

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING)	RESPONDENTS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF THEIR MOTION FOR SUMMARY DISPOSITION
File No. 2015-CFPB-0029)	
)	
In the matter of:)	
INTEGRITY ADVANCE, LLC and JAMES R. CARNES)	

**RESPONDENTS' STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF THEIR MOTION FOR SUMMARY DISPOSITION**

Pursuant to 12 C.F.R. § 1081.212(d)(2), Respondents Integrity Advance, LLC and James R. Carnes (collectively, “Respondents”) hereby submit the following separate statement of undisputed material facts in support of their motion for summary disposition. The following material facts are not in dispute:

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 ceased offering loans in December 2012. Joint Stipulation ¶ 10.
3. In offering loans to consumers, Integrity Advance primarily used a web-based Application and Loan Agreements (the “Loan Agreements.”) Declaration of Hillary S. Profita (“Profita Decl.”) ¶3, Exhibit 2 at 182:22-25.

4. Most Loan Agreements required that a customer sign or initial the document up to eight separate times before receiving a loan. Profita Decl. ¶2, Ex. 1; *see also* ¶3, Ex. 2 at 182:22-25-183:1-10.

5. 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. Profita Decl. ¶3, Ex. 2 at 188:18-25-189:1-13.

6. Integrity Advance then sent the customer a “welcome email” that provided details about the terms of the loan. Profita Decl. ¶3, Ex. 2 at 224:5-10; *see also* ¶4, Ex. 3.

7. Integrity Advance sent customers routine emails that apprised customers of payment due dates and payment amounts. Profita Decl. ¶3, Ex. 2 at 243:14-21; *see also* ¶5, Ex. 4.

8. The payday loans offered by Integrity Advance included a set finance charge. Profita Decl. ¶2; *see also* ¶3, Ex. 2 at 162:10-14.

9. Repayment of loans offered by Integrity Advance was due on the consumer’s next pay date. Profita Decl. ¶2, Ex. 1.

10. 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. Profita Decl. ¶2, Ex. 1.

11. 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 Date¹) 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 Due Date will be your next Pay Date¹, and the rest of the terms of the Loan Agreement will continue to apply.

Profita Decl. ¶2, Ex. 1.

12. 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. Profita Decl. ¶6, Ex. 5 at 84:14-85:18.

13. 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. Profita Decl. ¶2, Ex. 1.

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

14. The Loan Agreement contained a text box immediately beneath the TILA disclosures stated:

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

Profita Decl. ¶2, Ex. 1.

15. 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".

Profita Decl. ¶2, Ex. 1.

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

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

Profita Decl. ¶2, Ex. 1.

17. The Loan Agreement contained a notice of the consumers' recession rights, set out in a 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: _____

Profita Decl. ¶2, Ex. 1.

18. 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.

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	

Profita Decl. ¶2, Ex. 1.

19. The Loan Agreement also set forth the terms of Auto-Renewal and Auto-Workout.

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 Date¹, 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.¹ 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 Date¹ 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.

Profita Decl. ¶2, Ex. 1.

20. 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.” Profita Decl. ¶2, Ex. 1.

21. 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.” Profita Decl. ¶2, Ex. 1.

22. The Bureau's expert testified that consumer complaints are not a reliable source for ascertaining consumer injury. Profita Decl. ¶7, Ex. 6 at 139:12-19; 182:16-19.

23. In order to obtain and maintain its lending license, the Company had to renew it each year with the Delaware State Bank Commissioner. Profita Decl. ¶8, Ex. 7.

24. 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.

25. 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.*, Del. Code Ann. tit. 5 § 2207.

26. Per 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.” Del. Code Ann. tit. 5 § 2209–2210.

27. 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.” Del. Code Ann. tit. 5 § 2209.

Respectfully submitted,

Dated: May 10, 2016

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