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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. 1-MD-02992-GPC-MSB

EXPERT REPORT OF RUSSELL CRONAN

March 4, 2025

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PURSUANT TO STIPULATED PROTECTIVE ORDER

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I. Qualifications

1. I am currently the President of Compliance Risk Advisors LLC, which is a limited liability company I founded in 2021. Prior to founding Compliance Risk Advisors, since mid-2019, I provided similar independent consulting services. During this time as a consultant, I have advised depository institutions, non-depository institutions, FinTech firms, and government entities regarding regulatory compliance matters, which in the banking industry generally refers to a framework of consumer-centric regulations, including Regulation E, among many others.

2. Prior to becoming an independent consultant, I worked for approximately 30 years as a federal bank examiner, specializing in compliance, at the Federal Deposit Insurance Corporation ("FDIC"), the Federal Reserve Bank of St. Louis, the Office of the Comptroller of the Currency ("OCC"), and the Consumer Financial Protection Bureau ("CFPB").

3. I achieved Commissioned Examiner status at each of these agencies. Earning a commission confers on an examiner the opportunity and responsibility to be an Examiner in Charge, which is the professional responsible for the successful planning, execution, and completion of examinations or a series of examination activities over an examination cycle.

4. As an examiner and Examiner in Charge, I participated in thousands of examination activities for hundreds of depository and non-depository institutions, including many of the largest banks in the United States. In numerous cases, this included assessing procedures for their effectiveness in complying with all aspects of Regulation E, including procedures for resolving Regulation E errors. My assignments included but were not limited to:

a. Serving as the CFPB's Examiner in Charge (a/k/a Lead Examiner) for one of the top five largest banks in the country by asset size. In this role, I was responsible for the day-to-day implementation of the CFPB's supervision/examination function, which included evaluating the bank's procedures for their effectiveness in complying with Regulation E.

b. Serving as the OCC's Compliance Functional Examiner in Charge for a $38 billion bank (among the top 10 in the country in terms of its mortgage lending operation) which was in the OCC's Large Bank Supervision program. In this role, I was responsible for the day-to-day implementation of the OCC's supervision/examination of procedures for effectiveness in consumer compliance, which at that time included Regulation E compliance.

5. In my 30 years of conducting regulatory examinations, I developed an extensive knowledge of regulations, industry practices, and how banks manage -- and are expected to manage -- their procedures for meeting their compliance obligations. With respect to Regulation E specifically, I reviewed many banks' investigation processes and assessed their reasonableness. In doing so, I developed a deep understanding of how different banks and bank regulatory agencies approach these investigations, along with a deep understanding of practices across the industry.

6. In addition, during my 30 years with these agencies, I further buttressed my industry expertise by (1) completing thousands of hours of classroom and on-the-job training sponsored by the agencies; and (2) attending scores of ongoing compliance conferences and schools sponsored by the agencies and industry groups (*e.g.*, the American Bankers Association).

7. In further recognition of my knowledge and expertise relating to banking matters, I earned four industry certifications: (1) Certified Regulatory Compliance Manager, which is the industry's leading compliance certification from the American Bankers Association; (2) Certified Risk Professional (Compliance) from the Bankers Administration Institute; (3) Certified Anti-Money Laundering Specialist, which is the industry's leading certification regarding the Bank

Secrecy Act, anti-money laundering, and Office of Foreign Assets Control compliance from the Association of Certified Anti-Money Laundering Specialists; and (4) Anti-Money Laundering Professional from the Bankers Administration Institute.

8. My curriculum vitae is attached as Appendix A. I am being compensated at a rate of $650 per hour. In conducting my work on this matter, I have been assisted by individuals at Ankura Consulting Group, LLC ("Ankura"),[1] who worked at my direction and under my supervision. All opinions expressed herein are my own. I have not provided expert testimony in the past four years, and I have not authored any publications in the past 10 years. In preparing this report, I personally considered various documents produced in this litigation and other materials, which are identified in Appendix B.

II. Assignment

9. I have been retained by Goodwin Procter LLP, on behalf of Bank of America, N.A. ("Bank of America" or the "Bank") in connection with this matter. I was asked to (1) provide background on the Electronic Fund Transfer Act ("EFTA") (15 U.S.C. 1693 *et seq.*) as implemented by Regulation E (12 C.F.R. § 1005 *et seq.*) and the Regulation E investigative process, including the nature of Regulation E claims-handling, both leading up to and during the global pandemic, (2) assess whether it was reasonable for the Bank to believe that its response to the large surge of pandemic-era prepaid card fraud would have been acceptable to the Bank's regulators, and (3) address certain opinions and assumptions put forth in (a) the Expert Class Certification Report of J. Daniel Kreis dated August 29, 2024 ("Kreis Class Cert. Report"), (b) the Expert Rebuttal Report of J. Daniel Kreis dated November 21, 2024 ("Kreis Class Cert. Rebuttal

[1] Ankura is a professional services and consulting firm that provides dispute-related, investigative, financial, and operational consulting services to various types of organizations.

Report"), (c) the Expert Class Certification Report of Greg J. Regan dated August 29, 2024 ("Regan Class Cert. Report"), and (d) the Expert Class Certification Rebuttal Report Of William J. Abernathy, Jr. dated November 19, 2024 ("Abernathy Class Cert. Rebuttal Report").

III. Summary of Opinions

10. First, as a former banking regulator, it is my experience that regulators have historically afforded banks discretion in balancing an institution's safety and soundness obligations with consumer protection obligations. This includes discretion to determine the appropriate scope of Regulation E investigations. Therefore, it is my opinion that, given the unprecedented fraud facing Bank of America during the pandemic, it was reasonable for the Bank to believe that its use of the Claim Fraud Filter ("CFF") would have been viewed as acceptable by its regulators. Failing to apply such mitigation efforts and thus allowing the fraud to continue unabated could have been viewed as an unsafe and unsound practice by the OCC.

11. Second, as a former banking regulator, it is my experience that regulators have historically viewed banks' actions and inactions in the context of the circumstances in which those actions and inactions occur. Therefore, it is my opinion that Plaintiffs' [redacted]

12. Third, as a former banking regulator, it is my experience that no monitoring systems, no matter how well-designed to detect unusual, suspicious, or illegal activity, including fraud, will successfully detect 100% of such activity.

13. Fourth, it is my experience that banks that enter into regulatory settlements or consent orders typically take an extremely consumer-friendly approach to ensure that every *potentially* harmed consumer receives compensation, even if that means that unharmed consumers

are also compensated. Therefore, it is my opinion that [redacted]

IV. Relevant Background

A. Regulators Expect Banks to Manage the Institution's Safety and Soundness, Including the Development of Procedures for Preventing Fraud Losses.

14. Bank of America's prudential regulator, the OCC, oversees safety and soundness, which includes an institution's obligations to control operational losses, including fraud losses. The OCC expects banks to identify, measure, monitor, and control risk through risk-management programs that promptly adapt to changing circumstances and risk features, including fraud typologies and fraud losses.

15. These safety and soundness obligations are clearly set forth in several OCC Comptroller's Handbooks. These Handbooks, which span several series and which I referred to regularly over my career as an examiner, notably include a Safety and Soundness series (*e.g.*, Corporate and Risk Governance and Internal Control).

16. In general, the guidance outlined in these Handbooks (some of which is codified in regulations) provides that a financial institution will implement and oversee systems to identify, measure, monitor, and control risk.[2] This would include losses, and specifically fraud losses, to the bank. It is further expected that these systems will evolve as risks do. The Comptroller's Handbook related to Internal Control notes that a bank is "responsible for establishing and maintaining effective internal control that meets statutory and regulatory requirements and

[2] Declaration of Laura Brys in Support of Defendant's Opposition to Plaintiffs' Motion for Class Certification, Ex. ("DX") 106, *See* Comptroller's Handbook: Corporate and Risk Governance | OCC (page 42).

responds to changes in the bank's environment and conditions."[3] There is yet additional guidance related specifically to the risks that fraud presents to a bank's safety and soundness.[4]

17. Moreover, "covered banks" (*i.e.*, those with more than $50 billion in assets), which includes Bank of America, are subject to heightened standards of risk management.[5] Banks meeting this definition generally have more complex operations and face higher levels of risk in their operations. Consequently, the OCC expects such covered banks to have more robust risk management systems to identify, measure, monitor, and control risk. The OCC applies enhanced scrutiny to banks covered by the heightened standards, as described by then Comptroller of the Currency, Thomas Curry, when he noted, "The 2008 financial crisis demonstrated that much stronger supervisory standards would be necessary to manage the risks associated with large, complex financial institutions…. As a result, the OCC raised its standards for risk management, corporate governance, and control to help ensure these institutions effectively anticipate, evaluate, and mitigate the risks they face."[6]

18. The OCC expects that banks will adequately manage risk, and the agency will hold bank management accountable to the extent they do not do so. In such cases, bank management, and the bank itself, can receive lower ratings, supervisory actions, and informal enforcement actions. Lower ratings that result in a troubled condition designation can result in higher deposit insurance premiums, among other adverse consequences. In cases where the OCC judges risk management to be materially deficient, a bank could receive a formal enforcement action, and/or

[3] DX 107, *See* Comptroller's Handbook: Internal Control | OCC (page 15).

[4] DX 108, *See* OCC Bulletin 2019-37, July 24, 2019.

[5] DX 109, *See* Comptroller's Handbook: Large Bank Supervision | OCC (page 13).

[6] *See* OCC News Release, "OCC Finalizes Its Heightened Standards for Large Financial Institutions", September 2, 2014. https://www.occ.gov/news-issuances/news-releases/2014/nr-occ-2014-117.html (Last accessed March 4, 2025).

a civil money penalty, and/or a banker could receive a civil money penalty and/or be banned from banking. Over my 30-year regulatory career, I wrote or contributed to many "Matters Requiring Attention" and formal enforcement actions that directed bank management to develop and/or enhance risk management practices.

19. Based on my own experience with the OCC, the OCC would not consider uncontrolled fraud losses to be an effectively managed risk, and the OCC could deem it an unsafe and unsound banking practice.[7] More specifically, the possible consequences of allowing fraud losses to continue unabated could be an "abnormal risk or loss or damage to [the] institution, its shareholders, or the Deposit Insurance Fund."[8] In my experience, [redacted]

B. The Regulation E Investigative Process

20. The U.S. Congress enacted the EFTA in 1978 with the purpose of providing "a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems."[9] Regulation E implements the EFTA and provides certain protections to consumers when they use electronic fund transfers, including requiring financial institutions to implement error correction resolution procedures. Among other things, Regulation E outlines what constitutes an error, of which unauthorized transactions are one example, and sets forth what

[7] *See* 12 CFR Appendix-A-to-Part-30 II.A.4. *See* PPM-5000-7, Section: Bank, Supervision Subject: Civil Money Penalties, November 13, 2018 | OCC, page 14.

[8] *See* PPM-5000-7, Section: Bank, Supervision Subject: Civil Money Penalties, November 13, 2018 | OCC, page 14.

[9] *See* Public Law 95-630; 92 Stat. 3728.

is required of banks in investigating consumers' error claims (including unauthorized transactions).

21. From my decades of experience as a federal banking regulator with multiple agencies, I understand and have applied these requirements during examinations across the industry when evaluating the effectiveness of institutions' processes for compliance. As an examiner at each of the major banking regulators, including Bank of America's two primary banking regulators (*i.e.*, the OCC and the CFPB), I have reviewed every aspect of the Regulation E investigative processes, across many banks, from start to finish.

22. My evaluation of the processes institutions use to comply with Regulation E begins with the premise that an account must be established primarily for personal, family, or household purposes in order to be subject to the investigative requirements under Regulation E.[10] Regulators consider a prepaid card account to be subject to the same purpose requirements as any other account subject to Regulation E insofar that it must be established for personal, family, or household purposes to be afforded the protections under Regulation E or subject to the requirements of Regulation E. As noted in the Final Rule that added prepaid cards to Regulation E's definition of account:

> Finally, the Bureau has also removed the phrase "established primarily for personal, family, or household purposes" from the definition of prepaid account. Upon further consideration, the Bureau believes that phrase is unnecessary here as it already appears in the main definition of account in § 1005.2(b)(1), and prepaid accounts are expressly included as a subcategory within that broader definition.[11]

[10] *See* 12 CFR § 1005.2(b)(1).

[11] *See* "Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z)," Federal Register, Vol. 81, No. 225, Rules and Regulations, Tuesday, November 22, 2016, page 83969.

23. Notably, regulators do not consider accounts established by criminals as a means of committing fraud (including prepaid card accounts used to distribute unemployment benefits) as being subject to Regulation E, in the same way that prepaid cards established for business purposes are not subject to Regulation E. That was unambiguously the case throughout my 30 years with the agencies, and I am aware of no regulator that would have regarded it as consistent with the intent and purpose of Regulation E for its consumer protections to apply to criminals to aid them in stealing money from publicly insured depository institutions.

24. Additionally, regulators make distinctions in terms of items that constitute errors under Regulation E and those that do not. These distinctions are important because errors under Regulation E generally require investigation by the relevant bank, which may also include the bank extending provisional credit as part of the error resolution process. Claims of unauthorized transactions and requests for certain information (*e.g.,* clarification concerning an electronic fund transfer) are examples of errors under Regulation E.[12] Regulators have not considered the act of freezing an account in response to suspected fraud or inquiries related to account freezes to implicate Regulation E.[13]

C. Regulators Afford Banks Latitude in Conducting Reasonable Investigations.

25. If a consumer alleges an error recognized under Regulation E -- for example, an unauthorized transaction -- the processes expected of financial institutions include an investigation to determine if an error occurred. Because neither the statute nor the corresponding regulation set forth specific parameters on what an investigation should entail, regulators allow institutions latitude in exercising their judgment in determining the scope of a particular investigation based

[12] *See* 12 CFR § 1005.11(a)(1).

[13] *Id.*

on the range of circumstances and conditions that can arise. In fact, every regulatory agency I have worked with expects banks to exercise such judgment.

26. To that end, the regulatory agencies require banks to maintain risk management systems that are designed to adapt to changing circumstances and risk and will criticize banks that do not do so.[14] As an example, if a bank introduces a new card product that, based on the sheer volume of new transactions, results in a surge in the number of error claims, regulators will expect the bank to adapt its processes in order to effectively handle the increased volume of claims. One way a bank might do so would be to automate aspects of the investigative process to increase the efficiency of its claims-handling process.

27. In my experience, regulators understand that Regulation E allows for innovation so that banks can appropriately respond to the kind of dynamic and sometimes novel challenges that will arise over time. Over the course of my 30-year career as an examiner, some of the very real challenges banks faced included natural disasters, system failures, distressed economic conditions, and the scarcity of qualified personnel, among several others. The flexibility to respond to changing circumstances is fundamental to banks' effective risk management and is likewise a feature of investigations under Regulation E.

28. This approach is consistent with commentary issued by the Board of Governors of the Federal Reserve System ("FRB"), which administered Regulation E before the enactment and implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Dodd-Frank Act"), to facilitate compliance with the Regulation by financial institutions. The FRB commented that:

[14] These risk management expectations are laid out in various regulatory examination materials, such as the OCC Comptroller's Handbooks, which are discussed in more detail above.

a. "Because the nature of a consumer's allegation of error can vary, *the scope of an investigation may vary*;"[15] and

b. "*Institutions have flexibility to determine* what information is relevant to a meaningful investigation of the error in question."[16]

29. This language has guided bank regulators when assessing the reasonableness of banks' investigations, and I applied it many times over several decades. As an examiner, I did not apply a rigid set of criteria as to the specific form an investigation must take because I understood from my years of training and experience that the reasonableness of a bank's investigative process was dependent on the conditions and circumstances in which the investigation was conducted and the bank needed latitude to be able to adapt its approach accordingly. My fellow regulatory examiners were instructed to take this same approach throughout my time as a regulator. Specific criteria and instructions prescribing the form of a Regulation E investigation from regulators simply do not exist.

D. Reasonable Investigations Can Include Automated Features.

30. Over the course of my work as a federal banking examiner, I observed banks that had automated various elements of the investigation process, not only in response to high volumes but even during generally uneventful time periods. Examples include automated information gathering through web interfaces, automated calculation of provisional credits and consumer liability, and automated generation of consumer communications. The adoption of such automated features to aid or support an investigation has only become more prevalent over time.

31. During my 30 years working with each of the current federal banking regulatory agencies, no regulator to my knowledge took the position that such automated features were

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[15] DX 110, *See* Bd. of Govs. of Fed. Reserve System, *Electronic Fund Transfers*, 71 Fed. Reg. 1638, 1654 (Jan. 10, 2006) (emphasis added).

[16] *Id*. (emphasis added).

inherently unreasonable in terms of a Regulation E investigation. I also did not participate in any examinations where a financial institution's use of automation in conducting Regulation E investigations was criticized by the regulators as a per se violation of Regulation E. Nor did I hear or read about such regulatory criticism during my time as a banking regulator or since, prior to reading the consent orders entered into between Bank of America and the CFPB and OCC in July 2022.

32. Further to that end, there are a number of companies that sell automated solutions to support compliance with Regulation E's investigation requirements.[17] I have not reviewed and am not endorsing these companies or products; however, the mere fact that these companies are permitted to offer these products to the regulated banking industry speaks to the point that the usage of such automation is an accepted industry concept. In other words, if the regulators believed the mere use of these automated products as part of an investigation violated Regulation E, there would likely be public records indicating as much. Therefore, the fact that these companies actively market these products to banks supports my own direct experience that there is no prohibition against banks' use of automation in conducting Regulation E investigations.

33. In brief, financial institutions understand Regulation E to require reasonable investigations of error claims. Prior to the consent orders entered into between Bank of America and the CFPB and OCC in July 2022, I am not aware of any specific prescriptive elements about the nature of the investigation to be conducted, including any specific prescriptions about the use of automated features in fraud strategies.[18] In my experience, Regulation E allows for innovation

[17] Examples include Financial Back Office Automation ("FINBOA") and Fiserv.

[18] There is no additional guidance from the Federal banking regulators of which I am aware that provides additional information for the industry to consider when conducting investigations.

so that banks can appropriately respond to the kind of dynamic and sometimes novel challenges that will arise over time.

V. The Bank Faced Unprecedented Circumstances Related to the Explosion of Fraud in Its EDD Prepaid Debit Card Program.

34. Bank of America's prepaid debit card program for California's Employment Development Department ("EDD") was a relatively stable program from at least January 2018 leading up to the start of the pandemic in the early part of 2020. This can be demonstrated in at least the following ways:

- [redacted]
- [redacted]
- [redacted]

35. As the pandemic began to take hold in March 2020, the number of new prepaid debit card accounts in the EDD program sharply increased, and shortly thereafter came rising error

[19] *See* BANA_EDD_MDL-00884198_CONFIDENTIAL, BANA_EDD_MDL-00884199_CONFIDENTIAL.

[20] *See* BANA_EDD_MDL-00884198_CONFIDENTIAL.

[21] *See* BANA_EDD_MDL-00884200_CONFIDENTIAL.

claims. [redacted]

36. At the same time the EDD prepaid debit card program was growing exponentially, criminal fraudsters were infiltrating state unemployment benefits at an unprecedented rate. The infiltration of state unemployment benefits programs by fraudsters caused government agencies, law enforcement, and the Bank itself to believe that many of these new accounts were fraudulent. According to a House Oversight Committee Report from September 2024, initial reports about the amount of fraud in the EDD program were so extreme that some industry experts wondered if hackers had gained control of EDD's IT systems.[23] It was later determined that the web of fraud was carried out simultaneously by organized criminal groups, low-level scammers, and prison inmates, among others.[24]

37. As the pandemic wore on over the late spring and summer of 2020, error claims submitted to the Bank began to rise rapidly. In April 2020, there were under $1 million in claims

[22] *See* BANA_EDD_MDL-00884198_CONFIDENTIAL.

[23] *See* "Examining Widespread Fraud in Pandemic Unemployment Relief Programs", Report Prepared by the House Committee on Oversight and Accountability Majority Staff, September 10, 2024, pages 28-29. https://oversight.house.gov/wp-content/uploads/2024/09/UI-Report-FINAL.pdf (Last accessed March 4, 2025).

[24] *Id.*

made in connection with the EDD program. [redacted]

38. Looking at the number of error claims submitted during this time period paints a similar picture. [redacted]

39. [redacted] [redacted]

25 *See* BANA_EDD_MDL-00884200_CONFIDENTIAL.

26 *Id.*

27 DX 6, *See* Michael Letson October 23, 2024 Declaration, ¶ 27.

28 *Id.*

40. Based on the pervasiveness of fraud in the EDD prepaid debit card program, and [redacted].[29]

41. [redacted][redacted] [redacted][redacted] [redacted][redacted]

42. These unprecedented circumstances, including the unprecedented increase in error claims in a program that the Bank knew to be infiltrated by fraudsters, required an urgent response from the Bank.

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[29] *Id.*

[30] *See* BANA_EDD_MDL-00019618 – BANA_EDD_MDL-00019624 (BANA_EDD_MDL-00019618 - BANA_EDD_MDL-00019628).

[31] *See* BANA_EDD_MDL-00430148 (BANA_EDD_MDL-00430148 - BANA_EDD_MDL-00430162).

[32] *See* BANA_EDD_MDL-00430149 (BANA_EDD_MDL-00430148 - BANA_EDD_MDL-00430162).

VI. It Was Reasonable for Bank of America to Believe that Its Response to the Explosion of Pandemic-Era Prepaid Card Fraud Would Have Been Acceptable to the Bank's Regulators.

A. The Bank's Actions Were Consistent With the Belief that Its Response to the Explosion of Prepaid Card Fraud Was Compliant with Regulation E.

43. In typical circumstances, a financial institution's adherence to safety and soundness principles would not affect the conduct of its Regulation E investigations. But that unusual scenario is exactly what occurred with the unprecedented spike in fraud experienced by the EDD program and, in turn, Bank of America, during the summer of 2020.[33] [redacted] Those extraordinary circumstances were

[33] DX 6, *See* Michael Letson October 23, 2024 Declaration, ¶ 10 through ¶ 25.

[34] A California State Auditor Report from January 2021, states, "…EDD's lack of preparation left it unable to manage two important fraud-related situations that arose during its 2020 pandemic response. In September 2020, because of fraud concerns raised by Bank of America, EDD directed Bank of America to freeze 344,000 debit cards (accounts) that it used to provide benefit payments to claimants… EDD was also unprepared to prevent payment of fraudulent claims filed under the names of incarcerated individuals, the total of which is an estimated $810 million." DX 88, *See* BANA_EDD_MDL-00080296 (BANA_EDD_MDL-00080294-BANA_EDD_MDL-00080352). DX 6, *See* Michael Letson October 23, 2024 Declaration, ¶ 10 through ¶ 27. *See* William Matthew Martin February 14, 2024 Deposition transcript; pages 102-103.

[35] DX 6, *See* Michael Letson October 23, 2024 Declaration, ¶ 27.

the backdrop in which the Bank modified its approach to conducting its Regulation E investigations.

44. Financial institutions need processes to comply with Regulation E's requirements on issuing provisional credit equal to an alleged error amount while investigating the error. During the pandemic, criminals took advantage of these processes to defraud Bank of America (among other institutions) on an unprecedented scale and would have continued to do so had the Bank not altered its pre-pandemic approach.[36]

45. As Bank employee Michael Letson noted in his February 16, 2024 deposition, [redacted]

46. The Bank's [redacted] in the face of the unprecedented level of fraud and the corresponding rise in Regulation E error claims.[38] As Michael Letson further stated in his February 16, 2024 deposition, [redacted] As described above, [redacted]

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[36] DX 6, *See* Michael Letson October 23, 2024 Declaration, ¶ 10 through ¶ 25.

[37] *See* Michael Letson February 16, 2024 Deposition transcript; pages 169-170.

[38] DX 6, *See* Michael Letson October 23, 2024 Declaration, ¶ 26 through ¶ 27.

[39] *See* Michael Letson February 16, 2024 Deposition transcript; pages 108-109.

[redacted]

47. Based on my experience as a regulator, I would expect that as the nature of the error claims changed (*e.g.*, [redacted]) and the volume of such error claims dramatically increased, the Bank would have adapted to the changing risk. In my experience, a reasonable adaptation would include leveraging automation and other tools to identify indicia of potential fraud. Large banks have long used automated processes to identify indicia of potentially fraudulent activity based on various sources (*e.g.*, information about emerging typologies provided by law enforcement or regulatory agencies, historical industry knowledge, and a bank's own observations and experience).

48. I understand that the Bank did so adapt, and that in doing so, the Bank [redacted] I understand that the Bank used the CFF to conduct investigations [redacted] Based on my review of the discovery record in this case, [redacted]

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[40] *See* BANA_EDD_MDL-00019618 - BANA_EDD_MDL-00019628. *See* BANA_EDD_MDL-00430148 - BANA_EDD_MDL-00430162.

[41] *See* Michael Letson February 16, 2024 Deposition transcript; pages 97-98, 332-333. DX 6, *See* Michael Letson October 23, 2024 Declaration, ¶ 26 through ¶ 38.

[42] *See* William Matthew Martin February 14, 2024 Deposition transcript; pages 24-25. *See* Michael Letson October 23, 2024 Declaration, ¶ 32 through ¶ 35; *See* BANA_EDD_MDL-00430148-BANA_EDD_MDL-00430162; *See* BANA_EDD_MDL-00154004-BANA_EDD_MDL-00154008.

[redacted].[43] Plaintiffs allege that the Bank's adoption of CFF Indicator 1 was unreasonable under Regulation E.[44]

49. As the Bank conducted investigations, it came to realize that there was [redacted] As such, the Bank had a reasonable basis to implement CFF Indicator I, which focused on [redacted]. Indeed, based on the rapidly unfolding circumstances and the emerging scale of the unprecedented fraud, not acting to mitigate the fraud could have resulted in OCC action under safety and soundness requirements as discussed elsewhere in this report.

50. As I described above, regulators historically have permitted and expected that financial institutions will adapt their investigation procedures to changing circumstances. Had I reviewed this situation as an examiner, I would have expected that the Bank would have altered its approach to Regulation E investigations given the dramatic change in circumstances and the infiltration of the EDD program by criminals and fraudsters. Based on my experience and longstanding industry practice, the Bank's use of automation was not unreasonable or impermissible simply because the fraud targeted Regulation E error claims.

[43] DX 23, *See* Bank of America's Responses And Objections To Plaintiff Yick's Fourth Set Of Interrogatories, Case No. 3:21-md-02992-GPC-MSB, page 8.

[44] *See* Plaintiffs' Notice of Motion and Motion for Class Certification, Case No. 3:21-md-02992-GPC-MSB, page 3.

[45] DX 6, *See* Michael Letson October 23, 2024 Declaration, ¶ 31. *See* BANA_EDD_MDL-00125177 (BANA_EDD_MDL-00125177 - BANA_EDD_MDL-00125179).

51. The unprecedented spike in fraud that arose in connection with the pandemic-era unemployment benefits programs, and particularly the program administered by the EDD, is the kind of circumstance regulators historically have considered in assessing the reasonability of the investigation procedure deployed in response. This element of discretion allows financial institutions and the agencies supervising them to structure and adapt their investigations to take into account a variety of factors such as the overall fraud environment.

52. To this point, a California State Auditor Report from January 2021 noted that "EDD did not take substantive action to bolster its fraud detection efforts for its UI program until months into the pandemic, resulting in payments of about $10.4 billion for claims that it has since determined may be fraudulent because it cannot verify the claimants' identities."[46] According to a House Oversight Committee Report from September 2024, individual criminals, international organized crime groups, and prison inmates all participated in the massive fraud against the EDD program, in part because EDD's outdated systems did not allow it to perform basic checks such as cross referencing databases of incarcerated individuals. As just one example, the House Oversight Committee Report describes a suspected organized crime figure who was charged in March 2023 for orchestrating a scheme in coordination with 214 Romanian nationals to defraud EDD of over $5.2 million dollars.[47]

53. Based on the materials I have reviewed in this case and as informed by my 30 years of experience with the OCC, CFPB, Federal Reserve, and FDIC, in my opinion, the manner in

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[46] DX 88, *See* BANA_EDD_MDL-00080296 (BANA_EDD_MDL-00080294-BANA_EDD_MDL-00080352).

[47] *See* "Examining Widespread Fraud in Pandemic Unemployment Relief Programs", Report Prepared by the House Committee on Oversight and Accountability Majority Staff, September 10, 2024, page 7, 28-29, 70. https://oversight.house.gov/wp-content/uploads/2024/09/UI-Report-FINAL.pdf (Last accessed March 4, 2025).

which the Bank conducted its Regulation E investigations was principally a reflection of its efforts to balance its safety and soundness obligations and its Regulation E obligations in the face of unprecedented fraud and claim volume. The Bank would have understood and expected that, based on regulators' expertise in the industry, regulators would have considered these circumstances in evaluating the reasonableness of the Bank's processes. To that point, my knowledge gained through 30 years as an examiner was built upon the vast institutional experience of the regulatory agencies (over 160 years, in the OCC's case), which was in turn imparted to examiners such as myself.

54. I am aware that, in July 2022, Bank of America entered into consent orders with the CFPB and the OCC regarding, among other issues, its use of the CFF in connection with Regulation E investigations.

55. In my opinion, based on my experience and perspective as a former regulator, the Bank's approach to modifying its Regulation E investigative process was a reasonable response in light of the unprecedented fraud environment it was facing and its urgent need to address its safety and soundness obligations. It is further my opinion, based on my experience and perspective as a former regulator, that it was reasonable for Bank of America to believe that its regulators would consider its approach to modifying its Regulation E investigative process a reasonable and compliant response to the proliferation of benefits and cardholder fraud.

56. It is certainly not unheard of for regulators to disagree with a bank's decision and cite violations after-the-fact. To that end, the fact that Bank of America's regulators ultimately did not agree with Bank of America's implementation of the CFF as a fraud mitigation tool does not mean the Bank did not have a reasonable basis to believe it was complying with its regulatory

obligations at the time it implemented that tool, especially given the urgency presented by the explosion of prepaid card fraud.

57. I have every reason to believe that Bank of America would not willfully implement a process that violates Regulation E. I have reached this conclusion because bank examiners have virtually unfettered access to a bank's books and records and complete access to bank personnel.[48] It is further the case that obstructing or attempting to obstruct a bank examination is a criminal offense, so bankers are typically inclined to be cooperative and forthcoming.[49] As it relates to a Regulation E review specifically, in my experience, examiners would (1) review any policies, practices, or procedures that changed since the previous review, (2) review committee minutes which would discuss such changes, (3) review the level and trend of complaints, (4) test a sample of complaints, (5) review the level and trend of claims (*e.g.*, unauthorized transfers), and (6) interview both management and staff that work in the area. These examination activities generally lay bare changes in the bank's process, and Bank of America would almost certainly have assumed that its regulators would quickly learn about the CFF. The fact that the regulators ultimately disagreed with the Bank's approach does not mean that it was not reasonable for the Bank to believe its decisions would pass regulatory muster at the time the decisions were made.

VII. [redacted]

58. I understand that Plaintiffs define their Claim Denial class as "[a]ll Bank of America EDD cardholders who notified the Bank that an unauthorized transaction had occurred on their Bank of America EDD debit card account ('Claim') at an automated teller machine

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[48] *See* Comptroller's Handbook: Litigation and Other Legal Matters, Version 1.1, December 28, 2018 | OCC (pages 9-10).

[49] *See* 18 U.S. Code § 1517, "Obstructing examination of financial institution".

('ATM'), and whose Claim the Bank denied or closed at any time from September 28, 2020 through June 8, 2021, based solely on Indicator 1 of the Bank's CFF."[50]

59. Plaintiffs purport to exclude from the Claim Denial class any person who is also excluded from eligibility under the Remediation Plan implemented pursuant to the Bank's Consent Orders with the CFPB and OCC.[51]

60. The following individuals were excluded from Remediation Plan eligibility by the terms of the Remediation Plan itself: any person who "(i) has been disqualified by the state from Program eligibility; (ii) has previously engaged in fraudulent Program conduct, such as submission of fraudulent claims or other abuses of the claims process; or (iii) has had their card frozen due to legal order processes, as a result of Internal/Vendor fraud investigators, or by Global Financial Crimes Compliance."[52]

61. [redacted]

62. [redacted] Based on my expertise and experience as a former regulator, Plaintiffs' assumptions are not warranted.

[50] *See* Regan Class Cert. Report ¶ 4.

[51] *See* Regan Class Cert. Report ¶ 31.

[52] *See* BANA_EDD_MDL-00102557 (BANA_EDD_MDL-00102554-BANA_EDD_MDL-00102577).

[53] *See* Memorandum of Points and Authorities in Support of Motion for Class Certification, Case No. 3:21-md-02992-GPC-MSB, page 3, citing Regan Class Cert. Report ¶ 35.

63. [redacted]

64. Based on my experience, even more than the cost and business disruption, banks do not want to see remediation plans rejected because such an outcome can cause the regulators to call into question the bank's competence and/or motives in adopting the spirit and implementation of a consent order. Banks under consent orders are already under intense scrutiny with the regulators and thus take care to move forward in a way that satisfies the regulators. It behooves banks to be viewed by the regulators as being compliant with the consent order, appearing appropriately contrite, and seeking (through compliance) to have the consent order terminated as soon as possible.

65. [redacted]

[redacted] In my experience, regulators do not expect financial institution processes to identify and exclude 100% of illicit activity, including fraud. Regulators understand that it is not possible to identify all fraud. Therefore, regulators focus (and expect banks to focus) on processes for identifying fraud, not necessarily the result.

66. Based on my expertise and experience as a former regulator, and understanding of the rampant nature of fraud targeting the unemployment benefits program during the pandemic, [redacted]. Banks generally will err on the side of including the largest possible pool of potentially aggrieved consumers. This is true even if some potential fraudsters could be in that remediation population.

67. [redacted] In my opinion, this assumption is not warranted either. As the Kreis Class Cert. Report acknowledges, [redacted] Regulation E's investigation requirements often result in business decisions that are skewed towards payment, as reflected by the fact that the Regulation places the burden on the financial institution to provide credit for unauthorized transaction error claims unless the bank can show that the transaction was authorized. As a result, it is my

[54] DX 6, *See* Michael Letson October 23, 2024 Declaration, ¶ 7.

experience that Regulation E investigation procedures tend to overpay, because regulators focus on instances in which procedures resulted in improperly denied payments where the financial institution did not meet its burden of proof.

68. [redacted]

69. Additionally, ATM footage is not typically available for so-called "foreign" ATMs (*i.e.,* non-Bank of America ATMs). As such, camera footage from foreign ATMs would not have been available to the Bank in the way that its own ATM camera footage would when conducting investigations. Regulation E has no requirement that a bank go to unusual or extraordinary lengths to obtain such footage as part of its investigation.

70. Furthermore, in my experience, criminals can be adept at avoiding detection and will often go to great efforts to do so (*e.g.,* structuring cash transactions under reportable thresholds across multiple banks, or using many accounts and transactions to obscure the movement of illicit funds). In this particular case, the Bank observed fraudsters attempt to outmaneuver fraud controls the Bank had in place. [redacted]

[55] DX 6, *See* Michael Letson October 23, 2024 Declaration, ¶ 10 through ¶ 25.

[redacted] Such attempts at obfuscation are in fact intended to present the fraudster as a victim,

71. Banks' procedures and processes are intended to help the institutions manage risk by determining the likelihood that a particular transaction is authorized. In my decades of experience with the agencies, I reviewed many banks' procedures and investigative processes in that context and never attempted to determine whether a bank had conclusively and accurately determined whether or not fraud had occurred.

VIII. Conclusion

72. First, as a former banking regulator, it is my experience that regulators have historically afforded banks discretion in balancing an institution's safety and soundness obligations with consumer protection obligations. This includes discretion to determine the appropriate scope of Regulation E investigations. Therefore, it is my opinion that, given the unprecedented fraud facing Bank of America during the pandemic, it was reasonable for the Bank to believe that its use of the CFF would have been viewed as acceptable by its regulators. Failing to apply such mitigation efforts and thus allowing the fraud to continue unabated could have been viewed as an unsafe and unsound practice by the OCC.

73. Second, as a former banking regulator, it is my experience that regulators have historically viewed banks' actions and inactions in the context of the circumstances in which those actions and inactions occur. Therefore, it is my opinion that Plaintiffs' expert Kreis's application

[56] *See* BANA_EDD_MDL-00120424 (BANA_EDD_MDL-00120424-BANA_EDD_MDL-00120425).

of Bank of America's *pre-pandemic* manual investigation procedures in the context of the unprecedented fraud and error claims with which the Bank was confronted *during the pandemic*, renders his conclusions unreliable.

74. Third, as a former banking regulator, it is my experience that no monitoring systems, no matter how well-designed to detect unusual, suspicious, or illegal activity, including fraud, will successfully detect 100% of such activity.

75. Fourth, it is my experience that banks that enter into regulatory settlements or consent orders typically take an extremely consumer-friendly approach to ensure that every *potentially* harmed consumer receives compensation, even if that means that unharmed consumers are also compensated. Therefore, it is my opinion that Plaintiffs' assumption that non-exclusion from Bank of America's Remediation Plan means each EFTA claim was valid is unwarranted.

Executed this 4th day of March 2025.

Russell Cronan

Russell Cronan

Russell (Rusty) Cronan, Sr.

WORK EXPERIENCE

Independent Consulting (including Compliance Risk Advisors LLC)
2019 to present

Consumer Financial Protection Bureau
2011 to 2019
Job Title: Examiner

Duties

- While detailed from the Office of the Comptroller of the Currency (OCC) to the CFPB (prior to agency start up):
  - Reviewed data from and met with other regulators to assign risk ratings and suggested examination scopes and dates for banks transferring to the agency's jurisdiction.
  - Reviewed and provided feedback on various policy and procedure documents (e.g., the Examination Manual).
  - Reviewed and provided feedback on document templates (e.g., Examination Report).
  - Reviewed and provided feedback on training documents and met with training development staff (e.g., Examiner Soft Skills).
  - Provided information about competencies expected from financial fraud investigators.
  - Provided information about what technology examiners need.

- Through exams, and other data analysis, analyze bank and nonbank financial institutions' risk profiles, management, personnel, processes, and systems to comply with consumer protection laws, fair lending laws, and informational reporting laws; and opine on the entities' performance.
- Develop institutional risk assessments and supervisory plans; plan examinations; coordinate and supervise exam teams; lead team members in obtaining and analyzing numerous data to conclude on the institutions' risk profiles, FFIEC ratings, and compliance with various laws and regulations; document and report findings, both in writing and orally, to senior institution management and agency management; provide guidance to and development of team members, as needed; provide timely and candid team member evaluation and feedback; and, provide an equal opportunity work environment.
- Partner with various other internal and external entities (e.g., Office of Supervision Policy and Office of Enforcement, and federal and state banking regulators) to achieve objectives.

Accomplishments

- Selected by then CFPB implementation staff as one of two examiners detailed from OCC to the CFPB, prior to agency start up.
- Received examiner commission.
- Selected as the Examiner in Charge of one of the agency's first exams, which was the second largest bank in the Midwest Region and the 18th largest bank in the nation by assets.
- Selected as Lead Examiner/Central Point of Contact to lead the agency's day-to-day examination function at the largest bank in the Midwest Region and the fifth largest bank in the nation by assets.
- Received Midwest Region's first Spotlight Award.
- Received Spot Award for exceptional accomplishment in support of CFPB's mission.

Office of the Comptroller of the Currency
1998 to 2011
Job Titles: National Bank Examiner (Consumer/CRA), and BSA/AML Policy Specialist

Duties

- Through exams, and other data analysis, analyze banks' risk profiles, management, personnel, processes, and systems to comply with consumer protection laws, fair lending laws, informational reporting laws, anti-money laundering laws, economic sanctions laws, and community development laws; and opine on the banks' performance.
- Develop risk assessment summaries, core risk assessments, and supervisory strategies; plan examinations; assemble, coordinate, and supervise exam teams; lead team members in obtaining and analyzing numerous data to conclude on the banks' risk profiles, FFIEC ratings, and compliance with various laws and regulations; document and report findings, both in writing and orally, to senior bank management and senior OCC management; provide guidance to and development of team members, as needed; provide timely and candid team member evaluation and feedback; and, provide an equal opportunity work environment.
- Develop and train employees, other regulators, and bankers through teaching schools; speaking at conferences, and meetings; providing on-the-job training; and serving as a Coach (i.e., trainer) in the BSA/AML Examiner Specialized Skills Program (ESSP) national training initiative.
- Partner with various other departments and entities to achieve objectives.
- Represent the OCC at interagency meetings, bankers' outreach, conferences, and schools, including teaching BSA/AML at schools sponsored by the FFIEC and international organizations.
- Perform community contacts with government officials, development officials, academic officials, and other community leaders.

- While assigned to Compliance Policy as a BSA/AML Specialist at OCC headquarters:
    - Assist on or lead, as requested or assigned, high-risk or complex examinations.
    - Provide examination support regarding complex exams or analysis. through coaching and Currency Transaction Report (CTR) and Suspicious Activity Report (SAR) data management.
    - Provide expert guidance and information to field staff, bankers, and senior OCC management.
    - Develop written policy and procedure and guidance for OCC and interagency use.
    - Plan, organize, and execute project management responsibilities.
    - Plan, organize, and conduct meetings with other OCC staff and with interagency staff.
    - Plan, organize, develop, and make presentations to international bank supervisors (i.e., Japan, Russian Federation, and Republic of Korea).
- While assigned to the Large Bank Quality Assurance unit:
    - Developed, implemented, and led the Compliance Quality Assurance function in the Large Bank line of business, ensuring that OCC staff supervising the country's largest banks were following agency policy and procedures; ensuring that systemic and bank-specific issues and risks were appropriately identified and managed; and ensuring that best practices were identified for possible replication.

Accomplishments

- Received examiner commission.
- Earned three U.S. Treasury Department Special Act or Service Awards.
- Earned Letter of Appreciation from The Association of Supervisors of Banks of the Americas, which was then comprised of banking supervisors from 34 countries.
- Selected as the Compliance Functional Examiner in Charge at a $21B high-risk Mid-size Bank (responsible for managing day-to-day supervision of all compliance risk).
- Selected as the Compliance Functional Examiner in Charge at a $38B Large Bank, which was a top 10, nation-wide mortgage originator (responsible for managing day-to-day supervision of all compliance risk).
- Selected as one of three examiners to participate in the Developmental Program in the Chief National Bank Examiner's Office.
- Selected to develop, implement, and lead the Compliance Quality Assurance function in the Large Bank line of business.
- Selected to lead the design, development, and presentation of BSA/AML training for the Large Bank line of business, which fulfilled a commitment from then Comptroller of the Currency Dugan to Congress.
- Selected as one of 14 OCC staff to participate in the BSA/AML Foreign Technical Assistance Program in cooperation with the U.S. Department of State.

- Selected to instruct AML schools sponsored by the OCC (including one international school), the FFIEC, and an international school sponsored by the U.S. Department of State.
- Selected as one of seven charter OCC personnel to serve on a BSA/AML Team to examine the five highest risk community national banks.
- Selected as first Chairman of the Midwestern District Anti-Money Laundering Team.
- Founding member and Chairman of the BSA/AML Interagency Working Group (included reps. from about 20 state and federal regulatory and law enforcement agencies).
- Selected as a member of the U.S. Department of Justice's Eastern District of MO Anti-Terrorism Advisory Council.

NationsBank, N.A.
1997 to 1998
Job Title: Vice President and Program Support Manager

Duties

- Lead and manage the startup of the Program Support department in St. Louis, which covered lending-related compliance in states west of the Mississippi River, and Illinois.
- Guide, advise, and otherwise support and serve internal customers.
- Develop and implement my department's budget and operating plan.
- Partner with various other departments and entities to achieve objectives.
- Supervise two officer-level employees and one clerical employee.
- Provide guidance to and development of team members, as needed; provide timely and candid team member evaluation and feedback; and provide an equal opportunity work environment.

Accomplishments

- Successful startup of the Department itself.
- Successfully led and managed a Home Mortgage Disclosure Act data integrity scrub project, which included more than 7,000 files (supervised numerous clerical employees, two officer-level employees, and coordinated with a large consulting firm who assisted with the project).

Federal Reserve Bank of St. Louis
1996 to 1997
Job Title: Bank Examiner (Consumer Affairs)

Duties

- Through exams, and other data analysis, analyze banks' risk profiles, management, personnel, processes, and systems to comply with consumer protection laws, fair lending laws, informational reporting laws, and community development laws; and opine on the banks' performance.
- Plan examinations; coordinate and supervise exam teams; lead team members in obtaining and analyzing numerous data to conclude on the banks' risk profiles, FFIEC ratings, and compliance with various laws and regulations; document and report findings, both in writing and orally, to senior bank management, and, in some cases, senior Reserve Bank management; provide guidance to and development of team members, as needed; provide timely and candid team member evaluation and feedback; and provide an equal opportunity work environment.
- Develop and train employees and bankers through speaking at conferences and meetings; and providing on-the-job training.
- Partner with various other departments and entities to achieve objectives.
- Represent the Federal Reserve Bank of St. Louis at interagency meetings, bankers' outreach, conferences, and schools.
- Perform community contacts with government officials, development officials, academic officials, and other community leaders.

Accomplishments

- Received examiner commission.
- Selected as sole Federal Reserve Bank of St. Louis representative on a Federal Reserve System task force established to risk base the Consumer Affairs examination process across the nation's twelve Reserve Banks.
- Selected to chair the Federal Reserve Bank of St. Louis' risk-based compliance examination committee.

Federal Deposit Insurance Corporation
1989 to 1996
Job Titles: Bank Examiner, and Compliance Examiner

Duties

- Through exams, and other data analysis, analyze banks' management, capital adequacy, asset quality, earnings performance, liquidity posture; processes, personnel, and systems to comply with safety and soundness regulations and standards, consumer protection laws, fair lending laws, informational reporting laws, anti-money laundering laws, economic sanctions laws, and community development laws; and opine on banks' performances.
- Plan examinations; assemble, coordinate, and supervise exam teams; lead team members in obtaining and analyzing numerous data to conclude on the banks' risk profiles, FFIEC ratings, and compliance with various laws and regulations; document and report findings, both in writing and orally, to senior bank and agency

management.

- Provide guidance to and development of team members, as needed; provide timely and candid team member evaluation and feedback; and provide an equal opportunity work environment.
- Assist Division of Liquidation during closing of a failed bank chain.
- Work as a Review Examiner/Case Manager during Regional Office Detail assignments (review and process exam reports; take, document, and resolve consumer complaints and inquires; answer questions from field examiners; project work).
- Perform community contacts with government officials (including tribal governments), development officials, academic officials, and other community leaders.

Accomplishments

- Received examiner commission.
- Promoted to the next higher grade (i.e., 12), within one year of commissioning, which was the fastest possible time.
- Recommended for two Sustained Superior Performance Awards.
- Selected for two Regional Office Detail assignments.
- Selected to assist the Division of Liquidation during closing of a failed bank chain.

I have held other professional jobs in the banking industry, and details are available upon request.

EDUCATION

University of Mississippi
Oxford, MS
Bachelor of Business Administration
Major: Banking and Finance
GPA: 3.4/4.0

Job-related training:
Many company-sponsored schools and seminars covering: Accounting, auditing, capital analysis, credit analysis, investment analysis, earnings analysis, liquidity analysis, real estate appraisal analysis, written and oral communications, computer skills, management and leadership development, personal development, anti-money laundering laws, economic sanctions laws, consumer protection laws, informational reporting laws, fair lending laws, housing development, development issues on American Indian Reservations, and community development in general.

Industry Certifications:

- Received Certified Regulatory Compliance Manager (CRCM) designation.
- Received Certified Risk Professional (CRP) with Compliance Emphasis designation.

- Received Certified Anti-Money Laundering Specialist (CAMS) designation.
- Received Anti-Money Laundering Professional (AMLP) designation.

In RE Bank of America California Unemployment Benefits Litigation

Expert Report of Russell Cronan

List of Materials Considered

1. Expert Reports and Declarations

Expert Class Certification Report of J. Daniel Kreis dated August 29, 2024

Expert Class Certification Report of Greg J. Regan, CPA/CFF, CFE dated August 29, 2024

Declaration of Michael J. Letson in Support of Defendant's Memorandum in Opposition to Plaintiffs' Motion for Class Certification signed on October 23, 2024

Expert Class Certification Rebuttal Report of William J. Abernathy, Jr., dated November 19, 2024

Expert Rebuttal Report of J. Daniel Kreis dated November 21, 2024

2. Case Filings

Bank of America's Responses and Objections to Plaintiff Yick's Fourth Set of Interrogatories dated January 2, 2024

Bank of America's Second Set of Responses and Objections to Plaintiff Yick's Seventh Set of Interrogatories (Interrogs. 39 & 42) dated April 23, 2024

Plaintiffs' Notice of Motion and Motion for Class Certification filed on August 29, 2024

Memorandum of Points and Authorities in Support of Motion for Class Certification dated August 29, 2024

Plaintiff Second Amended Master Consolidated Complaint filed on July 16, 2024

Defendant's Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion for Class Certification dated October 24, 2024

Plaintiff's Reply in Support of Motion for Class Certification dated November 21, 2024

3. Depositions

William Matt Martin Deposition Transcript dated February 14, 2024

Michael Letson Deposition Transcript dated February 16, 2024

Ryan Schwartz Deposition Transcript dated December 4, 2024

Bradley Garfield Deposition Transcript dated December 10, 2024

Anne Holt Deposition Transcript dated January 8, 2025

Faiz Ahmad Deposition Transcript dated January 29, 2025

Melissa Ramirez Deposition Transcript dated February 11, 2025

William Fox Deposition Transcript dated February 13, 2025

Jennifer Ehresman Deposition Transcript dated February 19, 2025

Paul Simpson Deposition Transcript dated February 21, 2025

4. Other Produced Documents

BANA_EDD_MDL-00019618 - BANA_EDD_MDL-00019628

BANA_EDD_MDL-00055974 - BANA_EDD_MDL-00055981

BANA_EDD_MDL-00076983

BANA_EDD_MDL-00076984 - BANA_EDD_MDL-00076985

BANA_EDD_MDL_00080294 - BANA_EDD_MDL-00080352

BANA_EDD_MDL-00087715 - BANA_EDD_MDL-00087716

BANA_EDD_MDL-00102554 - BANA_EDD_MDL-00102577

BANA_EDD_MDL-00117097 - BANA_EDD_MDL-00117099

BANA_EDD_MDL-00118436 - BANA_EDD_MDL-00118437

BANA_EDD_MDL-00120424 - BANA_EDD_MDL-00120425

BANA_EDD_MDL-00125177 - BANA_EDD_MDL-00125179

BANA_EDD_MDL-00142730 - BANA_EDD_MDL-00142731

BANA_EDD_MDL-00154004 - BANA_EDD_MDL-00154008

BANA_EDD_MDL-00158953

BANA_EDD_MDL-00189032 - BANA_EDD_MDL-00189033

BANA_EDD_MDL-00416783 - BANA_EDD_MDL-00416784

BANA_EDD_MDL-00430148 - BANA_EDD_MDL-00430162

BANA_EDD_MDL-00547571 - BANA_EDD_MDL-00547572

BANA_EDD_MDL-00570333 - BANA_EDD_MDL-00570334

BANA_EDD_MDL-00884198

BANA_EDD_MDL-00884199

BANA_EDD_MDL-00884200

5. Publicly Available Documents

18 U.S. Code § 1517, "Obstructing examination of financial institution," available at https://www.govinfo.gov/content/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap73-sec1517.pdf

95th Congress, Public Law 95-630, November 10, 1978, available at https://www.govinfo.gov/content/pkg/STATUTE-92/pdf/STATUTE-92-Pg3641.pdf

Authenticated U.S. Government Information, Federal Reserve System, 12 CFR Part 205, January 10, 2006, available at https://www.govinfo.gov/content/pkg/FR-2006-01-10/pdf/06-145.pdf

Bureau Of Consumer Financial Protection, 12 CFR Parts 1005 and 1026, "Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z)," Federal Register, Vol. 81, No. 225, November 22, 2016, available at https://www.govinfo.gov/content/pkg/FR-2016-11-22/pdf/2016-24503.pdf

Consumer Financial Protection Bureau, Bank of America Consent Order dated July 14, 2022

Code of Federal Regulations, Title 12, "Appendix A to Part 30 – Interagency Guidelines Establishing Standards for Safety and Soundness," available at https://www.ecfr.gov/current/title-12/chapter-I/part-30/appendix-Appendix%20A%20to%20Part%2030

Consumer Financial Protection Bureau, "Electronic Fund Transfers FAQs," Version 3, January 15, 2025 available at https://files.consumerfinance.gov/f/documents/cfbp_electronic-fund-transfers-faqs.pdf

Consumer Financial Protection Bureau, "Supervision and Examination Manual," September 2023, available at https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual_2023-09.pdf

Consumer Financial Protection Bureau, "Supervisory Highlights," Fall 2014, available at https://files.consumerfinance.gov/f/201410_cfpb_supervisory-highlights_fall-2014.pdf

Consumer Financial Protection Bureau, "Supervisory Highlights," Winter 2015, available at https://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-2015.pdf

Consumer Financial Protection Bureau, "Supervisory Highlights," Issue 18, Winter 2019, available at https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-18_032019.pdf

Consumer Financial Protection Bureau, "Supervisory Highlights," Issue 25, Fall 2021, available at https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-25_2021-12.pdf

Consumer Financial Protection Bureau, "Supervisory Highlights," Issue 28, Fall 2022, available at https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-28_2022-11.pdf

Consumer Financial Protection Bureau, 12 CFR, "§ 1005.11 Procedures for resolving errors," available at https://www.consumerfinance.gov/rules-policy/regulations/1005/11/

Consumer Financial Protection Bureau, 12 CFR, "§ 1005.2 Definitions," available at https://www.consumerfinance.gov/rules-policy/regulations/1005/2/

Dodd-Frank Wall Street Reform And Consumer Protection Act, "PUBLIC LAW 111–203," July 21, 2010, available at https://www.govinfo.gov/content/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf

House Committee on Oversight and Accountability Majority Staff, "Examining Widespread Fraud in Pandemic Unemployment Relief Programs," September 10, 2024, available at https://oversight.house.gov/wp-content/uploads/2024/09/UI-Report-FINAL.pdf

Office of the Comptroller of the Currency, "OCC Finalizes Its Heightened Standards for Large Financial Institutions," September 2, 2014, available at https://www.occ.gov/news-issuances/news-releases/2014/nr-occ-2014-117.html

Office of the Comptroller of the Currency, OCC Bulletin 2019-37, "Operational Risk: Fraud Risk Management Principles," July 24, 2019, available at https://www.occ.gov/news-issuances/bulletins/2019/bulletin-2019-37.html

Office of the Comptroller of the Currency, Administrator of National Banks, "Internal Control," January 2001, available at https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/internal-control/pub-ch-internal-control.pdf

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Office of the Comptroller of the Currency, Comptroller's Handbook, "Corporate and Risk Governance," July 2019, available at https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/corporate-risk-governance/pub-ch-corporate-risk.pdf

Office of the Comptroller of the Currency, Comptroller's Handbook, "Large Bank Supervision," Version 1.0, June 2018, available at https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/large-bank-supervision/pub-ch-large-bank-supervision.pdf

Office of the Comptroller of the Currency, PPM-5000-7, Section: Bank, Supervision Subject: Civil Money Penalties, November 13, 2018, available at https://www.occ.gov/news-issuances/bulletins/2018/ppm-5000-7.pdf

Office of the Comptroller of the Currency, Comptroller's Handbook, "Litigation and Other Legal Matters," Version 1.1, December 28, 2018, available at https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/litigation-other-legal-matters/pub-ch-litigation.pdf

United States of America Department of the Treasury Office of the Comptroller of the Currency, Bank of America Consent Order dated July 14, 2022

Note: I also reviewed the materials listed in Appendix B of the Expert Class Certification Report of J. Daniel Kreis dated August 29, 2024 and Appendix B of the Expert Rebuttal Report of J. Daniel Kreis dated November 21, 2024.