

# Exhibit 1



**SUBJECT TO PROTECTIVE ORDER IN 2015-CFPB-0029**

Transcript of **Manoj Hastak, Ph.D.**

**Date:** March 11, 2016

**Case:** Integrity Advance, LLC and James R. Carnes, In the matter of

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UNITED STATES OF AMERICA

Before the

CONSUMER FINANCIAL PROTECTION BUREAU

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-x

ADMINISTRATIVE PROCEEDING :  
File No. 2015-CFPB-0029 :  
In the matter of:  
INTEGRITY ADVANCE, LLC and :  
JAMES R. CARNES.  
- - - - -  
-x

Deposition of MANOJ HASTAK, PH.D.

Washington, D.C.

Friday, March 11, 2016

9:45 a.m.

SUBJECT TO PROTECTIVE ORDER IN 2015-CFPB-0029

Job No.: 106250

Pages: 1 - 289

Reported by: Karen Young

Deposition of Manoj Hastak, Ph.D.

Conducted on March 11, 2016

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11           Pursuant to Notice, before Karen Young,  
12 Notary Public of the District of Columbia.

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Deposition of Manoj Hastak, Ph.D.

Conducted on March 11, 2016

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C O N T E N T S

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EXAMINATION OF MANOJ HASTAK, PH.D.

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By Ms. Baker..... 6

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E X H I B I T S

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(Attached to Transcript)

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Exhibit 1 Report by Manoj Hastak, Ph.D..... 12

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Exhibit 2 Publication, ".com Disclosures"..... 22

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Exhibit 3 Paper by Garrison et al..... 86

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1 Q I see. So is this document more inclusive,  
2 not less inclusive, than the one on which you relied,  
3 this document being what I've marked as Exhibit 2?

4 A This looks like it's a little more  
5 inclusive, yes.

6 Q Okay, but it includes -- Exhibit 2 includes  
7 those guidelines to which you cite in footnote 2 of  
8 your report.

9 A Yes, it does.

10 Q If we could please enter Exhibit 2 into the  
11 record, thank you. Why did you use the FTC's  
12 guidance that is marked Exhibit 2 in connection with  
13 your evaluation in this report?

14 A So there were several reasons for relying  
15 on the FTC guidelines. For one thing, the FTC has  
16 expertise in the area of evaluating the effects of  
17 disclosures on consumers and whether disclosures are  
18 being presented in a clear and conspicuous manner,  
19 and have spent a number of years developing a  
20 framework for addressing just that issue. So the FTC  
21 I believe started looking at this issue over 20 years  
22 ago and published its first set of guidelines over 15

1 years ago, so these guidelines go quite a way back.

2 They've then since been reevaluated and assessed.

3 They've been applied to on-line and mobile  
4 environments.

5 The FTC has held a series of workshops  
6 involving experts in the field of disclosures to try  
7 again and refine these guidelines as taken and put  
8 from industry and from other sources in evaluating  
9 these guidelines. Academics, including myself, have  
10 written about these guidelines in the published  
11 literature, so there's been discourse about the  
12 guidelines over the years. The guidelines have been  
13 applied by the FTC in sending letters to companies as  
14 an example where they've sensed that the disclosures  
15 being used by the companies are not clear and  
16 conspicuous. These guidelines have been used in  
17 litigation. So the guidelines are in my opinion well  
18 accepted based on good research and vetted over a  
19 long period of time, so I find them to be the best  
20 available framework for evaluating disclosures.

21 Q Thank you for that. I have a question  
22 about something you said just now. You said "this

1 vary.

2           In contrast, if the document is the same in  
3 content as an off-line document and consumers are  
4 essentially scrolling down it looking through it,  
5 then the way in which people might process that  
6 document in an on-line and in an off-line environment  
7 may be very similar. So it really depends again on a  
8 lot of factors.

9           Q     And you in this instance didn't evaluate  
10 those factors as it relates to your review of these  
11 loan agreements.

12          A     My review is based on the understanding  
13 that respondents had this document, very similar to  
14 the document that I saw, identical in content, that  
15 consumers could scroll down and look through, and  
16 that was essentially the mechanism that was used to  
17 expose consumers to that document.

18          Q     But you didn't in your evaluation replicate  
19 the on-line environment that a consumer -- a typical  
20 consumer, to use your language, would have seen in  
21 connection with the loan agreements here.

22          A     I did have a copy of the document on my

1 computer and I was able to scroll down, so to that  
2 extent, I was able to replicate that basic process,  
3 yes.

4 Q But not the on-line environment itself.

5 A I'm not sure what you mean by that.

6 Q Well, you've just described -- I mean,  
7 you've used the phrase "on-line environment," so what  
8 do you mean by that?

9 A So what I'm saying is one sort of  
10 instantiation of an on-line environment would be the  
11 way I'm describing it, that a consumer gets a  
12 document on line and they're able to scroll down and  
13 can read it as they proceed. I was able to replicate  
14 that fairly closely. There could be other ways that  
15 the document could be presented on line that I'm not  
16 aware of. I didn't certainly explore every possible  
17 way in which the document could be presented on line.  
18 I proceeded with the assumption that the main  
19 characteristic of the on-line presentation would be  
20 the same content, the same layout, but that the  
21 document is something that you can scroll down rather  
22 than, say, turning pages.

1 guidelines for evaluating clear and conspicuous  
2 disclosures. That's the area I'm talking about, and  
3 my footnote 2 tries to capture the various sources in  
4 which these guidelines are discussed or elaborated  
5 upon or evaluated. So I'm looking at that entire  
6 literature.

7 Q Okay. If I could ask you to please turn  
8 back now to what has been marked as Exhibit 2, which  
9 is Dot Com Disclosures, you did in fact use this  
10 document and rely on the guidelines in this document  
11 in connection with your report, right? We  
12 established that.

13 A Yes, I did.

14 Q Okay. The title of this document is "How  
15 to Make Effective Disclosures in Digital  
16 Advertising."

17 A That's correct.

18 Q Why -- what is your understanding of the  
19 relationship between digital advertising and the loan  
20 agreements that you are relying -- reviewing in this  
21 matter?

22 A So my understanding is that the FTC uses

1       the term "advertising" or "promotion" in a fairly  
2       broad manner. The term "advertising" is used broadly  
3       to reflect communication between a marketer and a  
4       consumer that might impact consumer decision-making.  
5       So the FTC's interest is in whether or not, for one  
6       thing, disclosures that may be relevant to consumer  
7       decision-making are appropriately presented in  
8       communication, which consumers might rely upon. So  
9       I'm -- I'm using the term "advertising" or  
10      "promotion" in that broad sense.

11           Q       So is it -- is it your testimony that the  
12      loan agreements are akin to advertising?

13           A       Well, the way I would characterize the loan  
14      agreement is that it's a document that communicates  
15      information to consumers that's relevant to their  
16      decision-making. It's information communicated by a  
17      marketer to a consumer, and it includes information  
18      that's relevant to their decision-making. So I see  
19      it as including promotional or marketing information.

20           Q       And when you say it's -- it's -- it's  
21      conveyed or relayed by a marketer, what is your  
22      understanding of what a marketer is?

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1 so I did not do that.

2 Q Okay, we can have that common  
3 understanding. And by empirical data, you mean what?

4 A I'm thinking of in some sense getting  
5 consumer reactions or consumer responses to certain  
6 communications.

7 Q Why didn't you conduct such a survey as  
8 you've described it generally in this matter?

9 A Well, there are two kinds of studies that I  
10 thought about when I first started looking at this  
11 matter. One would be to simply test how consumers  
12 might process other loan agreement. My sense was  
13 that, again, without being able to replicate what I  
14 call the consumer reality, which is that there's a  
15 phone call going on and providing information at the  
16 same time that consumers are processing the loan  
17 agreement, I didn't see how one could replicate that  
18 in a study, that simply doing a study with a loan  
19 agreement wouldn't really add a lot more value than  
20 doing this conceptual analysis based on a, in my  
21 opinion, a well defined, well articulated framework,  
22 the FTC guidelines.

1 Q Why is that?

2 A To me, in reviewing the loan agreement  
3 document, the clarity, the quality of the disclosures  
4 was fairly clear, and so in situations where I can  
5 look at a document and evaluate its clarity based on  
6 these guidelines, which I'm quite familiar with and  
7 have used before, and also in a situation where I'm  
8 unable to replicate the exact way in which consumers  
9 might have encountered the document, my sense is that  
10 there isn't a lot of added value to doing an  
11 experiment. So that was kind of one source of data I  
12 looked at.

13 Q Anything else?

14 A The other possibility is to do sort of  
15 retrospective survey, survey consumers and ask them  
16 about their recall of certain things associated with  
17 the transaction they had with Integrity Advance.  
18 Unfortunately, that approach also doesn't work well  
19 here for a variety of reasons. First, there is the  
20 passage of time. A lot of time has elapsed.

21 Now, I've done retrospective surveys where  
22 time has elapsed in trying to assess consumer

1 take-away from a transaction, but the focus in those  
2 studies has been on very memorable and broad  
3 outcomes. One example would be people purchased a  
4 business opportunity from a marketer and achieved no  
5 success, made no money, for example. The fact that  
6 people made no money is something that they tend to  
7 remember, so it's fairly memorable. And you can  
8 actually do a survey, assuming you have access to the  
9 list of customers, you can draw a random sample, you  
10 can actually assess the degree to which people were  
11 successful.

12 But here, the issues of interest were more  
13 subtle. The issues were how did people process that  
14 loan application, how were the disclosures presented  
15 to them. These are issues that are not easily  
16 amenable to measurement by asking consumers, and time  
17 becomes a particularly serious factor.

18 So I did consider ways in which one could  
19 address issues empirically in this case, but I felt  
20 on balance, that these were not avenues that would  
21 yield truthful information.

22 Q You say that these issues are more subtle.

1       What is it you mean by that?

2           A     So what we are interested in here is  
3       whether people understood that rolling over the loan  
4       will lead to significantly higher costs and whether  
5       the disclosures in the loan agreement or other  
6       documents people may have seen influenced those  
7       take-aways. Not something they learned after the  
8       fact, for example, right? Something that they  
9       learned while they were making their decision about  
10      selecting this loan.

11           To me, that's a subtle process issue. It's  
12       not a simple outcome issue like did you get a loan or  
13       what was the loan amount, right? Those are things  
14       that you might expect people to remember better.  
15       Again, time always creates memory problems, but you  
16       may have a better shot at having people remember them  
17       than these kind of issues that say what was your  
18       understanding about the terms of the loan and the  
19       costs at the time that you signed up for the loan.  
20       That's not a question that's -- so that's what I mean  
21       by a subtle issue that's not easily amenable to sort  
22       of this retrospective survey.

1 Q Is it your understanding that the subtle  
2 issue as you've just described it informs the  
3 analysis that you put forward in this report?

4 A My analysis in the report is focused  
5 directly on the disclosures in the document, and I'm  
6 applying a well defined set of guidelines to evaluate  
7 whether the disclosures in the document are clear and  
8 conspicuous. So that problem doesn't arise when I  
9 analyze the document using this framework. It's a  
10 static document that I'm applying the framework to.

11 Q So I just want to make sure I understand.  
12 It's your testimony that the actual experience that a  
13 consumer would have had in reviewing the loan  
14 agreement is not relevant to the analysis and  
15 opinions you're offering in this case?

16 A No, I'm not saying that. What I'm saying  
17 is that the best available evidence in my opinion  
18 that can have a bearing on this case is evaluating  
19 this loan agreement. There is no way in my opinion  
20 to evaluate systematically empirically the actual  
21 experience that consumers had because it was a  
22 variable experience.

1 Q And do you believe that the actual  
2 experience that consumers would have had is a  
3 relevant factor in determining whether or not a loan  
4 agreement provides a clear and conspicuous  
5 disclosure?

6 A If I could assess the consumer experience,  
7 and I've said that I don't know how one does that,  
8 hypothetically, if there is a way to evaluate the  
9 consumer experience, and that consumer experience is  
10 static so that you can evaluate a transcript, for  
11 example, then yes, that would have been an approach  
12 that I would have used.

13 In the absence of that information and  
14 having a document that we know all consumers looked  
15 at that we know all consumers signed and we know  
16 consumers had available to them if they chose to look  
17 at it again, I felt that this analysis does provide  
18 useful information about whether or not the  
19 disclosures were clear and conspicuous. So just,  
20 again, to make that point, my focus is only on the  
21 loan agreement. That's what I focus on.

22 Q Dr. Hastak, in your work as a professor of

1 marketing at American University, do you or have you  
2 conducted or overseen the conducting of consumer  
3 surveys as we described them earlier?

4 A Yes, I have.

5 Q And for what purpose have you been involved  
6 in some way in the conducting of a consumer survey?

7 A I've done a very large number of consumer  
8 studies or surveys. Many of them are for academic  
9 publication, so many of the papers that I've  
10 published involve an experiment or a survey, some  
11 kind of a consumer study. I've done a lot of  
12 consumer surveys in consulting work that I've done  
13 for the Federal Trade Commission as well as for other  
14 agencies that I list in my C.V. So I have a lot of  
15 experience in doing surveys.

16 Q And when you've done -- let's talk about  
17 the Federal Trade Commission for a moment. When  
18 you've done consumer surveys for the Federal Trade  
19 Commission, what is your understanding of why you  
20 have been asked to conduct those surveys generally  
21 speaking?

22 A In a broad sense, what is of interest

1 typically is what the consumer's take-away is from a  
2 particular piece of communication, whether it be an  
3 advertising, it be a package, I've done studies with  
4 privacy disclosures, a variety of communications. So  
5 consumer take-away, consumer interpretation, those  
6 have been the issues of interest.

7 Q And broadly speaking, do you have an  
8 understanding of why those have been -- those topics  
9 you just described have been areas of interest for  
10 the Federal Trade Commission, for example?

11 A Their focus, not always, but often is on  
12 whether consumers have been deceived, and so the  
13 issue they tend to focus on is have consumers taken a  
14 message from the advertisement that is false, is  
15 there something in the advertisement that may be  
16 factually true but is creating a misleading  
17 impression or a misleading take-away for the  
18 consumers. So the study is designed in a manner as  
19 to kind of tease out the effect of the communication  
20 on consumer take-away.

21 Q And in your opinion broadly speaking, is  
22 that an effective way of ascertaining consumer

1 take-away?

2 A Yes, it is.

3 Q Is it -- is it the most effective way of  
4 ascertaining consumer take-away in your opinion?

5 A So that depends on the situation. There  
6 are situations where at the FTC, the Commission would  
7 conduct a facial analysis, so they would look at  
8 material and rely on their expertise to make an  
9 evaluation that a particular claim is or is not  
10 misleading. This can often happen when the claims  
11 are express, they simply state something that is not  
12 true, or they're implied but they are very strongly  
13 implied. In other situations, the Commission might  
14 move to an empirical test where there might be  
15 uncertainty about whether or not a claim is deceptive  
16 or misleading, and the Commission may want to rely on  
17 empirical evidence. So it depends on the situation.

18 Q In your experience, when the Federal Trade  
19 Commission, the Commission about which you were just  
20 referring as the Federal Trade Commission --

21 A Right.

22 Q -- has used a facial analysis, that is, a

1 non-empirically based analysis, has that analysis  
2 been undertaken by attorneys at the Federal Trade  
3 Commission?

4 A No, typically the FTC would have an expert  
5 do the analysis.

6 Q And when you say the FTC would have an  
7 expert do the facial analysis, what is your  
8 understanding of what that process would involve?

9 A So if I'm doing the analysis at the FTC,  
10 for example, I look at the ad, I rely on my  
11 experience in evaluating ads, and I try to make an  
12 assessment, is this a situation where I feel  
13 confident that the claims and consumer take-aways are  
14 so clear to me based on my experience that an  
15 empirical test is not necessary, or do I feel like  
16 there is some uncertainty and I would prefer to do an  
17 empirical test. The same thing happens when the FTC  
18 hires an outside expert. The outside expert will  
19 look at the material, they will rely on their own  
20 expertise, the fact that they've looked at these  
21 kinds of materials before, they've looked at a lot of  
22 studies, and make a similar assessment. Again, is a

1       facial analysis enough or is it necessary to have an  
2       empirical test.

3           Q       And you -- it sounds like you've been in  
4       the position where you've made that determination how  
5       many times?

6           A       Well, determination may be very strong. I  
7       only recommend --

8           Q       Recommendation.

9           A       -- to the FTC, but I do this routinely.  
10       It's not uncommon for the FTC to show me materials  
11       and say do you see a problem here, is this something  
12       that should be looked at, and I'm clearly just one  
13       voice among many, and then do you think an empirical  
14       study can be done, what might be the nature of the  
15       empirical study, do you think one is necessary. So  
16       these are questions I deal with often.

17           Q       And I want to make sure I understand  
18       something. You -- you've used the concept  
19       advertisement or advertising. Is that concept as  
20       you've just described it defined as you earlier -- as  
21       you defined that concept earlier in this deposition?

22           A       Yes.

1 Q Okay. And when you do a facial analysis  
2 versus an empirical analysis, would so-called subtle  
3 issues of the kind that you described before have  
4 anything to do with that decision-making or  
5 recommendation in -- insofar as you're recommending  
6 either a facial analysis or an empirical analysis to  
7 the FTC?

8 A So let me clarify a moment what I mean by  
9 subtle issues. So in that context, I was talking  
10 about issues that are subtle in terms of doing a  
11 survey several years later. That doesn't mean these  
12 issues are subtle for a facial analysis or in this  
13 case more than a facial analysis. I'm actually  
14 applying a well defined framework, a well accepted  
15 framework systematically to a document.

16 So although it is a nonempirical analysis,  
17 it's a conceptual analysis. It's not simply an  
18 opinion. It's a systematic analysis of that  
19 communication based on in this case six articulated  
20 factors with clear guidelines on how each factor  
21 would apply to assessing whether the disclosures are  
22 clear and conspicuous. So to me, there's nothing

1 subtle about that analysis here.

2 Q You -- you've used the phrase "conceptual  
3 analysis" a couple of times. What specifically do  
4 you understand that phrase to mean or how are you  
5 specifically using it here?

6 A So I'm using it in a couple of ways. First  
7 is that this is not an empirical analysis, so I  
8 haven't done a study or a survey, as you would put  
9 it. And second is I have a conceptual framework, in  
10 this instance I would argue a well defined, well  
11 accepted conceptual framework that provides  
12 guidelines, but very clear guidelines for how to  
13 evaluate the clarity and the conspicuousness of  
14 disclosures in -- in any kind of document. So that's  
15 what I mean by a conceptual analysis.

16 Q And then you just used the phrase  
17 "systematic analysis." Can you explain to us more  
18 specifically what you mean by that?

19 A So the FTC guidelines provide a framework  
20 that essentially tells you how to evaluate the  
21 stimulus. Two different people with knowledge of the  
22 framework applying it to the same stimulus would use

1 the same approach. They would evaluate the  
2 communication on well laid out criteria, and they  
3 would rely on the guidelines to help them decide how  
4 to evaluate the communication on each of these  
5 criteria. So that's what I mean by a systematic  
6 analysis.

7 Q Have you looked at in connection with your  
8 review for this matter any other loan agreements  
9 offered by payday lenders during this time frame?

10 A No, I have not.

11 Q Have you looked at in connection with your  
12 analysis for this matter any other types -- or any  
13 other types -- or loan agreement -- or loan  
14 applications, rather, offered by any other payday  
15 lenders during this time frame?

16 A No, I have not.

17 Q Why not?

18 A What other loan agreements say was not  
19 really relevant to my charge here and my goal, which  
20 was to evaluate this loan agreement, so I  
21 concentrated on this document.

22 Q And same question for loan applications.

1           A     Well, I didn't evaluate the loan  
2 application in this matter, so that wasn't something  
3 I looked at for Integrity Advance or -- or any of the  
4 other payday lenders, as you suggest.

5           Q     In connection with your work as somebody  
6 who has presumably been an expert of some kind in --  
7 in -- for the Federal Trade Commission or perhaps for  
8 the CFPB, have you ever reviewed any -- in another  
9 capacity, loan agreements that were offered at any  
10 point in time to a consumer from a payday lender?

11          A     A payday lender, no, but I have looked at  
12 loan agreements between consumers and banks.

13          Q     And same question about loan applications.  
14 Have you ever looked at other payday lender loan  
15 applications in connection with any other work you've  
16 done?

17          A     I don't believe I have.

18          Q     And let me go back to the loan agreement  
19 question for a moment. You said you've looked at  
20 loan agreements as they concern banks. Have you ever  
21 looked at all of other -- at other loan agreements  
22 for payday lenders in maybe just an academic sphere?

1           A     I've looked at some of the literature on  
2     payday lenders, but I don't recall looking at a loan  
3     agreement.

4           Q     And in connection with your review of loan  
5     agreements for banks, can you describe for me how it  
6     came about that you were looking at those loan  
7     agreements?

8           A     Yes, so this was a consulting assignment in  
9     which I looked at a bank giving consumers a loan  
10    against an income tax refund. I think these are  
11    called refund something loans.

12          Q     Refund anticipation loans?

13          A     Refund anticipation loans. That's the  
14    right word for it, and there were issues with  
15    specific disclosures in the loan agreement, and I did  
16    a very similar analysis of clear and conspicuousness  
17    of the disclosure in the loan agreement using the FTC  
18    guidelines at the time.

19          Q     And do you have an understanding of in that  
20    context who the consumer population was that was  
21    receiving those loan agreements that you just  
22    described concerning tax -- tax -- tax refund

1 anticipation loans?

2 A I don't recall. I must have looked at some  
3 information, but I don't recall, but that information  
4 wasn't relevant to my analysis of the loan agreement.  
5 That's what I focused on like in this matter.

6 Q And -- and for this matter, did you -- or  
7 do you have any understanding of roughly speaking the  
8 general consumer population who would have received a  
9 loan agreement from Integrity Advance when Integrity  
10 Advance was -- was offering loans?

11 A I have a general understanding. I don't  
12 know the specifics.

13 Q What is your general understanding?

14 A I would expect that people who are applying  
15 for a payday loan, and this is based on looking at  
16 that literature as well --

17 Q Uh-huh.

18 A -- would be on the lower end of the  
19 socioeconomic ladder, lower income, for example.

20 Q Anything else?

21 A No, that was -- that was kind of the main  
22 thing. There are correlates to low income obviously,

1 so that correlates with ethnicity, for example, but  
2 income I would consider to be the main factor.

3 Q And what are the correlates that you  
4 understand to correlate to what you've described as a  
5 lower end of the socioeconomic ladder?

6 A For example, minorities, you might expect a  
7 higher proportion of minorities in the group as  
8 opposed to the U.S. population, you might expect a  
9 somewhat younger demographic and opposed to -- and  
10 again, these are -- I don't know this for a fact, but  
11 this is my general recollection of the correlates of  
12 people who get payday loans, rent to own agreements,  
13 payday loans, so yeah, that's -- that's kind of my  
14 general understanding.

15 Q And you said you looked at payday -- at  
16 some literature related to payday lenders. What --  
17 what literature specifically have you looked at?

18 A I don't recall the specifics. The context  
19 was that I did research on rent to own customers, and  
20 rent to own is seen as a subset of a broader topic,  
21 which is called consumers who get money from the  
22 alternate financial sector, who rely on institutions

1 other than banks, for example, or who rely on sources  
2 of money other than credit cards. So in doing the  
3 work on rent to own, that was one of the sectors that  
4 I'd looked at, but that was quite some time ago.

5 Q But you didn't in connection with this  
6 matter undertake an evaluation of the consumer  
7 population or customer base of Integrity Advance.

8 A No, I did not.

9 Q Do you have an understanding of how many  
10 repeat customers at any given point in time were  
11 obtaining loans from Integrity Advance?

12 A I don't have an exact number, but I  
13 understand that there were -- there were many  
14 customers who were repeat customers.

15 Q And when you say many customers, what --  
16 what approximately percentage would you assign to the  
17 phrase "many"?

18 MS. WEINBERG: If you know.

19 A Yeah, it would be pure guesswork.

20 Q Okay, but you have that understanding.  
21 What's that understanding based on?

22 A The folks at the CFPB told me.

1 way the consumer views the document, but let me give  
2 a clarification. So for example, when you look at  
3 this statement here, within the context of the entire  
4 ad, so the ad is a document. It's a static document.  
5 Different consumers view the ad under different  
6 circumstances. I don't believe the document is  
7 saying that you need to understand everything that  
8 every consumer is doing when they're looking at the  
9 ad as a basis of evaluating the ad, although those  
10 things are important, but it's impossible to -- in  
11 that sense, you could broaden the context to a point  
12 where there's no way you can actually get a handle on  
13 it.

14 So to me, what it's saying is the context  
15 that's truly important is the document within which  
16 the disclosure or communication is embedded. Don't  
17 just look at the disclosure. Look at the entire  
18 document. Would the way consumers view the documents  
19 matter? Yes, it would, but I don't see this  
20 guideline as emphasizing that so much as it's saying  
21 look at the entire document, look at the net  
22 impression that is created by that document.

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1 different agencies, consumer groups, industry, have  
2 different views of what might be the best document or  
3 notice in this case, data, and help address those  
4 issues."

5 - - -

6 BY MS. BAKER:

7 Q Thank you.

8 A So I would -- I would add a little bit to  
9 that. To qualify --

10 Q To what?

11 A To the statement I just made.

12 Q Okay.

13 A So what -- what I would -- what I would add  
14 to that is -- is when possible, consumer data  
15 provides the best way to assess consumer, you know,  
16 take-away from materials. It's certainly not the  
17 only way to do this, but yeah, I would -- that's what  
18 I would say.

19 Q And you say when possible. When is it not  
20 possible?

21 A Well, this was a case, for example, where  
22 at least in my assessment of the approach that would

1       be most useful, I reached the conclusion that it  
2       didn't make sense to do an empirical study for the  
3       various reasons that I listed earlier.

4           Q     So was not possible, or was it the case  
5       that it didn't make sense?

6           A     It wasn't possible to do a study  
7       replicating the consumer experience as closely as I  
8       would have liked, and it wasn't possible to do a  
9       retrospective survey because of memory problems being  
10      the chief issue, so the best available course in my  
11      opinion was to analyze the key document in this case  
12      using a framework that's based on empirical research  
13      in the past that's been applied quite often that's  
14      been looked at over many years by academics and  
15      others. So to me, that provided the next best  
16      approach that was available.

17           Q     You said it would not have been possible to  
18      do a study replicating the consumer experience as  
19      closely as I would have liked. What other component  
20      parts would you have wanted to have here to replicate  
21      the consumer experience for purposes of conducting a  
22      survey or study in this matter?

1           A     Well, the chief difficulty, as I mentioned  
2 before, was the consumer is talking to a salesperson,  
3 or many consumers are talking to a salesperson  
4 concurrently while they are looking at the loan  
5 document, and I have not seen an empirical study that  
6 looks at that format, and I couldn't imagine how one  
7 could replicate that in a systematic way.

8           Q     If I can take you to, on Exhibit Number 3,  
9 again, for our record, that's the Designing Evidence-  
10 Based Disclosures case study on which you are the  
11 co-author, Dr. Hastak, if I can take you to page 228  
12 of this document, but before we come here, I want to  
13 ask you a follow-up question. Why did you not  
14 consider in your review here the fact of phone calls  
15 in determining the -- or assessing the disclosures of  
16 the loan agreement?

17           MS. WEINBERG: It's misstating his  
18 testimony. He didn't say that he didn't consider the  
19 fact of the phone calls.

20 BY MS. BAKER:

21           Q     Did you consider the fact of the phone  
22 calls?

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1 an ad, for example, the FTC has satisfied the facial  
2 analysis. We know what the ad says. We know what  
3 people will take. If they are implied claims, then  
4 -- then maybe you need, you know, some more extrinsic  
5 evidence.

6 Q And your testimony here is that this is  
7 potentially a signaling or implied claim, not an  
8 express statement?

9 A Yes.

10 Q Now, the research you were just describing  
11 to me in connection with this sentence that carries  
12 from the end of 15 to the top of 16, is that research  
13 that you undertook yourself?

14 A Well, I've done a lot of the studies at the  
15 FTC where we have tested express and implied claims,  
16 and there's a fair amount of evidence that people  
17 will take express claims with greater certainty, just  
18 as people take more prominent claims, you know, more  
19 easily. So if you have a much more prominent express  
20 claim in an ad, people are likely to notice it and  
21 play it back. If you have an implied claim and  
22 you're looking for people to play back the implied --

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1 sort of the implication of that claim, you're less  
2 likely to have people play it back, so I've seen that  
3 time and again in research.

4 Q And does that research address the  
5 particular context in which a claim is made?

6 A I think the research is quite broad, so  
7 it's not really constrained to a particular context.  
8 It basically to me says other things being equal, if  
9 you want to communicate something in an ad or in a  
10 promotional material, the way to do it is state it  
11 expressly. Consumers are much more likely to get it  
12 if you state it expressly than if you kind of state  
13 something and have them put something together and  
14 arrive at the same conclusion.

15 That process involves an extra step, and so  
16 you're essentially reducing the likelihood that  
17 consumers will, A, notice the raw materials, if you  
18 will, hear the specific costs and then put two and  
19 two together and kind of say oh, this means the costs  
20 will be higher, and you're still with that problem  
21 of, you know, how much higher the costs will be, so  
22 why not just come out and say it, is what I'm -- it

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1           A     No, I didn't talk to any customers of  
2     Integrity Advance, but I should say that I have  
3     looked at some of the complaints that customers had  
4     submitted, and at least in my reading, several  
5     customers seem to have this misperception that their  
6     total payment would be the amount that was in the TIL  
7     box.

8                   So I knew that at least some customers, and  
9     I don't know how many, but at least some customers  
10    were taking away the message that whether they  
11    chose a single payment option or a multiple payment  
12    option, and these customers I'm talking about had a  
13    multiple payment option, that they thought the total  
14    payment would be the same. So this is consistent  
15    with that information.

16           Q     So you -- how many customer complaints as  
17    you understand that term did you review in connection  
18    with preparing this report?

19           A     I sampled through them fairly randomly, and  
20    I must have looked at about 50 or so.

21           Q     Fifty?

22           A     Yeah.

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1 was in the tens of thousands, is my understanding.

2 Q Do you have an understanding as to how many  
3 unique transactions there were total during the time  
4 of Integrity Advance's operations?

5 A I don't have a number in mind, but it's  
6 going to be of that or significantly larger  
7 magnitude.

8 Q Okay.

9 A It's going to be more than the number of  
10 customers.

11 Q Other than looking at customer complaints,  
12 what's the basis for the statement that you make, in  
13 other words, borrowers could incorrectly infer?

14 A So let me clarify, I'm not relying on the  
15 customer complaints to make this inference. I'm just  
16 saying it's consistent with this. The basis for this  
17 inference is very simple. It's simply reading the  
18 sentence and trying to understand it as an English  
19 sentence. So I read it and I say when somebody says  
20 the rest of the terms of the loan agreement will  
21 continue to apply, I'm looking at it and thinking I  
22 could well interpret this -- a consumer could well

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1 interpret this as meaning that the terms and  
2 conditions that have been set forth in the loan  
3 agreement will apply, and one of the terms that's  
4 stated in the loan agreement is the cost in the TIL  
5 box, so that's something that consumers could take as  
6 possibly applying.

7 Q I want to make sure I understand, but it's  
8 -- it's your testimony that you didn't rely on an  
9 understanding that customers had in writing this  
10 sentence.

11 A No, I have -- certainly didn't talk to any  
12 customers, and I didn't rely on the complaints  
13 either. The complaints simply validated the  
14 possibility that people may have made this inference.

15 Q Why did you not rely on the complaints?

16 A Well, the complaints are not  
17 representatives of the customers of Integrity  
18 Advance, and so they're just a small sampling of  
19 individuals who had a problem with Integrity Advance,  
20 so I don't take that as -- I don't take that as  
21 representative in any way of what a -- what a typical  
22 consumer, if you will, might -- might take.

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1 different if you knew that a regulator regularly  
2 reviewed this document in connection with ensuring  
3 compliance with relevant laws?

4 A No, it would not, and the reason is my  
5 analysis is not on whether this document meets  
6 certain legal requirements. I'm analyzing it in  
7 terms of whether it's consumer friendly, it actually  
8 communicates to consumers what they ought to know.  
9 And so you asked me earlier whether I'm an expert in  
10 payday loans, and I'm not, but my assumption is  
11 neither are the consumers of Integrity Advance.  
12 They're average consumers, and so I'm -- I'm trying  
13 to understand whether these disclosures make sense to  
14 the average consumer, whether this is something that  
15 will communicate to people easily -- remember, this  
16 is -- this is the third or fourth page in a long  
17 complex document, so it's not clear that people look  
18 at this. It's not clear that it meets many of the  
19 criteria for clarity and conspicuousness, but  
20 assuming people actually focus on this, does it have  
21 clarity, and my assessment is it does not.

22 Q You said the -- the concept of a regular

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1 you -- how can you be sure that that's the kind of  
2 information you would want a customer to have?

3 A Again, I go back to a basic understanding  
4 of what factors are likely to be important to a  
5 consumer when they borrow money. To me it's not a  
6 mystery that cost would be a big consideration, a big  
7 factor. That's one area where I don't think I need a  
8 consumer survey to figure out that consumers care  
9 about costs. They want loans that cost them less.  
10 If a loan costs them more, they want to understand  
11 why and they want to make those tradeoffs. To me,  
12 that just makes common sense.

13 Q But specifically here as to the customers  
14 who were taking out loans from Integrity Advance, you  
15 have no knowledge of what information they might  
16 consider to be important in that determination. You  
17 have no specific knowledge.

18 A Well, I don't know about Integrity Advance  
19 customers specifically, but I think I know a little  
20 bit about customers in the alternative financial  
21 sector, and rent to own, for example, I've studied  
22 quite a bit, and cost is an important consideration

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1 clearly to borrowers up front?

2 A Yes, I would -- I would be willing to say  
3 would.

4 Q Okay, and that's based on having not done  
5 any actual testing of that hypothetical disclosure;  
6 is that right?

7 A No, it's just based on all the work I've  
8 done with disclosures in the past, my experience with  
9 disclosures and understanding of how they work.

10 Q But no -- no testing of this potential  
11 hypothetical disclosure that you describe in this  
12 sentence; is that right?

13 A That's correct.

14 Q Okay. And if I can direct your attention  
15 to the next sentence that starts with the phrase, "By  
16 presenting," do you see where I am?

17 A Yes.

18 Q "By presenting this information early on  
19 and emphasizing the fact that borrowers have a  
20 choice, the loan agreement would be providing  
21 information in a unified manner rather than in a  
22 fragmented manner in the TIL box and later in