EXPERT REPORT OF DR. NATHAN NOVEMSKY

I. QUALIFICATIONS.

1. I am a Professor of Marketing at the School of Management, Yale University. I also have an affiliated appointment as a Professor of Psychology at the Department of Psychology, Yale University. A copy of my curriculum vitae, which includes a complete list of my publications, is attached as Appendix A. I hold a Ph.D. and Master's degree in Psychology from Princeton University, and a Bachelor's degree from Wesleyan University in Psychology, Math and Physics.

2. My field of expertise is consumer decision making, consumer experiences, consumer information processing, marketing research, and consumer psychology. Most of my research has focused on buyers' purchasing behavior, the effect of available information and product characteristics (such as brand name, price, and features), consumer's beliefs and attitudes, and marketing activities (such as promotions, advertising) on buying decisions and on consumer experiences.

3. At Yale University I have taught MBA and executive MBA courses on Marketing Management, covering such topics as buyer behavior, developing marketing strategies, building brand equity, advertising, sales promotions, and retailing. I also taught an MBA course Consumer Behavior, focusing on all aspects of how consumers make decisions and how information and marketing activities influence consumers' decisions and experiences. I have taught an MBA course applying Behavioral Science to decision making. In addition, I have guided and supervised many MBA student teams in their work on company and industry projects dealing with a variety of markets.

4. I have taught several doctoral courses on Behavioral Decision Making, one focusing on Judgment and one focusing on Choice. I also have taught in various executive education programs, including a program I jointly developed that applies Behavioral Science to marketing activities and marketing research.

5. I have published articles in the leading journals in consumer behavior as well as in psychology, including the Journal of Consumer Research, the Journal of Marketing Research, the Journal of Consumer Psychology, Psychological Science, Organizational Behavior and Human Decision Processes, and the Journal of Behavioral Decision Making.

6. I have conducted, supervised, or evaluated hundreds of surveys, including many related to consumer behavior and information processing, customer satisfaction, branding, consumer experiences, and advertising-related issues. I served on editorial boards of all the leading journals in consumer behavior, including the Journal of Consumer Research, Journal of Marketing Research, and the Journal of Consumer Psychology. I am also a frequent reviewer of articles submitted to journals in other fields, such as psychology, decision making, and economics. As a reviewer, I am asked to evaluate the research of scholars wishing to publish their articles in leading scholarly journals.

7. I have also worked as a consultant for many organizations on a variety of marketing and buyer behavior topics, often with a focus on how to communicate with consumers. And I have served as an expert and a consultant to experts in prior litigations involving various marketing and buyer behavior issues, consumer confusion, false advertising, branding, and other areas. I am being compensated at the rate of $450 an hour. My compensation is not contingent on any of the opinions reached in this case or the outcome of the litigation.

8. I was asked by counsel for Integrity Advance to evaluate the report of Dr. Manoj Hastak.

9. In connection with preparation of this report, I reviewed the documents listed in Appendix D. To the extent additional information or opinions become available to me, I reserve the right to review such information and opinions and to supplement or amend

my opinions as necessary.

II. SUMMARY OF CONCLUSIONS REGARDING THE DISCLOSURE OF LOAN RENEWAL COSTS

10. Dr. Hastak addresses three issues in his report. I organize my report around these three issues. He describes the first issue as follows:

> "How clearly does the Loan Agreement document disclose that the costs (fees and charges) associated with the loan are significantly higher if borrowers renew the loan (either actively or by default) rather than paying it off in full?" *See* Report of Dr. Manoj Hastak ("Hastak Report") at 5.

11. Dr. Hastak's first major conclusion is that the costs of renewing the loan were not disclosed in a clear and conspicuous manner. This conclusion is relevant only to the extent it implies consumers do not realize that they will incur fees if they renew their loans, so I will focus on this latter issue.

12. Dr. Hastak provides no empirical analysis (such as a consumer survey) of consumers' understanding (or lack thereof) with regard to the fees associated with renewal of their loans. To the extent his report provides conclusions about consumers' understanding that loan renewal will involve higher fees, they are completely speculative.

13. Moreover, Dr. Hastak does not address the relevance of renewal cost disclosures for consumers taking out a loan. He provides no empirical support for the idea that consumers find this information relevant in the first instance when taking out a loan. There are at least two lines of consumer behavior research that directly suggest that consumers may not be considering renewal at all when taking out an initial loan.[1]

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[1] Frederick, S., Loewenstein, G., & O'donoghue, T. (2002). Time discounting and time preference: A critical review. *Journal of economic literature*, *40*(2), 351-401; Berman, J., Tran, A., Lynch, J. & Zauberman, G., (in press). Expense Neglect in Forecasting Personal Finances. *Journal of Marketing Research.*

Accordingly, the need for actual empirical support of the claim that renewal costs are in fact considered at all when deciding to take out a loan is particularly important in assessing Integrity Advance customers' understanding of cost disclosures. There is also at least one past study that directly examines consumers' considerations when taking out a payday loan. This study found that consumers were more concerned with a quick and easy process for borrowing money than cost when choosing a payday loan.[2]

III. OPINIONS REGARDING THE DISCLOSURE OF RENEWAL COSTS

14. Dr. Hastak never tested scientifically using the standard practices of the field of consumer behavior as to the claims made in his report about consumers' understanding of the loan agreement provided by Integrity Advance. Consumer understanding of the loan agreement is extremely context dependent. That understanding can be affected by consumers' current thoughts, momentary goals, mindset, level of depletion, level of distraction, and many other factors that behavioral science has uncovered. Without a direct empirical assessment of consumers' understanding, such as with a consumer survey, any claims about that understanding are speculative.

15. Hypotheses or ideas regarding consumers' understanding of the loan agreement could be based on prior research and general expertise and experience, but these hypotheses need to be tested to be considered valid, as would be expected when submitting such ideas to a peer-reviewed journal for publication in the field of consumer behavior. Without such tests, these ideas would not be accepted by the field of consumer behavior.[3]

16. Many of the ideas Dr. Hastak puts forward are one of several possible interpretations of how consumers' understand the loan agreement and make loan related

[2] Lawrence, E. C., & Elliehausen, G. (2008). A comparative analysis of payday loan customers. *Contemporary Economic Policy*, *26*(2), 299-316.
[3] Calder, B. J., & Tybout, A. M. (1987). What consumer research is... *Journal of Consumer Research*, *14*(1), 136.

decisions. There are generally other equally plausible assertions that could be made based on existing consumer behavior research and my expertise and experience. Such possibilities are discussed in this report. In the absence of empirical support for one idea over another, each idea is simply one among several competing ideas. In my experience, such situations are exactly those that call for empirical investigation to understand which of several competing ideas is more descriptive of a particular situation. Without such data, there is no way to know which idea describes consumers' actual understanding and decision-making process.

17. In his deposition, Dr. Hastak appears to agree that a consumer survey is the best way to understand these situations. He stated, "So there were several reasons for doing the empirical analysis. One is that empirical data provides -- a well done study, provides the best evidence that you can get in terms of how consumers would process certain information. The other was that consumer testing is often useful in a situation where different interest groups, different agencies, consumer groups, industry, have different views of what might be the best document or notice in this case. Data can help address those issues." *See* Deposition of Dr. Manoj Hastak ("Hastak Dep.") at 88:18 – 89:5.

18. Dr. Hastak references FTC guidelines when making his assessment of the disclosures in the loan agreement. These guidelines highlight several dimensions as important to consider when making disclosures to consumers, including clarity, proximity, and prominence. However, the guidelines do not seem to suggest any particular standards about how much is enough for each dimension of disclosure. In fact, it would be very difficult to come up with standards for how much is enough of any of these dimensions because the same level of these dimensions could have different effects that depend on the context. For example, it is impossible to say how much proximity is exactly enough proximity to generate any particular level of consumer understanding because that understanding is so dependent on many other factors, including the factors listed in paragraph 14 of this report. Indeed, Dr. Hastak does not provide claims about how much is the right amount of any of these dimensions is lacking in the loan

agreement.

19. The FTC guidelines also offer no guidance about how many consumers might be confused if a disclosure is found to be lacking on any of these dimensions. Dr. Hastak makes no claims about how many consumers might be confused or misled by any aspects of the loan agreement. He also provides no empirical analysis of how many consumers would be confused by the disclosures contained in the loan agreement.

20. The FTC guidelines provide no guidance about how many consumers would have a better understanding if disclosures were modified along certain dimensions. And Dr. Hastak provides no empirical support for the idea that any consumers – much less how many – would have a better understanding, if any changes were made.

21. Underlying Dr. Hastak's report is the assumption that loan renewal costs have an influence in the first instance on consumers' decision making when evaluating the loan agreement. The main support I can find for this assumption is Dr. Hastak's reference to the notion that costs are generally important to consumers. *See* Hastak Dep. 99:2-17. I have encountered many examples of consumers ignoring seemingly important information,[4] and it is my experience that not all costs are considered by consumers, especially costs that are not immediate and certain.[5] Since renewal costs are neither immediate nor certain (because consumers may not renew the loan), these costs may not be considered by consumers during their loan origination decision. Accordingly, because of the existence of an equally plausible alternative to Dr. Hastak's untested assumption, any assertion that these costs are considered at all by consumers in this particular context demands empirical support. Nonetheless, Dr. Hastak provides no data to support his untested assumption that consumers consider renewal costs at all when taking out a loan.

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[4] Hsee, C. K. (1996). The evaluability hypothesis: An explanation for preference reversals between joint and separate evaluations of alternatives. *Organizational behavior and human decision processes*, *67*(3).

[5] Frederick, S., Novemsky, N., Wang, J., Dhar, R., & Nowlis, S. (2009). Opportunity cost neglect. *Journal of Consumer Research*, *36*(4), 553-561.

22. Furthermore, there are two bodies of research in consumer behavior and related fields that cast doubt on the idea that renewal costs have an impact on the original decision to take a loan. The first body of research finds that consumer decision making is driven much more by costs and benefits that are immediate compared to benefits that are further away in time.[6] To the extent that consumers are focused on solving their immediate cash flow problems and not focused on costs that will be realized several pay cycles later, they may not consider renewal costs important for their loan origination decision.

23. The second body of research in consumer behavior and related fields that also casts doubt on the idea that consumers find renewal costs relevant when making the loan origination decision shows that consumers are often extremely optimistic about their future. In particular, some studies find that people believe they will have more financial slack in the future than they do today.[7] Therefore, even if consumers are considering the future when thinking about their loan, they may be optimistic that they will be able to pay their loan off in full at their first due date. Accordingly, they may not consider the potential renewal costs of the loan.

24. These two bodies of research, along with the fact that renewal costs are neither immediate nor certain, provide a competing perspective on the question of whether loan renewal costs impact consumers' decisions to initiate payday loans. As discussed above, a situation where there are competing ideas about consumer behavior are situations where data, such as a consumer survey, are required to shed light on which idea actually describes consumer behavior in this particular situation. Unfortunately, Dr. Hastak provides no such data, leaving competing ideas unresolved.

25. My reading of Dr. Hastak's report is that he further assumes that a better understanding of the renewal costs would not only affect consumers' decision making

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[6] Frederick, S., Loewenstein, G., & O'donoghue, T. (2002). Time discounting and time preference: A critical review. *Journal of economic literature*, *40*(2), 351-401.

[7] Berman, J., Tran, A., Lynch, J. & Zauberman, G., (in press). Expense Neglect in Forecasting Personal Finances. *Journal of Marketing Research.*

about taking out a loan, but more specifically it would dissuade consumers from getting loans from Integrity Advance. As with his other ideas, there exist competing ideas that might apply in this particular context. For instance, it could be that consumers find the loan renewal option, despite its costs, not to be a deterrent to accepting Integrity Advance's offering. Indeed, there are several observations that support this idea. The first such observation involves the decision to renew the loan. Before making that decision consumers receive more disclosures about the cost of renewal. Customers receive a welcome e-mail (See Appendix B), a reminder e-mail (Appendix C) and they receive a phone call from Integrity Advance.

26. Customers receive a welcome e-mail once their loan is approved. The welcome e-mail (Appendix B) describes the three payment options available to customers and how to execute each option, including renewal as one of the options. They are also reminded that they can choose to pay off the loan at any time. This information is prominent within the email message and constitutes the majority of the information contained in that message. This information is repeated in a reminder e-mail that is sent shortly before the first payment due date. These two email messages clearly bear on customer's knowledge at the time they choose to renew their loan.

27. Customers also receive a phone call from Integrity Advance. During that call, consumers had the opportunity to ask any questions they had about costs of the loan including renewal costs. If there were confused about renewal costs after examining the loan agreement, this phone call would have been an opportunity to clear up those confusions.

28. Dr. Hastak provides no analysis of these e-mail messages or the phone call despite his own acknowledgment that the phone call could have facilitated consumers' understanding of the renewal costs. *See* Hastak Dep. 93:9-20.

29. There are two possible beliefs consumers can hold when facing the renewal decision. First, they might correctly believe that extending the duration of the loan

requires additional finance charges. Second, consumers might believe that Integrity Advance is offering to extend their loan to up to four times its original length without charging additional fees. This belief defies research showing that consumers often understand when they purchase a product or service that they are in an exchange relationship with the firm supplying the product or service.[8] They pay a price in exchange for the benefits of the product or service. *Id.* When consumers receive additional benefits they expect to pay for them. *Id.* Consumers' belief that their loan is being extended to five times its original length without additional fees contradicts this general expectation. Since the notion that consumers expect to pay for additional benefits, such as a loan extension, in marketplace contexts has empirical support, to be confident that any number of consumers – least of all most of them – indeed believe the loan extension comes without additional costs would require direct empirical support. Otherwise, this is just a hypothesis that contradicts previous empirical research, but has no empirical support of its own. Indeed, there is no empirical support in Dr. Hastak's report for the idea that consumers believe that loan extensions are free. Therefore, the relevant empirical analysis contradicts this particular hypothesis.

30. The fact that more than 85% of consumers choose to renew their loans despite receiving these e-mail messages reminding them when their loan is due and how to execute each of the possible payment options is further support for the idea that consumers prefer renewal to paying off the loan even after receiving these additional disclosures. If the renewal option is a valuable aspect of the loan, it is unlikely that some altered version of a disclosure of the renewal costs in the loan agreement would serve to dissuade interested customers from taking out a loan.

31. A second observation that supports the idea that loan renewals may be valuable to consumers is the large percentage of customers who take out additional loans after completing payment of their initial loan. In 2011, Integrity Advance issued 65,036 loans to 46,154 unique customers. *See* CFPB035849. Therefore at least 29% of their

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[8] Aggarwal, P. (2004). The effects of brand relationship norms on consumer attitudes and behavior. *Journal of consumer research*, *31*(1), 87-101.

business involved customers who already completed payment of a prior loan. *Id.* Similarly in 2012, Integrity Advance issued 56,161 loans to 41,015 unique customers, meaning at least 27% of their loans were to customers who already completed payment on a prior loan. *See* CFPB035850. These repeat customers either understood that loan renewal involved substantial costs because they choose not to renew their first loans with Integrity Advance or (more likely given that the vast majority of loans are renewed) they did renew them and experienced exactly how renewal works and what the costs are. Given that all these customers came back with yet more information about loan renewal and its associated costs suggests that these (and possibly other) customers find the Integrity Advance offering complete with its renewal option and its associated renewal costs to be an attractive offering.

32. Another observation that supports the idea that consumers are satisfied with the disclosed loan renewal costs focuses on the fact that most Integrity Advance customers come through a lead generation website. This means they have the opportunity to consider more than one provider when choosing a loan. When a customer chooses Integrity Advance it suggests that they either are not finding disclosures about renewal costs a critical piece of information for making their loan provider decision or they find Integrity Advance's offering complete with disclosures about renewal costs sufficiently attractive to end up choosing Integrity Advance as their loan provider.

33. To summarize, there are multiple observations that suggest that consumers do not find the renewal costs to be a reason not to choose Integrity Advance as their loan provider: a) they were informed about renewal by multiple e-mail messages that highlighted only the repayment options and still renewed at a very high rate; b) they received a phone call where they had the opportunity to ask questions about renewal costs; c) many customers completely paid off their Integrity Advance loans including renewals and chose to reengage with Integrity Advance for additional payday loans; and d) most customers sign up through a lead generation website suggesting they are either satisfied by or not sufficiently interested to be dissuaded by Integrity Advance's renewal cost disclosure. To assume that consumers would be dissuaded from taking out loans

from Integrity Advance by better knowledge of loan renewal costs in light of all these observations certainly should require empirical support that includes direct examination of consumers' actual understanding of renewal costs and of their decision making process. Such empirical support is not contained in Dr. Hastak's report.

34. Dr. Hastak suggests that renewal costs be made more prominent in the loan agreement throughout his report. However, when presenting information to consumers, especially financial information about a complicated product, like a payday loan, not every piece of information can be made maximally prominent. There are trade-offs in making some information prominent. For example, studies of consumer behavior show that consumers have limits for how much information they will process.[9] When there is too much information, consumers tend to disengage and not even process the information presented, a process termed "information overload." Indeed, Dr. Hastak seems to concur that making too much information prominent actually inhibits consumers' ability to process that information. *See* Hastak Dep. 106:12-15.

35. Both regulatory requirements and consumer decision making drive the decision to make certain information prominent. Given the research described above at ¶ 21-23, renewal costs may not be the information consumers are interested in understanding or using for their loan origination decision. As a result, it is not clear that better consumer understanding will result from making renewal cost information more prominent. Therefore, empirical support of improved consumer understanding is necessary to substantiate claims that higher prominence of renewal cost information will improve consumers' overall understanding of their loans.

36. Dr. Hastak claims that the renewal cost information is not displayed prominently. He provides no data to support the idea that with the current disclosure, consumers are not aware of the fees associated with loan renewal. He also makes no

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[9] Jacoby, J., Speller, D. E., & Berning, C. K.. (1974). Brand Choice Behavior as a Function of Information Load: Replication and Extension. *Journal of Consumer Research*, *1*(1), 33–42.

claims about how many consumers might be uninformed as a result of the current level of prominence.

37. Dr. Hastak does not provide any empirical support for the idea that consumers' understanding would change if the cost information were displayed more prominently. He makes no claims about how much prominence is sufficient based on FTC guidelines that he is using for his assessment. He also makes no claims about how many consumers would be better informed if certain specific changes in prominence were made.

38. Dr. Hastak claims that the renewal cost information is not placed close enough to the TIL disclosure box for consumers to understand renewal costs. He provides no data to support the idea that with the current distance between the renewal cost information and the TIL disclosure box, consumers are not aware of the renewal fees. He also makes no claims about how many consumers might be uninformed as a result of the distance between the renewal fees and the TIL disclosure box. Without such data, it is impossible to know the impact of proximity on consumers' understanding, since the effect of proximity will vary by context.

39. Dr. Hastak does not provide any empirical analysis that consumers' understanding would change if the distance between the renewal costs and the TIL disclosure box were decreased. Without such analysis, it is impossible to know the impact of changes in distance on consumers' understanding because any impact of proximity will vary by context. Further, Dr. Hastak makes no claims about how much of a decrease is sufficient based on the FTC guidelines. He also makes no claims about how many consumers would be better informed if the distance were reduced by some specific amount.

40. Dr. Hastak claims the renewal cost disclosures are not clear because they include the phrase "…rest of the terms of the Loan Agreement will continue to apply." Dr. Hastak suggests that consumers interpret this phrase to mean their total finance

charge would continue to be the one shown in the TIL box. While Dr. Hastak is providing one possible consumer interpretation of this phrase, another possible interpretation is that consumers interpreted this phrase as it was intended. In other words, consumers' understood that for each pay period that they have not paid off their loan, they will be assessed the same finance charge in accordance with the terms of the loan. However, Dr. Hastak provides no empirical analysis of how consumers interpret this statement. Therefore, there is no basis to decide which of these competing ideas actually describes consumers' understanding in this situation.

41. Dr. Hastak states that the renewal cost disclosure in the section labeled "Special Notice" has poor prominence and placement and therefore "suggests" it will not be very effective in communicating cost information. *See* Hastak Report at 20.Specifically, he says, "poor prominence and placement…suggests that it will not be very effective in qualifying cost information presented in the TIL box." *Id*. Since Dr. Hastak makes no claims about how many consumers would be affected by this disclosure, nor about whether the prominence and placement of this disclosure are responsible for any specific effect on consumers' understanding, it is not clear what to take away from this analysis. There is not even a clear statement in Dr. Hastak's report that this disclosure will not inform consumers that there are fees for loan renewal. Empirical analysis could be used to clarify whether this disclosure is or is not communicating anything about loan renewal fees. However, since Dr. Hastak provides no such analysis, it is difficult to draw any conclusions from his analysis of this section.

42. Furthermore, without empirical analysis, there is no way to know whether changing the prominence and placement of this disclosure will enhance any or all consumers' understanding of the renewal costs. Nor is there any way to know how much of a change in prominence and placement would be sufficient to change the effect of this disclosure on consumers' understanding.

43. Dr. Hastak also makes reference to the section entitled "Schedule of Charges and Fees." He states that some of the information is "difficult to comprehend,

and has the potential to suggest incorrect inferences." *See* Hastak Report at 21. This language communicates the speculative nature of Dr. Hastak's claims which seem to be based largely on his impression when reading the disclosure. He provides no data to support his conclusions about this disclosure. My impression was that the information was presented clearly in this section of the agreement, but I recognize this is no basis for claims about consumers' understanding of that information.[10] I will note that Dr. Hastak, when examining this section of the loan agreement during his deposition, also came to better understand the information that he had previously claimed to be difficult to comprehend and potentially misleading. *See* Hastak Dep. 171:18-172:3. This suggests personal impressions are likely to change and are not a good basis for inferences about consumer understanding. This is another situation where there are competing ideas, and an empirical investigation is needed to differentiate the validity of those ideas.

IV. OPINIONS REGARDING DEFAULT RENEWAL

44. Dr. Hastak's second major conclusion is that "since renewal was the default option in the Loan Agreement, one would expect a large proportion of borrowers to end up with this option, but this would not necessarily mean that many or most of them chose the option actively." *See* Hastak Report at 22.

45. We know that a large proportion of borrowers do indeed renew their loans, and I concur with Dr. Hastak's uncertainty as to the number of these renewals that are the result of renewal being the default option. There are many studies of default effects, including some I have conducted myself, and the absolute magnitude of default effects varies quite widely by the particulars of the decision and its context.[11] Dr. Hastak provides no data regarding the number of consumers who are affected by renewal being the default option.

[10] Daneman, M., & Carpenter, P. A. (1980). Individual differences in working memory and reading. *Journal of verbal learning and verbal behavior*, *19*(4), 450-466.
[11] Jachimowicz, J. M., Duncan, S., & Weber, E. U. (2016). Default-Switching: The Hidden Cost of Defaults. *Available at SSRN 2727301*.

46. It is important to note that some default must be chosen for the eventuality that consumers do not contact Integrity Advance prior to their loan due date. A default of pay-in-full would carry potential harm to consumers because it would result in a potentially unexpected debit of the entire loan amount on consumers' bank account. This could be more costly to consumers than the default of renewing the loan. Dr. Hastak provides no empirical analysis of the costs and benefits of different defaults, so it is impossible to determine which default is better for consumers.

47. Dr. Hastak provides no empirical analysis to suggest that consumers are not aware that renewal is the default option. So, to the extent the default may be swaying some consumers to renew their loans, it is not clear that this is happening without their consent, or against their preference for another option. In my experience, default effects are most pronounced when the decision maker does not have a strong preference for a particular course of action.[12]

48. In his discussion of default renewals, Dr. Hastak recommends that the loan agreement spell out multiple repayment scenarios, including the fees for no renewals, two renewals, and four renewals + workout. As discussed above, more information is not always better because it can cause information overload and lead consumers to disengage and detract from their understanding.[13] To be confident that more information would indeed enhance understanding requires data regarding consumers' understanding with and without that additional information. Dr. Hastak does not provide such data.

V. OPINIONS REGARDING AUTHORIZATION FOR REMOTELY CREATED CHECKS

49. Dr. Hastak's third major conclusion is that the Authorization for Remotely

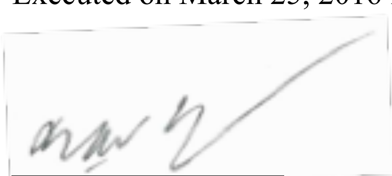
[12] Simonson, Itamar, Thomas Kramer, and Maia J. Young. "Effect propensity." *Organizational Behavior and Human Decision Processes* 95.2 (2004): 156-174.
[13] Jacoby, J., Speller, D. E., & Berning, C. K.. (1974). Brand Choice Behavior as a Function of Information Load: Replication and Extension. *Journal of Consumer Research*, *1*(1), 33–42.

Created Checks is "unlikely to be noticed, read, or correctly understood by borrowers." *See* Hastak Report at 26. There is no data provided about how many consumers read this disclosure and there is no empirical analysis provided about what consumers understand from this disclosure.

50. Moreover, there is no data provided to suggest that consumers consider this authorization important when agreeing to take out the loan. Note that remotely created checks are only relevant when consumers have blocked the very ACH authorization that they are granting by agreeing to accept this loan. Consumers are not likely to be thinking about what happens if they choose to revoke the ACH authorization at the very moment they are choosing to grant that same authorization. Therefore, the relevance of the remotely created check disclosure to consumers' loan origination decisions especially demands empirical support.

51. In his deposition, Dr. Hastak claims that consumers understand that their authorization will be required for each remotely created check. *See* Hastak Dep. 261:17-22. This conclusion is not apparent from my reading of the loan agreement. Therefore such a claim about consumer understanding requires empirical support from direct examination of consumers' understanding. However, Dr. Hastak provides no such empirical support.

Executed on March 25, 2016 in New Haven, Connecticut.



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