

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

--oOo--

IN RE: BANK OF AMERICA

CALIFORNIA UNEMPLOYMENT

BENEFITS LITIGATION

Case Number:

21-MD-02992-GPC-MSB

_____/

This document relates
to All Actions

_____/

VIDEO-RECORDED DEPOSITION OF DAVID I. LEVINE, Ph.D.
SAN FRANCISCO, CALIFORNIA
WEDNESDAY, MAY 28, 2025

Reported by:

Anrae Wimberley, CSR No. 7778

Job No. 7309212

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HIGHLY CONFIDENTIAL - UNDER PROTECTIVE ORDER

Transcript of video-recorded deposition
of DAVID I. LEVINE, Ph.D., taken at Goodwin Procter
LLP, 525 Market Street, 31st Floor, San Francisco,
California 94105, and also on Veritext Virtual Zoom,
beginning at 9:27 a.m. and ending at 3:45 p.m. on
Wednesday, May 28, 2025, before Anrae Wimberley,
Certified Shorthand Reporter No. 7778.

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11 Also present:

12 CAMERON TUTTLE, Videographer

13 VERITEXT LEGAL SOLUTIONS

14 -- oOo --

I N D E X

EXAMINATION BY:	PAGE
Mr. Levenberg	8

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E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
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Exhibit 1	Expert Report of Dr. David I. Levine, dated March 4, 2025; 41 pages	15
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Exhibit 2	Expert Class Certification Report of Greg J. Regan, CPA/CFF, CFE, dated August 29, 2024; 76 pages	35
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Exhibit 3	Third Amended Master Consolidated Complaint; 266 pages	83
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Exhibit 4	Plaintiff Stephanie Moore's Supplemental Objections and Responses to Bank of America, N.A.'s First Set of Interrogatories; 42 pages	90
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Exhibit 5	Expert Report of Professor Justin McCrary, Ph.D., dated April 4, 2025; 100 pages	95
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Exhibit 6	Plaintiff Kuang Ting Chong's Supplemental Objections and Responses to Bank of America, N.A.'s First Set of Interrogatories; 40 pages	99
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REPORTER'S NOTE: All quotations from exhibits are reflected in the manner in which they were read into the record and do not necessarily indicate an exact quote from the document.

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1 WEDNESDAY, MAY 28, 2025;

2 SAN FRANCISCO, CALIFORNIA;

3 9:27 A.M.

4 - - -

5 THE VIDEOGRAPHER: Good morning. We are going 09:27:52
6 on the record. The time is 9:27 a.m. on May 28th,
7 2025.

8 Please note that the microphones are
9 sensitive, may pick up whispering and private
10 conversations. Please mute your phones at this 09:28:08
11 time. Audio and video recording will continue to
12 take place unless all parties agree to go off the
13 record.

14 This is Media Unit 1 of the video-recorded
15 deposition of Dr. David Levine taken by counsel for 09:28:22
16 defendant in the matter of In Re: Bank of America
17 California Unemployment Benefits Litigation, filed
18 in the United States District Court, Southern
19 District of California, San Diego Division, Case
20 No. 21-MD-02992-GPC-MSB. 09:28:44

21 The location of the deposition is
22 525 Market Street, 31st Floor, San Francisco,
23 California 94105.

24 My name is Cameron Tuttle representing
25 Veritext, and I'm the videographer. I am not 09:29:11

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1 authorized to administer an oath. I am not related 09:29:16
2 to any party in this action nor am I financially
3 interested in the outcome.

4 If there are any objections to proceeding,
5 please state them at the time of your appearance. 09:29:25
6 Counsel will now state their appearances and
7 affiliations for the record beginning with the
8 noticing attorney.

9 MR. LEVENBERG: Good morning. This is Keith
10 Levenberg with Goodwin Procter representing Bank of 09:29:35
11 America.

12 MS. BRYN: Good morning. Laura Bryn, also
13 representing Bank of America.

14 MS. HUNSICKER: I'm Caroline Hunsicker with
15 Altshuler Berzon for the plaintiffs. 09:29:46

16 MS. CHAN: Connie Chan from Altshuler Berzon on
17 behalf of the plaintiffs.

18 THE VIDEOGRAPHER: Will the court reporter
19 please introduce yourself and administer the oath to
20 the witness. 09:29:57

21 THE REPORTER: We are on the record. My name
22 is Anrae Wimberley, CSR No. 7778, and I will now
23 swear in the witness.

24 //

25 // 09:30:01

1 DAVID I. LEVINE, PH.D., 09:30:01
2 sworn in personally as a witness by the Certified
3 Shorthand Reporter, testified as follows:
4 EXAMINATION
5 BY MR. LEVENBERG: 09:30:01
6 Q. State your name.
7 A. David Levine.
8 Q. And you've been retained by plaintiffs to
9 offer an expert opinion in this case?
10 A. Yes. 09:30:32
11 Q. Have you had a deposition taken before?
12 A. Yes.
13 Q. About how many times have you previously
14 sat for a deposition?
15 A. Three or four. 09:30:40
16 Q. When was the last time?
17 A. A dozen or 15 years ago, I think.
18 Q. Okay. So I'll go through some of the
19 things, which you've probably already heard, even
20 though it's been a while. 09:30:57
21 I'll ask the questions. Your attorney may
22 or may not object to those questions, but unless
23 your attorney tells you not to answer them, you
24 should answer them.
25 Does that make sense to you? 09:31:06

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1 appropriate way to represent classwide harm." 11:38:48

2 Describe what you mean by "aggregate
3 measure of harm."

4 A. The total harm suffered by a group.

5 Q. And do you need to have information about 11:39:17
6 the harm suffered by individual members of the group
7 to form an opinion about the total harm suffered by
8 the group?

9 MS. HUNSICKER: Objection; vague.

10 THE WITNESS: Can you ask that again? 11:39:41

11 You mean individuals as opposed to
12 having . . .

13 BY MR. LEVENBERG:

14 Q. If you have information about the
15 aggregate measure of harm for a group, can you use 11:39:50
16 that to draw conclusions about the harms suffered by
17 individual members of the group?

18 MS. HUNSICKER: Objection; vague.

19 THE WITNESS: So the method I'm proposing is to
20 say that this credit card interest rate is a 11:40:10
21 conservative lower bound on the opportunity cost of
22 funds.

23 My expectation is one would then take the
24 individual claims amounts and durations to create a
25 damage per person. 11:40:30

1 Is that what you're asking? 11:40:34

2 I'm not sure what you're asking.

3 BY MR. LEVENBERG:

4 Q. Well, that is helpful.

5 So I guess let's back up a little. Tell 11:40:42
6 me how you would propose to arrive at the aggregate
7 measure of harm.

8 A. If I can find opportunity cost to funds --
9 a lower bound on the opportunity cost to funds for
10 the vast majority of the class, and we apply that to 11:41:11
11 the total amount of UI payments that were delayed
12 times their delay, we would get an aggregate measure
13 of harm.

14 Q. Okay. And that aggregate measure of harm
15 is basically just the sum total of all individual 11:41:31
16 harms?

17 MS. HUNSICKER: Objection; confusing.

18 THE WITNESS: It is a conservative lower bound
19 on the sum of the individual harms is what it's
20 intended to create. 11:41:51

21 BY MR. LEVENBERG:

22 Q. Can your method be used to measure the
23 individual harms suffered by any individual class
24 member?

25 MS. HUNSICKER: Objection; outside the scope of 11:42:01

1 designed to create a conservative lower bound on an 11:50:12
2 interest rate that one could then multiply by an
3 amount of missing -- of delayed funds times the
4 duration of the delay and create an estimate of
5 harms for individuals. 11:50:31

6 But it's designed to create an aggregate
7 measure being a conservative lower bound that
8 applies to the vast majority of the class.

9 Is that responsive to your question?

10 There's many -- I don't know what you mean 11:50:48
11 by individual -- I mean --

12 BY MR. LEVENBERG:

13 Q. Well, it is what it is.

14 A. -- it's what it is designed for.

15 Q. It is a helpful response, but I can't stop 11:50:55
16 asking questions, so I'm going to keep going.

17 So should I interpret that to mean the
18 method was designed to create an aggregate measure
19 of harm for a class of 109,000 people; is that fair?

20 A. Even though I use that number, I forget 11:51:14
21 exactly which, but that was part --

22 Q. Whatever that number is, I know it's --

23 A. For more than 100,000 people, yes.

24 Q. Could that method also be used to create
25 an aggregate measure of harm for a class of 50,000 11:51:29

1 people? 11:51:33

2 MS. HUNSICKER: Objection; incomplete

3 hypothetical, confusing.

4 THE WITNESS: Yes.

5 BY MR. LEVENBERG: 11:51:42

6 Q. Could it be used to create an aggregate
7 measure of harm for a class of 100 people?

8 MS. HUNSICKER: Same objection; incomplete,
9 confusing.

10 THE WITNESS: As members get smaller, reliance 11:51:55
11 on averages gets more challenging and sampling
12 variation, random errors, and things like that,
13 become more important.

14 So as -- for 50,000, it's easy, and for
15 numbers at 100 and below, one has to be more 11:52:35
16 careful, so I would need to know a lot more.

17 BY MR. LEVENBERG:

18 Q. Okay. And could it be used to create an
19 aggregate measure of harm for a class of one person?

20 MS. HUNSICKER: Objection; incomplete. 11:52:48

21 THE WITNESS: This wouldn't be how I would
22 approach that problem.

23 BY MR. LEVENBERG:

24 Q. Okay.

25 All right. I think we are almost at our 11:52:54

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript (X) was () was not requested.

16 I further certify that I am neither
17 financially interested in the action nor a relative
18 or employee of any attorney of any party to this
19 action.

20 IN WITNESS WHEREOF, I have this date
21 subscribed my name.

22 Dated: June 11, 2025

23
24 

25 ANRAE WIMBERLEY, CSR No. 7778