

EXHIBIT G

UNITED STATES OF AMERICA
Before the
BUREAU OF CONSUMER FINANCIAL PROTECTION

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029

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In the Matter of:) **ENFORCEMENT COUNSEL'S**
) **ANSWERING BRIEF**
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INTEGRITY ADVANCE, LLC, and)
JAMES R. CARNES,)
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Respondents.)
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Respondents also have failed to offer evidence refuting that the harm was not reasonably avoidable. They suggest consumers could have rescinded or pre-paid their loans, *Resps. Br.* at 24, but as the ALJ explained, *RD* at 47, harm is not reasonably avoidable unless the consumer anticipates it. *See Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1365 (11th Cir. 1988). To avoid injury, consumers would have had to take action before Respondents auto-renewed their loans, but because Respondents never disclosed the loans' total costs, consumers could not have anticipated the harm until the first auto-renewal at the earliest. *See RD* at 47. Finally, Respondents' arguments on the countervailing benefits are meritless. Hiding the total cost of loans from consumers cannot plausibly provide a legitimate benefit to consumers or competition, and Respondents do not suggest otherwise or explain why they could not have offered loans with truthful disclosures. *See RD* at 49.

D. Respondents' Use of Remotely Created Checks Was Unfair

On 602 occasions after July 21, 2011, Respondents relied on a buried and inscrutable sentence in their ACH authorization form for authority to debit consumer accounts using remotely created checks ("RCCs") where those consumers had both paid the disclosed cost and withdrawn their ACH authorization. This practice caused substantial injury in the form of consumer losses totaling \$115,024.50. *See RD* at 60-61; *FTC v. Amazon.com, Inc.*, 71 F. Supp. 3d 1158, 1164 (W.D. Wash. 2014). Respondents argue that consumers consented, but their signatures cannot evidence informed consent, *see id.* at 1163, when "[i]t is not apparent from [the sentence in the ACH agreement] that IA could prepare a check without the consumer's knowledge or signature." *RD* at 62.

Because the provision was not clear and conspicuous, consumers could not reasonably avoid the harm. *See FTC v. Neovi, Inc.*, 598 F. Supp. 2d 1104, 1115 (S.D. Cal. 2008).

Respondents' suggestion that consumers could have provided payment through another method