

HX 18

**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 Case No. 1-MD-02992-GPC-MSB
CALIFORNIA UNEMPLOYMENT
BENEFITS LITIGATION

**EXPERT REPORT OF TERESA A. PESCE
March 4, 2025**

FILED PROVISIONALLY UNDER SEAL
PURSUANT TO STIPULATED PROTECTIVE ORDER

Table of Contents

I.	ASSIGNMENT	1
II.	QUALIFICATIONS	2
III.	SUMMARY OF RELEVANT FACTS CONSIDERED	4
IV.	SUMMARY OF OPINIONS	5
V.	EXPERT OPINION	7
1.	BACKGROUND	7
a.	Banks Have a Duty to Implement Processes to Prevent Potentially Criminal Activity.	7
b.	National Crisis	9
c.	California’s Employment Development Department.....	10
d.	Bank of America’s Role in Distributing EDD Benefits.....	14
e.	Warnings from Regulatory Agencies and Law Enforcement	16
2.	THE BANK MUST ADMINISTER THE PROGRAM FACING BOTH AN UNPRECEDENTED NUMBER OF CLAIMS AND AN UNPRECEDENTED VOLUME OF FRAUD.....	19
a.	Unemployment Insurance Enrollment Increased and the EDD Relaxed Eligibility Controls.....	19
b.	Unauthorized Transaction Claims and Resulting Fraud Skyrocketed	23
c.	The Bank Took Reasonable Steps to Analyze and Address Fraud	26
d.	The Fraud Filter was a Reasonable Attempt to Expeditiously Address a Growing Fraud Problem.....	32
3.	PLAINTIFFS’ ASSUMPTION THAT NON-EXCLUSION FROM THE BANK’S REGULATORY REMEDIATION PLAN ELIMINATES FRAUDSTERS FROM THE PROPOSED CLASS IS WITHOUT BASIS.	38

I. ASSIGNMENT

1. I have been engaged by Goodwin Procter LLP (“Counsel”), counsel for Bank of America, N.A. (“the Bank”) to provide an expert report in the matter of *In Re Bank of America California Unemployment Benefits Litig.*, Case No. 3:21-md-02992-GPC-MSB. This report is based upon my expertise, experience, and knowledge of the regulatory environment and industry practices in the area of financial crimes, in particular with respect to fraud and anti-money laundering (“AML”) requirements and expectations driven by the Bank Secrecy Act (“BSA”) as amended by the USA PATRIOT Act. Counsel has asked me to provide my opinion on the regulatory and law enforcement environment during a period when there was an unprecedented volume of fraudulent claims driven by lax controls deployed by the State of California’s Employment Development Department (“EDD”) when conferring unemployment benefits pursuant to COVID-19 related relief programs.
2. In furtherance of this assignment and to assist in my understanding of the facts and circumstances surrounding this matter, Counsel provided me with materials pertaining to this case, including materials in response to my requests, such as pleadings and other court documents, deposition transcripts, and materials produced in discovery which are referenced and cited herein. A list of materials reviewed and cited is appended hereto at Appendix A. I reserve the right to supplement or amend my report should new information become available. I am prepared to testify at trial on the topics addressed in this report.
3. Any and all opinions stated herein are mine and mine alone. My compensation in this matter is not dependent on my opinions in or the outcome of this case. I am being compensated at my standard rate of \$800 per hour for work related to preparing my report and \$1,000 per hour for deposition and trial testimony. In addition, staff at Cornerstone Research assisted me by performing research and other tasks under my direction in this matter.

II. QUALIFICATIONS

4. I am an industry leader and subject matter expert in financial-crimes regulatory enforcement and compliance, with an extensive and varied history of working in and with the financial services industry, including in government, industry, and consulting. I have led large teams and managed significant projects for global financial institutions, and I have designed and implemented financial-crimes compliance programs and organizational structures. I have been called upon by boards of directors and senior management of large, international financial institutions to provide guidance and support as those institutions navigated enforcement actions.
5. I have served, and currently serve, as an expert witness and expert consultant in litigations and investigations relating to financial crimes, including AML, sanctions, and fraud. I have provided expert opinions in cases in the United States and abroad.
6. I currently own and operate an independent consulting firm, Terry Pesce & Co. LLC, established in September 2020. My clients range from multinational financial institutions to fintechs and non-traditional firms. I have worked as an independent consultant with some of the largest global financial institutions headquartered and/or doing business in North America, Europe, and Asia. In addition to more traditional depository institutions, I have worked with the world’s largest investment banks, money service businesses, insurance companies, and more regional institutions.
7. Prior to establishing my consulting firm, I spent 13 years as a Principal in KPMG LLP’s (“KPMG”) Forensic Advisory Services, serving as Global Head of Anti-Money Laundering and Head of the firm’s Financial Crimes group. I spearheaded diverse engagements for financial institutions addressing numerous issues concerning financial crimes and sanctions. My work was both proactive, assisting firms in designing new compliance programs and conducting independent assessments, and reactive, assisting firms responding to enforcement actions. I have often been called upon to report directly to law enforcement agents, prosecutors, and regulatory agencies.

8. Before joining KPMG in early 2007, I was Executive Vice President and AML Director for HSBC North America (“HSBC”). I joined HSBC in late 2003 to build out the AML compliance function for all U.S. business lines and products in response to a regulatory order imposed by the Federal Reserve Bank of New York earlier that year and lifted by the Office of the Comptroller of the Currency (“OCC”) during my tenure in 2006. I left HSBC to join KPMG shortly thereafter.
9. Prior to joining HSBC, I was an Assistant United States Attorney in the Southern District of New York, serving as Chief of the Major Crimes Unit, and Deputy Chief of the Criminal Division. From 1999 through 2003, I was responsible for supervision and oversight of all money-laundering and tax prosecutions. I worked closely with law enforcement officers and agents and the financial regulatory agencies responsible for oversight of AML enforcement. During my tenure at the U.S. Attorney’s office, I investigated and prosecuted numerous cases involving and charging money laundering and other complex fraud cases.
10. I have served as an Associate Professor for the Case Western School of Law, Masters of Financial Integrity program, lecturing students from around the globe on a variety of subjects relevant to financial crimes enforcement and compliance, as well as criminal law.
11. I serve on the Advisory Board of AML RightSource, a financial crimes advisory and managed services provider.
12. I hold a Bachelor of Arts from Columbia University, where I graduated magna cum laude, Phi Beta Kappa, and I hold a Juris Doctor from Columbia Law School.
13. I am a recognized industry speaker and have published numerous pieces on financial crimes and enforcement. A complete CV, including a list of publications and matters in which I have provided testimony, is appended hereto at Appendix B.

III. SUMMARY OF RELEVANT FACTS CONSIDERED

14. The Bank’s partnership with EDD predated the COVID-19 pandemic. Pre-COVID-19, the Bank

15. During the COVID-19 pandemic, the paradigm shifted dramatically. Federal government programs made unemployment benefits available to individuals who either did not need them before or were not entitled to them before. The Bank was directed by EDD to provide prepaid cards to an unprecedented number of recipients –

In an effort to get funds into the hands of the masses of claimants, EDD relaxed its identification and eligibility controls, allowing claimants to apply for unemployment benefits without verifying their identity, former employment, wage, or salary history (adopting a “pay and chase” model), which resulted in cards being issued to fraudsters – e.g., recipients fraudulently claiming entitlement and identity thieves. As the number of cardholders increased and fraud controls were relaxed, the number of benefits recipients making claims and seeking reimbursement from the Bank for purportedly unauthorized transactions on their cards increased exponentially.

16. At the same time the Bank

, the Bank received numerous warnings from both its regulators and law enforcement to be vigilant to prevent, detect, and report rampant fraud associated with COVID-19-related relief, and, in particular, unemployment insurance. Regulators and law enforcement instructed banks to take action in the face of COVID-19-related fraud. Banks have an obligation to prevent, detect, and report financial crime, an obligation that was stressed by regulators in their alerts.

17. Regulatory warnings of rampant fraud were substantiated by the Bank’s own review of EDD account information and related unauthorized transaction claims. The Bank

uncovered significant fraud in the EDD portfolio.

IV. SUMMARY OF OPINIONS

18. Bank of America is required to have processes in place to detect and prevent fraud to protect its customers, the Bank, and the financial system. This duty was heightened during the COVID-19 pandemic. The Bank was required to distribute unemployment benefits to recipients in an EDD portfolio rife with fraudsters.

19. Recognizing its responsibility to law enforcement to prevent rampant fraud, and facing unprecedented volumes of unauthorized transaction claims, the Bank

To better address

these unique circumstances, the Bank

In my experience, friction is often used as a preventive measure and was a

¹ The concept of “friction” means making it more difficult for a criminal to commit a crime. Examples of friction could be requiring multiple points of identification before allowing access to financial information; it could include installing firewalls in computer systems to deter hackers. A simple example is when stores put their merchandise behind locked plastic barriers. The crime can still be committed, but friction makes it more difficult. *See* NAB News, *Why ‘Helpful Friction’ is Crucial in the Battle Against Scammers* (Nov. 30, 2023), <https://news.nab.com.au/news/why-helpful-friction-is-crucial-in-the-battle-against-scammers/>; Elissa Redmiles, *Friction Matters: Balancing the Pursuit of Perfect Protection with Target Hardening*, IEEE Security and Privacy (Jan./Feb. 2024), <https://www.computer.org/csdl/magazine/sp/2024/01/10411716/1TV5zSG0BKE>.

reasonable and appropriate measure in this case given the prevalence of fraud in the EDD portfolio and the abuse of the Bank’s claims system during the COVID-19 pandemic.

20. In my experience, banks routinely use automated detection technology to detect fraud and other suspicious activity. Regulators expect banks to deploy technology to attempt to detect such activity. There would be no other way to monitor the volume of transactions processed daily. As with any fraud strategy, no automated system is perfect; there are always false positives. Nevertheless, the use of automated detection technology is often the best way to discern fraudulent activity from legitimate transactions or unauthorized transaction claims in that it does, in fact, identify suspicious activity. In my opinion, the Bank’s deployment of the CFF was a reasonable effort to fulfill its duty to law enforcement, its customers, the Bank, and the financial system.

21. Moreover, Plaintiffs’ assumption that all fraudsters have been excluded from the proposed class population is unsupported. There can be no blanket application or assumption that the remaining individuals in the proposed claim denial class are all legitimately entitled to unemployment benefits or submitted a legitimate unauthorized transaction claim. Based on my experience, review, and understanding of the rampant fraud prevalent in connection with COVID-19-related unemployment insurance benefits, which has been estimated to exceed \$32 billion of EDD’s portfolio and nearly 40 percent of benefits issued pursuant to the Pandemic Unemployment Assistance (“PUA”), as well as my review and understanding of EDD’s failure to verify the identity and eligibility of EDD cardholders, it is my opinion that fraudsters remain in the population.

V. EXPERT OPINION

1. BACKGROUND

a. Banks Have a Duty to Implement Processes to Prevent Potentially Criminal Activity.

22. The BSA requires banks to implement compliance programs with processes in place to prevent, detect, and report potentially suspicious activity, including fraud, to the Financial Action Criminal Enforcement Network (“FinCEN”) of the U.S. Department of the Treasury.² Crime prevention under the BSA is furthered by banks knowing the identity of their customers pursuant to Customer Identification Program (“CIP”)³ requirements, and knowing the risk the customer poses to the bank through Customer Due Diligence (“CDD”).⁴ CIP requires banks not only to collect, but also to verify a customer’s identifying information so they can form a reasonable belief that the customer is who they purport to be.⁵ CDD requires banks to collect risk-based information on the customer, such as occupation, purpose of the account, and expected activity to enable banks to identify potentially unlawful activity.⁶ Through these controls, banks can better understand who is transacting through their bank, and what transactions are expected and

² FinCEN is the federal agency charged with administering and enforcing the BSA. FinCEN, *What We Do*, <https://www.fincen.gov/what-we-do>. See also Federal Financial Institution Examination Counsel Bank Secrecy Act/Anti-Money Laundering Examination Manual (“FFIEC Manual”), *Introduction, Role of Government Agencies in the BSA* (2015), <https://bsaaml.ffiec.gov/manual/Introduction/01>. Banks are required to file Suspicious Activity Reports (“SARs”) upon the identification of potentially suspicious activity. 31 C.F.R. § 1020.320.

³ 31 C.F.R. § 1020.220. See FFIEC Manual, *Assessing Compliance with BSA Regulatory Requirements, Customer Identification Program* (2021), <https://bsaaml.ffiec.gov/manual/AssessingComplianceWithBSARegulatoryRequirements/01>.

⁴ FFIEC Manual, *Assessing Compliance with BSA Regulatory Requirements, Customer Due Diligence, Overview* (2018), <https://bsaaml.ffiec.gov/manual/AssessingComplianceWithBSARegulatoryRequirements/02>; 31 C.F.R. § 1020.210.

⁵ 31 C.F.R. § 1020.220. See FFIEC Manual, *Assessing Compliance with BSA Regulatory Requirements, Customer Identification Program* (2021), <https://bsaaml.ffiec.gov/manual/AssessingComplianceWithBSARegulatoryRequirements/01>.

⁶ FFIEC Manual, *Assessing Compliance with BSA Regulatory Requirements, Customer Due Diligence, Overview* (2018), <https://bsaaml.ffiec.gov/manual/AssessingComplianceWithBSARegulatoryRequirements/02>; 31 C.F.R. § 1020.210.

normal for the customer.⁷ In the absence of these controls,⁸ banks risk providing services to illicit actors who would use the bank for criminal purposes.

23. Two critical purposes of fraud detection are to attempt to prevent fraud and to attempt to prevent loss.⁹ Banks deploy fraud software and technology solutions to assist with anti-fraud efforts. These include detection scenarios to stop transactions before they occur and, where necessary, cancel access, by, for example, cancelling prepaid, debit, or credit cards.¹⁰

24. Regulators do not expect banks merely to report repeated or egregious instances of criminal activity; regulators expect banks to have processes in place to close accounts and/or terminate relationships.¹¹ Per regulatory guidance, banks are expected to have policies, procedures, and processes in place on when to terminate relationships in the face

⁷ FFIEC Manual, *Assessing Compliance with BSA Regulatory Requirements, Customer Due Diligence, Overview* (2018), <https://bsaaml.ffiec.gov/manual/AssessingComplianceWithBSARegulatoryRequirements/02> (“The objective of CDD is to enable the bank to understand the nature and purpose of customer relationships, which may include understanding the types of transactions in which a customer is likely to engage. These processes assist the bank in determining when transactions are potentially suspicious.”).

⁸ *Id.* (“CDD policies, procedures, and processes are critical to the bank because they can aid in ... [a]voiding criminal exposure from persons who use or attempt to use the bank’s products and services for illicit purposes.”).

⁹ Office of the Comptroller of the Currency, *OCC Bulletin 2019-37: Operational Risk: Fraud Risk Management Principles* (July 24, 2019), <https://www.occ.treas.gov/news-issuances/bulletins/2019/bulletin-2019-37.html>, Appendix of Exhibits to the Declaration of Laura Brys in Support of Defendant’s Opposition to Plaintiffs’ Motion for Class Certification, Ex. (“DX”) 108.

¹⁰ Office of the Comptroller of the Currency, *OCC Bulletin 2019-37: Operational Risk: Fraud Risk Management Principles* (July 24, 2019), <https://www.occ.treas.gov/news-issuances/bulletins/2019/bulletin-2019-37.html> (DX 108). See Federal Trade Commission, *When a Company Declines Your Credit or Debit Card, Consumer Advice* (Aug. 2022), <https://consumer.ftc.gov/articles/when-company-declines-your-credit-or-debit-card> (“Your card may be declined for a number of reasons . . . the card issuer sees suspicious activity that could be a sign of fraud.”).

¹¹ Board of Governors of the Federal Reserve System, FDIC, FinCEN, NCUA, OCC, *Answers to Frequently Asked Questions Regarding Suspicious Activity Reporting and Other Anti-Money Laundering Considerations* (Jan. 19, 2021), <https://www.fincen.gov/sites/default/files/2021-01/Joint%20SAR%20FAQs%20Final%20508.pdf> (“The decision to maintain or close a customer relationship as a result of the identification of suspicious activity is a determination for a financial institution to make based on the information available to it, its assessment of money laundering or other illicit financial activity risks, and established policies, procedures, and processes. Financial institutions have the flexibility to develop risk-based procedures and monitoring processes for the purpose of updating the customer risk profile and determining when to maintain or close accounts. Generally, financial institutions have policies, procedures, and processes in place that establish an escalation process for decisions to maintain or terminate customer relationships based on relevant factors, including SAR filing(s). These processes establish criteria, including when review by senior management and legal staff is warranted, for the decision to maintain or terminate the customer relationship in light of elevated risk factors.”).

of elevated risk factors.¹² In my experience, banks are under constant regulatory scrutiny, and some have been subject to regulatory criticism and/or potential enforcement actions when maintaining accounts for bad actors.¹³

b. National Crisis

25. Beginning in the spring of 2020, the U.S. faced an unprecedented health crisis due to the COVID-19 pandemic.¹⁴ The majority of the country was placed under stay-at-home orders, which resulted in mass unemployment.¹⁵ To address the spike in unemployment and resulting hardship, Congress passed the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act at the end of March 2020, which expanded unemployment benefits to those not traditionally eligible (PUA), and provided additional benefits to those who had exhausted benefits (Pandemic Emergency Unemployment Compensation or “PEUC”), and weekly supplements (Federal Pandemic Unemployment Compensation or (“FPUC”).¹⁶ Available funds were drawn down by and distributed by states, with four states (California, Georgia, Kentucky, and Michigan) taking approximately one-third of all funds between March 28, 2020 and March 14, 2021.¹⁷ As a result of the PUA’s

¹² *Id.*

¹³ Office of the Comptroller of the Currency, OCC Issues Cease and Desist Order, Assesses \$450 Million Civil Money Penalty, and Imposes Growth Restriction Upon TD Bank, N.A. for BSA/AML Deficiencies (Oct. 10, 2024), <https://www.occ.treas.gov/news-issuances/news-releases/2024/nr-occ-2024-116.html>.

¹⁴ Trump White House, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020), <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

¹⁵ Centers for Disease Control, *Timing of State and Territorial COVID-19 Stay-at-Home Orders and Changes in Population Movement – United States, March 1–May 31, 2020* (Sep. 4, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6935a2.htm>; Congressional Research Service, *Unemployment Rates During the COVID-19 Pandemic* (Aug. 20, 2021) at 5, <https://crsreports.congress.gov/product/pdf/R/R46554>; Auditor of the State of California, *Employment Development Department: EDD’s Poor Planning and Ineffective Management Left it Unprepared to Assist Californians Unemployed by COVID-19 Shutdowns* (Jan. 2021) (“EDD’s Poor Planning, Jan. 2021”) (DX 89) at 1, <https://information.auditor.ca.gov/pdfs/reports/2020-128and628.1.pdf>.

¹⁶ U.S. Department of the Treasury, *About the CARES Act and the Consolidated Appropriations Act*, <https://home.treasury.gov/policy-issues/coronavirus/about-the-cares-act>; U.S. Department of Labor Press Release, *U.S. Department of Labor Announces New Guidance to States on Unemployment Insurance Programs* (Dec. 30, 2020), <https://www.dol.gov/newsroom/releases/eta/eta20201230-1>; U.S. Department of Labor, Office of Inspector General, *COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds From Improper Payments Including Fraud or From Payment Delays* (Sep. 30, 2022) (“DOL OIG Report”) at 1–2, <https://www.oig.dol.gov/public/reports/oa/2022/19-22-006-03-315.pdf>.

¹⁷ DOL OIG Report at 2.

elimination of traditional safeguards to benefits eligibility, and in an effort to distribute funds quickly given the unprecedented number of unemployment claims, states relaxed eligibility and identification procedures, which resulted in widespread fraud.¹⁸ The EDD’s June 2021 Annual Report states that “[t]raditionally state unemployment agencies rely on employment or wage records to verify eligibility. The self-certification of prior wages, made allowable under the PUA program, made it inherently susceptible to fraud. With the lack of verifiable criteria regarding eligibility, fraud increased with the number of [benefits] claims filed.”¹⁹

c. California’s Employment Development Department

26. EDD was responsible for administering the state unemployment benefits program generally, including PUA for the State of California.²⁰ Prior to PUA, California had safeguards in place to determine both the identity of claimants and eligibility to receive benefits; traditionally, the state could verify the claimant’s prior employment as well as the date they became unemployed and their wage or salary history.²¹ The PUA

¹⁸ United States Government Accountability Office, *GAO-22-105715: Significant Improvements Are Needed to Ensure Transparency and Accountability for COVID-19 and Beyond* (Mar. 17, 2022) (DX 87) (“When reviewing the federal government’s response to the COVID-19 pandemic, GAO found that agencies had significant shortcomings in their application of fundamental internal controls and financial and fraud risk management practices.”), <https://www.gao.gov/assets/gao-22-105715.pdf>; Employment Development Department, State of California, *Annual Report California Fraud Deterrence and Detection Activities* (June 2021) (“EDD Annual Report, June 2021”) (DX 16) at 3 (“The federal Pandemic Unemployment Assistance (PUA) program, where much of the current fraud is concentrated, was designed to provide unemployment benefits to independent contractors and the self-employed.”), https://edd.ca.gov/siteassets/files/about_edd/pdf/fraud_deterrence_and_detection_activities_2021.pdf; BANA EDD MDL-00080294–352 (Auditor of the State of California, *Significant Weaknesses in EDD’s Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments*, (Jan. 2021) (“Weaknesses in EDD’s Approach, Jan. 2021”) (DX 88) at 310 (“It is almost certain that because of its lax approach, EDD missed stopping payment on fraudulent claims during the pandemic.”), 342 (“The new federal Pandemic Unemployment Assistance (PUA) program presented particular challenges, as it did not have the same safeguards as California’s unemployment program.”).

¹⁹ EDD Annual Report, June 2021 (DX 16) at 3.

²⁰ Weaknesses in EDD’s Approach, Jan. 2021 (DX 88) at 300 (“The Employment Development Department (EDD) is responsible for administering the State’s unemployment insurance (UI) program, which provides partial wage replacement benefits to eligible Californians who have become unemployed, including those affected by the COVID-19 pandemic (pandemic).”).

²¹ House Committee on Oversight and Accountability Majority Staff, *Examining Widespread Fraud in Pandemic Unemployment Relief Programs* (Sep. 10, 2024), <https://oversight.house.gov/wp-content/uploads/2024/09/UI-Report-FINAL.pdf> (“House Committee Report”) (DX 14) at 13; Weaknesses in EDD’s Approach, Jan. 2021 (DX 88) at 304–5, 312–3.

eliminated many of these critical, longstanding eligibility verification measures, and instead allowed unemployment beneficiaries to *self-certify* their employment status and wages.²² This created a perfect opportunity for criminals to apply for benefits. Moreover, to distribute benefits quickly during the COVID-19 pandemic, the PUA and California further eliminated many of the identification and eligibility controls previously in place; EDD continued to rely on antiquated technology, including paper processes.²³ For example, for the first seven months of the pandemic, EDD did not employ identity verification software.²⁴ In September 2020, EDD’s antiquated systems became so overwhelmed with the volume of new benefits claims and inundated with fraud it shut down for a “two-week reset.”²⁵ When the system was reactivated in October 2020, EDD started using the ID.me identity verification software, but by this point the system was already rife with fraud, and, as explained below, fraudsters also quickly figured out how to bypass ID.me’s controls.²⁶ The EDD’s June 2021 Annual Report states that “[w]ith the absence of comparable wage information to validate the claims, the PUA program was particularly vulnerable to fraud. This was evident at the end of 2020 with an identified fraud rate in the PUA program of just over 24 percent, or approximately \$10.5 billion.”²⁷ Subsequent reports from the DOL-OIG have reported that more than 35 percent of the PUA benefits issued nationwide were likely fraudulent.²⁸

²² Department of Labor, *Questions and Answers: Pandemic Unemployment Assistance (PUA) Program*, https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2020/UIPL_16-20_Change_1_Attachment_1.pdf (“An individual must self-certify that he or she is unemployed, partially unemployed, or unable or unavailable to work ... nor does PUA take into account the individual’s principal source of income”); Weaknesses in EDD’s Approach, Jan. 2021 (DX 88) at 342 (“The new federal Pandemic Unemployment Assistance (PUA) program presented particular challenges, as it did not have the same safeguards as California’s unemployment program.”).

²³ EDD’s Poor Planning, Jan. 2021 (DX 89) at 5–6, 17, 25 (“In March 2020, EDD halted most of its work related to determining whether UI claimants were eligible for benefits.”).

²⁴ Weaknesses in EDD’s Approach, Jan. 2021 (DX 88) at 305; EDD’s Poor Planning, Jan. 2021 (DX 89) at 17.

²⁵ EDD, EDD Announces Reset in Response to Strike Team Recommendations to Process Claims Faster, Reduce Fraud and Tackle Backlog Issues (Sep. 19, 2020), <https://www.labor.ca.gov/2020/09/19/edd-announces-reset/>.

²⁶ *Id.*; EDD’s Poor Planning, Jan. 2021 (DX 89) at 17; *see infra* ¶ 36.

²⁷ EDD Annual Report, June 2021 (DX 16) at 7.

²⁸ House Committee Report (DX 14) at 6 (“In August 2023, DOL reported that the PUA program had a total improper payment rate of 35.9 percent.”).

27. The PUA's and EDD's removal of guardrails in administering unemployment benefits led to an unprecedented wave of fraud perpetrated by bad actors, including sophisticated criminal syndicates.²⁹ Two types of fraud were prevalent: benefits eligibility fraud and unauthorized transaction claims fraud. First, benefits eligibility fraud involved issuing EDD prepaid debit cards to benefits claimants who were not entitled to benefits, including fraudsters who also committed identity theft, by using fake or stolen identities to obtain prepaid benefits cards.³⁰ Second, [REDACTED]

██████████.³¹ Unauthorized transaction claims fraud was committed by those who fraudulently sought benefits ██████████

²⁹ EDD Annual Report, June 2021 (DX 16) at 3 (“States across the country faced new levels of criminal fraud, including fraud perpetrated by sophisticated organized crime groups and criminal opportunists throughout the country.”); Weaknesses in EDD’s Approach, Jan. 2021 (DX 88) at 342–343 (“The new federal Pandemic Unemployment Assistance (PUA) program presented particular challenges, as it did not have the same safeguards as California’s unemployment program. While in a September letter from the Department of Labor acknowledged that the new program is a ‘target for criminal enterprises and other bad actors deploying advanced technologies, stolen or synthetic identities, and other sophisticated tactics,’ the Trump Administration provided insufficient support to states to address the aggressive attacks by domestic and international criminal syndicates.”).

³¹ Deposition of William Matthew Martin, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Feb. 14, 2024) (“Martin Deposition”) (DX 122) at 146:19–25; Deposition of Shane Daniels, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Feb. 6, 2024) (“Daniels Deposition”) (DX 98) at 195:23–196:12.

28. The California State Auditor issued a report in January 2021 acknowledging that EDD had mishandled fraud prevention and had, at that point, already paid approximately \$10 billion in fraudulent claims.³³ The report noted that fraud in benefits payments had increased 393 percent.³⁴ More recently, the House Committee on Oversight and Accountability (the “House Committee”) issued a report setting forth in detail California’s failures with respect to preventing and/or detecting fraud in its pandemic unemployment relief programs, including that EDD’s parent agency “clearly ... made the decision to sacrifice preventing fraud for expeditious processing times” and EDD “adopted a ‘pay and chase’ model” that exposed the system to fraudsters, in the sense that EDD paid out benefits with essentially no verification, and then attempted to catch fraudsters after the fact.³⁵ More recent reports estimate COVID-19-related unemployment benefits fraud to be in the hundreds of billions of dollars. The U.S. Government Accountability Office estimates that the amount of fraud is likely between \$100 and \$135 billion.³⁶ And the Department of Labor (DOL) Office of Inspector General (OIG) estimates that the amount of improperly paid pandemic unemployment insurance payments is likely even higher and could be more than \$191 billion.³⁷

and sophisticated criminal schemes using stolen or borrowed identities, and using false addresses to obtain unemployment insurance benefits illicitly for financial gain. These occurrences generally involved filing for benefits using true wage earner without knowledge or consent.”). Letter from Elaine M. Howle, 2020-502 (Nov. 19, 2020), <https://information.auditor.ca.gov/pdfs/reports/2020-502.pdf> (DX 17).

³³ Weaknesses in EDD’s Approach, Jan. 2021 (DX 88) at 308.

³⁴ The report notes that, in 2019, \$116.8 million of \$4.9 billion in benefit payments were fraudulent (2.3%). Between March and December 2020, \$10.4 billion of \$111 billion in benefit payments were fraudulent (9.4%). *See* Weaknesses in EDD’s Approach, Jan. 2021 (DX 88) at 305, 308.

³⁵ House Committee Report (DX 14) at 28.

³⁶ *Id.* (DX 14) at 23.

³⁷ *Id.* (DX 14) at 6, 23.

d. Bank of America's Role in Distributing EDD Benefits

29. The Bank's relationship with EDD long predated the COVID-19 crisis.³⁸

[REDACTED]

39 The Bank would then issue prepaid cards to the benefits recipients loaded with funds made available by EDD.

30. In operating the EDD benefits program,

[illegible]

³⁸ Mary Ann Milbourn, *Unemployment Payouts Go Plastic in July*, The Orange County Register (Mar. 16, 2011), <https://www.ocregister.com/2011/03/16/unemployment-payouts-go-plastic-in-july/> (DX 91) (“Bank of America won the contract to provide the Visa-branded EDD debit cards. Under the program, EDD will deposit unemployment payments directly to the claimant’s debit card once the BofA account is activated.”).

³⁹ Letson Deposition (DX 97) at 112:16–20; [REDACTED]
[REDACTED] BANA_EDD_MDL-00529872–879 (Bank of America, *California Employment Development Department Electronic Payments Opportunity*, (Mar. 28, 2020)) at 74; Weaknesses in EDD’s Approach, Jan. 2021 (DX 88) at 304–309.

⁴⁰ Letson Deposition (DX 97) at 112:12–113:8 (“

⁴¹ Letson Deposition (DX 97) at 105:10–20, 112:12–113:8.

[REDACTED]

31. Before the COVID-19 pandemic, the number of active benefits recipients to whom the Bank issued prepaid cards was [REDACTED]⁴⁴ During the COVID-19 pandemic, the number of active benefits recipients to whom the Bank issued cards grew exponentially to [REDACTED], and as the federal government expanded benefits eligibility and the EDD relaxed identity and eligibility verification and requirements, the result was massive fraud.⁴⁵ Under normal circumstances, a bank would be able to address fraud in the ordinary course. [REDACTED]

[REDACTED] would present a massive challenge for any bank. This challenge was observed by Bank employees. As noted by Michael Letson, a Managing Director leading detection and complex investigations in the Bank’s Global Financial Crimes Compliance (“GFCC”) group,⁴⁶

[REDACTED]

⁴² Letson Deposition (DX 97) at 105:10–20, 111:9–17, 112:12–113:8.

⁴³ Deposition of Robert A. Chestnut, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Feb. 8, 2024) (DX 24) at 34:17–19 [REDACTED]

⁴⁴ The number of active EDD prepaid debit cards in mid-March of 2020 was 666,000. *See* BANA_EDD_MDL-00154700–8 (Bank of America, *California EDD Program Overview* (Nov. 2, 2020)) at 1.

⁴⁵ *Id.* at 1. *See* Section V.1.C.

⁴⁶ Letson Deposition (DX 97) at 35:23–36:3.

e. Warnings from Regulatory Agencies and Law Enforcement

32. Recognizing the extent of the fraud resulting from the PUA and the vulnerability of financial institutions, banking regulatory agencies and law enforcement issued warnings, alerting banks to be vigilant in detecting fraud.
33. FinCEN issued nine separate warnings to banks between March 2020 and February 2021 directing banks to ensure they detected, prevented, and reported financial crimes related to COVID-19-related payments, including one warning specifically addressing unemployment insurance fraud.⁴⁸ FinCEN encouraged banks to look for red flags indicating fraud and to implement “innovative approaches to meet their BSA/anti-money laundering compliance obligations, in order to further strengthen the financial system

⁴⁷ *Id.* (DX 97) at 112:16–113:8.

⁴⁸ FinCEN Press Release, The Financial Crimes Enforcement Network (FinCEN) Encourages Financial Institutions to Communicate Concerns Related to the Coronavirus Disease 2019 (COVID-19) and to Remain Alert to Related Illicit Financial Activity (Mar. 16, 2020), <https://www.fincen.gov/news/news-releases/financial-crimes-enforcement-network-fincen-encourages-financial-institutions> (DX 92); FinCEN Press Release, The Financial Crimes Enforcement Network Provides Further Information to Financial Institutions in Response to the Coronavirus Disease 2019 (COVID-19) Pandemic (Apr. 3, 2020), <https://www.fincen.gov/news/news-releases/financial-crimes-enforcement-network-provides-further-information-financial> (DX 92); FinCEN, Advisory on Medical Scams Related to the Coronavirus Disease 2019 (COVID-19) (May 18, 2020), <https://www.fincen.gov/sites/default/files/advisory/2020-05-18/Advisory%20Medical%20Fraud%20Covid%2019%20FINAL%20508.pdf> (DX 92); FinCEN, Notice Related to the Coronavirus Disease 2019 (COVID-19) (May 18, 2020), https://www.fincen.gov/sites/default/files/shared/May_18_Note_Related_to_COVID-19.pdf (DX 92); FinCEN, Advisory on Imposter Scams and Money Mule Schemes Related to Coronavirus Disease 2019 (COVID-19) (July 7, 2020), https://www.fincen.gov/sites/default/files/advisory/2020-07-07/Advisory_%20Imposter_and_Money_Mule_COVID_19_508_FINAL.pdf (DX 92); FinCEN, Advisory on Cybercrime and Cyber-Enabled Crime Exploiting the Coronavirus Disease 2019 (COVID-19) Pandemic (July 30, 2020), <https://www.fincen.gov/sites/default/files/advisory/2020-07-30/FinCEN%20Advisory%20Covid%20Cybercrime%20508%20FINAL.pdf> (DX 92); FinCEN, Advisory on Unemployment Insurance Fraud During the Coronavirus Disease 2019 (COVID-19) Pandemic (Oct. 13, 2020), <https://www.fincen.gov/sites/default/files/advisory/2020-10-13/Advisory%20Unemployment%20Insurance%20COVID%2019%20508%20Final.pdf> (DX 92); FinCEN, Consolidated COVID-19 Suspicious Activity Report Key Terms and Filing Instructions (Feb. 24, 2021), <https://www.fincen.gov/sites/default/files/shared/Consolidated%20COVID-19%20Notice%20508%20Final.pdf> (DX 92); FinCEN, Advisory on Financial Crimes Targeting COVID-19 Economic Impact Payments (Feb. 24, 2021), <https://www.fincen.gov/sites/default/files/advisory/2021-02-24/Advisory%20EIP%20FINAL%20508.pdf> (DX 92).

against illicit financial activity and other related fraud.”⁴⁹ Recognizing the extent of criminal activity associated with COVID-19 relief, in February 2021, FinCEN provided banks with specific instructions for banks filing SARs based on COVID-19-related fraud-types.⁵⁰

34. In September 2020, the United States Department of Justice (“DOJ”) established the National Unemployment Insurance Fraud Task Force. The intent was to marshal the resources of the DOJ together with other state and federal agencies to combat and prevent pandemic-related fraud.⁵¹ The Task Force noted that “[f]raudsters, some of which are transnational criminal organizations, are using the stolen identities of U.S. citizens to open accounts and file fraudulent claims for UI benefits, exploiting the unprecedented expansion of these benefits provided in response to economic disruption caused by the COVID-19 pandemic.”⁵² The Task Force’s most recent report confirms the widespread criminal activity relating to the issuance of COVID-related unemployment benefits; it reported the arrests of more than 3,500 defendants, the seizure or forfeiture of over \$1.4 billion in stolen COVID-19 relief funds, and the “ongoing investigations into hundreds of identity thieves, transnational fraud and money laundering networks, large-dollar individual fraudsters, and the businesses that facilitated these crimes.”⁵³ Banks

⁴⁹ FinCEN Press Release, The Financial Crimes Enforcement Network Provides Further Information to Financial Institutions in Response to the Coronavirus Disease 2019 (COVID-19) Pandemic (Apr. 3, 2020), <https://www.fincen.gov/news/news-releases/financial-crimes-enforcement-network-provides-further-information-financial> (DX 92).

⁵⁰ See FinCEN, *Advisory on Financial Crimes Targeting COVID-19 Economic Impact Payments* (Feb. 24, 2021), <https://www.fincen.gov/sites/default/files/advisory/2021-02-24/Advisory%20EIP%20FINAL%20508.pdf> (DX 92).

⁵¹ U.S. Department of Justice, National Unemployment Insurance Fraud Task Force, *Unemployment Insurance Fraud Consumer Protection Guide* (Sep. 21, 2020), <https://www.oig.dol.gov/public/Unemployment%20Insurance%20Fraud%20Consumer%20Protection%20Guide,%20Final.pdf> (DX 95).

⁵² *Id.* (DX 95).

⁵³ U.S. Department of Justice Press Release, *COVID-19 Fraud Enforcement Task Force Releases 2024 Report* (Apr. 9, 2024), <https://www.justice.gov/opa/pr/covid-19-fraud-enforcement-task-force-releases-2024-report>; U.S. Department of Justice, *COVID-19 Fraud Enforcement Task Force 2024 Report* (Apr. 2024), <https://www.justice.gov/coronavirus/media/1347161/dl?inline> (DX 94).

themselves can be, and often are, subject to enforcement actions if they allow criminal activity to flow through the bank unabated.⁵⁴

35. The United States Secret Service also issued a statement warning of massive fraud in connection with state unemployment insurance programs.⁵⁵

36. Kela, a cyber threat security company, published warnings about [REDACTED]

[REDACTED].⁵⁶ Fraudsters posted instructions on the dark web on

[REDACTED]

[REDACTED]

[REDACTED]⁵⁷

⁵⁴ See, for example, Office of the Comptroller of the Currency, OCC Issues Cease and Desist Order, Assesses \$450 Million Civil Money Penalty, and Imposes Growth Restriction Upon TD Bank, N.A. for BSA/AML Deficiencies (Oct. 10, 2024), <https://www.occ.treas.gov/news-issuances/news-releases/2024/nr-occ-2024-116.html>. See also, FFIEC Manual, Introduction, Role of Government Agencies in the BSA (2015), <https://bsaaml.ffiec.gov/manual/Introduction/01>; Office of the Comptroller of the Currency, Bank Secrecy Act (BSA), <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html>.

⁵⁵ BANA_EDD_MDL-00205361 (U.S. Secret Service, *Massive Fraud Against State Unemployment Insurance Programs* (May 14, 2020)) (DX 96).

⁵⁶ [REDACTED]

⁵⁷ [REDACTED]

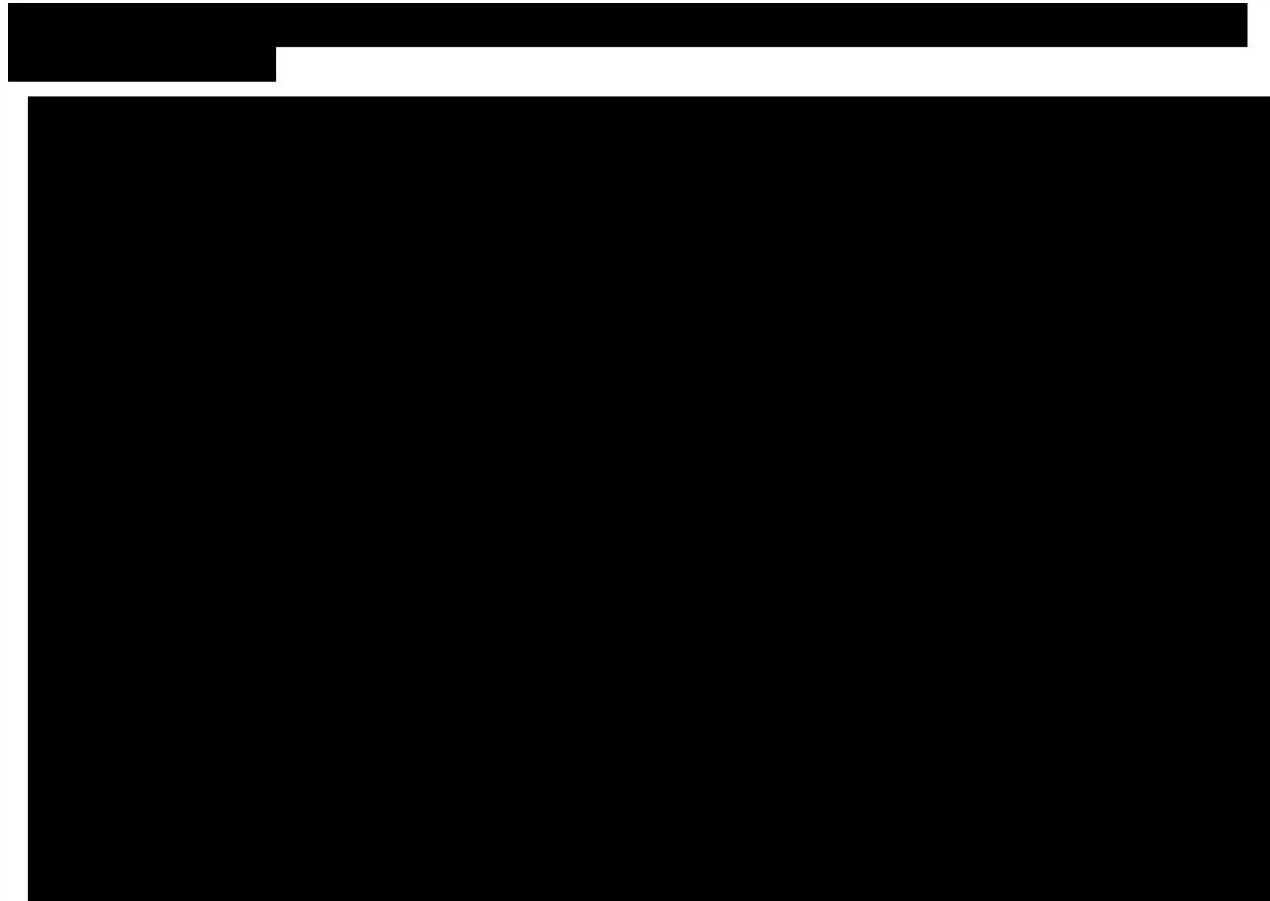
[REDACTED] BANA_EDD_MDL-00088501-5 (Kela, Targeted Cyber Intelligence, RaDark Intelligence Services, *ID.me Bypass* (Dec. 14, 2020)) (DX 103) at 4.

2. THE BANK MUST ADMINISTER THE PROGRAM FACING BOTH AN UNPRECEDENTED NUMBER OF CLAIMS AND AN UNPRECEDENTED VOLUME OF FRAUD.

a. Unemployment Insurance Enrollment Increased and the EDD Relaxed Eligibility Controls

37. During the COVID-19 pandemic, the Bank was [REDACTED] [REDACTED] the Bank went from issuing [REDACTED] new EDD prepaid debit card accounts in February 2020 prior to COVID-19 to issuing [REDACTED] new EDD prepaid debit card accounts in April 2020, as shown in Exhibit 1.⁵⁸

EXHIBIT 1



Source: BANA_EDD_MDL-00884198 (DX 120).

⁵⁸ See Exhibit 1; BANA EDD MDL-00884198 (DX 120). [REDACTED]

38. During the period of increased enrollment, the EDD relaxed its identity and eligibility verification processes. Indeed, the California State Auditor admitted that the EDD’s failure to exercise stringent identity and eligibility verification resulted in massive fraud:

[E]arly in the pandemic, EDD decided to remove a key safeguard against paying [benefits] claims for which staff had identity concerns because of the mistaken belief that other safeguards would stop payments on these claims. However, because the EDD leadership who made these decisions did not adequately understand how the stop payments worked, EDD waived the barriers to payment for almost 77,000 [benefits] claims and paid more than \$1 billion on claims that it has determined are potentially fraudulent.⁵⁹

39. As noted above, the Bank received warnings from its regulators telling it to be prepared to prevent, detect, and report fraud.⁶⁰ In addition, the House Committee on Oversight and Accountability recently reported that “EDD failed to cross reference applicants with databases of incarcerated individuals and lost around \$810 million to these fraudulent claims.”⁶¹

40. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁶³ Per Mr. Letson’s testimony, [REDACTED]

⁵⁹ Weaknesses in EDD’s Approach, Jan. 2021 (DX 88) at 317.

⁶⁰ See Section V.1.E.

⁶¹ House Committee Report (DX 14) at 7.

⁶² Letson Deposition (DX 97) at 105:3–106:10

[REDACTED]
Deposition of Bradley Garfield, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-GPC-MSB (Dec. 10, 2024) (“Garfield Deposition”) at 46:2–6, 354:17–355:5; Deposition of Anne Holt, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02292-GPC-MSB (Jan. 8, 2025) (“Holt Deposition”) at 36:23–37:10, 134:5–15.

⁶³ Letson Deposition (DX 97) at 126:15–131:6.

[REDACTED]
[REDACTED]
[REDACTED] “65 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 66
[REDACTED]

41. For example, the Bank’s challenges with EDD are illustrated in September 2020 after the Bank [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁶⁴ *Id.* (DX 97) at 113:10–18 [REDACTED]
[REDACTED] ; *Id.* at 109:2–10 [REDACTED]
[REDACTED] Holt Deposition at 36:22–37:10, 134:11–15, 290:6–10.

⁶⁵ Declaration of Michael J. Letson in Support of Defendant’s Memorandum in Opposition to Plaintiffs’ Motion for Class Certification, *In re: Bank of America California Unemployment Benefits Litigation*. Case No. 3-21-md-02992-GPC-MSB (Jan. 17, 2025) (“Letson Declaration”) (DX 6) at ¶ 22.

⁶⁶ Letson Deposition (DX 97) at 113:22–114:11 [REDACTED]
[REDACTED]

⁶⁷ Weaknesses in EDD’s Approach, Jan. 2021 (DX 88) at 323.

⁶⁸ Weaknesses in EDD’s Approach, Jan. 2021 (DX 88) at 322–323; BANA_EDD_MDL-00085577–80 (Email chain from Rita Gass to Bobby A Chestnut and Sharon Hilliard, *Sending ~690k Payments to BofA* (Oct. 3, 2020)).

⁶⁹ BANA_EDD_MDL-00085577–80 (Email chain from Dawn E Haddock to Bobby A Chestnut et al., *RE: Sending ~690k Payments to BofA* (Oct. 5, 2020)) at 79–80; BANA_EDD_MDL-00085694 (Email chain from Mahendra Malliwal to Sabrina Clark et al., *Accounts to Unfreeze* (Oct. 14, 2020)).

[REDACTED]

42. Based on the record I reviewed, including the California State Auditor reports, in my opinion, EDD did not perform actions sufficient to control the increase in fraud and in some instances took affirmative actions⁷⁴ that made the fraud worse.⁷⁵

⁷⁰ BANA_EDD_MDL-00085788–9 (Bank of America, *Prepaid Cardholder Analysis*, (Oct. 2020)); BANA_EDD MDL-00085786 (Email chain from Dawn Haddock to Sharon Hilliard, et al., *Meta Data and Unfrozen Accounts on 10/4* (Oct. 16, 2020)).

⁷¹ BANA_EDD_MDL-00085788–9 (Bank of America, *Prepaid Cardholder Analysis*, (Oct. 2020)).

⁷² BANA_EDD_MDL-00085803–8 (Email chain from Carole Vigne to Bobby A Chestnut et al., *RE: EDD/BOA Business Meeting*, (Oct. 19, 2020)) at 3.

⁷³ BANA_EDD MDL-00086221–5 (Letter from Bank of America to California State Legislature, (Dec. 7, 2020)) at 3; *See also* [REDACTED]

[REDACTED] *See also*, Weaknesses in EDD’s Approach, Jan. 2021 (DX 88) at 323.

⁷⁴ For example, EDD actually publicly released information regarding its fraud prevention strategies, which gave fraudsters advance notice of EDD’s efforts. *See* Post by @CA_EDD from X.com (Sep. 30, 2020) https://x.com/CA_EDD/status/1311335315043475457 (“One of the ways we’re stopping fraud is by suspending or canceling multiple claims filed using the same address. We’re also working hard to verify claimants who have the same address as those being used by scammers and minimize payment delays as soon as possible.”). EDD’s other actions also did not help. *See, e.g.*, EDD’s Poor Planning, Jan. 2021 (DX 89) at 25 (“In March 2020, EDD halted most of its work related to determining whether UI claimants were eligible for benefits.”); Weaknesses in EDD’s Approach, Jan. 2021 (DX 88) at 296 (“Specifically, EDD waited about four months to automate a key anti-fraud measure, took incomplete action against claims filed from suspicious addresses, and removed a key safeguard against improper payments without fully understanding the significance of the safeguard.”).

⁷⁵ Letson Deposition (DX 97) at 97:6–98:22; Section V.1.C.

b. Unauthorized Transaction Claims and Resulting Fraud Skyrocketed

43. [REDACTED]
[REDACTED]
[REDACTED]⁷⁶ which the Bank was able to manually investigate in a timely manner. Prior to the COVID-19 pandemic, in January 2020, [REDACTED]
[REDACTED]⁷⁷ Because traditional unemployment eligibility safeguards were in place, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁷⁸ During the COVID-19 pandemic, the number of unemployment benefits recipients increased dramatically as the federal government broadened eligibility and EDD abandoned many of its pre-pandemic controls.⁷⁹ As the number of benefits recipients increased and controls were relaxed, [REDACTED]
[REDACTED]⁸⁰ As shown in **Exhibit 2**, [REDACTED]
[REDACTED]

⁷⁶ Letson Deposition (DX 97) at 67:5–16, 75:13–76:12 [REDACTED]

⁷⁷ Bank of America’s Responses and Objections to Plaintiff Yick’s Fifth Set of Interrogatories, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Feb. 2, 2024) (“BoA Responses and Objections”), Exhibit 11 (DX 105).

⁷⁸ Letson Deposition (DX 97) at 66:18–67:16, 75:13–76:12; Daniels Deposition (DX 98) at 59:8–61:9.

⁷⁹ Weaknesses in EDD’s Approach, Jan. 2021 (DX 88) at 310; House Committee Report (DX 14) at 13–14. *See also*, **Exhibit 2**.

⁸⁰ *See Exhibit 2*; BANA_EDD_MDL-00019618–28 (Bank of America, *Unemployment Prepaid Debit Card Fraud*) at 18; BANA_EDD_MDL-00118436–7 (Email chain from Jennifer M Ehresman to Christine K Channels, *RE: Important pls review* (Nov. 5, 2020)) at 6.

[REDACTED]

[REDACTED] 81

[REDACTED]

[REDACTED]

[REDACTED]

Likewise, as shown in **Exhibit 3**, [REDACTED]

[REDACTED]

81 [REDACTED]
[REDACTED]
[REDACTED] . See BoA Responses and Objections, Exhibit 11 (DX 105).

[REDACTED]

[REDACTED] 82

[REDACTED]

[REDACTED]

[REDACTED]

82 [REDACTED]

c. The Bank Took Reasonable Steps to Analyze and Address Fraud

44. The increasing volume of fraud was apparent to the Bank [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].⁸³ At the same time, cardholders were reporting alleged unauthorized transactions at unprecedented volumes. While historically the Bank received approximately [REDACTED] unauthorized transaction or error claims per month in its unemployment prepaid card program, that number increased [REDACTED]
[REDACTED].⁸⁵

45. [REDACTED]
[REDACTED].⁸⁶ However, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].⁸⁷

⁸³ Letson Declaration (DX 6) at ¶ 13.

⁸⁴ [REDACTED]
[REDACTED].

⁸⁵ See Exhibit 2.

⁸⁶ Daniels Deposition (DX 98) at 102:20–103:17 [REDACTED]
[REDACTED]

⁸⁷ See, e.g., Jason Bramwell, The COVID-19 Pandemic is Causing Many Accountants (and a Whole Lot of Consultants) to Freak Out About Losing Their Jobs, going concern (Mar. 26, 2020), <https://www.goingconcern.com/covid-19-accountants-layoffs-survey/>; Consulting US, Global Consulting Firm Accenture is Firing 25,000 Employees (Aug. 26, 2020), <https://www.consulting.us/news/4776/global-consulting-firm-accenture-is-firing-25000-employees>. Similarly, the Bank implemented work from home measures. See, e.g. Holt Deposition at 15:3–5; Deposition of Faiz A. Ahmad, In re: Bank of America California Unemployment Benefits Litigation, Case No.: 3:21-md-02992-GPC-MSB (Jan. 29, 2025) (“Ahmad Deposition”) at 22:3–11; Deposition of Melissa Ramirez, In re: Bank of America California Unemployment Benefits Litigation, Case No.: 3:21-md-02992-GPC-MSB (Feb. 11, 2025) (“Ramirez Deposition”) at 13:6–8.

46. Under ordinary circumstances, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]⁸⁸ However, [REDACTED]

[REDACTED]

[REDACTED]⁸⁹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁹⁰ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁹¹ [REDACTED]

[REDACTED]

[REDACTED]⁹² In my

opinion, permitting the funds to be stolen would have been counter to the Bank’s
responsibility to combat fraud.

⁸⁸ Daniels Deposition (DX 98) at 59:8–61:9.

⁸⁹ Daniels Deposition (DX 98) at 59:8–61:9; Letson Declaration (DX 6) at ¶ 27.

⁹⁰ *Id.* (DX 98) at 60:25–61:9

[REDACTED]
[REDACTED] BANA_EDD_MDL_00416783–4 (Email chain from Kristen R Ciersi to Jennifer M Ehresman et al., *RE: Prepaid Card Claims/Losses Update*, (Sep. 17, 2020)); Letson Declaration (DX 6) at ¶ 29.

⁹¹ BANA_EDD_MDL_00416783–4 (Email chain from Kristen R Ciersi to Jennifer M Ehresman et al., *RE: Prepaid Card Claims/Losses Update*, (Sep. 17, 2020)).

⁹² BANA_EDD_MDL-00088501–5 (Kela, Targeted Cyber Intelligence, RaDark Intelligence Services, *ID.me Bypass* (Dec. 14, 2020)) (DX 103) at 3; BANA_EDD_MDL-0088506–21 (*PUA/EDD IDME Bypass Method*) (DX 121) at 06; Letson Declaration (DX 6) at ¶¶ 19, 27; Shoreline Mafia, *Bandemic (E.D.D)*, Youtube, (Apr. 20, 2021), <https://www.youtube.com/watch?v=vut-l7KzZJk>; ShotOff & Nuke Bizzle, *EDD*, Youtube (Oct. 22, 2020), <https://www.youtube.com/watch?v=K0ck7hTsug8>; BANA_EDD_MDL-00705503–510 (Email chain from William Fox to John Denning, et al., *FW: ACP-NYT-Fraud Schemes Exploit Weak Spots in Unemployment Claims System* (Oct. 1, 2020) at 4; BANA_EDD_MDL-00055974–981 (Bank of America, *Prepaid Activity – ATM Analysis Summary* (Mar. 2, 2020) at 74; Deposition of Ryan Schwartz, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Dec. 4, 2024) (“Schwartz Deposition”) at 131:9–132:2, 187:1–20.

47. Increasing the threshold for low-dollar-value unauthorized transaction claims that were auto-paid would not have solved the problem that the Bank was facing. Even at an increased threshold there would have been a large volume of fraudulent claims above and below the threshold. Moreover, in my experience, criminals constantly adapt to changing prevention strategies and I expect that criminals would have adapted to the Bank’s changes.⁹³ [REDACTED]

[REDACTED]⁹⁴ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁹⁵ Auto-paying more unauthorized transaction claims at this time would result in paying more fraudsters.

48. The Bank attempted to address fraud in the EDD portfolio [REDACTED]
[REDACTED] For example, the Bank [REDACTED]
[REDACTED] and the Bank [REDACTED]
[REDACTED].⁹⁶ In my opinion, these were reasonable attempts to prevent fraudulent transactions from being processed. However, they were insufficient to address the volume of false unauthorized transactions claims, or what the Bank referred [REDACTED]
[REDACTED]

⁹³ See, e.g., BANA_EDD_MDL-00120424–425 (Email chain from Christine K Channels to William Fox, et al., *RE: 5pm Proposed Agenda Item - Incoming Claims* (Oct. 6, 2020)) [REDACTED]

⁹⁴ Letson Declaration (DX 6) at ¶¶ 24–31; Ahmad Deposition at 151:9–16, 216:16–221:2; Schwartz Deposition at 187:14–188:8.

⁹⁵ Letson Declaration (DX 6) at ¶¶ 10–17; Garfield Deposition at 211:2–19; Ahmad Deposition at 60:7–61:2; Deposition of William Fox, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-GPC-MSB (Feb. 13, 2025) (“Fox Deposition”) at 15:9–17:1, 17:13–18:16, 26:9–25.

⁹⁶ Letson Declaration (DX 6) at ¶ 25; BANA_EDD_MDL-00592324–30 (Bank of America, *Model Identification Pre-paid Card Fraud and Claims Fraud MIR1102* (Oct. 9, 2020)) (“Model Identification”) at 26 (“[REDACTED]”)

29

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. In my experience, banks rely on KYC information when conducting investigations for potentially suspicious activity. Such information is critical to a bank in understanding whether transactions are normal and expected for a customer.¹⁰² [REDACTED]

50. [REDACTED]
[REDACTED]
[REDACTED]¹⁰³ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁰⁴ [REDACTED]
[REDACTED]
[REDACTED]¹⁰⁵ [REDACTED]
[REDACTED]
[REDACTED]¹⁰⁶ In my experience, Financial Crimes, Fraud, and Cyber Security professionals would view assisting law enforcement

¹⁰² See Model Identification at 26 (“A significant majority of cardholders are not Bank of America customers, which means we are blind to the card holder’s other financial activity, which hinders due diligence to determine fraud.”)

¹⁰³ Martin Deposition (DX 122) at 136:17–137:3, 139:21–140:7, 141:18–142:7, 142:9–21, 143:10–15, 143:18–144:9, 145:24–146:12; Holt Deposition at 58:15–59:3; Letson Deposition (DX 97) at 73:4–23, 79:25–80:7, 243:23–244:3; 261:17–262:14. See also, BANA_EDD_MDL-00154004-8 (Bank of America, *Unemployment Insurance (UI) Benefits Fraud Model Development*) at 4; BANA_EDD_MDL-00430148-62 (Bank of America, *Benefits Fraud | Patterns Observed*) at 48.

¹⁰⁴ Martin Deposition (DX 122) at 171:16–172:10; Fox Deposition at 15:9–17:1; Letson Deposition (DX 97) at 134:4–10; Schwartz Deposition at 31:9–20, 35:3–18; [REDACTED]

[REDACTED] BANA_EDD_MDL-00087715-6 (Bank of America, *Unemployment Benefits - Prepaid Fraud Analysis: California Overview* (Sep. 15, 2020)) (DX 99).

¹⁰⁵ Martin Deposition (DX 122) at 42:6–13; Letson Deposition (DX 97) at 42:22–43:3, 79:5–80:7; BANA_EDD_MDL-00057837-78 (Bank of America, *Bank of America’s Prepaid Organizational Structure* (Oct. 20, 2023)) at 39.

¹⁰⁶ Martin Deposition (DX 122) at 45:19–46:11; Letson Deposition (DX 97) at 42:22–43:3, 79:5–80:4; 243:23–244:3; Holt Deposition at 58:15–25; [REDACTED]

with crime prevention and detection as one of their most critical responsibilities. These departments are not profit centers for banks, and [REDACTED]
[REDACTED] Their goal is to protect the Bank and the financial system from fraud.

51. [REDACTED]
[REDACTED] 107 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 108 [REDACTED]
[REDACTED]
[REDACTED] 109 [REDACTED]

52. [REDACTED]
[REDACTED]
[REDACTED] 110 [REDACTED] 111 Based
on their analysis [REDACTED]
[REDACTED]

¹⁰⁷ Letson Declaration (DX 6) at ¶ 18.

¹⁰⁸ [REDACTED]
Analysis: California Overview (Sep. 15, 2020)) (DX 99) at 5; BANA_EDD_MDL-00055974–81 (*Prepaid Activity – ATM Analysis Summary* (Mar. 2, 2020) at 77–8; BANA_EDD_MDL-00154004–8 (Bank of America, *Unemployment Insurance (UI) Benefits Fraud Model Development*) at 5; BANA_EDD_MDL-00430148–62 (Bank of America, *Benefits Fraud | Patterns Observed*) at 48, 53.

¹⁰⁹ [REDACTED]
[REDACTED]
¹¹⁰ Martin Deposition (DX 122) at 136:17–137:3, 138:17–140:7, 141:15–142:7, 142:9–21, 143:10–15, 143:18–144:9, 145:24–146:12; Letson Deposition (DX 97) at 299:12–301:19; Ahmad Deposition at 136:3–137:14; BANA_EDD_MDL-00076984–5 (Bank of America, *Fraud Prevention & Detection Strategy*); BANA_EDD_MDL-00421427–8 (Email chain from Jose Firpi to William Fox et al., *RE: Financial Crimes Weekly* (Sep. 23, 2020)).

¹¹¹ Martin Deposition (DX 122) at 138:17–144:23; BANA_EDD_MDL-00057837–78 (Bank of America, *Bank of America’s Prepaid Organizational Structure* (Oct. 20, 2023); BANA_EDD_MDL-00019618–28 (Bank of America, *Unemployment Prepaid Debit Card Fraud*) at 18; BANA_EDD_MDL-00076983 (Email chain from Melissa Gargagliano to Renee T Johnson et al., *PPD UI Feedback Requested from Jenn and Renee* (Dec. 8, 2020)); BANA_EDD_MDL-00076984–5 (Bank of America, *Fraud Prevention & Detection Strategy*, (Dec. 8, 2020)) at 4.

[REDACTED]¹¹² The team also made two key observations: (1) [REDACTED]
[REDACTED] (2) [REDACTED]
[REDACTED].¹¹³ The need
for large amounts of cash would have been unusual given the general shift to cashless
payments during the COVID-19 Pandemic.¹¹⁴ [REDACTED]
[REDACTED]
[REDACTED]¹¹⁵ [REDACTED]
[REDACTED]
[REDACTED]¹¹⁶ [REDACTED]
[REDACTED]
[REDACTED]¹¹⁷ In my opinion, the analyses
performed by the Bank were consistent with the Bank’s responsibility to understand the
extent of the fraudulent activity and enable it to undertake reasonable measures to
mitigate victimization of the State and the Bank.

**d. The Fraud Filter was a Reasonable Attempt to Exeditiously
Address a Growing Fraud Problem**

53. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹¹² Letson Declaration (DX 6) at ¶ 34; Fox Deposition at 27:5–23.

¹¹³ Letson Deposition (DX 97) at 97:6–98:22, 115:9–117:24.

[REDACTED]
[REDACTED] BANA_EDD_MDL-00430148–62 (Bank of America, *Benefits Fraud | Patterns Observed*) at 49,
53.

¹¹⁴ Square, *Making Change, Chapter 4: One Year of Payments and the Pandemic*,
<https://squareup.com/us/en/press/making-change/2021>; Kelsey Coyle, et al., *Consumer Payments and the Covid-19
Pandemic*, Federal Reserve Bank of San Francisco (Feb. 9, 2021), [https://www.frbf.org/wp-
content/uploads/sites/7/consumer-payments-covid-19-pandemic-2020-diary-consumer-payment-choice-supplement-
2.pdf](https://www.frbf.org/wp-content/uploads/sites/7/consumer-payments-covid-19-pandemic-2020-diary-consumer-payment-choice-supplement-2.pdf).

¹¹⁵ [REDACTED]
[REDACTED]

¹¹⁶ [REDACTED]

¹¹⁷ [REDACTED]

[REDACTED]
[REDACTED]¹¹⁸ [REDACTED]

[REDACTED]

[REDACTED]¹¹⁹ In my experience, it is common for banks to cooperate closely with law enforcement, and to consider or apply information compiled from law enforcement, their own research, and the analysis of suspected fraud to develop fraud strategies.

54. Based on Mr. Letson’s testimony, [REDACTED]

[REDACTED]
[REDACTED]¹²⁰

In my experience, automated detection mechanisms are routinely used by banks to attempt to detect and prevent fraud and other financial crimes, and Financial Crimes professionals would be very accustomed to working with such systems. Due to the speed and volume of transactions, banks rely upon automated systems and features to alert them to fraud and other potentially suspicious activity.¹²¹ Indeed, banking regulators expect banks to deploy technology as part of their required fraud risk management processes.¹²²

¹¹⁸ Letson Deposition (DX 97) at 76:17–77:18.

¹¹⁹ BANA EDD MDL-00090640–7 (Email chain from William M Martin to Melissa Gargagliano, et al., [REDACTED] (Dec. 29, 2020)); BANA EDD MDL-00125177–9 at 7 (Email chain from Michael J. Letson to Bradley Garfield, et al., [REDACTED] (Sep. 28, 2020)); Letson Deposition (DX 97) at 115:9–117:24.

¹²⁰ Letson Deposition (DX 97) at 122:1–123:18. *See also*, Fox Deposition at 27:5–28:13, 45:21–47:17; 51:2–53:21; Ahmad Deposition at 60:7–61:1, 312:7–25; Holt Deposition at 136:11–137:11; Schwartz Deposition at 41:25–42:17, 99:10–13.

¹²¹ F5, How Fraud Detection Works: Common Software and Tools, <https://www.f5.com/glossary/fraud-detection>.

¹²² Office of the Comptroller of the Currency, *OCC Bulletin 2019-37: Operational Risk: Fraud Management Principals* (July 24, 2019), <https://www.occ.treas.gov/news-issuances/bulletins/2019/bulletin-2019-37.html> (DX 108); Office of the Comptroller of the Currency, *Acting Comptroller of the Currency Michael J. Hsu Remarks for the Financial Literacy and Education Commission’s Public Meeting* (July 10, 2024) at 2, <https://www.occ.treas.gov/news-issuances/speeches/2024/pub-speech-2024-75.pdf>.

55. Typical automated detection systems deploy scenarios or typologies to identify potentially suspicious activity. Systems are rules-based¹²³ – that is, they are programmed with rules based on flags for fraud, money laundering, and other criminal activity. The rules are often “if/then” – that is, if a certain type of behavior is/are detected, the system will generate an alert or stop the transaction or behavior.¹²⁴ In certain cases of protracted financial crimes or patterns of activity, where the goal is more detection and reporting than interdiction, there is time to investigate using traditional investigative techniques. In the case of a suspected fraudulent transaction or behavior, the goal, and a bank’s obligation, is prevention, to stop the money from getting into the fraudsters’ hands before it occurs.¹²⁵ This protects the bank, its customers, and the financial system. Thus, if a bank’s fraud detection rule triggers, a transaction may be stopped, and/or a card may be cancelled.¹²⁶
56. Considering the repeated warnings from regulators and law enforcement,¹²⁷ the unprecedented, increasing volume of fraud, and the need to act quickly to prevent further criminal activity, in my opinion, the Bank acted reasonably in devising an automated fraud detection-based solution. [REDACTED]

¹²³ Oraz Kereibayev, *AML Transaction Monitoring Rules: Best Examples*, The Sumsuher (Oct. 3, 2024), <https://sumsub.com/blog/aml-transaction-monitoring-rules-scenarios/>; Bob Hager, *Evaluating Effectiveness: The Impact of a Rules Coverage Assessment on Transaction Monitoring Solutions*, NICE Actimize (June 13, 2024), <https://www.niceactimize.com/blog/aml-evaluating-effectiveness-the-impact-of-a-rules-coverage-assessment-on-transaction-monitoring-solutions/>. While banks are beginning to explore more sophisticated methods of transaction monitoring, such as integrating machine learning and artificial intelligence into their monitoring solutions, based on my experience, this advancement is in its infancy.

¹²⁴ Letson Deposition (DX 97) at 61:1–7 (“[REDACTED]”).

¹²⁵ Office of the Comptroller of the Currency, *OCC Bulletin 2019-37: Operational Risk: Fraud Risk Management Principles* (July 24, 2019), <https://www.occ.treas.gov/news-issuances/bulletins/2019/bulletin-2019-37.html> (DX 108).

¹²⁶ See Board of Governors of the Federal Reserve System, FDIC, FinCEN, NCUA, OCC, *Answers to Frequently Asked Questions Regarding Suspicious Activity Reporting and Other Anti-Money Laundering Considerations* (Jan. 19, 2021), <https://www.fincen.gov/sites/default/files/2021-01/Joint%20SAR%20FAQs%20Final%20508.pdf> (“The decision to maintain or close a customer relationship as a result of the identification of suspicious activity is a determination for a financial institution to make based on the information available to it, its assessment of money laundering or other illicit financial activity risks, and established policies, procedures, and processes.”); see also, Federal Trade Commission, *When a Company Declines Your Credit or Debit Card*, Consumer Advice (Aug. 2022), <https://consumer.ftc.gov/articles/when-company-declines-your-credit-or-debit-card>.

¹²⁷ See *supra* ¶¶ 33–35.

[REDACTED]
[REDACTED] 128
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 129

57. [REDACTED]
[REDACTED] 130 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 131 [REDACTED]
[REDACTED] 132 [REDACTED]
[REDACTED]
[REDACTED] 133 In my experience, in a traditional banking relationship, a bank would have collected identifying information on a customer and verified that identifying information; they would have confidence that the person was

¹²⁸ See, e.g., BANA_EDD_MDL-00019618–28 [REDACTED] at 18–19; BANA_EDD_MDL-00125177–9 (Email chain from Michael J. Letson to Bradley Garfield, et al., RE: [REDACTED] (Sep. 28, 2020)) at 77; Letson Deposition (DX 97) at 69:8–70:21; Letson Declaration (DX 6) at ¶¶ 30–37; Fox Deposition at 45:21–47:17; Ahmad Deposition at 292:21–293:17, 304:15–24; Holt Deposition at 173:8–15, 185:8–186:7, 230:6–231:5.

¹²⁹ BANA_EDD_MDL-00125177–9 (Email chain from Michael J. Letson to Bradley Garfield, et al., [REDACTED] (Sep. 28, 2020)) at 77; BANA_EDD_MDL-00087715–6 ([REDACTED] (Sep. 15, 2020)) (DX 99) at 5; Letson Declaration (DX 6) at ¶¶ 28–34 [REDACTED]
[REDACTED]

¹³⁰ Declaration of William M. Martin in Support of Defendant’s Memorandum in Opposition to Plaintiffs’ Motion for Class Certification, *In re: Bank of America California Unemployment Benefits Litigation*, Case No. 3-21-md-02992-GPC-MSB (Jan. 17, 2025) (“Martin Declaration”) (DX 7) at ¶ 5.

¹³¹ Letson Deposition (DX 97) at 108:11–109:15, 110:20–112:6 [REDACTED]
[REDACTED]

¹³² Letson Deposition (DX 97) at 112:8–113:8 [REDACTED]
[REDACTED]

¹³³ Letson Deposition (DX 97) at 112:8–113:8.

who they said they were.¹³⁴ They would have conducted additional customer due diligence to understand what, if any, risk the customer posed to the bank.¹³⁵ A bank would not be trying to assess a cardholder’s entitlement to benefits or verifying their identity for the first time upon detection of a potential fraud event.

[REDACTED]
[REDACTED].¹³⁶ The concept of friction means making it more difficult for a criminal to commit a crime. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED].¹³⁷ [REDACTED]

[REDACTED]
[REDACTED]¹³⁸ In my opinion, the lack of prepaid cardholders seeking reconsideration would have provided the Bank with a good faith basis to believe the CFF was capturing fraudsters, as fraudsters would be unlikely to challenge the freeze. [REDACTED]

[REDACTED]
[REDACTED] If EDD was able to field the reauthorizations, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹³⁴ See FFIEC Manual, *Assessing Compliance with BSA Regulatory Requirements, Customer Identification Program* (2021), <https://bsaaml.ffiec.gov/manual/AssessingComplianceWithBSARegulatoryRequirements/01>; 31 C.F.R. § 1020.220.

¹³⁵ 31 C.F.R. § 1020.210.

¹³⁶ Letson Deposition (DX 97) at 110:20–112:6.

¹³⁷ Letson Deposition (DX 97) at 110:2–112:6.

¹³⁸ Letson Declaration (DX 6) at ¶ 36; Letson Deposition (DX 97) at 111:9–113:8 [REDACTED]

[REDACTED]
[REDACTED] BANA_EDD_MDL-00117097–9 (Email chain from Erica A Nappi Puskarik to Maria DiPietro et al., *PPD UI - MTM Bullets due 10am 12/28* (Dec. 22, 2020)) at 9; BANA_EDD_MDL-00118436–7 (Email chain from Jennifer M Ehresman to Christine K Channels, *RE: Important pls review* (Nov. 5, 2020)) at 6; BANA_EDD_MDL-00142730–1 (Email chain from Christine K Channels to Faiz Ahmad et al., *RE: Reconsiderations – Provisional credit recommendation* (Dec. 14, 2020)) at 1.

[REDACTED]
[REDACTED].¹³⁹

59. In my experience, and as with any fraud strategy, no automated fraud detection system is perfect or avoids false positives. This is especially so for newly implemented systems. To capture suspicious activity or fraudulent behavior, a wide net must be cast to prevent true criminal activity from going undetected. The result can be a significant number of false positive alerts. Financial institutions must accept and tolerate a certain degree of false positives.¹⁴⁰ Here, given the prevalence of fraudsters in the EDD program and [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] In my opinion, it reasonably deployed the CFF and froze cards expecting EDD to verify the identity and eligibility of the cardholders to address potential false positives – e.g., cardholders with potentially legitimate unemployment benefits claims and accounts. [REDACTED]

[REDACTED]

[REDACTED].¹⁴¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].¹⁴²

¹³⁹ Holt Deposition at 93:2–13, 104:3–23.

¹⁴⁰ See Martin Deposition (DX 122) at 288:10–289:17.

¹⁴¹ Letson Deposition (DX 97) at 110:2–112:6; Martin Declaration at (DX 7) ¶¶ 6–7.

¹⁴² Martin Declaration (DX 7) at ¶ 7.

3. **PLAINTIFFS’ ASSUMPTION THAT** [REDACTED]

60. Plaintiffs define their proposed 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.”¹⁴³

61. [REDACTED]
[REDACTED]
[REDACTED].¹⁴⁴ The following individuals are excluded from eligibility under the Remediation Plan: any person who “(i) has been disqualified by the state from Program eligibility; (ii) has previously engaged in fraudulent Program conduct, such as submission of fraudulent claims or other abuses of the claims process; or (iii) has had their card frozen due to legal order processes, as a result of Internal/Vendor fraud investigators, or by Global Financial Crimes Compliance.”¹⁴⁵

62. [REDACTED]
[REDACTED]
[REDACTED]¹⁴⁶

63. Based on my expertise and experience, [REDACTED]
[REDACTED]

¹⁴³ Regan Report, ¶ 4.

¹⁴⁴ *Id.* fn. 11.

¹⁴⁵ Remediation Plan at 557.

¹⁴⁶ See Memorandum of Points and Authorities in Support of Motion for Class Certification, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-GPC-MSB (Aug. 29, 2024) at 3, citing Regan Report ¶ 35 (emphasis added).

[REDACTED]
[REDACTED].¹⁴⁷

64. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹⁴⁸ There is nothing to suggest that EDD investigated the case of every individual it deemed eligible to assess whether it made a mistake. A report issued by the House Committee on Oversight and Accountability noted a case where even after EDD made a determination of suspicious fraudulent activity, it continued to issue benefits to some of the fraudsters.¹⁴⁹ The same report notes that, as of April 2024, the Department of Justice has recovered only \$1.4 billion of the more than \$191 billion of improperly paid pandemic unemployment insurance payments, and that many of the criminals “will likely never even be apprehended.”¹⁵⁰ [REDACTED]
[REDACTED]

65. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁵¹ [REDACTED]
[REDACTED] In my experience, criminals are

¹⁴⁷ [REDACTED]

¹⁴⁸ See Section V.1.C.

¹⁴⁹ House Committee Report (DX 14) at 29.

¹⁵⁰ House Committee Report (DX 14) at 74–75.

¹⁵¹ [REDACTED] Bank of America’s Second Set of Responses and Objections to Plaintiff Yick’s Seventh Set of Interrogatories (Interrogs. 39 & 42), *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3-21-md-02992-LAB-MSB (Apr. 23, 2024) (DX 43) at 8–10.

often one step ahead of detection mechanisms and may be able to commit fraud even when preventive measures are in place. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 152

66. The volume of fraud in the UI portfolio was unprecedented. By the end of 2020, the identified fraud rate in the PUA program of just over 24 percent, or approximately \$10.5 billion.¹⁵³ Subsequent reports from the DOL-OIG have reported that more than 35 percent of the PUA benefits issued nationwide were likely fraudulent.¹⁵⁴ The Department of Labor Office of Inspector General reported that “at least \$191 billion in pandemic UI payments could have been improperly paid with a significant portion attributed to fraud.”¹⁵⁵ As the House Committee reported, “California was arguably the most unprepared state in the United States,” and “EDD was especially vulnerable to fraud...”¹⁵⁶ Bank of America was the exclusive issuer of prepaid cards for EDD.¹⁵⁷ Thus, it follows that a significant percentage of the benefits EDD directed the Bank to pay were going to fraudsters.

¹⁵² Letson Deposition (DX 97) at 112:12–113:8

Letson Deposition (DX 97) at 105:10–20

¹⁵³ EDD Annual Report, June 2021 (DX 16) at 7.

¹⁵⁴ House Committee Report (DX 14) at 6 (“In August 2023, DOL reported that the PUA program had a total improper payment rate of 35.9 percent.”).

¹⁵⁵ *Id.* (DX 14).

¹⁵⁶ *Id.* (DX 14) at 44.

¹⁵⁷ Weaknesses in EDD’s Approach, Jan. 2021, (DX 88) at 322.

67. Based on my expertise and experience, and my understanding of the rampant nature of fraud targeting the unemployment benefits program during the pandemic, it is my opinion that there are likely additional fraudsters within Plaintiffs’ proposed claim denial class.

Executed this 4 of March, 2025

A handwritten signature in black ink, appearing to read 'T. Pesce', with a long horizontal flourish extending to the right.

Teresa A. Pesce

Documents Considered List

Articles

- Bob Hager, *Evaluating Effectiveness: The Impact of a Rules Coverage Assessment on Transaction Monitoring Solutions*, NICE Actimize (June 13, 2024), <https://www.niceactimize.com/blog/aml-evaluating-effectiveness-the-impact-of-a-rules-coverage-assessment-on-transaction-monitoring-solutions/>
- Consulting.US, *Global Consulting Firm Accenture is Firing 25,000 Employees* (Aug. 26, 2020), <https://www.consulting.us/news/4776/global-consulting-firm-accenture-is-firing-25000-employees>
- Doug Clare, *Falcon Intelligence Network: A Fraud Consortium for Fraud-Fighting Machine Learning Innovation*, FICO Blog (Mar. 26, 2021), <https://www.fico.com/blogs/falcon-intelligence-network-fraud-consortium-fraud-fighting-machine-learning-innovation>
- Elissa Redmiles, *Friction Matters: Balancing the Pursuit of Perfect Protection with Target Hardening*, IEEE Security and Privacy (Jan./Feb. 2024), <https://www.computer.org/csdl/magazine/sp/2024/01/10411716/1TV5zSG0BKE>
- F5, *How Fraud Detection Works: Common Software and Tools*, <https://www.f5.com/glossary/fraud-detection>
- FICO, *FICO Falcon Fraud Manager*, <https://www.fico.com/en/products/fico-falcon-fraud-manager>
- Mary Ann Milbourn, *Unemployment Payouts Go Plastic in July*, The Orange County Register (Mar. 16, 2011), <https://www.ocregister.com/2011/03/16/unemployment-payouts-go-plastic-in-july/>
- NAB News, *Why ‘Helpful Friction’ is Crucial in the Battle Against Scammers* (Nov. 30, 2023), <https://news.nab.com.au/news/why-helpful-friction-is-crucial-in-the-battle-against-scammers/>
- Jason Bramwell, *The COVID-19 Pandemic is Causing Many Accountants (and a Whole Lot of Consultants) to Freak Out About Losing Their Jobs*, going concern (Mar. 26, 2020), <https://www.goingconcern.com/covid-19-accountants-layoffs-survey/>
- Oraz Kereibayev, *AML Transaction Monitoring Rules: Best Examples*, The Sumsu (Oct. 3, 2024), <https://sumsub.com/blog/aml-transaction-monitoring-rules-scenarios/>
- Post by @CA_EDD from X.com (Sep. 30, 2020), https://x.com/CA_EDD/status/1311335315043475457

- Scott Zoldi, *FICO Fights Prepaid Card Fraud with AI and Machine Learning*, FICO Blog (Mar. 9, 2020), <https://www.fico.com/blogs/fico-fights-prepaid-card-fraud-ai-and-machine-learning>
- Shoreline Mafia, *Bandemic (E.D.D)*, Youtube, (Apr. 20, 2021), <https://www.youtube.com/watch?v=vut-17KzZJk>
- ShotOff & Nuke Bizzle, *EDD*, Youtube (Oct. 22, 2020), <https://www.youtube.com/watch?v=K0ck7hTsug8>
- Square, *Making Change*, Chapter 4: One Year of Payments and the Pandemic, <https://squareup.com/us/en/press/making-change/2021>
- TJ Horan, *The Fraud Consortium: 9,000 Heads Are Better than I*, FICO Blog (Dec. 6, 2017), <https://www.fico.com/blogs/fraud-consortium-9-000-heads-are-better-1>

Depositions

- Deposition of Shane Daniels, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Feb. 6, 2024)
- Deposition of Robert A. Chestnut, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Feb. 8, 2024)
- Deposition of William Matthew Martin, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Feb. 14, 2024)
- Deposition of Michael Letson, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Feb. 16, 2024)
- Deposition of William Golden, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Feb. 22, 2024)
- Deposition of Ryan Schwartz, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Dec. 4, 2024)
- Deposition of Bradley Garfield, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-GPC-MSB (Dec. 10, 2024)
- Deposition of Anne Holt, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02292-GPC-MSB (Jan. 8, 2025), and Exhibits
- Deposition of Faiz A. Ahmad, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-GPC-MSB (Jan. 29, 2025), and Exhibits

- Deposition of Melissa Ramirez, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-GPC-MSB (Feb. 11, 2025), and Exhibits
- Deposition of William Fox, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-GPC-MSB (Feb. 13, 2025), and Exhibits
- Deposition of Jennifer Ehresman, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-GPC-MSB (Feb. 19, 2025)
- Deposition of Paul Simpson, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-GPC-MSB (Feb. 21, 2025), and Exhibits

Expert Reports and Declarations

- Appendix of Exhibits to the Declaration of Laura Brys in Support of Defendant’s Opposition to Plaintiffs’ Motion for Class Certification, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-MD-02992-GPC-MSB (Oct. 24, 2024)
- Expert Class Certification Report of Greg J. Regan, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3-21-md-02992-GPC-MSB (Aug. 29, 2024)
- Expert Class Certification Report of J. Daniel Kreis, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-GPC-MSB (Aug. 29, 2024)
- Expert Declaration of Teresa A. Pesce, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 1-MD-02992-GPC-MSB (Oct. 24, 2024)
- Expert Rebuttal Report of J. Daniel Kreis, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-GPC-MSB (Nov. 21, 2024)
- Declaration of Michael J. Letson in Support of Defendant’s Memorandum in Opposition to Plaintiffs’ Motion for Class Certification, *In re: Bank of America California Unemployment Benefits Litigation*, Case No. 3-21-md-02992-GPC-MSB (Jan. 17, 2025)
- Declaration of William M. Martin in Support of Defendant’s Memorandum in Opposition to Plaintiffs’ Motion for Class Certification, *In re: Bank of America California Unemployment Benefits Litigation*, Case No. 3:21-md-02992-GPC-MSB (Jan. 17, 2025)

Government Reports and Releases

- Auditor of the State of California, *Employment Development Department: EDD’s Poor Planning and Ineffective Management Left it Unprepared to Assist Californians Unemployed by COVID-19 Shutdowns* (Jan. 2021), <https://information.auditor.ca.gov/pdfs/reports/2020-128and628.1.pdf>
- Board of Governors of the Federal Reserve System, FDIC, FinCEN, NCUA, OCC, *Answers to Frequently Asked Questions Regarding Suspicious Activity Reporting and Other Anti-Money Laundering Considerations* (Jan. 19, 2021), <https://www.fincen.gov/sites/default/files/2021-01/Joint%20SAR%20FAQs%20Final%20508.pdf>
- Centers for Disease Control, *Timing of State and Territorial COVID-19 Stay-at-Home Orders and Changes in Population Movement – United States, March 1–May 31, 2020* (Sep. 4, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6935a2.htm>
- Congressional Research Service, *Unemployment Rates During the COVID-19 Pandemic* (Aug. 20, 2021), <https://crsreports.congress.gov/product/pdf/R/R46554>
- EDD Strike Team, *Employment Development Department Strike Team Detailed Assessment and Recommendations* (Sep. 16, 2020), <https://www.govops.ca.gov/wp-content/uploads/sites/11/2020/09/Assessment.pdf>
- Employment Development Department, State of California, *Annual Report California Fraud Deterrence and Detection Activities* (June 2021), https://edd.ca.gov/siteassets/files/about_edd/pdf/fraud_deterrence_and_detection_activities_2021.pdf
- Federal Financial Institution Examination Counsel Bank Secrecy Act/Anti-Money Laundering Examination Manual (FFIEC Manual), *Introduction, Role of Government Agencies in the BSA* (2015), <https://bsaaml.ffiec.gov/manual/Introduction/01>
- Federal Trade Commission, *When a Company Declines Your Credit or Debit Card*, Consumer Advice (Aug. 2022), <https://consumer.ftc.gov/articles/when-company-declines-your-credit-or-debit-card>
- FFIEC Manual, *Assessing Compliance with BSA Regulatory Requirements, Customer Identification Program* (2021), <https://bsaaml.ffiec.gov/manual/AssessingComplianceWithBSARegulatoryRequirements/01>
- FFIEC Manual, *Assessing Compliance with BSA Regulatory Requirements, Customer Due Diligence, Overview* (2018), <https://bsaaml.ffiec.gov/manual/AssessingComplianceWithBSARegulatoryRequirements/02>

- Financial Crimes Enforcement Network, *Information on Complying with the Customer Due Diligence (CDD) Final Rule*, <https://www.fincen.gov/resources/statutes-and-regulations/cdd-final-rule>.
- FinCEN, *What We Do*, <https://www.fincen.gov/what-we-do>
- FinCEN, *Advisory on Cybercrime and Cyber-Enabled Crime Exploiting the Coronavirus Disease 2019 (COVID-19) Pandemic* (July 30, 2020), <https://www.fincen.gov/sites/default/files/advisory/2020-07-30/FinCEN%20Advisory%20Covid%20Cybercrime%20508%20FINAL.pdf>
- FinCEN, *Advisory on Financial Crimes Targeting COVID-19 Economic Impact Payments* (Feb. 24, 2021), <https://www.fincen.gov/sites/default/files/advisory/2021-02-24/Advisory%20EIP%20FINAL%20508.pdf>
- FinCEN, *Advisory on Imposter Scams and Money Mule Schemes Related to Coronavirus Disease 2019 (COVID-19)* (July 7, 2020), https://www.fincen.gov/sites/default/files/advisory/2020-07-07/Advisory_%20Imposter_and_Money_Mule_COVID_19_508_FINAL.pdf
- FinCEN, *Advisory on Medical Scams Related to the Coronavirus Disease 2019 (COVID-19)* (May 18, 2020), <https://www.fincen.gov/sites/default/files/advisory/2020-05-18/Advisory%20Medical%20Fraud%20Covid%2019%20FINAL%20508.pdf>
- FinCEN, *Advisory on Unemployment Insurance Fraud During the Coronavirus Disease 2019 (COVID-19) Pandemic* (Oct. 13, 2020), <https://www.fincen.gov/sites/default/files/advisory/2020-10-13/Advisory%20Unemployment%20Insurance%20COVID%2019%20508%20Final.pdf>
- FinCEN, *Consolidated COVID-19 Suspicious Activity Report Key Terms and Filing Instructions* (Feb. 24, 2021), <https://www.fincen.gov/sites/default/files/shared/Consolidated%20COVID-19%20Notice%20508%20Final.pdf>
- FinCEN, *Notice Related to the Coronavirus Disease 2019 (COVID-19)* (May 18, 2020), https://www.fincen.gov/sites/default/files/shared/May_18_Notice_Related_to_COVID-19.pdf
- House Committee on Oversight and Accountability Majority Staff, *Examining Widespread Fraud in Pandemic Unemployment Relief Programs* (Sep. 10, 2024), <https://oversight.house.gov/wp-content/uploads/2024/09/UI-Report-FINAL.pdf>
- Kelsey Coyle, et al., *Consumer Payments and the Covid-19 Pandemic*, Federal Reserve Bank of San Francisco (Feb. 9, 2021), <https://www.frbsf.org/wp->

content/uploads/sites/7/consumer-payments-covid-19-pandemic-2020-diary-consumer-payment-choice-supplement-2.pdf

- Letter from Elaine M. Howle, 2020-502 (Nov. 19, 2020), <https://information.auditor.ca.gov/pdfs/reports/2020-502.pdf>.
- Office of the Comptroller of the Currency, *OCC Bulletin 2019-37: Operational Risk: Fraud Risk Management Principles* (July 24, 2019), <https://www.occ.treas.gov/news-issuances/bulletins/2019/bulletin-2019-37.html>
- Office of the Comptroller of the Currency, *OCC Issues Cease and Desist Order, Assesses \$450 Million Civil Money Penalty, and Imposes Growth Restriction Upon TD Bank, N.A. for BSA/AML Deficiencies* (October 10, 2024), <https://www.occ.treas.gov/news-issuances/news-releases/2024/nr-occ-2024-116.html>
- Office of the Comptroller of the Currency, *Acting Comptroller of the Currency Michael J. Hsu Remarks for the Financial Literacy and Education Commission's Public Meeting* (July 10, 2024), <https://www.occ.treas.gov/news-issuances/speeches/2024/pub-speech-2024-75.pdf>
- Office of the Comptroller of the Currency, *Bank Secrecy Act (BSA)*, <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html>
- Trump White House, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020), <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>
- U.S. Department of Justice, *COVID-19 Fraud Enforcement Task Force 2024 Report* (Apr. 2024), <https://www.justice.gov/coronavirus/media/1347161/dl?inline>
- U.S. Department of Justice, National Unemployment Insurance Fraud Task Force, *Unemployment Insurance Fraud Consumer Protection Guide* (Sep. 21, 2020), <https://www.oig.dol.gov/public/Unemployment%20Insurance%20Fraud%20Consumer%20Protection%20Guide,%20Final.pdf>
- U.S. Department of Labor, Office of Inspector General, *COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds From Improper Payments Including Fraud or From Payment Delays* (Sep. 30, 2022), <https://www.oig.dol.gov/public/reports/oa/2022/19-22-006-03-315.pdf>
- U.S. Department of Labor, *Questions and Answers: Pandemic Unemployment Assistance (PUA) Program*, https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2020/UIPL_16-20_Change_1_Attachment_1.pdf

- U.S. Department of the Treasury, *About the CARES Act and the Consolidated Appropriations Act*, <https://home.treasury.gov/policy-issues/coronavirus/about-the-cares-act>
- U.S. Government Accountability Office, *GAO-22-105715: Significant Improvements Are Needed to Ensure Transparency and Accountability for COVID-19 and Beyond* (Mar. 17, 2022), <https://www.gao.gov/assets/gao-22-105715.pdf>

Legal Codes

- 31 C.F.R. § 1020.210
- 31 C.F.R. § 1020.220
- 31 C.F.R. § 1020.320

Pleadings

- Order Re Preliminary Injunction, *Jennifer Yick, et al. v. Bank of America, N.A.*, Case No.: 21-cv-00376-VC (May 17, 2021)
- Preliminary Injunction, *Jennifer Yick, et al. v. Bank of America, N.A.*, Case No.: 21-cv-00376-VC (June 2, 2021)
- Consent Order, *In the Matter of: Bank of America, N.A.*, File No.: 2022-CFPB-0004 (July 14, 2022)
- Consent Order, *In the Matter of: Bank of America, N.A. Charlotte, North Carolina*, File No.: AA-ENF-2022-21 (July 14, 2022)
- Order: (1) Granting in Part and Denying in Part Motion to Dismiss Master Consolidated Complaint, [Dkt. 64]; (2) Granting in Part and Denying in Part Request for Judicial Notice, [Dkt. 84-2]; and (3) Granting Request for Judicial Notice, [Dkt. 90-1], *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 21-MD-02992-LAB-MSB (May 25, 2023)
- First Amended Master Consolidated Complaint, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 21-MD-02992-LAB-MSB (June 13, 2023)
- Confidential Mediation Statement of Defendant Bank of America, N.A., *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 21-MD-02992-LAB-MSB (Oct. 10, 2023)
- Plaintiffs’ Mediation Statement, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Oct. 10, 2023)

- Plaintiffs’ Reply Mediation Statement, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 21-MD-02992-LAB-MSB (Oct. 30, 2023)
- Confidential Reply Mediation Statement of Bank of America, N.A., *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 21-MD-02992-LAB-MSB (Oct. 30, 2023)
- Bank of America’s Responses and Objections to Plaintiff Yick’s Fourth Set of Interrogatories, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Jan. 2, 2024)
- Bank of America’s Responses and Objections to Plaintiff Yick’s Fifth Set of Interrogatories, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Feb. 2, 2024), and Exhibit 11
- Plaintiffs’ Revised Notice of Deposition of Defendant Bank of America, N.A. Pursuant to Federal Rule of Civil Procedure 30(b)(6), *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-MD-02992-LAB-MSB (Feb. 4, 2024)
- Memorandum of Points and Authorities in Support of Defendant’s Motion to Dissolve Preliminary Injunction, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 21-MD-02992-LAB-MSB (Feb. 29, 2024)
- Order: (1) Granting Motion to Dissolve Preliminary Injunction, [Dkt. 225]; And (2) Granting Motion to Seal, [Dkt. 246], *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 21-MD-02992-LAB-MSB (Apr. 3, 2024)
- Bank of America’s First Set of Responses and Objections to Plaintiff Yick’s Seventh Set of Interrogatories (Interrogs. 40-41 & 44-46), *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 21-MD-02992-LAB-MSB (Apr. 23, 2024)
- Bank of America’s Second Set of Responses and Objections to Plaintiff Yick’s Seventh Set of Interrogatories (Interrogs. 39 & 42), *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3-21-md-02992-LAB-MSB (Apr. 23, 2024), and Exhibit 13
- Second Amended Master Consolidated Complaint, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-GPC-MSB (July 16, 2024)
- Memorandum of Points and Authorities in Support of Motion for Class Certification, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-GPC-MSB (Aug. 29, 2024)

- Reply in Support of Motion for Class Certification, *In re Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-GPC-MSB (Nov. 21, 2024)

Press Releases

- EDD News Release, *EDD Announces Reset in Response to Strike Team Recommendations to Process Claims Faster, Reduce Fraud, and Tackle Backlog Issues*, (Sep. 19, 2020), https://web.archive.org/web/20220427091742/https://edd.ca.gov/siteassets/files/About_EDD/pdf/news-20-49.pdf
- FinCEN Press Release, *The Financial Crimes Enforcement Network (FinCEN) Encourages Financial Institutions to Communicate Concerns Related to the Coronavirus Disease 2019 (COVID-19) and to Remain Alert to Related Illicit Financial Activity* (Mar. 16, 2020), <https://www.fincen.gov/news/news-releases/financial-crimes-enforcement-network-fincen-encourages-financial-institutions>
- FinCEN Press Release, *The Financial Crimes Enforcement Network Provides Further Information to Financial Institutions in Response to the Coronavirus Disease 2019 (COVID-19) Pandemic* (Apr. 3, 2020), <https://www.fincen.gov/news/news-releases/financial-crimes-enforcement-network-provides-further-information-financial>
- U.S. Department of Justice Press Release, *COVID-19 Fraud Enforcement Task Force Releases 2024 Report* (Apr. 9, 2024), <https://www.justice.gov/opa/pr/covid-19-fraud-enforcement-task-force-releases-2024-report>
- U.S. Department of Labor Press Release, *U.S. Department of Labor Announces New Guidance to States on Unemployment Insurance Programs* (Dec. 30, 2020), <https://www.dol.gov/newsroom/releases/eta/eta20201230-1>

Bates Stamped Documents

- BANA_EDD_MDL-00001312–30
- BANA_EDD_MDL-00003887–911
- BANA_EDD_MDL-00003912–37
- BANA_EDD_MDL-00004535–80
- BANA_EDD_MDL-00005509–45
- BANA_EDD_MDL-00005546–60
- BANA_EDD_MDL-00006482–535

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

- BANA_EDD_MDL-00012738–9
- BANA_EDD_MDL-00012790
- BANA_EDD_MDL-00019602–3
- BANA_EDD_MDL-00019618–28
- BANA_EDD_MDL-00028946–9
- BANA_EDD_MDL-00057504–6
- BANA_EDD_MDL-00057837–78
- BANA_EDD_MDL-00077223
- BANA_EDD_MDL-00077224–5
- BANA_EDD_MDL-00080294–352
- BANA_EDD_MDL-00085786
- BANA_EDD_MDL-00085577–80
- BANA_EDD_MDL-00085788–9
- BANA_EDD_MDL-00085694
- BANA_EDD_MDL-00085803–8
- BANA_EDD_MDL-00086221–5
- BANA_EDD_MDL-00087715–6
- BANA_EDD_MDL-00088501–5
- BANA_EDD_MDL-00088506–21
- BANA_EDD_MDL-00090135–7
- BANA_EDD_MDL-00090640–7
- BANA_EDD_MDL-00090695–8
- BANA_EDD_MDL-00090721
- BANA_EDD_MDL-00100390
- BANA_EDD_MDL-00100506–29
- BANA_EDD_MDL-00100530–59
- BANA_EDD_MDL-00100616–33
- BANA_EDD_MDL-00100634–79

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

- BANA_EDD_MDL-00100741–59
- BANA_EDD_MDL-00102554–77
- BANA_EDD_MDL-00104526–7
- BANA_EDD_MDL-00107327–35
- BANA_EDD_MDL-00117097–9
- BANA_EDD_MDL-00118436–7
- BANA_EDD_MDL-00120424–5
- BANA_EDD_MDL-00125177–9
- BANA_EDD_MDL-00125428–30
- BANA_EDD_MDL-00125919
- BANA_EDD_MDL-00125920–3
- BANA_EDD_MDL-00129437–40
- BANA_EDD_MDL-00014087–9
- BANA_EDD_MDL-00142730–1
- BANA_EDD_MDL-00154004–8
- BANA_EDD_MDL-00154700–8
- BANA_EDD_MDL-00158953
- BANA_EDD_MDL-00159469
- BANA_EDD_MDL-00159470–4
- BANA_EDD_MDL-00163307–8
- BANA_EDD_MDL-00181896
- BANA_EDD_MDL-00189032–3
- BANA_EDD_MDL-00205361
- BANA_EDD_MDL-00218256
- BANA_EDD_MDL-00225047–8
- BANA_EDD_MDL-00225867
- BANA_EDD_MDL-00228914–5
- BANA_EDD_MDL-00273305–7

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

- BANA_EDD_MDL-00297295
- BANA_EDD_MDL-00406128–30
- BANA_EDD_MDL-00411205
- BANA_EDD_MDL-00416783–4
- BANA_EDD_MDL-00417487–90
- BANA_EDD_MDL-00421427–8
- BANA_EDD_MDL-00430148–62
- BANA_EDD_MDL-00450516–8
- BANA_EDD_MDL-00452826–7
- BANA_EDD_MDL-00455617–9
- BANA_EDD_MDL-00510141
- BANA_EDD_MDL-00510142–7
- BANA_EDD_MDL-00510148
- BANA_EDD_MDL-00517105–26
- BANA_EDD_MDL-00547571–2
- BANA_EDD_MDL-00556122
- BANA_EDD_MDL-00556152
- BANA_EDD_MDL-00556324
- BANA_EDD_MDL-00556536–7
- BANA_EDD_MDL-00558991
- BANA_EDD_MDL-00558996
- BANA_EDD_MDL-00559094
- BANA_EDD_MDL-00559101
- BANA_EDD_MDL-00559693–980
- BANA_EDD_MDL-00055974–81
- BANA_EDD_MDL-00570333–4
- BANA_EDD_MDL-00571307–10
- BANA_EDD_MDL00571310

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

- BANA_EDD_MDL-00572766–70
- BANA_EDD_MDL-00592192–4
- BANA_EDD_MDL-00592324–30
- BANA_EDD_MDL-00630008–9
- BANA_EDD_MDL-00705503–10
- BANA_EDD_MDL-00718756–70
- BANA_EDD_MDL-00720087–90
- BANA_EDD_MDL-00076983
- BANA_EDD_MDL-00076984–5
- BANA_EDD_MDL-00881823–8
- BANA_EDD_MDL-00884198
- BANA_EDD_MDL-00004996–5020
- BANA_EDD_MDL-00104635
- BANA_EDD_MDL-00104636
- BANA_EDD_MDL-00104648
- BANA_EDD_MDL-00104649
- BANA_EDD_MDL-00118379–81
- BANA_EDD_MDL-00125012–3
- BANA_EDD_MDL-00163796–7
- BANA_EDD_MDL-00170234–5
- BANA_EDD_MDL-00170239–40
- BANA_EDD_MDL-00203187
- BANA_EDD_MDL-00293706–7
- BANA_EDD_MDL-00450481–2
- BANA_EDD_MDL-00496584–6
- BANA_EDD_MDL-00570351
- BANA_EDD_MDL-00705499–500
- BANA_EDD_MDL-00706496–7

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

- BANA_EDD_MDL-00706498
- BANA_EDD_MDL-00529872–879
- Moore_S_0000367

Note: Even if not included in this list, I also considered any documents cited in my Report.

Teresa A. Pesce
Financial Crimes Subject Matter Expert
(914) 602-4103, terry@terrypesceco.com

Professional Summary

Teresa (Terry) Pesce is an industry leader and Subject Matter Expert in Financial Crimes regulatory enforcement and compliance. She has a demonstrated history of working in and with the financial services industry in both an advisory and expert capacity. Her background includes experience in government, industry, and consulting. She has led large teams and managed significant projects, and she has designed and implemented financial crimes compliance programs and organizational structures.

Prior to establishing her independent consulting firm, Terry spent 13 years as a Principal in KPMG's Forensic Advisory Services, serving as Global Head of Anti-Money Laundering (AML) and Head of the firm's Financial Crimes Solution. Terry has spearheaded engagements for financial institutions addressing numerous financial crimes and sanctions issues. She has assisted clients facing regulatory enforcement actions, both private and public. She has often been asked to report directly to law enforcement agents and prosecutors, regulatory agencies, Boards of Directors, and senior management.

Before joining KPMG, Terry was Executive Vice President and AML Director for HSBC North America. She joined the bank to build out the AML compliance function for all business lines in response to a regulatory order imposed in 2003 and lifted by the OCC during her tenure in 2006.

Prior to joining HSBC, Terry was an Assistant United States Attorney in the Southern District of New York, serving as Chief of the Major Crimes Unit, and Deputy Chief of the Criminal Division. From 1999 through 2003, Terry was responsible for supervision and oversight of all money-laundering and tax prosecutions and worked closely with law enforcement and the financial regulatory agencies responsible for oversight of AML enforcement. During her tenure at the US Attorney's office, she investigated and prosecuted numerous cases involving and charging money laundering.

Terry holds a BA from Columbia University, where she graduated magna cum laud, Phi Beta Kappa, and she holds a JD from Columbia Law School, where she served as Managing Editor of the Law Review and received prizes in Constitutional Law and Trial Advocacy. She is a recognized industry speaker and has published numerous pieces on financial crimes and enforcement.

Professional and Industry Experience

- **President and CEO, Terry Pesce & Co LLC**

October 2020 to present

Terry provides legal and consulting services to the financial services industry, including assisting clients in the organizational design of financial crimes compliance programs, assisting with regulatory and enforcement matters, and advising senior management and Boards of Directors on financial crimes matters. She provides expert witness services in the areas of financial crime compliance and enforcement. Examples of recent matters include the following:

- Terry has provided expert witness and consulting services in connection with a variety of complex civil litigation and enforcement matters involving, for example, money laundering, sanctions enforcement, fraud, human trafficking, compliance, and financial industry practices. (See page 6 for representative engagements.)
- Terry has been retained by large financial services companies to advise senior leadership and Boards of Directors with respect to the effectiveness of regulatory responses, remedial actions, and program changes undertaken in response to enforcement actions and regulatory expectations.

- Terry has assisted a financial institution in the preparation of a response and reports to the Department of Justice in connection with a criminal enforcement action.
- Terry has designed the AML framework for a start-up FinTech company.
- Terry has assisted in designing the AML program for a de novo bank.
- Terry has advised a Private Equity fund on financial crimes risk and processes.
- Terry has served as legal counsel in a civil matter alleging financial crimes.
- Terry has been retained to assist counsel with the financial-crimes component of a FinTech's independent compliance assessment.
- Terry has performed gap analyses of financial crimes compliance programs against legal and regulatory standards and against industry best practices.
- Terry is assisting a financial institution with enhancing its anti-money laundering controls in response to regulatory findings.

- **Advisory Board, AML Rightsource, October 2020 – present**

- **Adjunct Professor, Case Western School of Law, Masters in Financial Integrity Program**

July 2020 to December 2021

Terry taught in a global program focusing on topics relevant to financial crimes, financial crime prevention, and criminal law related subjects, including sessions on human trafficking.

- **Principal, KPMG LLP Forensic Advisory Services, Head of Anti-Money Laundering/Financial Crimes Practice**

April 2007 – September 2020

Terry served as Global Head of AML Services and Head of Financial Crimes Solutions in the US. As leader of the AML service line, Terry led numerous engagements, assisting a variety of financial institutions in addressing AML and sanctions issues, both proactively and reactively.

Representative Project/Engagement Experience

- Assisted a global financial institution under regulatory order in enhancing its overall BSA/AML program, including by conducting a gap analysis of the then existing program, recommending and assisting in the design of enhancements to all required program components. The project also required conducting a transaction review of correspondent banking for suspicious activity.
- Assisted a global financial institution under investigation for potential sanctions violations. Assistance included presentation to the Department of Justice, NYS Department of Financial Services and the Federal Reserve Bank.
- Assisted a global broker dealer with an investigation of transactions for suspicious activity, including by presenting to the SEC and FINRA.
- Assisted a global financial institution in connection with the assessment and revision of its global AML Target Operating Model. Terry assisted with BSA/AML program enhancements to the markets division of this institution in the US by designing and implementing of AML and OFAC risk assessments; the implementation of tactical transaction monitoring; systems testing for sanctions and information sharing; and by performing a customer file remediation.
- Assisted a global financial institution in the creation and implementation of an AML Compliance risk self-assessment program for roll out across all business lines, measuring for risk against regulatory requirements

and expectations. The work involved the measuring of risks and the assessment of internal controls to measure residual risk to the institution.

- Assisted a global broker dealer in a KYC remediation of a complex client portfolio migrating from an unregulated entity to a bank in connection with the institution's transition to a bank holding company.
 - Assisted a global bank/broker dealer in a customer KYC remediation for both institutional and private wealth clients to ensure information on file met customer information, customer due diligence and enhanced due diligence requirements.
 - Assisted a global financial institution operating under a regulatory order in conducting a transaction lookback for cash and suspicious activity, including engaging in regular regulatory reporting. This matter involved extensive work with banking regulators.
 - Assisted a global financial institution/MSB by leading a transaction review in connection with the sale of monetary instruments; in the creation of AML policies and investigative procedures; and in the analysis of product specific risks in several high-risk jurisdictions globally.
 - Assisted a global MSB/payment processor by conducting an independent gap analysis of its AML program for compliance with regulatory requirements, regulatory guidance, and industry standards. Terry additionally assisted in the review of transaction monitoring processes for capturing suspicious activity and in the review of the suspicious activity reporting process.
 - Assisted a global MSB in connection with its credit card offering to high-net worth individuals by testing the AML/KYC program in the private banking business.
- **Executive Vice President/Managing Director for Anti-Money Laundering for HSBC North American Holdings, including HSBC Bank, USA, N.A.; HSBC Securities, Inc., and HSBC Finance Corporation.**

September 2003 – March 2007

Terry built out the AML compliance function for all business lines in response to a regulatory order imposed in 2003 and lifted by the OCC during her tenure in 2006. Responsibilities included management and oversight of teams responsible for the creation and maintenance of policies and procedures; testing; training; investigative/financial intelligence programs; transaction monitoring; OFAC/sanctions compliance; and business line AML compliance. Terry served as the primary contact for the bank's regulators (the FRBNY, OCC inter alia) during all AML-related examinations.

- **Assistant United States Attorney, Southern District of New York. Positions included Chief of the Major Crimes Unit, Deputy Chief of the Criminal Division and Senior Trial Counsel.**

August 1992 – September 2003

Terry was responsible for the investigation and prosecution of numerous criminal cases ranging from white collar offenses to narcotics and violent crimes. As Chief of the Major Crimes Unit, Terry supervised the prosecution of primarily white-collar crimes including, bank fraud, money laundering, wire fraud, tax fraud, investment fraud and computer crimes. For the last five years of her tenure at the U.S. Attorney's Office she was the supervisory attorney on all money laundering and criminal tax matters, reviewing all cases and ultimately providing the final authorization for the filing and prosecution of such cases within the district. Terry tried numerous criminal cases, including those charging money laundering.

- **Litigation Associate, Fried, Frank, Harris, Shriver & Jacobson**

December 1988 – August 1992

- **Law Clerk, Hon. Robert W. Sweet, United States District Judge, S.D.N.Y.**
October 1987 – October 1988

Education

- **Columbia University School of Law, New York, NY, JD 1987**
 - Columbia Law Review, Managing Editor
 - Harlan Fiske Stone Scholar
 - James A. Elkins Award in Constitutional Law
 - Whitney North Seymour Award in Trial Advocacy
- **Columbia University, New York, NY, BA 1984**
 - Magna cum laude
 - Phi Beta Kappa
 - Honors History

Speaking Engagements and Publications

Speaking engagements

Terry is frequently called upon to speak at industry conferences and forums regarding Financial Crimes and regulatory compliance, as well as the current regulatory landscape, including for the following organizations:

- American Bankers' Association
- American Bar Association
- ACAMS
- The Institute for International Research
- Institutional Investor
- New York State Society of CPAs
- Securities Industry and Financial Markets Association (SIFMA)
- Institution for International Bankers
- Association of the Bar of the City of NY
- Association of Certified Sanctions Specialists

Terry has served as a panelist for the New York State Banking Department (now the Department of Financial Services) conference on money laundering legislation and reporting requirements as applied to money remitters and other non-bank financial institutions; and participated in post-9/11 Clearing House panels on detecting terrorist financing.

While in industry, Terry was a member of the Clearing House AML and OFAC Committees, as well as a member of the Subcommittee on Cover Payments.

Terry also participated in the World Bank's Global Dialogue Series and attended meetings of the Wolfsberg Group and a UN Committee dedicated to combating terrorist financing.

Publications and Thought Leadership

The New Era of Regulatory Enforcement, Chapter 4, Money Laundering (Girgenti & Hedley 2016)

Managing the Risk of Fraud and Misconduct, Chapter 4, Money Laundering & Trade Sanctions (Girgenti & Hedley 2011)

ABA Bank Compliance – Intelligent Automation in Financial Crimes Compliance: We can't have a failure to innovate

Article written by Tom Keegan, Terry Pesce and Stephen Marshall

<https://advisory.kpmg.us/content/dam/advisory/en/pdfs/aba-aml-article-feb-2018.pdf>

Reuters

Coming Clean About Data Analytics in the Anti-Money Space, Nov. 2018

Q&A with Terry Pesce on using Artificial Intelligence in fighting financial crime

<https://blogs.thomsonreuters.com/answeron/coming-clean-about-data-analytics-in-the-anti-money-laundering-space/>

Risk Intelligence

Discussing the use of technology to improve sanctions compliance:

<http://www.garp.org/#!/risk-intelligence/culture-governance/compliance/a1Z1W000003fBo4UAE>

RESPA News

Article quotes Terry Pesce and Greg Matthews discussing third-party risk and AML compliance issues within the mortgage industry:

<http://www.respanews.com/RN/ArticlesRN/AML-thirdparty-oversight-hold-similarities-71171.aspx>.

- Wrote *American Banker* guest article: [Regulators Foster De-Risking More Than They Admit](#)
- Terry Pesce quoted in *Wall Street Journal* article: [Treasury Scrutinizes Credit Unions](#)
- Terry Pesce quoted in *American Banker* article: [Banks Feat Iron-Fisted Answer to De-risking Dilemma](#)
- Terry Pesce quoted in *Wall Street Journal* article: [Banks, Regulators Reach Impasse Over Risky Account Closures](#)
- Terry Pesce quoted in *Wall Street Journal* article: [Steering Clear of Sanctions](#)

Intelligent automation in financial crimes: Forging an innovative compliance strategy for the future

<https://advisory.kpmg.us/content/kpmg-advisory/risk-consulting/forensics/financial-services/intelligent-automation-in-financial-crime.html>

The future of financial crime: Comply. Integrate. Automate

<https://advisory.kpmg.us/content/dam/advisory/en/pdfs/future-of-financial-crime.pdf>

Building an effective financial crimes change management program: How financial institutions can keep up with global regulatory change

<https://advisory.kpmg.us/content/dam/advisory/en/pdfs/building-an-effective-financial-crimes-change-managemnet-program.pdf>

Under one agile umbrella: An approach to managing financial crimes risk

<https://advisory.kpmg.us/content/dam/advisory/en/pdfs/under-one-agile-umbrella.pdf>

Financial Crimes, A Paradigm Shift, December 2022

Contributor

<http://bit.ly/3GX0FhF>

Videos

Terrorist Financing and Anti-Money Laundering Regulation

Teresa Pesce of KPMG Forensic discusses the new era of anti-money laundering (AML) and terrorist financing regulatory enforcement that began following 9/11. This extends far beyond the original intent of the USA PATRIOT Act and is something that both the government and the financial services industry needs to pay attention to.

Webcasts

AML Hot Topics: More Updates to the FFIEC Exam Manual

With AML RightSource

<https://vimeo.com/530014556>

2021 Regulatory Sanctions Update – Challenges, Considerations, and Pathways

June 23, 2021

What's New for 2022

With AML RightSource

Value of FATF to Your Financial Crime Compliance Program

July 27, 2023

https://www.amlrightsourc.com/news/aml-voices-the-value-of-fatf-to-your-financial-crime-compliance?utm_content=261543986&utm_medium=social&utm_source=linkedin&hss_channel=lcp-2477367

AML Compliance Programs, Patterns and Trends

December 19, 2024

<https://webinars.amlrightsourc.com/watch/SXywEceaE7TVDGUhzQktG>

Podcasts

Financial Crimes – Dirty Money Stories

With AML RightSource

<https://vimeo.com/543213606>

Interagency Guidance on Third Party Risk Management

With AML RightSource

Expert Witness Experience

- *Blue Flame Medical LLC v. Chain Bridge Bank, NA, John J. Brough, and David M. Evinger; Chain Bridge Bank, NA v JPMorgan Chase Bank, NA*, Civil Action No. 1:20-cv-00658 (LMB/IDD) (E.D. VA.).
 - Provided expert report and testimony on behalf of JPMorgan Chase Bank, NA
- *Entesar Omar Kashef, et al. v. BNP Paribas, S.A., et al.*, Case 1:16-cv-03228-AKH (S.D.N.Y.).
 - Provided expert report and testimony on behalf of BNP Paribas, S.A.
- *Government of the United States Virgin Islands v. JPMorgan Chase Bank, N.A.*, Case No. 1:22-cv-10904-JSR (S.D.N.Y.)
 - Provided expert report and deposition testimony on behalf of JPMorgan Chase Bank, NA
- *In re J&J Investment Litigation*, Case No.: 2:22-cv-00529-GMN-NJK; *Winkler v. Wells Fargo Bank, N.A.*, Case No.: 2-23-cv-00703-GMN-NJK (D. NV.).
 - Provided expert report, rebuttal report, and deposition testimony on behalf of Wells Fargo Bank. N.A.
- Terry provided an expert report on behalf of three global financial institutions in a litigation filed in a foreign jurisdiction.
- Terry is providing expert services to a global financial institution in connection with a pending civil litigation involving fraud controls.
- Terry is providing expert services to a global money services business in connection with a pending civil litigation involving alleged unfair and deceptive practices.
- Terry is providing expert services to a global financial institution in connection with a pending civil litigation involving the Anti-Terrorism Act as amended by the Justice Against Sponsors of Terrorism Act.

Relevant Coursework

- Certificate in Human Trafficking Training from the Polaris Project.

Awards & Recognition

ACQ5 Gamechanger Awards 2023

- Terry Pesce & Co LLC – International Financial Crimes Service Provider of the Year
- Terry Pesce – International AML Expert of the Year

During Terry's tenure as Head of AML/Financial Crimes, KPMG won numerous awards from industry publications as the AML Firm of the Year globally and/or nationally including:

- Finance Monthly
- Lawyer International
- ACQ 5
- M&A Monthly

Teresa Pesce named International Game Changer of the Year in the field of Anti-Money Laundering by ACQ 5:

- 2015, 2016, 2017, 2020

Directors Award for Superior Performance as an Assistant United States Attorney

US Department of Justice, 1998

Professional Associations

- New York State Bar Association
- American Bankers Association, Associate Member
- Member of the American Bankers/Bar Association, FC Enforcement conference board 2014-2020; Terry continued to serve as a moderator and/or panelist at this conference, most recently in January 2022.

Bar Admissions

New York State Appellate Division, First Department

United States District Courts: SDNY, EDNY