

DX 13.A

**REDACTED VERSION OF
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BE SEALED PURSUANT TO
STIPULATED
PROTECTIVE ORDER**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE BANK OF AMERICA CALIFORNIA
UNEMPLOYMENT BENEFITS LITIGATION

Case No. 3:21-md-02992-GPC-MSB

EXPERT REBUTTAL REPORT OF STEVE HINDLE

APRIL 4, 2025

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I. QUALIFICATIONS

1. I have worked in the contact center industry for 30 years. Over the course of my career, I have held roles in direct service, operations management, and senior leadership in the contact center industry for several global multi-billion dollar public and private Business Process Outsource (BPO) organizations.
2. I began my career at Royal Bank of Scotland's support center in 1994. In 1996, I joined McQueen Ltd., a pioneer of offshore global Business Process Outsource (BPO) in the contact center industry. At McQueen Ltd., I served as an integral operations and technology leader, overseeing the architecture and infrastructure planning for the first global BPO organization in the Philippines. This initiative laid the foundation for the outsourced contact center and offshore customer service industry now utilized by Fortune 500 through Fortune 50 companies. I became a Regional Manager in 2016, after McQueen Ltd. was acquired by Sykes Enterprises Inc., a market leader in serving financial sector clients, predominantly global and geographically regional banks. From 1998 to 2016 at Sykes Enterprises Inc., my responsibilities increased to Senior Director of Global Security Operations. In 2016, I joined Sitel Group and became Global Vice President.
3. In 1998, I developed a specialized Training and Consultancy Solutions division at McQueen Ltd. that provided highly specialized training services; the two largest revenue clients for this contact center business unit were global banking institutions. As Senior Director of Sykes Enterprises Inc. in 2012, I developed and led the governance programs that ensured regulatory and industry compliance for, among others, global banking institutions, and their geographies. In 2016, I developed a client-metrics compliance program for a customer

service, multi-million dollar line of business at Sykes Enterprises Inc. This program was considered an industry differentiator, and pioneered operational metrics compliance programs and adoption across the contact center industry, in monitoring call center metrics, reducing fraud volumes, and ensuring the highest levels of customer satisfaction.

4. Throughout my contact center career, I have led technology teams to implement the strict requirements of financial institutions when engaging with BPOs to serve their customers, particularly around telephony and IT infrastructure that handles call volumes and facilitates omni-channel customer interactions through voice, email, and chat support. As Global Vice President at Sitel Group, a leading BPO serving the financial sector, I was accountable for \$8 million P&L and managing technology for client programs that generated \$4 billion in revenue. During the pandemic, I oversaw 160,000 contact center employees (60% of which were impacted and worked remotely) in over 40 countries, processing over 8 million customer interactions every day.

II. INTRODUCTION

A. Case Background

5. Plaintiffs in this matter brought a proposed class action against Defendant Bank of America, N.A. (“Bank of America” or “Bank”) for its alleged failures with regards to its contract with the California Employment Development Department (EDD) to issue and service prepaid debit cards to California residents who EDD determines are eligible for EDD benefits including, for example, benefit payments for unemployment insurance and disability

insurance.¹ Among other things, Plaintiffs allege that Bank of America implemented a Claims Fraud Filter on September 28, 2020² that deprived them of access to the benefits they allege they were legally entitled to.³ Plaintiffs further claim that the Bank failed to provide adequate customer service and issued prepaid debit cards without proper security features, making the accounts vulnerable to fraud.⁴

6. Plaintiffs seek certification of five classes, including a proposed “Customer Service Class” that is comprised of those who telephoned Bank of America’s customer service telephone number for its EDD prepaid debit cardholders at any time between September 13, 2020 through November 21, 2020, and whose telephone call was routed to the Bank’s Claims Call Center.⁵
7. On August 29, 2024, Mr. Jay Minnucci submitted an expert report.⁶ Among other things, he opined that the average speed to answer (“ASA”) of 75 seconds (1.25 minutes) is an appropriate industry benchmark to assess the wait times experienced by members of the

¹ Third Amended Master Consolidated Complaint, *In re: Bank of America California Unemployment Benefits Litigation*, No. 3:21-md-02992-GPC-MSB, United States District Court for the Southern District of California, January 24, 2025 (“TAMCC”), ¶¶ 38-41.

² Memorandum of Points and Authorities in Support of Motion for Class Certification, *In re: Bank of America California Unemployment Benefits Litigation*, No. 3:21-md-02992-GPC-MSB, United States District Court for the Southern District of California, August 29, 2024 (“Motion for Class Certification”), p. 2.

³ TAMCC, ¶¶ 93-96.

⁴ TAMCC, ¶¶ 55-69, 97-105.

⁵ The other four proposed classes are “Claim Denial Class,” “Credit Rescission Class,” “Account Freeze Class,” and “EMV Chip Class.” Memorandum of Points and Authorities in Support of Motion for Class Certification, Exhibit 4, Expert Class Certification Report of Greg J. Regan, CPA/CFF, CFE, August 29, 2024 (“Regan Class Certification Report”), ¶ 4; Memorandum of Points and Authorities in Support of Motion for Class Certification, Exhibit 3, Expert Report of Jay Minnucci, August 29, 2024 (“Minnucci Class Certification Report”), ¶ 2.

⁶ Minnucci Class Certification Report.

proposed Customer Service Class.⁷ Additionally, Mr. Greg Regan submitted an expert report on August 29, 2024, opining, among other things, that actual damages for members of the proposed Customer Service Class can be calculated on a class wide basis.⁸ He opined that such damages can be measured by the value of class members’ lost time spent on hold with the Claims Call Center that exceeded the industry benchmark ASA of 75 seconds proposed by Mr. Minnucci.⁹

8. On October 24, 2024, I submitted a declaration in response to certain opinions offered by Mr. Minnucci and Mr. Regan in their expert reports dated August 29, 2024. In that declaration, my opinions included that the actual damages for individual members of the proposed Customer Service Class cannot reliably be calculated on a class wide basis using the methodology proposed by Mr. Regan. I also opined that Mr. Minnucci had not shown that his proposed industry benchmark for ASA is appropriate, which further rendered Mr. Regan’s proposed damages calculation on an aggregate level speculative and unreliable.¹⁰
9. On November 21, 2024, Mr. Minnucci submitted a rebuttal report in response to my prior declaration, in which he challenged my qualifications and made several arguments that he repeated in his latest report served on March 4, 2025 as I discuss below.¹¹

⁷ Minnucci Class Certification Report, ¶¶ 12, 46.

⁸ Regan Class Certification Report, ¶ 113.

⁹ See Regan Class Certification Report.

¹⁰ Declaration of Laura Brys in Support of Defendant’s Memorandum in Opposition to Plaintiffs’ Motion for Class Certification, Ex. (“DX”) 5, Expert Declaration of Stephen Hindle, October 24, 2024 (“Hindle Class Certification Declaration”).

¹¹ See Declaration of Connie K. Chan in Support of Plaintiff’s Motion for Class Certification, Ex. (“PX”) 161, Expert Rebuttal Report of Jay Minnucci, November 21, 2024 (“Minnucci Class Certification Rebuttal Report”).

B. Summary of Mr. Minnucci’s March 4, 2025 Report

10. On March 4, 2025, Mr. Minnucci served an expert report in which he opined that:¹²
- “The Bank subjected EDD debit cardholders seeking assistance with unauthorized-transaction claims to long wait times that were unprecedented and fell far below industry performance standards;”
 - “The Bank’s practice of understaffing its Claims call center in the face of foreseeable call volume surges was inconsistent with industry standard practices;”
 - “The substandard performance levels in the Bank’s Claims call center from September 13, 2020 through November 21, 2020 reflected the Bank’s broader systemic failure to operate its prepaid call centers consistent with industry standards.”
11. In addition, Mr. Minnucci provided an estimate of call center representative (“CSR”) costs that the Bank “avoided” by allowing the staffing level in the Claims Call Center to drop below what was required. Mr. Minnucci’s calculation includes two types of CSR costs: (1) cost associated with workload hours (*i.e.*, time CSRs spend processing calls) and (2) cost associated with idle time (*i.e.*, time CSRs are waiting for the next call to arrive). For each type of CSR cost, Mr. Minnucci calculated the “avoided” cost as the difference between his estimate of required workload/idle hours and the actual workload/idle hours, multiplied by the CSR’s hourly rate.¹³

C. Summary of Mr. Regan’s March 4, 2025 Report

12. On March 4, 2025, Mr. Regan served an expert report in which he provides a methodology to calculate class-wide damages available to each of the five classes of Plaintiffs, including the Customer Service Class.¹⁴ Mr. Regan opines that actual damages for members of the proposed Customer Service Class can be calculated on a class-wide basis, as the product of

¹² Expert Report of Jay Minnucci, March 4, 2025 (“Minnucci Report”), section VII.A, B, C.

¹³ Minnucci Report, ¶¶ 109-113, Table 9, Table 10, Table 11, Appendix H, and Appendix I.

¹⁴ Expert Report of Greg J. Regan, CPA/CFF, CFE, March 4, 2025 (“Regan Report”).

(1) the number of times each class member called and was transferred to the Bank’s Claims Call Center, (2) the amount the ASA of the Bank’s Claims Call Center was allegedly in excess of an industry benchmark offered by Mr. Minnucci (“approximately [REDACTED] per call”), and (3) the California minimum wage.¹⁵

D. Assignment

13. I have been retained by counsel for Defendant Bank of America, N.A. (“Bank of America” or “BofA”) to respond to opinions Mr. Minnucci provided in his report filed on March 4, 2025.¹⁶ I have also been asked to respond to Mr. Regan’s calculations of Customer Service Class damages provided in his report filed on March 4, 2025.¹⁷
14. This report contains my current opinions in this matter. I reserve the right to supplement my opinions if additional relevant information becomes available.
15. The materials that I have personally reviewed and relied on in preparing this report are listed in **Appendix A** of this declaration. A copy of my CV is attached hereto as **Appendix B**. I have not provided any expert testimony in the past four years.
16. Eleven Canterbury, an expert search firm, charges \$925 per hour for my time spent on this matter, from which I receive \$695 per hour for my time on this matter. Employees of Analysis Group, Inc. (“Analysis Group” or “AG”) working under my direction have assisted me in this assignment. My fees, Eleven Canterbury’s fees, and Analysis Group’s fees do not depend upon the opinions I form or upon the outcome of this litigation.

¹⁵ Regan Report, ¶¶ 91-93.

¹⁶ See Minnucci Report.

¹⁷ See Regan Report, Section V.B.

III. SUMMARY OF OPINIONS

17. Below is a summary of the opinions I have reached, which I elaborate on in the body of my report.

18. **Mr. Minnucci’s calculation of BofA’s “avoided cost” is unreliable**

a. Mr. Minnucci’s calculation of BofA’s avoided cost relies on speculative and unsupported assumptions, including that anyone could have *accurately* forecasted actual call volumes and average handle times during the Proposed Class Period *sufficiently far in advance* to staff up to levels sufficient to deal with the surge in volume.

i. Mr. Minnucci’s estimates of required hours are based on a speculative and unsupported assumption that anyone could have accurately projected the call volumes and average handle time with sufficient lead time for it to ramp up the staffing accordingly. In my experience, forecasting the significantly increased call volume and handle times that BofA experienced during the Proposed Class Period would have been extremely challenging and virtually impossible.

ii. Mr. Minnucci’s claim that BofA had a “highly reliable” Workforce Management (“WFM”) model that can be used to forecast future call volume but “chose” not to use it is misleading and incorrect. This WFM model is not a forecasting model. Rather, it simply describes the contemporaneous correlation between the Main Call Center’s call volume and the UI payment. It was not developed for the Claims Call Center at issue. Nor can it be directly used to forecast call volume five to seven weeks in advance. In fact, had BofA

used this WFM model in the way Mr. Minnucci suggested, it would have predicted a decline in the Claims Call Center’s volume.

iii. In estimating the number of distinct callers that would have called back, Mr. Minnucci relies on (1) an “industry average abandonment rate” in 2020 based on a survey of call centers not directly comparable to the Claims Call Center and (2) an estimate of distinct call demand that he calculates based on call record data supplied by consulting clients of his firm, Service Agility. Mr. Minnucci has done nothing to show that these inputs are reasonable. Further, he has not provided the underlying data from his clients for me to assess whether the data he uses can be used to reliably infer the recall rates of the Claims Call Center.

iv. In estimating the number of idle hours, Mr. Minnucci relies on (1) an “industry average” ASA in 2020 based on a survey of call centers not directly comparable to the Claims Call Center and (2) the Erlang-C formula which uses over simplified assumptions that are not suitable for the Claims Call Center.

b. Mr. Minnucci’s calculation of BofA’s avoided cost is conceptually flawed as it fails to consider that BofA likely did not entirely avoid the workload and idle time costs Mr. Minnucci estimated. To the extent that a portion of the CSR costs BofA incurred after the Proposed Class Period was for addressing backlog of claims, and Mr. Minnucci has provided no evidence to the contrary, these costs have been simply delayed, not “avoided” as Mr. Minnucci claims.

19. **Mr. Minnucci’s calculation of “excess wait times” experienced by members of the Customer Service Class is unreliable.**

- a. Mr. Minnucci has not shown that his “industry” benchmark of ASA is appropriate and thus his calculation of “excess wait times” experienced by the proposed Customer Service Class is unreliable.
 - i. His industry standard ASA, obtained from a ContactBabel survey of 214 call centers, does not account for differences between industries, nor does it reflect conditions comparable to BofA’s Claims Call Center during the Proposed Class Period.
 - ii. Mr. Minnucci fails to consider that CA EDD had explicitly waived SLA penalties for wait times in the Claims Call Center during the Proposed Class Period.
- b. For these reasons, Mr. Regan’s calculation of damages suffered by the proposed Customer Service Class due to “excess wait times” is also unreliable.

20. **Mr. Minnucci fails to consider that BofA took reasonable steps to increase staffing.**

- a. BofA [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

b. Despite challenges caused by COVID-19, BofA [REDACTED]

[REDACTED]

[REDACTED]

c. BofA's approach was reasonable given the specific circumstances and consistent with industry practice, in my experience.

21. **Mr. Minnucci's claims that BofA failed to meet industry standards for disaster planning, adoption of Virtual Queuing and Estimated Wait Time Notifications technologies, background checks, and WFH security protocol are false.**

a. In my experience, while the call center industry had general pandemic contingency plans, fully preparing for all the outcomes COVID brought was not feasible. In my opinion, BofA acted reasonably and commendably in responding to COVID-related challenges in early 2020.

b. Mr. Minnucci fails to consider that deploying the Virtual Queuing and Estimated Wait Time Notifications technologies in a uniform manner requires not only technology upgrade and integration with existing telephony systems, but also extensive testing, configuration, and coordination across all vendors. Thus, it would not have been feasible to implement these technologies in a short time period to quickly and effectively address unprecedented surges in call volume.

c. In my experience, it was reasonable for BofA to [REDACTED]

[REDACTED].

d. In my experience, it was not unreasonable for BofA to [REDACTED]

[REDACTED]

[REDACTED]

e. Contrary to Mr. Minnucci’s claims, BofA [REDACTED]

[REDACTED]

IV. MR. MINNUCCI’S CALCULATION OF BOFA’S “AVOIDED” COST IS UNRELIABLE

22. Mr. Minnucci claims BofA’s “[REDACTED]

[REDACTED]”¹⁸

Mr. Minnucci calculates two different types of BofA’s [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].¹⁹

23. To calculate “workload charges avoided,” Mr. Minnucci estimates the additional salary costs BofA would have been required to pay to answer calls at the Claims Call Center assuming only 6.1 percent of calls were abandoned, equal to the average abandonment rate based on a survey from ContactBabel.²⁰ To estimate the costs necessary to answer calls assuming an only 6.1 percent abandonment rate, he performs the following calculations:

¹⁸ Minnucci Report, ¶ 108.

¹⁹ Minnucci Report, ¶¶ 106-108, Table 10, and Table 11.

²⁰ Minnucci Report, ¶ 111, Table 10.

- a. Estimates “distinct caller demand”, which equals to the calls answered plus his estimate of distinct abandoned callers.²¹
 - b. Estimates “expected calls answered” assuming 93.9 percent of calls are answered, which equals to his estimate of one minus the 6.1 percent abandonment rate multiplied by his estimate of “distinct caller demand.”²²
 - c. Estimates the workload time to handle “expected calls answered” as “expected calls answered” multiplied by the actual average handle time of calls answered.²³
 - d. Estimates the cost of the workload time by multiplying the workload time to handle “expected calls answered” by an hourly rate of \$32.46.²⁴
24. From this estimate, Mr. Minnucci subtracts his estimate of the actual costs BofA incurred to answer calls during the Proposed Class Period, equal to calls answered multiplied by average handle times multiplied by an hourly rate of \$32.46.²⁵
25. To calculate the “idle time charges avoided” Mr. Minnucci performs the following calculations:
- a. Distributes his estimate of “Distinct Caller Demand” (discussed above) into 30-minute intervals based on “[t]ypical half-hourly distribution for Service Agility clients;”²⁶
 - b. Estimates the number of CSRs required to meet the estimated “Distinct Caller Demand” and “industry standard” ASA of 75 seconds” using the Erlang-C formula.²⁷
 - c. Estimates the number of CSR idle hours by subtracting the CSR “staffed minutes” from the “workload minutes” (calculated using the distinct caller demand), divided by 60.²⁸

²¹ Minnucci Report, ¶ 110.

²² Minnucci Report, ¶ 111, Table 10.

²³ Minnucci Report, ¶ 111, Table 9, Table 10.

²⁴ Minnucci Report, ¶ 111, Table 10.

²⁵ Minnucci Report, ¶ 111, Table 10.

²⁶ Minnucci Report, ¶ 113, Appendix I.

²⁷ Minnucci Report, ¶ 113, Appendix I.

²⁸ Minnucci Report, ¶ 113, Appendix I.

26. Mr. Minnucci then multiples this estimated CSR idle hours²⁹ by an hourly rate of \$32.46 to arrive at the “idle time charges avoided.”³⁰

27. As I discuss in this section, Mr. Minnucci’s calculation is unreliable because:

- Both his calculations of “workload charges avoided” and “idle time charges avoided” rely on a speculative and unsupported assumption that BofA could have and should have accurately forecasted actual call volumes and average handle times sufficiently in advance of the Proposed Class Period to ramp up the staffing in the Claims Call Center;
- His estimate of “workload charges avoided” suffers from additional flaws;
- His estimate of “idle time charges avoided” suffers from additional flaws;
- To the extent customers who abandoned calls during the Proposed Class Period called back after the Proposed Class Period when BofA had significantly increased its FTEs, he fails to consider that a portion of his additional costs are not avoided, just delayed.

A. Mr. Minnucci’s Assumption that BofA Could Have and Should Have Accurately Forecasted Actual Call Volumes and Average Handle Times Sufficiently in Advance of the Proposed Class Period Is Speculative and Unsupported

28. Mr. Minnucci claims that “[i]f a planned company decision or policy change is expected to drive an increase in call volume, it is industry-standard practice to increase staffing levels as needed to maintain satisfactory call center performance levels, and to implement those staffing changes before implementing the company decision that is anticipated to drive up call volume.”³¹ Thus, he appears to recognize that planning for call center staffing requires *forecasts* of call volume. However, his estimate of avoided costs relies on *actual* data during the Proposed Class Period, including calls answered, calls abandoned, and average handle times. Further, as Mr. Minnucci acknowledges, [REDACTED]

²⁹ Mr. Minnucci assumes that “[REDACTED]” Minnucci Report, Table 11.

³⁰ Minnucci Report, ¶ 113, Table 11, Appendix I.

³¹ Minnucci Report, ¶ 45.

[REDACTED]³² Thus, for BofA to meet Mr. Minnucci’s expected staffing level for the Claims Call Center, it not only had to accurately predict the future call volumes and AHT but also had to predict the volumes and AHT [REDACTED] before the start of the Proposed Class Period (*i.e.*, by July 26, 2020 - August 9, 2020).³³

1. Mr. Minnucci’s Assumption that BofA Could Have and Should Have Accurately Forecasted Actual Call Volumes is Speculative and Unsupported Given the Unprecedented Increase in Call Volumes During the Proposed Class Period

29. The Claims Call Center experienced an unprecedented increase in call volume and average handle time during the Proposed Class Period. As shown in **Figure 3** of the Minnucci Report

[REDACTED]

[REDACTED]

[REDACTED]³⁴

Based on my experience, such a massive increase in call volume is rare in the industry and is virtually impossible to be anticipated.

³² Minnucci Report, ¶ 61. This ramp up period (which includes the time spent to hire, train, and nest new CSRs) is consistent with industry standards in my experience. Nesting “refers to the period immediately following formal training, where new agents are given the opportunity to apply their learned skills in a live environment but with enhanced support” (“What Is Nesting?” *Call Centre Helper*, available at <https://www.callcentrehelper.com/what-is-nesting-219108.htm>). A CSR is not considered a fully trained employee that handle calls independently until they have successfully passed through the nesting phase.

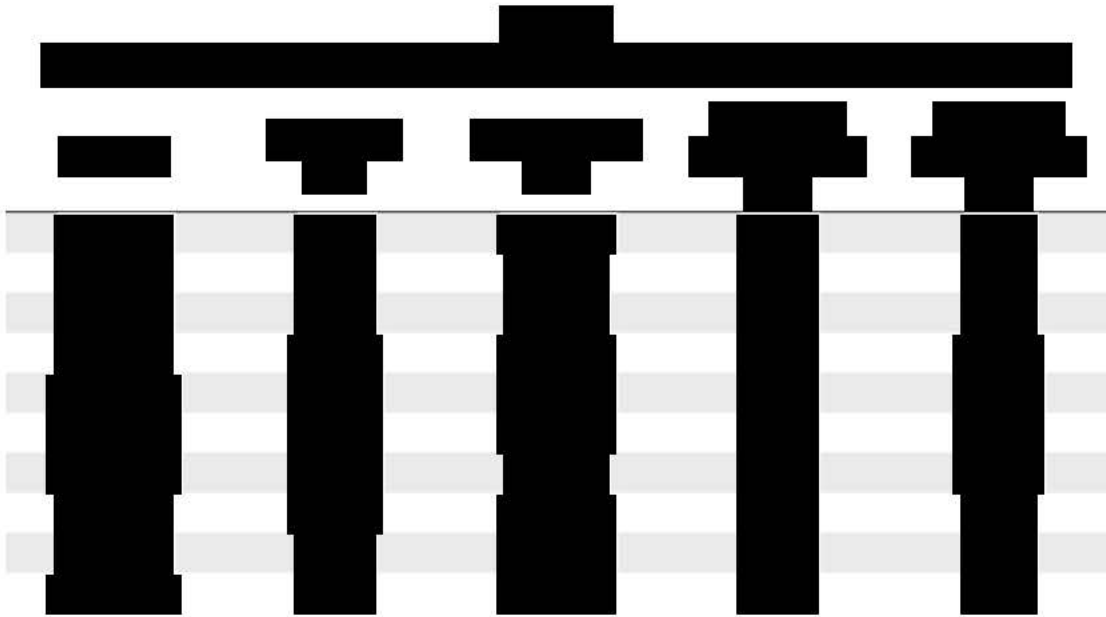
³³ In my opinion, it would be unreasonable to assume that BofA could have hired, trained, and nested the amount of CSRs suggested by Mr. Minnucci in less than five weeks in 2020, particularly considering the availability of suitable talent pool at the time.

³⁴ DX 116, BANA_EDD_MDL-00719115, tab “[REDACTED]”

35

30. Given that Mr. Minnucci’s calculation of avoided costs relies on actual call volumes during the Proposed Class Period, he implicitly assumes that BofA could have and should have accurately forecasted the significant increase in Claims Call Center volume [REDACTED] [REDACTED] in advance to allow sufficient time to hire, train, and nest new CSRs. As shown in **Figure 2** below, with a [REDACTED], Mr. Minnucci has effectively assumed that BofA could have and should have anticipated increases of call volume [REDACTED] [REDACTED] Mr. Minnucci has not shown such an assumption is reasonable.

³⁵ DX 116, BANA_EDD_MDL-00719115, tab [REDACTED]



31. Further, my review of BofA’s

[REDACTED]

[REDACTED]

[REDACTED] below and also testimony of Mr. William Golden, who was in charge of BofA’s

EDD prepaid debit card operations between August 2020 and November 2021.³⁷

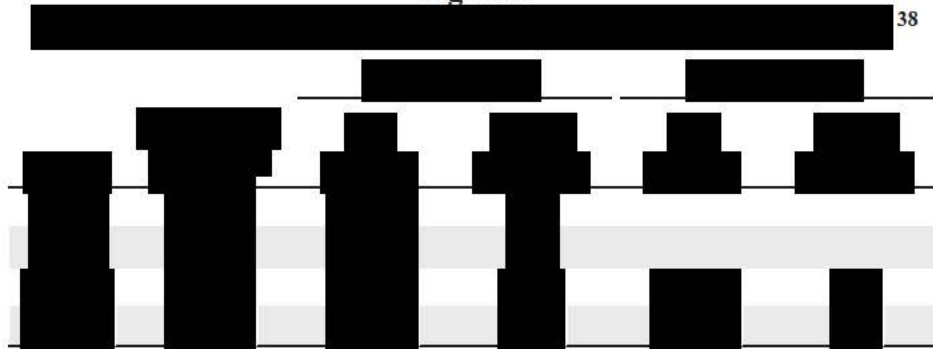
³⁶ DX 116, BANA_EDD_MDL-00719115, tab “[REDACTED]”

[REDACTED] and Mr. Minnucci has not presented one—this historical data cannot be used as a reliable basis for forecasting.

³⁷ 30(b)(6) Deposition of William Golden, February 22, 2024 (“Golden Deposition”), at pp. 74:18-75:7

[REDACTED] and p. 77:7-18

Figure 3



32.

[REDACTED]

[REDACTED]

[REDACTED] Another expert, Ms. Teresa A. Pesce, finds that.³⁹

“During the COVID-19 pandemic, the number of unemployment benefits recipients increased dramatically as the federal government broadened eligibility and EDD abandoned many of its pre-pandemic controls. As the number of benefits recipients increased and controls were relaxed, the number of unauthorized transaction claims increased exponentially...”

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

33.

[REDACTED]

[REDACTED]

[REDACTED]” As explained by another expert, Mr. Russell Cronan.⁴⁰

[REDACTED]

³⁸ BANA_EDD_MDL-00886356-358; BANA_EDD_MDL-00886359, tab [REDACTED]”; BANA_EDD_MDL-00104784-788, at 785; Golden Deposition, at pp. 296:24-297:3.

³⁹ Expert Report of Teresa A. Pesce, March 4, 2025 (“Pesce Report”), ¶ 43.

⁴⁰ Expert Report of Russell Cronan, March 4, 2025 (“Cronan Report”), ¶ 43.

[REDACTED]

34. Thus, Mr. Minnucci’s assumption that BofA could have and should have accurately predicted the increase in call volumes necessarily requires BofA to have been able to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁴¹ [REDACTED]

[REDACTED]

[REDACTED]. Mr. Minnucci has not shown how such a prediction could have been reasonably done.

35. Indeed, in my experience, historical call volume is a necessary input for developing any forecast. However, during the several months immediately preceding the Proposed Class Period (July and August 2020), [REDACTED]

[REDACTED]⁴² [REDACTED]

[REDACTED]

[REDACTED].⁴³ This made it particularly difficult to forecast future volume at the time, as the most

⁴¹ Deposition of Faiz Ahmad, January 29, 2025, at pp. 209:17-210:8 and Exhibit 322.

⁴² Pesce Report, Exhibit 2, ¶ 44 (“While historically the Bank received approximately [REDACTED] unauthorized transaction or error claims per month in its unemployment prepaid card program, that number increased [REDACTED]”).

⁴³ Pesce Report, ¶ 46 [REDACTED]
[REDACTED]
[REDACTED].”).

I understand that [REDACTED]
[REDACTED],” Pesce Report, ¶ 49.

recent historical call volume did not represent normal operating conditions, where the expected population of callers is based on the scope of the program or service provided. Instead, in the several months leading up to the Proposed Class Period, the call metrics of the Claims Call Center were likely distorted by fraudulent activities. Unless there is a reliable methodology to predict future fraudulent activity and its impact on call metrics—and Mr. Minnucci has not presented one—this historical data cannot be used as a reliable basis for forecasting.

36. For all the reasons discussed above, I conclude that Mr. Minnucci’s assumption that BofA could have and should have accurately predicted the unprecedented, massive increase in call volumes sufficiently in advance of the Proposed Class Period is speculative and unsupported.

To the extent that Mr. Minnucci has overstated [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁴⁴), he would have overstated his estimate of “workload charges avoided.”

2. Mr. Minnucci’s Assumption that BofA Could Have and Should Have Accurately Forecasted the Average Call Handle Time is Speculative and Unsupported

37. In calculating the number of workload hours that BofA should have planned for, Mr. Minnucci also assumes, without any support, that BofA could have and should have accurately forecasted the actual AHT during the Proposed Class Period. As shown in **Figure 4** below, [REDACTED], Mr. Minnucci has effectively assumed that BofA

⁴⁴ Deposition of Faiz Ahmad, January 29, 2025, at pp. 209:17-210:8 and Exhibit 322.

[REDACTED]

[REDACTED] Mr. Minnucci has not shown that such an assumption is reasonable. He has not considered [REDACTED] ⁴⁵ [REDACTED]

[REDACTED]

[REDACTED]

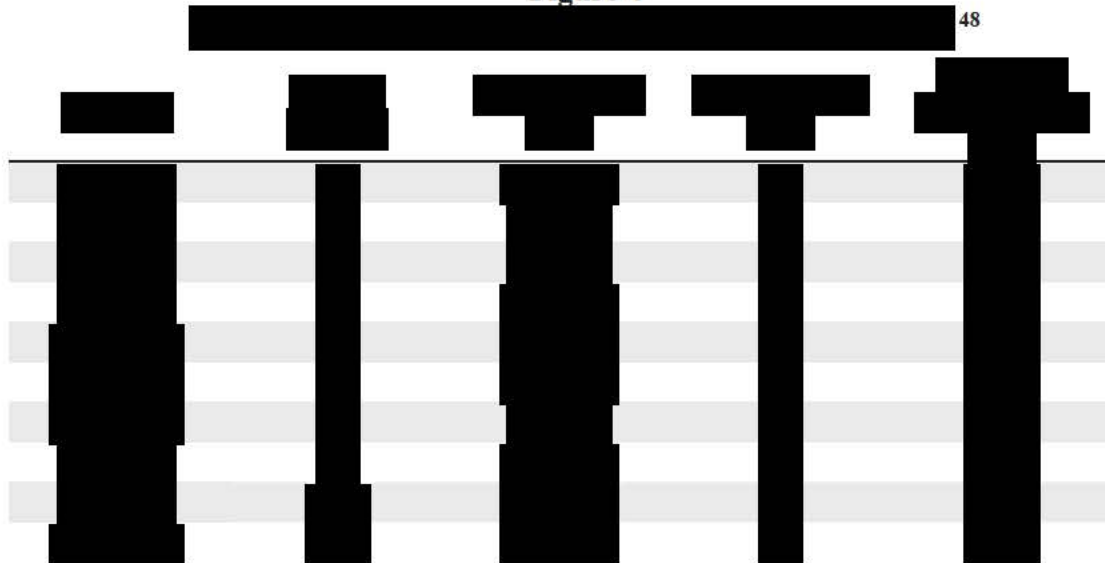
[REDACTED]

[REDACTED] ⁴⁶ [REDACTED]

[REDACTED]

[REDACTED] ⁴⁷

Figure 4



38. Further, such a substantial increase in AHT would compound the impact of the already large spike in call volume, on staffing during the Proposed Class Period because Mr. Minnucci

⁴⁵ Pesce Report, ¶¶ 19, 21.

⁴⁶ Pesce Report, ¶ 46.

⁴⁷ Deposition of Faiz Ahmad, January 29, 2025, at pp. 209:17-210:8 and Exhibit 322.

⁴⁸ DX 116, BANA_EDD_MDL-00719115, tab 4 [REDACTED]

multiplies the estimated number of distinct caller demand by the AHT to arrive at the expected CSR workload hours.⁴⁹ Based on my review of internal documents, [REDACTED]

[REDACTED]

[REDACTED].⁵⁰ [REDACTED]

[REDACTED]

[REDACTED]

39. Mr. Minnucci’s implicit assumption that BofA could have and should have accurately predicted the increase in AHT sufficiently in advance of the Proposed Class Period is speculative and unsupported. To the extent that Mr. Minnucci has overstated the increase in the Claims Call Center’s AHT that BofA could have and should have reasonably anticipated [REDACTED] prior to the start of the Proposed Class Period, he would have overstated his estimate of “workload charges avoided.”

3. Mr. Minnucci’s Claim that BofA Had a “Highly Reliable” Forecasting Method of Call Volume Is Misleading and Incorrect

40. Mr. Minnucci claims that BofA’s [REDACTED]
[REDACTED]

⁴⁹ Minnucci Report, Table 10.

[REDACTED]
[REDACTED]
[REDACTED] Mr. Minnucci has not presented one—this historical data cannot be used as a reliable basis for forecasting.

⁵⁰ BANA_EDD_MDL-00886356-358, at 357.

[REDACTED]

[REDACTED].⁵¹ Mr. Minnucci’s claim is misleading and incorrect in several ways.

41. *First*, the BofA [REDACTED]

[REDACTED]. Minnucci argues that [REDACTED]

[REDACTED],⁵²

however, Mr. Minnucci has not done any analysis to validate this derivative relationship using historical data (*e.g.*, showing the “percentage” would have remained stable and predictable), without which his statements are pure speculation.⁵³

42. *Second*, Mr. Minnucci mischaracterizes the BofA WFM Model as a forecasting model. In fact, this model simply describes the *contemporaneous* correlation between the Main Call Center’s call volume and the UI payment volume, and cannot be used directly to forecast call volume in [REDACTED] based on the UI payment today.⁵⁴ Furthermore, Mr. Minnucci incorrectly states that the BofA [REDACTED]

[REDACTED]⁵⁵ R^2 only measures how well one data series explains the variance in another. It does not measure the model’s predictive power or accuracy, *i.e.*, it does not indicate how well the BofA WFM Model can forecast call volume in say September 2020 using UI payment data available in July 2020.

⁵¹ Minnucci Report, ¶¶ 63-65.

⁵² Minnucci Report, ¶ 65.

⁵³ Nor has he examined whether and how such a “derivative” relationship may change under different circumstances, *e.g.*, during times of significant increase in Claims Call Center volume, or after the implementation of the Claims Fraud Filter.

⁵⁴ One could use the BofA WFM Model to estimate future call volume based on *future* UI Payment volume. However, Mr. Minnucci has not shown how BofA could have reliably forecasted the future UI payment amount either.

⁵⁵ Minnucci Report, ¶ 65.

43. *Lastly*, Mr. Minnucci has not considered whether this correlation described in the BofA

[REDACTED] The only input
to the BofA [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁵⁶ [REDACTED]

[REDACTED]⁵⁷ Following Mr. Minnucci’s logic, had BofA relied on this “highly reliable” forecasting model, it would have predicted a decline in call volume to the Main Call Center, and consequently, a decline in the Claims Call Center’s call volume as well (which according to Mr. Minnucci would simply be a [REDACTED]).⁵⁸

B. Mr. Minnucci’s Calculation of “Distinct Caller Demand” Is Speculative

44. Mr. Minnucci estimates the number of workload hours that BofA should have planned for during the Proposed Class Period based on his estimate of “Distinct Caller Demand,” which equals the sum of actual calls answered and an estimated number of “Distinct Abandoned Callers” (*i.e.*, the number of abandoned calls BofA should have answered in the Claims Call Center, after removing duplicate callers).⁵⁹

45. To estimate the number of “Distinct Abandoned Callers,” Mr. Minnucci multiplies the actual number of calls abandoned by an “Estimated Percent of Abandons That Did Not Recall,” which he derived using call record data from consulting clients of his own firm, Service

⁵⁶ BANA EDD MDL-0060339, at tab ‘[REDACTED]’ row 5 [REDACTED]

⁵⁷ Minnucci Report, Appendix F.

⁵⁸ Minnucci Report, ¶ 65.

⁵⁹ Minnucci Report, Table 9.

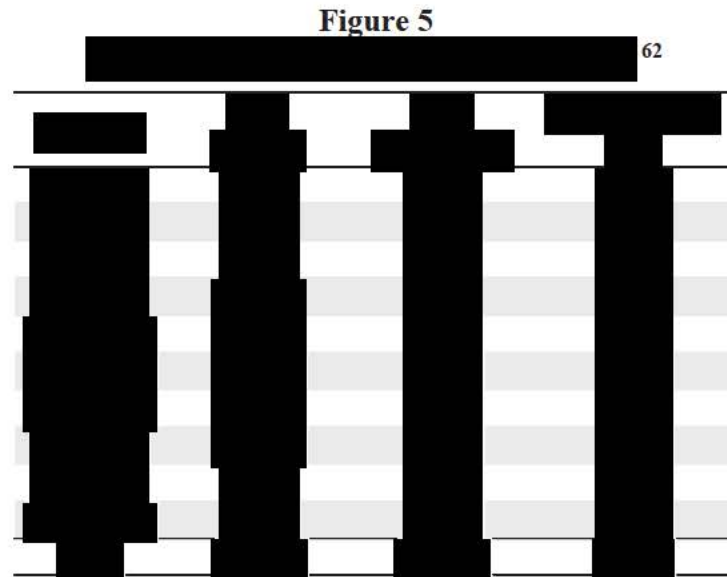
Agility. Mr. Minnucci has done nothing to show that such record data are reasonable inputs. Further, Mr. Minnucci has not produced the underlying data or provided sufficient explanation for me to assess whether they can be used to reliably infer the recall rates of the Claims Call Center. Based on the limited information I have, I see two potential issues with his approach.

46. *First*, Mr. Minnucci does not explain why the proprietary customer data he used as a basis for this analysis is appropriate, and applicable to the experience of the at-issue Claims Call Center. Given the nature of the calls to the Claims Call Center (*e.g.*, EDD cardholder calling to seek reconsideration of a claim that the Bank had automatically denied), I would expect a higher recall rate, all else equal, than a call center that handles general inquiries like hotel reservations which can be resolved using alternative means. Under Mr. Minnucci’s approach, a higher recall rate would result in a lower distinct demand, which in turn yields a lower estimate of “workload charges avoided.”

47. *Second*, according to Appendix H of the Minnucci Report, [REDACTED]
[REDACTED].⁶⁰ In [REDACTED]
[REDACTED]
[REDACTED] Mr. Minnucci has not provided any support whether the relationship he examined based on a limited sample would still hold during times with exceptionally high

⁶⁰ Minnucci Report, Appendix H.

abandonment rates. It is speculative for Mr. Minnucci to extrapolate the relationship outside the range of the data points he observed.⁶¹



48. *Third*, although he provides no explanation, it appears that Mr. Minnucci aggregated his individual client data into six data points based on predefined abandonment rate ranges.⁶³ Specifically, when analyzing the relationship between recall percentage and abandonment rate, Mr. Minnucci appears to have used (1) the midpoint of each abandonment rate range and (2) a single recall percentage for each abandonment rate range.⁶⁴ This aggregation

⁶¹ See, e.g., McClave, James T., and Terry Sincich, *Statistics*, 13th Edition, Pearson, 2018, at p. 779 (“One of the problems was that many of the regression models were used to extrapolate (*i.e.*, predict *y* for values of the independent variables that were outside the region in which the model was developed). [...] [T]he model may be highly accurate in predicting *y* when *x* is in the range of experimentation, but the use of the model outside that range is a dangerous practice.”); Harrell, Frank E. Jr., *Regression Modeling Strategies*, Second Edition, Springer, 2015, pp. 7-8 (“Many things can go wrong in statistical modeling, including the following. ... The user of the model relies on predictions obtained by extrapolating to combinations of predictor values well outside the range of the dataset used to develop the model.”)

⁶² DX 116, BANA_EDD_MDL-00719115, tab [REDACTED]

⁶³ See table in Appendix H of the Minnucci Report.

⁶⁴ Minnucci Report, Appendix H. Mr. Minnucci provides no explanation of how he derived this single recall percentage for each abandonment rate range, *i.e.*, whether the recall percentage represents the simple average (or some other statistical measure) of the underlying individual client data.

process masks the underlying variability in the data. For example, [REDACTED]

[REDACTED] Assuming that Mr. Minnucci has calculated the recall percentage for this range by taking a simple average of the underlying proprietary customer data, [REDACTED]

[REDACTED]⁶⁵

[REDACTED] In such a scenario, the substantial variation in the underlying data would call into question the reliability of the relationship between recall percentage and abandonment rate that Mr. Minnucci has derived and presented. Without the underlying data comprising each of the six abandonment rate ranges, it is not possible for me to assess the accuracy or reliability of Mr. Minnucci’s estimates.

49. In addition to his unsupported estimation of distinct abandoned callers, Mr. Minnucci has not shown that it is appropriate to assume that the Claims Call Center should have answered 93.9 percent of the calls during the Proposed Class Period, which Mr. Minnucci calculates as 1 minus an “industry average” abandonment rate of 6.1 percent to calculate.⁶⁶ As I discuss further in **Section V**, Mr. Minnucci fails to show that the multi-industry benchmark he has selected is appropriate to use, given, as noted above, the Claims Call Center was faced with unprecedented challenges during the Proposed Class Period. I note that Appendix H of the Minnucci Report shows [REDACTED]

[REDACTED]⁶⁷ To the extent that Mr. Minnucci has understated the abandonment rate (or overstated the call answer rate) that the Claims Call Center could have and should have

⁶⁵ Minnucci Report, Appendix H.

⁶⁶ Minnucci Report, Table 10, note 3.

⁶⁷ Minnucci Report, Appendix H.

reasonably achieved during the Proposed Class Period given the specific circumstances, he would have overstated his estimate of “workload charges avoided.”

C. Mr. Minnucci’s Calculation of BofA’s Avoided Costs of Idle Hours Is Unreliable

50. Mr. Minnucci’s use of the Erlang-C formula is inappropriate as it relies upon oversimplified assumptions that are not applicable to the at-issue Claims Call Center.

51. *First*, the Erlang-C formula is based on over simplified assumptions that deviate from reality, namely that all customer contact will follow a “Poisson” call arrival process and are serviced by a defined number of statistically identical CSRs.⁶⁸ Due to its limitations, in my experience, the Erlang-C formula is typically adopted by smaller contact centers with limited WFM resources because an Erlang-C calculator is freely available online, as Mr. Minnucci did here.⁶⁹ In my experience, call centers with more WFM resources typically build a staffing model taking into account the customer statistics, CSR performance (such as average handle time), and historical call center performance to better predict future staffing need.⁷⁰ Such a staffing model may be used for call centers operating under “normal” day-to-day business environment, but not in “[...] high traffic environments, a situation where the Erlang-C model is not applicable.”⁷¹

⁶⁸ Robbins, Thomas R., “Evaluating the Fit of the Erlang A Model in High Traffic Call Centers,” *IEEE*, 2016, available at <https://ieeexplore.ieee.org/document/7822226>, at p. 1791.

⁶⁹ I understand Mr. Minnucci’s calculations were done with the cc-Modeler Lite calculator cited in his report and available at <https://www.kooltoolz.com/lite.htm>. Also, *see, e.g.*, “Erlang Calculator,” *CCmath B.V.*, available at <https://appsource.microsoft.com/en-gb/product/office/wa200002158?tab=overview>; “Erlang Calculator - for Call Centre Staffing (Online Version 5.0),” *Callcentretools*, available at <https://www.callcentretools.com/tools/erlang-calculator/>.

⁷⁰ “How business intelligence can revolutionize contact center performance,” *CX Network*, December 20, 2024, available at <https://www.cxnetwork.com/contact-center/articles/business-intelligence-contact-center>.

⁷¹ Robbins, Thomas R., “Evaluating the Fit of the Erlang A Model in High Traffic Call Centers,” *IEEE*, 2016, available at <https://ieeexplore.ieee.org/document/7822226>, at p. 1790.

52. *Second*, academic research has found that Erlang-C based WFM tends to overstaff the call center, indicating that Mr. Minnucci’s use of the Erlang-C formula to estimate allegedly avoided CSR hour costs would likely overstate damages.⁷²
53. *Third*, the Erlang-C formula assumes independent and random call arrivals,⁷³ making it unsuitable to use during unprecedented events or disaster scenarios where call volumes tend to spike due to the common influencing factors.⁷⁴ [REDACTED]
[REDACTED]
[REDACTED],⁷⁵ [REDACTED] Therefore, it is inappropriate for Mr. Minnucci to apply the Erlang-C formula in calculating the CSR idle hours for the Claims Call Center, rendering his calculation of avoided costs of idle hours unreliable.
54. In addition, one of the inputs that Mr. Minnucci uses for the Erlang-C formula is an “industry average” ASA of 75 seconds. As I discuss further in **Section V**, Mr. Minnucci fails to show that the multi-industry benchmark he has selected is appropriate to use as a benchmark against the Claims Call Center. To the extent that Mr. Minnucci has understated the ASA that the Claims Call Center could have and should have reasonably achieved during the Proposed

⁷² See, e.g., Robbins, Thomas R., “Evaluating the Performance of the Erlang Models for Call Centers,” *International Journal of Applied Sciences and Technology* (2019), available at <https://myweb.ecu.edu/ROBBINST/PDFs/S-12130-TR.pdf>.

⁷³ Koole, Ger M., and Siqiao Li, “A Practice-Oriented Overview of Call Center Workforce Planning,” *Stochastic Systems* 13, no. 4 (2023): 479-495, available at <https://pubsonline.informs.org/doi/10.1287/stsy.2021.0008>.

⁷⁴ See “What Is Erlang, and Why Does It Matter?,” *CX Today*, November 25, 2022, available at <https://www.cxtoday.com/contact-center/what-is-erlang-and-why-does-it-matter/>.

⁷⁵ Pesce Report, ¶¶ 19, 21.

Class Period given the specific circumstances, he would have overstated his estimate of “idle time charges avoided.”

D. Mr. Minnucci’s Calculation Ignores That BofA Did Not Avoid the Entirety of Additional CSR Costs

55. Mr. Minnucci’s calculation of BofA’s allegedly avoided workload and idle hour costs fails to consider that BofA likely did not avoid these costs entirely. As discussed further in **Section**

VI.A, BofA [REDACTED]

[REDACTED]. To the extent that a portion of the CSR costs BofA incurred after the Proposed Class Period was for addressing backlog of claims and Mr. Minnucci has provided no evidence to the contrary, these costs have been simply delayed, not “avoided” as Mr. Minnucci claims.⁷⁶ Mr. Minnucci fails to consider these delayed costs as an offset to his calculation, which overstates his estimate of workload charges avoided.

V. MR. MINNUCCI HAS NOT SHOWN THAT HIS “INDUSTRY” BENCHMARK OF ASA IS APPROPRIATE, RENDERING MR. REGAN’S CALCULATION OF DAMAGES SUFFERED BY THE PROPOSED CUSTOMER SERVICE CLASS DUE TO “EXCESS WAIT TIMES” UNRELIABLE

56. Mr. Minnucci claims that Bank of America subjected its EDD debit cardholders to wait times “far longer than what is considered acceptable by industry standards.”⁷⁷ To estimate the “excess wait times” experienced by members of the proposed Customer Service Class, Mr. Minnucci compares the Claims Call Center’s [REDACTED] during the

⁷⁶ To put it differently, consider a but-for world where BofA ramped up the Claims Call Center during the Proposed Class Period to meet the “industry standard” service level as Mr. Minnucci claimed, and resolved the cardholders’ inquiries during the Proposed Class Period. In such case, there would be fewer customers recalling the Claims Call Center after the Proposed Class Period, and the call volume after the Proposed Class Period would have been lower than the actual. Thus, BofA would have ramped down the staffing after the Proposed Class Period and incurred a lower CSR cost.

⁷⁷ Minnucci Report, ¶ 49.

Proposed Class Period with an “industry standard” ASA of 75 seconds (1.25 minutes), based on a survey of 214 call centers conducted by ContactBabel.⁷⁸ Mr. Minnucci has not shown that the “industry standard” ASA he selected appropriately reflects the ASA experienced by other call centers comparable to Bank of America’s Claims Call Center during the Proposed Class Period. In addition, Mr. Minnucci fails to consider the fact that during the Proposed Class Period, [REDACTED]

[REDACTED], in light of COVID-19.

57. Therefore, Mr. Minnucci has not shown that his industry standard ASA can be relied upon to estimate the “excess wait times” experienced by members of the proposed Customer Service Class. Consequently Mr. Regan’s calculation of damages for the Proposed Customer Service Class, which relies on Mr. Minnucci’s calculation of “excess wait times,” is also unreliable.

A. Contrary to Mr. Minnucci’s Claims, There Is No Universal “Industry Standard” for Call Center Wait Times

58. Mr. Minnucci claims that “there are not substantial differences between the ASA or abandonment rate targets set in different industries,” such that “multi-industry call center performance data is the best source for identifying ASA and abandonment rate benchmarks applicable to the [Bank of America]’s Claims call center.”⁷⁹ I disagree.
59. In my experience, ASA, which measures the average amount of time that a customer waits before speaking with a CSR, is a common performance metric used to assess call center performance across different industries. However, the expectations of target ASAs and

⁷⁸ Minnucci Report, ¶ 52.

⁷⁹ Minnucci Report, ¶¶ 41-43.

realized ASAs vary significantly depending on the industry⁸⁰ and the nature and complexity of the requests handled.

60. Generally speaking, banking and financial services call centers operate under stricter security protocols and regulatory compliance requirements than many other industries. For example, banks must adhere to stringent fraud detection and identity verification procedures,⁸¹ when handling complex service requests such as transaction disputes and loan inquiries, all of which would demand longer call handle times. Even Mr. Minnucci himself acknowledges that the ASA in the financial industry in 2020 is higher than his industry standard.⁸² Yet, without any explanation, Mr. Minnucci chooses to use an ASA benchmark derived from call centers that serve a wide range of industries that are not comparable to BofA.
61. Within the financial industry, the expectations of target ASAs and realized ASAs can also vary depending on the nature and complexity of the requests handled. For example, in my experience, wait times can be very different for banks’ call centers that handle general inquiries about account balance and certain transactions and those that handle more complex requests such as unauthorized transactions and account security.

⁸⁰ For example, in my experience, call centers for a bank typically prioritize CSAT (Customer Satisfaction) over call times, while call centers serving the hospitality industry prioritize minimizing call length to reduce wait times.

⁸¹ For example, in 2016, the Bureau of Consumer Financial Protection (CFPB) issued its official guidance on banks’ (and nonbanks’) reliance on third-party service providers, clarifying its expectation for “banks and nonbanks to have an effective process for managing the risks of service provider relationships” and recognizing that risk management may “vary depending upon the service being performed [...] and the performance of the service provider in carrying out its activities in compliance with Federal consumer financial laws and regulations.” These expectations for banks include “[e]stablishing internal controls and on-going monitoring” to ensure provider’s compliance, as well as “appropriate and enforceable consequences” for violation of compliance. See “Compliance Bulletin and Policy Guidance; 2016-02, Service Providers,” *Bureau of Consumer Financial Protection*, October 31, 2016, available at https://files.consumerfinance.gov/f/documents/102016_cfpb_OfficialGuidanceServiceProviderBulletin.pdf.

⁸² Minnucci Report, ¶ 43. Mr. Minnucci notes that the average ASA across 29 Finance call centers from ContactBabel was 145 seconds, longer than his “industry standard” of 75 seconds.

62. In my view, there is no standard ASA applicable to all call centers. This is especially true in 2020 after the outbreak of the global COVID-19 pandemic, which had different effects on call centers depending on the industry served and requests handled. For example, in my experience, call volumes in the hospitality and travel industry, which accounts for 11 of the respondents in the ContactBabel survey,⁸³ plummeted as travel came to a halt at the onset of the pandemic.

63. In contrast, Bank of America [REDACTED] urged.⁸⁴ As discussed by Ms. Pesce, the number of new EDD prepaid debit card accounts issued increased from [REDACTED] in February 2020, to [REDACTED] in April 2020, [REDACTED].⁸⁵ In addition, [REDACTED] [REDACTED] start of the Proposed Class Period and at the start of the Proposed Class Period. As discussed by Ms. Pesce, [REDACTED]

⁸³ DX 119, The 2021 US Contact Decision-Makers’ Guide, 13th Edition, ContactBabel. In addition to hospitality and travel, entertainment and home services were among industries experiencing a decline in call volumes. *See, e.g.*, “COVID-19’s Impact on Customer Service Volumes,” *HelpScout*, September 10, 2024, available at <https://www.helpscout.com/blog/support-volumes-covid/>.

⁸⁴ [REDACTED] DX 120, BANA_EDD_MDL-00884198. Around this time, news outlets also reported that “the challenges for [bank] call centers have been magnified by increased call volume, increased call complexity, high stress of both employees and customers and a huge shift to work at home representatives.” *See* “Bank call centers feeling pressure of COVID-19,” *ATM Marketplace*, April 28, 2020, available at <https://www.atmmarketplace.com/articles/bank-call-centers-feeling-pressure-of-covid-19/>. In addition to financial services, airlines and retailers were among industries also experiencing long wait times. *See, e.g.*, “Customer Calls to Companies Rise Amid Coronavirus, but Operators Aren’t Standing By,” *Wall Street Journal*, March 29, 2020, available at <https://www.wsj.com/articles/calls-to-companies-rise-amid-coronavirus-but-operators-arent-standing-by-11585483200>.

⁸⁵ Pesce Report, ¶ 37.

[REDACTED] ⁸⁶ [REDACTED]

[REDACTED]

[REDACTED] ⁸⁷ Mr. Minnucci has not considered these unique circumstances that BofA’s Claims Call Center was faced with during the Proposed Class Period. Mr. Minnucci provides no evidence, and I have no reason to believe, that any of the call centers surveyed by ContactBabel experienced such a significant and extended increase in call volume over such a short period in time. As a result, attempting to apply a universal “industry standard” of wait times, as Mr. Minnucci has done here, is inappropriate.

B. Mr. Minnucci Fails to Consider that BofA Was Exempt from SLAs Related to Wait Times During the Proposed Class Period

64. Further, in my experience, the expected service levels and performance of a specific call center are typically defined in its contractual agreements. These contracts typically outline service level agreements (“SLAs”), including wait times and abandonment thresholds, that are set based on the unique needs of the client, the nature of the services provided, and the standards in that industry in general.⁸⁸ Thus, when evaluating the performance of a call center including its ASA, it is important to consider the relevant SLAs, as they appropriately account for key factors such as complexity of inquiries, regulatory requirements, and client

⁸⁶ Pesce Report, ¶ 43.

⁸⁷ Cronan Report, ¶ 43.

⁸⁸ See, e.g., Baron, Opher, and Joseph Milner, “Staffing to Maximize Profit for Call Centers with Alternate Service-Level Agreements,” *Operations Research* 57, no. 3 (2009): 685-700, at p. 685 (“Firms sign service-level agreements (SLAs) with outsourced call centers to ensure quality in the handling of their customers’ calls.”).

priorities specific to the industry in which this particular call center operates and unique to this call center.⁸⁹

65. In 2020, the impact of COVID-19 necessitated companies across industries to re-evaluate and adjust operations due to rapidly changing customer demand and workforce disruption.⁹⁰ These adjustments included revisions to SLAs, to “permit non-performance without incurring a penalty” due to challenges brought about by the pandemic.⁹¹ Therefore, any assessment of the Claims Call Center’s performance during the Proposed Class Period must take into account the specific SLA targets, or the lack thereof, as set forth in its agreement with the CA EDD at that time, which Mr. Minnucci fails to do.
66. On August 24, 2020, Bank of America entered into an amendment with CA EDD to temporarily modify the SLAs, obligations, and reporting requirements in light of the COVID-19 pandemic.⁹² Pursuant to this amendment, Bank of America would be excused from any failure to meet the above-mentioned SLAs for customer services (including the SLA that 70

⁸⁹ Baron, Opher, and Joseph Milner, “Staffing to Maximize Profit for Call Centers with Alternate Service-Level Agreements,” *Operations Research* 57, no. 3 (2009): 685-700, at p. 685 (“Within these agreements are terms that describe services to be provided, such as the hours of operation and the types of facilities; and terms that describe the service level, such as the average actual handling time (the service time), the acceptable abandonment rate, and acceptable customer delay times. **Although such SLAs are common in industry, their terms and the extent of their specifications vary.**”). Emphasis added.

⁹⁰ See, e.g., “Hot Topic: Coronavirus Potential impacts on the accounting for arrangements with customers,” *KPMG*, March 25, 2020, available at <https://kpmg.com/kpmg-us/content/dam/kpmg/frv/pdf/2020/hot-topic-coronavirus-revenue.pdf>.

⁹¹ “Hot Topic: Coronavirus Potential impacts on the accounting for arrangements with customers,” *KPMG*, March 25, 2020, available at <https://kpmg.com/kpmg-us/content/dam/kpmg/frv/pdf/2020/hot-topic-coronavirus-revenue.pdf> (“The current disruption to business and the workforce may cause companies to be unable to meet the service levels they promised to their customers. [...] Companies should consult legal counsel to determine whether force majeure clauses in a customer or subcontractor contract would permit non-performance without incurring a penalty based on the specific facts and circumstances.”).

⁹² BANA_EDD_MDL-00014091-095, at 091.

percent of the calls must be answered within 30 seconds “30/70 SLA”⁹³), “if such failure occurs despite the Bank’s use of efforts that are commercially reasonable in the context of the COVID-19 pandemic.”⁹⁴ This amendment was effective from August 24, 2020 through June 30, 2021,⁹⁵ which included the entirety of the Proposed Class Period.

67. In other words, during the Proposed Class Period, given the disruptions caused by COVID-19, CA EDD acknowledged that it was unreasonable to require BofA to adhere to the 30/70 SLA they initially agreed upon, or any other fixed, alternative SLA requirement. The amendment provided BofA discretion to use “commercially reasonable” efforts to manage the Claims Call Center’s performance and flexibility to react dynamically to the unpredictable ups and downs in call volume. In my experience, such amendments are rare and would only be agreed to by a client in dire times. The fact that CA EDD—an agency responsible for providing critical unemployment benefits—agreed to this amendment underscores the unprecedented challenges and call volume spikes the Claims Call Center faced during the Proposed Class Period. Under these extraordinary circumstances, it is inappropriate for Mr. Minnucci to assess the Claims Call Center’s performance using a “universal benchmark” that does not account for the specific challenges experienced by the Claims Call Center as a result of the pandemic. In other words, even setting aside the important differences in industry, nature of calls handled, and varying impact from COVID-19 which Mr. Minnucci’s “industry average” fails to properly account for, in my opinion, the mere fact that [REDACTED]

⁹³ BANA_EDD_MDL-00014091-095, at 091, 093.

⁹⁴ BANA_EDD_MDL-00014091-095, at 091.

⁹⁵ BANA_EDD_MDL-00014091-095, at 091.

██ indicates that a “universal benchmark” is not applicable to the Claims Call Center during the Proposed Class Period.

68. For the reasons discussed above, the “excess wait times” that Mr. Minnucci calculates based on an inappropriate industry standard ASA are unreliable. Because of the flaws in Mr. Minnucci’s approach, Mr. Regan’s calculation of damages allegedly suffered by the Proposed Customer Service Class due to these “excess wait times” is also unreliable.

69. In addition, I note that Mr. Regan does not provide a methodology to calculate actual damages, if any, to individual class members using their actual wait times. Rather, Mr. Regan relies on Mr. Minnucci’s report and intends to use the average ASA of Bank of America’s Claims Call Center over the entire Proposed Class Period and assumes that each individual class member’s experience and alleged harm was the same.⁹⁶ Based on my decades of experience leading contact center metrics compliance programs and teams, it is inappropriate because it does not represent each individual member’s personal experience.

VI. MR. MINNUCCI FAILS TO CONSIDER THAT BOFA TOOK REASONABLE STEPS TO INCREASING STAFFING DURING AND AFTER THE PROPOSED CLASS PERIOD

70. As discussed above, Mr. Minnucci has not shown that it is reasonable to assume that BofA could have and should have accurately predicted the increase in call volumes or AHT during the Proposed Class Period, yet he claims that BofA “deliberately” understaffed the Claims Call Center, “causing its Claims call center and its Fraud call center to perform at levels far below industry standards for sustained periods of time.”⁹⁷ I understand assessing the

⁹⁶ Regan Report, ¶¶ 91-93.

⁹⁷ Minnucci Report, ¶¶ 82. *See also* Minnucci Report, ¶¶ 15 and 69.

Defendants’ state of mind is not an appropriate area for expert analysis and opinion, and I am not offering such an analysis or opinion. Rather, my analysis is intended to provide information to assist the fact-finder in assessing whether BofA deliberately chose to understaff. While BofA of course chose its target staffing levels, simply observing with the benefit of hindsight that the Claims Call Center’s performance would have been better with more staff does not mean BofA intentionally chose the staffing levels to impose long wait times on customers. Indeed, as I explain in detail below, based on my experience and my review of the evidence, BofA quickly adjusted its staffing in response to new information in real time and its actions were consistent with industry standards to provide reasonable customer service.

A. After Experiencing Unanticipated Increase in Call Volume, BofA Quickly Adjusted to New Information in Real Time

71. As I discuss in **Section IV.A.1**, [REDACTED]
[REDACTED] After observing the surge, BofA [REDACTED]
[REDACTED]
[REDACTED]

72. Consistent with Mr. Golden’s testimony,⁹⁸ [REDACTED]
[REDACTED] shown in **Figure 6**, [REDACTED]
[REDACTED]
[REDACTED] This is in line with the time that
BofA [REDACTED], which Mr. Minnucci acknowledges, and

⁹⁸ BofA was “[REDACTED]” Golden Deposition, pp. 82:5-16 and 85:2-18.

also consistent with my experience under normal circumstances.⁹⁹ This indicates that BofA adjusted quickly to new information in real time and started the hiring process at the start of the Proposed Class Period.

[REDACTED]

100

73. One of the reasons that the Claims Call Center’s FTEs fluctuated earlier during the Proposed Class Period is that BofA [REDACTED]

[REDACTED]

[REDACTED].¹⁰¹ A late 2020 update outlined BofA’s approach,

⁹⁹ Golden Deposition, at p. 69:5-20.

¹⁰⁰ Minnucci Report, Appendix F; DX 116, BANA_EDD_MDL-00719115, tab “[REDACTED]”.

¹⁰¹ For example, [REDACTED] See Minnucci Report, Appendix G.

noting that the bank was [REDACTED]

[REDACTED] 102 [REDACTED]

[REDACTED] 103 [REDACTED]

74. BofA’s [REDACTED] [REDACTED] is reasonable and aligns with standard industry practices. Based on my experience, newer CSRs typically remain in frontline roles where they directly interact with customers and handle more straight forward inquiries, while more experienced CSRs transition to roles in higher-tier escalation call centers or back-office functions, such as the Claims Processing Center, to handle more complex inquiries or claim resolutions. Thus, it is reasonable, from a strategic perspective, for BofA [REDACTED]

75. Further, around this time period, BofA [REDACTED] [REDACTED] 104 [REDACTED]

¹⁰² BANA_EDD_MDL-00494863-865, at 863. *See also*, BANA_EDD_MDL-00886305-309, at 306-307.

¹⁰³ BANA_EDD_MDL-00494863-865, at 863. *See also*, BANA_EDD_MDL-00886305-309.

¹⁰⁴ BANA_EDD_MDL-00060129-143, at 132.

[REDACTED],¹⁰⁵ [REDACTED]
[REDACTED].¹⁰⁶

76. Despite these challenges, BofA [REDACTED]
[REDACTED]
[REDACTED]
• [REDACTED]¹⁰⁷
• [REDACTED]

77. [REDACTED]
[REDACTED]¹¹⁰ [REDACTED]
[REDACTED]¹¹¹ [REDACTED]
[REDACTED]¹¹²

¹⁰⁵ BANA_EDD_MDL-00886356-358, at 357.

¹⁰⁶ BANA_EDD_MDL-00498505-512, at 505 (“[REDACTED]”).

¹⁰⁷ BANA_EDD_MDL-00141022 [REDACTED]
[REDACTED]; BANA_EDD_MDL-00141585-590, at 586 [REDACTED]

¹⁰⁸ Paul Simpson (who was brought in to run the call centers for BofA’s unemployment benefits programs in 2020) and William Golden led this initiative, which sought to “[c]onsolidate Call Service Center, Fraud Tier 1 and Claims Servicing under GBAM Ops to holistically manage the three functions.” Deposition of Paul Simpson, February 21, 2025 (“Simpson Deposition”), at p. 9:12-20; BANA_EDD_MDL-00153928-930; BANA_EDD_MDL-00153872-874; BANA_EDD_MDL-00389951-956, at 955.

¹⁰⁹ BANA_EDD_MDL-00103857-865; BANA_EDD_MDL-00105042-046; BANA_EDD_MDL-00389951-956.

¹¹⁰ DX 116, BANA_EDD_MDL-00719115, tab “Weekly Summary”.

¹¹¹ DX 116, BANA_EDD_MDL-00719115, tab “Weekly Summary”.

¹¹² 91,786 calls abandoned / 115,168 calls offered = 79.7% in the week of October 25; 6,068 calls abandoned / 78,164 calls offered = 7.8% in the week of December 13. DX 116, BANA_EDD_MDL-00719115, tab “Weekly Summary”.

B. BofA’s Real-Time Staffing Approach to Real Time Call Demand is Consistent with Industry Practice

78. Mr. Minnucci criticizes BofA for following a [REDACTED]
[REDACTED]¹¹³ I disagree. My review of the documents indicate that BofA and its vendor [REDACTED]¹¹⁴ [REDACTED]
[REDACTED]
[REDACTED]¹¹⁵ After observing this unprecedented increase in the Claims Call Center’s call volume, BofA’s decision to adopt a real-time response approach aligns with industry norms in my experience.¹¹⁶
79. Further, Mr. Minnucci asserts, with the benefit of hindsight, that the [REDACTED]
[REDACTED]¹¹⁷ As a preliminary matter, Mr. Minnucci ignores that the [REDACTED]

¹¹³ Minnucci Report, ¶ 60.

¹¹⁴ For example, [REDACTED]. See BANA EDD MDL-00496761-773, at 762, 765-768. [REDACTED]
[REDACTED] See, e.g., BANA EDD MDL-00371301-304, at 301-303 [REDACTED]; BANA EDD MDL-00099617-619, at 61 [REDACTED]

¹¹⁵ Golden Deposition, at pp. 74:2-75:7 [REDACTED]
[REDACTED]

¹¹⁶ Insurance contact centers, for example, “find it challenging to predict the onslaught of needs during these times. Even when [we] know a disaster is coming, preparing for a surge can still be difficult.” “How to Handle Contact Center Staffing During a Natural Disaster,” *ShyftOff*, November 8, 2024, available at <https://www.shyftoff.com/blog/contact-center-staffing-during-a-natural-disaster>; “Optimising Call Centre Staffing Levels to Manage Call Spikes,” *Answer4U*, December 11, 2024, available at <https://www.answer-4u.com/blog/manage-call-spikes> (“[e]ven with accurate forecasting, unforeseen events can cause sudden surges in call volume”),

¹¹⁸ Deposition of Faiz Ahmad, January 29, 2025, at pp. 209:17-210:8 and Exhibit 322.

[REDACTED]¹¹⁸ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹¹⁹ Further, in my experience, it is extremely difficult to accurately predict the change in call volume with any degree of certainty, particularly in the absence of prior precedent on which BofA could rely. For example, if most of the

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Mr. Minnucci has not shown how BofA could have [REDACTED]
[REDACTED] Even if one were to assume that an initial increase in the Claims Call Center’s call volume could be anticipated, it is extremely difficult to predict the duration and magnitude of such an increase. Based on my experience, it was reasonable for BofA not to make any drastic staffing changes immediately, and instead, choose to closely monitor the situation and make real-time adjustments based on actual call patterns.

80. [REDACTED]
[REDACTED]

¹¹⁸ Deposition of Faiz Ahmad, January 29, 2025, at pp. 209:17-210:8 and Exhibit 322.

¹¹⁹ In addition, I understand that Mr. Cronan and Ms. Pesce both opine that not acting quickly to mitigate the fraud could have exposed the BofA to significant risks. Cronan Report, ¶ 49 (“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”); Pesce Report, ¶ 56 [REDACTED]
[REDACTED]

[REDACTED] ¹²⁰ As [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

81. [REDACTED]

[REDACTED]

[REDACTED] Mr. Minnucci claimed BofA should have added during the first seven weeks of the Proposed Class Period.

¹²⁰ That is, I calculate the additional FTEs BofA would have forecasted for the first seven weeks of the Proposed Class Period (from the week of September 13, 2020 through the week of October 25, 2020) seven weeks ahead of time (from the week of July 26, 2020 through the week of September 6, 2020, which is the week prior to the start of the Proposed Class Period).

¹²¹ For the purpose of this analysis, I assume that BofA would have planned for the Claims Call Center’s staffing level seven weeks in advance based on (1) the number of calls offered it observed at the time of planning, multiplied by 93.9 percent (1 minus Mr. Minnucci’s “industry standard” abandonment rate of 6.1 percent) and (2) the AHT it observed at the time of planning. I did not use Mr. Minnucci’s estimation of distinct calls to reduce the number of calls expected to answer, which is conservative.

My calculation here is intended solely to illustrate magnitude of the call volume spike in the Claims Call Center and the resulting staffing challenges. It should not be construed as an opinion on the appropriate approach to staffing planning or an opinion that this is what BofA should have done when planning for staffing.

In addition, as I discuss in ¶ 35 above, the Claims Call Center was not operating under ordinary circumstances at this time, *i.e.*, there is evidence that suggests it was [REDACTED]. Unless there is a reliable methodology to predict future fraudulent activity and its impact on AHT—and Mr. Minnucci has not presented one—the historical data from seven weeks prior cannot be used as a reliable basis for any forecast.

VII. MR. MINNUCCI’S CLAIM ON BOFA’S BROADER SYSTEMIC FAILURE TO REASONABLY OPERATE ITS PREPAID CALL CENTERS IS UNSUPPORTED

A. Mr. Minnucci’s Criticisms Regarding BofA’s Failure for Disaster Planning Are at Odds with Reality

82. Mr. Minnucci claims that BofA “failed to engage in reasonable planning for its Prepaid call centers for potential staffing-intensive events like the pandemic.”¹²² To support his claim,

Mr. Minnucci [REDACTED]

[REDACTED]¹²³ Mr.

Minnucci claims that it [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹²⁴ Mr. Minnucci further opines that that “[t]his lack of preparation from a major U.S. bank providing a service of immense importance to its cardholders is substantially out of step with industry norms.”¹²⁵ However, as I discuss below, Mr.

Minnucci’s claims are at odds with the industry-wide operational challenges the call centers experienced due to COVID-19.¹²⁶ In addition, Mr. Minnucci fails to acknowledge that BofA

¹²² Minnucci Report, ¶ 83.

¹²³ Minnucci Report, ¶¶ 83-88.

¹²⁴ Minnucci Report, ¶¶ 88-90. Further, Mr. Minnucci asserts that the “disconnected” calls were in violation of BofA’s contractual promise that “‘no call’ would be ‘transferred to voicemail or automatically disconnected from the queue.’” Minnucci Report, ¶ 89. I note that according to an email dated April 16, 2020, “[REDACTED]” See PX 140, BANA_EDD_MDL-00021102-136, at 102.

¹²⁵ Minnucci Report, ¶ 90.

¹²⁶ “5 Insights of Covid-19 in the Contact Center,” *Pindrop*, April 30, 2020 (updated on January 17, 2025), available at <https://www.pindrop.com/article/insights-covid-nineteen-in-the-contact-center> (“As a critical customer interface, contact centers have felt the effects directly, regardless of geography and industry. The global pandemic hit this critical function, and many were left scrambling to keep their operations running, customer service levels up, and their customer data safe”).

quickly responded to the outbreak of COVID-19, adding CSRs to its call centers and providing the necessary technology for its employees to work effectively in a remote environment.

83. After the outbreak of the COVID-19 pandemic, call centers’ operations faced severe disruptions due to a sudden surge in call volumes, and workforce shortages. Social distancing mandates forced approximately 90% of global CSRs to work remotely.¹²⁷ This mass transition to remote work complicated workforce management and operational oversight.¹²⁸ Many CSRs, working from home for the first time, lacked basic infrastructure such as stable and low latency voice connections or peer support, making it more difficult to assist customers efficiently.¹²⁹ Meanwhile, the pandemic-induced shift to remote work also exacerbated staffing shortages, with many call centers experiencing high levels of absenteeism, attrition, and workforce shrinkage.¹³⁰
84. Unlike seasonal fluctuations, which customer service teams could anticipate and prepare for, the COVID-19 pandemic brought rapid, large-scale changes with little to no warning.¹³¹ In addition, before the COVID-19 pandemic, while call center had previously prepared

¹²⁷ “Impact of Covid-19 on Contact Centers and Measures Taken,” *GEP*, October 29, 2020, available at <https://www.gep.com/blog/mind/impact-of-covid-19-on-contact-centers-and-measures-taken>.

¹²⁸ “5 Insights of Covid-19 in the Contact Center,” *Pindrop*, April 30, 2020 (updated on January 17, 2025), available at <https://www.pindrop.com/article/insights-covid-nineteen-in-the-contact-center>.

¹²⁹ “Supporting Customer Service Through the Coronavirus Crisis,” *Harvard Business Review*, April 8, 2020, available at <https://hbr.org/2020/04/supporting-customer-service-through-the-coronavirus-crisis>; “How Remote Work Has Changed The Call Center,” *Forbes*, May 22, 2023, available at <https://www.forbes.com/councils/forbestechcouncil/2023/05/22/how-remote-work-has-changed-the-call-center/>.

¹³⁰ A study from November 2021 found that “[o]ne in three contact center leaders (33%) say high agent turnover is one of their biggest pain points.” “Why Do Call Centers Have High Turnover (and What Can We Do About It),” *Medallia*, February 15, 2022, available at <https://www.medallia.com/why-do-call-centers-have-high-turnover-and-what-can-we-do-about-it/>.

¹³¹ “COVID-19’s Impact on Customer Service Volumes,” *Help Scout*, September 10, 2024, available at <https://www.helpscout.com/blog/support-volumes-covid>.

pandemic response plans as part of their overall business continuity programs,¹³² the focus of call center disaster planning typically centered around events such as natural disasters (*e.g.*, Hurricane Katrina), power or system outages, and labor strikes, which are all localized and short term. When such disastrous events occur, assistance can be sought from unaffected regions (*e.g.*, call centers located in a different region). COVID-19, on the contrary, created a global crisis in which virtually every region and business was affected, which significantly limited the availability of external assistance that organizations can typically rely on during localized disruptions.¹³³ As a result, in my experience, most of the call centers—even the ones with the most sophisticated and comprehensive disaster planning ahead of time—were disrupted in 2020 after the outbreak of the COVID-19 pandemic. Mr. Minnucci’s ideal world in which “reasonable planning” could have prevented these challenges is detached from reality.

85. Further, my review of the internal documents indicate that BofA acted reasonably and commendably in responding to COVID-related challenges in early 2020, increasing the number of vendor CSRs supporting the three call centers for prepaid cards (Main, Claims, and Fraud Call Centers) from [REDACTED]

¹³² Following the outbreak of H1N1 in 2009–2010, contact centers were often contractually required to prepare, maintain, test, and present their pandemic response plans on at least an annual basis.

¹³³ As the COVID-19 pandemic unfolded, it became clear that both businesses and even well-resourced governments found their localized, business-unit-focused pandemic plans—originally designed around H1N1 scenarios—were not fit for purpose. For example, the Council on Foreign Relations published a task force report titled “Improving Pandemic Preparedness: Lessons From COVID-19,” which noted that the U.S. was unprepared for COVID-19, “having failed to integrate and implement the lessons of earlier epidemics and multiple training exercises, to designate a strong focal point for interagency coordination, to allocate resources commensurate with the magnitude of the threat [...]” See “Improving Pandemic Preparedness: Lessons From COVID-19,” *Council on Foreign Relations* (2020), available at <https://www.cfr.org/task-force-report/improving-pandemic-preparedness/findings>.

[REDACTED]¹³⁴ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹³⁵ BofA [REDACTED]
[REDACTED]
[REDACTED]¹³⁶ BofA’s actions are consistent

with best practices of COVID-19 response in call centers supporting financial institutions in my experience.

B. Mr. Minnucci’s Criticism Regarding BofA’s Failure to Adopt Virtual Queuing and Estimated Wait Time Notifications Is Unfounded

86. Mr. Minnucci criticizes BofA for failing to adopt alternative technology such as Virtual Queuing (which allows callers to hold their place in line and receive a callback instead of waiting on hold indefinitely) and Estimated Wait Time Notifications (which provides callers with an estimated time until their call is answered).¹³⁷ In my experience, any technology deployed to facilitate the customer experience is typically agreed upon by the parties in advance. Mr. Minnucci has not shown—nor have I seen any evidence—that the use of either

¹³⁴ BANA_EDD_MDL-00494863-865.

¹³⁵ BANA_EDD_MDL-00265136-143, at 137, 138.

¹³⁶ BANA_EDD_MDL-00265136-143, at 141 (noting that [REDACTED]
[REDACTED]¹⁴³ [REDACTED]

”).

¹³⁷ Minnucci Report, ¶¶ 79-81.

Virtual Queuing or Estimated Wait Time Notifications was mandated by CA EDD or

[REDACTED]

[REDACTED].¹³⁸ In addition, Mr. Minnucci fails to consider that for BofA to adopt such technologies uniformly across all of its vendors’ call centers, it would require significant time, coordination, and infrastructure changes, such that it would not be an effective solution to quickly address the call volume surge caused by factors such as the COVID-19 pandemic or fraudsters implementing “double dipping” schemes.

87. In my experience, the decision to use certain technology or not at a specific call center is typically based upon a number of factors, including the nature and type of calls handled, whether consistently high volumes and/or wait times are anticipated, and most importantly the desired customer experience. In my experience, for organizations that rely on multiple outsourced contact center vendors—as is the case with BofA—providing a uniform customer experience is often the most important factor when making technology decisions. Specifically, in my experience, BofA requires all of the contact center vendors to deliver a consistent experience across all customer interactions, from the initial greeting and caller verification, through the call flow, questions asked, tools used, and data collected, to the conclusion of the call, including any post-call surveys.¹³⁹

88. In my experience, to maintain a uniform customer experience, the implementation of Virtual Queuing and Estimated Wait Time Notifications technologies would take considerable coordination, planning, and infrastructure changes. Adopting these technologies would require not only a technology upgrade (*e.g.*, to allow for outbound callbacks to customers)

¹³⁸ PX 115, BANA_EDD_MDL-00002286-851.

¹³⁹ This is to ensure that callers must never perceive that they are speaking with anyone other than BofA.

and integration with existing telephony systems across all call centers at multiple vendors, but also extensive testing and alignment in revising telephony configuration and operational workflows across all vendors. Thus, to ensure that the technologies are implemented in a uniform manner and cause minimal disruption to customer experience, the deployment would not be a trivial undertaking. Given these complexities, it would not have been feasible to implement such technologies in a reasonably short timeframe—such as a month or two—especially during periods of heightened demands.¹⁴⁰ As such, contrary to Mr. Minnucci’s claims, adopting the Virtual Queuing and Estimated Wait Time Notifications technologies would not be an effective solution to quickly address the call volume surge caused by factors such as the COVID-19 pandemic or fraudsters implementing “double dipping” schemes. [REDACTED]

[REDACTED]
[REDACTED].¹⁴¹ Further, as I discussed above, it is extremely difficult to accurately predict the change in call volume resulting from the Claims Fraud Filter or spikes in call volume attributed to attempted fraud or criminal activity with any degree of certainty, in the absence of prior precedent on which BofA could rely. Therefore, it was reasonable for BofA not to devote significant resources to implement such technologies ahead of time.

¹⁴⁰ In my experience, implementing technologies like Virtual Queuing or Estimated Wait Time Notifications would require weeks of planning, followed by additional weeks of implementation and testing at each individual call center, to ensure that they are seamlessly integrated with the existing systems and work uniformly and effectively across all vendors.

¹⁴¹ Deposition of Faiz Ahmad, January 29, 2025, at pp. 209:17-210:8 and Exhibit 322.

C. Mr. Minnucci’s Claims Regarding BofA’s “Lax Security Protocols in the Transition to Work-from-Home” Are False

1. *It Was Reasonable for BofA to* [REDACTED]

89. Mr. Minnucci claims that BofA failed to comply with Payment Card Industry Data Security Standard (PCI DSS) because it [REDACTED]

[REDACTED]

[REDACTED].¹⁴² Mr. Minnucci’s claims are misleading and incorrect.

90. Mr. Minnucci has conflated the responsibilities of different entities in the banking and payment processing ecosystem, such as banks and card brands (Visa/Mastercard, acting as issuers/acquirers) versus contact center vendors (service providers/processors) and merchants (handling payment transactions). The PCI DSS is an industry standard enforced by Visa and Mastercard through their contracts with banks, which serve as the issuers.¹⁴³ PCI DSS requires employee screening such as previous employment history, criminal record, credit history, and reference checks.¹⁴⁴ However, banks have a separate, regulated obligation to comply with the Gramm-Leach-Bliley Act (GLBA).¹⁴⁵ In 2021, the FTC significantly strengthened the GLBA’s information security requirements under the Safeguards Rule,

¹⁴² Minnucci Report, ¶ 100.

¹⁴³ “PCI DSS explained: Requirements, fines, and steps to compliance,” *CSO*, April 3, 2024, available at <https://www.csoonline.com/article/569591/pci-dss-explained-requirements-fines-and-steps-to-compliance.html>.

¹⁴⁴ “Requirements and Security Assessment Procedures,” *Payment Card Industry (PCI) Data Security Standard*, Version 3.2.1., May 2018, at p. 110, available at https://www.pcisecuritystandards.org/document_library/?category=pcidss.

¹⁴⁵ “Gramm-Leach-Bliley Act,” *Federal Trade Commission*, available at <https://www.ftc.gov/business-guidance/privacy-security/gramm-leach-bliley-act>.

which banks are legally required to meet.¹⁴⁶ Consequently, banks adhere to both regulatory mandates and industry standards, demonstrating compliance as required by the respective governing bodies—such as the card brands in this instance.¹⁴⁷

91. In the call center industry, compliance with PCI DSS is contractual rather than regulatory.¹⁴⁸ Third-party call centers are often under contractual obligations to provide evidence to their client banks that they maintain PCI compliance through a structured information security and governance program.¹⁴⁹ This compliance is typically attested to by a responsible executive within the contact center.¹⁵⁰ In the case of BofA and the call center vendors (*i.e.*, TTEC and ACT), the specific security requirements were outlined in their contracts, including

[REDACTED] 151

Vendors are audited annually to ensure adherence to these requirements across all relevant

¹⁴⁶ “FTC Strengthens Security Safeguards for Consumer Financial Information Following Widespread Data Breaches,” *Federal Trade Commission*, October 27, 2021, available at <https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-strengthens-security-safeguards-consumer-financial-information-following-widespread-data>.

¹⁴⁷ *See, e.g.*, “Visa Issuer and Acquirer Payment Card Industry Data Security Standard Compliance,” *Visa*, February 10, 2009, available at <https://usa.visa.com/dam/VCOM/global/support-legal/documents/bulletin-issuer-acquirer-pci-dss.pdf>.

¹⁴⁸ “What Are the PCI DSS Third-Party Service Provider Management Requirements,” *PCI DSS Guide*, July 13, 2021, available at <https://pcidssguide.com/what-are-the-pci-dss-third-party-service-provider-management-requirements/> (“The service provider’s acknowledgment of liability for card data will be a form of liability acceptance offered to you by the third party. It should be noted that PCI DSS [Attestation of Compliance] is not a legal contract between you and a third party and has nothing to do with the acceptance of liability.”).

¹⁴⁹ *See, e.g.*, “What Are the PCI DSS Third-Party Service Provider Management Requirements,” *PCI DSS Guide*, July 13, 2021, available at <https://pcidssguide.com/what-are-the-pci-dss-third-party-service-provider-management-requirements/>.

¹⁵⁰ “What Are the PCI DSS Third-Party Service Provider Management Requirements,” *PCI DSS Guide*, July 13, 2021, available at <https://pcidssguide.com/what-are-the-pci-dss-third-party-service-provider-management-requirements/> (“A PCI DSS compliant third-party service provider that has passed its PCI DSS assessment will have its Attestation of Compliance (AoC).”).

¹⁵¹ “What Are the PCI DSS Third-Party Service Provider Management Requirements,” *PCI DSS Guide*, July 13, 2021, available at <https://pcidssguide.com/what-are-the-pci-dss-third-party-service-provider-management-requirements/>. *See also* DX 117, BANA_EDD_MDL-00012816-874, at 834; DX 118, BANA_EDD_MDL-00013111-163, at 128.

service areas.¹⁵² [REDACTED]

[REDACTED].¹⁵³ It was reasonable for BofA to

[REDACTED]
[REDACTED]

2. *It Was Not Unreasonable for BofA to* [REDACTED]
[REDACTED]

92. Compliance gaps that arise due to operational or technological changes are expected to be remediated within 90 days of discovery to maintain compliance.¹⁵⁴ In my experience, temporary relaxations, such as a [REDACTED]
[REDACTED], are often adopted as an adaptive response to an unprecedented event and were intended to be corrected moving forward.

93. [REDACTED]
[REDACTED]
[REDACTED]”¹⁵⁵ [REDACTED]
[REDACTED]
[REDACTED].¹⁵⁶ [REDACTED]

¹⁵² “What Are the PCI DSS Third-Party Service Provider Management Requirements,” *PCI DSS Guide*, July 13, 2021, available at <https://pcidssguide.com/what-are-the-pci-dss-third-party-service-provider-management-requirements/>. See also DX 117, BANA_EDD_MDL-00012816-874, at 840; DX 118, BANA_EDD_MDL-00013111-163, at 135.

¹⁵³ DX 117, BANA_EDD_MDL-00012816-874, at 837, 866; DX 118, BANA_EDD_MDL-00013111-163, at 132, 161.

¹⁵⁴ Further, in my experience, since PCI DSS compliance assessments are conducted annually as “point-in-time” audits, PCI Qualified Security Assessors (QSA) examine supporting evidence that is not older than 90 days prior to the audit to confirm compliance.

¹⁵⁵ BANA_EDD_MDL-00515252-254.

¹⁵⁶ Golden Deposition, at pp. 272:20-273:6 [REDACTED]

[REDACTED]

[REDACTED] 157 [REDACTED]

[REDACTED]

[REDACTED] 158 Based on my experience, it was not unreasonable
for BofA [REDACTED]

[REDACTED] given the circumstances at the
time. 159 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 160 [REDACTED]

[REDACTED]”).

157 Golden Deposition, at pp. 276:19-20 [REDACTED]
[REDACTED], 278:6-12 [REDACTED]

158 [REDACTED]
[REDACTED] Golden Deposition, at pp. 277:7-10,
289:17-20.

159 Even if BofA and its call center vendors had [REDACTED]
suggested by Mr. Minnucci, it would not have substantially improved the call center service. In fact,
[REDACTED] would have slowed down the ramping up process
and resulted in poorer customer service.

160 Golden Deposition, at p. 276:2-7 [REDACTED]
[REDACTED] p. 277:1-6
[REDACTED]

3. *The Bank’s WFH Requirements Were Consistent With Industry Practice*

94. Mr. Minnucci asserts that BofA [REDACTED]

[REDACTED]¹⁶² Specifically, Mr. Minnucci criticizes BofA

[REDACTED]¹⁶³ Mr.

Minnucci further asserts that “[REDACTED]

[REDACTED]

[REDACTED]¹⁶⁴

95. First, Mr. Minnucci’s statement that [REDACTED]

[REDACTED]

[REDACTED]¹⁶⁵ Mr. Golden testified that the

¹⁶¹ Mr. Minnucci fails to acknowledge that by March 2020, BofA [REDACTED]. See BANA_EDD_MDL-00265136-143, at 137.

Internal documentation confirms [REDACTED]. BANA_EDD_MDL-00103022-023, at 022 ([REDACTED]). See BANA_EDD_MDL-00012793-794; PX 126, BANA_EDD_MDL-00090040-047.

¹⁶² Minnucci Report, ¶ 105.

¹⁶³ Minnucci Report, ¶ 105 [REDACTED]

[REDACTED] In my experience, based on reviewing well [REDACTED]

¹⁶⁴ Minnucci Report, ¶ 105.

¹⁶⁵ DX 117, BANA_EDD_MDL-00012816-874, at 834, 837, 840, 866; DX 118, BANA_EDD_MDL-00013111-163, at 128, 132, 135, 161. [REDACTED]

[REDACTED]. See BANA_EDD_MDL-00370698-700, at 699; BANA_EDD_MDL-00476903-905, at 904; BANA_EDD_MDL-00476906-908; BANA_EDD_MDL-00697112-113; BANA_EDD_MDL-00697114-118. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED], 166 [REDACTED]

[REDACTED]

[REDACTED], 167

96.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED], 168

[REDACTED]. *See* BANA EDD MDL-00201310-319, at 315. [REDACTED]

[REDACTED] *ee* BANA_EDD_MDL-00573033-036, at 034.

166 Golden Deposition, at pp. 285:3-20

[REDACTED], 286:8-288:7 [REDACTED]

[REDACTED]

[REDACTED] *See* BANA_EDD_MDL-00468927-931.

167

[REDACTED] *ee* BANA EDD_MDL-00468924. [REDACTED] *See, e.g.,* BANA EDD MDL-00468933-934. [REDACTED]

[REDACTED] *See* BANA_EDD_MDL-00268474-489, at 477, 482.

168 *See* Golden Deposition, at pp. 285:3-20

[REDACTED], 286:24-287:14 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 169 [REDACTED]

[REDACTED] 170 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The PCI Security

[REDACTED] See also, BANA_EDD_MDL-00468927-931.

¹⁶⁹ See, e.g., PX 126, BANA_EDD_MDL-00090040-047, at 042 ([REDACTED])

[REDACTED]

Avaya is a VOIP and VTI solution “to enhance and simplify communications and collaboration.” See “Avaya OneCloud™ Communications and Collaboration Solutions for Advanced Call Center Technologies (ACT), an Outsourcing Provider, Improve Experiences while Significantly Reducing Costs,” *Avaya*, April 11, 2022, available at <https://www.avaya.com/en/about-avaya/newsroom/pr-us-220411/>; “Professional Services Case Study in Focus: Avaya and ACT,” *UC Today*, August 12, 2022, available at <https://www.uctoday.com/unified-communications/professional-services-case-study-in-focus-avaya-and-act/>.

Visa DPS is a platform supporting “payment processing needs, from speed to authorization and fraud protection.” See “Visa DPS,” *Visa*, available at <https://usa.visa.com/sites/visa-dps.html> [REDACTED]

[REDACTED] See Golden Deposition, at pp. 226:24, 283:21-22.

¹⁷⁰ See, e.g., PX 126, BANA_EDD_MDL-00090040-047, at 042 [REDACTED]

Standards Council also recognized the unprecedented impact of the COVID-19 pandemic on remote work controls and issued guidance accordingly.¹⁷¹

97.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁷² [REDACTED]

[REDACTED]

[REDACTED]¹⁷³ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁷⁵ [REDACTED]¹⁷⁶ [REDACTED]¹⁷⁷

¹⁷¹ See, e.g., “Guidance On Working Remotely,” *PCI SSC*, available at <https://www.pcisecuritystandards.org/covid19/guidance-on-working-remotely/>; “Protecting Payments While Working Remotely,” *PCI SSC*, available at <https://blog.pcisecuritystandards.org/protecting-payments-while-working-remotely>.

¹⁷² BANA_EDD_MDL-00287970-973.

¹⁷³ BANA_EDD_MDL-00871377-400.

¹⁷⁴ BANA_EDD_MDL-00370698-700.

¹⁷⁵ BANA_EDD_MDL-00268474-489, at 480 (noting that “Global Information Security has reviewed at enterprise level to address any incremental risks [associated with USB adapters] and also to ensure the technology will work.”).

¹⁷⁶ BANA_EDD_MDL-00268474-489, at 482 (noting that privacy and data protection compliance process during WFH “was reviewed and approved by Privacy.”).

¹⁷⁷ Furthermore, BofA noted that appropriate partners with expertise “have been engaged” to “help identify risks and mitigation plans” such that “all concerns [have] been addressed.” BANA_EDD_MDL-00268474-489, at 485.

98.

[REDACTED]
[REDACTED]
[REDACTED].¹⁷⁸ At the same time, compliance with legal employee privacy protections remained essential. Employers were still required to respect personal rights, meaning they could not monitor home office environments through cameras or similar means without employee awareness and consent.¹⁷⁹

[REDACTED]
[REDACTED].¹⁸⁰ In my opinion, BofA’s remote work WFH arrangements for CSRs are consistent with industry best practices.

Executed on this 4th day of April, 2025.

By:



Stephen Hindle

¹⁷⁸ See, e.g., BANA_EDD_MDL-00869975-977, at 975-976 [REDACTED]

¹⁷⁹ See, e.g., “Workplace Monitoring: What’s Allowed, What’s Off Limits?” *ADP*, February 5, 2024, available at <https://sbshrs.adpinfo.com/blog/workplace-monitoring-whats-allowed-whats-off-limits> (The Electronic Communications Privacy Act (ECPA) “generally restricts the interception and monitoring of oral, wire and electronic communications, unless certain conditions, such as a legitimate business purpose and an employee’s consent to monitor, are met.”).

¹⁸⁰ See, e.g., BANA_EDD_MDL-00376191-201, at 197.

Appendix A
Documents Considered

Legal Documents

1. Bank of America's Responses and Objections to Plaintiff Yick's Fifth Set of Interrogatories, *In re: Bank of America California Unemployment Benefits Litigation*, No. 3:21-md-02992-LAB-MSB, United States District Court for the Southern District of California, February 2, 2024.
2. Declaration of Kelly Lorenzen, *In re: Bank of America California Unemployment Benefits Litigation*, No. 21-md-02992-LAB-MSB, United States District Court for the Southern District of California - San Diego Division, January 17, 2025.
3. Declaration of William Golden, *In re: Bank of America California Unemployment Benefits Litigation*, No. 21-md-02992-LAB-MSB, United States District Court for the Southern District of California - San Diego Division, October 21, 2021.
4. Declaration of William Golden, *Jennifer Yick, et al., v. Bank of America, N.A.*, No. 3:21-cv-00376-VC, United States District Court for the Northern District of California San Francisco Division, April 20, 2021.
5. Memorandum of Points and Authorities in Support of Motion for Class Certification, *In re: Bank of America California Unemployment Benefits Litigation*, No. 3:21-md-02992-GPC-MSB, United States District Court for the Southern District of California, August 29, 2024.
6. Second Amended Master Consolidated Complaint, *In re: Bank of America California Unemployment Benefits Litigation*, No. 3:21-md-02992-GPC-MSB, United States District Court for the Southern District of California, July 16, 2024.
7. Third Amended Master Consolidated Complaint, *In re: Bank of America California Unemployment Benefits Litigation*, No. 3:21-md-02992-GPC-MSB, United States District Court for the Southern District of California, January 24, 2025.

Expert Reports

1. Expert Class Certification Report of Greg J. Regan, CPA/CFF, CFE, August 29, 2024.
2. Expert Declaration of Stephen Hindle, October 24, 2024.
3. Expert Rebuttal Report of Jay Minnucci, November 21, 2024.
4. Expert Report of David I. Levine, March 4, 2025.
5. Expert Report of Greg J. Regan, CPA/CFF, CFE, March 4, 2025.
6. Expert Report of Jay Minnucci, August 29, 2024.
7. Expert Report of Jay Minnucci, March 4, 2025.
8. Expert Report of Russell Cronan, March 4, 2025.
9. Expert Report of Teresa A. Pesce, March 4, 2025.

Depositions

1. 30(b)(6) Deposition of William Golden, February 22, 2024, and All Associated Exhibits.
2. Deposition of Faiz A. Ahmad, January 29, 2025, and All Associated Exhibits.
3. Deposition of Jennifer Ehresman, February 19, 2025, and All Associated Exhibits.
4. Deposition of Paul Simpson, February 21, 2025, and All Associated Exhibits.
5. Deposition of Robert A. Chestnut, February 8, 2024, and All Associated Exhibits.

Data Files

1. Exhibit 11 to BANA's Response to Plaintiff's Interrogatories, February 2, 2024.
2. Exhibit 12 to BANA's Response to Plaintiff's Interrogatories, February 2, 2024.
3. Servicing and Fraud Call Metrics 2020-2021.xlsx.

Bates Stamped Documents

1. BANA_EDD_MDL-00001365.
2. BANA_EDD_MDL-00001367.
3. BANA_EDD_MDL-00002286.
4. BANA_EDD_MDL-00008349.
5. BANA_EDD_MDL-00009974.

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6. BANA_EDD_MDL-00010691.
7. BANA_EDD_MDL-00010783.
8. BANA_EDD_MDL-00012191.
9. BANA_EDD_MDL-00012653.
10. BANA_EDD_MDL-00012671.
11. BANA_EDD_MDL-00012793.
12. BANA_EDD_MDL-00012816.
13. BANA_EDD_MDL-00013074.
14. BANA_EDD_MDL-00013096.
15. BANA_EDD_MDL-00013107.
16. BANA_EDD_MDL-00013111.
17. BANA_EDD_MDL-00014091.
18. BANA_EDD_MDL-00015507.
19. BANA_EDD_MDL-00021174.
20. BANA_EDD_MDL-00052780.
21. BANA_EDD_MDL-00053041.
22. BANA_EDD_MDL-00054100.
23. BANA_EDD_MDL-00054439.
24. BANA_EDD_MDL-00054478.
25. BANA_EDD_MDL-00054515.
26. BANA_EDD_MDL-00060126.
27. BANA_EDD_MDL-00060128.
28. BANA_EDD_MDL-00060129.
29. BANA_EDD_MDL-00060144.
30. BANA_EDD_MDL-00060339.
31. BANA_EDD_MDL-00060395.
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33. BANA_EDD_MDL-00060470.
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35. BANA_EDD_MDL-00060670.
36. BANA_EDD_MDL-00060772.
37. BANA_EDD_MDL-00060774.
38. BANA_EDD_MDL-00060783.
39. BANA_EDD_MDL-00060854.
40. BANA_EDD_MDL-00060855.
41. BANA_EDD_MDL-00060864.
42. BANA_EDD_MDL-00060866.
43. BANA_EDD_MDL-00060881.
44. BANA_EDD_MDL-00060918.
45. BANA_EDD_MDL-00080512.
46. BANA_EDD_MDL_00090040.
47. BANA_EDD_MDL-00090066.
48. BANA_EDD_MDL-00098267.
49. BANA_EDD_MDL-00099615.
50. BANA_EDD_MDL-00099617.
51. BANA_EDD_MDL-00099620.
52. BANA_EDD_MDL-00102458.
53. BANA_EDD_MDL-00103022.
54. BANA_EDD_MDL-00103857.

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Documents Considered

55. BANA_EDD_MDL-00104400.
56. BANA_EDD_MDL-00104402.
57. BANA_EDD_MDL-00104403.
58. BANA_EDD_MDL-00104412.
59. BANA_EDD_MDL-00104414.
60. BANA_EDD_MDL-00104449.
61. BANA_EDD_MDL-00104450.
62. BANA_EDD_MDL-00104468.
63. BANA_EDD_MDL-00104553.
64. BANA_EDD_MDL-00104554.
65. BANA_EDD_MDL-00104685.
66. BANA_EDD_MDL-00104708.
67. BANA_EDD_MDL-00104709.
68. BANA_EDD_MDL-00104784.
69. BANA_EDD_MDL-00104906.
70. BANA_EDD_MDL-00105042.
71. BANA_EDD_MDL-00106044.
72. BANA_EDD_MDL-00106159.
73. BANA_EDD_MDL-00118438.
74. BANA_EDD_MDL-00118444.
75. BANA_EDD_MDL-00140232.
76. BANA_EDD_MDL-00141022.
77. BANA_EDD_MDL-00141407.
78. BANA_EDD_MDL-00141585.
79. BANA_EDD_MDL-00142093.
80. BANA_EDD_MDL-00142331.
81. BANA_EDD_MDL-00142333.
82. BANA_EDD_MDL-00142497.
83. BANA_EDD_MDL-00142764.
84. BANA_EDD_MDL-00142949.
85. BANA_EDD_MDL-00142950.
86. BANA_EDD_MDL-00153666.
87. BANA_EDD_MDL-00153667.
88. BANA_EDD_MDL-00153872.
89. BANA_EDD_MDL-00153928.
90. BANA_EDD_MDL-00154045.
91. BANA_EDD_MDL-00173061.
92. BANA_EDD_MDL-00186897.
93. BANA_EDD_MDL-00201310.
94. BANA_EDD_MDL-00202603.
95. BANA_EDD_MDL-00205638.
96. BANA_EDD_MDL-00224936.
97. BANA_EDD_MDL-00226642.
98. BANA_EDD_MDL-00233640.
99. BANA_EDD_MDL-00233643.
100. BANA_EDD_MDL-00233647.
101. BANA_EDD_MDL-00233648.
102. BANA_EDD_MDL-00233649.
103. BANA_EDD_MDL-00233653.

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Documents Considered

104. BANA_EDD_MDL-00265136.
105. BANA_EDD_MDL-00268474.
106. BANA_EDD_MDL-00287970.
107. BANA_EDD_MDL-00354508.
108. BANA_EDD_MDL-00354749.
109. BANA_EDD_MDL-00356316.
110. BANA_EDD_MDL-00370698.
111. BANA_EDD_MDL-00371301.
112. BANA_EDD_MDL-00371324.
113. BANA_EDD_MDL-00371326.
114. BANA_EDD_MDL-00371328.
115. BANA_EDD_MDL-00371330.
116. BANA_EDD_MDL-00371468.
117. BANA_EDD_MDL-00371469.
118. BANA_EDD_MDL-00371572.
119. BANA_EDD_MDL-00371574.
120. BANA_EDD_MDL-00371576.
121. BANA_EDD_MDL-00371578.
122. BANA_EDD_MDL-00371580.
123. BANA_EDD_MDL-00371788.
124. BANA_EDD_MDL-00371790.
125. BANA_EDD_MDL-00372684.
126. BANA_EDD_MDL-00372686.
127. BANA_EDD_MDL-00372688.
128. BANA_EDD_MDL-00372690.
129. BANA_EDD_MDL-00372692.
130. BANA_EDD_MDL-00372694.
131. BANA_EDD_MDL-00373634.
132. BANA_EDD_MDL-00373654.
133. BANA_EDD_MDL-00373656.
134. BANA_EDD_MDL-00373658.
135. BANA_EDD_MDL-00374118.
136. BANA_EDD_MDL-00374120.
137. BANA_EDD_MDL-00374122.
138. BANA_EDD_MDL-00374124.
139. BANA_EDD_MDL-00376191.
140. BANA_EDD_MDL-00377043.
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143. BANA_EDD_MDL-00389951.
144. BANA_EDD_MDL-00392014.
145. BANA_EDD_MDL-00407466.
146. BANA_EDD_MDL-00424455.
147. BANA_EDD_MDL-00424457.
148. BANA_EDD_MDL-00424461.
149. BANA_EDD_MDL-00424465.
150. BANA_EDD_MDL-00425815.
151. BANA_EDD_MDL-00425817.
152. BANA_EDD_MDL-00425822.

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153. BANA_EDD_MDL-00425827.
154. BANA_EDD_MDL-00455953.
155. BANA_EDD_MDL-00468924.
156. BANA_EDD_MDL-00468927.
157. BANA_EDD_MDL-00468933.
158. BANA_EDD_MDL-00476903.
159. BANA_EDD_MDL-00476906.
160. BANA_EDD_MDL-00476998.
161. BANA_EDD_MDL-00489021.
162. BANA_EDD_MDL-00489025.
163. BANA_EDD_MDL-00489026.
164. BANA_EDD_MDL-00489027.
165. BANA_EDD_MDL-00489030.
166. BANA_EDD_MDL-00489031.
167. BANA_EDD_MDL-00489032.
168. BANA_EDD_MDL-00489035.
169. BANA_EDD_MDL-00489036.
170. BANA_EDD_MDL-00489037.
171. BANA_EDD_MDL-00489041.
172. BANA_EDD_MDL-00493780.
173. BANA_EDD_MDL-00494310.
174. BANA_EDD_MDL-00494862.
175. BANA_EDD_MDL-00494863.
176. BANA_EDD_MDL-00494866.
177. BANA_EDD_MDL-00494874.
178. BANA_EDD_MDL-00495466.
179. BANA_EDD_MDL-00495468.
180. BANA_EDD_MDL-00496759.
181. BANA_EDD_MDL-00496761.
182. BANA_EDD_MDL-00496774.
183. BANA_EDD_MDL-00496860.
184. BANA_EDD_MDL-00498505.
185. BANA_EDD_MDL-00502609.
186. BANA_EDD_MDL-00515252.
187. BANA_EDD_MDL-00532675.
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189. BANA_EDD_MDL-00573033.
190. BANA_EDD_MDL-00586163.
191. BANA_EDD_MDL-00586455.
192. BANA_EDD_MDL-00586456.
193. BANA_EDD_MDL-00586695.
194. BANA_EDD_MDL-00587330.
195. BANA_EDD_MDL-00587331.
196. BANA_EDD_MDL-00587537.
197. BANA_EDD_MDL-00587538.
198. BANA_EDD_MDL-00619219.
199. BANA_EDD_MDL-00619347.
200. BANA_EDD_MDL-00641652.
201. BANA_EDD_MDL-00643995.

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202. BANA_EDD_MDL-00683155.
203. BANA_EDD_MDL-00683158.
204. BANA_EDD_MDL-00683159.
205. BANA_EDD_MDL-00684195.
206. BANA_EDD_MDL-00684196.
207. BANA_EDD_MDL-00684454.
208. BANA_EDD_MDL-00684455.
209. BANA_EDD_MDL-00697112.
210. BANA_EDD_MDL-00697114.
211. BANA_EDD_MDL-00697906.
212. BANA_EDD_MDL-00701634.
213. BANA_EDD_MDL-00701637.
214. BANA_EDD_MDL-00705999.
215. BANA_EDD_MDL-00706002.
216. BANA_EDD_MDL-00706007.
217. BANA_EDD_MDL-00706012.
218. BANA_EDD_MDL-00706588.
219. BANA_EDD_MDL-00706589.
220. BANA_EDD_MDL-00711015.
221. BANA_EDD_MDL-00711016.
222. BANA_EDD_MDL-00714960.
223. BANA_EDD_MDL-00714961.
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225. BANA_EDD_MDL-00716446.
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228. BANA_EDD_MDL-00719114.
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230. BANA_EDD_MDL-00719116.
231. BANA_EDD_MDL-00719209.
232. BANA_EDD_MDL-00845255.
233. BANA_EDD_MDL-00845810.
234. BANA_EDD_MDL-00845812.
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239. BANA_EDD_MDL-00846141.
240. BANA_EDD_MDL-00846145.
241. BANA_EDD_MDL-00846147.
242. BANA_EDD_MDL-00856027.
243. BANA_EDD_MDL-00862684.
244. BANA_EDD_MDL-00862685.
245. BANA_EDD_MDL-00869975.
246. BANA_EDD_MDL-00869978.
247. BANA_EDD_MDL-00870072.
248. BANA_EDD_MDL-00871377.
249. BANA_EDD_MDL-00884198.
250. BANA_EDD_MDL-00886271.

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251. BANA_EDD_MDL-00886273.
252. BANA_EDD_MDL-00886275.
253. BANA_EDD_MDL-00886280.
254. BANA_EDD_MDL-00886286.
255. BANA_EDD_MDL-00886293.
256. BANA_EDD_MDL-00886305.
257. BANA_EDD_MDL-00886320.
258. BANA_EDD_MDL-00886322.
259. BANA_EDD_MDL-00886324.
260. BANA_EDD_MDL-00886327.
261. BANA_EDD_MDL-00886330.
262. BANA_EDD_MDL-00886339.
263. BANA_EDD_MDL-00886346.
264. BANA_EDD_MDL-00886347.
265. BANA_EDD_MDL-00886352.
266. BANA_EDD_MDL-00886356.
267. BANA_EDD_MDL-00886359.
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Appendix A
Documents Considered

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Note:

I also considered the materials listed in Appendix D of the Expert Report of Jay Minnucci, August 29, 2024, Appendix B of the Expert Class Certification Report of Greg J. Regan, CPA/CFF, CFE, August 29, 2024, Appendix A of the Expert Rebuttal Report of Jay Minnucci, November 21, 2024, Appendix D of the Expert Report of Jay Minnucci, March 4, 2025, and Appendix B of the Expert Report of Greg J. Regan, CPA/CFF, CFE, March 4, 2025.

ELEVENCANTERBURY**STEPHEN HINDLE
FLORIDA****EXPERIENCE****ACHILLES SHIELD LLC****2007 – Present*****Founder, Board Advisor, and Vice President, Tampa, FL***

- Founder of consulting practice advising cybersecurity startups and VC Boards in partnership with the Israeli Economic and Trade Mission, Washington DC. VP and Operating Officer of consultancy business across four continents; APAC, EMEA, NAMER, LATAM.
- Board member of “The American Dog Society”, a 501(c)(3) organization aiming to prevent and reduce dog abandonment.
- Board appointed fractional Chief IT & Security Officer for FinTech payments startup, “Orquid Finance” providing financial services to the immigrant labor industry.
- Board appointed fractional Chief IT & Security Officer for Television Station subsidiary of Berkshire Hathaway - ensuring compliance with SEC mandates for cybersecurity.
- Strategic cybersecurity advisory for disruptive data analytics startup, “Šóta Signal Analytics” identifying Public Co. accounting fraud. The organization was awarded Entrepreneur of the Year 2023, by Pasco Economic Development Council
- Board member and CISO in Residence for two global 501c3 cybersecurity community organizations.
- “The CISO Society” (>1,500 member CISOs), and “Infosec.Live” (>12,000 member cyber talent development).
- Principal Security Advisor in cybersecurity incident response and resilience planning for “Abira Security.”
- Principal Chief Security Advisor for sensitive data discovery and loss prevention organization, “Spirion” providing SME advisory services to their prospective customers.
- Cybersecurity Board Advisor for Venture Capital group investing in Israeli cybersecurity startups.

MAD MOBILE INC.**2022 – 2023**

Disruptive global FinTech payments application development organization.

Global Chief Information Security Officer (CISO) & CIO, Tampa, FL

- Created and delivered a combined greenfield Cybersecurity and IT strategic plan, which transformed the organization’s maturity to defined industry standards and defensible Board metrics reporting on cyber, legal, and risk landscape.
- Negotiated Cybersecurity and Tech E&O insurance with 75% increase to coverage limits and removal of 50% ransomware co-insurance obligation. Assessments by global insurance Carriers considered program and controls to be “Best in Class.”
- Delivered protective controls, preventing inbound threats including 78 attempts to deploy ransomware.
- Restored client confidence and increased trust in CI/CD pipelines through automated application/code scanning platform.
- Ground-up creation of Governance, Risk Management, & Compliance program, delivering consolidation of multiple external audits for Anti Money Laundering (AML) and obtaining compliance certifications for PCI DSS, PCI P2PE, and SOC2.
- Undertook ownership of IT strategy development with oversight of IT Technical Operations group, as acting CIO.
- Established strategic partnership with leading IT solution providers, resulting in >50% reduction in renewal/replacement costs and improved efficiency by reducing deployment timeframes from >3 months to <4 days.
- Developed a strategy to perform Cloud consolidation, reduce complexity and overall cost-reduction of 25%.

ELEVENCANTERBURY

- Curated an Operational Risk Management framework with Board of Directors, providing quarterly reporting on risk and quantifiable FinOps technology metrics illustrating reduced Total Cost of Ownership and Return on Investment (ROI).

SITEL GROUP**2016 – 2021**

One of the world's leading business processing outsourcing (BPO) in the Call/Contact Center industry.

Vice President, Head of Global Security, Miami, FL

- Held accountability for \$8MM P&L budget and managing client programs that generated \$4B revenue across 40 countries and supporting 160K employees, 60% of which work remotely. Developed and managed diverse cyber talent in a team of 60 top performers with strategic oversight of enterprise-level risk management strategy.
- Championed data security for complex, internationally recognized clients in highly regulated verticals including banking and healthcare. Constantly driving innovation, effectiveness, and resilience in the evolving battle against cyberattacks and data breaches.
- Developed and maintained ownership and accountability of client relationships, designing, and promoting service offerings to grow revenue streams, building protection around vital infrastructure, business operating models, and security frameworks.
- Resolved cyber risk issues for clients with improved deterrence and protection of legacy systems, adapting to cloud-native architecture and tactics with upgraded internal controls and policies based upon NIST Cybersecurity Framework.
- Orchestrated crisis management for 70 global business continuity events since 2018, including cybersecurity, civil unrest, extreme weather, power outages, bomb threats, tsunamis, earthquakes, hurricanes, and Typhoons.
- Led incident response of three global cybersecurity incidents in 2020, including ransomware and DDOS. Increased client trust through collaboration and partnership with leading cybersecurity organizations, strengthening client relationships through transparency and trust, with no loss of business or revenue.

SYKES ENTERPRISES INC.**1998 – 2016**

\$2BN public company in the BPO Call/Contact Center industry.

Senior Director, Global Security Operations, Tampa, FL (2008 – 2016)

- Formulated high level, strategic plans for multi-national Fortune 100-500 clients, prioritizing roadmaps for data security, business continuity, disaster recovery, physical safety, and compliance to cover 100 locations in 26 countries with over 33K associates. Supplied strategic leadership to seven managers and directors with a total team of 24 personnel.
- Brought to life a global compliance assurance program which encompassed contractual requirements alongside industry and regulatory compliance—served as an industry differentiator and created alignment among people, processes, and technologies to drive 20% revenue growth in the telecommunications vertical.
- Defined best practices based on emerging trends and aligning cyber solutions to business needs and appetite for risk, which included anti-fraud and social-threat programs as well as protection services in areas of political and civil unrest.
- Commended by U.S. military 3-star general for supplying critical intelligence crucial to success of expatriot evacuation during the 2011 “Arab Spring” civilian uprising in Egypt.

Director, Global Security (2003 – 2008)

- Formed and later Recognized for leading one of SC Magazine's Top Five “Best Security Teams” (2008)
- Championed new business development and global service delivery, offering strategic guidance on IT, security, & compliance programs.

ELEVENCANTERBURY

- Formation of the Corporate Security & Risk Management (CSRM) organization and Global Security Operations Center.
- Developed payment card industry (PCI) compliance program, servicing 43 clients, and yielding \$850MM annual revenue.
- Established a robust incident response plan and managed cyber crises in coordination with government agencies, law enforcement and external counsel, to ensure solutions met with diverse and complex regulations.

Technical Lead, Regional Enterprise Engineering (2000 – 2003)

- Expert Witness in criminal trials in the UK and South Africa
- IT Architect & lead engineer for the EMEA region
- IT Architect & lead engineer for the EMEA region.
- Established 24/7/365 resilient, multi-regional data centers with supporting policies, standards, and processes to provide end-to-end service solutions related to intrusion detection, penetration testing, risk assessment and audit.
- Accountable for software licensing and IT standards compliance.
- Primary point of contact for security concerns and incident response prior to formal structure.

Manager, Training & Consultancy Solutions (1998 – 2000)

- Developed the first channel reseller training program for Citrix new 'Multi-user NT' platform
- Launched specialized IT consultancy division and developed bespoke training program for partner alliances, gaining highest-tier partner certification from Microsoft and Citrix to expand business opportunities.
- Led engineering of multi-user, thin-client, enterprise architecture for multinational banking, stock-market, and government customers.
- Developed bespoke technical training programs and through formation of a 5-person team, delivered to banking, oil, and defense industry clients globally in 3 languages.

MCQUEEN LTD.

1996 – 1998

Pioneer of offshore global BPO in the Call/Contact Center industry and distribution centers in Europe, Asia and the USA.

Manager, Customer Engineering, Edinburgh, UK

- Led the provision of highly technical contact center teams
- Built and managed outsourced European Response Centre for Insignia Solutions, a cross-platform Operating System emulation and terminal services provider.
- Delivered architecture and infrastructure planning for the first multinational contact center in The Philippines in 1997.
- Developed IT infrastructure for manufacturing, printing, and fulfilment operations in Galashiels Scotland, Shannon Ireland, and Nashville Tennessee USA, for McQueen Ltd.
- Print and production services for NATO threat assessment targets and patented self-healing ballistic rubber; Rand McNally maps within the USA.

ROYAL BANK OF SCOTLAND

1996

Analyst

- Online Banking platform development and support.
- Ensured all associates were appropriately trained for the call/contact center.
- Transition from mainframe/command-line to Windows.

ELEVEN CANTERBURY**LAND REGISTRY OF SCOTLAND****1995***Technician, Edinburgh, UK*

- Geographical digitization and land dispute resolution of contested boundaries.
- Technology administration.

SCOTTISH NATURAL HERITAGE**1994***Engineer, Edinburgh, UK*

- Scottish Government conservation and oil-company partnerships.
- Documentation and technology management.

HM CUSTOM & EXCISE AND INLAND REVENUE**1993***Secretary, London, UK*

- Treasury and collection from debtors for the British government.
- HM Collector of Taxes and Inspector of Taxes. Documentation and initial contact triage.

EDUCATION

MBA, The PowerMBA, Harvard Business School

Harvard 'ManageMentor' Certificates, Harvard Business School, Corporate Learning

Executive & Cloud Financial Taxonomies, Technology Business Management (TBM Council)

Bachelor of Arts (BA), Criminal Justice: Homeland Security, Saint Leo University (with highest honors)

CISSP – Certified Information Systems Security Professional, (ISC)2 since 2007

Building Leadership Impact, Eckerd College

Accelerate Leadership Development, Spencer Stuart

Community-Led Action in Response to Violent Extremism, University of Maryland

Advanced OSINT Tradecraft 1-4, InfraGard National Members Alliance

Network Cyber Threat Hunting, Active Countermeasures

Active Shooter, FEMA

CORE Impact Certified Professional (CICP), Core Security

Advanced Interview & Interrogation, John Reid Institute

Internal Auditor – ISO27001, British Standards Institution (BSI)

Fighting COVID-19 with Epidemiology, Johns Hopkins Bloomberg School

Chinese for HSK Prep 1 – 3.1, Peking University

Microsoft Certified Systems Engineer (MCSE), Microsoft, 1999 – 2002

PUBLICATIONS

Everything Starts with a Why: How to Promote Meaningfulness at Work, AuditBoard

Journey of a CISO, Cisco Secure

Achieving Cyber Resilience in Today's Threat Landscape, Cyberclan

Cybersecurity Strategies & Challenges of a Hybrid World, Cisco

Success Stories, Sykes Enterprises Inc

The State of Continuous Controls Monitoring, The CISO Society & Regscale

The 2024 State of Data Security Report, The CISO Society & BigID

Generative AI: LLM-Ready Data, Spirion

SolarWinds Ruling: Why CISOs Need to be Aware of Fraud, Bank Info Security

Debunking the Myths About Cyber Risk Quantification, AuditBoard

Empowering the Hybrid Workforce, Securely, Cisco

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[1] DX 116, BANA_EDD_MDL-00719115, tab [REDACTED]
[2] Minnucci Report, Table 9 and Table 10.