

1 UNITED STATES OF AMERICA

2 Before the

3 CONSUMER FINANCIAL PROTECTION BUREAU

4 _____
5 In the Matter of :
6 : Administrative Proceeding

7 INTEGRITY ADVANCE, LLC : File No. 2015-CFPB-0029

8 and JAMES R. CARNES, :
9 Respondent. :
10 _____

11 REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
12 HEARING (Volume III of III)

13 Washington, D.C.
14 Thursday, July 21, 2016

15 BEFORE:
16 HONORABLE PARLEN L. MCKENNA, ADMINISTRATIVE LAW JUDGE
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1 T A B L E O F C O N T E N T S

2 **ENFORCEMENT COUNSEL'S WITNESSES:**

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PROCEDINGS

JUDGE MCKENNA: Back on the record.

Mr. Hughes, you understand you are still under oath?

THE WITNESS: Yes, Your Honor.

JUDGE MCKENNA: All right. You want to --

THE WITNESS: Yes.

JUDGE MCKENNA: There you go.

THE WITNESS: Thanks.

JUDGE MCKENNA: Proceed.

MS. FOLEY: Thank you, Y

Good morning, Mr. Hughes.

BY MRS. TOLLEY

Q. You work for the CIB, correct.

A. TCS.

Q. Your title is data scientist?

A. Yes.

Q. You are not an economist?

A. No.

Q. Not a psychologist?

A. No.

Q. Not an expert in consumer behavior?

A. No.

1 Q. Now you made a number of assumptions in
2 performing your calculations in this case, didn't you?

3 A. Yes.

4 Q. Did somebody tell to you make these
5 assumptions?

6 A. Um, no.

7 Q. So all of the assumptions that you made about
8 the data set that you reviewed in this case are
9 assumptions you made on your own?

10 A. I think that's fairly broad. I can't think of
11 any that I was told to make, but I couldn't entirely
12 rule out the possibility that, for instance, someone
13 said you can assume that the, for instance, ACH, the
14 NACHA documents is actually the NACHA document that is
15 the one that is published on the web.

16 I mean, I think there is the possibility of
17 some bizarre (inaudible word) case there, but generally
18 the assumptions that I made were based on the data
19 itself.

20 Q. All right. Let's talk --

21 JUDGE MCKENNA: Were there any collaborations
22 between you and others within CFPB?

23 THE WITNESS: Yes.

24 JUDGE MCKENNA: On those assumptions?

25 THE WITNESS: Yes, so I mean, we discussed

1 what assumptions could reliably be made from the data.
2 I worked with other data scientists I discussed what
3 the data looked like with a forensic accountant and
4 had requests from attorneys for specific information.

5 JUDGE MCKENNA: Okay. Thank you.

6 BY MS. FOLEY:

7 Q. How many other people -- how many other data
8 scientists did you work with?

9 A. I think it was limited to two, the way we work
10 in general is very collaboratively so it's possible
11 that others were involved marginally but primarily with
12 two other data scientists.

13 Q. And you mentioned a forensic accountant, who
14 was that?

15 A. Tim Hanson.

16 Q. Is Mr. Hanson also employed by the CFPB?

17 A. Yes.

18 Q. And with -- what did you discuss with
19 Mr. Hanson?

20 A. I don't think I could go into detail about
21 that, that was months ago, and it was in early stages
22 of our first attempts to understand the data set.

23 Q. Did Mr. Hanson provide you information on
24 which you relied to perform your calculations in this
25 case?

1 A. No.

2 Q. Now let's talk about some of the assumptions
3 that you made. You assumed that loans originated at
4 the time of the first transaction you observed in the
5 data set, correct?

6 A. For some of the calculations, we had to make
7 that assumption, based on the fact that we did not
8 actually have the date of origination in that data set.
9 Origination was not one of the events that was provided
10 in the transaction table.

11 COURT REPORTER: Table?

12 THE WITNESS: Yeah, I'm sorry, in the file of
13 transactions. In some of the calculations, we assumed
14 that the origination date was up to twenty-three days
15 prior to the date of the first transaction.

16 BY MS. FOLEY:

17 Q. And your assumption of that for some
18 calculations you did, are talking about the
19 calculations for loans that originated on or after July
20 21st, 2011?

21 A. Yes.

22 Q. And your assumption for those calculations for
23 loans that originated on or after July 21st, 2011 the
24 decision use that August 13th date as a start date for
25 the loan, or the origination date was that an

1 assumption you chose to make or did somebody else
2 instruct you to make that?

3 A. No one instructed me to make that, we
4 discussed what the broadest -- what the most
5 conservative possible assumption would be in that case.

6 Q. And who was the, "we" you discussed that with?

7 A. I don't remember exactly who I talked to, it's
8 entirely possible that it was that it was the full case
9 team.

10 Q. Meaning Enforcement Counsel?

11 A. Yes.

12 Q. I think you mentioned that you reviewed a
13 model loan?

14 A. Yes.

15 Q. Yesterday? Did you actually review an actual
16 loan document?

17 A. I have seen quite a few loan documents.

18 Q. When you made the assumptions to use that
19 August 13th, 2011 start date, was that something you
20 determined based on reviewing the model loan agreement?

21 A. I had seen that in the loan agreement where it
22 -- I can't remember the exact text but it was saying
23 your next pay date -- it might not have actually been
24 those words -- but I think it was saying within -- I
25 don't remember the exact wording but it -- there was

1 something there that indicated that it should be within
2 twenty-three days.

3 Q. But the decision to use that date was a
4 decision you reached with Enforcement Counsel?

5 A. It's something I discussed with Enforcement
6 Counsel.

7 Q. Did they tell you to use that date?

8 A. I don't think I was ever instructed to use any
9 date. We, we came up with the assumptions that we were
10 completely comfortable with. It was in discussion
11 with, with them, but if they had mentioned a date that
12 we didn't think was supported by the evidence we would
13 not have gone with it.

14 Q. Okay. But if your conclusion that using the
15 August 13, 2011 date as a proxy for loans that
16 originated on or after July 21, 2011 is an incorrect
17 assumption to use, then your calculations about the
18 loans that originated on or after July 21, 2011 were
19 wrong.

20 A. That would depend on a lot of things. If the
21 date were earlier or later.

22 Q. It would change --

23 A. -- the number would change in different ways
24 it's -- I thought it was a, the most conservative way
25 to look at the data.

1 Q. But if you change the starting date, that
2 would likely change your calculations right?

3 A. Yes.

4 Q. July 21, 2011. Now in the -- in your
5 testimony yesterday and the -- some of the exhibits
6 that you discussed with enforcement counsel, you used a
7 phrase called total of payments do you remember that?

8 A. Yes.

9 Q. And total of payments is basically what you
10 think would have been disclosed in the TILA box in each
11 loan agreement?

12 A. Yes.

13 Q. Okay. Now you didn't actually look at each
14 and every single loan agreement to find that TILA box
15 amount, right?

16 A. Correct.

17 Q. Instead you made assumptions about the -- what
18 the total payments in the TILA box was represented in
19 the data?

20 A. This was also based on reviewing quite a few
21 loan documents. For instance, I looked at fifty
22 randomly selected loan documents and compared the
23 numbers in the TILA boxes to the data in our data set
24 corresponding with the assumptions that we had made.

25 JUDGE MCKENNA: And the results?

1 THE WITNESS: All of them matched.

2 BY MS. FOLEY:

3 Q. When you say fifty, you mean fifty actual loan
4 agreements?

5 A. Yes.

6 Q. Out of three hundred thousand plus loan
7 agreements that were made between consumers and
8 Integrity Advance?

9 A. Yes, I mean there were many different reasons
10 to believe that that was the case, that the -- that our
11 assumptions were correct. The --looking at the fifty
12 was the belt and suspenders approach, we just wanted
13 some actual real world validation of our assumptions.

14 Q. Okay. Now one of the other things you looked
15 at in the data you talked about renewal loans is that
16 right?

17 A. Yes.

18 Q. You defined renewal loans as all loans that
19 were rolled over?

20 A. Yes.

21 Q. So that would basically be your attempt to
22 assess the loans that were not paid in full on the
23 first payment date?

24 A. I wouldn't characterize it that way. There
25 may be a fairly significant overlap between your

1 categorization and ours.

2 Q. If a loan was paid off in full on the first
3 date you would call that a renewal loan?

4 A. I called a renewal loan a loan on which we saw
5 in our code a transaction starting off the chain of
6 transactions for that loan.

7 Q. And focussing on the renewed loans, you
8 assumed that the initial renewal records indicated the
9 principal paid, is that correct?

10 A. The principal that was rolled over indicated
11 the principal, yes.

12 Q. I'm sorry, did you assume that --

13 A. The renewal record indicated the principal --
14 on renewed loans, the R record the amount on the R
15 record indicated the principal.

16 Q. So the initial R record you assumed was a
17 principal borrowed?

18 A. Yes.

19 Q. And you assumed that the initial payment
20 record following the renewal indicates the finance
21 charge for the loan?

22 A. Yes.

23 Q. And those are important assumptions for your
24 calculations correct?

25 A. For a subset of the calculations, yes.

1 Q. You also assumed that the principal borrowed,
2 plus the initial payment record following the renewal,
3 together equaled the payment amount that would have
4 been disclosed by Integrity Advance as the total
5 payments in the TILA box is that right?

6 A. Our assumptions were more to evaluate what was
7 borrowed and what an initial charge was than it -- that
8 was the primary intent of those assumptions. I think
9 for some of the calculations, yes, we were looking at
10 the TILA boxes for validation.

11 Q. Mr. Hughes, do you have your May 10th, 2016
12 declaration with you here today? And if you don't --
13 you have your own copy? And for the record I believe
14 this has been marked as Enforcement Counsel Exhibit 72?

15 A. Yes.

16 Q. Can you please turn to paragraph 19 of your
17 declaration?

18 A. Yes.

19 Q. It says, "I have assumed that the principal
20 borrowed, plus initial payment record following the
21 renewal, together equal the amount that that" there's a
22 double that, "would have been disclosed by Respondents
23 as the 'quote total of payments' in the TILA box," did
24 you read that correctly?

25 A. Yes, yes.

1 Q. So the total of payments that would have been
2 in the TILA box is an important number in your
3 calculations that you provided, correct?

4 A. I suppose, yes.

5 Q. It was important to get that number right?

6 A. I would say it was important to get all of the
7 numbers right.

8 Q. And if your calculation of the total payments
9 that would been disclosed in the TILA box is wrong,
10 then likely your calculation of the total paid above
11 the total of payments would be wrong too.

12 A. That would follow. I would caution, though,
13 that we could very well be slightly incorrect by being
14 conservative.

15 Q. Okay, but if the -- if you start with your
16 total payment, you subtracted the total of payments
17 that would have been in the TILA box?

18 A. Right.

19 Q. To arrive at your calculation of the total
20 payments above the TILA box, is that an accurate
21 description?

22 A. On an individual basis, it was not an
23 aggregate difference minus -- it -- there was it was
24 not a difference of two aggregates it was the
25 difference on an individual loan basis.

1 Q. So if your assumptions on an individual loan
2 basis is wrong, your assumptions on the aggregate
3 number is going to be wrong as well, isn't it?

4 A. Yes.

5 Q. And none of the exhibits we saw yesterday
6 during your testimony -- did we actually see your
7 calculations of the total payments you assert would
8 have been disclosed in the TILA boxes, did we?

9 A. I'm sorry could you repeat that?

10 Q. In none of the exhibits that you were shown
11 yesterday did we see the actual numbers you calculated
12 would have been the total payments in the TILA boxes?

13 A. I'm not certain, no.

14 Q. Let's look at Enforcement Counsel Exhibit 97.
15 And take a look at page two -- and we will put one on
16 the screen so you can follow. Our Elmo here needs a
17 minute to warm up. Mr. Hughes do you recognize this
18 document?

19 A. Yes.

20 Q. Now did you actually prepare this or did
21 somebody else in your office prepare it?

22 A. I believe someone else prepared this actual
23 document.

24 Q. Okay. And now let me ask you a question --

25 MS. CHUM: Judge --

1 MS. FOLEY: I'm sorry.

2 MS. CHUM: -- allow him to finish his
3 response, please.

4 MS. FOLEY: That was the end of -- my question
5 was: Did you prepare it?

6 JUDGE McKENNA: And he has a right to answer.

7 THE WITNESS: Any document that was prepared
8 on this case was prepared at my direction and validated
9 by me as well. Sometimes I did initial calculations
10 and others validated them, and sometimes others did
11 initial calculations and I validated them.

12 BY MS. FOLEY:

13 Q. Okay, looking at page two of Enforcement
14 Counsel Exhibit 97. We see total paid is the top box,
15 correct?

16 A. I'm just grabbing my own copy.

17 Q. Sure can you see the screen? Or --

18 A. Yeah I can just see this one a little better,
19 yes.

20 Q. And on the bottom we see total paid above
21 total of payments right?

22 A. Yes.

23 Q. And there is nothing on this calculation that
24 tells you what the difference between the total paid
25 and total of payments actually is, that number is not

1 reflected on this document is it?

2 A. Well that number wouldn't mean a whole lot
3 anyway, because as I said we, we calculated it by
4 looking at the different -- anything we calculated, we
5 calculate by looking at the difference on an individual
6 account basis rather than simply taking two aggregate
7 numbers and subtracting them.

8 Q. Okay. But yes or no, the total of payments is
9 not in this document?

10 A. Yes.

11 JUDGE MCKENNA: Yes, it's not.

12 THE WITNESS: Yes, it's not I'm sorry.

13 BY MS. FOLEY:

14 Q. Now in calculating amounts paid by consumers
15 you included only records that met certain criteria
16 correct?

17 A. Yes.

18 Q. Okay. Did you choose those parameters
19 yourself, or did someone instruct you to use them?

20 A. We chose them ourselves. It was definitely
21 after discussion with, with the case team to inform
22 what we were looking at. But the final decision was
23 ours.

24 Q. Okay. The parameters included only records
25 that had a payment mode field of ACH cash or check is

1 that correct?

2 A. Yes.

3 Q. And in calculating amounts paid by consumers
4 you included only payments that were designated as NSF
5 payment, charge-off payments, or standard payment type?

6 A. That sounds correct.

7 Q. And you only included records that met the
8 first two criteria we discussed, that were marked as
9 cleared?

10 A. Yes.

11 Q. And you also only included records for
12 payments that were not void, is that correct?

13 A. Correct.

14 Q. Did it include any other records?

15 A. No, those were, we felt, the most conservative
16 way to look at payments that were conceivably other
17 payments that were excluded. But that would have come
18 up with a larger number.

19 Q. Now your total paid amount that you calculated
20 also includes fees that Integrity Advance calculated --
21 charged?

22 A. Um, that's entirely possible.

23 Q. If we look again the Enforcement Counsel
24 Exhibit 97, page two.

25 A. Finance fees plus additional fees.

1 Q. Okay.

2 A. Yes.

3 Q. Do those additional fees -- does that include
4 NSF fees?

5 A. Yes, I believe it does.

6 Q. And NSF fees means fees assessed because there
7 were insufficient funds to cover the charge?

8 A. Yes.

9 Q. It includes NSF fees even if the NSF occurred
10 on the first payment due date for the loan?

11 A. It likely would, I didn't restrict by that,
12 yeah.

13 Q. And turning to Enforcement Counsel Exhibit 100
14 that we looked at yesterday. Put it up on the screen
15 for us all. This, I believe, is also in your binder,
16 Mr. Hughes, if it's easier for you to see it.

17 A. Okay.

18 Q. Do you recognize this document?

19 A. Yes.

20 Q. Did you create this one?

21 A. No, someone else in the data science team
22 created this. However, I did validate it, and was
23 aware of it.

24 Q. Okay. Looking down at line seven, the March
25 14th, 2012 entry, do you see that?

1 A. Yes.

2 Q. I believe you testified yesterday this shows
3 Integrity Advance attempted an ACH but the transaction
4 failed, do you remember that testimony?

5 A. Yes.

6 Q. And by transaction failed it means Integrity
7 Advance did not actually get a payment in that
8 transaction?

9 A. That was my interpretation, yes.

10 Q. Now you don't know if between March 14th,
11 2012, and April 2nd, 2012 Integrity Advance tried to
12 reach out and contact this customer, do you?

13 A. There was nothing in the transaction data set
14 that indicated that, no.

15 Q. So unless it was in the transaction data set,
16 you have no idea what attempts Integrity Advance may
17 have made to contact this customer?

18 A. That was outside the scope of the analysis I
19 was asked to perform.

20 Q. You didn't make any independent investigation
21 outside of the data set?

22 A. No.

23 Q. You didn't talk to any consumer?

24 A. That would be --

25 Q. Outside the data set?

1 A. -- very unusual, yes.

2 Q. Okay. And you don't know why --

3 JUDGE MCKENNA: The answer is no?

4 THE WITNESS: No, I'm sorry, no. I did not
5 talk to any consumer.

6 BY MS. FOLEY:

7 Q. And sitting here today, you don't know why the
8 consumer may have revoked the ACH authorization?

9 A. No.

10 Q. I think we also talked yesterday about some
11 calculations you performed regarding the number of
12 instances that you observed Integrity Advance used
13 remotely created checks, remember that testimony?

14 A. Yes.

15 Q. And I believe you described your calculations
16 as being uses of remotely created checks to take money
17 out of the customer's account after the customers had
18 revoked or otherwise blocked ACH debits from the
19 account, do you recall that testimony?

20 A. That sounds right.

21 Q. And to determine whether a customer had
22 revoked or otherwise blocked ACH debits you used
23 certain ACH codes?

24 A. Yes.

25 Q. Did you choose those ACH codes or did someone

1 tells you tell you to use them?

2 A. Same as previously, it would -- I certainly
3 discussed it with the case team. But we independently
4 looked at the NACHA handbook for things that we were
5 comfortable met that description based on the
6 description in the handbook.

7 Q. Okay. And just to be clear, when you say the
8 case team, you mean with Enforcement Counsel?

9 A. Yes.

10 Q. All right. One of the ACH codes you used was
11 R 08 is that correct?

12 A. Yes.

13 Q. Do you need to look at something to refresh
14 your recollection? You can turn to your declaration if
15 it helps?

16 A. I was turning to the NACHA Handbook.

17 Q. Okay. So that is exhibit 82? Please do feel
18 free to turn to exhibit 82?

19 A. Okay. Yes.

20 Q. All right, does this refresh your recollection
21 that you used code R 08?

22 A. Yes.

23 Q. And code R 08, said payment stopped?

24 A. Yes, and the description says the receiver has
25 placed a stop payment order on this debit entry.

1 Q. Right. It doesn't tell you why the customer
2 may have stopped the payment does it?

3 A. No.

4 Q. No notes or comments in the data set that
5 would tell us why the customer may have stopped the
6 payment?

7 A. No.

8 Q. And you didn't do any independent
9 investigation into why the customer may have stopped
10 the payment, did you?

11 A. No.

12 Q. Possible the customer just chose to renege on
13 its obligations to pay?

14 A. I didn't do any investigation, into --

15 JUDGE McKENNA: Well, but that was the
16 question. She asked you a question.

17 THE WITNESS: Is it possible?

18 JUDGE McKENNA: Yes.

19 THE WITNESS: Um, I have no idea of anything
20 about that, I -- yes, that would be possible.

21 BY MS. FOLEY:

22 Q. Mr. Hughes, are you relying on anything in
23 your binder, your personal binder you brought up today?

24 A. The NACHA codes.

25 Q. Is that -- Your Honor I can't see it from here

1 but it looks different than the copy I have? I can't
2 tell what else is in that binder.

3 A. I'm sorry. It's printed four on a page.

4 Q. Okay. Can you tell us what else is in your
5 binder, we haven't seen this yet. I know yesterday we
6 understand there was a copy of your declaration, and
7 another declaration that wasn't in the exhibit list. I
8 would like to see what else is in the binder.

9 MS. CHUM: Objection.

10 JUDGE MCKENNA: Well --

11 MS. CHUM: Relevance, he has only --

12 JUDGE McKENNA: Just a second. If he is using
13 something, then you have a right to know what he is
14 using. If he says that he only used the NACHA
15 handbook, then that's all you have a right to see.

16 MS. FOLEY: That is fine, Your Honor, but I
17 can't tell if that's the same copy that is in evidence.

18 JUDGE McKENNA: All right. So you may
19 approach.

20 MS. FOLEY: Thank you, Your Honor. I can't
21 read that.

22 JUDGE McKENNA: That would be problematic.

23 THE WITNESS: Barely -- it's --

24 MS. FOLEY: Thank you. Honestly, the print is
25 too small for me to read and compare the exact text,

1 but it appears to be the excerpt of the NACHA code,
2 that's exhibit --

3 JUDGE McKENNA: At my age I can sympathize
4 with you.

5 MS. FOLEY: Thank you, it's getting harder
6 every day.

7 BY MS. FOLEY:

8 Q. All right. Mr. Hughes, is there anything else
9 in your binder you have consulted in your testimony
10 this morning?

11 A. No.

12 MR. FRECHETTE: ~~Objection, Your Honor.~~

13 ~~Forgive, me but Ms. Weinberg just looked at the~~
14 ~~witness, shook her head no, before the witness~~
15 ~~answered that question. That is highly inappropriate~~
16 ~~and I object.~~

17 JUDGE McKENNA: ~~Well, I didn't see it, number~~
18 ~~one, and if you did it, please don't do it again~~
19 ~~because that is inappropriate.~~

20 MS. WEINBERG: ~~Yeah, I -- I wasn't looking at~~
21 ~~the witness. I may have been shaking my head, but I~~
22 ~~certainly was not trying to direct his testimony.~~

23 JUDGE McKENNA: ~~Well, all right. We are all~~
24 ~~officers of the court, so we will conduct ourselves~~
25 ~~accordingly. You want to ask additional questions on~~

1 that point?—

2 BY MS. FOLEY:—

3 Q. Did you look at Ms. Weinberg before you
4 answered?—

5 A. No.—

6 BY MS. FOLEY:

7 Q. Now turning back to the RCC calculations, the
8 remotely created checks, regardless of why the customer
9 may have stopped a payment, you included all entries
10 that showed an ACH code 8 for stop payments in your
11 calculations?

12 A. I'm sorry could you repeat that?

13 Q. Sure.

14 A. I just lost track of part of what you were
15 saying.

16 Q. Regardless of why a customer may have stopped
17 a payment, you included all entries that you saw, I
18 believe, you said in -- I'm not sure which exhibit it
19 was, but on the spread sheet you referred to yesterday
20 that showed an ACH code 8 for stop payments?

21 A. Yes.

22 Q. And some of the calculations you testified
23 about yesterday regarding the use of remotely created
24 checks were calculations of the totals that Integrity
25 Advance collected using remotely created checks in the

1 time period after July 21, 2011, do you remember that
2 testimony?

3 A. Yes.

4 Q. And your calculations were of the number of
5 remotely created checks that Integrity Advance used
6 after July 21, 2011?

7 A. That sounds correct.

8 Q. You did not limit your calculations to the
9 number of remotely created checks Integrity Advance
10 used for loans that were originated on or after July
11 21, 2011 did you?

12 A. I'm not sure, I would have to refer back.

13 Q. Can we please have exhibit, Enforcement
14 Counsel Exhibit 97 slide four, or page four. Do you
15 recognize this exhibit, Mr. Hughes?

16 A. Yes, I do.

17 Q. Now did you create this one?

18 A. No. Again, it was created by the data science
19 team. I either created the numbers or validated the
20 numbers but I probably did not create the actual table.

21 Q. Okay. The title of this exhibit says Overview
22 of the Integrity Advance's use of RCC's on consumers
23 who had revoked IA's ACH authorization, or stopped IA's
24 ACH withdrawals? Did I read that correctly?

25 A. Yes.

1 Q. And the far right column says,
2 "RCC on or after July 11, 2011," did I read that
3 correctly?

4 A. Yes.

5 Q. And nowhere in here does it say a footnote
6 that you are limiting your calculations to loans that
7 were actually originated on or after July 21, 2011,
8 does it?

9 A. No, that was our general assumption so I, my
10 guess would be that this was a calculation based on
11 that. But --

12 Q. You don't know what --

13 A. But that detail I don't know off the top of my
14 head.

15 Q. You don't know sitting here today, one way or
16 the other?

17 A. No.

18 Q. And turning to Enforcement Counsel Exhibit 97
19 slide five. Where you calculate total amounts obtained
20 by RCC on after July 21, 2011, this also doesn't say
21 you have limited it to loans that were actually
22 originated on or after July 21, 2011 does it?

23 A. Correct.

24 Q. And looking at the data set you reviewed you
25 were able to determine that many customers took out

1 more than one loan from Integrity Advance, didn't they?

2 A. Yes.

3 Q. You didn't provide us any numbers or
4 calculations here of how many customers took out more
5 than two loans from Integrity Advance did you?

6 A. I don't think so.

7 Q. No calculations about how many customers took
8 out more than five loans?

9 A. No.

10 Q. No calculation about how many customers may
11 have taken out more than ten loans over time?

12 A. No.

13 Q. And now, if you turn to the new exhibit we saw
14 yesterday, Enforcement Counsel Exhibit 102.

15 A. Just to be clear I'm grabbing this from the
16 notebook.

17 Q. From your notebook that you brought, or
18 from --

19 A. Yes, from mine because I don't have the
20 updated exhibits up here.

21 Q. Would you mind just holding it up so we all
22 see it's the same document. Thank you. Now the first
23 line, Mr. Hughes, the first line is the number of
24 one-time customers, is that correct?

25 A. Yes.

1 Q. Okay. And those are customers who took out
2 only one loan with Integrity Advance?

3 A. Yes.

4 Q. So those are essentially the non-repeat
5 customers?

6 A. Yes.

7 Q. You didn't show anywhere on this document the
8 difference between the total number of customers and
9 the one-time customers?

10 A. No.

11 Q. And going down to the fifth line, the one-time
12 loans, it says in box money paid to IA by consumers
13 above the "total of payments" via one-time loans. We
14 just said the one times, did I read that correctly
15 first?

16 A. Yes.

17 Q. Okay. And we just said the one-time loans
18 that is the non-repeat customers?

19 A. Yes.

20 Q. So to get to this number you started with the
21 total paid by the consumers above the total of
22 payments? Or in other words, above the TILA box?

23 A. Um, yes.

24 Q. Okay. And so your calculations of what the
25 total of payments would have been matters for this

1 calculation, doesn't it?

2 A. Yes.

3 Q. And you excluded the amounts paid above the
4 TILA box by repeat customers? That is the flip-side.

5 A. Right, we didn't look at repeat customers for
6 one-time loans.

7 Q. So the remainder, you calculated this 39.9
8 million dollar number?

9 A. Yes.

10 Q. Okay. And so if your calculation of the total
11 payments is wrong, then this 39.9 million number is
12 likely wrong as well, isn't it?

13 A. Yes.

14 Q. Okay. And the same for the fourth line, money
15 paid to IA by consumers above the total of payments via
16 first time loans?

17 A. Correct.

18 Q. Did you read that correctly?

19 A. Yes.

20 Q. And similarly with the calculation you did for
21 the fifth line you start with the total paid by
22 consumers above total of payments that would have been
23 in the TILA box?

24 A. Yes.

25 Q. Okay --

1 JUDGE McKENNA: Excuse me, who are the
2 individuals that just came in?

3 UNIDENTIFIED MALE VOICE: We are with the
4 CFPB.

5 JUDGE McKENNA: All of you?

6 UNIDENTIFIED MALE VOICE: Yes, sir.

7 JUDGE McKENNA: Okay. Thank you.

8 BY MS. FOLEY:

9 Q. And so again for calculation four -- for line
10 four, the total of payments matters, your calculations
11 of the total payments matters for your calculations of
12 this 69.6 million dollars represented here?

13 A. Yes.

14 Q. And if your calculations of the total of
15 payments is wrong, the 69.6 million dollar number here
16 is wrong as well?

17 A. Yes.

18 MS. FOLEY: Your Honor if I may just have a
19 moment to confer with counsel.

20 JUDGE McKENNA: Yes, you may.

21 (Brief pause.)

22 MS. FOLEY: Your Honor, no further questions.
23 I did just want to put on the record yesterday
24 afternoon when we saw Exhibit 102. We requested the
25 source code for this document, and we convened court

1 -- when we recessed a little after 3:00.

2 At roughly 8:00 last night we received a
3 document that was represented to us was the source
4 code. We, unfortunately, were unable to use it, it
5 appeared to be incomplete. We moved forward anyway
6 with our cross-examination today. We would like the
7 complete version, reserve our right about it. We did
8 move forward and were able to, obviously,
9 cross-examine Mr. Hughes this morning.

10 I don't know what may happen on redirect but,
11 I obviously want to put that on the record, and
12 reserve our rights if anything comes up furthermore
13 with this.

14 MS. CHUM: Your Honor, of course I'm not a
15 data scientist, but our data scientists have pulled
16 the source code and they have cross checked, and
17 validated that this -- with the -- another individual
18 who was here, Ms. Nicole Kelly -- that this was the
19 source code that was used. For this particular -- for
20 this chart, so --

21 MS. FOLEY: I can only tell Your Honor that we
22 were not able to replicate the calculations based on
23 what was given from a high level perspective, because
24 I'm not a data scientist, it appeared to point to
25 reference paths that were not observable to us from

1 what was provided.

2 JUDGE MCKENNA: All right. Here is the
3 solution. Your request to have the Agency give you
4 sufficient information so that you can replicate is
5 granted. And you do reserve your right, and have the
6 right to recall Mr. Hughes if you have additional
7 questions based upon your analysis of the exhibit,
8 based upon those -- a full and complete set of source
9 codes.

10 MS. FOLEY: Thank you, Your Honor.

11 JUDGE MCKENNA: And then you, you can move to
12 -- to have an opportunity to cure any potential
13 problems that exist as a result of that exhibit.

14 MS. FOLEY: Thank you. No further questions.

15 MS. CHUM: Your Honor, if I may.

16 JUDGE MCKENNA: Can you speak up?

17 MS. CHUM: Your Honor, if I may, I don't
18 foresee us having any additional source code as we
19 have provided, and I'm representing that my
20 understanding is that we have provided all of the
21 source code already.

22 JUDGE MCKENNA: Well, what you can do is you
23 can take Mr. Hughes or another data scientist who
24 might be more familiar with it and sit down with
25 Respondent's experts so that they fully understand and

1 can replicate how you came up with the numbers, it's
2 quite simple.

3 MS. CHUM: Yes, Your Honor.

4 JUDGE MCKENNA: And I would suggest that that
5 happen this afternoon after we conclude so that I will
6 still be around -- and if there is any problems.

7 MS. CHUM: Certainly.

8 JUDGE MCKENNA: We can resolve them very fast.

9 MS. CHUM: Yes, Your Honor, thank you.

10 JUDGE MCKENNA: Thank you and you can do your
11 redirect.

12 **REDIRECT EXAMINATION**

13 BY MS. CHUM:

14 Q. Mr. Hughes, good morning.

15 A. Morning.

16 Q. Is it your understanding that the transaction
17 data that you received was the transaction data for all
18 transactions, for all consumers of Integrity Advance?

19 A. That was, yes.

20 Q. So that would include the principal paid and
21 the first, and the first finance fee?

22 A. Yes.

23 Q. In other words the transaction data would
24 include the total of payments?

25 A. Yes it should. Or rather, what we determined

1 to be an accurate proxy for those numbers, as
2 disclosed.

3 Q. Now earlier you testified that you had made an
4 assumption as to when a loan originated, based upon the
5 transaction data?

6 A. Yes.

7 Q. And you had to do that where you were asked to
8 limit your numbers, your values, to loans that
9 originated on or after July 21, 2011?

10 A. Yes.

11 Q. And you did that in every instance, you made
12 that -- an assumption, the same assumption in every
13 instance where you had to limit your values to those
14 that originated on or after July 21, 2011?

15 A. I believe we made that assumptions in all
16 cases, yes.

17 Q. And you had testified that that assumption, I
18 believe you testified that it was that you added -- you
19 looked at transactions that happened twenty-three days
20 after July 21, 2011 to make an assumption that the loan
21 originated on or after July 21, 2011?

22 A. Yes, I believe we looked at initial
23 transactions for individual accounts that occurred
24 twenty-three days or more following July 21, 2011, yes.

25 Q. And you repeatedly testified that that was a

1 very conservative approach can you explain further why
2 that was conservative?

3 MS. FOLEY: I'm just going to object to the
4 extent she is characterizing the testimony, it is what
5 it is.

6 JUDGE McKENNA: All right. It is sustained.
7 You heard the question without the qualifier and you
8 may answer.

9 THE WITNESS: We believed that that was a
10 conservative estimate because it could have been less
11 than twenty-three days. The first payment could have
12 been less than twenty-three days following loan
13 origination.

14 JUDGE McKENNA: Which would have what effect?
15 It would eliminate it?

16 THE WITNESS: Yes, we would effectively be
17 looking at a smaller -- we effectively looked at the
18 smallest data set of responsive records.

19 MS. CHUM:

20 Q. So by being conservative, was the total number
21 of consumers you look at in your analysis smaller or
22 larger than it would been if you were less
23 conservative?

24 A. Smaller.

25 Q. And were the dollar values that you assessed

1 in exhibits 97 and 102, smaller or larger than they
2 could have been if you had been, if you had not been
3 conservative?

4 A. They were smaller than they would have
5 otherwise been.

6 Q. You also testified that you relied on
7 something called an R code?

8 A. Yes.

9 Q. Again, what was that? What was an R code?

10 A. That was a return code, as specified in the
11 NACHA manual. Oh, I'm sorry, the R code in the actual
12 data set would be the -- I can't remember whether it
13 was payment mode or payment type, but yes --

14 Q. Is there some -- go ahead, sorry.

15 A. Yes, the code indicates that that is a
16 renewal, I'm sorry, there were multiple R codes kicked
17 around here.

18 Q. And for clarification, I'm asking about the R
19 code that opposing counsel asked about relating to the
20 data, not the R codes in the NACHA manual?

21 A. Okay. Yes, R indicated renewal.

22 Q. And where did you obtain that information?

23 A. That was both in the data dictionary and in
24 7.9 of the TranDotCom manual.

25 Q. And earlier you testified that you only looked

1 at data that met certain criteria, do you recall that?

2 A. Yes.

3 Q. Why did you do that?

4 A. There were certain types that didn't indicate
5 payments, so if we were calculating payments, if a
6 payment was either void or failed, it would not
7 indicate an actual payment by the customer.

8 Q. And you testified you only looked at cleared
9 payments?

10 A. Yes.

11 Q. Why did you do that?

12 A. For the same reason if the payment didn't
13 clear it was effectively not made, or potentially not
14 made, so, to be conservative we only looked at the
15 cleared payments.

16 Q. And you did not look at void payments?

17 A. Correct.

18 Q. Why did you do that?

19 A. Same reason, to be conservative, we did not
20 believe that the void payments were definitely made.

21 Q. So if you had included void payments and I
22 assumed that they were definitely paid, would the
23 number of consumers and the values assessed be larger
24 or smaller?

25 A. It would have been larger.

1 Q. You had testified about the NSF and charge-off
2 fees as well?

3 A. Yes.

4 Q. Do you recall? And what is it again that you
5 did with those?

6 A. We restricted to a subset of payment types, as
7 you just mentioned.

8 Q. And why did you do that?

9 A. Again, to be conservative, the meaning of some
10 other payment codes did not appear to reflect actual
11 payments, and so we did not include them.

12 Q. And you had testified that you included all
13 NSF fees or--

14 A. There was a payment type of NSF I can't
15 remember exactly what it was called, NSF payment
16 perhaps, that was included.

17 Q. And do you know whether that was a -- do you
18 know the approximate value or the specific value of the
19 amount that you included?

20 A. You mean the, like the total of NSF fees as it
21 went to the grand totals?

22 Q. Yes.

23 A. I don't. I know that it was not a substantial
24 portion of the number, but I don't know the exact
25 number off the top of my head.

1 Q. Now you were asked earlier about your use of
2 the NACHA Handbook, and now we are talking about R
3 codes in the NACHA handbook?

4 A. Sure.

5 Q. Would you turn with me to exhibit 82 the NACHA
6 Handbook?

7 A. Okay.

8 Q. Mr. Hughes, you testified that you relied only
9 on R 7, R 8 and R 10. Is that correct?

10 A. Yes, for the calculations of RCC's following
11 revocations.

12 Q. Now Mr. Hughes, if you had -- first of all
13 were there other R codes other than R 7, R 8, and R 10
14 in the data sets that you received from Integrity
15 Advance?

16 A. Yes.

17 Q. If you had included other R codes, other types
18 of revocations in your analysis, and looked at RCC's
19 that occurred after a larger set of instances of R
20 codes, would the number of RCC's have been larger or
21 smaller?

22 MS. FOLEY: Objection, Your Honor. She is
23 characterizing the R codes as saying that every single
24 R code would be a revocation. That is plainly not what
25 the document said.

1 MS. CHUM: Let me restate any question.

2 JUDGE McKENNA: Please.

3 MS. CHUM:

4 Q. Now if you had looked at all of the R codes
5 that occurred in the Integrity Advance data set, and
6 then looked at subsequent RCC's that occurred after
7 those R codes would the number of RCC's that occurred
8 after the R codes have been larger or smaller?

9 A. Larger.

10 Q. And if you had looked at the total paid to
11 Integrity Advance following an R code via RCC on or
12 after July 21, 2011, would that value have been larger
13 or smaller if you had looked at all of the R codes?

14 A. That would have been larger as well.

15 Q. Now yesterday you recall we talked briefly
16 about the ACH's the value associated with ACH's that
17 occurred above principal?

18 A. Yes.

19 Q. Do you, today, recall the amount that
20 consumers paid to Integrity Advance above the principal
21 via ACH for all loans?

22 A. I don't know the exact number off the top of
23 my head, it would be approximately ninety-eight percent
24 of the total number I believe.

25 MS. CHUM: Court's indulgence.

1 (Pause.)

2 MS. CHUM: Nothing further, Your Honor. Thank
3 you.

4 JUDGE MCKENNA: Thank you.

5 MS. FOLEY: I will be brief Your Honor.

6 **RECROSS EXAMINATION**

7 BY MS. FOLEY:

8 Q. Mr. Hughes, did you talk to anybody last night
9 about this case?

10 A. No, I talked to two other data scientists, in
11 the process of producing the source code.

12 Q. So you talked to two other data scientists
13 about this case last night?

14 MS. CHUM: Objection, mischaracterizes the
15 testimony.

16 JUDGE MCKENNA: And your point?

17 MS. FOLEY: Well, yesterday -- he gave some
18 number in his last answer which was the question he
19 struggled to have an answer for on the stand yesterday,
20 and I was looking for what refreshed his recollection.
21 Or on what he based that answer?

22 JUDGE MCKENNA: All right. Then you can ask
23 that question but you can't sit there and say, make
24 assertions that kind of indicate that he was doing
25 something wrong since he was effectively trying to

1 comply with your request to get you the data codes.

2 MS. FOLEY: That is fine, and I'm not trying
3 to imply to something else, I'm just trying to just get
4 to the question I asked. Which was different than what
5 he answered.

6 THE WITNESS: I did not discuss what you are
7 talking about anyway. My ninety-eight percent
8 assumption that I just referred to was, was something
9 that I believe I saw in the source code or in one of my
10 documents yesterday. Ninety-eight percent is
11 approximately the proportion of ACH transactions
12 overall of valid payments.

13 COURT REPORTER: Of what payment?

14 THE WITNESS: I'm sorry, I said valid
15 payments, but I mean payments that cleared.

16 MS. FOLEY:

17 Q. And when Ms. Chum was asking you about the
18 NACHA return codes, the -- you had access to all of the
19 transactions that were produced and to the extent any
20 of them had an R code you had the full access to see
21 what those R codes were?

22 A. Yes.

23 Q. So you could have chosen to use other R codes?

24 A. Yes.

25 Q. You didn't include any waived payment codes in

1 your analysis, did you?

2 A. No.

3 Q. Did you look at the amount of payments that
4 Integrity Advance may have just waived, and told the
5 customer they didn't need to pay?

6 A. I'm not sure what you are talking about by
7 waived codes, are you referring to payment type?

8 Q. Yes, I am. If you turn to the --

9 A. I'm just going to refer to the data
10 dictionary.

11 Q. I was just going to turn you there?

12 A. Which one is that?

13 Q. It's exhibit 80, Enforcement Counsel Exhibit
14 page two.

15 A. No. We did not look at waived codes, rather
16 we did not include those in the calculations that we
17 are discussing today.

18 Q. Nor did you do any independent calculate of
19 the amount this may have been waived?

20 A. I can't say we definitely didn't because we
21 did a lot of general top line analysis of the data set
22 as a first pass. But I don't recall any numbers from
23 that and there was nothing from that, that became part
24 of these calculations.

25 Q. You didn't present any calculations here about

1 the amounts that were waived?

2 A. No.

3 Q. And just to be clear, on the August 13th, 2011
4 date that you used that is just an estimate, right?
5 That was just a proxy you used to come up with what
6 loans were originated on or after July 21, 2011?

7 A. Yes.

8 MS. FOLEY: No further questions, Your Honor.

9 JUDGE McKENNA: All right. Anything further?

10 MS. CHUM: Court's indulgence.

11 (Brief pause.)

12 MR. WHEELER: Your Honor this might be a good
13 time for a quick recess, request your indulgence.

14 JUDGE McKENNA: Certainly.

15 MR. WHEELER: Thank you Your Honor.

16 (Brief recess.)

17 JUDGE McKENNA: Back on the record. Did we
18 come to a resolution?

19 MS. FOLEY: Yes, Your Honor in terms of the
20 data exchange we met outside and we have agreed upon
21 exactly what will be exchanged and both sides are
22 working to get that done.

23 JUDGE McKENNA: Great, and how that is going
24 to interplay with cross-examination.

25 MS. FOLEY: I don't have any more questions,

1 Ms. Chum might have -- we would not in any way delay
2 the remainder of the trial. We would just reserve the
3 right to see that and if necessary, recall Mr. Hughes.

4 JUDGE MCKENNA: That is fine, granted. Any
5 preliminary matters before Ms. Chum starts?

6 MS. CHUM: Your Honor, we would reserve the
7 right to recall Dr. Ang as well, pending the exchange
8 of data.

9 JUDGE MCKENNA: Oh, okay.

10 MS. BAKER: Your Honor, I have a preliminary
11 matter. Unfortunately, there was a slight exchange
12 before concerning Ms. Weinberg. And we would like to
13 have that entire exchange stricken from the record if
14 that is okay with Your Honor, thank you.

15 JUDGE MCKENNA: Do you understand --

16 MS. BAKER: And after I can go through and
17 specify with particularity what exactly I'm talking
18 about. I just, in the interest of time.

19 JUDGE MCKENNA: Yes, yes that's your
20 motion is granted.

21 MS. BAKER: Thank you, thank you.

22 (Court speaking with court reporter regarding
23 particulars of motion.)

24 JUDGE MCKENNA: But, counsel on both sides can
25 point out which part they want to omit.

1 MS. BAKER: ~~Thank you, Your Honor.~~

2 MS. CHUM: Enforcement Counsel has no further
3 questions.

4 JUDGE MCKENNA: All right.

5 MS. CHUM: Thank you, Your Honor.

6 MS. FOLEY: I have nothing further at this
7 time.

8 JUDGE MCKENNA: Unfortunately, Mr. Hughes, you
9 are going to be excused.

10 THE WITNESS: All right, thanks.

11 MS. CHUM: And just to clarify, now at this
12 point Mr. Hughes is no longer under oath, so that he
13 can be a part of this data discussion as needed?

14 JUDGE MCKENNA: Is that what you would like?

15 MS. CHUM: I defer to my data scientists. I
16 think that would be their preference.

17 JUDGE MCKENNA: Any objections?

18 MS. FOLEY: And that's -- just to clarify that
19 is about the data that we have agreed to exchange?

20 MS. CHUM: Yes.

21 MS. FOLEY: I have no objection to him being
22 part of that discussion.

23 JUDGE MCKENNA: All right, great.

24 MS. CHUM: Thank you, Your Honor.

25 JUDGE MCKENNA: There is a possibility that he

1 would be recalled, telephonically, I presume.

2 MS. FOLEY: I think it depends on what time of
3 day but possibly.

4 JUDGE MCKENNA: Well, if it's not this day, is
5 what I'm saying, I'm --

6 MS. FOLEY: Understood, Your Honor. It will
7 be telephonically, we understand.

8 JUDGE MCKENNA: I'm flying home.

9 MS. FOLEY: Understood.

10 JUDGE MCKENNA: All right. So Mr. Wheeler...

11 MR. WHEELER: Enforcement Counsel rests, Your
12 Honor.

13 JUDGE MCKENNA: You rest?

14 MR. WHEELER: Yes.

15 JUDGE MCKENNA: All right.

16 MS. BAKER: Your Honor we have a motion.
17 Permission to hand out our Motion. It's a Motion for
18 a Directed Ruling.

19 If I may.

20 JUDGE MCKENNA: Yes, you may.

21 MS. BAKER: Thank you. We are going to give
22 you copies of just a short brief.

23 JUDGE MCKENNA: You are forcing me to get my
24 glasses.

25 Proceed.

1 MS. BAKER: Your Honor, we have provided the
2 Court and Enforcement Counsel with a copy of a Motion,
3 and a Memo in Support of that Motion. It's a
4 relatively short memorandum and I will make a brief
5 argument summarizing it, and ask that Your Honor
6 consider the Motion before we begin our case in chief.

7 We -- Respondents move for a directed ruling
8 as to liability in this matter, and specifically,
9 liability as to Mr. Carnes as it concerns the
10 outstanding deception cause of action remaining in
11 this matter.

12 And specifically, as to Mr. Carnes and
13 Integrity Advance as it concerns the question of
14 whether or not the use of remotely created checks
15 gives rise to a claim of unfair conduct under the
16 unfair -- the prohibitions against unfair, deceptive,
17 and/or, abusive acts or practices of the CFPA.
18 And specifically, the standard under the rules of
19 practice for this Court, is that there has to be
20 sufficient evidence in the record to support a
21 reliable -- that has to be -- it has to be evidence
22 that is reliable, probative, and substantial.
23 So there has to be enough evidence in the record to
24 support, as a prima facie matter, a finding of
25 liability. And on appeal, of course, or as this goes

1 up to the director of the agency, and then possibly
2 past him, there has to be enough evidence to support,
3 and substantial evidence is specifically the standard,
4 there has to be enough evidence to support a finding
5 of liability.

6 Your Honor, we don't believe that there is
7 enough evidence in the record to support a finding of
8 liability specifically as to Mr. Carnes.

9 What Your Honor has heard so far is that Mr. Carnes
10 was a CEO, that he was the CEO of one of many
11 companies, that the relative, the relevant points in
12 time he didn't even spend fifty percent of his time on
13 Integrity Advance.

14 Your Honor, has heard a great deal of
15 testimony about what Mr. Carnes did not do. He was
16 not involved in writing any loan agreement, reviewing
17 any loan agreement, writing any loan disclosure,
18 reviewing any loan disclosure, indeed Mr. Carnes
19 testified, as did Mr. Foster yesterday that that was
20 something outside counsel looked at, and that, in
21 fact, that was why outside counsel was retained, at
22 least as to that issue.

23 So it's very clear that the standard that this
24 Court has to consider, and indeed it's the standard
25 that the CFPB annunciated at the beginning of this

1 case, is a standard that is not met in this instance.
2 And specifically, the case I cite here is CFPB versus
3 Gordon, a recent 9th Circuit case that Mr. Wheeler
4 cited at the beginning of this trial, is the standard
5 that concerns whether or not there is a finding of
6 liability as to a related person, as to an individual.

7 And I had noted in that case there was a
8 finding of liability. And here is why. The
9 individual in that case edited and modified scripts.
10 The individual in that case was charged with, and in
11 fact, did make sure that all of the advertising and
12 marketing of the financial services product, which was
13 at issue, was lawful.

14 The individual in that case actually made sure
15 that the final decisions that were made, specific
16 granular documents and information were put out to
17 consumers were, in fact, written by him, revised by
18 him, reviewed by him.

19 That is the standard in the Gordon case, that
20 the CFPB cited at the beginning of this case, in its
21 opening statement. That is clearly not what happened
22 here there is absolutely no evidence that the Bureau
23 has put into the record at this time in its case in
24 chief to support a finding of liability as to
25 Mr. Carnes for deception or unfairness.

1 Now the remotely created checks argument that
2 the CFPB has attempted to make, is that the mere
3 existence of a remotely created check was per se
4 unfair. But what Your Honor hasn't heard is, you
5 haven't heard any evidence to substantial injury. In
6 fact, what you heard yesterday was testimony that
7 fewer than one percent of any transactions resulted in
8 the use of a remotely created check, and at that it
9 was a last resort.

10 And at that it was only because a consumer
11 didn't contact Integrity Advance, choose not to use a
12 credit card, chose not to pay by PayPal. There were a
13 hundred other different ways, or numerous other
14 different ways that a consumer could have paid. And
15 so that is certainly not the reasonably avoidable
16 standard that unfairness mandates as to RCC's.

17 And there's absolutely no evidence in the
18 record that they were not reasonably avoidable, and
19 that there was substantial injury caused as a result
20 of the use of remotely created checks. That is the
21 unfairness prong for that. The remaining cause, there
22 is no evidence that supports a finding of liability as
23 to the company.

24 Certainly no evidence that supports a finding
25 of liability for RCC's as to Mr. Carnes. And for

1 those reasons, Your Honor, Respondents move for a
2 directed ruling as to liability at this time.
3 And we believe the only outstanding issue in this
4 matter that this Court should hear concerns the
5 question of any monetary relief. And that's we --
6 that is how we think the rest of the proceeding should
7 go, thank you Your Honor.

8 JUDGE McKENNA: Thank you.

9 MR. WHEELER: Your Honor as an initial matter
10 there is no provision in the CFPB adjudication rules
11 for a directed verdict. In fact, even in the federal
12 rules the Rule 50 only applies to the jury trials, and
13 obviously, this is not a jury trial. So Your Honor, I
14 would argue their Motion should be, not even be
15 considered because it's not proper.

16 In the alternative, obviously Your Honor we
17 have never read this, we just received it two minutes
18 ago as you saw, we would like an opportunity to
19 respond in writing, because Respondent's have had an
20 opportunity to write up their position.

21 Obviously I disagree with Ms. Baker. You
22 heard a lot of testimony during this proceeding about
23 how involved Mr. Carnes was, particularly in setting
24 up this company, how much he knew about what the
25 company did. He also testified that he knew how the

1 disclosures looked, he knew that the loan rolled over
2 by default, and he knew that most people rolled over.

3 And that is the essence of the deception that
4 we have alleged, Your Honor. And that you found in
5 your Order, that the loan disclosed one way but
6 actually worked in a different way.

7 JUDGE McKENNA: All right. Since you are
8 going -- you want to respond by writing, I have this
9 to say. I haven't read the pleading, I haven't read
10 the transcript of testimony, and I haven't fully
11 digested all of the exhibits.

12 So I think it would be irresponsible for me to
13 rule on your Motion I'm going to take it under
14 advisement. And so that is my ruling as to that
15 issue.

16 How many days do you need to respond?

17 MR. WHEELER: About five days, Your Honor. I
18 mean, in the alternative, I mean, we were planning --
19 we assumed there would be a post-trial briefing in
20 this in this matter, so --

21 JUDGE McKENNA: You can do it that way.

22 MR. WHEELER: That would be my preference,
23 just conduct it with the post-trial briefing that we
24 were going to do, regardless.

25 JUDGE McKENNA: And I was thinking that, do

1 the parties want to skip closing arguments since you
2 are going to be submitting briefs?

3 MS. BAKER: Your Honor, our preference would
4 be to have a closing argument.

5 JUDGE MCKENNA: All right.

6 MR. WHEELER: We would too, Your Honor.

7 JUDGE MCKENNA: Okay. How much time would you
8 need to illuminate everything?

9 MS. BAKER: Your Honor, I anticipate probably
10 twenty minutes to half an hour. And that would be the
11 upper end of that. I do speak quickly, Your Honor, so
12 I may be able to do it more quickly than that. But I
13 just want to --

14 JUDGE MCKENNA: And you have a very easy to
15 understand octave level.

16 MS. BAKER: Thank you.

17 JUDGE MCKENNA: Ms. Chum?

18 MS. CHUM: (No audible response.)

19 JUDGE MCKENNA: All right, so twenty minutes
20 apiece. If someone wishes to reserve five minutes for
21 rebuttal, they may do so. Thirty days from a receipt
22 of transcript, opening briefs. Fifteen days
23 thereafter for closing, for reply briefs.

24 MR. WHEELER: Thank you, Your Honor.

25 MS. BAKER: Your Honor, I just want a point of

1 clarification, are you deferring ruling on our Motion
2 or are you denying our Motion?

3 JUDGE MCKENNA: I'm deferring ruling on the
4 Motion.

5 MS. BAKER: Okay. Thank you.

6 JUDGE MCKENNA: But I anticipate that I will
7 handle it through the decision and order.

8 MS. BAKER: I see so, is it the case, Your
9 Honor, that the parties will be briefing this, or are
10 you asking that we brief this as part of our
11 post-trial briefing?

12 JUDGE MCKENNA: I think that post-trial
13 briefing would be the -- an appropriate way to go.
14 Now my lawyer tells me that the Agency rules provide
15 thirty days from the close of the hearing.

16 And I respond -- hm?

17 LAW CLERK: It's thirty days from the receipt
18 of transcript.

19 (Court speaking with law clerks.)

20 JUDGE MCKENNA: All right.

21 MR. WHEELER: Thank you, Your Honor.

22 JUDGE MCKENNA: Yeah.

23 MS. BAKER: Thank you, Your Honor.

24 JUDGE MCKENNA: All right. So at this time,
25 do you have a witness you wish to call?

MS. FOLEY: Yes, Your Honor Respondents call Dr. Ang.

2 JUDGE MCKENNA: Good morning.

3 THE WITNESS: Good morning, Sir.

4 JUDGE MCKENNA: Please raise your right hand.

5 **DOCTOR XIAOLING LIM ANG,**

6 A witness produced on call of the Respondent,
7 having first been duly sworn, was examined and
8 testified as follows:

9 THE WITNESS: Yes, Your Honor.

10 JUDGE MCKENNA: Please be seated.

11 MS. CHUM: Your Honor, may I just state for
12 the record that notice of Ms. Ang's testimony was only
13 given to us one day before the beginning of trial.
14 And Rule 215 calls for, I believe, ten-day notice.
15 And I just want to put that out there for the record.

16 JUDGE MCKENNA: All right. And what do you
17 want me to do about it?

18 MS. CHUM: Ah --

19 JUDGE MCKENNA: You just can't put something
20 out there with without a request.

21 MS. CHUM: Well I assume you will permit Dr.
22 Ang to testify but I just want to put it out there
23 that we would request that Dr. Ang not be permitted to
24 testify on those grounds, that we were not given fair
25 notice.

1 And that the exchange of the witness list and
2 the exhibit list had occurred per your schedule. And
3 that, that was the witness list that we relied on.

4 JUDGE MCKENNA: Okay. And I think that
5 everyone knows how I operate now. The way I operate
6 is that I will protect your due process rights.

7 You will have the same right that Respondents
8 had to recall Mr. Hughes. So I will give you five
9 days to make a determination of if you're prejudiced
10 and if so how to cure it through either exhibits,
11 additional cross-examination... Is that clear
12 bilaterally?

13 MS. FOLEY: Your Honor, to state for the
14 record, she is a rebuttal witness.

15 JUDGE MCKENNA: Pardon me?

16 MS. FOLEY: She -- Dr. Ang is a rebuttal
17 witness to Mr. Hughes. She was disclosed -- I have
18 lost track of time -- more than a week ago, roughly,
19 or approximately a week ago. It has been no surprise
20 that we needed to pull somebody together in light of
21 the new exhibits they included from Mr. Hughes, 97 in
22 particular.

23 JUDGE MCKENNA: Even without those, it -- all
24 right. So, you said one day before hearing.

25 MS. CHUM: Yes, Your Honor and Exhibit 97 and

1 Exhibit 100 were produced on the day that the exhibits
2 were due those were not new exhibits.

3 MS. FOLEY: They were, the first time we saw
4 them is when exhibits were disclosed, and then we
5 realized they were going to be new exhibits and
6 testimony from someone who only had a declaration
7 submitted on Summary Disposition. That's the first
8 time we were aware he was going to testify at trial.

9 JUDGE MCKENNA: All right well --

10 MS. FOLEY: Meaning -- yeah that's all I am --

11 JUDGE MCKENNA: -- all of that is resolvable
12 through my ruling. So, everyone be happy.

13 MS. FOLEY: I'm going to give you a set in
14 advance so you have some to look at. Demonstrative
15 that we will be using. Do you have a set for the
16 Court Andrew? Do you need another set, I think we can
17 get Your Honor a copy if you'd like another set.

18 JUDGE MCKENNA: Thank you, all right --

19 MS. CHUM: For the record Your Honor we have
20 just been handed six new exhibits marked exhibits 19,
21 through 24, and we have never seen these before. And
22 we would request additional copies of these.

23 MS. FOLEY: Sure we have copies and we will
24 hand them to you.

25 MS. CHUM: And time to review these exhibits

1 Your Honor.

2 JUDGE MCKENNA: Yes you, do you want a break
3 now.

4 MS. CHUM: Yes, Your Honor.

5 JUDGE MCKENNA: All right, so we will break
6 for lunch. Come back at 12:00. And before we go off
7 the record, could you give me the spelling of your
8 name.

9 THE WITNESS: Yes, Your Honor X-I.

10 JUDGE MCKENNA: Pardon me?

11 THE WITNESS: X, as in, x-ray.

12 JUDGE MCKENNA: Um-hmm.

13 THE WITNESS: I-A-O-L-I-N-G. The middle
14 name is L-I-M and last name is A-N-G.

15 MS. CHUM: And Your Honor we would like to
16 know whether these exhibits were based on the same
17 source code -- source -- exhibits 95 and 101 that were
18 provided to us by Integrity Advance. Or whether they
19 were placed --

20 MS. FOLEY: You mean the transactional
21 database?

22 MR. WHEELER: Yeah.

23 MS. CHUM: Yes.

24 MS. FOLEY: I just want to make sure because
25 you said source code, you threw me off.

1 MS. CHUM: I'm sorry, the transactional
2 database.

3 MS. FOLEY: Yeah, you will see in the
4 footnotes it tells you exactly what the sources are.
5 There is nothing surprising it's the same data that
6 Mr. Hughes had access to and testified about, and
7 these are in response to his testimony given.
8 And you have all of the source code for these already,
9 and I think there is some additional things we have
10 agreed to exchange which we will provide.

11 JUDGE McKENNA: All right. While you were
12 outside, did you clarify the source code issue?

13 MS. CHUM: Yes, Your Honor.

14 MS. FOLEY: Yes.

15 JUDGE McKENNA: Everybody is happy?

16 MS. FOLEY: With what we have agreed upon, I
17 am satisfied.

18 MS. CHUM: Yes, we will both be exchanging
19 materials.

20 JUDGE McKENNA: All right. Well, that is
21 good. So now let me see just a second. I want to
22 modify my ruling about breaking. Why don't you do
23 your direct, and then we will break.

24 MS. FOLEY: Sure.

25 (Attorneys conferring about exhibit copies.)

MS. FOLEY: May I proceed?

2 JUDGE MCKENNA: Yes, you --

3 MS. CHUM: Your Honor if they could just very
4 quickly photocopy these, so that we can --

5 JUDGE MCKENNA: Pardon me?

6 MS. CHUM: Your Honor, if they could just very
7 quickly --

8 MS. FOLEY: Okay. We got them, we got them
9 hold on.

10 MS. CHUM: So that we have five sets.

11 MS. FOLEY: I don't have five sets, but we
12 will give you at least one more, I can deliver that.
13 Okay, here why don't you --

14 JUDGE McKENNA: This approach is not going to
15 cause you a problem, is it, Mr. Wheeler?

16 MR. WHEELER: No, Your Honor, I just want to
17 make sure that we had enough, that, you know --

18 JUDGE McKENNA: No, I'm talking about taking
19 the direct because it's a little early to break for
20 lunch.

21 MR. WHEELER: No, no, that is fine Your Honor.

22 JUDGE McKENNA: All right, just wanted to make
23 sure.

24 Back on the record.

25 MS. FOLEY: Good morning, Dr. Ang.

1 DR. XIAOLING LIM ANG

2 DIRECT EXAMINATION

3 BY MS. FOLEY:

4 Q. Good morning.

5 Are you currently employed?

6 A. Yes, I am.

7 Q. Where do you work?

8 A. Edgeworth Economics.

9 Q. How long have you worked with Edgeworth?

10 A. Since November 2015.

11 Q. Prior to joining Edgeworth, were you employed?

12 A. Yes, I was.

13 Q. Where were you employed?

14 A. The Office of Research at the CFPB.

15 Q. How long were you at the Office of Research at
16 the CFPB?

17 A. Just over four years.

18 Q. And what did you do at the CFPB?

19 A. I was a research economist, which meant that I
20 did cost benefit analysis which involved both the
21 application of economic theory as well as empirical
22 analysis.

23 Q. Did your work involve empirical analysis of
24 loan level data sets?

25 A. Yes, it did.

1 Q. Were you present for Mr. Hughes's testimony?

2 A. Yes, I was.

3 Q. Have you reviewed Mr. Hughes's calculations?

4 A. Yes, I have.

5 Q. Have you reviewed the transaction data set
6 Mr. Hughes relied upon?

7 A. Yes, I have.

8 Q. Based upon your observation of Mr. Hughes's
9 testimony, and your review of the data set, do you have
10 an understanding of the criteria Mr. Hughes used to
11 calculate the amount paid by customers?

12 A. Yes, I do.

13 Q. And what is your understanding based upon?

14 A. My understanding is based upon both reading
15 the declaration, and applying it to the data, and
16 matching, or attempting to match rather, the accounts
17 and the dollar amounts listed in Exhibit 97.

18 Q. And when you say the declaration, are you
19 referring to Mr. Hughes's declaration in this case?

20 A. Yes, ma'am, Exhibit 72.

21 Q. Thank you. All right, using the description
22 in Mr. Hughes's declaration, were you able to replicate
23 Mr. Hughes's calculations of the amounts paid by
24 customers?

25 A. No, I was not.

1 Q. Do you have an understanding of why you were
2 not able to do so?

3 A. Yes, I do.

4 Q. And what is your understanding?

5 A. So if you will indulge me and turn to exhibit
6 72.

7 Q. Okay. Let's -- do you have it in right in
8 front of you? It's in -- there is a book of
9 Respondent's exhibits?

10 A. Yes, I do. So, if you take a look at page
11 four, and focus on paragraph 16. It states in 16 B
12 that the records that were included were designated as
13 NSF payment, charge off payment, or standard payment
14 type.

15 However while replicating I realized that
16 Mr. Hughes also included the payment type renewal.
17 Which you can see if you take peek at Enforcement
18 Counsel's Exhibit 80.

19 Q. And I'm sorry, you say Exhibit 80, that's the
20 data dictionary you are referring to?

21 A. Yes, ma'am.

22 Q. Okay. So I will just stop you there, so, you
23 looked at what, paragraph 16 of Mr. Hughes's
24 declaration?

25 A. Yes, and um --

1 Q. Let me just make sure we are all on the same
2 page. So you tried to replicate his numbers using the
3 parameters identified in paragraphs A through D of
4 paragraph 16?

5 A. That is correct.

6 Q. And the R payment you just described, renewal,
7 would have fallen in the same line as paragraph B with
8 the NSF payment, charge-off payment, or standard
9 payment?

10 A. Yes, it would.

11 Q. Okay. Was there anything else that you
12 observed based on Mr. Hughes's description of
13 parameters in paragraph 16 that you observed there was
14 anything different from what he actually used?

15 A. Yes.

16 Q. What was that?

17 A. In 16 D he states that he excluded
18 transactions that were void; however, he also excludes
19 an additional status flag, which is transactions that
20 were returned.

21 Q. And then once you understood the discrepancy
22 between Mr. Hughes's description and what was actually
23 used, were you able to replicate his calculations of
24 the total number of Integrity Advance customers?

25 A. Yes, I was.

1 Q. Were you able to replicate then his
2 calculations of the total number of loans?

3 A. Yes, I was.

4 Q. Were you able to replicate his calculations of
5 the total amounts consumers paid?

6 A. Yes, I was.

7 Q. Did you review Mr. Hughes's calculations of
8 total paid above total of payments?

9 A. Yes, I did.

10 Q. Do you have an understanding of what
11 Mr. Hughes was referring to when he used the phrase
12 total of payments?

13 A. Yes, I do.

14 Q. And what is your understanding of that phrase?

15 A. My understanding is that total of payments
16 represents the sum of the original principal and one
17 finance charge.

18 Q. And do you understand that that is what he
19 described as what would have been disclosed in the TILA
20 box in the loan agreements?

21 A. Yes, that is my understanding.

22 Q. So when Mr. Hughes calculated the total paid
23 above the total of payments, what do you understand
24 that calculation to represent?

25 A. I understand that to represent the difference

1 in all dollars paid by consumers by an individual
2 consumer to Integrity Advance, minus his estimate of
3 the amount that would have been disclosed in the TILA
4 box.

5 Q. So it's the amount, it's his estimate of the
6 amount the consumer paid above the TILA box disclosure?

7 A. That is correct.

8 Q. Did you make any observations about
9 Mr. Hughes's calculations of the total amount consumers
10 paid above the TILA box disclosures?

11 A. Yes, I did.

12 Q. And what is your observation?

13 A. That his calculation is an under estimate --
14 or an overestimate, pardon me, and overstatement of the
15 total paid above total of payments.

16 Q. And is that using the same parameters that
17 Mr. Hughes used in his calculations, the same criteria?

18 A. Yes, in terms of what was actually implemented
19 as well as following the methodology outlined in his
20 declaration.

21 Q. So why is Mr. Hughes calculations of the
22 amounts consumers paid above total payment overstated?

23 A. Because his calculations of the TILA amount is
24 too low.

25 Q. So his calculations of total of payments is

1 too low?

2 A. That is correct.

3 Q. Why does that matter?

4 A. It matters because to get the total paid above
5 the total of payments, you must subtract the total of
6 payments from the total amount paid, which we both
7 agree on.

8 Q. So basically, if his number is too small, then
9 when you subtract it from the larger number the
10 remainder is too big?

11 A. Exactly, yes ma'am.

12 Q. Okay. So using Mr. -- Enforcement Counsel's
13 Exhibit 97 slide 2 --

14 (Counsel speaking with projectionist regarding the
15 exhibit displayed.)

16 Is it your testimony that the bottom line
17 where it says, total paid above total of payments at
18 133 million dollars that that is wrong?

19 A. Yes.

20 Q. Okay. And if we look at page 3 of Exhibit 97.
21 Where -- let's give it a minute to warm up -- where
22 Mr. Hughes calculated the total paid above total of
23 payments in the bottom line, thirty-eight million
24 dollars, seven hundred ninety-five thousand, so that is
25 incorrect, that is your testimony?

1 A. That is incorrect, or you are correct, I
2 believe that number is incorrect.

3 Q. Thank you for fixing my grammar. Did you
4 prepare a document to show your analysis that we just
5 described?

6 A. Yes, I did.

7 Q. And can you turn to what has been marked as
8 Respondent's Exhibit 19, it's the first page I handed
9 to counsel this morning.

10 (Counsel conferring about exhibit copies.)

11 MS. FOLEY: Do you have a copy Dr. Ang?

12 THE WITNESS: I do.

13 BY MS. FOLEY:

14 Q. Okay. Do you recognize this document Dr. Ang?

15 A. I do.

16 Q. Did you prepare it?

17 A. Yes, I did.

18 Q. And what is this document?

19 A. This documents is a comparison of the CFPB's
20 estimates, and my adjusted calculations.

21 Q. So based upon -- can you walk us through your
22 calculations and how you reached your conclusion.

23 Is that -- your conclusion line here is the
24 "CFPB overstates total paid above total of payments" on
25 the bottom line, I apologize my Elmo is not

1 cooperating.

2 A. Yes, it is.

3 Q. And so, can you walk us through your
4 calculation for the period of time of all loans please?

5 A. Absolutely, so, if you take a look at the top
6 row, which looks at total paid, principal, plus finance
7 fees, plus additional fees, my calculations of total
8 paids using Mr. Hughes's parameters matches exactly
9 down to the penny.

10 Q. So that is the line, the first line that you
11 just described the total paid principal plus finance
12 fees plus additional fees?

13 A. Yes.

14 Q. Okay. And your number is the same as Mr.
15 Hughes's number on this document correct?

16 A. Yes, it is.

17 Q. And you used the same parameters that
18 Mr. Hughes implemented to reach this total?

19 A. That is correct.

20 Q. Okay. Then what does your line, "Total of
21 payments" reflect?

22 A. "Total of payments" reflects my implementation
23 of my understanding of Mr. Hughes's declaration in
24 terms of assigning finance charges and principal
25 borrowed, to a given loan.

1 Q. And your calculation of this amount is a 150
2 million?

3 A. That is correct.

4 Q. Compared to Mr. Hughes's calculations of 140.5
5 million?

6 A. Yes, it is.

7 Q. Okay. And then what is -- I'm going to try to
8 make this a little bigger so everyone can see it, there
9 we go -- and then please tell us what the third line of
10 exhibit 19 shows?

11 A. The third line of exhibit 19 is the result of
12 subtracting our respective total of payment amounts
13 from the total paid. And so what I find is that the
14 CFPB's calculation is 133.4 million dollars, compared
15 to my calculation of 123.8 million dollars. So these
16 two numbers do not match.

17 Q. And what is the difference Dr. Ang?

18 A. The difference is 9.6 million dollars?

19 Q. And whose is larger?

20 A. So the CFPB's calculation is larger and this
21 is, this 9.6 million dollars is their overstatement of
22 the total paid above the total of payments.

23 Q. Thank you. You performed the same
24 calculation, Dr. Ang for -- regarding Mr. Hughes
25 calculation for the time -- for loans originated on or

1 after July 21, 2011?

2 A. That is correct.

3 Q. Okay. And based upon your analysis, by how
4 much was Mr. Hughes's total paid above total payments
5 overstated?

6 A. His total paid above total of payments was
7 overstated by 2.6 million dollars.

8 MS. FOLEY: Your Honor, Respondents move
9 Exhibit 19 into evidence.

10 JUDGE McKENNA: Any objections.

11 MS. CHUM: Court's indulgence. Only to the
12 extent that we were just provided this document.

13 JUDGE McKENNA: Well, I have already given you
14 an opportunity to cure any problems, so --

15 MS. CHUM: Yes.

16 MS. FOLEY: Dr. Ang did you do anything --

17 JUDGE McKENNA: Just a second I'm not done.

18 MS. FOLEY: Oh, I'm sorry Your Honor.

19 JUDGE McKENNA: I might be old, but I'm slow,
20 all right. So admitted, Exhibit 19.

21 (Respondent's Exhibit No. 19 was
22 admitted into evidence.)

23 JUDGE MCKENNA: Proceed.

24 MS. FOLEY: Thank you, Your Honor.

25 BY MS. FOLEY:

1 Q. Dr. Ang, did you do anything to confirm your
2 calculations were correct?

3 A. Yes, I did.

4 Q. What did you do?

5 A. So I had my calculations validated and matched
6 numerically by an experienced colleague.

7 Q. That is your standard practice?

8 A. Yes, it is.

9 Q. In the transaction level data set that you
10 reviewed, could you observe if a customer took out more
11 than one loan over time?

12 A. Yes, I could.

13 Q. Based upon your observations did you calculate
14 the number of customers who took out two or more loans
15 with Integrity Advance over time?

16 A. Yes, I did.

17 Q. Did you calculate the number of customers who
18 took out five or more loans with Integrity Advance?

19 A. Yes, I did.

20 Q. Did you calculate the number of customers who
21 took out ten or more loans with Integrity Advance?

22 A. Yes, I did.

23 Q. Did you calculate the number of customers who
24 took out twenty or more loans with Integrity Advance?

25 A. Yes, I did.

1 Q. Did you prepare a document to reflect the
2 number of -- reflect these calculations?

3 A. Yes, I did.

4 Q. Okay. Dr. Ang --

5 JUDGE MCKENNA: What exhibit number is this?

6 MS. FOLEY: It's Respondent's Exhibit 20 Your
7 Honor.

8 MS. FOLEY: Dr. Ang do you recognize
9 Respondents Exhibit 20?

10 THE WITNESS: Yes, I do.

11 BY MS. FOLEY:

12 Q. Did you prepare this document?

13 A. Yes, I did.

14 Q. Please tell us what this -- Respondent's
15 Exhibit 20 is?

16 A. This exhibit displays the number of customers
17 who take out a given number of loans or higher. So, if
18 you take a look at the first row, two or more loans
19 means that customer has 2,3,4,5 up to 45 loans taken
20 out with Integrity Advance over the period May 2008
21 through May 2013.

22 Q. Let me stop you there. What was the highest
23 number of loans you observed a customer took out from
24 Integrity Advance?

25 A. Forty-five.

1 Q. And so you if you can just walk us across the
2 line, two or more, it says, "number of loans two or
3 more," what was your calculation of the total number of
4 these repeat customers starting in May 2008 forward?

5 A. Fifty-seven thousand seven hundred
6 ninety-eight.

7 Q. And you calculated the repeat customers who
8 had two or more loans for the period originated on or
9 after July 21, 2011?

10 A. Yes, I did.

11 Q. And what number -- how many repeat customers
12 were there who had two or more loans originated on or
13 after July 21, 2011?

14 JUDGE MCKENNA: You mean three or more?

15 MS. FOLEY: I was just going to finish the two
16 or more for the 2011 period.

17 JUDGE MCKENNA: Oh, okay, fine.

18 MS. FOLEY: Okay. I was reading right across
19 the line here.

20 THE WITNESS: Twenty-six thousand, one hundred
21 twenty-nine.

22 BY MS. FOLEY:

23 Q. Thank you, Dr. Ang. If we skip down to the
24 row that says, "Five or more."

25 (Speaking with projectionist regarding

1 displayed exhibits.)

2 BY MS. FOLEY:

3 Q. I think this might make it a little easier for
4 everyone to see. If we look at the line, "Five or more
5 loans" can you tell us what that means Dr. Ang?

6 A. Yes, that means that for the period starting
7 in May 2008, eight thousand four hundred forty-seven
8 customers took out five or more loans so 5, 6, 7 and so
9 forth.

10 Q. And for -- if we look at the period for loans
11 originated on or after July 21, 2011 did you calculate
12 the number of customers who had five or more loans
13 during that period?

14 A. Yes, I did.

15 Q. And what is your calculation?

16 A. Six thousand, five hundred twenty-seven.

17 Q. And if we could just look at the line where it
18 says, "Twenty or more," can you explain to us what is
19 represented on that line?

20 A. Yes, so for the period May 2008 through May
21 2013, seventy-two customers took out twenty or more
22 loans. When we restrict attention to the loans that
23 were originated on or after July 21st, 2011, those
24 loans -- seventy customers, took out a loan after on or
25 after that date. And those particular customers had

1 twenty or more loans.

2 JUDGE McKENNA: So there were only two before
3 that date?

4 THE WITNESS: So when we considered the
5 customers who are repeat customers we are looking at
6 the number of loans they took out over the entire time
7 period. So, there are only two who took out twenty or
8 more loans, between May 2008 through July 21st, 2011,
9 as Mr. Hughes defines it in his sample restrictions.

10 JUDGE MCKENNA: So the answer to my question
11 is yes.

12 THE WITNESS: Yes. Yes, sir.

13 JUDGE McKENNA: Thank you.

14 BY MS. FOLEY:

15 Q. Dr. Ang, did you also calculate the percentage
16 of customers who were repeat customers?

17 A. Yes, I did.

18 Q. And did you prepare a document reflecting the
19 percentage -- your calculations of the percentage of
20 repeat customers?

21 A. Yes, I did.

22 Q. I'm going to show you what's been marked --
23 Your Honor before I move forward, I would like to offer
24 Respondents Exhibit 20 into evidence, please?

25 JUDGE McKENNA: Any objections.

1 MS. CHUM: No, Your Honor.

2 JUDGE MCKENNA: So admitted.

3 (Respondent's Exhibit No. 20

4 was admitted into evidence.)

5 JUDGE MCKENNA: Are we going to 21 now?

6 MS. FOLEY: Yes, sir.

7 BY MS. FOLEY:

8 Q. Dr. Ang, directing your attention to what's
9 been marked as Respondent's Exhibit 21 do you recognize
10 this document?

11 A. Yes, I do.

12 Q. Did you prepare it?

13 A. Yes, I did.

14 Q. Please explain to us what this Exhibit 21
15 shows?

16 A. This puts repeat customers in context relative
17 to all customers, in terms of the count of customers,
18 count of loans, and payments made by repeat customers
19 relative to all customers.

20 Q. Okay. So focusing at the top category I see
21 the categories, are they the bold, customers, loans,
22 and payments?

23 A. Yes, ma'am.

24 Q. If we if he focus on top category of customers
25 did you calculate the percentage of repeat customers

1 for, let's start with the period May 2008 forward?

2 A. Yes, I did.

3 Q. And what is the percentage of repeat customers
4 for that time period?

5 A. Thirty-two percent.

6 Q. And that is reflected in this Column, B, "All
7 loans?"

8 A. Yes, it is.

9 Q. And did you also calculate the percentage of
10 repeat customers who had loans originated on or after
11 July 21, 2011?

12 A. Yes, I did.

13 Q. And is that reflected on Exhibit 21?

14 A. Yes, it is.

15 Q. And what that is percentage?

16 A. Forty-eight percent.

17 Q. Turning to the second category where it says,
18 "Loans," can you tell us what is reflected in this
19 category?

20 A. Yes, this is the total number of loans made to
21 repeat customers, relative to the total number of loans
22 made overall.

23 Q. And did you calculate the percentage of loans
24 to repeat customers for the time period May 2008
25 forward?

1 A. Yes, I did.

2 Q. And is that reflected on this document?

3 A. Yes, it is.

4 Q. And what was percentage of loans to repeat
5 customers in that time period?

6 A. Sixty percent.

7 Q. Did you also calculate the percentage of loans
8 to repeat customers in the time period of July -- for
9 loans originated on or after July 21, 2011?

10 A. Yes, I did.

11 Q. And what was that percentage?

12 A. Sixty-six percent.

13 Q. There is a third category on this document
14 that says, "Payments," please explain to us what that
15 represents?

16 A. Sure, so the total paid by customers is the
17 same line that we saw in both the exhibit 19, as well
18 as Enforcement Counsel's I believe Exhibit 97. Where
19 Mr. Hughes and I match on our total paid by customers,
20 so roughly 273.9 million for all loans. And 80.3
million for loans originated on or after July 21, 2011.

22 Q. I'm going to stop you there Dr. Ang when you
23 say you and Mr. Hughes match do you mean you were able
24 to replicate his number?

25 A. Yes down to the cent.

1 Q. Okay. And using Mr. Hughes's calculation, the
2 total paid by customers did you calculate the
3 percentage of those payments that were from repeat
4 customers?

5 A. Yes, I did.

6 Q. And from the time period May 2008 forward,
7 what was that percentage?

8 A. Sixty-nine percent.

9 Q. And that is reflected down at the bottom of
10 column B on Exhibit 21?

11 Yes?

12 You have to answer audibly. And did you
13 perform the same calculation for the percentage of
14 total payments from repeat customers for loans
15 originated on or after July 21, 2011?

16 A. Yes, I did.

17 Q. And what is that percentage?

18 A. Seventy-six percent.

19 MS. FOLEY: Your Honor, Respondents offer
20 Exhibit 21 into evidence.

21 JUDGE MCKENNA: Objection?

22 MS. CHUM: Your Honor, I would simply, just
23 for point of clarification, was the source code that
24 we received yesterday evening around 10:30 or so, did
25 that include the source code for these new exhibits.

1 MS. FOLEY: Yes.

2 MS. CHUM: Thank you.

3 JUDGE MCKENNA: No objection?

4 MS. CHUM: No objection, Your Honor.

5 JUDGE MCKENNA: Thank you.

6 (Respondent's Exhibit No. 21

7 was admitted into evidence.)

8 BY MS. FOLEY:

9 Q. Turning to Enforcement Counsel's Exhibit 102.

10 Dr. Ang did you have an opportunity to review

11 Enforcement Counsel's Exhibit 102?

12 A. Yes, I have.

13 Q. And if you look down at the fourth line,
14 "Money paid to IA by consumers above the total of
15 payments via first time loans," do you see that line?

16 A. Yes, I do.

17 Q. Have you had the opportunity to review
18 Mr. Hughes's calculations of the money paid to
19 Integrity Advance by consumers above the total of
20 payments via first time loans?

21 A. Yes, I have.

22 Q. Do you have an understanding of what
23 Mr. Hughes was referring to when he used first time
24 loans here?

25 A. Yes.

1 Q. And what is your understanding?

2 A. It is the first loan that any customer takes
3 out whether they are a one-time customer or a repeat
4 customer.

5 Q. And did you make any observations of about
6 Mr. Hughes's calculations regarding the amounts paid by
7 -- paid to Integrity Advance by consumers above the
8 total of payments via first time loans?

9 A. Yes, I did.

10 Q. And what were your observations?

11 A. I observed that that amount is overstated.

12 Q. Is that -- did he overstate the amount for
13 both loans originated between May 28 -- loans
14 originated after May 2008 as well as for loans
15 originated on or after July 21, 2011?

16 A. Yes, he did.

17 Q. Do you have an understanding of why these,
18 Mr. Hughes's calculations are overstated?

19 A. Yes, I do.

20 MS. CHUM: Calls for speculation.

21 JUDGE MCKENNA: Pardon me?

22 MS. CHUM: Objection, calls for speculation.

23 JUDGE MCKENNA: Overruled.

24 BY MS. FOLEY:

25 Q. And what is that understanding, Dr. Ang?

1 A. My understanding is that the amount he
2 calculates as the total of payments is too low.

3 Q. And the result? And what happens because his
4 total of payments is too low?

5 A. If his total of payments is too low then the
6 total paid minus total of payments is too high.

7 Q. And Dr. Ang, how did you conclude that
8 Mr. Hughes's amount of the total of payments was
9 understated?

10 A. I did this by running independent calculations
11 attempting to replicate Mr. Hughes's analysis.

12 Q. Were you able to replicate his analysis?

13 A. No, I was not.

14 Q. Did you take any steps after that to validate
15 that your analysis was correct?

16 A. Yes, of course.

17 Q. And I think you told us one of the steps you
18 took was to have a colleague run the calculations as
19 well.

20 A. Yes.

21 Q. Did you do anything else?

22 A. Yes.

23 Q. What did you do?

24 A. So, this may be a bit of a lengthy
25 explanation. So, as an empiricist one the first things

1 to do when you get data is to think about how it
2 relates to underlying data generating process. So,
3 where does the data come from, what does it describe.

4 So we know that these are transactions from
5 Integrity Advance for this particular product which has
6 particular features. So, we know that interest is not
7 capitalized on these loans, instead interest is,
8 basically included in the finance charge.

9 So, essentially, the principal paid should
10 never get bigger than for a given loan. Because
11 interest isn't capitalizing so how could it get bigger?
12 Similarly, the finance charge is linked to the
13 principal amount. So, it is proportional. One
14 possible way that it could be proportional is it could
15 be thirty dollars per one hundred dollars. So the
16 finance charge and the principal amount go in lock
17 step.

18 So if the principal can't get any bigger
19 neither can the finance charge.

20 Q. And you when you say the principal can get
21 bigger, you mean for a given loan?

22 A. Yes, ma'am. And so, if the principal can't
23 get any bigger for a given loan and finance charge
24 can't get any bigger for a given loan, then it seems
25 odd that when we -- when I sum across all loans that

1 the net total of payments as -- as described by the
2 CFPB, is larger in my calculations than they are in the
3 CFPB calculations. This defies our sense of how,
4 basically, addition works.

5 Q. So when you basically add it up -- can you
6 walk us through? Did you sample the data?

7 A. Yes.

8 Q. To you test your theory?

9 A. I looked at individual loan records.

10 Q. And what did you do, just so we all
11 understand, when you looked at the individual loan
12 records?

13 A. We took a look at where payments occurred, and
14 what the ordering of payments was. And we, basically,
15 just reviewed several records to understand the way
16 that those records are populated.

17 Q. Turning back to your observations about
18 Mr. Hughes's calculation regarding money paid to
19 Integrity Advance by consumers above the total of
20 payments via first time loans, did you prepare any
21 documents to show your calculations that you describe
22 how you determined that Mr. Hughes's number was too
23 big?

24 A. Yes, I did.

25 Q. Can I have -- Respondents Exhibit 22 I'm going

1 to put on the screen. Dr. Ang do you recognize
2 Respondents Exhibit 22?

3 A. Yes, I do.

4 Q. And can you tell us please what is
5 Respondent's Exhibit 22?

6 A. It is a comparison of the CFPB's calculations
7 to my adjusted calculations. Of the total paid above
8 total of payments for what they call first time loans.

9 Q. And you prepared this document?

10 A. Yes, I did.

11 Q. Okay. And if you look at the concluding line
12 here, "CFPB overstates total paid above total of
13 payments for first time loans," do you see that line,
14 Dr. Ang?

15 A. Yes, I do.

16 Q. And please tell us what that line reflects?

17 A. That reflects the amount by which the CFPB
18 overstates the difference between total paid above
19 total of payments. For this particular set of loans.

20 And the overstatement for the period 2008
21 through 2013 is approximately 7.1 million dollars.

22 Q. And that is the number reflected in "Column C"
23 under "Adjusted?"

24 A. Yes, it is.

25 Q. Okay. And did you run the same calculation

1 for loans originated on or after July 21, 2011?

2 A. Yes, I did.

3 Q. And what did you conclude about Mr. Hughes's
4 calculations for that period of time?

5 A. That his total paid above total of payments
6 was overstated by approximately 1.8 million dollars.

7 Q. Okay. And focusing on the period of time for
8 loans originated on or after July 21, 2011, the 1.8
9 million dollar difference, can you walk us through how
10 did you conclude that Mr. Hughes's number was
11 overstated by that amount?

12 A. So the first step, was to start from the
13 baseline of the calculation of total paid above total
14 of payments and as you have seen from exhibit 19,
15 we've, I demonstrated that Mr. Hughes's calculations
16 are an overstatement. So, I start from the baseline of
17 my adjusted calculations on exhibit 19.

18 Then, I compute the total paid above total of
19 payments for all second or higher loans for returning
20 or repeat customers.

21 So if you think about what happens when you
22 exclude all second or higher loans for repeat
23 customers, what you have left is the first loans for
24 repeat customers and the first loans for all one-time
25 borrowers.

And so, when you take the difference I get a total paid above total of payments for first time loans of approximately 10.4 million dollars.

MS. FOLEY: Your Honor, we move Respondent's Exhibit 22 into evidence.

JUDGE MCKENNA: Objections?

MS. CHUM: No, Your Honor.

JUDGE MCKENNA: So admitted.

(Respondent's Exhibit No. 22

was admitted into evidence.)

MS. FOLEY: If I may have Respondent's Exhibit 102, please.

MS. CHUM: Which exhibit?

MS. FOLEY: Respondent's Exhibit 102, put that back up. I'm sorry, that's right, Enforcement Counsel's Exhibit 102, this is not Respondent's exhibit for the record.

BY MS. FOLEY:

Q. If we look at the fifth box down. Which is money paid to Integrity Advance by consumers above the total of payments via one-time loans, do you see where I am?

A. Yes, ma'am.

Q. Dr. Ang, did you review Mr. Hughes's calculations for that amount for these -- for the --

1 sorry, for money paid to Integrity Advance by consumers
2 above the total of payments via one-time loans?

3 A. Yes, I did.

4 Q. And did you make any observations about
5 Mr. Hughes's calculations?

6 A. Yes, I did.

7 Q. And what observations did you make?

8 A. The -- Mr. Hughes's calculations are
9 overstated.

10 Q. So turning to the second row for loans
11 originated after May 2008, Mr. Hughes calculation was
12 39.9 million dollars?

13 A. Yes, it was.

14 Q. And your observation is that is overstated?

15 A. Yes, it is.

16 Q. And your observation is the same if we go over
17 one column for loans originated on or after July 21st,
18 your observation is that Mr. Hughes's calculation of
19 roughly 8.99 million dollars is overstated?

20 A. Yes. His calculation is also overstated in
21 this case.

22 Q. And do you have an understanding of why his
23 calculations are overstated?

24 A. Yes, I do.

25 Q. And what is your understanding?

1 A. My understanding is that he under calculated
2 the amount in the TILA box.

3 Q. Okay. And that as a function of under
4 counting the amount in the TILA box, what would happen?

5 A. That would be subtracting too small of a
6 number from the total paid by these consumers.

7 Q. And focusing on your methodology to sort of
8 validate that, your calculations were correct. You
9 started, you said you looked at some sample loans in
10 the data set?

11 A. Yes, I did.

12 Q. And you analyzed the records?

13 A. Yes, I did.

14 Q. And you used Mr. Hughes's methods and
15 parameters to look at those loan records?

16 A. Yes, as they were understood from the
17 declaration.

18 Q. And then explain, what did you see happening
19 with the TILA amounts as you reviewed the calc -- or
20 the total for each of those loans as you looked at the
21 records using Mr. Hughes's method?

22 A. So when I looked at the TILA amounts I noticed
23 that there were a variety of principal amounts, and a
24 variety of finance charges. And that, chronologically,
25 both of those values were declining. I also realized

1 that in just kind of good data hygiene practices I took
2 a look at what the data dictionary said and matched it
3 out to what was in the field.

4 So I think that something that was central to
5 my review of the data, initially, was the fact that if
6 you look at Ms. -- the exhibit that Ms. Chum brought up
7 yesterday, I believe this is Enforcement Counsel's
8 Exhibit 80 again.

9 Q. So, just stop right there, Doctor, and you are
10 looking at the data dictionary?

11 A. Yes, I am. So the different amounts
12 attributable to different parts or different payments
13 potentially made by consumers are compartmentalized
14 into their own separate fields.

15 Q. Okay. And can you tell us, are you referring
16 to a specific page, or part of an exhibit?

17 A. Yes, I am at the bottom of page two of exhibit
18 80.

19 Q. Is this the right page we are looking at?

20 A. Yes, it is.

21 Q. So -- I explain on the -- okay.

22 A. So, as you can see the principal paid has its
23 own variable, the finance charge has -- paid, has its
24 own variable, and the fees charged has its own
25 variable. So, every type of payment, basically, stays

1 in its own lane. It does -- so we know what payment or
2 attempted payment is a principal attempt for payment,
3 and which payment or attempt is a finance charge
4 payment or attempt.

5 And as I discussed earlier, given the
6 characteristics of the product those can't get any
7 smaller, over time. So --

8 Q. You mean -- I'm sorry, if someone pays off the
9 principal the number should go down?

10 A. Oh, sorry, those can get smaller, they can't
11 get any bigger over time.

12 Q. Okay. So what did you observe in the data --
13 did you observe something in the actual data that was
14 different than what you expected regarding the
15 principal shouldn't get bigger over time?

16 A. No, I did not.

17 MS. FOLEY: Just a moment, Your Honor, if I
18 may?

19 BY MS. FOLEY:

20 Q. When you attempted to use Mr. Hughes's
21 methodology, looking at your sample, did the --did you
22 observe that the principal numbers in the sample loans
23 actually got bigger over time as compared to smaller
24 over time?

25 A. So we did not receive turn over, so we

1 followed his directions as they were laid out in his
2 declaration. And we did not observe, to the best of my
3 knowledge, the principal getting bigger over time.

4 Q. And again, what told you there was an error in
5 Mr. Hughes's methodology?

6 A. The fact that we, that I could take a
7 principal record from a given loan, and a finance
8 charge record for a given loan, and that those could be
9 bigger when aggregated up in my calculations, than they
10 were in his calculations.

11 Q. All right.

12 JUDGE MCKENNA: How much more will you have
13 with this witness?

14 MS. FOLEY: Probably ten minutes, Your Honor.

15 JUDGE MCKENNA: Proceed.

16 MS. FOLEY: Okay. Thank you, Your Honor.

17 BY MS. FOLEY:

18 Q. Turning back to your observations regarding
19 Mr. Hughes's calculation of the total paid above total
20 payments for one-time loans, did you prepare a document
21 laying out your calculations?

22 A. Yes, I did.

23 Q. Okay. I'm putting in front of you -- or I'm
24 putting up on the screen Respondent's Exhibit 23. Do
25 you recognize this document, Dr. Ang?

1 A. Yes, I do.

2 Q. And please tell us what Respondent's Exhibit
3 23 is?

4 A. This represents the contrast between the
5 CFPB's calculations and my adjusted calculations of
6 total paid above total of payments for one-time loans.

7 Q. And what was your conclusion regarding -- when
8 you say CFPB you are referring to Mr. Hughes's
9 calculations?

10 A. Yes, I am.

11 Q. And what was your observation about the amount
12 by which Mr. Hughes's calculations overstated the total
13 paid above total of payments for one-time loans?

14 A. For the period from May 2008 through May 2013,
15 I find that the CFPB overstates total paid above total
16 of payments or, I apologize -- Mr. Hughes overstates
17 total paid above total payments by approximately 7.6
18 million dollars.

19 And when we -- when I focus loans originated
20 on or after July 21, 2011, that overstatement is
21 approximately 2 million dollars.

22 Q. Okay. And those are reflected in this bottom
23 line of the chart, that I'm now pointing to, which is
24 the fourth line down. And the numbers you were reading
25 period May 2008 forward is the 7 million, five hundred

1 sixty-four, eight hundred and three dollars,
2 seventy-one cents?

3 A. That is correct.

4 Q. Okay. And the number for your calculating of
5 the amount by which Mr. Hughes's calculations was
6 overstated is the one million nine hundred sixty-six
7 thousand four hundred eighteen dollars and fifteen cent
8 number reflected in the bottom of column E, is that
9 correct?

10 A. That is correct.

11 Q. Your Honor we move Respondent's Exhibit 23
12 into evidence?

13 JUDGE McKENNA: Objections?

14 MS. CHUM: No objection.

15 JUDGE McKENNA: So admitted.

16 (Respondent's Exhibit No. 23
17 was admitted into evidence.)

18 BY MS. FOLEY:

19 Q. Dr. Ang, did you perform any calculations
20 making adjustments to total amounts paid over the TILA
21 box disclosures based on an exclusion of another set of
22 repeat customers loans?

23 A. Yes, I did.

24 Q. And what calculation was that?

25 A. It was a calculation of total paid above total

1 of payments for a group -- for where I exclude second
2 or higher loans for repeat customers whose first loan
3 was a renewal loan.

4 Q. And what do you mean by renewal loan?

5 A. By renewal loan, I mean a loan that has more
6 than one transaction, or not transaction, I apologize
7 for that misstatement. More than one application
8 number in the data associated with that loan.

9 And I realize, Your Honor, that sounds
10 confusing because application number sounds like it
11 associates one per loan. But, in fact, every
12 interaction that is associated with a payment being due
13 is uniquely identified by the -- a variable called
14 application number.

15 So, I'm not misspeaking when I say that, it's
16 just essentially, the way the variable is named.

17 Q. Okay. And when -- did you prepare a document
18 reflecting your calculations?

19 A. Yes, I did.

20 Q. Okay. Can you put on the screen Respondent's
21 Exhibit 24.

22 JUDGE MCKENNA: All right, just one second.
23 BY MS. FOLEY:

24 Q. If you go to line two of Respondent's Exhibit
25 24.

1 So a repeat customer whose first loans were
2 renewal loans, does that mean that they were the repeat
3 customer, or are you talking about a rollover?

4 A. So it's a little bit of a combination. The
5 first cut is that this is restrict -- this exclusion is
6 restricted to customers who have more than one loan.

7 And with --

8 Q. Dr. Ang, I'm sorry -- is that repeat
9 customers, when you say that --

10 A. Yes, it is.

11 Q. -- more than one loan?

12 A. And once we look at repeat customers, there
13 are two types of repeat customers. One, the type that
14 rolls over their first loan. And two, the type of
15 customer who pays down their first loan in one payment.

16 JUDGE MCKENNA: Pays it off?

17 THE WITNESS: Exactly. So we are only
18 excluding the loans that are the loans attributable to
19 customers who have more than one loan and rolled over
20 that first loan. So, put another way, the customers
21 that we are including are the customers who had only
22 one loan as well as the repeat customers who paid down
23 their first loan.

24 JUDGE MCKENNA: Off the record.

25 (Brief recess was had.)

1 JUDGE McKENNA: Back on the record.

2 Proceed.

3 BY MS. FOLEY:

4 Q. Dr. Ang, sorry -- looking at Respondent's
5 Exhibit 24, can you walk us through your calculation if
6 we look at the time period for all loans, if we start
7 with the total paid above total payments for all
8 customers, and you adjust that to exclude the loans
9 which are repeat customers whose first loans were
10 renewal loans?

11 MS. CHUM: Objection. My understanding is
12 that as a rebuttal witness --

13 JUDGE McKENNA: You have to speak up.

14 MS. CHUM: Objection on the grounds that this
15 is beyond the scope of Mr. Hughes's direct, and
16 Dr. Ang has been brought on as a rebuttal witness.

17 JUDGE McKENNA: That's --

18 MS. CHUM: These are new numbers that do not
19 go to numbers that Mr. Hughes presented in his direct.

20 JUDGE McKENNA: I understand, and I'm going to
21 allow it.

22 Mr. Hughes, have you been reviewing
23 Respondent's recently distributed exhibits?

24 MR. HUGHES: Ah, yes.

25 JUDGE McKENNA: All right. During lunch I

1 want you to go over the transcript of the part that
2 you missed because when we come back, both of you are
3 going to be up here, and we are going to have -- see
4 if there is any disagreement so that it's on the
5 record, and it's clear. That is a little bit unusual,
6 but that is me. Okay?

7 MS. CHUM: Your Honor, given that we received
8 these documents just now, these new exhibits, my
9 understanding is that it will take quite some time for
10 the data scientists, for our data science team to
11 review all of the numbers and to go through the source
12 code.

13 I am not confident that we will be able to run
14 all of these numbers and to understand them within the
15 time that it will take for lunch, unless it's a very,
16 very long lunch.

17 JUDGE MCKENNA: All right. We can, we can
18 recess, and I will get my way at a later date.

19 MS. CHUM: Thank you, Your Honor.

20 MS. FOLEY: I mean, Your Honor, just for the
21 record, this is one additional calculation, the source
22 code was provided last night, underlying it. She's
23 walked through her methodology. I'm not sure that we
24 need hours to, to take the time, I understand that is
25 what Ms. Chum is representing. But I would foresee

1 that we finish up the direct, and take a break, and
2 have cross.

3 MS. CHUM: Your Honor, there are six new
4 documents here that Mr. Hughes has just seen for the
5 first time.

6 JUDGE McKENNA: Do you want to postpone cross?

7 MS. CHUM: Yes, Your Honor.

8 JUDGE McKENNA: Beyond lunch.

9 MS. CHUM: Yes, Your Honor.

10 JUDGE McKENNA: All right. And -- hi.

11 MS. BAKER: Your Honor, we have another
12 witness who is here, who we expect to put on the stand
13 after Dr. Ang. And out of respect for her schedule, I
14 don't want to make her have to come back tomorrow
15 because she has come back from Delaware.

16 So, I think, assuming that is okay with my
17 colleague, I would ask that she be permitted to
18 testify today, at some point, even if we recess today.

19 Which is what I understand Ms. Chum to be
20 proposing.

21 JUDGE McKENNA: Oh, yeah, well we would take
22 that witness.

23 MS. BAKER: Thank you, is that okay with you?

24 MS. FOLEY: That is -- of course.

25 MS. BAKER: Okay. Thank you. I just want to,

1 out of respect for her, not make her come back here,
2 since she is out of town.

3 JUDGE MCKENNA: I'm in agreement.

4 MS. BAKER: Thank you.

5 JUDGE MCKENNA: All right. So what I want
6 you to do is to, over the lunch hour, determine how
7 much time you will need to review the numbers, run
8 your own numbers and source codes, and determine
9 whether there is any disputes, not just numeric, but
10 schematically.

11 If both sides agree that a certain methodology
12 is appropriate, and that the numbers correspond, then
13 it would obviate the need for me to get both experts
14 together. And for those of you who haven't tried that
15 before, it's a lot of fun.

16 Okay. Proceed.

17 BY MS. FOLEY:

18 Q. Thank you, Your Honor. Dr. Ang -- I lost
19 track of where we were -- if could you just please tell
20 us, what was your calculation if you remove -- if you
21 exclude all loans to repeat customers whose first loans
22 were renewal loans from your adjusted total paid above
23 the total payments for all customers.

24 JUDGE MCKENNA: And before you answer that,
25 would you explain your answer to my question so that

1 Mr. Hughes can hear it, because that is pivotal as to
2 what is included in that second line.

3 THE WITNESS: Absolutely, so excluding all
4 loans to repeat customers whose first loans were
5 renewal loans, means that I am excluding loans that are
6 attributable to consumers who are repeat customers, so
7 that is the first distinction in that excluded group.

8 And the further distinction in that excluded
9 group that is the excluded group is limited to
10 customers who have rolled over their first loan.
11 So put another way, the customers in the included group
12 are: One time borrowers, or one time customers, and
13 that also includes repeat customers who paid down their
14 first loan.

15 JUDGE MCKENNA: Paid off?

16 THE WITNESS: Paid off their loan in one
17 payment.

18 BY MS. FOLEY:

19 Q. And Dr. Ang, when you exclude that group from
20 the total paid above total of payments for the period
21 of May 2008 forward, what does that result, what is the
22 total paid above total payments for that group?

23 A. Approximately 39.9 million dollars.

24 Q. And for the period of time with loans
25 originated on or after July 21, 2011, what is the

1 calculation for that group?

2 A. It's just under 10 million dollars, it's nine
3 million nine hundred eighty-nine thousand five hundred
4 sixty-four dollars and fifty-four cents.

5 MS. BAKER: Your Honor Respondents offer
6 exhibit 24 into evidence.

7 JUDGE McKENNA: Any objections?

8 MS. CHUM: No objection.

9 JUDGE McKENNA: So admitted.

10 (Respondent's Exhibit No. 24
11 was admitted into evidence.)

12 JUDGE MCKENNA: Is there a 25?

13 MS. FOLEY: There is not a 25. If you have a
14 25 please let me know.

15 JUDGE McKENNA: I have a tab.

16 MS. FOLEY: Okay. No there is not an Exhibit
17 25.

18 Your Honor, no further questions at this time.

19 JUDGE McKENNA: All right. So let the record
20 reflect that I'm taking that tab out.

21 So under my calculations, we have addressed
22 all of Respondent's Exhibits 1 through 24.

23 MS. FOLEY: I'm not sure.

24 MS. BAKER: Your Honor, we have a witness who
25 we expect to be putting on the stand, as I said,

1 through whom we will be we will be introducing a
2 couple of exhibits.

3 JUDGE MCKENNA: More?

4 MS. BAKER: No, Your Honor, they are contained
5 within the numbers you just described. In fact, I
6 think there is only, the only exhibits that we have
7 affirmatively moved into evidence during this
8 proceeding, just now and have addressed, are the ones
9 that Ms. Foley addressed.

10 JUDGE MCKENNA: Right, but then in my order --

11 MS. BAKER: Yes.

12 JUDGE MCKENNA: -- I admitted --

13 MS. BAKER: Yes, Your Honor, you have
14 admitted, if that is the question, yes. Your Honor
15 has admitted all of those exhibits. We have not yet
16 addressed all of those exhibits.

17 JUDGE MCKENNA: Right.

18 MS. BAKER: Yes.

19 JUDGE MCKENNA: And you are at liberty to do
20 so.

21 MS. BAKER: Thank you.

22 JUDGE MCKENNA: And I encourage you to do
23 so.

24 MS. BAKER: Thank you, Your Honor.

25 JUDGE MCKENNA: I was trying to speed things

1 up a little bit I don't know whether I did.

2 MS. BAKER: Thank you. We will be using
3 several of those exhibits in the afternoon. Thank
4 you.

5 JUDGE MCKENNA: Great.

6 MS. WEINBERG: Your Honor, just a point of
7 clarification. Are these any of the exhibits that
8 were withdrawn by Respondent's or are these the
9 exhibits that were already admitted?

10 MS. BAKER: No, they are not exhibits that
11 have been withdrawn. These withdrawn exhibits are
12 withdrawn.

13 MS. WEINBERG: Thank you.

14 MS. BAKER: These are exhibits that have been
15 admitted into evidence.

16 JUDGE MCKENNA: Okay. One o'clock. Before
17 you leave, I would like to take care of the striking.

18 MS. BAKER: Yes.

19 JUDGE MCKENNA: So that, that gets done. And
20 off the record.

21 (Lunch recess was had from 12:18 p.m. - 1:07
22 p.m.)

23 JUDGE MCKENNA: Back on the record.

24 Does Enforcement Counsel take the position
25 that -- or is -- do any of the exhibits break out the,

1 for the first-time payment, let's say that someone
2 borrows a hundred dollars and there is a thirty dollar
3 fee that's attached to that, all right.

4 Does the company -- does Enforcement Counsel
5 think that that is a violation if the --

6 LAW CLERK: I'm sorry I was just listening to
7 you.

8 JUDGE McKENNA: All right. Do you think it's
9 a violation if there is NSF, and they didn't call, and
10 they didn't pay, and they attempted to charge that
11 account thirty dollars and it's NSF.

12 MR. WHEELER: And the consumer hasn't -- has
13 paid nothing on the loan?

14 JUDGE McKENNA: Correct.

15 MR. WHEELER: I think our position is that
16 that would not be a violation. I think we have been
17 -- our position that is payments made above the total
18 of payments represents damages to the consumer.

19 JUDGE MCKENNA: Well that would be above what
20 is in the box?

21 MR. WHEELER: I thought your hypothetical that
22 is the consumer had paid nothing.

23 JUDGE McKENNA: Paid nothing.

24 MR. WHEELER: Right, so the only thing is
25 that --

1 JUDGE MCKENNA: And so there would be an
2 attempt to take thirty dollars out, he owes that
3 thirty because he didn't pay off the loan.

4 And then he owes a hundred and thirty more, so
5 it's a hundred and sixty total, right?

6 (Brief pause.)

7 MR. WHEELER: I guess I'm not a hundred
8 percent sure, Your Honor, I mean, I think we are -- I
9 mean, I think we are -- our concern is with amounts
10 paid to -- in excess of a total of payments.

11 JUDGE McKENNA: Well, in that case, if they
12 called on day fifty-five, said I want to pay it off,
13 the pay off would be a hundred and sixty, wouldn't it.

14 MR. WHEELER: Ah --

15 JUDGE McKENNA: Well, yeah, well there is the
16 rollover fee of thirty, plus there is the NSF fee, I
17 guess there is another one included in that.

18 MR. WHEELER: That you are saying to be
19 another NSF fee.

20 JUDGE McKENNA: Well, you have the rollover
21 fee.

22 MR. WHEELER: Right.

23 JUDGE McKENNA: How much is the NSF fee,
24 thirty. So, am I correct then it would be a hundred
25 and ninety that the person would owe? You have thirty

1 dollars for the initial loan, plus a hundred, so that
2 is a hundred and thirty.

3 And then they didn't pay it off within the
4 thirty days, so you got a rollover fee that brings it
5 up to a hundred and sixty.

6 And then there is -- when the company tried to
7 get the thirty dollars, and there was NSF on that,
8 then that would make it a hundred and ninety, right?

9 MR. WHEELER: In your hypothetical at this
10 point the consumer has paid nothing?

11 JUDGE McKENNA: Paid nothing.

12 MR. WHEELER: I guess I'm unsure the answer to
13 your question.

14 JUDGE McKENNA: Well, you take the position
15 that the rollover fee, the thirty dollars would be a
16 violation, because it's above what is in the box.
17 But, what about the NSF fee?

18 MR. WHEELER: I mean, yeah, I mean I think our
19 position is that all amounts paid over total of
20 payments represents a violation.

21 JUDGE McKENNA: But the agreement was that the
22 customer knew that he was going to have to pay at the
23 end of the month.

24 MR. WHEELER: True, I mean, I think
25 practically, that the volume of NSF fees is pretty

1 small, given the volume of payments that we are
2 talking about. I don't think that is going to
3 radically change the numbers.

4 JUDGE McKENNA: Well.

5 MR. WHEELER: I guess I'm, you know, I'm
6 trying to think through it. You know, obviously, I
7 wasn't, you know, prepared to address your question.

8 JUDGE McKENNA: All right. Well, do you need
9 to think through it? And I wanted to know whether
10 there are numbers in the record that kind of
11 identify -- so that is --

12 MR. WHEELER: I mean, I think it's a number
13 that we could calculate, Your Honor.

14 JUDGE McKENNA: All right.

15 MR. WHEELER: To sort of, I guess, subtract
16 out, if it is something you want us to subtract out,
17 NSF fees.

18 JUDGE McKENNA: And --

19 MR. WHEELER: I don't know if we have
20 generated that, sorry.

21 (Court conferring with law clerks.)

22 JUDGE McKENNA: Okay. So I guess that's what
23 I would like to know. It just didn't seem appropriate
24 to me that if they were, if they contract to have a
25 loan and they know that they are supposed to pay it

1 off in X date, and they don't and then the company
2 debits them thirty dollars to roll it over.

3 Then in addition to that they go over and put
4 it -- NSF charge the NSF charge seems to me to be an
5 appropriate charge that the company made against that
6 consumer.

7 MR. WHEELER: I think I understand your
8 question, Your Honor.

9 JUDGE McKENNA: All right. Now Ms. Baker
10 probably disagrees with me.

11 MR. CARNES: We agree with you.

12 MR. WHEELER: Yeah, I think --

13 MR. CARNES: We completely agree with you.

14 JUDGE McKENNA: All right. And at some point
15 in time, well right now is probably a good a time as
16 any. I want to -- if you take the Order that deals
17 with the CFPB Enforcement Counsel's exhibits. So are
18 you, are you not proffering 46 through 52?

19 MR. WHEELER: I believe that is correct, Your
20 Honor, we don't intend to proffer any additional
21 exhibits, that looks correct.

22 JUDGE McKENNA: Well, I just want it on the
23 record since you've rested, I mean that has to be your
24 answer, but...

25 All right. And 70 and 71.

1 MR. WHEELER: We don't intend to proffer
2 those, Your Honor.

3 JUDGE MCKENNA: Same for 74?

4 MR. WHEELER: Same answer, Your Honor.

5 JUDGE MCKENNA: Seventy-seven through 79?

6 MR. WHEELER: Oh, maybe. It's just you
7 admitted 81 yesterday, correct?

8 JUDGE MCKENNA: I thought that I just said 77
9 through 79?

10 MR. WHEELER: Oh, yes, but so 79, I'm sorry.
11 Seventy-nine is a large document and 81 is a subset.

12 JUDGE MCKENNA: Yes.

13 MR. WHEELER: So I was just clarifying that 81
14 was admitted yesterday, right?

15 JUDGE MCKENNA: Yes.

16 MR. WHEELER: Okay. So we are not intending
17 to proffer 77 through 79.

18 JUDGE MCKENNA: Okay. So we have 83, 84, 86,
19 and 89 and 90, that would seem to do it, are we in
20 agreement?

21 MR. WHEELER: Yes, Your Honor.

22 JUDGE MCKENNA: All right. Good. That is
23 done. Call your next witness.

24 MS. BAKER: Your Honor we call Ms. Miller,
25 Ms. Quinn Miller. And if I may approach the witness

1 stand just to tidy it up a bit before she takes it.

2 JUDGE MCKENNA: Of course.

3 MS. BAKER: Thank you, Your Honor.

4 (Witness takes the stand.)

5 JUDGE MCKENNA: Have you done this before?

6 THE WITNESS: No.

7 JUDGE MCKENNA: It's a lot of fun.

8 THE WITNESS: So I understand.

9 JUDGE MCKENNA: Okay. Please stand, raise
10 your right hand.

11 THE WITNESS: Sure.

12 **ELIZABETH QUINN MILLER,**

13 A witness produced on call of the Respondents,
14 having first been duly sworn, was examined and
15 testified as follows:

16 THE WITNESS: Yes.

17 JUDGE MCKENNA: Please be seated. State your
18 full name for the record.

19 THE WITNESS: Elizabeth Quinn Miller.

20 JUDGE MCKENNA: Proceed.

21 MS. BAKER: Thank you, Your Honor.

22 **DIRECT EXAMINATION**

23 BY MS. BAKER:

24 Q. Good afternoon, Ms. Miller. Could you please
25 tell us your current place of employment?

1 A. I work for the Office of the State Bank
2 Commissioner of the State of Delaware.

3 Q. What is your position in that office?

4 A. Investigative supervisor.

5 Q. And is there a particular unit that you work
6 in, meaning bank versus non-depository?

7 A. Non-depository.

8 Q. And what is a non-depository?

9 A. A non-depository is a financial business,
10 certain types of financial businesses that do not take
11 deposits, do not function as banks.

12 Q. Would a short-term small dollar lender or
13 payday lender be in the category of non-depository
14 institution?

15 A. Yes.

16 Q. And so you work in the capacity of overseeing
17 those types of institutions?

18 A. Define overseeing.

19 Q. Fair enough. What do you do with respect to
20 those types of institutions?

21 A. My staff investigates license applications,
22 and handles consumer complaints.

23 Q. And how long have you had your current
24 position?

25 A. In September it will be twenty-seven years.

1 Q. And before then, what did you do?

2 A. I was in retail banking.

3 Q. You were in retail banking. Were you in
4 retail banking in the Commissioner's Office?

5 A. No, I mean I worked for banks.

6 Q. I understand. And for how long did you work
7 for banks?

8 A. I don't know, maybe a decade.

9 Q. And if you can just tell us approximately how
10 many different banks you worked for?

11 A. Maybe four.

12 Q. What did you do for those different banks,
13 just generally?

14 A. Generally, a little bit of everything. I ran
15 the ATM system for one, I was a branch manager, I made
16 mortgage loans, I started out in credit card customer
17 service.

18 Q. Can you tell us your highest level of
19 education?

20 A. I have a four year degree.

21 Q. And what is your degree in?

22 A. Psychology and communications.

23 Q. That is a Bachelor of Arts or Bachelor of
24 Science?

25 A. Bachelor of Arts.

1 Q. And what do -- how -- can you give us a list
2 of all of your current job duties, and presumably have
3 you had the same job duties for the last twenty-seven
4 years?

5 JUDGE McKENNA: Just current right now.

6 MS. BAKER: Current is fine, thank you.

7 THE WITNESS: I supervise a staff of about
8 ten, review final recommendations on license
9 applications, pick up the slack wherever necessary,
10 review final recommendations on consumer complaint
11 resolution.

12 JUDGE McKENNA: Could you speak up.

13 THE WITNESS: Certainly, resolve complaints,
14 it all mashes in together, that is why it's hard to
15 list.

16 BY MS. BAKER:

17 Q. Thank you. This is a good list, thank you.

18 And is it fair to say that this -- these
19 groups of tasks or duties you just described, so
20 supervising staff of ten, reviewing final
21 recommendations of license applications, resolving
22 consumer complaints, that list has been or has
23 comprised your job duties for the last five years?

24 A. Yes.

25 Q. Would you say that would be true for the last

1 ten years?

2 A. Yes.

3 Q. So going back to, call it 2006?

4 A. Yes.

5 Q. Okay. You said that you review the final
6 recommendations for license applications.

7 A. From any investigators.

8 Q. From your investigators.

9 A. Part of my staff.

10 Q. The ten folks that you supervise.

11 A. Right, some of them are clerical, but yes, all
12 of the investigators are in that staff.

13 Q. How many investigators are there?

14 A. When we are fully staffed, it would be six or
15 seven.

16 Q. You said that you review the final
17 recommendations that they make concerning applications
18 for licenses, in a non-depository unit, is that right?

19 A. Yes.

20 Q. What is that process of renewing those license
21 recommendations entailing?

22 A. Renewing or ensuring?

23 Q. I'm sorry, reviewing the request for
24 applications that you are involved in reviewing.

25 Excuse me. What is involved in your task of

1 reviewing those recommendations?

2 A. Going over all of the information that has
3 been presented with the application, reading the
4 investigators analysis of it and their recommendation,
5 and seeing if I agree.

6 Q. And obviously, without going into any
7 specifics, can you give us a sense of instances or what
8 might trigger an instance when you would not agree with
9 a recommendation to accept a license?

10 A. There have been times when I have had
11 questions because of my review. I would go back to the
12 investigator, tell them what my questions are and they
13 proceed to continue to investigate.

14 Q. And again, I'm sensitive to the confidential
15 nature of what you do, so if you can give me a high
16 level understanding of an instance, for example, of
17 when you might have said to the investigator, as you
18 just represented, please go back and do more?

19 A. Let's see, sometimes it happens in financials,
20 the balance sheets and the profit and loss statements I
21 may pick up something that they missed. I may not
22 agree, they may think there is enough there and I may
23 think there isn't.

24 Sometimes I have questions about the
25 principles. I want to know something about their

1 experience that maybe I don't see in front of me. That
2 kind of thing.

3 Q. And when you say principal, just so we are
4 clear, you mean?

5 A. Executives, people who run the business that
6 is applying for the license.

7 Q. Thank you, Ms. Miller. Your office, it sounds
8 like from your description, is charged with licensing
9 what we described before as short-term small dollar
10 lenders; is that right?

11 A. Yes.

12 Q. How many, such, approximately, how much such
13 license lenders does your office over -- have licenses
14 for right now?

15 A. That particular type of license lenders in
16 general?

17 Q. I am -- thank you -- as to short-term small
18 dollar lenders, how many such entities, approximately,
19 would you say are licensed in the state of Delaware at
20 the moment?

21 A. Fifteen or twenty.

22 Q. And if I could ask you to go back in time a
23 little bit, and we will go back in time incrementally.
24 Starting with 2013, about how many were licensed,
25 short-term small dollar lenders?

1 A. I honestly don't know.

2 Q. Would it be more than today, or less than
3 today?

4 A. Probably more, I'm not sure when the reporting
5 requirements came in, third party reporting
6 requirements. Probably more.

7 Q. I'm going to ask you the same questions, going
8 back to 2008 and to the best of your ability if you can
9 try to approximate, and I understand it's an
10 approximation, and I'm calling on memory of going back
11 a number of years, I understand that. But if you can
12 do your best to give me a rough approximate of how many
13 licensed short-term small dollar lenders you believe
14 were in the state of Delaware in the year 2012?

15 MS. WEINBERG: Your Honor, I don't see the
16 relevance of this line of questioning.

17 THE WITNESS: I have no idea.

18 JUDGE MCKENNA: Overruled. All right. Let me
19 try and do it this way. What were the reporting
20 requirements?

21 THE WITNESS: I'm not exactly sure when it
22 came into effect, but, and it wasn't our idea. The
23 legislature decided that short-term small dollar
24 lenders needed to report their loans to, I think the
25 company is called Veritech, I have nothing to do with

1 that system, but I do know that it's happening. It's
2 fairly burdensome to the lender. So if they didn't
3 want to do it, they got out.

4 JUDGE McKENNA: And so that had a --

5 THE WITNESS: It had a negative impact on the
6 numbers.

7 JUDGE McKENNA: Right.

8 THE WITNESS: Right.

9 JUDGE McKENNA: And, do you remember year that
10 was done?

11 THE WITNESS: No, I don't. If I, when I get
12 back I could look it up. But, it's been fairly
13 recently, I don't know if it's been more than five
14 years, I kind of doubt it but I would have to check.

15 JUDGE McKENNA: All right. You could give it
16 to Ms. Baker, and she can get it into the record.

17 MS. BAKER: Thank you, Your Honor. And thank
18 you Ms. Miller.

19 BY MS. BAKER:

20 Q. I want to make sure I understand, I believe
21 there is a website link or a link on the website for
22 your office that has a list, it's like a registration
23 list, and it appears to be operated by this third party
24 vendor, Veritech, is that --

25 A. It could be.

1 Q. Okay. I -- it sounds like it might be the
2 same thing that you are referencing. Going back to the
3 line of questions to the best of your ability, and if
4 you don't recall you don't recall, how many licensed
5 short term small dollar lenders, approximately, do you
6 think might have been in the state of Delaware in 2011?

7 A. I don't know.

8 Q. Okay. I'm going to ask you for the other
9 years as well, you may or may not remember same for
10 2010?

11 A. I'm sorry, I just --

12 Q. Okay.

13 A. I don't memorize the numbers year by year.

14 Q. Thank you. I appreciate that. In connection
15 with a short-term small dollar lender obtaining a
16 license in the State of Delaware, can you walk us
17 through the steps that are involved in that process?

18 A. I can walk you through the steps of any
19 lender.

20 Q. And would it be different for short-term,
21 small dollar lender?

22 A. They use the same application.

23 Q. Okay.

24 A. There is an application, they submit it with
25 the information that is called for, along with an

1 investigation fee. We take the application now, this
2 is not, of course for anybody except mortgage
3 companies, but you are not involved in mortgage
4 companies, right.

5 We take the application, we go through all of
6 the information, if we have questions we go back to
7 them, back and -- it's a lot of back and forth. Once
8 we have everything that the application calls for and
9 that we need to consider, my investigator writes up
10 their recommendation and it comes to me, and I review
11 it.

12 Q. Now you said everything that the application
13 calls for and you qualified this at the beginning by
14 noting this is what any lender who is a non-depository,
15 and is licensed, or seeking a license in the State of
16 Delaware would need to complete, can you give us detail
17 about the types of things that an application for that
18 kind of license in your State requires?

19 A. We ask for financials, a balance sheet and a
20 profit and loss. We ask for, of course, all the
21 basics, address and all of that. We ask for business
22 references, we ask for the personal information, I say
23 personal information, it's name, position, resumes,
24 personal financial statements which is basically just a
25 balance sheet for the principles, the executives that

1 run the business.

2 We -- if they are going to have more than one
3 location, we ask them about managers of the other
4 locations. We ask various informational questions like
5 have any of their people ever been arrested -- ah, not
6 arrested but convicted, anybody go by an alias other
7 than married/maiden we don't worry about that.

8 Have they ever had like a license revoked,
9 something like that.

10 Q. Anything else?

11 A. That is basically it.

12 Q. If you were processing an application for a
13 lender would your office also seek some kind of copy of
14 the loan agreement?

15 A. Yes, we do. We try to get the loan contract
16 so we can have it on file we do not approve the
17 contract. Although, I know to look for certain things
18 that I might come up with questions about the contract.
19 But we don't actually rubber stamp it, and say it's
20 perfect, we don't approve it that way.

21 JUDGE MCKENNA: Do you ever make them change.

22 THE WITNESS: It depends on what I see. Once
23 in a great while, I -- it hasn't been often. I look
24 for things like the fed boxes.

25 JUDGE MCKENNA: Federal.

1 THE WITNESS: Right the four fed boxes where
2 they put the APR and all of that. And there are a
3 couple of things in our statute that I know need to be
4 in there, and they are usually right there with the
5 fed boxes right on the front. I can look for those
6 and make sure that, that part of our statute is being
7 adhered to.

8 JUDGE McKENNA: And what are they?

9 THE WITNESS: The most important one is if the
10 interest on the loan is calculated more or less up
11 front like, pre-computed and the loan gets paid off
12 early, they need to tell the consumer that they may be
13 entitled to a refund of some of that interest. It's
14 supposed to be pro-rated if that happens.

15 BY MS. BAKER:

16 Q. Ms. Miller, the application process that you
17 have just described, and the specifics of what the
18 application calls for, to use your language that you
19 just delineated for us, that is current that is
20 currently what State of Delaware looks for?

21 A. Um-hmm, yes.

22 Q. Was that the case, has that been the case for
23 the last five years?

24 A. Yes.

25 Q. Has it been the case for the last ten years?

1 A. Yes.

2 Q. So going back to 2006?

3 A. Yes.

4 Q. So -- and that would include looking at the
5 loan agreement itself as well?

6 A. Yes.

7 Q. In connection with -- excuse me Court's
8 indulgence. There is some feedback that I'm hearing
9 here, and I'm a little concerned it might be affecting
10 the quality of the recording. No? Okay, and you can
11 hear me fine?

12 A. Yes.

13 Q. Okay. Thank you. In connection with the
14 licensing process does your office also engage in
15 supervisory examinations?

16 A. That is not for me to comment on.

17 Q. Okay. So you -- the fact of it you can't even
18 acknowledge?

19 A. I am not -- we have an examination section in
20 the office.

21 Q. Okay. That is --

22 A. That is all I can say.

23 Q. I understand that. And that is all I'm going
24 to ask you. I understand and let me make sure the
25 record is clear about this. So I'm going to ask you a

1 couple of questions to clear the record up.

2 There is such an office in your office, but
3 the fact of an exam of an entity cannot be disclosed
4 and the contents of exams cannot be disclosed either,
5 both because they are subject to confidential
6 supervisory privileges maintained by your office. Is
7 that --

8 A. That is my understanding. I am not the expert
9 in that field.

10 Q. Okay. I'm going to -- just so the record is
11 clear, that is my understanding of your -- why you are
12 couching your conversation the way you are; is that
13 fair Ms. Miller?

14 A. Yes.

15 Q. Okay. Thank you. Are there ever instances
16 when a licensed entity, a deposit, a non-depository
17 lender seeks to renew its license?

18 A. Every year.

19 Q. And can you explain to us what that process
20 involves?

21 A. It's an abbreviated application, reiteration
22 of some of the original information, reiteration of
23 some of the original questions that we want to be sure
24 we have current information on. We have discovered
25 some things through renewal like, oh they have a new

1 vice president, or something like that.

2 But we do this every fall, and they send in the
3 abbreviated application, the fee, and it gets reviewed,
4 and we review them, you know unless we see some
5 horrendous problem, but at renewal that is highly
6 unlikely.

7 Q. Why do you say that?

8 A. Because it doesn't -- it hasn't happened.

9 Q. It's never happened that at renewal you have
10 seen a scenario where you have chosen not to renew a
11 license?

12 A. I have never had that situation come up.

13 Q. And do you have a sense of why that is?

14 A. No.

15 Q. You talk about an abbreviated application, and
16 I gather, are you are calling it abbreviated in
17 contrast to the more comprehensive application that is
18 filled out at the time a license is initially sought;
19 is that right?

20 A. Yes.

21 Q. Can you explain to us what the contents of an
22 abbreviated application are for license renewal?

23 A. I think the biggest difference is that we
24 don't ask for all lot of personal information, again,
25 of anybody that is running the business that we already

1 have on file.

2 Q. Everything else is more or less the same?

3 A. Pretty much.

4 Q. Okay? If a lender, a non-depository lender
5 who has a license that your office is charged with
6 either granting or renewing makes a change to its loan
7 application, is that something that your office sees,
8 that new loan or loan agreement? I'm sorry. Does your
9 office see that new loan agreement?

10 A. I don't believe we have a requirement that
11 says they have to submit that.

12 Q. So at what point would your office be involved
13 in looking at a loan agreement once a license has been
14 granted?

15 A. I would assume, not being the expert in this
16 area, that it would come up at examination, but I'm not
17 the one to ask about that.

18 Q. Okay. Thank you. Now the abbreviated
19 application process that you just described in
20 connection with seeking a license, a renewal of a
21 license, has that been more or less the way that
22 licenses get renewed in your office for the last five
23 years?

24 A. Yes.

25 Q. Same question as to the last ten years?

1 A. Yes.

2 Q. Going back to 2006?

3 A. Yes.

4 Q. Okay. Have there ever been any instances
5 where your office has revoked a non-depository lending
6 license?

7 A. Yes.

8 Q. Can you give us a sense of when that might
9 happen?

10 A. When a surety bond is cancelled and not
11 resolved by the licensee within the time limit.

12 Q. Any other reason?

13 A. Not that I can recall right now. I believe
14 they have all been because of the bond.

15 Q. And I understand you have -- you have
16 qualified your, the scope of your expertise and
17 knowledge with respect to your testimony here today.
18 But do you know if, for example, noncompliance with a
19 type supervisory directive could result in revocation
20 of a license?

21 MS. WEINBERG: Objection, she has already testified that
22 this is outside the scope of her knowledge.

23 JUDGE MCKENNA: Overruled.

24 THE WITNESS: I can't comment on that.

25 BY MS. BAKER:

1 Q. You can't comment on it?

2 A. On supervisory.

3 Q. If I told you that the statute describing your
4 office had that provision would you have any reason to
5 doubt it?

6 MS. WEINBERG: Objection, Your Honor. She is
7 not here as a legal expert, and she has already said
8 that she doesn't know about the --

9 JUDGE McKENNA: All right. Were you in the
10 courtroom the last couple of days, ma'am?

11 MS. WEINBERG: I think so.

12 JUDGE McKENNA: Yeah, and you heard me tell
13 Ms. Baker? Seriatim. Overruled. Overruled.

14 Well, I treat everybody the same, so if you
15 want to make an objection, you can make a continuing
16 objection, but I'm going to let her make her case to
17 the best of her ability.

18 MS. WEINBERG: Thank you, Your Honor.

19 MS. BAKER: Ms. Court Reporter, may I ask to
20 read back the last question I asked Ms. Miller.

21 Thank you.

22 COURT REPORTER: If I told you that the
23 statute describing your office had that provision,
24 would you have any reason to doubt it?

25 MS. BAKER: And did you hear her re-read?

THE WITNESS: Yes.

2 BY MS. BAKER:

3 Q. And that provision being the description I
4 said of noncompliance with a type of supervisory
5 directive letter?

6 A. If it's in the statute, I would have no reason
7 to doubt that, you telling me, that might be another
8 question.

9 Q. No, I'm just, if I said to you it was in the
10 statute you wouldn't doubt the statute?

11 A. I would not doubt the statute.

12 Q. Thank you. Do you have an understanding of
13 what a rollover is in the context of a short-term small
14 dollar loan?

15 A. Yes.

16 Q. What is your understanding, Ms. Miller?

17 A. That a consumer took out a short-term small
18 dollar loan, and rather than pay it all off at
19 maturity, they pay the interest and the principal of
20 the loan, more or less I guess a good word for it is
21 renews.

22 Q. And do you have an understanding about whether
23 or not the State of Delaware has a requirement that
24 there be a maximum number of renewals before principal
25 is paid in the instance of a short-term small dollar

1 loan?

2 A. I think, the statute says four.

3 Q. And?

4 A. But I would have to check that.

5 Q. Okay. And four, would it be four rollovers
6 before a principal has to be paid down in some amount?

7 A. I believe so. I would have to look at 2235.

8 Q. I have that statute with me, may I approach
9 the witness and refresh her recollection?

10 JUDGE MCKENNA: Yes.

11 MS. BAKER: I actually have copies for the
12 whole courtroom. So I will do that, if that is okay,
13 pass those out.

14 Permission to approach the witness, Your
15 Honor.

16 JUDGE MCKENNA: Granted.

17 MS. BAKER: Thank you. Ms. Miller, here you
18 go.

19 THE WITNESS: Thank you.

20 MS. WEINBERG: Your Honor.

21 JUDGE MCKENNA: Yes?

22 MS. WEINBERG: If I may be heard. I don't see
23 anything on this documents that indicates the
24 effective date of this.

25 MS. BAKER: I --

1 MS. WEINBERG: The law that was in effect at
2 the time that Integrity Advance was in operation.

3 MS. BAKER: Your Honor, I have that as well.

4 JUDGE McKENNA: Okay.

5 MS. BAKER: I, unfortunately only have a copy.
6 But I'm happy to represent to the Court, and I can
7 pass this up to Your Honor as well, that this
8 provision was approved July 9th, 2002 by the State of
9 Delaware according to the Delaware banking code. And
10 if you would like, Your Honor, I can publish this to
11 the Court, not to enter as an exhibit but for purposes
12 of refreshing the witness's recollection, and also
13 responding to Ms. Weinberg's question. But with the
14 Court's indulgence we will need to make copies.

15 JUDGE McKENNA: All right. I don't think we
16 need to do that now. Is that same statute materially
17 the same now?

18 MS. BAKER: Um, the provision that we are
19 discussing Your Honor is.

20 BY MS. BAKER:

21 Q. And specifically Ms. Miller, if I can take
22 your attention to 2235 large A, Short-term consumer
23 loans, do you see where I am?

24 A. Yes.

25 Q. Section A 2.

1 A. Yes.

2 MS. BAKER: And, Your Honor that is, in fact,
3 what I understand to have been promulgated by the
4 legislature in 2002.

5 JUDGE MCKENNA: Thank you. I mean, other
6 provisions of the code as well but that particular
7 provision. And, and Ms. Miller upon reading this,
8 does this refresh your recollection?

9 THE WITNESS: It's nice to know I was right.
10 BY MS. BAKER:

11 Q. You were right. Okay. Thank you.

12 And I'm going to read it into the record. It
13 says "No licensee," and a licensee would be a short
14 term small dollar lender who has a non-depository
15 license in the State of Delaware?

16 A. Correct.

17 MS. WEINBERG: And where are you reading?

18 MS. BAKER: I am reading from two -- 2235A,
19 short-term consumer loan subpart of subpart small A,
20 subpart 2.

21 JUDGE MCKENNA: Okay. Thank you.

22 MS. BAKER: Sure.

23 BY MS. BAKER:

24 Q. It says, "No licensee shall make more than
25 four rollovers of an existing short-term consumer loan.

1 A licensee may following not more than the maximum
2 allowable number of rollovers, enter into a workout
3 agreement with the borrower, or take such other actions
4 as are lawful to collect any outstanding and unpaid
5 indebtedness," is what you are referring to? That
6 provision we were just discussing about four rollovers?

7 A. Oh, when I mentioned 2235 A, yes.

8 Q. Okay. Thank you. Ms. Miller, you have in
9 front of you a small black, well it's not super-small,
10 but it's smaller than the two white binders next to
11 you, you have in front of a black binder, right next to
12 your right arm if you can turn it to tab 11 please?

13 A. I warn you I don't have my reading glasses on.

14 Q. Okay. Well, thank you.

15 MS. BAKER: And Your Honor, it's Respondents
16 Exhibit 11, and I believe you should have a copy of
17 our exhibit binder.

18 JUDGE MCKENNA: Yes.

19 BY MS. BAKER:

20 Q. Ms. Miller, I have in front of me a letter
21 that appears to be dated December 28th, 2010. Do you
22 see that?

23 A. Yes.

24 Q. And it appears that, it looks like you signed
25 this letter, is that right?

1 A. My signature may have been put in there.

2 Q. But, but --

3 A. And I'm familiar with the letter.

4 Q. And it's -- and you are E. Quinn Miller?

5 A. Yes.

6 Q. Investigative supervisor? So, it is fair to
7 say this letter would have been sent from your office?

8 A. Yes.

9 Q. And do you see that this letter concerns the
10 renewal of a licensed lender license for Integrity
11 Advance LLC?

12 A. Yes.

13 MS. BAKER: Your Honor, I'm move to admit
14 Respondent's Exhibit 11 into the record. It may
15 already be admitted.

16 MS. WEINBERG: No objection, Your Honor.

17 JUDGE McKENNA: It's already admitted.

18 BY MS. BAKER:

19 Q. And if I could just read the second paragraph
20 and third paragraph, mindful that you said you don't
21 have your reading glasses, so I will read it into the
22 record. And you can tell me if you think that there is
23 any reason to believe that what I'm reading isn't --
24 wouldn't be correct, Ms. Miller.

25 It says, "After review of said application, I

1 am happy to inform you that Integrity Advance, LLC has
2 been granted renewal for licensure under Chapter 22,
3 Title V, Delaware code?"

4 Is Chapter 22, Title V, Delaware code -- I
5 know you are not an attorney, but is that the lending
6 license code?

7 A. That is the License Lenders Act.

8 Q. So is it fair to say that that is what this is
9 referencing, in the -- the license for a lending
10 license in the State of Delaware is renewed?

11 A. Yes, yes.

12 Q. And then it says, "Enclosed you will find
13 licensed -- license number for the term January 1, 2011
14 through December 31, 2011", do you see that, maybe?

15 A. Yes I'm looking at the wording in the middle
16 of that, I'm going to get them to change that.

17 Q. So, is it your understanding that this letter
18 dated at the end of 2010 is confirming that Integrity
19 Advance has a lending license renewed for the year
20 2011?

21 A. From the date of letter, yes, that's correct.

22 Q. And it also says, in the letter, it says that
23 your license has been renewed, or it references a
24 license number granted for the term January 1, 2011,
25 through December 31th, 2011 so that would be the year

1 2011?

2 A. That would be the year 2011.

3 Q. Now you previously, a few minutes ago
4 testified about the license renewal process, do you
5 have any reason to think that as it relates to this
6 business, that would have been any different than the
7 process you described?

8 A. No.

9 Q. And is it fair to say that if this business
10 was renewing a license, it would have initially had an
11 application in for a license at an earlier time?

12 A. Yes.

13 Q. And is it fair to say, or do you have any
14 reason to think that the application process that would
15 have been associated with granting Integrity Advance an
16 initial license would be any different than what you
17 just described earlier in your testimony?

18 A. No.

19 Q. Ms. Miller, if I can ask you to flip the page
20 to the next document please, behind tab 12. And this
21 is Respondent's Exhibit Number 12? And I have what
22 appears to be a letter dated January 5th, 2012, do you
23 see that Ms. Miller?

24 A. Kind of.

25 Q. Take my word for it, that it's January 5,

1 2012?

2 A. Yes.

3 Q. Thank you. And at the bottom it looks like it
4 says, "Sincerely, E. Quinn Miller, Investigative
5 Supervisor", would that be you?

6 A. Yes.

7 Q. And it looks like, again, this letter concerns
8 application for Integrity Advance, LLC, do you see
9 that? That's not, and I'm referencing the second full
10 paragraph on this page?

11 A. It would appear to reference an application
12 for renewal.

13 Q. Exactly.

14 A. Right.

15 Q. Thank you and then the business at issue is
16 Integrity Advance?

17 A. Yes.

18 MS. BAKER: Your Honor, I move this exhibit
19 into evidence formally, I think it's already in.

20 JUDGE MCKENNA: It's already in.

21 MS. BAKER: Thank you.

22 JUDGE MCKENNA: All of your exhibits are in
23 that have been tendered to me.

24 MS. BAKER: Thank you.

25 BY MS. BAKER:

1 Q. Now Ms. Miller, if I can just read the second
2 paragraph of this letter, it says, "After review of
3 said application I'm happy to inform you that Integrity
4 Advance, LLC has been granted renewal for licensure
5 under Chapter 22 Title V." And do you sort of see
6 that?

7 A. Yes.

8 Q. And again, same question, it's fair to say
9 that this addresses or this concerns the provision of
10 the code that enables a non-depository lender to have a
11 license in the State of Delaware?

12 A. Yes.

13 Q. For lending purposes?

14 A. Yes.

15 Q. Third paragraph, "Enclosed you will find
16 licensed -- license number for the term January 1, 2012
17 through December 31st, 2012." Do you see that
18 paragraph?

19 A. Yes.

20 Q. And is your understanding that this paragraph
21 is essentially renewing Integrity Advance's license to
22 lend in the State of Delaware for the year 2012?

23 A. Yes.

24 Q. And you testified a few minutes ago that you
25 went through the process involved in renewing a loan

1 application, in the non-depository unit that you work
2 in, do you recall that testimony? Renewing a loan --

3 A. You mean a loan application?

4 Q. I'm sorry, a loan application, forgive me, a
5 license application, do you recall that testimony?

6 A. Yes.

7 Q. And do you have any reason to think that that
8 renewal process would not be applicable here as well,
9 would not have been followed?

10 A. No.

11 JUDGE McKENNA: Given the fact that these are
12 admitted, are there -- is that the last one?

13 MS. BAKER: That is the last exhibit I was
14 going to introduce through Ms. Miller, yes.

15 JUDGE McKENNA: All right. Thank you.

16 MS. BAKER: No further questions, thank you.

17 **CROSS-EXAMINATION**

18 BY MS. WEINBERG:

19 Q. Good afternoon, Ms. Miller. How often are
20 applications for licenses by payday lenders or short
21 term dollar lenders denied by your office?

22 A. I do not recall ever denying one.

23 Q. Okay. You mentioned that your office handles
24 consumer complaints?

25 A. Yes.

1 Q. Do you recall ever receiving consumer
2 complaints against Integrity Advance?

3 A. I do not recall.

4 Q. I want to focus my questions for just the time
5 period from 2008 to 2013, so that there is no confusion
6 in the record, every question that I'm about to ask
7 you, if you can look back to that time period, to try
8 to answer the question, if you can.

9 Okay, and I'm looking for the entire period if
10 there is any change in your testimony during that
11 entire period, I would ask you to tell me.

12 Is that doable or do you want me to go through
13 it year by year?

14 (No audible response.)

15 All right. Let's give it a whirl.

16 JUDGE MCKENNA: You have to say -- you have to
17 answer.

18 THE WITNESS: I will try.

19 BY MS. WEINBERG:

20 Q. Okay. From that period, from 2008 to 2013,
21 did Delaware require short term lenders to
22 automatically rollover their customer's loans?

23 A. No.

24 Q. So, a short term lender could comply with
25 Delaware law, and require payment in full at a next, at

1 the pay at the next payday of the consumer?

2 A. Yes.

3 Q. Okay. Did -- again the same period -- did
4 Delaware require payday lenders to offer the option of
5 rollovers?

6 A. No.

7 Q. So a lender could comply with Delaware law
8 without offering the option of rollovers, is that
9 correct?

10 A. Yes.

11 JUDGE McKENNA: And under what auspices would
12 that procedure be, paying off at the end of the term?

13 MS. WEINBERG: All right. I'm just asking
14 if --

15 JUDGE McKENNA: I'm asking you. If you say
16 did Delaware require, then the question -- and she
17 says no, then there would be some set of circumstances
18 that that no would apply to.

19 Because if they didn't pay it off during term,
20 then the answer might be that the rollover provisions
21 would kick in; is that correct?

22 THE WITNESS: We permitted them, we did not
23 require them.

24 JUDGE MCKENNA: All right. And so if they had
25 a loan, it went to term, they didn't pay it off, then

1 the lender could either attempt to get full payment or
2 they could roll it over?

3 THE WITNESS: Correct.

4 JUDGE McKENNA: And under Delaware law, you
5 couldn't roll it over more than four times?

6 THE WITNESS: Correct.

7 JUDGE McKENNA: All right.

8 BY MS. WEINBERG:

9 Q. Ms. Miller, just to clarify, was the ability
10 for a consumer to rollover their loan required by
11 Delaware law or is that something that some lenders put
12 in as an option in their loan agreement?

13 A. I can't speak for all of the loan agreements.
14 I can tell you that we permitted that option, we didn't
15 prohibit it in the statute, nor did we require it.

16 Q. And when you are talking about "it," you are
17 talking about rollovers?

18 A. Rollovers.

19 Q. Did Delaware law, again 2008 to 2013, require
20 the use of certain loan agreements between short-term
21 lenders and their customers?

22 A. We did not have a specific loan agreement put
23 together just for short-term lenders, no.

24 Q. And did short term lenders in Delaware during
25 that time period use different loan agreements?

1 A. They would have had to adhere to certain
2 federal standards, as I mentioned earlier, I always
3 looked for the fed boxes, things like that.

4 Of course I'm not an expert in that, but I do
5 know certain things. There are certain rules that all
6 lenders need to follow. But we did not give anybody a
7 blue print, or a form, or anything like that. They
8 sent us their form.

9 Q. Did Delaware set the fees that payday lenders
10 could charge?

11 A. No.

12 Q. Did all of the payday lenders that were
13 licensed by your office during this time period charge
14 the same fees to their customers?

15 A. I would have to research that to be sure, but
16 I don't believe so.

17 Q. Did your office provide a loan agreement for
18 Integrity Advance to use with its customers?

19 A. No.

20 Q. Did your office tell Integrity Advance that
21 they had to use a particular agreement?

22 A. No.

23 Q. Did your office look for compliance with
24 Electronic Funds Transfer Act a federal law?

25 A. No.

1 Q. Did your office look to see whether contracts
2 were clear and conspicuous as defined by the Truth in
3 Lending Act?

4 MS. BAKER: I'm going to object, on the
5 grounds that they are -- these questions are very
6 specific legal conclusions that Ms. Weinberg appears to
7 be seeking from this witness who hasn't been proffered
8 as a legal expert.

9 JUDGE MCKENNA: I understand, overruled.

10 THE WITNESS: Are you talking about in the
11 licensing application process?

12 BY MS. WEINBERG:

13 Q. As part of -- only as -- only sticking with
14 your duties, your office --

15 A. Okay. Um-hmm.

16 Q. -- and the licensing. So and also again, I
17 just want to cabin you to 2008 to 2013.

18 A. Okay. Not specifically.

19 Q. Okay. And when you say that your office
20 looked at the fed box, can you be more specific about
21 what you meant by that phrase?

22 A. Actually, I said I look at the fed box.

23 Q. Oh, I'm sorry, thank you for the correction.

24 A. It happens to be knowledge that I happen to
25 have.

1 Q. So --

2 A. I look to see that the num -- that they are
3 disclosing the numbers that they are supposed to. And
4 that's in a separate area, basically, that is it, very
5 basic.

6 Q. And when you say that they are disclosing the
7 numbers that they are supposed to, are you saying --

8 A. The annual percentage rate, the total of
9 payments, things like that.

10 Q. And were you checking to see if their
11 calculations were correct based on the numbers in those
12 boxes.

13 A. That we did with small term -- short-term
14 small dollar lenders, yes.

15 Q. And is that what you meant by checking the
16 numbers in the box?

17 A. No.

18 Q. What did you mean?

19 A. I, that -- I was just eyeballing the form when
20 I said that. But we did check the APR's.

21 Q. So when you said checking the federal box you
22 were -- you meant you were eyeballing the forms to see
23 if there was a Truth in Lending box that was separate?

24 A. Yes.

25 Q. And that was what you meant by looking at the

1 fed box?

2 A. Yes.

3 Q. And that was the extent of your office's
4 review?

5 A. It was the extent of my review. We didn't
6 specifically ask them or, you know, have anything in
7 our application about do you have your fed boxes.

8 That kind of thing, I just happen to know some
9 things to look for, and sometimes you can catch a
10 problem and it saves everybody a lot of time.

11 Q. Did your office, the licensing office, then
12 look at -- in granting a license look for compliance
13 with federal law other than seeing if there was a fed
14 box?

15 A. The only thing we did was check the annual
16 percentage rate.

17 Q. And what do you mean you checked it?

18 A. We had them submit a couple of Truth in
19 Lending forms, usually the front page of the loan
20 contract, with numbers filled in, make believe
21 customers that we could run through a program that we
22 had from the Office of the Comptroller of the currency.
23 And that program will tell you whether or not the APR
24 is within tolerance.

25 Q. So then is it fair to say that your

1 examination of the fed box would be to take the numbers
2 supplied by the company and see if their calculation of
3 the APR was correct as determined by running it through
4 a calculator from another -- from a federal agency?

5 MS. BAKER: Objection that mischaracterizes
6 the witness's testimony, the use of the word
7 examination.

8 MS. WEINBERG: Your review, excuse me. Thank
9 you.

10 THE WITNESS: My investigators running the
11 annual percentage rate through the program is
12 something my investigators do automatically, I mean,
13 they know that is part of the investigation. Me
14 eyeballing the contract, that is just me looking at
15 the contract.

16 BY MS. WEINBERG:

17 Q. And did your office, or you in reviewing the
18 application review what numbers should be in the fed
19 box other than the calculation that you testified that
20 you reviewed?

21 A. By what numbers -- I'm sorry I don't
22 understand.

23 Q. Did your office look at what should be
24 included as the total of payments other than looking to
25 see what was a mathematically correct calculation based

1 on the numbers that were in the Truth in Lending box?

2 A. The only math we did on that was for the APR,
3 we didn't try to figure anything else.

4 Q. Okay. Thank you that is helpful.

5 MS. WEINBERG: No further questions, thank
6 you.

7 JUDGE McKENNA: All right.

8 MS. BAKER: No further questions, thank you
9 Ms. Miller.

10 JUDGE McKENNA: Thank you, very much.

11 THE WITNESS: Thank you. Your Honor?

12 JUDGE McKENNA: Yes?

13 THE WITNESS: May I leave?

14 JUDGE McKENNA: No. You have to stay around
15 until tomorrow.

16 THE WITNESS: You are paying my hotel bill?

17 JUDGE MCKENNA: You may leave.

18 THE WITNESS: Thank you.

19 MS. BAKER: Thank you.

20 JUDGE MCKENNA: Off the record.

21 (Brief recess.)

22 MS. CHUM: Good afternoon, Your Honor.

23 JUDGE MCKENNA: Back on the record.

24 All right. Dr. Ang, you want to resume the
25 stand?

1 (Witness takes the stand.)

2 JUDGE McKENNA: As I understand it,
3 Mr. Wheeler, you are going to do a preliminary cross
4 and then you are going to notify the Court in five
5 days of whether you want to submit any rebuttal
6 documents to Dr. Ang's exhibits and whether you want
7 to do further cross on her.

8 MR. WHEELER: Yes, Your Honor, thank you.

9 JUDGE McKENNA: All right.

10 MS. CHUM: Good afternoon, Dr. Ang.

11 THE WITNESS: Good afternoon, Ms. Chum.

12 **DOCTOR XIAOLING LIM ANG**

13 **CROSS-EXAMINATION**

14 BY MS. CHUM:

15 Q. Earlier today, you testified that you looked
16 at samples to validate numbers, you recall that?

17 A. Yes.

18 Q. I believe you stated you looked at loan level
19 data?

20 A. So, I believe that that was a separate
21 question, that wasn't relative to this analysis, this
22 -- that was a more global question about my previous
23 experience.

24 Q. So --

25 A. Could you please clarify?

1 Q. Let's just go back here. Did you confine your
2 analysis in this matter to data submitted as
3 Enforcement Counsel Exhibit 95 and Exhibit 101?

4 A. Yes, in fact, it was confined to Exhibit 101.

5 Q. And do you recall if you used the term loan
6 records?

7 A. Perhaps, I don't, I don't recall precisely.

8 Q. You stated that you looked at loan records?

9 A. Well all of these records are loan records.
10 Aren't they.

11 Q. I just want to understand what you mean by
12 loan records?

13 A. Any records, are any line of data in a data
14 set about loans.

15 Q. So when you refer to loan records, did you
16 refer to -- were you meaning that you were looking at
17 lines of transaction data in Exhibit 101?

18 A. Well, in this case yes, loan records can be
19 anything from an origination file, to a transaction
20 file, to basically any form of data kept on loans.

21 Q. But in this case, you confined your review of
22 loan records to records in Exhibit 101?

23 A. Correct.

24 Q. Ms. Ang -- Dr. Ang, do you agree that total of
25 payments is equivalent to the principal plus the first

1 finance charge of every loan associated with a
2 consumer?

3 MS. FOLEY: Objection, vague.

4 JUDGE MCKENNA: Overruled.

5 THE WITNESS: So the total of payments, as
6 Mr. Hughes as has defined it in his analysis, yes, is
7 the principal plus the finance charge. However, I
8 would caveat that by the fact that we are talking
9 about a replication of Mr. Hughes's analysis. And so
10 we are speaking in the very narrow confines of that
11 context.

12 BY MS. CHUM:

13 Q. So you take no -- do you take any position as
14 to a definition of total of payments?

15 MS. FOLEY: Objection.

16 THE WITNESS: That was not within the scope of
17 my assignment.

18 BY MS. CHUM:

19 Q. I'm turning now to your -- to Respondent's
20 Exhibit 19. Do you have that in front of Dr. Ang?

21 A. Yes, I do.

22 Q. Let's look at the total paid, that first line.

23 A. Yes.

24 Q. Where it says, "principal plus final fees plus
25 additional fees."

1 When you calculated the total paid, in that
2 first row on Exhibit 19, you included all payments made
3 by a consumer?

4 A. I did to replicate Mr. Hughes's analysis.

5 Q. And that number includes payments made by any
6 consumers who paid over the life of the loan less than
7 the amount of the principal plus the first finance
8 charge?

9 A. It does, but once again it is parallel with
10 Mr. Hughes's analysis.

11 Q. So let's look at the second line.

12 A. Okay.

13 Q. The total of payments.

14 A. Uh-huh.

15 Q. Do you see how -- do you see with me, that the
16 CFPB's number you have put here, one hundred forty
17 million five hundred three thousand five hundred
18 sixty-eight and seventy-seven cents, and the adjusted
19 -- the Respondent's is one hundred fifty million one
20 hundred fourteen thousand thirty-six dollars and
21 forty-seven cents?

22 A. Yes.

23 Q. Okay. When you calculated the total of
24 payments, you summed the amount of the principal lent,
25 plus the total amount of the first finance charge

1 charged to every loan, and that is for your
2 calculation?

3 A. Yes.

4 Q. So for your calculation a person who did not
5 pay back the principal, plus the first finance charge,
6 was their loan included in your calculation of total
7 payments owed in the -- in line two?

8 A. So, I would say that it depends. There are
9 two class of consumers that we can think of in that
10 case, we can think of the people who have made zero
11 payments, and people who have made a positive payment,
12 but not necessarily a full payment, or a payment larger
13 than the TILA box amount.

14 The -- the consumers who did make less than
15 what could be considered the TILA box amount were still
16 included in that calculation. And as you can see from
17 our footnotes, basically, we don't really have any
18 guidance to compare what is in the CFPB's estimate to
19 ours. There were no footnotes that clarified this on
20 the CFPB's exhibits.

21 Q. So let me just get this clear, you did not
22 include consumers who did not make any payment?

23 A. That is correct.

24 Q. But you did include consumers who made a
25 payment towards their loan, but who paid less than the

1 total of payments?

2 A. Yes.

3 Q. Okay, so is the total of payments that you
4 calculated the amount that the consumers owed, or the
5 amount that they actually paid?

6 A. Could you please clarify?

7 Q. What was your -- when you -- when you
8 calculated your total of payments what did you consider
9 to be a total of payments?

10 A. I followed Mr. Hughes's lead, and took --
11 wait, total of payments, sorry, I was thinking of total
12 paid. This terminology is a little bit confusing, and
13 I apologize to Your Honor, we just followed the CFPB's
14 lead in this. So, for total of payments we considered
15 the -- what we assumed Mr. Hughes meant in his
16 declaration, by the first record being the principal,
17 and the subsequent record and we caveated this with
18 taking a positive record because, missing values are
19 also coded as zeros in our data --

20 COURT REPORTER: What, I'm sorry, what is coded
21 as zeros?

22 THE WITNESS: Missing values are also coded as
23 zeros, so we took the first nonzero value of the
24 finance charge as our finance charge.

25 BY MS. CHUM:

1 Q. All right. Going back to the second line, and
2 you had said that you included consumers who paid less
3 than the total of payments in that one hundred fifty
4 million number. So when you subtracted -- okay, did
5 you subtract the total of payments from total paid to
6 get to line three of exhibit 19?

7 A. Yes.

8 Q. And when you subtracted the total of payments,
9 from the total paid, to get to line three, you included
10 -- so you included people who had not paid the
11 principal plus one finance charge?

12 A. Yes but not people who did not pay at all.

13 Q. So for people who had paid less than the total
14 of payments, if a new customer had a hundred dollar
15 loan, you would have included a hundred and thirty for
16 that customer in line two if they had a thirty dollar
17 finance fee, even if they had not paid the total of
18 payments?

19 A. I'm sorry, I'm confused as to what you mean by
20 thirty dollar finance fee. Is that paid by the
21 consumer? Can you please clarify, Ms. Chum?

22 Q. Okay let's say a new consumer has a hundred
23 dollar loan?

24 A. Okay.

25 Q. And the finance fee on top of that hundred

1 dollar loan was the thirty dollars?

2 A. Okay. So that is loan contract?

3 Q. Yes, and the total of payments per what our
4 understanding of total payments is is that hundred
5 dollar loan principal plus the thirty dollars to equal
6 a hundred thirty dollars.

7 A. Are you telling me or asking me?

8 Q. Is that correct?

9 A. Yes.

10 Q. So if the -- a consumer had only paid sixty
11 dollars on that loan, you still would have subtracted a
12 hundred and thirty dollars out of the total, you still
13 would have assumed that that customer who had paid
14 sixty dollars had actually paid a hundred thirty
15 dollars?

16 A. I would not have assumed they paid a hundred
17 and thirty dollars, I would have assumed they paid
18 sixty dollars.

19 Q. So in assessing the total of payments --

20 A. Um-hmm.

21 Q. -- you would have assessed sixty dollars
22 towards the total of payments and not a hundred thirty
23 dollars in line two, of Exhibit 19; is that correct?

24 A. Sorry, can we start this again?

25 I would appreciate greater precision around

1 the language. Can you please repose the question,
2 Ms. Chum?

3 THE WITNESS: I'm sorry Your Honor, I'm just
4 confused by the way the questions were asked --

5 MS. CHUM:

6 Q. All right. In looking at line three, "the
7 total paid above the total of payments" you simply
8 subtracted the total paid, that is line one, from the
9 second line, total of payments; is that correct?

10 A. No, that is not correct then we would have a
11 negative 123.8 million.

12 Q. Let me miss -- restate. You simply subtracted
13 the total paid two hundred -- you subtracted the total
14 of payments from the total paid?

15 A. Yes.

16 Q. For a positive 123.8 million?

17 A. Yes, that is correct.

18 Q. In your total of payments you included
19 consumers who had actually -- you included loans that
20 -- where consumers had paid less than what we have
21 designated as total of payments on a loan?

22 A. That is correct.

23 JUDGE MCKENNA: In other words, they didn't
24 pay it off.

25 MS. CHUM: Yes, so they didn't --

1 BY MS. WEINBERG:

2 Q. Is that correct?

3 THE COURT REPORTER: Pay it off or pay it all?

4 JUDGE McKENNA: Pay it off. There was still a
5 residual.

6 THE WITNESS: Yes, but a nonzero residual.

7 MS. CHUM:

8 Q. So the total paid, line one, would have been
9 sixty dollars?

10 A. Okay.

11 Q. For that one consumer.

12 And total of payments, line two, you would
13 have put as a hundred and thirty dollars?

14 A. Yes.

15 Q. But in line two, for that consumer who paid
16 sixty dollars, did you assume that the consumer's total
17 of payments there would have been a hundred and thirty
18 dollars?

19 A. Yes.

20 Q. So you would have over counted when you
21 subtracted the hundred thirty dollars from the total
22 paid?

23 A. What would I be over counting? Negative
24 numbers are also valid values.

25 Q. Dr. Ang, what do you think that you -- that

1 Mr. Hughes did that was incorrect in calculating his --
2 the total of payments?

3 A. So, I can't speak to what Mr. Hughes has done,
4 precisely, because we received turnover at 8:00 p.m.
5 last night, which seemed kind of odd because we have
6 had the exhibits for a while.

7 But, what I can say is that when we were
8 vetting the data, when we were doing our analysis, it
9 seemed odd to us that this number didn't seem
10 compatible with what we understand the loan product to
11 be.

12 At least in the proportionality, and we did
13 run it separate ways. We did run it only with positive
14 net differences between the payments, and we still
15 ended up with numbers that are larger than his for the
16 total of payments, and therefore smaller than his for
17 the difference of total paid minus total of payments.

18 Q. Dr. Ang, would you turn with me now to
19 Respondent's Exhibit 24?

20 A. Sure.

21 Q. Okay. Look with me now to the second line
22 which reads, "excluding all loans to repeat customers
23 whose first loans were renewal loans?"

24 A. Okay.

25 Q. Do you see that?

1 A. Yes, I do.

2 Q. Did you calculate that number by summing up
3 the amounts paid above the total of payments for all
4 loans of returning consumers who rolled over their
5 first loan?

6 JUDGE McKENNA: Who rolled over or ruled over?

7 MS. CHUM: Rolled over.

8 THE WITNESS: Um, yes, I did.

9 MS. CHUM:

10 Q. Did you include those consumers first loan in
11 that total?

12 A. I did. Ah the -- to be clear, exhibit 24 line
13 two clearly states, "Excluding all loans to repeat
14 customers whose first loans were renewal loans."

15 JUDGE McKENNA: All right. We are going to
16 take a ten minute break, so I can do some temperature
17 work.

18 (Brief recess.)

19 JUDGE McKENNA: Back on the record.

20 MS. CHUM:

21 Q. Doctor, directing your attention again to
22 Respondent's Exhibit 24.

23 Did you derive the third line, the total paid
24 above total of payments for one time loan and repeat
25 borrowers by subtracting the second line from the first

1 line.

2 A. Yes, I did.

3 MS. CHUM: No further questions.

4 JUDGE McKENNA: Okay. Anything further?

5 MS. FOLEY: Very briefly, Your Honor.

6 JUDGE McKENNA: Sure.

7 **REDIRECT EXAMINATION**

8 BY MS. FOLEY:

9 Q. Dr. Ang, your analysis was based on a
10 replication of Mr. Hughes's calculations, correct?

11 A. That's correct.

12 Q. And you are not here endorsing Mr. Hughes's
13 calculation of 273,926,407.60 as the right starting
14 place are you?

15 A. No, I am not.

16 MS. FOLEY: Nothing further.

17 JUDGE McKENNA: All right. Anything further?

18 MS. CHUM: No further questions, Your Honor.

19 JUDGE McKENNA: All right. Thank you.

20 THE WITNESS: Thank you very much.

21 JUDGE McKENNA: Nice to meet you.

22 THE WITNESS: Nice to meet you as well.

23 JUDGE McKENNA: All right. We have already
24 set out the briefing schedules. We are going to get
25 some additional pleadings. We might have some more

1 proceedings, depending upon how the thing ends up
2 being structured, probably is going to be telephonic.
3 If we need to get both experts together in a panel,
4 and then I want to be sitting there.

5 So any other issues before I talk to counsel?

6 MS. BAKER: Your Honor, we have two additional
7 motions that we would like to make. And we can make
8 them now or we can make them after you speak with me.

9 JUDGE MCKENNA: No. You can make them now.

10 MS. BAKER: I'm going to make one motion and
11 my colleague, Mr. Frechette is going to make another.

12 The first motion that we would like to renew
13 is the motion to strike Mr. Baressi's testimony from
14 yesterday. And I know Your Honor noted my objections.
15 But the reason we are formally seeking to have his
16 testimony struck is because notwithstanding the fact
17 that Your Honor was able to hear him and make any
18 credibility determinations on the grounds that Your
19 Honor would make from hearing a witness like that,
20 this is a record that goes up to the director of this
21 agency and may go up further to the DC circuit. And
22 we would like his testimony struck for the following
23 three reasons: First of all, Mr. Baressi is neither a
24 lay opinion witness nor an expert witness and there
25 are no real rules for the rules of adjudication in

1 this court and so we ask that Your Honor consider the
2 federal rules of evidence as a good a guidance as any.
3 And Rule 701, which governs the proffering of lay
4 opinion is very clear that if a lay opinion witness is
5 offered, that person cannot be proffering opinions
6 that come solely from his or her technical or
7 professional expertise.

8 JUDGE McKENNA: Or a world expertise, Kumho
9 Tire.

10 MS. BAKER: Well, Kumho Tire concerns Daubert
11 motions for 702 experts. That's right, Your Honor,
12 and that's my next argument. Thank you. That's
13 precisely the argument, which is you can't proffer a
14 lay opinion witness and say this person is offering a
15 lay opinion and the basis for that opinion comes only
16 from that person's professional expertise. That's
17 called an expert witness.

18 And Mr. Baressi was not proffered as an expert
19 witness in this matter. And the Office of Enforcement
20 has been on notice since November that this is an
21 argument that they intend to make about remotely
22 created checks, so they certainly had adequate
23 opportunity to proffer any expert that they would have
24 wanted to proffer as to that issue.

25 JUDGE McKENNA: Yeah, but you know what they

1 said in Kumho Tire about when you proffer a witness
2 who is a lay witness, you know, he can give testimony
3 which crosses the line through his personal
4 experience, and so, you know, but I will take your
5 motion under advisement.

6 MS. BAKER: Well, thank you, Your Honor. I
7 understand Kumho Tire. I also understand Daubert,
8 which is a case that I understand maybe comes a little
9 after Kumho Tire.

10 JUDGE McKENNA: I thought it was the opposite.

11 MS. BAKER: Or maybe it is the opposite, but
12 they are often read together as Your Honor knows, and
13 in Daubert, of course, the argument is that if someone
14 is proffered as an expert, they have to actually offer
15 testimony that would meaningfully assist the finder of
16 fact in a way that that finder of fact may not
17 otherwise have the requisite expertise at his or her
18 hands. I don't even think we get there here.

19 JUDGE McKENNA: Maybe not. That's why it
20 didn't cite Daubert because it was modified by Kumho
21 Tire and it specifically deals with that subject
22 versus where you have Daubert is a little more
23 constrictive.

24 MS. BAKER: And I appreciate that. Thank you,
25 Your Honor. Nevertheless, we still seek to strike his

1 testimony.

2 JUDGE MCKENNA: And I will take it under
3 advisement.

4 MS. BAKER: The last reason we seek to strike
5 his testimony is that it's really unduly prejudicial
6 and had de minimis probative value, frankly. There
7 was very little that he said that this Court could not
8 have taken notice of from the articles that were
9 proffered as evidence into the record.

10 He merely offered an opinion of what he thinks
11 about remotely created checks and whether or not they
12 have the potential to harm consumers. That's not an
13 opinion that even derives from the work he did, the
14 payments work he did, it was more from other work that
15 he did in connection with that. And at the end of the
16 day, I think what came out of his testimony, embedded
17 in his testimony was the potential for fraud. But
18 that's not what's before this Court.

19 And a product that is per se legal --

20 JUDGE MCKENNA: And I don't take it that way.

21 MS. BAKER: And I know Your Honor doesn't take
22 it that way and I appreciate the comments Your Honor
23 made yesterday. And so that was the reason for my
24 preface in making this motion, if I thought that you,
25 Your Honor, were the final decider of this matter, I

1 would frankly not renew my motion because I respect
2 Your Honor's ability to make those determinations.

3 But unfortunately, this matter will likely be
4 reviewed almost on a de novo basis solely on the
5 papers, and solely on the record without having the
6 benefit of somebody who can hear in the courtroom in
7 real-time the testimony of Mr. Baressi from yesterday.

8 And my concern is that on that record, his
9 testimony is both improper because it's not lay
10 opinion. It's not properly before this Court as
11 expert opinion. And it's also extraordinarily
12 prejudicial to this matter. And the probative value
13 that it could potentially offer a finder of fact is
14 far outweighed by the prejudice and bias that was
15 embedded in his testimony.

16 And so for those three reasons, we renew or
17 motion to strike his entire testimony from the record,
18 as well as any direct and cross that was elicited as a
19 result of that.

20 Thank you, Your Honor.

21 JUDGE MCKENNA: Thank you.

22 MS. CHUM: Your Honor, may the government
23 respond?

24 JUDGE MCKENNA: Yes, you may.

25 MS. CHUM: As discussed yesterday, and first,

1 Enforcement Counsel does not agree with the
2 characterization -- respondent's characterization of
3 Mr. Baressi's testimony. As you stated on July 1st,
4 2016 in your Order, you -- the record must be
5 supplemented with additional information about RCC's.
6 That was when Enforcement Counsel became aware that
7 Your Honor would like additional information about
8 RCC's generally.

9 As you know, Mr. Baressi did not testify about
10 the application of RCC's to this specific case. He
11 simply provided information that has not been at
12 issue, not been contested in this case. The
13 information that Mr. Baressi offered is not
14 controversial and as Your Honor knows in this
15 administrative proceeding, pursuant to Rule 213, in
16 granting partial summary judgment, you have the right
17 to direct further proceedings in this action. And
18 more generally pursuant to rule 102, you have the
19 right to regulate the course of this proceeding.

20 And in requesting additional information about
21 RCC's generally you did just that. And Enforcement
22 Counsel provided general information, not as applied
23 to Integrity Advance, but general uncontroverted
24 information about RCC's through the testimony of
25 Mr. Baressi.

1 So Enforcement Counsel would ask that you not
2 grant respondent's motion. Thank you.

3 JUDGE McKENNA: Thank you.

4 Another motion?

5 MS. BAKER: May I briefly reply to Ms. Chum?

6 JUDGE McKENNA: Certainly.

7 MS. BAKER: Thank you, Your Honor. And we do
8 have one more motion as well.

9 JUDGE McKENNA: I understand that.

10 MS. BAKER: Your Honor, I note for the record
11 that Your Honor pursuant to his Order -- to your Order
12 from a couple of weeks ago, has already admitted into
13 the record as evidence in this matter, two specific
14 exhibits proffered by Enforcement Counsel.

15 One is Exhibit No. 94, an examination of
16 remotely created checks by somebody who presumptively
17 has some knowledge of that. That's already in this
18 record. So Mr. Baressi has not added any knowledge
19 that is not presumptively already in the record. In
20 addition, I also note that it appears that Exhibit No.
21 98, which I'm not sure has been moved into evidence,
22 but I believe was also moved into evidence per your
23 Order although I will seek confirmation of that, but
24 that exhibit, a guide for remotely created checks
25 again that would seem to respond to the queries that

1 Your Honor made in his Order granting Summary
2 Disposition in this matter but seeking additional
3 information about RCC's.

4 Mr. Baressi's testimony is cumulative as well.
5 There is certainly nothing that he added yesterday
6 that I would imagine those two articles don't add and
7 help enhance your understanding of this process and
8 this particular payment mechanism. And I still
9 believe that the testimony that was elicited from him
10 yesterday was highly prejudicial especially the last
11 couple of questions that were asked on redirect which
12 implied that this was used by fraudsters as a way to
13 evade payments -- or to evade being tracked by the
14 payment system, and that testimony is extremely
15 prejudicial and there is no probative value.

16 And somebody reading this record who doesn't
17 have the benefit of listening in real-time to that
18 witness would not be able to necessarily make the same
19 credibility determinations that Your Honor was able to
20 make yesterday.

21 JUDGE MCKENNA: All right. Off the record.

22 (Whereupon, a brief discussion was had off the
23 record.)

24 MR. FRECHETTE: Your Honor, Enforcement
25 Counsel, similar to Respondents, submitted a list of

1 exhibits before the hearing, and as we have gone
2 through and now sort of towards the end of the hearing
3 they haven't used all of the exhibits that were on the
4 list, even though some of those exhibits were
5 admitted per Your Honor's Order, Respondents move to
6 reexamine the relevance of exhibits that Enforcement
7 Counsel has not used in its case in chief or as
8 rebuttal exhibit.

9 Rule 303 requires irrelevant or immaterial
10 evidence not be admitted and so since Enforcement
11 Counsel has not used those exhibits, which I have a
12 list that we could read into the record, we would
13 request that they be stricken from the record as
14 evidence.

15 JUDGE MCKENNA: So what you are saying to me,
16 Mr. Frechette, is, Your Honor, in your desire to
17 shorten the proceeding and look at the proffer, the
18 objection, if any, and the legal rationale, and when I
19 review all of that and I make a determination that I'm
20 going to admit it, then you're saying, well, the
21 groundwork that you laid to shorten the hearing was
22 all screwed up. And then you're saying that we don't
23 want those exhibits in. So I set it up so that
24 Enforcement Counsel didn't do it in the way that it's
25 normally done.

1 I don't like engaging in historic unproductive
2 colloquies. All right. Now a couple of your exhibits
3 were admitted, and you didn't address them.

4 MS. BAKER: We will stipulate that they would
5 also not be admitted into evidence.

6 JUDGE McKENNA: Well, I'm not going to do
7 that. So if you don't want to withdraw your Motion
8 and go with the way things are, then I'm going to go
9 and we are going to stay here and we are going to
10 backfill every one of their exhibits that were
11 admitted by me, prior to the hearing.

12 MR. FRECHETTE: One point of clarification is
13 the motion is not that Enforcement Counsel needs to go
14 through the process of laying a foundation and
15 authenticating these documents, these exhibits, it's
16 rather that Your Honor took that step, but then
17 Enforcement Counsel did not use the exhibits that Your
18 Honor had admitted in any way in this proceeding
19 questioning whether they are relevant or material to
20 Enforcement Counsel --

21 JUDGE McKENNA: That's a good point. The fact
22 of the matter is that they can brief and it's in
23 evidence.

24 MR. FRECHETTE: Yes, Your Honor. One moment
25 of Court's indulgence to confer.

1 JUDGE McKENNA: Sure. I'm not in a hurry.

2 MR. FRECHETTE: Your Honor, I would like to
3 keep the motion on the record, but we will rest at
4 this time.

5 JUDGE McKENNA: All right.

6 So if that's the case, we will take a
7 five-minute recess. And then we will come back and
8 Enforcement Counsel will go through each exhibit that
9 I had admitted, as to doing it according to Hoyle,
10 because I'm not going to have an -- I'm not going to
11 have a manufactured error sitting out there because I
12 wanted to do something that speeded this process up.

13 MR. WHEELER: Your Honor, there is a precedent
14 PHH, a prior Bureau case, where it was held that
15 Enforcement Counsel didn't have to use exhibits for
16 them to be a part of the record.

17 JUDGE McKENNA: Right. But there's a problem
18 there too, isn't there?

19 MR. WHEELER: What would that problem be?

20 JUDGE McKENNA: It is on appeal.

21 MR. WHEELER: I don't think that issue is on
22 appeal.

23 JUDGE McKENNA: Well, the case is on appeal.

24 MR. WHEELER: Right. I don't think the
25 admission of exhibits was part of the appeal.

1 MS. BAKER: Your Honor, if I can clarify, our
2 motion is as follows, and Your Honor can deny the
3 motion, but we would just like to make the motion for
4 the record.

5 Our position is that to the extent exhibits
6 were pre-admitted into the record in anticipation that
7 they are relevant and that they would be introduced or
8 used in some fashion with a witness put forward by
9 either party, presumptively that's why they were put
10 on an exhibit list. To the extent they were admitted
11 into the record, not used by a witness, or not
12 introduced through a witness who was presented in
13 either case, we would argue that by necessity their
14 relevance to the case in chief of either party that
15 was argued before Your Honor would be in question.

16 That's the argument. Not to make Enforcement
17 Counsel go through the drill of introducing each piece
18 of evidence and if that's what Your Honor's proposing,
19 then we will withdraw our motion because that's not
20 our intent.

21 JUDGE MCKENNA: I set them up. I set
22 Enforcement Counsel up because I did not want to have
23 them to go through what I call gobbledegook rigmarole.

24 MS. BAKER: We will withdraw our motion Your
25 Honor.

1 JUDGE McKENNA: All right.

2 MS. BAKER: Thank you.

3 JUDGE McKENNA: That's fine.

4 JUDGE McKENNA: All right. So off the record.

5 (Whereupon a brief recess was had.)

6 JUDGE McKENNA: Back on the record.

7 **CLOSING ARGUMENTS BY MS. WEINBERG:**

8 Good afternoon, Your Honor. Based on Your
9 Honor's request, we would like to go first and address
10 the amount of damages that we are seeking in this
11 matter.

12 Under Count One, which was the Truth in
13 Lending Act, we are seeking \$133,422,838.83.

14 What this represents is the amounts paid above
15 the total of payment amount that was disclosed in the
16 TILA box for the entire period that Integrity Advance
17 was in business.

18 Your Honor, I should have said I want to
19 reserve five minutes for rebuttal in my closing. So I
20 wont try and keep my eye on the clock.

21 For Count Two, which is the related Consumer
22 Financial Protection Act Count to the Truth in Lending
23 Act Count we would be seeking \$38,795,584.12 cents.

24 JUDGE McKENNA: And you want to correspond
25 that to an exhibit?

1 MS. WEINBERG: Exhibit 97, page 3.

2 JUDGE McKENNA: And One is page 2?

3 MS. WEINBERG: The first, the 133 was 97, page
4 2. The second is 97 page 3.

5 JUDGE McKENNA: Thank you.

6 MS. WEINBERG: Our Count Three, which is our
7 deception count, is amounts paid over the disclosed --
8 the amount that was disclosed in the total of payments
9 box post-transfer date. And that is the same number
10 that I just mentioned for Count Two, that's the
11 \$38,795,584.12.

12 Count Four was withdrawn by Enforcement
13 Counsel.

14 Count Five is the Electronic Funds Transfer
15 Act Count, and we would have been seeking disgorgement
16 in this matter and would reserve the right to do so in
17 future cases. But in this particular case, we think
18 that the relief largely overlaps the relief that we
19 are seeking under Counts One, Two and Three. So we
20 are not seeking a separate finding for relief under
21 our Electronic Funds Transfer Act counts, which are
22 Counts Five and Count Six.

23 For Count Seven, which is remotely created
24 checks, we are seeking the total amount paid by
25 consumers after the transfer date, July 21st, 2011 and

1 that number is \$265,452.50. That figure can be found
2 in Exhibit 97, page 5.

3 For civil monetary penalties, from July 21st,
4 2011 until December 31st, 2013, there are 530 days.
5 We will note that this is a conservative calculation
6 of the penalties and the days that would be due under
7 this because evidence also indicated that Integrity
8 Advance provided loan to consumers through May of
9 2013.

10 Nonetheless, relying on the 530 day figure,
11 the penalties can be assessed up to \$5,437 per day at
12 the first tier penalty, which is what we would be
13 seeking here. That is the lowest tier penalties.
14 There are higher amount for second and third tier
15 penalties.

16 JUDGE MCKENNA: Do you have a penalty
17 schedule?

18 MS. WEINBERG: I do. The citation, which I
19 can provide Your Honor for the current schedule, it
20 has recently been amended. It was originally \$5,000
21 is 12 CFR Section 1083.1. And that reflects the
22 current schedule for civil monetary penalties.

23 So assessing penalties in that amount for 530
24 days, would be \$2,881,610 per practice. We are
25 alleging that there are three practices here for which

1 the Court should award civil monetary penalties. The
2 first has to do with the violations in the loan
3 agreements that the Court has already found in Counts
4 One through Three.

5 The second has to do with the violations under
6 the Electronic Funds Transfer Act and the third has to
7 do with violations, we are asking the Court, of
8 course, also to find that the --

9 JUDGE McKENNA: Is this a joint and several
10 situation?

11 MS. WEINBERG: We are seeking individual
12 liability against Mr. Carnes and I will be addressing
13 Mr. Carnes' liability.

14 JUDGE McKENNA: That wasn't what I asked. I
15 asked that when you are seeking damages against
16 Integrity Advance, is Mr. Carnes a joint and several?

17 MS. WEINBERG: He is not responsible for all
18 of the damages on all of the counts. We are not
19 saying that he is responsible under the Truth in
20 Lending Act.

21 JUDGE McKENNA: Okay. And so, well, the
22 company --

23 MS. WEINBERG: Has no money.

24 JUDGE McKENNA: -- basically doesn't exist any
25 more.

1 MS. WEINBERG: Exactly, Your Honor.

2 JUDGE MCKENNA: Like in NOAA proceedings, each
3 one is jointly several, so the fact that a company is
4 not around is irrelevant. Or if you have two
5 respondents, then they are joint and severally liable.
6 If you can't get it from one, you get it from the
7 other.

8 I just am asking what is the legal effect of
9 what you are asking for here?

10 MS. WEINBERG: Well, we are happy to spell
11 this out in more detail in our brief.

12 JUDGE MCKENNA: That would be fine. You have
13 been put on notice.

14 MS. WEINBERG: Thank you, Your Honor. So I
15 will just --

16 JUDGE MCKENNA: Continue.

17 MS. WEINBERG: Try to get through this part
18 quickly, given our time limitation and say that we are
19 seeking civil money penalties for three separate
20 practices, Counts One through Three, is one practice.
21 The Electronic Funds Transfer Act is a second
22 practice. And the remotely created checks is a third
23 practice.

24 So we would be seeking a total of \$8,644,830
25 in civil money penalties, plus we would be seeking

1 injunctive relief, which we will layout in much
2 greater detail in our post trial briefing.

3 So I would like to turn now to the other main
4 issue that is before the Court for its final decision.
5 Obviously RCC's remain, but I would like to move first
6 to address Mr. Carnes's liability and time allowing we
7 will move onto RCC's.

8 So the first thing that we need to do in
9 looking at whether or not Mr. Carnes is liable for the
10 violations that have been found, and that we are
11 asking the Court to further find against his company
12 in the activities that they undertook, is when can an
13 individual be held liable?

14 I'm going to start with the cases that
15 Respondents have cited. FTC versus Freecom and FTC
16 versus Commerce Planet. And what those cases hold is
17 that there are two, three main paths to finding an
18 individual liable.

19 One is when that individual had actual
20 knowledge. Another is when you can effectively find
21 that that individual had knowledge based on his
22 pervasive role and authority in the company. And a
23 third is when the individual was reckless in terms of
24 an awareness of a high probability of fraud, and an
25 intentional avoidance of the truth.

1 In fact, although Respondents have repeatedly
2 argued in this matter that Mr. Carnes had to actually
3 see the loan agreement and actually approve all of the
4 language, that is not the standard that the cases
5 uphold.

6 As I have said, there's three ways, three
7 different ways without an individual having to
8 actually look at the language in an agreement, and
9 say, yes, this is exactly what I want it to say. And
10 I would -- we will set out many cases in our briefing,
11 but I just want to point to one case that we pointed
12 to in our pre-trial briefing, which was FTC versus
13 Five Star. And in that case the Court held that not
14 only was the owner of the company liable for the
15 violations and for restitution for the violations, but
16 the owners wife was liable even though she had argued
17 that she had nothing to do with deceptive marketing
18 materials that were in issue in that case and
19 performed only ministerial tasks for the organization.
20 But she was found to have the requisite knowledge
21 because of her preparation of filings and responses to
22 state regulators.

23 So let's look at the first avenue, actual
24 knowledge. What do we know about what Mr. Carnes
25 actually knew?

1 He knew that the loans rolled over. He
2 testified in detail about how the product worked. He
3 knew that most consumers would experience rollovers.
4 At the same time, he knew that the loans disclosed the
5 cost as if it would be paid in full in just one
6 payment.

7 That is the essence of our deception claim.
8 That is the essence of our TILA claim. He was aware
9 of those factors.

10 Mr. Carnes has testified that he simply relied
11 on the advice of counsel and he tried to distance
12 himself from the actual content of the loan agreement.
13 But when Mr. Foster was on the stand, he didn't say
14 that Mr. Carnes had never asked about the loan
15 agreement. He simply repeatedly invoked attorney
16 client privilege.

17 Your Honor indicated that adverse inference
18 was appropriate in this instance given the
19 evasiveness.

20 JUDGE MCKENNA: No, I didn't. No, I didn't.

21 I said -- I raised the issue of an adverse
22 inference. I didn't say that I was going to invoke
23 it.

24 MS. WEINBERG: Well, Enforcement Counsel would
25 urge you.

1 JUDGE MCKENNA: I want to think about that
2 one.

3 MS. WEINBERG: Well, since you were just
4 considering it, Enforcement Counsel would urge you to
5 adopt it. We think it is appropriate under these
6 circumstances.

7 Mr. Foster and Mr. Carnes had to talk about
8 the loan agreement. It was Integrity Advance's only
9 product. It defies reason to think that the two
10 executives in a company who offered one product and
11 had only one document that was consumer facing never
12 talked about the content of that document.

13 So let's look at the second avenue for finding
14 Mr. Carnes liable. And that's from his pervasive role
15 and authority to control the activities of Integrity
16 Advance.

17 We know that Mr. Carnes was the CEO of
18 Integrity Advance for each and every year that he
19 operated. We know that for each and every year that
20 Integrity Advance was in operation he was the key
21 decision maker. We heard that from Mr. Carnes
22 himself. We heard it from Mr. Madsen. We heard it
23 from Mr. Andonian.

24 Mr. Carnes said that he had the ultimate
25 authority over Integrity Advance business. We heard

1 repeated testimony that all large decisions had to go
2 through Mr. Carnes. These facts are not in dispute.

3 Even the org chart that was supplied by
4 Integrity Advance all points to Mr. Carnes. Everyone
5 reported ultimately to Mr. Carnes for him to make
6 decisions. Nor did this change when Mr. Foster became
7 COO.

8 Mr. Carnes was the signatory on Integrity
9 Advance's bank account. He hired most of the
10 employees. He controlled the distributions of funds
11 to HIP, the other company that he controlled.

12 But most importantly he conceded that he had
13 the authority to control what loan agreement Integrity
14 Advance used.

15 He had a pervasive role and pervasive
16 authority over Integrity Advance's business practices.

17 Mr. Carnes was not a remote CEO who couldn't
18 know what was going on in his company. He was in the
19 weeds of the operation of his company. He was in the
20 same physical space as everyone except for the
21 individual who we have talked about who was in
22 Delaware.

23 He had daily talks with Mr. Madsen and other
24 key staff. He was monitoring the business of
25 Integrity Advance on a minute level, watching

1 conversions, watching follow-ups from calls which we
2 saw from the e-mail that was admitted. He ran
3 meetings. He set the agenda for meetings. He would
4 even go up to Mr. Andonian and tell him to make minute
5 adjustments in credit scores in terms of --

6 JUDGE McKENNA: Cutoff levels.

7 MS. WEINBERG: -- cutoff levels for what they
8 would accept in terms of their customer base.

9 JUDGE McKENNA: Right.

10 MS. WEINBERG: If the data base was slow,
11 Mr. Carnes was dealing with it. If Mr. Carnes wanted
12 a state off of the website, he would drop by
13 Mr. Andonian's desk and tell him to have it done, to
14 take care of it.

15 That particular example provides insight into
16 Mr. Carnes's testimony about the loan agreement.

17 When it came to compliance with the law, he
18 was hand's on. He walked towards the issue, not away
19 from it. We can expect that that behavior would be
20 consistent throughout and would include his control
21 and oversight over the loan agreement itself.

22 Mr. Carnes also testified with incredible
23 command of the details about the operations of
24 Integrity Advance. He knew the lowest and highest
25 amounts that were paid for leads. He knew the number

1 of lead generators used. He knew details about a
2 random incident of fraud at a call center that
3 happened many years ago.

4 He knew the percentage of total transactions
5 that occurred through remotely created checks. Yet
6 somehow with the loan agreement he has no knowledge
7 and no involvement.

8 His testimony was simply not credible on this
9 point.

10 The other thing to note about the product is
11 that the product did not change, the loan agreement
12 did not change significantly over the time that
13 Integrity Advance was in operation. Yet we know from
14 Mr. Madsen's testimony that when Integrity Advance
15 started its operation there were only four employees.
16 There were only four employees involved in setting it
17 up.

18 It was Mr. Carnes, Mr. Foster, Mr. Shahin, who
19 is VP of technology and a receptionist.

20 JUDGE McKENNA: Your five minutes is up now.

21 MS. WEINBERG: Okay. Thank you, Your Honor.

22 JUDGE McKENNA: You're going to reserve?

23 MS. WEINBERG: I wanted to reserve five
24 minutes rebuttal.

25 JUDGE McKENNA: There you go.

1 MS. WEINBERG: And that was 15?

2 JUDGE MCKENNA: Yeah.

3 MS. WEINBERG: Okay. Thank you, Your Honor.

4 MS. BAKER: Good afternoon. Your Honor.

5 **CLOSING ARGUMENTS BY MS. BAKER:**

6 Listening to Ms. Weinberg speak earlier or a
7 few minutes ago about the monetary relief that the
8 CFPB is seeking from Respondents was the first time I
9 had ever heard those numbers. And I note that as the
10 first sentence of my closing argument because I think
11 that's emblematic of the case that has not been put on
12 here the last few days.

13 I began my opening a couple of days ago by
14 telling this Court what it would not hear. I close by
15 reminding this Court of what it did not hear.

16 The CFPB's enforcement office filed in its
17 pre-hearing statement an acknowledgement of what it
18 needs to show with respect to deception as it concerns
19 Mr. Carnes.

20 Specifically, top of page 5, responding Carnes
21 was fully aware of how Integrity Advance's loan
22 product operated and how that did not align with the
23 company's loan agreement disclosures.

24 Your Honor, this Court has not been presented
25 with any evidence that Mr. Carnes was not aware of how

1 that did not align with the company's loan agreement
2 disclosures.

3 There is simply no evidence in the record,
4 even circumstantial evidence, let alone direct
5 evidence that Mr. Carnes had that knowledge.

6 Now the Office of Enforcement put on several
7 witnesses to try to establish that knowledge to no
8 avail. They opened with a Mr. Madsen, who, as Your
9 Honor heard, was responsible for overseeing the
10 company's efforts with respect to lead generation.

11 And as Your Honor noted during Mr. Madsen's
12 examination, lead generation concerned essentially the
13 bringing in of customers or would be customers into
14 the business. Mr. Madsen testified that he never had
15 a conversation with Mr. Carnes about the loan
16 agreement or any loan disclosures and, in fact,
17 Mr. Madsen himself never had anything to do with the
18 loan agreement or any loan agreement disclosures.

19 You heard testimony from Mr. Andonian, who was
20 essentially an IT specialist who was responsible for
21 supervising the IT activities of the Hayfield family
22 of companies, which I will talk about in a moment, and
23 what you heard from Mr. Andonian is that he worked
24 about 4,000 hours for Hayfield family of companies
25 between '11 and '12 and of those 4,000, he spent no

1 more than two hours total talking about or working on
2 Integrity Advance related matters in meetings. You
3 heard that testimony.

4 And at that, none of those conversations to
5 which he was privy had anything to do with the loan
6 agreement or loan disclosures which Enforcement
7 Counsel acknowledged was the salient issue before this
8 Court with respect to Mr. Carnes's potential liability
9 for deceptive conduct.

10 Now you also heard testimony from Mr. Foster,
11 who was the COO of the company starting in 2010. He
12 was the executive vice president of the company. He
13 was there at its -- and the general counsel. He was
14 there at its formation. And in fact what Mr. Foster
15 clearly testified to was two things: Mr. Carnes was
16 frequently traveling and out of office and that
17 Mr. Carnes was also while he was in the office, very
18 engaged and involved in not just Integrity Advance,
19 but a number of other business interests as well.

20 Now all of this is a long way of saying that
21 Mr. Carnes does not run from the fact that he was in
22 fact a hand's on CEO. Indeed he established on the
23 stand that he was quite proud of that. Enforcement
24 Counsel showed him on his direct an e-mail that
25 suggested that he knew about fraud.

1 What Mr. Carnes responded to in that e-mail
2 was three things: He said pay the consumer back, make
3 sure this doesn't happen again, and run it down.

4 That's what you heard, Your Honor. You heard
5 somebody who was concerned with making sure the
6 company got it right, but he did not look at or review
7 any of the loan agreement or loan disclosures and
8 there's absolutely no evidence in the record to
9 suggest that he did.

10 Now you also heard a fair amount of testimony
11 about the work of the Hayfield businesses. In fact,
12 we spent a lot of time listening to Enforcement
13 Counsel engage Mr. Carnes on Hayfield. Hayfield, as
14 Your Honor knows, was an umbrella company that had
15 about 14 other business lines associated with it.

16 And Mr. Carnes testified that particularly in
17 the years 2011 and 2012, which are the years at issue
18 with respect to deception, he spent approximately
19 seven and a half percent of his professional time at
20 the company working on business for the company.

21 If Your Honor recalls, he said 15 percent of
22 50 percent, which was about seven and a half percent.

23 So this is not the situation or the facts that
24 Ms. Weinberg is trying to paint of somebody who just
25 must have known about the details of legalese in a

1 loan agreement that he specifically noted in his
2 testimony he engaged outside counsel to draft.

3 Now perhaps even more critically earlier today
4 we heard the testimony from a Ms. Quinn Miller and
5 Ms. Quinn Miller is the chief investigator of the
6 non-depository institution's unit of the banking
7 commissioner in the state of Delaware.

8 And Ms. Miller told us two things: She told
9 us that she herself regularly examined the loan
10 agreements that were affixed to the license
11 applications that came through her office and that
12 come through her office and she examined them for a
13 couple of things.

14 She said, I looked at the TIL box and she said
15 I know that. And she said she also examined that work
16 of her investigators to make sure that when those
17 licenses were either accepted or renewed, that all of
18 the I's were dotted and all the T's were crossed.

19 She's about as credible a witness as I've ever
20 heard. And she was very earnest and honest in telling
21 us what she did. You also heard testimony from her
22 that under the State of Delaware law it was legal in
23 2008, 2009, 2010, 2011, 2012 just as it is now, to
24 have a loan product that enabled four rollovers before
25 there was a principal paydown.

1 You heard her talk about that. And in fact,
2 we refreshed her recollection with the law itself and
3 she acknowledged it, and she remembered it and that is
4 also in the record.

5 Mr. Carnes testified that he was aware that
6 his company was licensed in the state of Delaware, and
7 that he understood at a high level, his words high
8 level, what that meant insofar as each year that loan
9 -- that license was renewed. He testified to that.
10 And we heard testimony today acknowledging that, in
11 fact, in 2011 and 2012 as two examples, the lending
12 license for the Integrity Advance company was renewed
13 in the State of Delaware.

14 Now we have heard a fair amount about monetary
15 relief today. And I note that what we have heard
16 mostly is from an information technology specialist or
17 data scientist who was given a set of queries by the
18 Office of Enforcement and essentially ran data numbers
19 at their request.

20 Now I have no doubt that Mr. Hughes intended
21 to do the job he was asked to do. You also heard a
22 substantial amount of testimony from Dr. Ang, who is a
23 Ph.D. economist, who previously worked at the CFPB,
24 that, in fact, what Mr. Hughes did was quite flawed.

25 It was flawed in two significant ways:

1 Mr. Hughes calculated a number called total payments.
2 And the idea behind Mr. Hughes's calculations is this:
3 The assumption being that consumers are presumptively
4 harmed because they were paying more than what the TIL
5 box disclosed. And so his working assumption is that
6 that amount is the amount that should be given back
7 to, or that's the argument that's now been made by
8 counsel, that that number is what should be given back
9 to consumers on a theory that they were harmed.

10 There's a couple of problems with that
11 argument. First of all, that argument ignores the
12 fact that we also heard testimony from Dr. Ang today
13 that between 2011 and 2012, 66 percent of the loans
14 that were made were for repeat customers. That means
15 the customers came back another time, for a second
16 loan, a third loan, a fourth loan, a fifth loan, et
17 cetera.

18 If a customer chose to come back to take out
19 another loan, there is no consumer injury as a matter
20 of law. There is no consumer injury.

21 Which means that the numbers that we heard
22 from Mr. Hughes and were apparently, although not
23 clearly synthesized a few minutes ago, are in fact
24 numbers that do not adequately reflect consumer harm,
25 assuming there is any consumer harm. And Your Honor,

1 we do not by discussing these numbers suggest that
2 there is any consumer harm, but I do want to just
3 briefly address Dr. Ang's analysis for purposes of
4 closing and then I want to also talk about the
5 analytical route that this Court should not adopt in
6 looking at any numbers.

7 So Dr. Ang explained that if you took all of
8 the monies that were paid over the TIL box and you
9 took out of that category any consumer who took out
10 more than one loan, the number that you would end up
11 with is 7,033,546.

12 That is nowhere near the number we've heard
13 today. That's her testimony. That's Exhibit 23.

14 But more importantly than that testimony,
15 which is a significant counterpoint to Mr. Hughes's
16 testimony, more importantly than that, there is a
17 problem with this entire analysis. The CFPB's Office
18 of Enforcement has failed to make a damages showing.
19 They have offered no evidence into the record of
20 causation.

21 They have failed to show that even if there
22 was deceptive conduct, there was one consumer harmed.
23 Your Honor has not heard from anyone consumers. Your
24 Honor has not been shown a consumer survey. Your
25 Honor wasn't even presented during this entire trial

1 of three days with even one consumer complaint. Not
2 even one consumer complaint.

3 There is absolutely no evidence in the record
4 of any consumer harmed whatsoever. Let alone
5 \$133,000,000 worth of consumer harm.

6 Now there's another problem with this
7 analysis. The \$133,000,000 number presupposes that
8 the Consumer Financial Protection Bureau's Consumer
9 Financial Protection Act enables the agency to go all
10 the way back to the beginning of time that this
11 company started doing business.

12 And as we discussed the other day, that is as
13 a matter of law incorrect. They cannot retroactively
14 apply the Consumer Financial Protection Act or any
15 component part of TILA to obtain restitution on those
16 grounds. So that number as a matter of law can't
17 stand.

18 JUDGE MCKENNA: Did you wish to reserve?

19 MS. BAKER: I will continue with my argument,
20 Your Honor.

21 JUDGE MCKENNA: Five minutes.

22 MS. BAKER: Thank you.

23 Now I want to talk briefly about some of the
24 flaws in Mr. Hughes's testimony, as revealed by his
25 testimony. Two in particular. What Dr. Ang testified

1 about was that the problem with Mr. Hughes's analysis
2 is that the number over the TIL box that he used
3 neglected -- there was a problem when she ran those
4 numbers. And the problem that she articulated when
5 she ran those numbers is that the loan product at
6 issue never had an instance when the principal or
7 finance charge would have gone up as you got farther
8 in time.

9 It was always the case that the principal
10 would either stay the same or go down. But when she
11 analyzed some of that data she noted discrepancies
12 that precluded her from adopting the aggregate numbers
13 that he came up with. That's a flaw in his analysis
14 that she discussed.

15 The other flaw in his analysis goes more to
16 his calculation of remotely created checks that came
17 out today on his cross-examination. One of the things
18 that's noteworthy and it speaks to the lack of
19 consumer -- the lack of evidence in the record about
20 consumer harm, is that there was no evidence submitted
21 as to why any consumer might have withdrawn their
22 authorization and triggered creation of a remotely
23 created check in the first instance. And the fact
24 that he made a number of assumptions in his
25 calculation which were put up on a chart underscores

1 that.

2 Now I want to note something that Ms. Weinberg
3 requested of this Court. Ms. Weinberg requested that
4 this Court take notice of the CFPB's request for an
5 adverse inference and as Your Honor undoubtably knows,
6 there is lots of case that precludes a court from
7 taking an adverse inference from the assertion of the
8 attorney/client privilege. And we can certainly brief
9 this in more detail if Your Honor would like, but I
10 note for just for the beginning starting argument
11 there is a number of cases that effectively say that
12 the assertion of an attorney/client privilege by a
13 company or an individual does not lead to an adverse
14 inference. And it cannot lead to an adverse
15 inference. A company cannot be penalized because it
16 merely protects its rights and its privileges. And
17 the request for an adverse inference is counter to
18 law.

19 Now there were a number of other misstatements
20 in the record that Ms. Weinberg made. She talked
21 about the standard for finding liability. She said
22 actual knowledge.

23 It's clear Mr. Carnes had no actual knowledge
24 of what the loan language or disclosure said. She
25 affectively described a standard of constructive

1 knowledge. It's pretty clear he had no constructive
2 knowledge of what the loan agreement or the loan
3 disclosure said. He himself told this Court that that
4 was not something he was apprised of or aware of.

5 She also described another standard of a high
6 probability of fraud or recklessness, although I
7 didn't hear her enunciate that a great deal.
8 Obviously, the fact that you heard so much testimony
9 from how important it was to Mr. Carnes to get it
10 right when he could get it right discounts that third
11 prong as well.

12 But there is something else that I think is
13 important to establish here. Implicit in the CFPB's
14 argument is that if you're a hand's on CEO and you
15 care about your employees, and you don't shut the door
16 in their face when they come talk to you, that you
17 must be liable for everything your outside counsel
18 does. That can't be the law. That can't be the law,
19 Your Honor, thank you.

20 JUDGE MCKENNA: Thank you.

21 Ms. Weinberg.

22 MS. BAKER: Your Honor, do I have any time
23 left?

24 JUDGE MCKENNA: I'm going to give you some
25 time. You can have five.

1 MS. WEINBERG: Your Honor, under the rules I
2 just note that Enforcement Counsel is supposed to have
3 the final rebuttal in this matter.

4 JUDGE McKENNA: Okay. All right.

5 MS. BAKER: That's fine.

6 JUDGE McKENNA: All right. You should know
7 that.

8 **REBUTTAL CLOSING ARGUMENTS BY MS. WEINBERG:**

9 I have only five minutes, so I'm going to try
10 and be brief and just hit a few points.

11 Respondents have argued that there was no
12 consumer harm. I think that we have to bring this
13 case back to the consumers who were harmed. I think
14 that if you asked any of the consumers whose funds
15 were taken in amounts higher than the amounts that
16 they expected whether they were harmed, they would
17 uniformly say yes. Monetary harm in all of the case
18 law is found to be harm. And I have no idea how
19 Respondents are arguing otherwise.

20 I also just want to return to what Ms. Miller
21 testified to. Contrary to respondent's
22 characterization, Ms. Miller said that their review of
23 the TIL box was virtually nonexistent. They looked at
24 an APR calculation. They were not looking for
25 compliance with federal law. They were doing some

1 math.

2 And contrary to Mr. Carnes' testimony, they
3 did not provide her -- they did not provide Integrity
4 Advance with a loan agreement. She was, I think,
5 stupefied by the suggestion that they would.

6 I also want to address very briefly
7 respondent's repeated arguments about retroactivity.
8 The CFPB is not trying to enforce a retroactive
9 remedy. The remedy that we are seeking could have
10 been obtained by the FTC for TILA and EFTA violations
11 prior to the CFPB's existence. And the remedies that
12 the CFPB are seeking are available because the FTC
13 could have sought that relief.

14 Respondents are fond of quoting Landgraf;
15 however, Landgraf supports Enforcement Counsel's
16 position on this, as well as Hughes Aircraft Company v
17 U.S., which is 520 U.S. 939 another supreme court case
18 from 1997. And I, in the interest of time I just want
19 to read one quote which is that statutes merely
20 addressing which court shall have jurisdiction to
21 entertain a particular cause of action can fairly be
22 said merely to regulate the secondary conduct of
23 litigation and not the underlying primary conduct of
24 the parties.

25 In other words, if what they did was illegal

1 before, it doesn't matter that it's the CFPB that is
2 now enforcing it.

3 JUDGE MCKENNA: Let me ask you a question: Is
4 there contained in the statute, the regulations or the
5 caselaw that the fact that people were charged above
6 the TILA box that there is strict liability?

7 MS. WEINBERG: The only case that I know that
8 is directly on point is FTC versus AMG.

9 JUDGE MCKENNA: And the answer to my question
10 is?

11 MS. WEINBERG: I am trying to recall now
12 whether the individual was held liable in that case
13 and I cannot remember if that was an issue in that
14 case. But we will certainly brief that in our
15 post-trial briefing.

16 JUDGE MCKENNA: You can look at NOAA caselaw
17 on strict liability. It has some interesting
18 application.

19 MS. WEINBERG: For my final point and my
20 remaining minute or whatever it is that I have left.
21 I just want to return to RCC's because I think it's
22 interesting, there is no dispute that Respondents used
23 RCC's. And there is no dispute as to when they used
24 them.

25 They used them specifically when consumers had

1 affirmatively told the company through their
2 revocation of the ACH authorization, that they were
3 not authorizing the company to take any more money
4 from their accounts. The company knew that. Yet they
5 used this mechanism to take money from consumers under
6 those circumstances.

7 And I think it's instructive given the
8 extremity of the remedy that they were invoking on
9 their own behalf, to look at how they disclosed this
10 remedy to consumers. There is no headings in the loan
11 agreement that point to this. There is no bold
12 language that points to this. It's not front and
13 center on any page. It's not even near where any
14 consumer signed. Instead, it's part of a sentence in
15 the middle of a paragraph pertaining to something else
16 in language which is unclear, to be generous.

17 Under these circumstances, we think that the
18 use of RCC's was unfair. What we have to show for
19 unfairness was a substantial injury. And here
20 consumers lost funds when they thought that they had
21 protected themselves from revoking the ACH
22 authorization. It was not reasonably avoidable. And
23 there were no benefits.

24 Thank you, Your Honor.

25 JUDGE MCKENNA: All right. We will stand

1 adjourned. I will wait to receive paper. I
2 understand that counsel when they get a hard copy of
3 the transcript will try and work out any deletions.

4 How long will you need to file a motion to
5 correct the transcript?

6 MS. BAKER: For Mr. Baressi?

7 JUDGE McKENNA: Everybody, everything.

8 MS. BAKER: Oh, for everything or just for --
9 well, for Mr. Baressi, we would ask for -- we can
10 probably file an opening brief on that within three
11 days of receiving the transcript. In terms of
12 correcting the transcript.

13 JUDGE McKENNA: Well, I don't think that's
14 going to be necessary unless -- there are two avenues
15 here: One is just to get rid of some particular
16 sentences that you had -- question and answer that you
17 had talked about. That's number one. And I think
18 that that can be handled between counsel.

19 The second thing is the motion to strike the
20 entire testimony direct and cross, that's a separate
21 issue and you can put that in your brief.

22 MS. BAKER: Thank you, Your Honor.

23 JUDGE McKENNA: Rather than make it a separate
24 item but as to the sentence, let me know early.

25 MS. BAKER: We will, Your Honor, thank you.

1 JUDGE MCKENNA: All right. And how long are
2 you going to need for a motion to correct the entire
3 transcript?

4 MS. BAKER: We can -- I'm going to propose
5 Mr. Wheeler and I maybe go back to our office and talk
6 about this and apprise the Court. I mean, I don't
7 have a sense of how long that transcript is going to
8 be.

9 MR. WHEELER: Yeah, do we have any sense of
10 how long the transcript will take?

11 JUDGE MCKENNA: All right, well, see the deal
12 here is that we have deadlines.

13 I have deadlines. So I have to put
14 corresponding deadlines on you, and my general
15 inclination in watching the administrative process and
16 the deadline on regulations historically was manana,
17 and that is under the assumption that somebody was
18 trying to do their due diligence and get it done as
19 fast as they could get it done.

20 So the regulations require that I have to give
21 the director notice if I'm not going to be able to get
22 my decision out within 300 days from assignment.

23 So I'm going to try and do it right before
24 doing it fast.

25 MR. WHEELER: I appreciate that, Your Honor.

1 MS. BAKER: For correcting the transcript
2 assuming we get it in two weeks, would a week after
3 that for any corrections, and we could probably even
4 agree to file a joint submission to the extent we are
5 talking about errata sheet type --

6 JUDGE McKENNA: Yes. Five calendar days.

7 MS. BAKER: Maybe seven calendar days, would
8 that be okay, Your Honor? I'm mindful of everyone's
9 schedules.

10 Does that work for Mr. Wheeler?

11 MR. WHEELER: That's fine with me, Your Honor.

12 JUDGE McKENNA: All right.

13 Okay. Thank you. Everyone was a pleasure to
14 interact with for the last three days and I want to
15 thank you for that.

16 MR. WHEELER: Thank you, Your Honor.

17 (The proceedings concluded at 4:30 p.m.)

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1 REPORTER'S CERTIFICATE.
2

3 I, Jeannie A. Milio, Registered Professional
4 Reporter, an Official Court Reporter for the United
5 States Coast Guard, do hereby certify that I
6 stenographically recorded the proceedings in Consumer
7 Financial Protection Bureau versus Integrity Advance,
8 LLC and James R. Carnes, File No. 2015-CFPB-0029, held
9 on July 21, 2016, at 9:30 a.m. (ET), at the FERC
10 Building, 888 First St., N.E., Washington, DC, before
11 the Honorable Parlen L. McKenna.

12 I further certify that the page numbers III-1
13 through III-210 constitute an official transcript of
14 the proceedings as transcribed by me from my
15 stenographic notes to the within typewritten matter in
16 a complete and accurate manner.

17 In witness whereof, I have affixed my signature
18 this 1st day of September, 2016.

19
20
21
22 
23 Jeannie A. Milio, RPR
24 Official Court Reporter
25