

# EXHIBIT 2



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

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

**Date:** March 11, 2016

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

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1	1 UNITED STATES OF AMERICA 2 Before the 3 CONSUMER FINANCIAL PROTECTION BUREAU 4 5 -----x 6 ADMINISTRATIVE PROCEEDING : 7 File No. 2015-CFPB-0029 : 8 In the matter of: : 9 INTEGRITY ADVANCE, LLC and : 10 JAMES R. CARNES. : 11 -----x 12 Deposition of MANOJ HASTAK, PH.D. 13 Washington, D.C. 14 Friday, March 11, 2016 15 9:45 a.m. 16 17 SUBJECT TO PROTECTIVE ORDER IN 2015-CFPB-0029 18 19 20 Job No.: 106250 21 Pages: 1 - 289 22 Reported by: Karen Young	3
2	1 Deposition of MANOJ HASTAK, PH.D., held at the 2 offices of: 3 VENABLE LLP 4 575 Seventh Street, Northwest 5 Washington, D.C. 20004 6 (20) 344-4000 7 8 9 10 Pursuant to Notice, before Karen Young, 11 Notary Public of the District of Columbia. 12 13 14 15 16 17 18 19 20 21 22	4
1	1 A P P E A R A N C E S 2 ON BEHALF OF THE CONSUMER 3 FINANCIAL PROTECTION BOARD: 4 WENDY J. WEINBERG, ESQUIRE 5 VIVIAN W. CHUM, ESQUIRE 6 ALUSHEYI J. WHEELER, ESQUIRE 7 CONSUMER FINANCIAL PROTECTION BUREAU 8 1700 G Street, Northwest 9 Washington, D.C. 20006-4702 10 (202) 435-7688 11 12 13 14 15 16 17 18 19 20 21 22	3
1	1 ON BEHALF OF INTEGRITY ADVANCE, LLC and 2 JAMES R. CARNES: 3 ALLYSON B. BAKER, ESQUIRE 4 PETER FRECHETTE, ESQUIRE 5 VENABLE LLP 6 575 Seventh Street, Northwest 7 Washington, D.C. 20004 8 (202) 344-4000 9 10 HILLARY S. PROFITA, ESQUIRE 11 VENABLE LLP 12 Rockefeller Center 13 1270 Avenue of the Americas 14 New York, New York 10020 15 (212) 307-5500 16 17 18 19 20 21 22	4

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1 C O N T E N T S 2 EXAMINATION OF MANOJ HASTAK, PH.D. PAGE 3 By Ms. Baker..... 6 4 5 6 7 8 9 10 11 12 13 E X H I B I T S 14 (Attached to Transcript) 15 Exhibit 1 Report by Manoj Hastak, Ph.D..... 12 16 Exhibit 2 Publication, ".com Disclosures" ..... 22 17 Exhibit 3 Paper by Garrison et al..... 86 18 19 20 21 22	1 case. I'm joined by my colleague, Hillary Profita, 2 and soon by my other colleague, Peter Frechette. 3 Before we start, if counsel for the CFPB could 4 introduce themselves on the record? Thank you. 5 MS. WEINBERG: Wendy Weinberg. 6 MR. WHEELER: Alusheyi Wheeler. 7 MS. CHUM: Vivian Chum. 8 BY MS. BAKER: 9 Q Thank you. Dr. Hastak, can you please 10 spell your -- rather, give us your business address? 11 A It's 12518 Philmont Drive, Herndon, 12 Virginia. 13 Q And presumably you've been deposed before? 14 A Yes, I have. 15 Q So you're familiar with the rules of a 16 deposition, but I'm going to go over them a little 17 bit this morning just for purposes of clarity. I'll 18 be asking you some questions today on the record. I 19 would ask that you allow me to finish my question 20 before you begin your answer so that we have a 21 relatively clear record. 22 I also would ask that you provide a verbal
6	8
1 P R O C E E D I N G S 2 MANOJ HASTAK, PH.D., 3 having been duly sworn, was examined as follows: 4 - - - 5 EXAMINATION BY COUNSEL FOR INTEGRITY ADVANCE, LLC 6 and JAMES R. CARNES. 7 BY MS. BAKER: 8 Q Good morning, Dr. Hastak. Am I pronouncing 9 your last name correctly? 10 A Very close, thank you. 11 Q Would you want to correct me so I pronounce 12 it -- 13 A It's Hastak. 14 Q Hastak. 15 A Yes. 16 Q Thank you, Dr. Hastak. Can you please 17 spell your full name for the record before we begin? 18 A M-A-N-O-J. That's the first name, 19 H-A-S-T-A-K. That's the last name. 20 Q Thank you. My name is Allyson Baker. I'm 21 an attorney representing respondents in this matter, 22 and I'll be taking your deposition today in this	1 response to my answer so that the court reporter is 2 able to relay that accurately on the record. If 3 there's a question I ask you that you're not clear 4 about or you don't understand, please ask me to 5 clarify so that we also have a clear record. I will 6 assume if you've answered my question, that it's 7 because you understand my question. 8 MS. WEINBERG: That may not be the case. 9 You may assume that, but it may not that he 10 understands -- 11 MS. BAKER: Okay. 12 MS. WEINBERG: -- the question. 13 BY MS. BAKER: 14 Q Well, if you don't understand the question 15 at any point in time, please let me know, and that 16 goes for any part of the deposition. If you realize 17 I'd asked you something and maybe you had a different 18 understanding than what I was asking, please at any 19 point clarify or ask for clarification so that we 20 have a good record. 21 A Okay. 22 Q Thank you very much. I appreciate that.

<p style="text-align: right;">9</p> <p>1 Dr. Hastak, you've been engaged to provide expert 2 witness testimony in this matter; is that correct? 3 <b>A Yes.</b> 4 Q And when were you -- and you've been 5 engaged by the Consumer Financial Protection Bureau's 6 Office of Enforcement? 7 <b>A Yes.</b> 8 Q And that's the matter regarding Integrity 9 Advance and James Carnes? 10 <b>A Yes.</b> 11 Q When were you engaged by the CFPB? 12 <b>A I was first contacted by the CFPB I believe</b> 13 <b>in March, but then I was eventually engaged in</b> 14 <b>September, sometime in September.</b> 15 Q March of last year. 16 <b>A March of last year.</b> 17 Q Okay, and when you say you were first 18 contacted by them, can you describe what you mean by 19 that? 20 <b>A So the CF --</b> 21 MS. WEINBERG: I'm going to just instruct 22 you that to the extent that your answer reveals any</p>	<p style="text-align: right;">11</p> <p>1 Q What are those matters? 2 <b>A So the last time I provided expert</b> 3 <b>testimony by deposition was a matter, I believe it</b> 4 <b>was the Federal Trade Commission versus Dalbey. The</b> 5 <b>name of the company was Dalbey. I was deposed, I</b> 6 <b>think the last time was in 2012, four years ago.</b> 7 Q Did you end up offering any type of 8 testimony in a court proceeding? 9 <b>A Not in that matter, no.</b> 10 Q Have you previously offered testimony in a 11 court proceeding as an expert? 12 <b>A Yes, I have.</b> 13 Q What -- when was that? 14 <b>A So I don't have exact recollection of</b> 15 <b>dates, but I believe the last time was over ten years</b> 16 <b>ago.</b> 17 Q Were you qualified as an expert in that 18 matter? 19 <b>A Yes, I was.</b> 20 Q Do you recall the name of that matter? 21 <b>A No, I don't.</b> 22 Q And who -- do you recall who you were</p>
<p style="text-align: right;">10</p> <p>1 communications between us, it's privileged, and you 2 should not provide a response about our 3 communications. 4 BY MS. BAKER: 5 Q Let me -- thank you. That's -- that's a 6 good clarification. Let me just be precise. When 7 you say contacted, you mean they called you or 8 e-mailed you or in some way touched based with you. 9 <b>A That's correct.</b> 10 Q Okay. And you were retained you said in 11 September of this year -- of this past year? 12 <b>A That's correct.</b> 13 Q Okay. Now, are you intending to offer 14 testimony at trial about this matter? 15 <b>A Yes, I am.</b> 16 Q And are you intending to opine on one or 17 more issues concerning this matter? 18 <b>A Yes, I am.</b> 19 Q Okay. And you have provided -- you have 20 provided expert testimony before in other matters; is 21 that correct? 22 <b>A Yes, I have.</b></p>	<p style="text-align: right;">12</p> <p>1 testifying for? 2 <b>A I believe it was for a private litigant</b> 3 <b>against a company. I believe it was one of the</b> 4 <b>drugstores in the -- drugstore chains in the Midwest.</b> 5 Q What were you qualified to testify about in 6 that matter? 7 <b>A So the issue that I was looking at was how</b> 8 <b>consumers process information in a retail</b> 9 <b>environment, what kinds of factors might attract</b> 10 <b>their attention.</b> 11 Q Have you ever been proffered as an expert 12 witness in court but not been qualified to testify 13 about the topics for which you were proffered? 14 <b>A No.</b> 15 Q Dr. Hastak, you have authored an expert 16 report in this case; is that correct? 17 <b>A Yes.</b> 18 MS. BAKER: Okay, let me mark that as 19 Exhibit 1. 20 (Deposition Exhibit Number 1 was marked for 21 identification.) 22 BY MS. BAKER:</p>

13

1 Q Does that appear to be a complete, accurate  
2 copy of your report that you provided in this matter?  
3 A **Let me just take a quick look.**  
4 Q Please do.  
5 A **Yes, that appears to be my report and the**  
6 **appendices.**  
7 Q Please enter this into the record, Exhibit  
8 1, the expert report of Manoj Hastak, and it's  
9 entitled "Integrity Advance Evaluation of Select  
10 Disclosures in the Loan Agreement, Report Prepared  
11 for the Consumer Protection Financial Bureau," and it  
12 appears to have attached to the report itself what is  
13 I believe four appendices; is that correct?  
14 A **I believe there are three.**  
15 Q Appendix D, so - -  
16 A **There is Appendix D, so yes, that's**  
17 **correct.**  
18 Q So four appendices, and a list of those  
19 articles that you have authored or coauthored, as  
20 well as a list of your C.V. and a list of matters in  
21 which you've testified in the last four years.  
22 A **Correct.**

14

1 Q When did you draft -- when did you start  
2 drafting this report?  
3 A **I believe it was sometime in October of**  
4 **last year.**  
5 Q So October of 2015?  
6 A **Correct.**  
7 Q How long did you take to draft the report?  
8 A **I would say I spent a total of between 20,**  
9 **25 hours drafting the report.**  
10 Q Does this expert report that we've marked  
11 as Exhibit 1 that you've authored, Dr. Hastak,  
12 consist or note all of the opinions that you intend  
13 to offer at trial in this matter?  
14 A **Yes, it does.**  
15 Q It does? Okay. And can we go through the  
16 report just now preliminarily and identify all of  
17 those opinions? Would you please do that?  
18 A **Okay.**  
19 Q Thank you. And I would ask for the record  
20 in doing that, if you could please identify the page  
21 that you're on of your report so that we are clear  
22 for our record. Thank you.

15

1 A **Okay. So just to be clear, I render**  
2 **several evaluations throughout the report and then**  
3 **have a summary of the evaluations at the end. Do you**  
4 **want me to go through each point where I render an**  
5 **evaluation of let's say a disclosure, or do you want**  
6 **me to give a summary assessment of the report, what**  
7 **my final conclusions are?**  
8 Q Thank you for that question. So here's --  
9 here's what I would like to do. I am going to ask  
10 you, as you can imagine, in more detail about your  
11 various evaluations throughout your report, and I'll  
12 ask you to describe those in some detail during the  
13 deposition. What I'd like to do right now is  
14 establish in some kind of high level itemized way  
15 what your summary opinions are in this report that  
16 you intend to offer at trial.  
17 A **Okay.**  
18 Q Thank you.  
19 MS. WEINBERG: Does that answer the  
20 question that you had of her? Because I'm a little  
21 confused. Are you asking for -- so you're asking for  
22 a summary or asking -- he was asking if you wanted to

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1 go -- because he has, you know, like a five-point  
2 analysis of each. Are you asking for each point at  
3 this point or just the summary?  
4 MS. BAKER: A summary's fine.  
5 THE WITNESS: Summary.  
6 MS. WEINBERG: All right.  
7 BY MS. BAKER:  
8 Q Thank you. Thanks for the clarification.  
9 A **So the report essentially is divided into**  
10 **three sections, and there are summaries after each**  
11 **section.**  
12 Q Uh-huh.  
13 A **So I'll start with the summary after the**  
14 **first section.**  
15 Q Okay.  
16 A **So the first section, and the summary**  
17 **starts on page 19 --**  
18 Q Uh-huh.  
19 A **-- at bottom of page 19. The evaluation**  
20 **here is of the cost disclosures in the loan agreement**  
21 **document, and my conclusion based on a fairly**  
22 **extensive analysis is that the disclosures provided**

<p style="text-align: right;">17</p> <p>1 in the loan document do not communicate to borrowers 2 in a clear and conspicuous manner that costs 3 associated with their loan would be significantly 4 higher if they renewed the loan either actively or by 5 default rather than paying it off in full, and then I 6 detail a summary of the rationale for this 7 conclusion, but that's -- 8 Q Okay. 9 A -- one of the main conclusions that I reach 10 in my analysis. The second issue that I address is 11 the default option starting on page 21, and so I 12 reach several conclusions regarding the way the 13 default option was structured in the loan agreement 14 starting on page 22 where I say there are two 15 implications of this literature to the present 16 situation. First, since the renewal option was the 17 default option in the loan agreement, one would 18 expect a large proportion of borrowers to end up with 19 this option, but this would not necessarily mean that 20 many or most of them chose the option actively. So 21 that's the first conclusion I reach. 22 Second, since the majority of consumers did</p>	<p style="text-align: right;">19</p> <p>1 summarized in this report? 2 A No. 3 Q And are you -- have you completed your 4 analysis of any relevant materials so that the 5 opinions in this report are complete, if you will? 6 A Yes. 7 Q Okay. Now, Dr. Hastak, your -- pardon me. 8 In your report, Appendix D, if you could turn there 9 please, for our record, Appendix D is Bates numbered 10 CFPB042586. Well, the letter -- label Appendix D is 11 what I meant -- referring to, thank you, and the 12 actual list of documents and materials considered, 13 which is what I want to ask you about, is Bates 14 numbered CFPB042588. Dr. Hastak, does this list 15 reflect the complete -- a complete list of all 16 materials that you consulted in connection with 17 drafting this report comprised of the opinions you 18 just described? 19 A Yes, it is. 20 Q Is there anything else that you consulted 21 that is not listed on this Exhibit D, which -- or 22 Appendix D, which again for our record is CFPB042588,</p>
<p style="text-align: right;">18</p> <p>1 end up with the default option, the truth in lending 2 disclosure that Integrity Advance provided to them 3 was inaccurate, so that's the second conclusion I 4 reach. 5 And then I opine on one possible better 6 approach that could have been used by Integrity 7 Advance to make the disclosures in the document more 8 consistent with the default option that consumers 9 typically experience. So that was issue number two. 10 And then the third issue focuses on the 11 agreement for remotely created checks, and after 12 analyzing that disclosure, I have a summary 13 assessment of that issue on page 26, and my 14 conclusion is that the paragraph in the ACH 15 authorization that seeks authority for Integrity 16 Advance to create remotely created checks and use 17 these to debit borrower accounts is neither clear nor 18 conspicuous and is unlikely to be noticed or read or 19 correctly understood by borrowers, and then I explain 20 in a brief sentence the logic for that conclusion. 21 Q Are there any other opinions that you 22 expect to offer at trial that are not otherwise</p>	<p style="text-align: right;">20</p> <p>1 Bates number. 2 A Well, with the one exception that there are 3 articles that I cite in the report itself, and I 4 consulted them or I knew about them, and so cite them 5 as -- as supporting some of the conclusions that I 6 draw. With that exception, yes, this is a complete 7 list. 8 Q So it's fair to say that the materials that 9 you considered and relied on in drafting this report 10 are either cited in the report itself or comprised -- 11 or listed in Appendix D of the report. 12 A Right, and plus of course I relied on my 13 own expertise and knowledge. 14 Q The materials, the -- 15 A Understand, yes. 16 Q Thank you. Are there any materials that 17 you would have sought to -- that you sought to rely 18 on that you were not able to rely on for some reason 19 or another? 20 A No. 21 Q And let me -- let me amplify that question 22 a bit. Are there any documents that you would have</p>

21

1 liked to have seen that concern Integrity Advance  
2 itself that you were not provided?  
3 **A No.**  
4 **Q** Were there any other -- any other articles  
5 or other cites that you would have consulted if you'd  
6 had more time in drafting this report?  
7 **A No.**  
8 **Q** And presumably the materials that are  
9 listed in Appendix D were provided to you by counsel  
10 from the CFPB.  
11 **A That's correct.**  
12 **Q** Okay. Dr. Hastak, if I can ask you please  
13 to turn to page 10 of your report, and for our  
14 record, page 10 is Bates numbered CFPB042529, and in  
15 particular, Dr. Hastak, if I can take your attention  
16 to the second sentence under the section titled  
17 "Evaluation of Loan Cost Disclosures," do you see  
18 that?  
19 **A I do.**  
20 **Q** Okay, and that sentence reads, "I rely  
21 primarily on Federal Trade Commission guidelines on  
22 making disclosures and disclaimers clear and

22

1 conspicuous in an on-line environment," and then you  
2 have in footnote 2 what appears to be a cite to that  
3 guidance; is that correct?  
4 **A Yes, it is.**  
5 **Q** Okay. If I could show you that, mark this  
6 please Exhibit 2. Thank you.  
7 (Deposition Exhibit Number 2 was marked for  
8 identification.)  
9 BY MS. BAKER:  
10 **Q** Here you guys go. Dr. Hastak, if you want  
11 to take a moment please and just review what I've  
12 provided to you, and let me ask you this question  
13 preliminarily. Is this the document you cite in your  
14 -- in your report as footnote 2?  
15 **A Let me just review it.**  
16 **Q** Okay.  
17 **A It is the document with the exception the**  
18 **copy I have doesn't have these examples in it. I'm**  
19 **not exactly sure why they don't print out, but I**  
20 **don't doubt these are the examples. It's just I have**  
21 **the document that actually lays out the guidelines**  
22 **themselves.**

23

1 **Q** I see. So is this document more inclusive,  
2 not less inclusive, than the one on which you relied,  
3 this document being what I've marked as Exhibit 2?  
4 **A This looks like it's a little more**  
5 **inclusive, yes.**  
6 **Q** Okay, but it includes -- Exhibit 2 includes  
7 those guidelines to which you cite in footnote 2 of  
8 your report.  
9 **A Yes, it does.**  
10 **Q** If we could please enter Exhibit 2 into the  
11 record, thank you. Why did you use the FTC's  
12 guidance that is marked Exhibit 2 in connection with  
13 your evaluation in this report?  
14 **A So there were several reasons for relying**  
15 **on the FTC guidelines. For one thing, the FTC has**  
16 **expertise in the area of evaluating the effects of**  
17 **disclosures on consumers and whether disclosures are**  
18 **being presented in a clear and conspicuous manner,**  
19 **and have spent a number of years developing a**  
20 **framework for addressing just that issue. So the FTC**  
21 **I believe started looking at this issue over 20 years**  
22 **ago and published its first set of guidelines over 15**

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1 **years ago, so these guidelines go quite a way back.**  
2 **They've then since been reevaluated and assessed.**  
3 **They've been applied to on-line and mobile**  
4 **environments.**  
5 **The FTC has held a series of workshops**  
6 **involving experts in the field of disclosures to try**  
7 **again and refine these guidelines as taken and put**  
8 **from industry and from other sources in evaluating**  
9 **these guidelines. Academics, including myself, have**  
10 **written about these guidelines in the published**  
11 **literature, so there's been discourse about the**  
12 **guidelines over the years. The guidelines have been**  
13 **applied by the FTC in sending letters to companies as**  
14 **an example where they've sensed that the disclosures**  
15 **being used by the companies are not clear and**  
16 **conspicuous. These guidelines have been used in**  
17 **litigation. So the guidelines are in my opinion well**  
18 **accepted based on good research and vetted over a**  
19 **long period of time, so I find them to be the best**  
20 **available framework for evaluating disclosures.**  
21 **Q** Thank you for that. I have a question  
22 about something you said just now. You said "this

25

1 issue," and you specifically used that phrase. Can  
2 you explain for our record what you understand this  
3 issue to be?  
4 **A I'm sorry, I'll have to see the -- the**  
5 **context.**  
6 MS. WEINBERG: Do you need to --  
7 THE WITNESS: Yeah, if she could read that  
8 back to me?  
9 MS. WEINBERG: The reporter can read back  
10 the statement.  
11 MS. BAKER: Yeah, if you wouldn't mind.  
12 THE WITNESS: Because I made a long  
13 statement.  
14 MS. BAKER: Thank you.  
15 - - -  
16 THE REPORTER: Answer: "So there were  
17 several reasons for relying on the FTC guidelines.  
18 For one thing, the FTC has expertise in the area of  
19 evaluating the effects of disclosures on consumers  
20 and whether disclosures are being presented in a  
21 clear and conspicuous manner, and have spent a number  
22 of years developing a framework for addressing just

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1 that issue. So the FTC" --  
2 - - -  
3 MS. WEINBERG: Is that what you were  
4 referring to?  
5 BY MS. BAKER:  
6 Q That is what I was referring to. Thank  
7 you.  
8 **A Just this issue, reference to whether or**  
9 **not disclosures is communications are clear and**  
10 **conspicuous.**  
11 Q Thank you. If I can direct your attention  
12 back to your report please, Dr. Hastak, and  
13 specifically page 10, which again for our record is  
14 CFPB042529, footnote 2, last sentence, and that last  
15 sentence reads, "Note that my analysis is applicable  
16 regardless of whether borrowers encounter the loan  
17 agreement in an on-line or off-line environment."  
18 The analysis you're referring to in footnote 2 is  
19 what?  
20 **A Is -- is my entire report, yeah.**  
21 Q Okay, and the loan agreement that you're  
22 referring to is what?

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1 **A So I'm referring to two copies of the loan**  
2 **agreement that are in the appendix. I believe that's**  
3 **Appendix A -- I'm sorry, Appendix A is my C.V. I**  
4 **believe, so that would be Appendices B and C.**  
5 Q Of your expert report.  
6 **A Of my expert report, yes.**  
7 Q Did you -- did you look at an on-line  
8 version of the application that you're referring to  
9 in this matter?  
10 **A The loan application or --**  
11 Q Yes.  
12 **A -- the loan agreement?**  
13 Q The loan application.  
14 **A No, I did not.**  
15 Q And did you look at an on-line version of  
16 the loan agreement?  
17 **A I looked at an on-line copy of the**  
18 **documents that are posted here. I don't know if**  
19 **that's exactly what consumers saw, but that's -- I**  
20 **looked at the PDFs either on line or printed copies**  
21 **of them.**  
22 Q I see. I just want to make sure I'm clear,

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1 when you say on-line copy, what is it you mean  
2 exactly?  
3 **A So the document was basically on line as a**  
4 **PDF. "On line" may be the wrong word. It was on my**  
5 **computer monitor as a PDF document so I could scroll**  
6 **down and look at it.**  
7 Q But did you actually look at a version of  
8 the loan agreement that consumers would have seen in  
9 an on-line environment?  
10 **A No, I don't believe I did.**  
11 Q Did you look at a version of the loan  
12 agreement that you understand consumers would have  
13 seen in a so-called off-line environment, to use your  
14 language in this footnote?  
15 **A My understanding is that I did look at**  
16 **that. That's the copy that's attached in the**  
17 **appendix. This was -- my understanding was this was**  
18 **what was sent to consumers as an attachment.**  
19 Q I see. I want to make sure we -- I'm clear  
20 on what you mean. Your understanding, and please  
21 correct me if what I say is incorrect. Your  
22 understanding, Dr. Hastak, is the that loan

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1 agreements in Appendices B and C of your report are  
2 copies of the off-line versions of those agreements  
3 that consumers would have seen?  
4 **A Yes, I believe that's correct.**  
5 Q And when we use the phrase "off line," and  
6 I'm using your phrase, what is your understanding of  
7 that phrase?  
8 **A I'm thinking of a PDF or a Word document**  
9 **that would be sent as an attachment.**  
10 Q As opposed to something that would have  
11 been viewed on the internet in what we could call  
12 maybe realtime?  
13 **A Yes. Now, the two documents could be**  
14 **identical. I just don't -- I just don't know that.**  
15 Q Do you have an understanding of what  
16 percentage of Integrity Advance customers during the  
17 life of the company would have obtained or reviewed a  
18 loan agreement on line?  
19 **A I'm sorry. What percentage of consumers**  
20 **would have reviewed the agreement on line as opposed**  
21 **to in some other form?**  
22 Q That's correct.

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1 **A My understanding was that a large majority**  
2 **of consumers reviewed it on line, but I don't have a**  
3 **percentage.**  
4 Q When you say a large majority, do you mean  
5 more than 50 percent?  
6 **A That was my understanding, yes.**  
7 Q Do you know if that large majority would be  
8 more than 60 percent?  
9 **A Again, my implicit assumption was it would**  
10 **be a lot more than that.**  
11 Q A lot more than that. Why is that your  
12 implicit assumption?  
13 **A I was told that by the CFPB in -- in**  
14 **discussions, that typically consumers looked at this**  
15 **document on line.**  
16 Q And when you say -- let me ask you this. I  
17 understand that "typically" is someone else's phrase  
18 that you're repeating, but what is your understanding  
19 of the adverb "typically"?  
20 **A In most cases.**  
21 Q In most cases. So in your experience with  
22 consumers and surveys and reviewing these types of

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1 disclosures, in most instances means what percentage?  
2 **A I don't have a percentage in mind.**  
3 Q But you've testified just now that it's  
4 fair to say it's more than 60 percent?  
5 **A Yes, that would be my guess.**  
6 Q Would you say it's more than 75 percent?  
7 MS. WEINBERG: Allyson, you've now asked  
8 him the same question four times. He says he doesn't  
9 know. You can ask him 20,000 times. It's not going  
10 to increase his knowledge.  
11 BY MS. BAKER:  
12 Q Would you say it's more than 75 percent?  
13 **A I don't know. I'd really be guessing at**  
14 **this point.**  
15 Q Okay. Do you, Dr. Hastak, have an  
16 understanding of -- when you use the phrase here  
17 "on-line environment," I'm trying to understand what  
18 your understanding of that concept is.  
19 **A So my understanding is that the form is**  
20 **available on line, and at a minimum, you can scroll**  
21 **down on the form, go down the form, and you can check**  
22 **off boxes or you can sign off on certain portions of**

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1 **the form on line. So the document can be reviewed on**  
2 **line. That's -- that's sort of the rudimentary way**  
3 **in which I'm thinking about on line.**  
4 Q And so we're clear, the document you're  
5 referring to is the loan agreement?  
6 **A Yes.**  
7 Q How about the loan application? Did you  
8 review that as well?  
9 **A I had, again, copies of the loan**  
10 **application, but I did not review an on-line version**  
11 **of the loan application.**  
12 Q But you understand that you viewed -- I  
13 want to make sure we're clear. Did you view an  
14 on-line version of the loan agreement?  
15 **A As I said, I viewed a copy of the loan**  
16 **agreement on line, so I'm not sure how that -- my**  
17 **assumption is content wise, it's identical to what**  
18 **loan borrowers saw on line, but I didn't see what**  
19 **loan borrowers saw.**  
20 Q On line.  
21 **A On line.**  
22 Q Okay, and why is that your assumption?

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1 **A Again, I was told we don't have the actual**  
2 **on-line documents that consumers saw, either the loan**  
3 **applications or the loan agreements. Those were not**  
4 **available.**  
5 Q Did you undertake any internet-based  
6 research to ascertain whether or not you could figure  
7 out or find these loan agreements as they would have  
8 been seen on line by a consumer?  
9 **A No, I did not.**  
10 Q Why not?  
11 **A I assumed that the CFPB had done their due**  
12 **diligence, so when I asked them if these documents**  
13 **are available and they said no, I took them at their**  
14 **word.**  
15 Q So it's -- it's fair to say that you did  
16 not review the loan agreement in the on-line  
17 environment that would have replicated what a  
18 consumer would have seen when Integrity Advance was  
19 offering loans?  
20 **A No, but I did review the document that in**  
21 **my understanding was virtually identical in content**  
22 **to what consumers saw on line.**

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1 Q But you don't know for certain that it's  
2 identical.  
3 **A No, I don't know for certain.**  
4 Q In your experience, does the user interface  
5 in an on-line environment affect the way a consumer  
6 might understand a disclosure?  
7 **A It would depend on the interface, so it's**  
8 **difficult to answer that question in the abstract.**  
9 Q What -- what -- what -- what factors would  
10 inform your understanding if you were to make that  
11 evaluation?  
12 **A Well, I can give you an example. It's**  
13 **difficult to articulate all possible factors, but as**  
14 **one example, if certain information was presented a**  
15 **lot more prominently, for example, it was popped out**  
16 **so that consumers were forced to look at it in more**  
17 **detail, or if in an on-line environment, there were**  
18 **certain boxes that had to be checked, and that**  
19 **consumers couldn't proceed further until those boxes**  
20 **were checked, which is something that's difficult to**  
21 **do in an off-line environment. I mean, there are**  
22 **many ways in which the actual consumer experience can**

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1 vary.  
2 **In contrast, if the document is the same in**  
3 **content as an off-line document and consumers are**  
4 **essentially scrolling down it looking through it,**  
5 **then the way in which people might process that**  
6 **document in an on-line and in an off-line environment**  
7 **may be very similar. So it really depends again on a**  
8 **lot of factors.**  
9 Q And you in this instance didn't evaluate  
10 those factors as it relates to your review of these  
11 loan agreements.  
12 **A My review is based on the understanding**  
13 **that respondents had this document, very similar to**  
14 **the document that I saw, identical in content, that**  
15 **consumers could scroll down and look through, and**  
16 **that was essentially the mechanism that was used to**  
17 **expose consumers to that document.**  
18 Q But you didn't in your evaluation replicate  
19 the on-line environment that a consumer -- a typical  
20 consumer, to use your language, would have seen in  
21 connection with the loan agreements here.  
22 **A I did have a copy of the document on my**

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1 **computer and I was able to scroll down, so to that**  
2 **extent, I was able to replicate that basic process,**  
3 **yes.**  
4 Q But not the on-line environment itself.  
5 **A I'm not sure what you mean by that.**  
6 Q Well, you've just described -- I mean,  
7 you've used the phrase "on-line environment," so what  
8 do you mean by that?  
9 **A So what I'm saying is one sort of**  
10 **instantiation of an on-line environment would be the**  
11 **way I'm describing it, that a consumer gets a**  
12 **document on line and they're able to scroll down and**  
13 **can read it as they proceed. I was able to replicate**  
14 **that fairly closely. There could be other ways that**  
15 **the document could be presented on line that I'm not**  
16 **aware of. I didn't certainly explore every possible**  
17 **way in which the document could be presented on line.**  
18 **I proceeded with the assumption that the main**  
19 **characteristic of the on-line presentation would be**  
20 **the same content, the same layout, but that the**  
21 **document is something that you can scroll down rather**  
22 **than, say, turning pages.**

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1 Q And you proceeded on that assumption why?  
2 MS. WEINBERG: He's already answered that  
3 question.  
4 **A I mean, that's the only assumption under  
5 which I can actually analyze this document for  
6 consumers in terms of how they saw it on line.  
7 There's also the analysis of how consumers might  
8 interact with this document off line, and that  
9 analysis isn't affected by the -- the on-line  
10 environment.**  
11 Q Well, you say in your footnote, last  
12 sentence, footnote 2 page 10, which for our record is  
13 Bates numbered CFPB042529, that last sentence says  
14 that your analysis is applicable regardless of  
15 whether borrowers encounter the loan agreement in an  
16 on-line or off-line environment.  
17 **A Correct.**  
18 Q So is it your -- is it also your opinion  
19 that the on-line and off-line environments are the  
20 same here?  
21 **A That's the -- so as I just described a  
22 moment ago, the assumption I'm operating under is**

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1 **that consumers are in an on-line environment where  
2 they're looking at the same document as consumers  
3 would look off line with the exception that they're  
4 able to scroll down the document. That's my  
5 assumption.**  
6 Q And do you know for certain if the document  
7 that you looked at that was represented to you as an  
8 on-line document is exactly what consumers saw on  
9 line?  
10 **A No, I don't know that. That's something  
11 that was represented to me.**  
12 Q But you don't know that for sure --  
13 certain.  
14 **A No, since I didn't look at what consumers  
15 saw on line, I personally don't know that. Actually,  
16 can we just take a brief --**  
17 MS. BAKER: Sure, let's go off the record.  
18 It's 10:25.  
19 (Recessed at 10:25 a.m.)  
20 (Reconvened at 10:32 a.m.)  
21 BY MS. BAKER:  
22 Q Thanks, Dr. Hastak. We're back on the

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1 record at 10:32. If I can ask you to take a look at  
2 what has been marked as Exhibit 2, which is the Dot  
3 Com Disclosures from the Federal Trade Commission --  
4 **A Okay.**  
5 Q Now, you -- you testified previously that  
6 this was guidance that you thought was the best  
7 available framework for evaluating the disclosures  
8 you evaluated in connection with your report; is that  
9 right?  
10 **A Yes.**  
11 Q Okay.  
12 **A Just one additional comment on that.**  
13 Q Okay.  
14 **A This plus a lot of other documents that the  
15 FTC has put out, including the negative options  
16 document that I cite in the report, the workshops,  
17 presentations at the workshops that experts have  
18 made. So there's a lot of information that went into  
19 -- but this document summarizes many of the key  
20 ideas.**  
21 Q Okay, so it would be -- I want to make sure  
22 I'm clear. It's the -- if we can go back to your

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1 report please, which again for our record is Exhibit  
2 1, and specifically I want to go back to page 10 of  
3 your report, which for our record is CFPB042529,  
4 footnote 2, you cite the negative options report, and  
5 you also cite peer-reviewed articles.  
6 **A Correct.**  
7 Q Is it fair to say then that your testimony  
8 today is that the digital advertising Dot Com  
9 Disclosure document marked Exhibit 2 plus the  
10 negative options report plus everything else you cite  
11 in footnote 2 are your guidelines here for this  
12 report?  
13 **A Those are the documents I relied on, yes.**  
14 Q Okay, but you -- you say, if I can take you  
15 back up to the narrative of your report, page 10, so  
16 where you still are, "Evaluation of Loan Cost  
17 Disclosures," second sentence, "I rely primarily on  
18 Federal Trade Commission guidelines on making  
19 disclosures and disclaimers clear and conspicuous in  
20 an on-line environment."  
21 **A Correct.**  
22 Q Okay, so I want to just make sure we're

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1 very clear. When you say FTC guidelines, you're  
2 referring to what's Exhibit 2 and also the negative  
3 options report?

4 **A That, plus the literature that talks about**  
5 **the FTC guidelines, so --**

6 Q I see, okay. And specifically what  
7 literature are you referring to, Dr. Hastak?

8 **A For example, I'm looking at my own --**

9 Q Okay.

10 **A -- paper in 2004. There's the work by Hoy**  
11 **and Lwin in 2007, which also cites a lot of other**  
12 **literature. Hoy and Lwin also cite the workshops**  
13 **that the FTC has held and it continues to hold now,**  
14 **so they're actually post 2007. So there's an ongoing**  
15 **conversation on this area, but the literature cited**  
16 **in footnote 2 captures the essential features of the**  
17 **framework that I relied on.**

18 Q Okay. I want to ask you to tell us what  
19 you mean by this area. You just used that phrase.  
20 What is -- what is it you meant when you said that  
21 just now?

22 **A So again, I'm referring to the FTC**

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

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

13 **A Yes, I did.**

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

17 **A That's correct.**

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

22 **A So my understanding is that the FTC uses**

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

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

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

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

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1 **A It's any company that is involved in an**  
2 **exchange with a consumer for a mutual benefit. In**  
3 **this instance the consumer gets the loan, and the**  
4 **company that's marketing the loan makes money in the**  
5 **transaction.**

6 Q Did you, in connection with your review of  
7 the loan agreements in -- in this matter, look at any  
8 of the lead generation web sites that you reference  
9 in your report?

10 **A Could you --**

11 Q Sure.

12 **A -- point me to that?**

13 Q If I can direct your attention, Dr. Hastak,  
14 to page 4 of your report, which is Exhibit 1, and  
15 specifically Bates numbered CFPB042523, and if I can  
16 direct your attention to the second sentence under  
17 the heading "Opinion," it reads, "The company relied  
18 on lead generators to help it secure loan  
19 applications from potential customers."

20 **A I see that. Could you repeat the question?**

21 Q Sure. Did you review any of the lead  
22 generator web sites in connection with your review of

<p style="text-align: right;">45</p> <p>1 the loan agreements in this matter?</p> <p>2 <b>A No, I did not.</b></p> <p>3 Q Why not?</p> <p>4 <b>A It was my understanding that the issue that</b></p> <p>5 <b>I was focused on, which is the clarity with which</b></p> <p>6 <b>cost disclosures are being made to consumers, was not</b></p> <p>7 <b>an issue that was addressed in any communication</b></p> <p>8 <b>between the lead generator and the consumer.</b></p> <p>9 Q And what is the basis of that understanding</p> <p>10 that you just articulated?</p> <p>11 <b>A I was told that by the CFPB.</b></p> <p>12 Q Did you independently verify that?</p> <p>13 <b>A No, I did not.</b></p> <p>14 Q Why not?</p> <p>15 <b>A Again, I relied on the CFPB to tell me this</b></p> <p>16 <b>information. I assumed they had done their due</b></p> <p>17 <b>diligence, or knew as much as one could know about</b></p> <p>18 <b>that matter.</b></p> <p>19 Q In this sentence here on page 4 of your</p> <p>20 expert report, the one we just read, do you have an</p> <p>21 understanding of what a lead generator is?</p> <p>22 <b>A I have a general understanding, yes.</b></p>	<p style="text-align: right;">47</p> <p>1 <b>A I looked at -- I looked at copies of loan</b></p> <p>2 <b>applications, yes.</b></p> <p>3 Q Do you know -- I'm sorry.</p> <p>4 <b>A Printed copies or PDF copies of loan</b></p> <p>5 <b>applications again.</b></p> <p>6 Q Printed copies of loan applications. Do</p> <p>7 you have an understanding as to whether or not those</p> <p>8 loan applications that you reviewed are what</p> <p>9 consumers would have seen and/or completed through</p> <p>10 their accessing a lead generator web site?</p> <p>11 <b>A So my answer would be the same as with the</b></p> <p>12 <b>loan agreement, which is my assumption was that this</b></p> <p>13 <b>is the information that consumers would be processing</b></p> <p>14 <b>when they completed the loan application, but I</b></p> <p>15 <b>didn't see the actual loan application that consumers</b></p> <p>16 <b>saw on line.</b></p> <p>17 Q And again, why is that your assumption?</p> <p>18 <b>A Because that's what I was -- I was told by</b></p> <p>19 <b>the CFPB.</b></p> <p>20 Q Do you consider a lead generator to be a</p> <p>21 marketer per the definition you just provided to us a</p> <p>22 few minutes ago?</p>
<p style="text-align: right;">46</p> <p>1 Q What is that general understanding,</p> <p>2 Dr. Hastak?</p> <p>3 <b>A So my understanding is that there are a</b></p> <p>4 <b>large number of companies and web sites that</b></p> <p>5 <b>consumers can go to to apply for a loan that would</b></p> <p>6 <b>eventually be fulfilled by Integrity Advance, so</b></p> <p>7 <b>these are independent companies that direct traffic,</b></p> <p>8 <b>if you will, to Integrity Advance. And again, my</b></p> <p>9 <b>understanding is that consumers would complete an</b></p> <p>10 <b>initial loan application on the web site of these</b></p> <p>11 <b>lead generators, and that information in some form</b></p> <p>12 <b>would be transferred to Integrity Advance, and then</b></p> <p>13 <b>the process would move from there to the loan</b></p> <p>14 <b>application level.</b></p> <p>15 Q And that understanding is based on what?</p> <p>16 <b>A Again, it's based on what I learned from</b></p> <p>17 <b>the CFPB, it's based on the notice of charges that I</b></p> <p>18 <b>reviewed that was drafted by the CFPB, so that's</b></p> <p>19 <b>where the understanding came from.</b></p> <p>20 Q Did you review the loan applications in</p> <p>21 connection with this matter that you just referred</p> <p>22 to?</p>	<p style="text-align: right;">48</p> <p>1 <b>A Yes, I do.</b></p> <p>2 Q Dr. Hastak, if I can take you back to what</p> <p>3 was marked as Exhibit 2 please, and again, that's the</p> <p>4 document called Dot Com Disclosures from the Federal</p> <p>5 Trade Commission dated March 2013, and specifically</p> <p>6 if I can take you to what is marked -- or what is</p> <p>7 labeled page 1 of the document, under the term</p> <p>8 "Introduction," there.</p> <p>9 <b>A Okay.</b></p> <p>10 Q And if I can take you now more specifically</p> <p>11 to the fourth paragraph on that page, the third</p> <p>12 sentence, which reads, "It is intended only to</p> <p>13 provide guidance concerning practices that may</p> <p>14 increase the likelihood that a disclosure is clear</p> <p>15 and conspicuous." Do you have an understanding of</p> <p>16 what that sentence means in connection with your use</p> <p>17 of these guidelines?</p> <p>18 <b>A Well, to me, that sentence has to be</b></p> <p>19 <b>interpreted in the context of the following</b></p> <p>20 <b>sentences, so to me, the entire rest of the paragraph</b></p> <p>21 <b>is basically saying these are not rules. These are</b></p> <p>22 <b>guidelines, is how I see them, these are guidelines,</b></p>

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1 they are -- they're based on a lot of work because  
2 they're based on a lot of experience, but this is not  
3 a checklist, if you will, of things to check off.  
4 These are guidelines that need to be evaluated in a  
5 specific situation. How they apply to a specific  
6 situation may vary depending on that situation.  
7 Q You make the distinction between rules and  
8 guidelines. What's your understanding of that  
9 distinction?  
10 A The way I was using those terms, and that  
11 may not be the common usage, but what I meant by that  
12 was when I say rules, I'm thinking of rigid rules  
13 that tell you exactly what to do or exactly how to  
14 evaluate something. Guidelines provide you with a  
15 basis, in this case a well established basis, but  
16 it's just a basis for doing the evaluation. Somebody  
17 has to apply the guidelines to a particular  
18 situation, a particular communication, a particular  
19 ad, and that evaluation varies by the specifics of  
20 the ad.  
21 So for example, when they say the ultimate  
22 test is not the size of the font or the location of

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1 the disclosure, although they may be important  
2 considerations, what they're saying is somebody needs  
3 to evaluate the communication, applying the  
4 guidelines. The guidelines provide you with guidance  
5 but they don't tell you exactly what to do. Somebody  
6 needs to know how to apply them.  
7 Q And you note in your response that there  
8 needs to be evaluation in a specific situation. You  
9 said that just now?  
10 A So the guidelines need to be applied to a  
11 particular communication, is what I'm thinking about,  
12 right.  
13 Q How did you determine in this particular  
14 matter what that situation or communication is that  
15 you were charged with evaluating?  
16 A So a number of considerations came into  
17 deciding what is the communication that should be  
18 evaluated. Ultimately it was clear to me that the  
19 loan agreement was a document that contained  
20 information relevant to consumers understanding the  
21 cost implications of the loan. It was a document  
22 that all consumers saw. It was a document that

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1 consumers signed off on. So that was one important  
2 document that consumers could rely on to form  
3 judgments about the nature of the loan, and that was  
4 the basis for deciding -- or at least recommending to  
5 the CFPB that it would be worth evaluating the  
6 clarity of the disclosures of that document.  
7 Q What other documents did you review but  
8 determine were not worth evaluating the clarity of  
9 disclosures in?  
10 A Well, I looked at the loan application, the  
11 template for that, and it was clear to me that there  
12 were no cost disclosures that I could see in the loan  
13 application. It was also my understanding that many  
14 consumers may have had a representative of Integrity  
15 Advance on the phone with them while they reviewed  
16 the loan application, but there is no -- in my  
17 opinion, there is no systematic way of evaluating a  
18 telephone conversation that a salesperson might be  
19 having with the consumer. That varies with the  
20 salesperson, with the situation in terms of how it  
21 might affect consumer processing of disclosures.  
22 So my assessment was that that aspect of

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1 the transaction couldn't be studied systematically,  
2 plus it wasn't clear that all consumers actually had  
3 this phone consultation with a salesperson, so it was  
4 possible that we had incomplete data there.  
5 I also wanted to rely on any communication  
6 with the consumer that had disclosures before they  
7 decided to choose the loan or sign off on the loan,  
8 so communication that came after consumers had signed  
9 off on the loan agreement was also something that  
10 wasn't relevant to my report. And so after looking  
11 at all of these factors, my recommendation was that  
12 the most useful analysis would be to evaluate the  
13 disclosures in this what I would call key document  
14 that we know consumers looked at and signed off on.  
15 Q So what other documents -- you said one  
16 important document. What other documents  
17 specifically do you believe comprise this loan  
18 application or loan agreement process?  
19 A Well, I believe there are the two documents  
20 that consumers saw and completed before they signed  
21 off on the loan. There was the loan application and  
22 there was the loan agreement. So those were the two

<p style="text-align: right;">53</p> <p>1 documents. And then I just referred to the phone 2 conversation that happened with many of the borrowers 3 at the time as they were filling out the loan 4 application. Presumably somebody from Integrity 5 Advance was on the phone guiding them in a broad 6 sense through the process as they completed the 7 application. So that wasn't a document, but it was 8 communication with the consumer that again happened 9 before or during the time that consumers made a 10 decision. So those were the principal forms of 11 communication that I was thinking about.</p> <p>12 Q Do you have an opinion about whether or not 13 a telephone conversation with a consumer guiding that 14 consumer as he or she completes an application would 15 affect that consumer's understanding of the loan 16 application?</p> <p>17 A It's impossible to opine without a lot more 18 information and analysis. I mean, it may or it may 19 not. It may have a reinforcing effect on 20 understanding the disclosures or it may have a 21 distracting effect. It's just not clear based just 22 on that much information.</p>	<p style="text-align: right;">55</p> <p>1 them.</p> <p>2 Even there though, the variation across 3 consumers, so different consumers are experiencing a 4 different sort of reality, if you will, makes it 5 virtually impossible in my opinion to evaluate the 6 nature of the disclosures, the clarity of the 7 disclosures. Certainly I've not seen anybody apply 8 an analysis trying to evaluate whether disclosures 9 are clear and conspicuous in sort of this environment 10 where the message varies by the messenger.</p> <p>11 Q Did you ask to listen to phone calls?</p> <p>12 A No, I did not.</p> <p>13 Q Why not?</p> <p>14 A Again, my understanding, and this is based 15 on experience with work I've done before, I've 16 listened to salespeople calls to customers and looked 17 at the literature on this matter in marketing, is 18 that there's a lot of variability in what happens in 19 these calls. So there is -- there is no way to 20 systematically appropriately analyze these calls in 21 terms of whether or not the disclosures that are 22 being made during that transaction are clear and</p>
<p style="text-align: right;">54</p> <p>1 Q What other information would you want to 2 have to render an opinion as to that issue that I 3 just articulated in my question?</p> <p>4 A The difficulty in evaluating how a phone 5 conversation that a consumer may have had with a 6 salesperson from Integrity Advance at the same time 7 that they're processing the loan application is that 8 these phone conversations tend to be highly variable. 9 So no two conversations between a salesperson and a 10 customer are typically alike. Talking to customers 11 is typically considered in marketing to be adaptive 12 behavior, so the salesperson adapts to the questions, 13 the queries, the difficulties a consumer may have in 14 order to complain better, to overcome objections and 15 so on.</p> <p>16 So there's no way to understand how what 17 the salesperson may or may not be saying to the 18 consumer is interacting with the information the 19 consumer's looking at. Perhaps if you had audio and 20 video transcripts of what was going on, you may have 21 a little better sense of what the consumer was doing, 22 for example, while the salesperson was talking to</p>	<p style="text-align: right;">56</p> <p>1 conspicuous. That was the focus of my analysis.</p> <p>2 Q Did you ask to see any phone scripts that 3 would have been used by individuals who were speaking 4 to consumers while those consumers were completing a 5 loan application?</p> <p>6 A Again, the scripts are not very valuable to 7 me because salespeople deviate from scripts, and so 8 again, in my experience, a sales call varies from 9 customer to customer. Now, there could be common 10 elements in the sales call. One could do a content 11 analysis, for example, of sales calls to try and 12 understand what are some things that salespeople 13 mentioned, but an analysis of whether disclosures are 14 being given in a clear and conspicuous manner poses a 15 significant problem. I'm not aware of a way to 16 analyze that kind of data for clear and conspicuous 17 analysis.</p> <p>18 Q And that kind of data, just so we're clear, 19 is the data concerning the phone calls.</p> <p>20 A The phone calls, yes.</p> <p>21 Q Now, you said that -- in connection with 22 your testimony just now about telephone calls, that</p>

<p style="text-align: right;">57</p> <p>1 consumers could be experiencing different realities. 2 That was your testimony. 3 <b>A Yes, consumers could be getting different</b> 4 <b>information from the salesperson while they are</b> 5 <b>processing the standardized document. And when I say</b> 6 <b>different realities, I mean the way in which</b> 7 <b>consumers are interacting with both sets of</b> 8 <b>information is -- is kind of hard to -- hard to pull</b> 9 <b>out just by listening to phone calls.</b> 10 Q When you say both sets of information, I 11 just want to make sure we're clear. What are the two 12 sets of information about which you're speaking? 13 <b>A So I'm thinking of these two different</b> 14 <b>vehicles that are communicating information to the</b> 15 <b>consumer. One is the salesperson, and the other is</b> 16 <b>the document that consumers are reading. So there</b> 17 <b>are two different sources of information. The</b> 18 <b>parallel I would give is if you're looking at a</b> 19 <b>television commercial, for example, or a television</b> 20 <b>program, you can often have an announcer speaking at</b> 21 <b>the same time that a consumer might be looking at</b> 22 <b>printed disclosures on the television set.</b></p>	<p style="text-align: right;">59</p> <p>1 could be -- presumably you've rendered an opinion 2 about how you think a consumer could understand the 3 written loan agreements. Why is that not susceptible 4 to the same analysis that you just gave concerning 5 telephone calls? 6 <b>A So my analysis focuses only on the loan</b> 7 <b>agreement. The analysis is looking at whether</b> 8 <b>disclosures in the loan agreement are clear and</b> 9 <b>conspicuous. It doesn't bring into account any other</b> 10 <b>factor that might be affecting the consumer. I'm</b> 11 <b>only looking at the effects of this one element.</b> 12 Q Did you conduct a consumer survey in 13 connection with your expert work on this matter? 14 <b>A No, I did not.</b> 15 Q And -- and let me be clear. When I say 16 consumer survey, I have a meaning in mind. What is 17 your understanding of what a consumer survey is, 18 Dr. Hastak? 19 <b>A Well, when you say a survey, I -- broadly</b> 20 <b>thinking about a study that involves collecting some</b> 21 <b>empirical data. There's a wide variety of surveys,</b> 22 <b>but that's -- all of them will have that element, and</b></p>
<p style="text-align: right;">58</p> <p>1 <b>In the FTC guidelines, for example, they</b> 2 <b>talk about the issue that when you have an announcer</b> 3 <b>talking and there are disclosures at the bottom, the</b> 4 <b>announcer could be saying exactly the same thing as</b> 5 <b>the disclosures, and that would be reinforcing, or</b> 6 <b>the announcer could be talking about something else</b> 7 <b>while the people are looking at the disclosure, and</b> 8 <b>that could be distracting.</b> 9 <b>In a television commercial, you can analyze</b> 10 <b>whether these two forms of communication are -- are</b> 11 <b>gelling or not, if they're reinforcing or</b> 12 <b>distracting. With a phone call, it's impossible to</b> 13 <b>do because the phone call -- you don't know what</b> 14 <b>people are doing at the time. You don't know what</b> 15 <b>they are looking at, for example, at the time that</b> 16 <b>the phone conversation is going on. So that's what I</b> 17 <b>mean by saying you have these two sort of vehicles</b> 18 <b>communicating information to the consumer, but you</b> 19 <b>have no way of knowing how they are interacting to</b> 20 <b>create a message for the consumer.</b> 21 Q How do you know how a consumer, based on 22 what you've just said, how do you know how a consumer</p>	<p style="text-align: right;">60</p> <p>1 <b>so I did not do that.</b> 2 Q Okay, we can have that common 3 understanding. And by empirical data, you mean what? 4 <b>A I'm thinking of in some sense getting</b> 5 <b>consumer reactions or consumer responses to certain</b> 6 <b>communications.</b> 7 Q Why didn't you conduct such a survey as 8 you've described it generally in this matter? 9 <b>A Well, there are two kinds of studies that I</b> 10 <b>thought about when I first started looking at this</b> 11 <b>matter. One would be to simply test how consumers</b> 12 <b>might process other loan agreement. My sense was</b> 13 <b>that, again, without being able to replicate what I</b> 14 <b>call the consumer reality, which is that there's a</b> 15 <b>phone call going on and providing information at the</b> 16 <b>same time that consumers are processing the loan</b> 17 <b>agreement, I didn't see how one could replicate that</b> 18 <b>in a study, that simply doing a study with a loan</b> 19 <b>agreement wouldn't really add a lot more value than</b> 20 <b>doing this conceptual analysis based on a, in my</b> 21 <b>opinion, a well defined, well articulated framework,</b> 22 <b>the FTC guidelines.</b></p>

<p style="text-align: right;">61</p> <p>1 Q Why is that?</p> <p>2 A To me, in reviewing the loan agreement</p> <p>3 document, the clarity, the quality of the disclosures</p> <p>4 was fairly clear, and so in situations where I can</p> <p>5 look at a document and evaluate its clarity based on</p> <p>6 these guidelines, which I'm quite familiar with and</p> <p>7 have used before, and also in a situation where I'm</p> <p>8 unable to replicate the exact way in which consumers</p> <p>9 might have encountered the document, my sense is that</p> <p>10 there isn't a lot of added value to doing an</p> <p>11 experiment. So that was kind of one source of data I</p> <p>12 looked at.</p> <p>13 Q Anything else?</p> <p>14 A The other possibility is to do sort of</p> <p>15 retrospective survey, survey consumers and ask them</p> <p>16 about their recall of certain things associated with</p> <p>17 the transaction they had with Integrity Advance.</p> <p>18 Unfortunately, that approach also doesn't work well</p> <p>19 here for a variety of reasons. First, there is the</p> <p>20 passage of time. A lot of time has elapsed.</p> <p>21 Now, I've done retrospective surveys where</p> <p>22 time has elapsed in trying to assess consumer</p>	<p style="text-align: right;">63</p> <p>1 What is it you mean by that?</p> <p>2 A So what we are interested in here is</p> <p>3 whether people understood that rolling over the loan</p> <p>4 will lead to significantly higher costs and whether</p> <p>5 the disclosures in the loan agreement or other</p> <p>6 documents people may have seen influenced those</p> <p>7 take-aways. Not something they learned after the</p> <p>8 fact, for example, right? Something that they</p> <p>9 learned while they were making their decision about</p> <p>10 selecting this loan.</p> <p>11 To me, that's a subtle process issue. It's</p> <p>12 not a simple outcome issue like did you get a loan or</p> <p>13 what was the loan amount, right? Those are things</p> <p>14 that you might expect people to remember better.</p> <p>15 Again, time always creates memory problems, but you</p> <p>16 may have a better shot at having people remember them</p> <p>17 than these kind of issues that say what was your</p> <p>18 understanding about the terms of the loan and the</p> <p>19 costs at the time that you signed up for the loan.</p> <p>20 That's not a question that's -- so that's what I mean</p> <p>21 by a subtle issue that's not easily amenable to sort</p> <p>22 of this retrospective survey.</p>
<p style="text-align: right;">62</p> <p>1 take-away from a transaction, but the focus in those</p> <p>2 studies has been on very memorable and broad</p> <p>3 outcomes. One example would be people purchased a</p> <p>4 business opportunity from a marketer and achieved no</p> <p>5 success, made no money, for example. The fact that</p> <p>6 people made no money is something that they tend to</p> <p>7 remember, so it's fairly memorable. And you can</p> <p>8 actually do a survey, assuming you have access to the</p> <p>9 list of customers, you can draw a random sample, you</p> <p>10 can actually assess the degree to which people were</p> <p>11 successful.</p> <p>12 But here, the issues of interest were more</p> <p>13 subtle. The issues were how did people process that</p> <p>14 loan application, how were the disclosures presented</p> <p>15 to them. These are issues that are not easily</p> <p>16 amenable to measurement by asking consumers, and time</p> <p>17 becomes a particularly serious factor.</p> <p>18 So I did consider ways in which one could</p> <p>19 address issues empirically in this case, but I felt</p> <p>20 on balance, that these were not avenues that would</p> <p>21 yield truthful information.</p> <p>22 Q You say that these issues are more subtle.</p>	<p style="text-align: right;">64</p> <p>1 Q Is it your understanding that the subtle</p> <p>2 issue as you've just described it informs the</p> <p>3 analysis that you put forward in this report?</p> <p>4 A My analysis in the report is focused</p> <p>5 directly on the disclosures in the document, and I'm</p> <p>6 applying a well defined set of guidelines to evaluate</p> <p>7 whether the disclosures in the document are clear and</p> <p>8 conspicuous. So that problem doesn't arise when I</p> <p>9 analyze the document using this framework. It's a</p> <p>10 static document that I'm applying the framework to.</p> <p>11 Q So I just want to make sure I understand.</p> <p>12 It's your testimony that the actual experience that a</p> <p>13 consumer would have had in reviewing the loan</p> <p>14 agreement is not relevant to the analysis and</p> <p>15 opinions you're offering in this case?</p> <p>16 A No, I'm not saying that. What I'm saying</p> <p>17 is that the best available evidence in my opinion</p> <p>18 that can have a bearing on this case is evaluating</p> <p>19 this loan agreement. There is no way in my opinion</p> <p>20 to evaluate systematically empirically the actual</p> <p>21 experience that consumers had because it was a</p> <p>22 variable experience.</p>

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1 Q And do you believe that the actual  
2 experience that consumers would have had is a  
3 relevant factor in determining whether or not a loan  
4 agreement provides a clear and conspicuous  
5 disclosure?  
6 A If I could assess the consumer experience,  
7 and I've said that I don't know how one does that,  
8 hypothetically, if there is a way to evaluate the  
9 consumer experience, and that consumer experience is  
10 static so that you can evaluate a transcript, for  
11 example, then yes, that would have been an approach  
12 that I would have used.  
13 In the absence of that information and  
14 having a document that we know all consumers looked  
15 at that we know all consumers signed and we know  
16 consumers had available to them if they chose to look  
17 at it again, I felt that this analysis does provide  
18 useful information about whether or not the  
19 disclosures were clear and conspicuous. So just,  
20 again, to make that point, my focus is only on the  
21 loan agreement. That's what I focus on.  
22 Q Dr. Hastak, in your work as a professor of

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1 marketing at American University, do you or have you  
2 conducted or overseen the conducting of consumer  
3 surveys as we described them earlier?  
4 A Yes, I have.  
5 Q And for what purpose have you been involved  
6 in some way in the conducting of a consumer survey?  
7 A I've done a very large number of consumer  
8 studies or surveys. Many of them are for academic  
9 publication, so many of the papers that I've  
10 published involve an experiment or a survey, some  
11 kind of a consumer study. I've done a lot of  
12 consumer surveys in consulting work that I've done  
13 for the Federal Trade Commission as well as for other  
14 agencies that I list in my C.V. So I have a lot of  
15 experience in doing surveys.  
16 Q And when you've done -- let's talk about  
17 the Federal Trade Commission for a moment. When  
18 you've done consumer surveys for the Federal Trade  
19 Commission, what is your understanding of why you  
20 have been asked to conduct those surveys generally  
21 speaking?  
22 A In a broad sense, what is of interest

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1 typically is what the consumer's take-away is from a  
2 particular piece of communication, whether it be an  
3 advertising, it be a package, I've done studies with  
4 privacy disclosures, a variety of communications. So  
5 consumer take-away, consumer interpretation, those  
6 have been the issues of interest.  
7 Q And broadly speaking, do you have an  
8 understanding of why those have been -- those topics  
9 you just described have been areas of interest for  
10 the Federal Trade Commission, for example?  
11 A Their focus, not always, but often is on  
12 whether consumers have been deceived, and so the  
13 issue they tend to focus on is have consumers taken a  
14 message from the advertisement that is false, is  
15 there something in the advertisement that may be  
16 factually true but is creating a misleading  
17 impression or a misleading take-away for the  
18 consumers. So the study is designed in a manner as  
19 to kind of tease out the effect of the communication  
20 on consumer take-away.  
21 Q And in your opinion broadly speaking, is  
22 that an effective way of ascertaining consumer

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1 take-away?  
2 A Yes, it is.  
3 Q Is it -- is it the most effective way of  
4 ascertaining consumer take-away in your opinion?  
5 A So that depends on the situation. There  
6 are situations where at the FTC, the Commission would  
7 conduct a facial analysis, so they would look at  
8 material and rely on their expertise to make an  
9 evaluation that a particular claim is or is not  
10 misleading. This can often happen when the claims  
11 are express, they simply state something that is not  
12 true, or they're implied but they are very strongly  
13 implied. In other situations, the Commission might  
14 move to an empirical test where there might be  
15 uncertainty about whether or not a claim is deceptive  
16 or misleading, and the Commission may want to rely on  
17 empirical evidence. So it depends on the situation.  
18 Q In your experience, when the Federal Trade  
19 Commission, the Commission about which you were just  
20 referring as the Federal Trade Commission --  
21 A Right.  
22 Q -- has used a facial analysis, that is, a

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1 non-empirically based analysis, has that analysis  
2 been undertaken by attorneys at the Federal Trade  
3 Commission?  
4 **A No, typically the FTC would have an expert  
5 do the analysis.**  
6 Q And when you say the FTC would have an  
7 expert do the facial analysis, what is your  
8 understanding of what that process would involve?  
9 **A So if I'm doing the analysis at the FTC,  
10 for example, I look at the ad, I rely on my  
11 experience in evaluating ads, and I try to make an  
12 assessment, is this a situation where I feel  
13 confident that the claims and consumer take-aways are  
14 so clear to me based on my experience that an  
15 empirical test is not necessary, or do I feel like  
16 there is some uncertainty and I would prefer to do an  
17 empirical test. The same thing happens when the FTC  
18 hires an outside expert. The outside expert will  
19 look at the material, they will rely on their own  
20 expertise, the fact that they've looked at these  
21 kinds of materials before, they've looked at a lot of  
22 studies, and make a similar assessment. Again, is a**

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1 **facial analysis enough or is it necessary to have an  
2 empirical test.**  
3 Q And you -- it sounds like you've been in  
4 the position where you've made that determination how  
5 many times?  
6 **A Well, determination may be very strong. I  
7 only recommend --**  
8 Q Recommendation.  
9 **A -- to the FTC, but I do this routinely.  
10 It's not uncommon for the FTC to show me materials  
11 and say do you see a problem here, is this something  
12 that should be looked at, and I'm clearly just one  
13 voice among many, and then do you think an empirical  
14 study can be done, what might be the nature of the  
15 empirical study, do you think one is necessary. So  
16 these are questions I deal with often.**  
17 Q And I want to make sure I understand  
18 something. You -- you've used the concept  
19 advertisement or advertising. Is that concept as  
20 you've just described it defined as you earlier -- as  
21 you defined that concept earlier in this deposition?  
22 **A Yes.**

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1 Q Okay. And when you do a facial analysis  
2 versus an empirical analysis, would so-called subtle  
3 issues of the kind that you described before have  
4 anything to do with that decision-making or  
5 recommendation in -- insofar as you're recommending  
6 either a facial analysis or an empirical analysis to  
7 the FTC?  
8 **A So let me clarify a moment what I mean by  
9 subtle issues. So in that context, I was talking  
10 about issues that are subtle in terms of doing a  
11 survey several years later. That doesn't mean these  
12 issues are subtle for a facial analysis or in this  
13 case more than a facial analysis. I'm actually  
14 applying a well defined framework, a well accepted  
15 framework systematically to a document.**  
16 **So although it is a nonempirical analysis,  
17 it's a conceptual analysis. It's not simply an  
18 opinion. It's a systematic analysis of that  
19 communication based on in this case six articulated  
20 factors with clear guidelines on how each factor  
21 would apply to assessing whether the disclosures are  
22 clear and conspicuous. So to me, there's nothing**

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1 **subtle about that analysis here.**  
2 Q You -- you've used the phrase "conceptual  
3 analysis" a couple of times. What specifically do  
4 you understand that phrase to mean or how are you  
5 specifically using it here?  
6 **A So I'm using it in a couple of ways. First  
7 is that this is not an empirical analysis, so I  
8 haven't done a study or a survey, as you would put  
9 it. And second is I have a conceptual framework, in  
10 this instance I would argue a well defined, well  
11 accepted conceptual framework that provides  
12 guidelines, but very clear guidelines for how to  
13 evaluate the clarity and the conspicuousness of  
14 disclosures in -- in any kind of document. So that's  
15 what I mean by a conceptual analysis.**  
16 Q And then you just used the phrase  
17 "systematic analysis." Can you explain to us more  
18 specifically what you mean by that?  
19 **A So the FTC guidelines provide a framework  
20 that essentially tells you how to evaluate the  
21 stimulus. Two different people with knowledge of the  
22 framework applying it to the same stimulus would use**

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

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

10 A No, I have not.

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

16 A No, I have not.

17 Q Why not?

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

22 Q And same question for loan applications.

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

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

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

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

17 A I don't believe I have.

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

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

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

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

12 Q Refund anticipation loans?

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

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

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1 anticipation loans?

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

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

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

13 Q What is your general understanding?

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

17 Q Uh-huh.

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

20 Q Anything else?

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

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

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

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

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

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

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

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

8 A No, I did not.

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

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

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

18 MS. WEINBERG: If you know.

19 A Yeah, it would be pure guesswork.

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

22 A The folks at the CFPB told me.

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1 Q I see. And does that inform your analysis  
2 here?

3 A No, it doesn't.

4 Q Why?

5 A Because my focus is on the clarity of the  
6 elements in the loan agreement. Again, I'm -- my  
7 analysis is a systematic analysis based on this  
8 framework that we've talked about, and that's all I  
9 focused on.

10 Q If I could ask you, Dr. Hastak, to please  
11 turn back to what was marked as Exhibit 2, which is  
12 the document you have in front of you, Dot Com  
13 Disclosures, and specifically to turn your attention  
14 to page 6 of that document, and it's titled "B, The  
15 Clear and Conspicuous Requirement." Do you see that?

16 A Yes, I do.

17 Q And if I can turn your attention to the  
18 second sentence of that first paragraph reads,  
19 "Whether a disclosure meets this standard is measured  
20 by its performance. That is how consumers actually  
21 perceive and understand the disclosure within the  
22 context of the entire ad," or advertisement. Do you

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1 have an understanding in connection with your use of  
2 these guidelines as to what that sentence means?

3 A Let me just read it for a moment.

4 Q Please do.

5 A Okay, I've looked at it.

6 Q And what is your understanding of this  
7 sentence in connection with your use of the  
8 guidelines described here in Exhibit 2?

9 A So to me, the main point that's being made  
10 is that it's the net impression that matters. It  
11 isn't the impact of any one aspect of the disclosure  
12 that's a determining factor. You need to look at the  
13 disclosure or disclosures in context, so as a part of  
14 the entire document, and you need to assess the  
15 disclosure on multiple dimensions, the dimensions  
16 that have been laid out in this document, rather than  
17 on a single dimension.

18 Q What is your understanding of those  
19 dimensions?

20 A So in my report, for example, I focus on  
21 six dimensions which I think are the crucial  
22 dimensions in evaluating clear and conspicuous.

<p style="text-align: right;">81</p> <p>1 Those are all articulated in this document. The 2 document also talks about a few other dimensions 3 which I didn't think were relevant to my analysis. 4 Some of them, for example, apply to audiovisual 5 stimuli, which wasn't the case in the analysis I was 6 doing. So I'm thinking in my particular instance, 7 the recommendation is make sure that you evaluate a 8 disclosure or disclosures in context, look at the 9 whole document or look at the whole ad, and make sure 10 that you systematically evaluate the disclosure or 11 disclosures on each of these dimensions before you 12 form an overall assessment, but it's the overall 13 assessment, the net impression that matters.</p> <p>14 Q And when you're using -- I want to make 15 sure we have a clear record. When you're using the 16 word "dimension," what is it you mean specifically?</p> <p>17 A So for example, one of the dimensions I 18 talk about in my report is prominence. Another one I 19 talk about is placement, a third one is clarity. So 20 these are all dimensions on which you can evaluate a 21 disclosure or a set of disclosures. And again, to 22 me, the document is suggesting make sure you evaluate</p>	<p style="text-align: right;">83</p> <p>1 way the consumer views the document, but let me give 2 a clarification. So for example, when you look at 3 this statement here, within the context of the entire 4 ad, so the ad is a document. It's a static document. 5 Different consumers view the ad under different 6 circumstances. I don't believe the document is 7 saying that you need to understand everything that 8 every consumer is doing when they're looking at the 9 ad as a basis of evaluating the ad, although those 10 things are important, but it's impossible to -- in 11 that sense, you could broaden the context to a point 12 where there's no way you can actually get a handle on 13 it.</p> <p>14 So to me, what it's saying is the context 15 that's truly important is the document within which 16 the disclosure or communication is embedded. Don't 17 just look at the disclosure. Look at the entire 18 document. Would the way consumers view the documents 19 matter? Yes, it would, but I don't see this 20 guideline as emphasizing that so much as it's saying 21 look at the entire document, look at the net 22 impression that is created by that document.</p>
<p style="text-align: right;">82</p> <p>1 the disclosures in context and make sure you evaluate 2 them on each of these dimensions or factors, if you 3 will, independently before you put it all together 4 into a single overall assessment.</p> <p>5 Q And when you talk about your understanding 6 of in context, what is it you understand that 7 concept, in context, to be?</p> <p>8 A So here it says within the context of the 9 entire ad, and so instead of ad, if I replace the 10 loan agreement, which is the document of interest 11 here, it says make sure you look at the entire loan 12 agreement. There's what it's telling me.</p> <p>13 Q Would the context in which the loan 14 agreement was provided to a consumer be part of this 15 in-context assessment?</p> <p>16 A Yes, it's -- it's -- it's the loan 17 agreement and the consumer looking at the loan 18 agreement, so yes, that would be a part of context.</p> <p>19 Q Would the -- would the user interface on -- 20 on line be part of in-context as you understand that 21 concept?</p> <p>22 A So my understanding is that context is the</p>	<p style="text-align: right;">84</p> <p>1 Q Dr. Hastak, if I can ask you to turn the 2 page of Exhibit 2, page 7, item C, what are clear and 3 conspicuous disclosures, this is where we are, and if 4 I can ask you specifically to look at the first 5 sentence right under that item, C, it says, "There is 6 no set formula for a clear and conspicuous 7 disclosure. It depends on the information that must 8 be provided and the nature of the advertisement." 9 What is your understanding of that sentence as you 10 have used these guidelines?</p> <p>11 A So in my mind, that gets to the issue I was 12 mentioning before, which is in my mind the 13 distinction between a rule or a set of rules and 14 guidelines. I think what the FTC is saying here and 15 the way that I've seen them apply these guidelines is 16 this is not a checklist. You have to evaluate each 17 disclosure in the entirety of the document in which 18 it appears, and you need to independently assess the 19 disclosure on these dimensions or attributes that are 20 listed below. There are guidelines for how you do 21 the evaluation on each attribute, but these are 22 guidelines. These are not rules.</p>

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1 Q And the guidelines -- the dimensions that  
2 you're describing, or that you just described are  
3 those dimensions enumerated in the bullet points here  
4 on page 7 of Exhibit 2, so it's one, two, three,  
5 four, five, six, seven bullet points?  
6 **A Yes, that's what's in the document.**  
7 Q Okay.  
8 **A Is it seven -- it's seven, sorry.**  
9 Q And if I can ask you to look at number 7,  
10 the last bullet point, and again, we're on page 7 of  
11 Exhibit 2. It says, "Whether the language of the  
12 disclosure is understandable to the intended  
13 audience." Do you have an understanding of what this  
14 bullet point means in the context of your reliance on  
15 these guidelines for this matter?  
16 **A Yes, I do.**  
17 Q And what is that understanding?  
18 **A So one aspect is that the disclosure should**  
19 **be understandable, and the second aspect is what is**  
20 **understandable may vary by audience, and I believe**  
21 **they give an example of children, for example, and**  
22 **how certain things that may be clear to adults may**

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1 **not be clear to children. So the guideline is**  
2 **suggesting looking at both, clarity, and keeping in**  
3 **mind the audience. I'm just going to stand up for a**  
4 **second.**  
5 MS. BAKER: Sure. We can take a  
6 three-minute break if that works.  
7 THE WITNESS: That would be helpful.  
8 MS. BAKER: Absolutely. 11:33. We're off  
9 the record.  
10 (Recessed at 11:33 a.m.)  
11 (Reconvened at 11:39 a.m.)  
12 BY MS. BAKER:  
13 Q We're back on the record at 11:40, 11:39.  
14 Dr. Hastak, I have what I'm going to mark as Exhibit  
15 3, if the court reporter could please mark this  
16 document, thank you.  
17 (Deposition Exhibit Number 3 was marked for  
18 identification.)  
19 MS. WEINBERG: Thank you.  
20 THE WITNESS: Thank you.  
21 BY MS. BAKER:  
22 Q Dr. Hastak, I've handed you a document

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1 called "Designing Evidence-Based Disclosures, A Case  
2 Study of Financial Privacy Notices" on which you  
3 appear to be one of the coauthors; is that correct?  
4 **A Yes.**  
5 Q And it's from the Journal of Consumer  
6 Affairs, and it looks like it's from the summer of  
7 2012; is that correct?  
8 **A Yes.**  
9 Q And have you presumably seen this document  
10 before?  
11 **A Yes, I have.**  
12 Q And do you want to just take a minute and  
13 confirm it's the article you believe it is or a copy  
14 of the article you believe it is?  
15 **A Yes, it does appear to be my document.**  
16 Q Okay, if we can enter Exhibit Number 3 into  
17 the record, you were one of the coauthors on this  
18 report -- on this study, rather; is that correct?  
19 **A Yes.**  
20 Q Okay. What's the general purpose or  
21 finding, if you will, of this article, that this  
22 article's reporting on? Let me be specific.

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1 **A So the article is reporting on the**  
2 **development of a prototype financial privacy notice,**  
3 **and it describes what we call a consumer-centric**  
4 **approach where we develop a prototype notice using**  
5 **qualitative testing with consumers, using one-on-one**  
6 **interviews and focus groups, and then we test that**  
7 **notice in terms of its ability to communicate key**  
8 **issues to consumers against a number of other**  
9 **notices, in particular, the -- what we call the**  
10 **current notice or the existing notice. So we engage**  
11 **in an empirical test in comparing these -- these**  
12 **notices.**  
13 Q And as one of the coauthors of this paper  
14 which concerns a study, do you have an understanding  
15 of why that type of empirical analysis was done here?  
16 **A Yes.**  
17 Q What's your understanding?  
18 **A So there were several reasons for doing the**  
19 **empirical analysis. One is that empirical data**  
20 **provides -- a well done study provides the best**  
21 **evidence that you can get in terms of how consumers**  
22 **would process certain information. The other was**

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1 that consumer testing is often useful in a situation  
2 where different interest groups, different agencies,  
3 consumer groups, industry, have different views of  
4 what might be the best document or notice in this  
5 case. Data can help address those issues.  
6 Q And when you say that a consumer survey or  
7 a well done study can be -- I believe it was your  
8 phrase, the best way to process -- for consumers --  
9 to figure out how consumers process certain  
10 information. Is that your testimony?  
11 MS. WEINBERG: I don't think that -- if the  
12 reporter can read it back, I don't think that's what  
13 he said.  
14 MS. BAKER: Okay, please do. Thank you.  
15 - - -  
16 THE REPORTER: Answer: "So there were  
17 several reasons for doing the empirical analysis.  
18 One is that empirical data provides a well done study  
19 provides the best evidence that you can get in terms  
20 of how consumers would process certain information.  
21 The other was that consumer testing is often useful  
22 in a situation where different interest groups,

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1 different agencies, consumer groups, industry, have  
2 different views of what might be the best document or  
3 notice in this case, data, and help address those  
4 issues."  
5 - - -  
6 BY MS. BAKER:  
7 Q Thank you.  
8 A So I would -- I would add a little bit to  
9 that. To qualify --  
10 Q To what?  
11 A To the statement I just made.  
12 Q Okay.  
13 A So what -- what I would -- what I would add  
14 to that is -- is when possible, consumer data  
15 provides the best way to assess consumer, you know,  
16 take-away from materials. It's certainly not the  
17 only way to do this, but yeah, I would -- that's what  
18 I would say.  
19 Q And you say when possible. When is it not  
20 possible?  
21 A Well, this was a case, for example, where  
22 at least in my assessment of the approach that would

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1 be most useful, I reached the conclusion that it  
2 didn't make sense to do an empirical study for the  
3 various reasons that I listed earlier.  
4 Q So was not possible, or was it the case  
5 that it didn't make sense?  
6 A It wasn't possible to do a study  
7 replicating the consumer experience as closely as I  
8 would have liked, and it wasn't possible to do a  
9 retrospective survey because of memory problems being  
10 the chief issue, so the best available course in my  
11 opinion was to analyze the key document in this case  
12 using a framework that's based on empirical research  
13 in the past that's been applied quite often that's  
14 been looked at over many years by academics and  
15 others. So to me, that provided the next best  
16 approach that was available.  
17 Q You said it would not have been possible to  
18 do a study replicating the consumer experience as  
19 closely as I would have liked. What other component  
20 parts would you have wanted to have here to replicate  
21 the consumer experience for purposes of conducting a  
22 survey or study in this matter?

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1 A Well, the chief difficulty, as I mentioned  
2 before, was the consumer is talking to a salesperson,  
3 or many consumers are talking to a salesperson  
4 concurrently while they are looking at the loan  
5 document, and I have not seen an empirical study that  
6 looks at that format, and I couldn't imagine how one  
7 could replicate that in a systematic way.  
8 Q If I can take you to, on Exhibit Number 3,  
9 again, for our record, that's the Designing Evidence-  
10 Based Disclosures case study on which you are the  
11 co-author, Dr. Hastak, if I can take you to page 228  
12 of this document, but before we come here, I want to  
13 ask you a follow-up question. Why did you not  
14 consider in your review here the fact of phone calls  
15 in determining the -- or assessing the disclosures of  
16 the loan agreement?  
17 MS. WEINBERG: It's misstating his  
18 testimony. He didn't say that he didn't consider the  
19 fact of the phone calls.  
20 BY MS. BAKER:  
21 Q Did you consider the fact of the phone  
22 calls?

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1 **A I thought about if there was a way to**  
2 **incorporate the phone calls into my analysis, but my**  
3 **chief stumbling block, as I said, was the variability**  
4 **that the phone calls introduce in the material that**  
5 **consumers are evaluating. So that's why I focused on**  
6 **what I considered to be the loan agreement, the**  
7 **important document that was a static document in this**  
8 **situation.**

9 Q So do you believe it's possible that the  
10 phone calls themselves as you understand the point in  
11 the process where they took place could have  
12 facilitated a consumer's understanding of the loan?

13 A Well, to be honest, I think many things are  
14 possible. I mean, that could have been one outcome,  
15 but as I said, I can envision a situation where the  
16 opposite outcome occurs where -- where they have no  
17 impact. It's just impossible to know, and because  
18 the phone call, again, as I said, is not a static  
19 communication, one would be guessing if one tries to  
20 figure out how the phone calls factored in.

21 Q So I want to make sure I understand. Is it  
22 your testimony that you would never conduct a

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1 consumer survey that involved as a component part of  
2 the consumer experience some kind of interactive  
3 communication via telephone?

4 A No, I'm not saying that. I can see  
5 evaluating phone calls, for example, for a different  
6 purpose. If the purpose, for example, is to codify  
7 what the salesperson says, typically, understanding  
8 that different salespeople say somewhat different  
9 things, one could do what is called a content  
10 analysis of the phone calls, but that doesn't get at  
11 the issue that I was interested in, which was are the  
12 disclosures clear and conspicuous. That requires,  
13 again, in my assessment, what I'm calling a  
14 standardized or a static stimulus.

15 Q If I can ask you again to come back to page  
16 228 of Exhibit 3, and specifically if I can take you  
17 down to the last complete paragraph of that page,  
18 which starts with the sentence, "Layering of  
19 information," and it says, "Layering of information  
20 needs to be done carefully and thoughtfully.  
21 Researchers and policy-makers need to identify the  
22 key pieces of information that are essential to

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1 consumer understanding and usability and make sure  
2 those pieces are located together in a highly visible  
3 place and format." What is your understanding of  
4 that sentence, given your coauthorship of this  
5 article?

6 A As I'm looking at it now, it's a long  
7 article so it's difficult to be entirely sure of what  
8 specifically I'm saying there, but I could give you a  
9 gist.

10 MS. WEINBERG: Do you need more time to  
11 review the article?

12 A As I'm recalling how this section was  
13 written, these are -- these are broad lessons learned  
14 from this exercise and other work we've all done on  
15 -- on -- on disclosures.

16 Q Okay.

17 A So with that sort of background, I think  
18 the main thing we are saying here is that you need to  
19 look at what the objective of your communication is,  
20 what are you trying to accomplish, right? So you  
21 need to identify the key pieces of information that  
22 are essential to consumer understanding and

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1 usability, what is it that consumers -- in this  
2 instance, for example, the issues were how can  
3 consumers understand what information is being  
4 collected, how can consumers understand what  
5 information is being shared, what are the key aspects  
6 of the disclosure that matter, and then present them  
7 in a manner that would increase that communication.

8 Q What did you do with respect to your work  
9 in this matter, this matter concerning Integrity  
10 Advance, to ascertain what key pieces of information  
11 would have been essential to a consumer's  
12 understanding of the loan agreements?

13 A So in this instance, to me, the issue was  
14 quite simple, which is that consumers need to  
15 understand that if they roll the loan over, their  
16 costs will be substantially higher, sometimes two to  
17 three times higher than the costs they would incur if  
18 they paid off the loan in one shot, and in that case,  
19 they would incur the costs as exemplified in the  
20 truth in lending box.

21 So the central issue to me in looking at  
22 the disclosures in the loan agreement was where in

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1 the loan agreement is there information that will  
2 tell consumers that these costs will be higher. That  
3 was the purpose of the analysis, and then is that  
4 information presented in a clear and conspicuous  
5 manner. So that was kind of the approach.

6 Q Do you have an understanding of whether or  
7 not the issue you just described of loan renewal was  
8 an important piece of information for the consumers  
9 who had loans with Integrity Advance?

10 A Okay, so my understanding was that a  
11 majority of consumers who take loans from Integrity  
12 Advance renew their loans. Given that knowledge, it  
13 was clear to me that information that would affect  
14 that decision would be important to Integrity Advance  
15 borrowers, and the cost of renewing the loan would  
16 therefore be an important factor, so that's how I  
17 reached that conclusion.

18 Q And when you say an important factor, what  
19 is it you mean by that phrase?

20 A It's a factor that would affect their  
21 decision of whether or not to roll the loan over, one  
22 of the factors.

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1 Q How do you know that?

2 A Because I know that cost, money, is an  
3 important factor in consumer decision-making. That's  
4 been shown over and over.

5 Q But how do you know that in this instance  
6 as it relates to consumers who had loans from  
7 Integrity Advance, the particular issue of loan  
8 renewal was an important one that would have informed  
9 a decision to take a loan out in the first instance?

10 A Again, what I'm saying is whether or not  
11 people renew the loan affects the costs of the loan  
12 significantly. We know that. So when consumers are  
13 deciding whether to take the loan or how to manage  
14 the loan, those decisions would be affected by cost  
15 considerations.

16 Q Did you undertake any assessment of what  
17 was important to customers, specifically important to  
18 customers who were Integrity Advance customers in  
19 this case?

20 A Are you asking me if I talked to Integrity  
21 Advance customers?

22 Q Yes.

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1 A No, I did not.

2 Q Did you ever undertake any kind of survey  
3 to ascertain what kind of information a Integrity  
4 Advance customer would consider to be important in  
5 making a decision to take out a loan from Integrity  
6 Advance?

7 A No. I did not. What I'm relying on is  
8 based on my experience and understanding of the kinds  
9 of things that consumers typically focus on, and cost  
10 is recognized to be a factor that people consider in  
11 almost any decision. Again, as I said, it's not the  
12 only factor, but it's recognized to be an important  
13 factor, so I'm going with that.

14 Q So that's the sole basis that you have for  
15 determining that in your opinion, that would have  
16 been a key piece of information.

17 A Yes.

18 Q And you testified earlier, however, that  
19 you have not previously done any work reviewing  
20 payday loan agreements.

21 A That's correct.

22 Q And is it fair to say that you have also

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1 similarly not done any work in the realm of assessing  
2 consumer behavior as it relates to payday loans?

3 A I've not studied payday loans specifically,  
4 no.

5 Q And when you say you haven't studied payday  
6 loans specifically, you mean as well customers who  
7 take out payday loans?

8 A I haven't studied that population, no.

9 Q Okay. If I could turn your attention,  
10 Dr. Hastak, please, on Exhibit 3 to page 230 of this  
11 article, and again, for our record, it's "Designing  
12 Evidence-Based Disclosures," and specifically if I  
13 can take you to the first -- well, the paragraph that  
14 carries over from the prior page, and the last  
15 sentence of that paragraph, which reads -- do you see  
16 where I am? It reads, "Without direct exposure to  
17 actual consumers trying to understand and use the  
18 disclosures, it is all too easy to let self-  
19 confidence in one's own communication skills undercut  
20 the design of effective consumer communications."

21 A Uh-huh.

22 Q Based on your coauthorship of this article,

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1 what is your understanding of that sentence?  
2 **A So I think what we were trying to say there**  
3 **is that if you are designing disclosures, the**  
4 **approach that you should consider, and consider**  
5 **first, is consumer testing.**  
6 Q And is it your opinion that that assessment  
7 only concerns the specific act of designing a  
8 disclosure?  
9 **A Well, it applies to designing disclosures**  
10 **it as states in that -- that sentence. I'm not sure**  
11 **what else you mean by that.**  
12 Q So is it possible -- well, let me ask you  
13 this. Is it your opinion that this sentence and the  
14 sentiment expressed in this sentence would apply to  
15 other component parts of evaluating a disclosure?  
16 **A I see. So you're saying if a disclosure**  
17 **exists and you want to evaluate it, would you -- no,**  
18 **I think the sentiment would apply there as well. To**  
19 **me, I would say certainly you ought to look at**  
20 **whether or not a consumer study is possible.**  
21 Q Dr. Hastak, if I can ask you to please go  
22 back to Exhibit 1, which is your expert report

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1 provided to us in this matter --  
2 **A Okay.**  
3 Q Have you ever provided any kind of expert  
4 -- an expert report to the CFPB previously?  
5 **A I have worked --**  
6 MS. WEINBERG: And to the extent that this  
7 reveals any privileged communications or information  
8 about any communications you've had with attorneys at  
9 the CFPB, I'm going to instruct you not to answer.  
10 **A Okay, so the one matter I can think about**  
11 **is --**  
12 Q And let me -- let me caution you, I don't  
13 want to know about confidential --  
14 **A Yeah.**  
15 Q -- investigations.  
16 **A Yeah, so I'm thinking about something --**  
17 Q I really don't.  
18 **A -- that is public.**  
19 Q Okay.  
20 **A So I did a project -- I worked for the CFPB**  
21 **along with other people that involved mortgage**  
22 **disclosures, simplifying the mortgage disclosures,**

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1 **and in that connection, I coauthored a report.**  
2 Q And that's -- that was a workshop as well?  
3 **A I don't recall a workshop. There may be**  
4 **may have been a workshop, but I don't think I was**  
5 **involved in that.**  
6 Q Well, to the extent you can discuss that  
7 because it's public, was that with the Office of  
8 Enforcement?  
9 **A I don't -- I'm pretty sure it wasn't.**  
10 Q Was it in March --  
11 **A I don't know which office it was.**  
12 Q Okay, that's fair. And to the extent  
13 you've done other work for the CFPB, it's --  
14 **A I actually -- I'm sorry, I cite that in my**  
15 **-- in my C.V.**  
16 Q I've seen it. Thank you.  
17 **A Yeah.**  
18 Q To the extent you've done other work for  
19 the CFPB, it's fair to say you cannot discuss that  
20 work.  
21 **A Yes.**  
22 Q Okay. If I can ask you please to turn to

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1 page 11 of your expert report, which is Exhibit 1 --  
2 **A Okay.**  
3 Q And if I can take your attention to the  
4 middle of the page under subpart A, "Prominence," and  
5 specifically one, two, three, four, five, maybe six,  
6 the sentence that starts with "In addition," do you  
7 see where I am, Dr. Hastak?  
8 **A Under "Prominence," the sixth sentence?**  
9 Q I believe it's the sixth.  
10 **A "In addition," yes.**  
11 Q Yes, it says, "In addition, the box makes  
12 this information stand out, making it likely  
13 borrowers will attend to it and process it." What is  
14 the -- what is the basis for that statement?  
15 **A So there are various techniques for**  
16 **increasing the prominence of a stimulus. You could**  
17 **make it larger. Size does that. You could use**  
18 **color. One of the strategies that could be used is**  
19 **putting it in a box. So it's simply pointing out**  
20 **that that strategy, you know, has shown to be**  
21 **effective in increasing prominence.**  
22 Q And when you say it's been shown to be

<p style="text-align: right;">105</p> <p>1 effective, what is it you mean?</p> <p>2 <b>A Well, there's literature that suggests that</b></p> <p>3 <b>boxing can increase prominence. That's also one area</b></p> <p>4 <b>where there's some literature that suggests that it</b></p> <p>5 <b>may not really be effective, but generally it's</b></p> <p>6 <b>considered to be an effective technique in increasing</b></p> <p>7 <b>prominence, and it's widely used.</b></p> <p>8 Q Did you happen to look at the loan</p> <p>9 agreement in -- in color or black and white?</p> <p>10 <b>A In black and white, is what I -- what I</b></p> <p>11 <b>looked at.</b></p> <p>12 Q Do you know if it's offered in a different</p> <p>13 -- or was offered or presented to customers in a</p> <p>14 different format?</p> <p>15 <b>A No, I don't.</b></p> <p>16 Q You don't know.</p> <p>17 <b>A No, I don't know.</b></p> <p>18 Q Okay. And you say in here making it likely</p> <p>19 borrowers will attend to it. Do you know for certain</p> <p>20 if borrowers attended to it and processed it?</p> <p>21 <b>A No, I don't.</b></p> <p>22 Q If I can take your attention to page 12 of</p>	<p style="text-align: right;">107</p> <p>1 Q Okay, and when you talk about literature,</p> <p>2 what literature are you referring to?</p> <p>3 <b>A So the FTC guidelines provide some</b></p> <p>4 <b>direction for how to evaluate a disclosure or a set</b></p> <p>5 <b>of disclosures on these factors, if you will. I have</b></p> <p>6 <b>six of them in my report. There is literature that</b></p> <p>7 <b>talks about how to increase the prominence of a</b></p> <p>8 <b>disclosure or an element or a warning, for example,</b></p> <p>9 <b>and also discusses very similar factors.</b></p> <p>10 <b>And there has been research in marketing,</b></p> <p>11 <b>there has been research in human factors, for</b></p> <p>12 <b>example, that has all looked at some of these --</b></p> <p>13 <b>there's research in plain language, that has all</b></p> <p>14 <b>looked at how you can increase the readability, the</b></p> <p>15 <b>prominence, the noticeable of important information,</b></p> <p>16 <b>and one of the factors I've seen is upper case. The</b></p> <p>17 <b>fact that if material is all upper case, that makes</b></p> <p>18 <b>it less readable.</b></p> <p>19 Q But as it relates to this particular</p> <p>20 matter, you didn't undertake any separate survey or</p> <p>21 assessment to ascertain whether that was actually the</p> <p>22 case here.</p>
<p style="text-align: right;">106</p> <p>1 your report please, the first complete paragraph,</p> <p>2 second sentence, "Unfortunately, this sentence,</p> <p>3 placed among several sentences, approximately a half</p> <p>4 page, that are all presented in upper case bold font,</p> <p>5 and this decreases its prominence and noticeability."</p> <p>6 What is the basis for that sentence?</p> <p>7 <b>A Can I look at the --</b></p> <p>8 Q Please.</p> <p>9 <b>A -- material here? So this is under special</b></p> <p>10 <b>notice. Yes, so doing things like bolding or putting</b></p> <p>11 <b>things in upper case can attract people's attention,</b></p> <p>12 <b>but there's also literature that says that if you put</b></p> <p>13 <b>an entire communication, for example, whole paragraph</b></p> <p>14 <b>or a whole page all in upper case, that's difficult</b></p> <p>15 <b>for consumers to process. So I'm simply saying that</b></p> <p>16 <b>the prominence that is achieved from upper case is</b></p> <p>17 <b>negated by the fact that you're placing the sentence</b></p> <p>18 <b>among other sentences which are all in upper case so</b></p> <p>19 <b>it doesn't stand out. There isn't a contrast there.</b></p> <p>20 Q And you looked at this document in black</p> <p>21 and white on a PDF.</p> <p>22 <b>A That's correct.</b></p>	<p style="text-align: right;">108</p> <p>1 <b>A No, here I'm applying well known guidelines</b></p> <p>2 <b>in a conceptual analysis of the disclosures. There</b></p> <p>3 <b>is no empirical analysis here.</b></p> <p>4 Q And the well known guidelines again are the</p> <p>5 ones we discussed earlier today?</p> <p>6 <b>A That's correct, the FTC guidelines.</b></p> <p>7 Q Dr. Hastak, if I can take you to page 13 of</p> <p>8 your expert report please, again, that's Exhibit 1 --</p> <p>9 <b>A Okay.</b></p> <p>10 Q First complete sentence, "The three</p> <p>11 qualifying disclosure paragraphs are positioned in</p> <p>12 the bottom half of the first page. This less</p> <p>13 advantageous placement suggests that the qualifying</p> <p>14 paragraphs are less likely to be noticed and read</p> <p>15 than the TILA or TIL disclosures." What's the basis</p> <p>16 for that second sentence I just read, "This less</p> <p>17 advantageous," starting with that?</p> <p>18 <b>A So when consumers look at a document on</b></p> <p>19 <b>line as well as off line, but particularly on line,</b></p> <p>20 <b>there is research suggesting that they tend to look</b></p> <p>21 <b>at the material at the top first, and then they tend</b></p> <p>22 <b>to skim down further. So readability is highest for</b></p>

<p style="text-align: right;">109</p> <p>1 material that is up near the top, so that is 2 generally considered to be an advantageous position. 3 This is true in advertising research as well. The 4 material on the top is considered to be a more 5 advantageous position based on position alone. 6 So what I'm saying here is that the 7 information in the TIL box occupies a relatively more 8 advantageous position than the material that comes 9 later, and then as you -- 10 Q You say -- 11 A Sorry, and as you get deeper in the 12 document and look at potential disclosures that 13 happen on page 2 and 3 and 4, then the position 14 deteriorates. 15 Q And this is based on your review of a PDF 16 version of what you understand to be the loan 17 agreement that customers looked at on line. 18 A That's correct. 19 Q In black and white. 20 A That's correct. 21 Q Okay. If I can ask you please, still on 22 page 13 of Exhibit 1, your report, to go down to</p>	<p style="text-align: right;">111</p> <p>1 promotional material, that you ought to place it as 2 close as possible to the claim it's intended to 3 qualify, and if possible, you should link the two so 4 consumers can see the two are connected. If you 5 could do both, that structurally is the best way to 6 improve proximity. It's just one dimension of course 7 of clear and conspicuous, but just to improve 8 proximity, you would want it to be right next to the 9 claim it's supposed to qualify, and the two should be 10 linked in some manner. 11 Q And when you say linked, which you put in 12 quotes here, what is it you mean by that word? 13 A So consumers should -- should see the 14 connection between the claim and the qualifying 15 disclosure immediately. Consumers shouldn't have to 16 put two and two together. It should be clear to 17 consumers either through language that directly tells 18 consumers as an example, here's the cost you will 19 incur if you pay off the loan in one shot, but here 20 are the costs you will incur if you renew it just 21 once, here are the costs you will incur if you renew 22 it four times. So the qualifying information that</p>
<p style="text-align: right;">110</p> <p>1 section -- subsection C, titled "Proximity," to what 2 is the second sentence in that first paragraph, 3 starts, "TIL box," about finance charges and total 4 payments -- I'm sorry, that's -- 5 MS. WEINBERG: That's the first sentence. 6 BY MS. BAKER: 7 Q I apologize. The first sentence is -- 8 thank you. Let me read the first sentence. That's 9 the second phrase of the first sentence. "Since the 10 cost information in the three disclosure paragraphs 11 and in the section entitled 'Schedule of Charges and 12 Fees' is intended to qualify the statements made in 13 the TIL box about finance charges and total payments, 14 it is important that this information is placed in 15 close proximity to the TIL box and linked to the cost 16 statements therein." What is your -- what is the 17 basis for that first sentence? 18 A So this recommendation comes from the FTC 19 guidelines pretty directly based on a lot of work 20 that has happened at the FTC. In particular, the FTC 21 recommends that if you have a disclosure that is 22 directly qualifying another claim in the ad or the</p>	<p style="text-align: right;">112</p> <p>1 tells the information in the TIL box is only accurate 2 if you take certain actions, all right? But that 3 information is not accurate if you do other things. 4 That link would be made very explicit, and that would 5 be one way to link them. 6 Q When you say link, do you mean hyperlink? 7 A No, I'm not thinking hyperlink. I'm 8 talking about a conceptual link, a connection that 9 tells consumers this claim is qualified. 10 Q And -- and you say should. What -- why do 11 you use the modifier "should"? You just said 12 "should" in your response. I don't think it's in the 13 document itself. 14 A So that would be -- that would be an 15 approach to improve proximity. 16 Q How do you know that? 17 A Because again, this is -- this is based on 18 reach at the FTC, it's based on the guidelines that 19 the FTC puts out. It's been explicitly stated by the 20 FTC, if you want to qualify a claim with a 21 disclosure, don't bury the disclosure at the bottom, 22 don't put it in fine print. Put it right next to the</p>

<p style="text-align: right;">113</p> <p>1 <b>claim. The closer you come, the better it will be.</b></p> <p>2 Q How do you know in this instance that that</p> <p>3 recommendation would provide a more, to use your</p> <p>4 phrase, clear and conspicuous understanding or</p> <p>5 explanation or disclosure?</p> <p>6 <b>A So again, it's based on work that I've done</b></p> <p>7 <b>at the FTC. It's work that the FTC has done over the</b></p> <p>8 <b>years where they have noticed that when you do place</b></p> <p>9 <b>the disclosure really close to the claim, if you do</b></p> <p>10 <b>empirical testing, you find that consumers understand</b></p> <p>11 <b>the claim and the qualifier better. If you bury the</b></p> <p>12 <b>disclosure further down, or worse still, put it in a</b></p> <p>13 <b>footnote, for example, consumers are less likely to</b></p> <p>14 <b>notice that disclosure and so less likely to use that</b></p> <p>15 <b>disclosure to qualify their take-away from the claim.</b></p> <p>16 <b>So it's really based on understanding from a variety</b></p> <p>17 <b>of situations that improving proximity improves</b></p> <p>18 <b>communication.</b></p> <p>19 Q So that's your reading of the literature</p> <p>20 that's -- that's been put forward by the Federal</p> <p>21 Trade Commission.</p> <p>22 <b>A That plus work that I've done and others</b></p>	<p style="text-align: right;">115</p> <p>1 Q And when you talk about proximity, what is</p> <p>2 the relative measurement that you're using in this</p> <p>3 particular assessment of these particular loan</p> <p>4 agreements?</p> <p>5 <b>A So I'm literally relying on how far apart</b></p> <p>6 <b>they are in the document. So if something is right</b></p> <p>7 <b>next to the claim, that has high proximity. As you</b></p> <p>8 <b>put space and other intervening information between</b></p> <p>9 <b>the claim and the disclaimer or the qualifier, the</b></p> <p>10 <b>proximity goes down.</b></p> <p>11 Q And again, that's based on your review of a</p> <p>12 PDF copy what you understand to have been presented</p> <p>13 to customers on line.</p> <p>14 <b>A That is correct, I'm assessing proximity</b></p> <p>15 <b>based on the documents that are attached to this</b></p> <p>16 <b>report.</b></p> <p>17 Q Okay. Dr. Hastak, do you have an</p> <p>18 understanding of what a typical, to use the word you</p> <p>19 used earlier, Integrity Advance customer's</p> <p>20 understanding of loan costs might have been at the</p> <p>21 time that they -- that consumer was executing, or a</p> <p>22 typical consumer was executing a loan agreement, one</p>
<p style="text-align: right;">114</p> <p>1 <b>have done at the FTC.</b></p> <p>2 Q But work you haven't done in the context of</p> <p>3 loan agreements in this particular industry or space.</p> <p>4 <b>A No, it's not based on studying loan</b></p> <p>5 <b>agreements empirically, no.</b></p> <p>6 Q And when you say "claim," you've used that</p> <p>7 term a few times in response to questions I've asked</p> <p>8 you, what specifically is it you're referring to?</p> <p>9 <b>A So I'm referring to the cost information,</b></p> <p>10 <b>the finance charges, the total payments information</b></p> <p>11 <b>that is being given to the TIL box. I call that a</b></p> <p>12 <b>claim because what is being presented to consumers</b></p> <p>13 <b>first and most prominently in this document is that</b></p> <p>14 <b>those are the costs that they will incur. So I see</b></p> <p>15 <b>that as the main claim, and then I see information</b></p> <p>16 <b>following trying to qualify the claim saying well,</b></p> <p>17 <b>that only applies in some situations. In other</b></p> <p>18 <b>situations your costs may be higher. So that's been</b></p> <p>19 <b>the central purpose of my analysis, and do these</b></p> <p>20 <b>subsequent statements that qualify the claim that</b></p> <p>21 <b>these will be your costs, are those clear and</b></p> <p>22 <b>conspicuous.</b></p>	<p style="text-align: right;">116</p> <p>1 of the loan agreements that you evaluated here?</p> <p>2 <b>A No, I don't have any information on what a</b></p> <p>3 <b>typical consumer was thinking.</b></p> <p>4 Q If I can ask you please to turn to page 14</p> <p>5 of Exhibit 1, which again is your expert report the</p> <p>6 last sentence of that page -- or I'm sorry, the last</p> <p>7 sentence of the first -- the paragraph that carries</p> <p>8 over from page 13 at the top of page 14 says, "There</p> <p>9 is nothing in the loan agreement that ties the</p> <p>10 disclosures to the claims they are supposed to</p> <p>11 qualify." Do you see that sentence?</p> <p>12 <b>A Yes.</b></p> <p>13 Q What is the basis for that sentence?</p> <p>14 <b>A It's simply an observation based on</b></p> <p>15 <b>evaluating the loan agreement. I don't see anything</b></p> <p>16 <b>that's been done to tell consumers that certain</b></p> <p>17 <b>sentences, certain explanations that follow are</b></p> <p>18 <b>actually related to their -- or should be related to</b></p> <p>19 <b>their assessment of the cost of the loan that they'll</b></p> <p>20 <b>incur.</b></p> <p>21 Q You use the phrase "Should be related to</p> <p>22 their assessment of the cost of the loan they'll</p>

<p style="text-align: right;">117</p> <p>1 incur," they or their being customers. What is your 2 understanding of what their assessment of the cost of 3 the loan they'll incur should be? 4 <b>A Well, it's my understanding that a</b> 5 <b>majority, 80 percent I believe was the number</b> 6 <b>represented to me, of Integrity Advance customers</b> 7 <b>roll over their loan. For those customers, the</b> 8 <b>understanding that they should have is that the cost</b> 9 <b>of the loan to them would be significantly higher</b> 10 <b>than what's represented in the TIL box. So that's</b> 11 <b>what I'm thinking about.</b> 12 Q And you say -- use the phrase "should 13 have." What do you mean by that phrase? You just 14 used it in your description or your response to my 15 question. I don't believe it's in this sentence. 16 What is it you mean by should have? 17 <b>A Could I ask the sentence be read back?</b> 18 Q Absolutely. 19 <b>A I think I know, but I just want to be</b> 20 <b>clear.</b> 21 MS. BAKER: Would you please read back the 22 witness' last response to my question? Thank you.</p>	<p style="text-align: right;">119</p> <p>1 <b>A No, I don't.</b> 2 Q Still on page 14, if I can take you to the 3 next subpart, subpart D, called "Avoidability," and 4 specifically to the last sentence of that paragraph, 5 which reads, "Thus, it is unlikely that having 6 borrowers initial or sign the loan agreement in 7 multiple places would significantly increase their 8 attention to key disclosures related to the cost of 9 the loan." Dr. Hastak, what is the basis for that 10 sentence? 11 <b>A So when I analyzed the loan agreement</b> 12 <b>document, I noted that borrowers had to sign at</b> 13 <b>several places, and having people sign is a known</b> 14 <b>technique for slowing them down, increasing the</b> 15 <b>likelihood that they would look at the information</b> 16 <b>that is close to that signature space.</b> 17 <b>But then what I notice, and let me just</b> 18 <b>read from what I've written there. "However, the</b> 19 <b>first time borrowers are asked to sign the loan</b> 20 <b>agreement is on page 4. This is after the section on</b> 21 <b>schedule of charges and fees and well after the</b> 22 <b>sentence on additional fees and the cost disclosures</b></p>
<p style="text-align: right;">118</p> <p>1 - - - 2 THE REPORTER: Answer: "Well, it's my 3 understanding that a majority, 80 percent I believe 4 was the number represented to me, of Integrity 5 Advance customers roll over their loan. For those 6 customers, the understanding that they should have is 7 that the cost of the loan to them would be 8 significantly higher than what's represented in the 9 TIL box. So that's what I'm thinking about." 10 - - - 11 THE WITNESS: And you're saying what do I 12 mean by should have? 13 BY MS. BAKER: 14 Q Uh-huh. 15 <b>A And I'm just thinking that's the reality</b> 16 <b>for these customers, that they will pay a lot more,</b> 17 <b>so their understanding should be corresponding with</b> 18 <b>the reality. That's what I mean by they should have</b> 19 <b>the understanding that corresponds with their</b> 20 <b>reality.</b> 21 Q And do you know if these customers had that 22 understanding?</p>	<p style="text-align: right;">120</p> <p>1 <b>in the TIL box and the following disclosure</b> 2 <b>paragraph, so it's essentially most of the key</b> 3 <b>disclosures that have been made to respondents."</b> 4 <b>What I'm saying here is because the</b> 5 <b>signatures are happening fairly late and after key</b> 6 <b>disclosures, the likelihood that this strategy of</b> 7 <b>having them sign, which slows them down, would</b> 8 <b>increase the extent to which they would expose</b> 9 <b>themselves to or notice the disclosures is relatively</b> 10 <b>low.</b> 11 Q And how do you know that it's relatively 12 low, the likelihood? 13 <b>A Because the technique that's being used to</b> 14 <b>slow people down and read what are otherwise</b> 15 <b>disclosures that are essentially buried in a very</b> 16 <b>long document are unlikely to work because they're</b> 17 <b>not in close proximity to where you want people to</b> 18 <b>slow down if you want them to read the disclosures.</b> 19 <b>So this is not going to increase -- what I'm saying</b> 20 <b>is it's not going to increase the likelihood</b> 21 <b>substantially that people will notice them.</b> 22 Q And do you have an understanding of how</p>

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1 this loan agreement and the initial or signature  
2 function was presented to consumers on line?  
3 **A So I'm operating under the assumption that**  
4 **the locations where consumers were expected to sign**  
5 **on line were the same as the locations in the**  
6 **document that I reviewed, that they were as far down**  
7 **the document on line as I'm seeing in this PDF copy.**  
8 **That's the assumption I'm going with.**  
9 Q And you don't know if that's correct or  
10 not.  
11 **A I haven't -- I haven't looked at the**  
12 **on-line loan document, no.**  
13 Q And do you have an understanding of what  
14 functionality on the user interface a customer had to  
15 trigger or initial or sign the loan agreement?  
16 **A No, I don't.**  
17 MS. BAKER: Let's -- let's break for lunch.  
18 MS. WEINBERG: Oh.  
19 MS. BAKER: I think this is a good time if  
20 it's okay. Is that okay with you?  
21 THE WITNESS: I'm okay with that.  
22 MS. BAKER: It's -- I have 12:25. I think

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1 this is a good place to break.  
2 (Recessed at 12:25 p.m.)  
3 (Reconvened at 1:32 p.m.)  
4 (Whereupon, Mr. Frechette joined the deposition.)  
5 BY MS. BAKER:  
6 Q It's 1:32. We're back on the record after  
7 lunch. Good afternoon Dr. Hastak.  
8 **A Good afternoon.**  
9 Q We were discussing what is Exhibit 1 in  
10 this matter, or this deposition, your expert report,  
11 so if I could direct your attention back to that  
12 please, and specifically to page 14 of Exhibit 1,  
13 which again for our record is Bates numbered  
14 CFPB042533, and if I could actually in connection  
15 with the last section on this page marked "Clarity,"  
16 subpart E, if I could actually ask you to flip the  
17 page to page 15 and specifically to the first  
18 run-over paragraph on the top of that page, last  
19 sentence, "Thus, borrowers" -- do you see where I am?  
20 **A Yes.**  
21 Q "Thus, borrowers could incorrectly  
22 comprehend that they could take multiple payments and

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1 still only be responsible for the total payment  
2 amount provided in the TIL box." What is the basis  
3 for that statement, Dr. Hastak?  
4 **A So that's simply an evaluation of a**  
5 **statement that I believe appears in the TIL box, and**  
6 **let me just turn to that. So I'm on page 6.**  
7 Q You're on page 6 of your expert report?  
8 **A Of my report.**  
9 Q Okay, which is Exhibit 1, all right.  
10 **A Which is Exhibit 1, yes.**  
11 Q Okay.  
12 **A And in the middle of the page there where**  
13 **we have a copy of the -- that portion of the loan**  
14 **agreement, we -- the TIL box and the sentences that**  
15 **follow, I'm looking at the fourth box in the TIL box**  
16 **where it says "Total of Payments," and it says, "The**  
17 **amount you will have paid after you have made all**  
18 **payments as scheduled." And so when I read that,**  
19 **what I'm saying is if consumers read that, there is**  
20 **the potential that they might interpret that to mean**  
21 **multiple payments could be involved in generating a**  
22 **total payment of \$650, which is -- which is their**

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1 **total liability of what is in the TIL box.**  
2 Q I'm not sure I completely understand the  
3 answer you just gave me. Can you rephrase it or --  
4 **A Sure, sure.**  
5 Q -- perhaps clarify?  
6 **A So the total payments that are listed in**  
7 **the TIL box are based on the assumption that the**  
8 **respondent will make a single payment, and that's**  
9 **stated in the line below of TIL box. It says, "Your**  
10 **payment schedule will be one payment of \$650 due on**  
11 **this date," but the box that says "Total of Payments"**  
12 **uses the plural "payments," and so I'm simply making**  
13 **the comment that these two things are inconsistent**  
14 **with each other, and consumers could if they read**  
15 **this, one possible interpretation of it is that you**  
16 **could make multiple payments in order to meet your**  
17 **obligation of making a total of \$650 worth of**  
18 **payments. That's all I'm saying.**  
19 Q And you understand that scenario to not be  
20 correct?  
21 **A I understand that scenario not to be**  
22 **correct, yes.**

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1 Q If I can direct your attention back to page  
2 6 of Exhibit 1, which is your expert report,  
3 specifically the total of payments box, is it  
4 possible to read that as being the total of payments  
5 meaning finance charge plus amount financed?  
6 A Yes, I guess it's possible. My -- my  
7 initial interpretation was simply separate payments  
8 that the consumer is making, but it's possible. The  
9 statement is brief, and so there is some ambiguity in  
10 it, so it could be that.  
11 Q So sitting here today, you don't know for  
12 sure how a typical, to go back to your concept of  
13 typical, customer of Integrity Advance would have  
14 understood that box, the total payments box.  
15 A That's correct, and just to be clear, I  
16 don't assert on page 15, which we were looking at a  
17 moment ago, that a typical consumer would understand  
18 the statement to mean that multiple separate payments  
19 could be made. I'm just saying that it's one  
20 possible interpretation of that sentence.  
21 Q I see, okay, and -- and it's one possible  
22 interpretation that you have of that box.

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1 A That's correct.  
2 Q Okay. If I can direct your attention,  
3 Dr. Hastak, to going back to page 15, which again for  
4 our record is Bates numbered CFPB042534, and  
5 specifically the last sentence on that page, which  
6 starts with the sentence or the phrase, "The  
7 presumption," "The presumption appears to be that  
8 borrowers would automatically recognize that they  
9 would face additional finance charges under the  
10 renewal, auto-renewal, auto-workout options, and thus  
11 the total cost of the loan will be higher than what  
12 is indicated in the TIL box, but this is not made  
13 explicitly clear to them," and that goes on to page  
14 16, that last phrase. What is the basis for that  
15 sentence that I just read?  
16 A So that is my analysis not just of what  
17 information is being presented in these paragraphs,  
18 but what the implication may be, and I'm making the  
19 assumption that the implication here may well be to  
20 communicate to consumers that costs will be higher.  
21 I don't know that that is the case, but as I read the  
22 information that tells me sort of the procedure or

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1 the mechanics of what would happen, for example, if  
2 you choose the payment in full option versus you  
3 choose the renewal or the auto-renewal option, there  
4 is some specific information about what payments you  
5 would make under those scenarios, and thinking beyond  
6 what is stated, I'm assuming that an implication  
7 here, certainly one implication that I could take is  
8 that the payments would be higher, but that's not  
9 stated explicitly. That's not an explicit disclosure  
10 to consumers. That's an implied disclosure.  
11 Q Do you sitting here today know if this is  
12 in fact what any Integrity customer implied from this  
13 statement that you're referencing in this sentence I  
14 just read?  
15 A So actually, I'm -- just to be clear, I'm  
16 thinking about something that Integrity Advance might  
17 be intending to tell customers.  
18 Q I see.  
19 A So I'm thinking they're providing  
20 information on process. If the goal is to tell  
21 consumers simultaneously also that this process leads  
22 to much higher payments depending on which option you

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1 choose, then that's not stated very clearly, is what  
2 I'm saying. If they don't intend to say that, then  
3 the analysis doesn't apply, but if they intend to  
4 signal in some way to consumers that the costs will  
5 be higher, then to me, that's the best that they're  
6 doing, they're signaling. They're not explicitly  
7 stating the costs will be higher.  
8 Q And so embedded in this sentence is an  
9 assumption that that's what's intended by Integrity  
10 Advance.  
11 A I don't know that I'm directly assuming  
12 that so much as I'm saying if that's the intent of  
13 Integrity Advance, and I don't know that it is, but  
14 if that's the intent, then there could certainly be a  
15 much better way of accomplishing that.  
16 Q And you make a distinction between  
17 signaling and express statement? Is that -- is that  
18 what you were distinguishing between?  
19 A Yes.  
20 Q And what is -- what is that distinction?  
21 A So in this context, for example, an express  
22 statement would be to tell consumers if you choose a

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1 renewal or an auto-renewal option, this is the  
2 process, and the net result would be that you'd pay a  
3 lot more than what is in the TIL box. That to me is  
4 an express statement. Signaling is leaving out the  
5 conclusion, letting the consumer kind of draw a  
6 conclusion if they -- if they do or do not. I mean,  
7 you just -- you just provide them with some  
8 information, and the idea is that they'll kind of  
9 understand what these process descriptors mean in  
10 terms of the cost outcomes, if you will.

11 Q And do you have any -- have you conducted  
12 in any capacity a consumer survey or test that  
13 compares so-called signaling to express statements as  
14 you've just explained them to me in your response?

15 MS. WEINBERG: Are you asking in his entire  
16 professional experience?

17 MS. BAKER: Yes.

18 MS. WEINBERG: Or are you asking --

19 BY MS. BAKER:

20 Q Yes, that's what I'm asking, in his entire  
21 professional experience. Thank you for the clarity.

22 A I think there is research that shows that

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1 if you make an express claim to consumers versus make  
2 sort of an implied claim, especially if that  
3 implication is weak, that consumers are more likely  
4 to take the express claim or take it with more  
5 confidence, take it with more strength. It's also  
6 just -- you know, to some extent just a sort of on-  
7 its-face valid statement that says if you want to say  
8 something, just say it, right? Don't hint at it.  
9 That's what this is saying. Don't -- don't provide  
10 other information that people have to put together to  
11 draw the conclusion. State the conclusion for the  
12 consumer.

13 Q What is that based on, the statement you  
14 just made?

15 A Again, some of it is just as I'm calling it  
16 sort of just common sense that says if you state  
17 something, people are more likely to get it than if  
18 you provide the tools from which people can infer  
19 that. And there's also research. I mean, there's  
20 some research that shows that express claims are --  
21 are more easily taken than implied claims, which is  
22 typically why, again, if there are express claims in

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

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

9 A Yes.

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

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

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

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

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

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

<p style="text-align: right;">133</p> <p>1 <b>would be better to do it that way.</b></p> <p>2 Q It would be better to do it that way, and</p> <p>3 is that a statement you're making specific to this</p> <p>4 matter?</p> <p>5 A Yes.</p> <p>6 Q And did you actually, in connection with</p> <p>7 your evaluating of these loan agreements that's the</p> <p>8 subject of this report, test that assumption?</p> <p>9 A No, I did not test it. I'm relying on sort</p> <p>10 of a broader set of research and my own experience in</p> <p>11 making that -- drawing that conclusion.</p> <p>12 Q And when you talk about your own</p> <p>13 experience, you're not talking specifically about</p> <p>14 your own experience with payday loan agreements.</p> <p>15 A No, as I've mentioned before, I haven't</p> <p>16 done any empirical work with payday loan agreements.</p> <p>17 Q And you're not talking specifically about</p> <p>18 your own experience with consumers who are payday</p> <p>19 loan consumers, if you will.</p> <p>20 A No, this experience is based on a wide</p> <p>21 variety of consumers looking at a wide variety of</p> <p>22 materials, but not specifically payday loan</p>	<p style="text-align: right;">135</p> <p>1 Q Okay, great, thank you. "In other words,</p> <p>2 borrowers could incorrectly infer that choosing this</p> <p>3 option does not change their total payment amount."</p> <p>4 A Right.</p> <p>5 Q What is your basis for making that</p> <p>6 statement?</p> <p>7 A That is simply based on an analysis of this</p> <p>8 sentence, which I highlight earlier, if you choose</p> <p>9 this option, your new payment due date will be your</p> <p>10 next pay date and the rest of the terms of the loan</p> <p>11 agreement will continue to apply. In my reading of</p> <p>12 the loan agreement, one interpretation of these terms</p> <p>13 are the costs that are highlighted in the TIL box.</p> <p>14 Those are the only specific costs that are provided</p> <p>15 to the consumer. So one possible interpretation of</p> <p>16 this sentence is nothing really changes in terms of</p> <p>17 the terms and conditions of these loans other than</p> <p>18 your pay date, the date when the loan is due will</p> <p>19 change. That's one possible interpretation.</p> <p>20 Q And that interpretation, or one possible</p> <p>21 interpretation is one that you derive not from</p> <p>22 speaking with any customer of Integrity Advance.</p>
<p style="text-align: right;">134</p> <p>1 materials.</p> <p>2 Q Dr. Hastak, if I could take you to page 16</p> <p>3 of your report please, and specifically if I can</p> <p>4 direct your attention to the fourth sentence in that</p> <p>5 first complete paragraph, and that fourth sentence</p> <p>6 starts with, "In other words." Do you see where I</p> <p>7 am?</p> <p>8 A Just one moment. You're on page 16, right?</p> <p>9 Q I am on page 16 of your expert report,</p> <p>10 which is Exhibit 1.</p> <p>11 A And the fourth sentence of the first full</p> <p>12 paragraph?</p> <p>13 Q That's correct. It says -- I believe it's</p> <p>14 the fourth sentence, one, two --</p> <p>15 A Yes, I think I have you.</p> <p>16 Q "In other words, borrowers." Do you see</p> <p>17 where I am?</p> <p>18 A I don't see "In other words," but I just</p> <p>19 see "Borrowers." Oh, you're -- you're further down.</p> <p>20 You're on line 6 I think.</p> <p>21 Q Okay, line 6.</p> <p>22 A That's fine, I've got you.</p>	<p style="text-align: right;">136</p> <p>1 A No, I didn't talk to any customers of</p> <p>2 Integrity Advance, but I should say that I have</p> <p>3 looked at some of the complaints that customers had</p> <p>4 submitted, and at least in my reading, several</p> <p>5 customers seem to have this misperception that their</p> <p>6 total payment would be the amount that was in the TIL</p> <p>7 box.</p> <p>8 So I knew that at least some customers, and</p> <p>9 I don't know how many, but at least some customers</p> <p>10 were taking the away the message that whether they</p> <p>11 chose a single payment option or a multiple payment</p> <p>12 option, and these customers I'm talking about had a</p> <p>13 multiple payment option, that they thought the total</p> <p>14 payment would be the same. So this is consistent</p> <p>15 with that information.</p> <p>16 Q So you -- how many customer complaints as</p> <p>17 you understand that term did you review in connection</p> <p>18 with preparing this report?</p> <p>19 A I sampled through them fairly randomly, and</p> <p>20 I must have looked at about 50 or so.</p> <p>21 Q Fifty?</p> <p>22 A Yeah.</p>

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1 Q And of the 50 that you looked at, how many  
2 concerned this particular issue that you just  
3 described?  
4 A **I don't have an actual number. It was --  
5 it was quite a few, but -- it was more than one, but  
6 I don't -- I don't have a number.**  
7 Q Okay, so you said it was quite a few. Is  
8 that fair to say it was ten?  
9 A **Could have been.**  
10 Q More than ten?  
11 MS. WEINBERG: If you don't -- if you don't  
12 know, don't speculate.  
13 A **I just don't recall.**  
14 Q Okay. Do you have an understanding as to  
15 how many total customers Integrity Advance had at any  
16 point in time?  
17 A **I know I was shown a number. I believe  
18 it's tens of thousands.**  
19 Q And -- and that's the total during the  
20 duration of the company's existence. That's your  
21 understanding?  
22 A **May have been more than that, but yeah, it**

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1 **was in the tens of thousands, is my understanding.**  
2 Q Do you have an understanding as to how many  
3 unique transactions there were total during the time  
4 of Integrity Advance's operations?  
5 A **I don't have a number in mind, but it's  
6 going to be of that or significantly larger  
7 magnitude.**  
8 Q Okay.  
9 A **It's going to be more than the number of  
10 customers.**  
11 Q Other than looking at customer complaints,  
12 what's the basis for the statement that you make, in  
13 other words, borrowers could incorrectly infer?  
14 A **So let me clarify, I'm not relying on the  
15 customer complaints to make this inference. I'm just  
16 saying it's consistent with this. The basis for this  
17 inference is very simple. It's simply reading the  
18 sentence and trying to understand it as an English  
19 sentence. So I read it and I say when somebody says  
20 the rest of the terms of the loan agreement will  
21 continue to apply, I'm looking at it and thinking I  
22 could well interpret this -- a consumer could well**

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1 **interpret this as meaning that the terms and  
2 conditions that have been set forth in the loan  
3 agreement will apply, and one of the terms that's  
4 stated in the loan agreement is the cost in the TIL  
5 box, so that's something that consumers could take as  
6 possibly applying.**  
7 Q I want to make sure I understand, but it's  
8 -- it's your testimony that you didn't rely on an  
9 understanding that customers had in writing this  
10 sentence.  
11 A **No, I have -- certainly didn't talk to any  
12 customers, and I didn't rely on the complaints  
13 either. The complaints simply validated the  
14 possibility that people may have made this inference.**  
15 Q Why did you not rely on the complaints?  
16 A **Well, the complaints are not  
17 representatives of the customers of Integrity  
18 Advance, and so they're just a small sampling of  
19 individuals who had a problem with Integrity Advance,  
20 so I don't take that as -- I don't take that as  
21 representative in any way of what a -- what a typical  
22 consumer, if you will, might -- might take.**

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1 Q You keep using the phrase -- we've both  
2 used the phrase "typical consumer." What -- how  
3 would you describe or define that more precisely?  
4 A **Again, I'm thinking of it simply as what is  
5 -- what is it that a majority of the consumers might  
6 interpret when they look at this information, what is  
7 it that a -- what is it that is the most likely  
8 interpretation that consumers might have, what is it  
9 that a likely interpretation that consumers might  
10 have, and I try to separate those two things out. So  
11 sometimes in my report I talk about something that  
12 consumers -- this is a possibility that consumers may  
13 do. At other points I'm trying to indicate that this  
14 is what I think is -- is likely that might happen.**  
15 Q And when you're talking about consumers,  
16 are you particularizing that category for purposes of  
17 this evaluation?  
18 A **I'm not sure I follow that.**  
19 MS. WEINBERG: I didn't follow that  
20 question.  
21 BY MS. BAKER:  
22 Q Are you particularizing your definition of

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1 consumer for this evaluation?  
2 MS. WEINBERG: Particularizing it how?  
3 BY MS. BAKER:  
4 Q Well, when you say "consumer," what -- what  
5 is it you mean by consumer? Are you -- are you  
6 talking generically about every consumer who's a  
7 potential consumer, or are you speaking more  
8 specifically about the consumers who are actual  
9 customers of Integrity Advance?  
10 A I'm focusing on the latter. I'm thinking  
11 about people who have processed and signed the loan  
12 agreement.  
13 Q And what is your understanding -- or let me  
14 ask you this. What did you do to come up with some  
15 understanding of who those consumers are?  
16 A Again, I'm trying to sort of understand the  
17 question. So are you saying did I -- again, back to  
18 did I talk to the consumers or collect any data on  
19 them? The answer would be no.  
20 Q So yes, my answer -- my question, for  
21 example, thank you, is did you collect any data on  
22 who these consumers could be?

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1 A No, I did not.  
2 Q And did you do anything else to try to have  
3 some particular understanding about the consumers who  
4 were Integrity Advance customers?  
5 A No, I did not.  
6 Q Now, before, you made a distinction between  
7 likely and possibility, or possible. This was a few  
8 responses back, if you recall, Dr. Hastak.  
9 A Yes, I do.  
10 Q Can you explain to me what that distinction  
11 is please?  
12 A So I think what I was trying to say was in  
13 some situations, one could make a stronger claim, and  
14 in other situations, one could say this is something  
15 that could happen to a lot of consumers, but one  
16 would not go so far as to say that this is likely to  
17 happen to a majority of them. So I was -- I was  
18 trying to make that distinction. This is a  
19 qualitative assessment obviously, but it sort of gets  
20 at the issue of is it -- is it -- is it possible, is  
21 it probable, is it likely? That's -- that's the  
22 sequence I'm -- I'm creating.

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1 Q So in coming up with that sequence or  
2 continuum, if you will, what are the factors that  
3 determine -- that you use to determine whether an  
4 interpretation is possible?  
5 A It's difficult to say in the abstract. If  
6 I look at a particular representation, I could tell  
7 you how I arrived at that conclusion.  
8 Q Okay. Same question for probable.  
9 A The same thing. It's a qualitative  
10 process, and it -- it depends on the specifics of the  
11 situation.  
12 Q And then my same question for likely.  
13 A And I would say the same thing again. It  
14 would be situation specific.  
15 Q So each of these determinations, possible,  
16 probable, likely, is specific to the situation or  
17 statement that you're analyzing.  
18 A Yeah, the statement, it's -- perhaps it's  
19 location, its position, so all of the factors that I  
20 applied to evaluating these disclosures.  
21 Q But it's fair to say that that's the, for  
22 lack of a better word, continuum that you're using to

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1 make a determination in this report or an evaluation,  
2 possible, probable, likely.  
3 MS. WEINBERG: I think the report speaks  
4 for itself. I mean, I don't think that those terms  
5 are in the report, I mean, as a general  
6 categorization of his opinion.  
7 A Yeah, I was going to say, I don't know that  
8 there's something very systematic in that sense that  
9 I'm doing here. I'm writing the report and I'm  
10 expressing my judgment based on my evaluation. So I  
11 could certainly comment on a particular judgment, but  
12 I don't know that I could say there is a scale that I  
13 -- in a predetermined manner that I'm using. I'm  
14 using these as words in the English language.  
15 Possible versus -- I don't know what probable --  
16 possible versus likely.  
17 Q Well, you just told me possible, probable,  
18 likely. I just took that from what you --  
19 A Yeah.  
20 Q -- said.  
21 A No, I understand, and I'm basically saying  
22 I don't have a fine grain scale there. I -- possible

<p style="text-align: right;">145</p> <p>1 <b>and likely, I could see a difference between those</b> 2 <b>two, just the way it's used in the English language.</b> 3 <b>That's how I'm using it.</b> 4 Q I see. So it's really possible or likely, 5 not probable? 6 <b>A Yeah, that --</b> 7 Q Okay. 8 <b>A That makes more sense to me.</b> 9 Q Okay. If I can ask you please to go back 10 to page 16 of your expert report, which is Exhibit 1, 11 and it's the last sentence in the first full 12 paragraph of that page that starts with, "By using 13 the plural." Do you see where I am, Dr. Hastak? 14 <b>A Yes.</b> 15 Q "By using the plural 'payments' rather than 16 the singular, 'payment,' this language could 17 reinforce the take-away that total payments remain 18 the same, even if multiple payments under the renewal 19 option are selected." What's the basis for this 20 statement? 21 <b>A Again, as I said before, this is -- this is</b> 22 <b>based on reading the sentence in the TIL box that we</b></p>	<p style="text-align: right;">147</p> <p>1 Q Other than reading the sentence, is there 2 anything else that you did to come up with that 3 conclusion or determination? 4 <b>A No.</b> 5 MS. WEINBERG: Are you asking for this one 6 sentence or are you asking his entire conclusion from 7 the report? 8 BY MS. BAKER: 9 Q No, I'm asking this one sentence. Do you 10 understand my question? 11 <b>A Yes.</b> 12 Q Okay, so let me -- let me make sure we're 13 clear. Other than reading the sentence that this 14 last sentence references, and the sentence we're 15 talking about is the total of payments, is there 16 anything else that you did to render this conclusion 17 that is described in the last sentence of this first 18 paragraph that starts with, "By using the plural 19 'payments'"? 20 <b>A No, I -- as I said before, I relied on my</b> 21 <b>reading of that sentence and how I would interpret it</b> 22 <b>and how I think some consumers might interpret it.</b></p>
<p style="text-align: right;">146</p> <p>1 <b>just went over.</b> 2 Q Uh-huh. 3 <b>A It says the amount you will have paid after</b> 4 <b>you've made all payments as scheduled, and so I'm</b> 5 <b>interpreting the word "payments" as having the</b> 6 <b>possibility of suggesting to consumers that your</b> 7 <b>total payments could remain the same as stated in the</b> 8 <b>TIL box even if you chose a multiple payment option.</b> 9 Q And just so our record's clear, Dr. Hastak, 10 you're specifically referring to the middle of page 6 11 of your expert report where total of payments is the 12 time box; is that right? 13 <b>A That's correct.</b> 14 Q Okay. And you use the word "possible" 15 here, and you said that it's possible that this -- 16 this -- this sentence reflects a possibility of 17 consumer interpretation; is that right? 18 <b>A That's correct.</b> 19 Q Okay. What's that -- what's that -- how 20 did you arrive at that assessment that this sentence 21 reflects a possibility of consumer interpretation? 22 <b>A It's simply based on reading the sentence.</b></p>	<p style="text-align: right;">148</p> <p>1 Q And when you say how you think consumers 2 would interpret it, what's that based on? 3 <b>A That's just based on my experience as a</b> 4 <b>consumer researcher.</b> 5 Q But it's not experience that's specific to 6 the consumers here. 7 <b>A It's not specific to the consumers of</b> 8 <b>Integrity Advance, no.</b> 9 Q And you used in your response to my 10 question about this last sentence, in the first 11 paragraph on page 16, and again, that sentence, the 12 one I'm referring to is, "By using the plural, 13 'payments,'" that's -- that's the first phrase of 14 that sentence, you used the qualifier "possible" 15 there when you were responding to my question about 16 what the basis for this determination is. How did 17 you determine that this was possible as opposed to 18 likely? 19 MS. WEINBERG: I think this is the third 20 time you've asked this question, Allyson. He's 21 already answered it. 22 BY MS. BAKER:</p>

<p style="text-align: right;">149</p> <p>1 Q Do you understand my question?</p> <p>2 A <b>Yes, I do.</b></p> <p>3 Q Possible versus likely.</p> <p>4 A <b>And again, we are -- we are in the realm of</b></p> <p>5 <b>gray areas here. My response would be that this is</b></p> <p>6 <b>based on my reading of the sentence, and my reading</b></p> <p>7 <b>was that that's one possible interpretation. There</b></p> <p>8 <b>could be others.</b></p> <p>9 Q Dr. Hastak, if I can take you to the last</p> <p>10 paragraph of page 16 of Exhibit 1, which is your</p> <p>11 expert report, that last sentence, all -- well, let</p> <p>12 me -- let me -- that last sentence starts with the</p> <p>13 word "Again," so it says, "Again." Do you see where</p> <p>14 I am?</p> <p>15 A <b>Yes.</b></p> <p>16 Q "Again, however, by repeating the phrase,"</p> <p>17 quote, "rest of the terms of the loan agreement will</p> <p>18 continue to apply," end quote, "and another similar</p> <p>19 phrase," quote, "all the terms of the loan agreement</p> <p>20 continue to apply to renewals," end quote, "without</p> <p>21 alerting borrowers to potential changes in their</p> <p>22 total payments, the disclosure may reinforce the</p>	<p style="text-align: right;">151</p> <p>1 <b>sentence worded in a way that might lead to the</b></p> <p>2 <b>conclusion that the terms remain the same as in the</b></p> <p>3 <b>TIL box, but the repetition has the potential to</b></p> <p>4 <b>enhance that effect.</b></p> <p>5 Q And that sentence that you're referring to</p> <p>6 is the one that's in quotes within the sentence I</p> <p>7 just read?</p> <p>8 A <b>The rest of the terms of the loan agreement</b></p> <p>9 <b>will continue to apply, that's -- that's the</b></p> <p>10 <b>sentence.</b></p> <p>11 Q And why do you say that, what you just said</p> <p>12 about repetition?</p> <p>13 A <b>Because first of all, repetition is one of</b></p> <p>14 <b>the criteria that the FTC talks about. We know that</b></p> <p>15 <b>repeating something increases the likelihood that</b></p> <p>16 <b>people will notice it or pay attention to it. This</b></p> <p>17 <b>is known in the marketing literature as well.</b></p> <p>18 <b>Repetition is known to increase the chances that</b></p> <p>19 <b>people will see something, so I'm simply stating what</b></p> <p>20 <b>a is a pretty well known fact here.</b></p> <p>21 Q Okay. Is there anything else that's the</p> <p>22 basis for this sentence?</p>
<p style="text-align: right;">150</p> <p>1 take-away that total payments remain as specified in</p> <p>2 the TIL box." What is the basis for that statement,</p> <p>3 that sentence that I just read?</p> <p>4 A <b>And the basis is again my reading of those</b></p> <p>5 <b>sentences and interpreting -- trying to interpret</b></p> <p>6 <b>them as a -- as a consumer might.</b></p> <p>7 Q Anything else?</p> <p>8 A <b>No, that's what I based it on.</b></p> <p>9 Q If I can take you to page 17 of your expert</p> <p>10 report please, Dr. Hastak, second paragraph on that</p> <p>11 page, last sentence of that second paragraph, "To the</p> <p>12 contrary, by repeatedly emphasizing" -- do you see</p> <p>13 where I am?</p> <p>14 A <b>Yes.</b></p> <p>15 Q "To the contrary business repeatedly</p> <p>16 emphasizing that," quote, "the rest of the terms of</p> <p>17 the loan agreement will continue to apply," end</p> <p>18 quote, "the disclosures may reinforce the take-away</p> <p>19 that their total payments will be as indicated in the</p> <p>20 TIL disclosure box." What is the basis for that</p> <p>21 statement?</p> <p>22 A <b>So what I'm saying now is not only is that</b></p>	<p style="text-align: right;">152</p> <p>1 A <b>No.</b></p> <p>2 Q So when you talk about you're stating</p> <p>3 what's a well known fact, what -- what is the well</p> <p>4 known fact that you're referring to?</p> <p>5 A <b>That repeating -- other things being equal,</b></p> <p>6 <b>repeating something increases the likelihood that a</b></p> <p>7 <b>consumer will notice it or get exposed to it, pay</b></p> <p>8 <b>attention to it, comprehend it, all of the kinds of</b></p> <p>9 <b>effects that, you know, one seeks to have on</b></p> <p>10 <b>consumers with a communication.</b></p> <p>11 Q And that's based on your review of certain</p> <p>12 literature?</p> <p>13 A <b>There's a lot of literature on repetition</b></p> <p>14 <b>that essentially says repetition is designed to and</b></p> <p>15 <b>typically increases the likelihood that people will</b></p> <p>16 <b>notice something, will play it back, for example,</b></p> <p>17 <b>show an ad five times versus one time, likelihood</b></p> <p>18 <b>that people will play back more material from the ad</b></p> <p>19 <b>increases. It's pretty standard kind of stuff from,</b></p> <p>20 <b>say, advertising and marketing textbooks.</b></p> <p>21 Q And is that literature or studies that you</p> <p>22 also have conducted in connection with your work as a</p>

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1 professor?

2 **A I am trying to think if I've done a study**

3 **specifically on repetition. I'm not sure, but it's**

4 **certainly stuff that I -- I read and I teach.**

5 Q Okay. If I can ask you please to go to the

6 third paragraph on page 17 of your expert report, and

7 specifically the last sentence, which starts with the

8 phrase, "Also, by stating," do you see where I am,

9 Dr. Hastak?

10 **A Yes.**

11 Q "Also, by stating that additional fees,"

12 quote, "may accrue," unquote, "rather than," quote,

13 "will accrue," unquote, "the sentence introduces

14 unnecessary ambiguity about whether or not additional

15 costs will be incurred by the borrower." What is the

16 basis for that sentence?

17 **A Well, the word "may" is a hedge word. It's**

18 **known as a hedge word. And so again, this is simply**

19 **interpreting what the sentence says. My**

20 **understanding is that if the loan is rolled over,**

21 **there will be additional cost to the consumer. By**

22 **using the term "may," it's introducing some**

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1 **ambiguity, and that's what I'm saying.**

2 Q And what is your understanding of what the

3 source of ambiguity is?

4 **A The word "may."**

5 Q And why do you understand that to be

6 potentially ambiguous?

7 **A To me, the word "may" is ambiguous. It**

8 **means may or may not accrue, whereas if the reality**

9 **is that fees will accrue or higher costs will accrue,**

10 **then a clearer or less ambiguous way to say it will**

11 **be to say will.**

12 Q And what fees do you understand this to be

13 referring to?

14 **A So when I read the loan agreement, my**

15 **understanding of the word "fees" as it's used here is**

16 **that it covers any costs that the consumer may incur,**

17 **including finance charges. This is not explicitly**

18 **stated, but in that context, when it says additional**

19 **fees may accrue, there's actually an additional**

20 **source of potential confusion for the consumer**

21 **because it doesn't explicitly say finance charges,**

22 **which is what the consumer accrues, and they may**

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1 **accrue some fees as well, but it doesn't say that,**

2 **but I'm looking at that and in that context trying to**

3 **interpret the word "fees" to mean additional costs.**

4 Q And so that's your interpretation of what

5 the word "fees" means.

6 **A That's what I think is the intended meaning**

7 **of the word "fees." That's the only one that makes**

8 **sense here to me.**

9 Q Did you test that assumption?

10 **A No, I didn't. It was just my**

11 **interpretation based on how that paragraph was**

12 **written.**

13 Q Why didn't you test that assumption?

14 **A Well, I've talked before about why I didn't**

15 **do an empirical testing of the document as a whole.**

16 Q Uh-huh.

17 **A So the same reasons apply to why any aspect**

18 **of the document wasn't tested.**

19 Q Okay. If I could ask you please to go back

20 to page 16 of your expert report --

21 **A Okay.**

22 Q And specifically the last sentence on that

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1 page, and that last sentence reads, quote, "All

2 terms" -- I'm sorry, I did that again. "Again,

3 however, by repeating the phrase," quote, "rest of

4 the terms of the loan agreement will continue to

5 apply," end quote, "and another similar phrase,"

6 quote, "all terms of the loan agreement continue to

7 apply to renewals," end quote, "without alerting

8 borrowers to potential changes in their total

9 payments, the disclosure may reinforce the take-away

10 that total payments remain as specified in the TIL

11 box," and we discussed that sentence earlier. You

12 recall that discussion and testimony?

13 **A I do.**

14 Q Does your use of the word "may" here

15 similarly connote a hedge word as you described it

16 earlier?

17 **A Yes, it does. I mean, what I'm trying to**

18 **say explicitly is that this is a possible**

19 **interpretation, not that this is a definitive**

20 **interpretation.**

21 Q And is it similarly intended to be

22 ambiguous, as you've interpreted the word "may" in

<p style="text-align: right;">157</p> <p>1 other contexts?</p> <p>2 <b>A Well, it's intended to be ambiguous only in</b></p> <p>3 <b>the sense that the situation is somewhat ambiguous.</b></p> <p>4 <b>It isn't clear what consumers may take from this, but</b></p> <p>5 <b>here is a possibility.</b></p> <p>6 Q And when you use the word "may" as a hedge</p> <p>7 word, if you will, to use your word, not mine, in the</p> <p>8 context of your rendering of opinions here, are you</p> <p>9 intending to hedge those opinions?</p> <p>10 <b>A No, I'm not. Here it's not being used as a</b></p> <p>11 <b>hedge word. Here it's -- or maybe that's -- that's</b></p> <p>12 <b>the wrong choice, to call it a hedge word. Here it's</b></p> <p>13 <b>intending to say that this is one possible</b></p> <p>14 <b>interpretation. If I apply the logic to the previous</b></p> <p>15 <b>sentence, just to show the contrasts, when you say</b></p> <p>16 <b>that your fees may increase, that to me suggests that</b></p> <p>17 <b>the communication is or they may not, and the reality</b></p> <p>18 <b>is that they will increase. So I see that word as</b></p> <p>19 <b>not appropriate there. Here I'm actually trying to</b></p> <p>20 <b>say that you may or may not reach this</b></p> <p>21 <b>interpretation. This is one reasonable</b></p> <p>22 <b>interpretation that's possible. So that's why the</b></p>	<p style="text-align: right;">159</p> <p>1 Q So it says, "Rather, the figures appear to</p> <p>2 be based upon single-payment loans. My understanding</p> <p>3 is that most consumers did not have such loans. In</p> <p>4 sum, it is not clear what the data in these tables</p> <p>5 are and how they relate to loan costs based on</p> <p>6 different repayment schedules." Specifically as to</p> <p>7 that last sentence, what is the basis of your</p> <p>8 statement there? And by the last sentence, I mean</p> <p>9 the sentence starting with, "In sum."</p> <p>10 <b>A "In sum," okay. So what I'm saying there</b></p> <p>11 <b>is I'm not clear what the data in these tables are.</b></p> <p>12 <b>I can try to guess or figure out what they are, but I</b></p> <p>13 <b>find them really confusing, and it's not clear to me</b></p> <p>14 <b>how these data are related to the types of loans that</b></p> <p>15 <b>consumers actually had. My understanding again is a</b></p> <p>16 <b>majority of consumers paid off their loans over</b></p> <p>17 <b>multiple installments, and it's not clear how these</b></p> <p>18 <b>data, if at all, how these data relate to the costs</b></p> <p>19 <b>that those consumers will incur. That's what I'm</b></p> <p>20 <b>trying to say.</b></p> <p>21 Q And again, did you -- your understanding,</p> <p>22 but did you test that understanding?</p>
<p style="text-align: right;">158</p> <p>1 word "may" I would argue is appropriate here.</p> <p>2 Q So it is a hedge word as you're using it.</p> <p>3 <b>A Yeah, okay, I mean, that's the way I'm</b></p> <p>4 <b>using it.</b></p> <p>5 Q But it isn't necessarily a hedge word in</p> <p>6 other contexts. Is that your testimony?</p> <p>7 <b>A Well, in the advertising literature, "may"</b></p> <p>8 <b>is just called a hedge word, so I'm using a label</b></p> <p>9 <b>that I'm used to using. If you push what a hedge</b></p> <p>10 <b>word means, I'm just saying what it means is that</b></p> <p>11 <b>this may happen, meaning it may not happen. Both are</b></p> <p>12 <b>possible. Sorry.</b></p> <p>13 Q I see, okay. Dr. Hastak, if I can ask you</p> <p>14 please to turn to page 18 of your expert report,</p> <p>15 which for our record is Bates numbered CFPB042537.</p> <p>16 <b>A Okay.</b></p> <p>17 Q And specifically if I can direct your</p> <p>18 attention to the carryover paragraph at the top of</p> <p>19 that page, the last few sentences, the first</p> <p>20 sentence, the first word starting with "Rather," do</p> <p>21 you see where I am?</p> <p>22 <b>A Yes.</b></p>	<p style="text-align: right;">160</p> <p>1 <b>A Again, like I said, I haven't tested for</b></p> <p>2 <b>reasons that I cited earlier, I haven't done an</b></p> <p>3 <b>empirical study of these loan agreements, and so by</b></p> <p>4 <b>implication, I haven't tested any of the contents of</b></p> <p>5 <b>the -- the loan agreement empirically.</b></p> <p>6 Q You say that you find the data in these</p> <p>7 charts, in this table, and again, I just want to make</p> <p>8 sure we're clear. Are you talking about the table on</p> <p>9 page 6 of your report?</p> <p>10 <b>A No, not that table.</b></p> <p>11 Q Okay. What table are you discussing?</p> <p>12 <b>A I am -- just to make sure I'm talking -- so</b></p> <p>13 <b>we are talking about the --</b></p> <p>14 Q Table on page 9?</p> <p>15 <b>A Yeah, it's the table on page -- this one</b></p> <p>16 <b>here, right? That's in the appendix. It's on page</b></p> <p>17 <b>9, yes, that's the table I'm talking about.</b></p> <p>18 Q So when you say you find the data in -- in</p> <p>19 -- in this table --</p> <p>20 MS. WEINBERG: Just so -- just so that we</p> <p>21 have a clear record of exactly what we're talking</p> <p>22 about here --</p>

<p style="text-align: right;">161</p> <p>1 THE WITNESS: Maybe we should go to the 2 exhibit. 3 MS. WEINBERG: Are you talking about the -- 4 BY MS. BAKER: 5 Q You're talking about page 9 of your expert 6 report? 7 MS. WEINBERG: Of the report, not the 8 exhibit. 9 BY MS. BAKER: 10 Q That's right, okay. Page 9 of the expert 11 report, which has an excerpt of what appears to be 12 called VIP customer fees; is that right? Is that 13 what you're referring to? 14 <b>A That, and there's a table -- it's two</b> 15 <b>tables really. The other one is standard loan fees.</b> 16 <b>The headline is -- is abutting the previous table.</b> 17 Q I see. So both tables of data are what 18 you're referring to when you say that you understand 19 this to be confusing. 20 <b>A Yes.</b> 21 Q And when you say it's confusing, what is 22 the basis for your confusion, or put another way,</p>	<p style="text-align: right;">163</p> <p>1 <b>loan agreements empirically, and so I didn't test any</b> 2 <b>parts of them.</b> 3 Q And you are a professor of marketing at 4 American University; is that right? 5 <b>A That's correct.</b> 6 Q So you don't work in the financial services 7 industry, do you? 8 <b>A No, I don't.</b> 9 Q Okay, and do you have -- you testified 10 earlier that you haven't in your career spent any 11 time assessing or reviewing or looking at loan 12 agreements that are payday loan agreements; is that 13 right? 14 <b>A No, I haven't done that.</b> 15 Q Okay. And you say at the beginning of this 16 series of sentences that I read, the first sentence 17 starting with the word "Rather," "Rather, the" -- 18 <b>A I'm sorry, where are you now?</b> 19 Q I'm sorry, page 18 of your expert report. 20 Thank you for -- 21 <b>A No problem.</b> 22 Q So we're on page 18 of your expert report,</p>
<p style="text-align: right;">162</p> <p>1 what is -- what is the basis for that statement? 2 <b>A Well, the basis is that I spent a fair</b> 3 <b>amount of time trying to understand this table,</b> 4 <b>because it was the first and really the only place in</b> 5 <b>the loan agreement other than the TIL box where there</b> 6 <b>was some quantitative cost information, and so I was</b> 7 <b>quite interested in seeing if there was anything in</b> 8 <b>this disclosure that might have value to consumers</b> 9 <b>that consumers could understand and that could help</b> 10 <b>qualify what is in the TIL box, and I couldn't.</b> 11 <b>I mean, I had a really hard time doing</b> 12 <b>that. The more I looked at it, the more it looked</b> 13 <b>like the more obvious conclusions are clearly wrong,</b> 14 <b>and that's what I state in my analysis. So yeah, I</b> 15 <b>had trouble with it. I don't think -- in my opinion,</b> 16 <b>this is not very clear. If it's trying to</b> 17 <b>communicate something to consumers, it's not clear to</b> 18 <b>me what it is.</b> 19 Q You didn't assess what a customer, an 20 Integrity Advance customer's understanding of this 21 data would be, did you? 22 <b>A No, again, as I said, I didn't test the</b></p>	<p style="text-align: right;">164</p> <p>1 and we are at the end of the first paragraph that 2 carries over from the prior page 17 that starts with 3 the word "Rather, the figures appear to be based upon 4 single payment loans." What is the basis for that 5 statement there? 6 MS. WEINBERG: If you need to look at your 7 report to understand -- 8 THE WITNESS: Yeah, I'm just trying to do 9 that. This is -- this is the one area that I found 10 quite complicated so I'm just taking a look at it. 11 MS. WEINBERG: And if you need a chance to 12 read the actual language of your report, you should 13 take that too. 14 THE WITNESS: Yeah. Okay, so looking at 15 this here, and I know I spent a fair amount of time 16 looking at this trying to unravel it, you know, I do 17 see the part that says that the APR is higher for a 18 shorter duration, and I'm assuming here the days 19 represented days the loan is outstanding. And so the 20 table says something which doesn't make sense to me, 21 which is the APR is higher when the number of days is 22 lower and the fees are the same no matter what the</p>

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1 outstanding days are.  
2 But I'm -- quite honestly, I'm quite sure  
3 sitting here today where I got this insight, if you  
4 will, that these are single-payment loans. I mean, I  
5 said they appear to be, so I wasn't totally sure. I  
6 didn't say they are single-payment loans. I mean, I  
7 could try to figure it out, but I'm not -- I'm not  
8 seeing where that came from.  
9 BY MS. BAKER:  
10 Q Do you know if this disclosure, this loan  
11 agreement, this whole loan agreement, but  
12 specifically the disclosure on page 9 of the report  
13 that we're looking at, was ever reviewed by any  
14 financial regulator?  
15 MS. WEINBERG: If you know.  
16 A I mean, in looking at one of the documents  
17 that I reviewed, and I think it was Integrity  
18 Advance's response to some of the charges, there was  
19 mention of a regulator in Delaware reviewing these  
20 documents, so I saw that, but I didn't see anything  
21 about specifically reviewing this section.  
22 Q Would your opinion about this section be

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

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1 consumer. Is that what you mean by typical consumer,  
2 same idea?  
3 A Yeah, I'm just -- I'm just using that term  
4 loosely. I'm just saying the average person who --  
5 you know, who transacts -- who takes loans, and I  
6 take loans from banks, and here people are taking  
7 payday loans, but they're not -- I'm saying my  
8 assumption would be they're not experts in -- in the  
9 law. They're not experts in the finance of payday  
10 loans. They're looking for money, you know, to tide  
11 them over. So I'm thinking about that kind of a  
12 consumer.  
13 Q And you testified earlier that you had some  
14 understanding of the fact that there were repeat  
15 customers --  
16 A Yes, I did.  
17 Q -- of Integrity Advance.  
18 A Yes, I did.  
19 Q And does the fact that a customer's a  
20 repeat customer of Integrity Advance or a repeat  
21 customer of any payday loan provider affect your  
22 opinion as to this disclosure?

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1 A No, because again, my analysis is based  
2 only on what is in the disclosure document. It looks  
3 at the disclosure document and it looks at the nature  
4 of the disclosures in the document, so that's the  
5 focus.  
6 Q So the consumer -- the consumer's  
7 understanding doesn't play into your assessment here  
8 of this document.  
9 A My analysis is looking at whether consumers  
10 understand these disclosures. The kinds of behaviors  
11 consumers engage in is not something that I  
12 considered in evaluating that.  
13 Q Well, you said before that you were looking  
14 at what you thought consumers ought to know. That's  
15 your phrase, so what is your assessment of what  
16 consumers ought to know?  
17 A Again, so that was in a specific context,  
18 so let me just state that context. So if the  
19 consumers -- if most consumers are rolling over the  
20 loan, then it would be useful for them to know what  
21 the cost of that loan would be with the rollover. It  
22 is not as useful for them to know what the cost of

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1 **the loan is when it's paid off in a shingle shot. So**  
2 **that's -- that's the way the analysis is structured.**  
3 **If the majority of consumers are rolling**  
4 **over the loan, are the disclosures in the document**  
5 **that are intended to tell them that the costs would**  
6 **be significantly higher if they engage in this**  
7 **behavior, you know, whether or not they refinance --**  
8 **whether or not they take the loans again, is that**  
9 **something that they understand from the document. Is**  
10 **the document designed in a way that it would**  
11 **communicate that effectively to people. That was the**  
12 **focus of my analysis.**  
13 Q Well, you use --  
14 **A So ought to is -- yeah, sorry, so ought to**  
15 **is more -- this is something that I think would be**  
16 **relevant to them.**  
17 Q You used the -- you used the phrase "ought  
18 to know" just now in response to my questions about  
19 the charts on page 9 of your expert report, so my  
20 question about ought to know concerns specifically  
21 that testimony.  
22 MS. WEINBERG: Could we have the reporter

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1 read back --  
2 THE WITNESS: Yeah.  
3 MS. WEINBERG: -- the statement about ought  
4 to know, because I think this has gotten sort of --  
5 MS. BAKER: Sure.  
6 MS. WEINBERG: -- far.  
7 MS. BAKER: If you would please read back  
8 that testimony? Thank you.  
9 THE REPORTER: Question: "Would your  
10 opinion about this section be different if you knew  
11 that a regulator regularly reviewed this document in  
12 connection with ensuring compliance with relevant  
13 laws?"  
14 Answer: "No, it would not, and the reason  
15 is my analysis is not on whether this document meets  
16 certain legal requirements. I'm analyzing it in  
17 terms of whether it's consumer friendly, it actually  
18 communicates to consumers what they ought to know.  
19 And so you asked me earlier whether I'm an expert in  
20 payday loans, and I'm not, but my assumption is  
21 neither are the consumers."  
22 - - -

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1 THE WITNESS: Thank you, that's perfect.  
2 MS. BAKER: Thank you.  
3 THE WITNESS: So again, by ought to there,  
4 what I'm saying is this is information that would be  
5 relevant to them. Understanding the cost  
6 implications of paying in a single shot versus  
7 rolling over would be relevant to the consumer in  
8 terms of understanding the costs of the loan and  
9 making decisions about the loan. So that's what I  
10 mean by ought. I mean, I'm not trying to make a  
11 normative statement so much as I'm saying this is  
12 relevant information.  
13 BY MS. BAKER:  
14 Q You testified earlier that you weren't  
15 certain as to whether or not these charts reflected  
16 single-payment assumptions or multipayment  
17 assumptions; is that right?  
18 **A Sitting here now, I'm not able to see**  
19 **whatever I must have seen in the charts when I**  
20 **analyzed them. As I said before, they have been the**  
21 **one part of this loan agreement document that I found**  
22 **the most difficult to comprehend, and so yes, at this**

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1 **point I'm not sure if I can point to something in the**  
2 **document that tells me this is a single -- single-**  
3 **payment calculation.**  
4 Q Do you have an opinion about whether or not  
5 the intended use of a loan affects what information a  
6 customer of Integrity Advance may have considered to  
7 be important or relevant, to use your phrase?  
8 **A Could you please say that again?**  
9 MS. BAKER: Sure. Can you please read back  
10 my question?  
11 - - -  
12 THE REPORTER: Question: "Do you have an  
13 opinion about whether or not the intended use of a  
14 loan affects what information a customer of Integrity  
15 Advance may have considered to be important or  
16 relevant, to use your phrase?"  
17 - - -  
18 **A So when you say intended use of the loan,**  
19 **could you be a bit more specific?**  
20 Q Absolutely. Do you have an opinion that if  
21 a customer intended a loan to be paid off in its  
22 entirety initially or if that customer intended not

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1 to pay it off its entirety, in other words, a  
2 customer's intention in taking out the loan and their  
3 expectation is what I mean.  
4 **A Here's how I would look at it. If a**  
5 **customer knew for sure that they were going to pay**  
6 **off the loan in one installment, that would focus**  
7 **their attention on one set of cost information. If a**  
8 **customer knew for sure that they were going to roll**  
9 **the loan over, that might lead them to a different**  
10 **set of cost information that they may see as**  
11 **relevant. In situations in the middle where a**  
12 **customer is not a hundred percent sure either way,**  
13 **understanding the costs of single payment versus**  
14 **rollover would both be pertinent. So that's how I**  
15 **would look at it.**  
16 **Q** And do you have any understanding of what  
17 customers of Integrity Advance might have intended to  
18 pay the loan off in -- what percentage of customers  
19 might have intended to pay the loan off in two weeks,  
20 say?  
21 **A No, I don't have that information.**  
22 **Q** How about whether or not a customer would

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1 have intended to hold onto the loan and renew it one  
2 or more times?  
3 **A Again, I don't know what their intentions**  
4 **were. The only thing I know is that a lot of**  
5 **customers, 80 percent or so actually did renew the**  
6 **loan, but I don't know anything about their**  
7 **intentions.**  
8 MS. BAKER: Let's go off the record. It's  
9 2:33 according to my watch.  
10 (Recessed at 2:33 p.m.)  
11 (Reconvened at 2:57 p.m.)  
12 BY MS. BAKER:  
13 **Q** Back on the record at 2:57. Dr. Hastak, do  
14 you have an opinion about whether or not a customer's  
15 motivation, that is, his or her reason for seeking a  
16 loan, affects what aspect of a disclosure that person  
17 might pay attention to?  
18 **A Yes, I believe I was talking about that**  
19 **right before we went on break.**  
20 **Q** Uh-huh.  
21 **A So I would say the same thing, as one way**  
22 **in which the motivation can have an impact on what's**

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1 **important or relevant is if, as I was saying, the**  
2 **customer is certain that they wanted to pay off the**  
3 **loan in a single installment, then the costs**  
4 **associated with that installment are -- are really**  
5 **relevant and the other costs are not relevant.**  
6 **The opposite would be true if somebody**  
7 **knows they're going to roll over the loan, then the**  
8 **costs associated with rollover would be relevant, and**  
9 **to the extent consumers are in between, they may feel**  
10 **that they want to pay off the loan but there is a**  
11 **possibility they may have to roll over or vice versa,**  
12 **then both sets of costs become relevant.**  
13 **Q** What about the reason as to why someone  
14 might seek the loan in the first instance? Not their  
15 intention vis-a-vis the loan, but the reason why he  
16 or she may seek the loan?  
17 MS. WEINBERG: If you know.  
18 **A Can you -- can you articulate a specific**  
19 **reason that you want me to think about?**  
20 **Q** No, I'm just asking generally, if you have  
21 some understanding of, you know, to the extent there  
22 would be a specific reason or purpose for a loan, if

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1 that specific reason or purpose would affect in your  
2 opinion the information that a customer might be  
3 inclined to note or not note in a disclosure.  
4 MS. WEINBERG: If you have a basis for  
5 answering the question, please answer it. If you  
6 don't, then --  
7 **A Yeah, I'm -- I mean, I can appreciate that**  
8 **different consumers may have different reasons for**  
9 **borrowing money, but I'm not -- in the abstract, I'm**  
10 **not seeing why that should affect which kind of cost**  
11 **disclosures would be relevant. I'm not seeing that.**  
12 **Q** What about the information that they would  
13 be likely -- customers would be inclined to pay  
14 attention to or not pay attention to in a disclosure?  
15 **A I mean, again, in the abstract, I would say**  
16 **consumers will pay attention to information that's**  
17 **relevant to their decision, so in that general sense,**  
18 **yes. The reason for the loan may change the kinds of**  
19 **information that's relevant to making that decision.**  
20 **I'm having trouble though what that would be in a**  
21 **specific situation.**  
22 **Q** So sitting here today, you have no opinion

<p style="text-align: right;">177</p> <p>1 as to that issue; is that right?</p> <p>2 <b>A My opinion is that the disclosure</b></p> <p>3 <b>information that is relevant to them can be affected</b></p> <p>4 <b>by their -- by their motivation by the reason why</b></p> <p>5 <b>they are seeking the loan, but I can't go much beyond</b></p> <p>6 <b>that in terms of opining on what information would be</b></p> <p>7 <b>relevant. I think for that, we need to understand</b></p> <p>8 <b>what it is that they're trying to accomplish. I'm</b></p> <p>9 <b>just saying information about disclosures is relevant</b></p> <p>10 <b>to the goals that the consumers are trying to</b></p> <p>11 <b>accomplish. If some information is irrelevant to</b></p> <p>12 <b>their goals, then that's not going to be important to</b></p> <p>13 <b>them.</b></p> <p>14 Q And as to the customers here, you have no</p> <p>15 line of sight into that?</p> <p>16 <b>A I mean, not beyond a general understanding</b></p> <p>17 <b>for why people take out payday loans.</b></p> <p>18 Q So you have no specific information as to</p> <p>19 why people take out payday loans that you are using</p> <p>20 here in forming this opinion.</p> <p>21 <b>A No.</b></p> <p>22 Q Okay, and the same question as to the</p>	<p style="text-align: right;">179</p> <p>1 <b>called the alternative financial sector.</b></p> <p>2 Q And what other factors -- you just</p> <p>3 referenced other factors. What other factors do you</p> <p>4 have in mind?</p> <p>5 <b>A Those are the only ones that are coming to</b></p> <p>6 <b>mind right now. I should mention one other, and it</b></p> <p>7 <b>come -- came up in the rent to own studies that I did</b></p> <p>8 <b>as well, which is that customers sometimes reported</b></p> <p>9 <b>being treated much better by the alternative</b></p> <p>10 <b>financial sector than they are treated by banks.</b></p> <p>11 Q And do you consider Integrity Advance to</p> <p>12 have been a participant in the alternative financial</p> <p>13 sector as you understand that concept?</p> <p>14 <b>A Yes, I do.</b></p> <p>15 Q If I could ask you please to return to your</p> <p>16 expert report, which is Exhibit 1, and specifically</p> <p>17 to page 17?</p> <p>18 <b>A Okay.</b></p> <p>19 Q And the third paragraph on that page, last</p> <p>20 sentence, which we previously discussed, which starts</p> <p>21 with the phrase, "Also, by stating." Do you see</p> <p>22 where I am?</p>
<p style="text-align: right;">178</p> <p>1 specific customers of Integrity Advance.</p> <p>2 <b>A Yes, this information doesn't -- and in the</b></p> <p>3 <b>report I don't talk about any specific</b></p> <p>4 <b>characteristics of Integrity Advance customers. It's</b></p> <p>5 <b>a more general analysis of how consumers, individuals</b></p> <p>6 <b>would process this -- this information.</b></p> <p>7 Q Do you have any -- I want to -- do you have</p> <p>8 any understanding, general or specific, as to why</p> <p>9 consumers might seek a payday loan?</p> <p>10 <b>A Well, my understanding is that one of the</b></p> <p>11 <b>motivations certainly for getting a payday loan is</b></p> <p>12 <b>that consumers are short of cash. They're cash</b></p> <p>13 <b>strapped, and additionally, they don't have access to</b></p> <p>14 <b>other cheaper avenues of getting money, for example,</b></p> <p>15 <b>from a conventional bank. So those are the</b></p> <p>16 <b>conditions that I would normally associate with --</b></p> <p>17 <b>and there may be other -- other factors as well, but</b></p> <p>18 <b>I would associate those with the people who take</b></p> <p>19 <b>payday loans.</b></p> <p>20 Q What is that understanding based on?</p> <p>21 <b>A I've looked at the literature, as I said,</b></p> <p>22 <b>so I know a little bit about this, you know, what is</b></p>	<p style="text-align: right;">180</p> <p>1 <b>A Yes.</b></p> <p>2 Q And it states, "Also, by stating that</p> <p>3 additional fees," quote, "may accrue, rather than,"</p> <p>4 quote, "will accrue, the sentence introduces</p> <p>5 unnecessary ambiguity about whether or not additional</p> <p>6 costs will be incurred by the borrower," and we</p> <p>7 discussed this sentence previously.</p> <p>8 <b>A Yes.</b></p> <p>9 Q Is it the case that embedded in this</p> <p>10 sentence is the assumption that will accrue is more</p> <p>11 accurate as you understand it?</p> <p>12 <b>A Yes.</b></p> <p>13 Q And what is the basis of that</p> <p>14 understanding?</p> <p>15 <b>A So my understanding is simply based on an</b></p> <p>16 <b>understanding of how these loans work. Borrowers</b></p> <p>17 <b>have the opportunity to either pay off in full or to</b></p> <p>18 <b>roll the loan over. If the loan is rolled over, then</b></p> <p>19 <b>the total costs go up. And as I said before, I'm</b></p> <p>20 <b>interpreting the term "additional fees" broadly to</b></p> <p>21 <b>include finance charges and other costs that the</b></p> <p>22 <b>consumer may incur. So it is my understanding if you</b></p>

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1 **roll the loan -- if you roll the loan over, you will**  
2 **incur higher costs.**  
3 Q Do you know if that was always the case as  
4 to every customer whose loan was renewed or rolled  
5 over?  
6 **A That -- that is my assumption, yes.**  
7 Q What is that assumption based on?  
8 **A Again, it's just based on a review of the**  
9 **loan agreement document. When I look at the**  
10 **document, that's the understanding I come to.**  
11 Q But sitting here today, you don't know if  
12 it was the case for every single customer whose loan  
13 was renewed, that that person was going to accrue  
14 additional fees as you understand fees here.  
15 **A Well, to me, this is -- so I haven't seen**  
16 **the actual costs that individual customers have**  
17 **incurred. What I'm saying though is the language in**  
18 **the loan agreement documents to me seems to indicate**  
19 **that costs will be higher if you roll over the loan**  
20 **without exception.**  
21 Q But you don't know if there were instances  
22 where customers did not pay additional fees if their

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1 loan was renewed.  
2 **A No, I don't know that.**  
3 Q And so if there were instances where  
4 customers did not pay additional fees, would it be  
5 correct to then use the phrase "will accrue"?  
6 **A If it was the case that for some customers,**  
7 **there were no additional fees or costs, then "will**  
8 **accrue" would be wrong. "May accrue" would be --**  
9 **would be correct.**  
10 Q You said earlier that in your -- your  
11 understanding of customer complaints was that they  
12 were not representative of Integrity Advance  
13 customers. Do you recall that testimony?  
14 **A Yes.**  
15 Q Why do you believe that to be the case?  
16 **A Because there is a very small fraction of**  
17 **customers who complain, and so while complaints**  
18 **provide useful information, you can't generalize from**  
19 **the complaints to the entire customer base. Customer**  
20 **-- complainers are not a random sample, if you will,**  
21 **of all the customers of any company.**  
22 Q What's the basis for that statement that

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1 you just made, the random sample statement?  
2 **A That's the definition of random sampling.**  
3 **You're drawing the sample random. Here these are**  
4 **individuals who are self-selected to be in this**  
5 **sample. They've complained.**  
6 Q Do you from your experience in the general  
7 field of marketing have an understanding of what  
8 types of consumers may be more likely to, quote,  
9 self-select?  
10 **A Self-select as complainers?**  
11 Q Yes.  
12 **A Just to clarify, are you asking do I know**  
13 **what the demographic characteristics are of people**  
14 **who complain or -- I'm trying to understand what you**  
15 **-- what you're asking here.**  
16 Q Well, you said before that you didn't  
17 believe they were representative, and I'm trying to  
18 understand -- I'm trying to understand a little bit  
19 better why you made that statement. You said to me  
20 that they were not randomized, and that they are  
21 self-selected, and I'm trying to understand what you  
22 mean by that.

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1 **A Okay, so by self-selected, I mean that**  
2 **people choose to complain. A random sample would be**  
3 **that you use a probabilistic mechanism for choosing**  
4 **people from the company's customer database. So as**  
5 **an example, if I'm doing a survey of the customers of**  
6 **a company, I would draw a random sample. I wouldn't**  
7 **simply survey complainers or I wouldn't simply survey**  
8 **people who live in Philadelphia, for example, because**  
9 **these would not be random samples off the entire**  
10 **customer database, so I couldn't generalize the**  
11 **findings from that sample to the entire customer base**  
12 **of that company. So in the same sense that people**  
13 **self-select to live in Philadelphia, they're not**  
14 **randomly assigned to stay there, complainers are**  
15 **self-selecting themselves. They choose to complain.**  
16 Q And you talk about random selection. Is  
17 that something that you consider to be an important  
18 component in assessing a customer -- a customer  
19 base's experience with a product?  
20 **A So if I was to do a survey, for example,**  
21 **and try to interpret the experiences of a sample of**  
22 **customers of a company and then generalize the**

<p style="text-align: right;">185</p> <p>1 <b>conclusions to the entire customer population of that</b> 2 <b>company, I would want a more technically correct, I</b> 3 <b>would want a probability sample, is what I would</b> 4 <b>want, and a random -- a simple random sample, for</b> 5 <b>example, would be one way to do it.</b> 6 Q And just so we're using those phrases -- a 7 probability sample is a statistical term? 8 A Yes. 9 Q And generally, can you just describe at a 10 pretty high level for us? 11 A Certainly. All that's saying is that there 12 is a known probability that any person in that 13 population would be selected in the sample. 14 Q And so from your perspective, customer 15 complaints does not meet that definition. 16 A No, it doesn't. 17 Q Okay. If I can ask you please, Dr. Hastak, 18 to go back to your expert report, Exhibit 1, and 19 specifically to page 19? 20 A Is that exhibit numbered? 21 Q Page 19 of Exhibit 1, which is just your 22 expert report.</p>	<p style="text-align: right;">187</p> <p>1 "clarity, repetition of this idea is likely to 2 mislead borrowers by reinforcing the take-away the 3 total payments remain as specified in the TIL box." 4 A Yes. 5 Q Excuse me. What is the basis for -- let's 6 talk about that first sentence I read. What is the 7 basis for that first sentence, this increases the 8 likelihood? 9 A So that's based on the notion I was 10 discussing earlier, which is repetition of any 11 concept or idea in the document increases the 12 likelihood that that concept will be noticed, 13 attended to and processed. So I'm simply applying 14 that principle there. 15 Q Is there in your understanding a converse 16 of that concept as well? And specifically what I 17 mean is the repetition of information could also have 18 the opposite effect on a customer or consumer, 19 meaning he or she would tune it out? 20 A There is a point at which excessive 21 repetition will produce diminishing returns. There's 22 also limited number of situations where it can</p>
<p style="text-align: right;">186</p> <p>1 MS. WEINBERG: Just page -- 2 BY MS. BAKER: 3 Q Page 19. 4 A I was going to Exhibit 1, which is -- 5 Q I'm sorry. 6 A I thought Exhibit 1 of the -- it was my 7 mistake. 8 Q Exhibit 1 of our deposition purposes. I'm 9 just referencing it for the record. 10 A Yes, of course. 11 Q And more specifically, it's Bates numbered 12 CFPB042538. 13 A I have it. 14 Q I'd like to direct your attention to the 15 last sentence of the first complete paragraph on that 16 page, which starts with the phrase, "This increases 17 the likelihood." Do you see that? 18 A Yes. 19 Q It's actually the second to last sentence. 20 "This increases the likelihood that borrowers will 21 read and process this information. Unfortunately, as 22 discussed earlier in the section on," quote,</p>	<p style="text-align: right;">188</p> <p>1 actually produce boomerang, but that's fairly rare. 2 Q It can produce, I'm sorry. 3 A A boomerang effect. It can produce a 4 negative effect, but that's -- we can discuss, that's 5 in a rather different situation. I don't think that 6 applies here. So it would be the case if you just 7 looked at the literature that you could reach a point 8 of repetition where it has no additional beneficial 9 effects or at least it hits sort of an upper plateau 10 or asymptote. Just say plateau. Upper plateau or 11 upper bound. "Asymptote" was the word I used, but 12 I'm not sure we need that. Upper plateau or upper 13 bound. 14 Q And going back to the sentence, "This 15 increases the likelihood that borrowers will read and 16 process this information," what is this sentence 17 referring to? 18 A This is -- so I have two sets of repetition 19 that I talk about in this paragraph, just to be 20 clear. I start off with -- so let me just read that. 21 Q Sure. 22 A "Specifically the information presented in</p>

<p style="text-align: right;">189</p> <p>1 the section labeled ACH authorization repeats some of 2 the information presented earlier in the three 3 qualifying paragraphs by reinforming borrowers that 4 they may be charged for either the total of payments 5 and any accrued fees, or the finance charges plus any 6 accrued fees, or the finance charges plus fees plus 7 \$50 depending on their particular choice situation." 8 So this is the first kind of repetition that I talk 9 about. This -- this information is presented in the 10 three paragraphs earlier, and it's repeated in this 11 ACH authorization. 12 "This repetition increases the chances that 13 borrowers will notice and process this information." 14 But then I say, "Furthermore, the phrase 'rest of the 15 terms of the loan agreement will continue to apply' 16 is first mentioned in the first qualifying disclosure 17 paragraph and is repeated twice in the second 18 qualifying disclosure paragraph." This -- this -- so 19 this I'm referring to now the repetition of this last 20 sentence. "This increases the likelihood that 21 borrowers will read and process this information as 22 well." And then I know that unfortunately, as I've</p>	<p style="text-align: right;">191</p> <p>1 is a possible interpretation. 2 Q Is it possible or likely? 3 MS. WEINBERG: If you can answer the 4 question. 5 A I would say it's possible. 6 Q But you used the word "likely" here; is 7 that right? 8 A Yeah, I noticed that I used the word 9 "likely," and I'm -- here I'm sort of in the middle 10 between the two. As I said before, these are -- 11 these are qualitative qualifiers, you know, not 12 intended to create -- create strong impressions, but 13 I'm -- certainly I'm using "possible" and "likely," 14 and yeah, I said "likely." I mean, to some extent, 15 the fact that this is being repeated again and again 16 is -- just does increase the probability that it'll 17 have some impact on the consumer, so I'm okay with 18 "likely." 19 Q Okay. So is it likely or possible? 20 A I'd say likely. 21 Q Okay. The sentences we've just discussed 22 concern your opinion about the role of repetition and</p>
<p style="text-align: right;">190</p> <p>1 analyzed earlier, this information can mislead 2 borrowers. 3 Q And how -- I want to make sure I understand 4 exactly what your opinion is as to how this 5 information could -- this information you've just 6 referenced could mislead borrowers. 7 A So again, as I stated before, the idea here 8 is that consumers may read the sentence or the phrase 9 "All terms of the loan agreement continue to apply to 10 renewal," for example, and interpret that to mean 11 that the terms that are laid out in the TIL box, 12 which are the cost disclosures, will also continue to 13 apply. So the information in the TIL box do 14 represent the terms of the loan as presented in the 15 loan agreement document, and so consumers could think 16 of those as among the terms that are being referred 17 to here that would continue in the renewal condition. 18 So that's what I'm saying. 19 Q You don't know if consumers actually 20 thought that though, do you? 21 A No, I don't know that they thought that. 22 I'm just interpreting the language to mean that this</p>	<p style="text-align: right;">192</p> <p>1 renewal; is that right? 2 A They focus on repetition, yes. 3 Q And they concern in particular -- I'm 4 talking just about this paragraph on page 19 that we 5 just discussed. They concern in particular loan 6 renewals; is that right? 7 A Well, the repetition -- so there are two 8 sets of ideas that are being repeated. The first set 9 of ideas focus on the types of fees that might accrue 10 depending on which of three options the consumer 11 chooses. One is payment in full. One is loan 12 renewal and one is auto-renewal. 13 Q Okay. 14 A The second part of the repetition 15 reinforces, or potentially reinforces the idea that 16 the terms of the loan under these three scenarios are 17 the same, and so they really apply to all three 18 renewal options. I mean, what I'm saying is there's 19 a possibility consumers might take the message that 20 yes, these are three descriptions of different 21 processes that I can use to pay back the loan, but 22 the terms of the loan are the same. This is what I'm</p>

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1 **saying is a possibility.**  
2 Q I see. Do you have an opinion as to  
3 specifically what type of disclosure would apprise  
4 customers of how the renewal payments work or finance  
5 charges associated with renewals work?  
6 A **So I didn't design a new set of**  
7 **disclosures. That wasn't, you know, one of the goals**  
8 **of my assignment. My assignment was to simply**  
9 **evaluate these disclosures, so I haven't done any**  
10 **sort of systematic thinking on that issue. I'm sure**  
11 **a better set of disclosures can be created. I just**  
12 **haven't done that.**  
13 Q How are you sure a better set of  
14 disclosures, to use your phrase, could be created?  
15 A **When I evaluate a set of disclosures, I**  
16 **have certainly a sense of whether this disclosure can**  
17 **be improved upon. I give some examples of ways in**  
18 **which this might be done, although I don't do a**  
19 **comprehensive analysis, but one of the ideas I put**  
20 **out is that you could provide a much stronger**  
21 **disclosure than what we have here by introducing**  
22 **language right under the T-I-L box, the TIL box,**

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1 **indicating to consumers that the information in the**  
2 **TIL box is only relevant to single-payment loans,**  
3 **that a majority of consumers roll over the loan, and**  
4 **the costs for the rollovers are significantly higher,**  
5 **and then providing some very simple examples of what**  
6 **the costs might be if they roll over, you know, once**  
7 **or twice or four times. In the report I sort of lay**  
8 **out a little bit of information on that.**  
9 **So it seems to me that given the key**  
10 **disclosure in my mind that consumers would benefit**  
11 **from is that the costs are significantly higher if**  
12 **they roll over the loan, that information ought to be**  
13 **presented very directly, and it ought to be presented**  
14 **very close to the cost information that is provided**  
15 **for the single-payment loan. So that kind of would**  
16 **be my starting point.**  
17 Q Do you have an understanding as to what the  
18 average number of times a renewal -- a customer  
19 renewed a loan?  
20 A **No, I just know that about 80 percent of**  
21 **the consumers renewed it. I don't know how many**  
22 **times they did that.**

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1 Q How would you design a disclosure without  
2 having that knowledge?  
3 A **Well, again, we are just speculating here.**  
4 **I would have to think a lot more before I design new**  
5 **disclosures. I think it's a bad idea to design new**  
6 **disclosures on the fly. So these are ideas that may**  
7 **be worth considering. To me, it seems like providing**  
8 **information -- well, first of all, one would want to**  
9 **know how often people renewed the loan and tried to**  
10 **include that as one of the data points that you would**  
11 **provide to the consumer, but you could provide in a**  
12 **tabular form information like what happens if you**  
13 **renew it once, what happens if you do it twice, what**  
14 **happens if you do it four times.**  
15 **It's still a fairly simple table that would**  
16 **say here are three or four scenarios that we see, and**  
17 **for the loan that we are talking about for you where**  
18 **we have stated that your finance charges are \$150,**  
19 **the corresponding finance charges for renewal twice**  
20 **would be so much. If you renewed it four times, it**  
21 **would be so much, and if you went into the**  
22 **auto-workout, it would be so much. So at least in**

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1 **principle, I could see a way that this could be done.**  
2 **Of course, designing these things takes, you know,**  
3 **more than just the ideas, but that's -- that's kind**  
4 **of the approach I would take.**  
5 Q What if you included a disclosure that had  
6 four renewals, but there was a customer who -- or  
7 customers who renewed the loan more than four times?  
8 Would that be an accurate disclosure in your opinion?  
9 A **So there's no perfect disclosure in most**  
10 **cases. The only question is can you make the**  
11 **disclosure significantly better, is the current**  
12 **disclosure deficient, and what my analysis tells me**  
13 **is that this disclosure can be improved substantially**  
14 **with modest effort. That doesn't mean that it can**  
15 **address every possible contingency, but again, my**  
16 **concern would be can it provide relevant accurate**  
17 **information to a majority of the consumers without**  
18 **introducing excessive complexity. I think that could**  
19 **be done.**  
20 Q In the absence of a consumer survey, you  
21 think that could be done?  
22 A **Well, I think designing the disclosure**

<p style="text-align: right;">197</p> <p>1 itself could be done without the consumer survey. 2 Eventually if I wanted to see if the disclosures were 3 effective, I would certainly consider doing a 4 consumer survey as a -- as a possibility. 5 Q Why? 6 A Because consumer surveys provide good 7 information. 8 Q You've said that you think you could make 9 disclosures significantly better. What's the basis 10 for that concept, significantly better? What do you 11 mean by that? 12 A Well, there are many measures that you can 13 use to see if the disclosure is better, but the key 14 notion would be are there specific elements of 15 knowledge, bits of information that you want 16 consumers to understand. Here to me the answer is 17 fairly clear. One of the key pieces of information 18 you want consumers to have is that costs will be 19 significantly higher if they rolled the loan over. 20 To me, presenting that information clearly should not 21 pose a big challenge. 22 Q In the absence of a consumer survey, why do</p>	<p style="text-align: right;">199</p> <p>1 to those customers. It's not the only consideration, 2 so I'm certainly not arguing that's the only thing 3 that matters to people, but cost is an important 4 driver, and so providing information that accurately 5 tells them what the costs will be is important. I 6 mean, in my mind, that's just a known kind of thing. 7 Q You analogize the rent to own sector to 8 this one, and I know you've written a study on that 9 sector. 10 A Yes. 11 Q The study that you authored, or coauthored, 12 if I'm not mistaken, had a finding that a customer 13 might be more willing to purchase a product in the 14 rent to own sector in the absence of a disclosure? 15 A No, I'm fairly certain that wasn't a 16 finding. 17 Q So what is the finding? 18 A So the rent to own study was mainly 19 designed to see how people use the rent to own 20 transaction, do they use it as a device for a 21 short-term rental, as the industry indicated, or is 22 it a device that consumers use to actually purchase</p>
<p style="text-align: right;">198</p> <p>1 you -- how can you be sure that that's the kind of 2 information you would want a customer to have? 3 A Again, I go back to a basic understanding 4 of what factors are likely to be important to a 5 consumer when they borrow money. To me it's not a 6 mystery that cost would be a big consideration, a big 7 factor. That's one area where I don't think I need a 8 consumer survey to figure out that consumers care 9 about costs. They want loans that cost them less. 10 If a loan costs them more, they want to understand 11 why and they want to make those tradeoffs. To me, 12 that just makes common sense. 13 Q But specifically here as to the customers 14 who were taking out loans from Integrity Advance, you 15 have no knowledge of what information they might 16 consider to be important in that determination. You 17 have no specific knowledge. 18 A Well, I don't know about Integrity Advance 19 customers specifically, but I think I know a little 20 bit about customers in the alternative financial 21 sector, and rent to own, for example, I've studied 22 quite a bit, and cost is an important consideration</p>	<p style="text-align: right;">200</p> <p>1 the product, because the cost of rent to own is very 2 high, and the -- the companies that do rent to own 3 had argued that a lot of their consumers are simply 4 interested in a short-term rental, and they're 5 willing to pay the higher cost for that. 6 What the study showed was that a majority 7 of consumers actually use rent to own as a purchase 8 device, and the costs are very high. So the 9 recommendation there was to look at better cost 10 disclosures at the point of sale so consumers can see 11 what the cost of purchasing this product through rent 12 to own might be. 13 Q Let's go back to something you said before 14 about designing a disclosure in the context of this 15 matter. Is it ever possible to design a disclosure 16 here that in your opinion would involve a hundred 17 percent consumer comprehension as you understand that 18 concept? 19 A As I understand that concept, there is -- I 20 haven't seen a disclosure that achieves that goal. 21 Q Have you ever in your career seen a 22 disclosure that achieves that goal?</p>

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1 **A No.**

2 Q And so when you say a significantly better

3 disclosure here, what percentage are you thinking in

4 terms of consumer comprehension would -- would

5 achieve that goal of significantly better?

6 MS. WEINBERG: If you can respond to that

7 question.

8 **A Yeah, honestly, I don't have a number. I**

9 **just know, and this is a qualitative assessment. I**

10 **just know looking at this disclosure that it could be**

11 **improved and there could be a significant improvement**

12 **in consumer take-away, but I can't -- I can't say**

13 **much more beyond that just based on what I -- what I**

14 **see and what I know.**

15 Q And you say that based on having not looked

16 at -- or having not designed a disclosure yourself;

17 is that right?

18 **A In this particular situation, but I've**

19 **designed lots of disclosures.**

20 Q Right, in this particular situation. And

21 you talk about this disclosure being deficient. That

22 was your phrase.

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1 **A Yes.**

2 Q And when you talk about that concept of

3 deficiency, are you thinking about that concept in

4 relation to what you believe would be a significantly

5 better disclosure?

6 **A Yes.**

7 Q But you sitting here today don't actually

8 have in mind what a significantly better disclosure

9 would read like.

10 MS. WEINBERG: You're misstating his

11 testimony. He's already given you several examples

12 of ways that this disclosure can be improved.

13 MS. BAKER: Could you please read back my

14 question?

15 - - -

16 THE REPORTER: Question: "But you sitting

17 here today don't actually have in mind what a

18 significantly better disclosure would read like."

19 - - -

20 THE WITNESS: So I don't have a fully

21 designed disclosure, but I have thought a little bit

22 about the parameters of that disclosure and I did

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1 talk about some of them with you. So when you

2 evaluate a disclosure, the idea of how the disclosure

3 might be better automatically come out because these

4 are flip sides of the same coin, why is this a bad

5 disclosure.

6 Well, it's bad because of certain things.

7 For example, it's bad on proximity. How will

8 proximity be improved? It's bad because it's not

9 linked directly, you know, to the claim that it's

10 trying to qualify. How would you do that linking?

11 It's bad because it doesn't explicitly come out and

12 say that costs will be higher. How would you state

13 that? So these ideas have been playing in my head.

14 That's a far cry from designing a finished

15 disclosure, but I have enough to go on based on my

16 analysis to be able to say that I think a better

17 disclosure is possible.

18 BY MS. BAKER:

19 Q But you haven't tested that.

20 **A No, I haven't done that. I'm just going to**

21 **get a glass of water.**

22 Q Sure.

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1 **A Please continue.**

2 Q You talked before about one of the factors

3 that you believe a customer in this instance might

4 care about is the cost of the loan. Do you recall

5 that testimony?

6 **A Yes.**

7 Q Are there other factors that you think a

8 customer, an Integrity Advance customer, might have

9 cared about in connection with the provision or

10 receipt of a loan?

11 **A I haven't really thought about that.**

12 **Again, my assignment in this case was to evaluate the**

13 **cost disclosure, so that's what I really focused on.**

14 **But yeah, I mean, I could speculate on some things**

15 **that might matter to people.**

16 MS. WEINBERG: Don't speculate if you have

17 no basis.

18 **A Yeah, I have no -- I have no real basis to**

19 **know what these might be.**

20 Q So the only factor that you've considered

21 in assessing whether or not customers have been

22 provided with information that you call, quote,

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1 relevant, is the cost component.  
2 **A I'd phrase it a little differently. My**  
3 **analysis asks the question are the cost disclosures**  
4 **in this document clear and conspicuous. Doesn't**  
5 **actually address the question of are these**  
6 **disclosures relevant. I'm saying to you that I'm**  
7 **sure they're relevant, but that's not a part of my**  
8 **analysis. I don't analyze whether or not the cost**  
9 **disclosures are relevant. I analyze whether the**  
10 **disclosures are clear and conspicuous.**  
11 Q Well, if the cost disclosures were not  
12 relevant to a customer's decision, then does it  
13 matter if they're clear and conspicuous?  
14 **A And I don't believe that is true, but if**  
15 **you make the assumption that cost disclosures -- cost**  
16 **doesn't matter to consumers, then yes, I would agree**  
17 **the disclosure don't matter.**  
18 Q I didn't say it didn't matter. I said it  
19 wasn't relevant.  
20 **A I'm not sure what the distinction is.**  
21 Q Sure. What does your use of the term  
22 "relevant" mean? Let's -- let's talk about how

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1 you've used that term, and then I'll borrow it.  
2 **A So I'm using relevant to mean that it has**  
3 **an impact on how they evaluate the loan. So if they**  
4 **look at two loans, for example, one loan has a lower**  
5 **cost, the other loan has a higher cost for the same**  
6 **amount of money borrowed, that would affect their**  
7 **evaluation of the two loans. That's what I mean by**  
8 **relevant.**  
9 Q I see. So your -- your position is that  
10 the cost of the loan impacts, or could impact how a  
11 customer might evaluate or make a determination about  
12 whether to take the loan in the first place.  
13 **A Yes, it would have an effect on that, yes.**  
14 Q And again, you -- you haven't actually  
15 tested that assumption.  
16 **A No, I haven't.**  
17 Q Okay, but is there a difference in your  
18 mind between information that might be relevant to a  
19 customer and information that might be material to a  
20 customer?  
21 **A Okay, I'm using the term "relevant" I think**  
22 **in a similar sense to material. Again, we are now**

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1 **using different words, and I know that "material"**  
2 **sometimes has a legal meaning.**  
3 Q Right.  
4 **A So I'm not using it in a legal sense. To**  
5 **me, material is it has an impact in their**  
6 **decision-making.**  
7 Q What is your understanding of the relative  
8 importance of that impact for the cost disclosures to  
9 be relevant?  
10 **A I'm sorry, I don't understand that.**  
11 Q Sure. So you said that the relevance means  
12 impact of how a customer might make a decision.  
13 **A Right.**  
14 Q And I'm trying to understand if it's your  
15 position or your opinion that there's a percentage  
16 weight given to that particular component or factor  
17 in the decision-making process.  
18 **A So I have no basis for actually knowing**  
19 **what that weight is. Certainly there is some weight**  
20 **that the consumer might give. In my opinion, that**  
21 **weight is substantial, but I have nothing more than a**  
22 **qualitative assessment of that in my mind. I don't**

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1 **have a percentage in mind if that's what you're**  
2 **asking.**  
3 Q You say in your opinion, that weight is  
4 substantial, and we're referring that weight  
5 specifically to the cost disclosures. Why is that  
6 your opinion?  
7 **A Well, not the cost disclosures, but**  
8 **understanding the cost. The disclosure communicates**  
9 **that.**  
10 Q Thank you.  
11 **A To me again, just thinking about loans, it**  
12 **just seems fairly obvious that one of the key**  
13 **criteria for evaluating loans is cost. Again, I want**  
14 **to emphasize, that consideration is not relevant to**  
15 **my analysis here, which is not an analysis of how**  
16 **important or relevant or material cost information**  
17 **is. It's simply saying are the disclosures clear and**  
18 **conspicuous, but on a separate discussion, yes, I**  
19 **would assume cost information to be -- to be material**  
20 **or relevant.**  
21 Q Are there other factors that you believe  
22 would also be relevant or material to a customer's

<p style="text-align: right;">209</p> <p>1 decision, specifically an Integrity Advance 2 customer's decision to take out a loan? 3 MS. WEINBERG: If you can answer this based 4 on the record that you have reviewed. 5 <b>A Yeah, I -- there's nothing in the record 6 that I've reviewed that gives me the basis for 7 answering that question.</b> 8 Q So is it fair to say that your testimony 9 today is that you have no understanding of what 10 factors inform an Integrity Advance customer's 11 decision to take out a loan, or informed, I should 12 say? 13 <b>A Yes, I -- I mean, I have -- I've not 14 studied the Integrity Advance customers and how they 15 make decisions, so I have no basis for saying what 16 factors they consider.</b> 17 Q So your assumption about cost is based on 18 what? 19 <b>A So in my field, cost is considered to be a 20 perennial variable that influences consumer 21 decision-making. It's not specific to a particular 22 product. For most products, consumers consider cost</b></p>	<p style="text-align: right;">211</p> <p>1 Q And you're also similarly not able to weigh 2 the various decision factors that a customer might 3 weigh in making a decision to take out a loan from 4 Integrity Advance. 5 <b>A No, I'm not able to do that.</b> 6 Q And have you at any point compared the cost 7 of Integrity Advance's loan products as you 8 understand them to what other lenders, payday lenders 9 charged customers at the same time period? 10 <b>A No, I have not done that.</b> 11 Q Why not? 12 <b>A Again, it was not relevant to the analysis 13 I did, which was focused mainly on whether consumers 14 can understand the cost disclosures in the loan 15 agreement.</b> 16 Q Okay. If I can direct your attention 17 please to page 19 of your expert report, which again 18 for our record is Exhibit 1 -- 19 <b>A Okay.</b> 20 Q The summary assessment of cost disclosure 21 section -- is that a summary of the opinions we've 22 just discussed?</p>
<p style="text-align: right;">210</p> <p>1 <b>to be an important factor. So I'm basing my 2 assumption that cost would be important in making a 3 loan decision, and this is an expensive product. 4 People are paying a lot for getting this loan. So 5 I'm combining that information and my knowledge that 6 cost is generally considered to be an important 7 variable.</b> 8 <b>At the FTC, for example, in FTC cases, for 9 example, financial considerations are considered 10 automatically material. That materiality doesn't 11 have to be shown. So issues related to cost, issues 12 related to health, for example, issues related to 13 children are considered material in decision-making. 14 So I'm looking at all of that and saying it just 15 makes sense to me that cost would be material to 16 these consumers.</b> 17 Q But it's not -- you're not able sitting 18 here today to talk about what other components of the 19 loan might also be material or relevant to a 20 customer. 21 <b>A Not -- not based on any specific knowledge 22 of Integrity Advance customers.</b></p>	<p style="text-align: right;">212</p> <p>1 <b>A Yes, it is.</b> 2 Q Okay. And it's what you discussed earlier 3 this morning at the beginning of the deposition as 4 well; is that right? 5 <b>A That's correct.</b> 6 Q Okay. If I can take your attention now 7 please to page 21 of your report -- actually, if I 8 can take your attention to page 22 please, thank you, 9 and again, for the record, this is page 22 of your 10 expert report, which is Exhibit 1, and the Bates 11 number for this page is CFPB042541. Dr. Hastak, if I 12 can direct your attention to the first full 13 paragraph, and specifically the -- what appears to be 14 the third sentence that starts with, "A better 15 approach," do you see where I am? 16 <b>A Yes, I do.</b> 17 Q Okay. And that sentence reads, "A better 18 approach to facilitate consumer understanding might 19 be to communicate clearly to borrowers up front, near 20 or as a part of the TIL disclosure that their costs 21 and total payment amounts would vary depending on how 22 many times they renewed the loan, and to present</p>

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1 charges and total payments under several scenarios,  
2 such as payment in full, two renewals, four renewals  
3 plus auto-workout." What's the basis for that  
4 sentence?  
5 **A So that's one example of the kind of idea I**  
6 **was having when I drafted this report as to how this**  
7 **disclosure might achieve -- these disclosures might**  
8 **achieve their objectives better. These disclosures**  
9 **are designed in part to tell consumers what the true**  
10 **costs of borrowing are, and my sense is that an**  
11 **approach that does something like this would provide**  
12 **this information more clearly, more conspicuously to**  
13 **consumers.**  
14 Q Would or might?  
15 **A Would. I would say would.**  
16 Q Would. You said might in this report. Is  
17 there a difference in your mind between those two  
18 phrases or words?  
19 **A Well, might sounds like may. Would sounds**  
20 **a little stronger.**  
21 Q And so your testimony today is that it  
22 would communicate clearly to consumers -- communicate

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1 clearly to borrowers up front?  
2 **A Yes, I would -- I would be willing to say**  
3 **would.**  
4 Q Okay, and that's based on having not done  
5 any actual testing of that hypothetical disclosure;  
6 is that right?  
7 **A No, it's just based on all the work I've**  
8 **done with disclosures in the past, my experience with**  
9 **disclosures and understanding of how they work.**  
10 Q But no -- no testing of this potential  
11 hypothetical disclosure that you describe in this  
12 sentence; is that right?  
13 **A That's correct.**  
14 Q Okay. And if I can direct your attention  
15 to the next sentence that starts with the phrase, "By  
16 presenting," do you see where I am?  
17 **A Yes.**  
18 Q "By presenting this information early on  
19 and emphasizing the fact that borrowers have a  
20 choice, the loan agreement would be providing  
21 information in a unified manner rather than in a  
22 fragmented manner in the TIL box and later in

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1 qualifying disclosures, and would thus increase the  
2 likelihood that borrowers would comprehend the loan  
3 terms and their choices." What is the basis for this  
4 sentence?  
5 **A This is just essentially continuing the**  
6 **logic that I've already set up. So it's again based**  
7 **on an understanding that if you want a disclosure to**  
8 **qualify a claim, you want to reduce proximity. In**  
9 **this case I'm arguing literally integrating the claim**  
10 **and the disclosure together so they are processed as**  
11 **one, and you want to increase clarity. So you want**  
12 **to -- among other things. So you want to clearly**  
13 **indicate that there are cost implications of these**  
14 **choices. So I think you could do several things in**  
15 **order to improve the clarity of those disclosures.**  
16 Q You -- you make a distinction between a  
17 claim and a disclosure as it concerns this particular  
18 loan agreement. I'm not sure I understand what that  
19 distinction is. Can you explain it please?  
20 **A Sure. So the way I'm conceptualizing this**  
21 **is that there is a cost claim that is made early in**  
22 **this document, and that claim is in the TIL box and**

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1 **the sentences that follow, and that claim is that**  
2 **these are the costs that a borrower will incur.**  
3 Q And for our record, you appear to be  
4 looking at page 6 of your expert report; is that  
5 correct?  
6 **A Yes, that's correct.**  
7 Q Okay, explain -- if you could please  
8 explain what you mean by claim very specifically?  
9 **A So by claim, I mean that the document is**  
10 **informing consumers that for a loan amount of \$500,**  
11 **they would incur a finance charge of \$150, and so**  
12 **their total payments would be \$650. That's the**  
13 **claim. That's what I'm calling the claim in this**  
14 **case. And then there are qualifying disclosures, the**  
15 **first one being the three paragraphs that follow,**  
16 **that essentially is telling consumers if those**  
17 **disclosures work well, which I'm saying they don't,**  
18 **but the disclosures are essentially telling consumers**  
19 **well, this will only happen if you pay off the loan**  
20 **in full. If you don't pay off the loan in full, if**  
21 **you roll over, your costs will be significantly**  
22 **higher.**

<p style="text-align: right;">217</p> <p>1           <b>Now, in my opinion, they do a bad job of</b> 2 <b>saying that, but that's what they're doing. They're</b> 3 <b>intended to qualify this claim by saying this claim</b> 4 <b>is only valid in some situations, and that's what I</b> 5 <b>mean by qualifying the claim. So what I'm saying is</b> 6 <b>are these disclosures qualifying the claim that's</b> 7 <b>prominently made high up on page 1 in the loan</b> 8 <b>agreement.</b></p> <p>9           Q   And when you say these disclosures that you 10 believe are qualifying the claim, can you 11 specifically direct us to what disclosures you're 12 referring to?</p> <p>13           A   So my fairly exhaustive review of the loan 14 agreement found five sets of disclosures, some 15 sentences, some paragraphs, that had at least 16 something to say about costs that may help people 17 understand this claim better, in a more qualified 18 manner, and so I list them right at -- so early on in 19 my report I say immediately below the TIL box -- 20 well, immediately below the TIL box are the five 21 sentences, but then I say there are these five 22 messages, if you will, that could be interpreted and</p>	<p style="text-align: right;">219</p> <p>1   your -- and page 10 of your expert report, your 2 testimony is that those five items are qualifying 3 disclosures that you understand to be informing what 4 you call the claim made in the TIL box featured on 5 page 6 of your expert report.</p> <p>6           A   So just to be clear, those are the only 7 elements I found in the loan agreement that said 8 anything about costs, and so I wanted to evaluate 9 those to see if they do a good job or a poor job of 10 qualifying what is in the -- in the TIL box. I mean, 11 I don't accept them without analysis that they are 12 appropriate qualifying disclosures, but I say there 13 is something here that has the potential to influence 14 consumer understanding of costs, and then I evaluate 15 each of these elements systematically on the FTC 16 framework.</p> <p>17           Q   So let's go to page 9 for a moment of your 18 expert report. One of the five factors that you 19 describe is a disclosure that is, as you understand 20 it, intended or potentially intended to inform or 21 qualify the TIL box concerns these two charts that we 22 discussed earlier; is that right?</p>
<p style="text-align: right;">218</p> <p>1   should be evaluated as potentially qualifying the 2 claims in the TIL box.</p> <p>3           So I've got the three paragraphs which are 4 on page 7. They're highlighted on page 7. Then I 5 have the special notice, which is on page 8. Then I 6 have the schedule of charges, which is on page 9. 7 Then I have the ACH -- the paragraph under ACH 8 authorization, which is on page 10. And the fifth 9 one actually, I missed it, is earlier, is right below 10 the TIL box, are those five sentences as I call them. 11 That -- that's on page 1 below the TIL box. So right 12 below the TIL box is some information that reinforces 13 what is in the TIL box, and then you have the 14 additional disclosures. So in doing the analysis, I 15 looked at anything in the loan agreement document 16 that might shed some light on the cost of the loan, 17 and then I evaluate each of those disclosures on -- 18 on the FTC -- within the FTC framework using the FTC 19 guidelines.</p> <p>20           Q   And so I just want to make sure I 21 understand. Your testimony is the five items you 22 just described, page 6 and page 7, page 8, page 9 of</p>	<p style="text-align: right;">220</p> <p>1           A   Right, the charts and the language really. 2 The whole section is called schedule of charges and 3 fees. When I see that, to me, that's something I 4 need to investigate. You know, what does it say, is 5 there information here that can qualify the 6 impression that's being created by the TIL box about 7 costs, and then is it presented in a clear and 8 conspicuous manner.</p> <p>9           Q   You testified earlier that looking at those 10 two charts, you weren't certain as to whether or not 11 they concerned a -- an assumption of a one-time 12 payment or multipayment as to the loan; is that 13 right?</p> <p>14           A   Yes, I did.</p> <p>15           Q   So it's fair to say then that you also 16 similarly couldn't opine on whether or not those 17 boxes are intended to qualify the TIL box disclosure 18 that's referenced on page 6 of your report.</p> <p>19           A   Well, having -- having looked at that a 20 bit, I mean, I think -- so I think on that narrow 21 issue of whether this is a single loan or not and why 22 I say that, I think -- what's the language I use? So</p>

<p style="text-align: right;">221</p> <p>1 I did say that I found these two tables confusing. 2 Give me just one moment. 3 MS. WEINBERG: Page 18? 4 A Page 18. Right, I say that rather, the 5 figures appear to be based upon single-payment loans, 6 and as I reflect on this, my -- my understanding is 7 what this is showing is a loan that consumers take. 8 And then if you look at the eight-day column, that's 9 signifying a loan where the very next payday, payment 10 due date, the first payment due date would be within 11 eight days. 12 For some people, that payment due date may 13 be 11 days, 14 days, 16 days, et cetera, and my 14 understanding is that the company charges its fees 15 not by the number of days the loan is outstanding, 16 but by whether it's being paid the first time it's 17 due or the next pay date and so on. That's how the 18 charges are incurred. 19 So now that's how this table makes sense to 20 me, and there are all -- and that's where I call this 21 a single-payment type of loan. It's basically saying 22 if you pay off your loan at the very first pay date</p>	<p style="text-align: right;">223</p> <p>1 about single-payment loan, and so it's not providing 2 any information on rollover loans. 3 If that's the case, then it's not 4 qualifying that information at all. I just don't 5 know this. When I get into the analysis, I'm simply 6 saying here is a section that talks about charges and 7 fees and costs. I need to analyze this and see is 8 this prominent, is this placed in the right place, 9 you know, is there repetition here, is it clear? We 10 are just discussing clarity, and my assessment is 11 that this is not very clear at all. 12 Q If I can take you back to page 22 for a 13 moment please of your expert report? 14 A Twenty-two? 15 Q Yes, please. 16 A Okay. 17 Q You talk about that -- in that last 18 sentence on the first paragraph, it would -- that the 19 loan agreement would be providing important 20 information in a unified manner rather than in a 21 fragmented manner, and it's your -- as I understand 22 it, your testimony is that those qualifying</p>
<p style="text-align: right;">222</p> <p>1 when the loan is due, then your costs will be, and in 2 the second table, it's \$30 for every hundred dollars 3 that you borrow, you pay a fixed cost. If you renew 4 the loan, then you would be paying much higher cost 5 clearly. And so that's where I think I get the idea 6 that these are tables designed to focus on a single 7 -- single-payment loan. 8 Q So -- 9 A I mean, that was just that -- that one 10 narrow issue. I don't know if your question went to 11 that or you had a broader question. 12 Q So sitting here today, do you believe that 13 this chart on page 9 is intended as you understand it 14 to qualify the claim as you use that term described 15 in the TIL box on page 6 of your report? 16 A I don't comment on what the intention was. 17 What I'm saying is on the six dimensions on which I 18 evaluated this particular disclosure, clarity was one 19 of the dimensions. This is not at all clear in terms 20 of whether or not it relates to what's in the TIL 21 box. As I look at it more and more, it looks like it 22 doesn't relate to the TIL box because it simply talks</p>	<p style="text-align: right;">224</p> <p>1 disclosures, the five you described, should be 2 provided in a unified manner; is that right? 3 A Well, not all of them together. What I'm 4 saying is a disclosure should be unified with the 5 information in the TIL box. I'm not saying take the 6 language from the five disclosures as is and move it 7 up or anything like that, just to be clear. I'm 8 saying design a new disclosure that is actually 9 intended to do the job, which is qualify the claims 10 in the TIL box in a clear and conspicuous manner. 11 Q But you then describe the qualifying 12 disclosures which you previously went through, pages 13 6, 7, 8, 9 and 10 of your report. Is it your 14 testimony -- I'm just trying to understand your 15 testimony. Is it your testimony that those five 16 disclosures should be presented in a manner that is, 17 quote, unified, unquote, as it concerns the TIL box 18 claim as you call it? 19 A No. 20 Q What is your testimony? 21 A My testimony is that if you want to qualify 22 the TIL box disclosure, one approach would be to</p>

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1 create a new qualifying disclosure that is integrated  
2 with the language in the TIL box, that follows the  
3 TIL box and is linked to the TIL box so consumers  
4 process that information together so consumers get an  
5 understanding that says I'm borrowing \$500, my total  
6 cost of the loan is \$650.

7 Well, wait a minute, that only applies if I  
8 pay off this loan in one shot. If I roll over this  
9 loan, my costs are a lot higher, here are some  
10 examples. That's just one way of doing it. I'm  
11 certainly not saying to move all of the disclosures  
12 up here. I don't think that would be effective.

13 Q Okay, so -- so then let me ask you this.  
14 Would you modify the TIL box to capture your concern  
15 or address your concern as you've described it?

16 A So let me preface this by saying I haven't  
17 redesigned these disclosures, and that's not an easy  
18 job, so what we are doing here is speculating, and if  
19 I'm told to have designed the disclosures, I could do  
20 that, but that's going take to some time.

21 Secondly, my understanding is the TIL box  
22 is a legal requirement, so -- and I'm not an expert

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1 on the law, so I don't know that you can change the  
2 TIL box. But what I'm saying is in principle, you  
3 could bring a qualifying disclosure close to the TIL  
4 box and integrate it with the TIL box, not literally  
5 perhaps. By integrate, I don't necessarily mean  
6 changing the TIL box, but you could add language  
7 right below it so the entire representation would be  
8 processed by people in a unified manner rather than  
9 in a fragmented manner.

10 Right now they process this. Then if they  
11 so happen to look at it, they process the second  
12 disclosure, and later on they see a third disclosure  
13 that presents the information somewhat differently.  
14 So it's a fragmented presentation of information.  
15 What I'm arguing is that one approach that could be  
16 used -- I'm sure there are others -- that would  
17 improve the situation is to present the claim and the  
18 qualifying information in close proximity in a manner  
19 that they are linked.

20 Q So just to clarify, your -- your testimony  
21 and specifically the statements in the report that  
22 we've just described and discussed on page 22

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1 contemplates some redesigning of this disclosure; is  
2 that right?

3 A It doesn't necessarily contemplate  
4 redesigning the TIL box, but yes, it contemplates  
5 redesigning this portion of the loan agreement --

6 Q I see.

7 A -- document.

8 Q So -- but you -- but your testimony's also  
9 that that's not an easy feat.

10 A I don't think I say that.

11 Q Well, what is your testimony about the  
12 relative ease with which one could redesign some  
13 components of the disclosures here as you've  
14 described them?

15 A I think redesigning the disclosures so that  
16 they more effectively qualify the claims in the TIL  
17 box should not be that difficult.

18 Q But you haven't actually tried it.

19 A I haven't tried it, no.

20 Q So you sitting here today don't actually  
21 know if it would be difficult or not.

22 A I have a sense, but I haven't done it.

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1 Q And -- and sitting here today, what -- do  
2 you have a sense of whether or not you could redesign  
3 a disclosure in the so-called unified manner in which  
4 you describe and create -- or could you potentially  
5 redesign that disclosure and create a scenario that  
6 is more confusing to consumers, not less?

7 A I'm just trying to understand the question.

8 Q Sure.

9 A I mean --

10 MS. WEINBERG: If you can -- if you can  
11 understand the question, answer it. If you don't  
12 understand it, don't answer it.

13 MS. BAKER: Can you please read back my  
14 question?

15 THE WITNESS: Yeah, read it, just to be  
16 clear.

17 MS. BAKER: Thank you.

18 - - -

19 THE REPORTER: Question: "And sitting  
20 here today, do you have a sense of whether or not you  
21 could redesign a disclosure in the so-called unified  
22 manner in which you describe and create -- or could

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1 you potentially redesign that disclosure and create a  
2 scenario that is more confusing to consumers, not  
3 less?"  
4 - - -  
5 THE WITNESS: So my goal here would be to  
6 create a disclosure that is better, not worse, and  
7 sitting here, having analyzed the disclosures as they  
8 are and having thought about the issue, I'm saying  
9 that I don't see this as a difficult task, to develop  
10 a disclosure that would be more effective than the  
11 one we have now.  
12 BY MS. BAKER:  
13 Q Do you have an opinion about how much  
14 information is too much information for a customer of  
15 Integrity Advance or any customer of a payday lender  
16 to adequately understand or comprehend the  
17 disclosures that you're discussing?  
18 MS. WEINBERG: Objection, unclear.  
19 BY MS. BAKER:  
20 Q Do you understand my question?  
21 A **Yeah, I'm not understanding the question.**  
22 MS. BAKER: Could you please reread my

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1 question?  
2 MS. WEINBERG: I don't think that's going  
3 to help. Why don't you just rephrase it.  
4 MS. BAKER: Could you please reread my  
5 question? Thank you.  
6 - - -  
7 THE REPORTER: Question: "Do you have an  
8 opinion about how much information is too much  
9 information for a customer of Integrity Advance or  
10 any customer of a payday lender to adequately  
11 understand or comprehend the disclosures that you're  
12 discussing?"  
13 - - -  
14 A **I mean, I don't -- I can't answer that**  
15 **question in the abstract. I don't.**  
16 Q And you've testified earlier, a few minutes  
17 ago, that you didn't -- that you understand the TIL  
18 box described on page 6 of your report to be a legal  
19 requirement, but that you're not specifically  
20 apprised of that issue. Is that fair to say?  
21 A **I believe --**  
22 MS. WEINBERG: Objection, unclear.

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1 BY MS. BAKER:  
2 Q Is that fair to say?  
3 A **I mean, I believe I was told that that is**  
4 **-- that is -- that is by law, that TIL box is the way**  
5 **it is by law.**  
6 Q So given that that's by law, how would you  
7 -- does that impact or affect your ability or your  
8 thinking about how one might redesign a disclosure of  
9 the kind -- in the ways that you describe here on  
10 page 22 of your report?  
11 A **So again, at a very general level, the idea**  
12 **that I discussed in the report is that you could**  
13 **provide the qualifying information with a tier focus**  
14 **on costs associated with rolling the loan over right**  
15 **below the TIL box. That's the area that I was**  
16 **playing with or focusing on. And then the other**  
17 **issue would be presenting that information in a clear**  
18 **manner, in a way that clearly indicates what the**  
19 **costs are for the various options. Those were the**  
20 **ideas I was playing with. So that doesn't involve**  
21 **making changes in the TIL box.**  
22 Q Okay. If I can take your attention please

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1 back to your expert report and specifically page 21  
2 of that report, and before we go there, I have one  
3 other question. Do you have an opinion about whether  
4 the changes you're proposing would be TILA compliant,  
5 that's is compliant with --  
6 MS. WEINBERG: Objection.  
7 BY MS. BAKER:  
8 Q -- Truth in Lending Act?  
9 MS. WEINBERG: Calls for a legal  
10 conclusion. He's not a legal expert.  
11 A **Yeah, I -- I have no opinion on that.**  
12 Q So sitting here today, you don't know if  
13 the proposals that you are putting forward would even  
14 comply with the relevant laws.  
15 A **Well, again, to be clear, I'm not putting**  
16 **forward specific proposals. I'm just looking at an**  
17 **approach that I think would work. The specific**  
18 **design of the disclosure could be done while you keep**  
19 **in mind what the law is and what you can and cannot**  
20 **do. Again, based on my review so far, I don't see**  
21 **that as an insurmountable obstacle.**  
22 Q But you're not a lawyer, right?

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1 **A But I'm not a lawyer.**  
2 Q Okay, and so you haven't, it's fair to say,  
3 taken into account the legal consequences of a  
4 potential hypothetical redesign of the kind that you  
5 describe on page 22 of your report.  
6 **A No, I have not.**  
7 Q Okay. If I could ask you please to turn to  
8 page 21 of your expert report, and for our record,  
9 that's Bates numbered CFPB042540.  
10 **A Okay.**  
11 Q And specifically if I could take your  
12 attention down to the last paragraph on that page,  
13 first sentence, it reads -- do you see where I am,  
14 "Defaults have"?  
15 **A Yes.**  
16 Q "Defaults have a significant and a large  
17 impact on behavior. Given a choice between two  
18 options, people often choose to do nothing and hence  
19 get assigned to the default option." Why is that --  
20 those sentences -- why are those sentences in this  
21 report?  
22 **A So my understanding is that -- in reading**

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1 **the loan agreement, is that there is a default option**  
2 **in the loan agreement, and the default option is**  
3 **rolling over the loan. So if people either don't**  
4 **inform -- so people can inform Integrity Advance, but**  
5 **if they don't inform Integrity Advance and they don't**  
6 **pay off the loan in full on that first due date, then**  
7 **the loan is automatically rolled over. So that is a**  
8 **default option. And so what I'm writing about here**  
9 **is how do default options work, what are the**  
10 **implications of a default option, and relatedly, what**  
11 **might be appropriate disclosures in a situation where**  
12 **a default option is being used.**  
13 Q And you say here that defaults have a  
14 significant and large impact on behavior. What's the  
15 basis of that statement?  
16 **A There is a lot of literature both in**  
17 **economics and in marketing that actually shows that**  
18 **consumers are affected by default options, and that**  
19 **they have large effects for -- even for very**  
20 **significant types of behaviors, like organ donation,**  
21 **as I note here.**  
22 Q And you say it has an effect. What kind of

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1 effect do you understand the literature to reflect as  
2 it relates to your sentence here?  
3 **A So what it's really saying is that if you**  
4 **look at -- if there are two options confronting an**  
5 **individual, for example, and you look at the option**  
6 **that they eventually end up with, defaults have a**  
7 **huge impact on that choice. Early on in the**  
8 **literature it was presumed that if people are**  
9 **confronted with a -- especially decisions that have**  
10 **significant consequences, such as saving in their**  
11 **401(k) plans or donating their organs, that the way**  
12 **in which the choice was presented, which is what a**  
13 **default option is, what's called choice architecture,**  
14 **would not have a big impact on choice.**  
15 **People would know what they want and they**  
16 **would not simply go for the default. They'll make**  
17 **the choice that they want. In the same sense that**  
18 **you could argue a person borrowing money knows what**  
19 **the implications of the different options are and**  
20 **they'll make a conscious choice.**  
21 **But what the literature shows is that even**  
22 **for highly consequential decisions, if you set the**

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1 **default to be rollover, for example, then a lot of**  
2 **people will end up with that option even though that**  
3 **may not be the choice they would have made if they**  
4 **were forced to make a choice.**  
5 Q And is it your opinion that that fact or  
6 that -- that analysis that you've just articulated is  
7 relevant here to the loan agreements that you've  
8 evaluated?  
9 **A Yes, I mean, what I'm saying is that**  
10 **default options may partly be driving the high**  
11 **proportion of individuals who roll over the loan. So**  
12 **it's not clear, as I say, and I'll just quote from my**  
13 **report. I say there are two implications of this**  
14 **literature to the present situation. First, since**  
15 **the renewal -- since renewal was the default option**  
16 **in the loan agreement, one would expect a large**  
17 **proportion of borrowers to end up with this option,**  
18 **but this would not necessarily mean that many or most**  
19 **of them chose the option actively. So that's --**  
20 **that's the observation tying to default options.**  
21 **My second implication here is that since**  
22 **the majority of consumers did end up with the default**

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1 option, the TIL disclosure that Integrity Advance  
2 provided to them was inaccurate at least to those  
3 consumers. So essentially what I'm saying is the  
4 loan agreement sets the default option one way but  
5 presents cost information the other way with the  
6 nondefault option, and that's -- the literature would  
7 argue if you set a default option one way, you have  
8 to expect a lot of people to end up with that default  
9 option, so would it not make more sense to present  
10 cost information consistent with the default option?  
11 Q I just want the record to reflect you were  
12 reading the top of page 22 of your report.  
13 A Oh, I'm sorry, yes.  
14 Q Is that right? Okay.  
15 A Yes, that's the top of page 22.  
16 Q Thank you. You -- you -- if I can take you  
17 back to page 21 for a moment, you give examples here  
18 of organ donation, 401(k) plans and gym memberships.  
19 Is it your testimony that the loans that Integrity  
20 Advance offered to customers are akin to a decision  
21 to donate an organ?  
22 A No, this is not a direct comparison. What

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1 I'm trying to say here is that default options have  
2 been shown to have a strong effect in a wide variety  
3 of situations, and that the experts in this area  
4 would generally argue that default options work in  
5 most cases.  
6 Q Are you an expert in this area, as you're  
7 describing and using that terminology?  
8 A Yes, I -- I mean, I've looked at the  
9 options on default options. I haven't conducted  
10 studies on this myself. If I have -- I don't think  
11 so, but I understand this literature.  
12 Q So you would hold yourself out as an expert  
13 on default opinion?  
14 A I wouldn't say I'm an expert, but I  
15 understand the area.  
16 Q Okay. And is it your testimony that  
17 customers' decisions to affirmatively or through  
18 default enroll in a 401(k) plan is akin to a decision  
19 to renew a payday loan in this instance?  
20 A Again, as I said before, I'm not making a  
21 direct comparison. I'm saying what the literature  
22 indicates is that default options have been shown to

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1 work in a wide variety of areas, so it's fair to say  
2 that one could conclude that they will work in most  
3 cases.  
4 Q But you don't know for sure if they worked  
5 in this case, and worked meaning exactly as you've  
6 described, do you?  
7 A I don't have any empirical evidence on  
8 that, but the theory of default options is very  
9 strongly accept and supported in the literature.  
10 It's not one of those frameworks that receives some  
11 support. So this is one area where I would say most  
12 experts of default options would say that they are  
13 very likely to work in this area.  
14 Q And your assessment of --  
15 A And absent some specific evidence that  
16 there's something unusual about this area that  
17 counters the effect of default options, I'd go the  
18 other way. I'd say they're likely to work unless  
19 they're proven otherwise, rather than the other way  
20 around.  
21 Q And here they were -- in the work you did  
22 though, you neither proved it affirmatively or

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1 otherwise. Is that fair to say?  
2 A No, I just relied on the literature here.  
3 Q Okay. Can I ask you to go to page 22  
4 please of your report?  
5 A Okay.  
6 Q Second -- and I'm reading the third  
7 sentence in the first paragraph on page 22. It says,  
8 "Second, since the majority of customers did end up  
9 with a default option, the TIL disclosure that  
10 Integrity Advance provided to them was inaccurate."  
11 What is the basis for that statement?  
12 A Well, my understanding is that that's a  
13 factual statement. If people -- if people roll over  
14 the loan, then the cost disclosures in the TIL box no  
15 longer apply.  
16 Q And so your -- that's based on your  
17 understanding of the facts here?  
18 A Yes.  
19 Q And what's the predicate for your  
20 understanding of those facts? In other words, what  
21 have you looked at to come up with that  
22 understanding?

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1       **A** So I understand the numbers that are in the  
2 **TIL box. I know that those numbers apply to a**  
3 **single-payment loan. I read the loan agreement that**  
4 **says that if you roll over the loan, you'll be paying**  
5 **additional finance charges and wouldn't really be**  
6 **paying off your principal. I'm familiar with the**  
7 **fact that if you roll over the loan, your actual loan**  
8 **costs will be much higher.**  
9       **So I'm just putting sort of two and two**  
10 **together, if you will. I'm saying here is cost**  
11 **information in the TIL box that only applies to a**  
12 **single-payment loan. I know that most consumers roll**  
13 **their loan over, and just looking at the loan**  
14 **agreement, I know that the costs are higher if you**  
15 **roll the loan over, so the cost figures in the TIL**  
16 **box are not applicable.**  
17       **Q** So if you were to presumably render, as  
18 you've described, the TIL disclosure or the TIL box  
19 figures to be accurate, what in your estimation would  
20 those numbers in the TIL box need to show?  
21       **A** I mean, I haven't actually redesigned the  
22 **numbers in the TIL box. That's not a direction I**

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1 **thought about. Potentially you could go there if you**  
2 **wanted to, but I'm just saying that they aren't**  
3 **accurate right now, so that consumers are looking at**  
4 **the TIL box numbers, and those don't reflect their**  
5 **reality. That's all I'm observing. How should one**  
6 **achieve that is not something I've thought about very**  
7 **much.**  
8       **Q** Well --  
9       **A** I'm sorry, I've thought about it a little  
10 **bit, but that's the -- that's the -- that's the**  
11 **subsequent discussion on page 22. That's again a**  
12 **high-level sort of set of suggestions about how one**  
13 **might achieve that without necessarily changing the**  
14 **TIL box.**  
15       **Q** Well, your testimony as I understand it is  
16 that because a majority of the customers end up with  
17 a default renewal, that fact, the renewal fact should  
18 be disclosed in the TIL box to render it accurate.  
19 Is that right?  
20       **A** I'm not saying that should be done. I'm  
21 **just saying that it's inaccurate, but, yes, I mean,**  
22 **if the TIL box could be changed to reflect what**

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1 **consumers typically experience, then that -- that**  
2 **would be closer to the consumer reality than what we**  
3 **have now.**  
4       **Q** What is your understanding of the typical  
5 renewal experience for an integrity customer?  
6       **A** I don't know what it is. I just know that  
7 **they renew.**  
8       **Q** Do you have an understanding as to how many  
9 times the typical, to use your word --  
10       MS. WEINBERG: Asked and answered.  
11 BY MS. BAKER:  
12       **Q** -- Integrity Advance --  
13       MS. WEINBERG: He's already said he  
14 doesn't know.  
15       **A** I don't know that.  
16       **Q** You don't -- can I please finish my  
17 question? Do you have an understanding of the number  
18 -- the average number of times that the typical  
19 Integrity Advance customer renewed a loan?  
20       **A** No, I don't.  
21       **Q** So when you say that something's  
22 inaccurate, presumably that's in relation to that

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1 which you believe would be accurate; is that right?  
2       **A** Well, when I say that is -- the information  
3 **in the TIL box is inaccurate, I'm basing that on the**  
4 **understanding that 80 percent of the people don't pay**  
5 **back -- I think only eight percent of the people pay**  
6 **back their loan in a single shot, so the disclosure**  
7 **in the TIL box is accurate only for eight percent of**  
8 **the people.**  
9       **Q** What I'm trying to understand though is  
10 that if you have to have a TIL box, as you've  
11 testified, your understanding is you have to legally  
12 have a TIL box, and I know you're not a lawyer, but  
13 that's your testimony, and then you're saying in --  
14 in this sentence that you understand the TIL box to  
15 be inaccurate because it does not reflect the  
16 majority of customers ending up with a default  
17 option; is that right?  
18       **A** Right.  
19       **Q** I'm asking you what would be in the TIL box  
20 to make it accurate.  
21       **A** And I'm not -- I'm not proposing anything  
22 **in this report. What I'm saying is -- in the report**

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1 what I'm saying is there -- there is a way of  
2 qualifying the information in the TIL box so people  
3 can understand that if they roll their loan over,  
4 their costs will be higher. You can certainly do  
5 that.  
6 Q How would you do that?  
7 A Using -- well, one of the ideas I float  
8 here is on page 22. I'm basically saying right below  
9 the TIL box, you could have information that is tied  
10 to the information in the TIL box. So even if you're  
11 not able to change the information in the TIL box,  
12 you could provide information right below it so that  
13 the information that's relevant to a majority of the  
14 consumers who are rolling the loan over would be  
15 presented right there, and the likelihood that people  
16 would misunderstand the TIL box information would be  
17 reduced.  
18 Q So I want to make sure I understand your  
19 testimony. Is your testimony that you would change  
20 the information in the TIL box or the information  
21 underneath the TIL box?  
22 A So again, let me preface all of that by

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1 saying this is all -- this is top-of-the-head  
2 thinking here. My task was not to redesign these  
3 disclosures, and I haven't done that so I can't speak  
4 on them with any authority, but I do think that this  
5 is possible. And so the idea that I'm thinking about  
6 is not to change the information in the TIL box as  
7 one option. I'm assuming that the TIL box is  
8 sacrosanct. You could then present some information  
9 below the TIL box, right below the TIL box and tie it  
10 to the TIL box in a manner that consumers will  
11 process that information in a unified manner.  
12 That's what I mean by unified processing,  
13 that when they process the TIL box, almost  
14 immediately it's evident to them that there's  
15 qualifying information to that TIL box information,  
16 or that TIL box information may apply in some  
17 situations but not others, and that's not currently  
18 done.  
19 Q So your testimony as I understand it is  
20 that you would now -- now your testimony is that you  
21 would keep the TIL box, notwithstanding what you  
22 contend is inaccurate information; is that right?

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1 A Well, again, I'm not making any decisions  
2 here or I'm not redesigning the loan agreement on the  
3 fly here. I'm just saying these are some ideas that  
4 come to mind that could be implemented, but of  
5 course, you would have to design the disclosures.  
6 Can I take a short break?  
7 MS. BAKER: Sure, absolutely. Let's --  
8 THE WITNESS: Not very long.  
9 MS. BAKER: Let's go off the record. It's  
10 4:19.  
11 (Recessed at 4:19 p.m.)  
12 (Reconvened at 4:31 p.m.)  
13 BY MS. BAKER:  
14 Q Dr. Hastak, if I can take you to page 24 of  
15 your expert report please, and for our record, that's  
16 Bates numbered CFPB042543, the top of that page,  
17 first complete sentence on that page starts with the  
18 word "Unfortunately." Do you see where I am?  
19 A Yes, I do.  
20 Q It says, "Unfortunately, the paragraph of  
21 focal interest here is not presented in a prominent  
22 manner. It appears in normal font," quote, "blends

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1 with other text and is buried in the middle of the  
2 two-page section." What is the basis of this  
3 statement?  
4 A So that is just based on a direct  
5 observation of that section on ACH authorization, and  
6 if I may go to that --  
7 MS. WEINBERG: Page 23.  
8 THE WITNESS: Page 23. I wanted to look at  
9 the whole --  
10 MS. WEINBERG: Oh, the whole --  
11 THE WITNESS: -- section actually, so that  
12 would be in the appendix, right?  
13 MS. WEINBERG: We're looking at the same  
14 one, okay.  
15 THE WITNESS: I'm trying to see where that  
16 --  
17 MS. WEINBERG: It is in the second one.  
18 THE WITNESS: There it is.  
19 BY MS. BAKER:  
20 Q What are you looking at specifically?  
21 A I'm trying to find where that ACH  
22 authorization paragraph is. Yeah.

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1 MS. WEINBERG: There's one right here.  
2 **A Right, it's the -- it's the last paragraph.**  
3 **Right, so -- so this is -- I'm looking at the actual**  
4 **loan agreement, and I'm on CFPB042571 in Exhibit --**  
5 Q Appendix B?  
6 **A In Appendix B, correct. So that's --**  
7 **that's that ACH authorization paragraph, and so what**  
8 **I'm saying is the ACH authorization section itself**  
9 **has a bold and prominent heading, but of interest**  
10 **here is this one particular paragraph that's at the**  
11 **bottom of page 6, and so I'm commenting on that**  
12 **paragraph. So I'm saying unfortunately, the**  
13 **paragraph of focal interest, which is this last**  
14 **paragraph on page 6, is not presented in a prominent**  
15 **manner. It's really not -- I don't really see**  
16 **anything that's being done to make it stand out.**  
17 **It's in normal font, it blends with the other text**  
18 **and it's buried in the middle of the two-page**  
19 **section. So the section itself is pages 6 and 7, and**  
20 **this is -- this is sort of the halfway through that**  
21 **-- that section. That's all I'm saying.**  
22 Q And so we're clear, page 6 is Bates

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1 numbered CFPB042571, which is Appendix B of your  
2 expert report; is that right?  
3 **A That's correct.**  
4 Q Okay. And what you're referring to is  
5 specifically the last paragraph on that page that  
6 starts with, "You agree"?  
7 **A That's correct.**  
8 Q And is there any other basis for your  
9 statement at the top of page 24 other than what you  
10 just said?  
11 **A And so what it's relying on is my knowledge**  
12 **of the kinds of factors that increase prominence of**  
13 **information, things such as using bold, things such**  
14 **as, you know, boxing information, things such as, you**  
15 **know, other strategies that are designed to make it**  
16 **stand out, things such as leading off with that**  
17 **information in the beginning of the presentation, and**  
18 **I guess based on that, I'm saying none of those**  
19 **factors are being used here.**  
20 Q Do you know if -- but you reviewed this  
21 document in black and white version on a PDF; is that  
22 right?

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1 **A That is correct.**  
2 Q So you don't know if this was set off with  
3 any color or anything like that?  
4 **A No, I don't. You're talking about the way**  
5 **the consumer saw it on line?**  
6 Q That's correct.  
7 **A Yeah, no, I don't.**  
8 Q So you don't know how a consumer actually  
9 observed this particular paragraph that you're  
10 referring to; is that right?  
11 **A That's correct.**  
12 Q Okay.  
13 MS. WEINBERG: In the on-line environment,  
14 is his testimony.  
15 **A In the on-line environment, yes.**  
16 Q So let's make sure we have a clean record.  
17 So it's fair to say then that, Dr. Hastak, you don't  
18 know how a consumer actually viewed the paragraph  
19 that you're referring to, specifically page 6 of  
20 Appendix B of your expert report, on page 6 of  
21 Appendix B of your expert, in the on-line  
22 environment; is that right?

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1 **A Yes, that is correct.**  
2 Q So if I can direct your attention to the  
3 next paragraph on page 24, which is under the  
4 subheading "Placement," second sentence,  
5 "Furthermore, the paragraph of interest is placed  
6 toward the middle of the two-page section, making it  
7 even less conspicuous than information placed near  
8 the relatively prominent title of the section," and  
9 again, the paragraph of interest is what we just  
10 referenced to, the bottom of page 6 of Appendix B of  
11 your report; is that right?  
12 **A That's correct.**  
13 Q What do you mean by this -- what is the  
14 basis of this sentence that I just read, starting  
15 with "Furthermore"?  
16 **A So again, what it's really saying is what**  
17 **it says there. You know, the paragraph -- so the**  
18 **entire ACH authorization section is placed after four**  
19 **pages of very tense document. So this is a lengthy**  
20 **document, and the information that we are interested**  
21 **in is coming much later in the document, decreasing**  
22 **the likelihood that people will notice it and attend**

<p style="text-align: right;">253</p> <p>1 <b>to it. And then further, within this section, this</b></p> <p>2 <b>paragraph again is placed in a -- in a fairly</b></p> <p>3 <b>inconspicuous location, so its placement is rather</b></p> <p>4 <b>poor.</b></p> <p>5 Q And again, you -- you didn't review this</p> <p>6 paragraph as it was viewed by a customer accessing it</p> <p>7 on line, did you?</p> <p>8 MS. WEINBERG: Asked and answered about</p> <p>9 seven million times.</p> <p>10 <b>A No, I did not.</b></p> <p>11 Q Okay, and you looked at this paragraph in</p> <p>12 connection with a paper review of this loan</p> <p>13 agreement. Do you -- do you know if the paper</p> <p>14 version of this loan agreement included a -- was in</p> <p>15 color, that a customer would have received?</p> <p>16 <b>A My understanding was that what I'm looking</b></p> <p>17 <b>at is what the customer received.</b></p> <p>18 Q In the mail.</p> <p>19 <b>A In the mail.</b></p> <p>20 Q Okay.</p> <p>21 <b>A Yes.</b></p> <p>22 Q But --</p>	<p style="text-align: right;">255</p> <p>1 <b>A I'm sorry, could you say that again?</b></p> <p>2 Q Sure. If the ACH authorization was placed</p> <p>3 after two pages of a very dense document, to use your</p> <p>4 phrase, would that change your opinion here?</p> <p>5 MS. WEINBERG: If you can do -- if you can</p> <p>6 respond without doing -- on the fly without doing</p> <p>7 analysis, then please answer.</p> <p>8 <b>A I mean, if you just change that one factor,</b></p> <p>9 <b>it wouldn't change my opinion.</b></p> <p>10 Q What if the sentence read the section on</p> <p>11 ACH authorization is placed after one page of a very</p> <p>12 dense document, would that change your opinion?</p> <p>13 MS. WEINBERG: If you can answer without</p> <p>14 analysis.</p> <p>15 <b>A Yeah, I'd have to analyze it. I'd have to</b></p> <p>16 <b>think about it.</b></p> <p>17 Q And when you qualify something as a very</p> <p>18 dense document, what is -- what is the basis for that</p> <p>19 characteristic or -- or -- or characterization, I</p> <p>20 should say?</p> <p>21 <b>A I'm just looking at the document, and it's</b></p> <p>22 <b>very densely formatted. There's very little white</b></p>
<p style="text-align: right;">254</p> <p>1 <b>A But I don't know -- I didn't see consumer</b></p> <p>2 <b>e-mail -- e-mail attachment, so I'm just -- yeah,</b></p> <p>3 <b>that was my understanding, that this is what they saw</b></p> <p>4 <b>in the mail.</b></p> <p>5 Q Okay. And that understanding is just based</p> <p>6 on what you've been told in connection with your</p> <p>7 report.</p> <p>8 <b>A That's correct.</b></p> <p>9 Q Your sentence starting with "Furthermore"</p> <p>10 follows the sentence right before it which says that</p> <p>11 the ACH authorization is placed after four pages of a</p> <p>12 very dense document. Do you see that?</p> <p>13 <b>A Yes.</b></p> <p>14 Q Do you have an opinion about where this</p> <p>15 paragraph should have been placed in connection with</p> <p>16 the ACH authorization section of the loan agreements</p> <p>17 that you were reviewing?</p> <p>18 MS. WEINBERG: If you can answer.</p> <p>19 <b>A No, I didn't think about that.</b></p> <p>20 Q Well, if the ACH authorization was placed</p> <p>21 after two pages of very dense document, would that --</p> <p>22 would that change your opinion here?</p>	<p style="text-align: right;">256</p> <p>1 <b>space.</b></p> <p>2 Q If there was more white space, would that</p> <p>3 change your opinion?</p> <p>4 <b>A Again, I can't respond to how any one</b></p> <p>5 <b>element would change the overall opinion. I would</b></p> <p>6 <b>have to reassess the document.</b></p> <p>7 Q If the section on ACH authorization was</p> <p>8 placed after one page of a document that had two</p> <p>9 inches of more -- more white space, would that change</p> <p>10 your opinion?</p> <p>11 <b>A As I said, I would -- I would have to look</b></p> <p>12 <b>at the document. That would be the proper way to do</b></p> <p>13 <b>it.</b></p> <p>14 Q When you say you would have to look at the</p> <p>15 document, you would have to look at the reconfigured</p> <p>16 document posited in my hypothetical?</p> <p>17 <b>A That's correct.</b></p> <p>18 Q I see. So sitting here today, you have no</p> <p>19 opinion about how the ACH authorization could be</p> <p>20 placed to make it more clear and conspicuous. Is</p> <p>21 that fair to say?</p> <p>22 <b>A That's fair.</b></p>

<p style="text-align: right;">257</p> <p>1 Q And similarly, do you have an opinion about 2 how the ACH authorization paragraph that you've 3 referenced could be more prominent as you've used 4 that phrase to make it more clear and conspicuous? 5 <b>A I'm sorry, where are you reading now?</b> 6 Q I'm -- I'm -- I'm just looking at page 23 7 of your report where you discuss prominence of the 8 ACH authorization and specifically the paragraph of 9 focal interest. 10 MS. WEINBERG: Again, if you can answer 11 without doing any analysis, please do. 12 THE WITNESS: Could you repeat your 13 question please? 14 MS. BAKER: Can you please read back my 15 question? Thank you. 16 - - - 17 THE REPORTER: Question: "And similarly, 18 do you have an opinion about how the ACH 19 authorization paragraph that you've referenced could 20 be more prominent as you've used that phrase to make 21 it more clear and conspicuous?" 22 - - -</p>	<p style="text-align: right;">259</p> <p>1 <b>so I'm simply noting that.</b> 2 Q And as we've noted before, you didn't 3 actually look at the document in the on-line 4 environment though, right? 5 <b>A That's correct.</b> 6 Q Okay, and other than what you've just said 7 to me, is there any other basis for this statement 8 here that I just read? 9 <b>A No, that's -- that's it.</b> 10 Q If I can direct your attention please to 11 page 25 of your expert report, and specifically if I 12 can direct your attention to -- within the first 13 paragraph on that page under the subtext, or 14 subheading "Clarity," the third sentence down that 15 starts with the word "However," do you see where I 16 am? 17 <b>A Yes, I do.</b> 18 Q It reads, "However, for consumers who do 19 not understand this, and that may be the majority of 20 consumers, this statement fails to explain either 21 that the company could write these checks without 22 notifying the consumer when they create such checks,</p>
<p style="text-align: right;">258</p> <p>1 THE WITNESS: I don't. I haven't thought 2 about that. 3 BY MS. BAKER: 4 Q If I could ask you to look at -- back to 5 page 24 of your expert report please, which again for 6 our record is Exhibit 1, and we're looking at 7 CFPB042543, which is the Bates number, under the 8 subheading "Avoidability," and specifically if I can 9 direct your attention to the last sentence in that 10 section, "Asking borrowers to initial or sign right 11 after the key paragraph would have been a more 12 effective strategy for increasing a likelihood that 13 they might notice and read the information therein." 14 <b>A Yes, I see that.</b> 15 Q How do you know that? 16 <b>A Again, that's kind of a known factor, if 17 you have consumers do something in an on-line 18 environment, even something like check off an I agree 19 box or initial or sign, that simply increases the 20 likelihood that they will pause there. So it's 21 increasing -- so structurally it's increasing the 22 likelihood that people would notice that information,</b></p>	<p style="text-align: right;">260</p> <p>1 or that they could do so without the consumer's 2 signature." What is the basis for this sentence? 3 <b>A So this is simply based on an evaluation of 4 the sentence "If you revoke your authorization, you 5 agree to provide us with another form of payment 6 acceptable to us and you authorize us to prepare and 7 submit one or more checks drawn on your bank account 8 so long as amounts are owed." When I read this 9 sentence, it's not clear to me how these remotely 10 created checks work, and so a potential source of 11 misunderstanding for consumers could be that these 12 checks cannot be used without notification and 13 authorization each time they are used, even though 14 there is a blanket authorization, that each time the 15 check is used, there would be some authorization and 16 some opportunity for the consumer to react. So yeah, 17 that analysis is simply based on looking at this 18 sentence and -- and trying to interpret it.</b> 19 Q And this sentence that you're referencing, 20 Dr. Hastak, is the sentence that starts with, "If you 21 revoke your authorization" at the top of page 25 of 22 your report that you quote?</p>

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1 **A That's correct.**

2 Q I see. Do you have an understanding of

3 what percentage of Integrity Advance customers

4 understood how remotely created checks work?

5 **A No, I don't have an exact understanding of**

6 **that.**

7 Q Do you have an unexact or inexact

8 understanding of that?

9 **A I don't have an understanding of that.**

10 Q And you say the statement fails to explain

11 either that the company could write these checks

12 without notifying the consumer when they create such

13 checks, or that they could do so without the

14 consumer's signature. What is your understanding of

15 that -- what's the basis for that phrase that I just

16 read?

17 **A Again, when I read that sentence, my**

18 **analysis of it is that consumers would expect at**

19 **least some form of notification when the check is**

20 **used, and that they might also expect that they**

21 **provide authorization each time this -- this system**

22 **is used of remotely created checks. So I'm thinking**

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1 **of a situation where you might authorize somebody to**

2 **write a check for you. Usually you authorize it over**

3 **the phone, for example, so each time the check is**

4 **used, there's an authorization that is given. So I'm**

5 **suggesting that for people who don't understand how**

6 **these things work, they may not understand that**

7 **they've given a blanket authorization, that there**

8 **would be no notification, there would be no seeking**

9 **of approval each time the check is used.**

10 Q Do you know if Integrity Advance in some

11 form notified customers when it intended to use a

12 remotely created check?

13 **A No, I -- my understanding was that they**

14 **didn't notify consumers.**

15 Q Did you verify that?

16 **A Well, this is based on information I was**

17 **given.**

18 Q I see, but you didn't independently verify

19 that fact.

20 **A No, I didn't independently verify it.**

21 Q Do you have an opinion about whether

22 customers would make a different choice if they had a

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1 different understanding about how remotely created

2 checking work, assuming they have no such

3 understanding?

4 **A Could you repeat that?**

5 Q Sure. Do you have an opinion about whether

6 or not a customer would make a different choice as to

7 his or her authorization if they had an understanding

8 of how remotely created checks work? And that's

9 assuming that that customer has no understanding.

10 MS. WEINBERG: This was a compound and

11 confusing question.

12 **A I mean, I would say if customers understood**

13 **how remotely created checks work, that might affect**

14 **their decision about whether or not to give this**

15 **authorization.**

16 Q Do you have an opinion about whether they

17 would make a different choice and decide not to give

18 the authorization?

19 **A I think it's possible, yes.**

20 Q Is it possible that they would make the

21 same choice, assuming they made a choice to give

22 authorization?

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1 **A That's possible too.**

2 Q And do you have an understanding of why --

3 do you have -- do you have an opinion about whether

4 or not a customer of Integrity Advance would have

5 expected a specific notification that the company was

6 intending to write a remotely created check?

7 MS. WEINBERG: I'm sorry, could you repeat

8 the question?

9 MS. BAKER: Can you repeat my question

10 please, or read back my question? Thank you.

11 - - -

12 THE REPORTER: Question: "Do you have an

13 opinion about whether or not a customer of Integrity

14 Advance would have expected a specific notification

15 that the company was intending to write a remotely

16 created check?"

17 - - -

18 **A Yes, I think -- that's what I'm saying**

19 **here. I would -- I would -- I would say that**

20 **customers would expect such a notification.**

21 Q And what's the basis for that statement or

22 assessment that you've just testified to?

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1 **A It's just, you know, based on my**  
2 **understanding of how these remotely created checks**  
3 **work.**  
4 Q But it's not based on anything else?  
5 **A Well, it's also based to some extent on the**  
6 **consumer complaints, which -- which sort of seem to**  
7 **be parallel with this where consumers are complaining**  
8 **that even after they stopped the authorization for**  
9 **the ACH transfers, Integrity Advance was taking money**  
10 **out of their accounts. So it looked like there was**  
11 **some confusion about this authorization that they had**  
12 **given companies, and so I'm just taking an additional**  
13 **inferential step and saying if they'd received a**  
14 **notification, that would have changed things.**  
15 Q You testified earlier that you didn't rely  
16 on customer complaints in rendering opinions; is that  
17 right?  
18 **A Again, I'm just saying it's consistent with**  
19 **this interpretation. It's not something I relied on**  
20 **to form the opinion.**  
21 Q If I can take your attention down please to  
22 the bottom of page 25 of your expert report, Bates

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1 numbered CFPB042544 --  
2 **A Okay.**  
3 Q Sentence reading, "Consequently," you see  
4 where I am, last sentence?  
5 **A Yes, I am.**  
6 Q "Consequently, even if borrowers happen to  
7 notice and read this paragraph, they could come away  
8 with the impression that the ACH authorization as  
9 well as the authorization to remotely create and  
10 submit checks is only in force until the," quote,  
11 "total of payments," unquote, "specified in the TIL  
12 box have been made." What's the basis for that  
13 sentence?  
14 **A So if you move further up on that page**  
15 **towards the middle, what I say is further -- that**  
16 **sentence ends with the phrase "So long as amounts are**  
17 **owed to us under the loan agreement." And so this**  
18 **sentence -- so many consumers might believe that the**  
19 **amounts that they owe under the loan agreement are**  
20 **the amounts stated in the TIL box, and so consumers**  
21 **might believe that whatever authorization they are**  
22 **signing, the limit of the amount of money that could**

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1 **be taken out of their accounts, whether it be through**  
2 **an ACH authorization or through some other mechanism,**  
3 **is limited by what's in the TIL box, so that's --**  
4 **that's the sentence that's leading me to that**  
5 **conclusion.**  
6 Q And the sentence again that we're referring  
7 to is referenced at the top of this page, and  
8 specifically you're talking about the last phrase of  
9 that quoted sentence; is that right?  
10 **A That's correct.**  
11 Q Okay. And just so I understand, your --  
12 your -- well, let me -- let me ask you this. You're  
13 saying that customers could come away with the  
14 impression. How are you able to make that statement?  
15 **A So I'm using the same type of**  
16 **interpretation of the sentence as I used with the**  
17 **sentences that we discussed earlier with those three**  
18 **paragraphs, and you know the reference. Otherwise we**  
19 **can go back to that. To me, that sentence, "So long**  
20 **as amounts are owed to us under the loan agreement,"**  
21 **what that basically means is that if consumers don't**  
22 **understand for whatever reasons that the amounts they**

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1 **owe are quite different from what's in the TIL box,**  
2 **then -- then that source of confusion is not there,**  
3 **but if they feel that that's the amount they owe,**  
4 **then this last sentence which says even if borrowers**  
5 **happen to notice and read this paragraph, which I'm**  
6 **arguing is unlikely because of poor placement and,**  
7 **you know, poor prominence and so on, they could come**  
8 **away with the impression that the ACH authorization**  
9 **is only in force until they've paid the \$650, for**  
10 **example, which is the total payment amount in the TIL**  
11 **box.**  
12 Q And you have no knowledge though of what  
13 customers in this instance, Integrity Advance  
14 customers actually knew about amounts owed in the TIL  
15 box; is that right?  
16 **A Well, again, as I said, I haven't done any**  
17 **research with the customers, but again, some of the**  
18 **complaints are consistent, you know, with what is**  
19 **being stated here. So you did have complaints of**  
20 **customers who said, you know, they started taking**  
21 **money and they exceeded the \$650, whatever the amount**  
22 **was in the TIL box, and I didn't understand that, I'd**

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1 already made all my payments, so now how is it that  
2 they're taking money out.  
3 And so they hadn't quite understood that  
4 what they're authorizing is that money substantially  
5 higher than what is in the TIL box could be taken  
6 from their accounts, and the sentence "So long as  
7 amounts are owed under the loan agreement" was being  
8 interpreted differently by the company and by the --  
9 by the customer.  
10 Q And when you say it was being interpreted  
11 differently by the company and the customer, what's  
12 the basis for that statement?  
13 A What I read in some of the complaints where  
14 the customer says I owed them \$650, and they said  
15 they would take whatever, or \$600, and they said they  
16 would take four payments or five payments, and now  
17 they're taking more payments, and now that I call  
18 them, they tell me I haven't paid any of the loan,  
19 I've only paid the finance charges.  
20 So when you look at that description,  
21 that's consistent with the kind of interpretation  
22 that I'm talking about where even if a customer

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1 understood what this extra authorization is that is  
2 being given, which is that you revoke the ACH  
3 authorization but you authorize through another  
4 mechanism for Integrity Advance to take money from  
5 your account, but that's limited by the total amount  
6 that you owe, and their understanding of what they  
7 owe was this -- I'm calling it \$650, but it's the --  
8 it's the amount in the TIL box.  
9 Q Other than looking at customer complaints,  
10 what's the other basis for this statement that you've  
11 just made?  
12 A Well, it's that, and it's -- it's my own  
13 interpretation of the sentence. To me, the sentence  
14 does have the potential to create that impression.  
15 So those are the things I -- and the complaints are,  
16 you know, just consistent. I didn't rely on those,  
17 but those are consistent.  
18 Q If I can direct your attention please to  
19 page 26 of your expert report --  
20 A Okay.  
21 Q And specifically the first sentence after  
22 the summary assessment title, it says, "In my

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1 opinion," you see where I am, Dr. Hastak?  
2 A Yes.  
3 Q "In my opinion, the paragraph in the ACH  
4 authorization that seeks authority for Integrity  
5 Advance to create remotely created checks and use  
6 these to debit borrower accounts is neither clear nor  
7 conspicuous and is unlikely to be noticed, read or  
8 correctly understood by borrowers." Is there  
9 anything else that forms the basis for this opinion  
10 other than what we have just discussed?  
11 A No, so this opinion is based on the  
12 analysis that I've already presented. I'm not sure  
13 we discussed all of it, but it's laid out in detail  
14 in the report. That's what I'm basing this  
15 conclusion on.  
16 Q What else would you include as a predicate  
17 for this opinion that we have not discussed here  
18 today?  
19 A Well, I would simply go back and read my --  
20 my opinion, and I'm not sure that we haven't  
21 discussed anything. I just don't know that. We've  
22 talked a lot of issues, but I -- I do a detailed

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1 analysis of each of the six elements of clear and  
2 conspicuous in the report, so I would say all of  
3 those considerations that I have raised are feeding  
4 into that sentence, that conclusion. That's all I'm  
5 saying.  
6 Q And if I can direct your attention to the  
7 second sentence in this paragraph, "Specifically, it"  
8 -- you're talking about the paragraph that we've  
9 described, which again for our record is the bottom  
10 of page 6 of Appendix B of your expert report; is  
11 that right?  
12 A That's correct.  
13 Q Okay, "Specifically, it is placed  
14 inconspicuously if the paragraph is placed  
15 inconspicuously in a section that follows five pages  
16 of dense texts, the central idea of the paragraph is  
17 not repeated elsewhere, and the language in the  
18 paragraph has the potential to confuse and misdirect  
19 borrowers rather than illuminate them."  
20 A That's correct.  
21 Q And you say here that the central idea of  
22 the paragraph is not repeated elsewhere. What's --

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1 why is that phrase in this sentence? What's the  
2 purpose of that phrase?  
3 **A Well, so the central idea of the paragraph**  
4 **as I see it is that if the Integrity Advance customer**  
5 **revokes their ACH authorization, then they are**  
6 **essentially contradicting themselves by giving an**  
7 **authorization to the company to use some other**  
8 **mechanism, bypass the ACH and take money from their**  
9 **accounts. That idea I don't see anywhere else in the**  
10 **loan agreement.**  
11 Q And so your understanding of that  
12 paragraph, the one we've discussed, bottom of page 6  
13 of Appendix B of the report, is that -- is what you  
14 just described?  
15 **A Yes, that's my understanding of the**  
16 **paragraph.**  
17 Q And -- and what's that understanding based  
18 on?  
19 **A It's based on reading the paragraph**  
20 **essentially.**  
21 Q It's based on your reading of the  
22 paragraph.

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1 **A It's based on my reading of the paragraph,**  
2 **yes.**  
3 Q Anything else?  
4 MS. WEINBERG: Well, he's already testified  
5 it's based on his analysis using the FTC framework.  
6 BY MS. BAKER:  
7 Q Other than your reading of the paragraph,  
8 is there anything else that forms the basis for that  
9 understanding of the central idea of that paragraph?  
10 **A No, my understanding of the central idea of**  
11 **the paragraph is based on reading of the paragraph.**  
12 Q Okay, and you say that the language -- and  
13 I'm just reading the last phrase of this second  
14 sentence on page 26. You say, "And the language in  
15 the paragraph has the potential to confuse and his  
16 misdirect borrowers rather than illuminate them."  
17 What's the basis for that phrase?  
18 **A So that's based on the analysis on page 25**  
19 **under clarity. That's my summary of the statement of**  
20 **that analysis.**  
21 Q And it -- is it your opinion that the  
22 purpose of the paragraph should be to illuminate

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1 customers?  
2 **A Well, I'm simply evaluating what the**  
3 **paragraph does or doesn't do. I'm not opining on**  
4 **what it should do. I'm just saying when I evaluate**  
5 **the paragraph in terms of clarity, I don't find it to**  
6 **be terribly clear.**  
7 Q Okay. You've testified earlier today that  
8 you were aware of instances where customers spoke on  
9 the phone simultaneously with an Integrity Advance  
10 representative while they were completing the  
11 application. Do you recall that testimony?  
12 **A Yes, I do.**  
13 Q Are you aware of any other communications  
14 that Integrity Advance had with its customers  
15 concerning the loan application?  
16 **A I understand that customers -- at least**  
17 **some customers got e-mails from Integrity Advance**  
18 **after the loan application had been approved.**  
19 Q Have you reviewed those e-mails?  
20 **A I've looked at -- I've looked at a template**  
21 **of the e-mails, a couple of e-mails.**  
22 Q And by a template, what's your

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1 understanding of that? What do you mean by template?  
2 **A I think it was a standard form. I mean, I**  
3 **haven't looked at actual copies of e-mails.**  
4 Q And do you have an opinion as to whether or  
5 not that standard form e-mail that you reviewed  
6 informs a customer's understanding the loan  
7 application?  
8 **A I did not review the e-mails in terms of**  
9 **their impact on the customers. That was not**  
10 **something I did.**  
11 Q Why?  
12 **A So the e-mails come after consumers have**  
13 **already made a decision about getting a loan from**  
14 **Integrity Advance, and have actually signed the loan**  
15 **agreement document. So my focus was primarily on**  
16 **factors that might affect the decision to take a**  
17 **loan, and since the e-mail came after, that was one**  
18 **of the major reasons why I did not look at it. The**  
19 **other issue with e-mails of course is that people**  
20 **often don't open e-mails. There's a lot of**  
21 **literature in e-mail marketing which sort of suggests**  
22 **that certainly e-mails from marketers are often not**

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1 opened. So it isn't clear how many customers saw  
2 this e-mail. By comparison, we know that all of the  
3 customers saw the -- saw the loan agreement document,  
4 so that's the document that I focused on.  
5 Q And your understanding of the literature  
6 that people don't open e-mails from marketers, does  
7 that presuppose that that's the case if a person has  
8 already made a decision to obtain a product from that  
9 marketer?  
10 A No, there's literature on that as well,  
11 whether people open e-mails that are reminder  
12 e-mails, for example, and again, the evidence is  
13 pretty clear that certainly a majority of the  
14 consumers don't open such e-mails.  
15 Q And what's the basis as you understand that  
16 literature? Did you -- did you author such a study?  
17 A No, I haven't done that. It's -- it's just  
18 stuff that's talked about in marketing textbooks.  
19 Q But is it stuff that you've worked on  
20 yourself as an academic in this area?  
21 A Well, so my parallel would be I've done  
22 e-mail surveys where consumers are sent surveys, for

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1 example, and you find very, very low response rates.  
2 It's not the same situation, but it shows you that  
3 trying to get everybody to open an e-mail is a very  
4 difficult, almost impossible task.  
5 Q Do you have an opinion about what the most  
6 effective way to communicate with a customer is if  
7 it's not e-mail?  
8 A I haven't thought about that in this  
9 context, no.  
10 Q Okay, and this context being as it relates  
11 to Integrity Advance customers.  
12 A Right.  
13 Q Okay. You testified earlier that you  
14 considered or looked at and relied on guidelines from  
15 the Federal Trade Commission. Did you consider any  
16 other guidelines?  
17 A So there are guidelines from the Food and  
18 Drug Administration that I believe overlap the FTC,  
19 but they're not as clearly developed as the FTC  
20 guidelines. I believe the Better Business Bureau has  
21 co-opted the FTC guidelines, so they're often  
22 considered to be the FTC slash BBB guidelines.

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1 There's a lot of literature on warnings and  
2 disclosures that doesn't have guidelines but that has  
3 again summaries of research studies trying to talk  
4 about what makes warnings prominent, and again, many  
5 of the factors that they talk about overlap with the  
6 FTC guidelines. I'm not really aware of another  
7 systematic set of guidelines that have been offered  
8 the way the FTC guidelines have been that are both  
9 based on the literature, that have been vetted by  
10 academics and industry practitioners and that have  
11 evolved over a long period of time. So to me, they  
12 are -- you know, they are -- they are some of the  
13 go-to guidelines for this kind of evaluation.  
14 Q So it's fair to say that you did not really  
15 consider other guidelines.  
16 MS. WEINBERG: Misstating his testimony.  
17 A Yeah, I would say other guidelines overlap  
18 with the FTC guidelines, so I thought that the FTC  
19 guidelines capture some of these other guidelines.  
20 Q If you had had more time to evaluate these  
21 loan agreements in connection with authoring your  
22 report today, would you have conducted a consumer

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1 survey?  
2 MS. WEINBERG: Asked and answered.  
3 A The difficulty here for doing a consumer  
4 survey was not time. It was the nature of the  
5 transaction.  
6 Q Okay. If I can ask you please to turn to  
7 Appendix A of your expert report, and that starts at  
8 page CFPB042548, and specifically I'm looking at your  
9 C.V., Dr. Hastak, and that goes until CFPB Bates  
10 number 42563.  
11 A 563.  
12 Q Yes. Is there anything in this C.V. that  
13 is to your knowledge inaccurate?  
14 A No, not to my knowledge.  
15 Q Is there anything about this C.V. to your  
16 knowledge that is incomplete, in other words, there  
17 should be additional entries in it?  
18 A No, the C.V. is complete as of December  
19 2015.  
20 Q And -- and we're in March of '16, so is  
21 there anything that --  
22 A Oh, is there new stuff --

281

1 Q Yes.

2 A -- you're saying? I mean, I have papers

3 that are accepted for conference presentations that

4 are coming up that I have not put it in -- put in

5 here, but usually I wait until the -- the

6 presentations happen. No, I don't think there is

7 anything that would go into the C.V. between December

8 and March.

9 Q Thank you. If that changes, I would ask

10 that counsel provide us with an updated C.V. please

11 of Dr. Hastak. How did you go about preparing for

12 today's deposition?

13 MS. WEINBERG: To the extent that this

14 reveals any conversations between counsel at the

15 Bureau and yourself, I'm going to ask you not to

16 answer that question.

17 THE WITNESS: So I reviewed the materials

18 that I relied on in my report. I -- I reviewed my

19 report itself, went through the report. Am I allowed

20 to talk to you off the record for a moment?

21 MS. BAKER: Sure, go ahead. Let's go off

22 the record.

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1 - - -

2 (Discussion off the record)

3 - - -

4 THE WITNESS: So could you read back what I

5 had said so far if you don't mind?

6 - - -

7 THE REPORTER: Answer: "So I reviewed the

8 materials that I relied on in my report. I reviewed

9 my report itself, went through the report."

10 - - -

11 THE WITNESS: And I talked to the folks at

12 the CFPB about the deposition.

13 BY MS. BAKER:

14 Q Without disclosing the contents of any

15 communications you had with counsel for the CFPB, how

16 many times did you meet --

17 MS. WEINBERG: Objection. Do not answer.

18 MS. BAKER: It's not privileged

19 information, the fact that you met with them and how

20 long you met with them for.

21 MS. WEINBERG: I'm instructing you not to

22 answer.

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1 THE WITNESS: I'm going to listen to my

2 counsel here.

3 BY MS. BAKER:

4 Q But it's fair to say you talked to counsel

5 at the CFPB in preparation for today?

6 A I think I've already answered that.

7 Q Okay.

8 A Yes.

9 Q Can I ask you please to go back to page 10

10 of your report, and again, this is your expert

11 report, which is Exhibit 1 of our deposition, and

12 specifically Bates numbered CFPB042529, and

13 specifically I want to direct your attention,

14 Dr. Hastak, to the bottom of that page, footnote

15 number 2, and you have in the sentence that starts

16 with "For peer-reviewed articles." Do you see where

17 I am?

18 A Yes.

19 Q It says, "For peer-reviewed articles that

20 discuss application of the FTC guidelines to off-line

21 and on-line disclosures, see Hastak 2004, and Hoy and

22 Lwin, 2007." What is that referring to?

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1 A I mean, I can give you the citations if you

2 want. These are articles that are published in the

3 literature.

4 Q Are they articles referenced in this

5 report, do you know, as part of your C.V.?

6 A One of them is. My -- my article is, the

7 Hastak 2004 is, or should be.

8 Q Okay, if I could ask you, you don't have to

9 do it here, but if I could ask you to just follow up

10 -- Counsel, if you could please follow up and provide

11 me with the cites to those articles, that would be

12 helpful.

13 MS. WEINBERG: Are they in your C.V.?

14 THE WITNESS: The How and Lwin not. It's

15 not my --

16 BY MS. BAKER:

17 Q Right.

18 A -- article, so I can -- I can give you the

19 cite to that. The Hastak article is in --

20 MS. WEINBERG: That's what you're asking

21 for.

22 THE WITNESS: -- here, but if you want a

285	1 copy, we can pick it up for you. 2 MS. BAKER: That would be great, if you 3 could give me a copy of that article please as a 4 follow-up, and if you could also as a follow-up, Ms. 5 Weinberg, provide us with the cite for the Hoy and 6 Lwin 2007 reference in footnote 2 of page 10 of 7 Dr. Hastak report, I'm making that request on the 8 record. 9 THE WITNESS: Should I send them to you? I 10 can -- 11 MS. WEINBERG: We'll talk. 12 THE WITNESS: Okay. 13 BY MS. BAKER: 14 Q I want to go back to something that you 15 said about your understanding of whether or not 16 people open e-mails in connection with loan 17 agreements in this instance, for example. You said 18 that there's literature that suggests that people 19 don't open e-mails. 20 A Right. 21 Q Well, do you have a reason to believe that 22 if people don't open e-mails, do -- do you have any	287	1 you. 2 (Off the record at 5:24 p.m.) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22
286	1 understanding of whether or not those same people 2 would give consideration to or ignore language in 3 loan agreements? 4 A No, I'm not sure I can put those two things 5 together. 6 MS. BAKER: If we could just take four 7 minutes off the record, that would be helpful. Thank 8 you. 9 (Discussion off the record) 10 - - - 11 MS. BAKER: It's 5:14. We're back on the 12 record. No further questions. Thank you for your 13 time today, Dr. Hastak. 14 MS. WEINBERG: Okay. We have some 15 follow-up -- follow-up questions. 16 MS. BAKER: Okay. 17 MS. WEINBERG: So now we need a little 18 break time. 19 MS. BAKER: Okay, take your time. 20 (Recessed at 5:14 p.m.) 21 (Reconvened at 5:24 p.m.) 22 MS. WEINBERG: We have no questions. Thank	288	1 ACKNOWLEDGMENT OF DEPONENT 2 I, Manoj Hastak, Ph.D., do hereby 3 acknowledge that I have read and examined the 4 foregoing testimony, and the same is a true, correct 5 and complete transcription of the testimony given by 6 me, and any corrections appear on the attached errata 7 sheet signed by me. 8 9 _____ 10 (DATE) (SIGNATURE) 11 12 13 14 15 16 17 18 19 20 21 22

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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Karen Young, the officer before whom the  
3 foregoing deposition was taken, do hereby certify  
4 that the foregoing transcript is a true and correct  
5 record of the testimony given; that said testimony  
6 was taken by me stenographically and thereafter  
7 reduced to typewriting under my direction; and that I  
8 am neither counsel for or related to, nor employed by  
9 any of the parties to this case and have no interest,  
10 financial or otherwise, in its outcome.

11 IN WITNESS WHEREOF, I have hereunto set my  
12 hand and affixed my notarial seal this 13th day of  
13 March, 2016.

14

15

16

17

18 \_\_\_\_\_  
19 NOTARY PUBLIC IN AND FOR  
20 THE DISTRICT OF COLUMBIA

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22 My Commission expires:

July 31, 2019

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No. 106250

Re: Deposition of **Manoj Hastak, Ph.D.**  
Date: 03/11/2016  
Caption: Integrity Advance, LLC and James R. Carnes. In the matter of

ACKNOWLEDGMENT OF DEPONENT

I, Manoj Hastak, Ph.D., do hereby acknowledge that I have read and examined the foregoing testimony, and the same is a true, correct and complete transcription of the testimony given by me and any corrections appear on the attached Errata sheet signed by me.

April 4, 2016

(Date)



(Signature)

No. 106250

Re: Deposition of **Manoj Hastak, Ph.D.**

Date: 03/11/2016

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

Page	Line	Correction/Change and Reason
14	8-9	35-40 hours instead of 20, 25 hours / correction
21	3	taken input instead of put / typo
54	14	communicate instead of complain/ typo
58	5	could rather than would / typo
60	12	the rather than other / typo
111-112	22/1	drop "qualifying information that tells the" / typo
112	18	research instead of reach / typo
114	11	in instead of to / typo
120	2	add "after" before "most" / typo
131	1	been satisfied with instead of satisfied the / typo
165	2	add "not" before "quite" / typo
183	3	randomly instead of random / typo
210	8	Add "I don't speak for the FTC but my understanding is" at the beginning / correction
215	8	increase instead of reduce / correction
238	9	literature instead of options (first mention) / correction
252	19	terse instead of tense / typo
253	19	email instead of mail / typo
284	14	Hoy instead of How / typo

April 4, 2016

(Date)



(Signature)