# EXHBIT B

# FILED PROVISIONALLY UNDER SEAL WITH REDACTIONS PURSUANT TO STIPULATED PROTECTIVE ORDER

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

**SAN DIEGO DIVISION**

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| *In re Bank of America California Unemployment Benefits Litigation,* | Case No. 3-21-md-02992-GPC-MSB |
| This Document Relates to All Actions | |

**EXPERT CLASS CERTIFICATION REPORT OF**

**GREG J. REGAN, CPA/CFF, CFE**

**August 29, 2024**

FILED PROVISIONALLY UNDER SEAL
PURSUANT TO STIPULATED PROTECTIVE ORDER

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# I. INTRODUCTION

## A. Summary of Plaintiffs' Allegations

1. Class Plaintiffs Kuang Ting Chong, Candace Koole, Lindsay McClure, Azuri Moon, Stephanie Moore, Roland Oosthuizen, Vanessa Rivera, Michael Willrich, and Alex Yuan (collectively, "Plaintiffs") brought this proposed class action against Defendant Bank of America, N.A. ("Bank of America" or "Bank") on behalf of themselves and all other similarly situated individuals whose California unemployment and other public benefits were paid through debit cards issued by Bank of America.[1]

2. The California Employment Development Department ("EDD") administers programs that provide unemployment insurance ("UI") and state disability insurance (including disability insurance and paid family leave) benefits ("EDD benefits") to Californians.[2] In 2010, EDD contracted with Bank of America to provide Bank-administered prepaid debit cards ("EDD debit cards") through which individuals entitled to receive EDD benefits could access those benefits ("EDD cardholders").[3]

3. Plaintiffs allege that, during the Covid-19 pandemic, Bank of America implemented policies that deprived Plaintiffs of EDD benefits to which they were lawfully entitled, including by implementing an automated Claim Fraud Filter ("CFF")[4] that it used to

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[1] Second Amended Master Consolidated Complaint ("SAMCC") 1-2.

[2] *Id.* ¶¶ 1, 38; *see also* Emp. Dev. Dep't (EDD), State of California, *About Our Branches*, https://edd.ca.gov/en/about_edd/about_edd/.

[3] *Id.* ¶¶ 2, 39; *see also* Ex. 22 at 5. In this report, "Ex." refers to exhibits attached to the Declaration of Connie K. Chan in Support of Plaintiffs' Motion for Class Certification ("Chan Decl."), which are also listed in Plaintiffs' concurrently filed Index of Exhibits.

[4] I understand that, beginning on approximately September 28, 2020, Bank of America had a practice of applying its Claim Fraud Filter to unauthorized-transaction claims submitted by EDD cardholders, which Plaintiffs allege resulted in the improper denial of the class members' unauthorized transaction claims and other harms. *See, e.g.*, SAMCC ¶ 89. The Claim Fraud Filter was applied by the Bank to accounts associated with state unemployment programs. *See* Ex. 19

summarily close or deny unauthorized transaction claims made by EDD cardholders,[5] to rescind permanent credits previously issued to EDD Cardholder accounts,[6] and to freeze EDD Cardholder accounts cutting off access to the EDD benefits.[7] Plaintiffs further allege that the Bank failed to maintain adequate levels of customer service needed to handle EDD cardholders' unauthorized transaction claims,[8] and that Bank of America failed to take reasonable measures to secure their EDD Cardholder accounts by issuing EDD debit cards without industry-standard EMV security chips.[9]

4. I understand that Plaintiffs and class members are filing a motion for class certification.[10] I further understand that Plaintiffs and class members belong to one or more of the following classes, each of which is ascertainable from the Bank's records, as explained herein:[11]

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(Deposition of the Bank's Rule 30(b)(6) Designee Jennifer Lennon, dated February 23, 2024 ("Lennon Tr.") 75:22-76:7.

[5] SAMCC ¶¶ 89-91.

[6] *Id.* ¶ 92

[7] *Id.* ¶¶ 93-96.

[8] *Id.* ¶¶ 97-105.

[9] *Id.* ¶ 69.

[10] As discovery in this matter continues, my understanding of the composition of the Classes may be refined further.

[11] Excluded from each Class is any person whom the Bank has determined, pursuant to its Remediation Plan with the United States Consumer Financial Protection Bureau (CFPB) [redacted] *Id.* at -102555. Also excluded from each Class is any person whose Claim or Account the Bank closed, in whole or in part, because the State of California requested that the Bank close that person's Claim or Account.

| No. | Class | Class Definition |
|---|---|---|
| 1 | Claim Denial | All Bank of America EDD cardholders who notified the Bank that an unauthorized transaction had occurred on their Bank of America EDD debit card account ("Claim") at an automated teller machine ("ATM"), and whose Claim the Bank denied or closed at any time from September 28, 2020 through June 8, 2021, based solely on Indicator 1 of the Bank's CFF. |
| 2 | Credit Rescission | All Bank of America EDD cardholders who received permanent credit from the Bank in connection with their Claim, which credit the Bank rescinded at any time from September 28, 2020 through June 8, 2021, based solely on Indicator 1 of the Bank's CFF. |
| 3 | Account Freeze | All Bank of America EDD cardholders whose EDD debit card account ("Account") the Bank froze at any time from September 28, 2020 through March 18, 2021, based solely on Indicator 1 of the Bank's CFF, and whose Account the Bank (i) subsequently unfroze, or (ii) subsequently converted from frozen to blocked status on or after March 18, 2021, and then unblocked. |
| 4 | Customer Service | All members of the Claim Denial Class and/or the Credit Rescission Class who telephoned the Bank's customer service phone number for Bank of America EDD cardholders at any time between September 13, 2020 and November 21, 2020, inclusive, and whose telephone call was routed to the Bank's Claims Call Center. |
| 5 | EMV Chip | All members of the Claim Denial Class and/or the Credit Rescission Class whose EDD debit card did not include an EMV chip prior to June 9, 2021. |

### B. Nature of My Assignment

5. My firm, Hemming Morse, LLC ("HM"), was retained by Plaintiffs' counsel in *In re Bank of America California Unemployment Benefits Litigation*, Case No. 3-21-md-02992-GPC-MSB. I have been retained to evaluate appropriate methodologies to measure the impact on each Class of the Bank's policies and practices, as alleged by Plaintiffs, of: (1) denying EDD cardholders' unauthorized transaction claims without investigation or issuance of provisional credit, based on the results of the Bank's "Claim Fraud Filter"; (2) rescinding previously issued permanent credits on EDD Cardholders' unauthorized transaction claims, based on the Bank's retroactive application of its Claim Fraud Filter; (3) freezing the accounts of EDD cardholders who submitted unauthorized transaction claims, based on the results of the Claim Fraud Filter; (4) denying reasonable customer service to EDD cardholders seeking assistance with their unauthorized transaction claims during certain time periods; and (5) issuing EDD cardholders

debit cards that did not include an EMV chip prior to July 2021. Specifically, I have been asked to provide methodologies to calculate classwide damages available to each of the following five Classes, which I have summarized in the table below and described in the related sub-sections of this report:[12]

| Class | Claim | Damages Sought |
|---|---|---|
| Claim Denial | EFTA[13] and Regulation E[14] | Actual damages + Statutory damages + Treble Damages |
| | Breach of Fiduciary Duty | Actual damages + Disgorgement + Punitive damages |
| | Breach of the Implied Covenant of Good Faith | Actual damages + Disgorgement + Punitive damages |
| | Negligence | Actual damages + Disgorgement |
| | UCL | Restitution |
| Credit Rescission | EFTA and Regulation E | Actual damages + Statutory damages + Treble damages |
| | Due Process | Actual damages + Punitive damages |
| | Breach of Fiduciary Duty | Actual damages + Disgorgement + Punitive damages |
| | Breach of the Implied Covenant of Good Faith | Actual damages + Disgorgement + Punitive damages |
| | Negligence | Actual damages + Disgorgement |
| | UCL | Restitution |
| Account Freeze | Due Process | Actual damages + Punitive damages |
| | Breach of Fiduciary Duty | Actual damages + Disgorgement + Punitive damages |
| | Breach of the Implied Covenant of Good Faith | Actual damages + Disgorgement + Punitive damages |
| | Negligence | Actual damages + Disgorgement |
| | UCL | Restitution |
| Customer Service | Breach of Fiduciary Duty | Actual damages + Disgorgement + Punitive damages |
| | Breach of the Implied Covenant of Good Faith | Actual damages + Disgorgement + Punitive damages |

[12] I have not been asked to calculate punitive damages at this time. Although I have also not been asked to calculate restitution for Plaintiffs' Unfair Competition Law claim, restitution could be calculated using the same methodologies described for the Claim Denial, Credit Recission, and Account Freeze classes below.

[13] Electronic Funds Transfer Act ("EFTA"), 15 U.S.C. §§ 1693(a)-(r).

[14] 12 C.F.R. pt 1005. I understand that the Bank represented to EDD that it would comply with Regulation E requirements and timelines. *See* Ex. 22 at 199.

| Class | Claim | Damages Sought |
|---|---|---|
| | Negligence | Actual damages + Disgorgement |
| EMV Chip | CCPA | Actual damages + Statutory damages |
| | Breach of Fiduciary Duty | Actual damages + Disgorgement + Punitive damages |
| | Negligence | Actual damages + Disgorgement |

### C. Summary of Opinions

6. I understand that each of Plaintiffs' class definitions reference "Indicator 1" of the Bank's Claim Fraud Filter ("CFF"). The Bank applied Indicator 1 to all Claims submitted or pending disposition at any time between September 28, 2020 and June 8, 2021 that involved an unauthorized [redacted]."[15] The Bank has explained that Indicator 1 applied to Claims involving, in whole or in part, an unauthorized ATM withdrawal (*i.e.*, [redacted]").[16] Plaintiffs allege that the Bank denied Claims, rescinded permanent credits, and froze EDD cardholder accounts based solely on its application of Indicator 1.[17]

7. The paragraphs below summarize my present opinions for each class. Each of these opinions is described in further detail in a related section below:[18]

#### 1. <u>Claim Denial Class:</u>

8. Actual damages may be calculated on a classwide basis as follows. The principal amount of damages equals the amount of the Plaintiffs' and class members' claims that the Bank

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[15] Ex. 49 Bank of America's Responses and Objections to Plaintiff Yick's Fourth Set of Interrogatories ("4th Rogs"), No. 28.

[16] *See* Ex. 17 (Deposition of Bank's Rule 30(b)(6) Designee Michael Letson, ("Letson Tr.") 92:15-94:5 [redacted]; Ex. 145 at -125186-87 ([redacted] Ex. 50 ("[redacted]").

[17] SAMCC ¶¶ 89-96.

[18] For purposes of my analysis, I assume that Plaintiffs will establish liability based on their allegations.

denied based on Indicator 1 of its CFF, which data is available in Bank records that have been produced to Plaintiffs in this litigation. Consequential damages resulting from loss of access to this principal amount resulting from the Bank's denial of claims based on CFF Indicator 1 can be calculated using either of two alternative methodologies. *First*, those damages can be calculated by applying to the principal amounts (*i.e.*, the claim amounts) a compound interest rate that reflects the time value of money for this population of cardholders, based on the total length of time the class members were denied access to those funds, which data is also available in Bank records that have been produced to Plaintiffs in this litigation. A compound interest rate is a standard way of calculating the harm resulting from denial of access to funds. *Second*, damages can be calculated based on the financial harms experienced by these EDD Cardholders as a result of the Bank's denial of their claims. In circumstances where funds should have been available, but were unavailable due to the Bank's actions, these EDD cardholders would have needed to obtain alternate funds, incurring associated costs in doing so. In addition, due to the unexpected unavailability of their funds, the EDD cardholders in these circumstances would likely have incurred late or overdraft fees. Together, the costs incurred by EDD cardholders constitute my calculation of consequential damages under this alternative methodology. These calculations are explained in further detail in §§ II-IV below. This second methodology, which resembles the methodology the Bank itself used in calculating consequential harm payments to EDD cardholders under the Remediation Plan it developed pursuant to the CFPB and OCC Consent Orders, yields a similar sum of damages to the first methodology of using a compound interest rate.

9. Treble damages under EFTA, 15 U.S.C. §1693f(e), can be calculated on a classwide basis by simply multiplying each class member's actual damages by three.

10. Statutory damages under EFTA, 15 U.S.C. §1693m(a)(2)(B), can likewise be calculated on a classwide basis in accordance with the statute, which provides for statutory damages of up to $500,000 per violation in a class action. The aggregate award of statutory

damages can be allocated per capita (providing all class members an equal share) or pro rata among class members in proportion to the value of their actual damages.

11. Disgorgement can be calculated based on the Bank's records. Plaintiffs and the class seek disgorgement of profits that the Bank earned on the claim amounts that the Bank withheld from Plaintiffs and the class based on its Claim Fraud Filter. The disgorged profits can be allocated per capita or pro rata among class members in proportion to the value of their actual damages.

### 2. Credit Rescission Class:

12. Actual damages can be calculated on a classwide basis as follows. The principal amount of damages equals the amount of the claim credit that the Bank rescinded based on Indicator 1 of its Claim Fraud Filter, which data is available in Bank records that have been produced to Plaintiffs in this litigation. Consequential damages can be calculated using the same two alternative methodologies described above with respect to the Claim Denial class.

13. Treble damages under EFTA, 15 U.S.C. §1693f(e), can be calculated on a classwide basis by simply multiplying each class member's actual damages by three.

14. Statutory damages under EFTA, 15 U.S.C. §1693m(a)(2)(B), can likewise be calculated on a classwide basis in accordance with the statute, which provides for statutory damages of up to $500,000 per violation in a class action. The aggregate award of statutory damages can be allocated per capita or pro rata among class members in proportion to the value of their actual damages.

15. Disgorgement can be calculated based on the Bank's records. Plaintiffs and the class seek disgorgement of profits that the Bank earned on the rescinded claim credit amounts that the Bank withheld from Plaintiffs and the Class based on its Claim Fraud Filter. The

disgorged profits can be allocated per capita or pro rata among class members in proportion to the value of their actual damages.

**3. <u>Account Freeze Class:</u>**

16. Actual damages can be calculated on a classwide basis as follows. The principal amount of damages equals the amount of funds in Plaintiffs' and class members' accounts to which they were denied access when the Bank froze their accounts based on Indicator 1 of its Claim Fraud Filter, which data is available in Bank records that have been produced to Plaintiffs in this litigation. Consequential damages can be calculated using the same two alternative methodologies described above with respect to the Claim Denial class. Further, Account Freeze class members incurred additional time-value-of-money costs because of the delays in obtaining EDD benefits payments after EDD became unable to continue depositing funds into their frozen accounts and had to make subsequent payments by check instead. Those additional consequential damages can be calculated based on information about the length of delay in subsequent benefit payments caused by the Bank's freezing of accounts based on its Claim Fraud Filter.

17. Disgorgement can be calculated based on the Bank's records. Plaintiffs and the class seek disgorgement of profits that the Bank earned on the amounts frozen in their accounts that the Bank withheld from Plaintiffs and the class based on its Claim Fraud Filter. The disgorged profits can be allocated per capita or pro rata among class members in proportion to the value of their actual damages.

**4. <u>Customer Service Class:</u>**

18. Actual damages can be calculated on a classwide basis as follows. An appropriate measure of damages for this class is compensation for the value of Plaintiffs' and class members' lost time spent on hold with the Bank's Claims call center waiting for their call to be answered that was greater than the reasonable wait-on-hold time by industry standards. This calculation can be readily accomplished for all class members. I understand that Plaintiffs' call center expert has analyzed the Bank's call center data during the relevant times and has compared the

"Average Speed to Answer" ("ASA") of the Bank's Claims call center against the industry average ASA, yielding an average excess hold time of 81.75 minutes per call. The Bank's records reflect how many times each class member called during the relevant period. These figures can be multiplied by the applicable minimum wage—or other reasonable metric—to calculate the total value of class members' lost time.

19. Disgorgement can be calculated based on the Bank's records. Plaintiffs and the class seek disgorgement of profits, in the form of avoided costs, that the Bank earned by understaffing its Claims call center, which caused the long wait times that the Customer Service class members endured. The disgorged profits can be allocated per capita or pro rata among class members in proportion to the value of their lost-time actual damages.

**5. <u>EMV Chip Class,</u>**

20. Actual damages can be calculated on a classwide basis as follows. The principal amount of damages equals the amount of funds that were taken from the class member's EDD debit card account through an unauthorized ATM transaction and/or an unauthorized point-of-sale transaction, as reflected in the amount of the class member's claim that the Bank denied based on Indicator 1 of its Claim Fraud Filter, which data is available in Bank records that have been produced to Plaintiffs in this litigation. Consequential damages can be calculated using the same two alternative methodologies described above with respect to the Claim Denial class.

21. Statutory damages under the California Consumer Privacy Act ("CCPA"), Cal. Civ. Code §1798.150(a), can be calculated on a classwide basis in accordance with the statute, which provides for statutory damages ranging from a minimum of $100 to a maximum of $750 per violation, or actual damages, whichever is greater.

22. Disgorgement can be calculated based on the Bank's records. Plaintiffs and the class seek disgorgement of profits, in the form of avoided costs, that the Bank earned by not including EMV chips in its EDD debit cards prior to July 2021 (an estimated $0.39 per card as of

January 2020, according to Bank records). The disgorged profits can be allocated among the class members on a per capita basis.

### D. Qualifications

23. I am a Partner in the Forensic Consulting Services Group of Hemming Morse, LLC.[19] I have been licensed as a CPA in California continuously since 1998. I am also licensed as a CPA in New York. I hold the Certified in Financial Forensics ("CFF") certification from the AICPA, which is the national professional organization for CPAs. I am also a Certified Fraud Examiner ("CFE"), which is a certification issued by the Association of Certified Fraud Examiners. I obtained my undergraduate degree from Georgetown University and Masters in Business Administration with an emphasis in Corporate Finance from the University of San Francisco.

24. My work in the accounting profession includes experience as an auditor at Ernst & Young LLP, as the Controller of a publicly traded company, and as a consultant. My work as a consultant has involved extensive analysis of various forms of economic damages. Through these roles, I have gained substantial experience working with complex data systems.

25. I have been retained to perform these types of damages analyses in matters involving large companies such as Amazon, Avaya, ASML, Beyond Meat, Cisco, Fitbit, Google, Intuit, and PNC Bank. I have also been retained as an expert by numerous governmental entities such as the Securities and Exchange Commission, the Consumer Financial Protection Bureau ("CFPB") and Attorney Generals for numerous states (*e.g.*, California, Colorado, and Massachusetts). For example, I was retained by the Colorado Attorney General in its investigation of the lending practices of Marlette Funding LLC, a consumer lending company. Strategic Financial LLC also retained me to analyze allegations by the CFPB. Additionally, I

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[19] My expert qualifications, including the testimony I have given, are described in **Appendix A** hereto.

have published numerous peer-reviewed analyses of consumer outcomes in debt settlement programs for the American Association for Debt Resolution.

26. The AICPA has 650,000 members. The AICPA delegates policy-setting in areas in which CPAs are active to nineteen different executive committees.[20] I have served as a member of the AICPA's Forensic & Valuation Services Executive Committee. This nine-member committee establishes professional standards and guidance for practitioners performing consulting services that require the application of forensic accounting or valuation-related methodologies. I was the Chair of the AICPA's Economic Damages Task Force from 2010-2013 and served as a member of this task force through 2020. I continue to regularly present at the AICPA's national forensic and valuation services conference. In 2012, I received the AICPA's Forensic Services Volunteer of the Year, which is the award given annually to a member that has made significant contributions to the advancement of the field of forensic accounting.

27. I am also a member of the California Society of Certified Public Accountants and was the Chair of its statewide Forensic Services Section.

28. The AICPA requires its members to comply with its standards. The AICPA has determined that the services I am performing in this matter are subject to its Statement on Standards for Forensic Services. These standards require me, among other things, to operate with integrity, and to be impartial, intellectually honest, and free of conflicts of interest.

29. My hourly rate is $625 per hour. My compensation is not dependent on the calculations I have made, the opinions I express, or the outcome of this matter. A list of the sources I considered in preparing this report, as required by Federal Rule of Civil Procedure 26(a)(2)(B)(ii), may be found in **Appendix B** to this report, as well as the footnotes herein.

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[20] *See* AICPA & CIMA, *AICPA Board of Directors and Volunteer Committees*, www.aicpa-cima.com/resources/landing/aicpa-governance-and-senior-and-executive-committees.

These sources include documents produced by the Bank, documents that are publicly available including documents published by the Bank, testimony, and written discovery.[21]

30. I am providing this report in support of Plaintiffs' motion for class certification, in accordance with the Court's schedule, and anticipate I may perform further calculations and analysis in the future.[22] This report contains proprietary information designated by the Bank as "CONFIDENTIAL" and "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" under a Stipulated Protective Order entered in the United States District Court for the Northern District of California. Accordingly, no part of this report or its contents may be published without adherence to the applicable legal standards governing such publications.

## II. CLAIM DENIAL CLASS

### A. Identification of Claim Denial Class Members

31. As described in ¶ 4 above, the Claim Denial class consists of all EDD cardholders who gave the Bank notice that an unauthorized transaction had occurred on their EDD Debit Card Account ("Claim") and whose Claim the Bank closed or denied at any time between September 28, 2020 and June 8, 2021 based on the Bank's application of its CFF because the Claim triggered Indicator 1 of the Bank's CFF. Excluded from the class is any person whom the Bank has determined, pursuant to its Remediation Plan under the CFPB Consent Order [redacted]

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[21] In addition, other evidence may be produced that could be relevant to my conclusions, including the testimony and reports of other witnesses. Accordingly, I reserve the right to amend my report and supplement my opinions after considering such evidence, if necessary. For purposes of clarity, the Bank has produced supplemental and/or revised information in response to interrogatory requests. The references to the exhibits to the Bank's interrogatory responses herein should be understood to reference the most recent version of that exhibit, as of the date of this report, unless otherwise noted.

[22] I understand the inquiry into the merits of the case will occur at a later date, at which time I may be called upon to offer further analysis or testimony.

[redacted][23] [redacted][24]

32. The members of this Class are ascertainable from the Bank's records. Specifically, Bank of America produced data from its claims system of record Wadworth, The W, which contains transactional data received from Visa, and data from Global Information Security ("GIS"), that identifies all EDD cardholders whose claims satisfied ("triggered," in the Bank's words) Indicator 1, 2, or 3 of the CFF, and which the Bank then denied based on application of the Claim Fraud Filter, [redacted][25]

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[23] Ex. 74 at -102557.

[24] Ex. 98 (Bank of America's First Set of Responses and Objections to Plaintiff Yick's Seventh Set of Interrogatories ("7th Rogs"), No. 46 and Exhibit 16 thereto (as of April 19, 2024)). In addition to those identified in Exhibit 16, the Bank identified [redacted], who do not appear in Exhibit 16. For purposes of identifying class members and calculating class damages, I have also treated [redacted] as Excluded Cardholders.

[25] Ex.59 (Bank of America's Responses and Objections to Plaintiff Yick's Third Set of Interrogatories ("3rd Rogs"), No. 21); *see also* Ex. 19 (Lennon Tr.) 30:19-31:8, 208:24-209:14, 210:14-212:7.

33. [redacted].[26] [redacted].[27]

[redacted]

34. [redacted].[28]

[redacted]

35. In total, the Bank identified approximately [redacted] unique CardAliasIDs whose claims "triggered" Indicator 1 and did not trigger any other Indicator.[29] [redacted]

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[26] Ex. 19 (Lennon Tr.) 168:17-169:5.

[27] Ex. 59 (3rd Rogs, Revised Exhibit 6, Part 1) ([redacted]). *See also* Ex. 19 (Lennon Tr.) 205:22-207:20 [redacted]

[28] Ex. 146 (1st Rogs, Revised Exhibit 1).

[29] Ex. 59 (3rd Rogs, Revised Exhibit 6, Part 1).

[redacted][31]

36. [redacted][32] Ultimately, the EDD Cardholder claims relevant to the Claim Denial class damages calculations are identified in **Schedule 1**.[33] Although there are other reasonable methods for identifying Claim Denial class members, for purposes of illustrating my methodology to calculate classwide damages, I have presently assumed that the approach in ¶¶ 31-35 is the most reliable method to identify Claim Denial class members.[34]

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[30] For identification of the Credit Recission class, *see infra* ¶ 1-2. There are approximately [redacted] CardAliasIDs with multiple claims each reflecting different circumstances such that the CardAliasID met the criteria for inclusion in both the Claim Denial class and the Credit Recission class. In these cases, the CardAliasID is included in each class only to the extent of underlying relevant claim(s) (*i.e.*, there is no double-counting of claims).

[31] *See* Ex. 98 (7th Rogs, No. 46 and Exhibit 16 thereto).

[32] I understand discovery is ongoing and the identification of the members of this Class will be adjusted as the Bank continues to implement the Remediation Plan. As of the date of this report, at most [redacted] Individual Plaintiffs (*see* SAMCC ¶¶ 286-524) are members of at least one class.

[33] Of this total, there are approximately [redacted] cardholders for which there is no claim data in Revised Exhibit 1 (*i.e.*, the Bank does not appear to have produced sufficient data to calculate damages for these cardholders). Additionally, if printed, Schedule 1 would exceed 1,000 pages. Accordingly, I have attached the first 9 printed pages of Schedule 1 to this report and provided a native copy of the actual schedule to Plaintiffs' Counsel, which I understand they will provide to the Bank's counsel and the Court upon request.

[34] Other methods may be used to identify members of this Class. For example, (1) the data produced by the Bank in Revised Exhibit 6 to the 3rd Rogs at Part 1 may be compared to the

### B. Calculations of Claim Denial Class Damages

#### 1. Principal Amount of Actual Damages

37. The principal amount of damages equals the amount of the class members' claim that the Bank denied based on Indicator 1 of its Claim Fraud Filter. The actual amount of each such denied claim for each cardholder is readily available using data produced by the Bank.

38. Based on the Bank's records, the total dollar value of the Claim Denial class's claims that the Bank denied based solely on Indicator 1 of the CFF, and thus the total principal amount of damages for this class, equals $[redacted]

#### 2. Consequential Damages

39. An EDD cardholder who experienced and reported an unauthorized transaction on their EDD debit card account, which the Bank then wrongfully failed to timely credit, was deprived of the use of their funds. The funds at-issue originated through unemployment insurance from the California EDD, which were designed to replace only 60-70% of the recipient's wages prior to unemployment.[35] Moreover, consumers who lost their jobs during the pandemic and received unemployment insurance tended to earn less than the median wage (*i.e.*, were less likely to have available savings to bridge the time until re-employment).[36]

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Bank's data in Exhibit 9 to the 4th Rogs ([redacted]), (2) the data in Bank of America's Revised Second Supplemental Responses and Objections to Plaintiff Yick's First Set of Interrogatories ("1st Rogs"), No. 2, Revised Exhibit 1 may be compared to the Bank's Exhibit 16, or (3) the Bank's Revised Exhibit 1 may be compared to the Bank's Exhibit 9. I am able to readily perform any of these comparisons.

[35] Emp. Dev. Dep't (EDD), State of California *Disability Insurance Benefit Payment Amounts*, https://edd.ca.gov/en/disability/Calculating_DI_Benefit_Payment_Amounts/.

[36] CFPB, *Consumer Finances During the Pandemic: Insights from the Making Ends Meet Survey*, at 29 (Dec. 2021), https://files.consumerfinance.gov/f/documents/cfbp_making-ends-meet-survey-insights_report_2021-12.pdf.

40. Many Americans already live paycheck-to-paycheck.[37] Accordingly, consumers who no longer received a paycheck due to unemployment were under increased stress prior to being impacted by the Bank's claim denials.[38] A U.S. Department of Labor study performed on unemployment insurance recipients in California found that 97% of recipients in Los Angeles and the Central Valley reported benefits were important to being able to meet their financial obligations.[39] Similarly, the CFPB concluded:

> Unemployment insurance was crucial in keeping unemployed consumers from suffering financially.[40]

41. Consequently, Claim Denial class members were likely to experience financial harm after a denial of the reimbursement of their stolen funds. In my opinion, this harm was most likely to occur in the form of costs associated with obtaining substitute funds (*e.g.*, interest costs), as well as fees associated with late payments or overdrafts.[41]

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[37] For example, a recent study by Payroll.org estimated that 78% of Americans are in this situation. *See* Emily Batdorf, *Living Paycheck to Paycheck Statistics 2024*, Forbes Advisor (Apr. 2, 2024), https://www.forbes.com/advisor/banking/living-paycheck-to-paycheck-statistics-2024/. Another recent study found that 60% of Americans live paycheck-to-paycheck, including Super Prime consumers. *See* LendingClub, *60% of Americans Now Living Paycheck to Paycheck, Down from 64% a Month Ago*, (Feb. 28, 2023), https://ir.lendingclub.com/news/news-details/2023/60-of-Americans-Now-Living-Paycheck-to-Paycheck-Down-from-64-a-Month-Ago/.

[38] *See, e.g.*, Ex. 74 at -102577 ("[redacted]") (emphasis added); Ex. 17 (Letson Tr.) 100:19-22 ("[redacted]").

[39] Mathematica, *A Longitudinal Survey of Unemployment Insurance Recipients in Two Regions in California* at 84 (Jan. 30, 2017), https://www.mathematica.org/publications/a-longitudinal-survey-of-unemployment-insurance-recipients-in-two-regions-in-california. This study found that the average weekly earnings for recipients ranged from $676 to $1,064. *Id.* at 24. Moreover, approximately 75-80% of all recipients had accessible savings less than $5,000. *Id.* at 71.

[40] CFPB, *Consumer Finances During the Pandemic* at 30.

[41] *See, e.g.*, Lindsay Cook, *What are Your Rights if Your Bank Account is Frozen?*, Financial Times (July 23, 2020), www.ft.com/content/8fba7cac-83b3-4df3-a1a7-5b6869516085 ("For

42. Accessing alternative funds would have come at a cost. The amount of that cost was a function of the (1) claim denial amount, (2) time the cardholder could not access those funds, and (3) the applicable interest rate (*i.e.*, amount * time * rate). The actual amount of the denied claim for each cardholder—the first input in the calculation—is readily available using data produced by the Bank (*see* ¶¶ 37-38). The second input, which is the duration of time that funds were inaccessible because of the claim denial, is also readily available using data produced by the Bank (*see* ¶ 34).[42]

43. Accordingly, I used this data to calculate the duration of time applicable to each claim denial as the total number of days from the application of the CFF ("FraudFilterFileDate") to the paid date ("Paid_Date").

44. Consequential damages resulting from cardholders' loss of access to the principal amount described in § II.B.1 resulting from the Bank's Indicator 1 claims denials can be calculated using either of two alternative methodologies as described in the sub-sections below.

***a) Methodology 1***

45. The first methodology is to apply to the principal amounts (*i.e.*, the amount of the CFF-denied claim) a compound interest rate that reflects the time value of money for this

example, the FOS [Financial Ombudsman Service] says if a bank closes a customer's account without giving them enough notice this might mean they fail to honour a cheque, direct debit or standing order payments. It could also lead to a direct loss in the form of interest or late payment fees and there could be indirect losses like 'damage to a customer's reputation or adverse information on their credit file.'"); CFPB*, 2020 Consumer Response Annual Report* at 69–72 (Mar. 2021), https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf (indicating an inability to access an account, trouble using the card, a problem with a purchase or transfer and unexpected or other fees as top issues experienced with prepaid cards); *see* Brief for CFPB as Amicus Curiae Supporting Plaintiff-Appellant at 13, Mohamed v. Bank of America, N.A., 93 F.4th 205 (4th Cir. 2021) (No. 22-1954).

[42] The Bank's data show that the duration of time that funds were inaccessible because of the Banks' claim denial was more than [redacted] of all Claim Denial class members, and more than [redacted] of all class members. Ex. 146 (1st Rogs, No. 2, Revised Exhibit 1).

population of cardholders, based on the total length of time the class members were denied access to those funds.

46. This method is widely accepted as a reasonable methodology for measuring the economic harm caused by a wrongful denial of funds.[43] Courts in the United States have recognized that a plaintiff whose money has been wrongfully taken should not only be reimbursed the principal amount but also be compensated for the lost ability to use their funds when a wrongful act was committed by a defendant.[44]

47. To illustrate my methodology, as described above, I calculated the time value of money to the Plaintiffs based on the amount of the claim over the period the claim was denied. First, I made this calculation using a 10% interest rate, which is consistent with the interest rate applied to judgments in California.[45]

48. The 10% rate likely understates the cost a consumer would have incurred during that same period (*i.e.*, the cost of increased borrowing or the inability to pay down existing debt such as credit card debt). This is because impacted cardholders would have needed to obtain alternative funds to mitigate the inability to access their funds otherwise available in their Bank-

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[43] I was a principal author of the AICPA Practice Aid, *Discount Rates, Risk, and Uncertainty in Economic Damages Calculations*, which addresses these generally accepted financial principles. AICPA & CIMA, *Discount Rates, Risks, and Uncertainty in Economic Damages* (Jan. 1, 2020), https://www.aicpa-cima.com/resources/download/discount-rates-risks-and-uncertainty-in-economic-damages-calculations-or-fvs.

[44] *See, e.g.*, Judicial Council of California Civil Jury Instructions (2022) ("CACI") No. 3935, Prejudgment Interest ("Prejudgment interest is the amount of interest the law provides to a plaintiff to compensate for the loss of the ability to use the funds.").

[45] Cal. Civ. Proc. Code § 685.010.(a)(1) ("Except as provided in paragraph (2), interest accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied."). *See, e.g.*, Cal. Courts Self-Help Guide, *Add Costs and Interest to What's Owed*, https://selfhelp.courts.ca.gov/small-claims/after-trial/collect-money/add-costs-and-interest-whats-owed ("Generally, any unpaid principal balance collects interest at 10%, or 7% if the debtor is a government agency.").

controlled EDD accounts. Credit cards are the most widely used form of consumer credit.[46] As a result, the most likely source of funds accessible to an impacted cardholder would have been increased credit card utilization until the time the Bank credited their accounts for their claim(s).[47] This expectation is consistent with the Federal Reserve's data indicating that lower income consumers increased credit card spending following the onset of the pandemic.[48]

49. The table below summarizes then-applicable credit card interest rates based on consumer credit scores (*i.e.*, the annual percentage rate or "APR"):[49]

| Consumer Type | Credit Score Range | Average APR |
|---|---|---|
| Superprime | 720 or greater | 17.4% |
| Prime | 660 to 719 | 20.8% |
| Near Prime | 620 to 659 | 22.4% |
| Subprime | 580 to 619 | 23.3% |
| Deep subprime | 579 or less | 23.6% |

[46] CFPB, *Consumer Finances During the Pandemic* at 17, 44.

[47] *Mathematica* at xix (indicating recipients' average debt and loan amounts increased, while average savings did not decrease). *See also* CFPB, *Consumer Finances During the Pandemic* at 44 ("Consumers who received some form of pandemic assistance between March 2020 and June 2021 had higher credit card debt and higher utilization levels than those not observed in forbearance or receiving assistance, reflecting higher average levels of financial distress among this group.").

[48] *See, e.g.*, Joanna Stavins, *Credit Card Spending and Borrowing Since the Start of the Covid-19 Pandemic*, Fed. Rsrv. Bank of Bos. (Oct. 19, 2023), https://www.bostonfed.org/publications/current-policy-perspectives/2023/credit-card-spending-and-borrowing-since-the-start-of-the-covid-19-pandemic.aspx ("Although credit card spending and debt have risen among consumers in all income cohorts, the rate of increase has been highest for the bottom-income consumers."). *See also* CFPB, *Consumer Finances During the Pandemic* at 6 (indicating that credit card debt rose when unemployed consumers ceased receiving unemployment insurance benefits).

[49] *See, e.g.*, CFPB, The *Consumer Credit Card Market* at 19, Table 1, and 46-50, Figure 3 (Sept. 2021), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf (showing credit score tiers and APR data, respectively).

50. The average credit score for California consumers is approximately 712 to 722.[50] Consumers with lower incomes, however, receive unemployment insurance at a higher rate than consumers with higher incomes.[51] Additionally, consumer incomes are positively correlated with credit scores (*e.g.*, higher income is associated with a higher credit score and vice versa).[52]

51. Together, this data indicates that the applicable APR for impacted cardholders would have exceeded 20%. Ultimately, though, to be conservative, I selected 20% as the representative APR for the purpose of my second calculation to illustrate the cost of the time value of money. This 20% rate is consistent with my prior experience studying unsecured consumer debt such as credit cards,[53] and lower than APRs associated with alternative lending sources frequently accessed by the impacted consumers.[54]

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[50] *E.g.*, Equifax, *What Is the Average Credit Score by State?*, https://www.equifax.com/personal/education/credit/score/articles/-/learn/average-credit-score-state/ (reporting an average score of 712 in California); Jennifer Streaks, *The Average Credit Score by Age, State, and Year*, Business Insider (Jul. 31, 2024), https://www.businessinsider.com/personal-finance/credit-score/average-credit-score (reporting an average score of 722 in California); Caitlyn Moorhead, *The Average Credit Score in Each State*, Nasdaq (May 6, 2024), https://www.nasdaq.com/articles/the-average-credit-score-in-each-state-see-where-your-state-ranks (same).

[51] Jeff Larrimore, Jacob Mortenson, & David Splinter, *Unemployment Insurance in Survey and Administrative Data*, Fed. Rsrv., https://www.federalreserve.gov/econres/notes/feds-notes/unemployment-insurance-in-survey-and-administrative-data-20220705.html.

[52] American Express, *Average Credit Scores by Age, State, and Income* (Dec. 21, 2022), https://www.americanexpress.com/en-us/credit-cards/credit-intel/credit-score-by-age-state/.

[53] For example, in February 2021, I published a study of economic impacts on consumers in debt settlement programs. My study was peer reviewed by Professor Will Dobbie at Harvard. At that time, I observed that APRs ranged up to 29% for distressed consumers. Greg Regan, *Options for Consumers in Crisis: An Updated Economic Analysis of the Debt Settlement Industry* (Feb. 2021), https://ghllc.com/wp-content/uploads/2021/02/Options-for-Consumers-Mar-2020.pdf.

[54] Fintech companies became an increased source of funding during the pandemic and low- and moderate- income borrowers may have accessed these additional credit sources at higher rates than for traditional products. *See* Ambika Nair & Eldar Beiseitov, *The Role of Fintech in Unsecured Consumer Lending to Low- and Moderate-Income Individuals*, Fed. Rsrv. Bank of N.Y. at 13 (Nov. 2023), https://www.newyorkfed.org/medialibrary/media/outreach-and-education/household-financial-well-being/the-role-of-fintech-in-unsecured-consumer-lending-to-

52. The table below illustrates the two example calculations pursuant to proposed Methodology 1:[55]

| **Claim Denial Class** | **10% Rate** | **20% Rate** |
|---|---|---|
| Claim Amount (*see* § II.B.1) | [redacted] | [redacted] |
| Lost Time Value of Money | [redacted] | [redacted] |
| Total Actual Damages | [redacted] | [redacted] |

***b) Methodology 2***

53. The sub-sections below describe my alternative methodology to calculate the financial harms experienced by cardholders impacted by claim denial. For purposes of this

low-and-moderate-income-individuals. *See also*, Fed. Rsrv. Bank of Cleveland, *Fintech Lending Expands Small Businesses' Options* (July 8, 2020), https://www.clevelandfed.org/publications/research-in-brief/2020/rib-20200709-fintech-lending ("Small businesses that borrow from fintech lenders are much more likely to report encountering high interest rates or less favorable repayment terms than at banks."). I have previously been asked to analyze the consumer lending programs offered by Fintech lenders such as Marlette Funding, Avant, and Easypay for the Colorado and Massachusetts Attorney Generals Offices. In my experience, these lending programs involved APRs substantially in excess of 20%. In addition, consumers may have turned to other alternative sources such as (1) payday lenders, (2) buy now and pay later, or (3) penalty APRs, which typically exceed 25%. The Bank [redacted]. *See* Ex. 147 at -102534. The products available from these alternatives also typically featured APRs that exceeded 20% during the relevant period. *See* CFPB, *What is a Payday Loan?*, (May 28, 2024), https://www.consumerfinance.gov/ask-cfpb/what-is-a-payday-loan-en-1567/ (indicating APRs of almost 400%); Anne Marie Lee, *"Buy Now, Pay Later" Plans Can Rack Up Steep Interest Charges. Here's What Shoppers Should Know*, CBS News (July 24, 2023), https://www.cbsnews.com/news/buy-now-pay-later-loans-interest-rate-fees-tips-what-to-know/ (indicating APRs can reach 36.99%); CFPB, *Consumer Use of Buy Now, Pay Later* at 21 (Mar. 2023), https://files.consumerfinance.gov/f/documents/cfpb_consumer-use-of-buy-now-pay-later_2023-03.pdf (indicating that the alternative credit card cost for Buy Now Pay Later opportunities would be approximately 22-24%). *See, e.g.*, Barry Bridges, *What is Penalty APR and How do You Avoid It?*, Bankrate (Mar. 12, 2024), https://www.bankrate.com/credit-cards/zero-interest/what-is-penalty-apr/#consequences (indicating credit card issuers impose penalty APRs of approximately 29%).

[55] The amounts presented in the table below and other tables in this report for the purpose of illustrating damages may require an offset for amounts that the Bank has paid or presently expects to pay pursuant to the Remediation Plan. These amounts are calculable if and when an award is made in this matter.

methodology, I calculated the financial cost of (1) borrowing substitute funds and (2) late or overdraft fees.[56]

**(1) Cost of the Inability to Access Impacted Funds**

54. As described in the previous section related to Methodology 1, the impacted cardholders would likely have needed alternative funds to mitigate the inability to access their funds otherwise available in their Bank-controlled EDD accounts. The most likely source of credit for these consumers was increased utilization of credit cards (*see* ¶¶ 47-51).

55. Credit card utilization refers to the amount of a consumer's credit line that remains outstanding. For example, if a consumer has a credit limit of $10,000 and an outstanding balance of $6,000, then the consumer has a utilization rate of 60% and 40% of the credit line remains available. The table below presents the CFPB's data on average credit card lines and utilization rates from 2019 to 2022 based on consumer credit type:[57]

| Consumer Type (% of Population) | Average Credit Line | Average Utilization | Average Balance | Remaining Availability |
|---|---|---|---|---|
| Prime Plus (64%) | $27,732 | 20% | $5,611 | $22,120 |
| Prime (16%) | $20,187 | 46% | $9,245 | $10,942 |
| Near-prime (8%) | $10,437 | 63% | $6,569 | $3,868 |
| Subprime (6%) | $5,817 | 74% | $4,315 | $1,502 |
| Deep subprime (7%) | $3,538 | 88% | $3,124 | $414 |

56. As seen in the data above, deep subprime consumers had the least remaining available credit lines. Based on my analysis, the median claim amount for Claim Denial and Credit Recission class members was approximately $[redacted][58] Accordingly, in these circumstances, a deep subprime consumer would have had the capacity to increase utilization for approximately

[56] The Bank's Remediation Plan [redacted] *See* Ex. 74 at -102560-564.

[57] CFPB, *The Consumer Credit Card Market* at 19, Table 1, and 89-92, Figures 21, 23 (Oct. 2023), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2023.pdf.

[58] The average Account Freeze balance was $670.

50% of the claim denial amount (*i.e.*, approximately $900 * 50% or $450).[59] For all other types of consumers, including subprime consumers, the CFPB's data indicates that it would have been possible to increase utilization to 100% of the claim denial amount.[60]

57. Accordingly, to illustrate the calculation of the cost of the inability to access impacted funds, I multiplied the 1) claim denial amount (*see* ¶ 37) by the 2) 50% utilization factor for 3) the time period between the claim denial and payment (*see* ¶¶ 42-43) at 4) a 20% APR (*see* ¶¶ 47-51).

**(2) Cost of Late or Overdraft Fees**

58. Among all consumers, financially distressed consumers, such as those living paycheck-to-paycheck, are most likely to incur late fees.[61] In the circumstances relevant to this matter, it is likely that Claim Denial class members relied on their EDD funds to make timely payments and avoid late fees, but those funds were inaccessible due to the Bank's denial of their claims. As a result, it is likely that the impacted cardholders incurred late fees during the time

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[59] In this instance, the average deep subprime consumer would have been required to take further steps to mitigate the inability to access his or her funds (*e.g.*, reduce spending).

[60] A useful source of information to evaluate the rate of increased credit card utilization would be the Bank's data regarding the rate that EDD cardholders withdrew funds prior to an account freeze. For example, if the average EDD cardholder received average monthly deposits of $1,000 and made average monthly withdrawals of $800, then it would be reasonable to assume the EDD cardholder would need to replace approximately 80% of the inaccessible funds.

[61] CFPB, *Consumer Finances During the Pandemic* at 5 ("Consumers with a large income drop due to unemployment, who had to wait longer than four weeks to receive unemployment insurance benefits, or who never received any, were much more likely to have difficulty paying their bills."). *See also* Lisa L. Gill, *How to Avoid Credit Card Late Fees*, Consumer Reports (Oct. 19, 2023), https://www.consumerreports.org/money/credit-cards/how-to-avoid-credit-card-late-fees-a8219928529/ ("The burden of high late fees appears to fall heavily on communities of color, and people living paycheck to paycheck, who have less income and assets…These sharp, back-end penalties for paying late in effect make credit a lot more expensive for these customers.").

when their funds were unavailable with an increased risk of late fee incidence as the length of time the funds were unavailable extended.[62]

59. The typical consumer uses credit cards.[63] Each month, a consumer experiencing a loss in income, such as a consumer receiving unemployment insurance, is exposed to a late fee on any credit card account. The risk of incurrence of a late fee increases due to factors such as the 1) consumer's credit and 2) the duration of the time that the consumer is denied access to his or her funds (*i.e.*, it becomes increasingly difficult to obtain alternative sources of cashflow). For example, subprime and deep subprime accounts, which were most at-risk of losing employment, have the highest incidence of late fees.[64] Accordingly, to illustrate my methodology, I have assumed that those consumers with a claim denial that persisted for more than thirty days incurred a late fee related to one of their credit cards accounts each month up to six months. [redacted][65]

60. The late fee amount typically escalates if a consumer experiences additional instances of late payments. The CFPB's data indicates that the average first-time late fee was approximately $26 and repeat late fees were $35.[66] I adopt these inputs as the basis for my

[62] This frequency is consistent with other observed data. For example, a 2022 analysis by Forbes determined that subprime consumers incurred approximately 2.5 late fees per year. *See* Katharina Buchholz, 2022 Credit Card Late Fees Cost Consumers Record $15 Billion, Forbes (Mar. 6, 2024), https://www.forbes.com/sites/katharinabuchholz/2024/03/06/2022-credit-card-late-fees-cost-consumers-record-15-billion-infographic/?sh=6c59c946e68f.

[63] CFPB, *The Consumer Credit Card Market* at 89-92, Figures 21, 22.

[64] CFPB, *Credit Card Late Fees* at 2 (Mar. 2022), https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf ("Cardholders with subprime and deep subprime scores are far more likely to incur repeat late fees in a given year than those in higher credit score tiers.").

[65] Ex. 146 (1st Rogs, No. 2, Revised Exhibit 1).

[66] CFPB, *Credit Card Late Fees* at 6.

calculation of the amount of late fees incurred by impacted cardholders. Limiting an analysis of the direct impact of late fees on a consumer is a conservative estimate of this type of harm. Typically, a consumer that is charged a late fee also experiences a higher account APR in subsequent periods (*i.e.*, higher interest cost).[67] The consumer may also experience other negative consequences such as credit score decline if the delinquency was reported to credit bureaus.[68]

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[67] Credit Card Penalty Fees (Regulation Z), 89 Fed. Reg. 19128, 19131 (Mar. 15, 2024) ("For cardholders who typically pay their balance in full every month (so-called transactors), a late payment generally means both a late fee and new interest incurred for carrying or revolving a balance. For the cardholders who do not roll over a balance in the month before or after a late fee is assessed, the loss of a grace period and coinciding interest charges may pose a similar or even greater burden than the late fee itself.") (footnote omitted).

[68] *Id.* Other negative consequences include application of a penalty rate of interest, reduction of the credit line, or other costs such as limitation of rewards.

### (3) Illustrative Cardholder Compensation Scenarios

61. The table below provides two examples to illustrate my second methodology to calculate damages incurred by cardholders as a result of the Bank's claim denial described in the preceding sub-sections:[69]

| Cardholder Impact | Legend | A | B |
|---|---|---|---|
| Amount of Claim Denied | [a] | [redacted] | [redacted] |
| Amount Borrowed on Credit Card | [b]=[a]*50% | [redacted] | [redacted] |
| No. of Days Account Impacted | [c] | [redacted] | [redacted] |
| Cost to Borrow on Credit Card | [1]=[b]*(1+20%)^[c]/365-[b] | [redacted] | [redacted] |
| No. of Late Fees | [d] | [redacted] | [redacted] |
| Total Late Fee Cost | [2]=$26+([d]-1])*$35 | [redacted] | [redacted] |
| Total Compensation | [3]=[1]+[2] | [redacted] | [redacted] |
| Total Actual Damages | =[a]+[3] | [redacted] | [redacted] |

### (4) Summary of Claim Denial Class Actual Damages

62. The table below summarizes my illustration of the total actual damages for the Claim Denial class members based on this implementation of Methodology 2:[70]

| Claim Denial Class | Amount |
|---|---|
| Claim Amount | [redacted] |
| Cost of Inability to Access Funds | [redacted] |
| Late Fees | [redacted] |
| Total Actual Damages | [redacted] |

### (5) Methodology 2 is Consistent with the Bank's Method to Calculate Consequential Harm Payments

63. Bank of America and its bank subsidiaries are subject to regulation, supervision, and examination by the Office of the Comptroller of the Currency ("OCC").[71] The Bank's

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[69] These scenarios summarize my calculations for CardAliasIDs [redacted] respectively.

[70] The Claim Denial Class also includes members of the Account Freeze Class. Accordingly, if damages are awarded to the Claim Denial Class and the Account Freeze Class, it is appropriate to disaggregate the damage amounts.

[71] Bank of America Corp., Annual Report (Form 10-K) at 4 (Feb. 24, 2021).

consumer financial products and services are regulated by the Consumer Financial Protection Bureau ("CFPB").[72]

64. On July 14, 2022, approximately eighteen months after Plaintiffs initiated *Yick v. Bank of America, N.A.*, Case No. 21-cv-00376-VC (N.D. Cal.) and thirteen months after Plaintiffs obtained a preliminary injunction against the Bank in that case, the CFPB and the OCC issued consent orders against the Bank with factual findings that are consistent with the allegations in this case.[73] As stated in the CFPB's announcement of the enforcement action:

> In the fall of 2020, and continuing through mid-2021, Bank of America changed its practices for investigating prepaid debit cardholder notices of error to solely rely on an automated fraud filter, which it knew or should have known would incorrectly determine that no error had occurred and which led to its incorrectly freezing or blocking accounts. The Bureau found that Bank of America engaged in unfair acts or practices by denying prepaid debit cardholders' notices of error and freezing their prepaid debit card accounts based solely on the results of the Bank's flawed fraud filter. The Bank also engaged in abusive acts or practices by retroactively applying its fraud filter to deny notices of error submitted by prepaid debit cardholders that it had previously investigated and paid. Further, Bank of America engaged in unfair acts and practices by impeding unemployment insurance benefit prepaid debit cardholders' efforts to file notices of error concerning their prepaid debit card accounts. The Bank's failure to conduct a reasonable investigation of prepaid debit cardholders' notices of error and failure to timely investigate and resolve prepaid debit cardholders' error claims also violated the Electronic Fund Transfer Act and its implementing Regulation E. The Bureau's order requires Bank of America to redress harmed consumers who suffered hundreds of millions of dollars in direct and consequential financial harm; harmed consumers will also be eligible to receive additional remediation through an individualized review process.[74]

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[72] *Id.*

[73] Bank of America, N.A., CFPB No. 2022-CFPB-0004 (Jul. 14, 2022) ("CFPB Consent Order"); Bank of America, N.A., OCC No. AA-ENF-2022-21 (2022) ("OCC Consent Order").

[74] CFPB, *Bank of America, N.A.*, https://www.consumerfinance.gov/enforcement/actions/bank-of-america-na-2/; *see also* CFPB Consent Order at ¶¶ 14-17.

65. The OCC imposed a fine of $125 million and the CFPB Consent Order imposed a $100 million penalty.[75]

66. Additionally, the Consent Order required the Bank to provide redress to "Affected Consumers," defined under the CFPB Consent Order as "a consumer who during the Relevant Period: (1) qualified for and received government unemployment insurance benefit payments electronically through prepaid debit cards issued by Respondent [i.e., Bank of America]; (2) filed a notice of error concerning alleged unauthorized EFTs with Respondent; and (3) for whom Respondent incorrectly determined, based solely on the results of Respondent's Fraud Filter, that no error occurred, and, as a result, Respondent (i) denied the consumer's error claim or reversed permanent credits previously granted to the consumer and (ii) froze or, after March 17, 2021, blocked the consumer's unemployment insurance benefit prepaid debit card account."[76] However, the Bank was not required to pay redress to any Affected Consumer who, as of the date on which the Consent Order was entered, "(i) the state benefit granting agency has determined or later determines should have been initially disqualified for unemployment insurance benefit payments, or (ii) whose unemployment insurance benefit prepaid debit card account is or becomes frozen, blocked, or closed by Respondent at the request of the state benefit granting agency, or due to suspected fraud, anti-money laundering, or financial crimes inquiries or determinations made in conjunction with law enforcement, or due to an independent legal requirement such as receipt of legal process or orders."[77]

67. The Consent Order required the redress to consumers to include "(i) compensation for the value of unauthorized EFTs alleged by Affected Consumers in notices of error that Respondent incorrectly denied through its Fraud Filter; (ii) compensation to Affected

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[75] Bank of America, N.A., OCC No. AA-ENF-2022-22 (2022) ("OCC Consent Order for Civil Money Penalty") at Art. III ¶ 1; CFPB Consent Order at Art IX ¶ 99.

[76] CFPB Consent Order at Art. III ¶¶ 3(a), 93.

[77] *Id.* at Art VIII ¶ 93.

Consumers for related Consequential Harm …; and (iii) compensation to Affected Consumers through an individualized review process ….”[78] The Consent Order defined "Consequential Harm" to mean "the financial harm Affected Consumers incurred due to the time their unemployment insurance benefit prepaid debit card account remained frozen or blocked after Respondent incorrectly determined that no error occurred on the consumer's unemployment insurance benefit prepaid debit card account, based solely on the results of Respondent's Fraud Filter."[79]

68. The Bank agreed to submit a "comprehensive written plan for providing redress consistent with th[e] Consent Order."[80] The Consent Order required the plan to include, among other things: (a) "[a] description of the methodology Respondent will use to identify Affected Consumers"; (b) "[a] description of the procedures and process Respondent will use to remediate each Affected Consumer, which shall include: (i) calculating the value of unauthorized EFTs alleged by Affected Consumers in notices of error that Respondent incorrectly denied through its Fraud Filter; (ii) calculating the lump sum Consequential Harm payment; and (iii) an individualized review process administered by an independent third-party payment administrator that allows Affected Consumers to seek additional redress compensation by submitting evidence of financial harm exceeding Consequential Harm-related payment"; (c) [a] description of the methodology Respondent will use to calculate the amount of remediation to be paid as Consequential Harm for each Affected Consumer"; and (d) "[a] description of the methodology Respondent will use to identify compensable financial impacts to Affected Consumers for the purpose of additional redress compensation exceeding Consequential Harm-related payments in connection with the individualized review process."

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[78] *Id.*

[79] *Id.* at Art III ¶ 3(c).

[80] *Id.* at Art VII ¶ 94.

69. On October 6, 2022, Bank of America finalized a Remediation Plan with the OCC and the CFPB (the "Remediation Plan").[81] As required by the Consent Order, in addition to providing for payment of the value of unauthorized EFTs alleged by Affected Consumers in notices of error that the Bank incorrectly denied through its Fraud Filter,[82] the Bank's [redacted] for calculating the "Consequential Harm payments." These payments were designed to address "the financial harm Affected Consumers incurred due to the time their unemployment insurance benefit prepaid debit card account remained frozen or blocked after Respondent incorrectly determined that no error occurred on the consumer's unemployment insurance benefit prepaid debit card account, based solely on the results of Respondent's Fraud Filter."[84]

70. The Bank applied a two-step approach to guide its calculation of cardholder remediation. First, the Bank [redacted] [85] Next, the Bank [redacted].[86]

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[81] Ex. 74; Ex. 147; Ex. (Dep. Ex. 134). I understand that the Bank's implementation of the Remediation Plan is ongoing as of the date of this report. *See, e.g.*, Ex. 59 ( 3rd Rogs, No. 22) ("[redacted]"); Ex. 49 (4th Rogs, No. 30) ("[redacted]). Future updates because of the Bank's activities pursuant to the Remediation Plan may result in changes to the amounts and numbers presented in this report.

[82] CFPB Consent Order at Art VII ¶ 93.

[83] Ex. 19 (Lennon Tr.) 59:24-60:10.

[84] CFPB Consent Order at Art III ¶ 3(c).

[85] Ex. 74 at -102556-57. Approximately [redacted] *Id.* at -102565.

[86] *Id.* at -102556.

71. The Bank's methodology to calculate consequential harm to EDD cardholders under the Remediation Plan, developed pursuant to the CFPB and OCC Consent Orders, was [redacted] ¶¶ 53-62). [redacted] s.[87]

[redacted]

72. As described in the preceding sections of this report (*see* §§ II.B.2.b)(1) and II.B.2.b)(2)), the Bank likewise concluded [redacted].[88]

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[87] Ex. 49 (4th Rogs, No. 30 and Exhibit 9 thereto). The Bank's corporate representative [redacted] *See* Ex. 19 (Lennon Tr.) 294:6-295:15. In the excerpt, [redacted]

[88] Ex. 74 at -102559-560; Ex. 147 (Dep. Ex. 133) at -102534. In fact, 4th Rogs, No. 30, Exhibit 10 contains [redacted] The other identified harms primarily

73. To illustrate this point, the Bank concluded [redacted].[89] The Bank adopted [redacted].[90] The Bank also estimated [redacted][91]

74. The Bank also addressed [redacted].[92] To quantify the impact o[redacted].[93] The Bank concluded that [redacted][94] Ultimately, the Bank estimated that [redacted] The Bank did not [redacted][95] Additionally, the Bank performed [redacted].[96] From this analysis, the Bank concluded [redacted]

consist of [redacted]. Ex. 49 (4th Rogs, No. 30, Exhibit 10).

[89] Ex. 74 at -102561.

[90] *Id. See also* Ex. 19 (Lennon Tr.) 145:1-16 ([redacted]).

[91] Ex. 74 at -102561.

[92] *Id.* at -102560.

[93] *Id.* at -102577.

[94] *Id.* At this time, the Bank has not [redacted]

[95] Notwithstanding this issue, the Bank's findings indicate that consumers would have [redacted]

[96] Ex. 74 at -102562-563.

[redacted]

75. Finally, the Bank estimated [redacted] To do so, the Bank performed [redacted].[97] The Bank concluded that [redacted].[98] On this basis, the Bank's remediation plan [redacted] I estimate the damage to be approximately $22 for delayed payments to impacted cardholders (*see* § IV.B.2.b)(3)).

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[97] *Id.*

[98] *Id.* I understand that data exists that would enable me to analyze the timing of subsequent benefit payments.

### 3. EFTA Treble Damages

76. Treble damages under EFTA, 15 U.S.C. §1693f(e), can be calculated on a classwide basis by simply multiplying each class member's actual damages by three.

**Methodology 1**

| Claim Denial Class | Amount (10%) | Amount (20%) |
|---|---|---|
| Claim Amount | [redacted] | [redacted] |
| Lost Time Value of Money | [redacted] | [redacted] |
| Total Actual Damages | [redacted] | [redacted] |
| Treble Amount | [redacted] | [redacted] |

**Methodology 2**

| Claim Denial Class | Amount |
|---|---|
| Claim Amount | [redacted] |
| Cost of Inability to Access Funds | [redacted] |
| Late Fees | [redacted] |
| Total Actual Damages | [redacted] |
| Treble Amount | [redacted] |

### 4. EFTA Statutory Damages

77. I understand the Claim Denial class asserts violations of multiple different provisions of EFTA, each of which gives rise to statutory damages: (1) 15 U.S.C. § 1693f(a) (failure to investigate Claim Denial class members' unauthorized transaction claims); (2) 15 U.S.C. §1693f(c) (failure to issue provisional credit if reasonable investigation of alleged error not completed within 10 business days, and failure to issue permanent credit if reasonable investigation of alleged error not completed within 45 days); (3) 15 U.S.C. §1693f(d) (failure to provide a written "explanation of its findings"); and (4) 15 U.S.C. § 1693g(a) (failure to limit liability for unauthorized transactions to $50). In accordance with 15 U.S.C. §1693m(a)(2)(B), I

understand statutory damages are calculated as $500,000 multiplied by the number of violations established .

### 5. **Disgorgement of Profits**

78. The objective of a disgorgement calculation is to isolate the gain obtained by the defendant attributable to the alleged harmful act.[99] Disgorgement can also be calculated based on the Bank's records. Plaintiffs and the class seek disgorgement of profits that the Bank earned on the Claim amounts that the Bank withheld from Plaintiffs and the class based on its Claim Fraud Filter.[100]

79. The Bank referred to [redacted][101] The Bank generated [redacted]

[99] Restatement of the Law (Third), Restitution and Unjust Enrichment § 51 cmt a. (Am. L. Inst. 2011) ("The principal focus of § 51 is on cases in which unjust enrichment is measured by the defendant's profits, where the object of restitution is to strip the defendant of a wrongful gain.").

[100] *Id.* at § 51(4) ("Unless the rule of subsection (2) imposes a greater liability, the unjust enrichment of a conscious wrongdoer, or of a defaulting fiduciary without regard to notice or fault, is the net profit attributable to the underlying wrong." *See also id.* § 51 cmt a. ("Restitution measured by the defendant's wrongful gain is frequently called 'disgorgement.' Other cases refer to an 'accounting' or an 'accounting for profits.' Whether or not these terms are employed, the remedial issues in all cases of conscious wrongdoing are the same. They concern the identification and measurement of those gains to the defendant that should be regarded as unjust enrichment, in that they are properly attributable to the defendant's interference with the claimant's legally protected rights.").

[101] Ex. 15 (Deposition of Bank of America's Rule 30(b)(6) Designee Robert Chestnut ("Chestnut Tr.") 45:16-46:23.

[102] Ex. 15 (Chestnut Tr.) 46:24-48:8. [redacted] *See also* Ex. 149 (May 2018 Standard Agreement Amendment between the Bank and EDD), Exhibit F (specifying that the revenue sharing calculation will use the Effective Federal Funds Rate).

[redacted] [103] The Bank's records may be used to [redacted][104]

## III. CREDIT RECISSION CLASS

80. From approximately [redacted][105] the Bank provided [redacted][106] Upon application of its Claim Fraud Filter, the Bank [redacted].[107]

### A. Identification of Credit Recission Class Members

81. The members of this class are also ascertainable from the Bank's records. Bank of America produced data identifying the CardAliasID for each EDD cardholder who received a "permanent" credit from the Bank in connection with their claim, which credit the Bank later rescinded after September 28, 2020 based on its subsequent application of the Claim Fraud Filter, including: [redacted]

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[103] The Bank did not [redacted]

[104] The Bank's contract with the EDD [redacted] *See* Ex. 15 (Chestnut Tr.) 44:5-45:15, 170:1-13; Ex. 149 ([redacted]

[105] These dates correspond to the Bank's [redacted]. The Bank's Corporate Representative testified that [redacted]. Ex. 19 (Lennon Tr.) 241:3-248:1 (regarding Dep. Ex. 140-6).

[106] Ex. 59 (3rd Rogs, No. 21 and Revised Exhibit 6, Part 2); Ex. (1st Rogs, No. 3 and Revised Exhibit 2).

[107] Ex. 19 (Lennon Tr.) 236:18-240:24 (referencing Dep. Ex. 136-2, which is the Bank's revised Exhibit 2 in response to Rog 3).

[redacted][109] Bank of America obtained this data [redacted].[110]

82. A total of approximately [redacted] unique CardAliasIDs submitted claims for which the Bank rescinded previously issued permanent credits because the claim triggered Claim Fraud Filter Indicator 1 and no other indicators.[111] As described above (*see* ¶¶ 31, 35), I then removed Excluded Cardholders.[112] After this exclusion, approximately [redacted] Although there are other reasonable methods for identifying Claim Denial class members, for purposes of illustrating my methodology to calculate classwide damages in the sub-sections below, I have presently assumed that this is the most reliable method to identify Credit Recission class members.[113]

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108 Ex. 59 (3rd Rogs, No. 21 and Revised Exhibit 6, Part 2); Ex. 146 (1st Rogs, No. 3 and Revised Exhibit 2).

109 Ex. 59 (3rd Rogs, No. 21 and Revised Exhibit 6, Part 2).

110 *Id.*

111 Ex. 59 (3rd Rogs, Revised Exhibit 6, Part 2).

112 Ex. 98 (7th Rogs, No. 46 and Exhibit 16). In addition to those identified in Exhibit 16, the Bank identified [redacted] who do not appear in Exhibit 16. For purposes of identifying class members and calculating class damages, I have also treated those [redacted] as Excluded Cardholders.

113 Alternatively, the members of the Credit Recission class may be identifiable by reconciling other data sets produced by the Bank [redacted] Ex. 59 (3rd Rogs, Revised Exhibit 6), [redacted] Ex. 49 (4th Rogs, No. 30, Exhibit 9), [redacted]

### B. Calculations of Credit Recission Class Damages

#### 1. Principal Amount of Actual Damages

83. The principal amount of damages equals the amount of the class members' claim credit that the Bank rescinded based on Indicator 1 of its Claim Fraud Filter. The actual amount of each such rescinded credit for each class member is readily available using data produced by the Bank.[114]

84. Based on the Bank's records, the total dollar value of the Credit Rescission class's permanent credits that the Bank rescinded based solely on Indicator 1 of the CFF, and thus the total principal amount of damages for this Class, equals $[redacted]

#### 2. Consequential Damages

##### *a) Methodology 1*

85. One methodology to measure Credit Recission class damages is by using a compound interest rate reflecting the time value of money for this population of cardholders as

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[redacted] Ex. 60 (1st Rogs, No. 2, Revised Exhibit 1). These [redacted] Ex. 98 (7th Rogs, No. 46, Exhibit 16), and (3) CardAliasIDs that submitted a claim between January 1, 2020 and June 2, 2021 whose claim triggered the Claim Fraud Filter and was subsequently paid by the Bank. Ex. 60 (1st Rogs, No. 2, Revised Exhibit 1). These [redacted]. Ex. 49 (4th Rogs, No. 30, Exhibit 9).

[114] *See* Ex. 60 (1st Rogs, No. 3 and Revised Exhibit 2); Ex. 74 at -102561 n.23 ("[redacted]).

described in § II.B.2.a) above. The table below illustrates my calculations of the damages for the Credit Recission class applying the methodology described therein:[115]

| **Credit Rescission Class** | **Amount (10%)** | **Amount (20%)** |
|---|---|---|
| Claim Amount (*see* ¶ 83) | [redacted] | [redacted] |
| Lost Time Value of Money | [redacted] | [redacted] |
| Total Actual Damages | [redacted] | [redacted] |

#### ***b) Methodology 2***

86. All members of the Credit Recission class had credit that the Bank subsequently rescinded based on Indicator 1 of the CFF. From the time of the Bank's credit reversal until the Bank eventually reimbursed those funds, those class members were without access to those funds.

87. Accordingly, for the same reasons as the Claim Denial class members (*see* § II.B.2.b)(1)), the members of the Credit Rescission class would likely have been required to obtain alternative funds to mitigate the inability to access the credited funds that the Bank had rescinded from their accounts. I have applied the same methodology as described therein to calculate the cost of the inability to access impacted funds for the Credit Rescission class.[116]

88. Similarly, the members of the Credit Recission class also would likely have experienced late or overdraft fees for the same reasons as the Claim Denial class and the Account Freeze class members (*see* § II.B.2.b)(2)). Accordingly, I have applied the same methodology as described therein to calculate the cost of late or overdraft fees experienced by members of the Credit Recission class.

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[115] Schedule 1.

[116] The damages calculated in this section are independent of the damages presented §§ III and IV of this report.

89. The table below illustrates my Methodology 2 to calculate actual damages experienced by members of the Credit Recission class:[117]

| Credit Rescission Class | Amount |
|---|---|
| Claim Amount | [redacted] |
| Cost of Inability to Access Funds | [redacted] |
| Late Fees | [redacted] |
| Total Actual Damages | [redacted] |

### 3. EFTA Treble Damages

90. Treble damages under EFTA, 15 U.S.C. §1693f(e), can be calculated on a classwide basis by simply multiplying each class member's actual damages by three.

**Methodology 1**

| Credit Rescission Class | Amount (10%) | Amount (20%) |
|---|---|---|
| Claim Amount | [redacted] | [redacted] |
| Lost Time Value of Money | [redacted] | [redacted] |
| Total Actual Damages | [redacted] | [redacted] |
| Treble Amount | [redacted] | [redacted] |

**Methodology 2**

| Credit Rescission Class | Amount |
|---|---|
| Claim Amount | [redacted] |
| Cost of Inability to Access Funds | [redacted] |
| Late Fees | [redacted] |
| Total Actual Damages | [redacted] |
| Treble Amount | [redacted] |

### 4. EFTA Statutory Damages

91. I understand the Credit Rescission class asserts violations of multiple different provisions of EFTA, each of which gives rise to statutory damages: (1) 15 U.S.C. §1693f(a)-(c) (failure to issue permanent credit if reasonable investigation of alleged error not completed within 45 days ); (2) 15 U.S.C. §1693f(b) (failure to permanently correct the error within one

[117] Schedule 1.

business day after determining than an error did occur); (3) 15 U.S.C. §1693f(d) (failure to provide a written "explanation of its findings"); and (4) 15 U.S.C. § 1693g(a) (failure to limit liability for unauthorized transactions to $50). In accordance with 15 U.S.C. §1693m(a)(2)(B), I understand statutory damages are calculated as $500,000 multiplied by the number of violations established.

#### 5. <u>Disgorgement of Profits</u>

92. Disgorgement can also be calculated based on the Bank's records. Plaintiffs and the Class seek disgorgement of profits that the Bank earned on the permanent credit amounts that the Bank rescinded and withheld from Plaintiffs and the class based on its Claim Fraud Filter. The methodology to calculate disgorgement is set forth in § II.B.5 above. As described therein, the Bank's records may be used to calculate the benefit obtained by the Bank in the form of Float Revenue for each Credit Rescission class member.

## IV. ACCOUNT FREEZE CLASS

### A. Identification of Account Freeze Class Members

93. As described in § I.A above, this class consists of all EDD cardholders whose Account the Bank froze at any time between September 28, 2020 and March 18, 2021 based on the Bank's application of Indicator 1 of its CFF, and whose Account the Bank (i) subsequently unfroze, or (ii) subsequently converted from frozen to blocked status on or after March 18, 2021, and then unblocked.

94. The members of this class are also ascertainable from the Bank's records. To identify these members, I obtained the Bank's data for all EDD cardholders whose Account was frozen between September 28, 2020 and March 18, 2021 based on the application of the CFF, and then isolated the data for only those cardholders whose accounts were frozen based on CFF

Indicator 1 and no other CFF Indicator.[118] This data was obtained from the Bank's [redacted].[119]

95. The following table reflects an excerpt of the Bank's data regarding EDD cardholders whose Account was frozen:[120]

[redacted]

96. The data fields in the excerpt above identify the following information:[121]

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

[118] Ex. 60 (1st Rogs, Nos. 4-5 and Exhibit 3 thereto); Ex. 59 (3rd Rogs, No. 21 and Exhibit 6, part 3 thereto).

[119] Ex. 59 (3rd Rogs, No. 21).

[120] Ex. 60 (1st Rogs, No. 4, Revised Exhibit 3) (containing "[redacted]").

[121] *Id.*

[122] Revised Exhibit 3 indicates [redacted]

97. As seen in the excerpt above, the data produced by the Bank [redacted] There are approximately [redacted][123] As described above (*see* ¶¶ 31, 36), I then removed all Excluded Cardholders.[124] After excluding these [redacted].[125] Although there are other reasonable methods for identifying Account Freeze class members, for purposes of illustrating my methodology to calculate classwide damages in the sub-sections below, I have presently assumed that this is the most reliable method to identify Account Freeze class members.[126]

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[123] Ex. 59 (3rd Rogs, Revised Exhibit 6, Part 3).

[124] In addition to those identified in Exhibit 16, the Bank identified [redacted] Exhibit 16. For purposes of identifying class members and calculating class damages, I have also treated those [redacted] as Excluded Cardholders.

[125] Approximately [redacted] of these cardholders [redacted] (*i.e.*, the Bank does not appear to have produced sufficient data to calculate damages for these cardholders). As noted above, I understand discovery is ongoing and the identification of the members of this class will be adjusted as the Bank continues to implement the Remediation Plan.

[126] Alternatively, the Account Freeze class may be identifiable by reconciling other data sets produced by the Bank. These methods may include (1) [redacted] Ex. 59 (3rd Rogs, No. 21, Revised Exhibit 6, Part 3), compared with [redacted] Ex. 49 (4th Rogs, No. 30, Exhibit 9), (2) [redacted] Ex. 60 (1st Rogs, No. 4, Revised Exhibit 3). These [redacted] (Exhibit 16), (3) [redacted] Ex. 60 (1st Rogs, No. 4, Revised Exhibit 3). These [redacted] Ex. 49 (4th Rogs, No. 30, Exhibit 9).

## B. Calculations of Account Freeze Class Damages

### 1. Principal Amount of Actual Damages

98. The principal amount of damages for the Account Freeze class equals the amount of funds in their accounts to which class members were denied access when the Bank froze their account based on Indicator 1 of its CFF. The actual amount of such frozen funds for each Account Freeze class member is readily available using data produced by the Bank.[127]

99. Based on the Bank's records, the total dollar value of funds in the Account Freeze class's accounts to which the Bank denied class members access based solely on Indicator 1 of the CFF, and thus the total principal amount of damages for this class, equals $[redacted][128]

### 2. Consequential Damages

#### *a) Methodology 1*

100. One methodology to measure the Account Freeze class's consequential damages is to apply a compound interest rate that reflects the time value of money for this population of cardholders. I have applied the same methodology described in § II.B.2.a) above to make these illustrative calculations. The resulting amounts are summarized in the table below:[129]

| Account Freeze Class | Amount (10%) | Amount (20%) |
|---|---|---|
| Frozen Amount | [redacted] | [redacted] |
| Lost Time Value of Money | [redacted] | [redacted] |
| Total Actual Damages | [redacted] | [redacted] |

#### *b) Methodology 2*

101. When the Bank froze EDD cardholders' accounts based on application of the Claim Fraud Filter, those cardholders were no longer able to access the funds remaining in their

[127] *See* Ex. 60 (1st Rogs, No. 4-5 and Revised Exhibit 3 thereto); Ex. 47 at -102561 n.23 ([redacted]") This data is identifiable in Ex. 60 (1st Rogs, Revised Exhibit 3).

[128] This amount represents the total of each cardholder's account balance at the time of the account freeze, and it is identifiable for each account in Ex. 60 (1st Rogs, Revised Exhibit 3).

[129] Schedule 1.

EDD debit card accounts. In addition, EDD was unable to deposit ongoing benefits payments into the Bank accounts of EDD cardholders whose accounts the Bank had frozen based on the Claim Fraud Filter. Although some of those cardholders may eventually have started receiving ongoing benefits payments from EDD by paper check rather than deposited into their EDD debit card accounts, those subsequent payments were delayed. Members of the Account Freeze class thus incurred incremental actual damages due to the lost use of frozen funds, as well as the cost of a subsequently delayed benefit payment.[130] The composition of actual damages incurred by the Account Freeze class is described in the sub-sections below.

**(1) Cost of the Inability to Access Frozen Funds**

102. For the same reasons as the Claim Denial class members (*see* § II.B.2.b)(1)), the members of the Account Freeze class would likely have been required to obtain alternative funds to mitigate the inability to access their funds in their then-frozen Bank-controlled EDD accounts that otherwise would have been available. Following the same methodology described therein, I have identified the amount and duration data specific to each impacted cardholder for this calculation using the Bank's data.[131] To calculate the frozen period, I compared the [redacted]"). For those accounts that were subsequently blocked [redacted]

[130] The actual damages presented in this section are independent from the actual damages described in § II.B.

[131] Ex. 60 (1st Rogs, Revised Exhibit 3) ([redacted]

[redacted] The table below provides two examples to illustrate these calculations:[132]

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

103. Using the data in the table above, in the case of [redacted]. In the case of [redacted] I repeated this calculation for all members of the Account Freeze class.

**(2) Cost of Late or Overdraft Fees**

104. For the same reasons as the Claim Denial class members (*see* § II.B.2.b)(2)), the members of the Account Freeze class would likely have incurred late or overdraft fees while unable to access their funds otherwise available in their then-frozen Bank-controlled EDD accounts. I have applied the same methodology as described therein to make the example calculations of the cost incurred by each EDD Cardholder attributable to such late fees.[133]

**(3) Cost of Delayed Benefit Payments**

105. If a cardholder's account [redacted][134] In that event, the EDD Cardholder [redacted]

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[132] *Id.*

[133] I calculated late fees for the Claim Denial class based exclusively on the duration of the claim denial and late fees for the Account Freeze class based exclusively on the duration of the account freeze. In some instances, the period of the claim denial overlapped with the period of the account freeze. Accordingly, if damages are awarded to the Claim Denial class and the Account Freeze class, it is appropriate to reduce the late fee damages in proportion to the overlap.

[134] Ex. 19 (Lennon Tr.) 257:23-258:5. I have not calculated this type of damage for those cardholder accounts that were frozen for less than fifteen days.

[redacted].[135] In total, the Bank [redacted][136] The effect of the delayed receipt of these subsequent benefit payments constituted an additional harm to the cardholders (*i.e.*, the cardholder was forced to access alternative funds during this time). For example, the CFPB's analysis of unemployment insurance payments found that a 30-day delay caused substantial hardship on consumers.[137] [redacted][138]

106. The cost of delayed payments can be calculated using a common methodology for all Account Freeze class members based on the amount of each class member's bi-weekly benefit payment and the length of the delayed receipt of their subsequent benefit payments. The benefit payments received by each class member are ascertainable from the Bank's records, as well as data from the EDD, which I plan to consider in my methodology to calculate damages at the time it becomes available. For present purposes, to illustrate my calculation, [redacted][139] Accordingly, [redacted][140]

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[135] Ex. 74 at -102563.

[136] Ex. 98 (7th Rogs, No. 44 and Exhibit 14).

[137] CFPB, *Consumer Finances During the Pandemic* at 32 ("Most consumers who received unemployment benefits reported having to wait significant periods to get them…Nearly 42 percent of consumers had to wait four or more weeks… These delays appear to have caused substantial hardship.").

[138] Ex. 60 (1st Rogs, No. 4-5 and Exhibit 3 thereto).

[139] Ex. 74 at -102563 (indicating [redacted]

[140] This calculation reflects [redacted]

#### (4) Illustrative Cardholder Compensation Scenarios

107. The table below provides two examples to illustrate my calculation of the damages incurred by the Bank's account freeze action as described in the preceding sub-sections:[141]

| Cardholder Impact | Legend | A | B |
|---|---|---|---|
| Amount Frozen | [a] | [redacted] | [redacted] |
| Amount Borrowed on Credit Card | [b]=[a]*50% | [redacted] | [redacted] |
| No. of Days Account Impacted | [c] | [redacted] | [redacted] |
| Cost to Borrow on Credit Card | [1]=[b]*(1+20%)^[c]/365-[b] | [redacted] | [redacted] |
| No. of Late Fees | [d] | [redacted] | [redacted] |
| Total Late Fee Cost | [2]=$26+([d]-1])*$35 | [redacted] | [redacted] |
| No. of Delays in Benefit Payments | [e] | [redacted] | [redacted] |
| Cost to Borrow on Credit Card | [3]=[e]*$21.91 | [redacted] | [redacted] |
| Total Compensation | [4]=[1]+[2]+[3] | [redacted] | [redacted] |
| Total Actual Damages | =[a]+[4] | [redacted] | [redacted] |

#### (5) Summary of Account Freeze Class Damages

108. The table below summarizes my illustration of the total actual damages for Account Freeze class members based on this implementation of alternative Methodology 2:

| Account Freeze | Amount |
|---|---|
| Frozen Amount[142] | [redacted] |
| Cost of Inability to Access Funds | [redacted] |
| Deferred Benefits | [redacted] |
| Late Fees | [redacted] |
| Total Actual Damages | [redacted] |

### 3. Disgorgement of Profits

109. Disgorgement can also be calculated based on the Bank's records. Plaintiffs and the class seek disgorgement of profits that the Bank earned on the amounts frozen in their accounts that the Bank withheld from Plaintiffs and the class based on Indicator 1 of its Claim Fraud Filter. The methodology to calculate disgorgement is set forth in § II.B.5 above. The

[141] [redacted]

[142] The Frozen Amount represents the total of each cardholder's account balance at the time of the account freeze, which is identifiable for each account in Ex. 60 (1st Rogs, Revised Exhibit 3).

disgorged profits can be allocated either per capita or pro rata among class members in proportion to the value of their actual damages.

## V. CUSTOMER SERVICE CLASS

### A. Identification of Customer Service Class Members

110. The Customer Service class consists of members of the Claim Denial and/or Credit Rescission class members who telephoned the Bank's customer service phone number for EDD cardholders at any time between September 13, 2020 and November 21, 2020, inclusive, and whose telephone call was routed to the Bank's Claims call center.

111. I understand that the Bank has records, including call logs, which identify every EDD Cardholder who called the Bank's customer service phone number between these dates. I also understand that it was the Bank's general practice to [redacted][143] Accordingly, I was asked to assume that the Customer Service class includes at minimum every [redacted]. Presently, [redacted][144] This number does not include EDD cardholders who may have called between those dates to inquire about or seek reconsideration of a claim that the Bank denied or a

[143] *See* Ex. 114 (5th Rogs, No. 34).

[144] As described above (n. 33), Revised Exhibit 1 does not [redacted]. The absence of data in Revised Exhibit 1 for [redacted]

credit that the Bank rescinded based on the CFF; such cardholders would also be members of the Customer Service class.

112. Accordingly, there are at minimum approximately [redacted] members of the Customer Service class, and likely many more, whose identities can be ascertained from Bank records.

**B. Calculations of Customer Service Class Damages**

**1. <u>Actual Damages</u>**

113. I understand that an appropriate measure of damages for this class is compensation for the value of class members' lost time spent on hold with the Bank's Claims call center that was greater than the reasonable wait-on-hold time by industry standards. Accordingly, actual damages for the Customer Service class can be calculated on a classwide basis as follows.

114. First, I understand that Plaintiffs' call center expert has analyzed the Bank's call center data during the relevant times and compared the "Average Speed to Answer" ("ASA") of the Bank's Claims call center against the industry average ASA, yielding an average excess hold time of [redacted] per call.[145] Next, I understand that Plaintiffs' call center expert has expressed the opinion that the Bank's records reflect how many times each class member called and was transferred to the Claims call center during the relevant time period. These figures can be multiplied by the applicable minimum wage—or other reasonable metric—to calculate the total value of class members' lost time.

**2. <u>Disgorgement of Profits</u>**

115. Disgorgement can also be calculated based on the Bank's records. Plaintiffs and the class seek disgorgement of profits, in the form of avoided costs, that the Bank earned by

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[145] I expect that this analysis will be presented in the Expert Report of Jay Minnucci to be issued on August 29, 2024.

understaffing its Claims call center, which caused the excess wait times that the Customer Service class members endured.[146]

116. I understand that Plaintiffs' call center expert has analyzed the Bank's call center data and call center staffing contracts during the relevant times and has calculated the additional expenditure that would have been required for the Bank to staff its Claims call center from September 13, 2020 to November 21, 2020 in a manner sufficient to provide EDD cardholders an ASA and an answer rate consistent with industry standards. I also understand that the percentage of total calls offered to the Bank's Claims call center that are attributable to EDD cardholders can be reasonably estimated. The amount of profits to be disgorged to the Customer Service class can be calculated by multiplying the total amount of cost savings to the Bank resulting from understaffing its Claims call center from September 13, 2020 to November 21, 2020, and the percent of total calls to the Claims call center during this period attributable to Customer Service class members.

117. The disgorged profits can be allocated either per capita or pro rata among class members in proportion to the value of their lost-time actual damages.

## VI. EMV CHIP CLASS

118. All EDD debit cards that the Bank issued prior to July 2021 were mag-stripe-only cards that did not contain an EMV chip.[147] I have been asked to assume that EMV chips would have prevented the unauthorized ATM withdrawals that were the subject of Claim Denial and Credit Rescission class members' claims that triggered the Bank's CFF Indicator 1, and provide a methodology to calculate damages as described below.

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[146] I expect that this analysis will be presented in the Expert Report of Jay Minnucci to be issued on August 29, 2024.

[147] *See* Ex. 16 (Martin 30(b)(6) Depo Tr.) 65:4-14.

### A. Identification of EMV Chip Class Members

119. I was asked to assume that the EMV Chip class consists of all members of the Claim Denial class and all members of the Credit Rescission class because those individuals had mag-stripe-only EDD debit cards with no EMV chip at the time they reported the unauthorized ATM withdrawal from their account. Consequently, there are approximately [redacted] CardAliasIDs in the EMV Chip class.[148]

### B. Calculations of EMV Chip Class Damages

#### 1. <u>Actual Damages</u>

120. Actual damages for the EMV Chip class can be calculated on a classwide basis as follows. The principal amount of damages equals the amount of funds that were taken from the class member's EDD debit card account through an unauthorized ATM transaction and/or an unauthorized point-of-sale transaction, as reflected in the amount of the class member's Claim that the Bank denied based on Indicator 1 of its Claim Fraud Filter. These amounts are identifiable in Bank records that have been produced to Plaintiffs in this litigation. Consequential damages can be calculated using the same two alternative methodologies described above with respect to the Claim Denial class (*see* § II.B.2). For purposes of calculating consequential damages for the EMV Chip class, the length of time EMV Chip class members were denied access to their funds can be calculated from the date the Bank opened the claim until the date the Bank finally reimbursed the class member for the value of the claim.

#### 2. <u>CCPA Statutory Damages</u>

121. I understand *statutory damages* also apply for certain individuals based on the amount of their actual damages.[149] Specifically, if the individual has actual damages less than $750, their statutory damages are $750. Individuals with actual damages equal to or exceeding

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[148] The method to identify Claim Denial class members is presented in § II.A and Credit Rescission class members is presented in § III.A above.

[149] *See* Cal. Civ. Code § 1798.150.

$750 will not be included in the calculation of statutory damages. These formulaic calculations can be performed on a classwide basis using the Bank's data.

### 3. Disgorgement of Profits

122. Disgorgement can also be calculated based on the Bank's records. Plaintiffs and the class seek disgorgement of profits, in the form of avoided costs, that the Bank earned by not including EMV chips in its EDD debit cards prior to July 2021 (an estimated $[redacted] per card as of January 2020, according to Bank documents and testimony[150]). The disgorged profits can be allocated among the class members on a per capita basis.

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Dated: August 29, 2024

Greg J. Regan, CPA/CFF, CFE

[150] Ex. 27 at -351839–40; Ex. 16 (Martin Tr.) 82:8-83:13.

**In re Bank of America California Unemployment Benefits Litigation**
**Schedule 1 - Calculation of Damages by CardAliasID**
**Expert Report of Greg J. Regan, CPA/CFF**

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**In re Bank of America California Unemployment Benefits Litigation**
**Schedule 1 - Calculation of Damages by CardAliasID**
**Expert Report of Greg J. Regan, CPA/CFF**

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**In re Bank of America California Unemployment Benefits Litigation**
**Schedule 1 - Calculation of Damages by CardAliasID**
**Expert Report of Greg J. Regan, CPA/CFF**

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**In re Bank of America California Unemployment Benefits Litigation**
**Schedule 1 - Calculation of Damages by CardAliasID**
**Expert Report of Greg J. Regan, CPA/CFF**

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**In re Bank of America California Unemployment Benefits Litigation**
**Schedule 1 - Calculation of Damages by CardAliasID**
**Expert Report of Greg J. Regan, CPA/CFF**

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**In re Bank of America California Unemployment Benefits Litigation**
**Schedule 1 - Calculation of Damages by CardAliasID**
**Expert Report of Greg J. Regan, CPA/CFF**

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Appendix A

HEMMING | MORSE
FORENSIC & FINANCIAL CONSULTANTS

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# GREG REGAN, CPA/CFF, MBA

HEMMING.COM

## Profile

Greg Regan is a Partner in the Forensic and Financial Consulting Services Group in the San Francisco office of Hemming Morse. In 2018, Greg became the Chair of California Society of CPAs Forensic Services Section. In 2013, Greg was appointed to the American Institute of CPA's ("AICPA") Forensic and Valuation Services Executive Committee. This 9-member committee establishes professional standards for practitioners performing consulting services that require the application of forensic or valuation-related methodologies. From 2010 to 2013, he served on the AICPA's Forensic and Litigation Services ("FLS") Committee. This 11-member committee provides professional guidance to CPA practitioners who perform accounting investigations, economic damage analyses such as lost profits calculations, and a variety of other services. Greg was the Chair of the AICPA's Damages Task Force from 2010 to 2013 and continues to be an active member. Greg received the AICPA's 2012 Award for the FLS Volunteer of the Year.

Greg has testified in federal and state courts as well as in arbitrations regarding these types of forensic analyses. Greg is a Certified Public Accountant (CPA), a Certified Financial Forensic (CFF), and a Certified Fraud Examiner (CFE). Greg serves as an Officer of the California Society of Certified Public Accountants (CalCPA) statewide Forensic Services Committee.

Greg received his B.S. degree in Accounting from Georgetown University, Washington, D.C., and his Masters in Business Administration with an Emphasis in Finance from the University of San Francisco. When he's not working, he enjoys spending time with his wife and coaching the sports teams of his two boys.

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# GREG REGAN, CPA/CFF, MBA



## Employment & Education

- Hemming Morse 2003 – Present
  - -Partner
  - -Director, 2007-2011
  - -Manager, 2003-2006
- Golden Gate University 2009 – 2016
  - -Adjunct Professor
  - -Introduction to Financial Forensic Accounting, Spring 2009-2016
  - -An In-Depth Analysis of Economic Damages, Fall 2010
- SupportSoft, Inc. (Nasdaq: SPRT) 1999 – 2003
- Ernst & Young, LLP 1995 – 1999
- University of San Francisco 2004 – 2007
  - -Masters in Business Administration with emphasis in Finance
  - -Beta Gamma Sigma Honor Society
- Georgetown University, Washington, D.C. 1995
  - -B.S. Accounting, Minor in Theology

## Professional & Service Affiliations

- **Certified Public Accountant,** State of California, 1998
  State of New York, 2010
- **Certified Fraud Examiner**
- **Certified in Financial Forensics,** 2008
- **American Institute of Certified Public Accountants**
  - Forensic & Valuation Services Executive Committee, 2013-2016
  - Forensic & Litigation Services Committee, 2010-2013
  - Chair, Damages Task Force
  - National Forensic & Valuation Conference
    - Co-Chair, 2014-2015
    - Planning Committee, 2011-2016
- **California Society of Certified Public Accountants**
  - Co-chair, San Francisco Chapter Litigation Consulting Services Committee, 2006-2011
  - State Steering Committee, 2007-present
    Officer, 2012-2020
- **CAMICO**
  - Board of Directors, 2023 to present
  - Risk Management Committee, 2014-2023
- **California CPA Education Foundation**
  - Accounting & Auditing Curriculum Advisory Committee, 2007-2010
- **Legal Aid of San Mateo County**
  - Board of Directors, Treasurer
- **Board of Regents,** Junipero Serra High School

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## Testimony

### Trial and Deposition

- **Consumer Financial Protection Bureau v. Stratfs, LLC (2024),** U.S. District Court, Western District of New York, Case No. 1:24-cv-00040
- **DBI Beverage Inc. v. WSJ, LLC (2023),** Superior Court of California, San Francisco, Case No. CGC-20-582694
- **Knauf Ventures, LLC v. 154 Almonte Blvd, LLC (2023),** California Superior Court, Marin, Case No. CIV2003268
- **Virgin Hotels San Francisco, LLC v. 250 Fourth Development, L.P. et al. (2022),** Superior Court of California, San Francisco, Case No. CGC-20-584350
- **People of the State of California v Zovio, et al. (2021),** Superior Court of California, San Diego, Case No. 37-2018-00046134-CU-MC-CTL
- **Sumotext Corp. v. Zoove, Inc., et al. (2020)** U.S. District Court, Northern District of California, San Jose Division, Case No. 5:16-cv-01370-BLF
- **PPFA, Inc. v. Center For Medical Progress, et al. (2019),** U.S. District Court, Northern District San Francisco, Case No. 3:16-Cv-00236-Who
- **ASML US, Inc, v. XTAL (2018),** Superior Court of California, Santa Clara, Case No. 16-CV-295051
- **State of Colorado v. Center for Excellence in Higher Education, Inc., et al. (2017),** District Court, Denver City and State of Colorado, Case No. 2014cv34530

### Arbitration and Deposition

- **Levin Simes v. Peiffer Wolf, et al (2024),** JAMS Arbitration No. 1110029750
- **T.I.M.E. Service Catalyst Handling, LLC v. Scott Rogers et al. (2022),** American Arbitration Association, Case No. No. 01-18-002-3360
- **Sutter Health and Sutter Health Plan v. Optum Insight, Inc. (2017),** American Arbitration Association
  Case No. 011500034226
- **Cloud Cruiser, Inc. v. Cisco Systems, Inc. (2017)** JAMS Reference No. 1100085560

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# GREG REGAN, CPA/CFF, MBA



## Testimony continued

### Deposition

- **Universal Packaging West, Inc. v. Bomatic (2024),** Superior Court of San Diego, Case No. 37-2019-00050175-CU-BC-CTL
- **Federal Equipment Company v. ImmunityBio, Inc., et al (2024),** USDC ND of Ohio, Case No. 1:21-cv-01422
- **Primevere LLC v. Rezidential Development, Inc. (2024),** Superior Court of California, Orange County, Case No. 30-2021-01203514-CU-BC-CJC
- **Autumn Funkhouser-Ward v. Honeywell International, Inc. (2024),** USDC, Southern District of Illinois, Case No. 3:21-cv-00485-SMY
- **State of California ex re Mark Sersansie v. Gardens Regional Hospital Medical Center et. al. (2024),** Superior Court of California, Los Angeles, Case No. BC534466
- **SEC v. Barrington Asset Management (2023),** U.S. District Court, Northern District of Illinois, Case No. 21-cv-3450
- **Hewitt v. Google LLC (2023),** U.S. District Court, Northern District of California, Case 4:21-cv-02155-YGR
- **Shannon McBurnie, et al. v. RAC Acceptance East LLC (2022),** U.S. District Court, Northern District of California, Case No. 3:21-cv-01429-JD
- **Steven Gomo v. NetApp, Inc. (2022),** Federal Court, ND CA, Case No. 5:17-cv-02990-BLF
- **Stahl and Reynolds v. Orthopedic Alliance (2022),** U.S. District Court, Central District of California, Case No. CV16-03966-MWF (SKx)
- **Barry Forman v. Timothy Covington (2022),** Superior Court of California, San Francisco, Case No. CGC-21-588962
- **Don Lee Farms v. Beyond Meat (2022),** Superior Court of California, Los Angeles, Case No. BC662838
- **New Prime Inc. v. Amazon Logistics, Inc. (2021),** U.S. District Court, Western District of Missouri, Case No. 6:19-cv-03236-MDH
- **Kiva Health Brands, LLC v. Kiva Brands Inc. (2021),** U.S. District Court, Northern District of California, Civil No. 3:19-cv-03459-CRB
- **Class B Investors v. 8minutenergy US Manager, LLC (2021),** JAMS Case Reference No. 1100110779
- **Synchrony Bank v. RevPar Collective, Inc. (2021),** Superior Court of California, San Francisco, Case No. CGC-18-566487
- **Bridge-Folsom, LP, v. Terra Firma Development Company, LTD (2021),** JAMS Arbitration, No. 1130008587

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# GREG REGAN, CPA/CFF, MBA



## Testimony continued

### Deposition continued

- **SRS Acquiom, Inc. v. PNC Financial Services Group, Inc. (2020),** U.S. District Court, District of Colorado, Civil Action No. 1:19-cv-02005-DDD-SKC
- **United States ex rel. Matthew Macdowell v. Synnex Corporation (2020),** U.S. District Court, Northern District of California, Case No. 19-cv-00173-WHA
- **Ahmad Hamdan v. Dorothy Reggi, et al. (2020),** Yuba County Superior Court, Case No. CVCV18-01936
- **Aqualegacy Development LLC v. 2012 Canrow Owner (2020),** Superior Court of California, Monterey, Case No. 16CV001078
- **Cisco Systems, Inc., And Cisco Technology, Inc. v. ADSI, et al. (2020),** U.S. District Court, Northern District of California, Oakland Division, Case No. 4:18-cv-07602 YGR
- **Administrator v. Marlette Funding, LLC et al. (2020),** District Court, Denver City and State of Colorado, Case No. 17CV30376
- **In Re: Restasis Antitrust Litigation (2020),** U.S. District Court, Eastern District of New York, Case No. MDL No. 2819 18-MD-2819 (NG) (LB)
- **Wetlands Preservation Foundation v. Department of Water Resources, The Nature Conservancy (2019)** Superior Court of California, San Joaquin, Case No. STK-CV-UWM-2018-8957
- **Healthnet v. American International Specialty Lines Insurance Company, et al. (2019),** Superior Court of California, Los Angeles, Case No. Bc357436
- **Fred Sahadi v. Liberty Mutual Insurance. et al (2019),** U.S. District Court Northern District of California, Case No. 5:18-CV-04061-LHIK
- **Justice Laub v. Drone Racing League, Inc. et al. (2019),** U.S. District Court, Central District of California, Western Division, Case No. 2:17-CV-06210-JAK (KSX)
- **United States Of America v. County Of Clark And Nevada Links, Inc. (2019),** U. S. District Court District Of Nevada, Case No. 2:17-Cv-02303
- **Fuse Chicken, LLC v. Amazon.com, Inc. (2019)** U.S. District Court Northern District of Ohio, Eastern Division, Case No. 5:17-cv-01538-SL
- **Golden Gateway Center v. San Francisco Waterfront Partners II, LLC (2018),** Superior Court of California, San Francisco, Case No. CGC 15-548437
- **The Barrel Cellar v. Quince Pacific Avenue (2018),** Superior Court of California, San Francisco, Case No. CGC-17-561363
- **Just Games Interactive Entertainment, LLC v. Scopely, Inc. (2018),** JAMS Arbitration

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# GREG REGAN, CPA/CFF, MBA



## Testimony continued

### Deposition continued

- **Mark de Bibo Company v. Ryan & Ryan Construction, Inc. (2017),** Superior Court of California, San Mateo, Case No. CIV534040
- **Amedee Geothermal Venture I v. Lassen Municipal Utility District (2017),** Superior Court of California, Lassen, Case No. 59485

## Publications

- **"Making Sense of Forensic Accounting"**, CalCPA Magazine, 2020
- **"Trial Testimony by Financial Experts in California Court: A Reference Guide to Hearsay Evidence Objections",** CalCPA FSS, 2019
- **"Calculating Lost Profits",** AICPA Practice Aid, 2019
- **Unblurring the Line(s) Between Accounting and Legal Opinions",** The Witness Chair, Winter 2017
- **"Big Data's Day in Court",** Plaintiff Magazine, January 2017
- **"Attaining Reasonable Certainty in Economic Damages, Calculations",** AICPA Practice Aid, 2015
- **"How CPAs can benefi t from Colin Powell's Rule",** AICPA "FVS Insider" Article, August 2013
- **"Options for Consumers in Crisis - An Economic Analysis of the Debt Settlement Industry",** December 31, 2012
- **"Discount Rates, Risk, and Uncertainty in Economic Damage Calculations",** AICPA Practice Aid, 2012

## Awards

- **AICPA, Forensic & Litigation Services Volunteer of the Year,** 2012
- **Georgetown University,** Dean's Citation, 1995

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# GREG REGAN, CPA/CFF, MBA



## AICPA CFF Education, Spring 2010-Present

- Fundamentals of the Legal System & Engagement Administration
- Reporting, Expert Reports, and the Provision of Testimony
- Financial Statement Investigations

## Presentations

- **"Aligning Damages to the Claims for Relief"**, AICPA National Forensic & Valuation Services Conference (2023)
- **"An Exploration of Reliance Damages"**, AICPA National Forensic & Valuation Services Conference (2022)
- **"The 'State' of Sargon: 8 Years Later"**, CalCPA (2020)
- **"Damages - When are they Foreseeable?"**, AICPA National Forensic & Valuation Services Conference, 2018
- **"Linking Causation to Damages"**, AICPA National Forensic & Valuation Services Conference, 2017
- **"Un-blurring the Lines Between Legal and Expert Opinions"**, AICPA National Forensic & Valuation Services Conference, 2017
- **"Un-blurring the Lines Between Accounting and Legal Opinions"**, CalCPA Forensic Services Steering Committee, June 2016
- **"Examining Cross-Examination"**, AICPA National Forensic & Valuation Conference, 2015
- **"Experts on Offense, Experts on Defense"**, ABA National Securities Fraud Conference, 2014

**In Re: Bank of America California Unemployment Benefits Litigation**
**Appendix B - Documents Considered**
**Expert Report of Greg J. Regan, CPA/CFF**

| Category | File |
|---|---|
| **Case Filings** | 2021-05-17 [89] Order Re Prelim Inj |
| | 2021-06-02 [103] Corrected Preliminary Injunction |
| | 2023.10.05 - BANA's Supplemental Responses to Interrogatories 9 and 16 |
| | 2023.10.05 -Attachment C - BANA Supp. Response to Interrogatory 9 |
| | 2023-05-25 [126] Order re MTD |
| | 2023-06-13 [136] FAMCC |
| | 2023-10-10 BANA EDD - Mediation Statement (Merged) |
| | 2023-10-10 Pltffs' Mediation Stmt (Merged) |
| | 2023-10-13 BANA's 2nd Supp. Response to Pls. First Set of ROGs 2-6, 14-15 |
| | 2024-01-02 BofA R&Os to Pls Rogs Set 4 |
| | 2024-02-15 BofA Suppl Response |
| | Attachment A - BANA's Response to Interrogatory No. 7 (CONFIDENTIAL) |
| | Attachment B - BANA Response to Interrogatory No. 8 (CONFIDENTIAL) |
| | BANA - MDL - Plaintiff Alias IDs (10.25.2023).xlsx |
| | BANA Responses to Plaintiff's First Set of Interrogatories |
| | BANA Verification of Responses to Plaintiff's First Set of Interrogatories (9.5.23) |
| | BANA Verification to BANA's Revised Supplemental Responses to Interrogatories 2-6 and 14-15 (12.01.23) |
| | BANA's First Set of Responses to Plaintiffs' Seventh Set of Interrogs (40-41, 44-46) (4.19.24) |
| | BANA's Responses and Objections to Plaintiffs Fourth Set of Interrogatories |
| | BANA's Responses and Objections to Plaintiffs Third Set of Interrogatories |
| | BANA's Revised Supplemental Responses to Interrogatories 2-6_ 14-15 (12.01.23) |
| | BANA's Verification to Plaintiffs' Fifth Set of Rogs (2.3.24) |
| | BANA's Verification to Plaintiffs' Fourth Set of Rogs (1.3.24) (1) |
| | BofA 10/6/22 BofA Remediation Plan to OCC and CFPB Consent Orders |
| | Data Dictionary to Interrogatory 27.xlsx |
| | Exhibit 1 - BANA Response to Interrogs. 2 and 6.xlsx |
| | Exhibit 10 - BANA's Response to Interrog 30 (pt 2).xlsx |
| | Exhibit 11 - BANA's Response to Interrog 32.xlsx |
| | Exhibit 12 - BANA's Response to Interrog 33.xlsx |
| | Exhibit 15 - BANA's Response to Interrog 45.xlsb |
| | Exhibit 16 - BANA's Response to Interrog 46.xlsx |
| | Exhibit 2 - BANA Response to Interrog. 3 .xlsx |
| | Exhibit 3 - BANA Response to Interrogs. 4 and 5.xlsx |
| | Exhibit 4 - BANA Response to Interrogs. 14-15 (Direct Comp.).xlsx |
| | Exhibit 4 Rogs 14-15.xlsx |
| | Exhibit 5 - BANA Response to Interrogs. 14 and 15 (IRP).xlsx |
| | Exhibit 5 - Rogs 14 and 15 (IRP).xlsx |
| | Exhibit 6 - BANA Response to Interrog 21.xlsx |
| | Exhibit 6 - Supplemental BANA Response to Interrog 21.xlsx |
| | Exhibit 7 - BANA Response to Interrog 22.xlsx |
| | Exhibit 8 - BANA Response to Interrog 27.xlsx |
| | Exhibit 8 - BANA's Response to Interrog 27.xlsx |
| | Exhibit 9 - BANA's Response to Interrog 30 (pt 1).xlsx |
| | Federal Register, CFPB Late Fees, 2024-05011.pdf |
| | Plaintiff Alias IDs (10.25.2023).xlsx |
| | Revised Exhibit 1 - BANA Response to Interrogs. 2 and 6 -20231201.xlsx |
| | Revised Exhibit 1 - Rogs 2 and 6 xlsx.xlsx |
| | Revised Exhibit 2 - BANA Response to Interrog 3 (12.20.23).xlsx |
| | Revised Exhibit 3 - BANA Response to Interrogs 4 and 5 (12.20.23).xlsx |
| | Revised Exhibit 4 - BANA Response to Interrogs. 14 and 15 [redacted] - 20231201.xlsx |
| | Revised Exhibit 4 Rogs. 14 and 15.xlsx |
| | Revised Exhibit 5 - BANA Response to Interrogs. 14 and 15 ([redacted]) - 20231201.xlsx |
| | Revised Exhibit 5 Rogs. 14 and 15.xlsx |
| | Rogs 4 and 5 Data Dictionary 96460.xlsx |

**In Re: Bank of America California Unemployment Benefits Litigation**
**Appendix B - Documents Considered**
**Expert Report of Greg J. Regan, CPA/CFF**

| Category | File |
|---|---|
| **Depositions & Exhibits** | 30(b)(6) Deposition of Michael Letson dated February 16, 2024 |
| | Deposition of Jennifer Lennon (30)(b)(6) dated February 23, 2024 |
| | Deposition of Matthew Martin dated February 14, 2024 |
| | Depositon of Robert A. Chestnut dated February 8, 2024 |
| **Document Production** | BANA EDD MDL VOL027.opt |
| | BANA_EDD_MDL-00019733 - [redacted] |
| | BANA_EDD_MDL-00102472-587 |
| | BANA_EDD_MDL-00282498 - [redacted] |
| | BANA_EDD_MDL-00510125.xlsx |
| | BANAEDD MDL-00517105 |
| | Bank-EDD Contract M6100352 05-14-18 Amendment to Revenue Share |
| **Research** | AICPA Practice Aid, Discount Rates, Risk, and Uncertainty in Economic Damages Calculations |
| | American Express, “Average Credit Scores by Age, State, and Income” |
| | Bank_of_America_Corporation_-_Form_10-K(Feb-20-2024) |
| | Bank_of_America_Corporation_-_Form_10-K(Feb-22-2022) |
| | Bank_of_America_Corporation_-_Form_10-K(Feb-22-2023) |
| | CBO, "Characteristics of People Receiving Regular Unemployment Benefits in July 2020" |
| | CFPB amicus brief filed in Mohamed v. Bank of America, N.A., No. 22-1954 (4th Cir.) |
| | CFPB Consent Order |
| | CFPB, "Consumer Credit Card Market Report", September 2023 |
| | CFPB, "Consumer Finances During the Pandemic," December 2021 |
| | CFPB, "Consumer Response Annual Report", March 2021 |
| | CFPB, "Consumer Use of Buy Now Pay Later", March 2023 |
| | CFPB, "Credit Card Late Fees", March 2022 |
| | CFPB, "The Consumer Credit Card Market," September 2021 |
| | CFPB, Consumer Response Annual Report, March 2021 |
| | CFPB, Consumer use of buy-now-pay-later, March 2023 |
| | CFPB, Making ends meet survey insights report, December 2021 |
| | CFPB, Mohamed v. Bank of America N.A. |
| | Consumer Reports, “How to Avoid Credit Card Late Fees,” by Lisa Gill, October 19, 2023 |
| | Federal Register, 89 FR 19128 |
| | Federal Register, CFPB Late Fees, 2024-05011 |
| | Federal Reserve Bank of Boston, Credit Card Spending and Borrowing since the Start of the Covid-19 Pandemic, by Joanna Stavins, October 19, 2023 |
| | Federal Reserve Bank of Cleveland, "Fintech Lending Expands Small Businesses’ Options", July 2020 |
| | Federal Reserve Bank of New York, "The Role of Fintech in Unsecured Consumer Lending to Low- and Moderate-Income Individuals", November 2023 |
| | Federal Reserve, “Unemployment Insurance in Survey and Administrative Data” |
| | Financial Times, “What are your rights if your bank account is frozen?”, July 23, 2020 by Lindsay Cook |
| | Forbes, "2022 Credit Card Late Fees Cost Consumers Record $15 Billion," by Katharina Buchholz, March 6, 2024 |
| | Forbes, "Living Paycheck to Paycheck Statistics 2024, by Emily Batdorf, April 2, 2024 |
| | Lending Club, "60% of Americans Now Living Paycheck to Paycheck, Down from 64% a Month Ago", February 28, 2023 |
| | Lending Club, "Nearly 60% of Credit Cardholders in the U.S. Live Paycheck to Paycheck", December 18, 2023 |
| | Mathematica Policy Research Report, “A Longitudinal Survey of Unemployment Insurance Recipients in Two Regions in California,” January 2017 |
| | OCC Consent Order |