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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

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

HIGHLY CONFIDENTIAL
VIDEO-RECORDED DEPOSITION OF GREG REGAN

Monday, May 19, 2025
San Francisco, California

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

THE COURT REPORTER: And, Counsel, while we do that, may we go off the record for a quick audio fix.

MR. RIFFEE: Sure.

THE VIDEOGRAPHER: Going off the record. 10:17:51
The time is 10:17 a.m.

(Regan Deposition Exhibit 1 was marked for identification.)

(Regan Deposition Exhibit 2 was marked for identification.) 10:19:01

(Regan Deposition Exhibit 3 was marked for identification.)

THE VIDEOGRAPHER: Going back on the record. The time is 10:20 a.m.

BY MR. RIFFEE: 10:20:16

Q. Back on the record. Welcome back.

Handed you three documents. The first one, can -- if you could look at, it's been marked as Exhibit 1.

Do you recognize this document? 10:20:25

A. Yes, I do.

Q. Is this a copy of the affirmative expert report that you submitted in this case on March 4th, 2025, in support of plaintiffs' case?

A. Yes, it is. 10:20:37

Q. Okay. Does Exhibit 1 accurately describe the opinions you expect to provide in this case?

A. Yes, I believe so.

Q. And does it accurately describe the damages theories, models, and calculations that you intend to apply in this case? 10:20:46

A. Yes.

Q. Are there any errors or any corrections that you would like to make to your report at this time? 10:20:57

A. There's one thing that comes to mind.

Q. Is it the section reference?

A. I'm going to give it -- I'm going to give it to you.

I -- there are two cross-reference errors that popped up on the last refresh that I didn't catch. Hopefully that didn't cause too much confusion. 10:21:06

Q. No, that's not a problem. That's -- that's what I assumed when you said there was one thing. 10:21:18

A. I was, however, going to bring something to your attention.

Q. Okay.

A. In the -- on page 39 of the report, in 10:21:30

Paragraph 85, there is a table, and the row that's called "Cost of delayed benefit payments" -- in each of the two different illustrations, I applied a 20 percent interest rate to calculate the cost of the delayed benefit payment. For the 10 percent column, I should have used a 10 percent rate, in which case the amount is exactly half of what it is presently. 10:21:53

But I believe that's the only other item I -- I noticed in preparation. 10:22:08

Q. Okay. Thank you for that.

So other than the correction in the table

[redacted]

errors that you would like to make at this time; is that right?

A. That's correct.

Q. Okay. Have you formed any additional opinions that you intend to offer in this case that is not mentioned in -- in this report, Exhibit 1? 10:22:34

A. I don't believe I formed additional opinions. I would say that after the receipt of the bank's expert reports on April 4th, I thought about 10:22:59

the criticisms that were expressed on those reports, a number of which were addressed in what is Exhibit 3 that I'm sure we'll get to, which was my rebuttal report of November 21st, 2024. But I don't -- I don't believe I formed new opinions. 10:23:18

Q. Okay. If you -- you can put that aside for now, but I assure you we'll be returning to it.

If you could look at the exhibit that's been marked as Exhibit 2.

Do you recognize this document? 10:23:31

A. Yes, I do.

Q. Is this a copy of the expert report that you submitted in this case on August 29, 2024, in support of plaintiffs' motion for class certification? 10:23:43

A. It is.

Q. Okay. To the extent the opinions or methodologies that you express in Exhibit 1, your March 4, 2025, report, are different than the opinions and methodologies that you express in 10:23:48 Exhibit 2, your class certification report, is Exhibit 1 intended to supersede your -- your class certification report, Exhibit 2?

A. Yes, it is.

Q. Okay. So can we assume that to the extent 10:24:03

your opinions and methodologies are different in Exhibit 1, that you no longer intend to offer those opinions from Exhibit 2 in this case?

A. That's correct.

Q. If you could please look at the document that's been marked as Exhibit 3. 10:24:18

Do you recognize this document?

A. Yes, I do.

Q. Okay. Is this a copy of the reply or expert rebuttal report that you issued on November 21st, 2024, in support of plaintiffs' class certification motion? 10:24:30

A. It is.

Q. Okay. And I'll ask you the same question: To the extent the -- the opinions or methodologies expressed in Exhibit 3 are different than the opinions and methodologies that you expressed in Exhibit 1, your March 4, 2025, report, is your March 4, 2025, report, Exhibit 1, intended to supercede those opinions? 10:24:43 10:25:02

A. Yes.

Q. Okay. Have you done any additional work for plaintiffs since your affirmative report was served on March 4, 2025?

MS. CHAN: Objection. Vague. 10:25:17

THE WITNESS: The work I have done since this time would be -- would consist of reviewing the reports submitted by the bank on April 4th, 2025. And when I say those reports, I can think of Mr. Stan- -- Dr. Stango's, Dr. McCrary, I don't know if it's Mr. or Dr. Prye, I believe Hindle -- the Hindle report, as well as reviewing other reports submitted by the bank -- or excuse me, by -- by plaintiffs, including Dr. East and Dr. Levine, and considering that information in preparation for my deposition today. 10:25:40 10:26:10

BY MR. RIFFEE:

Q. So you believe since you issued your report on March 4, 2025, you reviewed four reports issued by Bank of America's experts, Dr. Stango, Dr. McCrary, Dr. Prye and Mr. Hindle; is that correct? 10:26:24

MS. CHAN: Objection. Mischaracterize -- misstates the testimony.

THE WITNESS: At least those four. Maybe another one that you'll refresh my recollection on. And one that I left out was Minnucci from -- from plaintiffs. 10:26:35

BY MR. RIFFEE:

Q. Okay. And then you've also reviewed 10:26:44

reports submitted by -- by -- I believe it's Ms. East, Mr. Levine, and Mr. Minnucci?

A. Correct.

Q. Okay. Have you conducted any further calculations since you issued your report on March 4, 2025? 10:27:04

A. I -- I've certainly looked at the data, in terms of understanding some of the assertions made by Mr. Stango, but I haven't submitted or developed any new schedules or anything like that. 10:27:22

Q. Do you anticipate doing any additional work for this matter that is not reflected in your March 4, 2025, report marked as Exhibit 1?

MS. CHAN: Objection. Vague.

THE WITNESS: I don't have any specific expectations. I can imagine developing some charts or graphics that might summarize some of the data expressed in the report, using the schedules that accompany the report, but I think the report itself encompasses the opinions I would expect to offer. 10:27:32 10:27:52

BY MR. RIFFEE:

Q. Okay. If you could please turn back to Exhibit 1. And I'd ask you to turn to page 3, Paragraph 5.

A. I'm there. 10:28:13

for various different consumer credit types.

Q. Credit types being credit scores?

A. I call it credit classifications.

Q. Okay.

A. I can point you to the paragraph that I'm thinking about. It's Paragraph 40-A on page 21 and its attendant table. 10:44:04

MS. CHAN: Counsel, he already testified that Mr. Carter is his agent; he was assisting him in preparation of his report. So all of his communications with his own staff and his agents is -- is protected as his work product. You haven't established that there was anyone else present during those conversations. 10:44:23

MR. RIFFEE: Are you asserting an objection and instructing him to not answer? I mean, he's answered. There was no objection. 10:44:36

MS. CHAN: I'm cautioning him to -- not to disclose further work product, and I'm also advising you not to pursue this line of questions. 10:44:48

MR. RIFFEE: Okay.

BY MR. RIFFEE:

Q. But based on the conversations that you had with Mr. Carter, there was -- there's nothing that you believe that you need to change or -- or 10:44:57

revise about your report; correct?

A. No. Only the one item I raised at the outset of the deposition.

Q. Other than the meeting with counsel and having conversations with Mr. Carter, did you do anything else to prepare for your deposition today? 10:45:14

A. No, other than read materials by -- by myself.

Q. Okay. Do you consider yourself to be an expert in the Electronic Funds Transfer Act, which I'm may call EFTA today, or Regulation E? 10:45:25

A. No.

Q. Do you consider yourself to be an expert in what EFTA and Regulation E may require for financial institutions in investigating or crediting unauthorized transaction claims for prepaid accounts? 10:45:41

A. No.

Q. Do you consider yourself to be an expert on financial institutions' unauthorized transaction claim practices or -- or procedures? 10:45:51

THE COURT REPORTER: I'm sorry. "Unauthorized transaction"...

BY MR. RIFFEE:

Q. Transactions claims practices or 10:45:59

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

BY MR. RIFFEE:

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

MS. CHAN: Objection.

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

BY MR. RIFFEE:

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

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

MS. CHAN: Objection. Vague.
THE WITNESS: I did not do it at an individual level because I didn't have data to indicate that that outcome would be reasonably extracted to the population as a whole. So what I 11:08:35 did was to develop my understanding of the overall population of consumers.
BY MR. RIFFEE:
Q. And that was based on your research and -- and information generally, but not specific to 11:08:45 the -- the actual class members; correct?
MS. CHAN: Objection.
THE WITNESS: It was my research regarding the typical type of harm incurred by members of the proposed class. 11:08:58
BY MR. RIFFEE:
Q. Have you ever been retained, prior to this case, to calculate damages concerning the denial of unauthorized transaction claims?
A. I -- I don't believe so. 11:09:09
Q. Have you ever been retained to calculate damages concerning an account freeze or similar restriction placed on a financial account that prevented an accountholder from accessing the funds in that account? 11:09:41

for example, articulated in his report. But I believe that I've identified all of those instances, and I'm not aware of anything that was withheld from me. It's a matter of the state of production.

Q. All right. 11:19:17

In footnote 22 to that same paragraph, Paragraph 30, you write, "In addition, other evidence may be produced that could be relevant to my conclusions, including the testimony and report of other witnesses. Accordingly, I reserve the 11:19:37 right" --

THE COURT REPORTER: "Other witnesses. Accordingly"...

BY MR. RIFFEE:

Q. "Accordingly, I reserve the right to amend 11:19:42 my report and supplement my opinions after considering such evidence, if necessary."

Other than the reports that you've already testified about that I understand you've reviewed since you provided this report, is there any other 11:19:54 testimony, reports or -- or other information that you reviewed and that you intend to rely on to amend or supplement your report since you issued this on March 4?

A. Right now I do not have a current plan to 11:20:12

amend or supplement my report. I think this is describing possible eventualities in which I would.

Q. If you could turn back to Appendix B, at the very end of -- it should be at the very end of your report, still on Exhibit 1. 11:20:41

A. I'm there.

Q. All right.

Is this the complete list of materials that you considered in forming the opinions in your March 4 report in this case? 11:20:51

MS. CHAN: Objection. Asked and answered.

THE WITNESS: Asked and answered.

Yes.

BY MR. RIFFEE:

Q. Sorry. 11:20:53

We weren't looking at it before, but I wanted to make sure that you had a chance to review and confirm that this is actually Appendix B and that this is intended to identify all the -- the materials you considered. 11:21:05

And that's -- that's correct; right?

A. It is.

Q. Okay. Did you put this list together?

A. I did.

Q. So you identify a number of case filings 11:21:10

interrogatory responses that you reviewed in this case?

A. That was my intent, yes.

Q. Do you know if any other interrogatory responses have been provided in this case? 11:22:31

A. Not as I sit here, no.

Q. Okay. Do you know if any of the class plaintiffs or -- or other plaintiffs in this case have also received and responded to interrogatories?

A. I have that understanding, yes. 11:22:54

Q. Okay. And have you reviewed any of the interrogatory responses provided by the class plaintiffs or other plaintiffs in this case?

A. I have not.

Q. In the -- still under case filings, it -- 11:23:14 in the middle, you note that you reviewed the declarations of Jennifer Lennon and William M. Martin.

Do you see that?

A. I see Martin. I'll take your word for it 11:23:28 on Lennon because I recall --

Q. I think it's just above Martin.

A. There it is. Thank you.

Q. It's small.

A. Yeah. 11:23:40

exhibits cited here in your report; correct?
A. Yes.
Q. If you could turn to Paragraph 77.
And this is meant to -- I -- I explain how you identified the proposed class members, less the exclusions for the -- the freeze account class; correct? 12:39:21
A. Yes.
Q. And you also determined that there were -- or here, you determined that there were approximately 65,800 card alias IDs in the proposed class freeze. And, again, that's based on interrogatory responses and data provided by the bank; correct? 12:39:36
A. Yes. 12:39:58
Q. Okay. If you could turn to Paragraph 88, which is on page 40.
In the middle of Paragraph 89 -- and this is concerning the customer service class -- it says, "Accordingly, I was asked to assume that the customer service class included the" -- "at minimum, every claim denial and credit rescission class member who submitted a claim based on the claim entry date field between September 13, 2020, and November 21, 2020. Presently, there are around 12:40:28 12:40:43

15,600 card alias IDs that meet that criterion."

And those individuals, the 15,600 card alias IDs that you say meet that criterion, they all submitted a claim during that period, the proposed customer class period, right, based on your review of the data? 12:41:05

A. Yes.

Q. Okay. Have you undertaken any other efforts to identify additional members of the proposed customer service class period? 12:41:22

A. I don't understand your question. Class period --

Q. Sure.

A. -- it does -- it --

Q. Sorry. 12:41:35

Have you -- other than identifying these 15,600 card alias IDs that meet the criterion because they -- the data indicates they submitted the claim during the proposed customer class -- service class period, have you undertaken any other efforts to identify other potential members of the proposed customer service class? 12:41:50

A. There -- there were efforts prior -- prior to this time, as the -- the class period was -- duration of the class period was identified, though 12:42:17

should not only be reimbursed the principal amount, but also compensated for the loss of ability to use their funds when a wrongful act was committed by a defendant."

Are you offering a legal opinion as to what the plaintiffs or proposed class members are entitled to receive under the law in this case? 01:38:37

A. No, I'm not offering a legal opinion. I'm offering economic opinion based upon my understanding of prior actions. 01:38:52

Q. Okay. And your economic opinion, based on your understanding, is that one of the things plaintiffs should be reimbursed for is the principal amount.

What's your understanding of what principal amount means for the purposes of this case? 01:39:06

A. It depends upon the class, though if we use the claim denial class, I would refer to the principal amount as the amount of the claim that was denied. 01:39:20

Q. Okay. And for the account freeze class, what would be the principal amount refers -- refer to?

A. The account balance that was frozen. 01:39:33

Q. Is it your opinion that if one of the class plaintiffs or the proposed class members have already been reimbursed or regained access to the full principal amount, that they should give it again as damages in this case? 01:39:48

MS. CHAN: Objection. Vague.

THE WITNESS: Ultimately, I think there will be an offset, but I think that there's a measurement or an assessment of that amount as the principal amount of damages as I describe it. 01:40:05

BY MR. RIFFEE:

Q. Okay. Do you -- would you agree that the -- the purpose -- or the goal in calculating economic damages is to measure the difference between the actual outcome for the consumer and the 01:40:22 outcome for the consumer in the hypothetical but-for world where the -- the alleged conduct didn't occur?

A. Yes.

Q. Okay. Do you agree that if a consumer receives or regains access to the full principal 01:40:42 amount of the money, the principal amount of money is not a measure of actual economic damages?

A. I think that question needs to be more precise because it's not clear when you're attempting to measure that. In this instance, the 01:41:00

service class considers that element of effort undertaken by cardholders.

BY MR. RIFFEE:

Q. Okay. You have not attempted to calculate damages based on the time any of the claim denial or 01:45:13 credit rescission or EMV chip or account freeze classes spent attempting to get their claims repaid or to regain access to their account, aside from what may be included in the proposed customer service class methodologies; right? 01:45:34

A. I -- I understand your que- -- can you explain your question again?

Q. Sure.

So putting aside the -- the proposed -- or the methodology that's been proposed for the 01:45:50 customer service class by Mr. Minnucci with respect to the time that cardholders or -- may have spent on hold, you have not attempted to calculate -- or have you attempted to calculate any damages -- consequential damages that cardholders incurred just 01:46:06 based on the time that they spent or the steps that they had to take contacting Bank of America or EDD to get their claims reimbursed or their -- to regain access to their accounts?

MS. CHAN: Objection. Ambiguous. 01:46:27

Compound.

THE WITNESS: Beyond the level of effort for those members -- proposed members of the customer service class, I have not attempted to measure incremental time incurred by other individuals to have their claim paid by the bank. 01:46:40

BY MR. RIFFEE:

Q. And why haven't you attempted to do that?

MS. CHAN: Objection. Beyond the scope.

THE WITNESS: It was my view that the primary harm that the individuals experienced was the lost access to their funds, and so that was the harm that I focused on for purposes of damage measurement. 01:46:55

BY MR. RIFFEE: 01:47:18

Q. Would you agree that any other harm or potential harm cannot be calculated based on the -- the information available to you for the proposed classes?

MS. CHAN: Objection. Ambiguous. 01:47:33

THE WITNESS: I can't agree to that because I -- I don't -- I haven't set about to try and make that calculation. It -- it may be a possible calculation; I just haven't evaluated it.

BY MR. RIFFEE: 01:47:46

[redacted]

Q. Okay. And you agree that an offset will 01:53:07

be required for the claim amounts that had been paid to each of these claim denial class members; is that right?

MS. CHAN: Objection. Ambiguous. Calls for legal conclusion. 01:53:24

THE WITNESS: I have no opinion regarding whether it would be required, but that would be my anticipation.

BY MR. RIFFEE:

Q. All right. 01:53:44

If you could turn to Paragraph 64 of your report with respect to the credit rescission class.

So for the credit rescission class in Paragraph 64, did you also attempt to calculate the principal amount of damages based on the claim 01:54:26 amount that is a -- claim denial amount that's included in Schedule 1 of your report, the full Schedule 1 of your report?

A. Yes.

Q. I'm sorry. I meant to refer to Paragraph 01:54:43 66 and not 64.

And based on the bank's records, you calculated that to be approximately $10.9 million?

A. Yes.

Q. Do you know whether the bank's records 01:54:59

[redacted]

Do you agree that an offset will be required for the principal amount of damages -- or the principal amount of damages, the account balance these individuals have regained access to that are in the proposed account freeze class? 02:05:21

MS. CHAN: Objection. Ambiguous. Calls for a legal conclusion.

THE WITNESS: It's the same answer I had a few moments ago: I don't have an opinion on whether it's required, but if the trier of fact implements 02:05:31

that -- that instruction, then it would be my expectation to do so.

BY MR. RIFFEE:

Q. Okay. If a cardholder regained access to the full balance of their account at the time of the freeze, they're then in the same place in the actual world as they would have been in the but-for -- for world, at least with respect to the principal amount, the balance of their account, right, because they've regained access to it? 02:05:41 02:06:00

MS. CHAN: Objection.

THE WITNESS: Subsequent to the time that hypothetical account was unfrozen. The principal amount is identified in the time period during which the account be -- commenced being frozen, until it was unfrozen. 02:06:14

BY MR. RIFFEE:

Q. Right.

So the principal amount in their account, that is not their actual economic damages; your economic -- their -- if they had any actual economic damages, they would be consequential damages that you calculated; correct? 02:06:22

MS. CHAN: Objection.

THE WITNESS: The -- your question isn't 02:06:36

precise enough in terms of time. The individual was damaged at the time of frozen because they did not have the funds; instead, the bank had the funds in the account that was frozen. And the consumer did not if or when the account would become unfrozen. 02:06:53 And during the time period until the account was unfrozen, that was the principal amount of the damages, and it's used then to measure the consequential harm during that period of time.

BY MR. RIFFEE: 02:07:09

Q. Right.

But then in terms of their actual economic damages after the point which they regained access to their account balance and, by definition, all of these account freeze members had regained access to 02:07:17 their -- or regained access to their account balance, the principal amount is not their actual economic damages because they already have that money, it has been returned to them; correct?

MS. CHAN: Objection. Ambiguous. 02:07:35

THE WITNESS: Effectively, it's confirmatory that the amount was damages during the time period of the freeze, and the bank made a partial payment of a judgment on those damages by unfreezing the account and giving the consumer 02:07:47

access back to their funds.
BY MR. RIFFEE:
Q. And what judgment are you referring to?
A. The consumer was reawarded the amount of their account balance that had been frozen. 02:07:58
Q. After the bank unfroze or unblocked their account; correct?
A. Yes.
Q. All right.
So you've referred to earlier today and in 02:08:14 your report the -- the concept of time value of money.
Would you agree that it's a common concept in economics and finance?
A. I do. 02:08:23
Q. All right.
And the time value of money, it's meant to reflect the measure -- or reflect and measure the fact that a dollar in hand today is typically worth more than a dollar at some point in the future; is 02:08:38 that right?
A. Yes.
Q. Okay. Would you agree that the time value of money is typically used to measure potential interest earning or investment opportunities for a 02:08:44

dollar today versus a dollar tomorrow?
MS. CHAN: Objection. Vague.
THE WITNESS: That's one way in which it's measured.
BY MR. RIFFEE: 02:08:55
Q. Okay. What are other ways in which you believe the time value of money is measured?
A. In -- again, the exercise is to identify the cash flow or asset that's been impacted and assess -- correlate that with an economic event -- 02:09:08 here, it's harm -- and identify the implication of that.
And in this instance, the consumers were unable to access their funds, and in my view, the consequential harm was a cost of borrowing that the 02:09:22 individuals incurred. So a cost of debt is a common way to assess the time value of money.
Q. Okay. When assessing the time value of money, what's the typical in- -- interest rate that is applied or considered for the average individual? 02:09:40
MS. CHAN: Objection. Ambiguous.
THE WITNESS: I don't have enough information --
BY MR. RIFFEE:
Q. Sure. 02:09:50

A. -- in the hypothetical.
Q. Is there a -- is there an interest rate that would apply to -- to any individual to -- to calculate the -- the time value of money?
MS. CHAN: Objection. Ambiguous. 02:10:04
THE WITNESS: I'd need to know more about the circumstances.
BY MR. RIFFEE:
Q. Do you agree that a risk-free interest rate would be applicable as a starting point for -- 02:10:16 for every individual, irrespective of their circumstances?
MS. CHAN: Objection. Ambiguous. Incom- -- incomplete hypothetical.
THE WITNESS: Not without more 02:10:29 information.
BY MR. RIFFEE:
Q. What information would you need to assess to determine what the appropriate interest rate would be for someone's time value of money? 02:10:36
A. I'd need to know what circumstances that individual was in for which they're being compensated on a time value of money basis.
THE VIDEOGRAPHER: Counsel, I think your microphone is scratching. It may have been touching 02:10:59

your jacket for a second.

MR. RIFFEE: Okay. Sorry. Could have been my pen.

BY MR. RIFFEE:

Q. What circumstances they were in for assessing the time value of money; what particular circumstances would you need to assess to determine that individual's time value of money calculation or -- or the appropriate interest rate? 02:11:08

A. For one, I'd need to know did the person lend the money, did the person borrow the money, for whom and to whom or for what purpose, would be amongst -- when in time the events occurred. 02:11:22

Q. Anything else? Any other circumstances that you would need to assess to determine an individual's time value of money? 02:11:51

A. Potentially.

Q. Potentially.

Can you think of any other circumstances beyond whether -- to whom they went the money, whether they borrowed money, when the events occurred? 02:12:03

A. Well, those would be the starting points.

Q. Okay. Any other points beyond the starting points? 02:12:15

MS. CHAN: Objection. Asked and answered.
THE WITNESS: With that information, I'd then figure out the next steps to take.
BY MR. RIFFEE:
Q. And what would be the -- the next steps to take? 02:12:25
A. Depend upon the answer to -- to the circumstances.
Q. Okay. If the individual did not borrow money, what would be the next stape -- next step you would take to determine the time value of money for that particular individual? 02:12:39
A. I'd assess other possible events for which the loss of access to funds was relevant.
Q. And those are going to vary from person to person; right? 02:13:03
MS. CHAN: Objection. Argumentative.
THE WITNESS: Not necessarily.
BY MR. RIFFEE:
Q. Okay. So what other possible events for which loss of access of funds might impact would you consider to determine the time value of money for an individual? 02:13:15
A. It could be any number of events. It could be the level of indebtedness that the 02:13:34

individual was not able to repay. It's -- I -- I'd want to look at the circumstances, much in the same way that I did here.

Q. Did you look at the individual circumstances for any proposed class plaintiffs or any proposed class members? 02:13:59

A. What I did was to look at the circumstances of the class as a whole, which are California consumers impacted by unemployment insurance in the time frame of 2020 through 2022 generally and into 2023. 02:14:18

Q. And would you agree that the California consumers impacted by unemployment insurance during that time period, that their individual facts and circumstances will vary from cardholder to cardholder? 02:14:50

MS. CHAN: Objection. Vague.

THE WITNESS: Which is exactly why looking at the characteristics of the population as a whole allows an estimate -- an appropriate estimate to be taken to ascertain the circumstances of a typical cardholder and the typical circumstances and expected outcomes to measure time value of money. 02:15:01

BY MR. RIFFEE:

Q. Did you review the circumstances of any 02:15:25

proposed class members or any class plaintiffs or a sample of such proposed class members or class plaintiffs to assess whether their circumstances were consistent with what you determined to be the likely circumstances for California consumers 02:15:50
impacted by unemployment insurance during this period?
A. My -- my focus was on the population of consumers and analyzing what the expected impact on the group as a whole would likely have been and how 02:16:05
best to measure that. It was my conclusion that looking at an individual plaintiff or named plaintiff would not put me in a position to draw a reasonable extrapolation.
Q. All right. 02:16:18
So let's go to Exhibit 2, your first class certification report. And I think you -- you testified to this earlier, but I just want to confirm.
So if you go to Paragraph 39 of that 02:16:47
report, on page 16 -- or, I'm sorry, Paragraph 44, you note that you were using -- or "proposing two alternative methodologies, as described in the subsection below." Methodology 1 starts at Paragraph 45, and then methodology 2 starts at 02:17:22

as a means to potentially calculate consequential damages in this case; is that right?

A. Yes.

Q. And you are no longer offering an opinion or attempting to calculate later overdraft fees in this case; is that right? 02:20:28

A. Yes.

Q. Okay. Why are you no -- why did you decide to no longer include methodology 2 in your affirmative report issued on March 4th? 02:20:41

A. I think there were several reasons, including my understanding of the opinions that would be expressed by Ms. East and Mr. Levine and my discussion with counsel regarding my -- their understanding of the tentative ruling in this 02:21:17 particular case, calling for more conservative measure of damages as set forth in methodology 1.

Q. So you believe that methodology 1 is a conservative measure of damages?

A. Yes. 02:21:33

Q. All right.

If you could turn to Paragraph 46 of Exhibit 1. It's on page 19. Now I'm looking at the wrong report.

THE COURT REPORTER: I'm sorry, I didn't 02:22:05

hear you.

MR. RIFFEE: Disregard. I said, "Now I'm looking at the wrong report."

BY MR. RIFFEE:

Q. All right. 02:22:09

I'm sorry. It's Paragraph 44. So you write that you -- you determined the consequential damages amount as a function of the claim denial amount, the time the card -- cardholder could not access the funds, and the applicable interest rate; 02:22:35 is that right?

A. Yes.

Q. And that's the same methodology -- you applied that same methodology for the claim denial, credit recision, and EMV chip classes to assess 02:22:45 consequential damages; is that -- is that correct?

A. Yes.

Q. And then for the applicable interest rates, you used the 10 percent interest rate that you say applied to judgments" -- or you say as it 02:22:55 applied to judgments in California and a 20 percent interest rate that you say is consistent with your experience studying unsecured consumer debt; is that right?

MS. CHAN: Objection. 02:23:10

THE WITNESS: That was one basis for selecting a 20 percent APR, to model this scenario.

BY MR. RIFFEE:

Q. Okay. Let's focus on the claim denial class right now. 02:23:22

Did you calculate consequential harm for all the proposed claim denial class members that are included in the Schedule 1 of your report?

A. Can you read back the question? I thought there just was something -- 02:23:44

Q. Sure.

A. -- that didn't sound right to me.

Q. Yeah.

So was your intent to calculate consequential damages for all the proposed members 02:23:50 of the claim denial class that are included in Schedule 1 of your report?

A. Yes.

Q. Okay. And did you do that regardless of how many days it took for the -- their claim to be 02:24:00 paid or repaid?

A. Yes.

Q. So even if Schedule 1 of your report reflects that the total number of claim denial days was ten or less, you still calculated consequential 02:24:16

instead of the -- the claim amount; right?
A. Yes, with respect to the principal amounts. Yes.
Q. Okay. And the consequential damages amounts; right? 02:33:19
A. Well, for the account freeze class, I have the cost of a delayed benefit payment as well, which is what I was distinguishing in my last answer.
Q. Fair enough.
For the cost of inability of access to 02:33:30 frozen funds, and not the cost of delayed benefits payments, it's the same calculation as you applied for the claim denial amount, except that you're doing it based on the -- a function of the account balance, as opposed to the unauthorized transaction 02:33:50 claim amount; right?
A. True.
Q. Okay. Thank you.
Let's go ahead and take a -- actually, if -- are you good to continue? 02:34:12
A. Okay.
Q. All right.
So we'll go to Paragraph 46. And at the bottom of the page, you note that the first interest rate, 10 percent, is consistent with the interest 02:34:35

rate applied to judgements in California.

And what's the -- the basis for your understanding that that's an interest rate that's applied to judgments in California?

A. My familiar- -- familiarity with the California Civil Code, my practicing in this area for more than 20 years, and quite a number of jury instructions that that's how this calculation is employed. 02:34:46

Q. Do you intend to offer a legal opinion in this case as to whether or not a 10 percent California judgement rate is the appropriate rate to be used here or that would apply to a claim brought under EFTA? 02:35:06

A. No. I don't intend to offer any legal opinions. 02:35:20

Q. At the top of page 20, still in Paragraph 46, you write that, "The 10 percent rate likely understates the cost a consumer would have incurred during that same period, including the cost of increased borrowing, reduced consumption or the inability to pay down existing debt, such as a credit card" -- or "such as credit card debt." 02:35:37

How would a borrowing rate be a measure of economic -- economic damages resulting from a 02:36:00

BY MR. RIFFEE:

Q. Is it your opinion that a 20 percent APR is a reasonable measure to measure a cost that an individual incurs by reducing consumption?

MS. CHAN: Objection. Outside scope. 02:37:46

THE WITNESS: On that topic, I'm relying upon the expertise of Ms. East and Mr. Levine.

BY MR. RIFFEE:

Q. Is it your opinion that an individual who reduces consumption purely to reduce consumption of 02:38:04 nonessentials -- Netflix subscriptions, gym memberships, things like that -- that that -- that a 20 percent APR interest rate is an appropriate measure of consequential damages for the reduction and consumption of -- of nonessential expenditures? 02:38:29

MS. CHAN: Objection. Assumes facts. Argumentative. Outside the scope.

THE WITNESS: Based upon my analysis of the circumstances of the class members and my assessment of the harm incurred by the population of 02:38:47 impacted class members, as well as my understanding of Ms. East and Mr. Levine's opinions, the -- this would be a reasonable and conservative measure of the harm incurred by those consumers.

BY MR. RIFFEE: 02:39:13

Q. So a consumer who had a claim of $50 denied by the claim fraud filter and, as a result, decided to -- to drop their online streaming subscriptions, your opinion would be that 20 percent APR is an appropriate measure of their consequential damages? 02:39:27

MS. CHAN: Objection. Assumes facts. Incomplete --

BY MR. RIFFEE:

Q. Is that your interpretation of -- sorry -- Ms. Levine's -- or Mr. Levine's and Ms. East's opinions? 02:39:31

MS. CHAN: Objection. Assumes facts. Incomplete hypothetical. Outside scope.

THE WITNESS: Based upon my own analysis of the circumstances of the class, as -- as well as Ms. East, Mr. Levine's analysis of the circumstances of the class as a whole, this is an appropriately conservative and appropriate measure -- measurement of the harm incurred by typical class members. 02:39:44 02:40:06

BY MR. RIFFEE:

Q. Even class members who reduced their consumption simply to avoid nonessentials --

THE COURT REPORTER: Sorry, your microphone is -- 02:40:15

beginning of Media Unit 4. We are going back on the record. The time is 3:00 p.m.

BY MR. RIFFEE:

Q. All right. Thank you. Welcome back again. 03:00:56

If you could turn back to your report, Exhibit 1, Paragraph 47, which is on page 20.

A. I'm there.

Q. Already there. Perfect.

In this paragraph you state, "I determined 03:01:06 the second interest rate based on my review of the types of credit excessed" -- or "accessed by typical consumers. Credit cards are the most widely used form of consumer credit. As a result, I concluded that the most likely sort of funds accessible to an 03:01:22 impact cardholder would have been increased credit card utilization until the time the bank credited their accounts for the claim."

So your -- this is -- this is the -- the basis for the -- the 20 percent, the second interest 03:01:35 rate that you used to calculate consequential damages in this case?

A. Yes.

Q. Okay. And did you select this rate yourself or were you instructed to -- to use this 03:01:47

rate by -- by counsel?
A. I selected this rate.
Q. Okay. And, again, you said -- you concluded that this -- or you stated, "This is based on my review of the types of credit accessed by typical consumers" and that "the most likely source of accessible funds was credit card utilization." 03:02:00
So this rate is meant to equate the -- the interest rate or the APR applicable to credit cards; right? 03:02:19
A. Yes, an -- an estimate of the cost of borrowing the consumers incurred.
Q. Okay. And it's -- it's not meant to equate to -- or to calculate the cost of reduced consumption? 03:02:35
MS. CHAN: Objection.
THE WITNESS: It's not a direct measurement of the cost of reduced consumption, but it's a proxy for it based upon my understanding of Ms. East and Mr. Levine's analyses. 03:02:53
BY MR. RIFFEE:
Q. Did you do anything to verify their analysis which you believe would lead them to conclude that a 20 percent APR is consistent also with the reduction in consumption? 03:03:09

A. Yes, because their analysis, in my view, was consistent with -- with mine. Different studies were -- were considered in terms of developing their opinions, but my findings regarding the conditions applicable to population of impacted cardholders yielded similar results to their analyses. 03:03:27

Q. Okay. But your -- your analysis here and your assumption here is based on the fact -- or your belief that the most likely source of funds that was used were -- was credit cards with a 20 percent APR; right? 03:03:44

A. That the best estimate of the -- the costs that consumers incurred is represented by the cost of borrowing on a credit card, yes.

Q. Even if they never had a credit card, you think the best estimate for a proposed class member is still a 20 percent APR, based on the -- the average available credit card interest rate at the time? 03:03:58

MS. CHAN: Objection. 03:04:13

THE WITNESS: When I consider the class-wide impact, in my view, that's the best estimate or best way to estimate the cost of borrowing incurred by the impacted cardholders.

BY MR. RIFFEE: 03:04:28

BY MR. RIFFEE:

Q. Did you review that data or information for any of the proposed class members?

MS. CHAN: Objection. Ambiguous.

THE WITNESS: What data? 03:08:25

BY MR. RIFFEE:

Q. The date at which their deposits occurred or the individuals' biweekly payment from EDD -- did you review that information for any of the proposed class members? 03:08:39

A. Earlier today I described the efforts that are underway to get information regarding the EDD biweekly deposit information, which would have both of those attributes, I would expect. But the existing data available to me doesn't allow me to 03:08:53 conduct that analysis.

Q. In footnote 46 of your report, which actually turns back to page 19, you write, "I understand the selection of the appropriate interest rate is ultimately an issue for the trier of fact to 03:09:13 determine."

Is it your opinion that 20 percent -- a 20 percent APR is the correct interest rate to apply here to calculate consequential damages for the proposed claim denial, credit rescission, account 03:09:28

freeze, and EMV chip classes, or are you deferring that to the -- to the trier of fact?

MS. CHAN: Objection.

THE WITNESS: It's slightly more complicated than that. I will opine that this is a 03:09:43 reasonable way in which to determine an -- a rate that would apply to this particular proposed class. Ultimately, I think the trier of fact is going to make a determination, and included in that determination will be an assessment of Ms. East's 03:10:01 proposed interest rate, Mr. Levine's proposed interest rate, and, I'm sure, evidence that the bank will put on as well.

BY MR. RIFFEE:

Q. Okay. But is it your opinion that a 03:10:12 20 percent -- is the opinion you intend to offer in your report and in this case that the 20 percent APR -- that you believe that's the more appropriate interest rate that should be used to calculate consequential damages in this case, as opposed to 03:10:26 the 10 percent rate that you suggested in the other alternative?

A. I haven't formed an opinion on which is more appropriate. I think either can be used to measure the impact. One is more conservative. 03:10:43

My -- the overall purpose of my report was to present a methodology to calculate damages and consequential damages, and it's my understanding that Ms. East's or Mr. Levine's proposed rates would be used in the construct of my methodology. 03:11:04

Q. All right.

Back to Paragraph 47, at the second -- third sentence: "As a result, I concluded the most likely source of funds accessible to an impacted cardholder would have been increased credit card 03:11:28 utilization."

You say "most likely." You don't intend to offer an opinion regarding whether any proposed class member actually increased their credit card utilization in this case, do you? 03:11:45

A. I don't intend to identify specific cardholders that did, no.

Q. Okay. You just believe it was likely based on the -- the sources cited in your report?

A. Correct. 03:11:55

Q. All right.

MR. RIFFEE: I'm going to introduce as Exhibit 6 to your deposition, a document that I'm handing to you now.

(Regan Deposition Exhibit 6 was marked for 03:12:10

identification.)

BY MR. RIFFEE:

Q. Do you recognize this document?

A. Yes.

Q. Okay. I've handed you a document that's titled "Credit Card Spending and Borrowing Since the Start of the COVID-19 Pandemic," authored by Joanna Stavins. 03:12:29

Is this a document that you have reviewed before? 03:12:45

A. Yes.

Q. Is this a document that you cited in your report and that you believe supports your opinions that the most likely source of funds accessible to an impacted cardholder would've been increased credit card utilization? 03:12:54

A. This is one source of data that I considered, yes.

Q. Okay. Do you see at the very beginning of Ms. Stavins' report, on the first -- bottom of the first page, she writes, "With the onset of the COVID-19 pandemic in the United States in the spring of 2020, consumers drastically reduced their spending, including spending on credit cards. Both current credit card spending and revolving unpaid 03:13:06 03:13:22

balances carried over from previous billing periods declined steeply."

And then it says, "Starting in the second quarter of 2021, credit card spending increased again." 03:13:36

Is this -- is that a statement that you've seen before?

A. Yes.

Q. Okay. And did you consider the fact that credit card spending was reported to have decreased 03:13:45 significantly the first year of the pandemic -- did that at all factor into your opinion that the most likely source of borrowing by the proposed class members was on credit cards?

A. Yes, I did consider that. 03:13:59

Q. Okay. And then your opinion is that the most likely source of borrowing by these proposed class members was on credit cards, even though it's been reported here and -- and in other sources cited -- cited in your report that credit card 03:14:16 spending actually decreased for the first year of the pandemic, when many of these proposed cardholders were without funds?

A. Yes. I considered it in a variety of ways. 03:14:28

Q. Okay. How did you consider it?

A. Well, amongst other things, this is an analysis of -- of all consumers. It's not targeted to the consumers at issue in the class -- proposed class. So you can't necessarily read into overall 03:14:39 trends when we're dealing with a specific subset of consumers, including those that the bank's own representatives describe as the most vulnerable of all of their customers. So that's what you should be looking at. 03:14:56

Second, as we see in the next paragraph, that credit card spending increased again in the second quarter of 2021, when a lot of the claims activity at issue was present in our particular proposed class. So that's -- strikes me as being 03:15:10 right on -- right on point to being -- using this as a reasonable measurement.

And third, this indicates that during the period of time in 2020, consumers were using available funds to be able to reduce their credit 03:15:26 card revolving unpaid balances. So that's consistent with avoiding the cost of interest, similar to what I've measured. And consumers were not able to do that when their funds were withheld from them. 03:15:44

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

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

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

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

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

MS. CHAN: Objection. Ambiguous.

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

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

BY MR. RIFFEE:
Q. But you didn't take any steps to -- to verify that those studies were, in fact, consistent with what these proposed class members actually did; correct? 03:18:43
MS. CHAN: Objection.
THE WITNESS: Given the -- the size of the classes, including claim denial, I think it's -- it's well over a hundred thousand people. It was my conclusion that studying the data about that type of 03:18:57 consumer at that moment in time would lead me to be able to provide the best measurement of the type of harm and the quantum of that harm experienced in that period of time.
BY MR. RIFFEE: 03:19:13
Q. Did you review any data or evidence regarding the proposed class members to assess their actual income levels or credit histories at the time they were without access to the funds in their account? 03:19:39
A. No. What I did was to focus on things such as median income levels and typical recipients of EDD benefits during this period of time to get a sense of the overall class characteristics, rather than look at the -- the individuals for whom did not 03:19:58

have sufficient data to -- to do the extrapolation I've described.

Q. Okay. So you -- you don't know if my particular cardholder in the proposed claim denial, credit rescission, EMV chip or account freeze 03:20:16 classes actually increased their credit card utilization or borrowed during the time that they were unable to access funds, either their claim amount or their account balance; right?

MS. CHAN: Objection. Misstates 03:20:29 testimony.

THE WITNESS: I understand that certain of the class reps or individual plaintiffs did use credit-card-related spending, but I did not -- did not analyze that to reach my conclusions regarding 03:20:41 the harm suffered by the class as a whole.

BY MR. RIFFEE:

Q. What's the basis for your understanding that certain class reps or plaintiffs actually used their credit card? What -- what information did you 03:20:52 review or evidence did you review to form that understanding?

A. My understanding was from counsel, that individuals testified or described in discovery responses the use of credit cards. I think 03:21:06

Mr. Stango addresses certain class members that -- that did so.

Q. So it's based on your conversation with counsel and your subsequent review of Mr. Stango's report? 03:21:21

A. Correct. Because I had concluded that I was not likely to extrapolate from a select number of individuals to the class as a whole, but rather study characteristics of the class.

Q. But you didn't review any individual 03:21:32 plaintiff or any proposed class member or any class plaintiff or proposed class representative plaintiff's discovery responses or deposition testimony or any other documents or evidence they produced prior to issuing this March 4 report; 03:21:47 right?

MS. CHAN: Objection. Asked and answered.

THE WITNESS: I'm not aware of -- aware of evidence to indicate that the -- either the class reps or named plaintiffs were selected because they 03:21:59 were representative of -- of the whole class. And absent that information, I don't have a basis, nor is that group of a size that would allow me to reasonably extrapolate, on the contrary, a very large class for which data can be analyzed and 03:22:16

ascertained.

BY MR. RIFFEE:

Q. Well, that wasn't my -- my question is simply, did you review any documents produced by the class plaintiffs, as you identify them in Paragraph 1 of your report, or any other proposed class members or any other individual plaintiffs in this case or their discovery responses or their testimony prior to issuing this March 4th report? 03:22:33

A. For all the reasons I've given you in my prior answers, I chose not to take that pathway because I felt that other alternatives would result in a better estimation of the type of harm experienced by proposed class members. 03:22:47

Q. All right. 03:23:04

MR. RIFFEE: Let's mark Tab 27 as Exhibit 7.

(Regan Deposition Exhibit 7 was marked for identification.)

MR. RIFFEE: Thank you. 03:23:28

BY MR. RIFFEE:

Q. I'm handing you a document which has been marked as Exhibit 7.

MS. LAMPO: Mm-hmm.

BY MR. RIFFEE: 03:23:35

[redacted]

BY MR. RIFFEE: 03:27:48

Q. Okay. Do you know whether -- are you aware that each of the other class plaintiffs that you identified in Paragraph 1 of your report, and other individual plaintiffs -- are -- are you aware that they were asked the same interrogatory, or 03:27:59

pro- -- they -- the same interrogatory was propounded to them?

A. I'm not aware of the discovery process that went back and forth.

Q. Because you didn't review any of the interrogatory responses or any other discovery concerning any of the individual class plaintiffs or any of the other individual plaintiffs in this case; correct? 03:28:09

MS. CHAN: Objection. 03:28:22

THE WITNESS: I focused my analysis on my assessment of California consumers, on unemployment insurance benefits during the time period in which the claim denials and other wrongful actions are alleged to have occurred. 03:28:36

BY MR. RIFFEE:

Q. Is it your opinion that the class representatives that plaintiffs' counsel have proposed that they believe are representative of the class, that their actual experience is not an important consideration or -- or check on your analysis to assess whether your consequential harm methodologies are consistent with the -- the classes that they're purporting to represent? 03:28:46

MS. CHAN: Objection. 03:29:03

THE WITNESS: I don't have an assessment or whether it's important or not. I understand that the class reps were not chosen to be representative of the types of damages that consumers were experiencing, which is why I've studied the population of proposed class members much in the same way that Ms. East and Mr. Levine have. 03:29:14

BY MR. RIFFEE:

Q. If you had a sample -- or if you have a sample here of available set of proposed class representatives and class members who have provided discovery, do you think -- would it not impact your opinion if you were to review their discovery responses, their documents, and those discovery responses and documents indicated that the majority of them did not incur borrowing costs or interest rates at the 20 percent APR that you've used to calculate consequential damages? 03:29:25 03:29:42

MS. CHAN: Objection. Ambiguous. Assumes facts. Incomplete hypothetical. 03:29:57

THE WITNESS: I'd have to look at the responses to see how those responses indicated some level of harm, and what the magnitude of harm would be, and whether or not the cost of borrowing was a reasonable representation of that level of harm. 03:30:15

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

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

MS. CHAN: Objection. Asked and answered.

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

BY MR. RIFFEE:

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

MS. CHAN: Objection.

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

economy.

So it doesn't -- my analysis doesn't necessitate, again, that everyone had a credit card. My analysis looks to the most common form of borrowing. I think the data in several of these 03:32:43 reports indicate that over 75 percent of Americans have credit cards, so it's very common form of borrowing, and it represents a reasonable approximation.

I selected 20 percent. I think we can see 03:33:00 that different types of consumers have higher rates. I observed that Ms. Levine came to a very similar answer -- Mr. Levine as well -- excuse me -- Mr. -- Ms. East and Mr. Levine came to very similar answers. 03:33:21

BY MR. RIFFEE:

Q. Okay. Did you assess whether or not 75 percent of the -- or do you know the percentage of the proposed class members who actually had and utilized credit cards during this period? 03:33:31

A. I don't have that specific data point. I'm relying upon data for large groups of consumers indicating that con- -- credit cards were commonly used. I think I cited some of the studies.

Q. And you said 20 percent APR is meant to be 03:33:48

a mean, an estimate. So a mean necessarily means that there are a -- many proposed class members who would have had borrowing costs or interest rates below the 20 percent APR; correct?

MS. CHAN: Objection. 03:34:05

THE WITNESS: I said it -- I said it was a median, actually.

There were other outcomes that would have been more expensive than the use of a credit card rate, is what I was saying. 03:34:17

BY MR. RIFFEE:

Q. And there would also be outcomes that were less expensive than the use of a credit card rate too; correct?

A. Yes. And the median captures that. 03:34:23

Q. So you'd agree that when you're con- -- or calculating consequential damages in Schedule 1 for each of these proposed class members, your calculations would provide consequential damages to some number of individuals below that median who 03:34:39 actually had less or significantly less consequential damage as a result of the point when they were -- or during the period when they were without access to the funds?

MS. CHAN: Objection. 03:34:56

THE WITNESS: I don't know that any would be significantly less. I think it's an appropriate estimation to calculate class-wide damages in the aggregate, and it's typical of a median -- median class member on that basis. 03:35:14

BY MR. RIFFEE:

Q. And your belief -- are you offering a legal opinion as to whether or not it's appropriate to calculate class-wide damages in the aggregate -- aggregate? 03:35:28

A. No. I'm offering an economic opinion.

Q. All right.

If you go Paragraph 42 in your report, it says that one of the bases for your consequential harm opinion in your opinion that proposed members 03:35:45 had to turn to credit cards to cover --

THE COURT REPORTER: Counsel, if you can slow down, please.

MR. RIFFEE: Sure.

BY MR. RIFFEE: 03:35:49

Q. Is your -- your opinion that proposed class members had to turn to credit cards to cover your expenses if your belief that the loss of this replacement income was particularly impactful because consumers who lost their job during the 03:36:00

[redacted]

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

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

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

BY MR. RIFFEE:

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

level prior to becoming unemployed regarding, whether or not they had other credit card account, regarding whether or not they had other checking or savings accounts -- would it surprise you if that information was not provided to Bank of America as -- by EDD or as part of their participation in the EDD program? 03:48:11

A. I don't know what information the bank had.

Q. Okay. Do your consequential harm methodologies and your proposed interest rates for calculating consequential harm consider the expansion of other COVID-era benefits that were available to proposed class members and just individuals as a whole? 03:48:21 03:48:41

MS. CHAN: Objection. Vague.

THE WITNESS: My analyses consider the circumstances of the pandemic, the time frame at which proposed class members experienced a harm. So during that time period, I'm aware that there were enhanced benefits, but, again, I'm looking to tailor the analysis to the specific circumstances of the proposed class members, including the information we've gone through for a few minutes now that's laid out in Paragraphs 40 to 43 of my report. 03:48:57 03:49:18

[redacted]

BY MR. RIFFEE: 04:10:27

Q. Do you know if this plaintiff was deposed?

A. I do not.

Q. Okay. Did you review the deposition testimony of any of the individual plaintiffs or class representatives to assess whether or not they 04:10:35

were actually harmed or had to pay any interest whatsoever while they were without funds in their accounts, or claims?

MS. CHAN: Objection. Asked and answered.

THE WITNESS: No, I did not. 04:10:46

MR. RIFFEE: All right. Let's go off the record and take break.

THE VIDEOGRAPHER: Okay. This marks the end of Media Unit 4. We are going off the record. The time is 4:10 p.m. 04:11:00

(Short recess taken.)

THE VIDEOGRAPHER: This marks the beginning of Media Unit 5. We are going back on the record. The time is 4:26 p.m.

BY MR. RIFFEE: 04:26:52

Q. Thank you. Welcome back again.

A. Thank you.

Q. So your consequential harm -- or consequential damages methodology, it assumes that every proposed class member in the claim denial, 04:27:02 credit rescission, account freeze or EMV chip classes borrowed at a -- or -- or was harmed in an amount that equates to a 10 or 20 percent interest rate for the full amount -- applied to the full amount of their claim for their account balance; 04:27:23

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

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

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

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

MS. CHAN: Objection. Incomplete hypothetical.

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

BY MR. RIFFEE:

Q. Yeah. 04:37:33

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

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

MS. CHAN: Objection. Incomplete hypothetical.

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

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

BY MR. RIFFEE:

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

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

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

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

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

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

MS. CHAN: Objection.

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

Mr. Levine's analysis.

BY MR. RIFFEE:

Q. But the only way that you measure harm in your methodology in your report is based on the 20 percent interest rate, which you equate to a credit card -- or credit card utilization; correct? 04:40:08

MS. CHAN: Objection.

THE WITNESS: I measure it in that way as an analog for the types of harm the consumers were experiencing during the time of a claim denial, for example. 04:40:21

BY MR. RIFFEE:

Q. Is it your opinion that every proposed class member in the claim denial, credit rescission, EMV chip classes -- that if they had a claim that was denied for less than 30 days, that they could not have paid off and that they incurred interest charges because of that 30-day period when they were without funds -- 30-day or less period when they were without funds? 04:41:01 04:41:21

A. I've said this repeatedly: It doesn't necessitate that they incurred credit-card-related interest. It is a measurement of the harm incurred by a class member during this period of time, using the most common form of borrowing. 04:41:38

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

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

MS. CHAN: Objection. Misstates testimony.

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

MR. RIFFEE: All right.

Let's mark as Exhibit 10, Tab 13.

THE COURT REPORTER: 13?

MR. RIFFEE: Yes.

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

So I would not say it's duplicative.

Q. So in the scenario where the claim denial, credit rescission, and EMV chip classes were all able to recover damages, would you agree that in that scenario, the principal amount damages that you calculated for the claim denial and credit rescission classes would be duplicative of the EMV chip principal amount damages and would need to be de-duplicated? 06:34:50

MS. CHAN: Objection. 06:35:10

THE WITNESS: In the scenario that I think you're conveying, yes. And that's why I describe it, my approach, in that way.

BY MR. RIFFEE:

Q. Because it's based on the same claims that are the subject of the principal amount for the claim denial and credit recission classes; right? 06:35:19

A. Same claim but different alleged harm.

Q. Same principal amount balance based on the claim amount, but different alleged harm; correct? 06:35:30

A. That's my understanding.

Q. So you're not proposing that if the claim denial and EMV chip class members were able to recover damages, they would be able to receive the principal amount of their damages twice based on 06:35:43

both their claim denial and EMV chip class --
A. I am not -- not make --
THE COURT REPORTER: Wait. Can you finish the question, please?
MR. RIFFEE: We've done pretty good not doing that today. 06:35:54
THE WITNESS: He -- he paused.
You done?
MR. RIFFEE: I was done.
THE COURT REPORTER: I didn't get the rest of the question. 06:36:07
MR. RIFFEE: Classes, I think, was the rest of the question. But I'll just restate it.
BY MR. RIFFEE:
Q. So I just want to confirm: You're not com- -- proposing that if the claim denial and EMV chip classes were both able to recover damages, that they would receive the principal amount of their damages twice, based on the denial of their claim; correct? You would offset so you recovered once? 06:36:11 06:36:26
A. That's correct. If both classes or some combination of two classes were awarded.
Q. And the same would be the case for the credit rescission proposed class and the EMV chip class; is that right? 06:36:40

A. That's correct.

Q. Are there any other proposed class damages that your methodology would calculate damages that you think would need be disaggregated or de-duplicated if multiple proposed classes were awarded damages? 06:36:53

A. The -- the ones that come to mind I'd have -- I'd have to look at are in the claim denial class. If one card alias ID has multiple claims that are overlapping in the same period, then need to look at the interest accumulation periods to make sure they're not over- -- if they're overlapping. 06:37:17

Q. Have you attempted to do that, sitting here today, or does your Schedule 1 of your report attempt to do that de-duplication of consequential damages or interest award for a person who had multiple claims? 06:37:34

A. I have -- all the data is in Schedule 1 to do it. I haven't carried out the calculation until an award is made, because I'd need to understand the terms of an award. 06:37:51

Q. So, for example, in the table under Paragraph 50 of your report for the claim denial class, where you calculate the cost of inability to access UI funds, that number does not reflect 06:38:14

CERTIFICATE OF REPORTER

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

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

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

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

Further, that if the foregoing pertains to the original transcript of a deposition in a federal case, before completion of the proceedings, review of the transcript [X] was [ ] was not requested.

In witness whereof, I have hereunto subscribed my name.

Dated: June 4, 2025.

Hanna Kim, CLR, CSR No. 13083