EXHIBIT F

UNITED STATES OF AMERICA
Before the
BUREAU OF CONSUMER FINANCIAL PROTECTION

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029

In the Matter of:	)	**RECOMMENDED DECISION GRANTING ENFORCEMENT COUNSEL'S MOTION FOR SUMMARY DISPOSITION AND DENYING RESPONDENTS' MOTION FOR SUMMARY DISPOSITION**
INTEGRITY ADVANCE, LLC and JAMES R. CARNES,	)	
Respondents.	)	
	)	**Hon. Christine L. Kirby, Presiding**

APPEARANCES:

Stephen C. Jacques, Benjamin J. Clark, Thomas Ward, Deborah Morris, and Alusheyi J. Wheeler for the Consumer Financial Protection Bureau

Richard J. Zack, Michael A. Schwartz, Christen M. Tuttle, and Saverio S. Romeo for the Respondents

SUMMARY

This Recommended Decision finds Respondent Integrity Advance liable for: Count I (Truth in Lending Act "TILA"); Count II (Consumer Financial Protection Act "CFPA" due to violation of TILA); Count III (CFPA-Deception with regard to Loan Agreement TILA disclosures); Count IV (CFPA-Unfairness with regard to Loan Agreement TILA disclosures); Count V (Electronic Funds Transfer Act "EFTA"); Count VI (CFPA due to violation of EFTA); and Count VII (CFPA-Unfairness with regard to use of remotely created checks "RCCs"). It finds Respondent James R. Carnes individually liable for Counts III, IV, and VII.

The decision recommends that Respondent Integrity Advance be held liable for restitution in the total amount of $132,580,041.06 and as a subset of that amount, both Respondent Integrity Advance and Respondent James R. Carnes be held jointly and severally liable for restitution in the amount of $38,453,341.62. It recommends that Respondents be ordered to cooperate in assisting the CFPB in determining the identity, location, and amount of restitution due to each consumer entitled to redress. Finally, it orders the imposition of a civil money penalty in the amount of $7,500,000.00 against Respondent Integrity Advance and in the amount of $5,000,000.00 against Respondent James R. Carnes.

Capital, 910 F.3d at 425-26. The court highlighted a lack of "evidence that indicates one way or another whether repeat customers were actually deceived." *Id.* at 428. I find that to also be true in the current matter.

Similarly, the Northern District of Georgia, in response to the defendants' argument that damages should be reduced by the amount of sales to repeat customers, noted that "the fact that the customers' experiences played a role in their purchasing decisions does not mean or even imply that the customers did not also rely upon the representations in the advertisements when making their subsequent purchases." *FTC v. Nat'l Urological Group, Inc.*, 645 F. Supp. 2d 1167, 1213 (N.D. Ga. 2008). Like the Ninth Circuit in the *AMG* case, the court also highlighted a lack of evidence supporting the defendants' position, noting that "defendants do not introduce any evidence of what actually influenced the customers' decisions to reorder the products; instead, they merely speculate that it was the customers' experiences rather than the advertisements." *Id.* The court ultimately concluded that since the FTC met its burden in proving the misrepresentations, it could presume that consumers actually relied upon the advertisements even for subsequent purchases and that defendants would therefore have to introduce evidence demonstrating the absence of reliance. *Id.* (citing *FTC v. Figgie Int'l, Inc.*, 994 F.2d 595, 605-06 (9th Cir. 1993)).

I find that while both sides speculate as to what motivated a repeat customer's behavior, neither party has established what actually motivated a repeat customer to take out a subsequent loan. Therefore, if I conclude that EC have met their burden in proving the deceptive nature of the loans, I will presume that consumers actually relied upon the deceptive disclosures even for subsequent purchases. *See id.*

Based on the case law discussed above, particularly those cases involving TILA, I find that the credit terms including the APR, finance charge, and total of payments disclosed in the TILA boxes were "material" representations to consumers taking out loans. RC do not provide a plausible explanation as to why the cost of credit would not be material to consumers who were already in the financial position of seeking out a payday loan, and they have introduced no convincing authority in support of such a position.

b. Did Carnes have knowledge of the misrepresentations or was he "recklessly indifferent" to the truth or falsity of the misrepresentations?[15]

The relevant facts regarding this issue are not in dispute and are set forth in Section V, above. With regard to the TILA loan disclosures, Carnes testified that IA hired outside counsel to draft a Loan Agreement that conformed with the law and that he did not draft, edit, revise, or substantively review it, although he may have looked through a template and could have "flipped through" it at some point before it was put into action and he gave his attorneys approval to use it. He also testified that he did not discuss the Loan Agreement with outside counsel or the Delaware regulator and could not recall whether he discussed it with in-house counsel or any IA personnel. He testified that IA had a lending license from the state of Delaware and that it was renewed. He testified that he knew the loan documents would be put into the loan management system and while he did not expressly approve it, he knew it was happening and did not prevent it, and thus gave tacit approval.

With regard to the loan process set forth in the Loan Agreement, Carnes' testimony makes clear that he understood the loan disclosures, auto-renewal, and auto-workout process. For example, he testified that he knew that for a fictional consumer with a $100 loan, their TILA disclosure would say they owed $130 for the "Total of Payments." He knew that if a consumer did not call or email IA, and it was their first payment, the loan would be automatically renewed, and if the consumer continued to do nothing, the loan would continue to renew or rollover four times before it went into the auto-workout process. He knew that about 90%[16] of IA's loans would experience at least one rollover and that consumers whose loans rolled over would pay more than had been disclosed in their TILA disclosures. He testified that IA did not have any products or sources of revenue besides the loans. He also testified that IA was the most profitable of HIP's subsidiary companies and it contributed most of the income to HIP.

[15] The CFPB alleges that Carnes had knowledge of the misrepresentation or alternatively that he was recklessly indifferent to the truth or falsity of the misrepresentations. It does not argue that he was aware of a high probability of fraud.

[16] He later testified that the 90% number was not in his head at the time he was the CEO, but he understood at the time that the majority of loans would have at least one rollover.

Similarly, I also find that Carnes did know and understand that RCCs were being used in circumstances when consumers had revoked their ACH authorization and tried to prevent IA from debiting their bank accounts. Even if he believed that IA was utilizing a lawful payment mechanism that was properly disclosed to collect money that IA was legally owed, Carnes knew the circumstances under which they were used. As I have found these circumstances to be unfair, I find that Carnes had the requisite knowledge to hold him individually liable for this practice.

Alternatively, considering that consumer loans were IA's only product and that IA was the most profitable of all of HIP's subsidiaries and contributed most of the income to HIP, if Carnes did not know the contents of the Loan Agreement as RC assert, then I find he was recklessly indifferent to the misrepresentations contained therein.

Accordingly, I conclude that Carnes had the "authority to control" IA and the deceptive and unfair practices at issue, and that he had knowledge of the deceptive and unfair misrepresentations in the Loan Agreement and of the unfair circumstances under which RCCs were used. Therefore, I find that the record contains sufficient undisputed material facts to establish that Respondent Carnes may be held individually liable for the deceptive practices in Count III, the unfair practices in Count IV, and the unfair practices in Count VII.

G. REMEDIES

EC seek the imposition of restitution, injunctive relief, and civil money penalties as remedies for Respondents' violations of law. As I have found the violations alleged in all counts proven, I must decide what relief is appropriate for each count. The CFPA provides me "jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of Federal consumer financial law . . . ." 12 U.S.C. § 5565(a)(1). This relief may include, *inter alia*, restitution, "limits on the activities of functions of the person" (i.e., injunctive relief), and civil money penalties. 12 U.S.C. § 5565(a)(2)(C), (G), (H).

1. Restitution