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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

IN RE BANK OF AMERICA CALIFORNIA UNEMPLOYMENT BENEFITS LITIGATION	) Case No. 21-MD-02992 LAB-MSB
This Document Relates to All Actions	)

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Monday, May 19, 2025
San Francisco, California

Stenographically Reported By:
Hanna Kim, CLR, CSR No. 13083
Job No. 7289038

BY MR. RIFFEE:

Q. Did you review the circumstances of any of the particular plaintiffs or proposed class members to assess whether they actually were harmed in that amount, that they actually incurred a 20 percent APR 11:03:21 or -- or similar interest rate?

MS. CHAN: Objection.

THE WITNESS: No. My objective was to develop an understanding of the class and identify the harms that -- that I observed and those harms 11:03:34 that were alleged, and attempt to quantify that harm on -- on a class-wide basis so that damages could be reasonably measured in the aggregate. And doing that at the individual level, I concluded, would not yield a result that could be reasonably 11:03:56 extrapolated. So my -- my objective was to look at the class as a whole and attempt to identify a method to measure damages on a class-wide basis?

BY MR. RIFFEE:

Q. In any of those cases, did you review on 11:04:10 an individual level or a sample to assess whether, in fact, any persons in -- in your proposed classes, or plaintiffs, actually incurred borrowing costs at -- at a -- at that interest rate or at a similar interest rate? 11:04:26

MS. CHAN: Objection.
THE WITNESS: Do you mind just reading the question back? I just lost when you were reading. Sorry.
BY MR. RIFFEE: 11:04:34
Q. Sure.
In any of those cases, did you review --
A. You can ask a different question.
Q. Sure. Yeah, no.
In any of those cases, did you review any 11:04:47 information concerning the actual plaintiffs or a sample of the actual plaintiffs or proposed classes to see -- to check your work to see if they actually did appear to have incurred borrowing costs at or near the -- the interest rate that you were using to 11:05:04 calculate your damages at the 20 -- for example, a 20 percent APR?
MS. CHAN: Objection. Compound, assumes facts.
THE WITNESS: Every case is unique, and so 11:05:18 certain instances lend themselves -- for example, a small group of plaintiffs or a individual plaintiff or company, then that type of analysis is possible; where here, a large group of plaintiffs exist, the approach that I performed was to analyze the most 11:05:37

common harm and attempt to identify a cost that most
reason- -- reasonably captured that harm.
BY MR. RIFFEE:
Q. In past cases where you've used a compound
interest rate to assess potential borrowing costs, 11:05:57
was there ever an instance where you didn't review
information concerning your proposed class or set of
plaintiffs to -- sorry -- to verify that some of
them actually incurred the borrowing costs that you
were assuming in your methodology? 11:06:18
MS. CHAN: Objection. Vague. Compound.
THE WITNESS: I -- I'm certain there have
been. I think that what I attempted to do in this
instance was to identify attributes of the consumers
and develop an understanding of common economic 11:06:36
circumstances confronting that type of consumer at
the particular time at issue, and associate that
with the process to identify the interest rate I
used to measure the harm.
BY MR. RIFFEE: 11:06:56
Q. Okay. In this case, you don't know
whether any particular class member actually
incurred the -- the 20 percent APR interest that you
calculate in your methodologies; correct?
MS. CHAN: Objection. 11:07:11

THE WITNESS: I believe the -- given the nature of the class, that it -- that type of harm was -- was incurred by individual consumers. And that conclusion's consistent with Dr. East and Dr. Levine's findings. 11:07:25

BY MR. RIFFEE:

Q. Have you reviewed any evidence to confirm that even one single proposed class member actually themselves incurred interest at, at least a 20 percent interest rate? 11:07:36

MS. CHAN: Objection.

THE WITNESS: It's my expectation that there are consumers that experience costs that exceed that. The objective of illustrating my analysis using a 20 percent rate was to identify a 11:07:49 median type of harm that was incurred by consumers and measure it in that -- in that way.

BY MR. RIFFEE:

Q. That wasn't -- that wasn't my question.

So I understand that's your expectation, 11:08:03 but did you review any evidence to confirm that anyone actually did -- in the proposed classes or any of the -- the class plaintiffs actually incurred borrowing costs at a 20 percent interest rate or higher? 11:08:16

MS. CHAN: Objection. Vague.

THE WITNESS: I did not do it at an individual level because I didn't have data to indicate that that outcome would be reasonably extracted to the population as a whole. So what I did was to develop my understanding of the overall population of consumers. 11:08:35

BY MR. RIFFEE:

Q. And that was based on your research and -- and information generally, but not specific to the -- the actual class members; correct? 11:08:45

MS. CHAN: Objection.

THE WITNESS: It was my research regarding the typical type of harm incurred by members of the proposed class. 11:08:58

BY MR. RIFFEE:

Q. Have you ever been retained, prior to this case, to calculate damages concerning the denial of unauthorized transaction claims?

A. I -- I don't believe so. 11:09:09

Q. Have you ever been retained to calculate damages concerning an account freeze or similar restriction placed on a financial account that prevented an accountholder from accessing the funds in that account? 11:09:41

hear you, Counsel.

MS. CHAN: Sorry. Confusing.

THE WITNESS: I think I understand your question. But I'm implementing, through the bank's data, my understanding of the allegation. So as -- I'm not opining about the nature of the conduct. 11:51:15

BY MR. RIFFEE:

Q. Sure.

A. But I am applying my understanding of the conduct to do the analysis. 11:51:27

Q. Thank you. That -- that was my -- the intent of my question. Thank you.

And your -- the damages, methodologies -- or at least the damages sought -- your understanding of the damages sought, that's described in the table that you have here on page 4 and 5? 11:51:42

A. Yes.

Q. And if you could turn back to -- I guess it's all on page 3. At the top of page 3, there's a chart. This is your understanding of the proposed class definitions in this case; right? 11:52:05

A. Yes.

Q. Did you have any input into how these five proposed classes would be defined?

A. I don't know if I can answer that question 11:52:16

other than responding to data-related questions as to what was available on -- on given dates.

Q. Are you relying entirely on counsel for these definitions?

A. I am. 11:52:40

Q. Did you have any input into who would be included in each proposed class, other than reviewing and -- and conducting data analysis based on the data provided to you from Bank of America?

MS. CHAN: Objection. Ambiguous. 11:52:58

THE WITNESS: It was my goal to implement my understanding of these definitions in terms of identifying proposed class members.

BY MR. RIFFEE:

Q. Did you have any input regarding who would 11:53:13 be excluded from each class -- or each proposed class, other than by conducting an analysis of the data that was provided to you by Bank of America?

MS. CHAN: Objection. Vague and ambiguous. 11:53:28

THE WITNESS: I would consider input in terms of understanding who was excluded for purposes of the remediation plan, then reading the interrogatories and, I think, you know, Mr. Martin's declaration, for example, to develop an 11:53:45

cardholders based on instruction from counsel; correct? The -- the cardholders that are described here in footnote 10.

A. I think, ultimately, that's a fair characterization. 11:55:29

Q. Do you have an understanding of why this criteria is being used to exclude cardholders from plaintiffs' proposed classes?

MS. CHAN: Objection.

THE WITNESS: I don't think I can have a 11:55:45 complete understanding because it appears to reflect some negotiations between the bank and its regulators, but I have a general understanding of the -- of the aim to exclude individuals suspected of engaging in fraudulent conduct. 11:55:58

BY MR. RIFFEE:

Q. Do you have an opinion as to whether these exclusion criteria described in footnote 10 are appropriate for the purposes of your damages methodologies? 11:56:15

MS. CHAN: Objection. Vague. Beyond scope.

THE WITNESS: I -- I didn't form an opinion on that topic, but I don't see it as unreasonable to make these exclusions. 11:56:24

[redacted]

And, ultimately, it would be the objective to exclude all such accounts or claims.

BY MR. RIFFEE: 11:57:09

Q. Sitting here today, do you know if you've excluded all such accounts and claims from your damages analyses, in particular Schedule 1 of your report?

MS. CHAN: Objection. Vague. 11:57:21

[redacted]

BY MR. RIFFEE:

Q. And your ability is limited by the -- or 11:57:33

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

MS. CHAN: Objection. Misstates testimony. 12:08:48

BY MR. RIFFEE:

Q. Or that's what you stated here in your class certification reply; correct?

MS. CHAN: Objection. Misstates testimony. Mischaracterizes report. 12:08:55

[redacted]

[redacted]

[redacted]

MS. CHAN: Objection. Vague. Compound.

THE WITNESS: Well, I'd have to see what data became available to allow me to conduct that 12:11:50 analysis and even ascertain whether it should be applied more broadly. But not knowing what that analysis might look like, if the bank simply added these card alias IDs to its list of excluded accounts, then I would use that data to exclude 12:12:10

[redacted]

MS. CHAN: Objection. Beyond scope.

THE WITNESS: That wasn't the nature of my assignment.

BY MR. RIFFEE: 12:26:14

Q. You're just drawing on information provided by Bank of America in its interrogatory responses; correct?

[redacted]

Q. Okay. But you don't -- you don't have an understanding, and you haven't reviewed anything to determine what, if anything, ED did -- EDD did to verify those claims? 12:26:39

MS. CHAN: Objection. Asked and answered. Beyond scope.

THE WITNESS: That was not the nature of my assignment.

BY MR. RIFFEE: 12:26:49

[redacted]

BY MR. RIFFEE: 12:27:22

Q. Are you aware that there are reports of significant unauthorized transaction claims fraud, sometimes referred to as double-dipping, that occurred during the proposed class periods?

MS. CHAN: Objection. Assumes facts. 12:27:33
Misleading. Outside scope.

THE WITNESS: I'd have to look at how double-dipping was characterized in the document, but I'm aware of claims of fraudulent activity occurring. 12:27:53

cardholder was damaged at the time of, in this case, the claim denial; and until the time at which the cardholder was compensated for that damage, he or she remained damage. But that that amount that the bank has paid is essentially a partial payment of the judgment that reduces those damages. 01:41:21

Q. Okay. So if we could turn back to page 4 and the chart where you include the class definitions -- sorry, Paragraph 4, page 3, the chart where you include the class definitions. 01:41:47

So for the claim denial class, you understand that it's defined by plaintiffs to include all -- EDD cardholders who notified Bank of America of an unauthorized transaction on their prepaid debit card account and had that claim denied because -- based on the use of indicator 1 of the claim fraud filter; correct? 01:42:07

A. Yes.

Q. So the alleged conduct at issue is Bank of America's use of the claim fraud filter, and specifically indicator 1. 01:42:26

Is that consistent with your understanding?

A. Yes.

Q. So in a but-for world, but for Bank of 01:42:32

America's use of indicator 1 of the claim fraud filter to deny those cardholders' claims, the cardholder would have been reimbursed by the Bank of America for the amount of the alleged unauthorized transactions included in their claims; right? 01:42:51

A. Yes.

Q. Would you agree that if a cardholder's account was credited for the full amount of the alleged unauthorized transactions, they are then in the same place that they would have been in the 01:43:04 but-for world, at least with respect to the principal amount of their claim?

A. Measured today, that would be a reasonable outlook. But what I'm talking about is the damage occurred at the time of the claim denial, and that 01:43:21 person was damaged until the amount of the claim being refunded to the individual's account.

Q. Okay. The only difference between the card -- cardholder in the actual world where they have been reimbursed for their claim amount and in 01:43:36 the but-for world is the timing of when they received the credit; right?

MS. CHAN: Objection.

BY MR. RIFFEE:

Q. Or the delay in -- in the receipt of -- of 01:43:46

the principal amount of their claim?
MS. CHAN: Objection.
THE WITNESS: The -- the difference is, again, the events that occurred on the date of the claim denial at that point in time, the cardholder 01:43:58 did not know if or when the bank would refund the amount of that claim to that person's account. During that period of time, in my view, the individual incurred consequential damages in the form of the time value of money. 01:44:20
And, later, the bank has at least partially paid that consumer; that amount would be offset to reduce the amount of damages, but doesn't change the fact that the individual had been damaged during the preceding period of time. 01:44:33
BY MR. RIFFEE:
Q. Okay. And we'll talk about it in a bit.
But you -- you have attempted to calculate consequential damages, which you say is the time value of money. Have you also attempted to 01:44:46 calculate damages based on the time any cardholder spent or the steps they took to get their -- their claims reimbursed?
MS. CHAN: Objection. Ambiguous.
THE WITNESS: In -- in part, the customer 01:44:55

Q. Okay. Did you review any of the proposed class members' credit card balances -- revolving balances to determine whether they, in fact, had revolving balances at the time they were without access to their funds? 03:15:59

A. I did not attempt to do an individual analysis because I did not have data that would allow me to make a reasonable extrapolation. So I studied the characteristics of the population of proposed class members and looked at the 03:16:09 information, including the studies and data that I highlighted in Paragraphs 40 to 43 of Exhibit 1, in reaching my conclusion that the cost of borrowing was the most appropriate way to measure consequential harm. And the most common way in 03:16:32 which consumers were borrowing during this period of time was on a credit card, and I used a median applicable credit card rate, all of which struck me as an appropriate methodology to measure damages.

Q. And you also did not review any of the 03:16:56 proposed class members' credit card balances or -- or statements to determine whether they, in fact, actually relied on a credit card or used credit cards to cover any funds that they may not have been able to access during this period; right? 03:17:13

A. I did not review individual credit card statement balances.

Q. And each of these studies -- none of them are specific -- that you relied on in your report and cited in your report, none of them are specific 03:17:24 to this particular set of proposed class members; correct?

MS. CHAN: Objection. Ambiguous.

THE WITNESS: Actually, I think that, for example, the Department of Labor study of 03:17:33 unemployment benefit recipients in California in which -- I think it was 97 percent of consumers surveyed said that those benefits were important to be able to meet their then-current financial needs. I think there was a CFPB study I cited reaching 03:17:53 similar conclusions, along with the bank's testimony that these were vulnerable people that were withdrawing their funds upon receipt. And that's consistent with, for example, the study from the Federal Reserve cited in Paragraph 42 of my report, 03:18:12 that the consequence of not having those funds available was incurring costs of borrowing.

So those studies, I think, were targeted. They were aligned with the specific class of people that I'm trying to measure damages for. 03:18:29

BY MR. RIFFEE:
Q. You haven't done that to date; right?
A. I understand that's a small population of people, and I don't have a reasonable basis to think that their circumstances are representative of the class as a whole, which is much larger. 03:30:31
Q. Do you know if any particular cardholder in plaintiffs' proposed classes even had a credit card during the period when they were without access to the claim amount or the funds in their account? 03:30:53
A. It's my understanding -- I think we just went through this a few moments ago -- from -- from counsel as well as from looking at Mr. Stango's report that certain of the individuals did -- did have credit cards during the time period. 03:31:10
Q. Are you aware that other individual plaintiffs and certain class member -- or class representatives testified that they did not have a --
THE COURT REPORTER: Counsel, slowly. 03:31:18
MR. RIFFEE: I'm sorry.
BY MR. RIFFEE:
Q. Are you aware that other individual plaintiffs or class plaintiffs testified that they did not have a credit card during the pandemic or 03:31:27

during the period when they were without access to -- to certain funds?

MS. CHAN: Objection. Asked and answered.

THE WITNESS: I -- I am aware of that. And my analysis doesn't necessitate that every 03:31:37 single class member had a credit card. My assessment is that credit card borrowing was the most common form of borrowing during the period of time, and the cost of borrowing on a credit card is an appropriate approximation of the consequential 03:31:53 harm experienced by class members.

BY MR. RIFFEE:

Q. Okay. But when your methodology is calculating consequential damages for each proposed class member, your methodology is necessarily 03:32:04 assuming that each of them incurred the same interest rate of 20 percent APR, as if they had a credit card; correct?

MS. CHAN: Objection.

THE WITNESS: It's assuming that 03:32:14 20 percent cost of borrowing is a median cost, which necessarily understates the typical average cost, because a mean, for example, would incorporate the impact of outliers that borrowed on -- on payday loans or other factors that we can observe in the 03:32:32

pandemic and received unemployment insurance tended to earn less than the median wage.

What steps, if any, did you take to verify that members of the proposed claim denial, credit rescission, account freeze or EMV chip classes, in fact, earned less than the median wage? 03:36:17

A. I think we've gone through this a large number of times. I'm looking at a group of California individuals in a specific period of time, 2020 and 2021 generally, that incurred a loss of employment and obtained unemployment insurance. If I said loss of unemployment -- I'm -- I think I did. Loss of employment -- and attempting to gauge the circumstances of that group -- group of people. And based upon the data available to me, collectively, it indicated that these individuals were -- were vulnerable, including by the fact that they earn than less than the median wage, and that was consistent with my observations of the testimony of the bank's representatives, that these people were under significant financial duress at this moment in time. 03:36:37 03:37:01 03:37:17

Q. Did you review any data regarding the actual wage that the proposed class members earned prior to becoming unemployed? 03:37:35

[redacted]

[redacted]

Q. Again, you have not reviewed any data for these proposed class members showing what their wage actually was prior to becoming unemployed, or what their available savings or checking account or alternative -- alternative income sources were at the time they were without their funds; correct? 03:39:34

MS. CHAN: Objection. Asked and answered. 03:39:53

THE WITNESS: I have not reviewed specific information for individual plaintiffs, but rather I'm looking at the population of impacted cardholders and gathering data to indicate what their circumstances were in the moment that the harm was incurred. 03:40:07

BY MR. RIFFEE:

Q. Okay. Do you agree that each of the proposed class member's fact and circumstances would be different? 03:40:18

MS. CHAN: Objection. Vague.
THE WITNESS: I think the individual plaintiffs are reflective of some portion of the class as a whole, which is what the data I'm using is designed to indicate. 03:40:41
BY MR. RIFFEE:
Q. Some of the proposed class members would have received higher than the median wage prior to applying for unemployment benefits; right?
Do you dispute that? 03:40:55
MS. CHAN: Objection.
THE WITNESS: Can -- can you repeat that?
BY MR. RIFFEE:
Q. Sure.
Would you agree that some of the proposed 03:40:59 class members received higher than the median wage prior to applying for unemployment benefits?
A. I don't have all their data in front of me. That sounds reasonable.
Q. Okay. Do you speak -- dispute reports -- 03:41:15 are you aware of reports that higher-income individuals were able to and did collect unemployment income during the pandemic, including millionaires?
MS. CHAN: Objection. 03:41:28

THE WITNESS: The millionaire point is in -- a complete outlier, though people earning above the median wage were able to collect unemployment benefits.

BY MR. RIFFEE: 03:41:40

Q. And sticking with Paragraph 42, you note that one of the bases for your assumption is that -- or that they relied on credit card -- increased credit card utilization, is that -- looking at the top of page 18, "Many families have little to no 03:42:08 financial cushion," and you cite a Federal Reserve study for that.

Would you agree that there's a considerable variation across households in the amount of liquid savings or available cash they may 03:42:26 have for unanticipated expenses?

MS. CHAN: Objection. Vague.

THE WITNESS: I don't know what you mean by "considerable variability," but the study does indicate that there are categories of financial 03:42:35 cushion that consumers do have.

BY MR. RIFFEE:

Q. Okay. But would you agree that there is variability across households in the amount of liquid savings or cash that they may have for 03:42:46

unanticipated expenses?

A. I will agree with that. The study at issue here is looking at -- at all consumers, so it's not sufficiently tailored to the population of individuals that are impacted by the wrongful claim 03:43:00 denial. But it's informative to the overall level of data we have regarding these consumers.

Q. Did you review any data or information regarding the proposed class members or class plaintiffs to assess whether or not they had 03:43:22 adequate savings to cover expenses while they -- a time -- during the time when they were without their claim amount or their account balance, such that they wouldn't need to borrow or increase their credit card utilization? 03:43:38

A. Can you read it one more time?

Q. Did you review any data or information regarding the proposed class members or class plaintiffs to assess whether or not they had adequate savings to cover expenses during the time 03:43:53 when they were without their claim amount or their account balance, such that they wouldn't need to borrow or increase their credit card utilization?

MS. CHAN: Objection. Compound.

THE WITNESS: My process was to look at 03:44:06

[redacted]

Q. Okay. But you yourself -- you did not review any data to assess the financial cushion that these individual proposed class members or their families had or their withdrawal patterns; right?

MS. CHAN: Objection. Asked and answered. 04:06:12

THE WITNESS: I determined that the data from individuals was not deep enough. It was not -- I didn't have enough data to be able to substantiate a conclusion that that information could be reasonably extrapolated. 04:06:31

BY MR. RIFFEE:

Q. Does your methodology consider whether proposed class members or class representative --

THE COURT REPORTER: I'm sorry, can you start that over?

MR. RIFFEE: Yeah. I apologize. I'm starting to get too fast.

BY MR. RIFFEE:

Q. Does your methodology consider whether proposed class members or class representatives 04:06:43 could have or did borrow or receive gifts from friends or fam- -- friends or family to cover the value of the claim amount or the account balance that they may have been without for a period of time? 04:06:58

MS. CHAN: Objection. Compound.

THE WITNESS: Yes. This analysis, it does accomplish that. It does consider that there can be an attendant cost of borrowing in that fashion that you just described. And looking at the available 04:07:19

financial cushions and how consumers would responsible to that particular situation, in my view, this methodology best supported what a typical class member would do. And in my opinion, based upon review of Ms. East's and Mr. Levine's, they -- they reached similar conclusion. 04:07:35

BY MR. RIFFEE:

Q. Is it your opinion that the attendant costs of an individual who borrows, for example, a thousand dollars from their grandfather to cover their rent during the period when they're without funds, that that -- the cost of that could be measured by a 20 percent interest rate, as you calculate in your report? 04:07:46

A. In your hypothetical, the grandfather could have charged an interest rate to that individual. I know if I borrow money from my dad, he charges me interest. 04:08:00

So it could very well accomplish that objective. 04:08:11

Q. But you don't know if they did; right?

A. Again, that's why I didn't base my analysis on the hypothetical implications of an individual situation, but rather looked to the class as a whole and developed an expectation of what the 04:08:23

reasonable behavior would be.

MR. RIFFEE: Let's do Tab 26 as Exhibit 9.

THE COURT REPORTER: 26.

MR. RIFFEE: Yes, please.

(Regan Deposition Exhibit 9 was marked for identification.) 04:08:43

MR. RIFFEE: Thank you.

THE WITNESS: Thank you.

BY MR. RIFFEE:

Q. I've marked as Exhibit 9 supplemental interrogatory responses provided by Plaintiff Lindsey McClure. 04:08:51

And I assume that you have not reviewed this before either; correct?

A. I have not. 04:09:10

[redacted]

regarding the likely actions of the individuals but for the claim denial or account freeze.

Q. If you could turn to Paragraph 51 of your report.

You write in the first sentence, "In my opinion, these calculations are reasonable and conservative because the median duration of the claim denial was 87 days. The duration indicates that the impacted cardholders' ability to repay their existing balance would have been constrained during this time." 04:33:39 04:33:58

Did you also calculate the median duration of the freeze period for the account freeze class?

A. Yes.

Q. Do you recall what that was? 04:34:05

A. I recall that it was longer. I identify that in the report.

Q. It looks like in Paragraph 82 you explained how you did the calculation for an individual cardholder. But you believe in your report it also contains the median number of days that the account freeze proposed class was without funds? 04:34:35

A. I use a different statistic in the body of Paragraph 83. 04:34:55

Q. Okay.
A. Indicating 72 percent of the account freeze -- accounts were frozen for more than 30 days.
Q. Which would mean that 28 percent of the accounts was frozen for less than 30 days? 04:35:09
A. Yes. If you give me a second. I want to say I presented this data.
Q. Looking at Paragraph 83.
So for the 28 percent of EDD accounts that were frozen for less than 20 -- or less than 30 days, you still calculated consequential damages for each of those accounts, assuming that they borrowed at a 20 percent interest rate; correct? 04:35:45
A. Yes. 04:36:06
Q. How long is a typical credit card billing cycle?
THE COURT REPORTER: I'm sorry, billing cycle?
MR. RIFFEE: Billing cycle. 04:36:18
THE WITNESS: Approximately 30 days.
BY MR. RIFFEE:
Q. Okay. And how long does a credit cardholder typically have to pay their bill once it's been issued? 04:36:28

A. Approximately 10 to 15 days, something like that.

Q. You think their credit card payment after a bill is issued -- that they have 10 to 15 days to submit a payment, on average? 04:36:40

A. I have to look -- I have to look at the typical term, but I -- somewhere in that order of magnitude. Maybe up -- 20-something days.

Q. Would you agree that if a consumer's without access to -- to funds for a week, they may 04:36:54 choose to use a credit card as a substitute for their funds, they would be able to make a credit card payment as they ordinarily would when it came due at the end of their billing cycle, once they regained those funds, within a week? 04:37:15

MS. CHAN: Objection. Incomplete hypothetical.

THE WITNESS: I'm sorry, can you say --

BY MR. RIFFEE:

Q. Yeah. 04:37:33

Would you -- from a -- from an economist's perspective, if an individual was without funds for one week and they choose to use a credit card in that one week, not knowing if they were going to get the funds get, then all of a sudden they get the 04:37:44

funds back a week later, the but-for cause of any interest that they may incur is not -- would not be the fact they didn't have funds for a week, because they would have had the funds in time to pay off that credit card by the time the statement became due? 04:37:57

MS. CHAN: Objection. Incomplete hypothetical.

THE WITNESS: To the extent that the consumer's balance wasn't revolving, that would be -- that could be the case. 04:38:07

But my analysis doesn't assert that a credit card was used in every transaction. It's assuming that the most common form of borrowing was on a credit card, and the cost of borrowing in that situation was 20 percent. 04:38:21

BY MR. RIFFEE:

Q. Okay. But your analysis does assert that every individual, even if they had -- were without funds in their account for 30 days or less -- without accounts for 2 weeks or less -- or funds in their account for 2 weeks or less, less than a typical credit card billing cycle, that your methodology would calculate the but-for consequential damages to be the 2-week period when 04:38:34 04:38:51

they were without funds in their account; is that correct?

A. Yes, because the consumer was harmed when the bank withheld their funds during that period of time. They might have borrowed on a credit card. 04:39:06 They might have reduced consumption or foregone some other element that they did not choose to have to encumber as a result of the harm that was incurred.

And I think that Dr. -- Ms. -- Ms. East and Mr. Levine measure harm similarly. They -- they 04:39:20 indicate that the cost would be higher in those particular circumstances.

So I think that the measurement of harm during that period of time is -- is consistent with doing so at 20 percent. 04:39:33

Q. But the methodology that you propose in your report and that you use to calculate consequential damages for each of the classes, other than the customer service class, assumes that each borrowed at a 20 percent interest rate; correct? 04:39:45

MS. CHAN: Objection.

THE WITNESS: As a way of measuring the harm. There are other ways in which the harm could have been incurred that were even more expensive, based upon my analysis of Ms. -- Ms. East and 04:39:58

There are other costs incurred that we've discussed. If a consumer had to forego buying groceries for a week or had to delay a medical procedure, there -- there are costs attendant to that, that this measurement can be used to quantify 04:41:59 the harm experienced by the consumer. And in that regard, I'm relying upon the analysis of Ms. -- Ms. East and Mr. Levine.

Q. So you believe that your methodology is also proposing the costs of -- of -- or your 04:42:14 consequential damages also calculate medical expenses?

MS. CHAN: Objection. Misstates testimony.

THE WITNESS: This is a conservative 04:42:20 measurement because those other types of instances are associated with greater rates of harm. And so this median credit card rate of interest appropriately captures class-wide damages on an aggregate basis. 04:42:40

MR. RIFFEE: All right.

Let's mark as Exhibit 10, Tab 13.

THE COURT REPORTER: 13?

MR. RIFFEE: Yes.

(Regan Deposition Exhibit 10 was marked 04:42:54

purposes of calculating the cost of delayed benefits concentration harm here; right?

A. Yes.

Q. Sorry. It's hard to read with the green.

And then you estimate that approximately 56 million of EDD benefits that EDD tried but was unable to deposit to accounts that were frozen based solely on application of its claim fraud filter -- that -- that's the total that the bank rejected. And the basis of that is cited in footnote 115; right? 05:06:14 05:06:31

A. Yes.

Q. Do you know whether that $56 million of benefits payments -- whether that was intended solely for individuals that you've identified for -- to be in the proposed account freeze class, or whether it would be -- it may be broader and include people who are excluded from that class either by the definition or as you've applied the exclusions? 05:06:47

A. My recollection is it's broader, though I think I can figure that out. 05:07:06

Yes. My recollection is it's broader.

Q. Then in Paragraph 84, you say that, "The cost of delayed benefits can be calculated using the common methodology for all account freeze 05:07:37

members" -- "account freeze class members based on the amount of each class member's biweekly benefit payment and the length of the delayed receipt of their subsequent benefit payments."

Did you actually do those calculations in your report? 05:07:49

A. I did a calculation of the amounts using the average data available to me. I did not do the specific calculations at the individual level because the data wasn't available to me. 05:08:10

Q. And that's data showing each proposed class -- account freeze class member's biweekly payment period; right?

A. Yes.

Q. Do you believe that Bank of America or EDD have that data? 05:08:23

Or do you know if Bank of America and -- or EDD have that data?

A. It -- it was my understanding that that data is available. I don't know if Bank of America has it as well as EDD, or some combination thereof. And I'm reluctant -- I shouldn't -- can't speculate because I know that I haven't seen the EDD deposition transcript. 05:08:36

Q. So sitting here today, you haven't 05:08:52

received or reviewed data showing each member's biweekly payment period; correct?

A. That's correct.

Q. You -- do you -- you also don't have data showing the length of the delayed receipt of each proposed account freeze class member's benefits payments; correct? 05:09:06

A. That's correct, that I do not have that data.

Q. Do you know if EDD or Bank of America has that information available for each of the proposed account freeze class members? 05:09:18

A. It -- it's my assumption that that data is available.

Q. Okay. Do you -- would you agree that the amount of time between when EDD would have credit -- credited a cardholder's account -- prepaid debit card account and when the benefits checks actually reached the cardholder will vary by cardholder? 05:09:30

MS. CHAN: Objection. 05:09:59

THE WITNESS: Without the data, I don't think I can conclusively answer that question, which is why I'm looking for the data on the length of the delayed receipt.

BY MR. RIFFEE: 05:10:16

Q. How would EDD's data show the amount of time it actually took for the check that was sent by EDD if their benefits were converted to a check -- the amount of time between when it was send and when it was actually received by the -- by the cardholder? 05:10:31

MS. CHAN: Objection.

THE WITNESS: I don't know that EDD's data would have that, but I think that that data could be estimated by the reasonable time of -- in post. 05:10:40

BY MR. RIFFEE:

Q. Okay. Would you agree that that would vary by cardholder, the amount of time that it would actually take a mailed check to -- to reach them or be accessed by them? 05:10:50

MS. CHAN: Objection.

THE WITNESS: I think any degree of variability would be minimal and could be appropriately estimated using -- using a median.

BY MR. RIFFEE: 05:11:09

Q. Do you have any data available to you or have you reviewed any data to assess the median amount of time that it would take for EDD to mail a check to a cardholder and for a cardholder to actually receive that check? 05:11:26

A. Can -- sorry. Can you repeat that?

Q. Sure.

Do you cite any data or have you -- in your report or have you considered any data that would allow you to assess the median amount of time that it would take for EDD to mail a check and a cardholder to actually receive that check? 05:11:34

A. I believe that data is readily ascertainable.

What -- what I have hypothesized here is -- I need to look at the data that is actually available, and it may be the case that the estimation is made based upon the time at which the check was sent by EDD to the consumer impacted by the account freeze. I'd have to look at the data that becomes available. 05:11:52 05:12:12

Q. Okay. But, again, sitting here today, you -- you don't have access to that data, so you haven't done the -- the actual calculations; you just have an estimate in your report; correct? 05:12:20

A. At this time I'm relying on estimates based upon the bank's data.

Q. Your cost of delayed benefits calculations for the account freeze class, it assumes that every single member of the proposed account freeze class 05:12:35

was continuing to receive or would have continued to receive unemployment benefits during the period when their account was frozen; correct?

A. For those that had a delay longer than -- than 50 -- 30 days, yes. 05:12:53

Q. Did you do anything to verify that all of the proposed account freeze class members were still eligible for and receiving additional EDD benefits payments at the time of or immediately after their account was frozen? 05:13:10

A. No. It's absent the data regarding the actual payment activity. It's an assumption.

Q. Okay. Would you agree that it's possible some of the proposed account freeze class members were no longer receiving ED- -- ED- -- EDD benefits 05:13:48 during -- when their account was frozen perhaps because they became employed and were no longer eligible?

A. It is possible.

A different way to test for that would be 05:14:02 to look at the -- the bank's data regarding the mediation -- remediation plan and its efforts to measure the -- the cost of the delayed benefits on a -- on a claimant basis. But -- but that is an assumption in my analysis, absent receipt of data 05:14:16

THE WITNESS: Can you clarify what you mean by --

BY MR. RIFFEE:

Q. Sure.

Do you intend to offer a legal opinion in this case as to whether or not any of the -- or disgorgement should be made available to the claim denial class members based on their claims? 05:45:29

A. No. My calculations assume that disgorgement is an available remedy. 05:45:46

Q. In Paragraph 61, at the end of the paragraph you say, "If the bank had not denied [redacted]

And then you cite in footnote 85 Mr. Chestnut's testimony, which you say is described above earlier in your report. 05:46:17

[redacted]

[redacted]

So your opinion is that Bank of America was earning float revenue on the credits that may have been issued but for the denial of those claims based on the claim fraud filter; right?

A. I think I understood your question. 05:50:30

Can you say it again?

Q. Sure.

So your opinion is that Bank of America was earning float revenue on the credits that may have been issued but for the denial of those claims 05:50:43 based on the fraud claim filter; is that right?

A. That's right.

Q. Okay. Would you agree that once those credits were paid to claim denial class members, they became losses to Bank of America? 05:50:53

MS. CHAN: Objection. Vague.

THE WITNESS: Yes, they became a cost to Bank of America.

BY MR. RIFFEE:

Q. Okay. And does your disgorgement and 05:51:05 calculation of the bank's profits consider whether or not the bank's fraud losses would outweigh the float revenue that you believe Bank of America may have accrued prior to accrediting the accounts?

A. Maybe I just didn't understand the 05:51:26

question. I'm sorry to make you repeat it, but --
Q. Of course.
A. -- if you could.
Q. For the purposes of your disgorgement calculations and the profits that you believe Bank 05:51:36 of America obtained, do you consider the profits that you calculated relative to the fraud losses that Bank of America incurred once it reimbursed each of the claim denial class members for the -- the full value of their claims? 05:51:56
A. I do not offset fraud losses. I think I described that the way in which a disgorgement calculation is prepared is, plaintiff identifies the relevant revenue stream, and to the extent there's additional cost to be deducted at that point, those 05:52:12 are identified by -- by the bank or by the defendant's expert, and then I make an analysis of that. I have -- I have not seen a quantification of those costs to be deductible.
Q. Do you have an opinion as to whether or 05:52:26 not the -- the fraud losses or the costs that the bank incurred to recredit, reimburse the proposed claim denial class members should off- -- offset the profits you calculated?
MS. CHAN: Objection. Vague. 05:52:43

THE WITNESS: I'd have to think about that. And I would have anticipated that Mr. Stango would -- would have addressed that particular point. So I can't answer as I sit here.

BY MR. RIFFEE: 05:52:57

Q. Your calculation of float revenue profits for the claim denial class begins the date the claim was denied; right?

A. Yes, based on my understanding of the wrongful conduct being the application of the claim 05:53:09 fraud filter.

Q. So there's no offset or account for the ten-day period that EFTA or Regulation E would have allowed for Bank of America to issue a provisional credit but for the claim fraud filter; correct? 05:53:27

MS. CHAN: Objection.

THE WITNESS: That's correct, based upon my assumption regarding the date of the harmful act.

BY MR. RIFFEE:

Q. All right. 05:53:54

If you could turn to Paragraph 72 of your report, where you discuss the disgorgement of profits for the credit rescission class.

Is your calculation of the float revenue profits that you attribute to the proposed 05:54:07

Q. And here you assume -- or, actually, strike that.

We discussed earlier and you testified earlier that one of your basis for your assumptions for the cost of delayed benefits payments' 05:55:27 consequential damages is that you understand that while the account freeze class members' accounts were frozen, their benefits, to the extent they were still receiving benefits, would've been converted to checks; right? 05:55:46

A. Yes.

Q. And you agree that while those accounts were frozen, those amounts that were converted to check, they were no longer being deposited by EDD into the prepaid cardholders' debit card accounts; 05:55:58 right?

A. Yes.

Q. Those benefits would have been rejected -- at least your understanding is that those benefits would have been rejected; right? 05:56:13

A. That's my understanding.

Q. So would you agree or you understand that Bank of America was not receiving -- did not receive float revenue on the additional benefits that were rejected and converted to -- to checks? 05:56:25

A. Yes.
Q. Does your disgorgement methodology attempt to account for offset for any additional float revenue that Bank of America would have accrued on additional EDD benefits loads to the proposed account -- freeze class members' accounts had they not been frozen during this time? 05:56:42
A. No. I don't think that's a proper way to do it.
Q. Why not? 05:56:53
A. Because a disgorgement is an accounting for the actual profits that the entity earned during the period of time. And that's conceptual profits related to monies that the bank didn't earn because of its harmful act practice. 05:57:08
Q. So it's your view that even though but for the alleged conduct -- if the bank would have earned more in float revenue but for its alleged conduct based on the continued benefits loads, that it's still appropriate to disgorge any profits that it obtained based on the frozen account balances? 05:57:27
MS. CHAN: Objection. Assumes facts.
THE WITNESS: The methodology to compute disgorgement, again, focuses on actual profits, what was the actual benefit that the defendant obtained 05:57:48

MR. RIFFEE: Of course.
BY MR. RIFFEE:
Q. Do you understand that he disputes that Mr. Minnucci's proposed industry-average ASA is an appropriate benchmark for Bank of America's claims call center during the proposed customer service class period? 06:09:48
A. That's my recollection.
Q. Do you have any reason to dispute Mr. Opinion -- Mr. Hindle's opinion? 06:10:02
MS. CHAN: Objection. Beyond scope.
THE WITNESS: Mr. Minnucci offered a rebuttal report of the Hindle opinions. Mr. Hindle also mischaracterized a few things on my opening report. So I'm deferring to Mr. Minnucci to address 06:10:17 Mr. Hindle's criticisms; and until that's resolved, I'm relying upon Mr. Minnucci.
BY MR. RIFFEE:
Q. Do you have any independent reason to rely on Mr. Minnucci over Mr. Hindle? 06:10:32
MS. CHAN: Objection. Beyond the scope.
THE WITNESS: I've been asked to assume that Mr. Minnucci's analysis is reliable.
BY MR. RIFFEE:
Q. If you go to paragraph 93, you note that 06:10:52

"these figures can be multiplied by the applicable minimum wage or other reasonable metric to calculate the total value of class members' lost time."

Have you proposed or did you -- do you intend to propose another metric, other than the applicable minimum wage, to calculate the total value of proposed customer service class members' lost time? 06:11:14

A. I -- I have not proposed an alternative metric. And it's my recollection that Mr. Levine applies -- opines that the minimum wage is an appropriate metric to utilize for purposes of the type of calculation proposed in this section. 06:11:29

Q. And you're relying on Mr. Levine for that opinion; is that right? 06:11:51

A. I am, and my experience calculating damages, in which I express the opinion that this would be an appropriate methodology to calculate damages.

Q. So you do intend in this case to offer an opinion yourself that the minimum wage -- the applicable California minimum wage is an appropriate measure for the lost time of these proposed customer service class period -- class members; is that right? 06:12:04 06:12:23

A. I don't know what I'm going to be asked to opine on if this matter goes to trial.

I would envision that Mr. Levine would talk about the suitability of that rate and I would talk about how to identify and implement that rate. 06:12:36

Q. Okay. So -- but sitting here today, and based on the scope of your March 4 report, you have not offered an opinion as to whether you believe the California minimum wage is an appropriate measure for the total value of class members' lost time; 06:12:54 you're relying on Mr. Levine for that opinion. Is that right?

A. (Witness reviews.)

Yes, it's my expectation that I'm going to rely upon Mr. Levine to offer -- offer this 06:13:23 testimony.

Q. Do you have an opinion as to whether or not wait times for a consumer call center should be recoverable?

MS. CHAN: Objection. Ambiguous. 06:13:46 Calls for legal --

BY MR. RIFFEE:

Q. Sure. Let me restate.

Do you have an opinion as to whether or not consumers should be able to recover damages 06:13:51

based solely on wait times for a -- a call center?
MS. CHAN: Objection. Calls for legal conclusion.
THE WITNESS: I don't have an opinion on that. I think the trier of -- trier of fact will reach its conclusion. 06:14:03
BY MR. RIFFEE:
Q. Do you agree that actual damages are meant to reflect what would happen in a -- in a but-for world, but for the alleged conduct? 06:14:20
A. As a general matter, yes.
Q. And as defined, or at least as -- as EDD unemployment benefits recipients, your assumption is that most of the proposed customer service class members were unemployed during the proposed customer service class period between September and November, correct, of 2020? 06:14:35
A. That's my understanding.
Q. And your other damages methodologies, in particular your cost of delayed benefits for the account freeze class members, assume that they were unemployed during this period; right? 06:14:50
A. Yes.
Q. And by definition, if they were unemployed, they were not receiving minimum wage or 06:15:02

any wage during the period when they may have called the bank's customer service call center; correct?

A. That's my general understanding.

Q. So but for the time they spent on hold, do you have any reason to believe that the proposed 06:15:16 class members would have earned minimum wage or some other wage during the period when they were on hold?

MS. CHAN: Objection.

THE WITNESS: I don't know that that's the sole basis for Mr. Levine's opinion. In fact, I 06:15:30 think he is expressing an opinion about the lost value of that time to the consumer and that something more valuable could've been do -- been done than waiting on a phone -- on a hold on a customer service call. 06:15:47

BY MR. RIFFEE:

Q. Is it your opinion that every person that calls a call center and is put on hold is entitled to damages for the amount of time they're on hold?

MS. CHAN: Objection. Hold. 06:15:58

THE WITNESS: It depends upon the circumstances of the situation. But I don't -- I'm not aware of data indicating that the impact of consumers wanted to be spending 80 minutes on a call, to recover funds that have been taken from 06:16:07

CERTIFICATE OF REPORTER

I, Hanna Kim, a Certified Shorthand Reporter, do hereby certify:

That prior to being examined, the witness in the foregoing proceedings was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said proceedings were taken before me at the time and place therein set forth and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

I further certify that I am neither counsel for, nor related to, any party to said proceedings, not in anywise interested in the outcome thereof.

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.

In witness whereof, I have hereunto subscribed my name.

Dated: June 4, 2025.

Hanna Kim, CLR, CSR No. 13083