

Exhibit D

In the Matter of:

Integrity Advance

*April 15, 2016
Nathan Novemsky*

Condensed Transcript with Word Index



For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

Integrity Advance

4/15/2016

1 CONSUMER FINANCIAL PROTECTION BUREAU
 2
 3
 4 In the matter of:)
 5 INTEGRITY ADVANCE)
 6 -----)
 7
 8 Friday, April 15, 2016
 9
 10 Consumer Financial
 11 Protection Bureau
 12 1625 I Street, N.W.
 13 Washington, D.C. 20006
 14
 15 The above-entitled matter came on for
 16 investigational hearing, pursuant to notice, at
 17 9:32 a.m., for the testimony of:
 18
 19 NATHAN NOVEMSKY
 20
 21
 22
 23
 24
 25 Reported by: Deborah Wehr, RPR

1 P R O C E E D I N G S
 2 - - - - -
 3 Whereupon--
 4 NATHAN NOVEMSKY
 5 a witness, called for examination, having been
 6 first duly sworn, was examined and testified as
 7 follows:
 8 EXAMINATION
 9 BY MS. WEINBERG:
 10 Q. Good morning, Dr. Novemsky.
 11 A. Good morning.
 12 Q. Am I saying your name correctly?
 13 A. You are.
 14 Q. As you know, you are here today for
 15 your deposition. Before we proceed, I just want
 16 to tell you everybody who is in the room. My
 17 name is Wendy Weinberg. I'm with the Consumer
 18 Final Protection Bureau. With me today are
 19 Alusheyi Wheeler and Vivian Chum. And
 20 representing you today is -- do you want --
 21 MS. BAKER: Allyson Baker from Venable.
 22 MS. PROFITA: And Hillary Profita from
 23 Venable.
 24 BY MS. WEINBERG:
 25 Q. Could you please state and spell your

1 APPEARANCES:
 2
 3 ON BEHALF OF THE CONSUMER FINANCIAL PROTECTION
 4 BUREAU:
 5 WENDY J. WEINBERG, ESQUIRE
 6 ALUSHEYI WHEELER, ESQUIRE
 7 VIVIAN CHUM, ESQUIRE
 8 Consumer Financial Protection Bureau
 9 1625 I Street, N.W.
 10 Washington, D.C. 20006
 11 (202) 435-7688
 12 wendy.weinberg@cfpb.gov
 13
 14 ON BEHALF OF INTEGRITY ADVANCE AND THE WITNESS:
 15 ALLYSON B. BAKER, ESQUIRE
 16 HILLARY S. PROFITA, ESQUIRE
 17 Venable, LLP
 18 575 Seventh Street, N.W.
 19 Washington, D.C. 20004
 20 (202) 344-4708
 21 abaker@venable.com
 22
 23
 24
 25

2
 3 name for the record.
 4 A. Sure. Nathan Novemsky, N-A-T-H-A-N,
 5 N-O-V-E-M-S-K-Y.
 6 Q. And your business address?
 7 A. 165 Whitney Avenue, New Haven,
 8 Connecticut, Yale School of Management, 06520.
 9 Q. Have you ever been deposed before?
 10 A. I have not.
 11 Q. Okay. So some basic ground rules.
 12 I'll be asking you a lot of questions. You'll
 13 be answering a lot of questions today. Our goal
 14 here is to have as clear a record as possible,
 15 which makes it a little different from
 16 conversations where people tend to sort of
 17 interrupt each other and there's a natural flow.
 18 That tends to create a bad record for
 19 depositions. So it's a little less like a
 20 normal conversation. So I'm going to ask that
 21 you let me complete my questions and I will do
 22 my best, although I will fail at some point
 23 during this day, to let you complete your
 24 answers before I move on.
 25 If you don't understand any of my
 26 questions, please ask me to clarify the
 27 question. I will do my best to be clear and

1 (Pages 1 to 4)

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1 succinct, but I'm sure that there will be times
 2 today when our communication isn't perfect. So
 3 please let me know if anything I say is unclear
 4 to you. If you don't ask for clarification,
 5 I'll assume that you do understand the question.

6 Another thing which is unlike
 7 conversation is that gestures aren't recorded.
 8 So if I ask you a question and you nod your
 9 head, the court reporter isn't going to record
 10 that. So I'm going to ask that rather than
 11 answering with anything that would include
 12 gestures, that you actually verbalize your
 13 response.

14 As I mentioned off the record, if you
 15 need a break at any point during the day to
 16 stretch or for any reason, please let me know
 17 and we'll go off the record. I want you to be
 18 comfortable. This could be a long day.

19 The exception to that is I'm going to
 20 ask you not to ask for a break when there's a
 21 question pending. There shouldn't be a long
 22 delay. And my goal here, as I said is not to
 23 make you uncomfortable, but that is the one
 24 caveat.

25 So have you been engaged by the law

5

1 amount of time that you spent preparing before
 2 you started writing?

3 A. So the total time I spent preparing and
 4 writing the report?

5 Q. How long did you prepare before you
 6 started writing? How long did you take to
 7 prepare?

8 A. How many hours you mean?

9 Q. Yes.

10 A. I would say around 20, 25 hours. I
 11 don't remember the exact number.

12 Q. Okay. And then assuming that your
 13 writing took place after your preparation, how
 14 long did it take you to write your report?

15 A. So there was some interweaving, but a
 16 total of about 40 hours, including the
 17 preparation.

18 Q. And did you read everything that you
 19 included in Appendix D of your report, which was
 20 a list of documents?

21 A. I would not say read. I would say
 22 skimmed or read depending on the nature of the
 23 document. Some documents I looked at more
 24 quickly, some documents more slowly.

25 Q. Is there anything that you read for

7

1 firm of Venable in this matter?

2 A. I have.

3 Q. Have you ever been hired by that law
 4 firm before?

5 A. No.

6 Q. And is it your intention to provide
 7 testimony in this matter at trial?

8 A. Yes.

9 Q. Okay. Let's look at your expert
 10 report. Is the CV that you provided in
 11 Appendix A to your report, is that a complete
 12 and up-to-date CV?

13 A. It is.

14 Q. When were you hired by Venable in this
 15 matter?

16 A. Around the third week of February. I
 17 don't remember the exact date.

18 Q. And when did you finish writing the
 19 report?

20 A. I believe it was the 25th of March.

21 The date is on the report.

22 Q. And how long did it take you to write
 23 your report?

24 A. In what sense are you asking how long?

25 Q. Well, I assume that there was a certain

6

1 your report that isn't in Appendix D?

2 A. Not that I'm aware of.

3 Q. Is there anything that you wanted to
 4 read but you were not able to?

5 A. No. One could read forever in the
 6 academic literature, but I stopped at some point
 7 and started writing the report.

8 Q. Was there anything in these documents
 9 that was summarized for you?

10 A. I don't think so.

11 Q. Did you write all the portions of your
 12 report?

13 A. I did.

14 Q. How much have you been compensated for
 15 your work on this report?

16 A. Compensated at the rate of \$450 an
 17 hour.

18 Q. So about 40 hours at 450; is that
 19 correct?

20 A. Correct.

21 Q. Have you ever been engaged as an expert
 22 before?

23 A. I have.

24 Q. By whom?

25 MS. BAKER: Let me just give you a word

8

2 (Pages 5 to 8)

9

1 of caution. If you can disclose that
 2 information because it wouldn't be disclosing
 3 confidential information, to the extent you have
 4 been retained in the context of a consultant and
 5 that was never made public or that was
 6 confidential work product, you can't talk about
 7 that. But in other instances when you have been
 8 engaged, you certainly can disclose that
 9 information to Ms. Weinberg.

10 THE WITNESS: I don't remember the name
 11 of the firm, if that's the question.

12 BY MS. WEINBERG:

13 **Q. What was the matter for which you were
 14 engaged?**

15 A. The most recent matter for which I was
 16 an expert was a defamation case where there was
 17 something put into the media and there was a --
 18 my expertise was around how people reacted to
 19 the statements made in the media.

20 **Q. Did you write an expert report in that
 21 matter?**

22 A. I did.

23 **Q. And did that go to litigation?**

24 A. It did not. It did not get to
 25 litigation.

11

1 them go to litigation?

2 A. Yeah, many of them went to litigation.

3 **Q. Can you tell me the names of any of
 4 those cases?**

5 MS. BAKER: To the extent your
 6 involvement in those cases was disclosed, you
 7 can. And if it was not, then I would caution
 8 you because often the consultants are retained
 9 as part of a work product doctrine. That's not
 10 something that you can breach.

11 THE WITNESS: So I don't know that I
 12 was revealed in any of those cases.

13 BY MS. WEINBERG:

14 **Q. Have you ever been qualified as an
 15 expert in a court or administrative proceeding?**

16 A. No.

17 **Q. Have you ever been offered as an expert
 18 but not qualified as an expert by a court or an
 19 administrative proceeding?**

20 A. No.

21 **Q. What year did you get your doctorate?**

22 A. 2000.

23 **Q. And what was it in?**

24 A. Social psychology.

25 **Q. And what was the topic of your thesis?**

10

12

1 **Q. Are there any other instances in which
 2 you have been engaged as an expert other than
 3 this defamation matter?**

4 A. So I have been engaged many times as
 5 part of a team of experts where I'm not the one
 6 authoring the report but I'm working with
 7 colleagues. One of the colleagues is typically
 8 the author on the report. I have done that in
 9 many matters.

10 **Q. How many matters would you say?**

11 A. Dozens. I don't have a number off the
 12 top of my head.

13 **Q. And so you have never been the author
 14 of a report in any of those matters?**

15 A. Correct. In those matters, no.

16 **Q. And what was the subject of those?**

17 A. There are many subjects. False
 18 advertising was a big one. Consumer
 19 understanding of labels, of products, of claims.
 20 That sort of thing was many of them. Often
 21 there was a survey involved. So sometimes we
 22 were on the side constructing and running a
 23 survey or on the side rebutting a survey that
 24 had been run. That's a lot of what we did.

25 **Q. And in any of those matters, did any of**

1 A. Decision-making.

2 **Q. In a particular context?**

3 A. It was consumer decision-making. It
 4 was in the context of consumer experiences.

5 **Q. Was there a particular type of
 6 experience that you were studying?**

7 A. My conclusions were not germane to the
 8 experience. We ran experiments which used
 9 particular stimuli, but our conclusions were
 10 generally about consumer experiences.

11 **Q. Have you ever had an article rejected
 12 by a peer-reviewed journal?**

13 A. Yes.

14 **Q. And when was that?**

15 A. These articles were ultimately accepted
 16 by journals. So I don't -- remembering the
 17 rejection would be a difficult thing. I don't
 18 have a date. That's a good question.

19 **Q. What was the article or articles?**

20 A. Material has been rejected by a
 21 peer-reviewed journal and then -- I'm trying to
 22 think. All of my articles that ultimately were
 23 submitted were accepted, but sometimes --

24 **Q. In different journals than the ones you
 25 submitted to?**

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	13		15
1	A. Sometimes the same journal; sometimes 2 different journals. It's now part of the game 3 of academia that sometimes you get rejected and 4 then you fix the things they wanted you to fix 5 and then you submit again. You can do to the 6 same journal or you can do to different 7 journals. The history of my submissions of my 8 articles is very hard to recall. So I would be 9 making it up. I don't want to do that.	1	more specific. When you were looking at an ad, 2 for instance, I guess one of your cases involved 3 an ad, what was the survey trying to determine 4 about the ad?
10	Q. Have you ever analyzed consumer contracts?	5	A. It was trying to determine the exact 6 consumer understanding of that ad.
11	A. Yes.	7	Q. And was the understanding based only on the text or was it based on other things like visual stimuli or --
12	Q. When?	8	A. I think I understand the question. So 9 yeah, it was based on anything that was 10 available, if there were visual stimuli, 11 sometimes even maps as part of some of these 12 litigations that involved telecommunications 13 coverage. Then it was based on whatever 14 information was present in the consumer context 15 was attempted to replicate it in the survey. So 16 it could include visual stimuli, yes.
17	A. As part of these matters that I was a 18 consultant to experts often had a consumer 19 contract and there was some question of the 20 consumer's understanding of that contract.	17	Q. Could it include things like for the ad, was there a particular content in there that you were testing to see what consumers' understanding of that content was? I'm just trying to understand what the work is that you were doing with these ads.
21	Q. Can you be more specific about which matters those were?	18	A. Usually there was a particular issue
22	MS. BAKER: Same --	19	
23	THE WITNESS: I guess I would rather not.	20	
24	BY MS. WEINBERG:	21	
25	Q. Then without naming the matters, can you tell me what your task was in analyzing the	22	
		23	
		24	
		25	
		14	16
1	contracts?	1	around consumer understanding. So as an 2 example --
2	MS. BAKER: You can disclose that.	2	Q. Could you be more specific?
3	THE WITNESS: Sure. So it's an issue 4 of when there's a certain -- you know, certain 5 either disclosure or entire contract, what is 6 the consumer taking away from that contract? 7 What do they understand the terms of the 8 contract to be?	3	A. So one was about cell phone coverage, 4 and so the ad was about cell phone networks. 5 And the question was, what is a consumer's 6 understanding of the extent of coverage after 7 seeing the information, including visuals that 8 was in the ad?
9	BY MS. WEINBERG:	4	Q. Okay. That's helpful. Can you give me another example of the type of survey work that you were doing in these consulting positions?
10	Q. And for that analysis were you looking at the text of the contract or were you looking at other types of variables?	5	A. So some of the survey work was about 11 class certification in some of these consumer 12 matters. So then the question was whether 13 consumers have similar understanding to each 14 other or have the same position vis-a-vis each 15 other and constitute a class or do not 16 constitute a class.
17	A. Almost invariably we had a consumer 18 survey. Either we would run the survey or the 19 other side would run the survey. Then we would 20 look at the data from the survey.	17	Q. In relation to their understanding of an ad?
21	Q. Was the survey directed at understanding of text or was it looking at other sort of extrinsic variables such as -- well, other extrinsic variables?	18	A. It could be in relation to their 22 understanding of an ad or a contract. I can't 23 remember the exact materials now. Sometimes 24 that was in relation to a contract.
25	A. It would look at whatever -- the target could be a lot of things. The target could be an ad. The target could be a contract. The target could be, you know, whatever is at issue.	25	
	Q. Okay. But I'm going to ask you to be		

4 (Pages 13 to 16)

17

1 **Q. Can you give me any other examples of
2 the type of work you did as a consultant?**

3 A. So consumer -- just to re-list them in
4 my own head, consumer understanding of ads or
5 contracts, certification of classes related to a
6 consumer matter where the consumers were either
7 similar or different from each other. Those are
8 the broad categories. I can remember the
9 defamation was another one that I mentioned most
10 recently. Those are the classes that come to
11 mind right now, classes of things that I have
12 done.

13 **Q. And in any of those consulting jobs did
14 you not do consumer surveys?**

15 A. I don't recall a matter that did not
16 involve a survey.

17 **Q. Outside of the context of these
18 consulting jobs that you have just referenced,
19 have you done any other research on consumer
20 contracts?**

21 A. I'll take a minute to think about that.

22 **Q. Sure.**

23 MS. BAKER: Can I just ask a question,
24 Wendy, while Dr. Novemsky is thinking about
25 this. Consumer contracts, I think you guys are

19

1 number of corporate partnerships. And in those
2 partnerships, I do work on areas where consumers
3 might, as part of their experience, have a
4 contract. So work on consumers' use of credit
5 cards, for example. I don't know if we consider
6 that relevant to a contract. There's certainly
7 a contract in a credit card agreement between a
8 bank and a consumer.

9 **Q. Was your research related to the
10 content of that contract, that credit card
11 contract itself or some other aspect of the
12 relationship?**

13 A. It included every aspect of the
14 relationship, perhaps including the terms of the
15 contract. So it probably wasn't limited only to
16 the contract, but included the terms.

17 **Q. What was the question that you were
18 given to answer?**

19 MS. BAKER: To the extent you can
20 discuss that. And I don't know if you have some
21 kind of NDA, nondisclosure agreement with those
22 companies. And if you do, then what I would --
23 even if you don't, with the absence of knowing
24 that for sure, what I would say is answer
25 Ms. Weinberg's question to the extent you can,

18

1 talking about the same thing, but do you want to
2 just clarify with precision exactly what you
3 mean by that?

4 BY MS. WEINBERG:

5 **Q. Well, let me ask you, since you have
6 been answering the questions based on my use of
7 those words, what has been your understanding of
8 what a consumer contract is?**

9 A. I'm assuming you mean a written
10 agreement between a consumer and some kind of
11 service or product provider where the consumer
12 often signs and agrees to the terms of a
13 particular contract.

14 **Q. Great. That was my intention.**

15 MS. BAKER: Good. Okay.

16 BY MS. WEINBERG:

17 **Q. That interrupted your flow of thought.
18 Do you need more time to think about your answer
19 to the question, which was have you ever done
20 research outside of the context of the
21 consulting positions that you just mentioned on
22 consumer contracts?**

23 A. I have done research related to
24 consumer situations where contracts are
25 involved. So many of -- in my CV I list a

20

1 but bear in mind that it probably will be pretty
2 obvious from your CV what companies you are
3 discussing. So if you can answer it without
4 violating what could be an NDA, and I don't know
5 if you have them or not --

6 MS. WEINBERG: I don't think it's
7 obvious from his CV. There's lots of companies.

8 BY MS. WEINBERG:

9 **Q. If you can just say generically like I
10 did this, you don't have to say it was for
11 company X. Or you can call it company X.**

12 MS. BAKER: I'm okay with that.

13 THE WITNESS: Generically, we tried to
14 understand what features of the product or
15 service, for example, a financial product, what
16 features of the product consumers understood and
17 liked and used and made decisions based on
18 versus what aspects they did not like or
19 understand or make decisions based on would be
20 the kinds of questions we would pursue.

21 BY MS. WEINBERG:

22 **Q. Okay. And is it fair to say that that
23 research focused primarily on the qualities of
24 the product rather than the qualities of the
25 contract?**

<p>1 A. It's hard for me to disentangle the 2 product and the contract just based on a 3 financial product...</p> <p>4 Q. What percentage of your work would you 5 say was a financial product versus a physical 6 product?</p> <p>7 A. Percentage of that particular type of 8 work?</p> <p>9 Q. Yeah.</p> <p>10 A. I don't know. Maybe a quarter was 11 financial. Twenty-five percent.</p> <p>12 Q. And what was the type of financial 13 product that was the subject?</p> <p>14 MS. BAKER: That's the caution right 15 there. Just if you can describe it without 16 disclosing something that would give away the 17 nature of the work you have done that I suspect 18 is subject to a nondisclosure agreement, you may 19 do so. But please keep in mind that you do have 20 an NDA and I don't want you to run afoul of that 21 with any of your entities.</p> <p>22 THE WITNESS: What I can say is broadly 23 we worked on consumer credit, so credit cards, 24 retirement, and commercial banking products were 25 areas where we did research.</p>	<p>21</p> <p>1 Q. As far as you know, is that form of the 2 contracts that you looked at in Dr. Hastak's 3 report how the contracts appeared to Integrity 4 Advance customers?</p> <p>5 A. My understanding is they appeared 6 online. Not in the paper form.</p> <p>7 Q. Other than them appearing online, are 8 you aware of any other differences in the 9 appearance of the contracts?</p> <p>10 A. No.</p> <p>11 Q. And just to make sure that we are 12 completely on the same page on this, so it's 13 your understanding that if you took a printed 14 copy of the contracts that appeared in 15 Dr. Hastak's report and they just appeared on 16 your computer screen, they would look exactly 17 the same as they do other than the fact that you 18 are looking at them on a computer screen?</p> <p>19 A. I mean, everything when you translate 20 it to from offline to online changes a bit in 21 out how it appears. But there are no specific 22 differences that I would expect other than that.</p> <p>23 Q. Nothing material; is that correct?</p> <p>24 MS. BAKER: Objection. Vague. 25 BY MS. WEINBERG:</p>
<p>1 BY MS. WEINBERG:</p> <p>2 Q. Okay. Did Venable or Integrity Advance 3 give you copies of the contracts that were used 4 with customers of Integrity Advance used by 5 customers of Integrity Advance?</p> <p>6 A. Yes. So the loan agreements I did see 7 largely as part of the appendix to Dr. Hastak's 8 report.</p> <p>9 Q. Great. And did you look at any other 10 contracts other than those that you have 11 specifically -- contracts between Integrity 12 Advance and these customers other than those 13 that were specifically referenced in your 14 report?</p> <p>15 A. Not that I know of.</p> <p>16 Q. Are you aware of any other contracts 17 used between Integrity Advance and its 18 customers?</p> <p>19 A. I am not, no.</p> <p>20 Q. As far as you know, is the form of 21 contracts that were given to you -- and they 22 were given to you by Venable; is that correct?</p> <p>23 Or you just got them through Dr. Hastak's 24 report?</p> <p>25 A. They gave me his report.</p>	<p>22</p> <p>1 Q. Are you aware of any differences at all 2 other than the difference that occurs naturally 3 when any document is viewed on paper as opposed 4 to on a computer screen or a smart phone, I 5 suppose?</p> <p>6 A. I'm not aware of any specific 7 differences other than the translation between 8 offline and online.</p> <p>9 Q. Okay. And when you say online, you 10 just mean viewing it on a computer?</p> <p>11 A. On a computer or a smart phone or a 12 tablet or digitally, I guess.</p> <p>13 Q. Have you ever done research on payday 14 loans?</p> <p>15 A. No.</p> <p>16 Q. Have you ever done research on payday 17 loan contracts?</p> <p>18 A. No.</p> <p>19 Q. Do you have any knowledge about the 20 types of people who take out payday loans?</p> <p>21 A. I have some from reading relevant to 22 this case, yes.</p> <p>23 Q. And what did you read relevant to this 24 case that provided the basis of that knowledge?</p> <p>25 A. There are a few academic articles</p>

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<p>1 referenced in my report that talked a bit about 2 who the people were who take out payday loans. 3 Q. So other than what is cited in your 4 report, do you have any other basis of knowledge 5 about who payday customers are?</p> <p>6 A. Just my experiences in the world prior 7 to this matter.</p> <p>8 Q. And do you have specific experience 9 with payday loans?</p> <p>10 A. No.</p> <p>11 MS. BAKER: Something that I want to 12 bring your attention to, Ms. Weinberg, is, I 13 believe, in footnote 2 of Dr. Novemsky's report. 14 And if you want to describe that, there's an 15 additional cite that should be included that was 16 not. We actually have copies of that article if 17 you would like them. It was inadvertently 18 omitted.</p> <p>19 MS. WEINBERG: Right now I don't want 20 to take testimony from you, Ms. Baker, but thank 21 you.</p> <p>22 MS. BAKER: I'm just telling you that.</p> <p>23 BY MS. WEINBERG:</p> <p>24 Q. I asked you before if there was 25 anything that you relied on that wasn't in your</p>	<p>25</p> <p>1 study, as this one is, they write several 2 articles on it. I read that article that's 3 cited and I read this article and inadvertently 4 cited that one as having the important -- the 5 thing that's footnoted. Not the correct one, 6 which is sitting on the table now.</p> <p>7 Q. Okay.</p> <p>8 MS. BAKER: Would you like a copy of 9 it? We brought them along. I don't think it 10 materially changes anything. You are welcome to 11 have copies if you think that that's of use to 12 you.</p> <p>13 MR. WHEELER: Thank you.</p> <p>14 BY MS. WEINBERG:</p> <p>15 Q. Other than the surveys that you 16 described in the context of your consulting 17 work, have you done any other consumer surveys?</p> <p>18 A. Sure. My research is based largely on 19 consumer surveys. So, yes.</p> <p>20 Q. And what is the main area of your 21 research?</p> <p>22 A. There are several areas of research 23 that I focus on. Consumer decision-making is 24 one broad area. Consumer experiences is another 25 broad area that I focus on.</p>
<p>26</p> <p>1 report and you said no. Are you changing that 2 testimony at this point to say --</p> <p>3 A. So I had a conversation with counsel 4 where they said we are going to add this --</p> <p>5 MS. BAKER: We discussed yesterday that 6 this inadvertently had been left out. So we 7 just wanted you to have a copy of the report.</p> <p>8 THE WITNESS: So when you asked me 9 what's in my report, I included that. Although 10 it was inadvertently left out, it's been added 11 or being added. So I was under the impression 12 that they had made copies and it was going to be 13 added.</p> <p>14 BY MS. WEINBERG:</p> <p>15 Q. Was that something you relied on in 16 writing your report?</p> <p>17 A. It was, yes.</p> <p>18 Q. Why wasn't it included in your report?</p> <p>19 A. It was an accident because these two 20 authors who wrote this also wrote the article 21 that is in my report. And I ended up citing an 22 article derived from this article, but this is a 23 better citation for that same point from the 24 same people and based on the same data. So 25 they -- often when an academic undertakes a big</p>	<p>26</p> <p>1 Q. And when you say consumer 2 decision-making, can you be more specific about 3 what you mean by that?</p> <p>4 A. Sure. I study how consumers react to 5 information that's in front of them, what 6 information they use, what information they 7 ignore and then how they go from the information 8 to an ultimate decision.</p> <p>9 Q. And the other broad topic that you --</p> <p>10 A. Consumer experiences.</p> <p>11 Q. And can you be more specific about 12 that?</p> <p>13 A. Sure. Consumers experience a product 14 or service or really anything, and then a number 15 of questions arise as to what their memory is of 16 that and how that inputs into future decisions.</p> <p>17 Q. And you have published papers, 18 obviously, as noted in your CV. Is it fair to 19 say that the main focus of the papers is the two 20 broad topics that you have just described as the 21 subjects of your research?</p> <p>22 A. Yes.</p> <p>23 Q. Are there any other types of papers 24 that you have written on different types of 25 subjects?</p>
<p>1 referenced in my report that talked a bit about 2 who the people were who take out payday loans. 3 Q. So other than what is cited in your 4 report, do you have any other basis of knowledge 5 about who payday customers are?</p> <p>6 A. Just my experiences in the world prior 7 to this matter.</p> <p>8 Q. And do you have specific experience 9 with payday loans?</p> <p>10 A. No.</p> <p>11 MS. BAKER: Something that I want to 12 bring your attention to, Ms. Weinberg, is, I 13 believe, in footnote 2 of Dr. Novemsky's report. 14 And if you want to describe that, there's an 15 additional cite that should be included that was 16 not. We actually have copies of that article if 17 you would like them. It was inadvertently 18 omitted.</p> <p>19 MS. WEINBERG: Right now I don't want 20 to take testimony from you, Ms. Baker, but thank 21 you.</p> <p>22 MS. BAKER: I'm just telling you that.</p> <p>23 BY MS. WEINBERG:</p> <p>24 Q. I asked you before if there was 25 anything that you relied on that wasn't in your</p>	<p>25</p> <p>1 study, as this one is, they write several 2 articles on it. I read that article that's 3 cited and I read this article and inadvertently 4 cited that one as having the important -- the 5 thing that's footnoted. Not the correct one, 6 which is sitting on the table now.</p> <p>7 Q. Okay.</p> <p>8 MS. BAKER: Would you like a copy of 9 it? We brought them along. I don't think it 10 materially changes anything. You are welcome to 11 have copies if you think that that's of use to 12 you.</p> <p>13 MR. WHEELER: Thank you.</p> <p>14 BY MS. WEINBERG:</p> <p>15 Q. Other than the surveys that you 16 described in the context of your consulting 17 work, have you done any other consumer surveys?</p> <p>18 A. Sure. My research is based largely on 19 consumer surveys. So, yes.</p> <p>20 Q. And what is the main area of your 21 research?</p> <p>22 A. There are several areas of research 23 that I focus on. Consumer decision-making is 24 one broad area. Consumer experiences is another 25 broad area that I focus on.</p>
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	29		31
1 A. Not coming to mind off the top of my 2 head, no. 3 Q. So then would it be fair to say that -- 4 well, could you characterize your area of 5 expertise, then? 6 A. Sure. My area of expertise includes 7 consumer decision-making, which I often unpack 8 into some of its parts which include consumer 9 information and processing, consumer 10 experiences. These also impact market research 11 because market research is done with the goal of 12 understanding consumer decision-making. So 13 there are a lot of areas that feed into consumer 14 decision-making that end up being relevant to my 15 research. Consumer psychology is another term 16 for this. Sadly, behavioral economics is 17 another term for this, inappropriately so, I 18 think, but it's the term people tend to use 19 outside of academia. There may be others I'm 20 forgetting. There are a lot of ways to 21 characterize them, but they are all quite 22 related fields. They get different names at 23 different moments but they are all related 24 fields.		1 understanding of the meaning of the analysis 2 that Dr. Hastak undertook around clear and 3 conspicuous disclosures is relevant insofar as 4 it influences consumer understanding of the 5 things that are being disclosed. And so I 6 certainly do have expertise around how consumers 7 form an understanding about information that is 8 disclosed either clearly or unclearly, either 9 conspicuously or inconspicuously. 10 Q. But then is it fair to say that your 11 specific expertise has to do with how consumers 12 make decisions about information that they read 13 in a document rather than on analyzing a 14 document itself? 15 A. I think it's all part of the process. 16 I think decision-making, as academics like 17 myself understand it, starts from the moment 18 from what are they exposed to, what experiences 19 do they have in the past, all the way through to 20 what information do they process, what do they 21 remember, what do they understand and then how 22 do they make a decision ultimately. So all of 23 those pieces, I think, fall within my expertise. 24 Q. So again, I just want to clarify. Am I 25 understanding your testimony correctly to say	
1 Q. Do you have any expertise on the 2 clarity of disclosures in written documents? 3 A. So that is about consumers using 4 information, and I certainly do have expertise 5 about how consumers go from information 6 presented to them to their understanding, 7 ultimately to a decision relevant to that 8 information. 9 Q. But I want to ask you specifically not 10 about consumer choice or decision-making, but 11 about clarity of disclosures or text in a 12 document. 13 A. I have to ask what you mean by clarity 14 specifically. 15 Q. Well, Dr. Hastak's report focused 16 primarily on the clarity, whether certain 17 disclosures were clear and conspicuous. 18 MS. BAKER: Is there a question 19 pending? 20 MS. WEINBERG: If you would let me 21 finish, there would be. 22 BY MS. WEINBERG: 23 Q. So my question is, do you have 24 expertise specifically on whether disclosures in 25 a written document are clear and conspicuous? A. So as I mentioned in my report, my	30	1 that your expertise has to do with consumer 2 decision-making based on either the text of a 3 document or other variables? 4 MS. BAKER: Objection. Assumes facts 5 not in evidence. 6 BY MS. WEINBERG: 7 Q. Do you understand the question? 8 A. No. 9 Q. It appears -- is it fair to say that 10 your expertise involves consumer 11 decision-making? 12 A. Yes. And as I -- consumer 13 decision-making is not just the moment of do I 14 chose. It includes the moments of information 15 acquisition, information exposure, memory, 16 experience and all those pieces of the 17 decision-making process. Not just the ultimate 18 decision. 19 Q. Right. So then what your focus has 20 been is on decision-making, including a 21 consideration of lots of different types of 22 input that a consumer has that go into making a 23 decision, the ones that you have just laid out 24 in your previous statement; is that correct? A. Yes. Included in that statement was	32

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1 how they process information that's disclosed to 2 them. 3 Q. And putting aside the question of how 4 consumers make decisions based upon reading a 5 particular document, just separating the 6 consumers from this experience entirely, have 7 you done -- do you have any expertise on simply 8 looking at a document, cutting out the consumers 9 and analyzing whether a document is conveying a 10 message clearly? 11 A. I don't think it's meaningful to 12 analyze the conveyance of a message without 13 thinking about the person it's being conveyed 14 to. So it's hard for me to even think about a 15 document conveying a message unless I have some 16 consideration of the person receiving that 17 conveyed message. 18 Q. So then your context does not include 19 only looking at the document. It only includes 20 how that document would impact a consumer 21 reading the document? 22 MS. BAKER: Objection. Assumes facts 23 not in evidence. Form. 24 BY MS. WEINBERG: 25 Q. Is that a correct statement of your	1 to that document, then you need some 2 consideration of the consumer. 3 Q. Have you ever done reports about 4 disclosures in documents? Specifically just 5 disclosures? 6 A. So I'm going to tell you what I think, 7 what I understand by the word "disclosures." 8 Disclosures to me just means communicating 9 information to a consumer. And so, yes, I have 10 certainly done work that involves just 11 communicating information to consumers. 12 Q. And what work is that? 13 A. Much of my research is about how 14 consumers respond to information presented. For 15 example, the advertisements work that we talked 16 about earlier, the question there was, when an 17 advertisement is shown to a consumer, what 18 answer understanding do they take away? I 19 consider that of this form. 20 Q. And have you always -- when you have 21 written those reports, have you always done a 22 survey for those reports? 23 A. Yes, either done a survey or responded 24 to someone else's survey. 25 Q. Have you formed any opinions in this		
1 expertise? 2 A. I'm not sure I understand the 3 statement. Could you repeat it? 4 Q. Sure. Is it fair to say then that your 5 expertise -- if I understand what you have said, 6 then you don't believe it's possible to separate 7 a document itself outside of a consumer's 8 understanding of that document, an analysis of 9 the document itself? 10 MS. BAKER: Objection. Form. 11 Compound. 12 BY MS. WEINBERG: 13 Q. Do you think it's possible to analyze a 14 document without considering how a consumer 15 would react to that document? 16 A. That would depend on the goal of the 17 analysis. If the goal of the analysis is 18 ultimately consumers' understanding of what's 19 been disclosed, then you need to think about the 20 consumer. You could analyze the document for 21 other purposes, like is it a nice font, and then 22 you would not need to refer to the consumers. 23 But if you want to analyze a document in a way 24 that has conclusions for how a consumer would 25 understand that document or do anything related	34	1 case? 2 A. Yes. 3 Q. What are they? 4 MS. BAKER: You can answer that if you 5 can remember it. 6 But I think you have a report from 7 Dr. Novemsky. 8 THE WITNESS: Yeah, I would say there 9 are many and they are in my report. 10 BY MS. WEINBERG: 11 Q. What would you say your main opinion is 12 coming out? 13 A. So to be clear, my task about which I 14 formed an opinion was to analyze Dr. Hastak's 15 report. And my main conclusion from 16 Dr. Hastak's report is in the absence of 17 evidence in his report, it's hard for me to see 18 what conclusions in his report about consumer 19 understanding are valid. 20 Q. Okay. Does your report contain all the 21 opinions that you intend to offer at trial? 22 A. At this moment it does. If new 23 information comes to light, I might form new 24 opinions. But right now, yes. 25 Q. What type of new information?	36

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1 A. I don't know. I just leave open the
2 possibility.

3 Q. In terms of Dr. Hastak's report, which
4 he has testified -- you've read the transcript,
5 that it's complete, I'm having trouble imagining
6 what type of new information would affect your
7 opinions if what you are responding to is
8 Dr. Hastak's report. Maybe you could tell me
9 what you are thinking about.

10 A. I don't know. New academic work comes
11 to light on this topic that reveals something
12 about how consumers think about these areas
13 would be one example.

14 Q. Any other examples?

15 A. Someone goes and finds consumers who
16 have taken out payday loans and interviews them
17 and gains knowledge about their understanding of
18 various things from that would be another
19 example, I suppose.

20 Q. So also academic work --

21 A. Or nonacademic versions of that, yeah.

22 Q. Such as?

23 A. If someone were to go and survey
24 consumers. For example, in this matter, if
25 someone decided to run a survey saying, you

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1 Q. The report will be 1 and the appendices
2 will be 2. Does that look like an accurate copy
3 of your report and the appendices?

4 A. It does.
5 MS. WEINBERG: So I would like to offer
6 Exhibits 1 and 2 into evidence.
7 BY MS. WEINBERG:
8 Q. What, if anything, did you do to
9 prepare for this deposition?

10 A. I reviewed documents in both my report,
11 Dr. Hastak's report and related documents.

12 Q. Anything else?

13 A. I met with counsel to talk about what
14 is expected --

15 MS. BAKER: Don't talk about what we
16 discussed. We met.
17 BY MS. WEINBERG:

18 Q. How many times did you meet?

19 A. Twice.

20 Q. And how long did you meet?

21 A. One time extremely briefly. I would
22 say 15 minutes. One time for, I would say,
23 about three hours.

24 Q. Okay. Did you conduct any studies or
25 surveys on Integrity Advance's disclosures?

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1 know, using aspects of the loan agreement, that
2 would be new information that I certainly would
3 want to see.

4 Q. Meaning they surveyed consumers who had
5 taken out loans with Integrity Advance?

6 A. Or other consumers who could be
7 surveyed about these same topics.

8 Q. The topics meaning the loan agreements
9 with Integrity Advance?

10 A. Correct.

11 Q. So other than these two caveats that
12 you have just given, that there might be new
13 literature or research done into payday loans,
14 have you completed your analysis so that the
15 opinions in your report are complete?

16 A. Yes.

17 Q. Okay. I would like to offer your
18 report into evidence. And it is in two separate
19 documents so that the appendix and the report
20 itself are stapled separately. Would you please
21 look at this and tell me if this represents --
22 I'm giving one to the court reporter.

23 (Novemsky Deposition Exhibit Numbers 1
24 and 2 were marked for identification.)

25 BY MS. WEINBERG:

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1 A. I did not.

2 Q. Did you contemplate conducting any such
3 studies?

4 A. I did not.

5 Q. Why not?

6 A. That was not the task I was given. I
7 was told to analyze Dr. Hastak's report.

8 Q. So let's turn -- you still have your
9 report in front of you. Let's turn to
10 paragraph 14, which is on page 4 of your report.
11 Do you see that?

12 A. I do.

13 Q. Your second full sentence there says,
14 Consumer understanding of the loan agreement is
15 extremely context-dependent.

16 Is that an accurate reading of your
17 report?

18 A. Yes.

19 Q. Did you do anything to evaluate the
20 context within which Integrity Advance's
21 customers would understand their loan
22 agreements?

23 A. I'm not sure what you mean by the term
24 "evaluate."

25 Q. Did you do any study, any research on

	41		43
1 that?		1 has uncovered. So in order to look at	
2 A. Research as to what was the context		2 consumers' understanding of Integrity Advance's	
3 when they examined the loan agreement?		3 loan agreements, is it your testimony that a	
4 Q. Yes.		4 survey should have looked at all of these	
5 A. I did not.		5 factors?	
6 Q. And why not?		6 A. A survey would do its best to control	
7 A. It was not my task.		7 those factors and to put consumers in a mindset,	
8 Q. And what sort of variables in this --		8 goals, et cetera, that are similar to how an	
9 within this frame of saying that understanding		9 actual consumer making an actual loan decision	
10 of a loan agreement is context-dependent, what		10 would be. So it's not that you need to examine	
11 sort of context would be important for		11 them as much as be aware and control for them	
12 understanding, for looking at consumers'		12 typically. In some cases you might examine	
13 understanding?		13 them.	
14 A. So the things listed in the next		14 Q. And how could you replicate the actual	
15 sentence in my report would be examples.		15 experience of Integrity Advance's customers	
16 Q. So it says, The consumer's current		16 reliably without knowing what each individual	
17 thoughts.		17 was going through at the time they took out the	
18 So you didn't look at the consumer's		18 loan?	
19 current thoughts here, right?		19 A. So the scientific method that the field	
20 A. I did not.		20 of consumer behavior uses is we put people,	
21 Q. In order to do that in this context,		21 similar people in similar situations as well as	
22 would you have had to speak with those consumers		22 we -- as similar as possible to the situation of	
23 at the time that they were taking out the loan		23 interest to us. We can't always put people in	
24 agreement?		24 the exact consumer situation and we can't always	
25 A. That's one way to do it. I would not		25 study the exact consumers. But the scientific	
	42		44
1 have to. There are other ways.		1 community has found ways to draw generalizations	
2 Q. What else?		2 from putting similar people in similar	
3 A. One could put them in a similar		3 situations and then examining them through a	
4 situation again, more similar consumers in a		4 survey or other measure and drawing conclusion	
5 similar situation again, present them with		5 about how things likely play without in the real	
6 similar context and information and then, you		6 situation. And then the peer review process	
7 know, ask some questions of them and try to		7 often points out factors that were not	
8 ascertain their thoughts in that context with		8 controlled for and then they get controlled	
9 the loan agreement.		9 form. We get as close as possible. It's not a	
10 Q. And the other factors that you list		10 perfect examination, but it's the best that	
11 here, momentary goals, mindset, level of		11 science can do in this area.	
12 depletion, what do you mean by level of		12 Q. But here you didn't do any empirical	
13 depletion?		13 research on how context would influence consumer	
14 A. Depletion is a psychological construct		14 behavior for Integrity Advance consumers?	
15 that's come up about the last 15 years.		15 A. Correct.	
16 Research in psychology has shown that people,		16 Q. And does context, as we've just been	
17 when they exert -- when they do something they		17 talking about it, impact the clarity of loan	
18 don't want to and they have to exert		18 disclosures?	
19 concentration, for example, sitting in a		19 A. Yes.	
20 deposition, over time their ability to exert		20 Q. Context -- it's your testimony that	
21 that same concentration and to resist impulses		21 context influences the content of the clarity of	
22 they might have goes down. That's what I mean		22 the loan disclosures as they appear on a piece	
23 by depletion.		23 of paper themselves?	
24 Q. And then you list level of distraction		24 MS. BAKER: Objection. Form. That's	
25 and many other factors that behavioral science		25 not quite what he said.	

11 (Pages 41 to 44)

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47

1 BY MS. WEINBERG:

2 **Q. Is it your testimony -- well, why don't**
 3 **you just state how you think context influences**
 4 **the content of a written document.**

5 A. Okay. So this comes back to our
 6 discussion earlier. I don't think the clarity
 7 of a document is a meaningful construct above
 8 and beyond how consumers understand that
 9 document. And I do think that consumers'
 10 understanding of a document so the clarity with
 11 which it conveys a particular message to a
 12 consumer or a set of consumers is dependent on
 13 the context. That's the sense in which I mean
 14 context affects the clarity of documents.

15 **Q. To do a consumer survey of whether**
 16 **consumers understood the terms of the loan,**
 17 **would you need generally to replicate the**
 18 **experience of Integrity Advance consumers?**

19 A. I'm not sure what you mean by the
 20 experience of Integrity Advance consumers.

21 **Q. The experience they were having when**
 22 **they took out the loan agreement.**

23 A. You would do your best to replicate all
 24 the aspects of the context that you think are
 25 relevant to their understanding and decision

1 A. I don't know offhand. I don't know how
 2 it appeared online. If I were running the
 3 survey and the original loan document was
 4 presented online, I would present it in the
 5 survey online if I could.

6 **Q. And what if you didn't know how it**
 7 **appeared online?**

8 A. I would present it as best as I
 9 would -- as close to how I think -- I would use
 10 everything I know about how it appeared online
 11 to make it as similar as possible to how it may
 12 have actually appeared online in my survey.

13 **Q. Do you know how Integrity Advance's**
 14 **loan agreements appeared online?**

15 A. I do not.

16 **Q. So you would have no basis for showing**
 17 **it to consumers in one way or another if you**
 18 **were attempting to replicate their experience**
 19 **here; is that correct?**

20 MS. BAKER: Objection. Form. Compound
 21 question.

22 BY MS. WEINBERG:

23 **Q. You can answer.**

24 A. I'm not sure -- if you could repeat the
 25 question.

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1 around that loan agreement when you do a survey
 2 of them to try to understand their comprehension
 3 of the loan agreement.

4 **Q. Would how that loan agreement appeared**
 5 **online be relevant to your ability to do a**
 6 **survey that replicates their experience?**

7 MS. BAKER: Objection. Form. Vague.

8 BY MS. WEINBERG:

9 **Q. Could you replicate consumers'**
 10 **experience without knowing how Integrity**
 11 **Advance's loan agreements appeared online?**

12 A. So when you do a consumer survey for
 13 the purpose of understanding what consumers take
 14 away from a loan agreement, let's say, you do
 15 your best to replicate as many aspects of the
 16 experience you are interested in as possible.
 17 You never replicate all of them exactly. That's
 18 generally impossible. But you replicate them as
 19 closely as you can given the factors you think
 20 are influencing them. And then you draw
 21 conclusions based on as near replication as you
 22 can do of the experience. It's never perfect.

23 **Q. Do you think that an important variable**
 24 **in consumers' understanding of their loan**
 25 **agreements was how it appeared to them online?**

1 **Q. You have just testified that you don't**
 2 **know how Integrity Advance's loan agreements**
 3 **appeared online.**

4 A. Yes.

5 **Q. Is that right?**

6 A. That's right.

7 **Q. So here you could not, you would have**
 8 **no basis for showing customers or consumers who**
 9 **were involved in a survey the loan agreements in**
 10 **one format versus another; is that correct?**

11 A. I would glean all the information I
 12 could about how they appeared online, for
 13 example. If they were signing in certain places
 14 online, I would replicate that aspect. If I
 15 knew anything else about how the information was
 16 displayed online, I would replicate those
 17 aspects. So I would use what information I
 18 have. It's not no information. Nor is there
 19 complete information. So I would use, for
 20 example, information about there were points at
 21 which the consumer was asked to sign or initial.
 22 So I would certainly want to replicate those
 23 aspects, for example.

24 **Q. Do you have any information about how**
 25 **that, where consumers signed online in Integrity**

<p style="text-align: right;">49</p> <p>1 Advance's loan agreements, about how that 2 appeared online at the time that they were 3 actually signing the agreements?</p> <p>4 A. I don't remember the specifics, but I 5 believe in some of the documents I reviewed 6 there was discussion of where loan agreements 7 were being initialled. I remember Dr. Hastak's 8 report was one place. There might have been 9 others where loan agreements were being signed 10 at particular points in the agreement. So I 11 would certainly want to replicate, let's have 12 them sign again in those same points in the 13 agreement that we know they did in the original 14 situation.</p> <p>15 Q. Do you have any information about how 16 that actually appeared to consumers who actually 17 took out loans from Integrity Advance?</p> <p>18 A. That is information about how it 19 appeared. If it appeared with a signature box 20 at this point, that's a piece of information I 21 have that I would use in an online survey.</p> <p>22 Q. But do you know how the signature box 23 appeared online?</p> <p>24 MS. BAKER: Objection. Form. Asked 25 and answered.</p>	<p style="text-align: right;">51</p> <p>1 A. I have not.</p> <p>2 Q. Have you ever studied signature boxes 3 online, in online agreements?</p> <p>4 A. I have not.</p> <p>5 Q. So your testimony is based on your 6 personal experience with signing documents 7 online; is that correct?</p> <p>8 MS. BAKER: Objection. Form. Assumes 9 facts not in evidence.</p> <p>10 BY MS. WEINBERG:</p> <p>11 Q. What is the basis of your testimony 12 about signature boxes as they appear online?</p> <p>13 A. Casual observation, personal 14 experiences, but not research.</p> <p>15 Q. What kind of casual observation?</p> <p>16 A. If I had gone online and seen signature 17 boxes for anything I was doing. I don't 18 remember the specific circumstances surrounding 19 it. It wasn't memorable.</p> <p>20 Q. So this is personal experience that you 21 are talking about?</p> <p>22 MS. BAKER: Are you finished with your 23 answer?</p> <p>24 THE WITNESS: Sure.</p> <p>25 BY MS. WEINBERG:</p>
<p style="text-align: right;">50</p> <p>1 BY MS. WEINBERG:</p> <p>2 Q. You can answer.</p> <p>3 A. I would assume it appeared like a 4 standard signature box.</p> <p>5 Q. And what is the basis of that 6 assumption?</p> <p>7 A. I would look at other signature boxes 8 that appear online for similar contracts.</p> <p>9 Q. So you have no basis of knowledge about 10 how it actually appeared for Integrity Advance 11 customers?</p> <p>12 A. I would have no knowledge about how it 13 was differentiated from other signature boxes 14 that naturally appear for similar contracts. I 15 wouldn't have specific information beyond that, 16 perhaps.</p> <p>17 Q. So in your experience, sometimes 18 signature boxes obliterate text that appears 19 behind them; is that correct?</p> <p>20 MS. BAKER: Objection. Form. Assumes 21 facts not in evidence.</p> <p>22 BY MS. WEINBERG:</p> <p>23 Q. Have you ever seen signature boxes that 24 appear online that make the text behind them 25 harder to read?</p>	<p style="text-align: right;">52</p> <p>1 Q. So was it a personal experience you are 2 talking about when you were signing a document 3 online?</p> <p>4 A. No. I browsed documents that weren't 5 part of my personal experience. I could browse 6 them while looking at how consumers react. I 7 study consumer behavior. So I look at consumer 8 websites, you know, for personal as well as 9 professional reasons. And I may or may not be 10 signing something for myself. I may just be 11 looking to see what it looks like.</p> <p>12 Q. And can you tell me any specific 13 examples outside of your personal experience 14 where you have done that?</p> <p>15 A. I don't remember what the agreements or 16 the signature would have been about. No, I 17 don't remember the content of the agreements.</p> <p>18 MS. BAKER: If this is a good time to 19 take a break, we are at about an hour, if it 20 works for you, Wendy?</p> <p>21 MS. WEINBERG: Sure. (A recess was taken.)</p> <p>22 BY MS. WEINBERG:</p> <p>23 Q. We are back on the record. Could you 24 replicate consumers' experience with Integrity</p>

<p>1 Advance without knowing how a conversation with 2 an Integrity Advance employee synced with what 3 the consumer is reviewing onscreen? 4 MS. BAKER: Objection. Form. Vague. 5 BY MS. WEINBERG: 6 Q. Do you understand the question? 7 A. I think I have an answer. 8 Q. You do, you said? 9 A. Yes. So and this will come back to the 10 answer I gave earlier, in replicating a 11 consumer's experience with any aspects of the 12 Integrity Advance communications, including 13 phone calls or loan agreements, I would use the 14 information I know about what happened before to 15 build as close as possible replication of all 16 the aspects that I have knowledge of. And if I 17 have knowledge of -- detailed knowledge of the 18 phone call, I would use that. If I don't have 19 detailed knowledge of the phone call, I would do 20 my best to use what knowledge I have. 21 Q. Do you have any knowledge in this case 22 about how a conversation between a consumer and 23 somebody working for Integrity Advance synced 24 with information that appeared online? 25 A. I'm not sure what you mean by synced</p>	<p>53</p> <p>1 loan agreement. 2 Q. You said you have no information on the 3 phone calls. So then -- 4 A. Other than the idea that they had the 5 opportunity to ask questions. 6 Q. Okay. Just so that I can try to convey 7 the question that I was -- I am going to take it 8 outside the context of Integrity Advance. There 9 can be like a TV commercial, right, and the 10 announcer is saying loudly, This is the best 11 bread slicer that's ever been invented and it 12 has all of these wonderful characteristics. And 13 you hear that voice, and at the same time at the 14 bottom of the screen there's text that says, 15 This is a lousy bread slicer and it doesn't have 16 any of these characteristics. 17 So when I'm talking about syncing the 18 consumer experience with what's happening on the 19 phone, it's similar to what I'm saying about the 20 oral presentation in the commercial as opposed 21 to the text that the consumer may or may not be 22 reading while watching that commercial. Does 23 that make my question any clearer to you? 24 A. So I think it follows the answer to my 25 previous question, which is I don't know what</p>
<p>1 with. 2 Q. So somebody could be looking at -- 3 let's take it out of the context of Integrity 4 Advance. There could be -- well, let's keep it 5 in the context. Strike that. 6 Let's keep it in the context of 7 Integrity Advance. The question is whether you 8 have information about what somebody -- what an 9 Integrity Advance employee was saying, when they 10 were saying that, what a consumer was looking at 11 on the screen. So at the moment that they might 12 have been saying anything, that there would be a 13 particular text on the screen at that moment. 14 MS. BAKER: Objection. Form. Compound 15 and vague. 16 BY MS. WEINBERG: 17 Q. Do you understand the question? 18 A. I'll give the following answer. I 19 don't know if it answers the question, but I 20 believe it does. I don't know what information 21 was in the phone calls. So I don't know how it 22 relates to what was on the screen. My one 23 understanding of the phone calls is people had 24 the opportunity to ask questions if they were 25 confused about anything that they saw in the</p>	<p>54</p> <p>1 was said on the phone other than consumers had 2 the opportunity to ask questions if they were 3 confused. So I don't know what else I can say. 4 Q. And you don't know when those 5 conversations happened in relation to whether 6 the consumers were signing the documents or 7 looking at the documents? 8 A. My understanding is for some of them, I 9 don't know, maybe all of them, that I am not 10 sure, for some of them it was happening 11 concurrent with their deciding whether to sign 12 the document. 13 Q. Do you have any information about what 14 they were looking at? 15 MS. BAKER: Objection. Form. Vague. 16 BY MS. WEINBERG: 17 Q. When they were having that 18 conversation? 19 MS. BAKER: Same objection. 20 BY MS. WEINBERG: 21 Q. You can answer it. 22 A. If you could say it in other words. 23 Q. You've testified that you have some 24 information that consumers could speak with an 25 Integrity Advance representative when they were</p>
<p>1 with. 2 Q. So somebody could be looking at -- 3 let's take it out of the context of Integrity 4 Advance. There could be -- well, let's keep it 5 in the context. Strike that. 6 Let's keep it in the context of 7 Integrity Advance. The question is whether you 8 have information about what somebody -- what an 9 Integrity Advance employee was saying, when they 10 were saying that, what a consumer was looking at 11 on the screen. So at the moment that they might 12 have been saying anything, that there would be a 13 particular text on the screen at that moment. 14 MS. BAKER: Objection. Form. Compound 15 and vague. 16 BY MS. WEINBERG: 17 Q. Do you understand the question? 18 A. I'll give the following answer. I 19 don't know if it answers the question, but I 20 believe it does. I don't know what information 21 was in the phone calls. So I don't know how it 22 relates to what was on the screen. My one 23 understanding of the phone calls is people had 24 the opportunity to ask questions if they were 25 confused about anything that they saw in the</p>	<p>54</p> <p>1 was said on the phone other than consumers had 2 the opportunity to ask questions if they were 3 confused. So I don't know what else I can say. 4 Q. And you don't know when those 5 conversations happened in relation to whether 6 the consumers were signing the documents or 7 looking at the documents? 8 A. My understanding is for some of them, I 9 don't know, maybe all of them, that I am not 10 sure, for some of them it was happening 11 concurrent with their deciding whether to sign 12 the document. 13 Q. Do you have any information about what 14 they were looking at? 15 MS. BAKER: Objection. Form. Vague. 16 BY MS. WEINBERG: 17 Q. When they were having that 18 conversation? 19 MS. BAKER: Same objection. 20 BY MS. WEINBERG: 21 Q. You can answer it. 22 A. If you could say it in other words. 23 Q. You've testified that you have some 24 information that consumers could speak with an 25 Integrity Advance representative when they were</p>

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1 signing the loan document; is that correct?		1 possible to the actual experience. More	
2 A. Yes.		2 information you have is better, but there's no	
3 Q. If they were confused, is that a		3 particular piece of information that is	
4 correct --		4 necessarily critical.	
5 A. They may have -- some, I don't know how		5 Q. So the telephonic communications you	
6 many, but some consumers -- my understanding is		6 would not consider critical?	
7 some consumers spoke with an Integrity Advance		7 A. No.	
8 representative while signing the loan document.		8 Q. No, you would not?	
9 Others may have spoken to them at a later time.		9 A. No, I would not consider them critical.	
10 I don't know if all of them spoke while signing		10 Q. And the same question, then, for what	
11 or if some spoke while signing and some spoke		11 was appearing online. Could you replicate	
12 later. That's the extent of my understanding of		12 consumers' experience with Integrity Advance, I	
13 the timing of the phone call.		13 think you have said that you could replicate it	
14 Q. Okay. So to the extent we are focusing		14 looking at other variables if you didn't know	
15 just on consumers who were talking to a customer		15 exactly what they were looking at online; is	
16 service representative at the time they were		16 that correct, at the time that they were signing	
17 signing the loan agreement, do you have any		17 the loan documents?	
18 information about what the consumers were		18 A. I'm sorry, I didn't follow that.	
19 looking at at the time that they were having the		19 Q. Do you think it would be critical	
20 conversation?		20 information to have in attempting to replicate	
21 A. I understand they were looking at the		21 the consumer's experience with Integrity Advance	
22 loan agreement. I don't have more specific		22 to know what the consumer was looking at online	
23 information beyond that.		23 at the time that they were signing the loan	
24 Q. Okay. And you've testified that you		24 documents?	
25 have no information on the phone calls. Do you		25 MS. BAKER: Objection. Form. Vague.	
	58		60
1 have any information about the content of the		1 THE WITNESS: In particular, I'm not	
2 phone calls?		2 sure what you mean by what they are looking at	
3 A. Nothing beyond that consumers had the		3 online.	
4 opportunity to ask questions for clarification		4 BY MS. WEINBERG:	
5 of the loan document.		5 Q. I'm referring to whatever appeared when	
6 Q. And would that affect your ability to		6 they were signing the loan agreement.	
7 replicate the consumer's experience with		7 A. My understanding is they were looking	
8 Integrity Advance in any survey that you or		8 at the loan agreement online. We know they were	
9 someone else might choose to do?		9 looking at the loan agreement online, and I	
10 MS. BAKER: Objection. Form. Vague.		10 would certainly show them the loan agreement as	
11 BY MS. WEINBERG:		11 part of an attempt to replicate their	
12 Q. You can answer.		12 experience.	
13 A. If you can say it in other words, it		13 Q. Could you do that without knowing	
14 would help me to answer.		14 exactly how it appeared online?	
15 Q. In order to do a survey that would		15 A. Yes.	
16 replicate the consumer's experience with		16 Q. And what would be the basis for your	
17 Integrity Advance, would you need to know what		17 presenting it to them in one form rather than	
18 the customer service representatives were saying		18 another form?	
19 on the telephone?		19 MS. BAKER: Objection. Form. Vague.	
20 A. You would not need to. The more		20 BY MS. WEINBERG:	
21 information you have, the better. As I said		21 Q. If you were going to offer them -- if	
22 earlier, when you build a consumer survey and		22 you were going to conduct a survey and present a	
23 attempt to replicate an actual consumer		23 loan agreement to the survey participants	
24 experience, you use whatever information you		24 online, what would be the basis of your	
25 have to build the replication as close as		25 presenting it to them in one format versus	

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1	another format?	1	counsel or Dr. Hastak's report, I was told that
2	A. So the basis would be, A, anything I	2	these are paper versions of the loan agreement.
3	know about how it was actually presented at the	3	And when I hear that, I take that to mean it
4	time --	4	represents many aspects of the original
5	Q. And here do you have any knowledge	5	agreement.
6	about that?	6	Q. But again, you have no -- is it fair to
7	A. As I said, we have, for example,	7	say you have no specific knowledge of how in
8	knowledge about where they were signing. And my	8	practice these loan agreements appeared other
9	understanding is some of the written -- the	9	than the assumption that you are making based on
10	printed document that we have does represent	10	viewing a printed document?
11	some aspects of the original document. For	11	A. There is the assumption based on the
12	example, there's a TIL box at the beginning and	12	printed document being similar. There's also
13	it has a box around it and it has certain fonts	13	statements in Dr. Hastak's report and possibly
14	and what have you. I would try to replicate	14	in other materials for this case about where
15	using all the information I have. And to the	15	signatures appeared and other particulars about
16	extent there's specific information I don't	16	the loan agreement. I would assemble all those
17	have, I would fill it in using what is most	17	particulars, including the printed document, and
18	common practice in that or related kinds of	18	those are all the pieces of information I would
19	agreements when presented online.	19	have to generate an online version of the
20	Q. But in this instance, your testimony is	20	document for purposes of a survey.
21	that you have no specific information about how	21	Q. And other than Dr. Hastak's report, you
22	it appeared online for Integrity Advance's	22	said other materials. Can you recall
23	customers; is that right?	23	specifically what other materials contain that
24	A. As I said, the specific information we	24	information?
25	have, we have several pieces of specific	25	A. I don't have very specific memories,
	62		64
1	information. One example is where it was	1	but I believe in the defendant's deposition
2	signed. Another example, there's a TIL box near	2	there were -- may have been reference, I can't
3	the beginning. It has a box around it. Certain	3	remember the sources now, there have been so
4	things were in bigger font. Certain things were	4	many documents related, but I think there were
5	in smaller fonts. There's a number of pieces of	5	references to where signatures happened or what
6	information we have about how it would appear	6	things may have looked like in the loan
7	online.	7	agreement. Those would be the kinds of things I
8	Q. But do you know what the screen looked	8	would use when generating an online version for
9	like for consumers when they were signing in the	9	a survey.
10	signature boxes?	10	Q. So you are not relying on any
11	A. I know that it contained the loan	11	information other than that it was in
12	agreement that had largely similar	12	Dr. Hastak's report or in the loan agreements
13	representation to what the printed document has.	13	itself or in Dr. Hastak's testimony; is that
14	Q. And what is the basis of that	14	correct, that it would be those three sources?
15	statement?	15	MS. BAKER: Objection. That's not what
16	A. My understanding is the printed	16	he said. That assumes facts not in evidence.
17	document was generated by taking the agreement	17	BY MS. WEINBERG:
18	that was actually used and somehow generating an	18	Q. Please tell me.
19	offline version of it. I assume that preserved	19	A. It includes all of the materials
20	many of the characteristics of the original	20	related to the case. So it includes the
21	document.	21	defendant's deposition, Dr. Hastak's report,
22	Q. What is the basis of your saying that	22	Dr. Hastak's deposition, loan agreements as they
23	that is how it was done?	23	were conveyed to me either in Dr. Hastak's
24	A. I was told when I was given the loan	24	report or if they were in other materials. I
25	agreements, I can't remember who it was from,	25	can't recall if they were also in other

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1	materials. Any place I would have seen them, I	1	the interaction between Integrity Advance and
2	would draw on those to build an online version	2	its customers occurred, are there any obstacles
3	of it for purposes of a survey.	3	that you would imagine in trying to replicate
4	Q. And is it fair to say that all of those	4	their experience in order to do a survey?
5	materials would have been listed in the	5	MS. BAKER: Objection. Form. Vague
6	appendix?	6	question.
7	A. It is, to my report.	7	BY MS. WEINBERG:
8	Q. Appendix D of your report?	8	Q. Do you think you would have any
9	A. It is fair to say that.	9	difficulties in conducting a survey that would
10	Q. Could you replicate consumers'	10	attempt to replicate the experience between
11	experience with Integrity Advance without	11	Integrity Advance and its customers in
12	knowing how many consumers talked to customer	12	originating the loan?
13	service representatives?	13	MS. BAKER: Objection. Same objection.
14	A. Yes.	14	BY MS. WEINBERG:
15	Q. How?	15	Q. You can answer.
16	A. As I said earlier, you would use the	16	A. If I were to perform a survey for the
17	knowledge you have. If you don't have knowledge	17	purpose of replicating customers' understanding
18	about people talking to Integrity Advance	18	when originating a loan with Integrity Advance,
19	representatives, you might not include that in	19	I would show them all the things that I believe
20	the replication.	20	they had seen at the time in whatever context
21	Q. And is this because, as you testified	21	they had seen them at the time and try to draw
22	earlier, the information in that phone call you	22	conclusions from that.
23	don't think is critical for conducting a survey?	23	Q. Okay. Let's go back to your report
24	A. I believe one can conduct a valid	24	again and look at paragraph 15. You suggest
25	survey without that information.	25	that -- well, I'm going to read the entire
	66		68
1	Q. And would it affect your ability to do	1	paragraph. Hypotheses or ideas regarding
2	a valid survey if not every Integrity Advance	2	consumers' understanding of the loan agreement
3	customer saw a loan agreement when they obtained	3	could be based on prior research and general
4	a loan?	4	expertise and experience, but these hypotheses
5	A. Let me be clear about what the purpose	5	need to be tested to be considered valid, as
6	of a survey would be. If the purpose of a	6	would be expected, when submitting such ideas to
7	survey would be to say what do consumers	7	a peer-reviewed journal for publication in the
8	understand when faced with this loan agreement,	8	field of consumer behavior.
9	then I would present them that loan agreement	9	Does that accurately reflect the
10	and take some measurements to try to ascertain	10	statement that you made in that paragraph?
11	what it is they understand following viewing	11	A. It does.
12	that loan agreement. I'm not sure what survey	12	Q. Do peer-reviewed journals accept
13	one would be interested in if we thought	13	articles that are just conceptual rather than
14	consumers did not see the loan agreement. So	14	empirical?
15	you would have to start with what is the purpose	15	A. Conceptual articles are generally based
16	of the survey.	16	on some data, whether it's data presented for
17	Q. What if the purpose of the survey was	17	the first time in that article or an
18	to ascertain or find out what consumers	18	accumulation or reference to data from other
19	understood the terms of the loan would be	19	articles. But you wouldn't have a conceptual
20	without looking at the loan agreement?	20	piece that lives completely independent of the
21	A. Then I would try to ascertain what is	21	data.
22	it they are basing their understanding on and	22	Q. So it's your testimony that
23	replicate that as closely as I can.	23	peer-reviewed journals do not include articles
24	Q. Given the information that has been	24	that are just about theory?
25	provided to you and your understanding of how	25	MS. BAKER: Objection --

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1	BY MS. WEINBERG:	1	A. The paragraph actually continues on the
2	Q. Is that correct?	2	next page, but that's the last line on page 3,
3	MS. BAKER: Objection. Form. Vague	3	yes.
4	and assumes facts not in evidence.	4	Q. Okay. Correct. I see that. And it
5	BY MS. WEINBERG:	5	says -- it goes on to talk about the need for
6	Q. What do you mean by conceptual?	6	empirical support. Is that the thrust of that
7	A. Remind me where I used the word	7	paragraph?
8	"conceptual."	8	A. The thrust of that -- that's not all
9	Q. Well, I asked do journals accept	9	the paragraph.
10	articles that are just conceptual rather than	10	Q. Is there something relevant that I
11	empirical. How did you understand that term	11	omitted?
12	when I used it or when you were answering my	12	A. The paragraph is saying that renewal
13	question?	13	costs may not be a factor in consumers'
14	MS. BAKER: That term being	14	decision-making at the time of loan origination
15	"conceptual"?	15	is the main thrust of that paragraph. There is
16	MS. WEINBERG: Yes.	16	no empirical support that indeed they are
17	THE WITNESS: So there are articles	17	relevant at the time of loan origination. Those
18	that focus on bringing new data to light.	18	are the two takeaways I have from that
19	That's the vast majority of articles and as a	19	paragraph.
20	reviewer, the kinds of articles I would be	20	Q. And so this is a theoretical framework
21	positively disposed to encouraging publication	21	that is sometimes used to analyze consumer
22	in a journal. There are other articles where	22	behavior, what consumers are thinking about when
23	bringing new data to light is not the focus of	23	they are taking out a loan?
24	the article, but synthesizing previous data and	24	A. I'm not sure I understand the question.
25	generating a new concept or theory is how I	25	Q. Well, you say there are two lines of
	70		72
1	understood your word "conceptual" to mean.	1	behavior research.
2	BY MS. WEINBERG:	2	A. Yes.
3	Q. So I want to make sure I understand	3	Q. That consumers may not be considering
4	your testimony. You are saying that -- are you	4	renewals, right?
5	saying that all articles that appear in	5	A. Yes.
6	peer-reviewed journals are based on empirical	6	Q. At the time they take out the loan.
7	data either directly or indirectly?	7	And then you cite a couple of articles; is that
8	A. Yes.	8	correct?
9	Q. Okay. Looking at paragraph 13 of your	9	A. That is correct.
10	report --	10	Q. So is it fair to say that these lines
11	MS. BAKER: And again for the record,	11	of consumer research provide a theoretical
12	his report is Exhibit 1.	12	framework through which to understand consumer
13	BY MS. WEINBERG:	13	behavior?
14	Q. Exhibit 1, and it's page 3 of his	14	A. I'm not sure I would use the word
15	report. And you say that there is two lines of	15	"theoretical framework." For clarity, those two
16	research that suggest that consumers may not	16	bodies are referenced in paragraphs 22 and 23,
17	consider renewals when taking out a loan. Is	17	those two lines of research. The first body is
18	that a fair statement of that paragraph?	18	in 22; the second body of research is in
19	A. That is one of the sentences in that	19	paragraph 23.
20	paragraph, yes.	20	Q. And if you wouldn't use the phrase
21	Q. Or specifically your last sentence	21	theoretical framework, what would you use?
22	says, There are at least two lines of consumer	22	A. I would say those are two pieces of
23	behavior research that directly suggests that	23	scientific evidence that suggest that people --
24	consumers may not be considering renewal at all	24	that consumers may not consider renewal costs
25	when taking out an initial loan.	25	when originating a loan.

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1	Q. And is there other scientific evidence	1	Q. Are you aware of research in your field
2	that consumers do consider renewal costs when	2	on the importance of prominence of a disclosure?
3	taking out loans?	3	A. No.
4	A. I don't have any evidence off the top	4	Q. Are you aware of research in your field
5	of my head of that.	5	related to placement of text in a disclosure?
6	Q. Are you aware of any other research	6	MS. BAKER: Objection. Form and vague.
7	other than what you have cited that addresses	7	Actually, this whole line of questions is vague.
8	that question?	8	If you can answer, go ahead.
9	A. I have not made the connection to other	9	THE WITNESS: I don't think the
10	research that I know as whether it addresses	10	researchers in my field use the framework from
11	this question.	11	the FTC guidelines with words like "placement,"
12	Q. Have you read any other research on	12	"proximity," "prominence," et cetera. And so I
13	this topic other than what is cited in your	13	don't recall research that's fitting the
14	report?	14	criteria as you are describing them. It doesn't
15	MS. BAKER: Objection. Form. Vague.	15	mean they aren't related, but those aren't terms
16	BY MS. WEINBERG:	16	that I see in the consumer behavior literature.
17	Q. You can answer.	17	BY MS. WEINBERG:
18	A. I don't know what you mean by "this	18	Q. Setting aside the word choice, are you
19	topic."	19	familiar with research that maybe doesn't use
20	Q. This topic on what consumers consider	20	the word "prominence," but deals with how -- I'm
21	when taking out a loan.	21	having trouble thinking of a good synonym, how
22	A. Have I read any other research that's	22	boldly or --
23	relevant to what consumers consider when taking	23	A. So I think consumer behavior
24	out a loan?	24	researchers don't dimensionalize consumer
25	Q. Yes, other than these two things that	25	information presentation into those dimensions,
	74		76
1	you cite here in the report.	1	whether using those labels or other similar
2	A. Maybe the best answer to this question	2	labels. I think we wouldn't imagine thinking
3	is how I think about how consumers process	3	about how much prominence is there, how much
4	information about taking out a loan. I think my	4	proximity, et cetera, for the different
5	conclusions about how consumers process	5	dimensions. I don't think that's a framework
6	information when taking out a loan are related	6	that's applied using those or related words in
7	to my conclusions about how consumers process	7	the academic field.
8	information when making other decisions as well.	8	Q. Okay. This might be a little tedious.
9	It involves principles that have been garnered	9	I'm going to ask you to bear with me because I
10	from past research on consumers' information	10	want to go through each of these six factors
11	processing and decision-making. And so lots of	11	just to make sure we are completely clear. So
12	research is potentially relevant. But as I said	12	you've testified about prominence and I think
13	earlier, I have not made a particular connection	13	you've also testified about placement, if I'm
14	between a piece of research that I might already	14	correct?
15	know about and how it might bear on this. I	15	MS. BAKER: Objection. Form. Assumes
16	made the connection between these two pieces of	16	facts not in evidence.
17	research when I thought about it, but that	17	But I mean, go ahead.
18	doesn't preclude that there might be others.	18	BY MS. WEINBERG:
19	Q. Prior to reading Dr. Hastak's report,	19	Q. Are you aware of research -- you have
20	were you aware of the FTC guidelines on clear	20	testified about your awareness of research on
21	and conspicuous disclosures?	21	prominence of text, using both that phrase and
22	A. I was not.	22	that concept. You said that you are not aware
23	Q. Are you aware of other people in your	23	of research on that concept or word. Is the
24	field using them?	24	same true for the concept of where text appears,
25	A. No.	25	its placement in a document?

	77		79
1 A. There is research on where you put 2 text, but it's not where you put it vis-a-vis 3 other text, which is what proximity means. 4 Q. What about just placement? As you 5 know, Dr. Hastak has six factors that he looked 6 at, prominence, placement, proximity, 7 avoidability, clarity and repetition. 8 A. I'm sorry. I got confused between 9 placement and proximity. 10 Q. I'm going to ask you the questions, so 11 we are on the same page here, for all six of 12 these. I think we've gone through prominence. 13 So I just want to move on to what he considers 14 the second factor, which is placement. So my 15 question is, are you aware of research on the 16 importance of placement of text in a document as 17 that concept is described in Dr. Hastak's 18 report? 19 A. I am aware of research that says you 20 put things -- you put things at the beginning, 21 for example, versus the end of a document. 22 Someone is more likely to read it. That might 23 count -- again, this dimensionalizing in the FTC 24 guidelines is foreign to me, but I'm trying to 25 relate it to what I understand in the research.	1 A. I'm not sure I can map the concept of 2 avoidability as mentioned in his report and in 3 the FTC guidelines to particular constructs. It 4 may be related to some things that are studied, 5 but avoidability, as it's discussed, doesn't 6 correspond to a particular primitive to me that 7 I can map to the research. 8 Q. And when you say primitive, how are you 9 using that term? 10 A. A psychological construct that I'm 11 aware of, something that we know affects the 12 psychology of consumers. 13 Q. And what about the FTC's fifth factor, 14 clarity, are you aware of any research on the 15 importance of clarity in disclosures to 16 consumers' understanding? 17 A. Clarity is such a broad and vague term 18 that I could connect it to a number of things, I 19 suppose or I could not. Clarity, again, is 20 not -- that concept, as it's described in 21 Dr. Hastak's report, is not used similarly in 22 research that I know. But one could say that 23 some things that are done in research actually 24 do have implications for clarity as he's using 25 it or vice versa, clarity applies to those	80	
1 And I guess it would be related to research 2 saying that putting something near the beginning 3 is more likely to be read than, for example, 4 putting something near the end of a document. 5 Q. Are you aware of any other research 6 other than that on the placement concept? 7 MS. BAKER: Objection. Form and vague. 8 BY MS. WEINBERG: 9 Q. You can answer. 10 A. There is research about text being 11 placed at eye level versus not at eye level is 12 more likely to be seen. That may fit the 13 definition of placement. I'm not sure. 14 Q. So let's move on to Dr. Hastak's third 15 factor, proximity. Are you aware of research 16 that addresses the importance of having text 17 that qualifies a disclosure in close proximity 18 to the actual disclosure itself? 19 A. No. 20 Q. What about Dr. Hastak's fourth 21 factor -- I shouldn't say Dr. Hastak. I should 22 say the FTC's fourth factor, avoidability. Are 23 you aware of research on the importance of this 24 factor of avoidability as described in 25 Dr. Hastak's report in consumer understanding?	1 things. But the mapping wouldn't be clear 2 because these aren't terms or even concepts that 3 are typically the way we organize our research 4 in consumer behavior. 5 Q. Okay. And the final factor in the 6 FTC's guidelines, repetition, are you aware of 7 research -- 8 A. I am. 9 Q. -- that -- okay. For the record, let 10 me finish the question. Research on the 11 importance of repetition for consumer 12 understanding of disclosures? 13 A. I am. 14 Q. And what is that? 15 A. More repetition is more likely to lead 16 to memory of disclosures. More repetition is 17 less likely to lead to attention to those 18 disclosures. 19 Q. Could you repeat that, please? 20 A. Sure. 21 MS. BAKER: Could you read it back, 22 please, Ms. Court Reporter. 23 (The record was read as requested.) 24 BY MS. WEINBERG: 25 Q. What did you mean by that second	80	

	81		83
1 phrase?		1 THE WITNESS: To me the meaning of	
2 A. If you say something over and over		2 clarity is would more consumers understand it.	
3 again to people, they stop paying attention to		3 And I don't even know how many consumers	
4 it.		4 understand it as it is. So I can't say whether	
5 Q. But based on your first sentence, they		5 that can be improved.	
6 have more memory of it?		6 BY MS. WEINBERG:	
7 A. If you can get them to pay attention to		7 Q. Okay. Do you have an opinion on	
8 it, then they will have more memory of it. It's		8 whether a consumer could calculate the cost of	
9 a well-known challenge in the marketing		9 loan renewals based on Integrity Advance's loan	
10 literature of how do you repeat something but		10 agreement?	
11 retain attention.		11 A. Yes, I do.	
12 Q. Do you have an opinion on whether		12 Q. What is your opinion?	
13 adherence to the FTC guidelines increases the		13 A. My opinion is that they could.	
14 clarity of disclosures?		14 Q. I'm going to -- let's look at, since	
15 A. I'm sorry, could you repeat the		15 you said that you looked at the loan agreements	
16 question?		16 that were appended to Dr. Hastak's report, so	
17 Q. Do you have an opinion on whether		17 let's take a look at those. I'll make this	
18 adherence to the FTC guidelines that Dr. Hastak		18 Exhibit 3. And I'm giving you a copy.	
19 used in his report increase the clarity of		19 (Novemsky Deposition Exhibit Number 3	
20 disclosures?		20 was marked for identification.)	
21 A. I don't have an opinion.		21 BY MS. WEINBERG:	
22 Q. In your opinion, were the costs of loan		22 Q. If you could go to the back of the	
23 renewals disclosed in a clear and conspicuous		23 report that I just handed you. This is the	
24 manner in Integrity Advance's loan agreements?		24 complete -- for the record, this is Dr. Hastak's	
25 A. To me that's an empirical question		25 complete report. It does not include all the	
	82		84
1 which I can't answer without data.		1 appendices. It omits all the appendices except	
2 Q. So you have no opinion; is that		2 for those that are the actual loan agreements.	
3 correct?		3 So his CV is omitted.	
4 A. I have no scientific basis for an		4 MS. BAKER: This document appears, I	
5 opinion. As an expert in consumer behavior, I		5 don't know if it's redacted or highlighted, but	
6 would have no basis for a scientific opinion. I		6 I note that it's not exactly what was provided	
7 might have my personal thoughts and feelings,		7 to us in the litigation. It's fine --	
8 but I know they don't correspond to the		8 MS. WEINBERG: This is exactly as it	
9 consumers necessarily.		9 appeared in Dr. Hastak's report.	
10 Q. You've established that you didn't do		10 MS. BAKER: This is just in color,	
11 any empirical research here. And putting aside		11 then? I'm talking about these --	
12 your personal views, based on your professional		12 MS. PROFITA: Our copy was not in	
13 expertise, do you have any opinion on whether		13 color.	
14 the loan renewals were disclosed in a clear and		14 MS. BAKER: I don't believe I have ever	
15 conspicuous manner?		15 seen these highlights before, unless they are	
16 MS. BAKER: Objection. Asked and		16 highlighted or redacted. I don't know. I'm	
17 answered.		17 just noting it. I don't think it matters. I'm	
18 BY MS. WEINBERG:		18 just making that record.	
19 Q. You are shaking your head no.		19 MS. WEINBERG: The personal information	
20 A. I said no and I continue to say no.		20 of the consumers was redacted in this version	
21 Q. Okay. Do you have any opinion on		21 and in the version in Dr. Hastak's report. It	
22 whether the disclosures could have been clearer		22 may be that the copy that you had had the	
23 on the cost of loan renewals in Integrity		23 redactions in gray rather than in yellow.	
24 Advance's loan agreements?		24 MS. BAKER: That must be it. Okay. So	
25 MS. BAKER: Same objection.		25 these are redactions and not highlights?	

21 (Pages 81 to 84)

<p>1 MS. WEINBERG: These are redactions. 2 MS. BAKER: Okay. That was my 3 question. Thank you. 4 BY MS. WEINBERG: 5 Q. Anyway, I think we are all potentially 6 on the same page here. So let's just look at 7 the first loan agreement here which, for the 8 record, appears as CFPB042566 through 042575. 9 A. Yep. 10 Q. You have it, okay. So if a consumer 11 chose to roll over their loans, this particular 12 consumer who had an amount financed of 500 and a 13 finance charge of 150, what would the cost of 14 the renewals have been for that consumers? 15 A. Each renewal would cost 150. 16 Q. And what would be the total cost if the 17 consumer went through the auto renewal and auto 18 workout process? 19 A. It would take me a few minutes to 20 calculate that. 21 MS. BAKER: Are you asking the witness 22 to calculate the cost of renewals based on his 23 review of this document? I'm not sure I 24 understand -- 25 MS. WEINBERG: Yes.</p>	<p>85</p> <p>1 MS. BAKER: Do you have a calculator? 2 BY MS. WEINBERG: 3 Q. In so doing it, if you could tell me 4 what you are doing to make that calculation? 5 MS. BAKER: Do you have a calculator? 6 MS. WEINBERG: No, I don't have a 7 calculator. 8 BY MS. WEINBERG: 9 Q. Would you need a calculator? 10 A. It will take me a while without one. I 11 will have to sit with pencil and paper. 12 Q. Do you want some paper and pencil? 13 A. I would need that if I were to do that. 14 MS. BAKER: Let the record reflect that 15 Ms. Weinberg has asked the witness to engage in 16 addition, subtraction calculations without a 17 calculator for some inexplicable reason. 18 Please go ahead. 19 MS. WEINBERG: Thank you for that 20 unnecessary characterization. I think the 21 record was perfectly clear about what I was 22 asking Dr. Novemsky to do. 23 BY MS. WEINBERG: 24 Q. Here is a pen and it is, for the 25 record, 11:26, I believe.</p>
<p>86</p> <p>1 MS. BAKER: So you are asking him to do 2 math. 3 MS. WEINBERG: Yes. 4 BY MS. WEINBERG: 5 Q. You have a degree in mathematics? 6 MS. BAKER: I know he does. I wasn't 7 suggesting he couldn't. 8 THE WITNESS: I can. It will take me a 9 few moments. 10 BY MS. WEINBERG: 11 Q. What is the degree that you have 12 mathematics? 13 A. My undergraduate degree is in 14 psychology, physics and mathematics. 15 Q. And where was that undergraduate degree 16 from? 17 A. Wesleyan University. 18 Q. Do you have any degrees in mathematics 19 post college? 20 A. No. 21 Q. But you were a triple major? 22 A. I was. 23 Q. You were busy. So yes, I am going to 24 ask you to calculate what that would be for this 25 consumer.</p>	<p>88</p> <p>1 MS. BAKER: Are you finished? 2 THE WITNESS: I am. 3 BY MS. WEINBERG: 4 Q. For the record, it's now 11:30. And 5 could you tell me, could you state for the 6 record what you did to calculate the costs of 7 renewals for this consumer? 8 A. I started with the payments that would 9 occur during the initial period and for auto 10 renewal periods. 11 Q. And what were those payments? 12 A. The payments would be 150 for five 13 times at the end of period one and then the four 14 auto renewals. So five times 150 for a total of 15 \$750 in payments. Oh, I didn't realize I made 16 an error which I have fixed. 17 Q. Did you want to correct something? 18 A. No, what I said was correct. I was 19 looking ahead. By saying that, I looked ahead 20 and realized I needed to fix something. 21 Q. So you started by saying you started 22 with the cost of -- 23 A. The cost of the first period is a \$150 24 finance charge. That would be paid at the 25 initial due date. \$150 would be paid at the end</p>

	89		91
1	of auto renewal one, two, three and four for a 2 total of five payments of \$150 or a total of 3 \$750 in payments.	1	Q. Do you have an opinion -- and as far as 2 you know, was that cost, \$2,075, do you have an 3 opinion about whether it would have influenced 4 consumer behavior to disclose the cost of going 5 through the auto renewal and auto workout 6 process more clearly in the document? So in 7 other words, for this consumer if it said 8 somewhere if you go through auto renewal and 9 auto workout, the cost will be \$2,075, do you 10 think that would have influenced consumer 11 behavior if that information appeared in 12 addition to the cost of a single-payment loan?
4	Q. Did you do any further calculations 5 after that?	13	MS. BAKER: Objection. Compound 14 question and a vague question. Form.
6	A. Sure. Then after that we go into auto 7 workout. At auto workout, at the end of the 8 first period you pay the same finance charge of 9 150, but you also pay \$50 in principal. In the 10 next period your principal is now not 500 but 11 450. And so at the end of that period you would 12 pay a reduced finance charge on the 450 which is 13 135, \$15 on every \$50 or \$30 on every 100 plus 14 the \$50 principal payment.	15	BY MS. WEINBERG:
15	Q. So just to break that down so I'm 16 clear, to make that calculation, you took -- you 17 had to calculate a new finance charge?	16	Q. Do you understand the question?
18	A. As the principal reduces, the finance 19 charge also reduces, correct.	17	A. No. The clarity I would need is 18 exactly how it's said. That could be described 19 to consumers in a variety of different ways. 20 And depending on how you describe it, it may or 21 may not have a positive or a negative influence 22 on a consumer's decision to take out this loan.
20	Q. And to get that number then you had to 21 do what to get the new finance charge? What was 22 the calculation you had to do?	23	Q. And under what circumstances would you 24 think it would have an influence on consumers' 25 decision to take out a loan?
23	A. It's \$30 for every hundred. So you 24 multiply the principal remaining by \$30 for 25 every hundred or point-3.	24	
	90		92
1	Q. So I'm sorry, please continue with how 2 you made your calculation.	1	MS. BAKER: Objection. Vague.
2	A. So at the end of auto workout period 3 one, they pay 150 finance plus \$50 principal for 4 a total of 200. At the end of auto workout 5 period two, they pay \$50 principal plus 135 in 6 finance charges and so on with the finance 7 charge going down by \$15 every period. As the 8 principal is reduced by 50, the finance charge 9 goes down by 15 until the principal reaches 10 zero, which looks like approximately ten auto 11 workout periods.	2	THE WITNESS: I don't have an answer 3 off the top of my head to that question.
12	Q. And the total amount that you say this 13 consumer would have paid if he or she had gone 14 through the renewal and auto renewal and auto 15 workout?	4	BY MS. WEINBERG:
16	A. Is \$2,075.	5	Q. You said depending on the circumstances 6 it may or may not have an influence on 7 consumers' decision to take out a loan. That's 8 what you said in answer to your prior question.
17	Q. And what was the error you made 18 initially when you were doing this calculation?	9	A. Right.
19	A. I had them pay the principal twice. 20 When I thought about the end of the five auto 21 renewals, I thought he paid the principal. But 22 the principal remains and is paid through the 23 auto workout. So I added in the principal twice 24 and I shouldn't have.	10	Q. So my question is whether you have any 11 thoughts about what the circumstances are that 12 it would have an impact?
25		13	A. I would have to think through the 14 circumstances. I know that that can be framed 15 very differently, and depending on how you frame 16 that cost, you can have a very different impact 17 on consumers. For example, you could frame that 18 cost as if you don't pay this loan back for over 19 half a year, which is the total time would be, 20 about 28 weeks, you know, then they may have a 21 very different feeling about it. There are lots 22 of ways to talk about the time that would elapse 23 as well as talk about the payments. Whether you 24 aggregate them or disaggregate them also has an 25 impact. There are many factors and the

23 (Pages 89 to 92)

<p>1 communication of that that would influence how 2 consumers are affected by it. And there are 3 many possible examples of that. So I would have 4 to think through which examples might possibly 5 have a particular influence. That would be an 6 exercise I would have to spend time engaging in. 7 I don't have a simple answer to that question. 8 It's a complex question.</p> <p>9 Q. Well, let's take a discrete scenario, 10 then. What if right under the TILA box it said, 11 you know, as the TILA box said what it says 12 here, your APR is this, your finance charge is 13 this, your amount financed, total payments for a 14 single payment loan and then it had the same 15 information on APR, finance charge, amount 16 financed and total payments for a complete auto 17 renewal scenario. Auto renewal, auto workout 18 scenario that you have just calculated would 19 have been \$2,075 for this consumer. Do you have 20 an opinion about whether that would have 21 influenced consumer behavior?</p> <p>22 MS. BAKER: Objection. Compound 23 question.</p> <p>24 THE WITNESS: I don't have an opinion 25 because I don't know that they would understand</p>	<p>93</p> <p>1 numbers corresponded with the correct 2 mathematical calculation of the cost of auto 3 renewals?</p> <p>4 A. If you gave them the same box and 5 changed the total payments and other numbers, 6 particularly the finance charge, that might have 7 an effect on consumers, sure.</p> <p>8 Q. What effect do you think it might have?</p> <p>9 A. They would find the loan in likelihood 10 less attractive if you said the total payments 11 were \$2,075 instead of \$650.</p> <p>12 Q. Let's go back to your report.</p> <p>13 MS. BAKER: Just for housekeeping 14 purposes, it's 11:45. Can we break for lunch at 15 noon or maybe even a little before noon since 16 we've already been going about an hour?</p> <p>17 MS. WEINBERG: You want to go until 18 noon?</p> <p>19 THE WITNESS: Noon sounds fine for me.</p> <p>20 MS. BAKER: If that works for you, 21 Wendy.</p> <p>22 MS. WEINBERG: That's fine.</p> <p>23 BY MS. WEINBERG:</p> <p>24 Q. So let's look at paragraph 21 of your 25 report, which is on page 6 of your report. And</p>
<p>1 that.</p> <p>2 BY MS. WEINBERG:</p> <p>3 Q. Why wouldn't they understand that?</p> <p>4 A. As I state in my report, consumers are 5 focused on the here and now, by and large. I 6 don't know when you say complete auto renewal 7 and auto workout, they would read those words 8 and may or may not think through what the 9 implications of those are for them.</p> <p>10 Q. Do you have an opinion about whether it 11 would have affected consumer behavior to put the 12 cost only of the full auto renewal and auto 13 workout cost of a loan with Integrity Advance in 14 the TILA box rather than the cost of a 15 single-payment loan?</p> <p>16 A. Again, it would depend on how you 17 represent it in the TILA box. I can't answer 18 that in the absence of a particular 19 instantiation of the TILA box.</p> <p>20 Q. What if for this loan -- and you have 21 the calculations, I don't, but let's just assume 22 it said finance charge here -- well, let's just 23 say the total payments box, which is the only 24 number that I have based on your calculations, 25 said \$2,075 instead of \$650 and that the other</p>	<p>94</p> <p>1 your report is, for the record, Exhibit 1. So 2 in this paragraph you cite your article on 3 opportunity costs in footnote 5; is that 4 correct?</p> <p>5 A. That is correct.</p> <p>6 Q. So let's take a look at that article.</p> <p>7 (Novemsky Deposition Exhibit Number 4 8 was marked for identification.)</p> <p>9 BY MS. WEINBERG:</p> <p>10 Q. And I would have this marked as 11 Exhibit 4. So if we could turn to the first 12 page, the first page of your article in the 13 right-hand column on that page, the first full 14 paragraph --</p> <p>15 MS. BAKER: Did you have a chance to 16 just confirm that this is a complete copy of 17 your article and it's what you have actually 18 previously written?</p> <p>19 MS. WEINBERG: Thank you.</p> <p>20 THE WITNESS: It does appear to be.</p> <p>21 BY MS. WEINBERG:</p> <p>22 Q. And this is the article that you 23 referenced in your footnote?</p> <p>24 A. It does appear to be that article, yes.</p> <p>25 Q. Great. So going to that first full</p>
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>93</p> <p>1 numbers corresponded with the correct 2 mathematical calculation of the cost of auto 3 renewals?</p> <p>4 A. If you gave them the same box and 5 changed the total payments and other numbers, 6 particularly the finance charge, that might have 7 an effect on consumers, sure.</p> <p>8 Q. What effect do you think it might have?</p> <p>9 A. They would find the loan in likelihood 10 less attractive if you said the total payments 11 were \$2,075 instead of \$650.</p> <p>12 Q. Let's go back to your report.</p> <p>13 MS. BAKER: Just for housekeeping 14 purposes, it's 11:45. Can we break for lunch at 15 noon or maybe even a little before noon since 16 we've already been going about an hour?</p> <p>17 MS. WEINBERG: You want to go until 18 noon?</p> <p>19 THE WITNESS: Noon sounds fine for me.</p> <p>20 MS. BAKER: If that works for you, 21 Wendy.</p> <p>22 MS. WEINBERG: That's fine.</p> <p>23 BY MS. WEINBERG:</p> <p>24 Q. So let's look at paragraph 21 of your 25 report, which is on page 6 of your report. And</p>
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>94</p> <p>1 your report is, for the record, Exhibit 1. So 2 in this paragraph you cite your article on 3 opportunity costs in footnote 5; is that 4 correct?</p> <p>5 A. That is correct.</p> <p>6 Q. So let's take a look at that article.</p> <p>7 (Novemsky Deposition Exhibit Number 4 8 was marked for identification.)</p> <p>9 BY MS. WEINBERG:</p> <p>10 Q. And I would have this marked as 11 Exhibit 4. So if we could turn to the first 12 page, the first page of your article in the 13 right-hand column on that page, the first full 14 paragraph --</p> <p>15 MS. BAKER: Did you have a chance to 16 just confirm that this is a complete copy of 17 your article and it's what you have actually 18 previously written?</p> <p>19 MS. WEINBERG: Thank you.</p> <p>20 THE WITNESS: It does appear to be.</p> <p>21 BY MS. WEINBERG:</p> <p>22 Q. And this is the article that you 23 referenced in your footnote?</p> <p>24 A. It does appear to be that article, yes.</p> <p>25 Q. Great. So going to that first full</p>

<p>97</p> <p>1 paragraph in the second column on that page, you 2 say, Evaluating opportunity cost requires 3 consumers to consider outside options that are 4 not explicit components of a purchase decision. 5 Then the second sentence, which is the 6 one I'm going to ask you to focus on here, you 7 refer to much psychological research showing 8 that judgments and preferences are based 9 primarily on information that is explicitly 10 presented. Do you see that sentence? 11 A. Um-hum. 12 Q. Can you describe the psychological 13 research, the judgments about judgments and 14 preferences being based on information that's 15 explicitly presented? 16 A. That's a very broad statement deriving 17 from a broad set of studies, but a summary of it 18 might be people pay attention to what's in front 19 of them and tend to ignore things that aren't in 20 the immediate environment even if those things 21 are very relevant to the decision at hand. 22 Q. And taking us back to the context of 23 Integrity Advance's loan agreements, would you 24 agree that what's explicitly presented in terms 25 of the cost of the loan is the cost of a</p>	<p>99</p> <p>1 Q. What does explicitly presented mean 2 as -- 3 A. Explicit -- sorry. 4 Q. As used in this article? 5 A. Explicitly presented means the 6 information is in front of you in the present 7 environment. The contrast drawn in this article 8 is to things that are not presented, for 9 example, opportunity costs. If I don't spend my 10 money on the stereo that I'm staring at, what 11 else could I spend my money on? Those options 12 are not in my current environment. I would have 13 to bring them to mind spontaneously myself. 14 In the loan agreement, renewal, auto 15 workout, all finance charges are explicitly 16 mentioned. There's nothing that you have to 17 bring to mind from your own experience or past 18 or future behavior as you would in -- that the 19 article is referencing. 20 Q. And it's your testimony, is it your 21 testimony that renewal costs are explicitly 22 presented even though it took you four or 23 five minutes to calculate the cost? 24 A. Yes. 25 Q. And in the other psychological research</p>
<p>98</p> <p>1 single-payment loan without rollovers? 2 A. I think -- no, I would not agree with 3 that. 4 Q. Why not? 5 A. I think the loan agreement presents the 6 costs of auto renewal and auto workout as well. 7 Q. And it's your testimony that that's 8 explicitly presented? 9 A. It is. That's how I made my 10 calculation, for example. 11 Q. But nowhere in that loan agreement was 12 that \$2,075 cost explicitly presented, was it, 13 in the agreement that you were just looking at? 14 MS. BAKER: Objection. Form. 15 Compound. Vague. 16 BY MS. WEINBERG: 17 Q. Is it your testimony that the cost in 18 this instance, as you have calculated, \$2,075, 19 for the cost of going through auto renewal and 20 auto workout was explicitly presented in the 21 loan agreement? 22 A. Yes. There's a confusion between 23 explicitly presented and presented in sum. The 24 sum is not presented, but the parts of it are 25 explicitly stated in the loan agreement.</p>	<p>100</p> <p>1 that you refer to here, is that also how they 2 are using the phrase "explicitly presented"? 3 MS. BAKER: Objection. Form. Vague 4 question. 5 BY MS. WEINBERG: 6 Q. Do you know the meaning of the term 7 "explicitly presented" in the other 8 psychological research that you reference in the 9 sentence that we have been talking about? 10 A. I don't know whether they use that 11 specific term. We are characterizing their 12 research using that term. And our 13 characterization of that term is explicitly 14 presented means the thing you are talking about 15 is in the present environment explicitly. It is 16 not something you have to pull from some other 17 environment, as I said, from your memory, past 18 experiences or something else. 19 Q. I would ask you to turn to the second 20 page of this article which, for the record, is 21 Opportunity Cost Neglect of which you are one of 22 the authors. On page 554, second paragraph -- 23 second column, first full paragraph at the top 24 of the page, the first full sentence ends, 25 Preferences shift towards cheaper options when</p>

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1 the price difference is made explicit even
 2 without mentioning other purchases.

3 **Can you explain what that means?**

4 A. Let me read it for a second.

5 **Q. Sure.**

6 A. Sure. So if you mention -- so without
 7 context, this won't make sense. So I'll give a
 8 bit of context.

9 **Q. Thanks.**

10 A. If you talk about buying -- so in
 11 study 1, buying a DVD for 14.99, you can label
 12 the options as buy or not buy. And you can also
 13 label the options as buy or keep the 14.99 for
 14 other purchases. The latter is referred to in
 15 this phrase an option described as keeping the
 16 money for other purchases. What that does is
 17 that shifts preferences towards cheaper options
 18 when the price difference is made explicit. So
 19 I realize I have given a bad example because it
 20 doesn't shift towards cheaper items. It shifts
 21 towards not buying.

22 But in some cases referenced in that
 23 sentence you can buy the more expensive item or
 24 buy a cheaper item. For example, in Figure 2 --

25 MS. BAKER: Where are you looking?

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1 the sentence we were referring to on page 554 of
 2 this article, the Opportunity Cost Neglect
 3 article?

4 A. I would agree with that, yes.

5 **Q. And what would you say the implications
 6 of that fact are here?**

7 MS. BAKER: Objection. Vague.

8 If you can answer it, go ahead.

9 THE WITNESS: I can't answer it.

10 BY MS. WEINBERG:

11 **Q. Why can't you answer it? Is it because
 12 of the form of my question --**

13 A. I don't understand what you are asking.

14 **Q. Okay. Let me try again. You just said
 15 that you agree that the price difference between
 16 rollovers and single-payment loans was not made
 17 explicit in Integrity Advance's loan agreements
 18 as the word "explicit" is used in this sentence,
 19 Preferences shift towards cheaper options when
 20 the price difference is made explicit even
 21 without mentioning other purchases.**

22 And so my question is whether that has
 23 any implications here, the fact that preferences
 24 shift towards cheaper options when the price
 25 difference is explicit and that wasn't explicit

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1 THE WITNESS: This is on page 555. At
 2 the bottom there's a box labeled Figure 2.
 3 There are two options, one option for \$399;
 4 another option for \$299 or the option not to
 5 buy.

6 If you add the explicit difference in
 7 price, that parenthetical remark, leaving you
 8 the \$100 in cash, which was presented to some
 9 participants but not others, when you present
 10 that, you tend to push people towards option B,
 11 the cheaper option and away from option A. So
 12 you shift preferences toward the cheaper option
 13 when you make the difference in costs explicit,
 14 meaning you write it on the page as opposed to
 15 not writing it on the page.

16 BY MS. WEINBERG:

17 **Q. Do you agree that the price differences
 18 between rollovers and single-payment loans was
 19 not made explicit in Integrity Advance's loan
 20 agreements?**

21 A. Sorry, say that again.

22 **Q. The price difference between rollovers
 23 and auto renewals and single-payment loans was
 24 not made explicit in Integrity Advance's loan
 25 agreements as the phrase "explicit" is used in**

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1 here?

2 MS. BAKER: Same objection.

3 THE WITNESS: Any implication is too
 4 vague for me. I'm not sure what you are asking
 5 me.

6 BY MS. WEINBERG:

7 **Q. Would influence consumer behavior in
 8 choosing to take out the loan?**

9 A. I don't know if it would because as I
 10 said in my report, I don't know that renewal was
 11 relevant to them when choosing to take out the
 12 loan. So the difference between price of
 13 renewed and unrenewed loans is not -- may not be
 14 on their minds when they are choosing do I
 15 originate this loan or not.

16 **Q. You don't know that it was on their --
 17 you are saying you have no basis for knowing
 18 whether it was or wasn't on their minds?**

19 A. I have cited research that suggests it
 20 might not be. We referred to that earlier in my
 21 report. So I have some basis for thinking maybe
 22 it wasn't, but without data, I can't say for
 23 sure whether it was or it wasn't. But I have
 24 some reason to believe it might not be. I have
 25 a hypothesis that it was not. That's

	105		107
1	unconfirmed.	1	AFTERNOON SESSION
2	Q. And I just asked you this question	2	(12:57 p.m.)
3	about whether making the price difference	3	MS. WEINBERG: So we are back on the
4	explicit in the loan would have affected	4	record at 12:58. I wanted to start by, I wanted
5	consumer behavior in terms of choosing the loan.	5	to have Dr. Novemsky's calculations marked as an
6	I want to ask you the same question in terms of	6	exhibit and entered for the record.
7	whether you think it would have affected	7	(Novemsky Deposition Exhibit Number 5
8	consumer behavior in terms of understanding the	8	was marked for identification.)
9	loan.	9	BY MS. WEINBERG:
10	MS. BAKER: Objection. Form. Vague	10	Q. Dr. Novemsky, are you aware of any
11	question.	11	research that shows that costs aren't important
12	BY MS. WEINBERG:	12	to consumers when they are borrowing money?
13	Q. Do you understand the question?	13	A. Costs aren't important to consumers,
14	A. I'm not certain I do.	14	no, I'm aware of no research that makes that
15	Q. Okay. The question is whether if	15	specific conclusion, no.
16	Integrity Advance's loan agreements had	16	Q. Do you think that this is a proposition
17	explicitly set forth the cost of single-payment	17	that requires research or is it the type of
18	and auto workout and I think, if we understand	18	proposition that could be accepted on its face?
19	auto workout, would mean the full calculation	19	MS. BAKER: Objection. Vague.
20	that you just did where somebody takes the full	20	THE WITNESS: I think it requires
21	renewals and auto workout options that are	21	research.
22	available under the loan, if they had been	22	BY MS. WEINBERG:
23	explicitly presented, both of those costs, that	23	Q. Okay. You are just not aware of any
24	it would have influenced consumer behavior in	24	research on that topic?
25	understanding the loan agreement?	25	A. Correct.
	106		108
1	A. I don't know. I don't know if it	1	Q. Do you have an opinion on whether costs
2	would. It's an empirical question.	2	would be important to consumers who utilize
3	Q. Okay.	3	payday loans?
4	MS. BAKER: Is this a good time for you	4	A. I don't have an opinion on that, no.
5	to break? It's up to you. We can go a few more	5	Q. Let's go back to your report which,
6	minutes if you would like.	6	again, is Exhibit 1, paragraph 22, which is on
7	MS. WEINBERG: We could break. It's	7	page 7. Okay. And in there you say, There's a
8	five of.	8	body of research that finds that consumer
9	THE WITNESS: That's fine with me if	9	decision-making is driven much more by cost and
10	you are not in the middle of something.	10	benefits that are immediate compared to benefits
11	MS. WEINBERG: I am, but it's nothing	11	that are further away in time.
12	critical.	12	Is that a correct statement of what's
13	(Whereupon, at 11:55 a.m., a lunch	13	in your report?
14	recess was taken.)	14	A. It is.
15		15	Q. Do you have an opinion on whether
16		16	clarity of disclosures on costs that are further
17		17	away in time would improve decision-making for
18		18	consumers choosing to take out a loan?
19		19	A. I do not.
20		20	Q. So sticking with paragraph 22 that we
21		21	were just talking about, you are talking about a
22		22	body of research on what consumers find
23		23	important. Is that a correct statement?
24		24	A. Not exactly.
25		25	Q. Tell me how I erred in that.

	109		111
1	A. I would say it's a body of research about how consumers consider things that are in the here and now versus things that are distant in time.	1	are further away in time have any impact on an analysis of the clarity of loan disclosures?
2		2	A. As I said a minute ago, when I think about the clarity of loan disclosures, I can't separate that from the person reading it in the context in which it's being read. So if the loan disclosure is about something happening at a certain point in time, then this theory and framework do speak to it.
3		3	
4		4	
5	Q. So that's one conceptual way of looking at how consumers make decisions. Is that a correct statement?	5	
6		6	
7		7	
8	A. Sure.	8	
9	Q. And you didn't do any research here to apply this framework to the specific consumers who would have been taking out Integrity Advance loans; is that right?	9	
10		10	Q. Let's move on to paragraph 23 of your report.
11		11	
12		12	A. Okay.
13		13	Q. And is it a fair summary of that paragraph to say that consumers might not consider renewal costs because they are optimistic about their future?
14		14	
15		15	A. That is a fair summary.
16	Q. Does this conceptual framework about benefits that are immediate compared to benefits that are further away in time consider the clarity of loan disclosures?	16	Q. It's also -- is it also possible that they might consider renewal costs?
17		17	
18		18	A. Yes, it is.
19	A. No, they don't.	19	Q. Do you have an opinion on whether this potential optimism makes it important to disclose costs of renewals in order for consumers to understand the consequences of taking out a loan?
20	Q. Does this conceptual framework impact an analysis on the clarity of disclosures?	20	
21		21	
22	A. They may insofar as the impact, someone's motivation to process those disclosures. As I said earlier, the clarity of a disclosure is related to the consumer trying	22	
23		23	
24		24	
25		25	
	110		112
1	to understand it. If it's further away in time, the consumer will have less motivation to understand it. So it may seem less clear in the sense that it may have a harder time getting through the customer's understanding.	1	A. I don't have an opinion on that in the absence of data, no.
2		2	
3		3	Q. So in order for you to apply this framework, you would have to do -- you or someone would have to do a study. Is that a fair statement?
4		4	
5		5	A. That is a fair statement.
6	Q. And if the analysis were limited to the clarity of a specific document, not the consumer's understanding of it, and I understand we have been back and forth on this -- you say that it's difficult to disentangle those two, but if you could disentangle those two and limit the analysis just to what a document says, would this conceptual framework impact the analysis on clarity? This conceptual framework being the one we've just been talking about, about immediate benefits versus benefits that are further away in time.	6	Q. Does this theory about consumer optimism consider the clarity of loan disclosures?
7		7	
8		8	A. No. It's a much -- no.
9		9	Q. In paragraph 25, you say -- well, on page 8, which is sort of the middle of your paragraph 25, you say, It could be that consumers find loan renewal option despite its costs not to be a deterrent to accepting Integrity Advance's offering.
10		10	Do you see that sentence?
11		11	
12		12	A. I do see that sentence, yes.
13		13	Q. Is it also true that it might not be that consumers consider -- might it be true that the inverse is true on that sentence?
14		14	
15		15	A. Yes.
16		16	Q. And in order to know which statement of that sentence was true, is it fair to say you
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	

	113		115
1 would have to do empirical research?		1 MS. BAKER: To the extent you can	
2 A. That's what I would say, yes.		2 answer the question without disclosing something	
3 Q. And again, to beat that dead horse, you		3 covered by an NDA, please do so.	
4 didn't do empirical --		4 THE WITNESS: I will try to. I'm	
5 A. I did not do empirical research.		5 thinking that through. We talked about -- so	
6 Q. And does this theory consider the		6 for certain companies who regularly send e-mail	
7 clarity of loan disclosures?		7 to their customers, we talked about ways and we,	
8 MS. BAKER: Objection. Vague.		8 in fact, studied ways to -- we tested certain	
9 BY MS. WEINBERG:		9 e-mails, formats of e-mails, wording of e-mails,	
10 Q. The theory that consumers find the loan		10 wording of e-mail subject lines, time of day of	
11 renewal option despite its costs not to be a		11 e-mails and other factors that would increase or	
12 deterrent to accepting Integrity Advance's		12 decrease the likelihood that a consumer would	
13 offering.		13 read that e-mail from their service provider.	
14 A. I would say this conjecture about what		14 BY MS. WEINBERG:	
15 consumers might feel about loan renewal is not		15 Q. And do you know the percentage of	
16 relevant to clarity.		16 people that read e-mails from commercial	
17 Q. Okay. And was there any basis for this		17 sources?	
18 conjecture in your report?		18 A. No.	
19 A. Yes. It's listed in the following		19 Q. And you very quickly listed a bunch of	
20 paragraphs.		20 factors that influence whether people read	
21 Q. Okay. And those are the -- okay. Can		21 e-mails. To be honest with you, I didn't get	
22 you be more specific about which paragraphs you		22 them all but they are in the record. Other than	
23 are referring to?		23 those factors that you just recited, are there	
24 A. I can. Give me a moment to review		24 any other factors you can think of?	
25 them.		25 A. My memory is only as good as yours, I'm	
	114		116
1 Q. Sure.		1 afraid.	
2 A. I believe it's everything from that		2 MS. WEINBERG: Could you read back what	
3 paragraph through to paragraph 33 on my quick		3 he said, please, on the factors.	
4 looking.		4 (The record was read as requested.)	
5 Q. So 26 through 33 is what you are --		5 BY MS. WEINBERG:	
6 A. I think that's right.		6 Q. So you said subject line, time of day	
7 Q. In paragraph 26 you refer to a welcome		7 were the two ones that you explicitly mentioned?	
8 e-mail and another e-mail that you describe as a		8 A. There was content.	
9 reminder e-mail; is that correct?		9 Q. Content of the e-mail itself?	
10 A. That is correct.		10 A. There was framing, I think, of the	
11 Q. Do you have any expertise on whether		11 e-mail.	
12 consumers read e-mails?		12 Q. And what do you mean by framing?	
13 A. I have expertise relevant to whether		13 A. The words that are used. You can talk	
14 consumers read e-mails, yes.		14 about something as avoiding a loss versus	
15 Q. And what is your relevant expertise?		15 approaching a gain. And people -- the same	
16 A. I have understanding of some of the		16 content can be described in either of those	
17 factors that might drive whether consumers read		17 frames and it changes someone's propensity to	
18 an e-mail or not.		18 read it. That's one example of framing, but	
19 Q. Have you done research in this area?		19 there are lots.	
20 A. I have worked on projects with some of		20 Q. And does the question or the concept of	
21 the corporate partners of the Yale Center For		21 framing have any relevance to Integrity	
22 Customer Insights on issues that are relevant to		22 Advance's e-mails?	
23 customers reading e-mails, yes.		23 A. I would have to review their e-mails.	
24 Q. Can you be more specific about what		24 Q. The e-mails are part of your report in	
25 that research is?		25 the appendix. And for the record, it is	

<p style="text-align: right;">117</p> <p>1 Appendix B and Appendix C of Dr. Novemsky's 2 report. And these are the two e-mails that you 3 were referencing in your report; is that 4 accurate?</p> <p>5 A. Yes. Can you repeat the question?</p> <p>6 Q. Does the concept of framing have any 7 relevance for Integrity Advance's e-mails? And 8 again, referring specifically to Exhibit B and 9 C.</p> <p>10 A. When you say have any relevance, what 11 are you asking me?</p> <p>12 Q. Well, what you specifically said about 13 framing is that it can have an impact when you 14 talk about avoiding loss or potential gain. Is 15 that an accurate restatement?</p> <p>16 A. That's one version of framing, yeah.</p> <p>17 Q. Is there anything in these two e-mails 18 that either talks about avoiding loss or 19 potential gain that would make the concept of 20 framing relevant?</p> <p>21 A. The concept of framing is broader than 22 just losses and gains. That's an example of one 23 way to reframe something. There are many ways 24 to reframe something. One could reframe really 25 any communication from anyone. And if you use a</p>	<p style="text-align: right;">119</p> <p>1 Q. Okay. I think that was my question. 2 So without doing an empirical analysis, you 3 couldn't --</p> <p>4 A. Without doing an empirical analysis, I 5 wouldn't have a conclusion to draw about how 6 many people read these e-mails.</p> <p>7 Q. Okay. Thank you. In paragraph 26, can 8 you tell me what -- you write -- the last 9 sentence of that paragraph you say, These two 10 e-mail messages, and again I think you are 11 referring to your Appendix B and C, clearly bear 12 on a customer's knowledge at the time they 13 choose to renew their loan.</p> <p>14 Do you see that sentence?</p> <p>15 A. I do.</p> <p>16 Q. And what is the basis for that 17 statement?</p> <p>18 A. These two e-mail messages provide clear 19 information about loan renewal and they were 20 received prior to loan renewal. And so it is 21 likely the case that they influenced consumers 22 at the time of their choosing to renew their 23 loan.</p> <p>24 Q. And what is the basis of your statement 25 that they were received prior to renewal?</p>
<p style="text-align: right;">118</p> <p>1 different frame on something, you can make it 2 more or less likely to engage the person 3 receiving it.</p> <p>4 Q. Okay. So we've talked about subject 5 line, time of day, content and framing. Are 6 there any other factors that come to your mind 7 about whether -- that influence whether people 8 read e-mails?</p> <p>9 A. Sure. The nature of the service being 10 provided, the level of perceived risk, the 11 importance, the monetary value of the thing 12 being mentioned. I'm sure there are more if I 13 had more time to think.</p> <p>14 Q. And did you analyze any of these 15 factors that you have mentioned, nature of 16 service, risk, value, subject line, time of day, 17 content, framing, in relation to Integrity 18 Advance's e-mails?</p> <p>19 A. I'm not sure what you mean by analyze. 20 If I --</p> <p>21 Q. To see whether these e-mails would have 22 been more likely to be read or not.</p> <p>23 A. That wouldn't be the way I would answer 24 the question, how likely they would be read. I 25 would answer that question empirically.</p>	<p style="text-align: right;">120</p> <p>1 A. My understanding is that the welcome 2 e-mail is sent out upon or within shortly after 3 loan approval. So that would certainly be prior 4 to loan renewal. And my understanding is that 5 the reminder e-mail is sent a few days before 6 loan renewal would be possible or before the 7 first due date.</p> <p>8 Q. And is this from information that you 9 obtained from counsel or from Integrity Advance?</p> <p>10 A. Or one of the many documents that I 11 looked at. I can't remember the source now.</p> <p>12 Q. But to summarize your previous 13 testimony, and tell me if I'm wrong, I'm sure 14 you will or I'm sure your counsel will, you 15 don't have any opinion on whether consumers 16 actually read these e-mails because you -- is 17 that correct?</p> <p>18 A. I don't have any opinion on how many 19 consumers read these e-mails, that is correct.</p> <p>20 Q. And you said that the information in 21 these e-mails is clear. Is that a correct 22 statement?</p> <p>23 A. I may have. What I was saying was the 24 material in these e-mails is clearly relevant to 25 the loan renewal.</p>

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1	Q. I see. So you weren't making a statement about the content of the e-mails?	1	then.
2	A. I was making a statement that the content of the e-mails is relevant to loan renewal.	2	BY MS. WEINBERG:
3	Q. But you weren't talking about clarity of disclosure in that?	3	Q. My only question was to try to clarify that the loan agreements that we were talking about, the ones that were in Appendix B and C of Dr. Hastak's report.
4	A. I wasn't talking about clarity in the way that Dr. Hastak talked about clarity.	4	MS. BAKER: Could you read back the last three questions that were asked and the answers that were given, please. I want to make sure I have a clean record here.
5	Q. And do you have any knowledge about whether consumers received any e-mails before they signed the loan documents?	5	(The record was read as requested.)
6	A. I don't have any knowledge about that.	6	MS. BAKER: Are you okay with those answers, given the clarification with the documents? I just want to make sure because we were talking about documents, and it wasn't clear what documents we were discussing.
7	Q. And just to clarify, when you said you have no knowledge about when they got that e-mail, were you referring to both e-mails, Exhibit B and Exhibit C?	7	THE WITNESS: Yes, I am.
8	A. I don't think that's --	8	BY MS. WEINBERG:
9	MS. BAKER: Objection. That assumes facts not in evidence. That's not what he said.	9	Q. What is the basis for your assumption about the timing of the welcome e-mail?
10	MS. WEINBERG: Could you read back the answer prior to this.	10	A. I was either told by counsel or it was in one of the documents I reviewed.
11	(The record was read as requested.)	11	Q. Okay. And I want to ask you these same questions about the reminder e-mail. What were your assumptions about when consumers got the
12	BY MS. WEINBERG:	12	
13	Q. So what was your assumption about when	13	
14	customers received the welcome e-mail?	14	
15	A. My understanding was that customers received the welcome e-mail shortly after being approved for the loan.	15	reminder e-mail? And for the record, the reminder e-mail is Exhibit C in your report; is that correct? Is that what you were referring to as the reminder e-mail?
16	Q. And what is your understanding about how that occurred in relation to the signing of the loan documents?	16	A. It is what I was referring to, yes.
17	A. I would presume that approval occurs after signing of the loan documents.	17	MS. BAKER: So it's Appendix C of Exhibit 2.
18	Q. Okay. And just to be clear, when we say loan documents, we are talking about the loan agreement that is in Dr. Hastak's report as exhibits --	18	BY MS. WEINBERG:
19	MS. BAKER: If you can clarify what you mean by loan document.	19	Q. Okay. Yeah, it is Appendix C. I think I might have given it a different name.
20	MS. WEINBERG: That's what I'm trying to do. The two loan agreements that are in Dr. Hastak's, and they are B and C.	20	So again, what were your assumptions about when consumers got that reminder e-mail, which we have now clarified was Appendix C in your report?
21	MS. BAKER: So would you mind re-reading Ms. -- reading back Ms. Weinberg's last question given her clarification just now, please. I assume that's the question pending?	21	A. A few days before their first due date.
22	MS. WEINBERG: I don't think there's a question pending.	22	Q. And what is the basis of that assumption?
23	MS. BAKER: I'm sorry. Never mind,	23	A. It was either from counsel or one of the documents that I reviewed.
24		24	Q. And again, that would have been a document that was listed in your Appendix D, which are the documents you considered?
25		25	A. That's correct.
			Q. And would that have been before origination or after?

	125		127
1	A. After origination.	1	A. I have no information about that.
2	Q. And what were your assumptions about which consumers got e-mails, either -- let's start with the first one. What were your assumptions about which consumers got the welcome e-mail?	2	Q. Would that matter to your analysis?
3	MS. BAKER: Objection. Form. Vague question.	3	A. No.
4	BY MS. WEINBERG:	4	Q. Is it your opinion that consumers are just as likely to read e-mails that come as text in the body of an e-mail versus opening attachments?
5	Q. Did you have an assumption about the number or percentage of consumers that got the welcome e-mail?	5	A. No, that's not my opinion.
6	A. I don't have a particular assumption about the number who got the e-mail.	6	Q. What is your opinion?
7	Q. And would it have been relevant to your opinion to know the percentage of consumers who received the welcome e-mail?	7	MS. BAKER: Opinion concerning what?
8	A. The more received the welcome e-mail, the more paragraph 26 applies.	8	MS. WEINBERG: Whether consumers are just as likely to read an e-mail that appears as text in the body of the e-mail versus in an attachment to that e-mail.
9	Q. But you didn't review any records or receive any information on the percentage of consumers who did receive the welcome e-mail?	9	MS. BAKER: Are you asking as specific to this case or are you asking him more generally?
10	A. I can't recall exactly. I may have been told that it was a matter of policy that everyone receives the welcome e-mail.	10	BY MS. WEINBERG:
11		11	Q. Generally, do you have an opinion about whether consumers are more or less likely to read e-mails that come in one form, attachment, versus another --
12		12	A. They might well be more likely to read them in one form or another. I have no data on the subject. So I don't know exactly what the
	126		128
1	Q. And do you remember who told you that?	1	case is here.
2	A. It would either, again, come from counsel or one of the documents in Appendix D.	2	Q. And as a concept, do you have an opinion separate and apart from its application in this case?
3	Q. And you said it was a matter of policy. Do you have any information on whether that policy was implemented?	3	A. Again, it would depend on the situation, I think. That's an empirical question as to how many people read an e-mail of one form or another.
4	A. I do not.	4	Q. So you are not aware of any research on this topic?
5	Q. And the same question for the reminder e-mail which, for the record, is exhibit -- Appendix C to your report. Do you have any information, did you make any assumptions about what percentage of consumers received that reminder e-mail, Appendix C?	5	A. Specifically on attachments versus text in the body, I am not aware of specific research on that, no.
6	A. I did not make any assumptions.	6	Q. Is it your opinion that the welcome e-mail -- and again, I would like us all to turn to Appendix B in your report. Does that convey the cost? Is it your opinion that that e-mail conveys the cost of loan rollovers?
7	Q. And would that have been relevant to the statement you made in paragraph 26?	7	MS. BAKER: I just want to, for the record, clarify something. Are you asking him to give an opinion on that question?
8	A. Sure. The more consumers received it, the more that part of paragraph 26 would be relevant to them.	8	MS. WEINBERG: I'm asking if he has an opinion on that question. And if he doesn't, that's what the record will reflect.
9	Q. Do you know the format in which these two e-mails that we have been referring to, Appendix B and C, were sent? In other words, whether they were sent as an attachment, like in a Word file or as text that appeared in the body of an e-mail?	9	THE WITNESS: Can you repeat the
10		10	
11		11	
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13		13	
14		14	
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16		16	
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
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25		25	

	129		131
1 question?		1 addition, subtraction or other mathematics.	
2 BY MS. WEINBERG:		2 Q. So they would have to know the finance	
3 Q. Do you have an opinion about whether or		3 charge?	
4 not the welcome e-mail conveys the cost of loan		4 A. That's correct.	
5 rollovers? And rollovers, as we discussed		5 Q. And is it possible that consumers could	
6 earlier about going through the auto renewal and		6 read that e-mail to confirm their	
7 auto workout relative to the calculation that		7 misunderstanding that the total of payments that	
8 you made this morning.		8 was due under the loan was the amount reflected	
9 A. I don't know how well consumers		9 in the TILA box in their loan agreement?	
10 understand the cost of their rollover from		10 MS. BAKER: Objection. Compound	
11 reading this e-mail. I think that is an		11 question.	
12 empirical question, looking at the e-mail.		12 BY MS. WEINBERG:	
13 Q. When you say you don't know whether		13 Q. You can answer.	
14 consumers understand the cost, is that what you		14 A. I'm not sure which scenario you are	
15 just said?		15 referring to.	
16 MS. BAKER: No, that's not what he just		16 Q. Let's assume a scenario in which the	
17 said.		17 consumer looks at the loan agreement -- and to	
18 MS. WEINBERG: Could you repeat what		18 make things abundantly clear, let's look at the	
19 exactly he said.		19 one in Dr. Hastak's report again.	
20 (The record was read as requested.)		20 So we are looking at the same agreement	
21 BY MS. WEINBERG:		21 that you analyzed before, which was, I think,	
22 Q. Could you just say something further		22 his Exhibit B. So in that case let's assume	
23 about what you mean I don't know how well		23 that this person read the TILA box where it says	
24 consumers understood the cost of the rollovers		24 total of payments is \$650 to mean that each time	
25 from reading this e-mail?		25 he or she paid the finance charge of 150, it was	
	130		132
1 A. There are phrases in this e-mail that		1 being credited towards the total amount they	
2 refer to the costs. Particularly point one,		2 would have to pay, which here they would believe	
3 after the first initial payment, the next four		3 is \$650. Is that clear?	
4 renewals require -- only require payment of the		4 A. Could you repeat the question part	
5 finance charge starting with the fifth renewal		5 again? I get the scenario now.	
6 in addition to the finance charge, and it goes		6 Q. Sure. So if this consumer thought that	
7 on. That may convey to consumers that there is		7 the total amount they would have to pay in this	
8 going to be a finance charge paid with each		8 case was 650, the amount reflected in the total	
9 renewal, in which case they would know, it would		9 of payments, is it possible that a consumer	
10 communicate to them the cost of the renewal. Or		10 could read this welcome e-mail that we were	
11 they may not read that to mean there's a new		11 talking about to confirm their misunderstanding	
12 finance charge for each renewal. That's an		12 that the total of payments that was due was the	
13 empirical question, which of those two		13 amount reflected in the TILA box?	
14 possibilities obtained.		14 A. It is possible.	
15 Q. And do you think that consumers could		15 Q. Okay. Let's move to paragraph 27 of	
16 calculate the cost of a renewal based on this		16 your report. And here I'll just read the whole	
17 e-mail?		17 paragraph. Consumers also receive a phone call	
18 A. Yes, they could.		18 from Integrity Advance. During that call	
19 Q. And would they have to do the same		19 consumers had the opportunity to ask any	
20 calculation that you did this morning on paper		20 questions they had about costs of the loan,	
21 in order to do that?		21 including renewal costs. If they were confused	
22 A. No. It's a much simpler question.		22 about renewal costs after examining the loan	
23 It's just, what is my finance charge? That's		23 agreement, this phone call would have been an	
24 what I have to pay for renewal if they are		24 opportunity to clear up those confusions.	
25 reading point one correctly. So there's no		25 Is that an accurate reading of your	

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1 statement?

2 A. It is.

3 Q. And what were your assumptions about
4 when such a call for the confused consumer would
5 have occurred?

6 A. That statement doesn't require any
7 assumption around when it occurred.

8 Q. So it could have been after they had
9 signed the loan agreements that we have been
10 referencing in Dr. Hastak's report?

11 A. It could have been.

12 Q. Did you make any assumptions or did you
13 have any information about how such a call
14 between a consumer and an employee of Integrity
15 Advance would have occurred? In other words who
16 would have initiated the call?

17 A. My understanding was Integrity Advance
18 initiated the call.

19 Q. And what is the basis of your
20 understanding?

21 A. Either I was told the procedure by
22 counsel or by one of the documents in
23 Appendix D.

24 Q. If a consumer was not confused but
25 simply misunderstood the costs, such as the

1 agreement, in other words, has the wrong
2 understanding of the costs?

3 A. It may or may not. I think that's an
4 empirical question whether you get confirmation
5 bias in this situation.

6 Q. So it is possible, then, that consumers
7 who are confused -- well, not confused, but just
8 were wrong about what they thought the loans
9 would cost would not have received any
10 correction in their misinterpretation through
11 this phone call?

12 A. It is possible.

13 Q. Are you aware of any complaints filed
14 by customers of Integrity Advance in which the
15 customer stated that they didn't understand that
16 renewals would cost more money?

17 A. I don't remember specifically enough
18 whether that was in the complaints. I did look
19 at complaints. I don't remember whether I saw
20 that exact thing.

21 Q. How many complaints did you look at?

22 A. I skimmed -- there were, I would guess,
23 hundreds in there. I don't know the exact
24 number. I skimmed and I read closely a few
25 dozen and skimmed a bunch more. I don't have an

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1 person we were talking about before who
2 misunderstood that the total cost would have
3 been 650 under the loan agreement we were just
4 examining, you understand the first part of that
5 question?

6 A. I think so.

7 Q. Would this call help? So they weren't
8 confused. They are just wrong in their
9 interpretation of the loan agreement.

10 MS. BAKER: Objection. Vague question.
11 Also a compound one.

12 BY MS. WEINBERG:

13 Q. You can answer.

14 A. I think my answer is it might help.

15 Q. Are you aware of the concept of
16 confirmation bias?

17 A. I am.

18 Q. What is that?

19 A. It's where individuals tend to look at
20 information that confirms preexisting notions
21 they have and tend to ignore information that
22 disconfirms preexisting notions they have.

23 Q. And does that concept of confirmation
24 bias have any application to this scenario of a
25 consumer who just misunderstands the loan

1 exact number beyond that, I'm afraid.

2 Q. Do you recall seeing any complaints
3 from consumers who said that they didn't
4 understand that renewals would cost more money
5 than that amount stated in the TILA box?

6 A. I don't remember that specific idea
7 being there.

8 Q. What is your recollection of the
9 content of most of the complaints?

10 A. There were complaints that stated that
11 this violated their state law and so they wanted
12 their money back, whether all of it in some
13 cases or what they thought was an overpayment
14 relative to their state law in other cases.
15 That was a big theme in what I remember.

16 Q. Do you remember any other themes?

17 A. Not specifically.

18 Q. Are you aware of any research that
19 analyzes whether disclosures in a phone call are
20 clear and conspicuous?

21 A. I am not.

22 Q. Did you listen to any recordings of
23 phone calls between employees who worked for
24 Integrity Advance and consumers?

25 A. I did not.

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1 Q. Why not?		1 Q. This is an article that's mostly about brand loyalty; is that right?	
2 A. None were made available to me.		2 A. It's an article that's about exchange versus communal relationships with a brand.	
3 Q. Did you ask that they be made available?		3 Q. And can you please explain what you mean by exchange versus communal relationships?	
4 A. I don't recall. I think it was my understanding that they were not available.		4 A. Certainly. An exchange relationship is a relationship where I engage with another party, entity, someone where I expect that kind of a quid pro quo situation. If I give, I expect to get; if I get, I expect to give, as contrasted with a communal relationship where there's a deep concern for the other's well-being and you give with no particular expectation of reciprocity and you get with no expectation of reciprocity.	
5 Q. Let's turn to paragraph 27. And in that you say -- this is the one we were just looking at. Do you have any expertise in analyzing whether telemarketers adhere to scripts?		5 Q. And how does that conclusion in the article, how does that support the premise that you have cited for here that when consumers receive additional benefits, they expect to pay for them?	
6 A. I don't know if I have expertise. I have listened to telemarketers knowing what their scripts are and I have heard claims from some of our -- some of the companies I have worked with about how telemarketers adhere. But I don't know if that constitutes expertise.		6 A. In that article, among other things, it says that relationships with -- and I can't remember the words they use, but I'll use the word commercial transactions tend to be exchange	
7 Q. Are you aware of research that indicates that telemarketers tend to vary from the scripts they are given for phone calls?		7	
8 A. I'm not aware of such research.		8	
9 Q. Are you aware of research that indicates that telemarketers engage in adaptive behavior in reacting to consumers' questions?		9	
10 A. I'm not aware of research to that		10	
11 extent, no.	138	11	
12 Q. In paragraph 29 of your report, Exhibit 1, which is a long paragraph, on page 9 you say, When consumers receive additional benefits, they expect to pay for them.		12	
13 Do you see that?		13	
14 A. Yes, I do.		14	
15 Q. Do you know whether Integrity Advance's customers expected to pay more for a longer loan?		15	
16 A. I don't have any scientific basis for making that statement whether they do or don't have that expectation.		16	
17 Q. And the article that you cite for this premise was listed in footnote 8. It's -- I'm not going to try to say this. It's A-G-G-A-R-W-A-L. The Effects of Brand Relationship Norms on Consumer Attitudes and Behavior; is that right?		17	
18 A. That is cited in that paragraph, yes.		18	
19 Q. And that's the article that you cite for this particular proposition that when consumers receive additional benefits, they expect to pay for them?		19	
20 A. Correct.		20	
21 Q. What's the basis for that statement?		21	
22 A. So let me summarize the statement first. If consumers like renewal, then telling them more about -- if people like renewal, telling them more about how much it costs may		22	
23		23	
24		24	
25		25	

<p>1 not dissuade them from taking out a loan. If 2 you expound on a feature that they enjoy about a 3 particular product or service, that doesn't make 4 them not want the product or service.</p> <p>5 Q. But applying that specifically to 6 Integrity Advance and its agreements with its 7 customers, is there any basis for the statement 8 that the renewal option might be valuable to 9 Integrity Advance's customers specifically?</p> <p>10 A. I'm sorry. I'm not sure what the 11 question was in that.</p> <p>12 Q. Did you have any basis for a statement 13 that the renewal option might be valuable to 14 Integrity Advance's customers?</p> <p>15 A. Yes. And that is --</p> <p>16 MS. BAKER: Where is that statement?</p> <p>17 MS. WEINBERG: What he just made. He 18 said if it's a valuable -- I'm not going to 19 paraphrase it.</p> <p>20 MS. BAKER: Could you please read back 21 the last three questions and answers. (The record was read as requested.)</p> <p>22 MS. BAKER: I'm not sure he made that 23 statement, but you can ask him that question. 24 That's not the rendering that was just read</p>	<p>141</p> <p>1 Q. Despite receiving these e-mail messages 2 reminding them when the loan is due and how to 3 execute each of the possible payment options is 4 further support of the idea that consumers 5 prefer renewal to paying off the loan even after 6 receiving these initial disclosures.</p> <p>7 So is it your assumption that people 8 are actively choosing to renew their loans 9 rather than having the operation of the default 10 scenario which we'll get into later?</p> <p>11 A. That's a longer -- that's a complex 12 question and we'll have to have a long answer to 13 that.</p> <p>14 Q. Right. We'll get into the defaults 15 later. Let me just say, is it your opinion that 16 consumers who rolled over the loans were 17 actively choosing to do so?</p> <p>18 A. It is my opinion that many of them did 19 not have a strong preference not to do so.</p> <p>20 Q. Can you explain what you mean by that?</p> <p>21 A. The number of consumers who rolled over 22 their loan actively is an empirical question. I 23 don't have a number without some data, which I 24 don't have. If you refer to my paragraph, sorry 25 to pull us ahead, but that's where this is</p>
<p>142</p> <p>1 back.</p> <p>2 BY MS. WEINBERG:</p> <p>3 Q. Could you answer the question, the last 4 question, then, as she read back. Do you think 5 that the renewal -- do you have any basis for 6 saying that the renewal option was valuable to 7 Integrity Advance's customers?</p> <p>8 A. Yes, I do.</p> <p>9 Q. What is that?</p> <p>10 A. I believe that -- I'm just going to 11 reference the paragraphs. There are several 12 paragraphs in my report that provide support for 13 that. I'm going to try to reference all of 14 them.</p> <p>15 Q. Okay.</p> <p>16 A. Paragraphs 30 and 31, I think, provide 17 my reasoning for why the renewal option might be 18 valuable.</p> <p>19 Q. But in paragraph 30 you say if it's a 20 valuable aspect of the loan.</p> <p>21 A. Right. But prior to that is the 22 evidence.</p> <p>23 Q. The fact that more than 85 percent of 24 consumers choose to renew their loans?</p> <p>25 A. Continuing.</p>	<p>144</p> <p>1 going, is paragraph 47.</p> <p>2 Q. And that's getting into defaults.</p> <p>3 A. Yes, which is what the question is kind 4 of getting into.</p> <p>5 Q. Okay. And I want to ask you the same 6 question for the second clause in the sentence 7 we have been looking at: If the renewal option 8 is a valuable aspect of the loan, it's unlikely 9 that some altered version of the disclosure of 10 the renewal cost and the loan agreement would 11 serve to dissuade interested consumers from 12 taking out a loan.</p> <p>13 MS. BAKER: So back to paragraph 30?</p> <p>14 BY MS. WEINBERG:</p> <p>15 Q. Back to paragraph 30. Do you have any 16 basis for the statement that the altered version 17 would not dissuade consumers?</p> <p>18 MS. BAKER: I just want to object to 19 that question. It assumes a fact not in 20 evidence. If you are asking him -- I'm not sure 21 exactly what you are asking him. So it's a 22 vague question also.</p> <p>23 If you understand it, answer it. But 24 it's not a clear question.</p> <p>25 BY MS. WEINBERG:</p>

<p style="text-align: right;">145</p> <p>Q. Do you understand the question, Dr. Novemsky?</p> <p>A. I'm thinking it through. My presumption when I wrote "some altered version" was a version that provides greater disclosure of the renewal costs. And if renewal is an option that consumers value, including its costs, then as I said earlier, expounding on that option to them isn't going to dissuade them from originating the loan.</p> <p>Q. So in order for that statement to be true, would consumers have to understand what the costs of the renewal were?</p> <p>A. In order for which statement to be true?</p> <p>Q. The statement you just made about the renewal option being valuable to consumers.</p> <p>A. I'm sorry. I'm lost as to what the question is.</p> <p>Q. Okay. You just said that consumers may find the renewal option to be valuable to them; is that correct?</p> <p>A. They may find the renewal option to be valuable to them, correct.</p> <p>Q. And this sentence says that because</p>	<p style="text-align: right;">147</p> <p>your opinion, is there a downside of disclosing the total costs of loan renewals?</p> <p>A. There's a number of, I think, assumptions in what you are asking. So let me try to be clear.</p> <p>Q. Okay.</p> <p>A. If the renewal option is valuable for someone who understands the cost of the renewal option, then disclosing the costs of the renewal option to that type of customer would not make them less likely to take the loan.</p> <p>Q. And conversely, if the person did not understand the costs of the loan renewal, would it be valuable?</p> <p>A. I'm sorry, too many pronouns there.</p> <p>Q. You said that, if I can paraphrase, if the renewal option is valuable to somebody who understands the cost of the loan, then disclosing the cost of the loan, essentially, doesn't add anything to the equation. Is that a fair summary?</p> <p>A. That is a fair summary.</p> <p>Q. So if you take a person who does not understand the costs of the loan but finds the renewal option valuable, do you think it is</p>
<p style="text-align: right;">146</p> <p>they might find the renewal option to be valuable, it's unlikely that some altered version of a disclosure of the renewal costs in the loan agreement would serve to dissuade interested consumers from taking out a loan, right?</p> <p>A. Right.</p> <p>Q. So my question is, does this assume, this statement that they find renewal option to be valuable, assume that they understand the costs of a loan renewal?</p> <p>A. Yes, it does.</p> <p>Q. Okay.</p> <p>MS. BAKER: Could we take a five-minute break if now is an okay time to do that?</p> <p>MS. WEINBERG: This is fine.</p> <p>(A recess was taken.)</p> <p>BY MS. WEINBERG:</p> <p>Q. So it is now 2:10. We are back on the record. And before the break we were talking about circumstances about whether a renewal option was valuable to Integrity Advance's customers, right?</p> <p>A. Right.</p> <p>Q. If the renewal option is valuable, in</p>	<p style="text-align: right;">148</p> <p>valuable to that consumer to disclose the costs of the loan with the renewals?</p> <p>A. I think it's valuable to disclose the cost of the renewal to anyone who doesn't understand the cost of renewal, including such a consumer.</p> <p>Q. Let's move on to paragraph 31. And on page 10 your paragraph 31 is long, so this is sort of the middle of your paragraph 31. You write, These repeat customers, and you are talking about consumers who had more than one loan from Integrity Advance, either understood that loan renewal involves substantial costs because they choose not to renew their first loan with Integrity Advance or more likely given that the vast majority of loans are renewed, they did renew them and experienced exactly how renewal works and what the costs are.</p> <p>Is that an accurate statement?</p> <p>A. It's an accurate reading of the paragraph, yep.</p> <p>Q. So are you assuming in making that statement that consumers who renew loans understand the costs of the loan?</p> <p>A. I am assuming that consumers who have</p>

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1 experienced a loan, including its costs, which
 2 they would have had to experience through their
 3 account being debited are aware that those
 4 debits happened after the loan is concluded.
 5 Yes, I am.

6 **Q. Is it also possible that consumers**
 7 **never calculate the total cost in spite of**
 8 **having their account debited?**

9 A. It's possible.

10 **Q. Are you aware of marketing done to**
 11 **consumers that emphasizes monthly payments**
 12 **rather than total costs?**

13 A. Yes.

14 **Q. And do you know why some marketers**
 15 **choose to emphasize monthly payments rather than**
 16 **total costs in their marketing?**

17 MS. BAKER: Are you speaking presumably
 18 not about this case?

19 BY MS. WEINBERG:

20 **Q. No, I'm asking generically.**

21 A. Can you repeat the question?

22 **Q. The first question was whether you are**
 23 **aware of marketing done to consumers that**
 24 **emphasizes monthly payments rather than total**
 25 **costs. And you said yes. And my follow-up**

1 for the cost of a cup of coffee a day, you could
 2 save this child, which was a very famous ad
 3 campaign some years ago and many of you may
 4 remember it, in that situation you get to
 5 compare something. You get to compare to
 6 something in that case not substantial, like a
 7 cost of a cup of coffee, and say, oh, this is
 8 actually more important than my coffee. So I'm
 9 going to do this instead.

10 **Q. Let's look at paragraph 32. And in**
 11 **this paragraph you talk about lead generators.**
 12 **Is that accurate?**

13 A. That is.

14 **Q. What is your understanding of how lead**
 15 **generators work?**

16 A. My understanding is the customer can
 17 put information in about themselves into a lead
 18 generation website and then providers of that
 19 service, in this case, loans, would reach out to
 20 them in some way.

21 **Q. And how did you come to that**
 22 **understanding?**

23 A. That's just my general knowledge about
 24 lead generation websites and how they operate.

25 **Q. What is your basis for the statement**

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1 **question was whether you knew why some marketers**
 2 **chose to market in that fashion, emphasizing**
 3 **monthly payments rather than total costs?**

4 A. Do I know exactly why? I do not know
 5 exactly why marketers would choose to do that.

6 **Q. Are you aware of any research on this**
 7 **topic of marketing to consumers using monthly**
 8 **payments rather than total costs?**

9 A. I'm not aware specifically of research
 10 on monthly payments versus total costs.

11 **Q. You said specifically. Are you aware**
 12 **of research that is related to this question?**

13 A. I am aware of research that's related,
 14 yes.

15 **Q. What is that?**

16 A. There is research on something called
 17 the pennies a day phenomenon. When you describe
 18 the cost of something in how many cents or
 19 dollars per day it is, that's different than
 20 describing it as in its total cost.

21 **Q. And what is the benefit of advertising**
 22 **that something costs pennies a day versus the**
 23 **total cost?**

24 A. One benefit of it is it allows them to
 25 compare to other purchases. So if I say this is

1 **that coming through lead generators suggests**
 2 **that renewal costs aren't critical to consumers?**

3 A. Could you point me to that?

4 **Q. Sure. In the sentence that begins**
 5 **"when," which is the third sentence, When a**
 6 **customer chooses Integrity Advance, it suggests**
 7 **that they are either not finding disclosures**
 8 **about renewal costs a critical piece of**
 9 **information for making their loan provider**
 10 **decision. And let's just --**

11 A. I think the rest of that sentence is
 12 critical. Or --

13 **Q. I was going to ask you about them**
 14 **separately since that's a compound sentence.**
 15 **But if you feel like you can't answer --**

16 A. I think I'm not making the claim that
 17 you have stated. I'm not making the claim that
 18 consumers don't find it critical. I'm making
 19 the statement that they either don't find it
 20 critical or the second half of the sentence.

21 **Q. Or Integrity Advance is offering**
 22 **complete with disclosures about renewal costs**
 23 **sufficiently attractive to end up choosing**
 24 **Integrity Advance as their loan provider?**

25 A. So I don't know which of the two is

<p>1 true. I know that one of the two is true.</p> <p>2 Q. And you haven't done any empirical 3 research, again, to make any conclusions about 4 which of these might be true here?</p> <p>5 A. Correct.</p> <p>6 Q. And you haven't cited any studies here 7 that would lead to one conclusion or the other?</p> <p>8 A. Correct.</p> <p>9 Q. In the preceding sentence in that same 10 paragraph 32, you said, This means they have the 11 opportunity to consider more than one provider 12 when choosing a loan.</p> <p>13 What is the basis of that statement?</p> <p>14 A. Coming back to my general understanding 15 of a lead generation website is it sends your 16 information to more than one provider, and so it 17 is often the case that more than one provider 18 then reaches out to you, resulting ultimately in 19 a choice for the consumer as to which provider 20 to engage.</p> <p>21 Q. Do you know if Integrity Advance's 22 consumers had a choice?</p> <p>23 A. I don't specifically know that, no.</p> <p>24 Q. Do you know if Integrity Advance 25 purchased any leads on an exclusive basis?</p>	<p>153</p> <p>1 disclosures about renewal costs sufficiently 2 attractive to end up choosing Integrity Advance 3 as their loan provider.</p> <p>4 First of all, this assumes that 5 consumers understood the costs of the loan 6 renewal; is that correct?</p> <p>7 A. That is not correct.</p> <p>8 Q. Why is that not correct?</p> <p>9 A. They don't -- so the first half of that 10 sentence is the scenario where that's not 11 correct where they say I don't care about or 12 think about or worry about a renewal cost. I 13 just want to choose a loan provider. That's one 14 of the two possibilities. So there they would 15 not need to understand renewal costs.</p> <p>16 Q. So are you testifying that some 17 consumers who were taking out loans from 18 Integrity Advance didn't care about the cost at 19 all?</p> <p>20 A. I am testifying they may not have cared 21 about the cost of renewal.</p> <p>22 Q. But again, you have no basis for saying 23 whether they did or did not?</p> <p>24 A. Correct.</p> <p>25 Q. So going back to the question,</p>
<p>154</p> <p>1 A. I don't know that either, no.</p> <p>2 Q. Would it change your opinion to learn 3 that Integrity Advance instructed its 4 representatives to not disclose the APR on a 5 loan until after a consumer had applied for the 6 loan?</p> <p>7 A. Would it change which opinion?</p> <p>8 Q. That's stated in the last sentence of 9 paragraph 32, when a consumer chooses Integrity 10 Advance, they are either finding the disclosures 11 about renewal costs critical or sufficiently 12 attractive, to summarize the statement without 13 reading it in its entirety.</p> <p>14 A. I'm sorry, I have lost -- can you 15 repeat the question now?</p> <p>16 Q. Let's -- I think we are all getting a 17 little tired. So I better read the sentence in 18 its entirety to make sure we are completely on 19 the same page here.</p> <p>20 You wrote, When a customer chooses 21 Integrity Advance, it suggests that they are 22 either not finding disclosures about renewal 23 costs a critical piece of information for making 24 the loan provider decision or they find 25 Integrity Advance's offering complete with</p>	<p>156</p> <p>1 hopefully without reading that one sentence 2 again, referring to the last sentence in 3 paragraph 32, would that sentence change, your 4 conclusion or your hypothesis change if you 5 learned that Integrity Advance instructed its 6 representatives to not disclose the APR on a 7 loan until after the consumers had applied for 8 the loan?</p> <p>9 A. No, it would not.</p> <p>10 Q. Why not?</p> <p>11 A. The first part of that sentence refers 12 to that scenario. If consumers are choosing a 13 loan provider and the loan provider omits 14 information important to the consumers, perhaps 15 information they would have gotten from other 16 loan providers and are eager to compare, then 17 they would either not choose that person or 18 demand that particular information from that 19 person.</p> <p>20 Q. Okay. I'm going to very ambitiously 21 try to discuss two paragraphs at once.</p> <p>22 Paragraphs 34 and 48 both discuss information 23 overload. Is that an accurate statement? I'll 24 give you a minute to look at your report and 25 tell me if that's correct.</p>

	157		159
1 A. Thirty-four and 47?		1 increases overload.	
2 Q. No, 34 and 48.		2 Q. So you think that -- is it your	
3 A. Okay.		3 testimony that all information that a consumer	
4 Q. So is it a fair statement to say that		4 reads in an agreement is processed equally?	
5 both of those paragraphs discuss information		5 A. No.	
6 overload?		6 Q. So is the converse true that some	
7 A. Yes.		7 information is processed more readily by	
8 Q. Is it your opinion that cost is		8 consumers than other information?	
9 important to consumers seeking to borrow money?		9 A. Most likely true, yes.	
10 A. What do you mean by cost?		10 Q. And we talked about this this morning	
11 Q. Cost of the borrowing.		11 about prominence being -- or placement being one	
12 A. That's an empirical question.		12 of the factors that might affect this; is that	
13 Q. So you have no opinion on whether cost		13 correct?	
14 is important to consumers who are borrowing		14 A. That's correct.	
15 money?		15 Q. So then is it a fair statement to say	
16 A. I have no definitive statement to make		16 that it is possible to highlight certain	
17 in this context whether cost is relevant to		17 information in a loan agreement to make it more	
18 consumers borrowing money. You can reference my		18 likely to be read by a consumer?	
19 paragraph, I want to say, 13. Not 13. The end		19 A. Yes, that is certainly possible.	
20 of paragraph 13.		20 Q. So just assuming for a second that cost	
21 Q. So do you have any opinion about		21 is important, would it be possible and do you	
22 whether the cost of borrowing money would be		22 think it would help consumers to overcome	
23 important to payday customers specifically?		23 information overload to highlight the costs more	
24 A. I'm sorry, I missed the first part of		24 prominently of loan renewals?	
25 the question.		25 MS. BAKER: Objection. Vague question.	
	158		160
1 Q. Do you have an opinion on whether the		1 Form.	
2 cost of borrowing money is important to payday		2 THE WITNESS: I don't think it would	
3 loan customers?		3 help with information overload to highlight any	
4 A. I don't have an opinion. There's		4 particular piece of information, including cost.	
5 evidence that it isn't cited in my paragraph 13.		5 BY MS. WEINBERG:	
6 And there's some reason to believe that it might		6 Q. Do you have an opinion on what the most	
7 be. So without further study, I don't know.		7 important piece of information is to consumers	
8 Q. So it either might be or it might not		8 seeking to borrow money?	
9 be?		9 A. I do not have an opinion.	
10 A. Correct.		10 Q. In your paragraph 35, you say, Renewal	
11 Q. And you have no opinion unless you can		11 costs may not be the information consumers are	
12 do research; is that correct?		12 interested in, in understanding or using for	
13 A. That's correct.		13 their loan origination decision.	
14 Q. If cost is important, I'm just going to		14 Do you see that sentence that's in the	
15 ask you to accept that premise for a second,		15 third and fourth line of paragraph 35?	
16 would it help to overcome information overload		16 A. I do.	
17 to highlight the cost of loan renewals more		17 Q. What is the basis for that statement?	
18 prominently in a loan agreement?		18 A. Paragraphs 21 to 23 that are referenced	
19 MS. BAKER: Objection. Vague question.		19 in that sentence.	
20 BY MS. WEINBERG:		20 Q. Anything else?	
21 Q. Do you understand?		21 A. Let me think for a moment. No, those	
22 A. My answer would be no. Importance of		22 are the main reasons for that sentence.	
23 information doesn't, especially raising the		23 Q. But again, you didn't do a study on	
24 importance of information as your predicate is		24 this. Is that fair to say?	
25 doesn't reduce overload. It potentially		25 A. I did not do a study on this.	

<p>1 Q. So it is possible that renewal costs 2 are important as well?</p> <p>3 A. It is possible that renewal costs are 4 important.</p> <p>5 Q. And you would need to do empirical 6 research in order to form an opinion on this. 7 Is a correct statement?</p> <p>8 A. That would be a correct statement, yes.</p> <p>9 Q. You cite Lawrence and Elliehausen in 10 your footnote 2. And let me give you that 11 article.</p> <p>12 A. This is the citation we corrected at 13 the beginning of the deposition.</p> <p>14 Q. So you weren't citing this cite?</p> <p>15 A. These two are very related articles, 16 but I really meant to be citing what they handed 17 you.</p> <p>18 Q. Let's stick with what you actually 19 cited and we can -- I haven't looked at the new 20 one.</p> <p>21 (Novemsky Deposition Exhibit Number 6 22 was marked for identification.)</p> <p>23 BY MS. WEINBERG:</p> <p>24 Q. Tell me if this is, in fact, the 25 article that you cited in your report.</p>	<p>161</p> <p>1 decision relevant to those fees.</p> <p>2 Q. And is it possible that even if they 3 don't think about the fees when making the 4 choice, it is nonetheless important to them?</p> <p>5 A. It's possible that it's important to 6 them. It's also possible that it is not 7 important to them. That's a separate empirical 8 question.</p> <p>9 Q. And you didn't do any research on the 10 question. So is it fair to say you don't have 11 an opinion?</p> <p>12 A. I did no research on that question of 13 whether costs are important to them in this 14 context.</p> <p>15 Q. Does that mean you don't have an 16 opinion?</p> <p>17 A. All I can do is cite the research in 18 the corrected citation of this article which 19 shows that, you know, many more people, very few 20 people reference cost as important to them.</p> <p>21 Q. I want to turn to or back to your 22 report. And we are skipping ahead. And you 23 say, referring to the schedule of charges and 24 fees that are referenced in Dr. Hastak's report, 25 and I think we need to look at them in order to</p>
<p>162</p> <p>1 A. Yep, this appears to be.</p> <p>2 Q. And I would refer you to Table 6, which 3 is on page 313 of this report. And in Table 6, 4 to the statement the government should limit the 5 fees charged by payday advance companies roughly 6 75 percent, if we are adding strongly agree and 7 somewhat agree together, roughly 75 percent of 8 consumers say that the government should limit 9 fees that payday companies can charge. Do you 10 see that?</p> <p>11 A. Um-hum.</p> <p>12 Q. And is my math correct it's roughly 13 75 percent of consumers?</p> <p>14 A. Yes.</p> <p>15 Q. Doesn't this indicate that most payday 16 customers are concerned about costs?</p> <p>17 A. No.</p> <p>18 Q. Why not?</p> <p>19 A. There is a difference between what 20 people think about when making a decision and 21 how people respond to a question when you make a 22 particular issue salient. So if I ask you about 23 fees, 99 out of 100 people are going to tell me, 24 I would like them to be lower. That doesn't 25 mean they think about the fees when making a</p>	<p>162</p> <p>1 have intelligible testimony on this.</p> <p>2 MS. BAKER: What page are you on?</p> <p>3 MS. WEINBERG: I am on his report, 4 paragraph 43, which is page 13 going on, and we 5 are talking about the schedule of charges and 6 fees, and I think we are going to have to look 7 at them. So let's go back to Dr. Hastak's 8 report, Appendix B.</p> <p>9 MS. BAKER: For the record, Exhibit 3, 10 right?</p> <p>11 MS. WEINBERG: Yes. And the schedule 12 of charges and fees in this report appears on 13 CFPB042569. Are we on the same page here?</p> <p>14 MS. BAKER: Um-hum.</p> <p>15 BY MS. WEINBERG:</p> <p>16 Q. Okay. Were you told anything about 17 this schedule by Integrity Advance or --</p> <p>18 A. Not that I recall.</p> <p>19 Q. You state here, My impression was that 20 the information was presented clearly in the 21 schedule. Do you see that, which is in the 22 middle on page 14 in the middle of the 23 paragraph?</p> <p>24 A. I do.</p> <p>25 Q. Can you tell me what your understanding</p>

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1 **of the schedule is?**

2 A. My understanding of this schedule --
 3 these two schedules are that whether your loan
 4 varies anywhere between 8 and 23 days, you pay
 5 the same finance charge on a particular loan
 6 size.

7 **Q. And does this provide any information**
 8 **about the cost of loan renewals?**

9 A. By extension it does, because the loan
 10 renewal cost is the same as the original loan
 11 cost for the next period.

12 **Q. I'm sorry, could you say that again.**

13 A. My cost in these loan charges are the
 14 cost of the loan for a single pay period. Any
 15 renewal would have identical finance charges.

16 **Q. But of course that would change once**
 17 **they were in the auto workout?**

18 A. Auto workout would be different,
 19 correct.

20 **Q. So if we are looking at the chart, it**
 21 **shows days going from 8 to 23 days, as you**
 22 **noted, on the left-hand column, right? And it**
 23 **also shows the same fee of \$24 per hundred on**
 24 **the top chart and \$30 per hundred on the bottom**
 25 **chart for an eight-day loan as well as a 23-day**

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1 very different answers from those two people.

2 So they tend the stick with the default in the
 3 sense that those who have a mug really don't
 4 want to sell it and those who don't have a mug
 5 don't particularly want to buy it even though
 6 you've randomly assigned people to have a mug or
 7 not have a mug. So default position seems to
 8 have an influence on their choice in that
 9 situation.

10 **Q. And can I understand your statement to**
 11 **mean that people are more likely to stick with**
 12 **the default situation? Is that what your**
 13 **conclusion is?**

14 A. Correct.

15 **Q. In your opinion, would the default**
 16 **option in Integrity Advance's loan agreements**
 17 **have affected renewals? In other words,**
 18 **affected whether or not a consumers would renew**
 19 **their loan?**

20 MS. BAKER: Objection. Compound
 21 question.

22 THE WITNESS: I think default would
 23 affect renewals, yes.

24 BY MS. WEINBERG:

25 **Q. And how would it affect them?**

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1 **loan; is that correct?**

2 A. That is correct.

3 **Q. Is one possible interpretation**
 4 **consumers could have had of that schedule that**
 5 **fees don't go up regardless of how long a loan**
 6 **is outstanding?**

7 A. That sounds like one possible
 8 interpretation.

9 **Q. So let's move on to default effects.**
 10 And you start talking about that -- I'm going to
 11 start on paragraph 45 of your report. And you
 12 refer to your own research on default effects in
 13 that paragraph.

14 A. Yes.

15 **Q. Can you describe your research on**
 16 **default effects?**

17 A. Sure. It's a version of what's called
 18 the dominance effect where you put people in one
 19 of two states of ownership, either they, for
 20 example, have a mug or don't have a mug. And so
 21 then you ask the people who have a mug what is
 22 their willingness to sell the mug. You ask the
 23 people who don't have a mug what is their
 24 willingness to buy the mug. It's a very
 25 well-known paradigm in my field. And you get

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1 A. It could potentially -- any default
 2 option could potentially be used more than any
 3 non-default option.

4 **Q. And so in the instance of Integrity**
 5 **Advance's agreements, that would lean to more**
 6 **loan renewals. Is that an accurate statement?**

7 A. That is an accurate statement.

8 **Q. Okay. In paragraph 46, you write --**
 9 **I'm paraphrasing here that paying in full could**
 10 **be more costly than loan renewals. Is that an**
 11 **accurate paraphrase of your statement?**

12 A. Not quite.

13 **Q. Tell me where I misstated it.**

14 A. Paragraph 46 raises the possibility
 15 that a pay-in-full default could be a more
 16 costly default than a renewal default.

17 **Q. Okay. Thank you for that**
 18 **clarification. And what is the basis of that**
 19 **statement?**

20 A. So a pay-in-full default is different
 21 from a renewal default. One of the key
 22 differences is someone could unexpectedly get a
 23 very large debit to their account. In the
 24 example we were talking about someone could be
 25 debited \$650 when they didn't expect it.

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1	Whereas, if auto renewal is the default, then 2 they would be debited \$150. So the likelihood 3 of an overdraft, for example, would be much 4 lower with a renewal default than with a 5 pay-in-full default.	1	financial harm, that's correct. 2
6	Q. And were you provided information or do 7 you have any information on the average amount 8 that consumers paid above the listed finance 9 charge in the TILA box?	3	Q. And you were considering things like what it would do to their credit report?
10	MS. BAKER: Objection as a vague 11 question.	4	A. Yes.
12	THE WITNESS: I'm not sure I understand 13 that.	5	Q. Anything else? Any other types of 6 harms that were embedded in that assessment?
14	MS. BAKER: I don't understand the 15 question.	7	A. It would leave them -- I don't know if 8 you consider this financial. It would leave 9 them potentially illiquid for the remainder of 10 their pay period.
16	BY MS. WEINBERG:	11	Q. So this was not supposed to be a 12 mathematical comparison of the costs of renewals 13 versus the actual costs of a pay-in-full?
17	Q. Were you provided any information on 18 the amount that Integrity Advance's customers 19 paid in costs for their loan above that amount 20 that was reflected in the TILA total of payments 21 box?	14	A. That's correct.
22	A. I was not.	15	Q. It was a broader statement?
23	Q. And did you have any information on or 24 what was the calculation that you made in what 25 the costs would be to a consumer who had the	16	A. That's correct.
		17	Q. Okay. In paragraph 47 you say, In my 18 experience, default effects are most pronounced 19 when the decisionmaker does not have a strong 20 preference for a particular course of action.
		21	That's the last sentence of that 22 paragraph. Do you see that?
		23	A. I do.
		24	Q. Does that statement assume that the 25 decisionmaker understands the implications of
	170		172
1	default pay-in-full option?	1	choosing one option over another?
2	A. So I wouldn't refer to it as a 3 calculation, but my reasoning for why 4 pay-in-full might be more costly than an auto 5 renewal default is that pay-in-full involves a 6 much larger debit to the consumer's account. 7 One of the things that that can result in is, 8 for example, an overdraft or just a lack of 9 money for the ensuing pay period. So that 10 consequence could be worse to consumers than the 11 consequence of renewal.	2	MS. BAKER: Objection. Vague question.
12	Q. But you didn't do an actual calculation 13 about how much overdraft costs a consumer would 14 likely experience or if there was the 15 pay-in-full option?	3	THE WITNESS: I don't understand the 4 question.
16	A. That's right. There was no calculation 17 because this isn't a completely monetary issue. 18 Consumers clearly have an aversion to 19 overdrafts. And that's, in this context, for 20 reasons other than just the cost of overdraft. 21 For example, credit consequences.	5	BY MS. WEINBERG:
22	Q. So when you were talking about 23 potential harm, you weren't talking about just 24 financial harm; is that accurate?	6	Q. Well, let's get it more specifically 7 within this context. If Integrity Advance's 8 customers didn't understand the cost 9 implications of the rollover option, would that 10 influence the default effect?
25	A. I wasn't talking about just immediate	11	A. Potentially. It is not clear.
		12	Q. It's not clear?
		13	A. Whether it would or not.
		14	Q. Is this the same answer where you would 15 have to do research in order to provide an 16 opinion on it?
		17	A. Yeah. I see no obvious connection 18 between understanding the renewal costs and the 19 size of the default effect. The size of the 20 default effect occurs through the strength of 21 preference which may or may not be related to 22 understanding of the costs of the renewal.
		23	Q. Well, I guess my question is here you 24 are posing that a decisionmaker doesn't have a 25 strong preference for one course of action over

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<p>1 another.</p> <p>2 A. I am not positing that.</p> <p>3 Q. You say the default effects are most</p> <p>4 pronounced when the decisionmaker doesn't have</p> <p>5 strong preferences --</p> <p>6 A. I am saying that.</p> <p>7 Q. -- for one course of action over</p> <p>8 another, right?</p> <p>9 A. That's correct.</p> <p>10 Q. In order for a consumer not to have</p> <p>11 preference for one course of action over</p> <p>12 another -- strike that.</p> <p>13 Let's move on to remotely created</p> <p>14 checks. Do you know what remotely created</p> <p>15 checks are?</p> <p>16 A. I have some understanding of them.</p> <p>17 Q. What is your understanding?</p> <p>18 A. That someone other than the</p> <p>19 acountholder generates a check on the</p> <p>20 acountholder's account and sends it to the</p> <p>21 bank, and it is paid to that other person.</p> <p>22 Q. How did you obtain your knowledge about</p> <p>23 remotely created checks?</p> <p>24 A. Mostly from thinking about this case</p> <p>25 and the documents in my Appendix D.</p>	<p>173</p> <p>1 A. I have no opinion on it.</p> <p>2 Q. Do you have an opinion on whether the</p> <p>3 disclosures in Integrity Advance's loan</p> <p>4 agreements concerning remotely created checks</p> <p>5 were conspicuous?</p> <p>6 A. I don't have an opinion on that.</p> <p>7 Q. Do you have an opinion on whether the</p> <p>8 disclosures in Integrity Advance's loan</p> <p>9 agreements concerning remotely created checks</p> <p>10 were clear?</p> <p>11 A. I don't have an opinion on that.</p> <p>12 MS. WEINBERG: Let's take a ten-minute</p> <p>13 break.</p> <p>14 (A recess was taken.)</p> <p>15 MS. WEINBERG: We are back on the</p> <p>16 record at 3:02.</p> <p>17 BY MS. WEINBERG:</p> <p>18 Q. I just had one question. You have or</p> <p>19 your counsel provided us with a copy of</p> <p>20 something called Payday Advance Credit in</p> <p>21 America, An Analysis of Customer Demand, which I</p> <p>22 believe you testified you wanted to supplement</p> <p>23 your footnote 2 with this document?</p> <p>24 A. Correct.</p> <p>25 Q. Is there a particular part of this</p>
<p>174</p> <p>1 Q. So you didn't have experience with</p> <p>2 remotely created checks prior to reading this</p> <p>3 report or the materials?</p> <p>4 A. That's correct.</p> <p>5 Q. In your opinion, would it be important</p> <p>6 to consumers to know that after they decided</p> <p>7 they didn't owe a company money and had revoked</p> <p>8 their ACH authorization that the company could</p> <p>9 still create a remotely created check to take</p> <p>10 their funds?</p> <p>11 A. I'm sorry, I missed the -- is it</p> <p>12 important to consumers?</p> <p>13 Q. Yeah.</p> <p>14 MS. BAKER: Could you read back that</p> <p>15 question.</p> <p>16 (The record was read as requested.)</p> <p>17 THE WITNESS: I need more context to</p> <p>18 the question is it important to consumers.</p> <p>19 BY MS. WEINBERG:</p> <p>20 Q. Would it be important to consumers in</p> <p>21 making a decision to take out a loan with a</p> <p>22 company to know this in advance of taking out</p> <p>23 that loan?</p> <p>24 A. That's an empirical question.</p> <p>25 Q. So you don't have an opinion on that?</p>	<p>176</p> <p>1 rather lengthy document that you were citing</p> <p>2 specifically to support that paragraph?</p> <p>3 A. There is.</p> <p>4 MS. BAKER: Are you entering this into</p> <p>5 the record, this document? It's your</p> <p>6 deposition.</p> <p>7 THE WITNESS: It's going to take me a</p> <p>8 second to find the page. The electronic version</p> <p>9 I can search it. So I never noted the page</p> <p>10 number to myself. Let me just flip through and</p> <p>11 find the table.</p> <p>12 At long last, page 51. In particular,</p> <p>13 523, that's some kind of table or some kind of</p> <p>14 number, and the second half of that table, most</p> <p>15 important reason for choosing payday advance</p> <p>16 over another source. And I was referring to</p> <p>17 that quick, easy process, fast approval, less</p> <p>18 paperwork, get 60 percent of people saying</p> <p>19 that's why. Whereas, less expensive gets</p> <p>20 4 percent of people saying, yes, that's why.</p> <p>21 So my footnote 2 refers to this idea</p> <p>22 that people care more about a quick, easy</p> <p>23 process than they care about something being a</p> <p>24 less expensive option.</p> <p>25 BY MS. WEINBERG:</p>

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