DX 11.A

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED PURSUANT TO STIPULATED PROTECTIVE ORDER

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 REBUTTAL REPORT OF TERESA A. PESCE

April 4, 2025

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I. ASSIGNMENT

1. I have been engaged by Goodwin Procter LLP ("Counsel"), counsel for Bank of America, N.A. ("the Bank") to provide an expert report in the matter of *In Re Bank of America California Unemployment Benefits Litig.*, Case No. 3:21-md-02992-GPC-MSB. My affirmative report, which includes my qualifications and compensation, was submitted on March 4, 2025 (the "Pesce Report"). I submit this report in rebuttal of the expert report of J. Daniel Kreis submitted on March 4, 2025 on behalf of the Plaintiffs in this case (the "Kreis Report").

2. A list of materials I reviewed and cited, that are in addition to the materials included in the Pesce Report, is appended hereto at Appendix A. I reserve the right to supplement or amend my report should new information become available. I am prepared to testify at trial on the topics addressed in this report.

II. SUMMARY OF REBUTTAL OPINIONS

3. I have reviewed the Kreis Report and disagree with several of Mr. Kreis's conclusions.

4. Mr. Kreis suggests that the Bank should have applied [redacted] wholly ignoring the explosion of the EDD program and fraudulent unauthorized transaction claims seeking to specifically take advantage o[redacted]. [redacted] could not have addressed the scale of the fraud, and likely would have enabled criminals and fraudsters to continue to steal additional taxpayer and bank funds.

5. Mr. Kreis ignores the fact that the Bank had a duty to implement processes to prevent fraud[redacted]

6. Mr. Kreis suggests that the Bank incorrectly applied a rules-based filter to identify fraudulent unauthorized transaction claims when it should have implemented a vendor technology model. Models, and in particular vendor models, are complex and can take months, or even years, to implement. Due to the unprecedented levels of fraud in the EDD program, and the targeted attack on the Bank's claims system, the Bank had to act swiftly in order to prevent or deter further fraud against the State and the Bank.

7. Mr. Kreis suggests that the Bank should have sought regulatory approval to implement the CFF. Banks do not, in general, request permission to deploy filtering rules; regulators would likely not provide guidance. Moreover, the process of receiving a regulatory no-action determination is protracted. The Bank did not have the luxury of time given the nature of the fraud that was being perpetrated against the State and the Bank.

8. Mr. Kreis suggests that the Bank's use of the CFF was improper to the extent it made a "definitive" determination of fraud. In fact, the Bank [redacted]

9. Mr. Kreis suggests alternative measures that the Bank could have used to address unauthorized transaction claims. None of his suggestions could have addressed the unprecedented fraud targeting the EDD program and the Bank's claims system.

10. Mr. Kreis fails to acknowledge [redacted] Additionally, Mr. Kreis's hindsight assessment of the CFF's accuracy relies on misleading statistics, [redacted]

[redacted]

11. In addition to the rebuttal opinions I offer in this report, I continue to hold all the opinions set forth in the Pesce Report which are incorporated by reference herein.

III. MR. KREIS IGNORES THE COVID-19 CRISIS AND THE ASSOCIATED FRAUD.

12. The Kreis Report is largely focused on the Bank's departure from its [redacted] when addressing fraudulent transaction claims during the COVID-19 pandemic.[1] He fails to acknowledge that the Bank's [redacted].[2]

13. As noted in the Pesce Report, there was massive fraud associated with COVID-19-related unemployment benefits, such as those granted by EDD.[3] EDD failed to adequately assess

[1] *See, e.g.,* Expert Report of J. Daniel Kreis, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-GPC-MSB (Mar. 4, 2025) ("Kreis Report"), Section VII.D.

[2] Deposition of Shane Daniels, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Feb. 6, 2024) ("Daniels Deposition") , Appendix of Exhibits to the Declaration of Laura Brys in Support of Defendant's Opposition to Plaintiffs' Motion for Class Certification, Ex. ("DX") 98 at 61:2–9 ("[redacted]); Declaration of Michael J. Letson in Support of Defendant's Memorandum in Opposition to Plaintiffs' Motion for Class Certification, *In re: Bank of America California Unemployment Benefits Litigation,* Case No. 3-21-md-02992-GPC-MSB (Jan. 17, 2025) ("Letson Declaration") (DX 6) at ¶ 29.

[3] *See, e.g.,* Employment Development Department, State of California, *Annual Report California Fraud Deterrence and Detection Activities* (June 2021) (DX 16) at 3, 7; BANA_EDD_MDL-00080294–352 (Auditor of the State of California, *Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments*, (Jan. 2021) ("Weaknesses in EDD's Approach, Jan. 2021"), (DX 88) at 308 ("EDD paid about $10.4 billion on claims that it later determined might be fraudulent."). *See also*, e.g. Expert Report of Teresa A. Pesce, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 1-MD-02992-GPC-MSB (Mar. 4, 2025) ("Pesce Report"), Section V.2.a.

the eligibility and identity of an unprecedented number of beneficiaries before directing the Bank to issue prepaid cards and provide benefits.[4] [redacted][5] Thus, during the spring and summer of 2020, [redacted]

IV. MR. KREIS FAILS TO ACKNOWLEDGE THE RESPONSIBILITY THE BANK HAD TO RESPOND QUICKLY TO THE CRISIS TO PREVENT FURTHER FRAUD.

14. Throughout the COVID-19 pandemic, law enforcement and banking regulators, including the Bank's primary regulator, the Office of the Comptroller of the Currency ("OCC"), issued warnings to banks to beware of unemployment benefits fraud and to ensure they had controls in place to prevent, detect, and report such fraud.[7] [redacted]

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[4] Auditor of the State of California, Employment Development Department: EDD's Poor Planning and Ineffective Management Left it Unprepared to Assist Californians Unemployed by COVID-19 Shutdowns (Jan. 2021) (DX 89) at 25 ("In March 2020, EDD halted most of its work related to determining whether UI claimants were eligible for benefits."); Weaknesses in EDD's Approach, Jan. 2021 (DX 88) at 310 ("It is almost certain that because of its lax approach, EDD missed stopping payment on fraudulent claims during the pandemic."), 316.

[5] *See, e.g.*, [redacted]

[6] *See* Pesce Report, Section V.2.b.

[7] *See, e.g.* Office of the Comptroller of the Currency, *Semiannual Risk Perspective from the National Risk Committee* (Spring 2021), https://www.occ.gov/publications-and-resources/publications/semiannual-risk-perspective/files/pub-semiannual-risk-perspective-spring-2021.pdf (DX 93) at 1, 20; FinCEN, *Advisory on Unemployment Insurance Fraud During the Coronavirus Disease 2019 (COVID-19) Pandemic* (Oct. 13, 2020), https://www.fincen.gov/sites/default/files/advisory/2020-10-13/Advisory%20Unemployment%20Insurance%20COVID%2019%20508%20Final.pdf; U.S. Department of Justice, National Unemployment Insurance Fraud Task Force, *Unemployment Insurance Fraud Consumer Protection Guide* (Sep. 21, 2020), https://www.oig.dol.gov/public/Unemployment%20Insurance%20Fraud%20Consumer%20Protection%20Guide,%20Final.pdf (DX 95); BANA_EDD_MDL-00205361 (U.S. Secret Service, *Massive Fraud Against State Unemployment Insurance Programs* (May 14, 2020)) (DX 96); Office of the Comptroller of the Currency, *Bank*

[redacted] This point of view is consistent with my experience running an AML team and assisting other banks' financial crimes teams. Mr. Kreis fails to take this into account in opining on the Bank's actions.

15. [redacted][10] Mr. Kreis [redacted][11] [redacted]

Secrecy Act/Anti-Money Laundering: OCC Supports FinCen's Regulatory Relief and Risk-Based Approach for Financial Institution Compliance in Response to COVID-19 (Apr. 7, 2020), https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-34.html.

[8] BANA_EDD_MDL-00087715–6 (Bank of America, *Unemployment Benefits - Prepaid Fraud Analysis: California Overview* (Sep. 15, 2020)) (DX 99) at 5; Deposition of Michael Letson, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Feb. 16, 2024) ("Letson Deposition") (DX 97) at 76:17–77:18; Letson Declaration (DX 6) at ¶¶ 10–17; Deposition of William Fox, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-GPC-MSB (Feb. 13, 2025) ("Fox Deposition") at 15:9–17:1, 17:13–18:16.

[9] Fox Deposition at 12:15–21, 24:5–7 [redacted]; Deposition of Bradley Garfield, *In re: Bank of America California Unemployment Benefits Litigation,* Case No.: 3:21-md-02992-GPC-MSB (Dec. 10, 2024) ("Garfield Deposition") at 211:2–19; Deposition of Faiz A. Ahmad, *In re: Bank of America California Unemployment Benefits Litigation,* Case No.: 3:21-md-02992-GPC-MSB (Jan. 29, 2025) ("Ahmad Deposition") at 151:9–16. *See*, Pesce Report at ¶ 50.

[10] Letson Declaration (DX 6) at ¶ 18; BANA_EDD_MDL-00570333–4 (Email chain from Daniel Buttafogo to Jennifer M. Ehresman, et al., (Sep. 23, 2020)) (DX 100); BANA_EDD_MDL-00087715–6 (Bank of America, *Unemployment Benefits - Prepaid Fraud Analysis: California Overview* (Sep. 15, 2020)) (DX 99) at 5. *See also*, BANA_EDD_MDL-00055974–81 (*Prepaid Activity – ATM Analysis Summary* (Mar. 2, 2020) at 74, 77–8; BANA_EDD_MDL-00154004–8 (Bank of America, *Unemployment Insurance (UI) Benefits Fraud Model Development*) at 5; BANA_EDD_MDL-00430148–62 (Bank of America, *Benefits Fraud | Patterns Observed*) at 48.

[11] Kreis Report at ¶¶ 34, 45.

[redacted][12] [redacted][14] [redacted]"[15]

16. [redacted][16] [redacted][17] [redacted][18] [redacted]

[12] Letson Deposition (DX 97) at 112:12–113:8; 147:15–149:19; 152:5–153:7; 177:4–22; Letson Declaration (DX 6) at ¶¶ 27–28. *See, e.g.*, BANA_EDD_MDL-00055974–81 (Bank of America, *Prepaid Activity – ATM Analysis Summary* (Mar. 2, 2020) at 74; Fox Deposition at 79:23–25.

[13] Letson Declaration (DX 6) at ¶ 27; Schwartz Deposition at 131:9–132:2.

[14] Declaration of William M. Martin in Support of Defendant's Memorandum in Opposition to Plaintiffs' Motion for Class Certification, *In re: Bank of America California Unemployment Benefits Litigation*. Case No. 3-21-md-02992-GPC-MSB (Jan. 17, 2025) ("Martin Declaration") (DX 7) at ¶ 5; Garfield Deposition at 211:2–19; Ahmad Deposition at 60:7–19.

[15] Fox Deposition at 12:15–21, 26:12–20.

[16] BANA_EDD_MDL-00019618–28 (Bank of America, *Unemployment Prepaid Debit Card Fraud*) at 18–19; BANA_EDD_MDL-00125177–9 ([redacted] Letson Deposition (DX 97) at 69:8–70:21; Letson Declaration (DX 6) at ¶¶ 30–35; Fox Deposition at 46:19–47:17; Ahmad Deposition at 292:21–293:17, 304:15–24; Deposition of Anne Holt, *In re: Bank of America California Unemployment Benefits Litigation,* Case No.: 3:21-md-02292-GPC-MSB (Jan. 8, 2025) ("Holt Deposition") at 173:8–15, 230:24–231:5.

[17] Fox Deposition at 27:20–22.

[18] Letson Declaration (DX 6) at ¶¶ 28–31; Letson Deposition (DX 97) at 187:10–24; Fox Deposition at 52:12–53:8; BANA_EDD_MDL-00125177–9 (Email chain from Michael J. Letson to Bradley Garfield, et al., *RE: Prepaid*

[redacted][19] but appears to conclude that such frauds only occur when the claimant is a victim and not themselves a fraudster. In my opinion, this conclusion is unreasonable; as the Bank was aware, there was rampant fraud in connection with the distribution of unemployment benefits and in the EDD portfolio in particular,[20] [redacted].[21]

17. Mr. Kreis criticizes the Bank's use of a "fraud rule" or "fraud filter" to root out fraud as opposed to developing a "fraud model", which he acknowledges would be "more complex technology that are often developed by third parties, have long leveraged artificial intelligence and machine learning based on large data sets of known fraud and non-fraud payment data, and can be tailored to specific geographic regions and lines of business."[22] [redacted][23] In my experience, technology platforms, which deploy models to detect fraud and other suspicious activity, including those developed by third-party vendors, can take many months or even years to implement. If the Bank had undertaken such a project, it would have allowed rampant fraud to run through the Bank while the project was under development and review.

Claims Processing – Benefits Fraud (Sep. 28, 2020)) at 77; BANA_EDD_MDL-00087715–6 (Bank of America, *Unemployment Benefits - Prepaid Fraud Analysis: California Overview* (Sep. 15, 2020)) (DX 99) at 5.

[19] Kreis Report at ¶ 51(2).

[20] Weaknesses in EDD's Approach, Jan. 2021 (DX 88) at 305, 308; House Committee on Oversight and Accountability Majority Staff, *Examining Widespread Fraud in Pandemic Unemployment Relief Programs* (Sep. 10, 2024), https://oversight.house.gov/wp-content/uploads/2024/09/UI-Report-FINAL.pdf (DX 14) at 28–29. *See, e.g.,* Letson Declaration (DX 6) at ¶ 28.

[21] Letson Declaration (DX 6) at ¶ 28; Letson Deposition (DX 97) at 115:9–116:10; BANA_EDD_MDL-00125177–9 at 77 (Email chain from Michael J. Letson to Bradley Garfield, et al., *RE: Prepaid Claims Processing – Benefits Fraud* (Sep. 28, 2020)); BANA_EDD_MDL-00430148–62 (Bank of America, *Benefits Fraud | Patterns Observed*) at 49, 53; BANA_EDD_MDL-00087715–6 (Bank of America, *Unemployment Benefits - Prepaid Fraud Analysis: California Overview* (Sep. 15, 2020)) (DX 99) at 5; BANA_EDD_MDL-00055974–81 (*Prepaid Activity – ATM Analysis Summary* (Mar. 2, 2020) at 77–8.

[22] Kreis Report at ¶ 59.

[23] Fox Deposition at 45:3–8.

Moreover, rules-based, "if – then" filtering, or monitoring tools are frequently used by financial institutions to identify suspicious activity.[24]

18. Mr. Kreis also suggests that the Bank should have sought regulatory approval before implementing the CFF highlighting his own experience in seeking prior approval from the CFPB before implementing an automated process.[25] He assumes that the Bank did not seek such approval because it believed it would not have been granted.[26] This assumption is unsupported and without merit. In my experience, banks do not generally seek regulatory approval before deploying monitoring rules. Often the OCC, the Bank's primary regulator, will decline to opine in advance on how a bank should handle a particular BSA-related situation. While the OCC encourages communication between a bank and its examiners,[27] the OCC does not have a formal no-action letter process. On-site examiners would be unlikely to provide approval on behalf of the OCC in any event.

19. While the CFPB does have a No-Action Letter Policy, the policy encourages communication with the CFPB before submitting an application.[28] It states that the regulator aims to provide a decision within 60-days of the application, but notes that certain circumstances could lead to longer processing times, placing emphasis on

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[24] Kreis Report at ¶ 59; Oraz Kereibayev, *AML Transaction Monitoring Rules: Best Examples*, The Sumsuber (Oct. 3, 2024) https://sumsub.com/blog/aml-transaction-monitoring-rules-scenarios/; Bob Hager, *Evaluating Effectiveness: The Impact of a Rules Coverage Assessment on Transaction Monitoring Solutions*, NICE Actimize (June 13, 2024), https://www.niceactimize.com/blog/aml-evaluating-effectiveness-the-impact-of-a-rules-coverage-assessment-on-transaction-monitoring-solutions/. *See also*, Letson Deposition (DX 97) at 61:1–19; FFIEC Manual, *Assessing Compliance with BSA Regulatory Requirements, Customer Due Diligence, Overview* (2018), https://bsaaml.ffiec.gov/manual/AssessingComplianceWithBSARegulatoryRequirements/02 ("[A]ll banks must develop and implement appropriate risk-based procedures for conducting ongoing customer due diligence, including, but not limited to … [c]onducting ongoing monitoring to identify and report suspicious transactions.").

[25] Kreis Report at ¶ 49.

[26] *Id.*

[27] Office of the Comptroller of the Currency, *Comptroller's Handbook: Examination Process, Bank Supervision Process* (Sep. 2019) https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/bank-supervision-process/pub-ch-bank-supervision-process.pdf at 1–2 ("High quality bank supervision … includes ongoing and effective communication with bank management and the board of directors (board).").

[28] Consumer Finance Protection Bureau, *Policy on No-Action Letters*, Federal Register, 12 C.F.R. § X (Sep. 13, 2019), https://www.federalregister.gov/documents/2019/09/13/2019-19763/policy-on-no-action-letter.

thorough analysis rather than the 60-day time frame.[29] In short, the CFPB No-Action Letter process, when available, is protracted. An institution seeking approval could wait months for any response at all. Moreover, at the time the Bank made the decision to implement the CFF, the CFPB and the OCC – like the rest of the country – were on lockdown.[30] The fact that all employees were working remotely could only have lengthened the wait time. The Bank had a growing problem it needed to address as quickly as possible. Once again, Mr. Kreis fails to account for the exigencies of COVID-19 and COVID-19-related fraud.

20. [redacted][31] [redacted][32] [redacted][33] [redacted]

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[29] Consumer Finance Protection Bureau, *Policy on No-Action Letters*, 12 C.F.R. § X (Sep. 13, 2019), https://www.federalregister.gov/documents/2019/09/13/2019-19763/policy-on-no-action-letters.

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

[31] Kreis Report at ¶ 65(c). [redacted] *See*, Letson Deposition (DX 97) at 110:20–113:8; Martin Declaration at (DX 7) ¶¶ 5–7.

[32] Letson Deposition (DX 97) at 182:1–14; Holt Deposition at 226:21–227:16; Daniels Deposition (DX 98) at 53:2–9, 231:11–233:3; Deposition of William Matthew Martin, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Feb. 14, 2024) ("Martin Deposition") (DX 122) at 197:1–20; Deposition of Renee Johnson, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-02992-md-LAB-MSB (May 7, 2024) (DX 29) at 42:22–43:3; BANA_EDD_MDL-00559094 (Letter from Bank of America to Customer (Oct. 1, 2020)); BANA_EDD_MDL-00556122 (Letter from Bank of America to Customer (Oct. 8, 2020)). *See* BANA_EDD_MDL-00118436–37 (Email chain from Jennifer Ehresman to Christine K Channels, *RE: Important pls review* (Nov. 5, 2020)) at 6; BANA_EDD_MDL-00142730–1 (Email chain from Christine K Channels to Faiz Ahmad et al., *RE: Reconsiderations – Provisional credit recommendation* (Dec. 14, 2020)) at 1; BANA_EDD_MDL-00117097–9 (Email chain from Erica A Nappi Puskarik to Maria DiPietro et al., *PPD UI - MTM Bullets due 10am 12/28* (Dec. 28, 2020)) at 9.

[33] Letson Deposition (DX 97) at 209:6–14 [redacted] *See also*, BANA_EDD_MDL-00118436–7 [redacted]

[redacted][34] This potential recourse is consistent with that which may be made available for suspected fraud identified by fraud rules like the CFF.

21. [redacted][35] [redacted][36] [redacted][37] [redacted][38] When it came to light that EDD's processes were inefficient, the Bank switched to blocking cards, and permitted cardholders to seek

[redacted]

[34] Letson Declaration (DX 6) at ¶ 36. *See, e.g.*, BANA_EDD_MDL-00225867 (Bank of America, *Prepaid Summary: Prior 7 Days For Daily View – MTD – YTD* (Nov. 11, 2020)); BANA_EDD_MDL-00118448 ([redacted]

[35] Letson Deposition (DX 97) at 111:9–113:8; Deposition of Melissa Ramirez, *In re: Bank of America California Unemployment Benefits Litigation,* Case No.: 3:21-md-02992-GPC-MSB (Feb. 11, 2025) at 26:23–27:18 [redacted] Martin Deposition (DX 122) at 197:1–20; 224:17–225:21.

[36] Pesce Report at ¶ 30; Letson Deposition (DX 97) at 112:12–113:8 [redacted]

[37] Pesce Report at ¶ 30; Letson Deposition (DX 97) at 105:10–25, 112:12–113:8

[38] BANA_EDD_MDL-00085577–80 (Email chain from Dawn E Haddock to Bobby A Chestnut et al., *RE: Sending ~690k Payments to BofA* (Oct. 5, 2020)) at 79–80; BANA_EDD_MDL-00085694 [redacted] Weaknesses in EDD's Approach, Jan. 2021 (DX 88) at 323.

[redacted][39] [redacted][40]

V. MR KREIS SUGGESTS ALTERNATIVE METHODS TO ADDRESS THE FRAUD THAT WOULD NOT HAVE SOLVED THE PROBLEM.

22. Mr. Kreis suggests that the Bank could have addressed the explosion of fraud in this portfolio, including both the infiltration of the program by individuals the Bank believed to be engaged in enrollment fraud, and the exploitation by those and others of the Bank's [redacted][41] These suggestions are flawed. Again, [redacted] Indeed, the Bank was faced with an unprecedented number of unauthorized transaction claims – an [redacted] from the months preceding the COVID-19 pandemic.[42] Mr. Kreis additionally ignores that EDD provided the Bank with limited information on these cardholders. As explained in the Pesce Report, when onboarding customers, banks not only collect identification information, but they must verify the customer's identity.[43] Additionally, they perform Customer Due Diligence ("CDD") and collect additional data that will provide information on the risk presented by the customer, as well as the

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

[40] Deposition of Robert A. Chestnut, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Feb. 8, 2024) (DX 24) at 34:17–19; Letson Deposition (DX 97) at 105:10–20.

[41] Kreis Report at ¶¶ 53(a)–(d).

[42] Pesce Report, ¶ 43, Exhibit 2.

[43] 31 C.F.R. § 1020.220. *See* FFIEC Manual, *Assessing Compliance with BSA Regulatory Requirements, Customer Identification Program* (2021), https://bsaaml.ffiec.gov/manual/AssessingComplianceWithBSARegulatoryRequirements/01. *See also,* Pesce Report at ¶¶ 22, 49.

customer's expected activity.[44] [redacted][45] Mr. Kreis's alternative suggestions are an inadequate solution to the problem the Bank was facing.

23. Mr. Kreis contends that the Bank could have, but failed to, increase Claims Department resources, suggesting that the Bank simply did not want to bear that expense.[46] He ignores the fact that the Bank did, in fact, add hundreds of additional resources in a very short time,[47] and appears to suggest that the Bank could have easily added even more resources, sufficient to manage the barrage of claims.[48] Based on my experience, I disagree. Claims analysts are skilled workers who must be trained to both engage in customer service and conduct potentially complex investigations. The Bank could not have just hired masses of workers from a temp agency. Mr. Kreis cites his own experience working with the consulting firm Accenture as evidence that the Bank had masses of resources at its disposal. To support his claim, he provides an Accenture brochure from 2025 detailing Accenture's current headcount of over 700,000 at the end of the 2024 fiscal year.[49] In 2020, Accenture employed approximately 500,000 globally,

[44] FFIEC Manual, *Assessing Compliance with BSA Regulatory Requirements, Customer Due Diligence, Overview* (2018), https://bsaaml.ffiec.gov/manual/AssessingComplianceWithBSARegulatoryRequirements/02; 31 C.F.R. § 1020.210; Pesce Report at ¶¶ 22, 49.

[45] Letson Deposition (DX 97) at 112:8–113:8 [redacted] *See also* Pesce Report at ¶ 30.

[46] Kreis Report at ¶¶ 53(d)–54.

[47] BANA_EDD_MDL-00570333–4 (Email chain from Daniel Buttafogo to Jennifer M. Ehresman, et al., (Sep. 23, 2020)) (DX 100) at 3; Daniels Deposition (DX 98) at 102:20–103:17 [redacted] BANA_EDD_MDL-00117097–9 (Email chain from Erica A Nappi Puskarik to Maria DiPietro et al., *PPD UI - MTM Bullets due 10am 12/28* (Dec. 28, 2020)) (DX 27) at 9; BANA_EDD_MDL-00416783–4 (Email chain from Kristen R Ciersi to Jennifer M Ehresman et al., *RE:* [redacted], (Sep. 17, 2020)) at 4.

[48] Kreis Report at ¶¶ 53(d)–54.

[49] *Id.* at ¶ 53(d), fn 68. *See*, Accenture, *Accenture Fact Sheet* (Second Quarter, 2025), https://newsroom.accenture.com/fact-sheet.

and it laid off 25,000 because of COVID-19.[50] Unlike Mr. Kreis, I did not just supervise a matter employing consultants, I ran a consulting practice for many years, including during COVID-19. Consulting firms, like the rest of the world, were in the midst of a pandemic.[51] In my experience, consulting firms were cutting costs, including headcount.[52] Employees were on work-from-home orders. Once again, suggesting that the Bank could have easily hired a consulting firm with enough knowledgeable resources to address the Bank's needs wholly disregards the realities of COVID-19.

24. Mr. Kreis also suggests that the Bank could have prioritized the investigation of higher-dollar-value claims and "increase[ed] the monetary threshold at which low-dollar-value claims are auto-paid without conducting an investigation . . . ."[53] [redacted][54] [redacted][55] and that the Bank had regulatory obligations to prevent such fraud from happening.[56] [redacted]

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[50] Consulting.US, *Global Consulting Firm Accenture is Firing 25,000 Employees* (Aug. 26, 2020), https://www.consulting.us/news/4776/global-consulting-firm-accenture-is-firing-25000-employees.

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

[52] *See e.g.*, Consulting.US, *Global Consulting Firm Accenture is Firing 25,000 Employees* (Aug. 26, 2020), https://www.consulting.us/news/4776/global-consulting-firm-accenture-is-firing-25000-employees*;* Consulting.US, *Deloitte cuts 5,000 jobs in US, consulting takes largest hit* (June 3, 2020), https://www.consulting.us/news/4308/deloitte-cuts-5000-jobs-in-us.

[53] Kreis Report at ¶ 53(c).

[54] *See, e.g.*, Pesce Report, Exhibit 2; Letson Declaration (DX 6) at ¶ 13; BANA_EDD_MDL-00090640–7 at 2 ([redacted]

[55] Letson Declaration (DX 6) at ¶ 27.

[56] Office of the Comptroller of the Currency, *OCC Bulletin 2019-37: Operational Risk: Fraud Risk Management Principles* (July 24, 2019), https://www.occ.treas.gov/news-issuances/bulletins/2019/bulletin-2019-37.html (DX 108). *See* Letson Declaration (DX 6) at ¶ 5 ("As a national bank, BANA has a statutory and regulatory obligation to take efforts not to permit BANA's products and systems –including BANA prepaid cards – from being used as instruments of fraud, money laundering, other criminal activities.").

[redacted][57] [redacted][58]

25. Mr. Kreis's opinion fails to address any of the extraordinary circumstances under which the events in this matter took place. His suggested alternative strategies were either already implemented by the Bank or would not have been sufficient to manage the unprecedented number of unauthorized transaction claims or prevent the unprecedented volume of actual fraud. He additionally does not address the regulatory pressure banks were under to prevent, detect, and report COVID-19-related fraud.[59] Because he ignores the context in which the Bank's decisions were made, his opinion is fatally flawed.

[57] Letson Declaration (DX 6) at ¶¶ 24–31; Ahmad Deposition at 151:9–16, 216:16–221:2; Schwartz Deposition at 187:14–188:8. *See*, Pesce Report at ¶ 47.

[58] Letson Declaration (DX 6) at ¶¶ 10–17; Garfield Deposition at 211:2–19; Ahmad Deposition at 60:7–61:2; Fox Deposition at 15:9–17:1, 17:13–18:16, 26:9–25. *See*, Pesce Report at ¶ 47.

[59] Office of the Comptroller of the Currency, *Semiannual Risk Perspective from the National Risk Committee*(Spring 2021), at ii, 20, 21, https://www.occ.gov/publications-and-resources/publications/semiannual-riskperspective/files/pub-semiannual-risk-perspective-spring-2021.pdf (DX 93); FinCEN Press Release, *The Financial Crimes Enforcement Network (FinCEN) Encourages Financial Institutions to Communicate Concerns Related to the Coronavirus Disease 2019 (COVID-19) and to Remain Alert to Related Illicit Financial Activity* (Mar. 16, 2020), https://www.fincen.gov/news/news-releases/financial-crimes-enforcement-network-fincen-encourages-financial-institutions (DX 92); FinCEN Press Release, *The Financial Crimes Enforcement Network Provides Further Information to Financial Institutions in Response to the Coronavirus Disease 2019 (COVID-19) Pandemic* (Apr. 3, 2020), https://www.fincen.gov/news/news-releases/financial-crimes-enforcement-network-provides-further-information-financial (DX 92); FinCEN, *Advisory on Medical Scams Related to the Coronavirus Disease 2019 (COVID-19)* (May 18, 2020), https://www.fincen.gov/sites/default/files/advisory/2020-05-18/Advisory%20Medical%20Fraud%20Covid%2019%20FINAL%20508.pdf (DX 92); FinCEN, *Notice Related to the Coronavirus Disease 2019 (COVID-19)* (May 18, 2020), https://www.fincen.gov/sites/default/files/shared/May_18_Notice_Related_to_COVID-19.pdf (DX 92); FinCEN, *Advisory on Imposter Scams and Money Mule Schemes Related to Coronavirus Disease 2019 (COVID-19)* (July 7, 2020), https://www.fincen.gov/sites/default/files/advisory/2020-07-07/Advisory_%20Imposter_and_Money_Mule_COVID_19_508_FINAL.pdf (DX 92); FinCEN, *Advisory on Cybercrime and Cyber-Enabled Crime Exploiting the Coronavirus Disease 2019 (COVID-19) Pandemic* (July 30, 2020), https://www.fincen.gov/sites/default/files/advisory/2020-07-30/FinCEN%20Advisory%20Covid%20Cybercrime%20508%20FINAL.pdf (DX 92); FinCEN, *Advisory on Unemployment Insurance Fraud During the Coronavirus Disease 2019 (COVID-19) Pandemic* (Oct. 13, 2020), https://www.fincen.gov/sites/default/files/advisory/2020-10-13/Advisory%20Unemployment%20Insurance%20COVID%2019%20508%20Final.pdf (DX 92); FinCEN, *Consolidated COVID-19 Suspicious Activity Report Key Terms and Filing Instructions* (Feb. 24, 2021), https://www.fincen.gov/sites/default/files/shared/Consolidated%20COVID-19%20Notice%20508%20Final.pdf (DX 92); FinCEN, *Advisory on Financial Crimes Targeting COVID-19 Economic Impact Payments* (Feb. 24, 2021), https://www.fincen.gov/sites/default/files/advisory/2021-02-24/Advisory%20EIP%20FINAL%20508.pdf (DX 92).

VI. THE CLAIMS FRAUD FILTER CAPTURED A SIGNIFICANT AMOUNT OF FRAUD; EARLY INDICATORS SIGNALED THAT IT WAS WORKING WELL, AND MR. KREIS'S ATTEMPT TO ASSESS ITS ACCURACY IN HINDSIGHT RELIES ON FAULTY STATISTICS, AND INAPT COMPARISONS.

26. Prior to implementing the CFF, [redacted][60] [redacted][61] However, other fraudsters might still seek reconsideration, particularly those who would be able to re-verify with EDD or the Bank using stolen identities and/or taking advantage of the PUA's limited verification requirements.

27. Mr. Kreis contends that the Bank [redacted][62] [redacted][63] [redacted]

[60] Letson Declaration (DX 6) at ¶ 34.

[61] As discussed in the Pesce Report, the [redacted] Examples of friction could be requiring multiple points of identification before allowing access to financial information; it could include installing firewalls in computer systems to deter hackers. A simple example is when stores put their merchandise behind locked plastic barriers. The crime can still be committed, but friction makes it more difficult. *See* NAB News, *Why 'Helpful Friction' is Crucial in the Battle Against Scammers* (Nov. 30, 2023), https://news.nab.com.au/news/why-helpful-friction-is-crucial-in-the-battle-against-scammers/; Elissa Redmiles, *Friction Matters: Balancing the Pursuit of Perfect Protection with Target Hardening*, IEEE Security and Privacy (Jan./Feb. 2024), https://www.computer.org/csdl/magazine/sp/2024/01/10411716/1TV5zSG0BKE; Letson Deposition (DX 97) at 110:20–112:6, 184:6–25. *See also,* Pesce Report at ¶ 58.

[62] Kreis Report at ¶ 71.

[63] BANA-EDD_MDL-00117097–9 (Email chain from Erica A Nappi Puskarik to Maria DiPietro et al., *PPD UI - MTM Bullets due 10am 12/28* (Dec. 22, 2020) (DX 27) at 9; BANA_EDD_MDL-00118436–7 ([redacted] at 6; BANA_EDD_MDL-00142730–1 [redacted] at 1.

[redacted][64] Additionally, [redacted][66]

28. Mr. Kreis provides [redacted][67] [redacted][68] [redacted][69] Indeed, the Bank [redacted]

[64] Bank of America's Responses and Objections to Plaintiff Yick's Fifth Set of Interrogatories, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-LAB-MSB (Feb. 2, 2024) (DX 104) at 15 [redacted]; Martin Deposition (DX 122) at 223:10–17.

[65] BANA_EDD_MDL-00077224–5 (Bank of America, *Prepaid Facts* (Oct. 2021)).

[66] Daniels Deposition (DX 98) at 231:11–233:3; Holt Deposition at 226:21–227:16; Martin Deposition (DX 122) at 132:20–133:3; BANA_EDD_MDL-00118436–7 (Email chain from Jennifer Ehresman to Christine K Channels, [redacted] at 6; BANA_EDD_MDL-00117097–9 (Email chain from Erica A Nappi Puskarik to Maria DiPietro et al., *PPD UI - MTM Bullets due 10am 12/28* (Dec. 28, 2020)) (DX 27) at 9.

[67] Kreis Report at ¶ 74.

[68] Kreis Report at ¶ 74.

[69] *See, e.g.*, BANA_EDD_MDL-00120424–425 (Email chain from Christine K Channels to William Fox, et al., *RE: 5pm Proposed Agenda Item - Incoming Claims* (Oct. 6, 2020)); Fox Deposition at 88:24–89:3; Letson Declaration (DX 6) at ¶ 7.

[redacted][70] [redacted][71] The CFF did not render the "definitive determination," as stated by Mr. Kreis.[72]

29. Mr. Kreis claims that [redacted],[73] [redacted][74] The claims the CFF *did not* deny are also relevant to assessing its accuracy. Next, Mr. Kreis applies an error rate that might have been used by some companies under normal operating circumstances and does not consider the unprecedented volume of fraud and the stress of COVID-19.

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[70] Martin Declaration (DX 7) at ¶¶ 7–8, 12.

[71] *See*, Section IV.

[72] Kreis Report at ¶ 65(c).

[73] Kreis Report at ¶ 68.

[74] Bank of America's Second Set of Responses and Objections to Plaintiff Yick's Seventh Set of Interrogatories, Exhibit 13, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3-21-md-02992-LAB-MSB (Apr. 23, 2024) (DX 43).

30. [redacted][76] and (b) even with testing and tuning, false positives will never be eliminated. Given the fraud crisis the Bank was addressing, its requirement to keep fraud out of the Bank, and its commitment to law enforcement, the Bank needed to act expeditiously, and the CFF was a reasonable response.

Executed this 4 of April, 2025

Teresa A. Pesce

[75] *See e.g.*, Martin Deposition (DX 122) at 288:10–289:17.

[76] Fox Deposition at 45:3–8; 88:6–12.

In RE Bank of America California Unemployment Benefits Litigation

Expert Rebuttal Report of Teresa A. Pesce

List of Materials Considered

I incorporate by reference the materials listed in Appendix A to the Pesce Report. In addition, I considered the following additional materials in preparing this rebuttal report.

Articles

- Accenture, *Accenture Fact Sheet* (Second Quarter, 2025), https://newsroom.accenture.com/fact-sheet
- Alan S. Kaplinsky, *Consumer Finance Monitor CFPB, Federal Agencies, State Agencies, and Attorneys General* (Dec. 10, 2020), Ballard Spahr, https://www.consumerfinancemonitor.com/2020/12/10/cfpb-issues-new-no-action-letter-to-upstart/
- Consulting.US, *Deloitte cuts 5,000 jobs in US, consulting takes largest hit* (June 3, 2020), https://www.consulting.us/news/4308/deloitte-cuts-5000-jobs-in-us

Depositions

- Deposition of Renee Johnson, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-02992-md-LAB-MSB (May 7, 2024)

Expert Reports and Declarations

- Expert Report of J. Daniel Kreis, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 3:21-md-02992-GPC-MSB (Mar. 4, 2025)
- Expert Report of Teresa A. Pesce, *In re: Bank of America California Unemployment Benefits Litigation*, Case No.: 1-MD-02992-GPC-MSB (Mar. 4, 2025)

Government Reports and Releases

- Consumer Finance Protection Bureau, *CFPB Provides Flexibility During Covid-19 Pandemic* (Mar. 26, 2020), https://www.consumerfinance.gov/about-us/newsroom/cfpb-provides-flexibility-during-covid-19-pandemic/
- Consumer Finance Protection Bureau, *Policy on No-Action Letters*, Federal Register, 12 C.F.R. § X (Sep. 13, 2019), https://www.federalregister.gov/documents/2019/09/13/2019-19763/policy-on-no-action-letter.

- Consumer Finance Protection Bureau, *Statement on Bureau Supervisory and Enforcement Response to COVID-19 Pandemic* (Mar. 26, 2020), https://www.consumerfinance.gov/compliance/supervisory-guidance/statement-bureau-supervisory-enforcement-response-covid-19-pandemic/
- Office of the Comptroller of the Currency, *Bank Secrecy Act/Anti-Money Laundering: OCC Supports FinCen's Regulatory Relief and Risk-Based Approach for Financial Institution Compliance in Response to COVID-19* (Apr. 7, 2020), https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-34.html.
- Office of the Comptroller of the Currency, *Comptroller's Handbook: Examination Process, Bank Supervision Process* (Sep. 2019) https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/bank-supervision-process/pub-ch-bank-supervision-process.pdf
- Office of the Comptroller of the Currency, *Semiannual Risk Perspective from the National Risk Committee* (Fall 2020), https://www.occ.gov/publications-and-resources/publications/semiannual-risk-perspective/files/pub-semiannual-risk-perspective-fall-2020.pdf
- Office of the Comptroller of the Currency, *Semiannual Risk Perspective from the National Risk Committee* (Spring 2020), https://www.occ.gov/publications-and-resources/publications/semiannual-risk-perspective/files/pub-semiannual-risk-perspective-spring-2020.pdf
- Office of the Comptroller of the Currency, *Semiannual Risk Perspective from the National Risk Committee* (Spring 2021), https://www.occ.gov/publications-and-resources/publications/semiannual-risk-perspective/files/pub-semiannual-risk-perspective-spring-2021.pdf

Bates Stamped Documents

- BANA_EDD_MDL-00118448

Note: Even if not included in this list, I also considered any documents cited in my Report. I also reviewed the materials listed in Appendix B of the Expert Report of J. Daniel Kreis, dated March 4, 2025.

APPENDIX B

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

Professional Summary

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

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

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

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

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

Professional and Industry Experience

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

  October 2020 to present

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

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

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

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

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

  July 2020 to December 2021

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

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

  April 2007 – September 2020

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

  Representative Project/Engagement Experience

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

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

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

- **Executive Vice President/Managing Director for Anti-Money Laundering for HSBC North American Holdings, including HSBC Bank, USA, N.A.; HSBC Securities, Inc., and HSBC Finance Corporation.**

  September 2003 – March 2007

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

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

  August 1992 – September 2003

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

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

  December 1988 – August 1992

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

  October 1987 – October 1988

Education

- **Columbia University School of Law, New York, NY, JD 1987**
  - Columbia Law Review, Managing Editor
  - Harlan Fiske Stone Scholar
  - James A. Elkins Award in Constitutional Law
  - Whitney North Seymour Award in Trial Advocacy

- **Columbia University, New York, NY, BA 1984**
  - Magna cum laude
  - Phi Beta Kappa
  - Honors History

Speaking Engagements and Publications

Speaking engagements

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

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

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

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

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

Publications and Thought Leadership

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

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

ABA Bank Compliance – Intelligent Automation in Financial Crimes Compliance: We can't have a failure to innovate
Article written by Tom Keegan, Terry Pesce and Stephen Marshall
https://advisory.kpmg.us/content/dam/advisory/en/pdfs/aba-aml-article-feb-2018.pdf

APPENDIX B

Reuters
Coming Clean About Data Analytics in the Anti-Money Space, Nov. 2018
Q&A with Terry Pesce on using Artificial Intelligence in fighting financial crime
https://blogs.thomsonreuters.com/answerson/coming-clean-about-data-analytics-in-the-anti-money-laundering-space/

Risk Intelligence
Discussing the use of technology to improve sanctions compliance:
http://www.garp.org/#!/risk-intelligence/culture-governance/compliance/a1Z1W000003fBo4UAE

RESPA News
Article quotes Terry Pesce and Greg Matthews discussing third-party risk and AML compliance issues within the mortgage industry:
http://www.respanews.com/RN/ArticlesRN/AML-thirdparty-oversight-hold-similarities-71171.aspx.

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

Intelligent automation in financial crimes: Forging an innovative compliance strategy for the future
https://advisory.kpmg.us/content/kpmg-advisory/risk-consulting/forensics/financial-services/intelligent-automation-in-financial-crime.html

The future of financial crime: Comply. Integrate. Automate
https://advisory.kpmg.us/content/dam/advisory/en/pdfs/future-of-financial-crime.pdf

Building an effective financial crimes change management program: How financial institutions can keep up with global regulatory change
https://advisory.kpmg.us/content/dam/advisory/en/pdfs/building-an-effective-financial-crimes-change-managemnet-program.pdf

Under one agile umbrella: An approach to managing financial crimes risk
https://advisory.kpmg.us/content/dam/advisory/en/pdfs/under-one-agile-umbrella.pdf

Financial Crimes, A Paradigm Shift, December 2022
Contributor
http://bit.ly/3GX0FhF

Videos

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

Webcasts

AML Hot Topics: More Updates to the FFIEC Exam Manual
With AML RightSource
https://vimeo.com/530014556

2021 Regulatory Sanctions Update – Challenges, Considerations, and Pathways
June 23, 2021

What's New for 2022
With AML RightSource

Valie of FATF to Your Financial Crime Compliance Program
July 27, 2023
https://www.amlrightsource.com/news/aml-voices-the-value-of-fatf-to-your-financial-crime-compliance?utm_content=261543986&utm_medium=social&utm_source=linkedin&hss_channel=lcp-2477367

AML Compliance Programs, Patterns and Trends
December 19, 2024
https://webinars.amlrightsource.com/watch/SXywEceaE7TVDGUhzhQktG

Podcasts

Financial Crimes – Dirty Money Stories
With AML RightSource
https://vimeo.com/543213606

Interagency Guidance on Third Party Risk Management
With AML RightSource

Expert Witness Experience

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

Relevant Coursework

- Certificate in Human Trafficking Training from the Polaris Project.

Awards & Recognition

ACQ5 Gamechanger Awards 2023

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

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

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

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

- 2015, 2016, 2017, 2020

Directors Award for Superior Performance as an Assistant United States Attorney

US Department of Justice, 1998

Professional Associations

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

Bar Admissions

New York State Appellate Division, First Department

United States District Courts: SDNY, EDNY