EXHIBIT I

Before the
BUREAU OF CONSUMER FINANCIAL PROTECTION

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029

In the Matter of:	)
INTEGRITY ADVANCE, LLC and JAMES R. CARNES,	)
Respondents.	)

ORDER DENYING RESPONDENTS' MOTION TO DISMISS AND/OR FOR SUMMARY DISPOSITION ON GROUNDS LIMITED TO OCTOBER 28, 2019 ORDER AND DENYING RESPONDENTS' REQUEST FOR ADDITIONAL DISCOVERY

Merck discuss or reasonably extend to the context of a case involving a government agency plaintiff.

b. *Gabelli*

Three years after *Merck*, the Supreme Court in *Gabelli* went further in clarifying whether the "discovery rule" applies to a government plaintiff. *Gabelli* involved a case where the Securities and Exchange Commission brought enforcement actions against investment advisors, seeking civil penalties for aiding and abetting fraud. The statute of limitations in question ran "five years from the date when the claim first accrued," and thus did not include the "discovery" language which we have in the current matter. The SEC argued that the "discovery rule" should apply because it had not discovered the fraud within five years of its occurrence. The Supreme Court held that it had never applied the discovery rule in this context, where the plaintiff was not a defrauded victim seeking recompense, but was instead the Government bringing an enforcement action for civil penalties. It thus declined to extend the discovery rule to Government enforcement actions.

RC are correct in stating that the facts in *Gabelli* were different from those in the present matter. However, what RC omit is that the *Gabelli* court went on to discuss *reasons* why, aside from the text of the particular statute of limitations in the case, the discovery rule should not apply to government agency plaintiffs. First, the Court expressed concern that it would leave defendants exposed to government enforcement actions for an uncertain period into the future, a concern that is also of relevance in the current matter. It then explained there were far more challenges involved in applying the discovery rule to a government enforcement action than to a suit by defrauded victims. It stated that repose would hinge on speculation about what the government knew, when it knew it, and when it should have known it. It stated that deciding when the government knew or reasonably should have known of a fraud would also present particular challenges for the courts, such as determining who the relevant actor is in assessing government knowledge, whether and how to consider agency priorities and resource constraints in deciding when the government reasonably should have known of a fraud, **and so on** (implying that additional factors would also need to be considered).[81]

Although, not exactly on point with the facts in the current matter, I find that the Court recognized the challenges inherent in attempting to determine when a government plaintiff knew or should have known of a violation and thus declined to apply the discovery rule to a government plaintiff. In the current matter, despite the Supreme Court's concerns about leaving respondents exposed to government enforcement actions for uncertain periods of time, Congress chose to write a discovery rule into the CFPA statute of limitations. However, I note that it did not include the language regarding "should have discovered" in the statute. So, although the CFPA statute of limitations clearly contains a discovery rule, despite the concerns expressed in *Gabelli*, I decline to infer that it also necessarily includes a "constructive" discovery rule.

c. *NDG*, *Nationwide Biweekly*, and *Ocwen*

[81] *Gabelli,* 568 U.S. at 443 (emphasis added).