UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029

In the Matter of:	**ORDER GRANTING IN PART AND DENYING IN PART BUREAU'S MOTION FOR SUMMARY DISPOSITION AND DENYING RESPONDENTS' MOTION FOR SUMMARY DISPOSITION**
INTEGRITY ADVANCE, LLC and JAMES R. CARNES **Respondents**	**Hon. Parlen L. McKenna**

I. PROCEDURAL HISTORY

The Consumer Financial Protection Bureau (CFPB or Bureau) brought this administrative action on November 18, 2015, alleging that Respondents Integrity Advance, Inc. and James R. Carnes (collectively, "Respondents") violated several consumer financial protection laws while providing short-term, small-dollar, high-cost loans. These loans are often referred to as "payday loans." Specifically, the Bureau alleged that Integrity Advance violated the Truth in Lending Act (TILA), Pub.L. 90-321, 82 Stat. 146, 15 U.S.C. § 1601 *et seq.*; the Electronic Fund Transfer Act (EFTA), Pub.L. 95-630, 92 Stat. 3641, 15 U.S.C. § 1693 *et seq.*; and the Consumer Financial Protection Act (CFPA), Pub.L. 111-203, 124 Stat. 1376, 12 U.S.C. § 5481 *et seq.*[1] The Bureau alleged that Respondent Carnes violated the CFPA, but not TILA or EFTA.

[1] All citations in this Order will be to the United States Code.

The parties filed cross-motions for summary disposition, as well as responses and replies. For the reasons stated below, the Bureau's motion for summary disposition is GRANTED as to Counts I, II, V, and VI and DENIED as to the remaining counts. Respondents' motion for summary disposition is DENIED in its entirety.

II. LEGAL STANDARD FOR SUMMARY DISPOSITION

CFPB's Rule of Practice 212 permits parties to file motions for summary disposition. 12 C.F.R. § 1081.212(c). The hearing officer shall grant the motion if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters to which official notice may be taken, and other evidentiary materials properly submitted show that (1) there is no genuine issue as to any material fact; and (2) the moving party is entitled to a decision in its favor as a matter of law. *Id.* This standard is virtually identical to the standard for summary judgment set out in Federal Rule of Civil Procedure 56, and the evidentiary support required is also comparable. The Bureau stated, in the commentary to the Final Rule, that it was adopting similar standards to those found in "the Uniform Rules, the SEC Rules, and the FTC Rules for such motions." 77 Fed. Reg. 39057, 39078 (Jun. 29, 2012). Both the SEC and FTC rules are modeled on the summary judgment standard in Fed.R.Civ.P. 56. *See Kornman v. SEC*, 592 F.3d 173, 182 (D.C. Cir. 2010); *Trans Union Corp. v. FTC*, 81 F.3d 228, 230 (D.C. Cir. 1996). In light of this, and the fact that little CFPB-specific case law exists, I find it appropriate to consider precedent under Fed.R.Civ.P. 56 in this proceeding.

In considering a motion for summary disposition, all evidence must be viewed in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). The party seeking summary disposition bears the initial burden of

identifying the specific evidence that "it believes demonstrate[s] the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). After the moving party has met its initial burden, "its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Com.*, 475 U.S. 574, 586 (1986). In other words, the party opposing summary disposition must specifically show what facts create a genuine issue for trial. *See Celotex* at 324.

A factual dispute between the parties will not defeat a motion for summary disposition unless it is both genuine and material. *Anderson*, 477 U.S. at 242 at 247-48. A dispute is genuine if the evidence is such that a reasonable fact finder could return a decision for the nonmoving party. *See id.* at 251-52; *Kautz v. Met-Pro Com.*, 412 F.3d 463,467 (3d Cir. 2005). "Material facts" are facts that may affect the outcome of the case. *See Anderson* at 248. At this stage in the proceedings, the judge's role is not to weigh the evidence, make credibility determinations, or determine the truth. *See Anderson* at 249. Instead, the judge's role is to determine whether there are genuine factual issues necessitating a hearing. *Id.* Summary disposition, however, "should be cautiously invoked to the end that parties may always be afforded a trial where there is a bona fide dispute of facts between them." *Assoc. Press v. United States*, 326 U.S. 1, 6 (1945).

Here, both parties filed motions for summary disposition as to liability (fact of violation) for all seven counts contained in the Notice of Charges. Where, as here, both motions involve the same complaint and responsive pleadings, "[i]t does not follow that, merely because each side moves for a summary judgment, there is no issue of material

fact. For, although a defendant may, on his own motion, assert that, accepting his legal theory, the facts are undisputed, he may be able and should always be allowed to show that, if plaintiff's legal theory be adopted, a genuine dispute as to a material fact exists." *Garrett Biblical Inst. v. Am. Univ.*, 163 F.2d 265, 266 (D.C. Cir. 1947) (internal quotations omitted).

Both 12 C.F.R. § 1081.212(c) and Fed.R.Civ.P. 56 are silent as to how a court should analyze cross-motions for summary disposition. However, it is generally accepted that each motion should be analyzed on its own merits and all "appropriate evidentiary material identified and submitted in support of both motions, and in opposition to both motions" must be considered before any ruling is made. *Fair Hous. Council of Riverside Cty., Inc. v. Riverside Two*, 249 F.3d 1132, 1134 (9th Cir. 2001); *see also Abraham v. Graphic Arts Int'l Union*, 660 F.2d 811, 820 (D.C. Cir. 1981) (summary judgment was appropriate only if one party has either demonstrated "its right to judgment 'with such clarity as to leave no room for controversy,'" or the other "would not be entitled to (prevail) under any discernible circumstances.").

Both parties have presented a set of facts they believe are material to the case, as well as argument about how the law applies to their set of facts. While the parties certainly differ as to what the facts mean, the material facts underlying the case are, by and large, not in dispute. "Where the operative facts are substantially undisputed, and the heart of the controversy is the legal effect of such facts, such a dispute effectively becomes a question of law that can, quite properly, be decided on summary judgment." *F.T.C. v. Gill*, 71 F.Supp.2d 1030, 1035 (E.C. Cal. 1999), *aff'd*, 265 F.3d 944 (9th Cir. 2001).

III. FACTS DEEMED ESTABLISHED

Under CFPB Rule 213, when "a decision is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the hearing officer shall issue an order specifying the facts that appear without substantial controversy," and these "shall be deemed established." 12 C.F.R. § 1081.213. Accordingly, the following facts appear to be without substantial controversy and are deemed established.

1. Integrity Advance is a Delaware limited liability company (LLC). Parties' Joint Stipulations, Mar. 23, 2016 at ¶2 (hereafter Joint Stip.).

2. Integrity Advance held a Delaware lending license. Joint Stip. ¶¶ 13-15.

3. From approximately May 2008 to December 2012, Integrity Advance originated and serviced short-term loans to consumers. Joint Stip. ¶ 8.

4. The loans offered by Integrity Advance ranged in value from $100 to $1,000. Joint Stip. ¶ 11.

5. New customers were generally charged finance fees of $30 per $100 financed and returning VIP customers were charged $24 per $100 financed. Loan Agreement Form #2 (CFPB000643-CFPB000645).[2]

6. Respondent James R. Carnes was the President and Chief Executive Officer of Integrity Advance from its formation to the date it ceased operations. Joint Stip. ¶ 7; Bureau Exh. 3-4 (Carnes Investigational Interview) at 31:3 (CFPB035906).[3]

7. Edward Foster was executive vice president, secretary, assistant treasurer, and general counsel to Integrity Advance. Bureau Exh. 6 (Foster Investigational Interview) at 15:21-16:1 (CFPB036163-CFPB036164).

[2] Both parties have submitted copies of the contract in their exhibits. The Bureau submitted a blank copy of the boilerplate contract as Exhibit 1. Respondents submitted a completed example of the same contract, with the consumer's personally identifying details redacted, as Exhibit 1, and the Bureau submitted two other completed and redacted examples of that contract as Exhibits 4 and 5. The Bureau also submitted a blank copy of a slightly different version of the contract as Exhibit 2. The contract terms are essentially the same between to the two versions of the contract, though some elements of layout and placement differ. For the sake of clarity in citation, I will generally refer to the boilerplate document found at Bureau Exhibit 1 and will cite to the unique document identifier for the cited page. However, I will note if any significant differences exist between this exhibit and others.

[3] Respondents submitted excerpts of Mr. Carnes's Investigational Interview as Exhibit 2 and of Mr. Foster's Investigational Interview as Exhibit 5. However, the Bureau's exhibits contain the full transcripts of those interviews, and I will refer to those exhibits herein.

8. Integrity Advance had one storefront in Delaware, which served as both a walk-in lending operation and as Integrity Advanced mailing address. Joint Stip. ¶ 3; Bureau Exh. 3-4 at 10:17-23 (CFPB035885), 24:8-18 (CFPB035899); Bureau Exh. 6 at 173:13-19 (CFPB036322), 176:15-21 (CFPB036325).

9. Integrity Advance primarily made loans online. Bureau Exh. 3-4 at 161:23 (CFPB036036), 162:6-7 (CFPB036037); Bureau Exh. 6 at 9:22-24 (CFPB036158).

10. Integrity Advance maintained a website at www.iadvancecash.com. Loan Agreement at 3; Bureau Exh. 6 at 89:23-25 (CFPB036238).

11. Customers could apply for a loan directly at Integrity Advance's website. Bureau Exh. 3-4 at 208:22-209:1 (CFPB036083-CFPB36084).

12. Other customers were directed to Integrity Advance through "lead generator" websites. Joint Stip. ¶ 9; Bureau Exh. 3-4 at 164:19-23 (CFPB036039), 207:5-12 (CFPB036082).

13. When customers visited a lead generator website, they would type in certain personal information and the lead generator would provide that information to Integrity Advance for a fee. Bureau Exh. 3-4 at 176:8-177:7 (CFPB036051-CFPB036052).

14. This was a computerized process that happened within a matter of seconds. Bureau Exh. 3-4 at 180:6-181:14 (CFPB036055-CFPB036056).

15. If Integrity Advance purchased a lead, the customer would be directed to a webpage with additional documents. Bureau Exh. 3-4 at 180:6-181:8 (CFPB036055-CFPB036056).

16. At this stage, the remaining application process was identical regardless of whether a consumer visited Integrity Advance's website directly or was sent there via a lead generator. Bureau Exh. 3-4 at 209:18-210:1 (CFPB036084-CFPB036085).

17. Consumers were then required to take additional steps to complete the loan documents. Bureau Exh. 3-4 at 182:22-183:9 (CFPB036057-CFPB036058).

18. These documents that made up the contract were the Application, the Loan Agreement, the ACH[4] Authorization, and the Arbitration Provision. Bureau Exh. 1, 2, 4, 5; Resp. Exh. 1.

19. Consumers were required to type their initials or full name in several places throughout the contract, and to click several "I Agree" buttons. Bureau Exh. 3-4 at 182:22-183:9 (CFPB036057-CFPB036058).

[4] ACH stands for Automated Clearing House.

20. A third-party call center contacted each customer prior to final approval of a loan and disbursement of the proceeds. Bureau Exh. 3-4 at 187:18-188:8 (CFPB036062-CFPB036063), 189:13 (CFPB036064).

21. After approving a loan, Integrity Advance sent customers an email reiterating certain portions of the loan agreement. Resp. Exh. 3.

22. Integrity Advance also sent one or more Payment Reminder Emails in advance of the payment due date. Resp. Exh. 4.

23. In a box found underneath the TILA disclosures, the Loan Agreement states, "Security: You are giving a security interest in the ECHECK/ACH Authorization." Loan Agreement Form #2 (CFPB000640).

24. A paragraph found later in the Loan Agreement states, "Security. Pursuant to Comment 2(a)(25) of the Federal Reserve Board Official Staff Commentary to Regulation Z 226.2, we have disclosed to you that our interest in the ECHECK/ACH Authorization Agreement is a security interest for Truth-in-Lending Purposes only because federal and Delaware law do not clearly address whether our interest in the ECHECK/ACH Authorization is a 'security interest.'" Loan Agreement Form #2 (CFPB000642).

25. These two references to Integrity Advance's security interest in the ACH Authorization are part of the boilerplate contracts. Bureau Exh. 1 and 2.

26. Consumers were required to provide employment information including the length of their pay periods and the corresponding pay dates. Application Form #1 (CFPB000654).

27. The Loan Agreement and related documents state that Integrity Advance uses electronic means to disburse customers' loan proceeds, but do not provide an alternate (non-electronic) method of receiving loan proceeds. Loan Agreement Form #2 (CFPB000641); ACH Authorization Form #2b (CFPB000796).

28. Respondents admitted that "[c]onsumers could only receive loan proceeds by way of an electronic deposit which was authorized by the ACH authorization form. Ans. ¶ 40; *see also* Bureau Exh. 3-4 at 159:24-160:1 (CFPB036034-CFPB36035).

29. The same form is used to authorize both electronic credits to and debits from a consumer's bank account. ACH Authorization Form #2 (CFPB000796-CFPB000797).

30. Consumers applying for loans online were required to click the "I Agree" buttons on the Loan Agreement form and all other related forms in order for the application to be processed. Loan Agreement Form #2 (CFPB000641).

31. Consumers were required to electronically sign the ACH Authorization in several places and to click the "I Agree" button. ACH Authorization Form #2 (CFPB000796-CFPB000797).

32. If a consumer did not want to authorize ACH transfers, he or she could attempt to make an alternate payment arrangement. Bureau Exh. 3-4 at 217:7-17 (CFPB036092); Bureau Exh. 6 at 85:14-86:22 (CFPB036233-CFPB036234).

33. A small percentage of consumers did not authorize ACH debits from their bank accounts. *See* Bureau Exh. C (Hughes Dec.) ¶8.

34. Neither the Loan Agreement nor the ACH Authorization indicates that a consumer can obtain a loan without completing and agreeing to the ACH Authorization. *See* Bureau Exh. 1 and 2.

35. Neither the Loan Agreement nor the ACH Authorization explains what a consumer must do to complete the loan application without signing and agreeing to the ACH Authorization. *See* Bureau Exh. 1 and 2.

36. Integrity Advance did not offer the option to complete the application without the ACH Authorization to every consumer. Bureau Exh. 3-4 at 217:7-17 (CFPB036092); Bureau Exh. 6 at 85:14-86:22 (CFPB036233-CFPB036234).

37. Approximately 98.5% of initial loan repayments were made via ACH transfer. Bureau Exh. C (Hughes Dec.) ¶8.

38. The ACH Authorization permitted consumers to repay the loan through other means, such as a cashier's check or money order sent to an address provided in the Authorization. ACH Authorization Form #2b (CFPB000797).

39. The ACH Authorization permitted consumers to revoke the authorization by contacting Integrity Advance directly. ACH Authorization Form #2b (CFPB000797).

40. The ACH Authorization did not specify the method a consumer wishing to revoke the authorization should use to contact Integrity Advance, i.e. by phone, email, fax, etc. ACH Authorization Form #2b (CFPB000797).

41. The ACH Authorization provided that consumers who revoked the authorization were required to provide "another form of payment acceptable to us." ACH Authorization Form #2b (CFPB000797).

42. The ACH Authorization also provided that consumers who revoked the authorization "authorize[d] us to prepare and submit one or more checks drawn on Your Bank Account so long as amounts are owed to us under the Loan Agreement." ACH Authorization Form #2b (CFPB000797).

43. The ACH Authorization stated, "You agree that the ACH Authorization herein is for repayment of a single payment loan, or for single payment of finance charges for Renewals, and that these entries shall not recur at substantially regular intervals." ACH Authorization Form #2b (CFPB000797).

44. The ACH Authorization form set out four circumstances under which a consumer's account would be debited. ACH Authorization Form #2b (CFPB000796-CFPB00797).

45. The first of these circumstances was if the consumer wanted to pay the loan in full and informed Integrity Advance by calling the telephone number provided at least

three days before the loan's due date. ACH Authorization Form #2b (CFPB000796-CFPB00797).

46. If the consumer contacted Integrity Advance and chose this option, a debit entry would be made for the full amount of the principal and finance charge, as disclosed in the TILA box. ACH Authorization Form #2b (CFPB000796-CFPB00797).

47. The second circumstance was if the consumer either contacted Integrity Advance by calling the telephone number provided at least three days before the due date and chose the renewal option, or if the consumer did not call Integrity Advance to select a payment option. ACH Authorization Form #2b (CFPB000797).

48. If the consumer contacted Integrity Advance and requested a renewal, or did not contact Integrity Advance, a debit entry would be made for the amount of the finance charge. ACH Authorization Form #2b (CFPB000797).

49. The third circumstance under which debit entries were made was when a consumer's loan entered "auto-workout" status. ACH Authorization Form #2b (CFPB000797).

50. During the "auto-workout" phase, a debit entry in the amount of the accrued finance charge plus $50.00 would be made on each successive pay date until the consumer's loan was paid in full. ACH Authorization Form #2b (CFPB000797).

51. The fourth circumstance in which debit entries were made was for accrued returned payment charges. ACH Authorization Form #2b (CFPB000797).

52. A customer was required to take additional action to effect a payment in full. Loan Agreement Form #2 (CFPB000640); ACH Authorization Form #2b (CFPB000796).

53. A customer was not required to take any additional action to renew a loan, make "auto-workout" payments, or pay accrued returned payment charges. Loan Agreement Form #2 (CFPB000640-CFPB000641); ACH Authorization Form #2b (CFPB000796-CFPB000797).

54. Integrity Advances' loan were due on a borrower's pay date. Loan Agreement Form #2 (CFPB000640).

55. Renewal loans were made for a minimum of 14 days, based on the customer's employer's pay schedule. Loan Agreement Form #2 (CFPB000645).

56. Renewal loans were due on the borrower's next pay date, except that if the pay date was less than 14 days from the renewal date, it would be scheduled for the following pay date. Loan Agreement Form #2 (CFPB000640 and CFPB000645).

57. Auto-workout payments were debited on each successive pay date until the loan balance was paid in full. Loan Agreement Form #2 (CFPB000641).

58. Integrity Advance's Loan Application forms included Truth in Lending Act disclosures. Loan Agreement Form #2 (CFPB000640).

59. These disclosures were contained in a box set apart from other sections of the application (hereafter "the TILA box"). Loan Agreement Form #2 (CFPB000640).

60. The TILA box was modeled on the sample provided in Regulation Z. *See* 12 C.F.R. Part 1026, app. H (H.2).

61. The box discloses the total cost of the loan if "all payments [are] made as scheduled." Loan Agreement Form #2 (CFPB000640).

62. The disclosed term of an Integrity Advance loan was from the effective date until the consumer's next pay date. Loan Agreement Form #2 (CFPB000640).

63. Consumers were required to take affirmative action to pay the loans as scheduled. Loan Agreement Form #2 (CFPB000640 and ACH Authorization Form #2b (CFPB000796).

64. The contract required consumers to confirm their payment option by telephone. Loan Agreement Form #2 (CFPB000640); ACH Authorization Form #2b (CFPB000796).

65. In practice, consumers may have used other methods to confirm their payment option. Bureau Exh. 3-4 at 228:4-10 (CFPB 036103); Ans. ¶¶ 29, 30.

66. The contract required consumers to confirm their payment option no later than three days prior to the payment due date. Loan Agreement Form #2 (CFPB000640).

67. In practice, consumers were able to choose their payment option until close of business on the day before the payment was due. Bureau Exh. 3-4 at 218:1-24 (CFPB36093).

68. If consumers did not take affirmative action, the loan was automatically "rolled over" up to four times, then automatically placed into "auto-workout" status. Loan Agreement Form #2 (CFPB000641).

69. Each auto-renewal would incur a new finance charge. Loan Agreement Form #2 (CFPB000641).

70. The application states that "All terms of the Loan Agreement continue to apply to Renewals." Loan Agreement Form #2 (CFPB000641).

71. The application does not explicitly state amount of the finance charge for each renewal. Loan Agreement Form #2 (CFPB000640-CFPB000641).

72. Each auto-workout payment was comprised of "accrued finance charges" plus a $50.00 payment toward principal. Loan Agreement Form #2 (CFPB000641).

73. The loan documentation does not explain how "accrued finance charges" are calculated for auto-workout payments. Loan Agreement Form #2 (CFPB000641).

74. The "auto-workout" section does not explicitly state how far in advance a consumer must contact Integrity Advance to avoid being placed into an auto-workout payment plan. ("Unless you contact us to confirm your option for Payment in Full prior to your Fourth Renewal Payment Due Date, your loan will

automatically be placed into a Workout Payment Plan."). Loan Agreement Form #2 (CFPB000641).

IV. DISCUSSION

The Bureau is authorized and charged with enforcing consumer protection laws including TILA and EFTA. 12 U.S.C. §§ 5481(12) and (13), 5511, 5514(c). Moreover, the Bureau is charged with preventing covered persons or service providers from committing or engaging in an unfair, deceptive or abusive act or practice (UDAAP) under federal law. 12 U.S.C. § 5531. As I ruled in the April 22, 2016 Order Denying Respondents' Motion to Dismiss, both Integrity Advance and James R. Carnes are "covered persons" for purposes of the CFPA. Although Respondents have renewed their argument to the contrary, I will not revisit my earlier ruling.

However, I am not yet convinced as to the precise nature of Mr. Carnes's role at Integrity Advance. The Bureau contends he had an active role in the operations because he directly or indirectly supervised all Integrity Advance employees, made final hiring decisions, worked with and spoke regularly with other Integrity Advance executives, had the authority to determine policies and practices, and signed contracts with third-party vendors. CFPB Statement of Material Facts ¶¶ 4-12. However, earlier in the proceeding Respondents specifically contested the Bureau's characterization of Mr. Carnes' role and practices as CEO. *See* Resp. List of Controverted Facts, Mar. 23, 2016.

Other evidence in the record shows that Integrity Advance had no direct employees, including Mr. Carnes. Hayfield Investment Partners was the parent company of Integrity Advance and numerous other companies, and the officers and senior management of Integrity Advance were employed by sister companies under the Hayfield umbrella. Bureau Exh. 3-4 at 10-18 (CFPB035885-CFPB035893); Bureau Exh. 6 at

138:12-15 (CFPB036287). Integrity Advance employed third parties to run its call center and collections operations, and it is unclear how much influence Mr. Carnes, or any of the other corporate officers, had over these third-party vendors. *See generally* Bureau Exh. 3-4 and Bureau Exh. 6.

Thus, I find there is a genuine question as to Mr. Carnes's role and his individual liability for any violations of law found proved. A hearing on the merits is necessary for me to resolve this issue and to formulate appropriate legal conclusions based on those facts. I therefore DENY both parties' motions for summary disposition as to Claims III, IV, and VII insofar as they relate to Mr. Carnes.

Integrity Advance's liability as to these claims is discussed below. The parties each presented a set of facts they deem undisputed. While the parties certainly differ as to the meaning of the facts, it is apparent that the bulk of the facts concerning Integrity Advance's business structure and purpose, the mechanics of how Integrity Advance's loans worked, and the terms and conditions of the loan agreements themselves are not in dispute. The main disputes are over the legal conclusions each party believes should be drawn from these facts and any applicable law.

A. Counts I TILA; Count II: CFPA; and Count III: CFPA – Deception

1. The Parties' Arguments

Counts I and II involve violations of TILA. The Bureau contends that the major question is whether Integrity Advance "disclosed multi-payment, automatically renewing loans as if they were single payment loans." Bureau's Motion at 8. The Bureau's position is that, since consumers did not have to take any action in order for their loans to renew and eventually be placed into an auto-workout status, this represented a borrower's legal obligation under the contract. Thus, the disclosures should have represented the costs

and fees for the initial loan term, each renewal, and the auto-workout payments instead of the costs and fees for one, single-payment loan. According to the Bureau, Integrity Advance failed to disclose consumers' true legal obligations, and "each of Integrity Advance's 304,227 loan agreements during its five years of operation included a false TILA disclosure." Bureau's Motion at 9.

Respondents deny any TILA violation. They contend that a consumer's legal obligation at the time he/she signed the Loan Agreement was to repay the loan in full on the payment date, thus the TILA disclosures were accurate. Respondents further claim that the Bureau has created a new term, "the total cost of the loan," which has never been a required disclosure under TILA or Regulation Z. Respondents argue that, under TILA, they were required to disclose only the "specific legal obligation present at the outset of the loan – that is, the single payment due on the designated Payment Due Date." Respondents' Opposition at 4. According to Respondents, Integrity Advance would have violated TILA if it disclosed the cost according to the Bureau's formula, since borrowers were not legally obligated to make the renewal and auto-workout payments unless they neglected to satisfy their obligation to make the one scheduled payment in full.

Count III alleges that Respondents engaged in deceptive practices regarding the TILA disclosures, in violation of the CFPA, 12 U.S.C. §§ 5531(a) and (c) and 5536(a)(1)(B). The Bureau contends the loan agreements are deceptive on their face because they do not clearly and conspicuously disclose the true cost of the loan. The Bureau argues that the APR, finance charge, number of finance charges, total amount owed, and total number of payments are all material representations and were not disclosed accurately, clearly, or conspicuously. Consumers were likely to be misled as to

the amount they would ultimately repay, and there is evidence that a number of consumers actually did feel misled or deceived. The Bureau further argues that Respondents' lending practices were legally unfair because they caused substantial monetary injury to consumers; were not reasonably avoidable because customers did not receive all the relevant information about the APR and finance charges until they had already applied for and agreed to the loan, and could not reasonably stop Integrity Advance from debiting their accounts by either ACH transfer or remotely created check; and that the injury suffered was not outweighed by the benefits the loans provided to consumers. Bureau's Motion at 13-20.

Respondents argue the Bureau has not offered any evidence that the loans were deceptive. Respondents say that, to prove its claim, the Bureau must prove that consumers thought they were receiving an installment loan, paid over time in equal installments and totaling the "amount financed" shown in the TILA box. No reasonable consumer would have believed this, according to Respondents, because their call center representatives took the time to ensure each consumer understood the terms of the loan. Moreover, Respondents say the TILA box and the sentence immediately following which sets out one payment date and one payment amount are sufficiently clear that consumers would understand it was a single-payment loan. Respondents believe the terms and layout of the Loan Agreement are conspicuous and understandable for a reasonable consumer. Finally, Respondents argue that the possibility of renewals was not material to Integrity Advance's customers because they "needed access to credit as quickly as possible to meet immediate needs." Resp. Motion at 12.

2. Analysis

a. Integrity Advance's Loans were Multi-Payment Loans

At the heart of Counts I, II and III is the legal question of whether the loans Integrity Advance made were single-payment or multi-payment loans, and consequently "whether consumers' legal obligation at signing included just a single payment or the auto-renewal and auto-workout payments." Bureau's Reply at 2. If the loans were actually multi-payment loans, then the loan agreement is deceptive on its face and the TILA disclosures in the agreement are *per se* incorrect. If, on the other hand, the loans are single-payment loans, the disclosures would not violate TILA but the question of whether the loan agreement was deceptive in other ways would still remain.

Integrity Advance's boilerplate TILA disclosures and repayment clauses read:

FEDERAL TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. CALCULATED_APR%	FINANCE CHARGE The dollar amount the credit will cost you. FINANCE_CHARGE	Amount Financed The amount of credit provided to you or on your behalf. LOAN_AMOUNT	Total of Payments The amount you will have paid after you have made all payments as scheduled. TOTAL_OF_PAYMENTS

Your Payment Schedule will be: One (1) payment of **TOTAL_OF_PAYMENTS** due on **LOAN_DUE_DATE** ("Payment Due Date").
Security: You are giving a security interest in the ECHECK/ACH Authorization.
Prepayment: If you pay off early, you will be entitled to a refund of the unearned portion of the finance charge.

See the terms of the Loan Agreement below for any additional information about nonpayment, default, and prepayment refunds.

Itemization of Amount Financed: Amount given to you directly: **LOAN_AMOUNT** . Amount paid on Loan#: **APPLICATION_NUMBER** with us: **TOTAL_OF_PAYMENTS**.

PAYMENT OPTIONS: You must select your payment option at least three (3) business days prior to your Payment Due Date by contacting us at (800) 505-6073. At that time, you may choose:

(a) Payment in full: You may pay the Total of Payments shown above, plus any accrued fees, to satisfy your loan in full. When you contact us and choose this option, we will debit Your Bank Account (defined below) for the Total of Payments plus any accrued fees, in accordance with the ACH Authorization below; OR

(b) Renewal: You may renew your loan (that is, extend the Payment Due Date of your loan until your next Pay Date[1]) by authorizing us to debit Your Bank Account for the amount of the Finance Charge, plus any accrued fees. If you choose this option, your new Payment Due Date will be your next Pay Date[1], and the rest of the terms of the Loan Agreement will continue to apply.

AUTO-RENEWAL: If you fail to contact us to confirm your Payment Option at least three (3) business days prior to any Payment Due Date, or otherwise fail to pay the loan in full on any Pay Date, Lender may automatically renew your loan as described under (b) above, and debit Your Bank Account on the Payment Due Date or thereafter for the Finance Charge and any accrued fees. Your new Payment Due Date will be your next Pay Date[1], and the rest of the terms of the Loan Agreement will continue to apply. You must contact us at least three (3) business days prior to your new Payment Due Date to confirm your payment option for the Renewal. If you fail to contact us, or otherwise fail to pay the loan in full on your new Payment Due Date, we may automatically renew the loan until your next Pay Date.[1] After your initial loan payment, you may obtain up to four (4) Renewals. All terms of the Loan Agreement continue to apply to Renewals. All Renewals are subject to Lender's approval. Under Delaware law, if you qualify, we may allow you to enter into up to four (4) Renewals, also known as a "refinancing" or a "rollover". The full outstanding balance shall be due upon completion of the term of all Renewals, unless you qualify for Auto-Workout, as described below.

AUTO-WORKOUT. Unless you contact us to confirm your option for Payment in Full prior to your Fourth Renewal Payment Due Date, your loan will automatically be placed into a Workout Payment Plan. Under the Workout Payment Plan, Your Bank Account will automatically be debited on your Pay Date[1] for accrued finance charges plus a principal payment of $50.00, until all amounts owed hereunder are paid in full. This does not limit any of Lender's other rights under the terms of the Loan Agreement. All Workout Payment Plans are subject to Lender's approval

Bureau Exh. 1 Loan Agreement Form #2 (CFPB000640-CFPB000641). However, I note that the second version of the Loan Agreement does *not* contain the line "Your payment schedule will be . . ." in the second box below the TILA disclosures. Bureau Exh. 2 Loan Agreement Form #2 (CFPB000684).

To illustrate the difference between the cost of a loan as disclosed by Integrity Advance and the cost to a consumer who held the loan until the end of the auto-workout schedule, the Bureau included in the Notice of Charges the amortization of a hypothetical $300 loan. The TILA disclosures would indicate a $90 finance fee and a Total of Payments of $390. However, Respondents admitted that after all auto-renewals and auto-workouts occurred, one possible repayment scenario was as follows:

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PAYDAY	PAYMENT	FINANCE CHARGE (30% OF REMAINING PRINCIPAL BALANCE)	AMOUNT APPLIED TO PRINCIPAL	REMAINING PRINCIPAL BALANCE	TOTAL PAID TO DATE
1	$90	$90	$0	$300	$90
2	$90	$90	$0	$300	$180
3	$90	$90	$0	$300	$270
4	$90	$90	$0	$300	$360
5	$90	$90	$0	$300	$450
6	$140	$90	$50	$250	$590
7	$125	$75	$50	$200	$715
8	$110	$60	$50	$150	$825
9	$95	$45	$50	$100	$920
10	$80	$30	$50	$50	$1000
11	$65	$15	$50	$0	$1065
TOTAL	**$1065**	**$765**	**$300**	-	**$1065**

Notice of Charges ¶ 31; Answer ¶ 31.

I recognize that there is no binding precedent on whether the loan structure utilized by Integrity Advance required a single payment or multiple payments. The Bureau relies on *F.T.C. v. AMG Services, Inc.*, 29 F.Supp.3d 1338 (D.Nev. 2013), which was brought by a different agency with similar, though not identical, enforcement abilities and goals. *AMG* also involved an enforcement action against a payday lender who utilized a similar loan structure to the one at issue here, and the court's discussion of TILA as it relates to these types of loans is instructive. Even so, my decision here must rely on a specific factual analysis of Integrity Advance's loans.

Additionally, "unfair" and "deceptive" acts or practices have long been prohibited under Section 5 of the Federal Trade Commission Act, but the doctrines of "unfairness" and "deception" have not yet been fully explored in the context of the CFPB. Although Section 5 of the FTCA remains in force, the Bureau has independent authority to issue rules prohibiting unfair and deceptive practices, as well as "abusive" practices.

As discussed in detail below, I have conducted a thorough analysis of the Loan Agreement and related documents, which together made up the contract between Integrity Advance and its customers. The terms and conditions of the loan agreement itself, including the mandatory TILA disclosures and the other provisions set out in the Loan Agreement and associated documents, form the primary basis for my decision here. The terms of the loan agreement and associated documents are the only material facts in determining whether summary disposition is appropriate. *See Anderson*, 477 U.S. 242 at 248 ("Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment"); *AMG*, 29 F.Supp.3d 1338 at 1350. Based on these documents, I find the loans Integrity Advance offered to be multi-payment loans.

Integrity Advance was a Delaware corporation, headquartered in Delaware, and its loan contracts were made under Delaware state law. *See* ACH Authorization Form #2b (CFPB000797). At the time Integrity Advance was operating, Delaware law was silent as to how an auto-renewal as described in the Loan Agreement should be treated.[5] However, "[t]he doctrine of *contra proferentem* is well established in Delaware contract law. When one side of a contract was unilaterally responsible for the drafting, courts apply *contra proferentem* and construe ambiguous terms against the drafter." *Aleynikov v. Goldman Sachs Grp., Inc.*, 765 F.3d 350, 366 (3d Cir. 2014) (citing *Norton v. K–Sea Transp. Partners L.P.*, 67 A.3d 354, 360 (Del.2013). The contracts at issue were drafted by Integrity Advance. The only input the consumer had into the contract was filling in the blanks; consumers did not set any of the material terms of the contract. Thus, to the

[5] On January 1, 2013, Delaware's Payday Loan Law went into effect. This law provides additional guidance on how to interpret payday loans, but since Integrity Advance ceased offering loans in December 2012, I cannot rely on the Payday Loan Law here.

extent there is any ambiguity in the Loan Agreement and associated documents that form the loan contract, it will be construed against Integrity Advance.

The parties do not dispute the technicalities of how Integrity Advance's loans worked. A consumer filled out a loan application, generally online.[6] After processing the application, if it was approved, Integrity Advance deposited a specified sum of money in the consumer's bank account. The contract stated a single payment due date, on which the loan was to be repaid. If the consumer contacted Integrity Advance at least three days prior to the payment due date and chose to pay the loan in full, Integrity Advance would debit the consumer's bank account for the amount of the loan plus the amount of the finance charge. If consumers chose to repay their loans early, they were entitled to a refund of the unearned portion of the finance charge. Consumers were also permitted to make payment by alternate means, such as cashier's check or money order, by timely mailing payment to Integrity Advance.

Customers could also actively choose to renew their loan by contacting Integrity Advance. However, if a customer took no affirmative steps to repay his/her loan, Integrity Advance automatically renewed the loan anyway, and the consumer incurred up to four more finance charges. If the consumer did not take affirmative steps to repay the loan by the payment due date of the fourth renewal, Integrity automatically enrolled the consumer in an "auto-workout" plan under which it automatically debited the consumer's bank account for $50.00 plus a finance charge each payday until the loan was fully repaid.

[6] As stated before, a small percentage of Integrity Advance's loans were made in person, through its storefront in Delaware.

Respondents argue that a consumer's only legal obligation at the time the loan was made was to pay it off in a single payment on a single date. In support of this argument, Respondents point to the line below the TILA disclosure box, which states, "**Your Payment Schedule will be:** One (1) payment of $[amount] due on [date] (Payment Due Date)." Bureau Exh. 1 Loan Agreement Form #2 (CFPB000640). However, as previously noted, the second version of the Loan Agreement found in Bureau Exhibit 2 does not contain this line, so any consumers who used that version would not have seen this information.

Moreover, the remaining provisions of the Loan Agreement, which describe payment in full as merely one of several "options," introduce ambiguity. An obligation is "[a] formal, binding agreement or acknowledgment of a liability to pay a certain amount or to do a certain thing . . .; esp., a duty arising by contract." OBLIGATION, Black's Law Dictionary (10th ed. 2014). An option, on the other hand, is "[t]he right or power to choose; something that may be chosen" or "[a]n offer that is included in a formal or informal contract." OPTION, Black's Law Dictionary (10th ed. 2014).

The discrepancy between the payment schedule—if the consumer received a version of the contract where the schedule was set out—and the rest of the Loan Agreement is confusing. The only action specifically required of a consumer is to select a payment option. Nothing in the Loan Agreement clearly differentiates between the consumer's repayment *obligation* and the alternative *offers* Integrity Advance made to consumers who could not, or did not want to, repay their loans on the initial due date. Instead, payment in full and renewal are presented equally:

PAYMENT OPTIONS: You must select your payment option at least three (3) business days prior to your Payment Due Date by contacting us at (800) 505-6073. At that time, you may choose:

(a) Payment in full: You may pay the Total of Payments shown above, plus any accrued fees, to satisfy your loan in full. When you contact us and choose this option, we will debit Your Bank Account (defined below) for the Total of Payments plus any accrued fees, in accordance with the ACH Authorization below; OR

(b) Renewal: You may renew your loan (that is, extend the Payment Due Date of your loan until your next Pay Date[1]) by authorizing us to debit Your Bank Account for the amount of the Finance Charge, plus any accrued fees. If you choose this option, your new Payment Due Date will be your next Pay Date[1], and the rest of the terms of the Loan Agreement will continue to apply.

Importantly, the language used to describe payment in full is permissive, rather than mandatory: "You *may* pay the Total of Payments shown above . . ." (emphasis added). Similarly, the ACH Authorization contains this statement:

8. I understand if I prefer to pay all or part of the loan amount, rather than accept the refinancing, I can call you at **(800) 505-6073** at least three (3) business days before my payment is due.

ACH Authorization Form #2b (CFPB000798).[7]

Respondents argue that Integrity Advance did everything possible to ensure that consumers understood their repayment obligations under the contract. Further, Respondent argues that a call center representative spoke to each loan applicant before the loan was fully approved, and Integrity Advance sent consumers a Welcome Email after disbursing the loan proceeds that laid out the repayment options. Resp. Exh. 3. Consumers also received one or more Payment Reminder Emails several days before the scheduled payment date. Resp. Exh. 4. These documents are not part of the actual contracts between Integrity Advance and its consumers, but are certainly relevant in considering whether Integrity Advance clearly conveyed that its loans were meant to be repaid in a single payment.

My review shows that, rather than supporting Respondents' position, the emails contributed to further confusion for consumers. They also lend further credence to the

[7] In the second version of the contract, this statement is at paragraph 6. Bureau Exh. 2 (CFPB000692).

argument that these loans were, from the outset, intended to be multi-payment loans. The Welcome Email reads, in relevant part:

Remember you have 3 options of paying the loan back:

*1) **YOU CAN LET THE LOAN AUTOMATICALLY RENEW**. All renewals are on your pay dates. After the **first** initial payment, the next 4 renewals will only require payment of the finance charge. Starting with the 5th renewal, in addition to the finance charge, we will also take out $50 of principal. This will continue until the loan is repaid in full, unless of course you select either option 2 or 3 below. **NOTE: PLEASE REMEMBER, YOU CAN SELECT OPTIONS 2 OR 3 AT ANYTIME DURING YOUR LOAN REPAYMENT PROCESS***

*2) **PAY THE LOAN DOWN IN PART**. If you want to increase your payment so you pay the loan back faster, you may do so in any amount ($50 increments required) which will bring down the principal of your loan. Just call us 3 business days in advance of your pay date so we can make the change.*

*3) **PAY THE LOAN IN FULL**. Once again, just call us 3 business days in advance so we may make the change on your account. If you pay your loan off before your next pay date, you only pay the finance charge for the days the loan remains unpaid.*

Thank You and Have a Great Day!

Resp. Exh. 3. The payment reminder email was almost identical, except that the consumer was told to call two business days in advance (rather than three business days) to choose option 2 or 3. Resp. Exh. 4.

These documents are particularly troubling. They place auto-renewal at the top of the list of options. Payment in full is placed last in the list and is specifically described as to be making a "change on your account." If these were truly single-payment loans, then compliance with the obligation to pay in full on the due date should have been presumed; choosing the option to pay in full as scheduled should not have been described as making a change to the consumer's account.[8]

Furthermore, the emails describe loan repayment as a "process." The definition of "process" is "a series of actions that produce something or that lead to a particular result." *See* http://www.merriam-webster.com/dictionary/process (accessed Jul. 1, 2016).

[8] In the Answer, Respondents also described payment in full as changing the terms of the consumer's loan or changing the terms of repayment. Answer ¶¶ 29 and 30. Respondents later sought to modify these paragraphs. I denied Respondents' motion on May 27, 2016, stating that I would be conducting an objective assessment of the evidence to reach my own conclusions as to the nature of Integrity Advance's loans. However, the emails Respondents provided as exhibits here serve as credible independent evidence that Integrity Advance viewed repayment in accordance with the disclosures as a change to the terms of the loan.

Repayment of a single-payment loan would not, by definition, involved a series of actions; instead, it would involve the single action of repaying the loan in full. These email notices would certainly lead consumers to believe that Integrity Advance expected its loans to be repaid in multiple payments, not a single lump sum.

Some consumers affirmatively chose the option to extend their loan due date in return for an additional finance charge. In such cases, the consumers got the benefit of their bargain, and one tenet of contract law is that the terms can be changed at a later date if all parties agree. If a consumer did nothing, though, the consequence was not that the consumer's account was debited for the total amount owed on the payment date. Nor was it simply being in default of the contract and accruing any penalties and fees associated with nonpayment.

In light of this, I find that Integrity Advance did not offer single-payment loans. Instead, at the time a consumer signed the Loan Agreement, he/she committed to an extended repayment schedule unless they affirmatively chose an alternate "repayment option" at least three days before the payment due date. Taken as a whole, the Loan Agreement and associated documents indicate that rolling over or refinancing an Integrity Advance loan is the agreed-upon course of action. If, as Respondents argue, payment in full was the consumer's legal obligation, a consumer would have to infer it from the contract; it is not disclosed in a clear and understandable manner. Instead, paying all or part of the loan balance is portrayed as one of several acceptable options and a matter of consumer preference.

Consumers did not have to understand that these loans were payable over time in equal installments, as Respondents contend, in order for the loans to operate as multi-

payment loans. Instead, Integrity Advance's failure to clearly communicate that repayment in full was an obligation while the ability to renew was an offer that carried substantial financial considerations—coupled with the fact that the loans automatically renewed and then automatically entered workout status—indicate that the company did not actually contemplate these loans being paid in a single lump sum. It is clear from the contract and other documentation in the record that Integrity Advance loans operated as multi-payment loans that were interest-only for five payments (the initial finance charge plus four renewals) and then amortized over the remaining payments until the loan was paid in full.

Integrity Advance drafted the contract and consumers were required to agree to its terms to receive a loan. Consequently, the ambiguity about whether the legal obligation was for a single payment or whether the contract expressly authorized a multi-payment loan repayment structure should be construed against Integrity Advance.

b. Count I: TILA

TILA was originally enacted in 1968. Its stated goal is to "assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices." 15 U.S.C. § 1601(a). In keeping with this goal, creditors must provide "clear and accurate disclosures of terms dealing with things like finance charges, annual percentage rates of interest, and the borrower's rights." *Beach v. Ocwen Fed. Bank*, 523 U.S. 410, 412 (1998). Creditors must make these disclosures "clearly and conspicuously" to borrowers prior to extending credit. 12 C.F.R. § 1026.17(a)-(c).

Closed-end consumer credit transactions like the loans Integrity Advance provided are subject to TILA. One of the requirements of TILA is "absolute compliance by creditors," and even minor or technical violations lead to creditor liability. *Rubio v. Capital One Bank*, 613 F.3d 1195, 1199 (9th Cir. 2010).

The implementing regulation is known as Regulation Z and is currently found at 12 C.F.R. Part 1026.[9] In part, Regulation Z requires lenders to calculate and disclose interest rates according to a prescribed formula. It is a violation for a lender to disclose an APR on a consumer loan that is "more than 1/8 of 1 percentage point above or below" the APR determined in accordance with certain actuarial methods. 12 C.F.R. § 1026.22(a)(2). Similarly, the finance charge and the total of payments must be accurately disclosed. 12 C.F.R. § 1026.17.

Here, the parties do not dispute that, if these loans had in fact been single-payment loans, the TILA disclosures were accurate. It necessarily follows that, for multi-payment loans wherein each payment incurred a separate finance charge, the APR, finance charges, and total of payments disclosed in the contract were *per se* inaccurate and violated TILA and Regulation Z.

A representative exhibit of the TILA boxes and subsequent disclosures included in Integrity Advance's contracts, drawn from an actual contract, is as follows:

FEDERAL TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. 684.38%	FINANCE CHARGE The dollar amount the credit will cost you. $150.00	Amount Financed The amount of credit provided to you or on your behalf. $500.00	Total of Payments The amount you will have paid after you have made all payments as scheduled. $650.00

Your Payment Schedule will be: One (1) payment of **$650.00** due on **4/10/2009** ("Payment Due Date").
Security: You are giving a security interest in the ECHECK/ACH Authorization.
Prepayment: If you pay off early, you will be entitled to a refund of the unearned portion of the finance charge.

See the terms of the Loan Agreement below for any additional information about nonpayment, default, and prepayment refunds.

[9] Prior to 2012, Regulation Z was found at 12 C.F.R. Part 226.

Resp. Exh. 1 (CFPB042567).

The TILA disclosures contemplate a single payment made up of the loan principle plus one finance charge. Respondents argue that the company had no way of knowing when a consumer signed the Loan Agreement or whether that consumer would repay the loan in one lump sum or whether they would choose to extend it; therefore, the TILA disclosures were accurate at the time. It is true that, in any loan, the TILA disclosures may become inaccurate prior to payoff due to a number of actions on the part of a consumer: accelerated payments, late payments, early payoff, et cetera.

However, for the reasons explained above, the loans Integrity Advance offered were multi-payment loans. It was within Integrity Advance's capabilities to calculate the finance charge and total of payments if its loans were paid according to the renewal-and-auto-workout structure set out in the contract. If a consumer repaid the loan balance prior to completing the full auto-renewal and auto-workout schedule, the consumer would benefit by paying less than the disclosed finance charge. Instead, Integrity Advance calculated the finance charge for a single-payment loan, at the same time structuring the terms of its loan to make repayment according to this schedule the most burdensome "option."

The TILA disclosures in Integrity Advance's Loan Agreement were not "clear and accurate." Instead, Integrity Advance disclosed the APR, finance charge, and total of payments as if the loan was due in a single payment, while the remainder of the contract bound consumers to an automatic multi-payment structure unless they took action to prevent it. The TILA disclosures should have included all finance charges for the life of

the loan, and the APR and total of payments should have been calculated accordingly. Summary disposition on Count I is GRANTED in favor of the Bureau.

c. CFPA

By virtue of having violated TILA, Integrity Advance also violated the CFPA. *See* 12 U.S.C. § 5481(12)(O) and 12 U.S.C. § 1036(a)(1)(A). Summary disposition in the Bureau's favor is therefore GRANTED on Count II.

d. UDAAP

The CFPA allows the Bureau to take action against a covered person to prevent unfair, deceptive, or abusive practices in connection with a consumer financial practice or service. 12 U.S.C. §§ 5531, 5536. A three-part test is used to determine whether a representation, omission, or practice is deceptive: 1) it must either mislead or be likely to mislead the consumer; 2) the consumer's interpretation must be reasonable under the circumstances; and 3) the misleading representation, omission, or practice must be material. *CFPB v. Frederick J. Hanna & Assoc., P.C.*, 114 F.Supp. 3d 1342, 1370 (N.D. Ga. 2015), *mot. to cert. appeal denied sub nom. CFPB v. Frederick J. Hanna & Assocs., P.C.*, No. 1:14-CV-2211-AT, 2015 WL 10551424 (N.D. Ga. Nov. 16, 2015) (citing *F.T.C. v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003)); *see also F.T.C. v. Cyberspace.com, LLC*, 453 F.3d 1196, 1199 (6th Cir. 2006) and *F.T.C. v. Gill*, 265 F.3d 944, 950 (9th Cir. 2001). The standards for establishing deception are, in general, less burdensome than the standards for establishing unfairness, since there is no requirement that the injury could not be reasonably avoidable or that the injury be weighed against benefits to consumers or to competition.

Similar to the court in *AMG*, I have not relied on the expert opinions in the record when considering the issue of deception. *See AMG*, 29 F.Supp.3d 1338 at 1350.

Respondents have filed a motion in limine to preclude testimony by the Bureau's expert, and that motion is currently pending. Thus, until a ruling is made on Respondents motion, including that evidence in rendering this ruling would not be sound as a matter of law. Accordingly, my rulings herein are based on the contract itself, consisting of the Loan Agreement and all associated documents, the terms of which are not in dispute. The Loan Agreement itself provides sufficient facts to render a decision on this issue; just as in *AMG*, "any facts other than the terms of the [Agreement] and their presentation in the document are immaterial to a summary judgment determination." *Id.* at 1350.

I have already discussed how the Loan Agreement was likely to mislead consumers into believing they were not obligated to pay the loan in a single lump sum. It was also likely that these consumers would not understand just how much more they would pay for a loan if they utilized the extended repayment options. In order to understand the amount of additional charges they would pay overall, consumers would be required to calculate both the five flat finance charges plus the amortization schedule set in the auto-workout clause. However, the Loan Application does not disclose how finance charges accrue during auto-workout. A customer would have no way of knowing for sure the amount of any given auto-workout payment, let alone the total amount of fees and accrued finance charges. Thus, consumers would not be able to meaningfully understand the cost difference between paying in a single lump sum and paying over time according to the renewal and auto-workout schedule, as authorized in the Loan Agreement.

The next question is whether the consumers' interpretation was reasonable under the circumstances. I find that it was. Although Respondents now argue that consumers

were simply obligated to pay the loan off in one lump sum, Integrity Advance did not adequately inform consumers about that obligation. Instead, the contract and follow-up communications make payment in full sound like an optional, and less-favorable, way of fulfilling their contractual obligation. Furthermore, consumers were not likely to understand the full implications of allowing a loan to renew and enter auto-workout status, and even a consumer who understood that renewing a loan would incur additional costs would be unable to easily calculate how substantial the difference would be under that option.

The Bureau argues that the cost of a loan is a material element of the loan. Regulation Z specifically sets out the conditions under which a finance charge or APR can be considered accurate, and permits a deviation of only 1/8 of one percentage point. 12 C.F.R. § 1026.22(a)(2). Here, the deviation was far greater than Regulation Z permits; even a single finance charge in excess of what was contained in the TILA box would cause it to be inaccurate. *Id.*

A material disclosure[10] is one "which a reasonable consumer would view as significantly altering the 'total mix' of information made available. That is, the omission need not be so important that a reasonable consumer would probably change creditors. However, the information must be of some significance to a reasonable consumer under the circumstances in his 'comparison shopping' for credit." *Ivey v. U.S. Dep't of Hous. & Urban Dev.*, 428 F. Supp. 1337, 1343 (N.D. Ga. 1977), *aff'd sub nom. Ivey v. U.S. Dep't of Hous. & Urban Dev.*, 607 F.2d 1004 (5th Cir. 1979). Respondents attempt to

[10] Respondents argue that "'[m]aterial disclosure' is a defined term under TILA and its implementing rule, Regulation Z. 12 C.F.R. § 1026.23(a)(3)(ii)." However, Respondents neglect to mention that § 1026.23(a)(3)(ii) specifically states that the definition within is "for purposes of this paragraph (a)(3)," which involves a consumer's right of rescission. The broadly applicable TILA definitions found at 12 C.F.R. § 1026.2 do not explain what constitutes a material disclosure for other purposes.

distinguish two cases the Bureau relies on for the proposition that cost is material, *F.T.C. v. Figgie Int'l, Inc.*, 994 F.2d 595, 608 (9th Cir. 1993) (price is a material fact in determining admissibility of evidence) and *Steele v. Ford Motor Co.*, 783 F.2d 1016, 1019-20 (11th Cir. 1986) (understatement of a finance charge was a material non-disclosure under TILA). However, Respondents only claim that these cases are inapposite and "cite legal standards that have no relationship to the materiality inquiry under deception doctrine."

Respondents also argue the cost of a loan was immaterial to their customers, since they were likely to agree to the loan terms in any event. However, even if I accept this argument, a reasonable consumer would still want an accurate disclosure of the payment schedule. The amount of any given banking transaction, especially an automatic debit, is material to a reasonable customer, even if the total cost of the loan is not. By disclosing the loans as single-payment, while effectuating repeated debits from the consumer's bank account, Integrity Advance deprived consumers of the ability to know exactly how much they would be paying on any given date, and for how long.

The purpose of TILA is to "assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices." 15 U.S.C. § 1601(a). Integrity Advance's Loan Agreement itself acknowledges that consumers are likely to consider the costs associated with a loan:

The APR, or Annual Percentage Rate, is the term for the effective interest rate that the borrower will pay on a loan to the lender in a standardized way. This is to show the total cost of credit to the consumer, expressed as an annual percentage of the amount of credit lent to the borrower. While APR is intended to make it easier to compare lenders and loan options, it can seem complicated to those that are not aware of its implications.

There is no account set up fee and, when scheduled payments are made, there are no additional fees outside the principal amount borrowed and the interest that accumulates on the amount borrowed. When comparing interest rates among companies, please note that some companies may charge set up fees, application fees, or other such charges while we do not charge for these services.

Loan Agreement Form #2 (CFPB000643). To now argue that cost is not a material element in a TILA deception analysis is specious.

I also note one particular instance of contract wording likely to generate confusion: the TILA box describes the Total of Payments as "[t]he amount you will have paid after you have made all payments as scheduled." While the TILA box is drawn from the model forms in Regulation Z, Appendix H, it nevertheless creates the impression that the finance fee is the total charged after multiple payments, not a single payment. Moreover, a consumer who has agreed to repayment by ACH transfer could reasonably believe that he or she had already "scheduled" the payment—meaning set the payment up to be drawn from a bank account—by virtue of having signed that document.

Respondents argue that returning customers could not be deceived because they already saw how the process worked and returned for an additional loan. This is partially relevant; certainly a returning consumer would be aware of the fact that they would pay more than the disclosed finance charge if they allowed the loans to renew and eventually enter auto-workout. However, it does not change the fact that the loans were facially deceptive: they provided the APR, finance charge, and total of payments for a single-payment loan but were actually multi-payment loans.

I find that the record contains sufficient evidence that Integrity Advance engaged in deceptive practices. Summary disposition is GRANTED in the Bureau's favor on Count III.

B. Counts V and VI: The Electronic Fund Transfer Act and the Consumer Financial Protection Act

1. The Parties' Arguments

Counts V and VI relate to alleged violations of EFTA, 15 U.S.C. §§ 1693 *et seq.* and CFPA, 12 U.S.C. § 5563 *et seq*. Although both parties addressed this issue separately in the cross-motions for summary disposition, as well as in response to those motions, all the pleadings on either side make substantially the same arguments and I can appropriately consider them together.

The Bureau alleges that Respondents violated EFTA by conditioning loans on consumers' preauthorization of electronic repayments, since consumers could not receive loans without agreeing to the ACH Authorization. The ACH Authorization permitted Integrity Advance to directly deposit loan proceeds into a consumer's bank account and to set up direct debits from the consumer's account to repay the loan. The Bureau argues Integrity Advance's loan application requires a consumer to complete and agree to the ACH Authorization, and only provides for electronic disbursement of loan proceeds. The Bureau states, "there is no evidence, in the loan agreement or otherwise, that Respondents told consumers that they could receive a loan without authorizing the electronic fund transfers as required by the agreement." Reply at 10. The ACH agreement was a necessary part of the loan application, and there was no way for a consumer to bifurcate the document, thus Integrity Advance improperly conditioned the extension of credit on its ability to effectuate electronic repayments.

Respondents argue that Integrity Advance's loans were not conditioned on repayment by electronic means for two reasons. First, the ACH Authorization expressly states that a consumer can repay the loan by cashier's check or money order, thus

Integrity Advance did not require electronic repayment. Second, some consumers were able to receive a loan from Integrity Advance without signing an ACH Authorization. Respondents argue that, unless the Bureau can show that all Integrity Advance customers signed ACH Authorizations, it cannot prove that Integrity Advance conditioned the extension of credit on consumer signing that document.

2. The Electronic Fund Transfer Act

Congress passed EFTA in 1973. Among other things, it governs transactions involving electronic deposits of funds into bank accounts and electronic withdrawals of funds from bank accounts. The CFPA granted the Bureau authority to enforce EFTA, except with respect to Section 920. 12 U.S.C. § 5481(12)(C) and (O), (14).

The Bureau alleged that Integrity Advance violated EFTA by conditioning extensions of credit on repayment by preauthorized electronic fund transfers. Under EFTA, a preauthorized electronic fund transfer is defined as "authorized in advance to recur at substantially regular intervals." 12 U.S.C § 1093a(9); 12 C.F.R. § 1005.2(k). If the evidence establishes that the transfers consumers agreed to via the ACH Authorization were both authorized in advance and occurred at substantially regular intervals, then they are "preauthorized electronic fund transfers" for purposes of EFTA. However, in order for a violation of EFTA to be proved, the evidence must also establish that agreeing to these transfers was a prerequisite for a consumer to receive an Integrity Advance loan.

The parties do not meaningfully differ as to the terms of the loan contract and ACH Authorization. The differences lie in whether the ACH Authorization was a required part of the loan application package and whether the loans were conditioned on electronic repayment even if they were permitted to send cashiers' checks or money

orders to repay their loans. I must also determine whether the electronic debits specified in the ACH Authorization are "preauthorized electronic transfers" as contemplated by EFTA and Regulation E.

a. Integrity Advance Conditioned its Loans on Consumers Executing an ACH Authorization

Under EFTA and Regulation E, it is prohibited for a person to "condition the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic fund transfers." 12 U.S.C. § 1693k(1); 12 C.F.R. § 1005.10(e). Regulation E defines "person" as a "natural person or an organization, including a corporation . . ." 12 C.F.R. § 205.2(j). There is no dispute that Integrity Advance is a "person" for purposes of EFTA and Regulation E, nor is there any dispute that Integrity Advance extended credit to consumers, defined as the right to "incur debt and defer its payment." 12 C.F.R. § 205.2(f).

Respondents support a narrow interpretation of "repayment," arguing that if customers were permitted to repay the loan by other means, there can be no EFTA violation. The Bureau argues a somewhat broader reading of EFTA and Regulation E: if a consumer had to agree to electronic repayments in order to receive a loan, it does not matter that the customer was ultimately permitted to repay by different means.

To accept Respondents' argument that requiring electronic repayment is meaningfully different than requiring an agreement to repay electronically with the option to later change one's mind would defy the spirit of EFTA. The declaration of purpose at 15 U.S.C. § 1693(b) states, "It is the purpose of this subchapter to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in the electronic fund and remittance transfer systems. *The primary objective of this*

subchapter, however, is the provision of individual consumer rights." (Emphasis added). In keeping with this spirit, courts have held that "the right to later cancel EFT payments does not allow a lender who conditions the initial extension of credit on such payments to avoid liability." *O'Donovan v. CashCall, Inc.*, No. C 08-03174 MEJ, 2009 WL 1833990, at *3 (N.D. Cal. June 24, 2009); *see also F.T.C. v. PayDay Financial LLC*, 989 F.Supp.2d 799 (D. S.D. 2013) (quoting and agreeing with *CashCall*).

Respondents attempt to distinguish the facts of this case from *PayDay Financial*, pointing out that the contract at issue in *PayDay Financial* required electronic repayment because it stated that repayments *shall* be made by the lender effecting one or more electronic transfers. 989 F.Supp.2d at 812. Integrity Advance's contract, on the other hand, stated, "You understand and agree that this ACH authorization is provided for your convenience, and that you have authorized repayment of your loan by ACH debits voluntarily. You agree that you may repay your indebtedness through other means . . ." ACH Authorization Form #2b (CFPB000797).

This is a distinction without any meaningful difference. Just as in *PayDay Financial*, "[n]o provision of . . . the . . . loan agreements, however, expressly states that the consumer does not need to authorize EFT at all to receive a loan or provides a means by which a consumer can obtain a loan without initially agreeing to EFT." 989 F.Supp.2d at 812. A customer executing an Integrity Advance loan application agreed to ACH transfers "voluntarily" only in the sense that the entire loan application process was voluntary; once a customer decided to apply for a loan from Integrity Advance, he or she would naturally infer that the ACH Agreement was a mandatory part of the process. The loan application itself states:

DISBURSEMENT: In order to complete your transaction with us, you must electronically sign the Loan Agreement by clicking the "I Agree" button at the end of the Loan Agreement, as well as all other "I Agree" buttons that appear within the Loan Agreement and related documents that appear below. We will then approve or deny your application and the Loan Agreement.

Loan Application Form #2 (CFPB000641). The ACH Authorization was one of the "related documents" a consumer was required to agree to.

Moreover, the Loan Agreement specifically provides that the consumer gives Integrity Advance a security interest in the ACH Authorization. This was part of the contract boilerplate and conveyed to the consumer that the ACH Authorization was a material part of the contract. There is no indication that Integrity Advance would accept an alternate security interest, or would extend credit absent any security interest. A reasonable consumer who saw these provisions would conclude that the ACH Authorization was a necessary part of the contract.

Finally, the Payment Options section of the Loan Agreement document states, "When you contact us and choose this option [Payment in Full], we will debit Your Bank Account (defined below) for the Total of Payments plus any accrued fees, in accordance with the ACH Authorization below" and "You may renew your loan . . . by authorizing us to debit Your Bank Account for the amount of the Finance Charge, plus any accrued fees." Loan Agreement Form #2 (CFPB000640). The Payment Options section does not indicate that any alternate payment methods are acceptable or even possible; it specifies that payment will be made by debiting the consumer's bank account. A reasonable consumer reading the Payment Options section of the contract would conclude that ACH debits were a required method of payment.

Respondents also argue that, unless the Bureau can show that one hundred percent of Integrity Advance customers signed the ACH authorization, it could not have been a condition for obtaining a loan. I disagree. If even one customer was required to execute

the agreement in order to obtain a loan, that instance would constitute an EFTA violation; it is not an all-or-nothing analysis, as Respondents would have me believe. However, as previously discussed, all consumers who accessed the online loan application documents were informed that they were required to complete and agree to the Loan Agreement, including a separate agreement for ACH Authorization. Loan Application Form #2 (CFPB000641). All consumers who accessed the online loan application documents were also told they were giving a security interest in the ACH Authorizations, and that each payment option involved automatic debits to their bank accounts. *Id.* Thus, all consumers who fully completed the loan application online were required by the terms of the contract to agree to electronic repayment.

Significantly, the Loan Agreement does not provide any alternate method by which a borrower could receive loan proceeds. It states, "If the Loan Agreement is approved, we will use commercially reasonable efforts to effect a credit entry by depositing the proceeds from the Loan Agreement into the bank account listed below in the ECheck/ACH Authorization ('Your Bank Account') on the Disbursement Date." Loan Application Form #2 (CFPB000641). No other method of receiving the loan proceeds is specified in the contract. Respondents admitted in the Answer that there was no other way for consumers to receive loan proceeds, and Mr. Carnes said that the only time Integrity Advance sent consumers funds by paper check was in the event of a refund. Answer ¶ 40; Bureau Exh. 3-4 at 159:24-160:1 (CFPB036034-CFPB36035).

The ACH Authorization is a single document authorizing both deposit of the loan proceeds and repayments on the loan from the listed bank account. In an online application, there is no way for the form to be bifurcated to allow only deposits, but not

withdrawals, or vice versa. A reasonable consumer would not, in reading the loan documents the company made available, conclude that he or she could receive a loan without completing and agreeing to the terms of the ACH Authorization.

The evidence does establish that a small percentage of Integrity Advance's customers were able to obtain loans without executing an ACH Authorization. However, the evidence does not show that this option was communicated to consumers before they submitted an application. Even corporate officers were unable to say with certainty how a customer could have avoided signing the ACH Authorization: Mr. Carnes stated, "I can't remember exactly how it was worded but I think if they didn't give us authorization, they had to provide some kind of payment system so we could get paid back. I don't know what that meant. I mean, I don't really remember." Bureau Exh. 3-4 at 217:7-17 (CFPB036092). Mr. Foster stated that, when a call center representative spoke to a consumer who submitted an incomplete application, they would attempt to get authorization, but if the customer resisted, "My understanding of the process would have been that if that individual met every other underwriting criteria and thresholds, et cetera, including all the other signatures, and could arrange for a different form of payment they could have been approved for a loan." Bureau Exh. 6 at 85:14-86:22 (CFPB036233-CFPB036234).

Nevertheless, in the vast majority of their loans, Integrity Advance conditioned the extension of credit on an agreement to allow electronic repayments. Integrity Advance presented the ACH Authorization as mandatory, not optional. A reasonable consumer more likely than not would have concluded from the documents that he/she could decide to send paper checks, provided the ACH Agreement had also been

completed. However, that consumer could not have understood from the application documents that he/she could prevent Integrity Advance from setting ACH debits up at all. In this regard, they were not given the option to "opt out" of signing the ACH Authorization; this option was only presented later by call center representatives seeking to close on a loan with incomplete documentation. Importantly, the record is unclear as to how many consumers with incomplete documentation were given this option by a call center representative. Thus, the ability to opt out of automatic ACH debits was simply an exception to the general requirement, which the company offered at its own discretion.

Construing these facts in a light most favorable to Respondents, I find that Integrity Advance initially conditioned the extension of all credit on the repayment by electronic transfer. The fact that a small fraction of Integrity Advance's customers in the second interaction (1) were not required to execute the ACH Agreement and (2) their credit was not conditioned on the company's ability to effectuate electronic repayments is not exculpatory. Indeed, the fact that Integrity Advance made exceptions in these cases does not alter the fact that the general rule uniformly conditioned the extension of all credit on repayment by electronic transfers.

b. The Electronic Transfers Agreed to in the ACH Authorization were Preauthorized Under EFTA and Regulation E

The next step in the analysis is determining whether the electronic transfers provided for in the ACH Authorization were "preauthorized" within the definition at 12 U.S.C § 1093a(9) and 12 C.F.R. § 1005.2(k). There is no dispute that the transfers were authorized in advance; after agreeing to the ACH Authorization and electronically signing the Loan Agreement, a consumer did not have to take any further action in order for finance charges, principal, and any other associated fees to be debited from their

accounts. The question, then, is simply whether they occurred at "substantially regular intervals."

The ACH Authorization states "You agree that the ACH Authorization herein is for repayment of a single payment loan, or for single payment of finance charges for Renewals, and that these entries shall not recur at substantially regular intervals." However, the specific conditions under which Integrity Advance could initiate an ACH debit entry to the borrower's bank account were:

(a) for the Total of Payments plus any accrued fees on the Payment Due Date, or on any subsequent Renewal Payment Due Date, if you contact us at least three (3) business days prior to such date and select Payment Option (a) in the Loan Agreement (Pay in full);

(b) for the Finance Charge plus any accrued fees on the Payment Due Date, or on any subsequent Renewal Payment Due Date, if you contact us at least three (3) business days prior to such date and select Payment Option (b) in the Loan Agreement (RENEWAL), or if you fail to contact us to confirm your payment option;

(c) for the accrued finance charges and fees, plus $50.00 on each Pay Date[1] after the fourth (4th) Renewal Payment Due Date, until all amounts owed under the Loan Agreement are paid in full; and

(d) for any accrued Returned Payment charges, subject to the Loan Agreement.

ACH Agreement Form #2b (CFPB000796-CFPB000797). It is unclear what the footnote/endnote designator in paragraph (c) ("Pay Date[1]") refers to, as the ACH authorization does not contain a footnote or endnote referring back to this section. However, I note that "Pay Date" is separately defined in the Loan Agreement as "the next time following the Payment Due Date, that you receive regular wages or salary from your employer. Because Renewals are for at least fourteen (14) days, if you are paid weekly, your loan will not be Renewed until the next Pay Date that is at least fourteen days after the prior Payment Due Date." Bureau Exh. 1 (CFPB000645); Bureau Exh. 2 (CFPB000685). Reading the contract as a whole, including all subsidiary documents, this appears to be the meaning of Pay Date in the ACH Authorization, as well.

In light of this, the statement in the ACH Authorization that debits shall not occur at substantially regular intervals is clearly untrue. If a loan was renewed, the new due date for the loan would be the consumer's next pay date, or 14 days from the renewal

date if the borrower was paid weekly. Thus, a borrower paid either weekly or biweekly would be debited every 14 days. A borrower paid monthly would be debited once a month. Similarly, once a borrower had reached the auto-workout stage of the loan, debits were made each pay date until the loan was satisfied. These debits were, by their nature, made at substantially regular intervals, regardless of what the ACH Authorization states. The debits specified in the ACH Authorization qualify as "preauthorized electronic transfers" under EFTA.

After reviewing the evidence in the record, it is clear that Integrity Advance required a consumer to agree to electronic fund transfers in order to receive a loan. The repayments described by the ACH Authorization were preauthorized electronic fund transfers within the definition at 12 C.F.R. § 1005.2(k). Consequently, a violation of EFTA is established and summary disposition in the Bureau's favor is GRANTED as to Count V.

3. CFPA

By virtue of having violated EFTA, Integrity Advance also violated the CFPA. *See* 12 U.S.C. § 5481(12)(C) and 12 U.S.C. § 1036(a)(1)(A). Summary disposition in the Bureau's favor is therefore GRANTED on Count VI.

C. Counts IV and VII (Unfairness) – CFPA

Unfairness is a higher bar than deception, but is also analyzed using a three-part test. An act or practice will be found unfair if: 1) it is likely to cause substantial injury to consumers; 2) the injury is not reasonably avoidable by consumers; and 3) the injury is not outweighed by the countervailing benefits to consumers or to competition. 12 U.S.C. § 5531(c).

One of the factors I may consider in determining whether a practice is unfair, in addition to all other evidence in the record, is whether it has public policy implications. Public policy can be reflected in statutes, regulations, case law, and other agency guidance. However, public policy considerations cannot serve as the primary basis for determining that an act or practice is unfair. The fact that an act or practice is legally permitted does not automatically mean it is fair, and conversely, the fact that an act or practice is not recognized by any statute or regulation does not mean it is automatically unfair. The requirements of TILA, EFTA, and the CFPA are examples of public policy considerations.

State law is also another public policy consideration. Respondents have argued that, under Delaware law, Integrity Advance's lending license was conditioned on the State Bank Commissioner determining "that the financial responsibility, experience, character and general fitness of the applicant . . . and of the officers and directors thereof are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently." Resp. Motion at 2. Since Integrity Advance's practices were subject to scrutiny by the State Bank Commissioner, Respondents argue this is evidence that the practices could not have been unfair. While I find the Delaware standards for holding a lending license are relevant public policy considerations which will be given due weight in my analysis, they are not conclusive evidence on which summary disposition could be granted.

I have thoroughly reviewed the pleadings and the evidence submitted by the parties, but find there is not enough information to make a decision as to unfairness at the summary disposition phase. The parties genuinely dispute the actual injuries suffered:

the Bureau contends the amount is $133,422,838.83 over the five years from May 2008 to May 2013, while Respondents contend the amount is much less because this figure does not account for consumers who affirmatively chose to renew their loans, as well as those who were repeat customers and were therefore not misled or deceived about the nature of Integrity Advance's loans. Respondents also say the proper measure of damages would be those sustained after July 21, 2011 because the Bureau limited its UDAAP claims to activities after the designated transfer date.

The Bureau also contends that Integrity Advance explicitly instructed call center representatives "*not* to tell consumers the total costs of the loans during the application process." Brief at 15. However, the record does not contain sufficient facts for me to determine whether this is true. The record contains a manual purportedly used by call center representatives, but Mr. Carnes and Mr. Foster both said that the call center was a third-party vendor and that they did not create or recognize the manual. The disagreement between the parties on the issue of if and how the manual was used, and how it relates to the unfairness claims, cannot be resolved on summary disposition.

Similarly, the record must be supplemented with additional information about remotely created checks before I can make appropriate findings. This is a poorly-understood mechanism for effectuating debits from a bank account. Thus, I will not rule on whether it constitutes an unfair practice until the record is full and complete on this issue.

Both motions for summary disposition on Counts IV and VII are DENIED.

ORDER

Both the Bureau's Motion for Summary Disposition and Respondents' Motion for Summary Disposition as to all counts against Respondent James R. Carnes are **DENIED**.

The Bureau's Motion for Summary Disposition against Respondent Integrity Advance is **GRANTED** as to Count I, II, III, V and VI.

Both the Bureau's Motion for Summary Disposition and Respondents' Motion for Summary Disposition as to Counts IV and VII against Integrity Advance are **DENIED**.

SO ORDERED.

Done and dated on this 1st day of July, 2016 at
Alameda, California.

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

CERTIFICATE OF SERVICE

I hereby certify that I have served the forgoing ***Order Granting In Part And Denying In Part Bureau's Motion For Summary Disposition And Denying Respondents' Motion for Summary Disposition*** (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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Done and dated this 1st day of July 2016
Alameda, California.

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