

EXHIBIT 3

**FILED
PROVISIONALLY
UNDER SEAL WITH
REDACTIONS
PURSUANT TO
STIPULATED
PROTECTIVE ORDER**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

IN RE: BANK OF AMERICA
CALIFORNIA UNEMPLOYMENT
BENEFITS LITIGATION

Case No. 3:21-md-02992-GPC-MSB

DECLARATION OF RUSSELL CRONAN
October 24, 2024

FILED PROVISIONALLY UNDER SEAL
PURSUANT TO STIPULATED PROTECTIVE ORDER

Table of Contents

I. Qualifications.....	3
II. Scope of Declaration	5
III. Summary of Opinions.....	6
IV. Relevant Background	7
A. Regulators Expect Banks to Manage the Institution’s Safety and Soundness, Including the Development of Procedures for Preventing Fraud Losses.	7
B. The Regulation E Investigative Process	9
C. Regulators Afford Banks Latitude in Conducting Reasonable Investigations.	11
D. Reasonable Investigations Can Include Automated Tools.....	13
V. It Was Reasonable for Bank of America to Believe that Its Response to the Explosion of Pandemic-Era Prepaid Card Fraud Would Have Been Acceptable to the Bank’s Regulators.....	14
VI. [REDACTED]	18
VII. The Kreis Report Ignores the Reality of the Bank’s Position During Unprecedented Circumstances.	22

I. Qualifications

1. I am currently the President of Compliance Risk Advisors LLC, which is a limited liability company I founded in 2021. Prior to founding Compliance Risk Advisors, since mid-2019, I provided similar independent consulting services. During this time as a consultant, I have advised depository institutions, nonbank depository institutions, FinTech firms, and government entities regarding regulatory compliance matters, which in the banking industry generally refers to a framework of consumer-centric regulations, including Regulation E, among many others.

2. Prior to becoming an independent consultant, I worked for approximately 30 years as a federal bank examiner, specializing in compliance, at the Federal Deposit Insurance Corporation (“FDIC”), the Federal Reserve Bank of St. Louis, the Office of the Comptroller of the Currency (“OCC”), and the Consumer Financial Protection Bureau (“CFPB”).

3. I achieved Commissioned Examiner status at each of these agencies. Earning a commission confers on an examiner the opportunity and responsibility to be an Examiner in Charge, which is the professional responsible for the successful planning, execution, and completion of examinations or a series of examination activities over an examination cycle.

4. As an examiner and Examiner in Charge, I participated in thousands of examination activities for hundreds of depository and non-depository institutions, including many of the largest banks in the United States. In numerous cases, this included assessing procedures for their effectiveness in complying with all aspects of Regulation E, including procedures for resolving Regulation E errors. My assignments included but were not limited to:

- a. Serving as the CFPB’s Examiner in Charge (a/k/a Lead Examiner) for one of the top five largest banks in the country by asset size. In this role, I was responsible for the day-to-day implementation of the CFPB’s supervision/examination

function, which included evaluating the bank's procedures for their effectiveness in complying with Regulation E.

- b. Serving as the OCC's Compliance Functional Examiner in Charge for a \$38 billion bank (among the top 10 in the country in terms of its mortgage lending operation) which was in the OCC's Large Bank Supervision program. In this role, I was responsible for the day-to-day implementation of the OCC's supervision/examination of procedures for effectiveness in consumer compliance, which at that time included Regulation E compliance.

5. In my 30 years of conducting regulatory examinations, I developed an extensive knowledge of regulations, industry practices, and how banks manage -- and are expected to manage -- their procedures for meeting their compliance obligations. With respect to Regulation E specifically, I reviewed many banks' investigation processes and assessed their reasonableness. In doing so, I developed a deep understanding of how different banks and how the different bank regulatory agencies approach these investigations, along with a deep understanding of practices across the industry.

6. In addition, during my 30 years with these agencies, I further buttressed my industry expertise by (1) completing thousands of hours of classroom and on-the-job training sponsored by the agencies; and (2) attending scores of ongoing compliance conferences and schools sponsored by the agencies and industry groups (*e.g.*, the American Bankers Association).

7. In further recognition of my knowledge and expertise relating to banking matters, I earned four industry certifications: (1) Certified Regulatory Compliance Manager, which is the industry's leading compliance certification from the American Bankers Association; (2) Certified Risk Professional (Compliance) from the Bankers Administration Institute; (3) Certified Anti-

Money Laundering Specialist, which is the industry’s leading certification regarding the Bank Secrecy Act, anti-money laundering, and Office of Foreign Assets Control compliance from the Association of Certified Anti-money Laundering Specialists; and (4) Anti-money Laundering Professional from the Bankers Administration Institute.

8. My curriculum vitae is attached as Appendix A. I am being compensated at a rate of \$650 per hour. In conducting my work on this matter, I have been assisted by individuals at Ankura Consulting Group, LLC (“Ankura”),¹ who worked at my direction and under my supervision. All opinions expressed herein are my own. I have not provided expert testimony in the past four years, and I have not authored any publications in the past 10 years. In preparing this declaration, I personally considered various documents produced in this litigation and other materials, which are identified in Appendix B.

II. Scope of Declaration

9. I have been retained by Goodwin Procter LLP, on behalf of Bank of America, N.A. (“Bank of America” or the “Bank”) in connection with this matter. This declaration (1) provides background on the Electronic Fund Transfer Act (“EFTA”) (5 U.S.C. 1693 et seq.) as implemented by Regulation E and the Regulation E investigative process, including the nature of Regulation E claims-handling, both leading up to and during the global pandemic, (2) discusses the impact of the unprecedented explosion of prepaid-card fraud during the pandemic on Bank of America’s Regulation E investigative process, and (3) addresses certain opinions and assumptions put forth in the Expert Class Certification Report of J. Daniel Kreis dated August 29, 2024 (“Kreis Report”)

¹ Ankura is a professional services and consulting firm that provides dispute-related, investigative, financial, and operational consulting services to various types of organizations.

and certain assumptions put forth in the Expert Class Certification Report of Greg J. Regan dated August 29, 2024 (“Regan Report”).²

III. Summary of Opinions

10. First, as a former banking regulator, it is my experience that regulators have historically afforded banks discretion in balancing the institution’s safety and soundness and consumer protection obligations. This includes discretion to determine the appropriate scope of Regulation E investigations. Therefore, it is my opinion that, given the unprecedented fraud facing Bank of America during the pandemic, it was reasonable for the Bank to believe that its use of the Claim Fraud Filter would have been viewed as acceptable by its regulators.

11. Second, as a former banking regulator, it is my experience that no monitoring systems designed to detect unusual/suspicious/illegal activity, including fraud, will successfully detect 100% of such activity. It is also my experience that banks that enter into regulatory settlements or consent orders typically take an extremely consumer-friendly approach, to ensure that every potentially harmed consumer receives compensation, even if that means that unharmed consumers are also compensated. Therefore, it is my opinion that [REDACTED]

[REDACTED]
[REDACTED].

12. Third, as a former banking regulator, it is my experience that regulators have historically viewed banks’ actions and inactions in the context of the circumstances in which those

² This declaration does not respond to all of the opinions in the Kreis Report and the Regan report. It only responds to those specific opinions or assumptions that counsel has asked me to respond to for purposes of opposing Plaintiffs’ Motion for Class Certification. I reserve the right to respond to additional opinions or assumptions in the Kreis Report and/or Regan Report if asked to do so by counsel in the future.

actions and inactions occur. Therefore, it is my opinion that Plaintiffs’ expert Kreis’s focus on Bank of America’s pre-pandemic manual investigation procedures, while ignoring the pandemic circumstances in which the Bank was confronted with unprecedented fraud and an unprecedented number of error claims, renders his conclusions unreliable. It is also my opinion that neither of the alternative solutions that Kreis proffers – that the Bank should have simply increased hiring or paid lower value claims without any investigation at all – were viable solutions to the unprecedented wave of fraud facing the Bank.

IV. Relevant Background

A. Regulators Expect Banks to Manage the Institution’s Safety and Soundness, Including the Development of Procedures for Preventing Fraud Losses.

13. Bank of America’s prudential regulator, the OCC, oversees safety and soundness, which includes an institution’s obligations to control operational losses, including fraud losses. The OCC expects banks to identify, measure, monitor, and control risk through risk-management programs that promptly adapt to changing circumstances and risk features, including fraud typologies and fraud losses.

14. These safety and soundness obligations are clearly set forth in several OCC Comptroller’s Handbooks. These Handbooks, which span several series and which I referred to regularly over my career as an examiner, notably include a Safety and Soundness series (*e.g.*, Corporate and Risk Governance and Internal Control).

15. In general, the guidance outlined in these Handbooks (some of which are codified in regulations) provides that a financial institution will implement and oversee systems to identify,

measure, monitor, and control risk.³ This would include losses, and specifically fraud losses, to the bank. It is further expected that these systems will evolve as risks do. The Comptroller’s Handbook related to Internal Control notes that a bank is “responsible for establishing and maintaining effective internal control that meets statutory and regulatory requirements and responds to changes in the bank’s environment and conditions.”⁴ There is yet additional guidance related specifically to the risks that fraud presents to a bank’s safety and soundness.⁵

16. Moreover, “covered banks” (*i.e.*, those with more than \$50 billion in assets), which includes Bank of America, are subject to heightened standards of risk management.⁶ Banks meeting this definition generally have more complex operations and face higher levels of risk in their operations. Consequently, the OCC expects such covered banks to have more robust risk management systems to identify, measure, monitor, and control risk. The OCC applies enhanced scrutiny to banks covered by the heightened standards, as described by then Comptroller of the Currency, Thomas Curry, when he noted, “The 2008 financial crisis demonstrated that much stronger supervisory standards would be necessary to manage the risks associated with large, complex financial institutions... As a result, the OCC raised its standards for risk management, corporate governance, and control to help ensure these institutions effectively anticipate, evaluate, and mitigate the risks they face.”⁷

³ Declaration of Laura Brys in Support of Defendant’s Opposition to Plaintiffs’ Motion for Class Certification, Ex. (“DX”) 106, *See* Comptroller’s Handbook: Corporate and Risk Governance | OCC (page 42).

⁴ DX 107, *See* Comptroller’s Handbook: Internal Control | OCC (page 15).

⁵ DX 108, *See* OCC Bulletin 2019-37, July 24, 2019.

⁶ DX 109, *See* Comptroller’s Handbook: Large Bank Supervision | OCC (page 13).

⁷ *See* OCC News Release, “OCC Finalizes Its Heightened Standards for Large Financial Institutions”, September 2, 2014. <https://www.occ.gov/news-issuances/news-releases/2014/nr-occ-2014-117.html> (Last accessed October 17, 2024).

17. The OCC expects that banks will adequately manage risk, and the agency will hold bank management accountable to the extent they do not do so. In such cases, bank management, and the bank itself, can receive lower ratings, supervisory actions, and informal enforcement actions. Lower ratings that result in a troubled condition designation can result in higher deposit insurance premiums, among other adverse consequences. In cases where the OCC judges risk management to be materially deficient, a bank could receive a formal enforcement action, and/or a civil money penalty, and/or a banker could receive a civil money penalty and/or be banned from banking. Over my 30-year regulatory career, I wrote or contributed to many “Matters Requiring Attention” and formal enforcement actions that directed bank management to develop and/or enhance risk management practices.

18. Based on my own experience with the OCC, the OCC would not consider uncontrolled fraud losses to be an effectively managed risk, and the OCC could deem it an unsafe and unsound banking practice.⁸ [REDACTED]

[REDACTED] This would be an unacceptable risk from the perspective of the OCC.

B. The Regulation E Investigative Process

19. The U.S. Congress enacted the EFTA in 1978 with the purpose of providing “a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems.”⁹ Regulation E implemented the EFTA and provided certain protections to consumers when they use electronic fund transfers, including requiring financial institutions to

⁸ See 12 CFR Appendix-A-to-Part-30 A. 4.

⁹ See Public Law 95-630; 92 Stat. 3728.

implement error correction resolution procedures. Among other things, Regulation E outlines what constitutes an error, of which unauthorized transactions are one example, and sets forth what is required of banks in investigating consumers’ error claims (including unauthorized transactions).

20. From my decades of experience as a federal banking regulator with multiple agencies, I understand and have applied these requirements during examinations across the industry when evaluating the effectiveness of institutions’ processes for compliance. As an examiner at each of the major banking regulators, including Bank of America’s two primary banking regulators (*i.e.*, the OCC and the CFPB), I have reviewed every aspect of the Regulation E investigative processes, across many banks, from start to finish.

21. My evaluation of the processes institutions use to comply with Regulation E begins with the premise that an account must be established primarily for personal, family, or household purposes in order to be subject to the investigative requirements under Regulation E.¹⁰ Notably, regulators do not consider accounts established by criminals as a means of committing fraud as being subject to Regulation E. That was unambiguously the case throughout my 30 years with the agencies, and I am aware of no regulator that would have regarded it as consistent with the intent and purpose of Regulation E for its consumer protections to apply to criminals to aid them in stealing money from publicly insured depository institutions.

22. Additionally, regulators make distinctions in terms of items that constitute errors under Regulation E and those that do not. These distinctions are important because errors under Regulation E generally require investigation by the relevant bank, which may also include the bank extending provisional credit under the error resolution process. Claims of unauthorized

¹⁰ See 12 CFR § 1005.2(b)(1).

transactions and requests for certain information are examples of errors under Regulation E.¹¹ Regulators have not considered the act of freezing an account in response to suspected fraud to implicate Regulation E.¹²

C. Regulators Afford Banks Latitude in Conducting Reasonable Investigations.

23. If a consumer alleges an error recognized under Regulation E – for example, an unauthorized transaction – the processes expected of financial institutions include an investigation to determine if an error occurred. Because the statute does not set forth specific parameters on what an investigation should entail, regulators allow institutions some latitude in exercising their judgment in determining the scope of a particular investigation based on the range of circumstances and conditions that can arise. In fact, every regulatory agency I have worked with expects banks to exercise such judgment.

24. To that end, the regulatory agencies require banks to maintain risk management systems that are designed to adapt to changing circumstances and risk and will criticize banks who do not do so.¹³ As an example, if a bank introduces a new card product that, based on the sheer volume of new transactions, results in a surge in the number of error claims, regulators will expect the bank to adapt its processes in order to effectively handle the increased volume of claims. One way a bank might do so would be to automate aspects of the investigative process to increase the efficiency of its claims-handling process.

25. In my experience, regulators understand that Regulation E allows for innovation so that banks can appropriately respond to the kind of dynamic and sometimes novel challenges that

¹¹ See 12 CFR § 1005.11(a)(1).

¹² *Id.*

¹³ These risk management expectations are laid out in various regulatory examination materials, such as the OCC Comptroller’s Handbooks, which are discussed in more detail below.

will arise over time. Over the course of my 30-year career as an examiner, some of the very real challenges banks faced included natural disasters, system failures, distressed economic conditions, and the scarcity of qualified personnel, among several others. The flexibility to respond to changing circumstances is fundamental to banks’ effective risk management and is likewise a feature of investigations under Regulation E.

26. This approach is consistent with commentary issued by the Board of Governors of the Federal Reserve System (“FRB”), which administered Regulation E before the enactment and implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act, to facilitate compliance by financial institutions within the Regulation. The FRB commented that:

- a. “Because the nature of a consumer’s allegation of error can vary, *the scope of an investigation may vary*,”¹⁴ and
- b. “*Institutions have flexibility to determine* what information is relevant to a meaningful investigation of the error in question.”¹⁵

27. This language has guided bank regulators when assessing the reasonableness of banks’ investigations, and I applied it many times over several decades. As an examiner, I did not apply a rigid set of criteria as to the specific form an investigation must take because I understood from my years of training and experience that the reasonableness of a bank’s investigative process was dependent on the conditions and circumstances in which the investigation was conducted and the bank needed latitude to be able to adapt its approach accordingly. This was not merely my experience. Specific criteria and instructions prescribing the form of a Regulation E investigation simply do not exist.

¹⁴ DX 110, *See* Bd. of Govs. of Fed. Reserve System, *Electronic Fund Transfers*, 71 Fed. Reg. 1638, 1654 (Jan. 10, 2006) (emphasis added).

¹⁵ *Id.* (emphasis added).

D. Reasonable Investigations Can Include Automated Tools.

28. Over the course of my work as a federal banking examiner, I observed banks that have automated various elements of the investigation process, not only in response to high volumes but even during generally uneventful time periods. Examples include automated information gathering through web interfaces, automated calculation of provisional credits and consumer liability, and automated generation of consumer communications. The adoption of such automated features to aid or support an investigation has only become more prevalent over time.

29. During my 30 years working with each of the current federal banking regulatory agencies, no regulator to my knowledge has ever considered such features inherently unreasonable in terms of a Regulation E investigation. I also did not participate in any examinations where a financial institution’s use of automation in conducting Regulation E investigations was criticized by the regulators as a per se violation of Regulation E. Nor did I hear or read about such criticism during my time as a banking regulator or since.

30. Further to that end, there are a number of companies that sell automated solutions to support compliance with Regulation E’s investigation requirements.¹⁶ I have not reviewed and am not endorsing these companies or products; however, the mere fact that they are permitted to offer these products to the regulated banking industry speaks to the point that the usage of such automation is an accepted industry concept. In other words, if the regulators believed the mere use of these products as part of an investigation violated Regulation E, there would likely be public records indicating as much. Therefore, the fact that these companies actively market these products to banks supports my own direct experience that there is no prohibition against banks’ use of automation in conducting Regulation E investigations.

¹⁶ Examples include Financial Back Office Automation (“FINBOA”) and Fiserv.

31. In brief, financial institutions understand Regulation E to require reasonable investigations of error claims. Prior to the consent orders entered into between Bank of America and the CFPB and OCC in July 2022, I am not aware of any specific prescriptive elements about the nature of the investigation to be conducted, including any specific prescriptions about the use of automated fraud strategies.¹⁷ In my experience, Regulation E allows for innovation so that banks can appropriately respond to the kind of dynamic and sometimes novel challenges that will arise over time.

V. It Was Reasonable for Bank of America to Believe that Its Response to the Explosion of Pandemic-Era Prepaid Card Fraud Would Have Been Acceptable to the Bank’s Regulators.

32. In typical circumstances, a financial institution’s adherence to safety and soundness principles would not affect the conduct of its Regulation E investigations. But that unusual scenario is exactly what occurred with the unprecedented spike in fraud experienced by California’s Employment Development Department (“EDD”) and, in turn, Bank of America, during the summer of 2020.¹⁸ Those extraordinary circumstances were the backdrop in which the Bank modified its approach to conducting its Regulation E investigations.

33. Financial institutions need processes to comply with Regulation E’s requirements on issuing provisional credit equal to an alleged error amount while investigating the error. During the pandemic, criminals took advantage of these processes to defraud Bank of America (among other institutions) on an unprecedented scale and would have continued to do so had the Bank not altered its pre-pandemic approach.¹⁹

¹⁷ There is no additional guidance from the Federal banking regulators of which I am aware that provides additional information for the industry to consider when conducting investigations.

¹⁸ DX 6, *See* Michael Letson October 23, 2024 Declaration, ¶ 10 through ¶ 25.

¹⁹ *Id.*

34. As Bank employee Michael Letson noted in his February 16, 2024 deposition, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

35. Beginning around the summer of 2020, the Bank began to recognize a new fraud scenario referred to as [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

36. The Bank’s [REDACTED]

[REDACTED] in the face of the unprecedented level of fraud and the corresponding rise in Regulation E error claims.²⁴ As Michael Letson further stated in his February 16, 2024 deposition,

[REDACTED]

²⁰ See Michael Letson February 16, 2024 Deposition transcript; pages 169-170.

²¹ DX 6, See Michael Letson October 23, 2024 Declaration, ¶ 27.

²² A California State Auditor Report from January 2021, states, “...EDD’s lack of preparation left it unable to manage two important fraud-related situations that arose during its 2020 pandemic response. In September 2020, because of fraud concerns, EDD directed Bank of America to freeze 344,000 debit cards (accounts) that it used to provide benefit payments to claimants... EDD was also unprepared to prevent payment of fraudulent claims filed under the names of incarcerated individuals, the total of which is an estimated \$810 million.” DX 88, See BANA_EDD_MDL-00080296 (BANA_EDD_MDL-00080294-BANA_EDD_MDL-00080352). DX 6, See Michael Letson October 23, 2024 Declaration, ¶ 27.

²³ See William Matthew Martin February 14, 2024 Deposition transcript; pages 102-103. DX 6, See Michael Letson October 23, 2024 Declaration, ¶ 10 through ¶ 25.

²⁴ DX 6, See Michael Letson October 23, 2024 Declaration, ¶ 26 through ¶ 27.

[REDACTED]

[REDACTED]

37. Based on my experience as a regulator, I would expect that as the nature of the error claims changed (*e.g.*, [REDACTED] [REDACTED]) and the volume of such claims dramatically increased, the Bank would have adapted to the changing risk. In my experience, a reasonable adaptation would include leveraging automation and other tools to identify indicia of potential fraud. Large banks have long used automated processes to identify indicia of potentially fraudulent activity based on various sources (*e.g.*, information about emerging typologies provided by law enforcement or regulatory agencies, historical industry knowledge, and a bank's own observations and experience).

38. I understand that the Bank did so adapt, and that in doing so, the Bank [REDACTED]

[REDACTED]

[REDACTED]²⁶ I understand that the Bank used the CFF to conduct investigations [REDACTED]

[REDACTED] Based on my review of the discovery record in this case, [REDACTED]

[REDACTED]

²⁵ See Michael Letson February 16, 2024 Deposition transcript; pages 108-109.

²⁶ See Michael Letson February 16, 2024 Deposition transcript; pages 97-98, 332-333. DX 6, See Michael Letson October 23, 2024 Declaration, ¶ 26 through ¶ 38.

²⁷ See William Matthew Martin February 14, 2024 Deposition transcript; pages 24-25.

[REDACTED]

39. As I described above, regulators historically have permitted and expected that financial institutions will adapt their investigation procedures to changing circumstances. Had I reviewed this situation as an examiner, I would have expected that the Bank would have altered its approach to Regulation E investigations given the dramatic change in circumstances. Based on my experience and longstanding industry practice, the Bank’s use of automation was not unreasonable or impermissible simply because the fraud targeted Regulation E error claims.

40. The unprecedented spike in fraud that arose in connection with the pandemic-era unemployment benefits programs administered by the EDD is the kind of circumstance regulators historically have considered in assessing the reasonability of the investigation procedure deployed in response. This element of discretion allows financial institutions and the agencies supervising them to structure and adapt their investigations to take into account a variety of factors such as the overall fraud environment and the dollar value of the claims.

41. To this point, a California State Auditor Report from January 2021 noted that “EDD did not take substantive action to bolster its fraud detection efforts for its UI program until months into the pandemic, resulting in payments of about \$10.4 billion for claims that it has since determined may be fraudulent because it cannot verify the claimants’ identities.”³⁰

²⁸ DX 23, *See* Bank of America’s Responses And Objections To Plaintiff Yick’s Fourth Set Of Interrogatories, Case No. 3:21-md-02992-GPC-MSB, page 8.

²⁹ *See* Plaintiffs’ Notice of Motion and Motion for Class Certification, Case No. 3:21-md-02992-GPC-MSB, page 3.

³⁰ DX 88, *See* BANA_EDD_MDL-00080296 (BANA_EDD_MDL-00080294-BANA_EDD_MDL-00080352).

42. Based on the materials I have reviewed in this case and as informed by my 30 years of experience with the OCC, CFPB, Federal Reserve, and FDIC, in my opinion, the manner in which the Bank conducted its Regulation E investigations was principally a reflection of its efforts to balance its safety and soundness obligations and its Regulation E obligations in the face of unprecedented fraud and claim volume. The Bank would have understood and expected that, based on their expertise in the industry, regulators would have considered these circumstances in evaluating the reasonableness of the Bank’s processes. To that point, my knowledge gained through 30 years as an examiner was built upon the vast institutional experience of the regulatory agencies (over 160 years, in the OCC’s case), which was in turn imparted to examiners such as myself.

43. I am aware that, in July 2022, Bank of America entered into consent orders with the CFPB and the OCC regarding, among other issues, its use of the CFF in connection with Regulation E investigations.

44. In my opinion, based on my experience and perspective as a former regulator, the Bank’s approach to modifying its Regulation E investigative process was a reasonable response in light of the unprecedented fraud environment it was facing and its urgent need to address its safety and soundness obligations. It is further my opinion, based on my experience and perspective as a former regulator, that it was reasonable for Bank of America to believe that its regulators would consider its approach to modifying its Regulation E investigative process a reasonable response to the proliferation of benefits and cardholder fraud.

VI. [REDACTED]

45. I understand that Plaintiffs define their Claim Denial class as “[a]ll Bank of America EDD cardholders who notified the Bank that an unauthorized transaction had occurred

on their Bank of America EDD debit card account (‘Claim’) at an automated teller machine (‘ATM’), and whose Claim the Bank denied or closed at any time from September 28, 2020 through June 8, 2021, based solely on Indicator 1 of the Bank’s CFF.”³¹

46. [REDACTED]

47. [REDACTED]

48. [REDACTED]

49. [REDACTED]

³¹ See Regan Report ¶ 4.

³² See Regan Report ¶ 31.

³³ See BANA_EDD_MDL-00102557 (BANA_EDD_MDL-00102554-BANA_EDD_MDL-00102577).

³⁴ See Memorandum of Points and Authorities in Support of Motion for Class Certification, Case No. 3:21-md-02992-GPC-MSB, page 3, citing Regan Report ¶ 35.

50. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

51. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

52. [REDACTED]

[REDACTED]

53. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In my experience, regulators do not expect financial institution processes to identify and exclude 100% of illicit activity, including fraud. Regulators understand that it is not possible to identify all fraud. Therefore, regulators focus (and expect banks to focus) on processes for identifying fraud, not necessarily the result.

54. Based on my expertise and experience as a former regulator, and understanding of the rampant nature of fraud targeting the unemployment benefits program during the pandemic, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

55. [REDACTED]

[REDACTED]

[REDACTED] In my opinion, this assumption is not warranted either. As the Kreis Report acknowledges, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Regulation E’s investigation requirements often result in business decisions that are skewed towards payment, as reflected by the fact that the Regulation places the burden on the financial institution to provide credit for unauthorized transaction error claims unless the bank can show that the transaction was authorized. As a result, it is my experience that Regulation E investigation procedures tend to overpay, because regulators focus on instances in

³⁵ DX 6, *See* Michael Letson October 23, 2024 Declaration, ¶ 7.

which procedures resulted in improperly denied payments where the financial institution did not meet its burden of proof.

56. Banks’ procedures and processes are intended to help the institutions manage risk by determining the likelihood that a particular transaction is authorized. In my decades of experience with the agencies, I reviewed many banks’ procedures and investigative processes in that context and never attempted to determine whether a bank had conclusively and accurately determined whether or not fraud had occurred.

VII. The Kreis Report Ignores the Reality of the Bank’s Position During Unprecedented Circumstances.

57. The Kreis Report ignores the Bank’s safety and soundness obligations imposed by the OCC, which included its obligation to control fraud. Instead, the Kreis Report improperly bases its conclusions on claims-handling in a pre-pandemic, business-as-usual environment. It does not appropriately consider how pandemic circumstances and safety-and-soundness obligations can affect a financial institution’s Regulation E investigative processes.

58. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In my experience as a regulator, on the one hand, banks are generally expected to pay claims to the extent they cannot conduct investigations in a timely matter. However, on the other hand, paying all claims without investigation, particularly in the overwhelming fraud environment of the summer of 2020, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

59. As explained above, the OCC expects that banks will adequately manage risk and that the agency will hold bank management accountable to the extent they do not do so. As further explained, the OCC would not consider uncontrolled fraud losses to be an effectively managed risk.

60. The Kreis Report's proposed alternative solution of hiring additional claims staff fails to account for operational challenges, which were exacerbated by the pandemic in unprecedented ways. The pandemic created many operational challenges for employers experiencing a first-of-its-kind migration to mass remote work, which presented challenges as to training, and access to systems and data. Of note, staffing is an operational risk reviewed by the OCC, so Bank of America had to thoughtfully and deliberately cope with these challenges to ensure it met OCC expectations in this area.

61. It has been my experience over 30 years that banks (and particularly large banks) commonly have dedicated units that conduct investigations, including Regulation E error investigations. These units are staffed by highly-specialized and trained analysts because the work is complex and difficult.

62. Even in a business-as-usual environment, my experience is that it takes months to properly onboard and train claims analysts. The Kreis Report suggests using contractors, but even if a bank can onboard contractors (or new employees) who are familiar with Regulation E investigations, these individuals would still require significant training on the bank's processes, systems, and standards. Rapidly adding personnel with the necessary knowledge, skills, and aptitude was even more difficult during the pandemic given the logistical challenges with remote hiring and training.³⁶ Claims analysts also needed to have secure means to access all systems and

³⁶ DX 5, *See* Stephen Hindle October 24, 2024 Declaration, ¶ 24.

databases necessary to conduct and document investigations and secure methods of communicating with consumers, which added further complexity to any such hiring during the novel work-from-home era introduced by the pandemic. Likewise, during the pandemic, increased employee absenteeism due to illness or caring for those who were ill would have negatively impacted the situation.

63. If a bank were to hire unqualified analysts, or any other employees, and/or fail to train them properly, the OCC would criticize management for those failures. The OCC expects bank management to staff bank business units with knowledgeable people in the case of a compliance matter like Regulation E.³⁷ Over my 30 years as a regulator, I have written or contributed to many “Matters Requiring Attention,” directing bank management to improve the training and/or quality of bank staff.

64. Even if the Bank had hired immediately when claims first began to spike, it would not have had a timely impact on the backlog of claims due to the necessary on-boarding and ramp-up time for these positions. At the time, the Bank had no way of knowing if the increased claims would be short-lived or sustained given the uncertain nature of the pandemic, so it did not know if mass hiring of employees or contractors was appropriate. The OCC will likewise criticize banks for over-hiring, too, if it presents an unnecessary drag on the bank’s earnings.

65. The Kreis Report’s suggestions to increase autopay thresholds likewise misses the mark, as it would not have prevented -- and instead would have exacerbated -- fraud losses that the Bank had regulatory obligations to control. Among other things, it ignores that any provisional credit extended pursuant to fraudulent circumstances (the crux of the fraud scheme against the

³⁷ DX 111, *See* Comptroller's Handbook: Compliance Management Systems, June 2018 | OCC (pages 6-7).

Bank) effectively guarantees loss and would likely run afoul of the Bank's safety and soundness obligations.

Executed this 24th day of October 2024.

Russell Conan

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Russell (Rusty) Cronan, Sr.**WORK EXPERIENCE****Independent Consulting (including Compliance Risk Advisors LLC)**

2019 to present

Consumer Financial Protection Bureau

2011 to 2019

Job Title: Examiner

Duties

- While detailed from the Office of the Comptroller of the Currency (OCC) to the CFPB (prior to agency start up):
 - Reviewed data from and met with other regulators to assign risk ratings and suggested examination scopes and dates for banks transferring to the agency's jurisdiction.
 - Reviewed and provided feedback on various policy and procedure documents (e.g., the Examination Manual).
 - Reviewed and provided feedback on document templates (e.g., Examination Report).
 - Reviewed and provided feedback on training documents and met with training development staff (e.g., Examiner Soft Skills).
 - Provided information about competencies expected from financial fraud investigators.
 - Provided information about what technology examiners need.
- Through exams, and other data analysis, analyze bank and nonbank financial institutions' risk profiles, management, personnel, processes, and systems to comply with consumer protection laws, fair lending laws, and informational reporting laws; and opine on the entities' performance.
- Develop institutional risk assessments and supervisory plans; plan examinations; coordinate and supervise exam teams; lead team members in obtaining and analyzing numerous data to conclude on the institutions' risk profiles, FFIEC ratings, and compliance with various laws and regulations; document and report findings, both in writing and orally, to senior institution management and agency management; provide guidance to and development of team members, as needed; provide timely and candid team member evaluation and feedback; and, provide an equal opportunity work environment.
- Partner with various other internal and external entities (e.g., Office of Supervision Policy and Office of Enforcement, and federal and state banking regulators) to achieve objectives.

Accomplishments

- Selected by then CFPB implementation staff as one of two examiners detailed from OCC to the CFPB, prior to agency start up.
- Received examiner commission.
- Selected as the Examiner in Charge of one of the agency's first exams, which was the second largest bank in the Midwest Region and the 18th largest bank in the nation by assets.
- Selected as Lead Examiner/Central Point of Contact to lead the agency's day-to-day examination function at the largest bank in the Midwest Region and the fifth largest bank in the nation by assets.
- Received Midwest Region's first Spotlight Award.
- Received Spot Award for exceptional accomplishment in support of CFPB's mission.

Office of the Comptroller of the Currency

1998 to 2011

Job Titles: National Bank Examiner (Consumer/CRA), and BSA/AML Policy Specialist

Duties

- Through exams, and other data analysis, analyze banks' risk profiles, management, personnel, processes, and systems to comply with consumer protection laws, fair lending laws, informational reporting laws, anti-money laundering laws, economic sanctions laws, and community development laws; and opine on the banks' performance.
- Develop risk assessment summaries, core risk assessments, and supervisory strategies; plan examinations; assemble, coordinate, and supervise exam teams; lead team members in obtaining and analyzing numerous data to conclude on the banks' risk profiles, FFIEC ratings, and compliance with various laws and regulations; document and report findings, both in writing and orally, to senior bank management and senior OCC management; provide guidance to and development of team members, as needed; provide timely and candid team member evaluation and feedback; and, provide an equal opportunity work environment.
- Develop and train employees, other regulators, and bankers through teaching schools; speaking at conferences, and meetings; providing on-the-job training; and serving as a Coach (i.e., trainer) in the BSA/AML Examiner Specialized Skills Program (ESSP) national training initiative.
- Partner with various other departments and entities to achieve objectives.
- Represent the OCC at interagency meetings, bankers' outreach, conferences, and schools, including teaching BSA/AML at schools sponsored by the FFIEC and international organizations.
- Perform community contacts with government officials, development officials, academic officials, and other community leaders.

- While assigned to Compliance Policy as a BSA/AML Specialist at OCC headquarters:
 - Assist on or lead, as requested or assigned, high-risk or complex examinations.
 - Provide examination support regarding complex exams or analysis through coaching and Currency Transaction Report (CTR) and Suspicious Activity Report (SAR) data management.
 - Provide expert guidance and information to field staff, bankers, and senior OCC management.
 - Develop written policy and procedure and guidance for OCC and interagency use.
 - Plan, organize, and execute project management responsibilities.
 - Plan, organize, and conduct meetings with other OCC staff and with interagency staff.
 - Plan, organize, develop, and make presentations to international bank supervisors (i.e., Japan, Russian Federation, and Republic of Korea).
- While assigned to the Large Bank Quality Assurance unit:
 - Developed, implemented, and led the Compliance Quality Assurance function in the Large Bank line of business, ensuring that OCC staff supervising the country's largest banks were following agency policy and procedures; ensuring that systemic and bank-specific issues and risks were appropriately identified and managed; and ensuring that best practices were identified for possible replication.

Accomplishments

- Received examiner commission.
- Earned three U.S. Treasury Department Special Act or Service Awards.
- Earned Letter of Appreciation from The Association of Supervisors of Banks of the Americas, which was then comprised of banking supervisors from 34 countries.
- Selected as the Compliance Functional Examiner in Charge at a \$21B high-risk Mid-size Bank (responsible for managing day-to-day supervision of all compliance risk).
- Selected as the Compliance Functional Examiner in Charge at a \$38B Large Bank, which was a top 10, nation-wide mortgage originator (responsible for managing day-to-day supervision of all compliance risk).
- Selected as one of three examiners to participate in the Developmental Program in the Chief National Bank Examiner's Office.
- Selected to develop, implement, and lead the Compliance Quality Assurance function in the Large Bank line of business.
- Selected to lead the design, development, and presentation of BSA/AML training for the Large Bank line of business, which fulfilled a commitment from then Comptroller of the Currency Dugan to Congress.
- Selected as one of 14 OCC staff to participate in the BSA/AML Foreign Technical Assistance Program in cooperation with the U.S. Department of State.

- Selected to instruct AML schools sponsored by the OCC (including one international school), the FFIEC, and an international school sponsored by the U.S. Department of State.
- Selected as one of seven charter OCC personnel to serve on a BSA/AML Team to examine the five highest risk community national banks.
- Selected as first Chairman of the Midwestern District Anti-Money Laundering Team.
- Founding member and Chairman of the BSA/AML Interagency Working Group (included reps. from about 20 state and federal regulatory and law enforcement agencies).
- Selected as a member of the U.S. Department of Justice's Eastern District of MO Anti-Terrorism Advisory Council.

NationsBank, N.A.

1997 to 1998

Job Title: Vice President and Program Support Manager

Duties

- Lead and manage the startup of the Program Support department in St. Louis, which covered lending-related compliance in states west of the Mississippi River, and Illinois.
- Guide, advise, and otherwise support and serve internal customers.
- Develop and implement my department's budget and operating plan.
- Partner with various other departments and entities to achieve objectives.
- Supervise two officer-level employees and one clerical employee.
- Provide guidance to and development of team members, as needed; provide timely and candid team member evaluation and feedback; and provide an equal opportunity work environment.

Accomplishments

- Successful startup of the Department itself.
- Successfully led and managed a Home Mortgage Disclosure Act data integrity scrub project, which included more than 7,000 files (supervised numerous clerical employees, two officer-level employees, and coordinated with a large consulting firm who assisted with the project).

Federal Reserve Bank of St. Louis

1996 to 1997

Job Title: Bank Examiner (Consumer Affairs)

Duties

- Through exams, and other data analysis, analyze banks' risk profiles, management, personnel, processes, and systems to comply with consumer protection laws, fair lending laws, informational reporting laws, and community development laws; and opine on the banks' performance.
- Plan examinations; coordinate and supervise exam teams; lead team members in obtaining and analyzing numerous data to conclude on the banks' risk profiles, FFIEC ratings, and compliance with various laws and regulations; document and report findings, both in writing and orally, to senior bank management, and, in some cases, senior Reserve Bank management; provide guidance to and development of team members, as needed; provide timely and candid team member evaluation and feedback; and provide an equal opportunity work environment.
- Develop and train employees and bankers through speaking at conferences and meetings; and providing on-the-job training.
- Partner with various other departments and entities to achieve objectives.
- Represent the Federal Reserve Bank of St. Louis at interagency meetings, bankers' outreach, conferences, and schools.
- Perform community contacts with government officials, development officials, academic officials, and other community leaders.

Accomplishments

- Received examiner commission.
- Selected as sole Federal Reserve Bank of St. Louis representative on a Federal Reserve System task force established to risk base the Consumer Affairs examination process across the nation's twelve Reserve Banks.
- Selected to chair the Federal Reserve Bank of St. Louis' risk-based compliance examination committee.

Federal Deposit Insurance Corporation

1989 to 1996

Job Titles: Bank Examiner, and Compliance Examiner

Duties

- Through exams, and other data analysis, analyze banks' management, capital adequacy, asset quality, earnings performance, liquidity posture; processes, personnel, and systems to comply with safety and soundness regulations and standards, consumer protection laws, fair lending laws, informational reporting laws, anti-money laundering laws, economic sanctions laws, and community development laws; and opine on banks' performances.
- Plan examinations; assemble, coordinate, and supervise exam teams; lead team members in obtaining and analyzing numerous data to conclude on the banks' risk profiles, FFIEC ratings, and compliance with various laws and regulations; document and report findings, both in writing and orally, to senior bank and agency

management.

- Provide guidance to and development of team members, as needed; provide timely and candid team member evaluation and feedback; and provide an equal opportunity work environment.
- Assist Division of Liquidation during closing of a failed bank chain.
- Work as a Review Examiner/Case Manager during Regional Office Detail assignments (review and process exam reports; take, document, and resolve consumer complaints and inquires; answer questions from field examiners; project work).
- Perform community contacts with government officials (including tribal governments), development officials, academic officials, and other community leaders.

Accomplishments

- Received examiner commission.
- Promoted to the next higher grade (i.e., 12), within one year of commissioning, which was the fastest possible time.
- Recommended for two Sustained Superior Performance Awards.
- Selected for two Regional Office Detail assignments.
- Selected to assist the Division of Liquidation during closing of a failed bank chain.

I have held other professional jobs in the banking industry, and details are available upon request.

EDUCATION

University of Mississippi
Oxford, MS
Bachelor of Business Administration
Major: Banking and Finance
GPA: 3.4/4.0

Job-related training:

Many company-sponsored schools and seminars covering: Accounting, auditing, capital analysis, credit analysis, investment analysis, earnings analysis, liquidity analysis, real estate appraisal analysis, written and oral communications, computer skills, management and leadership development, personal development, anti-money laundering laws, economic sanctions laws, consumer protection laws, informational reporting laws, fair lending laws, housing development, development issues on American Indian Reservations, and community development in general.

Industry Certifications:

- Received Certified Regulatory Compliance Manager (CRCM) designation.
- Received Certified Risk Professional (CRP) with Compliance Emphasis designation.

- Received Certified Anti-Money Laundering Specialist (CAMS) designation.
- Received Anti-Money Laundering Professional (AMLPL) designation.

APPENDIX B

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

*In RE Bank of America California Unemployment Benefits Litigation***Declaration of Russell Cronan****List of Materials Considered****1. Expert Reports and Declarations**

Expert Class Certification Report of J. Daniel Kreis dated August 29, 2024

Expert Class Certification Report of Greg J. Regan, CPA/CFF, CFE dated August 29, 2024

Expert Declaration of Stephen Hindle signed on October 24, 2024

Declaration of Michael J. Letson in Support of Defendant’s Memorandum in Opposition to Plaintiffs’ Motion for Class Certification signed on October 23, 2024

2. Case Filings

Bank of America’s Responses and Objections to Plaintiff Yick’s Fourth Set of Interrogatories dated January 2, 2024

Bank of America’s Second Set of Responses and Objections to Plaintiff Yick’s Seventh Set of Interrogatories (Interrogs. 39 & 42) dated April 23, 2024

Plaintiffs’ Notice of Motion and Motion for Class Certification filed on August 29, 2024

Memorandum of Points and Authorities in Support of Motion for Class Certification dated August 29, 2024

Plaintiff Second Amended Master Consolidated Complaint dated July 16, 2024

3. Depositions

William Matt Martin Deposition Transcript

Michael Letson Deposition Transcript

4. Other Produced Documents

BANA_EDD_MDL_00080294-BANA_EDD_MDL-00080352

BANA_EDD_MDL-00102554-BANA_EDD_MDL-00102577

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

5. Publicly Available Documents

95th Congress, Public Law 95-630, November 10, 1978, available at <https://www.govinfo.gov/content/pkg/STATUTE-92/pdf/STATUTE-92-Pg3641.pdf>

Authenticated U.S. Government Information, Federal Reserve System, 12 CFR Part 205, January 10, 2006, available at <https://www.govinfo.gov/content/pkg/FR-2006-01-10/pdf/06-145.pdf>

Bank of America Consent Order dated July 14, 2022

Code of Federal Regulations, Title 12, “Appendix A to Part 30 – Interagency Guidelines Establishing Standards for Safety and Soundness,” available at <https://www.ecfr.gov/current/title-12/chapter-I/part-30/appendix-Appendix%20A%20to%20Part%2030>

Consumer Financial Protection Bureau, “Electronic Fund Transfers FAQs,” Version 2, December 13, 2021 available at https://files.consumerfinance.gov/f/documents/cfbp_electronic-fund-transfers-faqs.pdf

Consumer Financial Protection Bureau, “Supervision and Examination Manual,” March 2019, available at https://files.consumerfinance.gov/f/documents/cfbp_supervision-and-examination-manual_2023-09.pdf

Consumer Financial Protection Bureau, “Supervisory Highlights,” Fall 2014, available at https://files.consumerfinance.gov/f/201410_cfbp_supervisory-highlights_fall-2014.pdf
Consumer Financial Protection Bureau, “Supervisory Highlights,” Issue 18, Winter 2019, available at https://files.consumerfinance.gov/f/documents/cfbp_supervisory-highlights_issue-18_032019.pdf

Consumer Financial Protection Bureau, “Supervisory Highlights,” Issue 25, Fall 2021, available at https://files.consumerfinance.gov/f/documents/cfbp_supervisory-highlights_issue-25_2021-12.pdf

Consumer Financial Protection Bureau, “Supervisory Highlights,” Issue 28, Fall 2022, available at https://files.consumerfinance.gov/f/documents/cfbp_supervisory-highlights_issue-28_2022-11.pdf

Consumer Financial Protection Bureau, “Supervisory Highlights,” Winter 2015, available at https://files.consumerfinance.gov/f/201503_cfbp_supervisory-highlights-winter-2015.pdf

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

Consumer Financial Protection Bureau, 12 CFR, “§ 1005.11 Procedures for resolving errors,” available at <https://www.consumerfinance.gov/rules-policy/regulations/1005/11/>

Consumer Financial Protection Bureau, 12 CFR, “§ 1005.2 Definitions,” available at <https://www.consumerfinance.gov/rules-policy/regulations/1005/2/>

Office of the Comptroller of the Currency, “OCC Finalizes Its Heightened Standards for Large Financial Institutions,” September 2, 2014, available at <https://www.occ.gov/news-issuances/news-releases/2014/nr-occ-2014-117.html>

Office of the Comptroller of the Currency, OCC Bulletin 2019-37, “Operational Risk: Fraud Risk Management Principles,” July 24, 2019, available at <https://www.occ.gov/news-issuances/bulletins/2019/bulletin-2019-37.html>

Office of the Comptroller of the Currency, Administrator of National Banks, “Internal Control,” available at <https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/internal-control/pub-ch-internal-control.pdf>

Office of the Comptroller of the Currency, Comptroller’s Handbook, “Compliance Management Systems,” June 2018, available at <https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/compliance-mgmt-systems/pub-ch-compliance-management-systems.pdf>

Office of the Comptroller of the Currency, Comptroller’s Handbook, “Corporate and Risk Governance,” July 2019, available at <https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/corporate-risk-governance/pub-ch-corporate-risk.pdf>

Office of the Comptroller of the Currency, Comptroller’s Handbook, “Large Bank Supervision,” Version 1.0, June 2018, available at <https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/large-bank-supervision/pub-ch-large-bank-supervision.pdf>

Note: I also reviewed the materials listed in Appendix B of the Expert Class Certification Report of J. Daniel Kreis dated August 29, 2024.