

UNITED STATES OF AMERICA
Before the
BUREAU OF CONSUMER FINANCIAL PROTECTION

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029

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)
In the Matter of:) **ENFORCEMENT COUNSEL'S**
) **REPLY IN SUPPORT OF ITS**
) **MOTION TO ALLOW**
) **TWO ATTORNEYS TO ARGUE**
INTEGRITY ADVANCE, LLC, and)
JAMES R. CARNES,)
)
)
Respondents.)
)
)

ENFORCEMENT COUNSEL'S REPLY IN SUPPORT
OF ITS MOTION TO ALLOW TWO ATTORNEYS TO ARGUE

Enforcement counsel has requested permission to have two attorneys present argument at the upcoming oral argument, one of whom is a Legal Division attorney who has been and will continue to be walled-off from providing advice to the Director in this matter. *See* EC Mot. to Allow Two Att'y's to Argue (Nov. 18, 2020) at 2 n.1. Respondents oppose the Bureau's request, asserting vague, unspecified "concerns" about fairness and a conflict of interest. But Respondents fail to explain how granting Enforcement Counsel's motion would either quell or stoke those concerns. Indeed, there is no genuine basis for concern here, where Enforcement Counsel merely seeks to have an attorney from the Legal Division present argument, and where that attorney has been and will continue to be walled off from providing any advice to the

Director on this matter. Respondents' opposition to Enforcement Counsel's reasonable request offers no justification for denying the motion.

There is nothing novel or concerning about certain walled-off attorneys from the Legal Division assisting the Office of Enforcement with its prosecution of an administrative action, as long as they do not provide advice and counsel to the Director in connection with that same proceeding. *See generally* 12 C.F.R. § 1081.110(e).¹ Legal Division attorneys frequently support the Office of Enforcement in its litigation and often enter appearances and provide argument in cases brought by the Office of Enforcement. Indeed, walled-off Legal Division attorneys have assisted the Office of Enforcement throughout this proceeding, including by appearing at an earlier oral argument before the Director on January 11, 2017—an appearance Respondents had no objection to. *See* EC Unopposed Mot. to Allow Two Att'ys to Argue (Dec. 29, 2016) [Dkt. 194] (noting that one of the two attorneys would be from the Bureau's Legal Division); Order Granting EC Unopposed Mot. to Allow Two Att'ys to Argue (Jan. 3, 2017) [Dkt. 195].

Moreover, it is perfectly reasonable for Enforcement Counsel to be represented by two attorneys from different offices at a hearing that could address innumerable factual findings and conclusions of law made by the ALJ in her Recommended Decision and in at least seven substantive orders that preceded it, all of which Respondents have appealed. This is especially

¹ Respondents' citation to *FTC v. Atlantic Richfield Co.*, 567 F.2d 96 (D.C. Cir. 1977), is of no use in resolving this motion. In that case, a subpoena recipient objected to the materials produced in response to the subpoena being shared with a separate litigation team at the FTC. *See id.* While the D.C. Circuit identified broad principles regarding the need for regulatory agencies to keep investigative and adjudicative functions separate, *id.* at 102, it remanded the case so that the FTC could clarify its policies regarding the sharing of materials among different teams within the FTC's equivalent of the Bureau's Office of Enforcement. *Id.* at 106-107. Neither the D.C. Circuit's holding nor the general principles cited therein have any bearing on whether walled-off attorneys from an office within an administrative agency can perform different roles in connection with an administrative adjudicative proceeding.

true where Respondents have appealed rulings relating to the Bureau's constitutionality, a subject in which attorneys from the Legal Division maintain specific expertise and regularly present argument in federal court in matters brought by the Office of Enforcement.

Dated: November 20, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of November 2020, I caused a copy of the foregoing Enforcement Counsel's Reply in Support of Its Motion to Allow Two Attorneys to Argue to be filed by electronic transmission (email) with the Office of Administrative Adjudication (CFPB_electronic_filings@cfpb.gov), and served by email on Respondents' counsel at the following addresses:

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