

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING)	RESPONDENTS' RESPONSE TO ENFORCEMENT COUNSEL'S SUBMISSION OF THE JULY 29, 2016 DECLARATION OF ROBERT J. HUGHES
File No. 2015-CFPB-0029)	
In the matter of:)	
INTEGRITY ADVANCE, LLC and)	
JAMES R. CARNES)	
)	
)	

RESPONDENTS' RESPONSE TO ENFORCEMENT COUNSEL'S SUBMISSION OF THE JULY 29, 2016 DECLARATION OF ROBERT J. HUGHES

On July 28, 2016, Enforcement Counsel filed a Proposed Remedy to Cure Prejudice and proposed introducing new evidence to purportedly cure some undefined prejudice that Enforcement Counsel suffered as a result of Respondents' proper rebuttal to Robert J. Hughes' ("Mr. Hughes") testimony. On July 29, 2016, Respondents filed a response asking the Court to deny Enforcement Counsel's proposal.¹ Later that same day, and before receiving an order from the Court on its proposal, Enforcement Counsel submitted a new declaration from Mr. Hughes. Respondents submit this response to address several points raised by Enforcement Counsel's submission of new evidence.

First, Enforcement Counsel's submission should be rejected because Enforcement Counsel suffered no prejudice from Dr. Xiaoling Ang's proper *rebuttal* testimony and critique of

¹ In response, Respondents requested that the Court deny Enforcement Counsel's proposal to introduce new evidence and, in the alternative, asserted their right to respond to Mr. Hughes' new declaration with supplemental exhibits.

Mr. Hughes' analysis. *See* Respondents' July 29, 2016 Response to Enforcement Counsel's Notice of Proposed Remedy. Enforcement Counsel had the opportunity to examine Mr. Hughes and Dr. Ang at trial and Enforcement Counsel also had a more-than-adequate opportunity at trial to respond to Dr. Ang's rebuttal testimony. Enforcement Counsel offers no basis for its delayed presentation of new evidence, which includes a declaration that cannot be subject to cross-examination. Indeed, if anything, Enforcement Counsel's presentation of new evidence prejudices Respondents.

Second, nothing in Mr. Hughes' new declaration addresses the flaws in his analysis that were the subject of Dr. Ang's testimony. Instead, Mr. Hughes merely includes new explanations concerning which populations of loans and customers he used for certain calculations. These explanations were not previously articulated by Mr. Hughes in his prior declarations purporting to describe his methodology or in his testimony. Based on this new information, it is clear that certain of Mr. Hughes' figures Enforcement Counsel presented at trial are wholly irrelevant to Enforcement Counsel's damages claims. For example, Mr. Hughes identified a \$273 million figure as the "Total Paid" by all Integrity Advance customers, and then a \$180 million figure as the "Total Paid Above Loan Principal." As Mr. Hughes now explains his methodology, neither of these figures have *any* bearing on the calculations upon which Enforcement Counsel purports to rely for its estimate of damages (as described for the first time during Enforcement Counsel's closing argument at trial). Instead, these numbers misleadingly inflate and confuse the potential relevant damages claims.

Further, Mr. Hughes now criticizes Dr. Ang for including in her calculation of the "Total Paid Above the Total of Payments" certain customers who paid *less* than the Total of Payments

on certain loans.² This highlights, at most, a difference in analytical reasoning and legal argument, not a flaw in calculations. Specifically, under Mr. Hughes' analysis, Enforcement Counsel would exclude from the injury analysis instances where a customer paid *less* than the Total of Payments on a single loan, even if the amount that the customer *underpaid* offsets potential "overpayments" on other loans the customer took out.³ This global approach is unsupported by the facts or the law.

Finally, Mr. Hughes' starting premise is fundamentally flawed and is not a true damages analysis demonstrating any causal link between Integrity Advance's practices and purported consumer injury. As just one example, Mr. Hughes begins from the position that *every single customer* who paid more than the Total of Payments suffered injury.⁴ This premise ignores the tens of thousands of customers who returned to Integrity Advance for second, third, or more loans,⁵ makes no effort to account for those customers who *chose* to rollover their loans, or in any way demonstrates that the alleges "overpayment" was caused by Respondents' conduct.

² To be clear, neither Respondents nor Dr. Ang agree with the premises underlying Mr. Hughes' analysis. Dr. Ang was tasked to replicate and respond to Mr. Hughes' calculations.

³ While Respondents disagree, even if you assume Mr. Hughes' starting conditions, Mr. Hughes fails to account for the fact that some *repeat* customers paid *less* than the Total of Payments on their second or higher loans. For example, if a customer paid \$800 on a \$500 loan with a \$150 finance charge (a purported overpayment of \$150), but then that same customer paid only \$470 towards a subsequent \$500 loan with a \$120 finance charge (an *underpayment* of \$150), according to Mr. Hughes that customer's \$150 underpayment on the second loan should be completely disregarded such that the customer has purportedly suffered \$150 in injury, when in reality the consumer's *net* payment across the two loans is actually zero (\$0).

⁴ In addition to fundamental flaws that Respondents will address further in post-trial briefing, Respondents also note that Mr. Hughes' analysis (a) failed to exclude duplicate loans present in the data set, and (b) in several instances used a finance charge of zero (\$0) instead of the correct finance charge.

⁵ See RX-20 (demonstrating, *inter alia*, that over 26,000 customers took out two or more loans for the period on or after July 21, 2011), and RX-21 (demonstrating that 66% of customers were repeat customers during the post-July 21, 2011 period).

Enforcement Counsel had the burden to prove its *prima facie* case, including an analysis of causation and consumer injury. Instead of the testimony of a damages expert, Enforcement Counsel presented the testimony of a data scientist who did no analysis of causation or actual consumer injury. Respondents will address this argument more fully in their post-trial briefing, but respectfully raise these issues now to shed light on the context within which Mr. Hughes' new declaration must be considered.

Respectfully submitted,

Dated: August 10, 2016

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CERTIFICATION OF SERVICE

I hereby certify that on the August 10, 2016, I caused a copy of the foregoing Response to be filed by electronic transmission (e-mail) with the U.S. Coast Guard Hearing Docket Clerk (aljdocketcenter@uscg.mil), Heather L. MacClintock (Heather.L.MacClintock@uscg.mil) and Administrative Law Judge Parlen L. McKenna (cindy.j.melendres@uscg.mil), and served by electronic mail on the following parties who have consented to electronic service:

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