

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029

In the Matter of:

**INTEGRITY ADVANCE, LLC and
JAMES R. CARNES**

Respondents

**ORDER GRANTING IN PART
AND DENYING IN PART
ENFORCEMENT COUNSEL'S
OBJECTIONS TO
RESPONDENTS' PROPOSED
EXHIBITS AND WITNESSES**

Hon. Parlen L. McKenna

Pursuant to my June 17, 2016 Order Revising Dates for Prehearing Submissions,¹ the Consumer Financial Protection Bureau (CFPB or Bureau) filed Objections to Respondents' Proposed Exhibits and Witnesses (Objections) on July 11, 2016. The Bureau objects to the introduction of eleven of Respondents' exhibits, arguing that 1) Respondents failed to provide copies of four exhibits, and 2) seven exhibits are irrelevant to the issues remaining for disposition. The Bureau also objects to the testimony of Respondents' generically identified witnesses and unnamed rebuttal or impeachment witnesses. For the reasons stated below I am granting in part and denying in part the Bureau's Objections.

A. RX015 through RX018

The Bureau has asked me to preclude the introduction of the following four exhibits:

RX015 (January 25, 2010 Email between E. Quinn Miller and Edward Foster – pending response from Delaware Office of the State Bank Commissioner),

¹ This order modified the dates previously set in an Order dated April 27, 2016.

RX016 (January 29, 2010 Letter between E. Quinn Miller and Claudia Callaway - pending response from Delaware Office of the State Bank Commissioner),

RX017 (January 11, 2012 Email from Kelley R. Jones to Edward Foster and attachments - pending response from Delaware Office of the State Bank Commissioner), and

RX018 (2012 Report of exam from the Delaware Office of the State Bank Commissioner - pending response from Delaware Office of the State Bank Commissioner).

The Bureau argues that Respondents failed to provide either copies of the exhibits, as required by the CFPB Rules of Practice, or a description of the exhibits' content. *See* 12 C.F.R. § 1081.215(a)(4). The Bureau also argues that the exhibits appear to be irrelevant to the limited issues remaining.

As a remedy for failure to comply with the CFPB procedural rules, 12 C.F.R. § 1081.215(c) provides, “[n]o witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.” On the other hand, 12 C.F.R. § 1081.104(b)(10) gives the hearing officer the power to “rule upon, as justice may require, all . . . motions appropriate in adjudication proceedings.” After thorough review of the Bureau’s arguments and in the interest of justice, I am DENYING the objections and admitting the exhibits into the hearing record.

However, Respondents are ordered to produce copies of RX015, RX016, RX017, and RX018 to Bureau counsel by 9:00 a.m. EDT on Monday, July 18, 2016. The Bureau will then have five days to propose, in writing, the appropriate remedy for any prejudice suffered due to the lack of advance production.

B. RX007 through RX013

The Bureau argues that the following documents, which pertain to Integrity Advance's formation as a LLC and licensing by the Delaware State Bank Commissioner, should be excluded:

- RX007 (DE LLC Formation)
- RX008 (DE License Renewal Application – 2011)
- RX009 (DE License Renewal Application – 2012)
- RX010 (DE License Renewal Application – 2013)
- RX011 (DE License Renewal Acceptance Letter – 2011)
- RX012 (DE License Renewal Acceptance Letter – 2012)
- RX013 (DE License Renewal Acceptance Letter – 2013)

Specifically, the Bureau argues that these exhibits are irrelevant and immaterial because they relate to facts already deemed established in my July 1, 2016 summary disposition order. *See* 12 C.F.R. § 1081.303(b)(1). The Bureau also relies on 12 C.F.R. § 1081.303(b), which provides that the hearing officer may exclude unduly repetitious evidence because consideration of cumulative evidence may cause undue delay.

I have considered these arguments but am DENYING the Bureau's request. It is the job of an Administrative Law Judge to create a full and complete record, and to render an informed decision based on the facts and the law. *See* 5 U.S.C. § 556(d). Accordingly, RX007 through RX013 are admitted into the hearing record and will be given appropriate weight during the hearing and in drafting the decision.

C. RX006

Exhibit RX006 (attachments to declaration from Chris Carson) contains Respondents' analysis of Integrity Advance's consumer transaction data. Chris Carson is an employee of TranDotComSolutions and is expected to testify concerning Integrity Advance's database, which is hosted by TranDotComSolutions. The Bureau seeks to reserve its right to raise an objection to this exhibit at a later date. The Bureau's specific objection is that Respondents did not seek to introduce the data underlying RX006 and did not provide a copy of the underlying data to the Bureau. Furthermore, the Bureau asserts that Respondents failed to confirm whether the dataset relied upon by Mr. Carson was the same dataset previously provided in response to a subpoena for data.

I will GRANT the Bureau's request, and will reserve ruling on the admissibility of RX006 until it is offered at the hearing. At such time, the Bureau may raise any objections to the admission of this exhibit. Furthermore, Respondents shall inform the Bureau whether the dataset relied upon by Mr. Carson was the same as the dataset it provided to the Bureau by 9:00 a.m. EDT on Monday, July 18, 2016. If Mr. Carson relied on a different dataset, Respondents must also provide that dataset by 9:00 a.m. EDT on Monday, July 18, 2016.

D. RX003, RX004, RX005, and RX014

My June 17, 2016 Order Revising Dates for Prehearing Submissions required the parties to submit all objections to the opposing party's exhibits by July 11, 2016. However, neither the parties' joint stipulations nor the Bureau's Objections mentioned the following exhibits:

RX003 (Novemsky Report dated March 25, 2016)

RX004 (Novemsky CV dated June 2016)

RX005 (List of Documents and Materials considered in Novemsky Report)

RX014 (DE Report of Delaware Assets – 2011).

On July 14, 2016, Bureau counsel indicated by email to my staff and all counsel involved in the proceedings that the Bureau will not object to the admission of these four exhibits. Accordingly, RX003, RX004, RX005, and RX0014, are admitted into the hearing record and will be given appropriate weight.

E. Objections to Witness

Finally, the Bureau objects to certain witnesses Respondents intend to call. One witness is identified as a “Representative from the State of Delaware Office of the State Bank Commissioner” and the other witness or category of witnesses is identified as “Potential Integrity Advance customer(s), to testify regarding his/her experience with the Integrity Advance loan application, customer service, and issues relating to general customer satisfaction.” The Bureau also objects to Respondents reserving the right to “call additional witnesses for purposes of impeachment or rebuttal.”

After disclosure of the proposed witness and exhibit list, Respondents requested a subpoena for E. Quinn Miller, Investigative Supervisor, from the Delaware Office of the State Bank Commissioner. I issued the subpoena on July 13, 2016; therefore, I am DENYING the Bureau’s request to preclude a “Representative from the State of Delaware Office of the State Bank Commissioner,” as the witness is now identified by name. I am also DENYING the Bureau’s request to preclude Respondents from calling rebuttal and impeachment witnesses. It is well established in administrative law that rebuttal and impeachment witnesses do not need to be named in advance. *See Generally* Federal Rules of Civil Procedure 26(a)(1)(A)(ii); *Weber v. Twin Bridges School District*, No. CV–05–83–BU–RFC, 2010 WL 2425984 (D. Mon. June 11, 2010).

However, I GRANT the Bureau's request to enjoin Respondents from calling "Potential Integrity Advance customer(s), to testify regarding his/her experience with the Integrity Advance loan application, customer service, and issues relating to general customer satisfaction" as witnesses on direct examination. To protect due process rights, this ruling does not preclude Respondents' from calling such witnesses for rebuttal purposes. Accordingly, any request to call an Integrity Advance customer for rebuttal purposes must be made as soon as practicable and I will rule on any such request at the appropriate time.

ORDER

IT IS HEREBY ORDERED the following Respondents' Exhibits were stipulated to in a Joint Stipulation Regarding Exhibits to Which Neither Party Objects filed on July 8, 2016 and are admitted into the hearing record:

RX001 (IA Reporting Structure)

RX002 (IA Amended Operating Agreement)

IT IS HEREBY FURTHER ORDERED the following Respondents' Exhibits are admitted into the hearing record without objection from the Bureau:

RX003 (Novemsky Report dated March 25, 2016)

RX004 (Novemsky CV dated June 2016)

RX005 (List of Documents and Materials considered in Novemsky Report)

RX014 (DE Report of Delaware Assets – 2011)

IT IS HEREBY FURTHER ORDERED the following Respondents' Exhibits are admitted into the hearing record pursuant to this Order:

RX007 (DE LLC Formation)

RX008 (DE License Renewal Application – 2011)

RX009 (DE License Renewal Application – 2012)

RX010 (DE License Renewal Application – 2013)

RX011 (DE License Renewal Acceptance Letter – 2011)

RX012 (DE License Renewal Acceptance Letter – 2012)

RX013 (DE License Renewal Acceptance Letter – 2013)

IT IS HEREBY FURTHER ORDERED the following Respondents' Exhibits are provisionally admitted into the hearing record pursuant to this Order, provided that Respondents provide the Bureau with copies of each proposed exhibit no later than Monday, July 18, 2016 at 9:00 a.m.

EDT:

RX015 (January 25, 2010 Email between E. Quinn Miller and Edward Foster – pending response from Delaware Office of the State Bank Commissioner)

RX016 (January 29, 2010 Letter between E. Quinn Miller and Claudia Callaway – pending response from Delaware Office of the State Bank Commissioner)

RX017 (January 11, 2012 Email from Kelley R. Jones to Edward Foster and attachments - pending response from Delaware Office of the State Bank Commissioner)

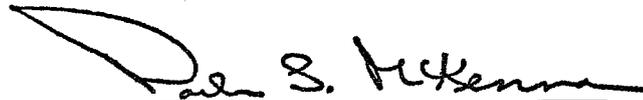
RX018 (2012 Report of exam from the Delaware Office of the State Bank Commissioner - pending response from Delaware Office of the State Bank Commissioner)

IT IS HEREBY FURTHER ORDERED that I am reserving ruling on the admission of RX006 (Attachments to declaration from Chris Carson) until the hearing. Respondents are to inform the Bureau of the dataset relied upon by Mr. Carson; and if applicable, provide to the Bureau that dataset used by Mr. Carson no later than 9:00 a.m. EDT on Monday July 18, 2016.

IT IS HEREBY FURTHER ORDERED that Respondents may present the testimony of E. Quinn Miller (Representative from the State of Delaware Office of the State Bank Commissioner), and present witnesses for impeachment or rebuttal purposes at hearing.

IT IS HEREBY FURTHER ORDERED that Respondents are precluded from presenting the testimony of “potential Integrity Advance customer(s), to testify regarding his/her experience with the Integrity Advance loan application, customer service, and issues relating to general customer satisfaction” during their case-in-chief at the hearing.

FINALLY, IT IS HEREBY FURTHER ORDERED that the Bureau submit in writing their proposal on how to remedy any prejudice suffered due to the lack of advance production within five days after receiving copies of RX015, RX016, RX017, and RX018.



Hon. Parlen L. McKenna
Administrative Law Judge
United States Coast Guard

Done and dated this 15th day of July, 2016 at
Alameda, California.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE SERVED THE *ORDER GRANTING IN PART AND DENYING IN PART ENFORCEMENT COUNSEL'S OBJECTIONS TO RESPONDENTS' PROPOSED EXHIBITS AND WITNESSES* (2015-CFPB-0029) UPON THE FOLLOWING PARTIES AND ENTITIES IN THIS PROCEEDING AS INDICATED IN THE MANNER DESCRIBED BELOW:

Via Fax and email: D05-PF-ALJBALT-ALJDocket

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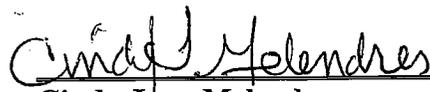
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Done and dated this 15th day in July, 2016
Alameda, California


Cindy June Melendres
Paralegal Specialist to the
Hon. Parlen L. McKenna