Exhibit 157

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE BANK OF AMERICA CALIFORNIA UNEMPLOYMENT BENEFITS LITIGATION	Case No. 3:21-md-02992-GPC-MSB **CLASS PLAINTIFFS' PROPOSED TRIAL PLAN** Ctrm: 2D (2nd Floor) Judge: Hon. Gonzalo P. Curiel
This Document Relates to All Actions	Trial Date: None set.

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I. PROPOSED TRIAL PLAN

Class Plaintiffs respectfully submit this trial plan to aid the Court in assessing the various options for conducting the trial in these MDL proceedings (in this Court or any transferor courts) against Bank of America, N.A. ("Defendant" or "Bank") on behalf of the five proposed classes in an efficient and manageable manner. Class Plaintiffs may modify this plan prior to trial in light of further discovery and further orders in this case. Discovery conducted to date demonstrates that trial on a classwide basis presents no manageability issues. Instead, certification will enable a fair and efficient resolution of claims common to the approximately 109,000 class members.

Plaintiffs envision that the trial will proceed as follows. In their case-in-chief, Class Plaintiffs will present common evidence of the Bank's wrongdoing and the resulting classwide injury and damages. Plaintiffs will present their case through the Bank's own documents and testimony, third-party documents and testimony, the testimony of class representatives, and expert testimony. The Bank will then present whatever defenses it is able to advance, after which Class Plaintiffs will present their rebuttal case. Plaintiffs anticipate the trial will take three weeks, including jury selection.

As Plaintiffs will show, the Bank's wrongdoing was accomplished through a series of uniform, classwide policies and practices, including: its use of the Claim Fraud Filter ("CFF") and in particular Indicator 1 ("CFF-1") to deny the class members' unauthorized-transaction claims, rescind the "permanent" credits the Bank had paid to class members, and freeze class members' accounts; its decision to grossly understaff the Claims call center; and its failure to include EMV chips on EDD debit cards;. Plaintiffs' presentation of evidence demonstrating the Bank's common course of conduct with respect to these issues will not be overly complex.

Classwide general damages are readily calculable based on the Bank's own records, as explained in the accompanying expert report of Greg Regan. These damages include, for the Claim Denial, Credit Recission, and Account Freeze Classes, the amount of the withheld or rescinded credit and frozen funds and the cost of that deprivation (*e.g.*, interest). The Regan report also sets forth common methodologies for calculating classwide damages for the Customer Service Class, including the Bank's wrongful profits through the Bank's avoided costs. These damages are tailor-made for classwide adjudication.

The availability of treble damages under EFTA, statutory damages under EFTA and the CCPA, and punitive damages for Class Plaintiffs' due process and common law claims, may also be determined classwide based on the common facts presented at trial.

Judgment may be entered based on the jury's verdict and, because the identity of all class members and their relevant data are available from the Bank's own records (and have already been produced in this case), an administrator will be able to use those Bank records to distribute damages payments to each individual class member based on the data and the methodologies presented.

Class Plaintiffs recognize that, in addition to classwide liability and damages to be adjudicated in the class case, some class members experienced extraordinary damages as a result of the Bank's conduct, such as consequential damages from eviction, foreclosure, repossession, physical injury and emotional distress. Information to date indicates the number of class members who might seek relief for those extraordinary damages will comprise a very limited portion of the approximately 109,000 class members.[1]

There is no lack of procedural devices for the Court to efficiently adjudicate these cases. *See, e.g.*, *Betances v. Fischer*, 304 F.R.D. 416, 432 (S.D.N.Y. 2015) (certifying class, noting the court could employ "'a number of management tools available to a district court to address any individualized damages issues,' such as bifurcation, the use of a magistrate or special master, alteration of the class definition, the creation of subclasses, or even decertification after a finding of liability.") (quoting *In re Nassau County Strip Search Cases*, 461 F.3d 219, 231 (2d Cir. 2006)).

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[1] For example, fewer than 400 individual cases against the Bank are pending in this MDL (most of which were stayed at the outset of these proceedings by the JPML). Moreover, of the 132 individual cases that are currently not stayed, only a minority are brought by members of one or more of the five proposed classes.

Class member plaintiffs asserting special damages beyond classwide damages could choose to opt out of the class upon receiving class notice and to proceed individually, although those individuals would lose the benefit of the Court's subsequent rulings and the jury's verdicts on common issues in the class case (at least absent a Rule 23(c)(4) certification). To ensure that judicial efficiency and the interests of justice are best served, the preferable approach would be to permit class members who do not opt out to adjudicate in Phase II proceedings any claims they may have for special damages (after having provided timely notice of their intent to do so). *See Arthur Young & Co. v. U.S. Dist. Ct.*, 549 F.2d 686, 697 (9th Cir. 1977) ("[W]e find it permissible to separate the individual damage issues from trial of the class issues, particularly where, as here, the damage issues reserved are a discrete aspect of the case as a whole."); *Barnes v. District of Columbia*, 278 F.R.D. 14, 20-22 (D.D.C. 2011) (approving a trial plan under which general damages would be tried on a classwide basis in a post-liability phase and any special damages claims would be adjudicated in later, individual proceedings); *Betances*, 304 F.R.D. at 431 (certifying a § 1983 class in which general damages would be assessed on a classwide basis while special damages would require individualized adjudication); *see also* Manual For Complex Litigation (Fourth) § 21.5 (2004) ("In jury cases, the court may consider trying common issues first, preserving individual issues for later determination.").[2]

Trial plans in mass tort cases often propose a similar approach where, after group-wide liability is established, damages are adjudicated in phased trials with groups of plaintiffs claiming similar categories of damages. *See, e.g., In re Exxon Valdez*, 270 F.3d 1215, 1225 (9th Cir. 2001) (affirming as "masterful" multi-phase trial plan in which the jury first determined cohesive classwide compensatory damages and punitive damages for

[2] In the class action context, courts have recognized "'bifurcating liability and damage trials with the same or different juries'" is one of the "management techniques available to deal with the individualized issues of damages." *In re Live Concert Antitrust Litig.*, 247 F.R.D. 98, 149 (C.D. Cal. 2007) (quoting *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 141 (2d Cir. 2001)). The decision to bifurcate is within the discretion of the trial court and "the exercise of that discretion will be set aside only if clearly abused." *United States v. 1,071.08 Acres of Land*, 564 F.2d 1350, 1352 (9th Cir. 1977).

all affected individuals, while reserving for a later phase determination of individual compensatory damages for uniquely situated class members).

Based on the current record, Plaintiffs propose the following approach to adjudicating the common issues of liability and classwide damages (including compensatory damages, treble damages under EFTA, restitution, and punitive damages), while accommodating the small number of class members who seek to pursue additional special damages on top of their common classwide recoveries:

- Phase 1: Adjudicate liability on class claims and classwide damages, including general and statutory damages, disgorgement, restitution (in the alternative), and entitlement to punitive and treble damages.
- Phase 2: Adjudicate special damages in individual cases to be determined either with claim forms, by a special master, or in other individualized adjudications.
- Phase 3: At the conclusion of trial proceedings, the Court may (1) adjust punitive damages as necessary to ensure compliance with due process; and (2) deduct already-paid amounts. *See Exxon Valdez*, 270 F.3d at 1225 (trial plan under which the court would deduct from the jury's damages awards the amount of "released claims, settlements, and payments by the Trans-Alaska Pipeline Liability Fund").

II. PRESENTATION OF COMMON PROOF

The Class Plaintiffs intend to rely on common proof, mostly obtained directly from the Bank's own witnesses and documents, as well as from third parties and class representatives, to establish liability and classwide restitution and damages (including EFTA treble damages and punitive damages for many claims). Class Plaintiffs presently intend to establish the Bank's liability on several class claims, including for its violations of EFTA/Reg E, in a post-certification motion for summary judgment or adjudication because the underlying material facts are undisputed—thereby streamlining the eventual trial proceedings even more.

Class Plaintiffs' case-in-chief will establish foundational facts common to each of the classes and to all class claims, including that:

- The Bank had an exclusive contract with EDD to distribute unemployment insurance, disability insurance, and paid family leave benefits to Californians through Bank-issued EDD debit cards.
- The Bank made multiple contractual promises about the services it would provide to EDD cardholders, including with regard to: card and account security, prevention of transaction fraud, compliance with EFTA and its implementing Regulation E's ("Reg E") error resolution procedures, and customer service.
- The Bank knew that cardholders receiving unemployment benefits were some of the most vulnerable customers the Bank would have.
- The Bank had, since 2014, issued its consumer and business account customers debit cards embedded with industry standard EMV chips but chose to issue its EDD debit cardholders less secure "magnetic-stripe only" cards.
- The Bank determined that the incremental cost of adding EMV chips was $[redacted] per card.
- The Bank knew, prior to the pandemic, that its unencrypted mag-stripe only EDD debit cards would attract ATM fraud through skimming and counterfeiting.
- The Bank used the vulnerability of these cards [redacted].
- The Bank's mag-stripe only EDD debit cards predictably became magnets for fraud during the pandemic as criminals drained tens of millions of dollars from EDD debit card holder accounts, including at ATMs.
- In the Fall of 2020, the Bank's [redacted] a claim fraud filter to systemically deny, without investigation or payment of provisional credit, all EDD cardholder claims meeting certain criteria, thereby [redacted].
- The Bank held [redacted] be required to pay to EDD cardholders under EFTA.

- The Bank's "[redacted]" option was a new tool the Bank called the Claim Fraud Filter ("CFF"), which it implemented on **September 28, 2020** and continued to use until enjoined by the District Court in June 2021.

- The Bank summarily denied claims without human review based solely upon application of its CFF.

- The Bank's "systemic denial" of EDD cardholder claims based on the CFF was unprecedented and contrary to its longstanding policies and procedures for conducting EFTA-compliant claims investigations.

- The Bank used CFF Indicator-1 as the sole basis for summarily denying, without investigation, every EDD cardholder claim involving an unauthorized ATM withdrawal ("Claim Denial Policy").

- The Bank used CFF Indicator-1 as the sole basis to summarily rescind permanent credits previously paid on EDD cardholders' claims of unauthorized ATM withdrawals ("Credit Rescission Policy").

- The Bank used CFF Indicator-1 to automatically freeze the EDD debit card accounts of all EDD cardholders who submitted claims of unauthorized ATM withdrawals, cutting off their access to existing and continuing benefits and denying them any opportunity to regain access to their accounts through the Bank, instead requiring those cardholders to call and re-verify their identities with EDD.

- The Bank's challenged policies were grossly inconsistent with industry standards for investigating claims and handling suspicious accounts.

- The Bank knowingly understaffed its Claims call center, at the same time it implemented its CFF policies, thereby subjecting EDD cardholders seeking to submit claims or seeking reconsideration of their CFF-1 denied claims or rescinded credits to call wait times rarely, if ever, seen in the call center industry.

A. Class Plaintiffs Will Prove with Common Evidence that the Bank Violated EFTA by Denying EDD Cardholder Claims Without Investigation Based Solely on CFF-1.

Common evidence, including the Bank's own documents, testimony, and discovery responses, will prove the Bank violated the EFTA rights of Claim Denial class members by summarily denying their claims based solely on CFF Indicator 1 without conducting a reasonable investigation of their claims as required under EFTA, in violation of 15 U.S.C.

§§ 1693f(a)-(d), 1693g and 12 C.F.R. § 1005.11. *See* ECF 126 at 19 ("MTD Order"). Common evidence will confirm the existence and operation of the Bank's CFF-1 and its use as the sole basis for "systemically" denying all class members' ATM transaction claims, and will identify which claims were denied pursuant to this policy.

B. Class Plaintiffs Will Prove with Common Evidence that the Bank Violated EFTA by Rescinding Permanent Credits Based Solely on CFF-1.

Common evidence, including the Bank's own documents, testimony, and discovery responses, will prove that the Bank violated the EFTA and Reg E rights of Credit Rescission class members by using CFF Indicator 1 as the sole basis for rescinding class members' "permanent" credits, in violation of 15 U.S.C. §§ 1693f(a)-(d), 1693g and 12 C.F.R. § 1005.11. Common evidence will confirm the existence and operation of the Bank's Credit Rescission Policy and will identify which credits were rescinded pursuant to this policy.

C. Class Plaintiffs Will Prove with Common Evidence Class Members Are Entitled to Treble Damages Under EFTA.

EFTA provides three independent scenarios in which "the consumer shall be entitled to treble damages": the financial institution: (1) failed to timely issue provisional credit and "did not make a good faith investigation of the alleged error," (2) failed to timely issue provisional credit and "did not have a reasonable basis for believing that the consumer's account was not in error," or (3) "knowingly and willfully concluded that the consumer's account was not in error when such conclusion could not reasonably have been drawn from the evidence available to the financial institution at the time of its investigation." *Id.* § 1693f(e). Common evidence, including the Bank's own documents, testimony, and discovery responses, will prove that the Bank unreasonably and willfully implemented and persisted in its CFF Policies despite knowing these policies were contrary to the Bank's own past practices and industry norms, that CFF-1 had an extremely high false positive rate and would harm vulnerable EDD cardholders who were legitimate victims of fraud.

D. Class Plaintiffs Will Prove with Common Evidence that the Bank Violated Their Due Process Rights

To establish a due process violation, Plaintiffs must establish the Bank (1) deprived class members of a constitutionally protected property or liberty interest (2) without adequate procedural safeguards, (3) acting under color of state law. *See Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist.*, 149 F.3d 971, 982 (9th Cir. 1998). Common evidence, including the Bank's own documents, testimony, and discovery responses, will prove the Bank violated the due process rights under the 14th Amendment (enforceable through 42 U.S.C. § 1983) and Article I, § 7 of the California Constitution by seizing previously awarded permanent credits from class members' EDD debit card accounts (Credit Rescission Class) and freezing those accounts (Account Freeze Class) based solely on CFF-1, without providing pre-deprivation notice or a meaningful opportunity to be heard, or even reasonable post-deprivation procedures. *See* MTD Order at 66-74.

Common evidence will show that the Bank accounts at issue held EDD-deposited benefits payments exclusively; and as Judge Burns ruled, the Bank "can't seriously dispute that Plaintiffs have a constitutionally protected property interest in the EDD benefits for which they were approved." MTD Order at 70. Common evidence will also establish on a classwide basis that the Bank rescinded credits and froze accounts pursuant to uniform policies and procedures and that cardholders whose credits were rescinded immediately lost access to their funds, while cardholders whose accounts the Bank froze lost access to all funds in their frozen accounts and also lost access to future benefits, which EDD was unable to deposit. Common evidence will show that the Bank knew that CFF-1, on which it relied in freezing accounts and rescinding credits, had a very high false positive rate, resulting in an extreme risk of erroneous deprivation. Common evidence will also identify the many alternative procedures the Bank could have adopted to minimize criminal fraud while protecting the interests of legitimate EDD cardholders and reducing the risk of erroneous deprivation. Class Plaintiffs will establish state action based on common evidence about the scope of the Bank's authority and its relationship with EDD.

E. Class Plaintiffs Will Prove with Common Evidence that the Bank Breached Its Fiduciary Duties.

To prevail on their breach of fiduciary duty claims on behalf of each class, Plaintiffs must prove "the existence of a fiduciary duty, its breach, and damages resulting therefrom." *Youngevity Int'l v. Smith*, No. 16-CV-704-BTM-JLB, 2019 WL 1131876, at *2 (S.D. Cal. Mar. 11, 2019) (citing *City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 68 Cal.App.4th 445, 483 (1998)).

Common evidence, including the Bank's own documents and testimony, will prove that the Bank entered into a "special relationship" with EDD Cardholders and thereby incurred fiduciary obligations. *See* MTD Order at 59 (quoting *Copesky v. Superior Ct.*, 229 Cal.App.3d 678, 687 n.7, 691 n.12 (1991)). For example, common evidence will show that the Bank held "the exclusive right to provide electronic benefits payment services for EDD," and "Plaintiffs couldn't seek similar services elsewhere (eliminating competition)," establishing the parties' unequal bargaining positions. *Id.*

Common evidence, including the Bank's own documents and testimony, will establish that the Bank breached its fiduciary duties by implementing and maintaining its Claim Denial, Credit Rescission, and Account Freeze Policies, and did so despite knowing that those policies were contrary to the Bank's own past practices and industry norms, and would harm vulnerable EDD cardholders who were legitimate victims of fraud and who depended on their EDD benefits, denying them critical funds access for weeks and months on end. Common evidence based on the Bank's own documents and testimony will further establish the Bank implemented and maintained each of these policies principally to protect its *own* economic self-interest at the expense of Class members' needs and interests.

Common evidence, including the Bank's own documents and testimony, will establish that the Bank breached its fiduciary duty by failing to include industry standard EMV chips on EDD debit cards. Common evidence will show that EMV chip-embedded cards were the industry standard for payment card security, that the Bank had embedded EMV chips in its *non*-prepaid consumer debit cards since 2014, and that by 2020, the Bank was aware of the vulnerability to fraud, including ATM fraud, of its mag-stripe only EDD cards. Common evidence will also establish that the Bank made a deliberate, profit-driven decision in early 2020 not to include EMV chips in EDD debit cards, despite knowing that (1) EDD cardholders were falling victim to fraud that EMV chips would prevent, (2) EDD cardholders are a vulnerable population, and (3) the incremental cost of adding EMV chips to EDD debit cards was merely $[redacted] per card, and the return on that investment would have yielded net savings for the Bank. Internal Bank communications will show the Bank tried to [redacted], which failed. Expert testimony will establish that the Bank's failure to issue EMV chip cards to class members enabled the unauthorized ATM transactions to which they fell victim and that these and other damages can be readily calculated on a classwide basis using the Bank's own data and records.

F. Class Plaintiffs Will Prove with Common Evidence that the Bank Was Negligent

The elements of a negligence claim are duty, breach, causation, and injury. *Vasilenko v. Grace Fam. Church*, 3 Cal.5th 1077, 1083 (2017). Plaintiffs' negligence claim rests on common issues as to whether the Bank owed Plaintiffs and class members a duty of care under the "special relationship" exception to the economic-loss rule, and whether the Bank negligently caused harm to members of the five classes. Whether the Bank and EDD Cardholders had a "special relationship" is an issue of law and fact that will result in the same answer for every EDD Cardholder. Common evidence that largely mirrors the evidence for the fiduciary duty claim will prove that the Bank breached its duty of care to class members and that those breaches caused resulting damages. The same is true of Plaintiffs' EMV-related negligence per se theories under the California Consumer Privacy Act ("CCPA") and Gramm-Leach-Bliley Act ("GLBA"). For example, common evidence, including the Bank's own documents and testimony, and expert testimony, will show that EMV chips were the industry standard for debit card security, and that including EMV chips in cards would have prevented unauthorized "disclosure" and "use" of cardholder Personal Information through card skimming and counterfeiting, in violation of Cal. Civ. Code § 1798.100(e).

G. Class Plaintiffs Will Prove with Common Evidence that the Bank Breached the Covenant of Good Faith and Fair Dealing

Common evidence, including the Bank's own documents and testimony, and the testimony of experts on industry norms, will prove that the Bank's challenged conduct was an objectively unreasonable exercise of its discretionary contractual authority under the form contracts in this case. Where a party to a contract "is invested with a discretionary power affecting the rights of another," that party breaches the covenant when it fails to "exercise such power in good faith and through 'objectively reasonable conduct.'" *3500 Sepulveda, LLC v. Macy's W. Stores, Inc.*, 980 F.3d 1317, 1324 (9th Cir. 2020) (citation omitted); MTD Order at 56.

Claim Denial and Credit Recission Classes. Common evidence will establish that the Bank's form EDD Cardholder Agreement included a guarantee that the class members would "incur no liability for unauthorized use of [their] Card" and gave the Bank discretionary authority to deny claims if "for any other reason [the Bank] conclude[s] that the facts and circumstances do not reasonably support a claim of unauthorized use." Common evidence, including the Bank's internal communications and expert testimony, will prove that the Bank did not exercise discretionary authority in a good faith and objectively reasonable manner, including by conducting a reasonable investigation of the class members' claims. Instead, common evidence will prove that the Bank applied a uniform policy of automatically denying all Claim Denial class members' claims and automatically rescinding all Credit Rescission class members' previously issued claim credits based solely on the results of a single factor—CFF-1—without considering any other evidence available to the Bank, and with knowledge that CFF-1 has a very high false positive rate and would harm vulnerable EDD cardholders who were legitimate victims of fraud.

Account Freeze Class. Common evidence will establish the EDD Cardholder Agreement gave the Bank discretionary authority if it "suspect[ed] irregular, unauthorized, or unlawful activities may be involved with [an] Account" to "'freeze' (or place a hold on) the balance pending an investigation of such suspected activities." The implied covenant required the Bank to exercise this discretionary authority in "good faith," to freeze a class member's account only based on an "objectively reasonable" suspicion, and to maintain that freeze only pending a reasonable investigation. Common evidence, including the Bank's own documents and testimony, will prove the Bank implemented a uniform policy from September 28, 2020 until March 17, 2021 of automatically freezing class members' accounts based solely on CFF-1 and maintaining those freezes for indefinite periods while purposefully obstructing cardholders' ability to regain access to their accounts.

Customer Service Class. Common evidence will establish that the Cardholder Agreement instructed class members to contact the Bank by calling the telephone numbers listed on the back of their cards to report unauthorized transactions and that the Bank knew that its call centers were the "main avenue" through which the "vast majority" of such cardholder claims were submitted. Common classwide evidence, including the Bank's call-center records, internal communications, and expert testimony, will prove that the Bank deliberately reduced its call-center staffing in Fall 2020 to inject "friction," i.e., increased difficulty—to discourage class members from pursuing claims, and the Bank kept call center staffing levels far below what was needed to provide reasonable service to cardholders seeking assistance with their unauthorized-transaction claims.

Common evidence, including expert testimony, will establish that each of the Bank's challenged policies and practices was grossly inadequate to meet industry standards and was objectively unreasonable. The Bank's own documents and testimony establish a lack of good faith, as they show that the Bank's principal motivation in implementing these policies and practices was to protect its own financial interests at the expense of Class members' rightful access to their public benefits.

H. Class Plaintiffs Will Prove with Common Evidence that the Bank Violated the California Consumer Privacy Protection Act.

The CCPA imposes civil liability on any business whose customers' "[1] nonencrypted and nonredacted [2] personal information…[3] is subject to an unauthorized access and exfiltration, theft, or disclosure [4] as a result of the business's violation of the duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the information …." Cal. Civ. Code § 1798.150(a)(1) (brackets added).

Common evidence, including the Bank's own documents and testimony and expert testimony, will establish that the Bank failed to implement "reasonable" data security practices to protect EDD Cardholder's personal information in that: all EDD debit cards issued by the Bank during the class period were nonencrypted, mag-stripe only cards that lacked industry standard EMV chips; the information encoded without encryption on the mag stripes was "personal information" ("PI") under the CCPA (Cal. Civ. Code § 1798.81.5(d)(1)(A)(iii)); and the Bank's issuance of mag-stripe only cards made class members' PI "subject to an unauthorized access and exfiltration, theft, or disclosure" through card "skimming" and counterfeiting. Common evidence will also show that the Bank's failure to issue industry-standard EMV chips on EDD debit cards caused criminals to specifically target Bank ATMs and EDD debit cards with skimmers, which subjected class members to unauthorized access, disclosure and theft of their PI.

I. Class Plaintiffs Will Prove with Common Evidence that the Bank Violated the California Unfair Competition Law (UCL).

California's UCL broadly defines "unfair competition" as "any unlawful [or] unfair … business act or practice," and authorizes restitution to any person who has "lost money or property as a result of such unfair competition." Cal. Bus. & Prof. Code §§ 17200, 17203-04.[3] Common evidence, including the Bank's own documents and testimony, and expert testimony, will prove that the Bank's uniform policies and practices of using CFF-

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[3] Plaintiffs bring their UCL claim in the alternative to their legal claims for damages for the Claim Denial, Credit Rescission, and Account Freeze Classes.

1 to deny claims, rescind credits, and freeze accounts were "unfair" under the UCL. Common evidence includes Bank records of how long class members were deprived of access to benefits, testimony showing the Bank knew EDD Cardholders were "some of the most vulnerable customers we would have," evidence that the Bank applied the CFF Policies only to EDD Cardholders, despite contrary promises it made to EDD, and despite knowing that CFF-1 had a very high false positive rate and was adversely impacting tens of thousands of legitimate cardholders. Common evidence will also prove that the CFF Policies were contrary to the Bank's own adequate investigation procedures and standard practices in the payment card industry, and that those Bank Policies violated declared public policy under EFTA and Reg E, state and federal statutes governing EDD benefits, and due process.

J. Class Plaintiffs Will Prove Damages with Common Evidence.

Common evidence will prove that Plaintiffs' actual damages under their EFTA, due process, and common law claims, and restitution under the UCL, can efficiently be calculated using common methodologies and the Bank's databases containing detailed information about the amount of each CFF-1-denied claim and CFF-1-rescinded credit of each Claim Denial and Credit Rescission class member, the amount frozen in each Account Freeze class member's CFF-1-frozen account, the length of time each class member was deprived of their benefits, and the number of times each Customer Service class member called during the relevant time period, among other relevant data.

Actual Damages. As set forth is the accompanying expert report of Greg Regan, the principal damages suffered by Claim Denial and Credit Rescission class members is the amount of each class member's claim that the Bank denied, or each permanent credit that the Bank rescinded, based on CFF Indicator 1. Consequential damages resulting from loss of access to this principal amount can be calculated on a classwide basis using a compound interest rate. Alternatively, consequential damages can be calculated based on classwide formulas based on a conservative measure of the cost of borrowing replacement funds.[4]

The principal damages suffered by Account Freeze class members is the amount of funds in each class member's account that was frozen based on CFF Indicator 1. This amount is readily determined from the Bank's records, as is the length of time the accounts remained frozen. Consequential damages resulting from the length of time class members were deprived of access to their funds will be calculated in the same manner as for the Claim Denial and Credit Rescission classes. Account Freeze class members also incurred additional time-value-of-money costs when EDD became unable to disburse continuing benefits to them through their Bank-frozen EDD debit card accounts. These additional damages can again be measured using a common methodology based on records showing the length of the delay in receipt of benefits caused by the Bank's account freeze.

The principal damages suffered by Customer Service class members is lost time which will be calculated from the Bank's records reflecting how many times each class member called during the relevant time period, multiplied by the average length of time they waited on hold in excess of an industry standard average, multiplied by the applicable minimum wage (or other reasonable metric).

EFTA Treble Damages. If liability is established, calculating treble damages will be a matter of simple arithmetic.

Statutory Damages. EFTA provides for statutory damages of up to $500,000 "in any class action … arising out of the same failure to comply [with EFTA] by the same person …." 15 U.S.C. § 1693m(a)(2)(B). Similarly, the CCPA provides for statutory damages of $100 to $750 per violation per consumer, or actual damages, whichever is greater. Cal. Civ. Code § 1798.150(a). These calculations can be performed using the Bank's data.

Punitive Damages. Plaintiffs' entitlement to punitive damages will be established through common evidence about the Bank's conduct and motives, including Bank

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[4] Damages for the EMV Class will be calculated in the same manner as for the Claim Denial and Credit Rescission classes.

documents and testimony showing that: (1) the Bank knew its decision not to include EMV chips in EDD debit cards made EDD cardholders vulnerable to fraud, including unauthorized ATM transactions, (2) the Bank knew that CFF Indicator 1, which simply identified whether a claim involved an ATM withdrawal, was inaccurate and not a basis for a definitive finding of fraud; (3) the Bank knew that relying on Indicator 1 as the sole basis for auto-denying claims, auto-rescinding credits, and auto-freezing accounts would result in the erroneous deprivation of benefits for many legitimate EDD cardholders; (4) the Bank knew that "[p]eople that are receiving unemployment benefits are probably some of the most vulnerable customers we would have," and would suffer extreme hardship were they prevented from accessing EDD funds; (5) the Bank, as a sophisticated financial institution, had reasonably available alternatives for addressing fraud that would have been less harmful to EDD cardholders; (6) the Bank's senior executives nevertheless chose to implement the hastily-contrived CFF policy which made no attempt to differentiate fraudsters from legitimate cardholders and was the "[redacted]" approach that would yield the greatest cost savings to the Bank by enabling it to avoid paying EFTA-required credits.

Restitution. Plaintiffs seek restitution under the UCL's "unfair" prong, as an alternative to their legal claims for damages, to recover the money lost by members of the Claim Denial, Credit Rescission, and Account Freeze Classes as a result of the Bank's challenged policies affecting those classes. The restitution sought comprises (1) money in which class members have a vested ownership interest but which the Bank wrongfully withheld from class members (i.e., the amount of the denied claims, rescinded credits, and frozen funds), *see Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134, 1148-49 (2003); (2) prejudgment interest of 7% per annum for the periods the Bank wrongfully withheld from class members the money attributable to denied claims, rescinded credits, and frozen accounts, *cf. Espejo v. Copley Press, Inc.*, 13 Cal.App.5th 329, 375-76 (2017) (awarding 7% prejudgment interest as component of restitution under UCL); *Wallace v. Countrywide Home Loans, Inc.*, No. SACV-08-1463-JST (MLGx), 2013 WL 1944458, at *8 (C.D. Cal. Apr. 29, 2013) (same); and (3) restitutionary disgorgement of the float revenue that the Bank earned on wrongfully withheld funds, *see Aguayo v. U.S. Bank*, 200 F.Supp.3d 1075, 1076-77 (S.D. Cal. 2016) (UCL permits restitutionary disgorgement "where defendant's profits stem from money unlawfully obtained from the plaintiffs"). Calculation of such restitution is readily ascertainable from the Bank's records.

Disgorgement. Plaintiffs seek disgorgement of the Bank's unjustly earned profits attributable to the Bank's breach of fiduciary duty, breach of the implied covenant, and negligence. The Bank earned a profit on all funds on deposit with the Bank, and thus on the amounts it wrongfully withheld from Plaintiffs and class members. The Bank also earned profits, in the form of avoided costs, by deliberately understaffing its Claims call center and issuing cards without EMV chips. Calculation of these profits is readily ascertainable from the Bank's own records.

Respectfully submitted,

Dated: August 29, 2024

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SIGNATURE ATTESTATION

Pursuant to section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I, Brian Danitz, attest that the other signatories listed, and on whose behalf this filing is submitted, concur in the filing content and have authorized this filing.

Dated: August 29, 2024

/s/ Brian Danitz
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