

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

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

In the Matter of:))	ENFORCEMENT COUNSEL'S STATEMENT OF MATERIAL FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION AS TO LIABILITY
INTEGRITY ADVANCE, LLC and JAMES R. CARNES,)		
Respondents.)		
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**ENFORCEMENT COUNSEL'S STATEMENT OF MATERIAL FACTS IN
SUPPORT OF ITS MOTION FOR SUMMARY
DISPOSITION AS TO LIABILITY**

Pursuant to 12 C.F.R. § 1081.212(d)(2), Enforcement Counsel hereby submits the following Statement of Material Facts in support of its Motion for Summary Disposition. As illustrated by the documentary evidence cited below and attached hereto, there is no genuine issue as to any of the following facts.

1. Integrity Advance is a Delaware limited liability company that, from at least May 2008 through December 2012, originated and serviced short term loans to consumers. Parties' Joint Stipulations of Fact ('JSF') ¶¶ 2, 8.
2. Integrity Advance offered loans ranging in value from \$100 to \$1000. JSF ¶ 11.
3. Respondent James Carnes ('Carnes') was the President and Chief Executive Officer of Integrity Advance throughout the entire time that it offered short term,

or ‘payday,’ loans to consumers. JSF ¶ 7; Exh. 32 (Integrity Advance Organizational Chart); Exh. 3 (Carnes 31:1-3).

4. Carnes directly or indirectly supervised all Integrity Advance employees. Exh. 32 (Integrity Advance Organizational Chart); Exh. 3 (Carnes 32: 4-9); Exh. 6 (Foster 21: 23-22: 1-5).
5. Carnes made the final decision to hire all Integrity Advance employees. Exh. 3 (Carnes 40: 24-25) Exh. 6 (Foster 22: 17-18).
6. Carnes worked in the office with other Integrity Advance executives on a daily basis. Exh. 3 (Carnes 32: 2-3).
7. Carnes had an open door policy and was accessible to any Integrity Advance employee who wanted to talk. Exh. 3 (Carnes 37: 11-13).
8. Carnes spoke daily with Integrity Advance Chief Operating Officer Edward Foster. Exh. 6 (Foster 22: 19-24); Exh. 3 (Carnes 35: 15-17).
9. Carnes met with Integrity Advance Chief Operating Officer Edward Foster “a few times a week” about Integrity Advance business. Exh. 3 (Carnes 35: 18-21).
10. As CEO, Carnes had the authority to make all decisions governing Integrity Advance’s policies and procedures. Exh. 3 (Carnes 32: 15-17).
11. During the time that Integrity Advance offered loans “the product never changed.” Exh. 3 (Carnes 22:12).
12. Carnes was the signatory on the contract with the vendor that provided debt collection services to Integrity Advance. Exh. 33 at 5 (IFP Contract) (CFPB042229).
13. Integrity Advance generated all of its contracts with consumers using either the loan agreement template attached as Exh. 1 or the loan agreement template

attached as Exh. 2. Exh. 7 at 5-6 (November 25, 2013 Integrity Advance Interrogatory Response) (CFPB042375-042376) (responding to a request to produce “each version of all” disclosures and contract).

14. Integrity Advance, either directly or through a third party vendor, serviced the loans that it originated. Exh. 3 (Carnes 15:1-8, 193:2-19, 197:2-198: 21), Exh. 6 (Foster 151: 17-22, 172: 13-22, 175:5-13). *See also*, Exh. 8 (Invoice from Clearvox to Integrity Advance) (CFPB040708).
15. Integrity Advance did not disclose the two week APR of their loans to consumers until after they had completed an online application. Answer ¶ 19.
16. Integrity Advance instructed its call center representatives not to disclose loan costs until after a consumer had applied for a loan. Exh. 31 at 13 (Procedures Manual) (CFPB0042665).
17. Each completed loan agreement sent to consumers included a Truth in Lending disclosure in a box (the ‘TILA box’). Answer ¶ 25.
18. The TILA box stated the loan APR, finance charge, amount financed, and total of payments. Answer ¶ 25.
19. For each loan originated by the company, Integrity Advance calculated each part of the TILA box by assuming that the loan would be repaid in a single payment. Answer ¶ 26.
20. Some Integrity Advance contracts included a statement immediately below the TILA boxes stating that the payment schedule was “[o]ne (1) payment” of a sum equal to the loan amount plus a single finance charge. Exh. 1 at 3 (Loan Agreement Template) (CFPB000640). *See, e.g.*, Exh. 4 at 3 (Sample Executed Loan) (CFPB002136).

21. Some Integrity Advance contracts contained a statement below the TILA box that read “Itemization of Amount Financed.” Exh. 2 at 2 (Loan Agreement Template) (CFPB000684). *See, e.g.*, Exh. 5 at 2 (Sample Executed Loan) (CFPB033706).
22. For a \$300 loan to a new consumer, the itemization of amount financed would include the following language: “Amount given to you directly: \$300. Amount paid on Loan# [xx] with us: \$390.” *See, e.g.*, Exh. 5 at 2 (Sample Executed Loan) (CFPB033706).
23. Unless a consumer contacted Integrity Advance to change the terms of her loan, Integrity Advance auto-renewed the consumer’s loan. Answer ¶ 29; Exh. 1 at 4 (Loan Agreement Template) (CFPB000641); Exh. 2 at 3 (Loan Agreement Template) (CFPB000685); Exh. 16 (Consumer Complaint) (CFPB036746); Exh. 17 (Consumer Complaint) (CFPB036816); Exh. 18 (Consumer Complaint) (CFPB037373); Exh. 20 (Consumer Complaint) (CFPB037335); Exh. 21 (Consumer Complaint) (CFPB036843); Exh. 22 (Consumer Complaint) (CFPB037492).
24. In order to prevent Integrity Advance from auto-renewing the loan, a consumer had to contact Integrity Advance three business days before the payment was due and change the payment option. Exh. 7 at 9 (November 25, 2013 Interrogatory Response) (CFPB042376); Exh. 1 at 4 (Loan Agreement Template) (CFPB000641); Exh. 2 at 3 (Loan Agreement Template) (CFPB000685); Exh. 16 (Consumer Complaint) (CFPB036746); Exh. 17 (Consumer Complaint) (CFPB036816); Exh. 18 (Consumer Complaint) (CFPB037373); Exh. 20

(Consumer Complaint) (CFPB037335); Exh. 21 (Consumer Complaint) (CFPB036843); Exh. 22 (Consumer Complaint) (CFPB037492).

25. If a consumer did not contact Integrity Advance three business days prior to a payment due date to change the payment option, Integrity Advance automatically renewed the loan four times. Answer ¶ 30.
26. The default payment option in all Integrity Advance consumer contracts was the auto-renewal option. Exh. 7 at 9 (November 25, 2013 Interrogatory Response) (CFPB042376); *see also*, Exh. 1 (Loan Agreement Template); Exh. 2 (Loan Agreement Template).
27. After four auto-renewals, the default payment option for all Integrity Advance consumer contracts was the auto-workout option. Exh. 7 at 9 (November 25, 2013 Interrogatory Response) (CFPB042376); *see also*, Exh. 1 (Loan Agreement Template); Exh. 2 (Loan Agreement Template).
28. In order to change the terms of the contract to the pay-in-full payment option, a consumer had to contact Integrity Advance three business days prior to the payment due date and change the payment option. Exh. 7 at 9 (November 25, 2013 Interrogatory Response) (CFPB042376).
29. All auto renewal and auto workout payments made on Integrity Advance loans were pulled out of consumers' accounts; they were not affirmatively directed by consumers. Exh. 1 at 4 (Loan Agreement Template) (CFPB000641); Exh. 2 at 3 (Loan Agreement Template) (CFPB000685); Exh. 16 (Consumer Complaint) (CFPB036746); Exh. 17 (Consumer Complaint) (CFPB036816); Exh. 18 (Consumer Complaint) (CFPB037373); Exh. 20 (Consumer Complaint)

(CFPB037335); Exh. 21 (Consumer Complaint) (CFPB036843); Exh. 22 (Consumer Complaint) (CFPB037492).

30. When Integrity Advance auto-renewed a loan it would debit an amount equal to the first finance charge from the consumer's account. Exh. 7 at 9 (November 25, 2013 Interrogatory Response) (CFPB042376); *see, e.g.*, Exh. 9 (CFPB005400); Exh. 10 (CFPB006002); Exh. 11 (CFPB006008); Exh. 12 (CFPB006286); Exh. 13 (CFPB006308); Exh. 14 (CFPB006357).
31. The payment of the finance charge by an auto-renewed consumer would not reduce the principal amount owed by the consumer. Exh. 7 at 9 (November 25, 2013 Interrogatory Response) (CFPB042376); Exh. 1 at 4 (Loan Agreement Template) (CFPB000641); Exh. 2 at 3 (Loan Agreement Template) (CFPB000685), *see, e.g.*, Exh. 9 (Consumer Payment History) (CFPB005400); Exh. 10 (Consumer Payment History) (CFPB006002); Exh. 11 (Consumer Payment History) (CFPB006008); Exh. 12 (Consumer Payment History) (CFPB006286); Exh. 13 (Consumer Payment History) (CFPB006308); Exh. 14 (Consumer Payment History) (CFPB006357).
32. After Integrity Advance auto-renewed a loan four times, if the consumer did not contact Integrity Advance three business days prior to the next payment date to change the payment option, the company would put the consumer into auto-workout status. Exh. 7 at 9 (November 25, 2013 Interrogatory Response) (CFPB042376).
33. During auto-workout, Integrity Advance would debit the consumer an amount equal to a finance charge plus \$50 which would be applied to loan principal. Exh. 7 at 9 (November 25, 2013 Interrogatory Response) (CFPB042376).

34. Unless a consumer changed the payment option, when a loan was in auto-workout, on each payment date Integrity Advance would debit the finance charge plus \$50, apply the \$50 to the loan principal, and charge a new finance charge until the loan principal was zero. Exh. 7 at 9 (November 25, 2013 Interrogatory Response) (CFPB042376); Exh. 1 at 4 (Loan Agreement Template) (CFPB000641); Exh. 2 at 3 (Loan Agreement Template) (CFPB000685), Exh. 9 (Consumer Payment History) (CFPB005400); Exh. 10 (Consumer Payment History) (CFPB006002); Exh. 11 (Consumer Payment History) (CFPB006008); Exh. 12 (Consumer Payment History) (CFPB006286); Exh. 13 (Consumer Payment History) (CFPB006308); Exh. 14 (Consumer Payment History) (CFPB006357).

35. For a new Integrity Advance consumer taking a \$300 loan, Integrity Advance stated in the TILA box that the finance charge would be \$90.

Answer ¶ 31; Exh. 4 at 3 (Sample Executed Loan) (CFPB002136); Exh. 5 at 2 (Sample Executed Loan) (CFPB033706).

36. For a new Integrity Advance consumer taking a \$300 loan, Integrity Advance stated in the TILA box that the Total of Payments would be \$390. Answer ¶ 31; Exh. 4 at 3 (Sample Executed Loan) (CFPB002136); Exh. 5 at 2 (Sample Executed Loan) (CFPB033706).

37. In order to pay only \$390, a new Integrity Advance consumer who took a \$300 loan would have to contact Integrity Advance three business days before the payment date to change the payment option to the pay-in-full option. Answer ¶ 29; Exh. 7 at 9 (November 25, 2013 Interrogatory Response) (CFPB042379).

38. If a new Integrity Advance consumer who took a \$300 loan did not affirmatively contact Integrity Advance and allowed the default repayment schedule to occur, she would make eleven payments totaling \$1065. Answer ¶ 31.
39. Integrity Advance consumers who had their loans renewed paid more in finance charges than the amount disclosed in the TILA box. Answer ¶¶ 26, 31.
40. Integrity Advance consumers who had their loans renewed paid more in 'total of payments' than what was disclosed in the TILA box. Answer ¶¶ 26, 31.
41. Integrity Advance's contracts did not disclose to consumers their exact payment amounts under the auto-renewal and auto-workout process. Exh. 1 (Loan Agreement Template) (CFPB000640-645); Exh. 2 (Loan Agreement Template) (CFPB000684-689).
42. Integrity Advance's consumer contracts did not state the total amount a consumer had to pay to satisfy the loan if the consumer did not contact Integrity Advance to change the default payment option in the contract. Exh. 1 (Loan Agreement Template) (CFPB000640-645); Exh. 2 (Loan Agreement Template) (CFPB000683-689).
43. Integrity Advance's consumer contracts did not state the total amount in finance charges a consumer would be charged if the consumer did not contact Integrity Advance to change the default payment option in the contract. Exh. 1 (Loan Agreement Template) (CFPB000640-645); Exh. 2 (Loan Agreement Template) (CFPB000683-689).
44. Integrity Advance's consumer contracts did not state the total APR that applied to a loan if the consumer did not contact Integrity Advance to change the default

payment option in the contract. Exh. 1 (Loan Agreement Template) (CFPB000640-645); Exh. 2 (Loan Agreement Template) (CFPB000683-689).

45. Some consumers did not understand how the default payment option of Integrity Advance's contract worked. *See, e.g.* Exh. 15 (Consumer Complaint) (CFPB036793); Exh. 16 (Consumer Complaint) (CFPB036746); Exh. 17 (Consumer Complaint) (CFPB036816); Exh. 19 (Consumer Complaint) (CFPB037029).

46. Some consumers complained once Integrity Advance had debited their account for more than the total of payments reflected in the TILA disclosure. Exh. 16 (Consumer Complaint) (CFPB036746); Exh. 17 (Consumer Complaint) (CFPB036816); Exh. 18 (Consumer Complaint) (CFPB037373); Exh. 20 (Consumer Complaint) (CFOPB037335).

47. Carnes knew that some consumers had not understood that their first four auto-renewal payments would not reduce loan principal. Exh. 3 (Carnes 243:1-12).

48. Carnes understood that most Integrity Advance consumers would make higher repayments than what the company disclosed. Exh. 3 (Carnes 245:4-25).

49. Integrity Advance did not provide consumers with full unified versions of their loan agreement until after they had agreed to the loan. Exh. 3 (Carnes 213: 11-13).

50. As a part of the online application and approval process, Integrity Advance consumers were presented with an ACH agreement that authorized electronic ACH debits. Answer ¶ 39; Exh. 1 (Loan Agreement Template) (CFPB000796-798); Exh. 2 (Loan Agreement Template) (CFPB000690-692); Exh. 4 (Sample

Executed Loan) (CFPB002142-2146); Exh. 5 (Sample Executed Loan) (CFPB033708-33710).

51. Consumers could not receive initial approval of an online application without signing the ACH agreement. Exh. 6 (Foster 84:1-7).
52. Integrity Advance consumers could only receive loan proceeds by way of an electronic deposit which was authorized by the ACH authorization. Answer ¶ 40.
53. The ACH authorization form authorized Integrity Advance to withdraw auto-renewal and auto-workout payments. Exh. 1 (Loan Agreement Template) (CFPB000796-798); Exh. 2 (Loan Agreement Template) (CFPB000690-692); Exh. 4 (Sample Executed Loan) (CFPB002142-2146); Exh. 5 (Sample Executed Loan) (CFPB033708-33710).
54. The ACH authorization form gave Integrity Advance the ability to execute repeated electronic withdrawals from a consumer's bank account pursuant to the default repayment plan that anticipated multiple rollovers: "You also authorize us to initiate an ACH debit entry to Your Bank Account: . . . (b) for the Finance Charge plus any accrued fees on the Payment Due Date, or on any subsequent Renewal Payment Due Date, if you contact us at least three (3) business days prior to such date and select Payment Option (b) in the Loan Agreement (RENEWAL), or if you fail to contact us to confirm your payment option; (c) for the accrued finance charges and fees, plus \$50.00 on each Pay Date after the fourth (4th) Renewal Payment Due Date, until all amounts owed under the Loan Agreement are paid in full." Exh. 1 (Loan Agreement Template) (CFPB000796-798); Exh. 2 (Loan Agreement Template) (CFPB000690-692); Exh. 4 (Sample

Executed Loan) (CFPB002142-2146); Exh. 5 (Sample Executed Loan) (CFPB033708-33710).

55. The electronic ACH withdrawals initiated by Integrity Advance during auto-renewal and auto-workout occurred at regular intervals tied to a consumer's paydays. *See* Exh. 3 (Carnes 160: 2-4; 23-24; Carnes 225:1-3; Carnes 228: 15-17); Exh. 1 (Loan Agreement Template) (CFPB000796-798); Exh. 2 (Loan Agreement Template) (CFPB000690-692); Exh. 4 (Sample Executed Loan) (CFPB002142-2146); Exh. 5 (Sample Executed Loan) (CFPB033708-33710).
56. To repay in a manner other than ACH transfer, a consumer had to prove to Integrity Advance that he or she could pay by another means. Exh. 3 (Carnes 217: 13-17); Exh. 6 (Foster 85: 4-13).
57. Integrity Advance's loan documents do not contain any indication that consumers could receive a loan from the company without signing the ACH authorization form. Exh. 1 (Loan Agreement Template); Exh. 2 (Loan Agreement Template); Exh. 4 (Sample Executed Loan); Exh. 5 (Sample Executed Loan).
58. The ACH authorization contains the language stating that it "remain[s] in full force and effect" until a consumer's indebtedness to Integrity Advance is repaid.
Answer ¶ 45.
59. When consumers signed the ACH authorization, they authorized Integrity Advance to debit any payments pursuant to the auto-renewal provisions in the contracts. Exh. 1 at 3 (Loan Agreement Template) (CFPB000640); Exh. 2 at 3 (Loan Agreement Template) (CFPB000685); Exh. 4 at 4 (Sample Executed Loan) (CFPB002137); Exh. 5 at 2 (Sample Executed Loan) (CFPB033706).

60. When consumers signed the ACH authorization, they authorized Integrity Advance to debit any payments pursuant to the auto-workout provisions in the contracts. Exh. 1 at 3 (Loan Agreement Template) (CFPB000640); Exh. 2 at 3 (Loan Agreement Template) (CFPB000685); Exh. 4 at 4 (Sample Executed Loan) (CFPB002137); Exh. 5 at 2 (Sample Executed Loan) (CFPB033706).
61. Integrity Advance's ACH agreement contained a provision that allowed the company to execute remotely created checks (RCCs), also known as demand drafts or check drafts, on consumers' accounts. Exh. 1 at 10 (Loan Agreement Template) (CFPB000797); Exh. 2 at 9 (Loan Agreement Template) (CFPB000691); Exh. 4 at 10-11 (Sample Executed Loan) (CFPB002143-2144); Exh. 5 at 5 (Sample Executed Loan) (CFPB033709).
62. The RCC provision stated "you authorize us to prepare and submit one or more checks drawn on Your Bank Account so long as amounts are owed to us under the Loan Agreement." Exh. 1 at 10 (Loan Agreement Template) (CFPB000797); Exh. 2 at 9 (Loan Agreement Template) (CFPB000691); Exh. 4 at 10-11 (Sample Executed Loan) (CFPB002143-2144); Exh. 5 at 5 (Sample Executed Loan) (CFPB033709).
63. Integrity Advance's Loan Management System Operations Manual states that that scheduling an RCC is "valuable when a customer revokes ACH authorization." Exh. 34 (Loan Management System Operations Manual) (CFPB038328).
64. The RCC provision appeared only once in the loan agreement on approximately page 5 of the loan agreement in the middle of the ACH authorization section.

Exh. 1 at 10 (Loan Agreement Template) (CFPB000797); Exh. 2 at 9 (Loan Agreement Template) (CFPB000691); Exh. 4 at 10-11 (Sample Executed Loan) (CFPB002143-2144); Exh. 5 at 5 (Sample Executed Loan) (CFPB033709).

65. The RCC provision is not emphasized by any bolded, underlined, capitalized, or enlarged font. Exh. 1 at 10 (Loan Agreement Template) (CFPB000797); Exh. 2 at 9 (Loan Agreement Template) (CFPB000691); Exh. 4 at 10-11 (Sample Executed Loan) (CFPB002143-2144); Exh. 5 at 5 (Sample Executed Loan) (CFPB033709).
66. Integrity Advance did not require consumers to sign or initial the RCC provision separately. Exh. 1 at 10 (Loan Agreement Template) (CFPB000797); Exh. 2 at 9 (Loan Agreement Template) (CFPB000691); Exh. 4 at 10-11 (Sample Executed Loan) (CFPB002143-2144); Exh. 5 at 5 (Sample Executed Loan) (CFPB033709).
67. The RCC provision does not state that the checks to be drawn on a consumer's bank account do not have to be signed by the consumer. Exh. 1 at 10 (Loan Agreement Template) (CFPB000797); Exh. 2 at 9 (Loan Agreement Template) (CFPB000691); Exh. 4 at 10-11 (Sample Executed Loan) (CFPB002143-2144); Exh. 5 at 5 (Sample Executed Loan) (CFPB033709).
68. The RCC provision does not state that the checks to be drawn on a consumer's bank account can be submitted without prior warning to the consumer. Exh. 1 at 10 (Loan Agreement Template) (CFPB000797); Exh. 2 at 9 (Loan Agreement Template) (CFPB000691); Exh. 4 at 10-11 (Sample Executed Loan) (CFPB002143-2144); Exh. 5 at 5 (Sample Executed Loan) (CFPB033709).
69. Some Integrity Advance consumers attempted to withdraw the company's authorization to initiate ACH debits or otherwise stop Integrity Advance from using ACH to electronically debit funds from their bank accounts because the

company had withdrawn more than consumers believed they owed. Exh. 27 (Consumer Complaint) (CFPB037533); Exh. 29 (Consumer Complaint) (CFPB037301); Exh. 23(Consumer Complaint) (CFPB 036619); Exh. 24 (Consumer Complaint) (CFPB037146); Exh. 25 (Consumer Complaint) (CFPB037194); Exh. 30 (Consumer Complaint) (CFPB037375).

70. Integrity Advance used the demand draft provision to withdraw money from the accounts of some of the consumers who had withdrawn ACH authorization. Exh. 3 (Carnes 219:7-18); Exh. 34 (Loan Management System Operations Manual) (038328); Exh. 30 (Consumer Complaint) (CFPB037375); Exh. 26 (Consumer Complaint) (CFPB037293); Exh. 28 (Consumer Complaint) (CFPB037548); Exh. 23 (Consumer Complaint) (CFPB036619); Exh. 24 (Consumer Complaint) (CFPB037146); Exh. 25 (Consumer Complaint) (CFPB037194); (Consumer Complaint) Exh. 27 (CFPB037533).
71. Carnes was a director and officer of Integrity Advance charged with managerial responsibility for Integrity Advance. Answer ¶ 6; Exh. 3 (Carnes 32:15-17).