Exhibit 161

Confidential

UNITED STATES DISTRICT COURTY
SOUTHERN DISTRICT OF CALIFORNIA

IN RE BANK OF AMERICA CALIFORNIA UNEMPLOYMENT BENEFITS LITIGATION	Case No. 3:21-md-02992-GPC-MSB

EXPERT REBUTTAL REPORT OF JAY MINNUCCI

November 21, 2024

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I. INTRODUCTION

1. I have been retained as an expert witness in this matter by Cotchett, Pitre & McCarthy LLP and Altshuler Berzon LLP, co-lead counsel for the Class Plaintiffs. On August 29, 2024, I provided my initial expert report in this matter ("Minnucci Report").

2. Based on more than forty years of experience, I described in my Minnucci Report the call forecasting, staffing, data management, and security practices that are standard across the call center industry. I also offered the opinions that from September 13, 2020 through November 21, 2020, [redacted].

3. I have reviewed the October 24, 2024 Declaration of Kelley Lorenzen ("Lorenzen Decl.") and the October 24, 2024 Expert Declaration of Steven Hindle ("Hindle Report"), and documents cited therein. I stand by all of the opinions expressed in my August 29, 2024

Minnucci Report, none of which have been altered by my review of the Hindle Report or Lorenzen Declaration.[1]

4. In this report, I evaluate the portions of the Hindle Report that refer or relate to my previous report, noting my agreement with some parts of some of his opinions, while noting my disagreement with many others.

II. SUMMARY OF OPINIONS

5. Evaluating the reasonableness of the Bank's call center staffing and procedures and assessing the degree of the Bank's deviation from industry norms requires substantial experience with and knowledge of call center performance metrics, forecasting processes, and staffing practices. To the extent that Mr. Hindle's CV is an accurate description of his background, he lacks such experience and is not qualified to opine on whether the Bank's call center staffing, forecasting, and performance management decisions were reasonable or in conformity with industry standards.[2]

6. Although [redacted] for EDD debit cardholders who called the Bank's Claims call center between September 13, 2020 and November 21, 2020, [redacted].[3]

7. [redacted]

[1] I have no changes to my CV or compensation, nor additional publications or testimony, to disclose.
[2] *See infra* ¶¶11-12.
[3] *See infra* ¶¶13-14.

[redacted].[4]

8. [redacted].[5]

9. Because callers compare their experiences—and form their reasonable expectations—based on interactions with call centers in different industries, it is standard practice for call center leaders to compare across industries when establishing performance targets. It is also true that callers will contact whichever of a company's call centers they anticipate will have the shortest wait; as such, it is standard practice—[redacted]—to establish similar, if not identical, wait time targets across generalist and specialty call centers. Accordingly, multi-industry call center performance data across call center types, like the data contained in the 2021 U.S. Contact Center Decision-Maker's Guide, is the best source for identifying industry-standard performance benchmarks that apply to even specialty call centers like the Bank's Claims call center.[6]

10. As long as the Bank did not destroy the relevant data, [redacted].[7]

III. MR. HINDLE IS NOT QUALIFIED TO OPINE ON CALL CENTER STAFFING, FORECASTING, OR PERFORMANCE MANAGEMENT.

11. Mr. Hindle's CV mentions a position he held in which he was "supporting" 160,000 contact center employees, which is an appropriate and commonly used term for someone who oversees the Information Technology used by contact center staff. In the body of

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[4] *See infra* ¶¶ 15-22.
[5] *See infra* ¶¶ 23-27.
[6] *See infra* ¶¶ 28-35.
[7] *See infra* ¶¶ 36-43.

his report, he also states that he "oversaw" 160,000 employees,[8] which suggests that he was in the direct line of supervision of call center managers, supervisors, and agents. However, nothing in his CV or Report suggests that he supervised call center managers, supervisors, or agents. During the time he worked at the various outsourcing organizations he identifies, the accomplishments he lists are almost exclusively in the realm of cybersecurity, business continuity, and compliance assurance.

12. Providing an opinion on call center speed of answer performance requires a thorough understanding of the data maintained by and metrics used in call centers, typical industry results, the most reliable forecasting processes used to predict future call volume, and the staffing practices and timing required to prepare and maintain staff levels appropriate for a predicted workload. Mr. Hindle's CV does not demonstrate the requisite level of expertise regarding any of these topics.

IV. SUBSTANTIALLY ALL CUSTOMER SERVICE CLASS MEMBERS EXPERIENCED LENGTHY WAIT TIMES FAR EXCEEDING ANY INDUSTRY STANDARDS.

13. The Hindle Report stated: "[A]verage ASAs cannot be used to represent the wait time experienced by individual class members who called during that week either. In my experience, each individual caller's experience varies. There will be individual data points both above and below the average, and those individual wait times can be very different than the 'average.'"[9] That Report also states: "Neither Mr. Regan nor Mr. Minnucci consider how many proposed class members experienced wait times either above or below the ASA."[10] Although it is mathematically true that an average, by definition, does not reflect each individual's personal

[8] Hindle Rep. ¶ 4.
[9] Hindle Rep. ¶ 16.
[10] Hindle Rep. ¶ 17.

experience, the Hindle Report overstates the amount of meaningful variation from the average during the Customer Service class period.

14. As I concluded in my report, "[v]irtually all EDD debit cardholders who telephoned the Bank between September 13, 2020 and November 21, 2020 and had their calls routed to the Bank's Claims call center . . . [redacted]."[11] This conclusion is fully supported by the Bank's performance data, which shows that between September 13, 2020 and November 21, 2020, [redacted].[12] This means that substantially all class members [redacted].

V. THE BANK'S SUBSTANDARD CLAIMS CALL CENTER PERFORMANCE IN FALL 2020 CANNOT BE BLAMED ON UNANTICIPATED PANDEMIC-RELATED EVENTS.

15. The Hindle Report stated: "Further, it is unreasonable to assume that any financial institution's call center, particularly one responsible for servicing complex requests like transactional fraud claims, could immediately respond to such a significant spike in call volume" from the COVID-19 pandemic.[13] My Report made no such assumption.

16. Although I observed that the Bank [redacted], my Report did *not* focus on the immediate aftermath of the pandemic and the related spike in call volume. Thus, the Hindle Report attempts to refute a claim that my Report did not make. Instead, my Report observed that, after the Bank had [redacted]

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[11] Minnucci Expert Rpt. ¶ 13; *see also id.* ¶ 44 ([redacted]).

[12] Ex. 124 at -719115. "Ex." refers to exhibits to the Chan Declaration and Supplemental Chan Declaration in support of Plaintiffs' class certification ("Mot.").

[13] Hindle Rep. ¶ 24.

[redacted] the Bank then [redacted].[14] My report focused on the September to November 2020 time frame, and concluded that the Bank's decision to [redacted].

17. As early as April 2020, the Bank [redacted].[15] [redacted]. Although the Bank [redacted] because it was [redacted]. Indeed, during a brief five-week period in July and early August, [redacted]

18. Nonetheless, from the week of July 5, 2020 to the week of September 27, 2020 [redacted]

[14] Minnucci Rep. ¶¶ 59-65.
[15] Minnucci Rep. ¶¶ 56-57; *see also* Ex. 133 at -60339.
[16] *See* Ex. 18 (Rule 30(b)(6) Depo. of William Golden ("Golden Tr.")) 67:8-68:6.

[redacted]. As stated in my Report, [redacted].[17]

19. The Hindle Report emphasizes the extensive nature of the training that must be provided to call center agents before they can begin answering phones.[18] But the [redacted] required to [redacted] is a common [redacted], and was fully accounted for in my Report.[19] This lead time underscores the importance of the industry-standard practice of staffing based on a forecast, rather than waiting for performance to deteriorate before activating the hiring and training process.

20. The Hindle Report also suggested that the Bank's poor performance could be attributable to high turnover associated with the pandemic.[20] Industry turnover actually *dropped* in 2020,[21] but in any event, normal turnover [redacted]. As shown in *Table 1* below, at a time when Finance call centers were seeing a staffing attrition rate of 28% over 52 weeks (0.54% per week, on average),[22] [redacted]

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[17] Minnucci Rep. ¶¶ 15, 58-63; *see also* Ex. 77 at -118438 (describing [redacted]); Ex. 134 at -106094 (strategy to [redacted] by [redacted], after which [redacted]).
[18] Hindle Rep. ¶ 24.
[19] Ex. 18 (Golden Tr.) 69:5-20; Minnucci Rep. ¶¶ 53-58;
[20] Hindle Rep. ¶ 24.
[21] *See* Ex. 169 (2024 *U.S. Contact Center Verticals: Finance*, ContactBabel) at 27 fig. 13 (showing lower annual agent attrition rates for all call centers and for Finance call centers in 2020 compared to 2019).
[22] *Id.*

[redacted].[23] The [redacted].

Table 1: Attrition Rates Comparison, July 5 to November 21, 2020

2020 Finance Industry Vertical Survey Average Weekly Attrition	Claims Call Center Performance Metrics						
	Week of:	Calls Offered	Abandonment Rate	ASA (Secs)	> 5 Min	Actual FTE	Weekly Attrition %
0.54%	7/5/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	7/12/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	7/19/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	7/26/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	8/2/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	8/9/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	8/16/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	8/23/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	8/30/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	9/6/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	9/13/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	9/20/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	9/27/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	10/4/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	10/11/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	10/18/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	10/25/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	11/1/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	11/8/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	11/15/2020	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Source: BANA_EDD_MDL-00719115							
Data Notes: Claims Call Metrics shown include all prepaid program types							

21. Regardless of the reasons behind [redacted], the Bank was clearly aware of [redacted] trying to reach the call center.[24] The Bank

[23] *See* Minnucci Rep. ¶ 64, tbl. 5.

[24] *See* Ex. 18 (Golden Tr.) 60:14-61:14 (testifying [redacted]).

was also aware of [redacted].[25] Yet it took the Bank [redacted].

22. [redacted]. This did not happen. [redacted].[27]

VI. WAIT TIMES FOR EDD CARDHOLDERS WERE THE SAME AS—OR WORSE THAN—WAIT TIMES FOR OTHER PREPAID CARDHOLDERS.

23. The Hindle Report stated: "[U]sing data from the Bank's Claim call center relies on an unsupported assumption that wait times for CA EDD customers were the same as all prepaid card programs."[28] With EDD Claims call center volume [redacted].

24. The Bank did not [redacted].[29] It is possible with modern call center phone equipment to route different groups of cardholders differently; [redacted]

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[25] *Id.*; *see also* Ex. 126 at -90046 [redacted]); Ex. 128 at -12883 ([redacted]).
[26] *See* Ex. 18 ("Golden Tr.") 67:8-68:6.
[27] *See* Minnucci Rep. ¶ 64, tbl. 5.
[28] Hindle Rep. ¶ 15.
[29] *See* Ex. 18 (Golden Tr.) 57:19-58:4.

[redacted]. The Bank's [redacted], it logically follows that any substantially large sub-group of these callers will experience the same average wait times. As I stated in my Report—and as the Hindle Report does not [redacted].[31] As a result, during any given period, EDD cardholders [redacted].

25. In light of the data provided by the Bank, [redacted]. The Bank's records show that, between September 13 and November 21, 2020, [redacted].[32] Because calls from EDD debit cardholders [redacted].

26. If there were any variations in service, in my opinion it is likely that EDD cardholders would have received *worse* service than other prepaid cardholders received. In my experience, the only callers who experience meaningfully shorter wait times when contacting a severely understaffed center are those who place their calls as soon as the call center begins operations each day. This opinion is consistent with the source cited in the Hindle Report, which states that "7 AM is the best time to call customer service" and that call center wait times

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[30] *See* Hindle Rep. ¶ 15.
[31] Minnucci Rep. ¶¶28-29, tbl. 1.
[32] Ex. 124 at -719115.

significantly increase after noon.[33] Because the Bank's Claims call center was open from 8:00 am to 10:00 pm *Eastern* Time Monday through Friday and 9:30 am to 8:00 pm *Eastern* Time on Saturday,[34] callers living in the Pacific Time Zone, which would include most California EDD cardholders, would have had to call at 5:00 am Pacific Time to receive the faster early morning service.[35] And while EDD callers were likely under-represented in these early morning hours, they were likely over-represented at the 7:00 pm Pacific close of the business day. Unfortunately, any callers in queue at the end of the day would have been dropped from the queue when the last CSR signed out, regardless of how long they had waited, adding to those EDD callers' frustration.[36]

27. Further, to the extent that the Bank's call center leaders could influence whether EDD cardholders received better or worse service than other prepaid cardholders, [redacted][37]

VII. IT IS STANDARD PRACTICE TO USE MULTI-INDUSTRY BENCHMARKS AND STRATEGIES TO EVALUATE CALL CENTER PERFORMANCE.

28. The Hindle Report stated: "[T]he expectations of target ASAs and realized ASAs vary depending on the industry, contracts, and the nature and complexity of the requests handled. For example, in my experience, wait times can be very different for call centers that handle general inquiries about account balance and certain transactions and those that handle more complex requests such as unauthorized transactions and account security. In my view, there is no

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[33] *See* Hindle Rep. ¶ 16 n.16 (citing TalkDesk, *7 Tips for Getting Better Customer Service*, https://www.talkdesk.com/resources/infographics/tips-for-getting-better-customer-service).
[34] Ex. 170 at -1362 ¶ 3.
[35] *See, e.g.*, Ex. 12 (Aug. 19, 2024 Willrich Decl.) ¶ 7.
[36] *See, e.g.*, *id.* ¶ 6; Ex. 10 (July 27, 2024 Oosthuizen Decl.) ¶ 5.
[37] Ex. 77 at -118438.

standard ASA applicable to all call centers."[38] Hindle's opinion that there are no relevant standards is incorrect and reflects a lack of understanding of performance management in call centers. In my experience, competent call center leaders adopt similar ASA standards, and deliver similar ASA results, across all lines of business within a company. Doing anything different not only exposes call centers to complaints from certain segments of a business, but also encourages callers to "number shop"—that is, calling different numbers or choosing the wrong options from a menu just to get into a queue that might have a shorter wait.

29. Although there may be expected differences in handle time, call centers do not generally expect to see meaningful differences in ASA or abandonment rate between general and specialty call centers. It should therefore not be surprising that EDD did not distinguish between Main, Claims, and/or Fraud call centers with respect to the performance benchmarks established in its contract with the Bank.[39] Nor did the Bank [redacted].[40] Hindle's opinion that average speed to answer varies based on "nature and complexity of the requests handled" is simply untrue.

30. The Hindle Report's assertion that call center performance cannot properly be compared across industries is also incorrect. In my experience working across industries, there are not substantial differences between the ASA or abandonment rate targets set in different

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[38] Hindle Rep. ¶ 22 (footnote omitted).

[39] Ex. 171 (Bank-EDD Contract) at 187, Req. 226 ("The Contractor shall, limit the average wait time to speak to a live CSR to no more than 30 seconds for 70 percent of the calls, and no more than two (2) minutes for all calls.").

[40] *See, e.g.*, Ex. 126 at -90046 ([redacted] Ex. 127 at -13092 ([redacted]); Ex. 128 at -12883 ([redacted]).

industries. In my consulting practice, I have found the most aggressive ASA targets set at 10 seconds and the least aggressive at 300 seconds, while the most aggressive abandoned targets are 2% with the least aggressive at 10%. These targets represent the extremes for individual call centers; industry averages have much less variation between the most and least aggressive.

31. Callers develop their expectations regarding how long it should take for a call to be answered based on their collective experience with *all* call centers over time, not just call centers in the same industry or providing the same service. In other words, when an individual evaluates how quickly Comcast picked up their call, they would not compare Comcast only to Verizon and AT&T. They would also compare it to AllState, Wells Fargo, Aetna, Wayfair, and any other company that they may have called recently. Because all call center experiences are used by customers in evaluating performance, it is standard practice for call centers to consider cross-industry benchmarks when setting performance targets. Therefore, the other vertical markets mentioned in Table 1 of the Hindle Report *are* relevant in the trier of fact's consideration of what constitutes an appropriate benchmark for adequate call center performance in this case. Accordingly, although there may be some differences in performance across industries, it is appropriate to use a multi-industry composite to identify adequate performance targets.

32. The Hindle Report significantly overstates the importance of the travel industry in the 2021 U.S. Contact Decision-Makers Guide. First, Transport & Travel respondents made up only 5% of the 2020 survey, while the Finance industry had the greatest representation among respondents.[41] Indeed, 29 (14%) of the respondent call centers were in the Finance field—the largest group of respondents—while another 28 (13%) were call center outsourcers, similar to

[41] Ex. 172 (2021 Decision Makers Guide) at 15.

TTEC, Sykes, and ACT, which operated the Bank's prepaid call centers.[42] Even if one assumes that the other industries are not relevant, there remain 57 respondents—27%—that are directly similar to the Bank. The 2021 Decision-Makers Guide is therefore far more heavily weighted toward call centers similar to the Bank than toward Transport & Travel, or any other industry. The Hindle Report also overstates the extent to which Transport & Travel respondents were likely to have meaningfully different speed of answer performance than the Bank. Even if it were true that the Transport & Travel respondents saw unusually low call volume during some parts of 2020[43]—and it is not clear from the Hindle Report that any supporting evidence exists for such an assumption—any decrease in call volume was likely matched with a decrease in staffing, as it was widely reported that airlines and other travel business inflicted prolonged wait times on their customers during the early months of the pandemic.[44] That should not be surprising, as it is standard practice for businesses to reduce call center staffing commensurate with substantial reductions in call volumes because by doing so, the businesses avoid the expense of over-staffing. Accordingly, there is no basis for the Hindle Report's suggestion that the Travel &

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[42] *Id.*

[43] Hindle Rep. ¶ 23.

[44] *See, e.g.*, Hannah Klein, Slate, *How Long Does it Take to Ask Delta a Question* (June 16, 2020), https://slate.com/business/2020/06/delta-airlines-customer-service.html (describing Delta's graceful disconnect practice and wait times exceeding four hours in June 2020); Matt Hochberg, Royal Caribbean Blog, *Royal Caribbean Hires Back over 100 Laid off Workers to Help with Long phone Hold Times* (May 27, 2020), https://www.royalcaribbeanblog.com/2020/05/27/royal-caribbean-hires-back-over-100-laid-workers-help-long-phone-hold-times (describing Royal Caribbean cruises efforts to address "longer than normal wait times" driven by cruise cancellation announcements and customer service lay offs); Zach Honig, Points Guy, *Having Trouble Getting through to Delta? You're Not Alone* (June 4, 2020), https://thepointsguy.com/news/how-to-reach-delta (describing the difficulties of Delta customers and noting that "current call center issues are related to a staffing shortage, after [Delta] asked agents to take a leave of absence in an effort to control costs").

Transport respondents to the U.S. Decision-Makers report had meaningfully different performance on the metrics at issue here: average speed to answer and abandonment rate.

33. Although it is my opinion, for the reasons stated above, that multi-industry call center performance data is the best source for identifying an ASA benchmark applicable to the Bank's Claims call center, performance data specific to the Finance and Outsourcing industries is available.[45] The average ASA reported in 2020 across the 29 Finance call centers surveyed by ContactBabel was 145 seconds (2.42 minutes).[46] The average ASA reported in 2020 across the 28 Outsourcers surveyed by ContactBabel was 39 seconds.[47]

34. From September 13, 2020 to November 21, 2020, the average ASA at the Claims call center was [redacted]. Even if one were to limit the comparison group to the 29 Finance call centers in the survey, the Bank [redacted] the 2 minute 25 second average of the Finance call center peer group. Regardless of whether one compares the Bank's Claims call center to the Finance group, the Outsourcing group, or all call centers, [redacted].

35. The 1.25 minute benchmark identified in my Report is an appropriate, industry standard ASA.[48] Although some businesses may set a faster or slower ASA target, those variations are minimal. I have never encountered a call center that set an ASA target of more

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[45] *See* Ex. 169 (2024 *U.S. Contact Center Verticals: Finance*, ContactBabel); Ex. 173 (2024 *U.S. Contact Center Verticals: Outsourcing*, ContactBabel).
[46] *See* Ex. 169 (*Finance Vertical*) at 31.
[47] *See* Ex. 173 (*Outsourcing Vertical*) at 32.
[48] Indeed, Mr. Hindle's own source suggests a much lower benchmark. *See* Hindle ¶ 16 n.16; TalkDesk, *7 Tips for Getting Better Customer Service*, https://www.talkdesk.com/resources/infographics/tips-for-getting-better-customer-service/ (indicating that the "average speed to answer is 8.2 seconds").

than five minutes, and no reputable business would [redacted].

VIII. THE SYSTEMS TO MAINTAIN AND ACCESS INDIVIDUAL CALL WAIT TIME ARE IN NEAR-UNIVERSAL USE AMONG LARGE CALL CENTERS.

36. The Hindle Report stated: "[T]he Claim call center systems of record between September 13, 2020 and November 21, 2020 did not contain or retain data or information showing the time a particular, individual EDD prepaid cardholder spent on hold when calling the Claims call center during the Proposed Class Period. This is consistent with my experience that while call centers may use [individual caller Automatic Number Identifications] ANI, they typically do not retain . . . wait time[] associated with particular ANIs or account holders."[49] The Hindle Report bases this opinion on a statement in the Lorenzen Declaration that stated: "None of the systems of record during the relevant time period that store data related to these customer service calls recorded data regarding individual call wait times, the speed to answer, or call handle times. This information is not available on a per caller basis identifiable through Caller ID, Automatic Number Identification, Alias ID, or any other individual identifier."[50]

37. Neither the Hindle Report nor the Lorenzen Declaration actually responds to the point I was making in my Report, which was that the "share of cardholders calling the Claims call center who are members of Plaintiffs' Customer Service class and assert an injury from the Bank's conduct [redacted]" because the Bank's phone systems [redacted][51]

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[49] Hindle Rep. ¶ 18 (citing Lorenzen Decl. ¶ 13).
[50] Lorenzen Decl. ¶ 13.
[51] Minnucci Report ¶ 94; *see, e.g.* Ex. 174 at -1044.

38. Moreover, the Bank's own records show—contrary to the declarations of Ms. Lorenzen and Mr. Hindle[52]—that the Bank does have the database systems available through Avaya and NICE that provide individual caller data, and the Bank has used these database systems in the course of managing its business.[53]

39. Ms. Lorenzen's assertion regarding the Bank's record keeping practices, if true, would be substantially out of line with nearly universal call center data management practices, and Mr. Hindle's opinion that such a practice is common reflects his lack of experience with call center performance management.[54]

40. In my experience, all phone systems built for call centers create and maintain automated logs of every incoming call. In the Avaya system [redacted],[55] one of the most robust of these logs is the Call Record Database, which consists of approximately 75 database items.[56] One of these items is named CALLING_PTY, and it houses the phone number of the

[52] *See* Lorenzen Decl. ¶ 13; Hindle Rep. ¶ 18.

[53] *See, e.g.*, Ex. 174 at -1044 (call logs showing date of call and start and stop time for certain class members).

[54] Mr. Hindle also states "the outsourced call centers for large financial institutions typically do not have access to the systems that generate these [ASA] data, nor are they provided these data by the Bank." Hindle Rep. ¶ 25. This assertion further demonstrates Mr. Hindle's lack of knowledge of both call center operations generally and [redacted]. First, an outsourcer could not possibly run their operation without access to ASA and a range of other performance data, because it is held accountable for results like wait time, abandonment rate, and average handle time. *See, e.g.*, Ex. 126 at -90046 ([redacted]). Second, it is often the outsourcer that provides this data to the business. At Bank of America, [redacted] *See* Ex. 18 (Golden Tr.) 60:24-61:14. Indeed, at one point, the Bank's counsel asserted that such data was *exclusively* held by its vendors. Ex. 175 (Feb. 9, 2024 Letter from Bank Counsel indicating that "a portion of the Fraud Call Center [performance] data was housed on a vendor's platform" and is not available to the Bank).

[55] Ex. 126 at -90042 ([redacted]).

[56] *See* Ex. 176 at 48-50 (July 2016 *Avaya Call Management System Database Items and Calculations* listing items in the Call Record Database).

person who made the call (known in the industry as the ANI), which is used to the link a call record with a specific cardholder.[57] The database also contains an item called QUEUETIME, which provides the time the call segment spent in queue before being answered.[58] To determine the amount of time a specific caller waited in the Claims call center queue, one could query the database with the caller's ANI, and once the record is located the time the caller spent in queue would be provided. Unless the Bank failed to preserve this data, Avaya's Call Record Database can be used to identify the precise wait time of each member of the Customer Service class.

41. There is evidence that the Bank used [redacted]. For instance, [redacted][59] This [redacted] could only have been [redacted], as the Bank does not [redacted].[60] [redacted] the Agent Trace database and the same Call Record Database that has the amount of time the caller spent queueing.

42. Although the Call Record Database from the phone system is the most accurate way to determine individual caller wait times, individual caller wait times can also be mechanically calculated by subtracting handle time, available in the Bank's call recording system, from total call time, derived from the date and time stamps in the Visa Prepaid Administration system (Visa PAS). I've used records that the Bank produced for Class

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[57] *Id.* at 49, 181.
[58] *Id.* at 50, 280.
[59] Ex. 177 at -190443.
[60] The specific database item accessed to make this determination would have been the AGT_RELEASED database item, available in the Call Record Database. *See* Ex. 176 at 48, 161.

Representative Roland Oosthuizen to illustrate this methodology. Table 1 is an excerpt from Oosthuizen's Archived Account History on September 29, 2020.[61] The first two entries in this table show Oosthuizen authenticated his identity and left the "VRU" (or "voice response unit," which is another name for an IVR) at 6:40 pm. Below that are three actions taken by the CSR followed by an entry for "CSR Call Completion," which marks the end of Oosthuizen's call at 9:21 pm.[62] The time between leaving the IVR at 6:40 pm and ending the call with the CSR at 9:21 pm (2 hours and 41 minutes) is equal to Oosthuizen's hold time (waiting) plus handle time (talking to the CSR).

Table 2: Account History Transaction Log Excerpt

VISA

Archived Account History

The report retrieves archived history information for up to 10 cards.

9/29/2020 6:40:19 PM	VRU Call Authentication	Vru	Authentication: Yes, Tokens Passed: Government ID, CVV2, Social Security Number.
9/29/2020 6:40:19 PM	VRU Call Completion	Vru	DNIS 2428. PAN 442743XXXXXX2694. Call Start 2020 Sep 29 18:38:05. Call Stop 2020 Sep 29 18:40:19
9/29/2020 9:17:39 PM	Card Status Change	prc384rhph409 59u	Card status changed. Old Value: Suspended, New Value: Lost card.
9/29/2020 9:17:51 PM	Lost/Stolen Card Replacement Order	prc384rhph409 59u	Replacement card ordered. User Notes: fraud
9/29/2020 9:18:13 PM	Lost/Stolen Card Replacement Order	prc384rhph409 59u	Previous card: XXXX-XXXX-XXXX-2694, New card: XXXX-XXXX-XXXX-5746, Replacement card Issued.
9/29/2020 9:21:11 PM	CSR Call Completion	prc384rhph409 59u	User Notes: Auth name dob sq fraud claim filed id [redacted] cancelled card issued new card exp deliv adv 2 3bd order conf Z6BAIP14AAAY330 all 1k wds fraud

43. The Bank also produced records for certain plaintiffs showing the duration of their calls (handle time) with CSRs.[63] An excerpt of a call record produced by the Bank for

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[61] Ex. 178 at -56916. The Lorenzen Declaration states that Visa PAS was used in the regular course of business to record transactions, freezes, blocks, and CSR interactions with EDD cardholders. *See* Lorenzen Decl. ¶¶ 14-15.

[62] During this interaction with the CSR, Oosthuizen was able to file an unauthorized transaction claim, suggesting that this was the Claims call center; that can be verified by cross-checking the customer service agent ID (prc384rhph40959u).

[63] The Lorenzen Declaration states that call information for EDD cardholders is routinely stored by the Bank in a system from Neptune Intelligent Computer Engineering ("NICE"), *see*

Oosthuizen is shown below as Table 2.[64] The first entry is the call Oosthuizen had on September 29, 2020, showing a duration of 9 minute and 18 seconds.[65] Subtracting the call duration from the total call time of 2 hours and 41 minutes documented in Oosthuizen's Archived Account History isolates his wait time: 2 hours and 32 minutes. The same calculation can be performed based on the data in the Bank's records for every Customer Service class member.

Table 3: Call Recording Log

Cardholder Name	Alias ID	Date of Call	Duration	PRC ID of Agent who took the call	Agent Name
Oosthuizen, Roland	[redacted]	9/29/20	0:09:18	prc384rhph40959u	[redacted]
Oosthuizen, Roland	[redacted]	11/20/20	0:13:00	prc384hauz64627u	[redacted]

Executed on November 21, 2024, at Collegeville, Pennsylvania.

Jay Minnucci

Lorenzen Decl. ¶¶ 6-7, which appears to be the source of the call logs produced by the Bank. Unless the Bank failed to preserve this data, this information is available for every call answered by the Claims call center. This contradicts the assertion in paragraph 13 of the Lorenzen Declaration that "[n]one of the systems of record during the relevant time period that store data related to these customer service calls recorded data regarding individual call wait times, the speed to answer, or **call handle times**."

[64] Ex. 174 at -1044.

[65] This can be confirmed as the same call that appears in Oosthuizen's Archived Account History by comparing the agent ID, which is also prc384rhph40959u.

Appendix A: Supplemental Materials List

In addition to sources cited in the Report and Appendix D, I considered the following in developing my opinions:

Declarations and Deposition Transcripts and Accompanying Exhibits

Declaration of Stephen Hindle, October 24, 2024

Declaration of Kelley Lorenzen, October 24, 2024

Call Center Industry Documents and Other External Sources

Avaya Call Management System Database Items and Calculations, July 2016 release

U.S. Contact Center Verticals: Finance, ContactBabel, 2024

U.S. Contact Center Verticals: Outsourcing, ContactBabel, 2024

https://slate.com/business/2020/06/delta-airlines-customer-service.html

https://www.royalcaribbeanblog.com/2020/05/27/royal-caribbean-hires-back-over-100-laid-workers-help-long-phone-hold-times

https://www.talkdesk.com/resources/infographics/tips-for-getting-better-customer-service/

https://thepointsguy.com/news/how-to-reach-delta

Pleadings and Other Case Documents

Defendant's Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion for Class Certification, *In re: Bank of America California Unemployment Benefits Litig.*, No. 3:21-md-02992-GPC-MSB, United States District Court for the Southern District of California, October 24, 2024

February 9, 2024 Letter from Bank Counsel to Plaintiffs Counsel re: Call Center Data

Documents Produced by Defendant

BANA_EDD_MDL-00001044

BANA_EDD_MDL-00001361

BANA_EDD_MDL-00056916

BANA_EDD_MDL-00190443

BANA_EDD_MDL-00291083

BANA_EDD_MDL-00809945

BANA_EDD_MDL-00812294