’s analysis of the Loan Agreement, “the disclosures provided in the Loan Agreement do not communicate to borrowers in a clear and conspicuous manner that costs (fees and charges) associated with their loan would be significantly higher if they renew the loan (either actively or by default) rather than paying it off in full.” EC MSD Exh. A at 19-20 (Hastak Report, CFPB042538-39). Finally, the notice excerpted in paragraph 16 is not material to any claim or defense, because the statement does not address disclosure of the costs of the loans.
17. Enforcement Counsel does not dispute that the terms excerpted in Respondents’ Statement paragraph 17 were included in the Loan Agreement (Resp. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (Loan Agreement Template)). However, Enforcement Counsel notes that a consumer could only rescind the loan within three days of receiving the funds. Resp. MSD at 17.
18. Enforcement Counsel does not dispute that the terms excerpted in paragraph 18 were included in the Loan Agreement (Resp. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (Loan Agreement Template)), but does dispute that the

Standard Loan Fees “indicated the range of time periods in which the initial loan would be required to be repaid or renewed.” The Standard Loan Fees table appears “to be based upon single payment loans” when most consumers did not have such loans. EC MSD Exh. A at 18 (Hastak Report, CFPB042537). In addition, the table, which provides information about different loan amounts for loans from eight to 23 days in duration, does not capture the costs associated with the auto-renewal or auto-workout process. *Id.*; see also EC SMF Exh. 1 at 8 (Loan Agreement Template, CFPB000644). Furthermore, “the information in these tables is confusing and is not accompanied by any text that would help the reader understand its implications.” EC MSD Exh. A at 17-18 (Hastak Report, CFPB042536-37); see also Exh. 13 (Hastak 159:1-20, 161:21-162:18). Ultimately, in spite of the Standard Loan Fees table, which was considered in Dr. Manoj Hastak’s analysis of the Loan Agreement, “the disclosures provided in the Loan Agreement do not communicate to borrowers in a clear and conspicuous manner that costs (fees and charges) associated with their loan would be significantly higher if they renew the loan (either actively or by default) rather than paying it off in full.” EC MSD Exh. A at 19-20 (Hastak Report, CFPB042538-39).

19. Enforcement Counsel does not dispute that the terms excerpted in Respondents’ Statement paragraph 19 were included in the Loan Agreement (Resp. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (Loan Agreement Template)), but notes that in spite of the Auto-Renewal and Auto-Workout provisions, which were considered in Dr. Manoj Hastak’s analysis of the Loan Agreement, “the disclosures provided in the Loan Agreement do not communicate to borrowers in a clear and conspicuous manner that costs (fees

and charges) associated with their loan would be significantly higher if they renew the loan (either actively or by default) rather than paying it off in full." EC MSD Exh. A at 19-20 (Hastak Report, CFPB042538-39). "The presumption appears to be that borrowers would automatically recognize that they would face additional finance charges under the 'Renewal/Auto-Rewal/Auto-Workout' options and thus the total cost of the loan would be higher than what is indicated in the TIL box, but that is not made explicitly clear to them." *Id.* at 15-16 (Hastak Report, CFPB042534-35). The terms "do not clearly explain the implications of loan renewal for the total cost and total loan payments. To the contrary, by repeatedly emphasizing that 'the rest of the terms of the Loan Agreement will continue to apply,' the disclosures may reinforce the take-away that their total payments would be as indicated in the TIL disclosure box." *Id.* at 17 (Hastak Report, CFPB042536).

20. Enforcement Counsel does not dispute that the portions of the sentence excerpted in paragraph 20 were included in the Loan Agreement (Resp. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (Loan Agreement Template)), but disputes that the sentence, as it appears in the Loan Agreement, indicates that other amounts will be owed to Integrity Advance "contingent on the consumers' choices." The sentence appears as a part of a paragraph of disclosures:

YOUR PROMISE TO PAY: You promise to pay us the Total of Payments according to the terms of our disclosures set forth below on the Payment Due Date and all other amounts owed to us under the Loan Agreement. You grant us a security interest in your ECheck/ACH Authorization in the amount of the Total of Payments (the "ECheck/ACH") which we may negotiate on the Payment Due Date or thereafter. All payments will be applied first to interest and fees and then to principal. Both the amount of interest charged and rate thereof are set forth respectively in the Finance Charge and Annual Percentage Rate disclosures in the Loan Agreement. Pursuant to the ECheck/ACH Authorization, you have directed us to initiate one or more ECheck/ACH debit entries to Your Bank Account for the amounts owed to us under the Loan Agreement on the Payment Due Date or thereafter and for certain fees that may be assessed in the event of dishonor when presentment is made to your bank on your ECheck/ACH Authorization.

Resp. Exh. 1 at 3 (CFPB042568). In addition, in spite of the provision, which was considered in Dr. Manoj Hastak's analysis of the Loan Agreement, "the disclosures provided in the Loan Agreement do not communicate to borrowers in a clear and conspicuous manner that costs (fees and charges) associated with their loan would be significantly higher if they renew the loan (either actively or by default) rather than paying it off in full." EC MSD Exh. A at 19-20 (Hastak Report, CFPB042538-39).

21. Enforcement Counsel does not dispute that the language excerpted in paragraph 21 was included in the ACH authorization section of the Loan Agreement (Resp. Exh. 1, which is a redacted, executed version of EC SMF Exh. 1 (Loan Agreement Template)), but notes that the language appears in the middle of paragraphs of disclosures:

If a payment is returned unpaid, you authorize us to make a one-time electronic fund transfer from Your Bank Account to collect a fee of \$25. You voluntarily authorize us, and our successor and assigns, to initiate a debit entry to Your Bank Account for payment of this fee. You further authorize us to initiate debit entries as necessary to recoup the outstanding loan balance whenever an ACH transaction is returned to us for any reason. You understand and agree that this ACH authorization is provided for your convenience, and that you have authorized repayment of your loan by ACH debits voluntarily. You agree that you may repay your indebtedness through other means, including by providing timely payment via cashier's check or money order directed to: Integrity Advance, 300 Creek View Road, Suite 102, Newark, DE 19711.

You authorize us to verify all of the information that you have provided, including past and/or current information. You agree that the ACH Authorization herein is for repayment of a single payment loan, or for single payment of finance charges for Renewals, and that these entries shall not recur at substantially regular intervals. If there is any missing or erroneous information in or with your loan application regarding your bank, bank routing and transit number, or account number, then you authorize us to verify and correct such information.

If your payment is returned to us by your financial institution due to insufficient funds or a closed account, you agree that we may recover court costs and reasonable attorney's fees incurred by us.

Resp. Exh. 1 at 7 (CFPB042572).

22. Enforcement Counsel disputes that its "expert testified that consumer complaints are not a reliable source for ascertaining consumer injury." Dr. Hastak testified that, while his expert report "did not rely on the consumer complaints ..., [t]he complaints ... validated the possibility that people may have made th[e] inference" that choosing the renewal option would not change the total cost of the

loan as represented in the ‘Total of Payments’ section of the TILA box. Exh. 13 (Hastak 139:11-14; 135:1-139:10). Dr. Hastak further explained that far from being an unreliable source, “complaints provide useful information” even though “you can’t generalize from the complaints to the entire customer base.” Exh. 13 (Hastak 182:17-19).

23. The facts alleged in paragraphs 23-27 of Respondents’ Statement are not material to any claim or defense because it was not the job of the Delaware State Bank Commissioner to assess Respondents’ compliance with TILA. Exh. 1 ¶ 9 (Albanese Decl.). In addition, the Delaware State Bank Commissioner never assessed its licensees for compliance with EFTA or laws prohibiting unfair and deceptive conduct. *Id.* at ¶¶ 9-12. The full extent of the Delaware State Bank Commissioner’s entire review of Integrity Advance’s TILA compliance consisted of collecting two or three samples of Truth in Lending disclosures prior to approving the company’s first license, and checking that APR calculations were mathematically accurate. *Id.* at ¶¶ 6-7. In addition, even if the APR calculations were inaccurate, that would only be one factor in determining whether a license would be granted or renewed. *Id.* at ¶ 8. Finally, Integrity Advance admitted that various state regulators had sent the company cease and desist letters asserting violations of state law. EC SMF Exh. 7 at 2-3 (November 25, 2013 Interrogatory Response, CFPB042372-73). Many of these letters centered on the fact that Integrity Advance was loaning in states where it did not have a license or was otherwise violating state law. See, e.g. Exh. 3 (Letter from KY Dept. of Financial Institutions, CFPB033843); Exh. 4 (Letter from SC Board of Financial Institutions, CFPB034323).

Respectfully submitted,

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