

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029

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

Pursuant to 12 C.F.R. §§ 1081.212(d)(2) and Administrative Law Judge Christine L. Kirby's April 29, 2020 Order, Respondents Integrity Advance, LLC and James R. Carnes ("Respondents") hereby submit the following statement of material facts as to which there is no genuine issue in support of their Motion for Summary Disposition. There is no genuine issue as to the following facts:

1. Integrity Advance was a Delaware licensed, short-term, small-dollar lender. Parties' Joint Stipulation of Facts (Dkt. 56) ("Joint Stipulation") ¶¶ 8, 11, 13, 14.
2. Integrity Advance was formed on July 2, 2007. Declaration of Richard J. Zack Supp. Mot. for Summ. Disposition ("Zack Decl.") ¶ 14, Ex. 13 (Integrity Advance Certificate of Formation). Integrity Advance is a subsidiary company to Hayfield Investment

Partners (“HIP”). *Id.* ¶ 9, Ex. 8 (Hearing Tr. Vol I, Testimony of James R. Carnes (“Carnes Hr’g Tr.”) at I-100:14-17).¹

3. EZ Corp. purchased a set of assets from HIP in December of 2012. *Id.* at I-238:9-11. EZ Corp. did not purchase Integrity Advance, *id.* at I-237:19-21, but did purchase a partial customer list from the Company, *id.* at I-237:22 – I-238:13.

4. Integrity Advance ceased offering loans in December 2012. Joint Stipulation ¶ 10.²

5. In offering loans to consumers, Integrity Advance primarily used a web-based Application and Loan Agreements (the “Loan Agreements”). Zack Decl. ¶ 3, Ex. 2 (June 17, 2014 Deposition of James R. Carnes (“Carnes Dep. Tr.”) at 182:22-25).

6. Most Loan Agreements required that a customer sign or initial the document up to eight separate times before receiving a loan. *Id.* ¶ 2, Ex. 1 (Integrity Advance Loan Application and Agreement); *see also id.* ¶ 3, Ex. 2 (Carnes Dep. Tr. at 182:22-25-183:1-10).

7. Before Integrity Advance extended a loan to a first-time customer, one of its representatives had a telephone conversation with the customer to ensure that he or she understood the details of the loan, including partial pay-down and loan pay-off options. *Id.* ¶ 3, Ex. 2 (Carnes Dep. Tr. at 188:18-25-189:1-13).

¹ Citations to “RX-” and “EC-EX-” refer to exhibits offered by Respondents and Enforcement Counsel at the previous hearing. Citations to Volumes I – III of the previous hearing transcripts refer to the redacted, publicly-filed versions of those transcripts (Dkt. 172; Dkt. 173; Dkt. 174).

² The CFPB admitted this fact in its Notice of Charges and stipulated to this fact in the Joint Stipulation. Enforcement Counsel later attempted to claim that loans were originated through May 2013. Dkt. 100 at 1-2, ¶ 2. However, the CFPB’s own expert testified that the data did not actually contain loan origination dates. Zack Decl. ¶ 11, Ex. 10 (Hearing Tr. Vol I, Testimony of Robert Hughes at III-7:7-10). Based on this fact, the prior ALJ found that the CFPB had not established that loans were originated beyond December 2012. Dkt. 176 at 72.

8. Integrity Advance then sent the customer a “welcome email” that provided details about the terms of the loan. *Id.* at 224:5-10; *see also id.* ¶ 4, Ex. 3 (Integrity Advance template “Welcome Email”).

9. Integrity Advance sent customers routine emails that apprised customers of payment due dates and payment amounts. *Id.* ¶ 3, Ex. 2 (Carnes Dep. Tr. at 243:14-21); *see also id.* ¶ 5, Ex. 4 (Integrity Advance template “Reminder Email”).

10. The loans offered by Integrity Advance included a set finance charge. *Id.* ¶ 2, Ex. 1 (Integrity Advance Loan Application and Agreement); *see also id.* ¶ 3, Ex. 2 (Carnes Dep. Tr. at 162:10-14).

11. Repayment of loans offered by Integrity Advance was due on the consumer’s next pay date. *Id.* ¶ 2, Ex. 1 (Integrity Advance Loan Application and Agreement).

12. Under 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. *Id.*

13. The Loan Agreement described loan repayment options:

PAYMENT OPTIONS: You must select your payment option at least three (3) business days prior to your Payment Due Date by contacting us at (800) 505-6073. At that time, you may choose:

(a) Payment in full: You may pay the Total of Payments shown above, plus any accrued fees, to satisfy your loan in full. When you contact us and choose this option, we will debit Your Bank Account (defined below) for the Total of Payments plus any accrued fees, in accordance with the ACH Authorization below; OR

(b) Renewal: You may renew your loan (that is, extend the Payment Due Date of your loan until your next Pay Date) by authorizing us to debit Your Bank Account for the amount of the Finance Charge, plus any accrued fees. If you choose this option, your new Payment Date will be your next Pay Date, and the rest of the terms of the Loan Agreement will continue to apply.

Id.

14. Integrity Advance had a process that allowed a customer who was otherwise eligible to obtain a loan to arrange for a type of payment, other than ACH

authorization, including checks and money orders. *Id.* ¶ 6, Ex. 5 (June 24, 2014 Deposition of Edward N. Foster (“Foster Dep. Tr.”) at 84:14-85:18).

15. The Loan Agreement contained a TILA Box that complied with the format provided by the CFPB in 12 C.F.R. § 1026 App. G.2. *Id.* ¶ 2, Ex. 1 (Integrity Advance Loan Application and Agreement).

FEDERAL TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate. 684.38%	The dollar amount the credit will cost you. \$150.00	The amount of credit provided to you or on your behalf. \$500.00	The amount you will have paid after you have made all payments as scheduled. \$650.00

16. The Loan Agreement contained a text box immediately beneath the TILA disclosures as follows:

Your Payment Schedule will be: One (1) payment of \$650.00 due on 4/10/2009 ("Payment Due Date").

Id.

17. The Loan Agreement contained a “special notice” displayed in all capital letters, which stated that:

SPECIAL NOTICE:

(1) THIS LOAN IS DESIGNED AS A SHORT-TERM CASH FLOW SOLUTION AND NOT DESIGNED AS A SOLUTION FOR LONGER TERM FINANCIAL PROBLEMS.

(2) ADDITIONAL FEES MAY ACCRUE IF THE LOAN IS REFINANCED OR “ROLLED OVER.”

Id.

18. The Loan Agreement contained a notice that told consumers:

A PAYDAY LOAN IS NOT INTENDED TO MEET LONG-TERM FINANCIAL NEEDS

Id.

19. The Loan Agreement contained a notice of the consumers' recession rights, as set out in this text box:

RIGHT TO CANCEL: YOU MAY CANCEL THIS LOAN WITHOUT COST OR FURTHER OBLIGATION TO US, IF YOU DO SO BY THE END OF BUSINESS ON THE BUSINESS DAY AFTER 3/24/2009. To cancel, you may call us at (800) 505-6073 to alert us of your intention to cancel. Alternatively, you may print this page, complete the information in this box, sign and fax it to us at (800)-581-8148. If you follow these procedures but there are insufficient funds available in Your Bank Account to enable us to reverse the transfer of loan proceeds at the time we effect an ACH debit entry of Your Bank Account, your cancellation will not be effective and you will be required to pay the loan and our charges on the scheduled maturity date.

Signature: (X) _____

Date: _____

Id.

20. The Loan Agreement also set out explanatory "Standard Loan Fees" that indicated the range of time periods in which the initial loan would be required to be repaid or renewed as follows:

STANDARD LOAN FEES (NEW CUSTOMERS AND NON-VIP CUSTOMERS)									
DAYS	APR	LOAN AMOUNT							
		\$100.00	\$150.00	\$200.00	\$250.00	\$300.00	\$350.00	\$400.00	\$450.00
23	476.09%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
22	497.73%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
21	521.43%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
20	547.50%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
19	576.32%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
18	608.33%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
17	644.12%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
16	684.38%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
15	730.00%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
14	782.14%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
13	842.31%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
12	912.50%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
11	995.45%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
10	1095.00%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
9	1216.67%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00
8	1368.75%	\$30.00	\$45.00	\$60.00	\$75.00	\$90.00	\$105.00	\$120.00	\$135.00

Id.

21. The Loan Agreement also set forth the terms of Auto-Renewal and Auto-Workout as follows:

AUTO-RENEWAL: If you fail to contact us to confirm your Payment Option at least three (3) business days prior to any Payment Due Date, or otherwise fail to pay the loan in full on any Pay Date, Lender may automatically renew your loan as described under (b) above, and debit Your Bank Account on the Payment Due Date or thereafter for the Finance Charge and any accrued fees. Your new Payment Due Date will be your next Pay Date, and the rest of the terms of the Loan Agreement will continue to apply. You must contact us at least three (3) business days prior to your new Payment Due Date to confirm your payment

option for the Renewal. If you fail to contact us, or otherwise fail to pay the loan in full on your new Payment Due Date, we may automatically renew the loan until your next Pay Date. After your initial loan payment, you may obtain up to four (4) Renewals. All terms of the Loan Agreement continue to apply to Renewals. All Renewals are subject to Lender's approval. Under Delaware law, if you qualify, we may allow you to enter into up to four (4) Renewals, also known as a "refinancing" or a "rollover". The full outstanding balance shall be due upon completion of the term of all Renewals, unless you qualify for Auto-Workout, as described below.

AUTO-WORKOUT. Unless you contact us to confirm your option for Payment in Full prior to your Fourth Renewal Payment Due Date, your loan will automatically be placed into a Workout Payment Plan. Under the Workout Payment Plan, Your Bank Account will automatically be debited on your Pay Date for accrued finance charges plus a principal payment of \$50.00, until all amounts owed hereunder are paid in full. This does not limit any of Lender's other rights under the terms of the Loan Agreement. All Workout Payment Plans are subject to Lender's approval.

Id.

22. Under the Loan Agreement, consumers “[p]romise[d] to pay [Integrity Advance] the Total of Payments ... on the Payment Due Date . . .” and, contingent on the consumers’ choices, “[a]ll other amounts owed to us under the Loan Agreement.” *Id.*

23. Regarding the short-term loan industry, the CFPB has acknowledged, “some consumers provided favorable responses about the speed at which these loans are given, the availability of these loans for some consumers who may not qualify for other credit products, and consumers’ ability to use these loans as a way to avoid overdrawing a deposit account or paying a bill late.” CFPB White Paper, “Payday Loans and Deposit Advance Products” (available at https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf).

24. The CFPB’s expert witness, Dr. Manoj Hastak, testified at a deposition that he “didn’t talk to any customers, and [he] didn’t rely on complaints either.” Zack Decl. ¶ 7, Ex. 6 (Mar. 11, 2016 Deposition of Dr. Manoj Hastak (“Hastak Dep. Tr.”) at 139:11-13). Dr. Hastak explained that “the complaints are not representatives of the customers of Integrity Advance, and so they’re just a small sampling of individuals who had a problem with Integrity

Advance . . .” and were, thus, not “representative in any way” of a “typical consumer.” *Id.* at 139:16.

25. The CFPB’s expert, Dr. Hastak, submitted a report that made no findings of any misrepresentations or false information in the Loan Agreement, but instead provided an opinion that the fee disclosures and the disclosures related to the use of RCCs were not “clear and conspicuous.” *Id.* ¶ 12, Ex. 11 at 26 (Expert Report of Dr. Manoj Hastak).

26. Respondents’ expert, Nathan Novemsky, Ph.D., challenged Dr. Hastak’s methodology and conclusions. *Id.* ¶ 13, Ex. 12 (Rebuttal Report of Dr. Nathan Novemsky).

27. In order to obtain and maintain its lending license, the Company had to renew it each year with the Delaware State Bank Commissioner. *See id.* ¶ 8, Ex. 7 (Dec. 28, 2010 Delaware Office of the State Bank Commissioner Renewal Letter).

28. Integrity Advance could only obtain a Delaware lending license once the State Bank Commissioner determined “that the financial responsibility, experience, character and general fitness of the applicant . . . and of the officers and directors thereof are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently.” Del. Code Ann. tit. 5 § 2204.

29. Integrity Advance had to renew its license regularly and furnish the State Bank Commissioner with any materials or information that had changed since the initial filing or any renewal application, including any changes to loan agreements and promissory notes. *See e.g., id.* § 2207.

30. Under the Delaware statute, the State Bank Commissioner is required to conduct “a thorough examination into the affairs” of any nonbank lender, including its “resources and liabilities, the investment of the funds, the mode of conducting the business and

the compliance or noncompliance with this Code or any regulations promulgated thereunder, and any under statutes or regulations of [Delaware] or the United States.” *Id.* § 2209-2210.

31. If at any time there is a finding or determination that the licensee has violated any federal or state law, the State Bank Commissioner may revoke or suspend any lending license. *See id.* This includes any findings that “[t]he licensee has engaged in business activities or practices in connection with extensions of credit to consumers, which could be deemed unfair or deceptive by nature of intent. Such activities and practices include, but are not limited to, the use of tactics which mislead the consumer, misrepresent the consumer transaction or any part thereof or otherwise create false expectations on the part of the consumer.” *Id.* § 2209.

32. Mr. Foster testified that “the vast majority of that, what the [Integrity Advance loan] product looked like and how it functioned was defined by Delaware law. Zack Decl. ¶ 10, Ex. 9 (Hearing Tr. Vol II, Testimony of Edward Foster (“Foster Hr’g Tr.”) at II-19:22-24).

33. The Delaware regulator’s licensing process involves a review of an applicant’s financial documents, business references, personal information of executives, and the applicant’s loan contract. *See id.* ¶ 11, Ex. 10 (Hearing Tr. Vol III, Testimony of Elizabeth Quinn Miller (“Miller Hr’g Tr.”) at III-125:23 – III-126:22).

34. Elizabeth Quinn Miller, Senior Investigator for the Delaware Office of the State Bank Commissioner testified that she reviewed loan contracts and paid particular attention to the “fed boxes,” (i.e. the TILA box) stating “[t]here are a couple of things in our statute that I know need to be in there, and they are usually right there in the fed boxes right on front. I can look for those and make sure that, that part of our statute is being adhered to.” *Id.* at III-126:16 –

127:18. She further testified that this has been regulator's practice going back ten years to 2006.

Id. at III-128:1-10.

35. Ms. Miller further explained that Delaware lenders must renew their licenses annually. *Id.* at III-129:19-22.

36. Ms. Miller also indicated that lenders' loan agreement were reviewed during the examination process. *Id.* at III-131:16-21.

37. Testimony from Ms. Miller shows that Delaware law sets parameters with which loans must comply – including the number of allowed renewals. *See id.* at III-135:1-11, III-138:3-11.

38. Mr. Carnes had a high-level understanding that Delaware granted Integrity Advance a lending license, and renewed the license annually upon the Company's application. *Id.* ¶ 10, Ex. 9 (Carnes Hr'g Tr. at II-80:13-25, II-81:1-13. Mr. Carnes knew that Integrity Advance received approval to lend every year and "posted the license on [the company's] website." *Id.* at II-82:7-9. Mr. Carnes understood that Integrity Advance submitted its Loan Agreement and other financial documents to the Delaware regulator for its review. *See id.* at II-80:19 – II-81:6.

39. Mr. Carnes was not, and is not, a consumer financial regulation expert. *See id.* II-26:20-23. Similarly, Mr. Foster's field was not in consumer financial regulations. *See id.* ¶ 9, Ex. 8 (Carnes Hr'g Tr. at I-232:5-6).

40. Mr. Foster testified that "[n]o one at the Hayfield group of companies, including myself or Mr. Carnes, were consumer lawyers or experts in consumer law. So the strategy of the company was to always have highly compensated, highly acknowledged and

reputable consumer law counsel, outside counsel, to provide the counsel and guidance on those matters.” *Id.* ¶ 10, Ex. 9 (Foster Hr’g Tr. at II-26:20-25 – II-27:1).

41. Integrity Advance hired outside counsel to create loan documents that conformed to Delaware and federal law. *Id.* (Carnes Hr’g Tr. at II-95:10-13); *id.* ¶ 9, Ex. 8 (Carnes Hr’g Tr. at I-227:17-21). Mr. Carnes testified that “we hired an outside counsel to come up with the loan agreement. We trusted that that was the best thing to do and we used it.” *Id.* ¶ 9, Ex. 8 (Carnes Hr’g Tr. at I-231:23-25). Mr. Carnes further testified that: “[w]e hired outside counsel to create and give us loan documents that conformed with the Delaware and federal law. Once they gave us those documents, we took them and through our IT department, implemented them into our loan management system to use to lend to consumers.” *Id.* ¶ 10, Ex. 9 (Carnes Hr’g Tr. at II-95:11-16).

42. Mr. Carnes further testified that Integrity Advance used an industry standard fee, but did not recall who, if anyone, made an affirmative decision to use the industry standard. *Id.* at II-48:23 - II-49:6.

43. Integrity Advance’s loan agreement was implemented by a third-party call center that had experience in the loan process. *Id.* ¶ 9, Ex. 8 (Carnes Hr’g Tr. at I-133:16 – I-135:23).

44. Mr. Foster testified that matters dealing with repayment of Integrity Advance loans were “handled specifically by the call centers on a day-to-day basis.” *See id.* ¶ 10, Ex. 9 (Foster Hr’g Tr. at II-16:4-6).

45. Consumer complaints were handled primarily by customer service representatives (“CSRs”) at the third-party call center, or escalated to a call center manager. *Id.* at II-30:2-7.

46. Consumer complaints that were escalated beyond the third-party call center were ultimately the responsibility of Integrity Advance's legal group and Mr. Foster. *Id.* at II-30:15-16.

47. The evidence shows that Integrity Advance received only a *de minimis* number of complaints from consumers, which did not rise to the level of Mr. Carnes' personal awareness. *See id.* ¶ 9, Ex. 8 (Carnes Hr'g Tr. at I-233:18-22).

48. Integrity Advance required customers to repay fully their first loan before taking out a second loan. *See id.* ¶ 10, Ex. 9 (Foster Hr'g Tr. at II-15:19-22). Customers taking out a second loan were repeat customers (or "VIP customers"). *See id.*

49. Thus, before Integrity Advance customers became repeat customers, they were necessarily fully informed of how the loan agreement, including rollovers, worked. *See id.*

50. Since July 21, 2011, a total of 26,129 customers (48% of Integrity Advance customers since July 21, 2011) chose to take out two or more loans. *See id.* ¶ 16, Ex. 15 (chart entitled "Integrity Advance Repeat Customers Relative to All Customers"). More broadly, a total of 57,798 customers (32% of all Integrity Advance customers) chose to take out two or more loans. *Id.*

51. Since July 21, 2011, more than 6,527 customers chose to take out *five or more* loans and 926 customers chose to take out *ten or more loans*. *See id.* ¶ 15, Ex. 14 (chart entitled "Integrity Advance Counts of Repeat Customers by Number of Loans"). More broadly, out of all Integrity Advance customers, 8,447 customers chose to take out five or more loans and 1,039 customers chose to take out ten or more loans. *Id.*

52. Of the 82,980 loans originated on or after July 21, 2011, 66% of those loans were loans to repeat customers. *See id.* ¶ 16, Ex. 15 (chart entitled "Integrity Advance

Repeat Customers Relative to All Customers’). More broadly, 60% of *all* Integrity Advance loans were to repeat customers. *Id.*

53. The evidence shows that Integrity Advance personnel, including Mr. Carnes, had access to and reviewed information regarding the number of repeat customers through an Integrity Advance dashboard. *See id.* ¶ 9, Ex. 8 (Hearing Tr. Vol I, Testimony of Timothy A. Madsen (“Madsen Hr’g Tr.”) at I-46:6 – I-47:10). Mr. Madsen testified that “[w]e could see returning customers, the number of returning customers coming back to use and taking out new loans.” *Id.* at I-46:11-13.

54. Remotely created checks (“RCCs” or “demand drafts”) are legal and were legal during all relevant times Integrity Advance operated. *Id.* ¶ 10, Ex. 9 at (Hearing Tr. Vol II, Testimony of Joseph P. Baressi (“Baressi Hr’g Tr.”) II-181:17-18; II-183:6-11; II-188:5 – 189:10).

55. Remotely created checks are a legitimate payment mechanism governed by the Uniform Commercial Code (U.C.C. § 3-104(f)) and Regulation CC (12 C.F.R. § 229.2(f)).

56. Joseph Phillip Baressi, III, an attorney in the CFPB’s Office of Regulations, testified that RCCs are lawful payment mechanisms and were lawful at all operative times in at issue in this proceeding. Zack Decl. ¶ 10, Ex. 9 (Baressi Hr’g Tr. at II-188:5 – II-189:10).³

57. RCCs have not been banned regarding short-term loans. *Id.* at II-183:10-12.

³ Reliance by the CFPB on Mr. Baressi’s testimony is subject to Respondents’ motion to strike. *See* Dkt. 153, Resp’ts’ Mot. to Strike Test. of Joseph Baressi (Aug. 5, 2016).

58. Integrity Advance used remotely created checks in less than one percent of all loans during the post-July 21, 2011 period. *Id.* ¶ 18, Ex. 17 at 1, 5 (document entitled “Overview of Integrity Advance (IA) Loans and Consumers”).

59. Integrity Advance rarely used remotely created checks and did so only after numerous attempts to contact a customer to set up alternative payment arrangements. *Id.* ¶ 10, Ex. 9 (Carnes Hr’g Tr. at II-84:7-85:12).

60. The decision to use RCCs was made by the third-party call center on a case-by-case basis. Mr. Foster testified that repayment issues were “handled specifically by the call centers on a day-to-day basis.” *See id.* (Foster Hr’g Tr. at II-16:4-6).

61. Use of RCCs was a last resort. Mr. Carnes testified that RCCs were “very sparsely used,” *id.* (Carnes Hr’g Tr. at II-84:20-21), and that “very very few [loans] . . . went down that path,” *id.* at II-85:8-11.

62. Mr. Carnes testified that of the total universe of Integrity Advance loans, RCCs were used on “well under one percent” of loans, and RCCs were only used when customers had no payment option in place and “through numerous calls and e-mails refused to contact [Integrity Advance] and set up alternate payment arrangements.” *Id.* at II-84:22 – II-85:8.

63. The Loan Agreement’s ACH authorization states that “[y]ou 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.” *Id.* ¶ 2, Ex. 1 (Integrity Advance Loan Application and Agreement).

64. Consumers could receive a loan without signing the ACH authorization. Dkt. 1 ¶ 41 (Notice of Charges).

65. Integrity Advance offered many ways to repay loans as an alternative to ACH withdrawal. Zack Decl. ¶ 10, Ex. 9 (Carnes Hr'g Tr. at II-85:15-17).

66. For example, Integrity Advance customers could pay by personal check, debit card, credit card, Paypal account, Western Union, or MoneyGram. *Id.* at II-97:12-23. Mr. Carnes testified that Integrity Advance “accepted all forms of payments beside cash that [the Company] could think of.” *Id.* at II-97:23-25.

67. Mr. Carnes testified that Integrity Advance customers could even stop the RCC process if it had been initiated by contacting Integrity Advance and informing the Company of a desired payment method. *See id.* at II-85:15-17.

68. Enforcement Counsel did not conduct any independent investigation into why a customer may have placed a “stop payment” or withdrawn authorization for a particular ACH debit. In particular, Robert Hughes, Enforcement Counsel’s data scientist, testified that any investigation into actual customer interactions was “outside of the scope of the analysis he had been asked to perform.” *Id.* ¶ 11, Ex. 10 (Hearing Tr. Vol III, Testimony of Robert Hughes (“Hughes Hr’g Tr.”) at III-20:2 – III-21:9).

69. Integrity Advance customers signed an ACH authorization that expressly acknowledged the possibility that Integrity Advance could use demand drafts to satisfy unpaid balances. *See, e.g., id.* ¶ 2, Ex. 1 (Integrity Advance Loan Application and Agreement).

70. The ACH authorization was in a separate section of the Loan Agreement, and the demand draft paragraph was located at the bottom of the first page of that authorization. *Id.*

71. The demand draft language in the ACH authorization clearly stated that customers could “provide [Integrity Advance] with another form of payment,” including, but not limited to, a cashier’s check or money order. *Id.*

72. The demand draft language included the following authorization: “[Y]ou agree to provide us with another form of payment acceptable to us and 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.” *Id.*

73. The CFPB did not present testimony from a single consumer at the prior hearing. *See generally id.* ¶ 9, Ex. 8 (Hr’g Tr. Vol. I); *id.* ¶ 10, Ex. 9 (Hr’g Tr. Vol. II); *id.* ¶ 11, Ex. 10 (Hr’g Tr. Vol. III).

Timothy Madsen

74. Timothy Allen Madsen worked for HIP for approximately five years (2008-2013) as Vice President of Marketing. *Id.* ¶ 9, Ex. 8 (Madsen Hr’g Tr. at I-27:10-14; I-28:4-8,1-29:6-8).

75. Mr. Madsen’s job was to purchase leads⁴ and manage relationships with lead providers for Integrity Advance, as well as manage leads internally and coordinate with Integrity Advance’s call center regarding leads. *Id.* at I-28:9-13, 24-25; *id.* at I-29:1-5. As part of his duties, Mr. Madsen monitored lead acceptance, purchase rates, and conversion rates through a dashboard system. *Id.* at I-45:13-25. Mr. Madsen coordinated interactions between Integrity Advance and its third party call center. *Id.* at I-63:6-7.

⁴ The term “lead” refers to information relating to potential applicants for Integrity Advance loans. *See Zack Decl.* ¶ 9, Ex. 8 (Carnes Hr’g Tr. Vol. I at I-116:6-23).

76. Mr. Madsen's job did not involve any aspect of Integrity Advance's loan agreement. *Id.* at I-67:7-20.

77. Mr. Madsen did not draft, edit, revise, or review Integrity Advance's loan agreement. *See id.* (stating that none of Mr. Madsen's job duties involved the loan agreement).

78. Mr. Madsen discussed conversion rates, performance of leads, first payment defaults, and, generally, lead generation with Mr. Carnes as part of his job duties. *Id.* at I-67:1-6.

79. Mr. Madsen did not discuss Integrity Advance's loan agreement with Mr. Carnes. *Id.* at I-67:21-24. Mr. Madsen similarly testified that he never discussed the language of loan disclosures with Mr. Carnes. *Id.* at I-67:25 – I-68:1-6.

Bruce Andonian

80. Bruce Andonian worked for HIP for approximately two years (2011-2013) as Director of Software Development. *Id.* (Hearing Tr. Vol I, Testimony of Bruce Andonian (“Andonian Hr’g Tr.”) at I-70: 12-13,1-71:5, I-75:11-12).⁵

81. Mr. Andonian reported directly to Mr. Foster, and ultimately to Mr. Carnes. *Id.* at I-72:5-6.

82. Mr. Andonian's job was to manage the software development team for HIP's Empower product. *Id.* at I-83:7-8. Related to Integrity Advance, Mr. Andonian's job was to address issues with Integrity Advance's website and database. *See id.* at I-89:10-16. Mr. Andonian did not begin working on the Integrity Advance website until Mr. Foster asked him to fill in for another employee. *Id.* at I-84:3-6. In conjunction with his duties, Mr. Andonian

⁵ Willowbrook Partners owns 50.3% of HIP. EC-EX-067. Willowbrook served as the manager for HIP. *See id.* (Foster Hr’g Tr. II-8:2-3).

attended weekly IT meetings to discuss the different products covered under the Willowbrook/HIP umbrella. *Id.* at I-75:16-25 -1-76:1-17.⁶

83. Mr. Andonian did not draft, edit, revise, or review Integrity Advance's loan agreement. *See id.* at I-87:24 – I-88:12.

84. As part of his job duties, Mr. Andonian discussed with Mr. Carnes issues with Integrity Advance's website and database. Mr. Andonian testified that Mr. Carnes would be involved with Integrity Advance issues when “[s]omething wasn't working properly.” *Id.* at I-75:8-9. Mr. Andonian specified that he typically discussed issues with Integrity Advance's database with Mr. Carnes when “the data base was running slow or if we weren't accepting leads or the conversion rate was low . . .” *Id.* at I-75:7-12.

85. Mr. Andonian did not discuss the language of Integrity Advance's loan agreement, the disclosures in the loan agreement, edits, or revisions to the loan agreement or its disclosures, with Mr. Carnes. *Id.* at I-87:24 – I-88:12.

86. Mr. Andonian did not discuss scripts used by call center representatives, or edits or revisions to such scripts, with Mr. Carnes. *Id.* at I-88:13-21.

Edward Foster

87. Edward Foster worked for HIP as General Counsel, Executive Vice President, Secretary, and Assistance Treasurer. *Id.* ¶ 10, Ex. 9 (Foster Hr'g Tr. at II-7:24 – II-

⁶ Integrity Advance was not the focus of the weekly IT meetings. Mr. Andonian testified that “there wasn't [sic] a lot of Integrity Advance topics on our task list.” *Id.* (Andonian Hr'g Tr. at I-76:21-22). In fact, Integrity Advance's business took up merely five minutes out of an hour-long monthly meeting, *id.* at I-85:20-23 – equating to roughly two hours out of the total 4,000 hours that Mr. Andonian spent working on Willowbrook-related matters, *id.* at I-87:15-19 (representing 0.05% of Mr. Andonian's time at Willowbrook/HIP).

8:4, II-8:10-12). In June of 2010, Mr. Foster also took on the role of Chief Operations Officer of HIP. *Id.* at II-12:3-8.

88. Relating to Integrity Advance, Mr. Foster's job was primarily to provide corporate legal counsel to the Company. *Id.* at II-8:13-15.

89. Mr. Foster discussed all of the HIP subsidiaries with Mr. Carnes as part of his job duties. While Mr. Foster and Mr. Carnes discussed Integrity Advance more often towards the beginning of the business, the time spent on Integrity Advance matters eventually became "a very small percentage of the time spent on things." *See id.* at II-10:2 – II-11:11.

James R. Carnes

90. Mr. Carnes worked for HIP as Chief Executive Officer. *Id.* ¶ 9, Ex. 8 (Carnes Hr'g Tr. at I-94:7-12).

91. Mr. Carnes testified that, as CEO of HIP, he was "*de facto*" CEO of Integrity Advance, *id.* at I-94:7-9, I-105:10-12, I-210:3-5; *id.* ¶ 10, Ex. 9 (Carnes Hr'g Tr. Vol. II at II-49:10-11, II-63:6-8), and was in charge of Integrity Advance merely to the extent that "any CEO is in charge . . ." *Id.* ¶ 9, Ex. 8 (Carnes Hr'g Tr. at I-210:8).

92. HIP is the parent company of Integrity Advance, as well as approximately thirty other entities, at various times. *Id.* ¶ 17, Ex. 16 (document entitled "Hayfield Corporate Structure"); *id.* ¶ 9, Ex. 8 (Carnes Hr'g Tr. at I-100:20 – I-101:21).

93. As CEO of HIP, Mr. Carnes was the "*de facto*" CEO of HIP's subsidiary businesses. *Id.* (Carnes Hr'g Tr. at II-63:6-8). HIP's subsidiaries included fourteen distinct business interests. *Id.* at II-64:22 – II-65:8.

94. In addition, Mr. Carnes' time was also taken up by business interests outside of HIP. *See id.* at II-66:9-19.

95. Mr. Carnes' active involvement with HIP, as well as with Integrity Advance, changed over time. Mr. Carnes spent 75% of his time on all HIP businesses in 2008, 70% in 2009, 60% in 2010, 50% in 2011, and 80-90% in 2012 (which involved HIP's asset sale to EZ Corp.). *Id.* at II-67:8-12, II-68:23 – II-69:9.

96. Of Mr. Carnes' time spent on HIP businesses, he focused a percentage on Integrity Advance: 66% in 2008, 50% in 2009, 25% in 2010, 15% in 2011, and 15% in 2012. *Id.* at II-67:8-12, II-69:10 – II-71:3.

97. Mr. Carnes' job did not involve Integrity Advance's loan agreement, other than possibly "flipping through it." *See id.* ¶ 9, Ex. 8 (Carnes Hr'g Tr. at I-229:2-6).

98. Mr. Carnes did not draft, edit, or revise Integrity Advance's loan agreement template or any version of the agreement. *Id.* ¶ 10, Ex. 9 (Carnes Hr'g Tr. at II-75:11-25, II-76:1-13).

99. Mr. Carnes did not discuss the loan agreement template with its drafters (legal counsel from an outside law firm) or Integrity Advance personnel. *Id.* ¶ 9, Ex. 8 (Carnes Hr'g Tr. at I-227:10-12). Mr. Carnes testified that he did not recall Integrity Advance's in-house counsel, Mr. Foster, ever explaining Integrity Advance's loan agreement to him. *Id.* at I-231:11-12. Mr. Carnes did not recall specific conversations with Integrity Advance personnel about the loan agreement. *Id.* at I-232:14-17.

100. Mr. Carnes did not discuss the Integrity Advance loan agreement with the Delaware regulator. *Id.* ¶ 10, Ex. 9 (Carnes Hr'g Tr. at II-96:21-23). Further, Mr. Carnes testified that he was not aware of any discussions that other Integrity Advance personnel may have had with the Delaware regulator. *Id.* at II-96:24 – II-974.

101. Mr. Carnes did not substantively approve of Integrity Advance's loan agreement template or loan disclosures. *See, e.g., id.* ¶ 9, Ex. 8 (Carnes Hr'g Tr. at I-228:6 – I-229:6). Mr. Carnes only approved Integrity Advance's loan agreement to the extent that he, as CEO of HIP, effectively approved everything. Mr. Carnes testified that, while, "as CEO you are ultimately approving everything," he did not substantively review Integrity Advance's loan agreement template and did not "stamp[] [his] approval." *Id.* at I-228:8-9, I-232:1-3.

102. Mr. Carnes did not substantively approve of Integrity Advance's website or website contents. *Id.* at I-216:24 -I-217:15. Mr. Carnes testified that he only approved Integrity Advance's website "at a high level." *Id.* at I-217:13-15.

103. Mr. Carnes did not review, edit, revise, or discuss call center scripts. *Id.* ¶ 10, Ex. 9 (Carnes Hr'g Tr. at II-74:13-25, II-75:1-9). Indeed, Mr. Carnes never saw any call center scripts. *Id.* at II-75:10.

Respectfully submitted,

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Dated: May 15, 2020

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of May 2020, I caused a copy of the foregoing Respondents' Statement of Undisputed Facts in Support of their Motion for Summary Disposition Order to be filed by electronic transmission (email) with the Office of Administrative Adjudication (CFPB_electronic_filings@cfpb.gov), and served by email on opposing counsel at the following addresses:

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