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**	**RECOMMENDED DECISION** **Hon. Parlen L. McKenna, Presiding**

APPEARANCES: Alusheyi J. Wheeler, Wendy J. Weinberg, Vivian W. Chum, and Craig A. Cowie representing the Consumer Financial Protection Bureau

Allyson B. Baker, Peter S. Frechette, Danielle R. Foley, Andrew T. Hernacki, and Hillary S. Profita, Venable LLP, representing Respondents

Gerald S. Sachs on behalf of Edward Foster

SUMMARY

This Recommended Decision finds that Respondent Integrity Advance violated: the Truth in Lending Act (TILA) by disclosing incorrect finance fees and annual percentage rates in its loan agreements; the Electronic Funds Transfer Act (EFTA) by conditioning its loans on repayment by electronic means; and the Consumer Financial Protection Act (CFPA) by virtue of having violated a Federal consumer financial protection law. It finds that Respondents Integrity Advance and James R. Carnes violated the CFPA's prohibition on deceptive conduct by using a loan agreement that was likely to mislead consumers, and the CFPA's prohibition on unfairness by using remotely created checks to obtain funds from consumers' accounts after those consumers blocked authorization for electronic debits. It finds that a reasonable approximation of the total harm caused to consumers by the TILA violations and deceptive conduct (Counts I-III) is $38,164,153.31 and recommends that Respondents be held jointly and severally liable for paying restitution in that amount. It also finds that the total monetary harm to consumers caused by the unfair conduct (Count VII) is $115,024.50 and recommends Respondents be held jointly and severally liable in that amount. It recommends civil money penalties against Integrity Advance in the amount of $8,155,500.00 and against Mr. Carnes in the amount of $5,437,000.00. Finally, it recommends injunctive relief.

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I. INTRODUCTION

The Consumer Financial Protection Bureau (CFPB or Bureau) brought this administrative proceeding pursuant to the Consumer Financial Protection Act, 12 U.S.C. §§ 5511(c)(4), 5512(a), 5563, 5564, which includes the Truth in Lending Act (TILA), 15 U.S.C. §§ 1601 *et seq.*, and the Electronic Fund Transfer Act (EFTA), 15 U.S.C. §§ 1693 *et seq.*, except with respect to Section 920 of EFTA. *See* 12 U.S.C. § 5481(12)(C), (O), (14). On November 18, 2015, the CFPB filed a Notice of Charges against Respondents Integrity Advance and James R. Carnes. The Bureau alleged that Integrity Advance, a payday lender, violated several consumer financial protection laws and that Mr. Carnes, as CEO of Integrity Advance, was also personally liable for certain unfair and deceptive acts and practices.

A payday loan is a type of short-term, small-dollar loan. A consumer who takes out one of these loans typically pays interest in the form of a finance charge, which covers the period until the consumer's next payday. Integrity Advance loans carried a finance charge of $30 per $100 borrowed for new customers, and $24 per $100 borrowed for returning customers. The finance charge was the same regardless of the length of the initial loan term based on the next payday (i.e., one week or two weeks). Expressed in terms of an annual percentage, these rates often exceeded several hundred percent; for example, one Integrity Advance loan of $100.00 carried a 576.316% APR if paid in full on the borrower's next payday. EC-EX-008. Three other loans of $300.00 carried APRs of 521.429%, 782.14%, and 684.38%, respectively. EC-EX-010, EC-EX-011, and EC-EX-012.

However, the actual cost of the loans was made higher still if the consumer did not pay off the loan on the next payday and it was renewed[1] at the end the term. Each renewal resulted in additional finance charges. Finally, if the principal was repaid over time, rather than in one lump sum, additional finance charges and fees accrued. Integrity Advance's loan agreement permitted it to automatically renew its loans unless the consumer took additional action to stop the renewal process, and further permitted them to place the loans in "auto-workout" status, whereby the principal would be repaid in small increments along with associated finance charges and fees.

In its Notice of Charges, the Bureau provided an example of the total amount a consumer would pay for a $300.00 loan if all automatic renewals and all auto-workout payments occurred as described in the Integrity Advance loan agreement:

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. Respondents admitted that this was one possible scenario under which the loan could be repaid. Answer ¶ 31.

[1] Renewals are also referred to as rollovers. For the sake of clarity, I will only use the term renewal in this Recommended Decision.

The Bureau initially brought seven counts against Integrity Advance, three of which were also against Mr. Carnes. The Notice of Charges focused on three main issues: first, whether the TILA disclosures in Integrity Advance's loan contracts were incorrect; second, whether the loan contract was deceptive as it concerned the costs of Integrity Advance's loans; and third, whether Integrity Advance's use of remotely created checks (RCCs) to collect loan payments from certain customers was an unfair practice.

On December 18, 2015, Respondents moved to dismiss the charges, claiming the Bureau never had jurisdiction over either Integrity Advance or Mr. Carnes; that the Bureau's structure violates the constitutional separation of powers; and that the Notice of Charges did not set out claims on which relief could be granted. I denied Respondents' Motion to Dismiss on April 22, 2016.

On May 10, 2016, both parties moved for summary disposition as to all charges. On July 1, 2016, I issued an Order granting partial summary disposition in the Bureau's favor, and for purposes of this Recommended Decision, that Order is hereby incorporated herein by reference. My findings from the July 1, 2016 summary disposition Order are briefly summarized below for the reader's convenience.

As to Count I, which alleged that Integrity Advance violated TILA, I determined that the contracts between Integrity Advance and its customers were ambiguous; whether Integrity Advance required consumers to make one payment in full to satisfy their loans or required them to make multiple payments over time. Importantly, because Integrity Advance drafted the contracts, I construed the ambiguous terms against Integrity Advance. Accordingly, I found that Integrity Advance offered multi-payment loans but

disclosed the finance charges, annual percentage rate (APR), and total of payments on each loan as if it was a single-payment loan.

Count II asserted that Integrity Advance violated the Consumer Financial Protection Act (CFPA). The only element of this violation was the underlying TILA violation, found proved in Count I. I therefore found Count II proved.

Count V alleged that Integrity Advance violated the EFTA by conditioning extensions of credit on repayment by electronic means. I found this count proved. Respondents argued that some consumers were able to receive a loan without signing an ACH Agreement authorizing electronic repayment, but I found this was merely an exception to the standard practice of requiring consumers to sign the form. Respondents also argued that the loan agreement permitted consumers to repay loans using alternate payment methods. However, for the majority of Integrity Advance's customers, signing the ACH authorization was a condition for securing the loan in the first place, even if they could avoid having the ACH debits actually occur by sending a check or money order, or paying by credit card. Count VI alleged that Integrity Advance violated the CFPA by way of the EFTA violation. I also found this count proved.

As to Count III, alleging deceptive acts or practices in connection with the TILA violations, I found the charge proved against Integrity Advance but deferred any decision about Mr. Carnes's liability until the record was fully developed after the hearing. The finding against Integrity Advance was predicated on the fact that its loan contract was facially deceptive. Specifically, the contract disclosed finance charges and APRs to loan applicants as though the loans would be repaid in a single payment, but for the

overwhelming majority of Integrity Advance customers, the loans operated as multi-payment loans with much higher charges and fees.

I denied summary disposition on Counts IV and VII, alleging unfair use of RCCs, because there was not enough information in the record prior to the hearing for me to determine whether liability existed.

On July 11, 2016, the Bureau withdrew with prejudice Count IV, which alleged unfair practices by both Integrity Advance and Mr. Carnes in connection with the TILA violations. Thus, the only counts remaining for decision after the hearing are whether (1) Mr. Carnes may be held individually liable for the deceptive practices described in Count III; (2) whether Integrity Advance's use of remotely created checks was an unfair act or a practice prohibited by the CFPA (as alleged in Count VII); and (3) if Integrity Advance unfairly used RCCs, whether Mr. Carnes may be held individually liable for that act or practice, as alleged in Count VII. Once these matters are decided, I must make a determination about the appropriate sanctions and relief for each proved violation.

II. STANDARD OF PROOF

These proceedings are conducted under the Administrative Procedure Act (APA), 5 U.S.C. § 551 *et seq*. Section 7(c) of the APA places the burden of proof on the proponent of a rule or order, unless otherwise provided by statute. The decision "shall be on a consideration of the whole record relevant to the issues decided, and shall be supported by reliable, probative, and substantial evidence." 12 C.F.R. § 1081.400(c)(1); *see also* 5 U.S.C. § 556(d). The "preponderance of the evidence" standard is applied in administrative proceedings, meaning a party must prove that a "fact's existence is more likely than not." *Steadman v. SEC*, 450 U.S. 91, 98 (1981); *Greenwich Collieries v. Dir.,*

Office of Workers' Comp. Prog., 990 F.2d 730, 736 (3d Cir. 1993). The Bureau brought this proceeding and therefore it bears the initial burden of proving its prima facie case against Respondents by a preponderance of the evidence. *See Dir., Office of Workers' Comp. Prog. v. Greenwich Collieries*, 512 U.S. 267 (1994).

Evidentiary rules under the APA are less strict than in jury trials, and only irrelevant, immaterial, or unduly repetitious evidence need be excluded. *See* 5 U.S.C. § 556(d); *Gallagher v. Nat'l. Transp. Safety Bd.*, 953 F.2d 1214, 1214 (10th Cir. 1992); *Sorenson v. Nat'l. Transp. Safety Bd.*, 684 F.2d 683, 688 (10th Cir. 1982). Moreover, evidence "need not be authenticated with the precision demanded by the Federal Rules of Evidence" in order to be admissible in an administrative proceeding. *Gallagher* at 1218.

It is well-settled that determinations as to credibility and reliability are within the discretion of the trial judge, or the discretion of the Administrative Law Judge in an administrative hearing such as this. *See, e.g., Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 565 (1985); *Butz v. Economou*, 438 U.S. 478, 513 (1978). As long as "the account of the evidence is plausible in light of the record viewed in its entirety," the judge's determination is entitled to deference. *Anderson* at 564. "Traditional factors in assessing credibility include such things as (1) the demeanor of the witness, (2) the inherent plausibility of the witness's testimony, (3) the consistency of the testimony of the witness with prior statements of the witness, (4) the internal consistency of the witness's statements, (5) the consistency of the testimony with other evidence, (6) the accuracy of the witness's testimony, and (7) the interest of the witness in the outcome of the proceeding." *St. Claire Marine Salvage, Inc. v. Bulgarelli*, No. 13-10316, 2014 WL 3827213, at *6 (E.D. Mich. Aug. 4, 2014), *aff'd* (July 22, 2015). A judge may also apply

other factors, and bases the credibility assessment on "the totality of the circumstances after considering any relevant facts that may impact the witnesses [sic] credibility." *Id.*

III. FINDINGS OF FACT

The findings of fact below are based on the entire record of this proceeding. *See* 12 C.F.R. § 1081.400(c)(1). My individual rulings on the parties' proposed findings of fact are attached as **Appendix B** (Enforcement Counsel or CFPB) and **Appendix D** (Respondents). My rulings on the parties' proposed conclusions of law are attached as **Appendix C** (CFPB) and **Appendix E** (Respondents). I have considered all of the parties' arguments, proposed findings and conclusions and rejected those inconsistent with this Recommended Decision. To the extent that each party proposed findings of fact and conclusions of law were accepted or accepted as modified, they are hereby incorporated into this Recommended Decision.

Background and Structure of Integrity Advance

1. Integrity Advance, LLC was a Delaware licensed, short-term, small-dollar lender (payday lender). Tr. I-93:25–94:2; RX-007–RX-014.

2. Integrity Advance's only product was a consumer loan. Tr. I-94:14–22; Tr. I-232:18–22.

3. Those loans were the sole source of Integrity Advance revenues and operating profits. Tr. I-95:1–8.

4. Respondent James Carnes (Mr. Carnes) founded Integrity Advance on July 2, 2007. Tr. I-94:3–4; EC-EX-068 at 7:12–13; RX-007.

5. Integrity Advance is a wholly-owned subsidiary company of Hayfield Investment Partners (HIP). Tr. I-100:14–17; Tr. II-6:12–16; EC-EX-067.

6. Willowbrook Marketing LLC owned a majority share, 50.3%, of HIP and acted as the manager for HIP. Tr. I-102:8–10; Tr. II-8:2–3; EC-EX-067.

7. Mr. Carnes was the sole owner of Willowbrook Marketing LLC. Tr. I-102:8–9; EC-EX-067.

8. Integrity Advance's first consumer loan transaction occurred in May 2008 and its final loan transaction occurred on July 9, 2013. Tr. II-132:23–133:18.

9. Integrity Advance's loan agreement did not change significantly between 2008 and 2013. Tr. II-38:20–39:1; EC-EX-061; EC-EX-063.

10. Integrity Advance generated the most operating profits of all the HIP subsidiaries. Tr. I-110:11–12; EC-EX-068 at 88:24–89:6.

11. Integrity Advance contributed more than 75% of HIP's profits in 2010 (Tr. I-114:11–115:7; EC-EX-068 at 92:19–93:9), 2011 (Tr. I-115:8–21; EC-EX-068 at 93:10–14), and 2012 (Tr. I-115:22–116:2; EC-EX-068 at 93:15–16).

12. Integrity Advance originated 82,980 loans on or after July 21, 2011. EC-EX-097.

13. Of the loans made on or after July 21, 2011, 28,001 were made to new customers. EC-EX-097.

14. Integrity Advance ceased offering loans in December 2012. Tr. II-92:8–9.

15. EZ Corp. purchased some of Integrity Advance's assets, including a partial list of its customers, in December 2012. Tr. I-237:22–238:13; Tr. II-70:22–23.

16. EZ Corp. did not purchase Integrity Advance. Tr. I-237:19–21.

17. Integrity Advance still exists as a non-operational Delaware LLC. EC-EX-068 at 9:8–10:3.

Mr. Carnes's Role At Integrity Advance and Associated Companies

18. Mr. Carnes was the CEO of both Integrity Advance and its parent company HIP. Tr. I-94:5–12.

19. Mr. Carnes was viewed as the primary decision maker at Integrity Advance. Tr. I-51:4–7; Tr. I-82:2–4.

20. Mr. Carnes "had ultimate authority over [Integrity Advance] and making sure that it complied with the Delaware law." Tr. I-221:24–222:1.

21. Mr. Carnes's role at Integrity Advance did not change from 2008 until the EZ Corp. sale. Tr. I-5:2–8.

22. Mr. Carnes had the authority to make all decisions governing Integrity Advance's policies and procedures. Tr. I-209:1–11; EC-EX-068 at 32:15–17.

23. Mr. Carnes made the final decisions about Integrity Advance's underwriting policies. Tr. I-59:18–25; EC-EX-069 at 22:17–18.

24. Mr. Carnes signed contracts on behalf of Integrity Advance, including two lead purchase agreements (Tr. I-122:22–123:14; EC-EX-053 and Tr. I-126:17–127:13; EC-EX-054) and a debt collection vendor agreement (Tr. I-129:22–130:11; EC-EX-085).

25. Mr. Carnes was the signatory on the ACH origination agreement between MoneyGram and Integrity Advance. EC-EX-056.

26. Mr. Carnes was an authorized signatory for the bank account used by Integrity Advance. Tr. I-141:16–20.

27. Mr. Carnes ran monthly or quarterly meetings where HIP employees discussed all the entities under the HIP umbrella, including Integrity Advance. Tr. I-78:10–80:12.

28. Mr. Carnes also ran weekly IT meetings. Tr. I-76:2–3.

29. Mr. Carnes had final say over what appeared on the company's website. Tr. I-216:24–217:15; EC-EX-068 at 41:1-6.

30. Mr. Carnes communicated directly with the call centers used by Integrity Advance. Tr. I-64:3–6.

31. Mr. Carnes did not see, review, edit, revise, or discuss call center scripts. Tr. II-74:13–75:10.

32. Mr. Carnes reviewed call logs from the call centers used by Integrity Advance. Tr. I-179:18–180:1; EC-EX-088.

33. Mr. Carnes made the decision to move Integrity Advance's business from one call center to another. Tr. I-64:13–19.

34. Mr. Carnes was involved in resolving the issue of a call center employee who allegedly committed fraud against an Integrity Advance customer. Tr. I-177:3–178:3; EC-EX-087.

35. As CEO, Mr. Carnes had ultimate responsibility for approving everything related to Integrity Advance's business. Tr. I-228:8–11.

36. Outside counsel drafted the Integrity Advance loan agreement template. Tr. I-226:20–227:9; I-231:23–24.

37. Mr. Carnes did not discuss the loan agreement template with its drafters. Tr. I-227:10–12.

38. Mr. Carnes could not recall whether Integrity Advance's in-house counsel explained the content of the loan agreement template to him. Tr. I-231:11–12.

39. Mr. Carnes did not discuss the Integrity Advance loan agreement template with anyone from the Delaware State Banking Commission. Tr. II-96:21-23.

40. Mr. Carnes may have seen and flipped through an Integrity Advance loan agreement template prior to its use. Tr. I-226:9-14; I-227:21–25.

41. Mr. Carnes did not edit Integrity Advance's loan agreement template or any version of the agreement. Tr. II-75:11-25, II-76:1-13.

42. HIP/Integrity Advance staff had Mr. Carnes's approval to use the loan agreement. Tr. I-232:11–12.

43. Mr. Carnes had operated other payday lending companies before starting Integrity Advance. Tr. I-10–12.

44. Mr. Carnes understood how Integrity Advance's loans worked when he was CEO. Tr. I-220:10–12.

45. Mr. Carnes knew the fee structure of Integrity Advance's loans and testified that it followed the industry standard. Tr. II-48:14–49:6.

46. At all times Integrity Advance was operating, the loan agreement disclosed the finance fees as $30 per $100 lent to new customers, and $24 per $100 lent to returning customers. Tr. II-15:18–23; II-48:18–22.

47. Mr. Carnes had the authority to change Integrity Advance's fee structure. Tr. II-49:12–18.

48. Mr. Carnes knew that if a consumer "didn't call or email, and it was their first payment . . . they would be renewed." Tr. I-219:13–20.

49. Mr. Carnes knew that if the consumer did nothing on the next payday, the loan would be renewed again. Tr. I-219:21–23.

50. Mr. Carnes knew that an Integrity Advance loan would renew four times before it went to workout. Tr. I-219:24–220:3.

51. At the time he was CEO of Integrity Advance, Mr. Carnes understood that most of the company's customers would experience at least one renewal. Tr. I-222:17–20; I-225:6–25.

52. Mr. Carnes understood that consumers who had the loans renewed would pay more than what had been disclosed in their TILA disclosures. EC-EX-068 at 245:10–25.

Integrity Advance Personnel and Operations

53. All persons who worked for Integrity Advance, except for George Davis, worked from a location in Kansas. Tr. I-73:15–17; I-99:19–22; I-209:17–21.

54. Four HIP employees provided services to Integrity Advance when it commenced operations in 2008. These employees were Mr. Carnes, Edward Foster, Hassan Shahin, and a receptionist. Tr. I-53:19–54:10.

55. At its largest, in 2011, HIP employed between 20 and 30 people. Tr. II 92:2–6.

56. Although a corporate reporting structure existed, HIP was a small company and there was no formal chain of command; employees "interacted with everybody as needed to support the business." Tr. I-39:16–40:3.

57. Mr. Carnes was at the head of the reporting structure, meaning all employees directly or indirectly reported to him. EC-EX-065; EC- EX-068 at 32:4–9; EC-EX-069 at 21:23–22:5.

58. Mr. Carnes had an open door policy and was accessible to any Integrity Advance employee who wanted to talk to him. Tr. I-213:10–12; Tr. II-74:6–8; EC-EX-068 at 37:12–13.

59. Mr. Foster was executive vice president, general counsel, secretary, and assistant treasurer of Integrity Advance. Tr. II-7:24–8:4, II-8:10-12.

60. In June of 2010, Mr. Foster also took on the role of Chief Operations Officer of HIP. Tr. II-12:3–8.

61. Relating to Integrity Advance, Mr. Foster's job was primarily to provide corporate legal counsel to the Company. Tr. II-8:13-15.

62. Mr. Carnes directly hired Mr. Foster and set Mr. Foster's salary. Tr. I-96:15–16; II-7:17–20.

63. In his capacity as executive vice president, Mr. Foster reported to Mr. Carnes. Tr. II 9:19–22.

64. Mr. Foster and Mr. Carnes spoke on a daily basis. Tr. I-214:13–14.

65. At the beginning of Integrity Advance's operations, Mr. Foster and Mr. Carnes spent more time discussing the company than they did toward the end. Tr. II-10:2–11:9.

66. In general, Mr. Foster and Mr. Carnes did not speak about Integrity Advance business daily; the frequency varied depending on business needs and whether there were any problems necessitating both men's involvement. Tr. I-214:15–215:16.

67. Timothy Allen Madsen worked as Vice President of Marketing for HIP for approximately five years (2008–2013). Tr. I-27:10–14; I-28:4–8, I-29:6–8.

68. Mr. Carnes and Mr. Foster together hired Mr. Madsen. Tr. I-98:4–6.

69. Mr. Madsen's primary job function was to purchase leads and manage relationships with lead providers for Integrity Advance, as well as manage leads internally and coordinate with Integrity Advance's call center regarding leads. Tr. I-28:9–13, I-28:24–29:5.

70. The term "lead" refers to information relating to potential loan applicants for Integrity Advance. Tr. I-28:15–16; I-116:20–21.

71. Lead generators or lead providers are companies that use some methodology to contact a consumer, get the consumer to take an offer and fill out an application, and then sell the data. Tr. I-116:13–16.

72. Leads are rated according to the quality of the applicant's financial status. The lead generators price leads on a sliding scale for sale to lenders such as Integrity Advance. Tr. I-120:20–122:21.

73. Integrity Advance had a system, called the dashboard, which it used to monitor the performance of leads, including lead acceptance, purchase rates, and conversion rates. Tr. I 45:13–23.

74. As part of his duties, Mr. Madsen monitored the dashboard. Tr. I-45:13–25.

75. Mr. Madsen also coordinated interactions between Integrity Advance and its third party call center. Tr. I-63:6–7.

76. Mr. Carnes and Mr. Madsen discussed information found on the dashboard, including conversion rates, performance of leads, first payment defaults, and lead generation. Tr. I-48:16–49:1; I-67:1–6; I-68:20–22.

77. Mr. Madsen had to consult with Mr. Carnes about changes in the credit scores Integrity Advance would accept from its customers if they departed by more than a couple of points from set parameters. Tr. I-33:15–21.

78. Mr. Carnes was knowledgeable about the factors that influenced the price of a lead, such as whether it was a "first look lead," meaning the company had the opportunity to view and purchase it before any other lender did (Tr. I-119:15–19); whether a consumer had direct deposit of their paycheck (Tr. I-121:15–17); or whether the consumer's account was a savings account versus a checking account (Tr. I-122:16–18).

79. Mr. Carnes had ultimate authority as to what Integrity Advance would pay for a lead. Tr. I-32:10–14; I-35:1–6.

80. Bruce Andonian worked for HIP for approximately two years (2011–2013) as Director of Software Development. Tr. I-70:12–13, I-71:5.

81. Mr. Andonian reported directly to Mr. Foster, and ultimately to Mr. Carnes. Tr. I-72:5–6.

82. Mr. Andonian's job was to manage the software development team for HIP's Empower product. Tr. I-70:14–24; I-83:7-8.

83. Mr. Andonian's work at Integrity Advance involved addressing issues with Integrity Advance's website and database. Tr. I-75:5–15; I-76:21–77:3; 89:10–16.

84. Mr. Andonian first worked on the Integrity Advance website when Mr. Foster asked him to fill in for another employee, but gradually started performing more work for Integrity Advance. Tr. I-83:9–84:2.

85. Mr. Carnes brought issues with Integrity Advance's website and database to Mr. Andonian's attention. Tr. I-75:8–15.; I-89:10–16

86. Mr. Carnes directed Mr. Andonian to make certain changes to the website and database, such as removing states in which Integrity Advance could not lend (Tr. I-76:21–77:3) and changing parameters on credit scores Integrity Advance would accept on applications (Tr. I-77:4–78:5).

Regulation by the State of Delaware

87. As a Delaware corporation engaged in making loans, Integrity Advance was regulated by the Delaware State Banking Commission. Tr. II-80:13–16; RX-8–13.

88. Integrity Advance renewed its license annually until 2013, after which it stopped submitting applications for renewal. RX-8-13.

89. E. Quinn Miller is an Investigative Supervisor in the non-depository unit of the Delaware Office of the State Bank Commission. Tr. III-116:3–11.

90. In Delaware, the licensing process for non-depository lenders involves a review of an applicant's financial documents, business references, and the personal information of the applicant's executive officers. Tr. III-124:18–126:15.

91. The investigators also try to obtain a copy of the applicant's loan contract to include in the file. Tr. III-126:19–20.

92. The investigators do not specifically approve the contract, but may ask questions about it. Tr. III-126:20–24.

93. Ms. Miller testified that the Delaware State Bank Commission "did not give anybody a blueprint, or a form, or anything like that. They sent us their form." Tr. III-148:9–11.

94. Ms. Miller looked at agreements to make sure the TILA disclosures were presented in the correct format. Tr. III-150:24–151:8.

95. Ms. Miller or her staff also used a computer program to verify that the APR calculation in the TILA box was within the legally allowed tolerance for a hypothetical loan. III-151:18–152:18.

96. The investigatory staff does not verify any other mathematical calculations. Tr. III-153:5–6.

97. The investigatory staff does not verify compliance with other provision of TILA or with EFTA. Tr. III-149:1–21.

98. During the period of time Integrity Advance was operating, the Delaware Commissioner did not set the fees that non-depository lenders could charge their customers. Tr. III-148:12–14.

99. During the period of time Integrity Advance was operating, Delaware law permitted non-depository lenders to offer a maximum of four renewals before principal repayments began. Tr. III-135:1–11; III-137:13; *see also* 5 Del. C. § 2235A(a)(2) (2009).

100. During the period of time Integrity Advance was operating, neither Delaware law nor the Delaware Commissioner required non-depository lenders to offer the option of renewals. Tr. III-145:24–146:14; *see also* 5 Del. C. Subchapter III (2009).

101. During the period of time Integrity Advance was operating, neither Delaware law nor the Delaware Commissioner required non-depository lenders to automatically renew their customers' loans. Tr. III-145:24–146:2.

102. During the period of time Integrity Advance was operating, the Delaware Commissioner did not review non-depository lenders' loan agreements for compliance with the EFTA. Tr. III-149:1–3.

103. The Delaware Commissioner has never denied a non-depository lender's application for a license. Tr. III-144:23–145:1.

104. The Delaware Commissioner has only revoked a non-depository lender's license when its surety bond was "cancelled and not resolved by the licensee within the time limit." Tr. III-132:14–15.

Remotely Created Checks

105. Integrity Advance's ACH agreement contained a provision that allowed the company to execute RCCs on its customers' bank accounts. EC-EX-001-014; EC-EX- 063.

106. The ACH agreement stated "[i]f you revoke your authorization, you agree to provide us with another form of payment acceptable to us and you authorize 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." EC-EX-001-014; EC-EX-063.

107. The authorization to create RCCs appeared only once in the loan agreement on approximately page 9, at the end of a paragraph, in the middle of the ACH authorization section. EC-EX-001-014; EC-EX-063.

108. The RCC provision was not separated out from the other text or emphasized in any way. EC-EX-001-014; EC-EX- 061; EC-EX-063.

109. Integrity Advance did not require consumers to sign or initial the RCC provision separately. EC-EX-001-014; EC-EX-063.

110. The RCC provision did not inform consumers that these checks could be submitted without the consumer's signature. EC-EX-001-014; EC-EX-063.

111. The RCC provision did not inform consumers that these checks could be submitted without any additional notification to the consumer. EC-EX-001-014; EC-EX-063.

112. Integrity Advance used RCCs to withdraw funds from some consumers' bank accounts after those consumers paid more than the disclosed "total of payments" and had attempted to halt ACH debits by Integrity Advance. Tr. I 235:19 – 236:3; II-84:6–11; II-84:25–85:8; II-142:15–148:4; II-152:15–153:11; EC-EX-072 at ¶¶9-11; EC-EX-97; *see also* EC-EX-95.

113. Integrity Advance used RCCs after trying and failing to obtain payment in some other way from consumers who had blocked ACH transfers. Tr. II-85:3–6.

114. Mr. Carnes knew that Integrity Advance used RCCs and the circumstances under which they were used. Tr. II 84:6 – 85:11; EC-EX-068 at 219:7–18.

115. Mr. Carnes saw remotely created checks printed using a printer in the Kansas City office. Tr. I-236:10–11, Tr. I-236:20–22.

116. Mr. Carnes testified that Integrity Advance printed remotely created checks on a weekly basis and regularly used remotely created checks to collect consumer debt. Tr. I 235:24 – 236:15.

117. Integrity Advance used remotely created checks 602 times on or after July 21, 2011, on consumers who had revoked or stopped their authorization for Integrity Advance to withdraw funds from their accounts and who had already paid an amount equal to the "Total of Payments" in the TILA box in the consumers' loan agreements. Tr. II-151:6–11; EC-EX- 097; *see also* EC-EX-95.

IV. MOTION FOR RECONSIDERATION

At the close of their post-hearing brief, Respondents moved for me to reconsider my determination that the loan agreements used by Integrity Advance were facially deceptive. While acknowledging that the CFPB Rules of Practice do not address motions for reconsideration, Respondents say Federal Rule of Civil Procedure 60 provides guidance and such motions are appropriate when new evidence is adduced at trial that contradict an earlier ruling.

Respondents rely on the testimony of E. Quinn Miller, a representative from the Delaware State Banking Commission, as evidence that my earlier finding was incorrect. Ms. Miller testified about the application and renewal process for Delaware lending licenses, such as those issued to Integrity Advance. Respondents argue her testimony showed that the loan agreement, including the TILA box, was "reviewed for accuracy by Ms. Miller and others on her staff as a condition for obtaining a lending license and reviewed by examiners as a condition for maintaining the license." Resp. Post-Hearing Brief at 35. They further contend that Delaware's lending laws expressly permitted renewals, and Integrity Advance's "loan agreement complied with the State of Delaware, which was its only regulator at the time it made loans to consumers." *Id.* at 36.

In its responsive brief, the Bureau argues that Respondents' request for reconsideration lacks both a procedural and a substantive basis, and states that whether Delaware law allowed payday loans to be renewed is irrelevant. EC Opposition at 29. The Bureau also says Respondents' argument misstates Ms. Miller's testimony about the

actions her office took when reviewing payday lenders' applications for licensure or license renewal. *Id.* at 29-30.

As a procedural matter, the CFPB's Rules of Procedure do not cover every possible motion that could be made in a proceeding before the Bureau. Administrative law judges commonly look to the Federal Rules of Civil Procedure for guidance where an agency's specific rules are silent. The CFPB's rules give me "all powers necessary to conduct a proceeding in a fair and impartial manner," and specifically grant me the authority to "consider and rule upon . . . all procedural and other motions appropriate in adjudication proceedings." I therefore find I may consider Respondents' motion. However, I disagree with Respondents that Fed. R. Civ. P. 60 is most applicable here.

Rule 60(a) permits courts to correct clerical mistakes or mistakes arising from oversight or omission, which is not at issue here. Rule 60(b) provides grounds for relief from a *final* judgment, order, or proceeding. My summary disposition Order, and indeed this Recommended Decision, are not final agency action. The Director is charged with issuing the final decision in this matter, whether by adopting this decision if neither party appeals and he is satisfied with my findings, or by issuing a decision after an appeal and *de novo* review. *See* 12 C.F.R. § 1081.402(b). I believe the most applicable provision of the Federal Rules is Rule 54(b), which states, "any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." *Id.* Accordingly, as a procedural matter, I may consider whether revision of my earlier Order is appropriate.

Respondents' argument in support of reconsideration, however, is unconvincing. First, while the State of Delaware may have been Integrity Advance's only state regulator at the time it was in operation, Integrity Advance was required to comply with certain Federal laws such as TILA and EFTA, and was subject to enforcement actions by the FTC for violations of those Federal laws. Compliance or non-compliance with state law may constitute one of many factors in determining whether deception occurred, but compliance with state law is not a bar to liability if other facts establish a violation occurred under the CFPA's prohibition on deceptive conduct. *See, e.g., FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244 (1972) (FTC is authorized to prohibit conduct that, although legally proper, goes against "public values beyond simply those enshrined in the letter or encompassed in the spirit of the antitrust laws").

At the hearing, Ms. Miller testified that she and her staff "try to get the loan contract so we can have it on file" but do not approve the contract or "rubber-stamp" it. *See* Tr. III-126:19–21. Ms. Miller is familiar with the TILA disclosures, so she ensures that the TILA box is present on the first page of the contract and that it matches the format required by Federal law. *See* Tr. III-127:1–11. She or members of her staff also run calculations using hypothetical consumer data through a computer program from the Office of the Comptroller of the Currency, which ensures that the annual percentage rate is mathematically accurate within the legal tolerance. Tr. III-151:18–152:18.

Ms. Miller testified that, at the time Integrity Advance was operating, Delaware permitted lenders to offer up to four renewals on a loan, but did not require them to do so. *See* Tr. III-145:24–146:14. She did not offer any testimony about the precise mechanisms for effectuating renewals, specifically whether there was a difference between contracts

that required consumers to affirmatively renew their loans and contracts that utilized automatic renewal provisions. She did not offer any specific testimony about Integrity Advance, other than the company met the basic criteria for licensing and was therefore granted an initial license and renewals each year thereafter until 2012.

Nothing in Ms. Miller's testimony, or anywhere else in the record, affects my finding that the loan agreement was deceptive. While it appears to have complied with the letter of the Delaware state statute governing short-term lenders, I never found it to have violated any Delaware laws. However, compliance with state law is not a defense to a charge of deceptive conduct under the CFPA. The State of Delaware did not provide sample or form contracts for lenders to use; instead, the regulators reviewed the lenders' contracts at a basic level to ascertain that specific aspects of the Delaware lending statute were present and accurately stated. The regulators also ensured that the APR displayed in a contract was mathematically accurate within the tolerance allowed by TILA. Due to her long experience and familiarity with the TILA requirements, Ms. Miller personally looked at the language and placement of the TILA box to ensure it was appropriate. The regulators did not review all of the terms in the contract to make sure they were clearly understandable and internally consistent. Nor did they analyze whether the amounts disclosed in the TILA box were actually what a consumer was required to pay under the terms of the contract.

An act or practice is deceptive if 1) there is a representation, omission, or practice that 2) is likely to mislead consumers acting reasonably under the circumstances, and 3) the representation, omission, or practice is material. *See CFPB v. Frederick J. Hanna & Assocs., P.C.*, 114 F. Supp. 3d 1342, 1370 (N.D. Ga. 2015), *mot. to cert. appeal denied*,

2015 WL 10551424 (N.D. Ga. Nov. 16, 2015). Respondents have asserted that, in order for me to find the contract deceptive, the Bureau must present a consumer survey or consumer testimony showing that a "reasonable consumer" would not understand the contract. This is incorrect. Certainly, empirical consumer survey data can be useful, but it is not required as a matter of law. *FTC v. Publishers Bus. Servs., Inc.*, 821 F. Supp. 2d 1205, 1223 (D. Nev. 2010). To satisfy the second prong of this test, it is not necessary to show that an *actual* consumer *was* misled, only that a hypothetical consumer acting reasonably would be likely misled by the act, omission, or practice.

The reasonable person determination is properly within the fact-finder's discretion, and is generally limited to "the relevant audience." *Publishers Bus. Servs.* at 1223. For instance, in *Floersheim v. FTC*, 411 F.2d 874, 877 (9th Cir. 1969), a collection form's disclaimer was found insufficient because the target consumer was often low-income and not well-educated. Here, there is no evidence in the record as to the intelligence, education level, or income bracket of Integrity Advance's customers. Thus, I made my analysis based on a generic "reasonable person" standard and determined that an average person of average intelligence and education would likely be misled by the contract Integrity Advance used.

An act or practice is not deceptive if it is "unreasonably misunderstood by an insignificant and unrepresentative segment of the class of persons to whom the representation is addressed." *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 175 (1984). Here, ninety percent or more of Integrity Advance's customers experienced at least one renewal. The record does not establish exactly how many customers contacted the company to specifically request a renewal, nor does it establish how many consumers

understood the automatic renewal provision and knowingly allowed it to happen. Even so, Integrity Advance originated 82,980 loans on or after July 21, 2011, with 28,001 of those made to new customers who would not yet have been familiar with Integrity Advance's business practices. *See* EC-EX-097. Thus, the number of consumers who misunderstood the confusing and ambiguous terms of the contract and, in consequence, experienced at least one renewal, is not likely to be insignificant or unrepresentative.

Deception may be found based on the "net impression" created by a representation. *FTC v. Cyberspace.com LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006). Moreover, the law does not require that all customers were deceived, and "the existence of satisfied consumers does not constitute a defense." *FTC v. Johnson*, 96 F. Supp. 3d 1110, 1119 (D. Nev. 2015). In my Order granting partial summary disposition, I found that one version of the contract contained a single line stating that the consumer's payment of the "total of payments" was due on a specific date. The other version of the contract did not include that line. *See* Order dtd. Jul. 1, 2016 at 16, 20. The remainder of the contract set forth an extended payment structure and presented payment in full as merely one of several equally valid options for paying off the loan. It did not clearly disclose that consumers would pay substantially more than the TILA box disclosed if they chose an alternate option. *Id.* at 23. It is not difficult to see how a consumer acting reasonably under the circumstances would be confused, and ultimately misled, by the disclosure of a single finance charge juxtaposed with a labyrinthine payoff structure.

If Integrity Advance had required its customers to ask for a renewal, instead of automatically renewing the loans until consumers intervened, there would have been little question as to whether consumers understood the contract. Consumers who wanted or

needed the opportunity to extend their payment date would have contacted the company to seek renewal, while other consumers would have either paid their loans off in one lump sum or defaulted. Certainly, some of Integrity Advance's customers did understand the nature of renewals, and did contact the company to avail themselves of that option. Respondents have also pointed to the large number of consumers who took out more than one loan as indicative of a high degree of consumer satisfaction. However, Respondents themselves presented no evidence that consumers took additional loans because they were satisfied; repeat customers may simply have been caught in a cycle of debt and saw no other option than to take out multiple loans. Thus, I do not conclude that a high return rate necessarily shows consumer satisfaction with Respondents' product.

In short, Ms. Miller's testimony provided nothing to convince me that my earlier findings were incorrect, nor did any other evidence adduced at the hearing. While the individual clauses in Integrity Advance's contract do not appear to violate the relevant Delaware state laws, when read as a whole, the contract's net impression is misleading. It appears to give consumers multiple, equally valid options for paying off the loan while not clearly stating that the costs disclosed in the TILA box apply only to the "option" of payment in full on the consumer's next payday. I therefore **DENY** Respondent's Motion to Reconsider.

V. DISCUSSION AND CONCLUSIONS OF LAW

A. Jurisdiction

In the Order Denying Respondents' Motion to Dismiss dated April 22, 2016, I considered a number of jurisdictional arguments, which are incorporated by reference into this Recommended Decision. I determined that the Bureau had the authority to

enforce Federal consumer financial protection laws, specifically TILA, EFTA, and the CFPA, against Respondents at all times on or after July 21, 2011. Relying on the Decision of the Director, *In the Matter of PHH Corp., et al.*, File No. 2014-CFPB-0002 (Jun. 4, 2015), I also determined that the statutes of limitations contained in 12 U.S.C. §5564(g)(1), 15 U.S.C. §1640(e), and 15 U.S.C. §1693m(g) did not apply to this administrative proceeding.[2]

The CFPA authorizes the Bureau "to conduct hearings and adjudication proceedings with respect to *any* person." *See* 12 U.S.C. § 5563(a) (emphasis added). A "person" is defined for purposes of the CFPA as "an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity." 12 U.S.C. § 5481(19).

The section of the CFPA entitled "Supervision of nondepository covered persons" sets out the scope of coverage, supervisory authority, enforcement authority, rulemaking and examination authority the Bureau is granted over such persons. *See* 12 U.S.C. § 5514. As a payday lender, Integrity Advance was specifically subjected to these provisions. *See* 12 U.S.C. § 5514(a)(1)(E). Integrity Advance is also a "covered person" for purposes of the CFPA, since it "engage[d] in offering or providing a consumer financial product or service." *See* 12 U.S.C. § 5481(6).

Likewise, the Bureau has authority to bring charges against Mr. Carnes. He is a "related person" as defined in the CFPA because he was an officer of Integrity Advance, had managerial responsibility, and was a controlling shareholder who materially

[2] I did not reach the question of whether, even if the statute of limitations did apply, the Bureau timely filed its Notice of Charges.

participated in Integrity Advance's affairs. *See* 12 U.S.C. § 5481(25)(C). He is therefore a "covered person" for purposes of the CFPA. *See* 12 U.S.C. § 5481(25)(B).

B. Count VII as to Integrity Advance

1. Overview of Remotely Created Checks

An RCC is a paper check, drawn against a bank account, in many respects identical to a check torn from a checkbook. *See* Tr. II 172:3–6; *see also* EC-EX-094 at 1. The key difference is, however, that the account holder does not prepare or sign the check, and generally never even sees it. *See* EC-EX-098 at 1; EC-EX-094 at 1–2. Instead, the payee—the person who will be receiving the funds from the RCC—uses the account holder's data to create the check using software designed for this purpose. *See* EC-EX-094 at 3. While the account holder must authorize the payee to create this check, he or she may not understand that such an authorization was given, how the RCC process works, and if or when a check will actually be created and deposited.

RCCs are a legal device and serve legitimate purposes in the banking system. *See* EC-EX-094 at 5; EC-EX-098 at 1. Scenarios exist whereby the use of an RCC is mutually agreeable and beneficial to both the account holder and the payee. *See* EC-EX-094 at 5; EC-EX-098 at 1–2. However, it is generally acknowledged that the potential for fraudulent, unfair, or abusive use of RCCs exists. *See* EC-EX-094 at 5–8; EC-EX-098 at 2. While the law requires the creators of RCCs to obtain authorization from consumers, this may happen days, weeks, or months in advance. Moreover, depository institutions do not always specifically identify RCC transactions on consumers' periodic statements, so consumers may not even realize that this device (as opposed to an ACH

transfer or other electronic payment) was used to debit their accounts. *See* EC-EX-094 at 15.

2. Legal Standard for Unfairness

An act or practice is unfair if: (1) it causes or is likely to cause substantial injury; (2) consumers themselves could not reasonably have avoided it; and (3) it is not outweighed by countervailing benefits to consumers or competition. *See* 12 U.S.C. § 5531(c)(1); *see also* 15 U.S.C. § 45(n), *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1155 (9th Cir. 2010). Here, I must determine whether Integrity Advance's use of RCCs was unfair, as the Bureau alleges. In general, the Bureau must show that consumers "were injured by a practice for which they did not bargain." *Neovi* at 1157 (citation and quotes omitted). "In determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination." *See* 12 U.S.C. § 5531(c)(2).

It is also important to note that consumer financial protection laws treat unfairness differently than deception. *See FTC v. Cantkier*, 767 F. Supp. 2d 147, 153 (D.D.C. 2011) ("Deception and unfairness . . . provide two distinct rationales for FTC enforcement"); *Am. Fin. Servs. Ass'n v. FTC*, 767 F.2d 957, 979 n. 27 (D.C.Cir.1985) ("The distinction between the deception rationale and the unfairness rationale tends to become obfuscated. Nonetheless the two rationales are distinct"); *see also In re Int'l Harvester Co.*, 104 F.T.C. 949, 1061 (1984) ("Unlike deception, which focuses on 'likely' injury, unfairness cases usually involve actual and completed harms.").

The first prong of the test focuses on whether the harm is substantial. "Under the standard for unfair practices that the [CFPA] has borrowed from the FTC Act, a 'substantial' injury in the context of consumer protection is most often a financial one." *CFPB v. ITT Educ. Servs., Inc.*, No. 1:14-CV-00292-SEB, 2015 WL 1013508, at *25 (S.D. Ind. Mar. 6, 2015). The financial harm to consumers does not need to be "massive on an annual basis to count as substantial." *Id.* Instead, it may be the aggregate of many small individual injuries." *FTC v. Johnson*, 96 F. Supp. 3d at 1151 (*citing FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th Cir. 1994)). However, a "trivial or speculative" harm is insufficient to demonstrate substantial injury. *See FTC v. IFC Credit Corp.*, 543 F.Supp.2d 925, 945 (N.D. Ill. 2008).

To make a determination about the second prong, whether consumers' injuries were reasonably avoidable, "courts look to whether the consumers had a free and informed choice." *Neovi*, 604 F.3d at 1158; see also *Johnson* at 1151; *IFC Credit Corp.* at 950. "An injury is reasonably avoidable if consumers 'have reason to anticipate the impending harm and the means to avoid it,' or if consumers are aware of, and are reasonably capable of pursuing, potential avenues toward mitigating the injury after the fact." *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1168–69 (9th Cir. 2012) (*quoting Orkin Exterminating Co., Inc. v. FTC*, 849 F.2d 1354, 1365–66 (11th Cir.1988)).

Finally, the last prong of the test focuses on whether "a practice produces clear adverse consequences for consumers that are not accompanied by an increase in services or benefits to consumers or by benefits to competition." *FTC v. J.K. Publ'ns*, 99 F.Supp.2d 1176, 1201 (C.D. Cal. 2000).

In analyzing an unfairness claim, it is important to bear in mind that "legality and unfairness are not necessarily congruent." *CFPB v. ITT Educ. Servs., Inc.*, 2015 WL 1013508 at *27 (citing *FTC v. IFC Credit Corp.*, 543 F.Supp.2d at 948, 953 and *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233). As discussed above, *Sperry* stands for the proposition that conduct may be legal but nonetheless unfair when public policy is taken into consideration. *See also IFC Credit Corp* at 950.

3. Was Integrity Advance's Use of RCCs Unfair?

Integrity Advance's loan agreement contains language authorizing the company to use RCCs in the ACH authorization section of the agreement. The operative language reads: "you authorize 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." It is important to note that the Bureau does not contend that any law forbade Integrity Advance from using RCCs in appropriate circumstances. Instead, it contends that the manner in which Integrity Advance obtained consumers' authorization to create these checks, coupled with the scenarios under which the company actually created and submitted RCCs, amounts to an unfair practice. The Bureau has identified 602 times after July 21, 2011 when Integrity Advance used an RCC to obtain money from consumers' bank accounts after those consumers had already paid more than the "total of payments" disclosed on the loan agreement and blocked Integrity Advance's ACH access to their accounts. *See* Tr. II-151:6–11; EC-EX-095; EC-EX-097, EC-EX-101.

Respondents argue that the Bureau "seeks to impose a strict-liability standard and a finding that every instance in which Integrity Advance used an RCC after a consumer had withdrawn authorization for ACH debits constituted an unfair practice." *See* Resp.

Post-Hearing Brief at 12. Respondents further state that the Bureau's "entire theory as to unfairness for RCCs rests on an unsupported assumption that every instance in which Integrity Advance used an RCC after a consumer had purportedly withdrawn authorization for ACH debits amounts to consumer harm." *See* Resp. Opposition at 11.

I note that the Bureau's theory regarding the consumer harm caused by Integrity Advance's use of RCCs changed substantially between the hearing and the filing of post-hearing briefs. At the hearing, enforcement counsel stated, "[f]or Count Seven, which is remotely created checks, we are seeking the total amount paid by consumers after the transfer date, July 21st, 2011 and the number is $265,452.50." *See* Tr. III-181:1–4. If the Bureau continued to seek this amount, Respondents' strict liability argument may have had merit, since the Bureau would have been asking me to impose liability for every RCC used, regardless of the rationale for using it. However, in its post-hearing brief, the Bureau reduced the amount of monetary relief it seeks. Now, it only asserts the use of RCCs was unfair if the consumer had already paid more than the "total of payments" disclosed in the loan documents before blocking ACH authorization. *See* EC Post-Hearing Brief at 15.

This serves to eliminate Respondents' concern about situations where "consumers could have been trying to renege on their obligation to pay." *See* Resp. Opposition at 12. Since I have found Integrity Advance was not entitled to collect more from consumers than the disclosed "total of payments," except certain fees stemming from consumer error such as NSF fees, the amounts it obtained from consumers above each loan's disclosed "total of payments" were not properly owed to them under the agreement. Thus, the use

of RCCs on these consumers' accounts does not appear to have been authorized by the precise terms of the contract language.

Respondents also appear to argue that Integrity Advance was not directly involved in using RCCs because "[t]he decision to use RCCs was made by the third-party call center on a case-by-case basis." *See* Resp. Prop. Find. of Fact # 75. However, this proposed finding is wholly unsupported by the record. The first call center Integrity Advance used was located in Overland Park, Kansas and then it transitioned to one located in Delaware. *See* Tr. I-42:3–6. Integrity Advance's office was in Westwood, Kansas. *See* Tr. I-29:22–23. Mr. Carnes testified he saw RCCs being printed on approximately a weekly basis in Kansas City-area office. *See* Tr. I-236:10–22. Thus, the evidence leads to the inescapable conclusion that the call centers did not make any decisions regarding RCCs; instead, the decision to print and submit an RCC had to have been made by personnel working out of the main HIP/Integrity Advance office. In any event, regardless of where the RCCs were printed and submitted, I do not find Respondents' argument that Integrity Advance was not directly involved in using RCCs to be credible.

Turning to the three-pronged test for whether the use of RCCs was legally unfair, the Bureau argues that consumers were substantially injured by Respondents' conduct. While the amount Integrity Advance collected through each RCC was not itself massive, the company nevertheless used this mechanism 602 times between July 21, 2011 and the date it ceased operations. The total amount collected by RCC during this period was approximately $115,024.50. Neither the number of transactions nor the sum of money

involved is trivial. Taken together, all these small injuries rise to the level of substantial harm. *See Johnson*, 96 F. Supp. 3d at 1151.

The next question is whether the harm was reasonably avoidable. Integrity Advance normally used ACH transfers to deposit loan proceeds and withdraw loan payments from customers' accounts. *See* Order dtd. July 1, 2016 at 32; Answer at 12. However, some consumers blocked Integrity Advance's ACH access to their accounts. When this occurred, Integrity Advance used RCCs to collect loan payments. *See* Tr. II-85:3–6. The Bureau argues that consumers could not reasonably avoid having RCCs submitted against their accounts (1) because RCCs are not well-known or widely understood among the general population, and (2) the language in the contract was so obscure they could not have known what they were authorizing. Respondents' counterargument is that the Bureau failed to demonstrate that harm was not reasonably avoidable because there is no evidence about how many consumers actually read the provision in the ACH authorization allowing Integrity Advance to use RCCs and no empirical data showing what consumers actually understood. Respondents state, "[i]n sum, there is simply no evidence in the record to support a finding that consumers did not understand the loan agreement and could not reasonably avoid the use of RCCs." *See* Resp. Opposition at 13-14.

Mr. Carnes's uncontroverted testimony is that Integrity Advance only used RCCs when consumers had not paid on the loan, had blocked ACH access, and could not be contacted. Without having entered any supporting evidence in the record, the Bureau claims consumers were only trying to protect their accounts after having paid more than the "total of payments" on their loans. In addition, the Bureau asserts that "Integrity

Advance took money from consumer bank accounts through remotely created checks when consumers were specifically trying to protect those accounts. EC-EX-095, EX-EX-097; EX-EX-100; EC-EX-101." *See* EC Post-Hearing Brief at 16.[3] The Bureau has not provided any credible, sworn testimony in support of its claim that consumers blocked ACH access out of sheer self-preservation. The record merely contains several Better Business Bureau complaints. Had the Bureau called Integrity Advance customers to testify at the hearing about their experience with RCCs, I could have credited such testimony, but I will not give weight to unsworn, largely anonymous consumer complaints. Certainly, the Bureau would have bolstered its case if it had presented credible testimony from persons who were actually harmed by Respondents' actions. But, the lack of such testimony is not fatal where the preponderance of all the evidence in the record establishes harm.

I agree with the Bureau that the contract did not adequately inform consumers they were authorizing Integrity Advance to use remotely created checks: it stated, "You authorize 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." This single sentence is the only provision in the loan agreement that relates to RCCs, and was buried in the fine print of the ACH Agreement. I also find that once consumers provided their bank account and routing numbers on the loan application, they were powerless to stop Integrity Advance from creating and submitting RCCs if the company believed all the conditions for RCC

[3] The exhibits the Bureau has cited in support of their assertion that consumers were "specifically trying to protect" their bank accounts include a printout of Integrity Advance transactional data and the Bureau's calculations of the amount of money Integrity Advance collected through RCCs. There is also a single breakdown of the payments made against loan # 54158546, showing that the consumer had blocked ACH access after paying $950 against a loan with a disclosed "total of payments" of $650. The next payment was returned due to ACH access being revoked by the consumer, and an RCC was used in the amount of $520. While the Bureau's conclusion is one logical explanation for the behavior, it is certainly not the only one.

use had been met. The only way a consumer could avoid having an RCC used was to provide a different form of payment to Integrity Advance, thereby paying the very money the consumer did not believe he or she legitimately owed.

The question, then, is whether blocking ACH access and refusing further contact with Integrity Advance was a reasonable step for consumers to take. I find it was. The Bureau does not allege that the use of remotely created checks was unfair in all circumstances; rather, only those RCCs used after the consumer had already paid more than the "total of payments." This eliminates any consumers who had not satisfied their indebtedness as disclosed in the TILA box on their loan documents.

I find it reasonable that an average consumer, having experienced at least one renewal and having paid more than the amount disclosed, would seek to block the company's access to their bank account. The data the Bureau extracted from Respondents' database shows that this did, in fact, occur, and Respondents have not presented any credible evidence to rebut that data. Once a consumer blocked ACH access, he or she could not reasonably anticipate the company's use of an RCC, as the opaque language in the contract did not provide a clear and adequate description of how the company would continue to withdraw funds from the consumer's account. Consumers were also unable to mitigate the injury once they discovered an RCC had been used. By the time a consumer found out about an RCC, it was too late to try to stop payment and the money had already been debited from their accounts.

The final question is whether Integrity Advance's use of RCCs was outweighed by countervailing benefits to consumers or competition. I find that it was not. There is no evidence in the record that RCC use benefitted competition, or that Integrity Advance

would have been unable to compete in the payday lending marketplace without using this practice. This is particularly true because, as Mr. Carnes emphasized, RCCs were only used in a tiny fraction of Integrity Advance's transactions. Moreover, the consumer saw no benefit to RCCs at all; assuming the consumer was trying to avoid paying additional monies to Integrity Advance—whether out of the belief that the amounts were not owed, or in an attempt to avoid paying the loan at all—the use of an RCC defeated the consumer's intent. In some cases, it may even have caused additional harm in the form of overdraft or other, similar fees. Count VII against Integrity Advance is **PROVED**.

C. Counts III and VII as to Mr. Carnes

1. Standard for Finding Individual Liability

The Bureau asks me to hold Mr. Carnes individually liable for the unfair and deceptive practices of Integrity Advance. "The policy behind the imposition of individual liability is to ensure that an individual defendant does not benefit from deceptive activity and then hide behind the corporation." *FTC v. Silueta Distributors, Inc.*, No. C 93-4141 SBA, 1995 WL 215313, at *4 (N.D. Cal. Feb. 24, 1995).

Cases interpreting the FTC Act (FTCA) provide some guidance for determining when an individual may be held liable for a corporation's unfair and deceptive acts and practices. Although the FTCA differs in many respects from the CFPA, the Bureau has borrowed the FTC's standards regarding unfairness and deception in all its enforcements to date. Moreover, since both the FTC and CFPB are permitted to enforce certain consumer financial laws, such as TILA and EFTA, and the two agencies are required to coordinate their enforcement efforts, it would be illogical for there to be separate

standards. I therefore find FTC case law regarding individual liability for corporate violations to be applicable here.

In order to prove that an individual is liable for corporate violations of the CFPA, the Bureau must prove that the individual: "(1) participated directly in, or had the authority to control, the unlawful acts or practices at issue; and (2) had actual knowledge of the misrepresentations involved, was recklessly indifferent to the truth or falsity of the misrepresentations, or was aware of a high probability of fraud and intentionally avoided learning the truth." *FTC v. Commerce Planet, Inc.*, 815 F.3d 593, 600 (9th Cir. 2016). Proof of intent to deceive is not an element in establishing liability. *FTC v. Windward Mktg., Inc.*, No. 1:96–CV–615F, 1997 WL 33642380, at *9 (N.D. Ga. Sept. 30, 1997). Nor is an explicit lie required—"[d]eception may be accomplished by innuendo rather than by outright false statements." *Regina Corp. v. FTC*, 322 F.2d 765, 768 (3rd Cir.1963).

2. Analysis

Here, the threshold question of whether Mr. Carnes had the authority to control the unlawful practices is straightforward. This authority may be evidenced by "active involvement in business affairs and making of corporate policy, including assuming the duties of a corporate officer." *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989). Signing documents on behalf of the company also demonstrates sufficient control. *See, e.g., FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir.1997). Evidence that an individual developed or created, reviewed, altered and disseminated the deceptive materials goes to whether an individual directly participated in the unlawful practices, even absent proof of the authority to control them. *FTC v. Ross*, 897 F. Supp.

2d 369, 383 (D. Md. 2012), *aff'd*, 743 F.3d 886 (4th Cir. 2014), *cert. denied* 135 S.Ct. 92 (2014).

The Bureau called as witnesses several former employees of Integrity Advance's parent company HIP, who had performed duties for Integrity Advance. These witnesses established that Mr. Carnes was actively involved in the company's business affairs. He routinely discussed various issues stemming from Integrity Advance's operations with his employees, and signed contracts on behalf of Integrity Advance. Mr. Carnes himself admitted that, as CEO of HIP and de facto CEO of Integrity Advance, he had ultimate control over the businesses.

Mr. Carnes did not deal directly with Integrity Advance's customers, and was in fact many levels removed from this function. Integrity Advance did not technically have any employees, including Mr. Carnes, and the day-to-day consumer-facing operations were outsourced to a call center and a collections company. However, the Bureau does not have to separately prove direct participation in order to satisfy the first prong of the test, since either participation *or* control will suffice. *See Ross*, 897 F.Supp. 2d at 382-83.

The second question is whether the Bureau proved that Mr. Carnes had actual knowledge of the illegal practices, was recklessly indifferent to those practices, or intentionally avoided learning about them. The parties fundamentally disagree as to the level of knowledge required to satisfy this prong of the test. The Bureau posits that a basic understanding of the way Integrity Advance's loan process worked is sufficient to show actual knowledge, since Mr. Carnes knew the agreement "disclosed an expensive multi-payment installment loan as if it was a much cheaper single payment loan." *See* EC Post-Hearing Brief at 11.

Respondents, on the other hand, claim that "an individual must know that a representation deceived consumers or was otherwise unfair in order to be held personally liable" and that "requisite knowledge is shown by clear evidence that the individual defendant was integral to the creation of materials causing the misrepresentation or was alerted to the falsity of a representation or the potential for fraud." *See* Resp. Opposition at 4-5. They argue that the Bureau is asking me "to infer Mr. Carnes's knowledge *of the misrepresentation* from his general understanding of [Integrity Advance's loan] process." *See* Resp. Opposition at 7. Mr. Carnes has represented that he hired experts to handle certain business matters that required expertise he did not personally have; that he relied on outside counsel to create the loan agreement; and that he knew the company had satisfied all the requirements for licensure by the State of Delaware.

My review of case law interpreting the knowledge requirement shows that there is no bright-line test for how much knowledge is enough for liability to attach. The analysis is always specific to the facts and circumstances of the case. *See, e.g., FTC v. FTN Promotions, Inc.*, No. 807-CV-1279-T-30TGW, 2008 WL 821937, at *2 (M.D. Fla. Mar. 26, 2008) (the knowledge test is a "judicially developed principle[] that should be flexibly applied as circumstances warrant."). However, while not determinative, an individual's "participation in corporate affairs is probative of knowledge." *FTC v. Wilcox*, 926 F. Supp. 1091, 1104 (S.D. Fla. 1995) (*citing FTC v. Kitco of Nevada, Inc.*, 612 F.Supp. 1282, 1292 (D. Minn. 1985).

Moreover, although courts in the Ninth Circuit have questioned whether knowledge of deceptiveness is legally required before individual liability attaches under the FTCA, those courts ultimately determined they did not need to analyze or reach a

conclusion as to that question. *See, e.g., FTC v. Pantron I Corp.*, 33 F.3d 1088, 1103 (9th Cir. 1994); *FTC v. Sage Seminars, Inc.*, No. C 95-2854 SBA, 1995 WL 798938, at *5 (N.D. Cal. Nov. 2, 1995); *FTC v. Silueta Distributors, Inc.*, No. C 93-4141 SBA, 1995 WL 215313, at *5 (N.D. Cal. Feb. 24, 1995). I was unable to find, and the parties did not cite, any cases from other jurisdictions that considered this specific issue. All available case law concerning deceptiveness indicates that the operative question is whether a person knew or should have known that a consumer was likely to be misled, not that a person knew or should have known that a court would rule the act or practice legally deceptive, and I will therefore apply such an analysis.

In cases where individual liability was imposed, the defendants personally engaged in the deceptive conduct, and therefore clearly had knowledge of it. *See, e.g., FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975, 1005–06 (N.D. Cal. 2010), *aff'd*, 475 F. App'x 106 (9th Cir. 2012) (defendants had filed two lawsuits against their own marketers for unauthorized billing practices, but still continued billing customers "acquired by the very entities they had sued" and also falsified LEC-billing applications and sold their "customers" to a third-party vendor so that they could get around an LEC billing suspension); *FTC v. World Media Brokers*, 415 F.3d 758, 765–66 (7th Cir. 2005) (individual's handling of financial matters required knowledge that the companies were illegally selling foreign lottery tickets, and she was personally named in a cease-and-desist order from the United States Postal Service about the activity).

Many cases use knowledge of consumer complaints as a proxy for actual knowledge of unfair or deceptive practices. *See, e.g., FTC v. Bay Area Bus. Council, Inc.*, 423 F.3d 627, 638 (7th Cir. 2005) (the individual defendants were aware of the

"near-constant stream of complaints"); *FTC v. Lanier Law, LLC*, No. 3:14-CV-786-J-34PDB, 2016 WL 3632371, at *30 (M.D. Fla. July 7, 2016) (defendants were aware of consumer complaints; one was frequently copied on emails discussing how to respond to these investigations and complaints and the other was "kept up-to-date" on written and oral complaints from consumers, as well as complaints from the BBB and governmental agencies); *FTC v. NHS Sys., Inc.*, 936 F. Supp. 2d 520, 535 (E.D. Pa. 2013) (one individual defendant sent emails demonstrating her knowledge of the business's operations, the receipt of complaints, and required consumer refunds; and another supervised and controlled the call centers); *FTC v. Wilcox*, 926 F. Supp. at 1104 (individuals knew of the deceptive conduct because they saw notations on checks about the goods or services the consumers expected to receive in return and knew the consumers would not be receiving those things, and saw thousands of consumer complaints showing that their solicitations had misled the consumers).

Other cases focus on the nature of the individual's involvement with the company to determine whether that person knew or should have known that certain practices were unfair or deceptive. *See, e.g., FTC v. Network Servs. Depot, Inc.*, 617 F.3d 1127, 1141 (9th Cir. 2010) (defendants were recklessly indifferent where "[i]n the face of numerous warning signs—multiple customer complaints, admitted delays, BVC's suspicious financial practices, and Bevilacqua's false statements—[they] failed to undertake even modest due diligence on behalf of their customers"); *FTC v. Grant Connect, LLC*, No. 2:09-CV-01349-PMP-RJ, 2009 WL 3074346, at *10 (D. Nev. Sept. 22, 2009) (two defendants likely had actual knowledge because they knew of emails and an article published on the internet that discussed the company's fraudulent conduct, and another

defendant was likely either recklessly indifferent or had an awareness of a high probability of fraud because she entrusted her businesses to people who were under permanent injunctions against future telemarketing activity related to prior violations of the Act); *FTC v. Safety Plus, Inc.*, No. CIV. A. 91-352, 1993 WL 330656, at *3 (E.D. Ky. July 6, 1993) (company president essentially admitted he had knowledge of deceptive practices because he stated that he took steps to remedy them).

Intensive day-to-day involvement in business practices is not always required. In *FTC v. J.K. Publications, Inc.*, 99 F. Supp. 2d at 1206, one individual defendant argued that she had no knowledge of the illegal activities of the other defendants or the fact that she had been a participant, and attempted "to hide behind the shield erected by her claims that she did not read the documents that she signed." The court found that, even if this was true, she was liable because she was aware of the nature of the company's businesses; moreover, she had ample opportunity to review the documents she signed, and was aware of the legal significance of failing to do so. In *FTC v. Oks*, No. 05 C 5389, 2007 WL 3307009, at *6 (N.D. Ill. Nov. 2, 2007), the court found sufficient knowledge where one of the individual defendants was in the office every day; made sure that telemarketers placed sales calls; overheard the contents of those telephone calls; entered into contracts for telephone service on behalf of the corporate defendants that made the deceptive telephone solicitation possible; arranged for bank account debiting services for the corporate defendants; and used his credit card to open P.O. boxes for the corporate defendants. In *FTC v. Medicor, LLC.*, 217 F. Supp. 2d 1048, 1055 (C.D. Cal. 2002), the court held two defendants who had high-level knowledge of the operations liable, but did not discuss with any specificity their degree of knowledge.

A very low level of involvement in the corporation satisfied the knowledge test in *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 539 (S.D.N.Y. 2000). There, the FTC did not prove by a preponderance of the evidence that an individual defendant was personally involved in creating or disseminating deceptive materials, and the tasks she performed were ministerial in nature. Nevertheless, "by virtue of her participation in the preparation of filings with and responses to State regulators" the court found she had "more than a minimal degree of knowledge concerning the various challenges to Five Star's legitimacy" and was at least recklessly indifferent to the company's conduct. Similarly, in *FTC v. Direct Mktg. Concepts, Inc.*, 569 F. Supp. 2d 285, 311 (D. Mass. 2008), *aff'd*, 624 F.3d 1 (1st Cir. 2010), one defendant was considered a "driving force" in the deceptive conduct because he directed his employees to pursue producing an infomercial; provided his companies' studios to record it; and personally participated in it. As to another individual who "managed the Coral Calcium program and . . . procured placement of the infomercial," the court concluded it was likely he had actual knowledge of the misleading claims in the infomercial but, at the least, he was "willfully blind or recklessly indifferent to it." The court made a preliminary determination of liability in *FTC v. Millennium Telecard, Inc.*, No. CIV.A. 11-2479 JLL, 2011 WL 2745963, at *9 (D.N.J. July 12, 2011), where the individual defendant participated in all central aspects of the company's business, admitted that its service providers controlled its rates and fees, and was responsible for day-to-day business operations at one of its main service providers.

In the relatively few cases where an individual did not have the requisite knowledge, that individual was generally tangential to the company's operations. For

instance, in *FTC v. Garvey*, 383 F.3d 891, 901 (9th Cir. 2004), the paid spokesman for a weight-loss product was not individually liable where the representations he made about the product came from scripts he did not prepare and where he had personally experienced weight loss after taking the product. In *FTC v. QT, Inc.*, 448 F. Supp. 2d 908, 973 (N.D. Ill. 2006), *amended on reconsideration in part*, 472 F. Supp. 2d 990 (N.D. Ill. 2007), and *aff'd*, 512 F.3d 858 (7th Cir. 2008) (7th Cir. 2008), the court held that the FTC failed to prove either prong against one of the individual defendants. Indeed, the court noted that since she had no authority to control the deceptive acts or practices and the record contained no information about her degree of knowledge, she could not be held liable. Similarly, in *FTC v. J.K. Publications, Inc.*, 99 F. Supp. 2d at 1208, the court did not reach the knowledge prong of the analysis because it held that an individual's role as an officer or director on paper, without more, did not show sufficient control or direct participation in the acts or practices.

Finally, it is important to note that the Ninth Circuit has held it to be an abuse of discretion where the district court found, without further explanation, that there was no evidence in the record to support liability against a number of individual defendants. Instead, because the record contained a sworn declaration by one defendant that he was "familiar with the business operations, policies and procedures of [Ed Dantuma Enterprises] and Publishers Business Services," and specifically attested to PBS's alleged efforts to "comply with the [Telemarketing Sales Rule], the FTCA, and debt collection laws," the Ninth Circuit remanded the case and directed the district court to hold those individuals liable. *See FTC v. Publishers Bus. Servs., Inc.*, 540 F. App'x at 558 (substitutions in original). The Circuit Court did not discuss any additional evidence

showing the individual defendants' level of knowledge, nor did it require the district court to conduct additional proceedings to supplement the record.

Clearly, courts have found the knowledge prong satisfied in a wide array of circumstances. Respondents contend that "no cases have found knowledge sufficient to hold an individual personally liable without . . . extensive and specific evidence. The court should not be the first to do so here." However, the defendants in some cases discussed here had no greater degree of knowledge than Mr. Carnes. As I will discuss in greater detail below, the evidence firmly establishes that Mr. Carnes was knowledgeable about Integrity Advance's loan processes and business operations; even if the proffered evidentiary record might not establish that he was aware at the time that the loan agreements were deceptive and the use of RCCs was unfair.

a. Count III (Deception)

As to the deception alleged in Count III, the Bureau must prove that Mr. Carnes knew or should have known of Integrity Advance's misrepresentations as to the amount of interest consumers were told they would pay versus the amount consumers actually paid. In my Order granting partial summary disposition, I held that the loan agreement itself was deceptive. Therein, I found that the payment provisions in the loan agreement to be ambiguous; while one version of the contract contained a single line stating "Your payment of $[total of payments] is due on [date]," the remainder of the contract set up an elaborate multi-payment structure that took effect automatically absent further action from the consumer. The follow-up emails Integrity Advance sent its customers were also consistent with a multi-payment loan, since they stated that paying the loan off or paying

the principal down would constitute a change to the payment schedule. *See* Order dtd. July 1, 2016 at 22.

The evidence establishes that the HIP employees who worked on Integrity Advance business knew the loans were likely to involve multiple payments. Mr. Madsen testified that his conversations with Mr. Carnes about Integrity Advance business usually revolved around "conversion rates, performance, [and] *first payment defaults*." *See* Tr. I-50:8–9 (emphasis added). Likewise, Mr. Carnes said that if a consumer failed to call or email and it was their first payment, they would be renewed. *See* Tr. I-218:9–15. The term "first payment" necessarily anticipates a series of payments; it would be illogical for company personnel to use that term if they believed only a single payment was ever required to satisfy its loans.

Mr. Carnes subsequently testified that he was familiar with the auto-renewal and auto-workout process set up by the contract. *See* Tr. I-217:23–220:1. He also knew the majority of Integrity Advance's loans renewed at least once. *See* Tr. I-224:20–224:24. At some point in time, he became aware that the percentage of renewals was at least ninety percent. *See* Tr. I-221:19–222:9. Mr. Carnes also knew that Integrity Advance's loan agreement disclosed a single finance charge.

Integrity Advance received complaints from consumers, and Mr. Foster testified that these complaints were tracked on a spreadsheet. *See* Tr. II-29:20–21 and II-31:1–3. If consumers called to complain, the call center representatives were authorized to either resolve them or, if unable to do so, escalate matters to a call center manager. If the complaint escalated further, it was directed to the person in charge of collections and workouts, and then to the legal group in Kansas City. Mr. Foster was ultimately

responsible because the legal team reported to him. *See* Tr. II-30:1–16. Integrity Advance also received written complaints. *See* Tr. II-31:19–22. Mr. Foster testified that he was unable to say whether he and Mr. Carnes discussed these complaints because such discussions, if any occurred, were protected by attorney-client privilege. *See* Tr. II-31:11–17.

Mr. Carnes testified that he did not know that consumers complained about the product:

> Q. Were there any complaints that you received about Integrity Advance's loan product?
> A. Complaints never rose to my level, so I don't know.
> Q. So you were unaware personally of any complaints?
> A. I wasn't aware of complaints.

Tr. I-233:16–22. However, this is directly contradicted by statements he made during his investigational interview in this matter:

> I'm aware that there are complaints out there . . . one common complaint that people -- that consumers would have to try to get out of paying what they owed or paying less was to say, I didn't understand I was being -- that these payments weren't going towards principal and that they were going toward interest only. . . . So the common complaint was they would call and say, Well, I didn't understand it. They had their head buried in the sand and not listen to anything we gave them or talked to them on the phone. We answered the phone. We actually had very high very high customer satisfaction, which was evidenced by our returning customers. People will say anything to get out of paying, and my guess is some of those complaints were just that.

EC-EX-068 at 243:6–244:5. Mr. Carnes then clarified that he was not actually tracking complaints, but knew that this type of complaint existed. *Id.* at 244:9–11. When questioned later about who reviewed consumer complaints, he said that collections complaints would be reviewed by the head of collections, then escalated to Chris Pickett

or Edward Foster, but he was not personally involved in the process. *Id.* at 264:1–25. For other types of complaints, "it would go through the call center and their staff, and we had extremely few complaints on that side." *Id.* at 265:2–3.

Mr. Carnes also knew that some Integrity Advance customers contested ACH charges submitted by the company, meaning they claimed to their banks that the charges were unauthorized. *See* EC-EX-068 at 246:21–247:2. Finally, he knew some Integrity Advance customers attempted to revoke the ACH authorization. *Id.* at 247:18–20. Clearly, even though Mr. Carnes was not responsible for reviewing and responding to individual complaints, he was generally aware that such complaints existed. Thus, I find his testimony at the hearing that he was not aware of any complaints about Integrity Advance's loan product inherently incredible.

Integrity Advance offered a single product: a payday loan. While Mr. Carnes was actively involved in running several companies at the time, at least two of those companies also offered other substantially similar products. Moreover, HIP (including its subsidiary companies) was a small, closely-held enterprise. Mr. Carnes was the driving force behind the companies and the controlling shareholder. A "heavy burden of exculpation rests on the chief executive and primary shareholder of a closely held corporation whose stock-in-trade is overreaching and deception." *Standard Educators, Inc. v. FTC*, 475 F.2d 401, 403 (D.C. Cir. 1973).

It strains credulity to believe that Mr. Carnes had only a "cursory knowledge of the disclosures in Integrity Advance's loan agreement," as Respondents would have me believe. *See* Resp. Post-Hearing Brief at 6. Integrity Advance was HIP's most profitable company, and the deceptive acts determined its profitability; thus they were an integral

part of the whole operation. **As a "competent CEO," to use Respondents' phrasing, Mr. Carnes would not have been ignorant of the matrix that would ultimately determine the failure or success of the enterprise.**

At the very least, the record establishes that Mr. Carnes was familiar with the payday lending industry and its standard practices at the time he started Integrity Advance. He repeatedly referred to industry standards, such as charging $30 in interest per $100 lent to new customers and $24 per $100 to returning customers. *See* Tr. II-48:18–25. When asked why Integrity Advance used the industry standard, he said, "we were forming the company, prior companies we had charged the same amount, and that was just used." *See* Tr. II-49:4–6.

Specifically, the evidence establishes that Mr. Carnes knew the contract disclosed a single finance charge and also knew that the majority of Integrity Advance's loans would renew without any action on the consumer's part, causing those consumers to pay more than the amount disclosed. *See* Tr. I-219:13–220:3; I-222:17–20; I-225:6–25; EC-EX-068 at 245:10–25. Mr. Carnes also testified that outside counsel drafted Integrity Advance's loan agreement and he did not change, edit, or meaningfully review the substance of the agreement, *See* Tr. I-226:20–227:9II-75:11–25. However, I do not find it credible that he was unfamiliar with the terms of the agreement. Even assuming for the sake of argument it was credible, it would not be exculpatory. As the CEO, Mr. Carnes's "reliance on advice of counsel [is] not a valid defense on the question of knowledge required for individual liability." *FTC v. Cyberspace.Com LLC*, 453 F.3d at 1202.

Moreover, even a cursory reading of the loan documents shows them to be, at the very least, confusing. Mr. Carnes had both the opportunity and the business acumen to

read through the loan documents and form an opinion about them, even if I gave credence to his assertion that he did not actually do so—which I do not. *See FTC v. J.K. Publications, Inc.*, 99 F. Supp. 2d at 1206. Even if Mr. Carnes did not know that the fee and payment structure in the contract amounted to a legally deceptive practice, he nevertheless knew or should have known that the agreement would have a tendency to mislead consumers. He was also at least generally aware that some consumers complained about the product and the way in which Integrity Advance debited loan payments, but apparently dismissed it as a viable concern because "people will say anything to get out of paying." *See* EC-EX-068 at 243:6–244:5.

Moreover, while Mr. Carnes may not have spent a great deal of time on Integrity Advance business after the initial set-up was complete; this does not make it less probable that he knew about the deceptive nature of the loans. The loan agreement did not substantially change during the time Integrity Advance was in operation, so any knowledge he had at the outset as to the way the loans were disclosed and the way they actually worked would have carried through the entire time Integrity Advance was lending. The record establishes that Mr. Carnes actively reviewed numerous metrics related to Integrity Advance's business throughout the company's time in operation. It also establishes that he fully understood the type of loans Integrity Advance offered; the methods Integrity Advance used to make its money; and the roles of the third-party contractors who did the majority of Integrity Advance's day-to-day business transactions. This is similar to *FTC v. World Media Brokers*, 415 F.3d at 758, where the court found liability in part because the defendant's assertion that she did not know what the company was doing was incredible; she had to have understood the nature of the company's

business in order to perform her duties. Likewise, Mr. Carnes could not have been a functional CEO without a sophisticated understanding of the business operations. This is especially true considering that Integrity Advance had only one product; and that product contained crucial elements of previous loan agreements from other businesses.

I do not agree with Respondents' contention that "the generalized standard argued by Enforcement Counsel would hold all CEOs liable for any unlawful conduct where the CEO generally understands how the company's product works." I have thoroughly considered Mr. Carnes's testimony about his role at Integrity Advance and do not find it fully credible, particularly because some of it is contradicted by other sworn statements he made during the investigatory phase. I have also considered the testimony other HIP employees gave about their respective roles at Integrity Advance and their interactions with Mr. Carnes. I have considered that HIP was a small company with relatively few employees, and that the companies under HIP's umbrella engaged in similar enterprises. I have also considered that this was not the first payday lending company Mr. Carnes had operated.

The record as a whole establishes that Mr. Carnes was primarily interested in his companies' profitability. Yet, he could not have simultaneously known that the company's revenues far exceeded the interest payments disclosed on the loan agreements and also believed that consumers were not being misled by the terms of those agreements. The assertion that a CEO in his position would have no more than a cursory understanding of his most profitable company's only product is wholly unconvincing.

Despite Mr. Carnes's protestations to the contrary, I find he either had actual knowledge that Integrity Advance's loan agreement made misleading representations

while acting as CEO of the company, or he recklessly and intentionally avoided such knowledge. As in *FTC v. Lanier Law*, he attempted to insulate himself "through the use of a web of inter-related entities, each insulating him from any direct connection to the fraudulent activity. Nonetheless, the evidence places [him] squarely at the center of this deceptive enterprise, and the law holds [him] individually responsible for its conduct." *Id.*, 2016 WL 3632371, at *30. Accordingly, I find Count III against Mr. Carnes **PROVED**.

b. Count VII (Unfairness)

The Bureau argues Mr. Carnes should be held personally liable under the CFPA for Integrity Advance's unfair use of RCCs. I found Count VII proved against Integrity Advance because the company used RCCs to take funds from consumers' accounts after those consumers paid more than the disclosed "total of payments" on their loans and subsequently withdrew Integrity Advance's ACH authorizations. Furthermore, these RCCs could not be cancelled by consumers, who only became aware after the fact that the company was using a method other than ACH transfers to withdraw money from their accounts.

To find Mr. Carnes individually liable for these unfair practices, I must apply the same standard discussed above in Count III (deception). To reiterate, in order to hold an individual liable for corporate violations of the CFPA, the Bureau must prove that the individual: "(1) participated directly in, or had the authority to control, the unlawful acts or practices at issue; and (2) had actual knowledge of the misrepresentations involved, was recklessly indifferent to the truth or falsity of the misrepresentations, or was aware of

a high probability of fraud and intentionally avoided learning the truth." *FTC v. Commerce Planet, Inc.*, 815 F.3d 593, 600 (9th Cir. 2016).

As CEO, Mr. Carnes had the authority to control this practice and the authority to make all decisions governing Integrity Advance's policies and procedures. *See* Tr. I-209:1–11; Tr. II-84:6–14. Mr. Carnes could have altered or banned the use of RCCs if he saw fit. Mr. Carnes testified at the hearing that he had actual knowledge of Integrity Advance's occasional use of RCCs. *See* Tr. II-84:6–14. Furthermore, Mr. Carnes knew that Integrity Advance used RCCs and the circumstances under which they were used: to withdraw funds from consumers' bank accounts when consumers revoked the company's ACH authorization and could not be contacted. *See* Tr. I-235:19 – 236:3; II-84:6 – 85:11; II-142:15–148:4; II-152:15–153:11. Mr. Carnes observed RCCs being printed in the Kansas City office, and testified that these RCCs were printed by Integrity Advance on approximately a weekly basis to collect monies owed by consumers. *See* Tr. I-235:24–236:15, I-236:10–11, I-236:20–22.

Accordingly, in light of the fact that Mr. Carnes had actual knowledge that Integrity Advance used RCCs and why, I find Count VII against Mr. Carnes **PROVED**.

VI. SANCTIONS AND RELIEF

Having established liability, the Bureau is entitled to seek sanctions and other appropriate relief. As an initial matter, I note that Enforcement counsel did not lay out a theory of damages until the final day of the hearing. This delay was unhelpful to the court in the damages assessment. Enforcement counsel contends they did not set out their theory of damages earlier in the proceeding because Respondents did not turn over the database of loan transactions until well after the original date for production had

passed. Respondents have argued that the Bureau's failure to state its theory of damages until the late stages of this proceeding has put them at a disadvantage and violated their due process rights.[4]

I am not convinced by Respondents' due process arguments. At the outset of this proceeding, the Bureau indicated it would be seeking:

> A. Disgorgement of money, in an amount to be determined at trial;
> B. Restitution in an amount to be determined at trial to compensate borrowers who were the victims of Respondents' practices;
> C. Civil money penalties;
> D. A permanent injunction preventing future violations of the Truth in Lending Act, 15 U.S.C. § 1601, et seq., Regulation Z, 12 C.F.R. § 226, et seq., the Electronic Fund Transfer Act, 15 U.S.C. § 1693, et seq., Regulation E, 12 C.F.R. § 205, et seq., the CPFA, 12 U.S.C. § 5536, or any provision of "Federal consumer financial law" as defined by 12 U.S.C. § 5481(14);
> E. Other injunctive relief as the Court may deem just and proper;
> F. Recovery of costs in connection with prosecuting this action; and
> G. Any other legal or equitable relief deemed appropriate.

Notice of Charges at 14-15.

This was sufficient to place Respondents on notice of what theories the Bureau would be arguing, generic though they were. Importantly, Respondents were competently represented, including by lead counsel who is a former CFPB prosecuting attorney. Respondents were also able to call a very educated, mathematically trained rebuttal witness to refute the amounts proposed by the Bureau. Importantly, at the hearing, I gave Respondents the same opportunity as I had given the Bureau to make a

[4] Certainly, the regulatory 300-day deadline for completing this proceeding necessitates a more compressed schedule than in an action brought in the courts. However, *all* parties—myself, the ALJ, included—are equally subject to any pressures the deadline may cause.

determination about whether they were prejudiced by the Bureau's additional submissions and to propose whether to cure such through exhibits or additional cross-examination. Tr. III-59:8–16. Respondents did not avail themselves of this opportunity.

Moreover, Respondents do not have clean hands as to this issue, since they waited until the very last moment to turn over their datasets containing over 5.3 million lines of data, and then only after I was forced to intervene and order compliance. To the extent that the Bureau did not disclose its damages approximations until just before the hearing commenced, the fault does not entirely lie with enforcement counsel. Thus, I do not accept Respondents' assertion that the Bureau's final requested sanction amounts being disclosed after the hearing somehow violated their due process rights.

In any event, the Bureau has now made a showing as to the relief it is seeking and has explained why it believes those damages are appropriate. Both parties have had the opportunity to develop the record and make reasoned factual and legal arguments in this matter. Accordingly, having found Counts I, II, III, V, VI, and VII proven, I must next decide what relief is appropriate for each of these counts.

A. Restitution for Counts I, II, and III and Monetary Relief for Counts V, VI, and VII

1. The Parties' Arguments as to Methodology

At the hearing, the Bureau called one of its data scientists, Robert Hughes, to present the Bureau's approximation of damages. Mr. Hughes analyzed Integrity Advance's transactional database to make these calculations, and testified about his methodology and results. Respondents then called as a rebuttal witness Dr. Xiaoling Ang, a research economist. Dr. Ang criticized some of Mr. Hughes' methodology and proffered a different set of damages calculations in somewhat lower amounts.

Due to the late notice of Dr. Ang's testimony and the fact that the Bureau was unable to review her calculations until the hearing, I permitted the Bureau to submit a responsive declaration from Mr. Hughes. In that declaration, he defends his original methodology and critiques Dr. Ang's calculations. Neither Mr. Hughes nor Dr. Ang was proffered as an expert, and neither party called a damages expert to testify.

Although the testimony given by both Mr. Hughes and Dr. Ang was highly technical, lengthy, and complex, the threshold issue of which loans should be included in the Bureau's harm analysis is fairly straightforward. Both Mr. Hughes and Dr. Ang were able to obtain the same values for the total amount paid on all Integrity Advance loans, and the total amount paid on Integrity Advance loans originated on or after July 21, 2011.[5] It was only when they attempted to calculate amounts based on subsets of these loans that their methodology and results diverged.

Mr. Hughes stated that, in determining the amount paid over the "total of payments" for each population, he limited his analysis to loans where the consumers paid more than the "total of payments" and experienced at least one renewal. In other words, he excluded all loans where the consumer did not pay more than the "total of payments," since these consumers paid less than they originally expected and therefore did not suffer any harm. *See* Hughes Declaration, July 29, 2016, at ¶ 10. Mr. Hughes states, and the data supports, that Dr. Ang did not exclude loans where the consumer paid less than the "total of payments" from her calculations. *Id.* at ¶¶ 14, 15, and 16. This had the effect of

[5] To account for the fact that origination dates are not in the database, both Mr. Hughes and Dr. Ang considered only loans with a first payment date on or after August 13, 2011. This eliminates the possibility of loans originated after the transfer date being included in the calculation, since the maximum possible loan term under Integrity Advance's agreement was 23 days. In consequence, the calculation is conservative because the initial term of most Integrity Advance loans was two weeks or less, so many loans originated in the days immediately following the transfer date are excluded.

reducing the total amount by the sum of the windfalls to consumers who did not suffer monetary harm; it "allowed consumers who *underpaid* to offset consumers who *overpaid*." Dr. Ang's testimony does not contradict this. *See* Tr. III-72:7–75:12. I find Mr. Hughes's methodology to be more reasonable. While Respondents did not financially benefit from those consumers who paid less than the total of payments, the proper analysis here is based on the actual harm to consumers who paid more than the contract provided, not the net amount of Integrity Advance's gains.

2. Appropriate Amounts of Restitution and Monetary Relief

In its post-hearing brief, the Bureau revised its figures from those presented at the hearing, and now requests the following amounts:

Count	Violation	Liable Persons	Amount	How Calculated
I	TILA	Integrity Advance	$132,580,041.06	All sums paid over amounts disclosed for all loans
II	CFPA (TILA violation)	Integrity Advance	$38,453,341.62	All sums paid over amounts disclosed for all post transfer date loans
III	CFPA (Deception)	Integrity Advance and Carnes	$38,453,341.62	All sums paid over amounts disclosed for all post transfer date loans
V	EFTA	Integrity Advance	(same as Count I)	N/A
VI	CFPA (EFTA violation)	Integrity Advance	(same as Count II)	N/A
VII	CFPA (Unfairness)	Integrity Advance and Carnes	$115,024.50	All remotely created check payments post transfer date where the consumer had already satisfied the amount disclosed

In addition, the Bureau seeks a full first-tier civil penalty against Integrity Advance for Counts II, III, and VII and a full first-tier civil penalty against Mr. Carnes for Counts III and VII.

I also noted at the hearing that I was concerned about whether certain fees, such as a fee for insufficient funds (NSF), were appropriate for inclusion in the award of damages. The circuits are split on the proper measure of restitution in FTC cases, and this split has not yet been resolved. For instance, the Second Circuit permits only equitable restitution, holding that restitution is not appropriately measured as the full amount lost by consumers, but rather as the benefit unjustly received by Respondents. *FTC v. Verity Int'l, Ltd.*, 443 F.3d 48, 67 (2d Cir. 2006). The Ninth Circuit, on the other hand, permits restitution measured by the entire loss to consumers, *see FTC v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009), and has extended this theory to CFPB cases. *CFPB v. Gordon*, 819 F.3d 1179, 1195 (9th Cir. 2016). The Eleventh Circuit held that "the amount of net revenue (gross receipts minus refunds), rather than the amount of profit (net revenue minus expenses), is the correct measure of unjust gains" is the proper measure under section 13(b) of the FTCA. *FTC v. Washington Data Res., Inc.*, 704 F.3d 1323, 1327 (11th Cir. 2013). In the Third and Seventh Circuits, appropriate restitution under the FTCA is any amount up to gross revenues. *See FTC v. Magazine Solns., LLC*, 432 F. App'x 155, 158 (3d Cir. 2011); *Amy Travel Serv., Inc.*, 875 F.2d at 571–72.

I recognize that remedies under the CFPA are not identical to remedies under the FTCA, and that only one circuit has ruled on the proper scope of restitution under the CFPA. Thus, I believe I am bound to consider whether including fees incurred as the result of consumer error, as opposed to corporate wrongdoing, is appropriate. In its post-

hearing brief, the Bureau contends that "any fees charged after consumers had satisfied the amount disclosed were improper and should be returned." *See* EC Post-Hearing Brief at 29. This does not specifically address my concern. In particular, a consumer who had insufficient funds in his or her account when Integrity Advance withdrew the first payment on that loan, and who then proceeded to pay more than the total of payments, would still properly owe the NSF fee and it should be deducted from the damages calculation.[6] Nevertheless, the Bureau argues that "all of the fees represent a small portion of the harm . . . such that the [amounts the Bureau is seeking] still reasonably approximate harm . . . ." *See* EC Post-Hearing Brief at 29. Mr. Hughes stated that he ran the same calculations as before, but excluded the fields "feecharge_paid," "latecharge_paid," and "othcharge_paid" to obtain values that excluded those additional fees. *See* Hughes Aug. 29, 2016 Declaration at ¶ 26. The relevant amounts are thus:

Count	Amount Without Fees
I	$131,433,343.47
II	$38,164,153.31
III	$38,164,153.31
VII	$103,623.00

EC Post-Hearing Brief at 29.

To ensure I am not recommending restitution amounts over what is actually due, I will consider the Bureau's "Amount Without Fees" calculations for Counts I, II, and III as the amounts the Bureau is actually seeking for these violations. Although I still do not know exactly what fees were assessed at what points in the life of the consumers' loans, this will eliminate the possibility of Respondents being held liable for amounts that were

[6] The amount Integrity Advance withdrew for a first payment on a loan that was renewed was *lower* than the amount the company contends was actually "due" on that date, so logically, if the consumer had insufficient funds to make the lower payment, they also would have incurred an NSF fee if the company had attempted to withdraw the "total of payments" on that date.

properly owed to the company. However, as to Count VII, the Bureau's original calculation only included amounts debited by RCC after the disclosed "total of payments" was satisfied. Therefore, fees do not need to be extracted from this calculation, because there is no possibility of a first-payment NSF fee being included.

For purposes of this decision, I therefore consider the Bureau to be seeking the following amounts:

Count	Amount Without Fees
I	$131,433,343.47
II	$38,164,153.31
III	$38,164,153.31
VII	$115,024.50

a. Count I: TILA

The CFPA permits the Bureau to seek, in a court action or administrative proceeding, "any appropriate legal or equitable relief with respect to a violation of Federal consumer financial law, including a violation of a rule or order prescribed under a Federal consumer financial law." *See* 12 U.S.C. § 5565(a)(1). The types of relief may include, without limitation:

> (A) rescission or reformation of contracts;
> (B) refund of moneys or return of real property;
> (C) restitution;
> (D) disgorgement or compensation for unjust enrichment;
> (E) payment of damages or other monetary relief;
> (F) public notification regarding the violation, including the costs of notification;
> (G) limits on the activities or functions of the person; and
> (H) civil money penalties, as set forth more fully in subsection (c).

12 U.S.C. § 5565(a)(2).

The Bureau seeks restitution for Integrity Advance's TILA violations for the entire period the company was in operation, for a total of $131,433,343.47. At the

hearing, the Bureau asserted that "[b]ecause the FTC could obtain equitable relief including disgorgement and restitution under section 13(b) of the FTC Act prior to July 21st, 2011," the Bureau can equally obtain such relief. *See* Tr. II-102:7–13, *see also* Tr. III-204:11–16. Similarly, in its post-hearing brief the Bureau argues that recommending relief for the entire period Integrity Advance was in operation "does not have an impermissible retroactive effect, because the FTC was empowered to obtain equitable relief, and in particular restitution" for TILA violations during that time. *See* EC Post-Hearing Brief at 32.

The Bureau also contends that, although Section 5565 became effective on July 21, 2011, this "does not prevent the Administrative Law Judge from recommending relief for violations that happened prior to the transfer date. Instead, the relevant consideration is when the Administrative Law Judge recommends the relief." *See* EC Post-Hearing Brief at 25. This decision is indisputably issued after the transfer date; thus, the Bureau believes I may issue any relief I find appropriate.

Respondents argue that it would violate due process if damages were awarded for conduct predating July 21, 2011, and this would be impermissibly retroactive under *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994). Respondents also point out that the Bureau relies on the FTCA to support its request for restitution, but the FTCA does not provide for monetary relief in administrative proceedings, only judicial ones. Moreover, they state that the FTCA is similar to the CFPA in some respects but is not identical; in particular, the statutory relief provided for in the CFPA does not exist in the FTCA and should not be retroactively applied.

I find the Bureau's argument that I may impose monetary relief for conduct predating July 21, 2011 fatally flawed. The definition of "Federal consumer financial law" for purposes of the CFPA specifically excludes the Federal Trade Commission Act. *See* 12 U.S.C. § 5481(14). Thus, it is clear that the CFPB may not rely on the provisions of the FTCA to justify its damages calculations; Congress clearly intended to maintain separation between the two agencies' powers, even while permitting some overlap in jurisdiction. Instead, the CFPB may only rely on its own governing statutes and other "Federal consumer financial laws" as defined therein. The Bureau has not cited, and I have not found, any other provision of the CFPA allowing the type of retroactive relief the Bureau seeks.

In light of this, it would not be appropriate for me to recommend relief premised on FTC's authority to enforce TILA and its own statutes. The CFPB had no independent authority to enforce TILA or EFTA prior to July 21, 2011 and has never had authority to enforce the FTCA. The Bureau also conceded that the CFPA only applies to post-transfer date conduct. Consequently, any relief I recommend may only arise from violations that occurred after the designated transfer date of July 21, 2011.

The Bureau asserted that the proper value of damages suffered after the designated transfer date is $38,164,153.31, explaining that:

> Loan origination dates are not explicitly captured in the Integrity Advance datasets, which only include consumer transaction date, i.e., payments made to or from Integrity Advance. To ensure that all loan transactions connected to loans that had originated before July 21, 2011 were removed from consideration, any loans with first transaction dates prior to August 13, 2011 were removed from the calculation. Tr. II 128:13-129:19; EX-EX-097. As set forth in the Integrity Advance Loan Agreement, the first transaction on a loan occurs between 8 and 23 days

> after origination. To ensure that the loans considered had originated on or after July 21, 2011, any loans with transaction dates that occurred fewer than 23 days after July 21, 2011 were not considered. Tr. III 37:1-38:6.

EC Post-Hearing Brief at 28 n. 12. In light of the fact that the data does not contain origination dates and there is no way to know for sure what date any loan agreement was signed, I agree with the Bureau's conservative approach and find this method of calculation appropriate. I therefore recommend that damages be assessed against Integrity Advance in the amount of $38,164,153.31 for its violation of TILA.

b. Count II: CFPA (TILA Violation)

The Bureau has asked for restitution of all amounts paid over the "total of payments" for loans made after the transfer date. However, the Bureau has not provided any justification for why restitution is the proper measure of damages for this violation. Respondents contend that granting restitution on Count II would amount to an impermissible double penalty for the same conduct as Count I. They cite *Medina v. Dist. of Columbia*, 643 F.3d 323, 326 (D.C. Cir. 2006) and *Atkinson v. Anadarko Bank & Trust Co.*, 808 F.2d 438, 441 (5th Cir. 1987), *cert. denied* 483 U.S. 1032 (1987) for the proposition that a party cannot recover the same damages multiple times, even if different theories apply.

Restitution is defined as "the set of remedies associated with that body of law, in which the measure of recovery is usu[ally] based not on the plaintiff's loss, but on the defendant's gain" or the "return or restoration of some specific thing to its rightful owner or status." RESTITUTION, Black's Law Dictionary (10th ed. 2014). Restitution may form all or part of an award of damages, defined as the total amount of money due to a

person as compensation for loss or injury. DAMAGES, Black's Law Dictionary (10th ed. 2014).

Here, restitution is clearly not an appropriate remedy for Count II because it would result in recovery above either the company's actual gain or the consumers' actual loss.[7] This principle is succinctly described by Professor Dan B. Dobbs:

> The familiar principle of damages law is that the remedy should not provide more than one full compensation. The analogous principle of restitution law is that restitution should not force disgorgement of more than the unjust enrichment. If the two remedies are to be combined in one recovery, those limiting principles require that the combined recovery must not exceed the greater of (a) full compensation or (b) full disgorgement. If the combination does not exceed full compensation, or full disgorgement of the unjust enrichment, then it should be permitted.

Dan B. Dobbs, Law of Remedies, § 4.5(b). The restitution ordered for the TILA violation in Count I accounts for Integrity Advance's gain from its illegal activities, and accomplishes the return of a specific thing—money—to the consumers who were harmed as a result of the violation.

The Bureau could have sought various other forms of relief under its statute, see *See* 12 U.S.C. § 5565(a)(2), including but not limited to the civil penalty separately discussed below. Alternately, if the Bureau had proved that the appropriate amount of restitution for Count II was greater than that for Count I, it could have sought the balance. *See, e.g., FTC v. Lalonde*, 545 F. App'x 825, 842 (11th Cir. 2013) (defendant was ordered to pay restitution in connection with a criminal case and to disgorge funds in connection with the FTCA violation, but the total judgment against him subtracted the

[7] As discussed above, it is not yet established for purposes of the CFPA which of these is the correct method of measuring restitution and I have chosen to use the more conservative method—Respondents' actual gain—for purposes of this decision.

payments he made in connection with the criminal case). However, the Bureau has not made either showing. The Bureau's request for restitution stemming from the CFPA violation proved in Count II proved is denied.

c. Count III: CFPA (Deception)

I have found that both Integrity Advance and Mr. Carnes violated the CFPA's prohibition against deceptive acts or practices. The Bureau again seeks restitution in the amount of the payments above the "total of payments" for all loans originated on or after July 21, 2011. As above, Respondents have argued that restitution should not be granted for this violation because it would amount to yet another recovery for the same conduct. Respondents also argue that repeat consumers should not be included in the calculations because those consumers were aware of how Integrity Advance's loans worked and therefore cannot have been deceived.

When "each defendant repeatedly participated in the wrongful acts and each defendant's acts materially contributed to the losses suffered, all defendants [may be] held jointly and severally liable." *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996); *see also FTC v. BurnLounge, Inc.*, 584 F. App'x 315, 318 (9th Cir. 2014); *F.T.C. v. Stefanchik*, 559 F.3d at 927, 930–31; *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d at 1170–71. Joint and several liability means that each defendant is independently liable for the full amount of the judgment, but the plaintiff cannot recover more than the total amount of the judgment, regardless of how the payments are apportioned between the defendants. *Tilcon Capaldi, Inc. v. Feldman*, 249 F.3d 54, 62 (1st Cir. 2001). Here, Mr. Carnes and Integrity Advance may be held jointly and severally liable as long as the total restitution paid by both parties, collectively, does not exceed the appropriate amount of

restitution discussed in detail above. *See FTC v. Seismic Entm't Prods., Inc.*, 441 F. Supp. 2d 349, 354 (D.N.H. 2006).

The Bureau argues that the proper scope of damages for this violation is the amount of money Respondents gained through their deceptive practices, in other words, the amount collected above the "total of payments" for loans made after the transfer date or $38,164,153.31. I find this to be a reasonable approximation of the amount consumers are due for the violations found proved in Count III. I do not accept Respondents' argument for extracting all repeat customers from the calculation. The proper test for deceptive conduct is not whether an actual consumer was deceived, but rather whether the act or practice had the potential to deceive. *See FTC v. Johnson*, 96 F. Supp. 3d at 1119. Each loan agreement offered had the potential to deceive a consumer, whether or not that consumer actually understood the contract. I therefore recommend that Respondents Integrity Advance and James R. Carnes be held jointly and severally liable for $38,164,153.31, with the caveat that the total amount of restitution due for Counts I-III may not exceed that amount, however Respondents choose to apportion it.

d. Counts V and VII (EFTA and CFPA)

The Bureau has not sought any additional damages for Counts V and VII, stating "Enforcement Counsel Believes disgorgement would be the most appropriate remedy for the violations of EFTA . . . However, given the relief being provided to consumers pursuant to Counts I-III would largely encompass any disgorgement amounts, Enforcement Counsel is not seeking additional equitable monetary relief or damages." *See* EC Post-Hearing Brief at 30. I therefore will not recommend any additional relief on these counts.

e. Count VII: CFPA (Unfairness)

As discussed above, a reasonable approximation of the amount of monetary harm consumers suffered through Integrity Advance's unfair use of RCCs is $115,024.50. I have already set out the principles of joint and several liability above, and those principles are equally applicable here. I therefore recommend Integrity Advance and Mr. Carnes be held jointly and severally liable for this amount for the violation alleged in Count VII and found proved herein.

B. Civil Penalty

The Bureau seeks a first-tier civil penalty against Respondents for their CFPA violations. Under 12 U.S.C. § 5565(c)(2)(A), "[f]or any violation of a law, rule, or final order or condition imposed in writing by the Bureau, a civil penalty may not exceed $5,000 for each day during which such violation or failure to pay continues." However, the Bureau adjusted its penalty schedule in accordance with the Federal Civil Penalties Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015, 20 U.S.C. § 2461 note. *See* 12 C.F.R. § 1083.1. Accordingly, the maximum civil penalty now permitted for a first-tier violation is $5,437 per day; this amount applies to all civil penalties assessed after July 14, 2016 even if the violation took place while a prior penalty schedule was in effect. *Id.*

The Bureau seeks imposition of a civil penalty for each of the CFPA counts. At the hearing, the Bureau asserted that the relevant time period was 530 days. This appears to be the number of days between the designated transfer date, July 21, 2011, and December 31, 2012, inclusive of those dates. However, in its post-hearing brief, the

Bureau asserts the relevant number of days is 720 because the last transaction in the database Respondents provided took place on July 9, 2013.

I do not accept the Bureau's civil penalty calculation. The threshold problem is that the Bureau has not established the relevant date on which Respondents' illegal conduct ceased. Implicit in their calculation is an argument that each loan payment constituted a separate violation. However, I have found that the illegal conduct Respondents engaged in was *disclosing* a finance fee and APR inconsistent with the terms of the loan. The improper disclosure occurred only once, at the moment the consumer accepted and signed the documents Integrity Advance provided. The Bureau did not allege, and I did not find, that each loan renewal or loan payment was a separate violation of either TILA or the CFPA. *See* Notice of Charges ¶ 57 ("Integrity Advance's inaccurate *disclosures* violated the Truth in Lending Act, 15 U.S.C. §§ 1631, 1638, and Regulation Z, 12 C.F.R. § 1026.17 and 1026.18"); ¶61 ("By virtue of its violation of the Truth in Lending Act and Regulation Z, Integrity Advance has violated the CFPA"); ¶ 70 ("Respondents' *disclosures* were false and misleading and constituted a deceptive act or practice in violation of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B)") (emphasis added).

This contrasts with the Director's Decision in *PHH*, but the two cases are distinguishable. There, the Director held that each time the mortgage company received an illegal kickback, it constituted a separate violation of the prohibition fees, kickbacks, or things of value stemming from real estate settlement services involving a federally related mortgage loans; the violation was not limited to the date a particular loan closed. *Id.* at 22-26. However, I do not read *PHH* to stand for the proposition that every

transaction associated with a deceptive practice is itself a violation in all circumstances. Here, the Bureau did not allege or prove that each separate debit on a consumer's account, or attempt to debit such account, involved a separate illegal disclosure. Thus, the legal and factual analysis is inapposite to that in *PHH*.

I therefore find that the relevant date on which Respondents' illegal conduct ceased was the last day on which a consumer took out a loan from Integrity Advance. Unfortunately, this date is not established in the record; all we know is that the company stopped making new loans in mid-December 2012. Indeed, the Bureau's data scientist testified that "we did not actually have the date of origination in that data set. Origination was not one of the events that was provided in the transaction table." *See* Tr. III-7:7–10. Accordingly, I will use July 21, 2011 through December 1, 2012 as the relevant time period for calculating the civil penalty. The record establishes that Integrity Advance was still making loans at least as late as December 1, but I cannot say with any certainty how far into December the company continued making loans.[8] I therefore find this to be a reasonable time frame which will yield an appropriate civil penalty.

The unfair use of RCCs was also transaction-specific. However, the Bureau has not provided me with the last date on which an RCC was actually used.[9] In the absence of this information, I will not assume that the last transaction in the Integrity Advance

[8] Mr. Carnes testified that one condition of the sale of HIP to EZCorp was that Integrity Advance would stop making loans. The transaction between HIP and EZCorp closed on December 20, 2012. However, the origination date of the final loan is not recorded. It is unclear specifically what the Bureau is relying on to support its claim Integrity Advance continued making loans into 2013. Mr. Hughes stated that the database demonstrates that Integrity Advance originated loans through May 2013, but did not explain how he arrived at that conclusion. EC-EX-072 at ¶3. I note that it was possible for a consumer who took out a loan in December 2012 to still be paying down that loan in July 2013 if all rollovers and auto-workout payments occurred. *See* the graphic on page 8 of this Recommended Decision.

[9] The database provided as EC-EX-101 may contain the relevant information, however, I do not have the technological capabilities to sort through the millions of lines of data. As the Bureau itself noted, "[t]he size of the datasets, which contained approximately 5.3 million lines of transaction data, required that the calculations be conducted using a computer programming language that could manage large datasets." Brief at 27 n. 10.

database, which occurred on July 9, 2013, was an RCC. While I recognize that RCCs were likely used after December 1, 2012, I will use this date to calculate the civil penalty for Count VII, as well as Counts II and III, because it will prevent penalties from being assessed for dates after the illegal conduct had ceased.

At $5,437.00 per day for 500 days, the maximum civil penalty the Bureau may seek in connection with each individual violation is $2,718,500. Respondents argue that enforcement counsel did not articulate any reason for seeking the maximum civil penalty. They also argue that the mitigating factors show that no civil penalty is appropriate. These mitigating factors, which I must consider pursuant to 12 U.S.C. § 5565(c)(3), include:

> (A) the size of financial resources and good faith of the person charged;
> (B) the gravity of the violation or failure to pay;
> (C) the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided;
> (D) the history of previous violations; and
> (E) such other matters as justice may require.

12 U.S.C. §5565(c)(3).

I recognize that Integrity Advance has virtually no financial resources and it has not been the subject of any previous civil actions or administrative proceedings. However, as discussed above, I find that the violations were grave and resulted in severe losses to consumers. As to Mr. Carnes, I have no information about his current financial resources, and I do not believe he acted in good faith. He was clearly aware of the predatory nature of payday loans, and he was not fully candid with the court during this proceeding. Integrity Advance made hundreds of thousands of loans during its period of operations, tens of thousands of which were made after the transfer date. That a loophole

in Delaware state law permitted Integrity Advance to repeatedly renew its loans without affirmative action on consumers' part to stop them does not demonstrate that the company acted in good faith by taking "all the steps expected of an institution in a highly regulated industry." It merely shows that Respondents had the resources and acumen to exploit that loophole. I therefore do not find any mitigating factors, and will award the maximum first-tier penalty.

For three counts of violating the CFPA, the total civil penalty assessed against Integrity Advance is $8,155,500. For two counts of violating the CFPA, the total civil penalty assessed against Mr. Carnes is $5,437,000.

C. Injunctive Relief

In addition to monetary relief, the Bureau also seeks six types of injunctive relief. Specifically, the Bureau asks me to recommend that Respondents and any successors be (1) permanently enjoined from taking any action that would result in the collection, sale, assignment, or transfer of any consumer debt Integrity Advance still holds as the result of its payday lending operations; and (2) enjoined from any future violations of Federal consumer financial laws, including but not limited to TILA, EFTA, and the CFPA. The Bureau also asks me to order Respondents to (3) make all reasonable and appropriate efforts to correct consumer credit reports damaged by information Integrity Advance provided to reporting agencies, and (4) assist the Bureau in determining the identify, location, and amount due to each consumer entitled to relief. Finally, the Bureau asks me to (5) order Mr. Carnes to provide an accounting of all funds received from Integrity Advance, either directly or indirectly, and (6) order disgorgement of any funds Mr. Carnes received from Integrity Advance in excess of the restitution and civil penalty

amounts recommended herein. Each of these requests requires a separate analysis of whether that precise form of relief is appropriate in this matter.[10]

Respondents contend there is no basis for injunctive relief because, at the outset, the Bureau failed to articulate until its post-hearing brief what relief it would seek, why such relief is justified, and the legal standard it believes applies here. They argue that the Bureau has not shown any possibility that Mr. Carnes or Integrity Advance will engage in any conduct in the future that would violate the TILA, EFTA or CFPA.

In general, injunctions must be narrowly tailored to remedy only the specific harms the Bureau has proved. *See, e.g., Price v. City of Stockton*, 390 F.3d 1105, 1117 (9th Cir. 2004). However, Respondents' arguments that injunctive relief is inappropriate because the company has ceased its lending operations are unconvincing. In *PHH*, the Director held that a cognizable danger of future violations existed where the company could easily resume its once-profitable business at any time, and that the Bureau was not required to show that the company had any actual intent to resume operations. *Id.* at 33. The Director determined that injunctions can therefore be appropriate even if the illegal conduct has ceased. *Id.* at 32-33 (*citing U.S. v. W.T. Grant Co.*, 345 U.S. 629,633 (1953); *EEOC v. AutoZone, Inc.*, 707 F.3d 824, 841-44 (7th Cir. 2013); *Borg-Warner Corp. v. FTC*, 746 F.2d 108, 110 (2d Cir. 1984)). One factor a judge should consider, which is "germane but not dispositive" is that there are no ongoing violations. *PHH* at 33 (*citing NLRB. v. Greensboro News & Record, Inc.*, 843 F.2d 795, 798 (4th Cir. 1988).

As to the first request, I note that Integrity Advance is still technically in existence, though not currently operational. If, as the Bureau alleges, Integrity Advance

[10] I note that the Bureau did not cite to any law, whether it be a statute, regulation, or case law, in its request for injunctive relief.

still holds approximately $18 million in consumer debt on its books, it would be appropriate to enjoin the company or its successors from attempting to collect that debt, at least to the extent it represents amounts above the "total of payments" due on any loan. Unfortunately, the Bureau has not cited to any evidence in the record showing where this number came from or demonstrating what portion is attributable to loans where the payments have already exceeded the "total of payments." I therefore find the Bureau has not adequately supported its request, but note that any attempt by Integrity Advance or its successors to collect on debt incurred through the deceptive and unfair practices established during this proceeding may constitute a separate violation which could be the subject of a separate proceeding.

The second request for injunctive relief, which seeks to prohibit Respondents from violating any Federal consumer financial protection law, including but not limited to TILA, EFTA, and the CFPA in the future, is rejected as overbroad. The Supreme Court has cautioned against "sweeping injunction[s] to obey the law," *Swift & Co. v. United States*, 196 U.S. 375, 401 (1905), and most federal circuit courts have likewise adopted a rule against them. *See, e.g., Peregrine Myanmar Ltd. v. Segal*, 89 F.3d 41, 51 (2d Cir. 1996); *McLendon v. Cont'l Can Co.*, 908 F.2d 1171, 1182 (3d Cir. 1990); *Davis v. Richmond, Fredericksburg & Potomac R. Co.*, 803 F.2d 1322, 1328 (4th Cir. 1986); *Payne v. Travenol Labs., Inc.*, 565 F.2d 895, 898 (5th Cir. 1978); *Perez v. Ohio Bell Tel. Co.*, No. 15-3303, 2016 WL 3755795, at *6 (6th Cir. July 14, 2016); *Jake's, Ltd., Inc. v. City of Coates*, 356 F.3d 896, 904 (8th Cir. 2004); *Glover Const. Co. v. Babbitt*, 172 F.3d 878 (Table) (10th Cir. 1999); *Hughey v. JMS Dev. Corp.*, 78 F.3d 1523, 1531 (11th Cir. 1996).

Here, preventing future violations of Federal consumer financial protection laws is a noble goal, but as worded in the Bureau's request for relief, it is unenforceable. I therefore cannot find it narrowly tailored to the violations found proved herein. However, I find that an injunction prohibiting Integrity Advance and Mr. Carnes from engaging in payday lending operations for a period of time would be enforceable, narrowly tailored, and in keeping with the Bureau's mandate to ensure compliance with Federal consumer financial protection laws. *See PHH* at 32-33 ("'Fencing in' is important because, if the Bureau 'is to attain the objectives Congress envisioned, it cannot be required to confine its road block to the narrow lane the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity.'" (Internal citations omitted)). In *PHH*, the Director determined that a 15-year injunction was appropriate, and I will follow his reasoning in recommending the same length of time.

Accordingly, even though I will not grant the Bureau's proposed injunction against an indefinite prohibition on violating any Federal consumer financial protection laws, I find that imposing a 15-year injunction on engaging in payday lending operations is appropriate as to both Integrity Advance and Mr. Carnes.

I find the third and fourth requests, which require Respondents to assist the Bureau in returning funds to consumers and removing damaging information supplied by Integrity Advance to consumer reporting agencies from such consumers' credit reports, are reasonable. Respondents are covered persons under the CFPA, therefore the Bureau has the authority to require them to provide information such as this. *See* 12 U.S.C. § 5514(b)(1). Respondents are in the best position to supply company data regarding the

names of its customers and their last known contact information. Respondents are also in the best position to know what data were supplied to consumer reporting agencies, and to notify those agencies that the data should be removed. If Respondents were not ordered to cooperate with the Bureau's efforts to achieve these goals, it is likely that consumers who were injured by Respondents' actions would not be made whole. I will therefore grant the relief sought in requests three and four, limited to consumers who originated loans or were subject to withdrawals by RCC on or after July 21, 2011.

Requests 5 and 6 concern Mr. Carnes's liability for damages, and the issue of disgorgement. Disgorgement is an equitable remedy that requires a violator to give up ill-gotten gains causally related to the proven wrongdoing. *See FTC v. Bishop*, 425 F. App'x. 796, 797-98 (11th Cir. 2011). It returns the violator to where he or she would have been if the misconduct had not occurred, and serves as a deterrent to others who may engage in similar conduct. The initial burden is on the Bureau to set out a disgorgement calculation that reasonably approximates the amount of unjust enrichment; the burden then shifts to Respondents to demonstrate that the calculation is not a reasonable approximation. *FTC v. Verity Int'l, Ltd.*, 443 F.3d at 67.

Here, the Bureau tried at the hearing to establish the flow of money from Integrity Advance, through the various corporate entities, and finally to Mr. Carnes. *See* Tr. I-143:3–208:24; I-237:5–251:20. Although the path was clear, the precise amounts at issue remained unresolved. The Bureau did not present any evidence as to Mr. Carnes's current financial status, and did not establish with any precision the amount of money Mr. Carnes obtained from the sale of HIP/Integrity Advance assets to EZCorp. The Bureau now asks me to order Mr. Carnes to provide an accounting of all funds received directly

or indirectly from Integrity Advance, and to order disgorgement of any funds in excess of the restitution, monetary relief, and civil penalty ordered herein.

I find the Bureau's efforts on this point to be too late. While I agree that disgorgements of any funds received as a result of Mr. Carnes's CFPA violations would be appropriate, that conduct is specifically limited to the deceptive disclosures contained in loan agreements for loans originated on or after July 21, 2011, or RCC use on or after July 21, 2011. The Bureau has not established what this amount is, or how it would differ in any way from the restitution I have already found appropriate. Moreover, to make such calculations after the decision in this matter has already been issued would present both procedural problems and potential due process issues. I therefore find I cannot grant requests 5 or 6.

VII. CONCLUSIONS OF LAW

1. Integrity Advance violated the Truth in Lending Act by disclosing inaccurate finance fees and annual percentage rates in its loan agreements.

2. Integrity Advance violated the Consumer Financial Protection Act by virtue of its TILA violations.

3. Integrity Advance and James R. Carnes violated the CFPA's prohibition on deceptive conduct because the net impression of its loan agreement was misleading. The loan agreement was ambiguous as to whether it was due in a single payment or multiple payments; it disclosed finance charges as if it were a single-payment loan but automatically renewed loans so consumers would incur multiple finance charges.

4. Integrity Advance and James R. Carnes violated the CFPA's prohibition on unfair conduct by using remotely created checks to withdraw money from consumers' bank accounts after those consumers had already paid the disclosed "total of payments" on their loans and blocked Integrity Advance's ACH authorization to debit their accounts.

5. The CFPA does not permit the Bureau to seek retroactive relief prior to the statutory designated transfer date of July 21, 2011.

6. A reasonable approximation of the restitution due to consumers for the practices described in Counts I, II, and III is $38,164,153.31.

7. A reasonable approximation of the monetary harm suffered by consumers in connection with the practices described in Count VII is $115,024.50.

8. The Consumer Financial Protection Bureau is authorized to seek a civil penalty for any violations of the CFPA found proved.

9. The most reasonable calculation of the civil penalty for the CFPA violations found proved herein is $2,718,500.00 for each count.

10. Injunctive relief is appropriate to ensure that consumers are properly compensated for their injuries and that any negative credit reports resulting from Integrity Advance's violations are mitigated.

11. Injunctive relief is appropriate to prevent further violations of Federal consumer financial protection laws.

VIII. PROPOSED ORDER

It is hereby **ORDERED** that Counts I, II, and III against Respondent Integrity Advance are found **PROVED**, as previously determined in the Order Granting In Part Summary Disposition, and Respondents' Motion for Reconsideration is **DENIED**; and

It is further ordered that Count VII against Respondent Integrity Advance is found **PROVED**; and

If is further ordered that Counts III and VII against Respondent James R. Carnes are found **PROVED**.

It is **ORDERED** that the total amount of restitution due to Integrity Advance consumers stemming from the violations found proved in Counts I, II, and III is $38,164,153.31. Respondents Integrity Advance and James R. Carnes are jointly and severally liable for the violation alleged in Count III. Respondents shall therefore make restitution in the amount of $38,164,153.31; and

It is **ORDERED** that the total amount of monetary harm suffered by consumers as a result of Respondents' unfair practices described in Count VII is $115,024.50. Respondents are jointly and severally liable for this amount; and

It is **ORDERED** that a civil penalty be assessed against each Respondent in the amount of $2,718,500.00 for each violation of the CFPA. For three counts of violating the CFPA, the total civil penalty against Integrity

Advance shall be $8,155,500.00. For two counts of violating the CFPA, the total civil penalty against James R. Carnes shall be $5,437,000.00; and

It is **ORDERED** that Respondents be enjoined from operating or participating in a payday lending operation for 15 years; and

It is **ORDERED** that Respondents assist the Bureau in returning funds to consumers and removing damaging information supplied by Integrity Advance to consumer reporting agencies from such consumers' credit reports.

The parties are hereby notified that a notice of appeal may be filed within ten days after service of the recommended decision. Unless a party timely files and perfects a notice of appeal of the recommended decision, the Director may adopt the recommended decision as the final decision and order of the Bureau without further opportunity for briefing or argument. *See* 12 C.F.R. § 1081.400(c)(1).

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

Done and dated this 27th day of September, 2016, at Alameda, California.

APPENDIX A:
LIST OF WITNESSES AND EXHIBITS

Agency Witnesses:

1. Timothy Madsen
2. Bruce Andonian
3. James R. Carnes
4. Edward Foster
5. Robert Hughes
6. Joseph Baressi

Respondents' Witnesses:

1. Xiaoling Ang
2. Elizabeth Quinn Miller

Agency Exhibits:

Exhibit Number	Exhibit Description	Status	Redacted or Under Seal
1	Completed consumer application and loan agreement	Admitted	Redacted
2	Completed consumer application and loan agreement	Admitted	Redacted
3	Completed consumer application and loan agreement	Admitted	Redacted
4	Completed consumer application and loan agreement	Admitted	Redacted
5	Completed consumer application and loan agreement	Admitted	Redacted
6	Completed consumer application and loan agreement	Admitted	Redacted
7	Completed consumer application and loan agreement	Admitted	Redacted
8	Completed consumer application and loan agreement	Admitted	Redacted
9	Completed consumer application and loan agreement	Admitted	Redacted
10	Completed consumer application and loan agreement	Admitted	Redacted
11	Completed consumer application and loan agreement	Admitted	Redacted
12	Completed consumer application and loan agreement	Admitted	Redacted

13	Completed consumer application and loan agreement	Admitted	Redacted
14	Completed consumer application and loan agreement	Admitted	Redacted
15	September 2010 Hayfield balance sheet	Admitted	Under Seal
16	January 2011 Hayfield income statement	Admitted	Under Seal
17	February 2011 Hayfield income statement	Admitted	Under Seal
18	March 2011 Hayfield income statement	Admitted	Under Seal
19	April 2011 Hayfield income statement	Admitted	Under Seal
20	May 2011 Hayfield income statement	Admitted	Under Seal
21	June 2011 Hayfield income statement	Admitted	Under Seal
22	July 2011 Hayfield income statement	Admitted	Under Seal
23	August 2011 Hayfield income statement	Admitted	Under Seal
24	September 2011 Hayfield income statement	Admitted	Under Seal
25	October 2011 Hayfield income statement	Admitted	Under Seal
26	November 2011 Hayfield income statement	Admitted	Under Seal
27	December 2011 Hayfield Income Statement	Admitted	Under Seal
28	January 2012 Hayfield income statement	Admitted	Under Seal
29	February 2012 Hayfield income statement	Admitted	Under Seal
30	March 2012 Hayfield income statement	Admitted	Under Seal
31	April 2012 Hayfield income statement	Admitted	Under Seal
32	May 2012 Hayfield income statement	Admitted	Under Seal
33	June 2012 Hayfield income statement	Admitted	Under Seal
34	July 2012 Hayfield income statement	Admitted	Under Seal
35	August 2012 Hayfield income statement	Admitted	Under Seal
36	September 2012 Hayfield income statement	Admitted	Under Seal
37	October 2012 Hayfield income statement	Admitted	Under Seal
38	November 2012 Hayfield income statement	Admitted	Under Seal
39	Hayfield 2011 income statement	Admitted	Under Seal
40	2012 Hayfield income statement	Admitted	Under Seal
41	Hayfield 2012 balance sheet	Admitted	Under Seal
42	2010 Integrity Advance income statement and balance sheet	Admitted	
43	2011 Integrity Advance income statement and balance sheet	Admitted	

44	2012 Integrity Advance income statement and balance sheet	Admitted	
45	Hayfield 2011 tax return	Admitted	Under Seal
46	Hayfield 2011 partnership income tax filing	Not Admitted	
47	Hayfield 2012 partnership income tax filing	Not Admitted	
48	2011 Hayfield partnership distributions to Willowbrook	Not Admitted	
49	2012 Hayfield partnership distributions to Willowbrook	Not Admitted	
50	Asset purchase agreement between Hayfield and EZ Corp	Not Admitted	
51	Lead purchase agreement between Integrity Advance and LeadPile	Not Admitted	
52	Lead purchase agreement between Integrity Advance and Incent Media	Not Admitted	
53	Lead purchase agreement between Integrity Advance and T3 Leads	Admitted	
54	Lead purchase agreement between Partner Weekly and Integrity Advance	Admitted	
55	signature card for First Bank of Louisburg	Admitted	Redacted
56	ACH origination agreement between MoneyGram and Integrity Advance	Admitted	
57	Invoice from ClearVox to Integrity Advance	Admitted	
58	Invoice from ClearVox to Integrity Advance	Admitted	
59	Arbitration provision template	Admitted	
60	Integrity Advance application template	Admitted	
61	Loan agreement template	Admitted	
62	Application template	Admitted	
63	Application and loan agreement template	Admitted	
64	ACH authorization template	Admitted	
65	Integrity Advance organizational chart	Admitted	
66	Description of Hayfield entities	Admitted	
67	Hayfield organizational chart	Admitted	
68	James Carnes investigational hearing transcript	Admitted	Redacted
69	Edward Foster investigational hearing transcript	Admitted	Redacted

70	November 25, 2013 interrogatory responses	Not Admitted	
71	Integrity Advance's October 25, 2013 interrogatory responses to January 7, 2013 Civil Investigative Demand	Not Admitted	
72	Declaration of Robert J. Hughes	Admitted	
73	Declaration of Christopher Albanese	Admitted	
74	Nov. 1, 2011-Dec. 9, 2011 emails regarding a consumer refund requested by the New Hampshire Banking Department	Not Admitted	
75-A	Consumer complaint produced by the Better Business Bureau on June 10, 2014	Admitted	Redacted
75-B	Consumer complaint produced by the Better Business Bureau on June 10, 2014	Admitted	Redacted
75-C	Consumer complaint produced by the Better Business Bureau on June 10, 2014	Admitted	Redacted
75-D	Consumer complaint produced by the Better Business Bureau on June 10, 2014	Admitted	Redacted
76	June 10, 2014 email to Alusheyi Wheeler attaching Better Business Bureau complaints	Admitted	
77	ClearVox Facilitators Guide	Not Admitted	
78	Integrity Advance procedures manual	Not Admitted	
79	Loan Management System Operations Manual	Not Admitted	
80	Data dictionary produced by Integrity Advance on April 22, 2016 in response to February 19, 2016 subpoena for data	Admitted	
81	Section 7.9 of Loan Management System Operations Manual	Admitted	
82	NACHA Table of ACH Return Reason Codes	Admitted	
83	July 22, 2008 Lead Purchase Insertion Order between Partner Weekly and Integrity Advance	Not Admitted	
84	Hayfield Investment Partners, LLC Consolidated Income Statement YTD Thru September 2010	Not Admitted	

85	January 19, 2009 Debt collection agreement between Integrity Financial Partners, Inc. and Hayfield Investment Partners, LLC for the benefit of its subsidiaries including Integrity Advance, LLC	Admitted	
86	March 21-23, 2011 emails between ClearVox and Integrity Advance employees	Not Admitted	
87	February 21-25, 2011 emails between James Carnes, Edward Foster, and ClearVox employees regarding potential fraud	Admitted	
88	November 13-14, 2008 emails James Carnes and ClearVox employees and between ClearVox employees	Admitted	
89	February 21, 2008 email from ClearVox employee to James Carnes regarding Outbound Call Agreement	Not Admitted	
90	February 20, 2008 emails between James Carnes and ClearVox employee	Not Admitted	
91	Hayfield Investment Partners, LLC 2012 Tax Return	Admitted	Under Seal
92	Expert Report of Dr. Manoj Hastak	Admitted	
93	Respondents' December 11, 2015 Answer and Affirmative Defenses to Notice of Charges	Admitted	
94	"An Examination of Remotely Created Checks" by Ana R. Cavazos-Wright	Admitted	
95	Excel spreadsheet entitled "Check_Draft_Cleared_ Payments" produced on May 5, 2016 in response to February 19, 2016 subpoena for data	Admitted	
96	16 CFR Part 310: Telemarketing Sales Rule: Federal Register Notice Containing Notice of Proposed Rulemaking and Request for Public Comment	Admitted	
97	Charts containing Integrity Advance values from transaction data produced in response to February 19, 2016 subpoena for data	Admitted	
98	"A Guide to Remotely Created Checks" by Dave Mercurio and Angie Spitzley	Admitted	

99	May 5, 2016 email from Allyson Baker to Vivian Chum and others attaching Excel spreadsheet "Check_Draft_Cleared Payments"	Admitted	
100	Consumer #21292653 Transactions on Integrity Advance $500 Loan #54158546 in which Integrity Advance uses an RCC to obtain funds from a consumer after the consumer revokes ACH authorization	Admitted	
101	Integrity Advance consumer transaction data produced in response to February 19, 2016 subpoena for data	Admitted	
102	First-time and one-time loans chart	Admitted	
103	Declaration of Robert J. Hughes	Admitted	

Respondents' Exhibits:

Exhibit Number	Exhibit Description	Status	Redacted or Under Seal
1	IA Reporting Structure	Admitted	
2	IA Amended Operating Agreement	Admitted	
3	Novemsky Report (Mar. 25, 2016)	Admitted	
4	Novemsky CV June 2016	Admitted	
5	List of Documents and Materials Considered in Novemsky Report	Admitted	
6	Attachments to Declaration of Chris Carson	Not Admitted	
7	DE LLC Formation	Admitted	
8	DE License Renewal Application (2011)	Admitted	Redacted
9	DE License Renewal Application (2012)	Admitted	Redacted
10	DE License Renewal Application (2013)	Admitted	Redacted
11	DE License Renewal Acceptance Letter (2011)	Admitted	
12	DE License Renewal Acceptance Letter (2012)	Admitted	
13	DE License Renewal Acceptance Letter (2013)	Admitted	
14	DE Report of Delaware Assets (2011)	Admitted	

15	January 25, 2010 Emails between E. Quinn Miller and Edward Foster	Not Admitted	
16	January 29, 2010 Letter to E. Quinn Miller from Claudia Callaway	Not Admitted	
17	January 11, 2012 Email from Kelley R Jones to Edward Foster, and attachments	Not Admitted	
18	2012 Report of Exam from the Delaware State Bank Commissioner	Not Admitted	
19	Adjusted versus CFPB Comparison All Loans	Admitted	
20	Counts of Repeat Customers by Number of Loans	Admitted	
21	Repeat Borrowers as a Percent of All	Admitted	
22	First Loans	Admitted	
23	One Time Loans	Admitted	
24	Exclude Repeat Borrowers Who Renew	Admitted	

APPENDIX B:
RULINGS ON THE BUREAU'S PROPOSED FINDINGS OF FACT

The Administrative Procedure Act (APA) and the CFPB Rules of Practice entitle parties to a reasonable opportunity to file proposed findings and fact and conclusions of law and any supporting reasons before the issuance of an initial decision. *See* 5 U.S.C. § 557 (c) and 12 C.F.R. § 1081.305(a). After the hearing in this matter, each party filed proposed findings of fact and conclusions of law, and argument in support thereof. The parties also filed responsive briefs pursuant to 12 C.F.R. § 1081.305(b). If I have designated a proposed finding of fact or conclusion of law as "accepted and incorporated" it means I have found it to be supported by the record as a whole and have incorporated it, to the extent it is relevant, into the Recommended Decision. Not all proposed findings or conclusions are relevant, and thus some designated as "accepted and incorporated" in my rulings are not specifically discussed in the Recommended Decision. I have also designated some proposed findings of fact as accepted with modifications, which are described herein. Finally, if I rejected a proposed finding of fact, I have set forth my reasoning.

1. Integrity Advance started originating loans to consumers in May 2008. Tr. II 132:23-24.
Ruling: **ACCEPTED AND INCORPORATED.**

2. As a part of its purchase of Hayfield Investment Partners, EZ Corp. Inc. purchased some of the assets of Integrity Advance in December 2012. Tr. II 70:22-23.
Ruling: **ACCEPTED AND INCORPORATED.**

3. Integrity Advance's first consumer loan transaction occurred in May 2008 and its final loan transaction occurred on July 9, 2013. Tr. II 132:23 – 133:18; *see also* EC-EX-072; EC-EX- 101.
Ruling: **ACCEPTED AND INCORPORATED.**

4. Respondent James Carnes (Carnes) founded Integrity Advance. EC-EX-068 at 7:12-13; Tr. I 94:3-4.
Ruling: ACCEPTED AND INCORPORATED.

5. Carnes was the sole owner of Willowbrook Marketing LLC. EC-EX-067; Tr. I 102:4-6.
Ruling: ACCEPTED AND INCORPORATED.

6. Willowbrook Marketing LLC owned a majority share of Hayfield Investment Partners. EC- EX-067; Tr. I 102:8-10.
Ruling: ACCEPTED AND INCORPORATED.

7. Hayfield Investment Partners was the sole owner of Integrity Advance. EC-EX-067; Tr. II 6:12-16.
Ruling: ACCEPTED AND INCORPORATED.

8. Carnes was the CEO of Hayfield Investment Partners, the parent company of Integrity Advance, and the chief executive of Integrity Advance. Tr. I 93:22 – 94:12; EC-EX-068 at 31:1-3.
Ruling: ACCEPTED AND INCORPORATED.

9. Carnes was the president and chief executive of Integrity Advance throughout the entire time that it offered short term, or payday, loans to consumers. EC-EX-065; EC-EX-068 at 31:1-3.
Ruling: ACCEPTED AND INCORPORATED.

10. Carnes received an annual salary of $250,000 when he was the chief executive of Integrity Advance. Tr. I 167:11-17.
Ruling: ACCEPTED AND INCORPORATED.

11. Integrity Advance was the most profitable company of all of the Hayfield subsidiaries. EC- EX-068 at 88:24-89:6.
Ruling: ACCEPTED AND INCORPORATED.

12. Integrity Advance contributed more than 75% of Hayfield's profits in 2010. EC-EX-068 at 92:19-93:9; Tr. I 114:11-25.
Ruling: ACCEPTED AND INCORPORATED.

13. Integrity Advance contributed more than 75% of Hayfield's profits in 2011. EC-EX-068 at 93:10-14; Tr. I 115:8-21.
Ruling: ACCEPTED AND INCORPORATED.

14. Integrity Advance contributed more than 75% of Hayfield's profits in 2012. EC-EX-068 at 93:15-16; Tr. I 115:22 – 116:2.
Ruling: ACCEPTED AND INCORPORATED.

15. Carnes received approximately twenty-three to twenty-five million dollars from the sale of Integrity Advance and other Hayfield entities to EZ Corp. Tr. I 239:4-

8; and Tr. I 245:16 - 246:12.
Ruling: ACCEPTED AND INCORPORATED as modified herein.

16. [redacted]
Ruling: ACCEPTED AND INCORPORATED.

17. [redacted]
Ruling: ACCEPTED AND INCORPORATED.

18. All persons who worked for Integrity Advance, except for George Davis, worked from a location in Kansas. Tr. I 73:15-17.
Ruling: ACCEPTED AND INCORPORATED.

19. Carnes directly or indirectly supervised all Integrity Advance employees. EC-EX-065; EC- EX-068 at 32:4-9; EC-EX-069 at 21:23-22:5.
Ruling: ACCEPTED AND INCORPORATED.

20. The four people who performed services for Integrity Advance when the company commenced operations in 2008 were Carnes, Edward Foster (Foster), Hassan Shahin, and a receptionist. Tr. I 53:19 – 54:10.
Ruling: ACCEPTED AND INCORPORATED.

21. At its largest, in 2011, Hayfield employed between 20 and 30 people. Tr. II 92:2-6.
Ruling: ACCEPTED AND INCORPORATED.

22. Timothy Madsen (Madsen), the Vice President of Marketing for Integrity Advance, worked at Integrity Advance from August 2008 until some of Integrity Advance's assets were purchased by EZ Corp. Tr. I 28:4-6; Tr. I 29:6-12.
Ruling: ACCEPTED AND INCORPORATED.

23. After he was originally hired, Madsen reported directly to Carnes. Tr. I 39:3-7.
Ruling: ACCEPTED AND INCORPORATED.

24. Carnes spoke with Madsen on a daily basis. Tr. I 35:8-10.
Ruling: ACCEPTED AND INCORPORATED.

25. Foster worked for Integrity Advance as its executive vice president, general counsel, secretary, and assistant treasurer. Tr. II 8:10-12.
Ruling: ACCEPTED AND INCORPORATED.

26. Foster reported to Carnes. Tr. II 9:19-22.
Ruling: ACCEPTED AND INCORPORATED.

27. Carnes spoke with Foster on a daily basis. EC-EX-069 at 22:19-24; EC-EX-068 at 35:15-17.

Ruling: **ACCEPTED AND INCORPORATED.**

28. Carnes met with Foster "a few times a week" about Integrity Advance business. EC-EX-068 at 35:18-21.
Ruling: **ACCEPTED AND INCORPORATED.**

29. Foster spoke to Carnes if there "was a significant problem" with Integrity Advance. Tr. I 215:5-18.
Ruling: **ACCEPTED AND INCORPORATED.**

30. Carnes set Foster's salary. Tr. II 9:17-18.
Ruling: **ACCEPTED AND INCORPORATED.**

31. Carnes made the final decision to hire all Integrity Advance employees. EC-EX-068 at 40:24-25; EC-EX-069 at 22:17-18.
Ruling: **ACCEPTED AND INCORPORATED.**

32. Carnes directly hired Foster. Tr. I 96:15-16.
Ruling: **ACCEPTED AND INCORPORATED.**

33. Carnes and Foster together hired Madsen. Tr. I 98:4-6.
Ruling: **ACCEPTED AND INCORPORATED.**

34. Carnes and Foster together hired Stephanie Schaller, Integrity Advance's Vice President of Decision Science. Tr. I 98:17-20.
Ruling: **ACCEPTED AND INCORPORATED.**

35. Carnes directly hired George Davis, the Delaware Office Manager. Tr. I 98:24 – 99:1.
Ruling: **ACCEPTED AND INCORPORATED.**

36. Carnes directly hired Hassan Shahin, Integrity Advance's Vice President of Technology. Tr. I 99:6-7.
Ruling: **ACCEPTED AND INCORPORATED.**

37. Carnes and Foster together hired Mark Rondeau, Integrity Advance's Director of IT Operations. Tr. I 99:15-18.
Ruling: **ACCEPTED AND INCORPORATED.**

38. Carnes worked in the office with other Integrity Advance executives on a daily basis. EC- EX-068 at 32:2-3; Tr. I 29:24 – 30:1; Tr. I 74:13-17.
Ruling: **ACCEPTED AND INCORPORATED.**

39. Carnes had an open door policy and was accessible to any Integrity Advance employee who wanted to talk to him. EC-EX-068 at 37:11-13; Tr. I 213:10-12; Tr. II 74:6-8.
Ruling: **ACCEPTED AND INCORPORATED.**

40. Carnes spoke to Madsen, the Vice President of Marketing for Integrity Advance, about "the behavior of the lead purchase systems that we had in place, how well they were performing, our different partners, and any adjustments that we need to make sure that it backed out for us what it needed to from a business perspective." Tr. I 31:11-16.
Ruling: **ACCEPTED AND INCORPORATED.**

41. The adjustments that Carnes spoke to Madsen about included how much Integrity Advance would pay for a lead and whether the company needed to change its underwriting model in order to purchase more leads. Tr. I 31:19-23.
Ruling: **ACCEPTED AND INCORPORATED.**

42. Madsen and Carnes discussed "lead volume conversion rates, long-term performance of any particular sources that we had" as well as default rates. Tr. I 47:13-21.
Ruling: **ACCEPTED AND INCORPORATED.**

43. Carnes was knowledgeable about the factors that influenced the price of a lead, such as whether it was a 'first look lead,' "where the lead came to you as a lender first before it went to any other lender" (Tr. I 119:15-19); whether a consumer had direct deposit of her paycheck (Tr. I 121:15-17); or whether the consumer's account was a savings account versus a checking account (Tr. I 122:16-18).
Ruling: **ACCEPTED AND INCORPORATED.**

44. Carnes ultimately made the call on what Integrity Advance would pay for a lead. Tr. I 35:1- 6; Tr. I 32:10-14.
Ruling: **ACCEPTED AND INCORPORATED.**

45. Madsen had to consult with Carnes about changes in the credit scores Integrity Advance would accept from its customers if they departed by more than a couple of points from set parameters. Tr. I 33:15-21.
Ruling: **ACCEPTED AND INCORPORATED.**

46. Integrity Advance had a system, called the dashboard, which it used to monitor the performance of leads. Tr. I 45:13-19.
Ruling: **ACCEPTED AND INCORPORATED.**

47. Sometimes Carnes reported results from the dashboard to Madsen, and sometimes Madsen reported resulted from the dashboard to Carnes. Tr. I 48:16 – 49:1; Tr. I 68:20-22.
Ruling: **ACCEPTED AND INCORPORATED.**

48. Carnes was the main decision-maker regarding Integrity Advance's underwriting policies. EC-EX-069 at 22:17-18; Tr. I 59:18-25.
Ruling: **ACCEPTED AND INCORPORATED.**

49. Bruce Andonian (Andonian) worked for Integrity Advance as its Director of Software Development. Tr. I 70:10-13.

Ruling: **ACCEPTED AND INCORPORATED.**

50. Andonian worked for Integrity Advance from February 2011 through May of 2013. Tr. I 71:2-5.
Ruling: **ACCEPTED AND INCORPORATED.**

51. Carnes would direct Andonian to make changes in Integrity Advance's website to reflect adjustments in the credit score that the company would accept from its potential customers. Tr. I 77:19 – 78:5.
Ruling: **ACCEPTED AND INCORPORATED.**

52. Carnes spoke to Andonian when "something wasn't working properly. So it was if the database was running slow or if we weren't accepting leads or the conversion rate was low and there would be an in investigation on why that was happening." Tr. I 75:7-12; Tr. I 216:2-9.
Ruling: **ACCEPTED AND INCORPORATED.**

53. Carnes would direct Andonian to remove states from Integrity Advance's website. Tr. I 77:1- 3.
Ruling: **ACCEPTED AND INCORPORATED.**

54. Carnes held weekly meetings in his office with Foster, Andonian, and a project manager in which they discussed Integrity Advance IT issues. Tr. I 75:16 – 76:1.
Ruling: **ACCEPTED AND INCORPORATED.**

55. Carnes ran the weekly IT meetings. Tr. I 76:2-3.
Ruling: **ACCEPTED AND INCORPORATED.**

56. "Most of the time" Carnes set the priorities for the tasks that were addressed at the weekly IT meetings. Tr. I 76:2-13.
Ruling: **ACCEPTED AND INCORPORATED.**

57. Carnes had final say over what appeared on the company's website. EC-EX-068 at 41:1-6; Tr. I 217:1-8.
Ruling: **ACCEPTED AND INCORPORATED.**

58. Carnes ran the monthly meetings where all of the employees who did work for Integrity Advance would discuss Integrity Advance as well as other companies owned by Hayfield. Tr. I 78:10-80:12.
Ruling: **ACCEPTED AND INCORPORATED.**

59. As chief executive, Carnes had the authority to make all decisions governing Integrity Advance's policies and procedures. Tr. I 209:1-11; EC-EX-068 at 32:15-17.
Ruling: **ACCEPTED AND INCORPORATED.**

60. Carnes "had ultimate authority over [Integrity Advance] and making sure that it complied with the Delaware law." Tr. I 221:24 – 222:1.

Ruling: **ACCEPTED AND INCORPORATED.**

61. Carnes was the primary decision maker at Integrity Advance. Tr. I 51:4-7; Tr. I 82:2-4.
Ruling: **ACCEPTED AND INCORPORATED.**

62. Carnes was a director and officer of Integrity Advance charged with managerial responsibility for the company. EC-EX-068 at 32:15-17; Tr. I 209:9-11.
Ruling: **ACCEPTED AND INCORPORATED.**

63. Carnes's role as primary decision maker at Integrity Advance did not change from 2008 until the EZ Corp. sale. Tr. I 51:4-15; Tr. I 28:9-29:12.
Ruling: **ACCEPTED AND INCORPORATED.**

64. Carnes signed a contract with a debt collection vendor on behalf of Integrity Advance. EC- EX-085: Tr. I 129:22 – 130:11.
Ruling: **ACCEPTED AND INCORPORATED.**

65. Carnes was the signatory on the lead purchase agreement between Integrity Advance and T3 Leads. EC-EX-053; Tr. I 122:22 – 123:14.
Ruling: **ACCEPTED AND INCORPORATED.**

66. Carnes was the signatory on the lead purchase agreement between Integrity Advance and Partner Weekly. EC-EX-054; Tr. I 126:17 – 127:13.
Ruling: **ACCEPTED AND INCORPORATED.**

67. Carnes was the signatory on the ACH origination agreement between MoneyGram and Integrity Advance. EC-EX-056.
Ruling: **ACCEPTED AND INCORPORATED.**

68. Carnes was an authorized signatory for the bank account used by Integrity Advance. EC-EX- 055; Tr. I 141:16-20.
Ruling: **ACCEPTED AND INCORPORATED.**

69. Carnes had communications with the call centers used by Integrity Advance. Tr. I 64:3-6.
Ruling: **ACCEPTED AND INCORPORATED.**

70. Carnes analyzed call logs from the call centers used by Integrity Advance. EC-EX-088; Tr. I 179:18 – 180:1.
Ruling: **ACCEPTED AND INCORPORATED.**

71. Carnes was involved in the decision to move Integrity Advance's business from one call center to another. Tr. I 64:13-19.
Ruling: **ACCEPTED AND INCORPORATED.**

72. Invoices from ClearVox, LLC, a call center used by Integrity Advance, were directed to Carnes's attention. EC-EX-057; EC-EX-058.

Ruling: **ACCEPTED AND INCORPORATED.**

73. When a call center used by Integrity Advance had an employee who was allegedly committing fraud, Carnes directed the resolution of the problem. EC-EX-087; Tr. I 177:3- 178:3.
Ruling: **ACCEPTED AND INCORPORATED.**

74. Integrity Advance made loans to consumers. Tr. I 94:14-18. Those loans were the sole source of Integrity Advance revenues and operating profits. Tr. I 94:14 – 95:8.
Ruling: **ACCEPTED AND INCORPORATED.**

75. Integrity Advance did not offer any products other than consumer loans. Tr. I 94:19-22.
Ruling: **ACCEPTED AND INCORPORATED.**

76. The fees that Integrity Advance charged its customers did not change over time. Tr. II 15:24- 25; Tr. II 48:14-22.
Ruling: **ACCEPTED AND INCORPORATED.**

77. When Integrity Advance's loan agreement template was created and first used in 2008, only four people worked for Integrity Advance. Tr. I 230:25 – 231:5; Tr. I 53:19 – 54:23.
Ruling: **ACCEPTED AND INCORPORATED.**

78. In addition to Carnes, the other Integrity Advance employees in 2008 were Edward Foster, the Executive Vice President and General Counsel, Hassan Shahin, the Vice President of Technology, and a receptionist. Tr. I 53:19 – 54:23; *see also* EC-EX-065.
Ruling: **ACCEPTED AND INCORPORATED.**

79. As the chief executive, Carnes was ultimately responsible for approving everything related to Integrity Advance's business when the loan agreement was created and first used in 2008. Tr. I 228:8-11.
Ruling: **ACCEPTED AND INCORPORATED.**

80. Integrity Advance's loan agreement did not change significantly between 2008 and 2013. Tr. II 38:20 – 39:1; EC-EX-061; EC-EX-063.
Ruling: **ACCEPTED AND INCORPORATED.**

81. Carnes understood how Integrity Advance's loans worked when he was CEO of Integrity Advance, testifying, "Sure it was our product." Tr. I 220:12.
Ruling: **ACCEPTED AND INCORPORATED.**

82. Carnes knew that for a "fictional consumer . . . who had $100 loan . . . their TILA disclosure would say $130." Tr. II 50:21 – 51:3.
Ruling: **ACCEPTED AND INCORPORATED.**

83. Carnes knew that if a consumer "didn't call or email, and it was their first payment, [the loan] … would be renewed." Tr. I 219:13-20; EC-EX-068 at 227.
Ruling: **ACCEPTED AND INCORPORATED.**

84. Carnes knew that if the consumer did nothing on the next payday, the loan would be renewed again. Tr. I 219:21-23.
Ruling: **ACCEPTED AND INCORPORATED.**

85. Carnes knew that an Integrity Advance loan would rollover four times before it went to workout. Tr. I 219:24 – 220:3.
Ruling: **ACCEPTED AND INCORPORATED.**

86. Carnes understood that about ninety percent of Integrity Advance's loans experienced at least one rollover. Tr. I 222:17-20.
Ruling: **ACCEPTED AND INCORPORATED.**

87. Carnes understood that most Integrity Advance consumers would experience at least one rollover. Tr. 219:11 – 222:20.
Ruling: **ACCEPTED AND INCORPORATED.**

88. Carnes understood that consumers who had the loans rolled over would pay more than what had been disclosed in their TILA disclosures. EC-EX-068 at 245:10-25.
Ruling: **ACCEPTED AND INCORPORATED.**

89. Carnes understood that consumers who did not contact the company would have their loans renewed repeatedly, which would result in much higher costs than what had been disclosed. Tr. 219:13 – 220:3.
Ruling: **ACCEPTED AND INCORPORATED.**

90. Carnes had the authority to change Integrity Advance's fee structure. Tr. II 49:15-18.
Ruling: **ACCEPTED AND INCORPORATED.**

91. Carnes testified that he "possibly" saw an Integrity Advance loan agreement in 2008 when the company was being formed and started loaning. Tr. I 226:9-14.
Ruling: **ACCEPTED AND INCORPORATED.**

92. Carnes's attorneys had his approval to use the loan agreement. Tr. I 232:7-12.
Ruling: **ACCEPTED AND INCORPORATED.**

93. Based on an assessment of all the evidence in the record and of the credibility of the witnesses who testified, Carnes approved Integrity Advance's use of its loan agreement. Tr. I 228:6-9; Tr. II 96:2-14.
Ruling: **ACCEPTED AND INCORPORATED.**

94. The Delaware Office of the State Bank Commissioner's Licensing Office (Delaware Commissioner) does not approve the loan contracts that non-depository lenders use with their customers. Tr. III 126:19-24.

Ruling: **ACCEPTED AND INCORPORATED.**

95. From 2008-2013, the Delaware Commissioner did not require the use of particular loan agreements between non-depository lenders and their customers. Tr. III 148:2-6.
Ruling: **ACCEPTED AND INCORPORATED.**

96. From 2008-2013, the Delaware Commissioner did not review changes to a loan application that a non-depository lender used with its customers. Tr. III 131:8-15.
Ruling: **ACCEPTED AND INCORPORATED.**

97. From 2008-2013, the Delaware Commissioner did not set the fees that non-depository lenders could charge their customers. Tr. III 148:12-14.
Ruling: **ACCEPTED AND INCORPORATED.**

98. From 2008-2013, the Delaware Commissioner did not require non-depository lenders to automatically roll over their customers' loans. Tr. III 145:24 – 146:2.
Ruling: **ACCEPTED AND INCORPORATED.**

99. From 2008-2013, the Delaware Commissioner did not require short term lenders to offer the option of rollovers. Tr. III 146:7-10.
Ruling: **ACCEPTED AND INCORPORATED.**

100. The Delaware Commissioner "permitted [rollovers], we didn't prohibit it in the statute, nor did we require it." Tr. III 147:16-18.
Ruling: **ACCEPTED AND INCORPORATED.**

101. From 2008-2013, the Delaware Commissioner did not review non-depository lenders' loan agreements for compliance with the Electronic Funds Transfer Act. Tr. III 149:1-3.
Ruling: **ACCEPTED AND INCORPORATED.**

102. From 2008-2013, the Delaware Commissioner's review of Truth in Lending compliance for non-depository lenders consisted of determining whether there was a separate Truth in Lending box in the loan agreement (Tr. III 150:24 – 151:2), and checking the lenders' calculations of the APR in the Truth in Lending box to determine if it was mathematically correct (Tr. III 153:5-6).
Ruling: **ACCEPTED AND INCORPORATED.**

103. The Delaware Commissioner has never denied a non-depository lender's application for a license. Tr. III 144:23 – 145:1.
Ruling: **ACCEPTED AND INCORPORATED.**

104. The Delaware Commissioner has never denied the renewal of a non-depository lender's license. Tr. III 129:25 – 130:10.
Ruling: **ACCEPTED AND INCORPORATED.**

105. The Delaware Commissioner has only revoked a non-depository lender's license

when its surety bond was "cancelled and not resolved by the licensee within the time limit." Tr. III 132:14-15.
Ruling: ACCEPTED AND INCORPORATED.

106. Integrity Advance's ACH agreement contained a provision that allowed the company to execute remotely created checks on its customers' bank accounts. EC-EX-001-014; EC-EX- 063.
Ruling: **ACCEPTED AND INCORPORATED.**

107. The ACH agreement stated "[i]f you revoke your authorization, you agree to provide us with another form of payment acceptable to us and you authorize 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." EC-EX-001-014; EC-EX-063.
Ruling: **ACCEPTED AND INCORPORATED.**

108. The remotely created check provision appeared only once in the loan agreement on approximately page 9, at the end of a paragraph, in the middle of the ACH authorization section. EC-EX-001-014; EC-EX-063.
Ruling: **ACCEPTED AND INCORPORATED.**

109. The remotely created check provision was not emphasized by any bolded, underlined, capitalized, or enlarged font. EC-EX-001-014; EC-EX-063.
Ruling: **ACCEPTED AND INCORPORATED.**

110. Integrity Advance did not require consumers to sign or initial the remotely created check provision separately. EC-EX-001-014; EC-EX-063.
Ruling: **ACCEPTED AND INCORPORATED.**

111. The remotely created check provision made no explicit mention of remotely created checks and did not state that the checks to be drawn on a consumer's bank account did not have to be signed by the consumer. EC-EX-001-014; EC-EX-063.
Ruling: **ACCEPTED AND INCORPORATED.**

112. The remotely created check provision did not state that the checks to be drawn on a consumer's bank account could be submitted without prior warning to the consumer. EC- EX-001-014; EC-EX-063.
Ruling: **ACCEPTED AND INCORPORATED.**

113. Integrity Advance used remotely created checks to withdraw funds from consumers' bank accounts after consumers had revoked the company's authorization to electronically debit their accounts using the ACH network or stopped ACH withdrawals made by the company, and after those consumers had already paid over the disclosed "Total of Payments." Tr. II 84:6-11; Tr. II 84:25 – 85:2; 142:15 – 148:4; 152:15 – 153:11; Tr. I 235:19 – 236:3; EC-EX-072 at ¶¶9-11; EC-EX-97; *see also* EC-EX-95; EC-EX-101.
Ruling: **ACCEPTED AND INCORPORATED.**

114. Integrity Advance continued to attempt to use remotely created checks on consumers who had revoked the company's ACH authorization or stopped ACH debits by Integrity Advance even after consumers' bank accounts had insufficient funds. Tr. II 142:15-148:4; EC-EX- 097; EC-EX-100; *see also* EC-EX-95; EC-EX-101.
Ruling: **ACCEPTED AND INCORPORATED.**

115. Integrity Advance used remotely created checks 3,545 times on consumers who had revoked ACH authorization to withdraw funds from their accounts or stopped ACH withdrawals by Integrity Advance. Tr. II 149:4-9, 14-16; EC-EX-097; *see also* EC-EX-95; EC-EX-101.
Ruling: **ACCEPTED AND INCORPORATED.**

116. Integrity Advance used remotely created checks 1,271 times on or after July 21, 2011, on consumers who had revoked ACH authorization to withdraw funds from their accounts or stopped ACH withdrawals by Integrity Advance. Tr. II 150:24-151:3; EC-EX-097; *see also* EC-EX-95; EC-EX-101.
Ruling: **ACCEPTED AND INCORPORATED.**

117. Integrity Advance used remotely created checks 1,826 times on consumers who had revoked ACH authorization or stopped ACH withdrawals by Integrity Advance and who had already paid an amount equal to the "Total of Payments" in the TILA box in the consumers' loan agreements. Tr. II 149:4-9, 19-22; EC-EX-097; *see also* EC-EX-95; EC- EX-101.
Ruling: **ACCEPTED AND INCORPORATED.**

118. Integrity Advance used remotely created checks 602 times on or after July 21, 2011, on consumers who had revoked or stopped their authorization for Integrity Advance to withdraw funds from their accounts and who had already paid an amount equal to the "Total of Payments" in the TILA box in the consumers' loan agreements. Tr. II 151:6-11; EC-EX- 097; *see also* EC-EX-95; EC-EX-101.
Ruling: **ACCEPTED AND INCORPORATED.**

119. Carnes knew that Integrity Advance used remotely created checks to withdraw money from the accounts of some of the consumers who had withdrawn ACH authorization. EC-EX-068 at 219:7-18; Tr. II 84:6 – 85:11.
Ruling: **ACCEPTED AND INCORPORATED.**

120. Carnes saw remotely created checks printed using a printer in the Kansas City office. Tr. I 236:10-11, Tr. I 236:20-22.
Ruling: **ACCEPTED AND INCORPORATED.**

121. Carnes testified that Integrity Advance printed remotely created checks on a weekly basis and regularly used remotely created checks to collect consumer debt. Tr. I 235:24 – 236:15.
Ruling: **ACCEPTED AND INCORPORATED.**

122. From May 2008 through July 2013, Integrity Advance obtained $132,580,041.06

more from its consumers than the amount disclosed in the "Total of Payments" boxes in their TILA disclosures, excluding all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 8; *see also* EC-EX-101.
Ruling: ACCEPTED AND INCORPORATED. However, the Bureau may not seek relief for pre-transfer date TILA violations.

123. From May 2008 through July 2013, Integrity Advance obtained $131,433,343.47 more from its consumers than the amount disclosed in the "Total of Payments" box in their TILA disclosures, excluding all fees charged by Integrity Advance and payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 18; *see also* EC-EX-101.
Ruling: ACCEPTED AND INCORPORATED. However, the Bureau may not seek relief for pre-transfer date TILA violations.

124. Loans where the first transaction occurred on or after August 13, 2011 originated on or after July 21, 2011. Tr. III 37:1–38:6; Tr. II 128:13-129:19.
Ruling: ACCEPTED AND INCORPORATED.

125. For loans originated on or after July 21, 2011, Integrity Advance obtained $38,453,341.62 more from its consumers than the amount disclosed in the "Total of Payments" box in their TILA disclosures, excluding all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 8a; *see also* EC-EX-101.
Ruling: ACCEPTED AND INCORPORATED.

126. On loans originated on or after July 21, 2011, Integrity Advance obtained $38,164,153.31 more from its consumers than the amount disclosed in the "Total of Payments" box in their TILA disclosures, excluding all fees charged by Integrity Advance and payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 18a; *see also* EC-EX-101.
Ruling: ACCEPTED AND INCORPORATED.

127. On or after July 21, 2011, Integrity Advance used remotely created checks to obtain $115,024.50, excluding all payments denoted as refunds or rebates, from consumers who had revoked or stopped their authorization for Integrity Advance to withdraw funds from their accounts after having paid an amount equal to the "Total of Payments" in the TILA box in the consumers' loan agreements. Attch. A, Hughes Decl. ¶ 9a; EC-EX-097; Tr. II 152:15 – 153:1; *see also* EC-EX-095; EC-EX-101.
Ruling: ACCEPTED AND INCORPORATED.

128. On or after July 21, 2011, Integrity Advance used remotely created checks to obtain $103,623.00, excluding all fees charged by Integrity Advance and payments denoted as refunds or rebates, from consumers who had revoked or stopped their authorization for Integrity Advance to withdraw funds from their accounts after having paid an amount equal to the "Total of Payments" in the TILA box in the consumers' loan agreements. Attch. A, Hughes Decl. ¶ 19a; EC-EX-097; Tr. II 152:15 – 153:1; *see also* EC-EX-095; EC-EX-101.

Ruling: **ACCEPTED AND INCORPORATED.**

129. For all first-time loans from May 2008 through July 2013, Integrity Advance obtained $69,232,170.39 more from its consumers than the amount disclosed in the "Total of Payments" box in their TILA disclosures, excluding all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 11; *see also* EC-EX-101.
Ruling: **ACCEPTED AND INCORPORATED.**

130. For all first-time loans from May 2008 through July 2013, Integrity Advance obtained $68,477,934.28 more from its consumers than the amount disclosed in the "Total of Payments" box in their TILA disclosures, excluding all fees charged by Integrity Advance and all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 21; *see also* EC- EX-101.
Ruling: **ACCEPTED AND INCORPORATED.**

131. For all first-time loans originated on or after July 21, 2011, Integrity Advance obtained $12,141,593.76 more from its consumers than the amount disclosed in the "Total of Payments" box in their TILA disclosures, excluding all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 11a; *see also* EC-EX-101.
Ruling: **ACCEPTED AND INCORPORATED.**

132. For all first-time loans originated on or after July 21, 2011, Integrity Advance obtained $11,999,322.85 more from its consumers than the amount disclosed in the "Total of Payments" box in their TILA disclosures, excluding all fees charged by Integrity Advance and all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 21a; *see also* EC- EX-101.
Ruling: **ACCEPTED AND INCORPORATED.**

133. For all one-time loans from May 2008 through July 2013, Integrity Advance obtained $39,734,832.39 more from its consumers than the amount disclosed in the "Total of Payments" box in their TILA disclosures, excluding all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 13; *see also* EC-EX-101.
Ruling: **ACCEPTED AND INCORPORATED.**

134. For all one-time loans from May 2008 through July 2013, Integrity Advance obtained $39,105,182.12 more from its consumers than the amount disclosed in the "Total of Payments" box in their TILA disclosures, excluding all fees charged by Integrity Advance and all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 23; *see also* EC- EX-101.
Ruling: **ACCEPTED AND INCORPORATED.**

135. For all one-time loans originated on or after July 21, 2011, Integrity Advance obtained $8,934,859.59 more from its consumers than the amount disclosed in the "Total of Payments" box in their TILA disclosures, excluding all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 13a; *see also* EC-EX-101.
Ruling: **ACCEPTED AND INCORPORATED.**

136. For all one-time loans originated on or after July 21, 2011, Integrity Advance

obtained $8,807,265.56 more from its consumers than the amount disclosed in the "Total of Payments" box in their TILA disclosures, excluding all fees charged by Integrity Advance and all payments denoted as refunds or rebates. Attch. A, Hughes Decl. ¶ 23a; *see also* EC- EX-101.
Ruling: **ACCEPTED AND INCORPORATED.**

APPENDIX C:
RULINGS ON THE BUREAU'S PROPOSED CONCLUSIONS OF LAW

1. As the chief executive in charge of Integrity Advance, Carnes is a related person under the Consumer Financial Protection Act (CFPA). 12 U.S.C. § 5481(25)(C)(i).
Ruling: **ACCEPTED AND INCORPORATED.**

2. As the ultimate majority owner of Integrity Advance, Carnes is a related person under the CFPA. 12 U.S.C. § 5481(25)(C)(i).
Ruling: **ACCEPTED AND INCORPORATED.**

3. As a related person, Carnes is a covered person under the CFPA. 12 U.S.C. § 5481(25)(B).
Ruling: **ACCEPTED AND INCORPORATED.**

4. A covered person can be held liable for an unfair or deceptive act or practice when he "engages" in that practice. 12 U.S.C. § 5536(a)((1)(B) ("It shall be unlawful for—(1) any covered person or service provider-(B) to engage in any unfair, deceptive, or abusive act or practice.").
Ruling: **ACCEPTED AND INCORPORATED.**

5. A covered person engages in a deceptive practice when "(1) he participated directly in the deceptive acts *or* had authority to control them, and (2) he had knowledge of the misrepresentations, was recklessly indifferent to the truth or falsity of the misrepresentations, or was aware of a high probability of fraud along with an intentional avoidance of the truth." *CFPB v. Gordon*, 819 F.3d 1179, 1193 (9th Cir. 2016) (emphasis in original) (quoting *F.T.C. v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009)).
Ruling: **ACCEPTED AND INCORPORATED.**

6. By virtue of his direct control over all Integrity Advance operations, policies, and procedures, Carnes participated directly in Integrity Advance's use of a facially deceptive loan agreement.
Ruling: **ACCEPTED AND INCORPORATED.**

7. By virtue of his position of CEO of Integrity Advance, Mr. Carnes controlled all management decisions. As such, he either approved or had his subordinates approve the company's loan agreement template. Mr. Carnes participated directly in Integrity Advance's use of a facially deceptive loan agreement.
Ruling: **ACCEPTED AND INCORPORATED AS MODIFIED.**

8. Carnes exercised authority over Integrity Advance and had authority to control the company's actions, including the use of the facially deceptive loan agreement.
Ruling: **ACCEPTED AND INCORPORATED.**

9. Carnes knew or should have known that the Integrity Advance loan agreement

misrepresented the loans that consumers had accepted.
Ruling: **ACCEPTED AND INCORPORATED AS MODIFIED.**

10. Carnes knew that Integrity Advance disclosed the terms of a multi-payment payday loan as if the loan were a single-payment loan.
Ruling: **ACCEPTED AND INCORPORATED.**

11. In light of his knowledge, Carnes was "recklessly indifferent to the truth or falsity of the misrepresentations[.]" *CFPB v. Gordon*, 819 F.3d at 1193.
Ruling: **ACCEPTED AND INCORPORATED.**

12. Based on an assessment of all the evidence in the record and of the credibility of the witnesses who testified, Carnes engaged in deceptive acts in violation of the CFPA.
Ruling: **ACCEPTED AND INCORPORATED.**

13. An act or practice is "unfair" if it "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers" and that "substantial injury is not outweighed by countervailing benefits to consumers or to competition." 12 U.S.C. § 5531(c).
Ruling: **ACCEPTED AND INCORPORATED.**

14. Integrity Advance used remotely created checks against consumers when those consumers had blocked electronic access to their accounts, even when those consumers had satisfied the amount disclosed as the "Total of Payments" in their loan agreement.
Ruling: **ACCEPTED AND INCORPORATED.**

15. The language in the Integrity Advance loan agreement which allegedly authorized Respondents' use of remotely created checks was not clear and conspicuous.
Ruling: **ACCEPTED AND INCORPORATED.**

16. The language in the Integrity Advance loan agreement which allegedly authorized Respondents' use of remotely created checks did not adequately inform consumers of the rights it conferred upon Integrity Advance.
Ruling: **ACCEPTED AND INCORPORATED.**

17. Respondents' use of remotely created checks caused substantial injury to consumers.
Ruling: **ACCEPTED AND INCORPORATED.**

18. The injury caused to consumers by Respondents' use of remotely created checks was not reasonably avoidable.
Ruling: **ACCEPTED AND INCORPORATED.**

19. The injury caused to consumers by Integrity Advance's use of remotely created checks was not outweighed by countervailing benefits to consumers or to competition.

Ruling: **ACCEPTED AND INCORPORATED.**

20. Based on an assessment of all the evidence in the record and of the credibility of the witnesses who testified, Integrity Advance's use of remotely created checks was unfair.
Ruling: **ACCEPTED AND INCORPORATED.**

21. By virtue of his direct control over all Integrity Advance operations, policies, and procedures, Carnes participated directly in Integrity Advance's use of remotely created checks.
Ruling: **ACCEPTED AND INCORPORATED.**

22. By virtues of his role of the chief executive of Integrity Advance, Carnes had authority to control the company's use of remotely created checks.
Ruling: **ACCEPTED AND INCORPORATED.**

23. Carnes knew that Integrity Advance employed remotely created checks when customers had satisfied the "Total of Payments" in their loan agreements and revoked their ACH authorizations.
Ruling: **ACCEPTED AND INCORPORATED.**

24. Based on an assessment of all the evidence in the record and of the credibility of the witnesses who testified, Carnes engaged in unfair acts in violation of the CFPA.
Ruling: **ACCEPTED AND INCORPORATED.**

25. The Administrative Law Judge has authority to grant broad relief in this matter, including monetary restitution and civil money penalties. 12 U.S.C. § 5565.
Ruling: **ACCEPTED AND INCORPORATED.**

26. Restitution in this matter shall be determined using Enforcement Counsel's proposed methodology of calculating the amount, if any, that each Integrity Advance consumer paid in excess of the amount disclosed in the "Total of Payments" boxes in the TILA disclosures in their loan agreements, excluding all payments denoted as refunds or rebates.
Ruling: **ACCEPTED IN PART. I have generally accepted Enforcement Counsel's proposed methodology, but have recalculated certain amounts as described more fully in the Recommended Decision.**

27. Restitution in this matter shall include the amounts of any fees collected by Integrity Advance.
Ruling: **REJECTED for the reasons described more fully herein.**

28. Payments collected from consumers who had more than one loan with Integrity Advance shall not be excluded from the restitution calculation.
Ruling: **ACCEPTED AND INCORPORATED.**

29. Respondent Integrity Advance, LLC is liable for restitution for payments

collected between May 2008 through July 2013.
Ruling: REJECTED for the reasons described more fully in the Recommended Decision. Restitution is available only for payments collected on loans originated after July 21, 2011.

30. Respondent James R. Carnes is liable for restitution for payments collected on loans that originated on or after July 21, 2011.
Ruling: **ACCEPTED AND INCORPORATED.**

31. Based on the violations of law found herein as well as those violations found in the Order Granting in Part and Denying in Part Bureau's Motion for Summary Disposition and Denying Respondents' Motion for Summary Disposition, Respondent Integrity Advance, LLC is liable for restitution in the amount of $132,580,041.06, which includes all payments made from May 2008 through July 2013 that were in excess of the "Total of Payments" boxes in the TILA disclosures in the relevant loan agreements, excluding all payments denoted as refunds or rebates but including all fees charged and appropriate payments by consumers who had more than one loan with Integrity Advance, LLC.
Ruling: **REJECTED. As described more fully in the Recommended Decision, the proper scope of restitution is the payments collected on loans originated after July 21, 2011 which exceeded the "total of payments."**

32. Based on the violations of law found herein, Respondent James R. Carnes is liable for restitution in the amount of $38,164,153.31, which includes all payments made on loans that were in excess of the "Total of Payments" boxes in the TILA disclosures in the relevant loan agreements, excluding all payments denoted as refunds or rebates but including all fees charged and appropriate payments by consumers who had more than one loan with Integrity Advance, LLC, for loans where the first payment was made on or after August 13, 2011.
Ruling: **ACCEPTED AND INCORPORATED AS MODIFIED.**

33. Carnes's violations of the consumer financial laws warrant the imposition of a civil money penalty.
Ruling: **ACCEPTED AND INCORPORATED.**

34. Integrity Advance's violations of the consumer financial laws warrant the imposition of a civil money penalty.
Ruling: **ACCEPTED AND INCORPORATED.**

APPENDIX D:
RULINGS ON RESPONDENTS' PROPOSED FINDINGS OF FACT

Respondents' Proposed Findings of Fact and Conclusions of Law contained footnotes. I have incorporated certain footnotes as individual findings of fact herein, and the numbering is therefore different than in the original. Specifically, footnote 1 is now Finding of Fact 12; footnote 2 is now Finding of Fact 18; footnote 3 is now Finding of Fact 21; footnote 4 is now Finding of Fact 48; footnote 5 is now Finding of Fact 59; footnote 6 is now Finding of Fact 81; and footnote 7 is now Finding of Fact 102.

1. Integrity Advance, LLC was a Delaware licensed, short-term, small-dollar lender. *See* Hr'g Tr. I-93:25 – I-94:2; RX-007 – RX-014.
Ruling: ACCEPTED AND INCORPORATED.

2. Integrity Advance was formed on July 2, 2007. RX-007. Integrity Advance is a subsidiary company to Hayfield Investment Partners ("HIP"). *Id.* at I-100:14-17.
Ruling: ACCEPTED AND INCORPORATED.

3. EZ Corp. purchased a set of assets from HIP in December of 2012. *Id.* at I- 238:9-11. EZ Corp. did not purchase Integrity Advance, *id.* at I-237:19-21, but did purchase a partial customer list from the Company, *id.* at I-237:22 – I-238:13.
Ruling: ACCEPTED AND INCORPORATED.

4. Integrity Advance ceased offering loans in December 2012. Dkt. 111, Order Granting In Part and Denying In Part Bureau's Mot. for Sum. Disp. and Denying Respondents' Mot. for Sum. Disp. at 5; Hr'g Tr. II-92:8-9.
Ruling: ACCEPTED AND INCORPORATED.

5. On November 18, 2015, Enforcement Counsel filed a Notice of Charges ("Notice") against Respondents Integrity Advance and James R. Carnes. Dkt. 1.
Ruling: ACCEPTED AND INCORPORATED.

6. The Notice claims violations against Integrity Advance solely of the Truth-in-Lending Act ("TILA") (Count One); the Electronic Fund Transfer Act ("EFTA") (Count Five); and corresponding violations of the Consumer Financial Protection Act ("CFPA") (Counts Two and Six).
Ruling: ACCEPTED AND INCORPORATED AS AMENDED.

7. The Notice claims violations against Integrity Advance and Mr. Carnes, of the CFPA for deceptive loan agreement disclosures (Count Three) and unfair use of remotely-created checks (Count Seven).

Ruling: ACCEPTED AND INCORPORATED AS AMENDED.

8. The Court granted Enforcement Counsel's Motion for Summary Disposition against Integrity Advance as to liability on Counts One, Two, Five, and Six. *Id.* at 44. The Court granted Enforcement Counsel's Motion for Summary Disposition as to liability on Count Three solely against Integrity Advance. *Id.*
Ruling: ACCEPTED AND INCORPORATED AS AMENDED.

9. On July 12, 2016, the Court granted Enforcement Counsel's stipulated Motion to Withdraw Count Four with prejudice. Dkt. 133, Order Granting Enforcement Counsel's Stipulated Motion to Withdraw Count IV with Prejudice
Ruling: ACCEPTED AND INCORPORATED.

10. Timothy Allen Madsen worked for HIP for approximately five years (2008–2013) as Vice President of Marketing. *Id.* at I-27:10-14; I-28:4-8, I-29:6-8.
Ruling: ACCEPTED AND INCORPORATED.

11. Mr. Madsen's job was to purchase leads and manage relationships with lead providers for Integrity Advance, as well as manage leads internally and coordinate with Integrity Advance's call center regarding leads. *Id.* at I-28:9-13, 24-25; *id.* at I-29:1-5. As part of his duties, Mr. Madsen monitored lead acceptance, purchase rates, and conversion rates through a dashboard system. *Id.* at I-45:13-25. Mr. Madsen coordinated interactions between Integrity Advance and its third party call center. *Id.* at I-63:6-7.
Ruling: ACCEPTED AND INCORPORATED.

12. The term "lead" refers to information relating to potential applicants for Integrity Advance loans. See id. at I-116:6-23.
Ruling: ACCEPTED AND INCORPORATED.

13. Mr. Madsen's job did not involve any aspect of Integrity Advance's loan agreement. *Id.* at I-67:7-20.
Ruling: ACCEPTED AND INCORPORATED.

14. Mr. Madsen did not draft, edit, revise, or review Integrity Advance's loan agreement. *See id.* (stating that none of Mr. Madsen's job duties involved the loan agreement).
Ruling: ACCEPTED AND INCORPORATED.

15. Mr. Madsen discussed conversion rates, performance of leads, first payment defaults, and, generally, lead generation with Mr. Carnes as part of his job duties. *Id.* at I-67:1-6.
Ruling: ACCEPTED AND INCORPORATED.

16. Mr. Madsen did not discuss Integrity Advance's loan agreement with Mr. Carnes. *Id.* at I-67:21-24. Mr. Madsen similarly testified that he never discussed the language of loan disclosures with Mr. Carnes. *Id.* at I-67:25 – I-68:1-6.
Ruling: ACCEPTED AND INCORPORATED. However, this Finding does

not preclude the fact that Mr. Carnes was the Chief Executive Officer. As such, he set the terms of the loan agreement, or at a minimum, had the authority to set or change its terms.

17. Bruce Andonian worked for HIP for approximately two years (2011–2013) as Director of Software Development. *Id.* at I-70: 12-13, I-71:5, I-75:11-12.
Ruling: ACCEPTED AND INCORPORATED.

18. Willowbrook Partners owns 50.3% of HIP. EC-EX-067. Willowbrook served as the manager for HIP. *See* Hr'g Tr. II-8:2-3.
Ruling: ACCEPTED AND INCORPORATED.

19. Mr. Andonian reported directly to Mr. Foster, and ultimately to Mr. Carnes. *Id.* at I-72:5-6.
Ruling: ACCEPTED AND INCORPORATED.

20. Mr. Andonian's job was to manage the software development team for HIP's Empower product. *Id.* at I-83:7-8. Related to Integrity Advance, Mr. Andonian's job was to address issues with Integrity Advance's website and database. *See id.* at I-89:10-16. Mr. Andonian did not begin working on the Integrity Advance website until Mr. Foster asked him to fill in for another employee. *Id.* at I-84:3-6. In conjunction with his duties, Mr. Andonian attended weekly IT meetings to discuss the different products covered under the Willowbrook/HIP umbrella. *Id.* at I-75:16-25 – I-76:1-17.
Ruling: ACCEPTED AND INCORPORATED.

21. Integrity Advance was not the focus of the weekly IT meetings. Mr. Andonian testified that "there wasn't [sic] a lot of Integrity Advance topics on our task list." *Id.* at I-76:21-22. In fact, Integrity Advance's business took up merely five minutes out of an hour-long monthly meeting, *id.* at I-85:20-23 – equating to roughly two hours out of the total 4,000 hours that Mr. Andonian spent working on Willowbrook-related matters, *id.* at I-87:15-19 (representing 0.05% of Mr. Andonian's time at Willowbrook/HIP).
Ruling: REJECTED AS IRRELEVANT. See discussion of the required elements to prove that an individual is liable for corporate violations of the CFPA.

22. Mr. Andonian did not draft, edit, revise, or review Integrity Advance's loan agreement. *See id.* at I-87:24 – I-88:12.
RULING: ACCEPTED AND INCORPORATED. However, this Finding does not preclude the fact that Mr. Carnes was the Chief Executive Officer. As such, he set the terms of the loan agreement, or at a minimum, had the authority to set or change its terms. Also, see Ruling on Proposed Finding 21, above.

23 As part of his job duties, Mr. Andonian discussed with Mr. Carnes issues with Integrity Advance's website and database. Mr. Andonian testified that Mr. Carnes

would be involved with Integrity Advance issues when "[s]omething wasn't working properly." *Id.* at I- 75:8-9. Mr. Andonian specified that he typically discussed issues regarding Integrity Advance's database with Mr. Carnes when "the data base was running slow or if we weren't accepting leads or the conversion rate was low . . . ." *Id.* at I-75:7-12.
Ruling: ACCEPTED AND INCORPORATED.

24. Mr. Andonian did not discuss the language of Integrity Advance's loan agreement, the disclosures in the loan agreement, edits, or revisions to the loan agreement or its disclosures, with Mr. Carnes. *Id.* at I-87:24 – I-88:12.
Ruling: ACCEPTED AND INCORPORATED as modified in the Ruling for Proposed Finding 16, above.

25. Mr. Andonian did not discuss scripts used by call center representatives, or edits or revisions to such scripts, with Mr. Carnes. *Id.* at I-88:13-21.
Ruling: ACCEPTED AND INCORPORATED.

26. Edward Foster worked for HIP as General Counsel, Executive Vice President, Secretary, and Assistance Treasurer. *Id.* at II-7:24 – II-8:4, II-8:10-12. In June of 2010, Mr. Foster also took on the role of Chief Operations Officer of HIP. *Id.* at II-12:3-8.
Ruling: ACCEPTED AND INCORPORATED.

27. Relating to Integrity Advance, prior to June of 2010, Mr. Foster's job was primarily to provide corporate legal counsel to the Company. Thereafter, Mr. Foster took on additional operational duties as the chief operations officer. *Id.* at II-8:13-15.
RULING: ACCEPTED AND INCORPORATED AS MODIFIED. Importantly, Respondents take the position neither Mr. Foster (as General Counsel) nor Mr. Carnes (as Chief Executive Officer) can discuss issues surrounding the terms of the loan agreement based on attorney-client privilege. Both Mr. Foster and Mr. Carnes testified that outside counsel prepared the loan agreement. Under this circumstance, they both invoked the privilege and would not discuss any matters pertinent to the setting of the terms of the loan agreement.

28. Mr. Foster discussed all of the HIP subsidiaries with Mr. Carnes as part of his job duties. While Mr. Foster and Mr. Carnes discussed Integrity Advance more often towards the beginning of the business, the time spent on Integrity Advance matters eventually became "a very small percentage of the time spent on things." *See id.* at II-10:2 – II-11:11.
Ruling: ACCEPTED AND INCORPORATED. However, once the terms of the loan agreement were set, there would be little need to spend additional time on such discussions.

29. Mr. Carnes worked for HIP as Chief Executive Officer. *Id.* at I-94:7-12."
Ruling: ACCEPTED AND INCORPORATED.

30. The evidence shows that Mr. Carnes' job focused on the external business aspects of Integrity Advance, including business relationships with vendors and customer intake (*i.e.*, lead generation and conversion), as well as troubleshooting high priority issues that rose to his attention. *See supra* ¶¶ 12, 18; *infra* ¶¶ 35–38 (discussing instances of Mr. Carnes' specific involvement in Integrity Advance's business).

Ruling: ACCEPTED AND INCORPORATED to the extent that this finding does not exclude the fact that Mr. Carnes permitted the adoption of the terms set forth in the loan agreement. In addition, Mr. Carnes could have changed the terms of the loan agreement at anytime. Also see my Ruling on Proposed Finding 27, above.

31. Mr. Carnes' job did not involve Integrity Advance's loan agreement, other than possibly "flipping through it." *See id.* at I-229:2-6.
Ruling: REJECTED. As the Chief Executive Office, Mr. Carnes permitted the terms of the loan agreement to be employed, and could have changed any of its terms at any time. Also see my Ruling on Proposed Finding 27, above.

32. Mr. Carnes did not draft, edit, or revise Integrity Advance's loan agreement template or any version of the agreement. *Id.* at II-75:11-25, II-76:1-13.
Ruling: ACCEPTED AND INCORPORATED to the extent that, although Mr. Carnes did not engage in these specific activities, it does not preclude his knowledge of the agreement's content and his overarching authority to implement it. See Rulings on Proposed Finding of Facts 27 and 31, above.

33. Mr. Carnes did not discuss the loan agreement template with its drafters (legal counsel from an outside law firm) or Integrity Advance personnel. *Id.* at I-227:10-12. Mr. Carnes testified that he did not recall Integrity Advance's in-house counsel, Mr. Foster, ever explaining Integrity Advance's loan agreement to him. *Id.* at I-231:11-12. Mr. Carnes did not recall specific conversations with Integrity Advance personnel about the loan agreement. *Id.* at I-232:14-17.
Ruling: REJECTED as incredible. See my Ruling on Proposed Finding 27, above.

34. Mr. Carnes did not discuss the Integrity Advance loan agreement with the Delaware regulator. *Id.* at II-96:21-23. Further, Mr. Carnes testified that he was not aware of any discussions the other Integrity Advance personnel may have had with the Delaware regulator. *Id.* at II-96:24 – II-974.
Ruling: ACCEPTED AND INCORPORATED.

35. Mr. Carnes approved Integrity Advance's loan agreement to the extent that he, as CEO of HIP, effectively approved everything. Mr. Carnes testified that, while, "as CEO you are ultimately approving everything." *Id.* at I-228:8-9, I-232:1-3.
Ruling: ACCEPTED AND INCORPORATED as modified. Mr. Carnes assertion that he, in effect, never substantively reviewed nor put his stamp of approval on Integrity Advance's loan agreement template is REJECTED as

not credible.

36. Mr. Carnes did not substantively approve of Integrity Advance's website or website contents. *Id.* at I-216:24 – I-217:15. Mr. Carnes testified that he only approved Integrity Advance's website "at a high level"). *Id.* at I-217:13-15.
Ruling: ACCEPTED AND INCORPORATED as to the nature of his testimony.

37. Mr. Carnes did not review, edit, revise, or discuss call center scripts. *Id.* at II-74:13-25, II-75:1-9. Indeed, Mr. Carnes never saw any call center scripts. *Id.* at II-75:10.
Ruling: ACCEPTED AND INCORPORATED.

38. Mr. Carnes testified that, as CEO of HIP, he was "*de facto*" CEO of Integrity Advance, *id.* at I-94:7-9, I-105:10-12, I-210:3-5, II-49:10-11, II-63:6-8, and was in charge of Integrity Advance merely to the extent that "any CEO is in charge . . . ." *Id.* at I-210:8.
Ruling: ACCEPTED AND INCORPORATED.

39. HIP is the parent company of Integrity Advance, as well as approximately thirty other entities, at various times, EC-EX-067; Hr'g Tr. I-100:20 – I-101:21.
Ruling: ACCEPTED AND INCORPORATED.

40. As CEO of HIP, Mr. Carnes was the "*de facto*" CEO of HIP's subsidiary businesses. *Id.* at II-63:6-8. HIP's subsidiaries included fourteen distinct business interests. *Id.* at II-64:22 – II-65:8.
Ruling: ACCEPTED AND INCORPORATED.

41. In addition, Mr. Carnes' time was also taken up by business interests outside of HIP. *See id.* at II-66:9-19.
Ruling: ACCEPTED AND INCORPORATED.

42. Mr. Carnes' active involvement with HIP, as well as with Integrity Advance, changed over time. Mr. Carnes spent 75% of his time on all HIP businesses in 2008, 70% in 2009, 60% in 2010, 50% in 2011, and 80–90% in 2012 (which involved HIP's asset sale to EZ Corp.). *Id.* at II-67:8-12, II-68:23 – II-69:9.
Ruling: ACCEPTED AND INCORPORATED.

43. Of Mr. Carnes' time spent on HIP businesses, he focused a percentage on Integrity Advance: 66% in 2008, 50% in 2009, 25% in 2010, 15% in 2011, and 15% in 2012. *Id.* at II-67:8-12, II-69:10 – II-71:3.
Ruling: ACCEPTED AND INCORPORATED.

44. The percentage of Mr. Carnes' total time that was focused on Integrity Advance issues can be seen in the chart below:

Year	Time Focused on HIP	Time Focused on Integrity	**Total Time Focused on Integrity Advance**

		Advance	
2008	75%	66%	**49.5%**
2009	70%	50%	**35%**
2010	60%	25%	**15%**
2011	50%	15%	**7.5%**
2012	80–90%	15%	**12–13.5%**

Ruling: ACCEPTED AND INCORPORATED.

45. Mr. Carnes was not an absentee CEO and did not ignore problems when they arose. Mr. Carnes testified that he would discuss a "significant problem" with Mr. Foster, but that, "[i]f it was a problem that Mr. Foster could handle on his own, and I . . . didn't need to be brought into the loop that is what he was there to do." *Id.* at I-215:15-18. During his testimony, Mr. Andonian agreed that "if there was a problem with the website or with the software," he would address the issue with Mr. Carnes. *Id.* at I-90:12-15.
Ruling: ACCEPTED AND INCORPORATED.

46. Mr. Carnes testified that if Integrity Advance's "data base [*sic*] become [*sic*] very slow for some reason and was causing us problems in approving consumers, that is something that I would be brought into the database so I would be aware, because that would [have far] reaching effects throughout the rest of the business." *Id.* at I-216:4-9.
Ruling: ACCEPTED AND INCORPORATED.

47. The evidence shows that Mr. Carnes helped resolve issues that rose to his attention. In a chain of e-mails from February 2011, Mr. Carnes responded to the fraudulent actions of a rogue employee from the third party call center by instructing Integrity Advance personnel to:
1) Take care of customers who had been wrongfully charged and refund any fees and bank charged the customers incurred;
2) Perform further investigation to uncover any other potential harm; and
3) Instruct the call center to alert the authorities.EC-EX-087; Hr'g Tr. I-176:1 – I-178:11.
Ruling: ACCEPTED AND INCORPORATED.

48. Enforcement Counsel's claims cannot, as a matter of law, apply to conduct prior to July 21, 2011, and Respondents generally objected to the introduction of evidence pre-dating this time period. *See, e.g.*, Dkt. 132, Resp'ts' Omnibus Mot. in Limine to Exclude Evid. at 4–5; Hr'g Tr. I-127:17-23, I-128:18-23, I-131:6-17. Respondents specifically objected to EC-EX-087. *Id.* at I- 176:21-23.
Ruling: REJECTED as a conclusion of law rather than finding of fact, but ACCEPTED as to the nature of Respondents' objections.

49. In another instance, Mr. Carnes provided input on a problem with the third-party call center's performance under its contract with Integrity Advance. *See* Hr'g Tr. I-178:12 – I- 180:21. In an e-mail chain from November 2008, Mr. Madsen

escalated an issue with lead conversion at the call center for Mr. Carnes' review and input, which Mr. Carnes provided. *Id.* at I-179:18 – I-180:21; EC-EX-088.
Ruling: ACCEPTED AND INCORPORATED.

50. Respondents objected to EC-EX-088 as pre-dating July 21, 2011. *Id.* at I-178:24 – I-179:2.
Ruling: ACCEPTED AND INCORPORATED.

51. Regarding Mr. Carnes' style of management, Mr. Madsen testified that Mr. Carnes "operated a small internet [*sic*] company, as president or CEO the same way as I would expect from any other president or CEO, he was involved when he needed to be, and he gave you room to work when you needed it from that perspective as well." *Id.* at I-52:17-21.
Ruling: ACCEPTED AND INCORPORATED.

52. Mr. Carnes addressed issues that rose to his attention, but was not personally and substantively involved in every aspect of Integrity Advance's business. For instance, testimony from Mr. Carnes indicates that he could have signed agreements with vendors without actually being involved in the negotiations, knowing that such agreements were reviewed by others, including Mr. Foster. Hr'g Tr. I-122:22 – I-124:7, I-125:25 – I-126:1-6, I-129:7-11.
Ruling: ACCEPTED AND INCORPORATED.

53. Mr. Carnes was not, and is not, a consumer financial regulation expert. *See id.* II-26:20-23. Similarly, Mr. Foster's field was not in consumer financial regulations. *See id.* I- 232:5-6.
Ruling: ACCEPTED AND INCORPORATED.

54. Mr. Foster testified that "[n]o one at the Hayfield group of companies, including myself or Mr. Carnes, were consumer lawyers or experts in consumer law. So the strategy of the company was to always have highly compensated, highly acknowledged and reputable consumer law counsel, outside counsel, to provide the counsel and guidance on those matters." *Id.* at II-26:20-25 – II-27:1.
Ruling: ACCEPTED AND INCORPORATED.

55. Integrity Advance hired outside counsel to create loan documents that conformed to Delaware and federal law. *Id.* at II-95:10-13; *id.* at I-227:17-21. Mr. Carnes testified that "we hired an outside counsel to come up with the loan agreement. We trusted that that was the best thing to do and we used it." *Id.* at I-231:23-25. Mr. Carnes further testified that: "[w]e hired outside counsel to create and give us loan documents that conformed with the Delaware and federal law. Once they gave us those documents, we took them and through our IT department, implemented them into our loan management system to use to lend to consumers." *Id.* at II-95:11-16.
Ruling: ACCEPTED AND INCORPORATED.

56. Mr. Carnes further testified that Integrity Advance used an industry standard fee,

but did not recall who, if anyone, made an affirmative decision to use the industry standard. *Id.* at II-48:23 – I-49:6.
Ruling: ACCEPTED AND INCORPORATED.

57. Integrity Advance's loan agreement was implemented by a third-party call center that had experience in the loan process. *Id.* at I-133:16 – I-135:23.
Ruling: ACCEPTED AND INCORPORATED.

58. There is no evidence that Mr. Carnes was ever alerted to the fact that the TILA disclosure on Integrity Advance's loan agreements might be incorrect, or that the Company's customers may have been confused about their repayment obligations.
Ruling: REJECTED as calling for a conclusion of law, not a finding of fact. Moreover, any such evidence would be in the sole possession of Respondents, and such testimony is self-serving and not credible.

59. Mr. Foster testified that matters dealing with repayment of Integrity Advance loans were "handled specifically by the call centers on a day-to-day basis." *See id.* at II-16:4-6.
Ruling: ACCEPTED AND INCORPORATED.

60. Consumer complaints were handled primarily by customer service representatives ("CSRs") at the third-party call center, or escalated to a call center manager. *Id.* at II-30:2-7.
Ruling: ACCEPTED AND INCORPORATED.

61. Consumer complaints that were escalated beyond the third-party call center were ultimately the responsibility of Integrity Advance's legal group and Mr. Foster. *Id.* at II-30:15-16.
Ruling: ACCEPTED AND INCORPORATED.

62. The evidence shows that Integrity Advance received only a *de minimis* number of complaints from consumers, which did not rise to the level of Mr. Carnes' personal awareness. *See id.* at I-233:18-22.
Ruling: REJECTED as calling for a conclusion of law, not a finding of fact. Moreover, this statement is not credible; there is contradictory evidence in the record.

63. Integrity Advance had a high rate of repeat customers. *Infra* ¶ 96.
Ruling: ACCEPTED AND INCORPORATED.

64. Repeat customers took out a majority of the loans originated by Integrity Advance. *Infra* ¶ 98.
Ruling: ACCEPTED AND INCORPORATED.

65. Many repeat customers took out five or more loans. *Infra* ¶ 197.
Ruling: ACCEPTED AND INCORPORATED.

66. The evidence shows that Integrity Advance personnel, including Mr. Carnes had

access to and reviewed information regarding the number of repeat customers through an Integrity Advance dashboard. *See* Hr'g Tr. I-46:6 – I-47:10. Mr. Madsen testified that "[w]e could see returning customers, the number of returning customers coming back to use and taking out new loans." *Id.* at I-46:11-13.
Ruling: ACCEPTED AND INCORPORATED.

67. Licensure by the Delaware Office of the State Bank Commissioner and annual renewal of Integrity Advance's license indicated to Mr. Carnes and other HIP personnel that there were no issues with Integrity Advance's loan agreement as far as the State of Delaware was concerned.
Ruling: ACCEPTED AND INCORPORATED AS MODIFIED.

68. Mr. Foster testified that "the vast majority of that, what the [Integrity Advance loan] product looked like and how it functioned was defined by Delaware law. *Id.* at II-19:22-24.
Ruling: ACCPTED as to the nature of his testimony, but REJECTED as to its substance.

69. The Delaware regulator's licensing process involves a review of an applicant's financial documents, business references, personal information of executives, and the applicant's loan contract. *See id.* III-125:23 – III-126:22.
Ruling: ACCEPTED AND INCORPORATED.

70. Elizabeth Quinn Miller, Senior Investigator for the Delaware Office of the State Bank Commissioner testified that she reviewed loan contracts and paid particular attention to the "fed boxes," (i.e. the TILA box) stating "[t]here are a couple of things in our statute that I know need to be in there, and they are usually right there in the fed boxes right on front. I can look for those and make sure that that part of our statute is being adhered to." *Id.* at III-126:16–127:18. She further testified that this has been regulator's practice going back ten years to 2006. *Id.* at III-128:1-10.
Ruling: ACCEPTED AND INCORPORATED.

71. Ms. Miller further explained that Delaware lenders must renew their licenses annually. *Id.* at III-129:19-22.
Ruling: ACCEPTED AND INCORPORATED.

72. Ms. Miller also indicated that lenders' loan agreements were reviewed during the examination process. *Id.* at III-131:16-21.
Ruling: ACCEPTED AND INCORPORATED.

73. Testimony from Ms. Miller shows that Delaware law sets parameters on the number of allowed renewals with which loans must comply. *See* Hr'g Tr. III-135:1-11, III- 138:3-11.
Ruling: ACCEPTED AND INCORPORATED AS MODIFIED.

74. Mr. Carnes had a high-level understanding that Delaware granted Integrity

Advance a lending license, and renewed the license annually upon the Company's application. *Id.* at II-80:13-25, II-81:1-13. Mr. Carnes knew that Integrity Advance received approval to lend every year and "posted the license on [the company's] website." *Id.* at II-82:7-9.
Ruling: ACCEPTED AND INCORPORATED.

75. Mr. Carnes' understanding of Integrity Advance's compliance with the Delaware laws, licensing and review process, access to information on Integrity Advance's returning customer rate, as well as the lack of consumer complaints that rose to his attention, and Mr. Carnes' lack of involvement in the creation or substantive review of Integrity Advance's loan agreement shows the Mr. Carnes did not have any knowledge or reason to think that Integrity Advance's loan agreement disclosure might be found to be deceptive."
RULING: REJECTED as a legal conclusion, not a finding of fact. Also see discussion above in this Recommended Decision.

76. Remotely created checks ("RCCs" or "demand drafts") are legal and were legal during all relevant times Integrity Advance operated. *Id.* at II-181:17-18; II-183:6-11; II-188:5– 189:10.
Ruling: ACCEPTED AND INCORPORATED.

77. Remotely created checks are a legitimate payment mechanism governed by the Uniform Commercial Code (U.C.C. § 3-104(f)) and Regulation CC (12 C.F.R. § 229.2(f)).
Ruling: ACCEPTED AND INCORPORATED.

78. Joseph Phillip Baressi, III, an attorney in the CFPB's Office of Regulations, testified that RCCs are currently lawful payment mechanisms, and were lawful at all operative times at issue in this proceeding. Hr'g Tr. II-188:5 – II-189:10.
Ruling: ACCEPTED AND INCORPORATED.

78. RCCs have not been banned regarding short-term loans. *Id.* at II-183:10-12.
Ruling: ACCEPTED AND INCORPORATED.

79. Integrity Advance used remotely created checks in less than one percent of all loans during the post-July 21, 2011 period. EC-EX-97 at 1, 5.
Ruling: ACCEPTED AND INCORPORATED.

81. Mr. Baressi's testimony was subject to Respondents' pending motion to strike. *See* Dkt. 153, Resp'ts' Mot. to Strike Test. of Joseph Baressi (Aug. 5, 2016).
Ruling: ACCEPTED AND INCORPORATED.

82. Integrity Advance rarely used remotely created checks and did so only after numerous attempts to contact a customer to set up alternative payment arrangements. Hr'g Tr. at II-84:7-85:12.
Ruling: ACCEPTED AND INCORPORATED.

83. The decision to use RCCs was made by the third-party call center on a case-by-

case basis. Mr. Foster testified that repayment issues were "handled specifically by the call centers on a day-to-day basis." *See id.* at II-16:4-6.
Ruling: REJECTED as contradictory to the weight of the evidence, as analyzed more fully in the Recommended Decision.

83. Use of RCCs was a last resort. Mr. Carnes testified that RCCs were "very sparsely used," *id.* at II-84:20-21, and that "very very few [loans] . . . went down that path," *id.* at II-85:8-11.
Ruling: ACCEPTED AND INCORPORATED.

84. Mr. Carnes testified that of the total universe of Integrity Advance loans, RCCs were used on "well under one percent" of loans, and RCCs were only used when customers had no payment option in place and "through numerous calls and e-mails refused to contact [Integrity Advance] and set up alternate payment arrangements." *Id.* at II-84:22 – II-85:8.
Ruling: ACCEPTED AND INCORPORATED.

85. Integrity Advance offered many ways to repay loans in alternative to ACH withdrawal. *Id.* at II-85:15-17.
Ruling: ACCEPTED AND INCORPORATED.

86. For example, Integrity Advance customers could pay by personal check, debit card, credit card, Paypal account, Western Union, or MoneyGram. *Id.* at II-97:12-23. Mr. Carnes testified that Integrity Advance "accepted all forms of payments beside cash that [the Company] could think of." *Id.* at II-97:23-25.
Ruling: ACCEPTED AND INCORPORATED.

87. Mr. Carnes testified that Integrity Advance customers could even stop the RCC process if it had been initiated by contacting Integrity Advance and informing the Company of a desired payment method. *See id.* II-85:15-17.
Ruling: ACCEPTED AND INCORPORATED.

88. Enforcement Counsel has not identified any customer complaints relating to RCCs that post-date July 21, 2011. *See* Dkt. 88E, Ex. 24 at 48.
Ruling: ACCEPTED AND INCORPORATED to the extent that the lack of documented consumer complaints does not preclude a finding that such RCCs were used.

89. Enforcement Counsel did not conduct any independent investigation into why a customer may have placed a "stop payment" or withdrawn authorization for a particular ACH debit. In particular, Robert Hughes, Enforcement Counsel's data scientist, testified that any investigation into actual customer interactions was "outside of the scope of the analysis he had been asked to perform." Hr'g Tr. at III-20:2 – III-21:9.
Ruling: ACCEPTED AND INCORPORATED.

90. Integrity Advance customers signed an ACH authorization that expressly acknowledged the possibility that Integrity Advance could use demand drafts to

satisfy unpaid balances. *See, e.g.*, EC-EX-001.
Ruling: ACCEPTED AND INCORPORATED.

91. The ACH authorization was in a separate section of the Loan Agreement, and the demand draft paragraph as located at the bottom of the first page of that authorization. *Id.*
Ruling: ACCEPTED AND INCORPORATED.

92. The demand draft language in the ACH authorization clearly stated that customers could "provide [Integrity Advance] with another form of payment," including, but not limited to, a cashier's check or money order. *Id.*
Ruling: ACCEPTED AND INCORPORATED.

93. The demand draft language included the following authorization: "[Y]ou agree to provide us with another form of payment acceptable to us and you authorize 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." *Id.*
Ruling: ACCEPTED AND INCORPORATED.

94. Regarding RCCs, Mr. Carnes knew only that RCCs were a possible repayment mechanism under Integrity Advance's loan agreement, and that RCCs were used infrequently as a last resort repayment option. *Supra* ¶¶ 73–77.
Ruling: ACCEPTED AND INCORPORATED.

95. Mr. Carnes did not write, edit, or revise the loan agreement, including the ACH authorization or any provisions relating to RCCs. *Supra* ¶¶ 28-33.
Ruling: ACCEPTED AND INCORPORATED.

96. Integrity Advance's third party call center handled customer repayment on a day-to-day basis. *Supra* ¶¶ 52, 75.
Ruling: ACCEPTED AND INCORPORATED.

97. The evidence contains no consumer complaints regarding RCCs within the relevant timeframe for Enforcement Counsel's CFPA claims.
Ruling: ACCEPTED AND INCORPORATED to the extent that the lack of documented consumer complaints does not preclude a finding that such RCCs were used.

98. Moreover, Mr. Carnes testified that consumer complaints did not rise to the level of his personal attention and awareness. *Supra* ¶ 55.
Ruling: REJECTED as not credible and contradicted by other evidence in the record.

99. There is no evidence that Mr. Carnes knew, should have known, or recklessly avoided knowing that the use of RCCs might later be found to result in consumer unavoidable consumer injury.
Ruling: REJECTED as calling for a conclusion of law, not a finding of fact.

100. There is no evidence that the Integrity Advance loan agreement disclosures or Integrity Advance's use of RCCs caused injury to any consumers.
Ruling: REJECTED as calling for a conclusion of law, not a finding of fact.

101. The first (and only) time Enforcement Counsel even discussed consumer injury was a hypothetical presumption of it during their closing argument. *See* Hr'g Tr. III-203:16-20 ("I think if you ask any of the consumers whose funds were taken in amounts higher than the amounts that they expected whether they were harmed, they would uniformly say yes.").
Ruling: REJECTED as irrelevant and for the reasons more fully discussed in the Recommended Decision.

102. Integrity Advance required customers to repay fully their first loan before taking out a second loan. *See* Hr'g Tr. II-15:19-22. Customers taking out a second loan were repeat customers (or "VIP customers"). *See id.*
Ruling: ACCEPTED AND INCORPORATED.

103. Thus, before Integrity Advance customers became repeat customers, they should have been fully informed of how the loan agreement, including rollovers, worked.
Ruling: REJECTED as calling for a conclusion of law and/or a credibility determination, not a finding of fact.

104. Since July 21, 2011, a total of 26,129 customers (48% of Integrity Advance customers since July 21, 2011) chose to take out two or more loans. *See* RX-021. More broadly, a total of 57,798 customers (32% of all Integrity Advance customers) chose to take out two or more loans. *Id.*
Ruling: ACCEPTED AND INCORPORATED.

105. Since July 21, 2011, more than 6,527 customers chose to take out *five or more* loans and 926 customers chose to take out *ten or more loans*. *See* RX-020. More broadly, out of all Integrity Advance customers, 8,447 customers chose to take out five or more loans and 1,039 customers chose to take out ten or more loans. *Id.*
Ruling: ACCEPTED AND INCORPORATED.

106. Of the 82,980 loans originated on or after July 21, 2011, 66% of those loans were loans to repeat customers. *See* RX-021. More broadly, 60% of *all* Integrity Advance loans were to repeat customers. *Id.*
Ruling: ACCEPTED AND INCORPORATED.

107. The lack of evidence of consumer injury shows that Enforcement Counsel is not entitled to equitable monetary relief against Integrity Advance or Mr. Carnes.
Ruling: REJECTED as a calling for a conclusion of law, not a finding of fact.

108. The lack of evidence of any potential future injury shows that Enforcement counsel is not entitled to injunctive relief against Integrity Advance or Mr. Carnes.
Ruling: REJECTED as a calling for a conclusion of law, not a finding of fact.

109. The evidence shows that Enforcement Counsel is not entitled to any civil money penalties against Integrity Advance.
Ruling: REJECTED as a calling for a conclusion of law, not a finding of fact.

110. The evidence shows that Enforcement Counsel is not entitled to any civil money penalties against Mr. Carnes.
Ruling: REJECTED as a calling for a conclusion of law, not a finding of fact.

APPENDIX E:
RULINGS ON RESPONDENTS' PROPOSED CONCLUSIONS OF LAW

1. Enforcement Counsel has the burden of proof for each of the Consumer Financial Protection Bureau's ("CFPB's" or "Bureau's") claims. *See* 12 C.F.R. § 1081.303(a).
Ruling: ACCEPTED AND INCORPORATED.

2. Enforcement Counsel has failed to show by a preponderance of the evidence that it is entitled to relief on any of its claims. *See* 5 U.S.C. § 556(d); *Steadman v. SEC*, 450 U.S. 91, 103 (1981) (applying the preponderance of the evidence standard to adjudicatory proceedings subject to the APA); *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 277 (1994) (same).
Ruling: REJECTED for the reasons stated in the Recommended Decision.

3. To establish that Mr. Carnes is liable for the alleged conduct at issue, Enforcement Counsel has the burden to prove that: (1) Mr. Carnes participated directly in the wrongful acts or had the authority to control them; *and* (2) Mr. Carnes had knowledge of the misrepresentations, was recklessly indifferent to the truth or falsity of the misrepresentation, or was aware of a high probability of fraud along with an intentional avoidance of the truth. *See CFPB v. Gordon*, 819 F.3d 1179, 1193 (9th Cir. 2016).
Ruling: ACCEPTED AND INCORPORATED.

4. To hold an individual liable for consumer redress, "the [CFPB] must show a heightened standard of awareness beyond the authority to control." *See FTC v. Freecom Commc'ns, Inc.*, 401 F.3d 1192, 1207 (10th Cir. 2005).
Ruling: ACCEPTED AND INCORPORATED AS MODIFIED.

5. To meet the "knowledge" requirement for individual liability, the evidence must show that the individual:

   - Drafted or otherwise provided input in the creation of the deceptive, fraudulent, or violative materials, *see FTC v. Amy Travel*, 875 F.2d 564, 574 (7th Cir. 1989) (finding that "as authors of the sales scripts," the liable individuals "were certain of the misrepresentations contained in them"); *see also FTC v. Ross*, 897 F. Supp. 2d 369, 385–86 (D. Md. 2012) (finding the defendant individually liable because she "wrote, edited, reviewed, and participated in the development" of the misleading advertisements at issue);
   Ruling: REJECTED for the reasons stated in the Recommended Decision.

   - Substantively reviewed, edited, or revised the deceptive, fraudulent, or otherwise violative materials, *see FTC v. World Media Brokers*, 415 F.3d 758, 764–65 (7th Cir. 2005) (finding individual defendant liable where there

was evidence he knew a scheme was illegal and approved scripts "directing telemarketers to assure consumers" that it was legal); *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1202 (9th Cir. 2006) (finding that the liable individual was "directly involved in the development of the deceptive marketing scheme," reviewed solicitation forms and "was aware" of resulting consumer injuries); *FTC v. Commerce Planet, Inc.*, 878 F. Supp. 2d 1048, 1082 (C.D. Cal. 2012) (finding that the former president of the company had knowledge of the company's practices because he had "seen, reviewed, commented on, and approved various versions" of the misrepresenting documents); or was alerted to the deception, fraud, or other violation through other means, such as the advice of employees and counselors, (*see Freecom*, 401 F.3d at 1207); (b) communications, investigations, or enforcement actions by State or federal regulators, (*see FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502 at 538-539 (S.D.N.Y. 2000)); or (c) direct review of a substantial number of consumer complaints regarding the representation at issue, (*see Commerce Planet* 878 F. Supp. 2d at 1082).

Ruling: REJECTED for the reasons stated in the Recommended Decision.

6. Under the governing standard, Enforcement Counsel has failed to prove that Mr. Carnes should be held individually liable under the CFPA for alleged deceptive acts or practices committed by Integrity Advance. Enforcement Counsel has presented no evidence that Mr. Carnes was involved in creating, editing or revising Integrity Advance's loan agreement or call center scripts. Enforcement Counsel presented no evidence that Mr. Carnes was ever alerted to consumer complaints regarding confusion about their repayment obligations, nor any other indication that Integrity Advance's loan agreement disclosures could be found to be deceptive.

Ruling: REJECTED for the reasons stated in the Recommended Decision.

7. In order to prove an act or practice is unfair under the CFPA, Enforcement Counsel must establish that the act or practice: (1) caused substantial injury to consumers, which is not reasonably avoidable by consumers; and (2) substantial injury is not outweighed by countervailing benefits to consumers or competition. *See* 12 U.S.C. § 5531(c).

Ruling: ACCEPTED AND INCORPORATED.

8. Enforcement Counsel has not proven that Integrity Advance's use of RCCs caused any injury, let alone substantial injury, to consumers.

Ruling: REJECTED for the reasons stated herein.

9. Remotely created checks ("RCCs") in the short-term loan context were legal during the entire time of Integrity Advance's operations and remain legal today. *See* U.C.C. § 3- 104(f); *see also* 12 C.F.R. §229.2(f).

Ruling: ACCEPTED AND INCORPORATED.

10. Enforcement Counsel did not introduce a single consumer complaint regarding

RCCs, nor any expert testimony or a consumer survey demonstrating such alleged injury. Enforcement Counsel further failed to adduce evidence linking Integrity Advance's use of RCCs to consumer injury, relying instead upon irrelevant testimony from a lay opinion witness and a numerical analysis that served only to establish that Integrity Advance used RCCs to withdraw money from the accounts of a small percentage of its customers.
Ruling: REJECTED as not being a Conclusion of Law.

11. Even assuming, *arguendo*, that any injury existed, it was reasonably avoidable because Integrity Advance customers signed an ACH authorization, which was a separate section of the loan agreement, that allowed Integrity Advance to use RCCs to satisfy unpaid balances. Furthermore, Mr. Carnes gave uncontroverted testimony that Integrity Advance only used RCCs after making multiple attempts to arrange alternative means of remitting payment.
Ruling: REJECTED as not being a Conclusion of Law.

(1) To establish that Mr. Carnes is liable for the alleged conduct at issue, Enforcement Counsel had the burden to prove that: (1) Mr. Carnes participated directly in the wrongful acts or had the authority to control them; *and* (2) Mr. Carnes had knowledge of the misrepresentations, was recklessly indifferent to the truth or falsity of the misrepresentation, or was aware of a high probability of fraud along with an intentional avoidance of the truth. *See Gordon*, 819 F.3d at 1193.
Ruling: ACCEPTED AND INCORPORATED.

12. Enforcement Counsel failed to prove that Mr. Carnes should be held individually liable for any alleged unfair acts and practices regarding Integrity Advance's use of RCCs.
Ruling: REJECTED for the reasons stated in the Recommended Decision.

13. As discussed in Section II, *supra*, Enforcement Counsel has not demonstrated that Integrity Advance is liable for unfair acts and practices regarding RCCs.
Ruling: REJECTED for the reasons stated in the Recommended Decision.

14. Further, Enforcement Counsel failed to adduce evidence that Mr. Carnes specifically engaged in the alleged unfair acts or practices regarding RCCs. The evidence shows that Mr. Carnes was not personally involved in policies regarding RCCs, nor was he involved in drafting, reviewing or revising any RCC-related disclosures to consumers.
Ruling: REJECTED for the reasons stated in the Recommended Decision.

15. Enforcement Counsel bears the burden to prove that Integrity Advance's conduct caused consumer injury and the reasonable approximation of the injury caused. *See* 12 C.F.R. § 1081.303(a).
Ruling: ACCEPTED AND INCORPORATED.

16. Enforcement Counsel did not articulate the amount of damages it was seeking

until its closing arguments at the hearing and has still failed to state the form of relief it is seeking under 12 U.S.C. §5565, thus prejudicing Respondents' ability to mount a defense. *See Apple, Inc. v. Samsung Elecs. Co.*, No. 11-CV-01846, 2013 U.S. Dist. LEXIS 162863 at *21–22 (N.D. Cal., Nov. 12, 2013).
Ruling: REJECTED for the reasons stated in the Recommended Decision.

17. To support any request for relief, Enforcement Counsel must provide, and support with evidence in the record, a reasonable approximation of consumer harm caused by Respondent's alleged conduct. *See, e.g.*, *FTC v. Publishers Bus. Servs., Inc.*, 540 F. App'x 555, 558 (9th Cir. 2013) (holding that "the district court should base its calculations [of monetary damages] on the *injury to consumers*, not on the net revenues received by defendants.") (emphasis added).
Ruling: ACCEPTED AND INCORPORATED.

18. To prove equitable monetary relief arising from alleged deceptive or unfair conduct, Enforcement Counsel, like the FTC, must "first 'show that its calculations reasonably approximated' the amount of the defendant's *unjust gains*, after which 'the burden shifts to the defendants to show that those figures were inaccurate.'" *FTC v. Verity Int'l, Ltd.*, 443 F.3d 48, 67 (2d Cir. 2006) (quoting *FTC v. Febre*, 128 F.3d 530, 535 (7th Cir. 1997)) (emphasis added).
Ruling: ACCEPTED AND INCORPORATED.

19. Thus, all money paid by Integrity Advance customers above the amount disclosed in the TILA box is not a reasonable approximation of consumer injury caused by Integrity Advance's conduct because, at a minimum, it does not account for: (1) consumers who affirmatively chose to roll over their loans, and thus received the benefit of their bargain, or (2) repeat customers, who were informed of and understood how the loan operated.
Ruling: REJECTED for the reasons stated in the Recommended Decision.

20. Accordingly, the damage amounts sought by Enforcement Counsel must exclude the amounts paid above the total of payments by customers who took out more than one loan.
Ruling: REJECTED for the reasons stated in the Recommended Decision.

21. In the alternative, the damage amounts sought by Enforcement Counsel must exclude the amounts paid above the total of payments by repeat customers for their second or greater loans.
Ruling: REJECTED for the reasons stated in the Recommended Decision.

(a) Enforcement Counsel may not seek separate monetary awards for conduct that: (a) arises from the same act or practice; and (b) is sought from the same pool of payments from consumers. To the extent Enforcement Counsel seeks a triple award of monetary relief based on the same conduct underlying Claims I, II, and III, Enforcement Counsel's request would amount to an impermissible triple recovery based on the same conduct. *See Medina v. District of Columbia*, 643 F.3d 323, 326 (D.C. Cir. 2006).

Ruling: ACCEPTED AND INCORPORATED.

22. Enforcement Counsel may not obtain monetary relief for violations of the CFPA when the "violation" pre-dates July 21, 2011, which is the effective date of the statute. *See* 12 U.S.C. § 5582; *Designated Transfer Date*, 75 Fed. Reg. 57252 (Sept. 20, 2010).
Ruling: ACCEPTED AND INCORPORATED.

23. Awarding monetary relief for conduct that pre-dates July 21, 2011 would be an impermissible retroactive application of the CFPA. *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 269 (1994) (internal quotation marks omitted).
Ruling: NEITHER ACCEPTED NOR REJECTED. As described more fully in the Recommended Decision, I did not need to reach this issue because the Bureau is statutorily precluded from seeking the requested damages.

24. Enforcement Counsel incorrectly seeks to rely on the FTC's authority under Section 13(b) of the FTC Act, which does not include the power to order equitable monetary relief in an administrative forum. *See Heater v. FTC*, 503 F.2d 321, 326–27 (9th Cir. 1974). Any equitable monetary relief available under Section 13(b) as an extension of the *district courts'* broad equitable powers. *See, e.g.*, *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1112 (9th Cir. 1982).
Ruling: ACCEPTED IN PART. As described more fully in the Recommended Decision, the Bureau's reliance on the FTCA was incorrect, but for reasons other than those set forth here by Respondents.

25. Enforcement Counsel's requests for relief that predate July 21, 2011, which are made solely against Integrity Advance, are to be denied.
Ruling: ACCEPTED AND INCORPORATED.

26. Any award of civil money penalties ("CMPs") must take into account statutory mitigating factors under the CFPA, including:
(A) the size of financial resources and good faith of the person charged;
(B) the gravity of the violation or failure to pay;
(C) the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided;
(D) the history of previous violations; and
(E)such other matters as justice may require.
See 12 U.S.C. § 5565(c)(3).
Ruling: ACCEPTED AND INCORPORATED.

27. Based upon consideration of the statutory mitigating factors, no award of CMPs is warranted in this matter.
Ruling: REJECTED for the reasons stated in the Recommended Decision.

28. In the alternative, to the extent CMPs are awarded against Integrity Advance, based upon the statutory mitigating factors, that award must be reduced and may not be, as Enforcement Counsel requests, an award of the maximum first tier

CMP allowed under the CFPA.
Ruling: REJECTED for the reasons stated in the Recommended Decision.

29. In the alternative, to the extent CMPs are awarded against Integrity Advance, no award of CMPS as to Mr. Carnes is warranted in this matter.
Ruling: REJECTED for the reasons stated in the Recommended Decision.

30. Enforcement Counsel's intent to brief an argument for injunctive relief for the first time in its post-hearing brief prejudices Respondents by failing to articulate: (a) what relief it would seek; (b) why such relief was justified; and (c) the legal standard under which it expects this Court to evaluate its propriety.
Ruling: REJECTED for the reasons stated in the Recommended Decision.

31. "The purpose of an injunction is to prevent *future* violations." *See United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953) (internal citations omitted, emphasis added). A party moving for an injunction must demonstrate that "there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive." *Id.*
Ruling: ACCEPTED AND INCORPORATED.

32. Under *W.T. Grant Co.* standard, Enforcement Counsel has not proven that injunctive relief is warranted in this matter. Enforcement Counsel has made no reference to the scope and breadth of the injunctive restriction(s) it seeks (whatever they may be) nor to which of the Respondents it seeks to apply such injunctive restrictions. Enforcement Counsel has adduced no evidence that either Respondent poses a risk of future violations of the TILA, EFTA, or the CFPA – or, indeed, or any law whatsoever. Therefore, Enforcement Counsel may not be granted injunctive relief as to either Respondent.
Ruling: REJECTED for the reasons stated in the Recommended Decision.

33. Even assuming, *arguendo,* that claims prior to July 21, 2011 are valid, the equitable monetary relief requested by Enforcement Counsel would fall within the five-year limitations period of 28 U.S.C. § 2462. *See SEC v. Graham*, 823 F.3d 1357 (11th Cir. 2016).
Ruling: NEITHER ACCEPTED NOR REJECTED. As described more fully in the Recommended Decision, I did not need to reach this issue because the Bureau is statutorily precluded from seeking the requested damages.

34. Enforcement Counsel's claims "accrued" as to the conduct alleged against Respondents when the conduct occurred (*i.e.*, when the loans were made). *See 3M Co. (Minn. Mining & Mfg.) v. Browner*, 17 F.3d 1453, 1460-63 (D.C. Cir. 1994); *see also United States v. Lindsay*, 346 U.S. 568, 568 (1954) (stating that general rule that a cause of action "accrues when it comes into existence").
Ruling: ACCEPTED AND INCORPORATED.

35. Thus, Enforcement Counsel cannot obtain monetary damages or penalties related to conduct prior to November 18, 2010.

Ruling: NEITHER ACCEPTED NOR REJECTED. As described more fully in the Recommended Decision, I did not need to reach this issue because the Bureau is statutorily precluded from seeking damages prior to July 21, 2011.

36. Under the CFPA, an act or practice is only deceptive if: (1) there is a representation, omission, or practice that, (2) is likely to mislead consumers acting reasonably under the circumstances, and (3) the representation, omission, or practice is material. *See CFPB v. Frederick J. Hanna & Assocs., 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 *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003)); *see also* Consent Order, *In re ACE Cash Express, Inc.*, No. 2014- CFPB-008, at 10–11 (July 10, 2014) ("The standard for "deceptive" practices in the Dodd-Frank Act is informed by the standards for the same terms under Section 5 of the FTC Act.").
Ruling: ACCEPTED AND INCORPORATED.

37. Even after three days of trial, the record contains no evidence as to even one "reasonable consumer's" interpretation of the Loan Agreement. Instead, the uncontroverted testimony of Elizabeth Quinn Miller, Senior Investigator for the Delaware Office of the State Bank Commissioner, established a contrary conclusion – that consumers were unlikely to be deceived because the State of Delaware repeatedly reviewed the accuracy of Integrity Advance's TILA box disclosures and examined the company annually for compliance with the State's lending laws, which expressly allowed for the type of renewal loans that Integrity Advance offered.
Ruling: REJECTED for the reasons stated in the Recommended Decision.

38. In light of the new evidence presented at trial, Integrity Advance's loan agreement was not facially deceptive and did not violate TILA.
Ruling: REJECTED for the reasons stated in the Recommended Decision.

CERTIFICATE OF SERVICE

I hereby certify that I have served the *RECOMMENDED DECISION (*Redacted/Public Version in 2015-CFPB-0029) upon the following parties and entities in this proceeding as indicated in the manner described below:

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Done and dated this 27th day in September, 2016
Alameda, California

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