

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING)	<u>RESPONDENTS' MOTION FOR EXTENSION OF TIME TO RESPOND TO BUREAU'S SUBPOENA</u>
File No. 2015-CFPB-0029)	
In the matter of:)	
INTEGRITY ADVANCE, LLC and JAMES R. CARNES)	

**RESPONDENTS' MOTION FOR EXTENSION OF TIME TO RESPOND TO
BUREAU'S SUBPOENA**

Pursuant to 12 C.F.R. § 1081.115 and the Order Granting Bureau's Request for Issuance of Subpoena ("Subpoena Order"), Respondents Integrity Advance, LLC and James R. Carnes ("Respondents"), respectfully move the Court for an extension of time to produce certain data and/or documents responsive to the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") Subpoena. Specifically, Respondents seek an extension of the deadline for the production of all data and/or documents responsive to Requests 1 and 2 from March 21, 2016 to **April 11, 2016.**¹ Respondents seek an extension because this process is even more burdensome than expected, but they have diligently sought to comply since the date the subpoena was issued. To be clear: Respondents are not trying to avoid production of data or documents; they are,

¹ See Attachment A to Bureau's Request for Issuance of Subpoena Requiring Production of Documents at 10. As of the date of this motion, Respondents have not identified any witnesses that would require production of statements pursuant to Request 3. However, to the extent that Respondents might in the future identify such witnesses, Respondents do not seek an extension of the deadline(s) imposed by the Court for production of statements responsive to Request 3.

however, unable to meet the current schedule, as they repeatedly relayed to counsel for the Bureau.

On February 19, 2016, the Court signed the Subpoena Order, which states that “all documents responsive to Requests 1 and 2—or the entire database, if Respondents choose to provide it instead of processing the data themselves—is due within 30 days of the date the subpoena is served.” Subpoena Order at 6. The Bureau’s subpoena was served on Respondents electronically on February 19, 2016. Under Rule 114, the current deadline for Respondents to produce the documents requested in the Bureau’s subpoena is Monday, March 21, 2016. 12 C.F.R. § 1081.114.

Despite Respondents’ repeated efforts to meet and confer, Respondents will not be able to respond to the subpoena by March 21. Indeed, Respondents have held this motion to the last possible moment, out of hope and in anticipation that they could come to an agreement with the Bureau—to no avail, unfortunately. Counsel for the Respondents advised the Bureau orally of the need for an extension approximately two weeks ago. Since that time, counsel for the Respondents has engaged in discussions with the Bureau to determine a date, acceptable to the CFPB, by which Respondents will be able to produce responsive data and/or documents. On March 18, mindful of the March 21 deadline, counsel for the Respondents again sought to come to agreement with the Bureau. Counsel for the Bureau indicated the need for further discussion on Monday, March 21, before a possible agreement could be reached. Pursuant to the Order Following Scheduling Conference issued on December 18, 2015, undersigned counsel conferred

with counsel for the Bureau on at least the following dates: March 11, 15, 17, 18, and 21.

Unfortunately, the parties have not been able to settle on an extension.²

Rule 115 states that “the hearing officer may, in any proceeding before him or her, for good cause shown, extend the time limits prescribed . . . by any notice or order issued in the proceedings.” 12 C.F.R. § 1081.115(a). A hearing officer may grant a motion for extension of time “where the moving party makes a strong showing that the denial of the motion would substantially prejudice its case.” *Id.* § 1081.115(b).

In determining whether to grant any motions [for extension of time], the . . . hearing officer . . . shall consider, in addition to any other relevant factors:

- (1) The length of the proceeding to date;
- (2) The number of postponements, adjournments or extensions already granted;
- (3) The stage of the proceedings at the time of the motion;
- (4) The impact of the motion on the hearing officer’s ability to complete the proceeding in the time specified by § 1081.400(a); and
- (5) Any other matters as justice may require.

Id.

Good cause exists to grant the requested extension. Respondents are not able to respond to the Bureau’s subpoena by the deadline. Integrity Advance has not been operational for several years, so there is no existing infrastructure through which to access the requested data. Therefore, contract workers have had to perform a fair amount of processing of the raw data

² Regrettably, Respondents must bring this motion. Indeed, counsel for the Bureau approached Respondents earlier this month with an eleventh-hour request to change the date of the agency’s proffered expert’s deposition. Out of professional courtesy and respect for the Court’s time, Respondents agreed to accommodate the Bureau’s request and even went so far as to inform the Bureau’s counsel that they would continue to work with any other last minute changes that the Bureau might request concerning the scheduling of the expert deposition. To date, the Bureau has continually declined to reciprocate.

before it can be exported in a meaningful form. Respondents have been working diligently to process the data but require more time to be able to fully comply with the Bureau's subpoena. In order to provide the type of information that was originally produced to the Bureau in response to its Civil Investigative Demand ("CID"), Respondents were required to rebuild the database used to generate that response. As the Bureau has been informed, Respondents cannot replicate exactly the Excel spreadsheet that was originally produced to the Bureau in response to the CID. Rather, Respondents will provide the information responsive to the subpoena in Statistical Analysis Format ("SAS") format. Nor can Respondents replicate, with certainty, the data fields reflected on the Excel spreadsheet referenced in the subpoena (CFPB003126). Indeed, if Respondents could replicate these data fields, they would have already provided the Bureau with the data dictionary. Instead, Respondents have offered to respond to any customized data queries the Bureau requests in order to comply with the subpoena. However, to date the Bureau still has not told Respondents what data fields it seeks or what specific queries it wants performed on the existing database. This further complicates Respondents' ability to respond to the subpoena, and, is a part of why there is a need for more time.

Mindful of the Bureau's need for timely access to the information covered by the subpoena, Respondents are working to provide information to the Bureau as quickly as possible—but are unable to promise, with certainty, a response before the requested extended deadline. Counsel for the Bureau has indicated that a deadline of April 11 will not leave enough time between the date of production and the deadline for filing motions for summary disposition. Under the current Scheduling Order, motions for summary disposition are due on May 2, 2016. Were the Court to grant Respondents' Motion for an Extension of Time, the parties would have twenty-one days between the latest possible date of production and the deadline for filing for

summary disposition. This timeframe is no shorter than—and, in fact, is three days longer than—the timeframe between production and summary disposition filing contemplated under the initial scheduling order.³

Accordingly, Respondents respectfully request that the Court grant Respondents' Motion for Extension of Time and extend the deadline for production of all data and/or documents responsive to Requests 1 and 2 to **April 11, 2016**.

Respectfully submitted,

Dated: March 21, 2016

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³ Under the Order Following Scheduling Conference, issued December 18, 2015, motions for summary disposition were to be due on April 8, 2016. The Subpoena Order states that all documents responsive to Requests 1 and 2 are due within thirty days of the date of service of the subpoena. The Bureau's subpoena was served on Respondents electronically on February 19, 2016, so under Rule 114, the production would be due on March 21, which is only eighteen, and not twenty-one, days before April 8.

CERTIFICATION OF SERVICE

I hereby certify that on the 21st day of March 2016, I caused a copy of the foregoing Answer to be filed by electronic transmission (e-mail) with the U.S. Coast Guard Hearing Docket Clerk (aljdocketcenter@uscg.mil), Heather L. MacClintock (Heather.L.MacClintock@uscg.mil) and Administrative Law Judge Parlen L. McKenna (cindy.j.melendres@uscg.mil), and served by electronic mail on the following parties who have consented to electronic service:

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