

UNITED STATES OF AMERICA
Before the
BUREAU OF CONSUMER FINANCIAL PROTECTION

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029

| | | |
|--|---|--|
| In the Matter of: |) | ENFORCEMENT COUNSEL'S STATEMENT REGARDING RESPONDENTS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF THEIR MOTION TO DISMISS AND/OR FOR SUMMARY DISPOSITION ON GROUNDS LIMITED TO OCTOBER 28, 2019 ORDER, AND ENFORCEMENT COUNSEL'S STATEMENT OF ADDITIONAL UNDISPUTED MATERIAL FACTS ON THE STATUTE-OF-LIMITATIONS ISSUE |
| INTEGRITY ADVANCE, LLC and JAMES R. CARNES, |) | |
| Respondents. |) | |

Pursuant to 12 C.F.R. § 1081.212(d)(2), Enforcement Counsel hereby submits the following statement in response to Respondents' Statement of Undisputed Facts in Support of their Motion to Dismiss and/or for Summary Disposition on Grounds Limited to October 28, 2019 Order ("Respondents' Statement"). Enforcement Counsel also sets out additional undisputed material facts relevant to the Respondents' statute-of-limitations defense.

Enforcement Counsel's Statement Regarding Respondents' Statement of Undisputed Facts in Support of Their Motion to Dismiss and/or for Summary Disposition on Grounds Limited to October 28, 2019 Order

1. Enforcement Counsel does not dispute the facts alleged in paragraph 1 of Respondents' Statement.
2. Enforcement Counsel does not dispute the facts alleged in paragraph 2 of Respondents' Statement.
3. Enforcement Counsel does not dispute the facts alleged in paragraph 3 of Respondents' Statement.
4. Enforcement Counsel does not dispute the facts alleged in paragraph 4 of Respondents' Statement. Those facts, however, are not material to Respondents' statute-of-limitations defenses. Then-Director Cordray's speech addressed in general terms the payday lending industry and certain non-enforcement tools that the Bureau had available or was developing to supervise and better understand that market. Then-Director Cordray's speech did not pertain to the Bureau's enforcement function, nor did it address Integrity Advance or any other specific payday lenders. Therefore, it is not material to the issue of when the Bureau discovered the violations of law asserted in the Notice of Charges.
5. Enforcement Counsel does not dispute the facts alleged in paragraph 5 of Respondents' Statement. Those facts, however, are not material to Respondents' statute-of-

limitations defenses. The quoted portion of then-Director Cordray's speech refers to the Bureau's work supervising payday lenders. But there is no evidence in the record that Integrity Advance was ever subject to a supervisory examination conducted by the Bureau. Therefore, it is not material to the issue of when the Bureau discovered the violations of law asserted in the Notice of Charges.

6. Enforcement Counsel does not dispute the facts alleged in paragraph 6 of Respondents' Statement. Those facts, however, are not material to Respondents' statute-of-limitations defenses. The Bureau's Memorandum of Understanding with the Federal Trade Commission has no bearing on when the Bureau discovered the violations of law asserted in the Notice of Charges.

7. Enforcement Counsel does not dispute the facts alleged in paragraph 7 of Respondents' Statement. Those facts, however, are not material to Respondents' statute-of-limitations defenses. The Bureau's Memorandum of Understanding with the Federal Trade Commission has no bearing on when the Bureau discovered the violations of law asserted in the Notice of Charges.

8. Enforcement Counsel does not dispute the facts alleged in paragraph 8 of Respondents' Statement. Those facts, however, are not material to Respondents' statute-of-limitations defenses. As the ALJ has already recognized, guidance in the Office of Enforcement Policies and Procedures Manual "whether followed or not, would not reveal when the [Office of Enforcement] received the factual information which is the basis for the allegations contained in the Notice of Charges." Order Denying Further Discovery on the Statute of Limitations Issue (Oct. 28, 2019) [Dkt. 238] at 8. Further, the manual Respondents cite in support of this fact is dated May 5, 2017, which is nearly five years after November 18, 2012.

9. Enforcement Counsel does not dispute the facts alleged in paragraph 9 of Respondents' Statement. Those facts, however, are not material to Respondents' statute-of-limitations defenses. As the ALJ has already recognized, guidance in the Office of Enforcement Policies and Procedures Manual "whether followed or not, would not reveal when the [Office of Enforcement] received the factual information which is the basis for the allegations contained in the Notice of Charges." Order Denying Further Discovery on the Statute of Limitations Issue (Oct. 28, 2019) [Dkt. 238] at 8. Further, the manual Respondents cite in support of this fact is dated May 5, 2017, which is nearly five years after November 18, 2012.

10. Enforcement Counsel does not dispute the facts alleged in paragraph 10 of Respondents' Statement. Those facts, however, are not material to Respondents' statute-of-limitations defenses. As the ALJ has already recognized, guidance in the Office of Enforcement Policies and Procedures Manual "whether followed or not, would not reveal when the [Office of Enforcement] received the factual information which is the basis for the allegations contained in the Notice of Charges." Order Denying Further Discovery on the Statute of Limitations Issue (Oct. 28, 2019) [Dkt. 238] at 8. Further, the manual Respondents cite in support of this fact is dated May 5, 2017, which is nearly five years after November 18, 2012.

11. Enforcement Counsel does not dispute the facts alleged in paragraph 11 of Respondents' Statement. Those facts, however, are not material to Respondents' statute-of-limitations defenses. As the ALJ has already recognized, guidance in the Office of Enforcement Policies and Procedures Manual "whether followed or not, would not reveal when the [Office of Enforcement] received the factual information which is the basis for the allegations contained in the Notice of Charges." Order Denying Further Discovery on the Statute of Limitations Issue (Oct. 28, 2019) [Dkt. 238] at 8. Further, the manual Respondents cite in support of this fact is

dated May 5, 2017, which is nearly five years after November 18, 2012.

12. Enforcement Counsel does not dispute the facts alleged in paragraph 12 of Respondents' Statement. Those facts, however, are not material to Respondents' statute-of-limitations defenses. As the ALJ has already recognized, guidance in the Office of Enforcement Policies and Procedures Manual "whether followed or not, would not reveal when the [Office of Enforcement] received the factual information which is the basis for the allegations contained in the Notice of Charges." Order Denying Further Discovery on the Statute of Limitations Issue (Oct. 28, 2019) [Dkt. 238] at 8. Further, the manual Respondents cite in support of this fact is dated May 5, 2017, which is nearly five years after November 18, 2012.

13. Enforcement Counsel does not dispute the facts alleged in paragraph 13 of Respondents' Statement. Those facts, however, are not material to Respondents' statute-of-limitations defenses. As the ALJ has already recognized, guidance in the Office of Enforcement Policies and Procedures Manual "whether followed or not, would not reveal when the [Office of Enforcement] received the factual information which is the basis for the allegations contained in the Notice of Charges." Order Denying Further Discovery on the Statute of Limitations Issue (Oct. 28, 2019) [Dkt. 238] at 8. Further, the manual Respondents cite in support of this fact is dated May 5, 2017, which is nearly five years after November 18, 2012.

14. Enforcement Counsel does not dispute the facts alleged in paragraph 14 of Respondents' Statement. To support the fact, however, the paragraph should cite to both paragraphs 1 and 2 of the Joint Update (not just paragraph 1).

15. Enforcement Counsel does not dispute the facts alleged in paragraph 15 of Respondents' Statement to the extent that they state that the PDF attached as Exhibit A to the Zack Declaration reflects that a person was logged-in to the FTC's Sentinel database account as

Kara Miller, and that Kara Miller is an attorney in the Office of Enforcement. Also, to support the fact, the paragraph should cite to both paragraphs 1 and 2 of the Joint Update (not just paragraph 1).

16. Enforcement Counsel does not dispute the facts alleged in paragraph 16 of Respondents' Statement.

17. Enforcement Counsel does not dispute the facts alleged in paragraph 17 of Respondents' Statement.

18. Enforcement Counsel does not dispute the facts alleged in paragraph 18 of Respondents' Statement.

19. Enforcement Counsel does not dispute the facts alleged in paragraph 19 of Respondents' Statement.

20. Enforcement Counsel does not dispute the facts alleged in paragraph 20 of Respondents' Statement.

21. Enforcement Counsel does not dispute the facts alleged in paragraph 21 of Respondents' Statement, except with respect to Respondents' characterization of their position with respect to the motion to withdraw Count IV. Respondents did not agree to the motion, they "stated that they do not object to this motion." Stipulated Motion to Withdraw Count IV with Prejudice (July 11, 2016) [Dkt. 127] at 1.

22. Enforcement Counsel does not dispute the facts alleged in paragraph 22 of Respondents' Statement.

**Enforcement Counsel's Statement of Additional
Undisputed Material Facts on the Statute-of-Limitations Issue**

23. Under 12 C.F.R. § 1081.206 (“Rule 206”), Enforcement Counsel has produced to Respondents, among other things, “documents obtained by the Office of Enforcement prior to the institution of proceedings, from persons not employed by the Bureau, in connection with the investigation leading to the institution of such proceedings.” Joint Update on Fact Development Regarding Statute of Limitations Issue (Sept. 11, 2019) [Dkt. 234] (“Joint Update”) at 3 ¶ 1.

24. On January 7, 2013, the Bureau sent a civil investigative demand (“CID”) to Integrity Advance requesting documents and posing interrogatories. Joint Update at 3 ¶ 3; Decl. of Alusheyi J. Wheeler (Dec. 5, 2016) [Dkt. 187] (“Wheeler Decl.”) at ¶ 3 and Exh. A (copy of CID).

25. The January 7, 2013 CID issued to Integrity Advance was the first CID that the Bureau directed to Integrity Advance. Joint Update at 3 ¶ 4; Wheeler Decl. ¶ 4.

26. Integrity Advance made an initial production in response to the Bureau’s January 7, 2013 CID on October 25, 2013, and largely completed its production in December 2013. Joint Update at 3 ¶ 5; Wheeler Decl. ¶ 5-6.

27. Integrity Advance produced a copy of its loan agreement with its customers in response to the Bureau’s January 7, 2013 CID. Joint Update at 3 ¶ 6; Wheeler Decl. ¶ 7.

28. Enforcement Counsel first obtained copies of Integrity Advance’s loan agreement through the company’s productions in response to the January 7, 2013 CID. Wheeler Decl. ¶ 7.

29. The record does not contain any copies of Integrity Advance’s loan agreement with its customers that the Bureau received before receiving the responses to the January 7, 2013 CID.

30. The Bureau took investigational hearing testimony from Respondent and Integrity Advance Chief Executive Officer James Carnes on June 17, 2014. Joint Update at 3 ¶ 7.

31. The Bureau took investigational hearing testimony from Integrity Advance Chief Operating Officer Edward Foster on June 24, 2014. Joint Update at 3 ¶ 8.

32. Before the Office of Enforcement recommends that the Bureau commence enforcement proceedings, the Office of Enforcement may give the subject of such recommendation notice of the nature of the subject's potential violations and may offer the subject the opportunity to submit a written statement in response. The objective of the notice is to ensure that potential subjects of enforcement actions have the opportunity to present their positions to the Bureau before an enforcement action is recommended or commenced. *See CFPB Bulletin 2011-4 (Enforcement), Notice and Opportunity to Respond and Advise (NORA) (Nov. 7, 2011, updated Jan. 18, 2012),* <https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-guidance/bulletin-notice-opportunity-respond-advise/>. Joint Update at 3 ¶ 9.

33. Enforcement Counsel issued a Notice and Opportunity to Respond and Advise ("NORA") letter to Respondents on October 23, 2014, stating that the "CFPB's Office of Enforcement is considering recommending that the Bureau take legal action against" Respondents. Joint Update at 3 ¶ 10, Wheeler Decl. ¶ 8.

34. Respondents provided a NORA response to Enforcement Counsel on November 13, 2014. Joint Update at 4 ¶ 11; Wheeler Decl. ¶ 9.

Respectfully submitted,

*Attorneys for Plaintiff
Bureau of Consumer Financial Protection*

CARA PETERSEN
Acting Enforcement Director

DEBORAH MORRIS
Deputy Enforcement Director

ALUSHEYI J. WHEELER
Assistant Litigation Deputy

/s/ Stephen C. Jacques
Stephen C. Jacques
Enforcement Attorney
stephen.jacques@cfpb.gov
202-435-7368

Benjamin J. Clark
Enforcement Attorney
benjamin.clark@cfpb.gov
202-435-7871

Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Enforcement Counsel

December 6, 2019

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of December 2019, I caused a copy of the foregoing Enforcement Counsel's Statement Regarding Respondents' Statement of Undisputed Facts in Support of Their Motion to Dismiss and/or for Summary Disposition on Grounds Limited to October 28, 2019 Order, and Enforcement Counsel's Statement of Additional Undisputed Material Facts on the Statute-of-Limitations Issue to be filed by electronic transmission (email) with the Office of Administrative Adjudication (CFPB_electronic_filings@cfpb.gov), and served by email on Respondents' counsel at the following addresses:

Richard J. Zack, Esq.
zackr@pepperlaw.com

Michael A. Schwartz, Esq.
schwarma@pepperlaw.com

Christen Tuttle, Esq.
tuttlec@pepperlaw.com

Saverio S. Romeo, Esq.
romeos@pepperlaw.com

/s/ Stephen C. Jacques
Stephen C. Jacques