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FILED PROVISIONALLY UNDER SEAL WITH REDACTIONS PURSUANT TO STIPULATED PROTECTIVE ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION
--oOo--

IN RE: BANK OF AMERICA
CALIFORNIA UNEMPLOYMENT   Case Number:
BENEFITS LITIGATION   21-MD-02992-GPC-MSB
_______________________________/
This document relates
to All Actions
_______________________________/

VIDEO-RECORDED DEPOSITION OF DAVID I. LEVINE, Ph.D.
SAN FRANCISCO, CALIFORNIA
WEDNESDAY, MAY 28, 2025

Reported by:
Anrae Wimberley, CSR No. 7778
Job No. 7309212

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

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IN RE: BANK OF AMERICA CALIFORNIA UNEMPLOYMENT BENEFITS LITIGATION

Case Number: 21-MD-02992-GPC-MSB

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This document relates to All Actions

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HIGHLY CONFIDENTIAL - UNDER PROTECTIVE ORDER

Transcript of video-recorded deposition of DAVID I. LEVINE, Ph.D., taken at Goodwin Procter LLP, 525 Market Street, 31st Floor, San Francisco, California 94105, and also on Veritext Virtual Zoom, beginning at 9:27 a.m. and ending at 3:45 p.m. on Wednesday, May 28, 2025, before Anrae Wimberley, Certified Shorthand Reporter No. 7778.

APPEARANCES ON ZOOM:

ON BEHALF OF THE PLAINTIFFS:

COTCHETT, PITRE & McCARTHY, LLP
BY: BRIAN DANITZ, ESQ.
DAVID HOLLENBERG, ESQ.
(VIA ZOOM, WHERE NOTED)
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, California 94010
(650) 697-6000
bdanitz@cmplegal.com
dhollenberg@cmplegal.com

APPEARANCES IN PERSON:

ON BEHALF OF THE PLAINTIFFS:

ALTSHULER BERZON LLP
BY: CAROLINE HUNSICKER, ESQ.
CONNIE K. CHAN, ESQ.
177 Post Street, Suite 300
San Francisco, California 94108
(415) 421-7151
chunsicker@altshulerberzon.com
cchan@altshulerberzon.com

ON BEHALF OF DEFENDANT BANK OF AMERICA:

GOODWIN PROCTER LLP
BY: KEITH LEVENBERG, ESQ.
LAURA BRYS, ESQ.
1900 N Street N.W.
Washington, D.C. 20036
(202) 346-4248
klevenberg@goodwinlaw.com
lbrys@goodwinlaw.com

Also present:

CAMERON TUTTLE, Videographer
VERITEXT LEGAL SOLUTIONS

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E X H I B I T S

REPORTER'S NOTE: All quotations from exhibits are reflected in the manner in which they were read into the record and do not necessarily indicate an exact quote from the document.

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WEDNESDAY, MAY 28, 2025;

SAN FRANCISCO, CALIFORNIA;

9:27 A.M.

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THE VIDEOGRAPHER: Good morning. We are going on the record. The time is 9:27 a.m. on May 28th, 2025. 09:27:52

Please note that the microphones are sensitive, may pick up whispering and private conversations. Please mute your phones at this time. Audio and video recording will continue to take place unless all parties agree to go off the record. 09:28:08

This is Media Unit 1 of the video-recorded deposition of Dr. David Levine taken by counsel for defendant in the matter of In Re: Bank of America California Unemployment Benefits Litigation, filed in the United States District Court, Southern District of California, San Diego Division, Case No. 21-MD-02992-GPC-MSB. 09:28:22 09:28:44

The location of the deposition is 525 Market Street, 31st Floor, San Francisco, California 94105.

My name is Cameron Tuttle representing Veritext, and I'm the videographer. I am not 09:29:11

authorized to administer an oath. I am not related to any party in this action nor am I financially interested in the outcome. 09:29:16

If there are any objections to proceeding, please state them at the time of your appearance. Counsel will now state their appearances and affiliations for the record beginning with the noticing attorney. 09:29:25

MR. LEVENBERG: Good morning. This is Keith Levenberg with Goodwin Procter representing Bank of America. 09:29:35

MS. BRYS: Good morning. Laura Brys, also representing Bank of America.

MS. HUNSICKER: I'm Caroline Hunsicker with Altshuler Berzon for the plaintiffs. 09:29:46

MS. CHAN: Connie Chan from Altshuler Berzon on behalf of the plaintiffs.

THE VIDEOGRAPHER: Will the court reporter please introduce yourself and administer the oath to the witness. 09:29:57

THE REPORTER: We are on the record. My name is Anrae Wimberley, CSR No. 7778, and I will now swear in the witness.

//

// 09:30:01

DAVID I. LEVINE, PH.D., 09:30:01
sworn in personally as a witness by the Certified
Shorthand Reporter, testified as follows:

EXAMINATION

BY MR. LEVENBERG: 09:30:01
Q. State your name.
A. David Levine.
Q. And you've been retained by plaintiffs to offer an expert opinion in this case?
A. Yes. 09:30:32
Q. Have you had a deposition taken before?
A. Yes.
Q. About how many times have you previously sat for a deposition?
A. Three or four. 09:30:40
Q. When was the last time?
A. A dozen or 15 years ago, I think.
Q. Okay. So I'll go through some of the things, which you've probably already heard, even though it's been a while. 09:30:57
I'll ask the questions. Your attorney may or may not object to those questions, but unless your attorney tells you not to answer them, you should answer them.
Does that make sense to you? 09:31:06

A. Yes. 09:31:07

Q. If you don't understand any question that I ask, you can ask me to repeat it, and I'll do my best to repeat or rephrase it, but if you do answer a question, I'll assume you've understood it. 09:31:15

Does that make sense?

A. Yes.

Q. For the sake of the transcript and the reporter trying to get everything down, you should wait until I finish my question before you start 09:31:25 answering.

It's difficult sometimes, but she will let you know if we are stepping on anything we shouldn't be stepping on.

Is there any reason you can think of why 09:31:34 you wouldn't be able to give complete and truthful testimony today?

A. No.

Q. For example, you're not taking any kind of medication or anything that would affect your 09:31:44 memory?

A. No.

Q. Not short of sleep or anything like that?

A. No.

Q. I am. 09:31:50

What were the previous cases that you testified in depositions for? 09:31:54
A. There were -- 15 or 20 years ago, there were several class action lawsuits about wage and hours classification with some large companies, Walmart, Best Buy and Home Depot, I think. 09:32:10
And then there was one executive compensation case.
Q. And who retained you in those cases?
A. I have no idea. 09:32:34
Q. Do you remember if it was the plaintiffs or the defendants?
A. I'm sorry. On the classification wage and hour cases, they were the plaintiff.
On the executive compensation -- just a minute. I'm mixing up who -- which one -- who was also the plaintiff. 09:32:47
Q. What was the Walmart case about?
A. Whether assistant managers were similar enough in their conditions to have a class action for a dispute about whether they were hourly or management. 09:33:13
Q. And what opinion did you offer in that case?
A. That there was similarities sufficient. I 09:33:27

don't know if I said sufficient for the law, but there was -- I pointed out there were lots of similarities in policies and practices to keep their jobs similar and lots of evidence. 09:33:31

Q. Do you remember the name of that case? 09:33:41

A. No.

Q. Did you testify at trial?

A. No.

Q. Besides issuing a report and sitting for a deposition, did you do anything else in that case? 09:33:55

MS. HUNSICKER: Objection; vague.

THE WITNESS: I mean, it's possible I gave them advice on deposing the other expert. I don't recall the other experts.

I did that in at least one of the cases -- wage and hour cases. 09:34:22

(Whereupon, David Hollenberg, Esq. entered the proceedings via zoom.)

BY MR. LEVENBERG:

Q. Okay. And what about the Best Buy case? 09:34:26

A. The same work.

Q. That was also a wage and hour case?

A. Yeah.

Q. And who were you retained by in that case?

A. By the plaintiffs. 09:34:48

Q. And what opinions did you give in that case? 09:34:49
A. The same, that there was evidence and that there were policies that would make them have very similar conditions. 09:35:00
Q. And you wrote an expert report in that case?
A. Yes.
Q. And testified in a deposition?
A. Yes. 09:35:10
Q. Did you do anything else in that case?
A. Again, in at least one of the cases, I gave some feedback to prepare for deposing the other experts or expert, I don't remember.
Q. Did you testify at trial? 09:35:24
A. No.
Q. And do you remember the name of this case?
A. I have no idea.
I mean, some of this is on my CV, the case names, I think. 09:35:37
Q. Sure.
A. I just -- sitting here, I don't remember.
Q. The Home Depot case, was that also a wage and hour case?
A. Yes. 09:35:46

Q. And who were you retained by in that case? 09:35:47
A. The plaintiffs.
Q. And what was the opinion that you offered in that case?
A. Again, that they had a tremendous number 09:35:54 of policies to create uniformity across stores and that there was a lot of evidence of uniformity in the evidence that both the company and the plaintiffs had gathered.
Q. But was your opinion in this case that a 09:36:15 class should be certified?
A. I can't recall exactly. I pointed out there was a lot of commonality. I don't think I gave a -- class being certified sounds more like a legal opinion, and I try to avoid those because I'm 09:36:30 not a lawyer.
But I was pointing out there were a tremendous number of policies pointing towards uniformity and that each side had gathered evidence. There was tremendous uniformity. 09:36:46
Which side of the 50/50 line they were on was different, but they both presented evidence that it was very uniform, and I wasn't saying anything about the merits.
I was just saying everyone seems to agree 09:36:57

that these folks are all both treated similarly, 09:36:58
have policies creating uniformity, and that the
evidence each side had gathered showed very, very
high levels of uniformity.
Q. Were your opinions in those cases -- or I 09:37:10
should say, were your reports in those cases used in
connection with a motion for class certification?
A. I assume so.
This was both a long time ago, and you're
also using legal language that is beyond my 09:37:30
understanding.
At the time, I might have understood that
question better, but I -- they were submitted to the
court or just -- I would assume.
Q. And in all of these cases, you wrote a 09:37:44
report and sat for a deposition but did not testify
at trial?
MS. HUNSICKER: Objection; compound.
THE WITNESS: I don't believe any of them went
to trial. 09:37:59
I did not testify at trial, I can say
that.
BY MR. LEVENBERG:
Q. When did you do these opinions?
Let's start with the Walmart case. When 09:38:11

was that? 09:38:14
A. On the order of 15 years ago, but I can't recall.
Q. Same answer for the other two?
A. I think Best Buy was probably the first, 09:38:28 so it might have been 20 years ago.
If I could look at my CV, I could nail it down a little bit closer, but I don't remember.
MR. LEVENBERG: Do you want to mark that exhibit, if it would help you to look at the report? 09:38:49
Are we starting at 1? Did we cover that already?
MS. BRYS: Um-hum.
(Deposition Exhibit 1 was marked.)
(Witness reviews document.) 09:39:47
THE WITNESS: Let's see, they must have been more than 20 years ago. Because I wrote a chapter, I think, after I had done all three, so I would say 20, 25 years ago is when I did these is my best guess. 09:40:20
BY MR. LEVENBERG:
Q. Okay. And Keker & Van Nest, Tjian versus Westamerica Bancorporation, that's the executive compensation case?
A. Yes. 09:40:42

Q. And who retained you for that case? 09:40:43
A. It looks like it's the law firm Keker & Van Nest.
Q. Were they representing the plaintiff or the defendant? 09:40:56
A. The plaintiff.
Q. And what was the nature of the opinions you offered in that case?
A. It was just explaining how stock options work. 09:41:08
I don't think I was deposed in that case. It was a -- I don't recall being deposed in that case. It was a -- just one plaintiff against an employer and a dispute about compensation.
I must have been -- I don't know if I was 09:41:30 deposed. I do not recall being deposed.
Q. And when was this one?
I'm sorry, did you want to say more?
A. No.
Q. When was this case? 09:41:40
A. Roughly 20 years ago is my best guess, but I really don't know.
Q. Have you been retained as an expert in any matters other than the ones listed here?
A. I mean, this mentions -- I was a legal 09:42:17

consultant on two cases that didn't get far enough. 09:42:21
Q. Those are the ones listed right above --
A. Yes.
Q. -- Goldman and Goldman and Morgenstein & Jubelirer? 09:42:34
What did you do in those matters?
You can start with the first one.
MS. HUNSICKER: Objection; vague.
THE WITNESS: I believe that case was -- they were thinking about doing a class action for wage 09:42:57 and hours for some -- a chain of gas station stores -- gas station managers, I believe.
Yeah, and I think that -- and that didn't get very far.
BY MR. LEVENBERG: 09:43:24
Q. When you say it "didn't get very far," what do you mean?
A. They didn't work with me very long, so I assume they decided not to proceed.
But I -- again, this was 20 years ago, and 09:43:37 I don't recall.
Q. What did you do for them?
A. I don't recall in detail. I discussed what sort of evidence they would need to gather, but I don't recall. 09:44:01

I didn't work for them very long. 09:44:05

Q. And what about the next one, Morgenstein & Jubelirer, what was that about?

(Whereupon, Brian Danitz, Esq. entered the proceedings via zoom.) 09:44:17

THE WITNESS: I don't recall.

Again, I didn't work for them very long.

What was that?

Okay. I don't recall.

BY MR. LEVENBERG: 09:44:50

Q. Do you recall anything about it?

MS. HUNSICKER: Objection; vague.

THE WITNESS: No.

BY MR. LEVENBERG:

Q. Have you been hired as an expert in anything other than the things that we've talked about so far? 09:45:10

A. Expert in the legal sense?

Q. Well, we'll start there, in connection with litigation. 09:45:25

A. No.

Q. More broadly, have you been hired by a law firm or anybody representing -- strike that.

Have you been hired by a law firm to provide expert services in any other matter that we 09:45:47

haven't talked about? 09:45:50

A. No.

Q. Have you testified either in a deposition or at trial in anything other than what we've talked about with your expert work? 09:46:09

A. I've testified in two trials, I believe.

Q. What were those?

A. Let's see, when I was an undergraduate, my landlord took a shot at my roommate. I testified in that trial, I believe. 09:46:43

And a few years later, I was across the street from where a murder was committed, and I testified about the timing of gunshots in that trial.

Q. Exciting, perhaps too exciting. 09:47:02

Have you testified under oath in any other scenarios that we haven't talked about yet?

A. Not that I recall.

Q. What were you hired to do in this case?

A. Plaintiffs' attorney asked me to come up 09:47:39 with a conservative lower bound on a discount rate for damages for a few class of people who hadn't received their full unemployment insurance benefits and a conservative lower bound for the value of time for people who were kept on hold for unusually long 09:48:04

periods of time. 09:48:15

Q. Okay. I'm looking in your report -- you can refer to it, too. It will probably be helpful as we get through these questions.

I'm looking at the way you phrase those 09:48:27 topics in paragraph 5.

The first one you described as "an appropriate methodology for determining the value of the lost opportunity costs to the class members whose access to UI benefits was delayed or denied." 09:48:41

Explain to me what you mean by "lost opportunity costs" in that phrase.

A. So you kind of misused the term "opportunity cost" of choice A as being the value of A compared to what your next best choice, B. 09:49:00

So if you choose A, you forego B, and that's the opportunity cost. Or if you would like to choose A and someone takes that option away from you and you're stuck with B, the difference in that value is the opportunity cost itself. 09:49:18

A check is supposed to come in the mail today for you, and whoever is sending it says, Oh, it will be a month. So instead of having 1,000 days now, you have 1,000 -- $1,000 today, you'll have $1,000 in a month. 09:49:35

And you take out a loan for let's say $986 today, which you repay $1,000 in a month when you get the check. Today you have $986, that's $14 less -- $14 interest would be about a 20 percent interest rate in this example -- that $14 is the opportunity cost of the delay. 09:49:37 09:49:56

You had to take out a loan and pay $14 in interest, so you only got $986 today instead of the $1,000 the check was worth.

So that's -- the opportunity cost of the delay is, if your next best alternative was taking a loan, would be that $14 in interest. 09:50:11

Q. So -- and I'm not an economist here, so bear with me.

When I hear the phrase "opportunity cost," what I've tended to associate it with is choosing between two options, right? 09:50:24

And you choose one option and deliver certain benefits, but you give up the benefits that you would have received had you chosen the other option. 09:50:39

So isn't that a fair explanation of the concept?

A. Absolutely.

And I was simply saying, if somebody takes 09:50:45

away one option, then the opportunity cost is, oh, 09:50:49
exactly the same inside, as you had just explained.
Q. Okay. So what is -- clarify for me again what the two options are that you're considering here. 09:51:00
A. Getting the $1,000 today versus in a month.
Q. Okay.
A. If I -- if -- and getting it in a month and taking out the loan so that I have as close to 09:51:09 $1,000 as I can today and repay the loan with the $1,000 in a month.
Q. And it's still accurate to use the phrase "opportunity cost" even though the person didn't have the option between getting the money now and 09:51:24 getting the money in a month?
MS. HUNSICKER: Objection; confusing.
BY MR. LEVENBERG:
Q. Is that confusing?
A. Can you just say it one more time? 09:51:33
Q. Is it still accurate to use the phrase "opportunity cost" if the person isn't making the choice?
It just struck me as a little weird. Maybe it's not weird, but it struck me as a little 09:51:52

confusing because there was no other opportunity; right? 09:51:55

They only had the one opportunity that they were going to get the money when the money was sent. 09:52:03

MS. HUNSICKER: Objection; confusing.

THE WITNESS: We can say I can choose between the A and B, and the opportunity cost of choosing A is the difference in value of A and B.

Or we can say I would choose A. That option disappeared, I'm stuck with B, and it's the same opportunity cost. It's the same arithmetic -- 09:52:18

BY MR. LEVENBERG:

Q. Okay.

A. -- as in your example. So that's how I'm using it, and I think that's standard economics. 09:52:28

Q. Okay. And you draw a distinction between access to UI benefits being delayed or denied.

What do you mean when you say "delayed"?

A. If my debit card is supposed to have $1,000 of credit on it and it doesn't have that $1,000 for an extra month, then I would call that a delay in access to benefits. 09:52:55

Q. And what would you mean when you say "denied"? 09:53:07

A. If the benefits disappeared and you didn't have access to them ever. 09:53:10

Q. Do you use the same method for evaluating the lost opportunity costs in the delayed scenario as you do in the denied scenario? 09:53:25

MS. HUNSICKER: Objection; compound.

THE WITNESS: Yeah, this is -- the word "denied" is not relevant because I only look at delayed in this report.

That's sort of a leftover from a -- the word "denied" is an unnecessary word because I don't look at that. 09:53:47

(Reporter seeks clarification.)

THE WITNESS: Because my method only looked at delayed. 09:54:15

BY MR. LEVENBERG:

Q. So you're not offering any opinion on the value of lost opportunity costs to people whose access to benefits was denied?

A. No. 09:54:33

Q. Did you evaluate any data on how many class members had delayed access to UI benefits?

A. I very briefly looked at one spreadsheet, but I didn't analyze it in any depth.

Q. And what spreadsheet did you look at? 09:55:00

A. I think McCrary had -- for this report, I did not look at any data. And after this report I looked at some. 09:55:07
I forget what your question was. Can you repeat it? 09:55:21
Q. Did you look at any data on the value of lost opportunity cost whose access to UI was delayed?
MS. HUNSICKER: Objection; confusing.
BY MR. LEVENBERG: 09:55:35
Q. You're right, that was confusing.
Did you evaluate any data on how many class members had delayed access to UI benefits?
A. And are you asking for this report or for my -- 09:55:48
Q. At any point did you evaluate that data -- those data?
A. I looked briefly at a spreadsheet that had some of those data on it, but I didn't analyze it in detail. 09:55:58
Q. And that spreadsheet came to you after you wrote this report?
A. Yes.
Q. And that was a spreadsheet referenced in Professor McCrary's report? 09:56:08

A. I assume it was the basis of some of his opinions. It came with some files that he turned over. 09:56:10

He did have some data on duration, so I assume he used that spreadsheet -- durations of delays, so I assume he used that spreadsheet, but I'm not -- I didn't explore in detail what his code was or -- so analyzing that spreadsheet, I just looked at it briefly. 09:56:25

Q. Did you form any opinions at all about the information in that spreadsheet? 09:56:38

A. No.

Q. Did that -- did you consider that spreadsheet relevant to any of the opinions you express in this report? 09:57:06

MS. HUNSICKER: Objection; vague.

THE WITNESS: Can you ask that question -- are you -- since I saw it after this report, are you asking does it change my opinions?

Is that what you're saying or -- 09:57:23

BY MR. LEVENBERG:

Q. Well, I was going to get there.

Did it change any of your opinions?

A. No.

Q. Did you consider it relevant to any of 09:57:45

your opinions? 09:57:50

MS. HUNSICKER: Objection; vague.

THE WITNESS: I didn't look at it in detail.

BY MR. LEVENBERG:

Q. Okay. Can you tell me what kind of 09:58:00
information was in there?

A. These sorts of recall questions are very uncomfortable for me. I have a very bad memory.

My vague recollection is it had a scrambled ID for individuals and several dates, and 09:58:27 probably amounts.

But I want to make clear that I would normally have to look at the spreadsheet to answer a question like this, and I'm -- working off of memory, it's very proximate. 09:58:48

Q. In writing this report, did you consider any data about the class members?

MS. HUNSICKER: Objection; vague.

THE WITNESS: Which types of data are you --

BY MR. LEVENBERG: 09:59:02

Q. Any types of data.

MS. HUNSICKER: Same objection.

THE WITNESS: Yes.

BY MR. LEVENBERG:

Q. What did you look at? 09:59:16

A. One of Mr. Regan's earlier reports had data and, also, I saw one of Dr. Stango's reports had some data on duration and either mean or median or maybe both of the claim size and the counts of the several classes. 09:59:27 09:59:52

And if memory serves, Dr. Stango's earlier report -- "earlier" meaning it was -- the report was available by February -- had some discussion of either short or small claims or both.

I believe both. 10:00:21

Q. Did you look at any of the underlying data themselves or just the discussion of it in the Regan and Stango reports?

MS. HUNSICKER: Objection; compound.

THE WITNESS: Again, remind me, are we discussing in creating this report or preparing for this deposition? 10:00:34

BY MR. LEVENBERG:

Q. We'll start with the report. And then if the answer is different after the report, we'll get to that next. 10:00:52

A. Let's see, at some point, there were excerpts from some of the either depositions and -- or interrogatories of the -- some of the plaintiffs. So if those were in the earlier reports, I would 10:01:13

have seen a few excerpts. 10:01:15

And plaintiffs' counsel would have told me various numbers on the size of classes and so forth as well. And some of the dates.

And I saw what was ever in the consent 10:01:51 decree about the classes -- about -- they weren't class at that point -- about those who were in -- many of whom became part of these classes.

Q. And when you say, "some of the dates," what dates are you referring to there? 10:02:09

MS. HUNSICKER: Objection; vague.

THE WITNESS: The dates of when the bank started using the several screens and stopped using them and when they were, I believe, an injunction, and I assume dates of various legal actions, as well 10:02:38 as the dates of the consent decree and so forth related to that.

I don't remember exactly which dates were discussed but several dates.

BY MR. LEVENBERG: 10:03:10

Q. And what do you mean by "dates of various legal actions"?

A. There were dates when the consent decree -- the government says something and then the bank comes up with a plan and the plan is endorsed, 10:03:35

I don't remember what these are all called in 10:03:39
detail, but those various stages of that process I assume we discussed.

Q. Backpedaling a little bit, did you consider or were you given any data about class 10:03:57
members themselves?

MS. HUNSICKER: Objection; vague.

THE WITNESS: No. The class members -- I'm sorry, the class members, the 109,000 or the named plaintiffs? 10:04:34

BY MR. LEVENBERG:

Q. Any.

A. The plaintiffs' attorneys explained to me they had very limited data on the class members themselves, and the named plaintiffs were a 10:04:47
nonrandom sample that was small.

So I didn't look at their -- any evidence about them when preparing this report.

Q. You didn't look at any evidence about the named plaintiffs when preparing this report? 10:05:07

MS. HUNSICKER: Objection; vague.

THE WITNESS: Unless something was mentioned in the available -- the Stango report available to me last February, I did not.

BY MR. LEVENBERG: 10:05:28

Q. What information relevant to class members did you consider from the Stango report? 10:05:28

MS. HUNSICKER: Objection; vague.

BY MR. LEVENBERG:

Q. If any. 10:05:36

A. Nothing that I recall. You just asked if I had seen any, and if he had quoted any, I would have seen it.

Q. But you didn't consider it in preparing your report? 10:05:48

MS. HUNSICKER: Objection; vague.

THE WITNESS: I did not consider evidence from a small and nonrandom sample that was -- if he did any, it would have been excerpted by proposedly -- I don't know how to say that word -- excerpted with an intent to be informative, no. 10:05:59

BY MR. LEVENBERG:

Q. And what about the unnamed class members, did you look at any information about them in preparing your report? 10:06:18

MS. HUNSICKER: Objection; vague.

THE WITNESS: Those 100-plus thousand?

BY MR. LEVENBERG:

Q. That certainly would be one of the classes, yes. 10:06:31

A. No. 10:06:33
Q. Now, for any of the other classes, is the answer the same?
MS. HUNSICKER: Objection; compound.
THE WITNESS: I did not look at information on class members for any of the classes. 10:06:41
BY MR. LEVENBERG:
Q. You mentioned a few numbers that you said plaintiffs' counsel told you about.
What assumptions did the plaintiffs' counsel ask you to make in forming your opinions? 10:06:59
MS. HUNSICKER: Objection; vague.
THE WITNESS: Can you ask that again? It's a -- I'm not sure what you mean "what assumptions."
BY MR. LEVENBERG: 10:07:27
Q. Did plaintiffs' counsel ask you to make any assumptions in doing your report?
MS. HUNSICKER: Objection; vague.
THE WITNESS: They asked me to prepare a conservative lower bound on the cost of not having access to the funds and of the time. 10:07:45
So any assumptions implicit in those, but something that would apply to the vast majority of the class members.
But they didn't state any particular 10:08:08

assumptions about -- that I can think of. 10:08:11

BY MR. LEVENBERG:

Q. Were there any facts that they asked you to assume true for purposes of conducting your analysis? 10:08:21

A. I mean, the description of the classes that were in the first few pages of the Regan report that I had access to in February.

You know, the number -- I . . .

And then some other description of the 10:09:24 case that was consistent with what was in the consent decree.

I don't think there was much else they mentioned.

Q. When you refer to the "description of the 10:09:43 classes," how were the classes described?

MS. HUNSICKER: Objection; vague.

THE WITNESS: Would you be kind enough to share the Regan report that was available last February?

I don't know when it was created. 10:10:03

MR. LEVENBERG: Do we have the Regan report?

MS. BRYS: Yes, we do.

BY MR. LEVENBERG:

Q. Before we look at the report, can you tell me what your understanding is of the classes that 10:10:16

are at issue in this case? 10:10:19

MS. HUNSICKER: Objection; compound.

THE WITNESS: There were people who complained there was a fraudulent withdrawal or expense on their debit card. The bank had agreed with the 10:10:41 State to resolve these promptly and give credit in the meantime, and they -- the bank didn't do so.

In some cases, they gave credit and then later rescinded it.

In some cases, if people had credit on 10:11:09 their debit card, that was frozen. And future UI benefits couldn't be added to the debit card but with some delay, the State mailed checks.

Modern credit cards have a chip in them, and -- almost all cases, and the bank didn't issue 10:11:48 cards with a chip, so they were less secure. And the bank had agreed with the State to provide -- I'll just use the vernacular term -- "good customer service."

There was a more detailed agreement which 10:12:19 they failed to uphold, so people had extremely lengthy hold times and measured in hours in many cases.

I think those are the five classes.

MR. LEVENBERG: Do you want to exhibit Regan? 10:12:40

MS. BRYS: This is the August 2024 one. There are three Regans. I'm not sure which one he's referring to. 10:12:42

THE WITNESS: It was available to me in February of this year, so probably this one. 10:12:51

MR. LEVENBERG: Mark this one as an exhibit.

(Deposition Exhibit 2 was marked.)

MS. HUNSICKER: Is this Exhibit 2?

MR. LEVENBERG: Yes, despite the confusing "Exhibit 4" label. I assume it was Exhibit 4 to something else. 10:13:29

MS. HUNSICKER: The class certification.

BY MR. LEVENBERG:

Q. Take as much time as you need to look through this, but my question is, when you were referring to a Regan report that you reviewed, is this that report? 10:13:42

A. The table on page 3 is the same, so I assume the report is.

Yes. 10:14:06

Q. Okay. And my original question, rewinding a little bit, I believe you testified in response to my questions about looking at information about class members, that you had considered information from the Regan report. 10:14:17

Is that a fair characterization of what you told me? 10:14:19

A. Yes, from this Regan report since . . .

Q. Can you point me to the portions of the Regan report that had the information about class members that you were referring to? 10:14:36

MS. HUNSICKER: Objection; vague.

THE WITNESS: Definitely the definitions on the top of page 3.

If I can go back to an earlier answer, you asked what was in this spreadsheet that I looked at. 10:15:21

It is quite likely it's the spreadsheet Regan refers to on page 14 of this report, in which case, in addition to several dates, it also had which, if any, fraud filters applied. 10:15:47

I said I couldn't recall what else was in it. It looks as if it has fraud filters.

So in paragraphs 35 and 36, there's some of the counts that I referred to about the number of people in classes. 10:16:10

And paragraph 80 has some of the dates.

And I must have skipped one, but on -- paragraph 84 has some of the dollar amounts, which -- and if you take the total amount times the class size, you can get the average claim. And 10:17:32

presumably has similar dollar amounts for all the classes, I just . . . 10:17:35

Yeah, in paragraph 76 and . . .

Paragraph 100 and 108. And there must be a count. 10:18:28

And in paragraph 97, there's a count.

And paragraph 111, there's a count and 114 -- or paragraph 111 and 112, there's a count, and paragraph 114 is an amount.

And paragraph 119 has a count. 10:19:36

After page 54, excerpts from this spreadsheet, it looks like, and I assume this is the spreadsheet I looked at, but I . . .

I'm not 100 percent certain. I don't think it -- as I said, I looked at it pretty quickly. 10:20:32

So I can't promise I found every class size or sum of claims, but that's the sort of data I extracted from the Regan report.

And then the Stango report may have had mean or median claim, and it definitely had some -- the early Stango report had something about small claims or short claims, I believe. 10:20:50

BY MR. LEVENBERG:

Q. Now, did you review any of the underlying 10:21:09

data in the portions of the report you just mentioned or was your review limited to the report itself? 10:21:13

MS. HUNSICKER: Objection; vague.

THE WITNESS: After the rebuttal reports from McCrary, I received some of the underlying data and I looked at it briefly. 10:21:30

And -- yeah.

BY MR. LEVENBERG:

Q. But you didn't look at any of that data in creating your own report? 10:21:50

MS. HUNSICKER: Objection; asked and answered.

THE WITNESS: I did not.

BY MR. LEVENBERG:

Q. So in paragraph 34, when it references -- 10:22:01

A. I'm sorry, which report?

Q. I'm looking at the one with the green, Mr. Regan.

In paragraph 34, when it references [redacted]

You did not consider any of that data in 10:22:33

creating your report, did you? 10:22:37

A. I was asked to derive a methodology to create a conservative lower bound that would apply to the vast majority of the class members.

I didn't look at data for each of the 10:23:04 109,000.

Q. So does that mean I should understand that you did not look at any of the data referenced in paragraph 34?

A. Correct. 10:23:22

Q. And then I'm looking at the data -- or the spreadsheet that follows the signature page after page 54.

Did any of the data here factor in the conclusions in your report? 10:24:14

MS. HUNSICKER: Objection; vague.

THE WITNESS: I did not look at the microdata, the individual level data.

BY MR. LEVENBERG:

Q. And why not? 10:24:40

A. I was asked to derive a methodology to derive a conservative lower bound, and my methodology is appropriate for the vast majority of the class members. These data would not have helped in that project. 10:25:03

Q. What portion of the class would your methodology not be appropriate for? 10:25:06

MS. HUNSICKER: Objection; confusing.

THE WITNESS: Can you . . . the methodology I used applies to the vast majority of the class. I don't have a specific numeric number. 10:25:31

BY MR. LEVENBERG:

Q. Aside from a numeric number, what would make somebody belong to the class but have your methodology not be applicable to them? 10:25:48

MS. HUNSICKER: Objection; confusing, misstates testimony.

THE WITNESS: I have a couple of different opinions. I actually can't answer that. I have two different methods for two different questions. 10:26:38

So can you ask that again?

BY MR. LEVENBERG:

Q. Okay. Well, how would you describe the first of those two methods?

A. That the credit card interest rate is a conservative measure of the value of not having access to funds for the vast majority of the class members. 10:26:56

Q. And your testimony still is that your methodology is appropriate -- your methodology in 10:27:21

reference to the credit card interest rate is appropriate for the vast majority of the class members? 10:27:26

MS. HUNSICKER: Objection; misstates testimony.

MR. LEVENBERG: It didn't. 10:27:35

THE WITNESS: Can you say it again?

BY MR. LEVENBERG:

Q. Is your testimony still that your methodology in reference to the credit card interest rate is appropriate for the vast majority of the class members? 10:27:48

MS. HUNSICKER: Same objection.

THE WITNESS: Say it one more time. Let me just see if I can hear it.

BY MR. LEVENBERG: 10:27:59

Q. You testified before, "my methodology is appropriate for the vast majority of the class members."

Is that correct?

MS. HUNSICKER: Same objection. 10:28:06

THE WITNESS: Now, we're talking about the delays in payment?

BY MR. LEVENBERG:

Q. Well, I was just talking about that particular statement that you made. 10:28:18

A. There's the two methods I used. 10:28:21
Q. Right.
A. What the plaintiffs' attorney asked me to do was answer two questions with a conservative lower bound on the cost of delayed funds and the 10:28:30 opportunity cost, the value of time being on hold.
Q. Right. Which means you had two methods to --
A. Yes.
Q. -- to answer the two questions. 10:28:41
A. So I prefer you just do them one at a time.
Q. Right.
So as to the first method, is that method appropriate for the vast majority of the class 10:28:49 members?
MS. HUNSICKER: Objection; confusing.
THE WITNESS: The credit card interest rate is a conservative lower bound for the vast majority of the class members, yes. 10:28:59
BY MR. LEVENBERG:
Q. What portion of the class members is that methodology not appropriate for?
MS. HUNSICKER: Objection; confusing.
THE WITNESS: I don't have a numeric answer to 10:29:14

that question. 10:29:17

MS. CHAN: Mr. Levenberg, can we go off the record for just a second?

MR. LEVENBERG: Sure.

THE VIDEOGRAPHER: We're going off the record. 10:29:23 The time is 10:29 a.m.

(Discussion off the record.)

(Recess taken.)

THE VIDEOGRAPHER: We're back on the record. The time is 10:45 a.m. 10:45:56

BY MR. LEVENBERG:

Q. So before we took our break, we were discussing your opinion that the credit card interest rate is a conservative lower bound for the vast majority of the class members. 10:46:12

Is that still your opinion?

A. Yes.

Q. And my question was, what portion of the class members is it not appropriate for?

MS. HUNSICKER: Objection; confusing. 10:46:28

THE WITNESS: So the method I use is appropriate for the entire class. It's a conservative lower bound. I was asked to come up with a conservative lower bound that would apply to the vast majority, and that method applies to the 10:46:48

entire class. 10:46:53

BY MR. LEVENBERG:

Q. Well, you said before, "my methodology is appropriate for the vast majority of the class members." 10:46:59

A. I apologize for the imprecise language.

My methodology is appropriate for the entire class. The lower bound applies to the vast majority of the class members.

And there's a . . . yeah. 10:47:22

Q. Explain what that means, "the lower bound applies to the vast majority of the class members."

A. Plaintiffs' attorneys asked me to find a method that would estimate lower bound on the opportunity cost of not having access to funds that 10:47:54 would apply to the vast majority of class members, meaning that the vast majority would have an opportunity cost equal to or greater than that bound that I opined on.

And so the methodology applies to 10:48:21 everyone. The lower bound applies to the -- is the opportunity cost for --

Q. What portion of --

A. -- the credit card interest rate that I proposed using is a lower bound of the opportunity 10:48:35

cost for the vast majority of the class members. 10:48:44

Q. What portion of the class would have an opportunity cost less than that lower bound?

A. I don't have a numeric number.

Q. What characteristics of a class member 10:48:55 could cause them to have an opportunity cost less than that lower bound?

MS. HUNSICKER: Objection; incomplete hypothetical.

THE WITNESS: I was asked to create -- to 10:49:12 estimate an opportunity cost that would be a lower bound for the vast majority. I didn't do an analysis of each of the 100,000 plus to say the characteristics.

So it's -- I'm glad to go into the basis 10:49:28 of my opinion, and -- but I can't sum up all that in one answer easily.

BY MR. LEVENBERG:

Q. Well, if the lower bound applies to the vast majority of the class members, then there is a 10:49:48 portion to whom it does not apply; is that correct?

MS. HUNSICKER: Objection; misstates testimony.

THE WITNESS: There's two answers, and it's just -- my hesitation, it's a little bit hard for me to respond. 10:50:11

My method applies to the entire class because I was supposed -- I was asked to get something that would create an estimate of aggregate harm that was appropriate for the class. 10:50:14

So I -- that's what I was asked to do, and that's what I did. 10:50:32

Most people would have a higher opportunity cost, some would have that opportunity cost and a small minority could be different.

But that wasn't what I was asked to look at. I was asked to look at what would create an estimate of the aggregate harm. 10:50:49

BY MR. LEVENBERG:

Q. What would cause somebody to belong to that small minority? 10:51:02

MS. HUNSICKER: Objection; incomplete hypothetical.

THE WITNESS: It's hard for me to answer because there's so many ways to be above the bound, and if I start listing them, I'm afraid -- off the top of my head, I'm afraid I would be missing some. 10:51:42

So I would go through the basis of the opinion and at the end, we can return to that.

Is that reasonable?

BY MR. LEVENBERG: 10:51:53

Q. No, I still want to figure this out. 10:51:54
I understand that there are a lot of ways somebody could be above the bound, but I'm trying to ask about what ways could somebody be below that bound. 10:52:06
What ways can you think of?
MS. HUNSICKER: Objection; vague.
THE WITNESS: I had mentioned I don't like to rely on my memory. So if you . . .
Not have any liquidity constraints, not 10:53:07 have concerns about precautionary savings, not have a high subjective discount rate, not be overly concerned about the duration of the delay, not be facing uncertainty in the pandemic about income or expenses or correlated shocks that might increase 10:53:46 the need for precautionary savings.
I'm sure there's several I'm forgetting asking me to go through all the bases of the report.
Not have transaction costs be a large portion of the opportunity cost of not having access 10:54:31 to funds, not have credit card debt that they could be repaying or any other high-interest rate debt they could be repaying, and anything I'm forgetting.
BY MR. LEVENBERG:
Q. Well, take your time. Search your memory. 10:55:30

If there's anything else that you want to mention there, I do want to hear it. 10:55:33

So if there are any other factors that could make someone a member of the small minority that have an opportunity cost less than the bound, let me know what you can think of. 10:55:44

A. I mean, not be reducing consumption in things that are hard to substitute across time, not be relying on sources of credit with high nonmonetary costs in terms of reputation or status or social obligation. 10:56:46

And that's what comes to mind.

Q. Anything else you can think of?

A. No. But I'm pretty sure I'll want to add to this list as the day proceeds. 10:57:16

Q. Okay. Well, if you do think of anything more as the day proceeds, feel free to let me know and I'll put in a note to self to ask you if anything else occurred to you.

One of the things that you listed was not having transaction costs be a large portion of the opportunity cost of not having access to funds. 10:57:37

I think I know what that means, but can you clarify it?

A. So you asked whether I had looked at the 10:58:02

microdata on the claims, and I said it wasn't 10:58:04 necessary for my methodology.

But, ultimately, one would take the interest rate that I defend as appropriate -- I don't know you would, one could, I guess a jury will 10:58:21 decide what to do if this goes to trial -- and multiply it times the size of the claim and the duration.

Some claims have very short duration or small amounts. And so if it's a $1,000 claim for 10:58:42 3 days or $100 claim for a month, my interest rate would imply damages of a couple dollars or less. And the transaction costs of having your debit card balance be off is more than $1.50, just in terms of the time involved, ignoring embarrassment or stress 10:59:19 or whatever.

So the notion that a small or a claim or a short claim, even if none of the other criteria held, the transaction costs are larger than the interest rate I'm proposing, and so the interest 10:59:54 rate remains a conservative lower bound.

Q. I'm trying to wrap my head around this scenario. Give me a moment.

So you referred to somebody who might need to access credit to cover a $1,000 claim for 3 days. 11:00:34

A. No, no. I apologize for my lack of clarity. 11:00:39

If somebody losses access to $1,000 for 3 days -- let me just do the math real quick.

I think -- we can check my math more fully -- but I think that means the damages are on the order of $1.50 using my method. 11:01:07

And the reason I say the credit card interest rate is lower bound to the opportunity cost, it is not necessarily that they would borrow the $1,000 for 3 days but simply that $1.50 is -- the transaction cost of dealing with why your debit card isn't working as expected is more than $1.50 for the vast majority of the class. 11:01:20

And we haven't talked about my second opinion about the value of time, but just for the moment thinking of the minimum wage as the value of time, they would say, you know, a few minutes of time it takes to figure out why it's denied, even if customer service is working perfectly, if you have to go on a website or visit a -- call a call center to figure out why it was denied and figure it out, that that's more than $1.50 worth of transaction costs. 11:01:42 11:02:02

Q. And what's the connection between that and 11:02:17

the credit card interest rate? 11:02:19

MS. HUNSICKER: Objection; vague.

THE WITNESS: The credit card interest rate says such a person has an opportunity cost of not having access to their funds, at least the credit 11:02:30 card interest rate, of at least $1.50.

And if you work out the transaction cost, they're well over $1.50, so this is a lower bound. This is a conservative amount of damages they have suffered. 11:02:46

Even if they are not borrowing, they still suffered damage -- here, it's transaction cost -- and this credit card rate is a conservative measure of their damage.

So it remains part of this -- this person 11:02:59 remains part of this vast majority, even if they didn't need to borrow it for three days. And some would, but even if they didn't.

BY MR. LEVENBERG:

Q. So this person's damages are not based on 11:03:17 the credit card rate, you're just certain that whatever damages those are, they are more than the credit card rate?

MS. HUNSICKER: Objection; misstates testimony, vague. 11:03:28

THE WITNESS: For the vast majority of people, the transaction cost would be more than what would be implied by the credit card interest rate, yes. 11:03:30

BY MR. LEVENBERG:

Q. But it's not the case that their damages are based on the credit card interest rate? 11:03:36

MS. HUNSICKER: Objection; vague, misstates testimony.

THE WITNESS: If we looked merely at the transaction costs, the credit card interest rate would be -- this $1.50 in this example would be a very conservative estimate of the damages they would suffer. 11:03:47

BY MR. LEVENBERG:

Q. Well, by "very conservative," what do you mean? You mean the damages they suffered are greater than the credit card interest rate? 11:03:57

MS. HUNSICKER: Objection; vague.

THE WITNESS: Greater or equal to, yes.

BY MR. LEVENBERG: 11:04:08

Q. Do the damages they suffered have anything to do with the credit card interest rate other than being more than it?

MS. HUNSICKER: Objection; vague.

THE WITNESS: In this hypothetical, I'm 11:04:23

assuming that their only cost are these transaction costs. 11:04:26

They could also be -- they might have other costs and then some of those would be tied to the credit card interest rate. But I'm saying, in this simplest example where they have no other cost, the credit card interest rate remains a conservative lower bound. 11:04:38

BY MR. LEVENBERG:

Q. Where their only costs are their opportunity costs? 11:04:54

A. No. Their only costs are the transaction costs.

Did I say that wrong? Pardon me.

THE REPORTER: No, I wrote it wrong. 11:05:06

THE WITNESS: Oh, okay. Thank you both for the correction.

BY MR. LEVENBERG:

Q. I know this is a complicated concept. I'm just trying to break it up into all of its parts. 11:05:14

Where their only costs are the transaction costs, their costs are greater than the credit card interest rate; is that your opinion?

A. Yes, for these small or short claims.

I mean, if we look at $100 claim for a 11:05:30

month, again, it's -- again, it's about $1.50, and 11:05:34
so it's a longer claim but it's a smaller amount of
money --

(Reporter seeks clarification.)

A. -- the transaction costs are going to be 11:06:04
higher.

Let me just check my math here.

I think that's right, yeah.

So the point is, even for small or short
claims, the credit card interest rate, even if they 11:06:20
have no need to borrow, remains a very conservative
lower bound.

Q. Can the credit card interest rate be used
to calculate their transaction costs?

MS. HUNSICKER: Objection; confusing. 11:06:36

THE WITNESS: I'm using it as a conservative
lower bound.

Does that answer your question?

BY MR. LEVENBERG:

Q. Not quite. 11:06:50

So I understand your opinion that the
interest rate is a conservative lower bound, meaning
the transaction costs are higher than the figure
produced by the interest rate.

Am I stating that accurately? 11:07:04

A. Yes. 11:07:06

Q. Can the interest rate be used to figure out what the transaction costs are?

MS. HUNSICKER: Objection; vague.

THE WITNESS: That's not part of how I 11:07:25 calculated the transaction costs, using the credit card interest rate. It's not necessary for it in this extreme case.

BY MR. LEVENBERG:

Q. When you say how you calculated the 11:07:34 transaction costs, you're just talking about the calculation you did just now, not any calculation you did in your report; right?

A. Correct.

Q. Okay. What factors make somebody a member 11:07:50 of the vast majority of people for whom you said the interest rate is a conservative lower bound?

MS. HUNSICKER: Objection.

THE WITNESS: Can you ask that one more time? Pardon me. 11:08:09

BY MR. LEVENBERG:

Q. Sure.

What factors make somebody a member of the vast majority of people for whom the interest rate is a conservative lower bound? 11:08:18

THE WITNESS: And then did you have an objection? 11:08:20

MS. HUNSICKER: Objection; overbroad, vague.

THE WITNESS: You're asking me to rely on my memory for the entire report, so I will -- 11:08:33

BY MR. LEVENBERG:

Q. You can refer to the report if that's helpful for you.

A. Possibly increase -- those who face liquidity constraints have high subjective discount 11:08:43 rates where transaction costs are higher than the credit card interest rate implies.

If they accessed sources of credit with high nonfinancial burden in terms of status or reputation or demands of reciprocity, if they 11:09:09 lowered consumption in items that are hard to substitute over time, if they had the alternative to repay credit card debt or other high-interest debt are some of the groups for which this is the lower bound. 11:09:35

Q. I think I understand all that. There's just one thing I wanted to clarify.

Part of your answer was you referred to "if they accessed sources of credit with high nonfinancial burden in terms of status or 11:09:52

reputation." 11:09:55

I'm understanding that as a layperson basically to mean, for example, borrowing money from friends.

Would that be an example that fits into 11:10:04 that category?

A. In many cases.

Q. What are some other examples of things that would qualify as accessing sources of credit with high nonfinancial burdens in terms of status or 11:10:16 reputation?

A. Very often, borrowing from friends and family.

Q. Anything else that you would put in that category? 11:10:31

A. No, not right now.

Q. Okay. And are there any other factors that you haven't mentioned yet that would make someone a member of the vast majority of people for whom the interest rate is a conservative lower 11:10:56 bound?

A. I may think of others, but none come to mind.

Q. How vast is that vast majority?

MS. HUNSICKER: Objection; vague. 11:11:28

THE WITNESS: I don't have a numeric reply. 11:11:31
BY MR. LEVENBERG:
Q. What do you base your opinion that it is a vast majority on?
A. One group I mentioned that have an 11:11:53 opportunity cost of funds greater --
(Reporter seeks clarification.)
A. -- greater than or equal to the credit card interest rate are those who would use government transfers to repay credit card debt. 11:12:14
And I paraphrase some of Professor Stango's analysis. We replicate it and I mentioned in my report that I believe the majority of people receiving stimulus -- who were unemployed receiving one of the stimulus checks said they were 11:12:46 using it to repay credit card debt.
So that immediately says that their opportunity cost to funds was the credit card interest rate because if they had funds, they were repaying debt, and conversely, if they're not -- if 11:13:07 those funds hadn't arrived, they would not repay the debt and they would be having larger credit card debt.
And I would have to look that up, but I think that was 66 percent in one survey that Stango 11:13:20

analyzed. 11:13:27

I apologize, some of this language may literally be a quote from Stango -- it's definitely paraphrased -- because I redid his analysis and got the same result. 11:14:06

And I think that's probably -- the 66 percent probably doesn't -- I think that figure was a little bit lower for some of the other transfers.

But a majority of people were using 11:14:25 transfers to repay debt, which conversely applies, not having transfers means they would not repay debt.

A majority or near majority of people were expressing -- unemployed people during COVID were 11:14:47 expressing deprivations, such as food insecurity or not being able to pay bills on time, or if they received a $400 piece of bad news, they would not be able to pay bills on time or meet the expense.

And these were data on unemployed people 11:15:10 most of whom were receiving unemployment insurance. Those not receiving unemployment insurance had even higher levels of deprivation.

A meaningful share of people are liquidity constraint, meaning if they -- they don't have 11:15:33

liquid assets large enough to pay a $1,000 or $2,000 11:15:36 piece of bad news.

Even when people have access -- I hope I mentioned precautionary savings. Even when people have access to funds, they're liquid, many people 11:16:03 also have credit card debt.

And one motive for that is the fact that people have a desire for precautionary savings, that we can't predict our next expenses, our -- we can't predict incomes. 11:16:33

Particularly during COVID, uncertainty was very high. The ability to count on one's other family members or social network was low because they were also under lockdown or had enormous uncertainty. 11:16:54

So the desire for precautionary savings they do, we need to keep a buffer of liquidity was higher than usual. So even people --

(Reporter seeks clarification.)

A. -- who have liquidity can behave very 11:17:14 similarly to those we -- economists normally think of liquidity constrained because they don't want to have enough, you know, liquid assets in case an unexpected expense arises or some income they expect does not appear. 11:17:33

And people have a, what economists call, subjective discount rate, which in the vernacular would be impatience. 11:17:50

And, again, because of this, people prefer to have money sooner than later. And when the subjective discount rate is high, that also is appropriate to consider the opportunity cost of funds to be their subjective discount rate, their rate of impatience. 11:18:09

That's almost the definition that if I would rather have monies sooner than later, that that is the opportunity cost of it showing up later, is that impatience. 11:18:37

Q. Okay. There's much to unpack there, but don't worry, I'm not going to unpack all of it. I do have a couple of follow ups though. 11:19:00

You made reference to 66 percent of some population using stimulus to repay credit card debt. And I want to make sure that we are talking about the same thing because, as I understand it, there were several different types of payments or benefits available during the COVID-19 period. 11:19:19

There was unemployment insurance on the one hand and then there was also more broadly federal stimulus checks on the other hand. Maybe 11:19:36

state stimulus checks as well. 11:19:40

Is that 66 percent figure in reference to the unemployment insurance or in reference to the stimulus checks?

A. The Census Bureau's Household Pulse Survey 11:19:55 found that 66 percent of responding households at the end of January 2021 who indicated that they were laid off due to the pandemic -- to the Coronavirus pandemic, whose employer went out of business due to the Coronavirus pandemic, used their COVID-19 11:20:23 stimulus payments primarily to pay off debt.

So this is the similar population to the unemployed people receiving unemployment insurance, and I'm generalizing, not saying exactly 66 percent, but this implies unemployed people were using 11:20:52 government transfers, and a large, large share of them, to pay off debt.

And that means they had an opportunity cost of the interest rate on that debt, which for most Americans was the credit card interest rate. 11:21:10

Q. But is the payment here that they were using, is that unemployment insurance payments or stimulus payments?

A. This is stimulus.

Q. Okay. And are you assuming that if 11:21:25

66 percent used stimulus payments primarily to pay off debt, that the same proportion also used the UI benefits to pay off debt? 11:21:30

MS. HUNSICKER: Objection; misstates testimony.

THE WITNESS: I think I said I think it's -- 66 percent is higher than I've seen in other surveys, but that that does show a very high proportion were using government transfers to pay off debt. And I assume that probably less than 66 percent but a high proportion were using unemployment insurance to pay off debt. 11:21:43 11:22:01

And there are other data sources that support that.

BY MR. LEVENBERG:

Q. And is that 66 percent the vast majority that you were referring to earlier? 11:22:17

MS. HUNSICKER: Objection; confusing.

THE WITNESS: There are many ways to make it into the vast majority. I talked about liquidity constraints -- 11:22:35

(Reporter seeks clarification.)

THE WITNESS: Liquidity constraints, a high subjective discount rate, transaction costs being a large share of the total opportunity cost; accessing loans with high nonfinancial costs due to social 11:22:55

status, reducing consumption that's hard to shift in time and precautionary motives. 11:23:00

So this is one of that six or seven or eight ways to get into that category.

BY MR. LEVENBERG: 11:23:13

Q. And other than the data that you just discussed in reference to the 66 percent, how do you know that all of those factors add up to a vast majority?

MS. HUNSICKER: Objection; vague. 11:23:23

THE WITNESS: I have evidence on the size of these several groups. They come from various data sources. Each of them is large.

This one is a majority. Some of the others are majorities or near majorities. 11:24:10

I don't know exactly how much they overlapped, but they were not perfectly correlated. And so, if I simply added up the shares, I would get well over 100 percent. But given they are imperfectly correlated, I can say that the vast majority will be in one of or more of these categories. 11:24:29

BY MR. LEVENBERG:

Q. Can you tell me about what groups that you have data sources for? 11:24:37

MS. HUNSICKER: Objection; vague. 11:24:40

THE WITNESS: There are several data sources showing that a high share of Americans have a hard time coming up with funds for a few thousand dollars and would have to access one or more of these 11:25:06 high-cost sources to meet a shock.

Their estimates of the aggregate subjective discount rate among the unemployed that we can -- during COVID that is higher than the credit card discount rate -- interest rate that I 11:25:53 propose, that would be an aggregate rate, so that wouldn't be about a share but just saying on average, it's higher.

We have evidence on the deprivation suffered by the unemployed, particularly those not 11:26:12 receiving UI, during COVID, and we have evidence that the factors leading to precautionary savings got -- precautionary savings is savings because the world is uncertain, and we have evidence that uncertainty, the risk to income and needs, went up 11:26:47 during COVID.

BY MR. LEVENBERG:

Q. So what proportion of class members fall into the group of people who have a hard time coming up with funds for a few thousand dollars? 11:27:04

MS. HUNSICKER: Objection; vague. 11:27:09

THE WITNESS: So I cited pre-pandemic data that about 37 percent of all adults had one month's expenses in emergency savings.

Unemployed people tend to have lower 11:28:23 savings than those who are employed, so I would say they would be below the 37 percent. And then my understanding is that most of the UI payments were delayed by over a month, so 37 percent having a month may not be enough. 11:28:58

And I want to come back to this idea of precautionary savings.

If I have $1,000 in the bank, and I have bills I need to pay of $1,000, it doesn't mean I have enough liquidity to cover the bills because 11:29:17 that would drive me to zero, and people don't like that because new expenses may come they're not expecting or income may not appear that they do expect.

So just because you have that much money 11:29:39 in the bank doesn't mean you actually can pay these expenses.

People -- demand for precautionary savings depends partly on how much uncertainty they have. Unemployed people have uncertainty. During a 11:30:03

pandemic, the whole world had uncertainty, and 11:30:06
definitely, unemployed people during the pandemic.

There's also uncertainty about income. These are 100 percent people whose unemployment insurance, which had been their backstop, all of a 11:30:18
sudden was not working as expected, so they would have had extra uncertainty due to that.

And uncertainty is often reduced by knowing that if things go wrong, I can rely on those around me. But during a pandemic, everybody is 11:30:42
facing -- many people were facing shutdowns during various time periods and everybody was facing very high uncertainty.

So precautionary savings demand would be much higher than usual, meaning that somebody who 11:31:00
says, I have enough money in the bank to cover a month's bills, would have found that less adequate than in normal times for somebody who had a regular job and there weren't the risks to health or medical expenses or just everything else that the pandemic 11:31:26
brought.

BY MR. LEVENBERG:

Q. Let's explore that hypothetical a little bit because I think that will be helpful to us.

So the scenario you posed -- and please 11:31:36

stop me if I'm getting anything wrong here -- 11:31:39
someone who has bills to pay of $1,000 and has $1,000 in the bank, and they could do one of two things, right?

They could either access the $1,000 they 11:31:55
have in the bank to pay the bill or they could borrow $1,000 and keep the $1,000 as liquidity; is that right?

MS. HUNSICKER: Objection; incomplete hypothetical. 11:32:14

THE WITNESS: Those are two of the options. They can reduce their consumption, and they may have various sources of borrowing and they can mix and match these and it's not -- it could be some combination. 11:32:51

BY MR. LEVENBERG:

Q. Okay. Other than reducing consumption, what other options can you think of besides the ones we've already mentioned?

A. To an economist, failing to pay the bill 11:33:18
counts as a form of borrowing.

Q. Sure.

A. But in the vernacular, those are different.

In normal times, sometimes you can work 11:33:42

longer hours and get another job. That was pretty hard for unemployed people during the pandemic. 11:33:45

But those are some of the options. There might be others I haven't thought of.

Q. Okay. Can you think of any others? 11:33:57

A. Not at this moment. I might -- please proceed.

Q. Sure.

So in that scenario where someone borrows off of a credit card to pay the $1,000 and pays 15.9 percent interest on their borrowing, I understand the basis for your opinion that 15.9 percent is a good measure of their cost, or a good minimum measure of their cost to be sure of, stating that accurately. 11:34:13 11:34:34

But not everybody is going to choose that option, right? We can assume that?

Can we assume that?

A. Yes.

Q. Okay. So there are some people who would indeed access the $1,000 they have in the bank. 11:34:46

Is that a valid assumption?

A. I mean, very few people would use 100 percent of their bank account, but some might.

Q. And do you have any data on how frequently 11:35:16

people might choose one of those options over 11:35:20
another one?

MS. HUNSICKER: Objection; vague.

THE WITNESS: I do not hear about people driving bank balances to zero, closing out bank 11:35:39 accounts because of transitory incomes very often, so I don't have any data. But I think it is a very, very small share.

BY MR. LEVENBERG:

Q. And what makes you think it's a very, very 11:35:52 small share?

A. Because I've been reading about household financial behavior and doing research in it for a long time, and there are many examples of people borrowing and very few examples of people closing 11:36:13 out bank accounts due to short -- I don't know of any accounts.

I mean, it does exist, I'm not saying it's zero, but it's very rare to drive your bank balance to zero because a check was delayed by a month if 11:36:26 you had access to a credit card.

Q. Well, let's adjust the hypothetical then.

Let's say they had $2,000 in the bank and had to pay $1,000, so they're not driving the balance of the account to zero or closing out the 11:36:42

account but they are accessing the account, do you have any data on how many people would choose that option over the other one? 11:36:46

A. Not tied to this hypothetical.

What we do see is that a very high share of American households have positive bank balances and have positive credit card debt they are paying interest on. 11:37:08

So it's -- people having money in the bank doesn't mean they're not borrowing on their credit card. 11:37:37

Q. Right.

Do you have any data on the proportion of class members who chose to pay on credit cards in lieu of accessing liquid funds? 11:37:52

A. No.

Q. Okay. I wanted to go through your report more or less in sequence, and I realize we were doing it a little bit out of sequence. So we'll leave that line of questioning there and go back roughly to the beginning. 11:38:22

I'm on paragraph 9 now.

Your statement there was, "Using an aggregate measure of harm is common practice in the field of economics, and aggregates are an 11:38:44

appropriate way to represent classwide harm."
Describe what you mean by "aggregate measure of harm."
A. The total harm suffered by a group.
Q. And do you need to have information about the harm suffered by individual members of the group to form an opinion about the total harm suffered by the group?
MS. HUNSICKER: Objection; vague.
THE WITNESS: Can you ask that again?
You mean individuals as opposed to having . . .
BY MR. LEVENBERG:
Q. If you have information about the aggregate measure of harm for a group, can you use that to draw conclusions about the harms suffered by individual members of the group?
MS. HUNSICKER: Objection; vague.
THE WITNESS: So the method I'm proposing is to say that this credit card interest rate is a conservative lower bound on the opportunity cost of funds.
My expectation is one would then take the individual claims amounts and durations to create a damage per person.

Is that what you're asking? 11:40:34
I'm not sure what you're asking.
BY MR. LEVENBERG:
Q. Well, that is helpful.
So I guess let's back up a little. Tell 11:40:42
me how you would propose to arrive at the aggregate measure of harm.
A. If I can find opportunity cost to funds -- a lower bound on the opportunity cost to funds for the vast majority of the class, and we apply that to 11:41:11 the total amount of UI payments that were delayed times their delay, we would get an aggregate measure of harm.
Q. Okay. And that aggregate measure of harm is basically just the sum total of all individual 11:41:31 harms?
MS. HUNSICKER: Objection; confusing.
THE WITNESS: It is a conservative lower bound on the sum of the individual harms is what it's intended to create. 11:41:51
BY MR. LEVENBERG:
Q. Can your method be used to measure the individual harms suffered by any individual class member?
MS. HUNSICKER: Objection; outside the scope of 11:42:01

the report. 11:42:04

THE WITNESS: I was asked to create a method to get a conservative lower bound for estimating the aggregate harm.

I wasn't asked to -- 11:42:15

BY MR. LEVENBERG:

Q. Okay. You can finish.

So can your method be used to assess the harm experienced by any individual class member?

MS. HUNSICKER: Objection; outside the scope of 11:42:29 the report.

THE WITNESS: I wasn't asked to do that, so I don't . . .

BY MR. LEVENBERG:

Q. Do you have an opinion on it? 11:42:40

MS. HUNSICKER: Same objection.

THE WITNESS: Ask the question again.

BY MR. LEVENBERG:

Q. Can your method be used to assess the harm experienced by any individual class member? 11:42:52

MS. HUNSICKER: Same objection.

THE WITNESS: I'm hesitant to answer because it's an ill-posed question.

My method was trying to create a conservative lower bound for the class and then use 11:43:01

the individualized information on claimed amounts 11:43:17
and duration.

It makes it very hard to say how . . . it
was not designed for any other purpose besides that.

BY MR. LEVENBERG: 11:43:41

Q. Could it be used for any purposes it
wasn't designed for?

MS. HUNSICKER: Objection; outside the scope of
the report.

THE WITNESS: I can't answer that. 11:43:51

I mean, I'm sorry, I'm just -- ask the
question again. It makes sense, but I'm having
trouble answering it.

BY MR. LEVENBERG:

Q. That's fine. 11:44:01

Can your method be used to assess the
harms experienced by any member of the class?

MS. HUNSICKER: Outside the scope of the
report; objection.

THE WITNESS: I wasn't designing the method 11:44:18
with that intent, and I don't have an expert opinion
on that.

I just -- you guys are welcome to hire me
to answer that question, but I just don't have an
opinion that I can defend right now. 11:44:33

BY MR. LEVENBERG: 11:44:34

Q. Okay. Is that another way of saying you don't know if your method could be used for that purpose?

MS. HUNSICKER: Misstates testimony. 11:44:42

THE WITNESS: I'm under oath. I don't want to give an answer that I have not thought deeply about, and I have not thought deeply about that.

So I just -- it's a separate question than what I was asked to answer. 11:44:53

BY MR. LEVENBERG:

Q. So is the answer to that question I don't know?

MS. HUNSICKER: Same objection.

BY MR. LEVENBERG: 11:44:58

Q. I know this is annoying, but I just want a record --

A. It's not a question, it's sort of -- I mean, it's completely grammatical, but it's just not well-framed from the way I think about things, so 11:45:12 it's hard for me to answer.

Ask it one more time. Let me see why it is so hard for me the answer.

Q. Could your method be used to measure the harms experienced by any individual class member? 11:45:30

MS. HUNSICKER: Objection; outside the scope of the report. 11:45:34

THE WITNESS: If someone hired me to answer a different question, I would use the same economic logic, but I can't say exactly how the method would differ because I wasn't asked to look at that. It's just the method would overlap enormously, but I don't know if it would be identical. 11:45:43

BY MR. LEVENBERG:

Q. Okay. Can you think of anything you would do different? 11:46:00

MS. HUNSICKER: Objection; outside the scope of the report.

THE WITNESS: The problem is I -- you have a hypothetical in mind, and tell me the whole hypothetical and I might be able to answer. 11:46:19

BY MR. LEVENBERG:

Q. I actually don't have a specific hypothetical in mind. I'm just thinking that for any individual class member, if we wanted to know what their damages were, what would we do? 11:46:28

MS. HUNSICKER: Objection; outside of the scope of the report.

THE WITNESS: I mean, that's a really different question. I spent a long time on this report. I 11:46:39

would use the same economic principles, but I don't know what data that I would have. I really can't answer that. 11:46:44

The economic principles remain the same, but the exact method would depend on a lot of things that you haven't told me about. 11:47:03

BY MR. LEVENBERG:

Q. Sure.

What would it depend on?

MS. HUNSICKER: Objection; this whole line of questioning is outside of the scope of the report. 11:47:11

THE WITNESS: It's an important question. I can tell you the principle is the same. I can't tell you exactly what it would take. I would have to work hard on that. 11:47:34

BY MR. LEVENBERG:

Q. Okay. But -- and just for the sake of clarity, and I know we're retreading some ground here, but I just want to make sure we're clear.

You might vary the method, but you're not sure exactly how you would vary it; is that fair? 11:47:48

MS. HUNSICKER: Objection; misstates testimony.

THE WITNESS: There's not enough substance to this question about what the hypothetical is for me to give any coherent answer. 11:48:11

So I will simply say the economic principles remain the same, and I would need to know way more about this to say how I would approach it. You just haven't told me enough and -- 11:48:13

BY MR. LEVENBERG: 11:48:27

Q. Well, what more would you want me to tell you?

MS. HUNSICKER: Objection; outside the scope of the report.

Asked and answered as well. 11:48:44

THE WITNESS: I'm still not even sure what -- since I was asked a question about aggregate harm to create a lower bound for a group, to say how I would approach that for an individual is just a very different question. 11:49:02

I have not thought deeply about what . . . I just haven't thought deeply about what it would take to answer it.

BY MR. LEVENBERG:

Q. So do you have an opinion about whether the method described in your report could be used to assess harm experienced by an individual class member? 11:49:43

MS. HUNSICKER: Objection; asked and answered.

THE WITNESS: The methodology I used was 11:50:10

designed to create a conservative lower bound on an interest rate that one could then multiply by an amount of missing -- of delayed funds times the duration of the delay and create an estimate of harms for individuals. 11:50:12 11:50:31

But it's designed to create an aggregate measure being a conservative lower bound that applies to the vast majority of the class.

Is that responsive to your question?

There's many -- I don't know what you mean by individual -- I mean -- 11:50:48

BY MR. LEVENBERG:

Q. Well, it is what it is.

A. -- it's what it is designed for.

Q. It is a helpful response, but I can't stop asking questions, so I'm going to keep going. 11:50:55

So should I interpret that to mean the method was designed to create an aggregate measure of harm for a class of 109,000 people; is that fair?

A. Even though I use that number, I forget exactly which, but that was part -- 11:51:14

Q. Whatever that number is, I know it's --

A. For more than 100,000 people, yes.

Q. Could that method also be used to create an aggregate measure of harm for a class of 50,000 11:51:29

people? 11:51:33

MS. HUNSICKER: Objection; incomplete hypothetical, confusing.

THE WITNESS: Yes.

BY MR. LEVENBERG: 11:51:42

Q. Could it be used to create an aggregate measure of harm for a class of 100 people?

MS. HUNSICKER: Same objection; incomplete, confusing.

THE WITNESS: As members get smaller, reliance 11:51:55 on averages gets more challenging and sampling variation, random errors, and things like that, become more important.

So as -- for 50,000, it's easy, and for numbers at 100 and below, one has to be more 11:52:35 careful, so I would need to know a lot more.

BY MR. LEVENBERG:

Q. Okay. And could it be used to create an aggregate measure of harm for a class of one person?

MS. HUNSICKER: Objection; incomplete. 11:52:48

THE WITNESS: This wouldn't be how I would approach that problem.

BY MR. LEVENBERG:

Q. Okay.

All right. I think we are almost at our 11:52:54

lunchtime. I'm at a good breaking point now 11:52:57
regardless, but we should check on the food status.

MS. BRYS: Lunch will be here. I just checked.

MR. LEVENBERG: All right. So why don't we take a break, and we'll come back after we are all 11:53:09 satiated.

THE VIDEOGRAPHER: We are going off the record. The time is 11:53 a.m.

(Lunch recess was taken at 11:53 a.m.)

(Nothing omitted or deleted. See next page.)

AFTERNOON SESSION 12:59 P.M.

- - -

THE VIDEOGRAPHER: We're back on the record. The time is 12:59 p.m.

EXAMINATION RESUMED 12:59:05

BY MR. LEVENBERG:

Q. All right. Before getting back to your report, we're going to put some more paper in front of you.

MR. LEVENBERG: So we're going to exhibit the complaint. 12:59:14

(Deposition Exhibit 3 was marked.)

BY MR. LEVENBERG:

Q. Have you seen this before?

Take as much time as you need to page through it. 12:59:43

(Witness reviews document.)

A. I don't believe I've seen the entire document. I probably -- I may have seen excerpts of it. 13:01:11

I don't know if I've seen the whole thing. I believe I've seen excerpts.

Q. When did you see the excerpts?

A. I'm sorry?

Q. When did you see the excerpts? 13:02:10

A. Let's see . . . 13:02:20
I don't like to rely on my memory, so I'm not sure. It is possible I just received this in the last week or so, but I may have seen parts of it earlier. 13:02:45
It -- you know --
Q. Do you remember what was in the parts that you saw?
A. I believe the factual -- I may have seen -- I may have been given the whole thing. I 13:03:25 believe I looked at the factual allegations, Section 4.
Q. Did you rely on anything in the complaint in forming the opinions in your report?
A. I apologize for my poor memory, but as 13:04:09 best I recall, I didn't see this until after I wrote the report.
Q. Okay.
A. And I will e-mail you if I find out that is incorrect. 13:04:21
Q. That's fair.
So we could talk about pretty much any part at random, but there was one passage in particular I thought would be useful to start with.
Turn to page 81, if you could. 13:04:40

There are a few paragraphs of allegations on page 81 and 82 about Stephanie Moore. 13:04:48

You could take your time to read it if you would like. Let me know when you're ready and I'll ask my next question. 13:05:02

(Witness reviews document.)

A. Okay.

Q. Based on what you've read here, can you form an opinion on whether Ms. Moore is in the group of the vast majority of people for whom your 13:05:57 conclusions about the credit card interest rate has a lower threshold of damage are appropriate?

MS. HUNSICKER: Objection; outside the scope, confusing, incomplete hypothetical.

THE WITNESS: The plaintiffs' attorney 13:06:18 requested that I determine a conservative lower bound on an appropriate discount rate or interest rate for the vast majority of the class.

It's designed to figure out the most -- a very generous amount of aggregate damage for the 13:06:41 bank to pay using standard social science methods.

It wasn't designed to speak to each of the 100,000 people and, in any case, there's vastly too little information here for me to say anything about this case. 13:07:14

BY MR. LEVENBERG: 13:07:14

Q. So are you able to tell whether Ms. Moore is in the vast majority?

MS. HUNSICKER: Same objections.

THE WITNESS: The question is ill posed because 13:07:27 that's not what the method was designed to do.

BY MR. LEVENBERG:

Q. Can you tell -- apart from what the method was designed to do, can you tell if the credit card interest rate is a lower bound for the damages that 13:07:42 Ms. Moore suffered?

MS. HUNSICKER: Same objections.

THE WITNESS: The question doesn't become well posed when you taint it to me. It's just not what it's designed to do. 13:07:57

BY MR. LEVENBERG:

Q. Do you have an opinion on it?

MS. HUNSICKER: Outside the scope of the report, incomplete hypothetical.

THE WITNESS: You're welcome to hire me for a 13:08:10 different project, but that wasn't what I was hired to do.

No, I do not have an expert opinion on it as we sit here right now.

BY MR. LEVENBERG: 13:08:20

Q. What information would you need to form that opinion? 13:08:20

MS. HUNSICKER: Objection; vague.

THE WITNESS: The question plaintiffs' counsel asked me to answer was, can I find a conservative lower bound that applies to the vast majority of class members and that, in aggregate, would create a lower bound on what the bank would owe that is surely conservative, that is less than the actual damage caused to the class as a whole. 13:08:36 13:09:00

That's just a different question. And so you can ask me lots of different variations, but it's just a different question. It's not the -- the principles I would need to underlie -- understand as a single person are going to overlap substantially. I'm going to use the same economic methods, but it's not how one thinks about each of the 100,000. It's just a different question. 13:09:18

BY MR. LEVENBERG:

Q. And what additional information would you need to think about that different question? 13:09:35

MS. HUNSICKER: Objection; vague.

THE WITNESS: It's not just a matter of information, it's a different question.

Even with the same principles, you would 13:09:48

have to tell me a lot more about what you are interested in, and sitting here right now, I just can't whip out an answer. It takes time for me to think these things through. 13:09:50

BY MR. LEVENBERG: 13:10:03

Q. If I'm interested in whether Ms. Moore has incurred damages, do you have enough information here to form an opinion about that?

MS. HUNSICKER: Objection; same objections, outside the scope, vague. 13:10:12

THE WITNESS: Damages meaning nonzero damages? You just mean any damages?

BY MR. LEVENBERG:

Q. Sure. You can start there.

A. There's enough information here to say the damages were above zero. 13:10:33

Q. And what information would you need to determine how much above zero they are?

A. That's a different question than I was asked to answer, and so I strongly encourage you to hire me to answer that other question. 13:10:48

But my expert opinion is about the aggregate damages that would be generous to the bank and a conservative lower bound for the aggregate harm. 13:11:08

Q. What information are you relying on in assuming that her damages are above zero? 13:11:09
A. That she could not access -- the transaction was declined, and she spent time trying to figure out what happened. 13:11:26
Q. Anything else?
A. That's enough to show it's above zero, but suffices -- you asked me what shows it's above zero, and that suffices.
Q. Does it make a difference whether the transaction was properly declined? 13:11:45
MS. HUNSICKER: Objection; outside the scope.
THE WITNESS: I don't even know what -- I can't -- I'm sorry. Ask that again.
What does "properly" mean in this case? 13:12:07
BY MR. LEVENBERG:
Q. The allegation is Moore attempted to use her debit card, the transaction was declined.
Is that right?
A. I know absolutely nothing about this case. 13:12:27
Q. Understood.
A. If these assertions are all true, that this was erroneously declined, then I can say it's positive.
If it's properly, then it's not this 13:12:38

scenario and I can't answer about it anymore. I just -- then it wouldn't be part of this case or class. 13:12:40

I mean, I -- I don't understand the question, I guess, to say how could somebody in this class, if they were properly treated -- I don't understand how to answer. 13:12:52

Q. Well, I think that was a good answer.

MR. LEVENBERG: Let's exhibit the interrogatory response. 13:13:17

(Deposition Exhibit 4 was marked.)

MR. LEVENBERG: Exhibit 4 now, and the complaint was Exhibit 3. Now it's all there for us.

BY MR. LEVENBERG:

Q. Have you seen this before? 13:14:13

A. Very briefly.

Q. When did you see it?

A. Yesterday.

Q. Okay. Did you see any other interrogatory responses yesterday? 13:14:25

A. I believe I saw nine for the named plaintiffs that McCrary's rebuttal report had analyzed.

Q. And this was during your meeting with your attorneys in preparation for your testimony today? 13:14:41

MS. HUNSICKER: Objection. 13:14:44
So don't -- I instruct you not to answer to the extent that it reveals our work product in preparing for the deposition.
But you can answer generally. 13:14:52
THE WITNESS: And can you ask the question again, please?
BY MR. LEVENBERG:
Q. Did you see this while you were meeting with your attorneys? 13:15:00
A. I think I'm not supposed to answer that.
MS. HUNSICKER: You can answer generally if it doesn't reveal sort of the substance of our conversations.
THE WITNESS: Yes. 13:15:11
MR. LEVENBERG: Always a tricky one there. You walked the line just fine.
BY MR. LEVENBERG:
Q. So on page 27, you can start reading Interrogatory No. 14. 13:15:26
[redacted] and you can see the answer on the next page, followed by a supplemental response that continues to the page after that. 13:15:43

Take all the time you need to review that, 13:15:44
and let me know when you're ready.
(Witness reviews document.)
MS. HUNSICKER: Don't write on them.
THE WITNESS: Thank you. 13:16:34
So I should stop at the end of 14?
BY MR. LEVENBERG:
Q. Right. We're not going to talk about 15.
A. Okay.
Q. Unless you want to. 13:17:02
Is any of the information here relevant to whether Ms. Moore is in the vast majority?
A. Yes.
Q. Which pieces of information in here would you consider relevant to that? 13:17:43
A. So, again, my methodology was designed to look at aggregate harm.
I had not looked at the interrogatories of the named plaintiffs because they're a nonrandom sample and a small sample. 13:18:11
When McCrary appeared to be using them as examples of my error, then I did take a look at them.
But this is not -- so what I'm saying now is more as a response to McCrary than the proper 13:18:44

application of my method, [redacted]

I'll stop there.

Q. So am I correct to say that one of the factors that you consider relevant to her damages was that the line on page 29 that says she, [as read] [redacted]

So I realize I just read a lot, but am I correct to say that that was one of the pieces of information that you'd consider relevant to whether she is in the vast majority of people to whom your method applies? 13:21:21

MS. HUNSICKER: Objection; confusing, misstates testimony. 13:21:35

THE WITNESS: So, again, my method wasn't intended to be applied to each of 100,000 people, it would be a conservative estimate for the aggregate harm.

When McCrary was implying that people were not paying the credit card interest rate, thus they had a low opportunity cost, this seemed to show -- it was one of several statements here that, if true, would show meaningful opportunity costs above what McCrary was implying. 13:21:53 13:22:15

BY MR. LEVENBERG:

Q. How can the credit card interest rate be used to measure that opportunity cost?

A. The credit card interest rate is not supposed to measure the opportunity costs for each person. 13:22:36

What I can say is, when I read this and McCrary -- and, again, I wish I had McCrary.

I can't grab McCrary's report to look at exactly what he said? 13:22:54

Q. If it would help, we can show you McCrary's report. 13:22:55

A. I would appreciate that, if you would be so kind.

MR. LEVENBERG: All right. We're going to call it Exhibit 5. 13:23:01

(Deposition Exhibit 5 was marked.)

THE WITNESS: So what McCrary wrote in paragraph 76, "all of the class representatives used savings or borrowing from friends and family to 13:23:50 cover at least some portion of their expenses. These sources of funds would have significantly lower costs than the credit card rate."

Continuing after a few sentences, "the credit card borrowing rate is above the upper bound 13:24:26 of the cost of borrowing for the class representatives."

And continuing that "the named plaintiffs suggest credit card borrowing or any borrowing at a similar or even higher interest rate was not a 13:24:49 primary source of borrowing for many class members."

And the implication was that if they were not borrowing with a high explicit credit card interest rate, that the opportunity cost was low.

And you asked me which of these suggested 13:25:12

the opportunity cost was higher and that the summary of returning to live with a person with whom she had an abusive relationship, late payments, a weakened credit rating, inability to look for a job, all seemed to have a positive opportunity cost. 13:25:15 13:25:56

My method wasn't designed to value each of these separately but is an extraordinarily conservative bound for someone like this.

The interest rate I'm proposing, it's something like $15 a month for the median claim. I don't recall the median claim, but on that order. 13:26:19

And that seems to be -- most people would require more than $15 to return to live with an abusive person or defer looking for work.

BY MR. LEVENBERG: 13:26:55

Q. Is there a connection between the $15 or the credit card interest rate and the harm of being forced to return to living with the person with whom she had an unhealthy relationship?

MS. HUNSICKER: Objection; asked and answered. 13:27:10

THE WITNESS: There's a very strong connection in that I was asked to get a lower bound, and that is much, much lower than what most people would consider that.

So only in the sense that I was asked to 13:27:18

find a lower bound, and it seems to satisfy that requirement. 13:27:20

BY MR. LEVENBERG:

Q. Is there enough information here for you to draw a conclusion about whether Ms. Moore is in the vast majority? 13:27:33

MS. HUNSICKER: Objection; vague, incomplete.

THE WITNESS: Are we assuming all of this is true for this question?

BY MR. LEVENBERG: 13:28:03

Q. If you need to assume it's true, tell me if you need to assume it.

A. If this were all true, she would suffer more harm than that.

Again, my method wasn't designed to go case by case. But I don't know how much her claim was for. I guess you told me that earlier. That was in an earlier thing you showed me and the duration. So I -- without doing some math, I'm a little hesitant to say. 13:28:12 13:28:35

Do you want me to do that math?

Q. You can.

(Pause in proceedings.)

A. Again, I hate to do math real-time, but I think the damages in my credit card rate are 13:29:43

somewhere under $45. 13:29:47

And I don't know where she borrowed the $1,500 from or what the interest rate was. But it seems safe to say that this would have more than $45 worth of damage if my math is correct, yes. 13:30:51

Q. Okay. Let's turn back to the complaint.

The page before the allegations about Ms. Moore, there are allegations about another plaintiff, Kuang Ting Chong. It's on page 80.

Read those, and let me know when you're 13:31:20 ready.

(Pause in proceedings.)

MR. LEVENBERG: For the reporter's benefit, the spelling of that name was K-u-a-n-g, T-i-n-g, and then Chong, three words, C-h-o-n-g. 13:32:08

THE WITNESS: Okay.

BY MR. LEVENBERG:

Q. And I apologize in advance, I'm going to bore you with similar questions.

But is there enough information here for 13:32:40 you to tell whether Mr. Chong is in the vast majority or not?

A. Again, my methodology was not designed to look at each of the 100,000 individually, so the question is somewhat ill posed. 13:33:12

I would not have an opinion based on this. But I'm hesitant to have an opinion based on any amount of evidence. 13:33:16

Q. So there's not enough information here to form an opinion on whether Mr. Chong is in the vast majority? 13:33:29

MS. HUNSICKER: Objection; misstates testimony.

THE WITNESS: The whole methodology was not designed to determine that and this is definitely not enough information. 13:33:47

MR. LEVENBERG: Let's look at the interrogatory responses.

We'll make those -- it's a different document there. Let me give you Mr. Chong's -- and this is going to be Exhibit 6. 13:34:05

(Deposition Exhibit 6 was marked.)

THE WITNESS: Interrogatory 14?

BY MR. LEVENBERG:

Q. Yes, it's the same number. This time it's on page 26, where the Interrogatory No. 14 concerns damages. 13:34:29

And, again, take all the time you need to read the response and the supplemental response.

(Witness reviews document.)

A. Okay. 13:35:57

Q. Is there any information here that would be relevant to determining whether Mr. Chong's damages, if he has any, are above or below that conservative lower bound? 13:35:58

A. The question I was asked was about aggregate harm and was not designed to look at any individual person. 13:36:34

There's -- in the prior case, there was some clear indications of harm. To prove that there wasn't harm would require much more information than is contained here. 13:37:00

Q. What information would you need to form an opinion about whether Mr. Chong is in the vast majority or not?

MS. HUNSICKER: Objection; vague. 13:37:37

THE WITNESS: This morning you asked a related question, who would not be in the class.

It was somebody who did not face any liquidity constraints, did not have high subjective discount rate, was not reducing their spending on hard-to-shift items, was not foregoing repaying a credit card, was not receiving benefits from their savings because it was precautionary savings that permitted them to self-ensure against shocks to their income or expenses, which might have been 13:38:09 13:38:36

amplified by the pandemic. 13:38:39

So we need to know that they were not in those categories.

BY MR. LEVENBERG:

Q. On page 28, near the top, there's a line that says, [redacted] 13:38:57

Is that relevant to computing the opportunity cost incurred by this plaintiff? 13:39:15

A. Yes.

Q. How is it relevant?

A. It meant [redacted]

Q. What information would you need to calculate the opportunity cost of [redacted] 13:39:52

MS. HUNSICKER: Objection; outside the scope, incomplete.

THE WITNESS: Again, my method was designed for the aggregate.

For an individual, you would need to know 13:40:11

that they weren't in any of these other groups. 13:40:14

I don't know -- [redacted]

There's an opportunity cost that's nonfinancial about losing your precautionary savings and having to worry more about running out of money. 13:40:52 You would need to know whether he was reducing any consumption.

There's just a vast amount of information in the other categories I mentioned that this one sentence doesn't tell us about. 13:41:06

BY MR. LEVENBERG:

Q. Is the information here enough for you to form an opinion on whether his opportunity costs are above or below the conservative lower bound?

MS. HUNSICKER: Objection; incomplete 13:41:21 hypothetical.

THE WITNESS: My method was not designed to look at one person at a time, and there's not enough information here to judge.

BY MR. LEVENBERG: 13:41:33

Q. Okay. We can put those away. 13:41:36

MS. HUNSICKER: Can we take a break in the next 10?

MR. LEVENBERG: We can take it now.

MS. HUNSICKER: You want to do it now? 13:41:58

MR. LEVENBERG: Yeah.

MS. HUNSICKER: Take five minutes?

MR. LEVENBERG: Sure.

THE WITNESS: We'll be quick.

THE VIDEOGRAPHER: We're going off the record. 13:42:03 The time is 1:42 p.m.

(Recess taken.)

THE VIDEOGRAPHER: We're back on the record. The time is 1:54 p.m.

MR. LEVENBERG: I've never seen a five-minute 13:54:16 deposition break last five minutes.

THE WITNESS: Before we continue, I want to extend some answers I gave earlier that I realize were incomplete.

BY MR. LEVENBERG: 13:54:30

Q. Please.

A. Let's see . . .

Let's see. My report, paragraph 35, I referred to data on people reporting they had sufficient income to cover an emergency month. And 13:54:53

I mentioned several reasons I thought that might be an overstatement of the true number. 13:54:58

Since I wrote the report, I read reports in the bank experts and one which cited a study by a Professor Stavins, perhaps with a co-author, and 13:55:15 that paper reported that a substantial share of people -- I think about a third, 30 percent -- were optimistic about the amount of money they had in their savings and checking accounts.

And so her data, again, would support that 13:55:37 people who say they have sufficient savings to cover a given payment may be overstating what is actually true. Just an additional reason I hadn't mentioned.

[redacted]

[redacted]

So McCrary referred to these as being low-cost sources of credit -- I forget his exact 13:58:00 words -- and the credit card borrowing rate is instead above the upper bound of the cost of borrowing for the class representatives -- this is McCrary paragraph 76 in Exhibit 5 -- is a misunderstanding of the opportunity cost of 13:58:43 borrowing.

Q. For people who do borrow from friends and family -- and I understand your opinion is that the total cost of borrowing for those might even be greater than the cost of borrowing from a bank; is 13:59:05

that right? 13:59:07

A. If we see them borrowing from a bank and then when they run out of bank credit then turning to friends and family, they're revealing a preference to borrow from a bank since they did that 13:59:18 first, which means that's the lower full cost --

Q. Right.

A. -- the opportunity cost.

Q. Okay. I think I understand your point here. 13:59:27

How would you calculate the total cost of borrowing for those people?

MS. HUNSICKER: Objection; incomplete hypothetical.

THE WITNESS: All I need to know is it's above 13:59:41 the credit card rate. I don't have to say that the credit card rate is a conservative estimate --

BY MR. LEVENBERG:

Q. And you conclude --

A. -- that's what I do. 13:59:51

Q. And you can conclude that it's above the credit card rate because they preferred to pay the credit card rate when they had both options; is that right?

A. Exactly. 14:00:00

Q. Do you know how many people in the class fit into that category? 14:00:02

MS. HUNSICKER: Objection; vague.

THE WITNESS: No.

BY MR. LEVENBERG: 14:00:24

Q. Is there anything else that you wanted to add to your prior answers?

A. No.

Q. Okay. So I was at paragraph 17 of your report. 14:00:48

And it concludes with a statement "that individuals face harm over time when their sources of funds for these expenses are abruptly cut off."

What do you mean here with the phrase "abruptly cut off"? 14:01:07

A. If they think they have a -- an example of that would be if they believe they have funds on a debit card and the funds disappear or diminish.

Q. Is that a term that you would use to describe a situation where the cardholder is still 14:01:45 receiving benefits but has delayed access to a portion of the benefits?

A. Yes, that's what I'm referring to in this.

Q. Okay. So you'd still use the phrase "cut off" to describe that scenario? 14:02:06

A. Yes. 14:02:10

Q. The sentence also discusses your review of the economic literature.

What literature are you referring to there? 14:02:23

MS. HUNSICKER: Objection; vague.

THE WITNESS: I reviewed the literature on the effects -- the theory and effects about unemployment insurance from before COVID and then I focused specifically on the literature of unemployment 14:02:50 insurance, how it operated and its effects during COVID.

BY MR. LEVENBERG:

Q. And what did that literature say about the harm individuals face over time when their sources 14:03:04 of funds or expenses are abruptly cut off?

MS. HUNSICKER: Objection; vague.

THE WITNESS: There's a large literature on the effects of unemployment insurance demonstrating pretty consistently that it helps people smooth 14:03:33 consumption, and so when unemployment insurance benefits end, which is predictable, there are changes in behavior -- I'm sorry, ask the question again. I'm getting distracted by my mind.

BY MR. LEVENBERG: 14:04:21

Q. What did the economic literature you referenced say about the harm individuals face over time when their sources of funds or expenses are abruptly cut off? 14:04:21

A. So the -- most of the pre-COVID literature looked at just having unemployment versus not having, yet often comparing the effects of states with different durations or generosity of unemployment. 14:04:38

And this literature largely found that unemployment insurance is important in helping people maintain their consumption when their incomes decline, and conversely, not having unemployment insurance means that consumption is more variable, people are foregoing expenses they value when their income declines. 14:05:11 14:05:33

During COVID, there were large changes in unemployment insurance generosity as there was a $600 bonus for a short period of time. There was a $300 addition for a longer period of time. 14:05:58

This generosity sometimes varied state by state and, again, studies looked at what happened to consumption when these benefits were started and stopped and found quite large -- there were several studies, there were several changes in benefits, but 14:06:25

they tended to find large effects on things like consumption when benefits changed. 14:06:28

Q. Did any of the studies in that literature address specifically the situation where benefits did not stop entirely but beneficiaries temporarily lost access to a portion of them? 14:06:43

A. Not that I recall.

There were adjacent studies, so some people -- if benefits are -- you have some money and you don't have access to it for a month, but you know you'll get it in a month, that will have a smaller effect than if you lose benefits and you don't know when you'll get them back, or it could be much longer than a month. 14:07:34

So a foreseeable receipt of benefits, economic theory says, should have a smaller effect than a promise for benefits being restored sometime in the indefinite future. 14:07:50

And we saw some people applying for unemployment insurance that they were eligible for and then for fairly arbitrary reasons having it delay until they received them. So this would be a foreseeable increase in benefits. 14:08:11

And consumption increased substantially. And if memory serves, debt repayment, when the 14:08:31

benefits arrived, even though they were predictable, and if people were able to smooth consumption in running down savings and such, then there should not have been a change in consumption when the check actually arrived. But we see a large increase in consumption when this foreseen check arrived. 14:08:41 14:09:00

So the converse of that is, when a check disappears, we expect there to be decline in consumption.

Q. On page -- paragraph 21 rather, you refer to a study that "demonstrates that when individuals experience a loss of income, they incur a cost that is greater than just the loss of income itself, as they are forced either to cut back on consumption and other expenses or turn to alternative sources of replacement funds." 14:09:24 14:09:47

It goes on, but I think that's the important part.

Explain that one to me. I'm not sure I understand how somebody who loses $1,000 in income and then cuts back on consumption -- say they cut back $1,000 in expenses -- has a loss greater than the loss of income. Why isn't that person just net zero? 14:10:01

MS. HUNSICKER: Objection; confusing. 14:10:24

MR. LEVENBERG: Well, I'm confused, so I wonder if he can help me. 14:10:29

THE WITNESS: I think this is written somewhat confusingly, so I'm glad to clarify.

If people -- in the simplest model, people take their lifetime income and they smooth it out evenly over their lifetime. 14:10:48

So if somebody loses -- they're unemployed for some period of time and their income goes down by $5,000, they would not lower consumption that year by $5,000 or $4,000, they would spread it evenly over their remaining lifetime. 14:11:10

So if someone expects to live another 50 years, to make the math easy, they would actually only lower their consumption by -- I'm ignoring uncertainty and interest rates, lots of other things -- by, you know, 100, 200 bucks. 14:11:34

So you've lost -- your lifetime income went down by $5,000 -- your animal income went down by $5,000, so your lifetime consumption is going to go down by the order of $5,000, but your annual consumption goes down by just a few percent of that, maybe 4 percent of that. 14:11:53

So this is what people can do if they're not worried about precautionary savings, they have 14:12:18

lots of access to credit or savings, they don't have a high subjective discount rate, you get this very smooth consumption. 14:12:21

So that's the sense in which -- I could have written this more clearly. It's not just the loss of income itself which they can spread over their whole life, but we see much more dramatic than 4 percent declines in consumption. 14:12:38

And turning to source of replacement funds, in this simple model, the borrowing and lending rates are similar but we see people routinely using high-cost sources of credit, like credit cards, not just running down their savings account. 14:13:05

BY MR. LEVENBERG: 14:13:23

Q. So it sounds like the scenario I posed you're telling me is rare, that if someone incurs a cost -- I should say, if they lose access to $1,000 and they cut back on consumption, it's rare that they would cut down consumption by $1,000. 14:13:44

Is that a fair understanding of what you just told me?

A. No, no, I'm sorry --

MS. HUNSICKER: Objection; misstates testimony.

THE WITNESS: To the contrary. What I was 14:13:52

saying is that the standard economic theory, without liquidity constraints and all these other real-world problems, is what you said, that when income goes down, consumption only goes down a very small share of that. 14:14:05 14:14:23

What we see in reality is that very often consumption declines substantially and that people are not just reducing their savings.

So the contrast is, the bank's experts, Professors McCrary and Stango, have emphasized their reading of the literature is that almost everyone has enough money in the bank that they can maintain their consumption and just run down their savings. 14:15:07

And that's close to this textbook model I was saying where if you had a persistent loss of $1,000, you would smooth it evenly. If you had a transitory loss of $1,000, it disappears now but you know you're getting it back in a month or two or three, then there would be no change in consumption. 14:15:23

And what we see in the data is very, very different from that. That even when there's a predictable gain or loss of unemployment insurance benefits, for example, we see consumption responding. 14:15:42

Whereas McCrary and Stango make it sound 14:15:58

as if people can fund everything out of savings, in which case consumption would -- for transitory loss of ability to access funds would have very, very close to zero effect on consumption. 14:16:03

And during the COVID pandemic, some of the best studies on this looked at both expected increases in unemployment that were very predictable, I just haven't got my check yet, and very predictable ending of benefits, and both of which led to substantial changes in consumption. 14:16:23 14:16:42

BY MR. LEVENBERG:

Q. All right. Bear with me. I think I was able to wrap my head around some of that, but I'm not an economist, I'm just an unfrozen caveman lawyer here. So I do want to understand this a little bit better. 14:17:02

So the scenario I posed where someone temporarily loses access to $1,000 and they are forced to cut back on consumption, and you told me that what I was suggesting -- well, you told me that there was some pattern that happens in the real world in that scenario. 14:17:17

What is the pattern that tends to happen in the real world in terms of cutting back on consumption there? 14:17:33

A. So the evidence from COVID unemployment insurance are for two adjacent questions. They're not exactly that one. 14:17:51

One is, if you know your unemployment insurance is about to run out, and then it runs out, does consumption decline? 14:18:00

And lots of economic theory says, no, it shouldn't. You should be smoothing.

In fact, it does, what we saw under COVID.

The flip side is, if you know you're about to get large unemployment insurance checks, does your spending go up once the checks arrive? 14:18:23

And under certain assumptions -- strong assumptions that Stango and McCrary make, economic theory says consumption shouldn't respond, but, in fact, it did repeatedly to these changes both up and down. 14:18:44

So those are both known changes. Together they sort of correspond to what if you lose a 1,000 and you know you're getting it back in a month or something. If it's uncertain, that's just one more reason for consumption to change. 14:19:05

So that's why I'm confident in saying that part of the cost of not having access to funds would have been reductions in consumption, and that just 14:19:23

looking in the passage I quoted of McCrary talking 14:19:26 about the upper bound of cost of borrowing for the class representatives, that that's a very incomplete characterization of the opportunity cost of not having cost of access to funds because people also 14:19:58 reduced their spending.

And you directed me to the case of, I believe, [redacted]

So there were costly declines in consumption that have a meaningful opportunity cost. 14:20:46 And this claim that the credit card borrowing rate is above the upper bound of the cost of borrowing for the class representatives misunderstands the concept of opportunity cost of not having access to funds is both borrowing and foregone consumption. 14:21:08

Q. Is every cutback -- does every cutback in consumption impose a cost greater than the loss of the income?

A. Ask that again. That's not . . .

Q. So you wrote, "when individuals experience 14:21:36

a loss in income, they incur a cost that is greater than just the loss of the income itself, as they are forced either to cut back on consumption" or something else. 14:21:41

A. That is not a well-written sentence. I apologize. 14:21:53

What it's trying to say is . . .

I apologize for the poorly written sentence.

I was mushing together two ideas there. 14:22:51

One concept is we think of losing $1,000. When we look at the large pre-COVID and some of the post-COVID literature, we see that there are additional costs that arise. Defaults in mortgages and evictions and reductions in medical care can have much higher costs than the initial loss of income. 14:23:55

And even a -- so if we look, just you lost $1,000, that seems like a certain magnitude. If somebody else was evicted or missed medical care, the magnitude of harm could be much higher. Or somebody took a Payday Loan with high interest rates. 14:24:22

Even if there's a transitory -- what I apologize for is this is mixing two concepts next to 14:24:37

each other. 14:24:39

Even if there's a transitory delay in receiving income, there could be some of these persistent harms. And the idea of having a smooth income is exactly to help avoid these large harms 14:25:04 that come from certain forms of cutbacks.

Q. Okay.

A. At the same time -- I didn't make this point in the report but I looked at the bank experts, and they referred to one of the plaintiffs 14:25:26 who canceled his streaming service, which is normally thought of as quite different from, you know, getting evicted or losing healthcare, and I think appropriately so.

But it still has an opportunity cost. And 14:25:47 so to save 30 or $100 a month and in the middle of the pandemic not have access to streaming, what we think is $100 a month -- for a month of my interest rate, I think I said was $1.50 -- it is quite likely that just the transaction cost of canceling and 14:26:17 reinstating your streaming services are more than $1.50, and that's completely ignoring the value of streaming when you're unemployed and there's a pandemic and you can't go to the movies.

So I think this notion that even 14:26:31

transitory sources of delay in receiving income have an opportunity cost is what I'm alluding to here. 14:26:34

This was emphasizing some of the dramatic costs. But even, you know, smaller shocks, obviously, would have very low damages, according to my formula would still be -- my formula would still be a conservative lower bound on the damages. 14:26:58

Q. So there are actually a few things in there I wanted to ask about. But let's talk a little bit about the streaming service example because I think it's a good one. 14:27:16

If someone is choosing to cancel a streaming service as a type of consumption cutback, presumably one of the other options that they had at that time was to keep the streaming service but borrow money from a credit card or otherwise to pay for it; right? 14:27:32

MS. HUNSICKER: Objection; incomplete hypothetical.

THE WITNESS: I have no evidence that's true. 14:27:43

BY MR. LEVENBERG:

Q. Why not?

MS. HUNSICKER: Same objection.

THE WITNESS: A substantial share of Americans don't have a credit card. A substantial share of 14:28:02

unemployed people, of Americans, but a larger share of unemployed people are maxed out on their credit cards. And just as there can be precautionary savings, there could be a precautionary motive not to max out your credit card and to try to reserve some borrowing capacity. 14:28:05 14:28:22

So your conclusion doesn't follow.

BY MR. LEVENBERG:

Q. Is there anyone who would have the ability to pay for a streaming service by borrowing money? 14:28:42

MS. HUNSICKER: Objection; incomplete hypothetical, calls for speculation.

THE WITNESS: Can you ask that again?

BY MR. LEVENBERG:

Q. Is there anybody who would have the ability to borrow money instead of canceling a streaming service? 14:28:54

MS. HUNSICKER: Same objections.

THE WITNESS: Yes.

BY MR. LEVENBERG: 14:29:05

Q. Okay. So if a person has the ability to borrow money instead of canceling the streaming service, is it fair to conclude that they value the streaming service less than the cost of borrowing the money? 14:29:23

MS. HUNSICKER: Objection; incomplete hypothetical. 14:29:24

THE WITNESS: So I spoke extensively this morning about precautionary savings, and maintaining room in your credit card -- your credit limit is an 14:29:33 adjacent idea, and many people value having borrowing capacity, and so that does not follow.

BY MR. LEVENBERG:

Q. I'm not sure I understand why, but let's talk about this a little more. 14:30:07

Option 1 is to keep the streaming service and borrow money to pay for it.

Option 2 is to cut back on consumption and cancel the streaming service and not pay for it.

So you spoke about the value people place 14:30:45 in having borrowing capacity. Why isn't that value accounted for when we're evaluating the value of the option of canceling the streaming service?

MS. HUNSICKER: Objection; confusing.

THE WITNESS: Value accounted for isn't the 14:31:15 language I would use.

Can you ask that again?

BY MR. LEVENBERG:

Q. You say that people value having borrowing capacity; is that correct? 14:31:29

A. Yes. 14:31:31

Q. How would you evaluate -- how would you quantify the value people place on that?

MS. HUNSICKER: Objection; vague.

THE WITNESS: I mean . . . I would have to ponder how to do that. 14:32:25

It's not an important part of . . .

If we see somebody undertaking activities that are costly to avoid borrowing, that suggests that they value the borrowing capacity. That's the general principle. 14:33:47

Applying it to this case is a little bit subtle because my method isn't designed to look at each of the 100-plus thousand case class members. But the general principle is -- would be to see what people are doing to avoid borrowing and if people change their behavior as they get closer to their borrowing limit but are not yet at it. 14:34:04

BY MR. LEVENBERG:

Q. Let me approach it from another way. 14:34:24

I was talking about two options. The first option was keeping the streaming service and borrowing money to pay for it.

And you pointed out, I think very reasonably, that the value of -- that the streaming 14:34:38

service -- having the streaming service in a pandemic situation itself has value. It provides entertainment in a period when you're stuck at home. 14:34:40

Is that a fair statement of what you just told me? 14:34:55

A. Yes.

Q. Okay. So if we're trying to evaluate the total cost of that option, we would account for the physical cost, but the consumer also realizes a benefit, right? 14:35:17

And presumably, they consider that benefit to be worth the cost; is that fair?

MS. HUNSICKER: Objection; confusing.

THE WITNESS: Ask that one more time, please.

BY MR. LEVENBERG: 14:35:33

Q. So in that option, there are costs and benefits, and one of the costs is the cost of borrowing money, and one of the benefits is the benefit of the streaming service; right?

A. Um-hum. 14:35:43

Q. And you would want to account for all of those things in deciding on the value of that option; is that fair?

A. You being the decision maker here or me being the economist? 14:36:00

Q. Well, both. 14:36:01
I realize most decision makers aren't as rational as economists. But if you were assessing the value of that option, you would assess both the costs and the benefits; right? 14:36:19
A. Yes.
Q. So could you -- or would you conclude that someone who has chosen to pay money to keep the streaming service has revealed a preference that this -- the benefit of the streaming service is 14:36:37 worth more to them than the cost?
MS. HUNSICKER: Objection; calls for speculation.
THE WITNESS: The full cost being the loss of services and the transaction cost to cancel and 14:36:53 restart it and so forth, yes.
BY MR. LEVENBERG:
Q. And then there was another option of cutting back on consumption and canceling the streaming service. 14:37:09
Someone who chooses that option would lose out on the benefits of the streaming service, but they are actually gaining another benefit that you mentioned earlier, right?
They're gaining the benefit of having more 14:37:21

borrowing capacity because they don't like to max out their borrowing capacity. 14:37:24

Am I right about that?

A. You had told me earlier to assume they had borrowing capacity, yeah. So then they would be maintaining their borrowing capacity, yeah. 14:37:34

Q. And that itself is a benefit as well; right?

A. Yes.

Q. That's your opinion? 14:37:44

So -- but rational consumer or a rational economist choosing between both of those options would consider all of those costs and all of those benefits in choosing one option over another one; right? 14:38:04

A. Yes.

Q. So if the person chooses to keep the streaming service and borrow money to pay for it, is it fair to conclude that they valued all those costs and benefits higher than they valued the benefits of canceling the service and realizing all the benefits of the higher borrowing capacity? 14:38:21

MS. HUNSICKER: Objection; calls for speculation.

THE WITNESS: There may be parts of this 14:38:53

hypothetical that I'm not following, but I believe what you're saying is correct, yes. 14:38:56

BY MR. LEVENBERG:

Q. Okay. Okay. I know that was dense, but I think I understand now. 14:39:04

Same paragraph, the next page, still on paragraph 21, and the next sentence after the one we were talking about, you list other consequences of being denied UI.

And we actually talked about that phrase "denied" earlier. Denied is -- is that still the phrase you would use or would you use a different phrase? 14:39:34

A. So most of the studies in this section -- in this paragraph are looking at unemployment insurance prior to COVID, so they're not about -- they're about having access to UI. 14:40:02

Q. Okay. So the consequence listed there, or one of the consequences, is default on mortgage.

And there's a discussion in the McCrary report about that in paragraph 36 where he points out that during the COVID period there was widespread mortgage forbearance. 14:40:23

So I guess my question is, is this consequence that a default on -- is the scenario 14:40:50

where a default on mortgage is a consequence of 14:40:55 being denied UI, is that a conclusion that you consider generally applicable to the COVID UI benefits?

MS. HUNSICKER: Objection; vague. 14:41:07

THE WITNESS: Can you ask that again?

I'm sorry, I was reading.

BY MR. LEVENBERG:

Q. Well, let me ask it more simply.

Is a default on mortgage a consequence 14:41:19 that you think happens as a result of temporarily losing access to a portion of UI benefits?

MS. HUNSICKER: Objection; calls for speculation.

THE WITNESS: I'll answer in a few different 14:41:54 ways.

Partly, the answer is going to depend on the size and duration of lost access to UI. And so in the scenario that we discussed of $100 for a month or $1,000 for three days would be very 14:42:32 different for some of the larger and longer delays.

There also were, as the McCrary report emphasized, a number of programs to reduce evictions and mortgage defaults, but not all of these would be helpful in the short run. 14:43:17

Many of them required an application process that was long and complicated, and even knowing their existence that was relevant to you was not always trivial, particularly for people with poor English skills or less education. 14:43:19 14:43:43

And there was a study I didn't cite but I had seen after I saw the McCrary report that emphasized the challenges of accessing these programs, and take up was far below 100 percent.

And then because these programs were complex and not always familiar, we can't assume that -- I shouldn't have said "finally" because I'll have a fourth point. 14:44:10

Thirdly, but, ultimately, we can't assume that people were aware of them, meaning that some would have made payments even if those were relatively low-cost loans they could have accessed with the sense that a mortgage or a rent payment that wasn't paid would accumulate as a low-cost loan, which was sometimes the case depending on the program. 14:44:45 14:45:10

And I think, finally, many people are concerned about going further into debt. This, again, goes back to this idea of precautionary savings that I've emphasized as during a pandemic, 14:45:28

when income and needs are very uncertain, it makes sense for many households to think they don't want to increase their debt and instead cut back on consumption instead of failing to pay rent or mortgage, even if that was a potential low-cost source of credit. 14:45:32 14:45:50

So the relation between unemployment and eviction or default was definitely weakened because of these programs, but that doesn't mean that these programs made it easy for everybody to manage UI funds that they lost access to. 14:46:11

BY MR. LEVENBERG:

Q. Do you have any information on how many class members suffered the consequences of a mortgage default as a result of being denied UI? 14:46:25

A. No.

(Discussion off the record.)

BY MR. LEVENBERG:

Q. I got just a few quick items here, not done yet, but we can get through these a little faster. 14:47:27

Paragraph 30, your opinion is "A compound interest rate is an appropriate way to measure this opportunity cost because it can be applied to the principal amount of funds withheld and the length of 14:47:40

time benefits were delayed, which represented the costs incurred over time as the affected individuals either paid to avoid or incurred these harms." 14:47:43

So my question there is, the reference to the "length of time benefits were delayed," what period are you talking about? 14:48:01

Are you referring to the entire period between -- well, you tell me. How do you measure the length of time benefits were delayed?

MS. HUNSICKER: Objection; outside the scope. 14:48:19

MR. LEVENBERG: It's right in the report.

THE WITNESS: For most of the classes, there were funds on the debit card that were frozen or disappeared and then reappeared.

For the -- I believe the account freeze class -- let me just check the name of it. I'm sorry. 14:48:49

Yeah, the account freeze class, my understanding is that the cards were blocked from receiving additional deposits. And so it's unclear to me how long it took for the state EDD to determine the card was blocked and establish systems to send paper checks. So that amount of time, it would be until the checks arrived and were cashed or deposited. 14:49:18 14:49:46

And -- but the other ones, I think it's just how long the block was -- from when they rescinded credit to when they reinstated it or how long between the bank denied until when they added back in the money they owed. 14:49:48 14:50:13

BY MR. LEVENBERG:

Q. Do you consider it relevant how long the period was that consumers actually accessed credit?

MS. HUNSICKER: Objection; confusing.

THE WITNESS: I don't understand that. 14:50:29

BY MR. LEVENBERG:

Q. So, for example, if someone lost access to funds for a month but didn't need to borrow money as a result for another -- until three weeks into that, are you treating that last week as the period in which they're entitled to recover the credit card interest rate or are you measuring it by the whole month? 14:50:43

MS. HUNSICKER: Objection; confusing.

THE WITNESS: I'm going to ask you to ask that one more time. I'm sorry. 14:51:00

I think I understood, but I'm not sure.

BY MR. LEVENBERG:

Q. Yeah. So the question really is about whether we're measuring the benefits or the access 14:51:07

to credit. 14:51:11

So my example was, if a consumer is without access to a portion of their benefits for a month but there's only a week of that month in which they borrowed funds, what period of time do you apply your credit card interest rate method to, the week or the entire month? 14:51:24

A. The month.

Q. Okay. And why is that?

A. So my method is designed to estimate a conservative lower bound of the costs that class members in aggregate suffered and that would apply to the vast majority of them, the typical plus many more. 14:52:07

It's not designed to talk about any particular person or any particular week. 14:52:25

That's not the question it's answering.

Q. Why is the month the lower bound and not the week?

A. I would just repeat my prior answer word for word. 14:53:09

Maybe I didn't understand the question. I'm sorry, I didn't mean to be flippant.

Q. No, that's fine.

Why is a month's worth of interest 14:53:31

payments a conservative lower bound as applied to 14:53:36
someone who only made those interest payments for a week?

MS. HUNSICKER: Objection; misstates the report. 14:53:52

THE WITNESS: My analysis is not discussing the harm of each of 100,000-plus people. It's saying that if you use this method, the bank will be paying less than the aggregate harm and at a rate that is below what the typical person would suffer harm due 14:54:14
to the fact they didn't have access to funds.

So asking me about each individual person is just something that's not addressed -- my report is not addressed -- designed to address.

BY MR. LEVENBERG: 14:54:37

Q. Well, here my question is not about any individual person, rather --

A. I thought you just told me -- I'm sorry, to interrupt.

I thought you told me this person, if 14:54:46
there was this person, why would this be the right rate. And I thought was what your question --

Q. Well, I think this is -- this is the rate you're applying to the aggregate, to all of the persons, the aggregate period of time in which 14:54:56

access to funds was delayed. 14:55:00

Is that wrong?

A. Okay. You may have to break because I'm getting confused and I just may need more coffee.

Ask that one more time. If I don't 14:55:17 understand, maybe we'll break.

Q. I'm asking about the rate you were applying in the aggregate.

The aggregate is the aggregate period of time in which access to funds was delayed for 14:55:26 everybody, not just for one person but for everybody; right?

A. That wouldn't be how I would phrase it, not just for one person, including each of the one persons to create the aggregate. 14:55:46

Q. Right. Yeah. I think we're on the same page on that.

A. I'm sorry.

Q. Okay. So there's one number, which is basically a number of days that funds were delayed 14:55:57 in the aggregate; right?

A. I'm sorry, I was unclear.

People had different amounts of delay --

Q. Right.

A. -- so to generate -- it's not you take the 14:56:17

aggregate number of days and the aggregate dollar amount, you take each person's delay times dollar amount. 14:56:20

Q. Right.

A. So you don't sum up days, you sum up dollar days to create the -- yeah -- aggregate amount of days or years' worth of thousands or millions of whatever funds the bank owed that it had removed or not added or not permitted the State to add to various debit cards. 14:56:29 14:56:52

Okay. Are we saying the same thing?

Q. Yes.

A. Okay. So it's not aggregate days, it's aggregate days and dollars.

Q. So your method, what you're proposing, is you sum up the dollar days for each person during the period that they lacked access to the funds and then you apply your 15.9 percent interest to that; correct? 14:57:07

A. Yes. 14:57:27

Q. Okay. But you could also sum up the days a different way.

You could say that instead of measuring all of the days they were without access to funds, we'll measure all of the days in which they were 14:57:42

paying an actual interest rate. 14:57:47

That number exists conceptually, does it not?

MS. HUNSICKER: Objection; outside of the scope of the report. 14:57:59

THE WITNESS: This morning I mentioned borrowing, reducing consumption, failing to repay credit cards or other high-interest debt, transaction costs, subjective discount rates, precautionary motives. 14:58:23

So you're emphasizing just the borrowing rate, but I said there's a lot of different dimensions --

BY MR. LEVENBERG:

Q. Right. 14:58:31

A. -- of harm.

Q. Understood.

A. So just looking at when they started borrowing would be an extreme misunderstanding of the notion of opportunity costs. It's all 14:58:38 dimensions of opportunity costs of not having access to funds.

Q. Okay. I understand that your opinion is that doing so would undercount their damages; is that correct? 14:58:48

A. Extremely, yes. 14:58:51

Q. Okay. So that gets back to my original question. If someone paid credit card interest for a week but you are compensating them with credit card interest for a month, how do you know that you 14:59:05 are undercounting their damages?

MS. HUNSICKER: Objection; confusing.

THE WITNESS: My method wasn't intended to go person by person, so that's not a relevant question. And if I don't know all these other dimensions about 14:59:23 reducing consumption or transaction costs or the value of precautionary savings, then it's not a well-posed question.

BY MR. LEVENBERG:

Q. So for that person, do we know that their 14:59:40 damages are undercounted or is it just a possibility?

MS. HUNSICKER: Objection; incomplete hypothetical, calls for speculation.

THE WITNESS: If we know -- my method is not 14:59:55 designed for an individual, then we say --

(Reporter seeks clarification.)

THE WITNESS: My method was not designed for an individual.

If we try to apply it for an individual 15:00:13

and have very little information about them, that's going to amplify the inapplicability, and it's just a poorly posed question. 15:00:15

BY MR. LEVENBERG:

Q. Well, I don't think it is. I don't think -- I don't think it's productive to get bogged down in talking about this as if it's a question about an individual because I could pose the same question about a thousand individuals. 15:00:29

There's a class of thousands of people for whom they were without access to funds for a certain period and paid credit card interest for a substantially shorter period than that. 15:00:44

MS. HUNSICKER: Objection to form.

BY MR. LEVENBERG: 15:01:01

Q. Is it your opinion that that's not the case?

MS. HUNSICKER: Objection; calls for speculation.

THE WITNESS: There's not enough information there for me to give a meaningful answer. I'm sorry. 15:01:23

I'm not trying to be trouble making. You just asked me a question to which the answer is -- it's just not well-posed for -- 15:01:38

BY MR. LEVENBERG: 15:01:43

Q. Well --

A. -- the situation, and I'm -- you're correct, it's not about an individual, but if you told me all class members were this way, I'd say, 15:01:46 you know, that's a different situation than I -- you know -- different situation I haven't thought much about. So I'll try to be responsive.

Can you reask the question again? I think that -- 15:02:13

MS. HUNSICKER: Can we have a coffee break when you're done with this question?

MR. LEVENBERG: Maybe two or three more questions and then let's break.

MS. HUNSICKER: Thank you. 15:02:19

BY MR. LEVENBERG:

Q. You don't have any information about how many class members paid credit card interest though, do you?

MS. HUNSICKER: Objection; asked and answered. 15:02:27

THE WITNESS: No.

BY MR. LEVENBERG:

Q. So we also don't have any information about the periods in which class members paid credit card interest, do we? 15:02:43

A. If the "we" includes Bank of America, I have no idea how much information they have, but I do not. 15:02:46

Q. Okay. That's fine.

MR. LEVENBERG: All right. We can take that break. 15:02:54

THE VIDEOGRAPHER: We're going off the record. The time is 3:02 p.m.

(Recess taken.)

THE VIDEOGRAPHER: We're back on the record. The time is 3:19 p.m. 15:19:43

BY MR. LEVENBERG:

Q. Okay. I'm going to fast forward to part three of your report.

Looking at paragraph 47, your opinion is, "I understand that the Customer Service Class is seeking damages for time spent on hold with the Bank's Claims call center." 15:20:07

Is it your opinion that class members were damaged by all of the time they spent on hold? 15:20:22

MS. HUNSICKER: Objection; vague.

THE WITNESS: This is actually poorly written.

It should have said excess time on hold or excesses compared to some measure of normal time on hold. 15:20:44

BY MR. LEVENBERG: 15:20:44

Q. Do you have any opinion on what would qualify as an excess time?

MS. HUNSICKER: Objection; outside the scope.

MR. LEVENBERG: That's what I'm trying to 15:20:51 figure out.

THE WITNESS: Conceptually, beyond normal. But I don't have anything beyond that concept.

BY MR. LEVENBERG:

Q. Did you form an opinion about the total 15:21:09 amount of damages for the value of lost time for the customer service class?

MS. HUNSICKER: Objection; beyond the scope.

THE WITNESS: No, I did not.

BY MR. LEVENBERG: 15:21:26

Q. And in order to measure the damages, you would need some measure of excess hold time; correct?

A. One would need, not you in the sense of me -- 15:21:40

Q. Right.

A. -- but yes.

Q. And is it your understanding that plaintiffs are relying on other experts for computing that value? 15:21:47

A. I'm unsure how they're computing that. I don't know what data they have or experents. 15:21:55

Q. Okay. The next paragraph, you refer to several studies that have found that the typical value of time is close to the median wage. 15:22:08

What does that mean exactly? Does it mean the typical value of time for everybody, is that the median wage, or does it mean that the typical -- or does it mean that the value of everyone's time is at their own wage, so across a group value is the median? 15:22:28

MS. HUNSICKER: Objection; confusing.

THE WITNESS: Plaintiffs' attorneys asked me to pick a measure of the value of lost time that would be a conservative measure for the class as a whole. 15:22:48

When economists estimate this value of time, they sometimes estimate an aggregate number and they sometimes disaggregate it relative to an individual or a group's own wages.

And the relationship is pretty consistent in both methods, that economic theory says that, you know, if somebody is willing to take a wage to work 40 hours, that the value of their 40 hours is somewhat close to that wage or -- and that's roughly what we see depending on what the alternative use of 15:23:15 15:23:53

time is. 15:23:56

So for commuting, it's often somewhat less than the median wage. When you're commuting and stuck in traffic, it's higher than the median wage or above. When it's unproductive and stressful, if 15:24:14 you're in an airport and your flight is delayed, then it's quite a bit higher in the one study I saw that looked at that.

But across regions and across study methods, it's pretty consistently a bit below the 15:24:37 median wage for commuting and above for unpleasant commuting or things like that.

BY MR. LEVENBERG:

Q. Does it depend on a person's actual wage?

A. The disaggregated studies often find that 15:25:04 it moves not quite one for one but is higher for people with higher wages.

Again, that was why I chose to -- the plaintiffs' attorneys asked me to find a conservative measure that would, in aggregate, be 15:25:24 generous to the bank, lower than the average, and also be applied at a vast majority of the class members, which is what I did.

Q. So just to be clear, when we are talking about the studies that have found that the typical 15:25:45

value of time is close to the median wage, that would include some people for whom it's higher than the median wage and some people for whom it's lower than the median wage; is that correct? 15:25:48
A. Ask that again. I'm sorry. 15:26:03
Q. So when we're talking about these studies that have found that the typical time is close to the median wage, I assume that's for a group of people and not for just one person; right?
A. I'm sorry, ask it one more time. I'll get it right this time. 15:26:17
Q. When we're talking about these studies that have found that the typical value of time is close to the median wage, is that the value of time for one person or the value of time for a group of people? 15:26:35
A. It depends on the study.
The regularity holds, but some studies looking at the individual wage and willingness -- value of time wouldn't use median. 15:27:04
When I aggregated these studies, some of them use absolute dollar amounts, or if they're from England or Great Britain, United Kingdom, British pounds -- pardon me -- not all of them expressed results in wage units if they said it was so many 15:27:28

dollars, but I then converted into U.S. dollars adjusted for -- and then found data on median wages in that time and place and compared them. 15:27:31

But some of them were aggregate studies that delivered a single number. Some of them had more disaggregated results by earnings. 15:27:52

The aggregate results tend to be close to the median wage, you know, depending on the alternative activity. And the disaggregated studies tend to find that people with higher earnings have higher value of time. 15:28:10

Importantly, people with no earnings still have positive value of time, right? If someone has $100 million in the bank and is retired, they're not earning any money with their time but they are still willing to pay quite a lot to avoid hassles and they spend large amounts on a butler, so I've read about, that's not part of my expertise, but they still have a value of time. 15:28:29

And similarly, someone who is full time taking care of children has a value of time even if that person isn't earning money. And an unemployed person has a value of time. 15:28:47

Economists tend to use, what we call, the reservation wage, which would be something like the 15:29:03

answer to if you had a job offer in your field, how much would it need to pay for you to accept the job is one way to measure that in surveys. 15:29:06

And unemployed people rarely give the answer of, you know, 50 cents or whatever. If they had zero value of their time, they would take any job. 15:29:21

So when I was reading McCrary's report, he referenced some Federal Reserve data, and that dataset included some information on reservation wages, and the reservation wages for Californians were -- who were unemployed were quite a bit above the minimum wage that I posit here. 15:29:43

This reservation wage, again, is what an unemployed person would need to be offered to accept a job. And these survey responses are not perfect predictors of people's behavior but they have a lot of information. 15:30:04

Q. So one of the things you said there was "aggregate results tend to be close to the median wage." 15:30:18

Does that mean that everybody in the aggregate values their time at the median wage or does it mean that the aggregate includes some people who value their time above the median and some 15:30:29

people who value their time below the median? 15:30:33
A. Normally, the latter. Some of that variation is measurement error, and so the integration of individual responses may be greater than reality for things like surveys. 15:30:50
Q. Are you aware of any prior scenarios in which the value of lost time was measured for purposes of a damages analysis?
MS. HUNSICKER: Objection; vague.
THE WITNESS: None come to mind. I don't know 15:31:56 very much about damages analysis. I'm a professor, not a lawyer.
BY MR. LEVENBERG:
Q. Is it your opinion in this case that the value of lost time is relevant to a damages 15:32:13 analysis?
MS. HUNSICKER: Objection; calls for a legal conclusion.
THE WITNESS: I mean, to repeat, I'm not a lawyer. 15:32:24
As an economist who thinks about opportunity cost, it is appropriate, but I have no idea what the law is in this case.
BY MR. LEVENBERG:
Q. Are any of the publications of yours that 15:32:38

you list in Appendix A, do any of those concern the value of lost time? 15:32:44

A. That's a fine question.

(Witness reviews document.)

A. No. 15:33:29

Q. Do any of the publications of yours that you list in Exhibit A concern measures of the opportunity costs of being deprived access to benefits?

A. The underlying theory, as I discuss, about subjective discount rates, transaction costs, liquidity constraints are -- underlie a number of my publications. 15:34:16

Q. Do any of those concern access to benefits specifically? 15:34:41

A. I don't believe so, but there's always a possibility.

No.

Q. Can you tell me what you did to prepare for your testimony today? 15:35:03

MS. HUNSICKER: Objection; vague.

THE WITNESS: Let's see, I read the rebuttal reports by Professors Stango and McCrary and looked at some of the publications they cited.

I mentioned the Stavins article and the 15:35:27

Federal Reserve data that led me to the reservation wage data. 15:35:36

I had a Zoom meeting and an in-person meeting with plaintiff attorneys to discuss some questions and practice answers and go over the rules of a deposition. 15:35:54

I probably read some additional literature on some of the points that Stango had -- not probably. I read some literature on some of the points that McCrary and Stango mentioned. 15:36:30

I looked briefly at the interrogatories of the named plaintiffs that McCrary had alluded to and summarized in -- as we discussed.

I looked at some of McCrary's tables. As I mentioned, I think he had a table he got from Regan on the class members. I looked at that briefly. 15:37:09

Let's see, I practiced explaining opportunity costs in Chat GPT and got feedback on that explanation. 15:37:43

BY MR. LEVENBERG:

Q. That was smart. That was like my second question.

A. Actually, opportunity costs, value of time I practiced explaining to the AI. 15:37:59

That's what I remember. 15:38:15

Q. And it's two meetings that you said you had, one in person and one on Zoom?

A. Yeah. There may have been brief -- there probably was another phone call or Zoom that was 15:38:25 brief, but there were two that were more than two hours.

Q. Who was at those meetings?

A. Caroline and Connie. One might have been just with Caroline. The in-person meeting was with 15:38:43 both.

Q. Anybody else?

A. I don't think so.

Q. Did you have any assistance in writing your report? 15:39:01

A. Yes.

Q. Who provided that assistance?

A. I had two research assistants.

I mean, they didn't assist in writing, they assisted in preparing the report. 15:39:17

Q. And who are they?

A. Doug Hirsch, H-i-r-s-c-h.

And I can give you the spelling, but Zhou Shawn Zhong. And I can't spell his last name. The first name is Z-h-o-u, and he goes by Shawn, 15:39:41

S-h-a-w-n. And I would have to look up his last name. 15:39:47

Q. Did anybody else assist you in any way?

A. Caroline helped shorten the report, and people in her office formatted it. 15:40:00

Q. The research assistants that you mentioned, are they students of yours?

A. No.

Q. Were they paid?

A. Yes. 15:40:13

Q. Who paid them?

A. Me, but I charged the plaintiffs' attorneys.

Q. Right.

How much did you pay them for their work on the case? 15:40:25

A. I don't know. I mean, I don't recall.

Q. How much have you been paid for your work on the case?

A. I hate to ever say anything without looking at notes, but I think around $40,000. And there's another bill yet to be turned in, but that could be quite far off. 15:40:46

If that's important, I will e-mail you an updated figure. 15:41:13

Q. Somebody else can figure out how important that is to them. 15:41:14

Are there any opinions in your report sitting here today that you would revise or change in any way? 15:41:23

A. I mean, there's definitely wording and line editing I would do, but no, there are no substantive opinions.

You know, in paragraph 47, I should have said excess waiting time and so forth. So there's poorly worded sentences, but there are no opinions that I would change. 15:41:39

Q. Are there any additional opinions that you would express in this case that aren't contained in this report? 15:41:52

A. No.

Q. Do you have any plans to supplement this report?

A. I don't even know what that means.

Q. Do you have any plans to make any changes or additions to the report? 15:42:15

A. No.

I'll have to caution that I didn't know that was possible. If there's a possibility, I would definitely do some line editing. 15:42:32

Q. Other than line editing, are there any changes or additions you would make? 15:42:35

A. Yeah, I should say, I mentioned a couple of cases where after reading McCrary and Stango, you know, the Stavins citation on imperfect recall, that 15:42:47 people were optimistic on how much they were saving, and the Federal Reserve data on reservation wages were both things I found in pursuing what they -- the sources that they cited, and I would mention those. 15:43:12

Q. Is there anything else you would add or change?

A. I think some of the wording I used on describing the Pulse Survey, the 66 percent, was literally Stango's words, in which case there should 15:43:27 have been quotation marks, and I feel bad about that.

But I'm not sure of that. But it looked awfully similar to what he wrote. So it's definitely paraphrasing, maybe a quote, and I should 15:43:40 have cited that.

Q. Anything else?

A. No.

MR. LEVENBERG: All right. I think I am probably done. 15:43:56

Am I done? 15:43:57

MS. BRYS: I think you're done.

MR. LEVENBERG: Do you have anything?

If you want to take a break, that's fine, too. 15:44:07

MS. HUNSICKER: I don't have any questions.

MR. LEVENBERG: All right.

Well, thank you very much, sir.

THE VIDEOGRAPHER: Can I get video orders on the record? 15:44:21

MR. LEVENBERG: Yeah, we'll order the transcript.

The way I like them -- I don't know if you can do this -- but like where the exhibit reference is, if you can like hyperlink the exhibit in the 15:44:32 transcript and then you click on it and it's embedded in the PDF, that would be perfect.

And I don't need a hard copy, just the PDF is fine.

And we don't need to rush it either, just 15:44:43 regular turnaround.

MS. HUNSICKER: I think we have a standing order for transcripts.

THE VIDEOGRAPHER: And video order.

MS. BRYS: We'll take the video but not synced. 15:44:54

THE VIDEOGRAPHER: We're going off the record. 15:44:59
The time is 3:45 p.m.

(Whereupon, the proceedings were concluded
at 3:45 p.m.)

---oOo--- 15:45:02

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were administered an oath; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript (X) was ( ) was not requested.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: June 11, 2025

Anrae Wimberley

ANRAE WIMBERLEY, CSR No. 7778

I declare under penalty of perjury that the foregoing is true and correct. Subscribed at ______________, _______________, this______day of ______________, 20___.

____

DAVID I. LEVINE, PH.D.

Caroline Hunsicker
chunsicker@altshulerberzon.com

June 11, 2025

RE: Bank Of America California Unemployment Benefits Litigation

5/28/2025, David I. Levine, Ph.D., (#7309212).

The above-referenced transcript has been completed by Veritext Legal Solutions and review of the transcript is being handled as follows:

__ Per CA State Code (CCP 2025.520 (a)-(e)) – Contact Veritext to schedule a time to review the original transcript at a Veritext office.

__ Per CA State Code (CCP 2025.520 (a)-(e)) – Locked .PDF Transcript - The witness should review the transcript and make any necessary corrections on the errata pages included below, notating the page and line number of the corrections. The witness should then sign and date the errata and penalty of perjury pages and return the completed pages to all appearing counsel within the period of time determined at the deposition or provided by the Code of Civil Procedure. Contact Veritext when the sealed original is required.

__ Waiving the CA Code of Civil Procedure per Stipulation of Counsel - Original transcript to be released for signature as determined at the deposition.

__ Signature Waived – Reading & Signature was waived at the time of the deposition.

_X_ Federal R&S Requested (FRCP 30(e)(1)(B)) – Locked .PDF Transcript - The witness should review the transcript and make any necessary corrections on the errata pages included below, notating the page and line number of the corrections. The witness should then sign and date the errata and penalty of perjury pages and return the completed pages to all appearing counsel within the period of time determined at the deposition or provided by the Federal Rules.

__ Federal R&S Not Requested - Reading & Signature was not requested before the completion of the deposition.

Bank Of America California Unemployment Benefits Litigation

David I. Levine, Ph.D. (#7309212)

E R R A T A S H E E T

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(David I. Levine, Ph.D.)   Date

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.