

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

1

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

16 The above-entitled matter came on for

17 investigational hearing, pursuant to notice, at

18 9:32 a.m., for the testimony of:

19

20 NATHAN NOVEMSKY

21

22

23

24

25 Reported by: Deborah Wehr, RPR

2

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 Protectin 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

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25

3

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 you 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

4

1 name for the record.

2 A. Sure. Nathan Novemsky, N-A-T-H-A-N,

3 N-O-V-E-M-S-K-Y.

4 Q. And your business address?

5 A. 165 Whitney Avenue, New Haven,

6 Connecticut, Yale School of Management, 06520.

7 Q. Have you ever been deposed before?

8 A. I have not.

9 Q. Okay. So some basic ground rules.

10 I'll be asking you a lot of questions. You'll

11 be answering a lot of questions today. Our goal

12 here is to have as clear a record as possible,

13 which makes it a little different from

14 conversations where people tend to sort of

15 interrupt each other and there's a natural flow.

16 That tends to create a bad record for

17 depositions. So it's a little less like a

18 normal conversation. So I'm going to ask that

19 you let me complete my questions and I will do

20 my best, although I will fail at some point

21 during this day, to let you complete your

22 answers before I move on.

23 If you don't understand any of my

24 questions, please ask me to clarify the

25 question. I will do my best to be clear and

5

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

6

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

7

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

8

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

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.

10

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**

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?**

12

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?**

13

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.

10 **Q. Have you ever analyzed consumer**
 11 **contracts?**

12 A. Yes.

13 **Q. When?**

14 A. As part of these matters that I was a
 15 consultant to experts often had a consumer
 16 contract and there was some question of the
 17 consumer's understanding of that contract.

18 **Q. Can you be more specific about which**
 19 **matters those were?**

20 MS. BAKER: Same --

21 THE WITNESS: I guess I would rather
 22 not.

23 BY MS. WEINBERG:

24 **Q. Then without naming the matters, can**
 25 **you tell me what your task was in analyzing the**

14

1 **contracts?**

2 MS. BAKER: You can disclose that.

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?

9 BY MS. WEINBERG:

10 **Q. And for that analysis were you looking**
 11 **at the text of the contract or were you looking**
 12 **at other types of variables?**

13 A. Almost invariably we had a consumer
 14 survey. Either we would run the survey or the
 15 other side would run the survey. Then we would
 16 look at the data from the survey.

17 **Q. Was the survey directed at**
 18 **understanding of text or was it looking at other**
 19 **sort of extrinsic variables such as -- well,**
 20 **other extrinsic variables?**

21 A. It would look at whatever -- the target
 22 could be a lot of things. The target could be
 23 an ad. The target could be a contract. The
 24 target could be, you know, whatever is at issue.

25 **Q. Okay. But I'm going to ask you to be**

15

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?**

5 A. It was trying to determine the exact
 6 consumer understanding of that ad.

7 **Q. And was the understanding based only on**
 8 **the text or was it based on other things like**
 9 **visual stimuli or --**

10 A. I think I understand the question. So
 11 yeah, it was based on anything that was
 12 available, if there were visual stimuli,
 13 sometimes even maps as part of some of these
 14 litigations that involved telecommunications
 15 coverage. Then it was based on whatever
 16 information was present in the consumer context
 17 was attempted to replicate it in the survey. So
 18 it could include visual stimuli, yes.

19 **Q. Could it include things like for the**
 20 **ad, was there a particular content in there that**
 21 **you were testing to see what consumers'**
 22 **understanding of that content was? I'm just**
 23 **trying to understand what the work is that you**
 24 **were doing with these ads.**

25 A. Usually there was a particular issue

16

1 around consumer understanding. So as an
 2 example --

3 **Q. Could you be more specific?**

4 A. So one was about cell phone coverage,
 5 and so the ad was about cell phone networks.
 6 And the question was, what is a consumer's
 7 understanding of the extent of coverage after
 8 seeing the information, including visuals that
 9 was in the ad?

10 **Q. Okay. That's helpful. Can you give me**
 11 **another example of the type of survey work that**
 12 **you were doing in these consulting positions?**

13 A. So some of the survey work was about
 14 class certification in some of these consumer
 15 matters. So then the question was whether
 16 consumers have similar understanding to each
 17 other or have the same position vis-a-vis each
 18 other and constitute a class or do not
 19 constitute a class.

20 **Q. In relation to their understanding of**
 21 **an ad?**

22 A. It could be in relation to their
 23 understanding of an ad or a contract. I can't
 24 remember the exact materials now. Sometimes
 25 that was in relation to a contract.

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

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

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,

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?**

21

1 A. It's hard for me to disentangle the
2 product and the contract just based on a
3 financial product...

4 **Q. What percentage of your work would you
5 say was a financial product versus a physical
6 product?**

7 A. Percentage of that particular type of
8 work?

9 **Q. Yeah.**

10 A. I don't know. Maybe a quarter was
11 financial. Twenty-five percent.

12 **Q. And what was the type of financial
13 product that was the subject?**

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.

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.

22

1 BY MS. WEINBERG:

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?**

6 A. Yes. So the loan agreements I did see
7 largely as part of the appendix to Dr. Hastak's
8 report.

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?**

15 A. Not that I know of.

16 **Q. Are you aware of any other contracts
17 used between Integrity Advance and its
18 customers?**

19 A. I am not, no.

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?
23 Or you just got them through Dr. Hastak's
24 report?**

25 A. They gave me his report.

23

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?**

5 A. My understanding is they appeared
6 online. Not in the paper form.

7 **Q. Other than them appearing online, are
8 you aware of any other differences in the
9 appearance of the contracts?**

10 A. No.

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?**

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.

23 **Q. Nothing material; is that correct?**

24 MS. BAKER: Objection. Vague.

25 BY MS. WEINBERG:

24

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?**

6 A. I'm not aware of any specific
7 differences other than the translation between
8 offline and online.

9 **Q. Okay. And when you say online, you
10 just mean viewing it on a computer?**

11 A. On a computer or a smart phone or a
12 tablet or digitally, I guess.

13 **Q. Have you ever done research on payday
14 loans?**

15 A. No.

16 **Q. Have you ever done research on payday
17 loan contracts?**

18 A. No.

19 **Q. Do you have any knowledge about the
20 types of people who take out payday loans?**

21 A. I have some from reading relevant to
22 this case, yes.

23 **Q. And what did you read relevant to this
24 case that provided the basis of that knowledge?**

25 A. There are a few academic articles

25

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?**

6 A. Just my experiences in the world prior
7 to this matter.

8 **Q. And do you have specific experience**
9 **with payday loans?**

10 A. No.

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.

19 MS. WEINBERG: Right now I don't want
20 to take testimony from you, Ms. Baker, but thank
21 you.

22 MS. BAKER: I'm just telling you that.

23 BY MS. WEINBERG:

24 **Q. I asked you before if there was**
25 **anything that you relied on that wasn't in your**

26

1 **report and you said no. Are you changing that**
2 **testimony at this point to say --**

3 A. So I had a conversation with counsel
4 where they said we are going to add this --

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.

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.

14 BY MS. WEINBERG:

15 **Q. Was that something you relied on in**
16 **writing your report?**

17 A. It was, yes.

18 **Q. Why wasn't it included in your report?**

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

27

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.

7 **Q. Okay.**

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.

13 MR. WHEELER: Thank you.

14 BY MS. WEINBERG:

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?**

18 A. Sure. My research is based largely on
19 consumer surveys. So, yes.

20 **Q. And what is the main area of your**
21 **research?**

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.

28

1 **Q. And when you say consumer**
2 **decision-making, can you be more specific about**
3 **what you mean by that?**

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.

9 **Q. And the other broad topic that you --**

10 A. Consumer experiences.

11 **Q. And can you be more specific about**
12 **that?**

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.

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?**

22 A. Yes.

23 **Q. Are there any other types of papers**
24 **that you have written on different types of**
25 **subjects?**

29

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.

25 **Q. Do you have any expertise on the**

30

1 **clarity of disclosures in written documents?**

2 A. So that is about consumers using
3 information, and I certainly do have expertise
4 about how consumers go from information
5 presented to them to their understanding,
6 ultimately to a decision relevant to that
7 information.

8 **Q. But I want to ask you specifically not**
9 **about consumer choice or decision-making, but**
10 **about clarity of disclosures or text in a**
11 **document.**

12 A. I have to ask what you mean by clarity
13 specifically.

14 **Q. Well, Dr. Hastak's report focused**
15 **primarily on the clarity, whether certain**
16 **disclosures were clear and conspicuous.**

17 MS. BAKER: Is there a question
18 pending?

19 MS. WEINBERG: If you would let me
20 finish, there would be.

21 BY MS. WEINBERG:

22 **Q. So my question is, do you have**
23 **expertise specifically on whether disclosures in**
24 **a written document are clear and conspicuous?**

25 A. So as I mentioned in my report, my

31

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**

32

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?**

25 A. Yes. Included in that statement was

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 **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

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 **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?**

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

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:

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?**

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

1 **that?**

2 A. Research as to what was the context

3 when they examined the loan agreement?

4 **Q. Yes.**

5 A. I did not.

6 **Q. And why not?**

7 A. It was not my task.

8 **Q. And what sort of variables in this --**

9 **within this frame of saying that understanding**

10 **of a loan agreement is context-dependent, what**

11 **sort of context would be important for**

12 **understanding, for looking at consumers'**

13 **understanding?**

14 A. So the things listed in the next

15 sentence in my report would be examples.

16 **Q. So it says, The consumer's current**

17 **thoughts.**

18 **So you didn't look at the consumer's**

19 **current thoughts here, right?**

20 A. I did not.

21 **Q. In order to do that in this context,**

22 **would you have had to speak with those consumers**

23 **at the time that they were taking out the loan**

24 **agreement?**

25 A. That's one way to do it. I would not

42

1 have to. There are other ways.

2 **Q. What else?**

3 A. One could put them in a similar

4 situation again, more similar consumers in a

5 similar situation again, present them with

6 similar context and information and then, you

7 know, ask some questions of them and try to

8 ascertain their thoughts in that context with

9 the loan agreement.

10 **Q. And the other factors that you list**

11 **here, momentary goals, mindset, level of**

12 **depletion, what do you mean by level of**

13 **depletion?**

14 A. Depletion is a psychological construct

15 that's come up about the last 15 years.

16 Research in psychology has shown that people,

17 when they exert -- when they do something they

18 don't want to and they have to exert

19 concentration, for example, sitting in a

20 deposition, over time their ability to exert

21 that same concentration and to resist impulses

22 they might have goes down. That's what I mean

23 by depletion.

24 **Q. And then you list level of distraction**

25 **and many other factors that behavioral science**

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1 **has uncovered. So in order to look at**

2 **consumers' understanding of Integrity Advance's**

3 **loan agreements, is it your testimony that a**

4 **survey should have looked at all of these**

5 **factors?**

6 A. A survey would do its best to control

7 those factors and to put consumers in a mindset,

8 goals, et cetera, that are similar to how an

9 actual consumer making an actual loan decision

10 would be. So it's not that you need to examine

11 them as much as be aware and control for them

12 typically. In some cases you might examine

13 them.

14 **Q. And how could you replicate the actual**

15 **experience of Integrity Advance's customers**

16 **reliably without knowing what each individual**

17 **was going through at the time they took out the**

18 **loan?**

19 A. So the scientific method that the field

20 of consumer behavior uses is we put people,

21 similar people in similar situations as well as

22 we -- as similar as possible to the situation of

23 interest to us. We can't always put people in

24 the exact consumer situation and we can't always

25 study the exact consumers. But the scientific

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1 community has found ways to draw generalizations

2 from putting similar people in similar

3 situations and then examining them through a

4 survey or other measure and drawing conclusion

5 about how things likely play without in the real

6 situation. And then the peer review process

7 often points out factors that were not

8 controlled for and then they get controlled

9 form. We get as close as possible. It's not a

10 perfect examination, but it's the best that

11 science can do in this area.

12 **Q. But here you didn't do any empirical**

13 **research on how context would influence consumer**

14 **behavior for Integrity Advance consumers?**

15 A. Correct.

16 **Q. And does context, as we've just been**

17 **talking about it, impact the clarity of loan**

18 **disclosures?**

19 A. Yes.

20 **Q. Context -- it's your testimony that**

21 **context influences the content of the clarity of**

22 **the loan disclosures as they appear on a piece**

23 **of paper themselves?**

24 MS. BAKER: Objection. Form. That's

25 not quite what he said.

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 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 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.

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**

1 **Advance's loan agreements, about how that**
2 **appeared online at the time that they were**
3 **actually signing the agreements?**

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.

15 **Q. Do you have any information about how**
16 **that actually appeared to consumers who actually**
17 **took out loans from Integrity Advance?**

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.

22 **Q. But do you know how the signature box**
23 **appeared online?**

24 MS. BAKER: Objection. Form. Asked
25 and answered.

1 A. I have not.

2 **Q. Have you ever studied signature boxes**
3 **online, in online agreements?**

4 A. I have not.

5 **Q. So your testimony is based on your**
6 **personal experience with signing documents**
7 **online; is that correct?**

8 MS. BAKER: Objection. Form. Assumes
9 facts not in evidence.

10 BY MS. WEINBERG:

11 **Q. What is the basis of your testimony**
12 **about signature boxes as they appear online?**

13 A. Casual observation, personal
14 experiences, but not research.

15 **Q. What kind of casual observation?**

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.

20 **Q. So this is personal experience that you**
21 **are talking about?**

22 MS. BAKER: Are you finished with your
23 answer?

24 THE WITNESS: Sure.

25 BY MS. WEINBERG:

1 BY MS. WEINBERG:

2 **Q. You can answer.**

3 A. I would assume it appeared like a
4 standard signature box.

5 **Q. And what is the basis of that**
6 **assumption?**

7 A. I would look at other signature boxes
8 that appear online for similar contracts.

9 **Q. So you have no basis of knowledge about**
10 **how it actually appeared for Integrity Advance**
11 **customers?**

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.

17 **Q. So in your experience, sometimes**
18 **signature boxes obliterate text that appears**
19 **behind them; is that correct?**

20 MS. BAKER: Objection. Form. Assumes
21 facts not in evidence.

22 BY MS. WEINBERG:

23 **Q. Have you ever seen signature boxes that**
24 **appear online that make the text behind them**
25 **harder to read?**

1 **Q. So was it a personal experience you are**
2 **talking about when you were signing a document**
3 **online?**

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.

12 **Q. And can you tell me any specific**
13 **examples outside of your personal experience**
14 **where you have done that?**

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.

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?

21 MS. WEINBERG: Sure.

22 (A recess was taken.)

23 BY MS. WEINBERG:

24 **Q. We are back on the record. Could you**
25 **replicate consumers' experience with Integrity**

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

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

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

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**

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1 signing the loan document; is that correct?

2 A. Yes.

3 Q. If they were confused, is that a
4 correct --

5 A. They may have -- some, I don't know how
6 many, but some consumers -- my understanding is
7 some consumers spoke with an Integrity Advance
8 representative while signing the loan document.
9 Others may have spoken to them at a later time.
10 I don't know if all of them spoke while signing
11 or if some spoke while signing and some spoke
12 later. That's the extent of my understanding of
13 the timing of the phone call.

14 Q. Okay. So to the extent we are focusing
15 just on consumers who were talking to a customer
16 service representative at the time they were
17 signing the loan agreement, do you have any
18 information about what the consumers were
19 looking at at the time that they were having the
20 conversation?

21 A. I understand they were looking at the
22 loan agreement. I don't have more specific
23 information beyond that.

24 Q. Okay. And you've testified that you
25 have no information on the phone calls. Do you

1 possible to the actual experience. More
2 information you have is better, but there's no
3 particular piece of information that is
4 necessarily critical.

5 Q. So the telephonic communications you
6 would not consider critical?

7 A. No.

8 Q. No, you would not?

9 A. No, I would not consider them critical.

10 Q. And the same question, then, for what
11 was appearing online. Could you replicate
12 consumers' experience with Integrity Advance, I
13 think you have said that you could replicate it
14 looking at other variables if you didn't know
15 exactly what they were looking at online; is
16 that correct, at the time that they were signing
17 the loan documents?

18 A. I'm sorry, I didn't follow that.

19 Q. Do you think it would be critical
20 information to have in attempting to replicate
21 the consumer's experience with Integrity Advance
22 to know what the consumer was looking at online
23 at the time that they were signing the loan
24 documents?

25 MS. BAKER: Objection. Form. Vague.

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1 have any information about the content of the
2 phone calls?

3 A. Nothing beyond that consumers had the
4 opportunity to ask questions for clarification
5 of the loan document.

6 Q. And would that affect your ability to
7 replicate the consumer's experience with
8 Integrity Advance in any survey that you or
9 someone else might choose to do?

10 MS. BAKER: Objection. Form. Vague.

11 BY MS. WEINBERG:

12 Q. You can answer.

13 A. If you can say it in other words, it
14 would help me to answer.

15 Q. In order to do a survey that would
16 replicate the consumer's experience with
17 Integrity Advance, would you need to know what
18 the customer service representatives were saying
19 on the telephone?

20 A. You would not need to. The more
21 information you have, the better. As I said
22 earlier, when you build a consumer survey and
23 attempt to replicate an actual consumer
24 experience, you use whatever information you
25 have to build the replication as close as

1 THE WITNESS: In particular, I'm not
2 sure what you mean by what they are looking at
3 online.

4 BY MS. WEINBERG:

5 Q. I'm referring to whatever appeared when
6 they were signing the loan agreement.

7 A. My understanding is they were looking
8 at the loan agreement online. We know they were
9 looking at the loan agreement online, and I
10 would certainly show them the loan agreement as
11 part of an attempt to replicate their
12 experience.

13 Q. Could you do that without knowing
14 exactly how it appeared online?

15 A. Yes.

16 Q. And what would be the basis for your
17 presenting it to them in one form rather than
18 another form?

19 MS. BAKER: Objection. Form. Vague.

20 BY MS. WEINBERG:

21 Q. If you were going to offer them -- if
22 you were going to conduct a survey and present a
23 loan agreement to the survey participants
24 online, what would be the basis of your
25 presenting it to them in one format versus

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1 **another format?**
 2 A. So the basis would be, A, anything I
 3 know about how it was actually presented at the
 4 time --
 5 **Q. And here do you have any knowledge**
 6 **about that?**
 7 A. As I said, we have, for example,
 8 knowledge about where they were signing. And my
 9 understanding is some of the written -- the
 10 printed document that we have does represent
 11 some aspects of the original document. For
 12 example, there's a TIL box at the beginning and
 13 it has a box around it and it has certain fonts
 14 and what have you. I would try to replicate
 15 using all the information I have. And to the
 16 extent there's specific information I don't
 17 have, I would fill it in using what is most
 18 common practice in that or related kinds of
 19 agreements when presented online.
 20 **Q. But in this instance, your testimony is**
 21 **that you have no specific information about how**
 22 **it appeared online for Integrity Advance's**
 23 **customers; is that right?**
 24 A. As I said, the specific information we
 25 have, we have several pieces of specific

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1 information. One example is where it was
 2 signed. Another example, there's a TIL box near
 3 the beginning. It has a box around it. Certain
 4 things were in bigger font. Certain things were
 5 in smaller fonts. There's a number of pieces of
 6 information we have about how it would appear
 7 online.
 8 **Q. But do you know what the screen looked**
 9 **like for consumers when they were signing in the**
 10 **signature boxes?**
 11 A. I know that it contained the loan
 12 agreement that had largely similar
 13 representation to what the printed document has.
 14 **Q. And what is the basis of that**
 15 **statement?**
 16 A. My understanding is the printed
 17 document was generated by taking the agreement
 18 that was actually used and somehow generating an
 19 offline version of it. I assume that preserved
 20 many of the characteristics of the original
 21 document.
 22 **Q. What is the basis of your saying that**
 23 **that is how it was done?**
 24 A. I was told when I was given the loan
 25 agreements, I can't remember who it was from,

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1 counsel or Dr. Hastak's report, I was told that
 2 these are paper versions of the loan agreement.
 3 And when I hear that, I take that to mean it
 4 represents many aspects of the original
 5 agreement.
 6 **Q. But again, you have no -- is it fair to**
 7 **say you have no specific knowledge of how in**
 8 **practice these loan agreements appeared other**
 9 **than the assumption that you are making based on**
 10 **viewing a printed document?**
 11 A. There is the assumption based on the
 12 printed document being similar. There's also
 13 statements in Dr. Hastak's report and possibly
 14 in other materials for this case about where
 15 signatures appeared and other particulars about
 16 the loan agreement. I would assemble all those
 17 particulars, including the printed document, and
 18 those are all the pieces of information I would
 19 have to generate an online version of the
 20 document for purposes of a survey.
 21 **Q. And other than Dr. Hastak's report, you**
 22 **said other materials. Can you recall**
 23 **specifically what other materials contain that**
 24 **information?**
 25 A. I don't have very specific memories,

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1 but I believe in the defendant's deposition
 2 there were -- may have been reference, I can't
 3 remember the sources now, there have been so
 4 many documents related, but I think there were
 5 references to where signatures happened or what
 6 things may have looked like in the loan
 7 agreement. Those would be the kinds of things I
 8 would use when generating an online version for
 9 a survey.
 10 **Q. So you are not relying on any**
 11 **information other than that it was in**
 12 **Dr. Hastak's report or in the loan agreements**
 13 **itself or in Dr. Hastak's testimony; is that**
 14 **correct, that it would be those three sources?**
 15 MS. BAKER: Objection. That's not what
 16 he said. That assumes facts not in evidence.
 17 BY MS. WEINBERG:
 18 **Q. Please tell me.**
 19 A. It includes all of the materials
 20 related to the case. So it includes the
 21 defendant's deposition, Dr. Hastak's report,
 22 Dr. Hastak's deposition, loan agreements as they
 23 were conveyed to me either in Dr. Hastak's
 24 report or if they were in other materials. I
 25 can't recall if they were also in other

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1 materials. Any place I would have seen them, I
 2 would draw on those to build an online version
 3 of it for purposes of a survey.
 4 **Q. And is it fair to say that all of those**
 5 **materials would have been listed in the**
 6 **appendix?**
 7 A. It is, to my report.
 8 **Q. Appendix D of your report?**
 9 A. It is fair to say that.
 10 **Q. Could you replicate consumers'**
 11 **experience with Integrity Advance without**
 12 **knowing how many consumers talked to customer**
 13 **service representatives?**
 14 A. Yes.
 15 **Q. How?**
 16 A. As I said earlier, you would use the
 17 knowledge you have. If you don't have knowledge
 18 about people talking to Integrity Advance
 19 representatives, you might not include that in
 20 the replication.
 21 **Q. And is this because, as you testified**
 22 **earlier, the information in that phone call you**
 23 **don't think is critical for conducting a survey?**
 24 A. I believe one can conduct a valid
 25 survey without that information.

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1 **Q. And would it affect your ability to do**
 2 **a valid survey if not every Integrity Advance**
 3 **customer saw a loan agreement when they obtained**
 4 **a loan?**
 5 A. Let me be clear about what the purpose
 6 of a survey would be. If the purpose of a
 7 survey would be to say what do consumers
 8 understand when faced with this loan agreement,
 9 then I would present them that loan agreement
 10 and take some measurements to try to ascertain
 11 what it is they understand following viewing
 12 that loan agreement. I'm not sure what survey
 13 one would be interested in if we thought
 14 consumers did not see the loan agreement. So
 15 you would have to start with what is the purpose
 16 of the survey.
 17 **Q. What if the purpose of the survey was**
 18 **to ascertain or find out what consumers**
 19 **understood the terms of the loan would be**
 20 **without looking at the loan agreement?**
 21 A. Then I would try to ascertain what is
 22 it they are basing their understanding on and
 23 replicate that as closely as I can.
 24 **Q. Given the information that has been**
 25 **provided to you and your understanding of how**

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1 **the interaction between Integrity Advance and**
 2 **its customers occurred, are there any obstacles**
 3 **that you would imagine in trying to replicate**
 4 **their experience in order to do a survey?**
 5 MS. BAKER: Objection. Form. Vague
 6 question.
 7 BY MS. WEINBERG:
 8 **Q. Do you think you would have any**
 9 **difficulties in conducting a survey that would**
 10 **attempt to replicate the experience between**
 11 **Integrity Advance and its customers in**
 12 **originating the loan?**
 13 MS. BAKER: Objection. Same objection.
 14 BY MS. WEINBERG:
 15 **Q. You can answer.**
 16 A. If I were to perform a survey for the
 17 purpose of replicating customers' understanding
 18 when originating a loan with Integrity Advance,
 19 I would show them all the things that I believe
 20 they had seen at the time in whatever context
 21 they had seen them at the time and try to draw
 22 conclusions from that.
 23 **Q. Okay. Let's go back to your report**
 24 **again and look at paragraph 15. You suggest**
 25 **that -- well, I'm going to read the entire**

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1 **paragraph. Hypotheses or ideas regarding**
 2 **consumers' understanding of the loan agreement**
 3 **could be based on prior research and general**
 4 **expertise and experience, but these hypotheses**
 5 **need to be tested to be considered valid, as**
 6 **would be expected, when submitting such ideas to**
 7 **a peer-reviewed journal for publication in the**
 8 **field of consumer behavior.**
 9 **Does that accurately reflect the**
 10 **statement that you made in that paragraph?**
 11 A. It does.
 12 **Q. Do peer-reviewed journals accept**
 13 **articles that are just conceptual rather than**
 14 **empirical?**
 15 A. Conceptual articles are generally based
 16 on some data, whether it's data presented for
 17 the first time in that article or an
 18 accumulation or reference to data from other
 19 articles. But you wouldn't have a conceptual
 20 piece that lives completely independent of the
 21 data.
 22 **Q. So it's your testimony that**
 23 **peer-reviewed journals do not include articles**
 24 **that are just about theory?**
 25 MS. BAKER: Objection --

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1 BY MS. WEINBERG:
2 **Q. Is that correct?**
3 MS. BAKER: Objection. Form. Vague
4 and assumes facts not in evidence.
5 BY MS. WEINBERG:
6 **Q. What do you mean by conceptual?**
7 A. Remind me where I used the word
8 "conceptual."
9 **Q. Well, I asked do journals accept**
10 **articles that are just conceptual rather than**
11 **empirical. How did you understand that term**
12 **when I used it or when you were answering my**
13 **question?**
14 MS. BAKER: That term being
15 "conceptual"?
16 MS. WEINBERG: Yes.
17 THE WITNESS: So there are articles
18 that focus on bringing new data to light.
19 That's the vast majority of articles and as a
20 reviewer, the kinds of articles I would be
21 positively disposed to encouraging publication
22 in a journal. There are other articles where
23 bringing new data to light is not the focus of
24 the article, but synthesizing previous data and
25 generating a new concept or theory is how I

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1 understood your word "conceptual" to mean.
2 BY MS. WEINBERG:
3 **Q. So I want to make sure I understand**
4 **your testimony. You are saying that -- are you**
5 **saying that all articles that appear in**
6 **peer-reviewed journals are based on empirical**
7 **data either directly or indirectly?**
8 A. Yes.
9 **Q. Okay. Looking at paragraph 13 of your**
10 **report --**
11 MS. BAKER: And again for the record,
12 his report is Exhibit 1.
13 BY MS. WEINBERG:
14 **Q. Exhibit 1, and it's page 3 of his**
15 **report. And you say that there is two lines of**
16 **research that suggest that consumers may not**
17 **consider renewals when taking out a loan. Is**
18 **that a fair statement of that paragraph?**
19 A. That is one of the sentences in that
20 paragraph, yes.
21 **Q. Or specifically your last sentence**
22 **says, There are at least two lines of consumer**
23 **behavior research that directly suggests that**
24 **consumers may not be considering renewal at all**
25 **when taking out an initial loan.**

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1 A. The paragraph actually continues on the
2 next page, but that's the last line on page 3,
3 yes.
4 **Q. Okay. Correct. I see that. And it**
5 **says -- it goes on to talk about the need for**
6 **empirical support. Is that the thrust of that**
7 **paragraph?**
8 A. The thrust of that -- that's not all
9 the paragraph.
10 **Q. Is there something relevant that I**
11 **omitted?**
12 A. The paragraph is saying that renewal
13 costs may not be a factor in consumers'
14 decision-making at the time of loan origination
15 is the main thrust of that paragraph. There is
16 no empirical support that indeed they are
17 relevant at the time of loan origination. Those
18 are the two takeaways I have from that
19 paragraph.
20 **Q. And so this is a theoretical framework**
21 **that is sometimes used to analyze consumer**
22 **behavior, what consumers are thinking about when**
23 **they are taking out a loan?**
24 A. I'm not sure I understand the question.
25 **Q. Well, you say there are two lines of**

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1 **behavior research.**
2 A. Yes.
3 **Q. That consumers may not be considering**
4 **renewals, right?**
5 A. Yes.
6 **Q. At the time they take out the loan.**
7 **And then you cite a couple of articles; is that**
8 **correct?**
9 A. That is correct.
10 **Q. So is it fair to say that these lines**
11 **of consumer research provide a theoretical**
12 **framework through which to understand consumer**
13 **behavior?**
14 A. I'm not sure I would use the word
15 "theoretical framework." For clarity, those two
16 bodies are referenced in paragraphs 22 and 23,
17 those two lines of research. The first body is
18 in 22; the second body of research is in
19 paragraph 23.
20 **Q. And if you wouldn't use the phrase**
21 **theoretical framework, what would you use?**
22 A. I would say those are two pieces of
23 scientific evidence that suggest that people --
24 that consumers may not consider renewal costs
25 when originating a loan.

1 **Q. And is there other scientific evidence**
2 **that consumers do consider renewal costs when**
3 **taking out loans?**

4 A. I don't have any evidence off the top
5 of my head of that.

6 **Q. Are you aware of any other research**
7 **other than what you have cited that addresses**
8 **that question?**

9 A. I have not made the connection to other
10 research that I know as whether it addresses
11 this question.

12 **Q. Have you read any other research on**
13 **this topic other than what is cited in your**
14 **report?**

15 MS. BAKER: Objection. Form. Vague.

16 BY MS. WEINBERG:

17 **Q. You can answer.**

18 A. I don't know what you mean by "this
19 topic."

20 **Q. This topic on what consumers consider**
21 **when taking out a loan.**

22 A. Have I read any other research that's
23 relevant to what consumers consider when taking
24 out a loan?

25 **Q. Yes, other than these two things that**

1 **Q. Are you aware of research in your field**
2 **on the importance of prominence of a disclosure?**

3 A. No.

4 **Q. Are you aware of research in your field**
5 **related to placement of text in a disclosure?**

6 MS. BAKER: Objection. Form and vague.
7 Actually, this whole line of questions is vague.

8 If you can answer, go ahead.

9 THE WITNESS: I don't think the
10 researchers in my field use the framework from
11 the FTC guidelines with words like "placement,"
12 "proximity," "prominence," et cetera. And so I
13 don't recall research that's fitting the
14 criteria as you are describing them. It doesn't
15 mean they aren't related, but those aren't terms
16 that I see in the consumer behavior literature.

17 BY MS. WEINBERG:

18 **Q. Setting aside the word choice, are you**
19 **familiar with research that maybe doesn't use**
20 **the word "prominence," but deals with how -- I'm**
21 **having trouble thinking of a good synonym, how**
22 **boldly or --**

23 A. So I think consumer behavior
24 researchers don't dimensionalize consumer
25 information presentation into those dimensions,

1 **you cite here in the report.**

2 A. Maybe the best answer to this question
3 is how I think about how consumers process
4 information about taking out a loan. I think my
5 conclusions about how consumers process
6 information when taking out a loan are related
7 to my conclusions about how consumers process
8 information when making other decisions as well.
9 It involves principles that have been garnered
10 from past research on consumers' information
11 processing and decision-making. And so lots of
12 research is potentially relevant. But as I said
13 earlier, I have not made a particular connection
14 between a piece of research that I might already
15 know about and how it might bear on this. I
16 made the connection between these two pieces of
17 research when I thought about it, but that
18 doesn't preclude that there might be others.

19 **Q. Prior to reading Dr. Hastak's report,**
20 **were you aware of the FTC guidelines on clear**
21 **and conspicuous disclosures?**

22 A. I was not.

23 **Q. Are you aware of other people in your**
24 **field using them?**

25 A. No.

1 whether using those labels or other similar
2 labels. I think we wouldn't imagine thinking
3 about how much prominence is there, how much
4 proximity, et cetera, for the different
5 dimensions. I don't think that's a framework
6 that's applied using those or related words in
7 the academic field.

8 **Q. Okay. This might be a little tedious.**
9 **I'm going to ask you to bear with me because I**
10 **want to go through each of these six factors**
11 **just to make sure we are completely clear. So**
12 **you've testified about prominence and I think**
13 **you've also testified about placement, if I'm**
14 **correct?**

15 MS. BAKER: Objection. Form. Assumes
16 facts not in evidence.

17 But I mean, go ahead.

18 BY MS. WEINBERG:

19 **Q. Are you aware of research -- you have**
20 **testified about your awareness of research on**
21 **prominence of text, using both that phrase and**
22 **that concept. You said that you are not aware**
23 **of research on that concept or word. Is the**
24 **same true for the concept of where text appears,**
25 **its placement in a document?**

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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.

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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?**

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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

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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**

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1 **phrase?**

2 A. If you say something over and over

3 again to people, they stop paying attention to

4 it.

5 **Q. But based on your first sentence, they**

6 **have more memory of it?**

7 A. If you can get them to pay attention to

8 it, then they will have more memory of it. It's

9 a well-known challenge in the marketing

10 literature of how do you repeat something but

11 retain attention.

12 **Q. Do you have an opinion on whether**

13 **adherence to the FTC guidelines increases the**

14 **clarity of disclosures?**

15 A. I'm sorry, could you repeat the

16 question?

17 **Q. Do you have an opinion on whether**

18 **adherence to the FTC guidelines that Dr. Hastak**

19 **used in his report increase the clarity of**

20 **disclosures?**

21 A. I don't have an opinion.

22 **Q. In your opinion, were the costs of loan**

23 **renewals disclosed in a clear and conspicuous**

24 **manner in Integrity Advance's loan agreements?**

25 A. To me that's an empirical question

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1 which I can't answer without data.

2 **Q. So you have no opinion; is that**

3 **correct?**

4 A. I have no scientific basis for an

5 opinion. As an expert in consumer behavior, I

6 would have no basis for a scientific opinion. I

7 might have my personal thoughts and feelings,

8 but I know they don't correspond to the

9 consumers necessarily.

10 **Q. You've established that you didn't do**

11 **any empirical research here. And putting aside**

12 **your personal views, based on your professional**

13 **expertise, do you have any opinion on whether**

14 **the loan renewals were disclosed in a clear and**

15 **conspicuous manner?**

16 MS. BAKER: Objection. Asked and

17 answered.

18 BY MS. WEINBERG:

19 **Q. You are shaking your head no.**

20 A. I said no and I continue to say no.

21 **Q. Okay. Do you have any opinion on**

22 **whether the disclosures could have been clearer**

23 **on the cost of loan renewals in Integrity**

24 **Advance's loan agreements?**

25 MS. BAKER: Same objection.

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1 THE WITNESS: To me the meaning of

2 clarity is would more consumers understand it.

3 And I don't even know how many consumers

4 understand it as it is. So I can't say whether

5 that can be improved.

6 BY MS. WEINBERG:

7 **Q. Okay. Do you have an opinion on**

8 **whether a consumer could calculate the cost of**

9 **loan renewals based on Integrity Advance's loan**

10 **agreement?**

11 A. Yes, I do.

12 **Q. What is your opinion?**

13 A. My opinion is that they could.

14 **Q. I'm going to -- let's look at, since**

15 **you said that you looked at the loan agreements**

16 **that were appended to Dr. Hastak's report, so**

17 **let's take a look at those. I'll make this**

18 **Exhibit 3. And I'm giving you a copy.**

19 **(Novemsky Deposition Exhibit Number 3**

20 **was marked for identification.)**

21 BY MS. WEINBERG:

22 **Q. If you could go to the back of the**

23 **report that I just handed you. This is the**

24 **complete -- for the record, this is Dr. Hastak's**

25 **complete report. It does not include all the**

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1 **appendices. It omits all the appendices except**

2 **for those that are the actual loan agreements.**

3 **So his CV is omitted.**

4 MS. BAKER: This document appears, I

5 don't know if it's redacted or highlighted, but

6 I note that it's not exactly what was provided

7 to us in the litigation. It's fine --

8 MS. WEINBERG: This is exactly as it

9 appeared in Dr. Hastak's report.

10 MS. BAKER: This is just in color,

11 then? I'm talking about these --

12 MS. PROFITA: Our copy was not in

13 color.

14 MS. BAKER: I don't believe I have ever

15 seen these highlights before, unless they are

16 highlighted or redacted. I don't know. I'm

17 just noting it. I don't think it matters. I'm

18 just making that record.

19 MS. WEINBERG: The personal information

20 of the consumers was redacted in this version

21 and in the version in Dr. Hastak's report. It

22 may be that the copy that you had had the

23 redactions in gray rather than in yellow.

24 MS. BAKER: That must be it. Okay. So

25 these are redactions and not highlights?

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.

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.**

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.**

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

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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.

4 **Q. Did you do any further calculations**
5 **after that?**

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 **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?**

18 A. As the principal reduces, the finance
19 charge also reduces, correct.

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 A. It's \$30 for every hundred. So you
24 multiply the principal remaining by \$30 for
25 every hundred or point-3.

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1 **Q. So I'm sorry, please continue with how**
2 **you made your calculation.**

3 A. So at the end of auto workout period
4 one, they pay 150 finance plus \$50 principal for
5 a total of 200. At the end of auto workout
6 period two, they pay \$50 principal plus 135 in
7 finance charges and so on with the finance
8 charge going down by \$15 every period. As the
9 principal is reduced by 50, the finance charge
10 goes down by 15 until the principal reaches
11 zero, which looks like approximately ten auto
12 workout periods.

13 **Q. And the total amount that you say this**
14 **consumer would have paid if he or she had gone**
15 **through the renewal and auto renewal and auto**
16 **workout?**

17 A. Is \$2,075.

18 **Q. And what was the error you made**
19 **initially when you were doing this calculation?**

20 A. I had them pay the principal twice.
21 When I thought about the end of the five auto
22 renewals, I thought he paid the principal. But
23 the principal remains and is paid through the
24 auto workout. So I added in the principal twice
25 and I shouldn't have.

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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?**

13 MS. BAKER: Objection. Compound
14 question and a vague question. Form.

15 BY MS. WEINBERG:

16 **Q. Do you understand the question?**

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.

23 **Q. And under what circumstances would you**
24 **think it would have an influence on consumers'**
25 **decision to take out a loan?**

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1 MS. BAKER: Objection. Vague.

2 THE WITNESS: I don't have an answer
3 off the top of my head to that question.

4 BY MS. WEINBERG:

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.**

9 A. Right.

10 **Q. So my question is whether you have any**
11 **thoughts about what the circumstances are that**
12 **it would have an impact?**

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

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.

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?**

22 MS. BAKER: Objection. Compound
23 question.

24 THE WITNESS: I don't have an opinion
25 because I don't know that they would understand

1 that.

2 BY MS. WEINBERG:

3 **Q. Why wouldn't they understand that?**

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.

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?**

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.

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**

1 **numbers corresponded with the correct**
2 **mathematical calculation of the cost of auto**
3 **renewals?**

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.

8 **Q. What effect do you think it might have?**

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.

12 **Q. Let's go back to your report.**

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?

17 MS. WEINBERG: You want to go until
18 noon?

19 THE WITNESS: Noon sounds fine for me.

20 MS. BAKER: If that works for you,

21 Wendy.

22 MS. WEINBERG: That's fine.

23 BY MS. WEINBERG:

24 **Q. So let's look at paragraph 21 of your**
25 **report, which is on page 6 of your report. And**

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?**

5 A. That is correct.

6 **Q. So let's take a look at that article.**
7 **(Novemsky Deposition Exhibit Number 4**
8 **was marked for identification.)**

9 BY MS. WEINBERG:

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 --**

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?

19 MS. WEINBERG: Thank you.

20 THE WITNESS: It does appear to be.

21 BY MS. WEINBERG:

22 **Q. And this is the article that you**
23 **referenced in your footnote?**

24 A. It does appear to be that article, yes.

25 **Q. Great. So going to that first full**

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

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.

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

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

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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 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 **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 **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

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1 unconfirmed.
2 **Q. And I just asked you this question**
3 **about whether making the price difference**
4 **explicit in the loan would have affected**
5 **consumer behavior in terms of choosing the loan.**
6 **I want to ask you the same question in terms of**
7 **whether you think it would have affected**
8 **consumer behavior in terms of understanding the**
9 **loan.**
10 MS. BAKER: Objection. Form. Vague
11 question.
12 BY MS. WEINBERG:
13 **Q. Do you understand the question?**
14 A. I'm not certain I do.
15 **Q. Okay. The question is whether if**
16 **Integrity Advance's loan agreements had**
17 **explicitly set forth the cost of single-payment**
18 **and auto workout and I think, if we understand**
19 **auto workout, would mean the full calculation**
20 **that you just did where somebody takes the full**
21 **renewals and auto workout options that are**
22 **available under the loan, if they had been**
23 **explicitly presented, both of those costs, that**
24 **it would have influenced consumer behavior in**
25 **understanding the loan agreement?**

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1 A. I don't know. I don't know if it
2 would. It's an empirical question.
3 **Q. Okay.**
4 MS. BAKER: Is this a good time for you
5 to break? It's up to you. We can go a few more
6 minutes if you would like.
7 MS. WEINBERG: We could break. It's
8 five of.
9 THE WITNESS: That's fine with me if
10 you are not in the middle of something.
11 MS. WEINBERG: I am, but it's nothing
12 critical.
13 (Whereupon, at 11:55 a.m., a lunch
14 recess was taken.)
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1 AFTERNOON SESSION
2 (12:57 p.m.)
3 MS. WEINBERG: So we are back on the
4 record at 12:58. I wanted to start by, I wanted
5 to have Dr. Novemsky's calculations marked as an
6 exhibit and entered for the record.
7 (Novemsky Deposition Exhibit Number 5
8 was marked for identification.)
9 BY MS. WEINBERG:
10 **Q. Dr. Novemsky, are you aware of any**
11 **research that shows that costs aren't important**
12 **to consumers when they are borrowing money?**
13 A. Costs aren't important to consumers,
14 no, I'm aware of no research that makes that
15 specific conclusion, no.
16 **Q. Do you think that this is a proposition**
17 **that requires research or is it the type of**
18 **proposition that could be accepted on its face?**
19 MS. BAKER: Objection. Vague.
20 THE WITNESS: I think it requires
21 research.
22 BY MS. WEINBERG:
23 **Q. Okay. You are just not aware of any**
24 **research on that topic?**
25 A. Correct.

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1 **Q. Do you have an opinion on whether costs**
2 **would be important to consumers who utilize**
3 **payday loans?**
4 A. I don't have an opinion on that, no.
5 **Q. Let's go back to your report which,**
6 **again, is Exhibit 1, paragraph 22, which is on**
7 **page 7. Okay. And in there you say, There's a**
8 **body of research that finds that consumer**
9 **decision-making is driven much more by cost and**
10 **benefits that are immediate compared to benefits**
11 **that are further away in time.**
12 **Is that a correct statement of what's**
13 **in your report?**
14 A. It is.
15 **Q. Do you have an opinion on whether**
16 **clarity of disclosures on costs that are further**
17 **away in time would improve decision-making for**
18 **consumers choosing to take out a loan?**
19 A. I do not.
20 **Q. So sticking with paragraph 22 that we**
21 **were just talking about, you are talking about a**
22 **body of research on what consumers find**
23 **important. Is that a correct statement?**
24 A. Not exactly.
25 **Q. Tell me how I erred in that.**

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1 A. I would say it's a body of research
 2 about how consumers consider things that are in
 3 the here and now versus things that are distant
 4 in time.
 5 **Q. So that's one conceptual way of looking**
 6 **at how consumers make decisions. Is that a**
 7 **correct statement?**
 8 A. Sure.
 9 **Q. And you didn't do any research here to**
 10 **apply this framework to the specific consumers**
 11 **who would have been taking out Integrity Advance**
 12 **loans; is that right?**
 13 A. I did no research with respect to
 14 Integrity Advance loans, that is correct.
 15 **Q. Does this conceptual framework about**
 16 **benefits that are immediate compared to benefits**
 17 **that are further away in time consider the**
 18 **clarity of loan disclosures?**
 19 A. No, they don't.
 20 **Q. Does this conceptual framework impact**
 21 **an analysis on the clarity of disclosures?**
 22 A. They may insofar as the impact,
 23 someone's motivation to process those
 24 disclosures. As I said earlier, the clarity of
 25 a disclosure is related to the consumer trying

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1 to understand it. If it's further away in time,
 2 the consumer will have less motivation to
 3 understand it. So it may seem less clear in the
 4 sense that it may have a harder time getting
 5 through the customer's understanding.
 6 **Q. And if the analysis were limited to the**
 7 **clarity of a specific document, not the**
 8 **consumer's understanding of it, and I understand**
 9 **we have been back and forth on this -- you say**
 10 **that it's difficult to disentangle those two,**
 11 **but if you could disentangle those two and limit**
 12 **the analysis just to what a document says, would**
 13 **this conceptual framework impact the analysis on**
 14 **clarity? This conceptual framework being the**
 15 **one we've just been talking about, about**
 16 **immediate benefits versus benefits that are**
 17 **further away in time.**
 18 MS. BAKER: Objection. Compound.
 19 BY MS. WEINBERG:
 20 **Q. Do you understand the question?**
 21 A. It was a long question.
 22 **Q. Yes, it was a long question. Let me**
 23 **try and make it shorter. Does this theory that**
 24 **we have been talking about in paragraph 22 that**
 25 **compares immediate benefits versus benefits that**

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1 **are further away in time have any impact on an**
 2 **analysis of the clarity of loan disclosures?**
 3 A. As I said a minute ago, when I think
 4 about the clarity of loan disclosures, I can't
 5 separate that from the person reading it in the
 6 context in which it's being read. So if the
 7 loan disclosure is about something happening at
 8 a certain point in time, then this theory and
 9 framework do speak to it.
 10 **Q. Let's move on to paragraph 23 of your**
 11 **report.**
 12 A. Okay.
 13 **Q. And is it a fair summary of that**
 14 **paragraph to say that consumers might not**
 15 **consider renewal costs because they are**
 16 **optimistic about their future?**
 17 A. That is a fair summary.
 18 **Q. It's also -- is it also possible that**
 19 **they might consider renewal costs?**
 20 A. Yes, it is.
 21 **Q. Do you have an opinion on whether this**
 22 **potential optimism makes it important to**
 23 **disclose costs of renewals in order for**
 24 **consumers to understand the consequences of**
 25 **taking out a loan?**

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1 A. I don't have an opinion on that in the
 2 absence of data, no.
 3 **Q. So in order for you to apply this**
 4 **framework, you would have to do -- you or**
 5 **someone would have to do a study. Is that a**
 6 **fair statement?**
 7 A. That is a fair statement.
 8 **Q. Does this theory about consumer**
 9 **optimism consider the clarity of loan**
 10 **disclosures?**
 11 A. No. It's a much -- no.
 12 **Q. In paragraph 25, you say -- well, on**
 13 **page 8, which is sort of the middle of your**
 14 **paragraph 25, you say, It could be that**
 15 **consumers find loan renewal option despite its**
 16 **costs not to be a deterrent to accepting**
 17 **Integrity Advance's offering.**
 18 **Do you see that sentence?**
 19 A. I do see that sentence, yes.
 20 **Q. Is it also true that it might not be**
 21 **that consumers consider -- might it be true that**
 22 **the inverse is true on that sentence?**
 23 A. Yes.
 24 **Q. And in order to know which statement of**
 25 **that sentence was true, is it fair to say you**

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1 **would have to do empirical research?**
2 A. That's what I would say, yes.
3 **Q. And again, to beat that dead horse, you**
4 **didn't do empirical --**
5 A. I did not do empirical research.
6 **Q. And does this theory consider the**
7 **clarity of loan disclosures?**
8 MS. BAKER: Objection. Vague.
9 BY MS. WEINBERG:
10 **Q. The theory that consumers find the loan**
11 **renewal option despite its costs not to be a**
12 **deterrent to accepting Integrity Advance's**
13 **offering.**
14 A. I would say this conjecture about what
15 consumers might feel about loan renewal is not
16 relevant to clarity.
17 **Q. Okay. And was there any basis for this**
18 **conjecture in your report?**
19 A. Yes. It's listed in the following
20 paragraphs.
21 **Q. Okay. And those are the -- okay. Can**
22 **you be more specific about which paragraphs you**
23 **are referring to?**
24 A. I can. Give me a moment to review
25 them.

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1 **Q. Sure.**
2 A. I believe it's everything from that
3 paragraph through to paragraph 33 on my quick
4 looking.
5 **Q. So 26 through 33 is what you are --**
6 A. I think that's right.
7 **Q. In paragraph 26 you refer to a welcome**
8 **e-mail and another e-mail that you describe as a**
9 **reminder e-mail; is that correct?**
10 A. That is correct.
11 **Q. Do you have any expertise on whether**
12 **consumers read e-mails?**
13 A. I have expertise relevant to whether
14 consumers read e-mails, yes.
15 **Q. And what is your relevant expertise?**
16 A. I have understanding of some of the
17 factors that might drive whether consumers read
18 an e-mail or not.
19 **Q. Have you done research in this area?**
20 A. I have worked on projects with some of
21 the corporate partners of the Yale Center For
22 Customer Insights on issues that are relevant to
23 customers reading e-mails, yes.
24 **Q. Can you be more specific about what**
25 **that research is?**

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1 MS. BAKER: To the extent you can
2 answer the question without disclosing something
3 covered by an NDA, please do so.
4 THE WITNESS: I will try to. I'm
5 thinking that through. We talked about -- so
6 for certain companies who regularly send e-mail
7 to their customers, we talked about ways and we,
8 in fact, studied ways to -- we tested certain
9 e-mails, formats of e-mails, wording of e-mails,
10 wording of e-mail subject lines, time of day of
11 e-mails and other factors that would increase or
12 decrease the likelihood that a consumer would
13 read that e-mail from their service provider.
14 BY MS. WEINBERG:
15 **Q. And do you know the percentage of**
16 **people that read e-mails from commercial**
17 **sources?**
18 A. No.
19 **Q. And you very quickly listed a bunch of**
20 **factors that influence whether people read**
21 **e-mails. To be honest with you, I didn't get**
22 **them all but they are in the record. Other than**
23 **those factors that you just recited, are there**
24 **any other factors you can think of?**
25 A. My memory is only as good as yours, I'm

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1 afraid.
2 MS. WEINBERG: Could you read back what
3 he said, please, on the factors.
4 (The record was read as requested.)
5 BY MS. WEINBERG:
6 **Q. So you said subject line, time of day**
7 **were the two ones that you explicitly mentioned?**
8 A. There was content.
9 **Q. Content of the e-mail itself?**
10 A. There was framing, I think, of the
11 e-mail.
12 **Q. And what do you mean by framing?**
13 A. The words that are used. You can talk
14 about something as avoiding a loss versus
15 approaching a gain. And people -- the same
16 content can be described in either of those
17 frames and it changes someone's propensity to
18 read it. That's one example of framing, but
19 there are lots.
20 **Q. And does the question or the concept of**
21 **framing have any relevance to Integrity**
22 **Advance's e-mails?**
23 A. I would have to review their e-mails.
24 **Q. The e-mails are part of your report in**
25 **the appendix. And for the record, it is**

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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?**

5 A. Yes. Can you repeat the question?

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.**

10 A. When you say have any relevance, what
11 are you asking me?

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?**

16 A. That's one version of framing, yeah.

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?**

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

1 **Q. Okay. I think that was my question.**
2 **So without doing an empirical analysis, you**
3 **couldn't --**

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.

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.**

14 **Do you see that sentence?**

15 A. I do.

16 **Q. And what is the basis for that**
17 **statement?**

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.

24 **Q. And what is the basis of your statement**
25 **that they were received prior to renewal?**

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1 different frame on something, you can make it
2 more or less likely to engage the person
3 receiving it.

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?**

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.

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?**

19 A. I'm not sure what you mean by analyze.
20 If I --

21 **Q. To see whether these e-mails would have**
22 **been more likely to be read or not.**

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.

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.

8 **Q. And is this from information that you**
9 **obtained from counsel or from Integrity Advance?**

10 A. Or one of the many documents that I
11 looked at. I can't remember the source now.

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?**

18 A. I don't have any opinion on how many
19 consumers read these e-mails, that is correct.

20 **Q. And you said that the information in**
21 **these e-mails is clear. Is that a correct**
22 **statement?**

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.

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1 **Q. I see. So you weren't making a**
 2 **statement about the content of the e-mails?**
 3 A. I was making a statement that the
 4 content of the e-mails is relevant to loan
 5 renewal.
 6 **Q. But you weren't talking about clarity**
 7 **of disclosure in that?**
 8 A. I wasn't talking about clarity in the
 9 way that Dr. Hastak talked about clarity.
 10 **Q. And do you have any knowledge about**
 11 **whether consumers received any e-mails before**
 12 **they signed the loan documents?**
 13 A. I don't have any knowledge about that.
 14 **Q. And just to clarify, when you said you**
 15 **have no knowledge about when they got that**
 16 **e-mail, were you referring to both e-mails,**
 17 **Exhibit B and Exhibit C?**
 18 A. I don't think that's --
 19 MS. BAKER: Objection. That assumes
 20 facts not in evidence. That's not what he said.
 21 MS. WEINBERG: Could you read back the
 22 answer prior to this.
 23 (The record was read as requested.)
 24 BY MS. WEINBERG:
 25 **Q. So what was your assumption about when**

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1 **customers received the welcome e-mail?**
 2 A. My understanding was that customers
 3 received the welcome e-mail shortly after being
 4 approved for the loan.
 5 **Q. And what is your understanding about**
 6 **how that occurred in relation to the signing of**
 7 **the loan documents?**
 8 A. I would presume that approval occurs
 9 after signing of the loan documents.
 10 **Q. Okay. And just to be clear, when we**
 11 **say loan documents, we are talking about the**
 12 **loan agreement that is in Dr. Hastak's report as**
 13 **exhibits --**
 14 MS. BAKER: If you can clarify what you
 15 mean by loan document.
 16 MS. WEINBERG: That's what I'm trying
 17 to do. The two loan agreements that are in
 18 Dr. Hastak's, and they are B and C.
 19 MS. BAKER: So would you mind
 20 re-reading Ms. -- reading back Ms. Weinberg's
 21 last question given her clarification just now,
 22 please. I assume that's the question pending?
 23 MS. WEINBERG: I don't think there's a
 24 question pending.
 25 MS. BAKER: I'm sorry. Never mind,

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1 then.
 2 BY MS. WEINBERG:
 3 **Q. My only question was to try to clarify**
 4 **that the loan agreements that we were talking**
 5 **about, the ones that were in Appendix B and C of**
 6 **Dr. Hastak's report.**
 7 MS. BAKER: Could you read back the
 8 last three questions that were asked and the
 9 answers that were given, please. I want to make
 10 sure I have a clean record here.
 11 (The record was read as requested.)
 12 MS. BAKER: Are you okay with those
 13 answers, given the clarification with the
 14 documents? I just want to make sure because we
 15 were talking about documents, and it wasn't
 16 clear what documents we were discussing.
 17 THE WITNESS: Yes, I am.
 18 BY MS. WEINBERG:
 19 **Q. What is the basis for your assumption**
 20 **about the timing of the welcome e-mail?**
 21 A. I was either told by counsel or it was
 22 in one of the documents I reviewed.
 23 **Q. Okay. And I want to ask you these same**
 24 **questions about the reminder e-mail. What were**
 25 **your assumptions about when consumers got the**

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1 **reminder e-mail? And for the record, the**
 2 **reminder e-mail is Exhibit C in your report; is**
 3 **that correct? Is that what you were referring**
 4 **to as the reminder e-mail?**
 5 A. It is what I was referring to, yes.
 6 MS. BAKER: So it's Appendix C of
 7 Exhibit 2.
 8 BY MS. WEINBERG:
 9 **Q. Okay. Yeah, it is Appendix C. I think**
 10 **I might have given it a different name.**
 11 **So again, what were your assumptions**
 12 **about when consumers got that reminder e-mail,**
 13 **which we have now clarified was Appendix C in**
 14 **your report?**
 15 A. A few days before their first due date.
 16 **Q. And what is the basis of that**
 17 **assumption?**
 18 A. It was either from counsel or one of
 19 the documents that I reviewed.
 20 **Q. And again, that would have been a**
 21 **document that was listed in your Appendix D,**
 22 **which are the documents you considered?**
 23 A. That's correct.
 24 **Q. And would that have been before**
 25 **origination or after?**

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1 A. After origination.
 2 **Q. And what were your assumptions about**
 3 **which consumers got e-mails, either -- let's**
 4 **start with the first one. What were your**
 5 **assumptions about which consumers got the**
 6 **welcome e-mail?**
 7 MS. BAKER: Objection. Form. Vague
 8 question.
 9 BY MS. WEINBERG:
 10 **Q. Did you have an assumption about the**
 11 **number or percentage of consumers that got the**
 12 **welcome e-mail?**
 13 A. I don't have a particular assumption
 14 about the number who got the e-mail.
 15 **Q. And would it have been relevant to your**
 16 **opinion to know the percentage of consumers who**
 17 **received the welcome e-mail?**
 18 A. The more received the welcome e-mail,
 19 the more paragraph 26 applies.
 20 **Q. But you didn't review any records or**
 21 **receive any information on the percentage of**
 22 **consumers who did receive the welcome e-mail?**
 23 A. I can't recall exactly. I may have
 24 been told that it was a matter of policy that
 25 everyone receives the welcome e-mail.

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1 **Q. And do you remember who told you that?**
 2 A. It would either, again, come from
 3 counsel or one of the documents in Appendix D.
 4 **Q. And you said it was a matter of policy.**
 5 **Do you have any information on whether that**
 6 **policy was implemented?**
 7 A. I do not.
 8 **Q. And the same question for the reminder**
 9 **e-mail which, for the record, is exhibit --**
 10 **Appendix C to your report. Do you have any**
 11 **information, did you make any assumptions about**
 12 **what percentage of consumers received that**
 13 **reminder e-mail, Appendix C?**
 14 A. I did not make any assumptions.
 15 **Q. And would that have been relevant to**
 16 **the statement you made in paragraph 26?**
 17 A. Sure. The more consumers received it,
 18 the more that part of paragraph 26 would be
 19 relevant to them.
 20 **Q. Do you know the format in which these**
 21 **two e-mails that we have been referring to,**
 22 **Appendix B and C, were sent? In other words,**
 23 **whether they were sent as an attachment, like in**
 24 **a Word file or as text that appeared in the body**
 25 **of an e-mail?**

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1 A. I have no information about that.
 2 **Q. Would that matter to your analysis?**
 3 A. No.
 4 **Q. Is it your opinion that consumers are**
 5 **just as likely to read e-mails that come as text**
 6 **in the body of an e-mail versus opening**
 7 **attachments?**
 8 A. No, that's not my opinion.
 9 **Q. What is your opinion?**
 10 MS. BAKER: Opinion concerning what?
 11 MS. WEINBERG: Whether consumers are
 12 just as likely to read an e-mail that appears as
 13 text in the body of the e-mail versus in an
 14 attachment to that e-mail.
 15 MS. BAKER: Are you asking as specific
 16 to this case or are you asking him more
 17 generally?
 18 BY MS. WEINBERG:
 19 **Q. Generally, do you have an opinion about**
 20 **whether consumers are more or less likely to**
 21 **read e-mails that come in one form, attachment,**
 22 **versus another --**
 23 A. They might well be more likely to read
 24 them in one form or another. I have no data on
 25 the subject. So I don't know exactly what the

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1 case is here.
 2 **Q. And as a concept, do you have an**
 3 **opinion separate and apart from its application**
 4 **in this case?**
 5 A. Again, it would depend on the
 6 situation, I think. That's an empirical
 7 question as to how many people read an e-mail of
 8 one form or another.
 9 **Q. So you are not aware of any research on**
 10 **this topic?**
 11 A. Specifically on attachments versus text
 12 in the body, I am not aware of specific research
 13 on that, no.
 14 **Q. Is it your opinion that the welcome**
 15 **e-mail -- and again, I would like us all to turn**
 16 **to Appendix B in your report. Does that convey**
 17 **the cost? Is it your opinion that that e-mail**
 18 **conveys the cost of loan rollovers?**
 19 MS. BAKER: I just want to, for the
 20 record, clarify something. Are you asking him
 21 to give an opinion on that question?
 22 MS. WEINBERG: I'm asking if he has an
 23 opinion on that question. And if he doesn't,
 24 that's what the record will reflect.
 25 THE WITNESS: Can you repeat the

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1 question?
2 BY MS. WEINBERG:
3 **Q. Do you have an opinion about whether or**
4 **not the welcome e-mail conveys the cost of loan**
5 **rollovers? And rollovers, as we discussed**
6 **earlier about going through the auto renewal and**
7 **auto workout relative to the calculation that**
8 **you made this morning.**
9 A. I don't know how well consumers
10 understand the cost of their rollover from
11 reading this e-mail. I think that is an
12 empirical question, looking at the e-mail.
13 **Q. When you say you don't know whether**
14 **consumers understand the cost, is that what you**
15 **just said?**
16 MS. BAKER: No, that's not what he just
17 said.
18 MS. WEINBERG: Could you repeat what
19 exactly he said.
20 (The record was read as requested.)
21 BY MS. WEINBERG:
22 **Q. Could you just say something further**
23 **about what you mean I don't know how well**
24 **consumers understood the cost of the rollovers**
25 **from reading this e-mail?**

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1 A. There are phrases in this e-mail that
2 refer to the costs. Particularly point one,
3 after the first initial payment, the next four
4 renewals require -- only require payment of the
5 finance charge starting with the fifth renewal
6 in addition to the finance charge, and it goes
7 on. That may convey to consumers that there is
8 going to be a finance charge paid with each
9 renewal, in which case they would know, it would
10 communicate to them the cost of the renewal. Or
11 they may not read that to mean there's a new
12 finance charge for each renewal. That's an
13 empirical question, which of those two
14 possibilities obtained.
15 **Q. And do you think that consumers could**
16 **calculate the cost of a renewal based on this**
17 **e-mail?**
18 A. Yes, they could.
19 **Q. And would they have to do the same**
20 **calculation that you did this morning on paper**
21 **in order to do that?**
22 A. No. It's a much simpler question.
23 It's just, what is my finance charge? That's
24 what I have to pay for renewal if they are
25 reading point one correctly. So there's no

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1 addition, subtraction or other mathematics.
2 **Q. So they would have to know the finance**
3 **charge?**
4 A. That's correct.
5 **Q. And is it possible that consumers could**
6 **read that e-mail to confirm their**
7 **misunderstanding that the total of payments that**
8 **was due under the loan was the amount reflected**
9 **in the TILA box in their loan agreement?**
10 MS. BAKER: Objection. Compound
11 question.
12 BY MS. WEINBERG:
13 **Q. You can answer.**
14 A. I'm not sure which scenario you are
15 referring to.
16 **Q. Let's assume a scenario in which the**
17 **consumer looks at the loan agreement -- and to**
18 **make things abundantly clear, let's look at the**
19 **one in Dr. Hastak's report again.**
20 **So we are looking at the same agreement**
21 **that you analyzed before, which was, I think,**
22 **his Exhibit B. So in that case let's assume**
23 **that this person read the TILA box where it says**
24 **total of payments is \$650 to mean that each time**
25 **he or she paid the finance charge of 150, it was**

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1 **being credited towards the total amount they**
2 **would have to pay, which here they would believe**
3 **is \$650. Is that clear?**
4 A. Could you repeat the question part
5 again? I get the scenario now.
6 **Q. Sure. So if this consumer thought that**
7 **the total amount they would have to pay in this**
8 **case was 650, the amount reflected in the total**
9 **of payments, is it possible that a consumer**
10 **could read this welcome e-mail that we were**
11 **talking about to confirm their misunderstanding**
12 **that the total of payments that was due was the**
13 **amount reflected in the TILA box?**
14 A. It is possible.
15 **Q. Okay. Let's move to paragraph 27 of**
16 **your report. And here I'll just read the whole**
17 **paragraph. Consumers also receive a phone call**
18 **from Integrity Advance. During that call**
19 **consumers had the opportunity to ask any**
20 **questions they had about costs of the loan,**
21 **including renewal costs. If they were confused**
22 **about renewal costs after examining the loan**
23 **agreement, this phone call would have been an**
24 **opportunity to clear up those confusions.**
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**

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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**

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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 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?**
 2 A. None were made available to me.
 3 **Q. Did you ask that they be made**
 4 **available?**
 5 A. I don't recall. I think it was my
 6 understanding that they were not available.
 7 **Q. Let's turn to paragraph 27. And in**
 8 **that you say -- this is the one we were just**
 9 **looking at. Do you have any expertise in**
 10 **analyzing whether telemarketers adhere to**
 11 **scripts?**
 12 A. I don't know if I have expertise. I
 13 have listened to telemarketers knowing what
 14 their scripts are and I have heard claims from
 15 some of our -- some of the companies I have
 16 worked with about how telemarketers adhere. But
 17 I don't know if that constitutes expertise.
 18 **Q. Are you aware of research that**
 19 **indicates that telemarketers tend to vary from**
 20 **the scripts they are given for phone calls?**
 21 A. I'm not aware of such research.
 22 **Q. Are you aware of research that**
 23 **indicates that telemarketers engage in adaptive**
 24 **behavior in reacting to consumers' questions?**
 25 A. I'm not aware of research to that

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1 extent, no.
 2 **Q. In paragraph 29 of your report,**
 3 **Exhibit 1, which is a long paragraph, on page 9**
 4 **you say, When consumers receive additional**
 5 **benefits, they expect to pay for them.**
 6 **Do you see that?**
 7 A. Yes, I do.
 8 **Q. Do you know whether Integrity Advance's**
 9 **customers expected to pay more for a longer**
 10 **loan?**
 11 A. I don't have any scientific basis for
 12 making that statement whether they do or don't
 13 have that expectation.
 14 **Q. And the article that you cite for this**
 15 **premise was listed in footnote 8. It's -- I'm**
 16 **not going to try to say this. It's**
 17 **A-G-G-A-R-W-A-L. The Effects of Brand**
 18 **Relationship Norms on Consumer Attitudes and**
 19 **Behavior; is that right?**
 20 A. That is cited in that paragraph, yes.
 21 **Q. And that's the article that you cite**
 22 **for this particular proposition that when**
 23 **consumers receive additional benefits, they**
 24 **expect to pay for them?**
 25 A. Correct.

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1 **Q. This is an article that's mostly about**
 2 **brand loyalty; is that right?**
 3 A. It's an article that's about exchange
 4 versus communal relationships with a brand.
 5 **Q. And can you please explain what you**
 6 **mean by exchange versus communal relationships?**
 7 A. Certainly. An exchange relationship is
 8 a relationship where I engage with another
 9 party, entity, someone where I expect that kind
 10 of a quid pro quo situation. If I give, I
 11 expect to get; if I get, I expect to give, as
 12 contrasted with a communal relationship where
 13 there's a deep concern for the other's
 14 well-being and you give with no particular
 15 expectation of reciprocity and you get with no
 16 expectation of reciprocity.
 17 **Q. And how does that conclusion in the**
 18 **article, how does that support the premise that**
 19 **you have cited for here that when consumers**
 20 **receive additional benefits, they expect to pay**
 21 **for them?**
 22 A. In that article, among other things, it
 23 says that relationships with -- and I can't
 24 remember the words they use, but I'll use the
 25 word commercial transactions tend to be exchange

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1 relationships, which is to say they tend to be
 2 these quid pro quo type relationships where when
 3 I give, I expect to get or when I get, I expect
 4 to give.
 5 **Q. But that wasn't in the context of**
 6 **paying more for a longer loan?**
 7 A. The article was not studying loans in
 8 particular. But the claim seems to apply in the
 9 consumer behavior literature that that article
 10 also relies on that this is generally --
 11 exchange relationships generally dominate in
 12 commercial transactions.
 13 **Q. Let's turn to paragraph 30. You say,**
 14 **If the renewal option is a valuable aspect of**
 15 **the loan, it is unlikely that some altered**
 16 **version of a disclosure of the renewal costs in**
 17 **the loan agreement would serve to dissuade**
 18 **interested consumers from taking out a loan.**
 19 **Do you see that sentence?**
 20 A. I do.
 21 **Q. What's the basis for that statement?**
 22 A. So let me summarize the statement
 23 first. If consumers like renewal, then telling
 24 them more about -- if people like renewal,
 25 telling them more about how much it costs may

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.

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?**

10 A. I'm sorry. I'm not sure what the
11 question was in that.

12 **Q. Did you have any basis for a statement**
13 **that the renewal option might be valuable to**
14 **Integrity Advance's customers?**

15 A. Yes. And that is --

16 MS. BAKER: Where is that statement?

17 MS. WEINBERG: What he just made. He
18 said if it's a valuable -- I'm not going to
19 paraphrase it.

20 MS. BAKER: Could you please read back
21 the last three questions and answers.

22 (The record was read as requested.)

23 MS. BAKER: I'm not sure he made that
24 statement, but you can ask him that question.
25 That's not the rendering that was just read

1 back.

2 BY MS. WEINBERG:

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?**

8 A. Yes, I do.

9 **Q. What is that?**

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.

15 **Q. Okay.**

16 A. Paragraphs 30 and 31, I think, provide
17 my reasoning for why the renewal option might be
18 valuable.

19 **Q. But in paragraph 30 you say if it's a**
20 **valuable aspect of the loan.**

21 A. Right. But prior to that is the
22 evidence.

23 **Q. The fact that more than 85 percent of**
24 **consumers choose to renew their loans?**

25 A. Continuing.

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.**

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?**

11 A. That's a longer -- that's a complex
12 question and we'll have to have a long answer to
13 that.

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?**

18 A. It is my opinion that many of them did
19 not have a strong preference not to do so.

20 **Q. Can you explain what you mean by that?**

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

1 going, is paragraph 47.

2 **Q. And that's getting into defaults.**

3 A. Yes, which is what the question is kind
4 of getting into.

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.**

13 MS. BAKER: So back to paragraph 30?

14 BY MS. WEINBERG:

15 **Q. Back to paragraph 30. Do you have any**
16 **basis for the statement that the altered version**
17 **would not dissuade consumers?**

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.

23 If you understand it, answer it. But
24 it's not a clear question.

25 BY MS. WEINBERG:

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1 **Q. Do you understand the question,**
2 **Dr. Novemsky?**
3 A. I'm thinking it through. My
4 presumption when I wrote "some altered version"
5 was a version that provides greater disclosure
6 of the renewal costs. And if renewal is an
7 option that consumers value, including its
8 costs, then as I said earlier, expounding on
9 that option to them isn't going to dissuade them
10 from originating the loan.
11 **Q. So in order for that statement to be**
12 **true, would consumers have to understand what**
13 **the costs of the renewal were?**
14 A. In order for which statement to be
15 true?
16 **Q. The statement you just made about the**
17 **renewal option being valuable to consumers.**
18 A. I'm sorry. I'm lost as to what the
19 question is.
20 **Q. Okay. You just said that consumers may**
21 **find the renewal option to be valuable to them;**
22 **is that correct?**
23 A. They may find the renewal option to be
24 valuable to them, correct.
25 **Q. And this sentence says that because**

1 **your opinion, is there a downside of disclosing**
2 **the total costs of loan renewals?**
3 A. There's a number of, I think,
4 assumptions in what you are asking. So let me
5 try to be clear.
6 **Q. Okay.**
7 A. If the renewal option is valuable for
8 someone who understands the cost of the renewal
9 option, then disclosing the costs of the renewal
10 option to that type of customer would not make
11 them less likely to take the loan.
12 **Q. And conversely, if the person did not**
13 **understand the costs of the loan renewal, would**
14 **it be valuable?**
15 A. I'm sorry, too many pronouns there.
16 **Q. You said that, if I can paraphrase, if**
17 **the renewal option is valuable to somebody who**
18 **understands the cost of the loan, then**
19 **disclosing the cost of the loan, essentially,**
20 **doesn't add anything to the equation. Is that a**
21 **fair summary?**
22 A. That is a fair summary.
23 **Q. So if you take a person who does not**
24 **understand the costs of the loan but finds the**
25 **renewal option valuable, do you think it is**

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1 **they might find the renewal option to be**
2 **valuable, it's unlikely that some altered**
3 **version of a disclosure of the renewal costs in**
4 **the loan agreement would serve to dissuade**
5 **interested consumers from taking out a loan,**
6 **right?**
7 A. Right.
8 **Q. So my question is, does this assume,**
9 **this statement that they find renewal option to**
10 **be valuable, assume that they understand the**
11 **costs of a loan renewal?**
12 A. Yes, it does.
13 **Q. Okay.**
14 MS. BAKER: Could we take a five-minute
15 break if now is an okay time to do that?
16 MS. WEINBERG: This is fine.
17 (A recess was taken.)
18 BY MS. WEINBERG:
19 **Q. So it is now 2:10. We are back on the**
20 **record. And before the break we were talking**
21 **about circumstances about whether a renewal**
22 **option was valuable to Integrity Advance's**
23 **customers, right?**
24 A. Right.
25 **Q. If the renewal option is valuable, in**

1 **valuable to that consumer to disclose the costs**
2 **of the loan with the renewals?**
3 A. I think it's valuable to disclose the
4 cost of the renewal to anyone who doesn't
5 understand the cost of renewal, including such a
6 consumer.
7 **Q. Let's move on to paragraph 31. And on**
8 **page 10 your paragraph 31 is long, so this is**
9 **sort of the middle of your paragraph 31. You**
10 **write, These repeat customers, and you are**
11 **talking about consumers who had more than one**
12 **loan from Integrity Advance, either understood**
13 **that loan renewal involves substantial costs**
14 **because they choose not to renew their first**
15 **loan with Integrity Advance or more likely given**
16 **that the vast majority of loans are renewed,**
17 **they did renew them and experienced exactly how**
18 **renewal works and what the costs are.**
19 **Is that an accurate statement?**
20 A. It's an accurate reading of the
21 paragraph, yep.
22 **Q. So are you assuming in making that**
23 **statement that consumers who renew loans**
24 **understand the costs of the loan?**
25 A. I am assuming that consumers who have

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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**

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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

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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 **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

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1 true. I know that one of the two is true.
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?**
5 A. Correct.
6 **Q. And you haven't cited any studies here**
7 **that would lead to one conclusion or the other?**
8 A. Correct.
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.**
13 **What is the basis of that statement?**
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.
21 **Q. Do you know if Integrity Advance's**
22 **consumers had a choice?**
23 A. I don't specifically know that, no.
24 **Q. Do you know if Integrity Advance**
25 **purchased any leads on an exclusive basis?**

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1 A. I don't know that either, no.
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?**
7 A. Would it change which opinion?
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.**
14 A. I'm sorry, I have lost -- can you
15 repeat the question now?
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.**
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

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1 **disclosures about renewal costs sufficiently**
2 **attractive to end up choosing Integrity Advance**
3 **as their loan provider.**
4 **First of all, this assumes that**
5 **consumers understood the costs of the loan**
6 **renewal; is that correct?**
7 A. That is not correct.
8 **Q. Why is that not correct?**
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.
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?**
20 A. I am testifying they may not have cared
21 about the cost of renewal.
22 **Q. But again, you have no basis for saying**
23 **whether they did or did not?**
24 A. Correct.
25 **Q. So going back to the question,**

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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?**
9 A. No, it would not.
10 **Q. Why not?**
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.
20 **Q. Okay. I'm going to very ambitiously**
21 **try to discuss two paragraphs at once.**
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.**

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1 A. Thirty-four and 47?
 2 **Q. No, 34 and 48.**
 3 A. Okay.
 4 **Q. So is it a fair statement to say that**
 5 **both of those paragraphs discuss information**
 6 **overload?**
 7 A. Yes.
 8 **Q. Is it your opinion that cost is**
 9 **important to consumers seeking to borrow money?**
 10 A. What do you mean by cost?
 11 **Q. Cost of the borrowing.**
 12 A. That's an empirical question.
 13 **Q. So you have no opinion on whether cost**
 14 **is important to consumers who are borrowing**
 15 **money?**
 16 A. I have no definitive statement to make
 17 in this context whether cost is relevant to
 18 consumers borrowing money. You can reference my
 19 paragraph, I want to say, 13. Not 13. The end
 20 of paragraph 13.
 21 **Q. So do you have any opinion about**
 22 **whether the cost of borrowing money would be**
 23 **important to payday customers specifically?**
 24 A. I'm sorry, I missed the first part of
 25 the question.

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1 **Q. Do you have an opinion on whether the**
 2 **cost of borrowing money is important to payday**
 3 **loan customers?**
 4 A. I don't have an opinion. There's
 5 evidence that it isn't cited in my paragraph 13.
 6 And there's some reason to believe that it might
 7 be. So without further study, I don't know.
 8 **Q. So it either might be or it might not**
 9 **be?**
 10 A. Correct.
 11 **Q. And you have no opinion unless you can**
 12 **do research; is that correct?**
 13 A. That's correct.
 14 **Q. If cost is important, I'm just going to**
 15 **ask you to accept that premise for a second,**
 16 **would it help to overcome information overload**
 17 **to highlight the cost of loan renewals more**
 18 **prominently in a loan agreement?**
 19 MS. BAKER: Objection. Vague question.
 20 BY MS. WEINBERG:
 21 **Q. Do you understand?**
 22 A. My answer would be no. Importance of
 23 information doesn't, especially raising the
 24 importance of information as your predicate is
 25 doesn't reduce overload. It potentially

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1 increases overload.
 2 **Q. So you think that -- is it your**
 3 **testimony that all information that a consumer**
 4 **reads in an agreement is processed equally?**
 5 A. No.
 6 **Q. So is the converse true that some**
 7 **information is processed more readily by**
 8 **consumers than other information?**
 9 A. Most likely true, yes.
 10 **Q. And we talked about this this morning**
 11 **about prominence being -- or placement being one**
 12 **of the factors that might affect this; is that**
 13 **correct?**
 14 A. That's correct.
 15 **Q. So then is it a fair statement to say**
 16 **that it is possible to highlight certain**
 17 **information in a loan agreement to make it more**
 18 **likely to be read by a consumer?**
 19 A. Yes, that is certainly possible.
 20 **Q. So just assuming for a second that cost**
 21 **is important, would it be possible and do you**
 22 **think it would help consumers to overcome**
 23 **information overload to highlight the costs more**
 24 **prominently of loan renewals?**
 25 MS. BAKER: Objection. Vague question.

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1 Form.
 2 THE WITNESS: I don't think it would
 3 help with information overload to highlight any
 4 particular piece of information, including cost.
 5 BY MS. WEINBERG:
 6 **Q. Do you have an opinion on what the most**
 7 **important piece of information is to consumers**
 8 **seeking to borrow money?**
 9 A. I do not have an opinion.
 10 **Q. In your paragraph 35, you say, Renewal**
 11 **costs may not be the information consumers are**
 12 **interested in, in understanding or using for**
 13 **their loan origination decision.**
 14 **Do you see that sentence that's in the**
 15 **third and fourth line of paragraph 35?**
 16 A. I do.
 17 **Q. What is the basis for that statement?**
 18 A. Paragraphs 21 to 23 that are referenced
 19 in that sentence.
 20 **Q. Anything else?**
 21 A. Let me think for a moment. No, those
 22 are the main reasons for that sentence.
 23 **Q. But again, you didn't do a study on**
 24 **this. Is that fair to say?**
 25 A. I did not do a study on this.

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1 **Q. So it is possible that renewal costs**
 2 **are important as well?**
 3 A. It is possible that renewal costs are
 4 important.
 5 **Q. And you would need to do empirical**
 6 **research in order to form an opinion on this.**
 7 **Is a correct statement?**
 8 A. That would be a correct statement, yes.
 9 **Q. You cite Lawrence and Elliehausen in**
 10 **your footnote 2. And let me give you that**
 11 **article.**
 12 A. This is the citation we corrected at
 13 the beginning of the deposition.
 14 **Q. So you weren't citing this cite?**
 15 A. These two are very related articles,
 16 but I really meant to be citing what they handed
 17 you.
 18 **Q. Let's stick with what you actually**
 19 **cited and we can -- I haven't looked at the new**
 20 **one.**
 21 (Novemsky Deposition Exhibit Number 6
 22 was marked for identification.)
 23 BY MS. WEINBERG:
 24 **Q. Tell me if this is, in fact, the**
 25 **article that you cited in your report.**

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1 A. Yep, this appears to be.
 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?**
 11 A. Um-hum.
 12 **Q. And is my math correct it's roughly**
 13 **75 percent of consumers?**
 14 A. Yes.
 15 **Q. Doesn't this indicate that most payday**
 16 **customers are concerned about costs?**
 17 A. No.
 18 **Q. Why not?**
 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

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1 decision relevant to those fees.
 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?**
 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.
 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?**
 12 A. I did no research on that question of
 13 whether costs are important to them in this
 14 context.
 15 **Q. Does that mean you don't have an**
 16 **opinion?**
 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.
 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**

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1 **have intelligible testimony on this.**
 2 MS. BAKER: What page are you on?
 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.
 9 MS. BAKER: For the record, Exhibit 3,
 10 right?
 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?
 14 MS. BAKER: Um-hum.
 15 BY MS. WEINBERG:
 16 **Q. Okay. Were you told anything about**
 17 **this schedule by Integrity Advance or --**
 18 A. Not that I recall.
 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?**
 24 A. I do.
 25 **Q. Can you tell me what your understanding**

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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 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 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 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.

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?**

10 MS. BAKER: Objection as a vague
11 question.

12 THE WITNESS: I'm not sure I understand
13 that.

14 MS. BAKER: I don't understand the
15 question.

16 BY MS. WEINBERG:

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?**

22 A. I was not.

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**

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1 **default pay-in-full option?**

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.

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?**

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.

22 **Q. So when you were talking about**
23 **potential harm, you weren't talking about just**
24 **financial harm; is that accurate?**

25 A. I wasn't talking about just immediate

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1 financial harm, that's correct.

2 **Q. And you were considering things like**
3 **what it would do to their credit report?**

4 A. Yes.

5 **Q. Anything else? Any other types of**
6 **harms that were embedded in that assessment?**

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.

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?**

14 A. That's correct.

15 **Q. It was a broader statement?**

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**

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1 **choosing one option over another?**

2 MS. BAKER: Objection. Vague question.

3 THE WITNESS: I don't understand the
4 question.

5 BY MS. WEINBERG:

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?**

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 positing that a decisionmaker doesn't have a**
25 **strong preference for one course of action over**

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1 **another.**
 2 A. I am not positing that.
 3 **Q. You say the default effects are most**
 4 **pronounced when the decisionmaker doesn't have**
 5 **strong preferences --**
 6 A. I am saying that.
 7 **Q. -- for one course of action over**
 8 **another, right?**
 9 A. That's correct.
 10 **Q. In order for a consumer not to have**
 11 **preference for one course of action over**
 12 **another -- strike that.**
 13 **Let's move on to remotely created**
 14 **checks. Do you know what remotely created**
 15 **checks are?**
 16 A. I have some understanding of them.
 17 **Q. What is your understanding?**
 18 A. That someone other than the
 19 accountholder generates a check on the
 20 accountholder's account and sends it to the
 21 bank, and it is paid to that other person.
 22 **Q. How did you obtain your knowledge about**
 23 **remotely created checks?**
 24 A. Mostly from thinking about this case
 25 and the documents in my Appendix D.

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1 **Q. So you didn't have experience with**
 2 **remotely created checks prior to reading this**
 3 **report or the materials?**
 4 A. That's correct.
 5 **Q. In your opinion, would it be important**
 6 **to consumers to know that after they decided**
 7 **they didn't owe a company money and had revoked**
 8 **their ACH authorization that the company could**
 9 **still create a remotely created check to take**
 10 **their funds?**
 11 A. I'm sorry, I missed the -- is it
 12 important to consumers?
 13 **Q. Yeah.**
 14 MS. BAKER: Could you read back that
 15 question.
 16 (The record was read as requested.)
 17 THE WITNESS: I need more context to
 18 the question is it important to consumers.
 19 BY MS. WEINBERG:
 20 **Q. Would it be important to consumers in**
 21 **making a decision to take out a loan with a**
 22 **company to know this in advance of taking out**
 23 **that loan?**
 24 A. That's an empirical question.
 25 **Q. So you don't have an opinion on that?**

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1 A. I have no opinion on it.
 2 **Q. Do you have an opinion on whether the**
 3 **disclosures in Integrity Advance's loan**
 4 **agreements concerning remotely created checks**
 5 **were conspicuous?**
 6 A. I don't have an opinion on that.
 7 **Q. Do you have an opinion on whether the**
 8 **disclosures in Integrity Advance's loan**
 9 **agreements concerning remotely created checks**
 10 **were clear?**
 11 A. I don't have an opinion on that.
 12 MS. WEINBERG: Let's take a ten-minute
 13 break.
 14 (A recess was taken.)
 15 MS. WEINBERG: We are back on the
 16 record at 3:02.
 17 BY MS. WEINBERG:
 18 **Q. I just had one question. You have or**
 19 **your counsel provided us with a copy of**
 20 **something called Payday Advance Credit in**
 21 **America, An Analysis of Customer Demand, which I**
 22 **believe you testified you wanted to supplement**
 23 **your footnote 2 with this document?**
 24 A. Correct.
 25 **Q. Is there a particular part of this**

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1 **rather lengthy document that you were citing**
 2 **specifically to support that paragraph?**
 3 A. There is.
 4 MS. BAKER: Are you entering this into
 5 the record, this document? It's your
 6 deposition.
 7 THE WITNESS: It's going to take me a
 8 second to find the page. The electronic version
 9 I can search it. So I never noted the page
 10 number to myself. Let me just flip through and
 11 find the table.
 12 At long last, page 51. In particular,
 13 523, that's some kind of table or some kind of
 14 number, and the second half of that table, most
 15 important reason for choosing payday advance
 16 over another source. And I was referring to
 17 that quick, easy process, fast approval, less
 18 paperwork, get 60 percent of people saying
 19 that's why. Whereas, less expensive gets
 20 4 percent of people saying, yes, that's why.
 21 So my footnote 2 refers to this idea
 22 that people care more about a quick, easy
 23 process than they care about something being a
 24 less expensive option.
 25 BY MS. WEINBERG:

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1 **Q. Can't that also be read that they don't**
2 **choose it because payday loans are, in fact,**
3 **more expensive than other forms of borrowing?**

4 A. It suggests to me they would choose it
5 not because of cost-related considerations.
6 They choose it because of ease and speed
7 considerations.

8 **Q. Do you know if in doing this survey**
9 **they were given the option of choosing anything**
10 **other than the five --**

11 A. Yes, there is the other category.

12 **Q. I see the other, which was 7.1. And**
13 **was this study sponsored by the payday lending**
14 **industry?**

15 A. I don't believe so, but you can look on
16 page -- the governing board is on page -- I
17 don't see a page number prior to page 1, prior
18 to the table of contents. My guess would be no,
19 because there's no payday lenders -- there might
20 be one out of the 12. So, no, my guess is this
21 is not funded by the payday loans, but I don't
22 have any deeper knowledge than looking at this
23 right now.

24 **Q. And is it your intent to substitute**
25 **this document, which I will introduce into the**

1 coming in today. I have no further questions.
2 And thank you for bearing with a semi-long day.
3 MS. BAKER: We'll obviously read and
4 sign the deposition.
5 MS. WEINBERG: We'll send you the PDF.
6 (Reading and signature not waived.)
7 (Whereupon, the proceedings at 3:07
8 p.m., were concluded.)

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1 **record as Exhibit 7, for your previously cited**
2 **report?**

3 A. I am happy to substitute or supplement.
4 I think substitute is fine.

5 **Q. So even though the report that you have**
6 **cited is from 2008 --**

7 A. It's based on these same data, I
8 believe.

9 MS. BAKER: Are you supplementing or
10 substituting? You can do either.

11 THE WITNESS: I'm fine with
12 substituting.

13 BY MS. WEINBERG:

14 **Q. So you are substituting an early -- a**
15 **later report with an earlier report?**

16 A. Yes, because this is a more complete
17 reporting of the data on which the later report
18 is based.

19 **Q. I see.**

20 A. This has much more detail and much more
21 data. The later report is a derivative, I
22 believe, of this data collection effort.

23 (Novemsky Deposition Exhibit Number 7
24 was marked for identification.)

25 MS. WEINBERG: Okay. Thank you for

1 DISTRICT OF COLUMBIA)
2) SS:
3 WASHINGTON, D.C.)

4
5 I, DEBORAH WEHR, a Court Reporter and/or
6 Notary Public in and for the District of
7 Columbia, do hereby certify that the above
8 testimony of NATHAN NOVEMSKY was recorded on
9 Friday, April 15, 2016, and reduced to writing
10 under my personal direction.

11 I further certify that I am not a
12 relative or employee or attorney or counsel of
13 any of the parties, or a relative or employee of
14 such attorney or counsel, or financially
15 interested directly or indirectly in this
16 action.

17 The witness whereof I have hereunder set
18 my hand and affixed my seal of office from the
19 District of Columbia on 04/21/2016.

20
21
22
23 _____
24 NOTARY PUBLIC IN AND FOR THE DISTRICT OF
25 COLUMBIA
My Commission expires: 2/14/21

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