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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE BANK OF AMERICA CALIFORNIA UNEMPLOYMENT BENEFITS LITIGATION	Case No. 3:21-md-02992-GPC-MSB

EXPERT REBUTTAL REPORT OF

WILLIAM J. ABERNATHY, JR.

April 3, 2025

REDACTED PUBLIC VERSION

Table of Contents

I. ASSIGNMENT

1. I have been retained by Plaintiffs' counsel in *In re Bank of America California Unemployment Benefits Litigation*, Case No. 3-21-md-02992-GPC-MSB.

2. Counsel for Class Plaintiffs have asked me to review the Expert Report of Russell Cronan ("Cronan Report"), which I understand Defendant Bank of America (the "Bank") disclosed on March 4, 2025, and to respond to the opinions set forth in Sections V and VI of Mr. Cronan's Report, including his statement that "It was reasonable for Bank of America to believe that its response to the explosion of pandemic-era prepaid card fraud would have been acceptable to the Bank's regulators."

3. Based on my experience as a long-time senior federal regulator at the Office of the Comptroller of the Currency (OCC), including as Director of Compliance and Bank Analysis, and for the reasons explained below, my opinion is that this statement and others presented in the Cronan Report are demonstrably incorrect.

4. Counsel for Class Plaintiffs have also asked me to respond to Section VII of the Cronan Report, including his opinion that the Bank's remediation plan, identifying "harmed consumers" also included fraudsters. (Cronan Rep. ¶65) He also stated the Remediation Plan was designed to be "generous."

5. Based on my experience as a long-time senior federal regulator at the OCC, it is my opinion that when regulators require a bank to identify a population of harmed consumers for remediation, the regulators expect the bank to develop and implement a process that will effectively identify and exclude fraudsters. In Bank of America's own remediation plan, submitted to the OCC and CFPB on October 12, 2022 they described how fraudsters would **not** be included as "harmed consumers." Regulators do not expect or tolerate payments to be made to fraudsters pursuant to a regulatory Consent Order.

6. My work on this case is ongoing, and I may review additional materials or conduct additional analysis. I reserve the right to update, refine, or revise my opinions as appropriate including if additional information becomes available to me.

II. QUALIFICATIONS

7. I am the Chief Executive Officer, expert witness, executive consultant and founder of Abernathy Bank Consulting, LLC in Atlanta, Georgia. I have over 50 years of broad educational, technical, and managerial experience in the banking industry as a National Bank Examiner (commissioned by the Secretary of the U.S. Treasury), senior district federal bank regulator, senior-level banker (Executive VP - Chief Risk Officer), and member of the board of directors of banks and a credit union, and I currently serve as a bank consultant and banking expert witness in litigation matters. I am a graduate of the University of Alabama with a Bachelor of

Science degree in Banking and Finance, and of The Stonier Graduate School of Banking for the American Bankers Association at Rutgers – The State University, New Jersey.

8. During my 33-year career with the Office of the Comptroller of the Currency (OCC), a bureau of the U.S. Department of Treasury, I served in six different senior management positions, including:

- **Director of Compliance and Bank Analysis** for over 300 national banks within the nine southeastern states. My responsibilities included supervision of these national banks to ensure their compliance with all consumer laws and regulations, including the Electronic Fund Transfers Act ("EFTA"), 15 U.S.C. §§1693(a)-(r), and its implementing Regulation E ("Reg E"), 12 C.F.R. pt. 1005, which OCC and CFPB have alleged that Bank of America violated in this case. The banks and the examiners-in-charge of these banks reported to me as the Supervisory Officer for compliance examinations in the Southeastern District.
- **Director of Bank Supervision** – Senior OCC Federal Supervisor of the 15 largest national banks headquartered in the nine-state district as well as all problem banks in the Southeastern District. I was the responsible official for safety and soundness examinations, consumer compliance exams, and direct

communications with these large bank executive officers and their Board of Directors.

- **Assistant Deputy Comptroller** – As the second-highest ranking executive for the Southeastern District, I managed the top banking technical experts (Lead Experts in consumer compliance, commercial lending, retail lending, capital markets, asset management (trust), and bank information systems), and all internal district operations including examiner training and development. I was also responsible for monitoring and follow-up on consumer complaints against all banks in the nine-state district, including complaints filed against Bank of America. My responsibilities included receiving, analyzing, and tracking all consumer complaints, as well as requiring the identified bank to respond to the consumer and OCC. This information was given to the bank's Examiner-in-Charge (EIC) for follow-up at the next compliance examination.

9. As a federal bank regulator, I served as the OCC's designated senior official for several Supervisory Offices, using my professional judgment to determine and confirm if OCC's EIC had reached accurate conclusions on safety, soundness and compliance examinations, including, if a particular institution had complied with the federal laws and regulations, and if OCC should require the bank to consent to the execution of a formal enforcement action for correction of material deficiencies. Each of these banks within my area of supervision and OCC's EIC of

each of those banks reported to me (as senior official of the Supervisory Office) regarding their examination of the bank, the accuracy of their examination report findings, and the recommendations for any proposed supervision action regarding the banks under my authority.

10. After my retirement from OCC and over the next decade, I served as a senior-level banker (Executive Vice President and Senior VP) at four different banks in Metro-Atlanta, including roles as Senior Vice President – Retail Banking (supervision of Branches, Branch Administration & Banker Training) and as Chief Risk Management Officer (CRO) at three different banks. As CRO, I generally managed the banks' six internal control departments: Audit, Bank Secrecy Act / Anti-Money Laundering (BSA/AML), consumer compliance regulations, operational risk controls (written policies & procedures - bank wide), commercial loan review, and regulatory relations (coordinate Federal Reserve and FDIC examination process and ensure corrective actions were taken by the Bank, if needed). Also, I implemented Enterprise Risk Management (ERM) at these banks, each of which had $1-3 billion in assets.

11. In 2013, I left full-time banking to establish my own firm, Abernathy Bank Consulting, LLC, to provide executive consultant services across a broad spectrum of the industry, including by assisting banks with risk management, compliance with BSA and other regulatory matters, and serving as an expert witness

in bank litigation. In the last five years, I have provided expert witness reports in 14 lawsuits and provided testimony in six depositions involving bank compliance, BSA/AML, Elder Financial Abuse (EFA), internal and external frauds, Ponzi schemes, financial institution standards, and other matters. I have been engaged as an expert for cases nationwide, on suits ranging from $250,000 to $7 billion, representing both plaintiffs and defendants, in both federal and state courts. Additionally, I have served on several boards of directors and as Chair of Committees for two banks, a credit union, and two large nonprofits. As a financial institution director, I have chaired the institutions' Compliance Committee (including compliance with Banking Laws & Regulations, Consumer Compliance, Bank Secrecy Act, and Regulatory Enforcement Action) and Directors Loan Committees, and have served as a member of those institutions' Executive Committees and Audit Committees.

My current curriculum vitae (CV) is attached as Appendix A.

III. HOURLY RATE

12. The charge for my service on this case is on an hourly basis at a flat rate of $700 per hour, whether for review of documents, research, writing this Expert Rebuttal Report, consulting, or testifying at deposition or trial. My compensation is not contingent upon my opinions or the outcome of the case.

IV. BASIS FOR OPINIONS

13. In preparing this rebuttal report, I relied upon the materials listed in **Appendix B**. I also base this rebuttal report on my 50 years of experience in the banking industry, including as a senior official of several Supervisory Offices of the OCC where, among other duties, I was responsible for the accuracy of examination findings and conclusions, the execution of enforcement action (if needed) and examiner supervision.

V. SUMMARY OF OPINIONS

1. The Bank's use of Indicator 1 of its Claim Fraud Filter as the sole basis for denying unauthorized-transaction claims by EDD debit cardholders in 2020-21 and for taking other adverse actions against them (freezing accounts, rescinding permanent credit) was highly improper, unprecedented, and contrary to my understanding of the governing legal and industry standards.

2. The Bank could not reasonably have believed that its use of Indicator 1 of its Claim Fraud Filter as the sole basis for denying unauthorized-transaction claims by EDD debit cardholders in 2020-21 and for taking other adverse actions against them (freezing accounts, rescinding permanent credit) would be found acceptable or consistent with permissible banking practices by the Bank's regulators.

3. I strongly disagree with many of the opinions stated in the Cronan Report, including the stated belief that "it was reasonable for Bank of America to

believe that its regulators would consider its (the Bank's) approach to modifying its Regulation E investigative process a reasonable response …." In my opinion, it would have been unreasonable for the Bank to have such a belief, and none of the Bank documents in this case that I reviewed support Mr. Cronan's assertion that the Bank believed that its approach to modifying its Regulation E investigative process during that time period was reasonable. Based on my extensive experience as a senior bank regulator, coupled with the fact that the OCC and CFPB later fined the Bank $225 million for violating its statutory and regulatory obligations under EFTA and Reg E – a fine that Mr. Cronan never mentions – I also strongly disagree with Mr. Cronan's suggestion that the Bank had any basis for believing that its regulators would have approved its use of Indicator 1 of the Claim Fraud Filter as the sole basis for denying claims, rescinding credits, and freezing accounts.

4. Regulators do not expect or tolerate payments to be made to fraudsters under a regulatory consent order and resulting remediation plan. Rather, regulators expect the financial institution to develop and implement reliable processes for effectively identifying "harmed consumers" and excluding fraudsters.

VI. STATEMENT AND EXPLANATION OF OPINIONS

A. Bank's Expert Cronan Offered Several Inaccurate Opinions

14. I understand that Mr. Cronan has 30 years of experience as an

examiner with the four bank Regulators; however, I find several of his opinions to be weak, not supportable, or outright mistaken. I base my views of his opinions on my 50-year career as a senior level official at OCC, as Executive or Senior Vice President and Chief Risk Management Officer at three banks, and now as CEO and owner of Abernathy Bank Consulting, LLC. Further as an OCC Senior Supervisory Officer, I had authority to overrule and change inaccurate examination findings or incorrect conclusions made by the bank Examiners-in-Charge, i.e., employees in Mr. Cronan's former position, and now, I must correct several of the inaccuracies in Mr. Cronan's Report.

15. Section IV, part A of the Cronan Report is titled "Regulators Expect Banks to Manage the Institution's Safety and Soundness, Including the Development of Procedures for Preventing Fraud Losses." In this section Mr. Cronan tries to make the case that OCC would have had supervisory concerns if the Bank had not properly managed "uncontrolled fraud losses" in its administration of the California EDD debit card funds in 2020-21. He implies that the Bank had only two choices at that point, *either* (1) manage "uncontrolled fraud losses" *or* (2) comply with EFTA and Reg E, but not both. As Mr. Cronan must know, though, it is not an "*either-or*" option. The OCC and other regulators expect the banks under their jurisdictions to fully comply with established safety and soundness standards *while also complying with all legal obligations, including under EFTA/Reg E*, in the course of addressing

whatever circumstances have arisen that may threaten economic losses, whether through fraud or otherwise. I am not aware of any circumstances in which a bank has requested, let alone obtained, its regulator's approval to violate EFTA, Reg E, or other safety and soundness standards and compliance laws based on the bank's assertion that special circumstances justify abandonment of those legal requirements.

16. In Section IV, part B, paragraph 23, Mr. Cronan states "Notably, regulators do not consider accounts established by criminals as a means of committing fraud as being subject to Regulation E." I do not know what Mr. Cronan bases this on, given that banks and regulators generally do not know whether an unauthorized-transaction claim is valid or not until after the bank has complied with its Reg E investigation requirement. This statement also strikes me as being highly insulting to the tens of thousands of honest claimants who needed to have access to their funds, but whose claims were denied by the Bank in their time of greatest need, i.e., during their unemployment due to the pandemic, based on an automated filter that treated every unauthorized-transaction claim as fraudulent if it involved an ATM withdrawal.

17. Mr. Cronan's entire part C of Section IV appears to be devoted to trying to explain why his personal understanding of a Regulation E investigation is more

accurate than the collective judgement reached by the OCC and CFPB. Mr. Cronan states in paragraph 29:

> "As an examiner, I did not apply a rigid set of criteria as to the specific form an investigation must take because I understood from my years of training and experience that the reasonableness of a bank's investigative process was dependent on the conditions and circumstances in which the investigation was conducted and the bank needed latitude to be able to adapt its approach accordingly."

Plainly, however, the OCC itself did not agree with Mr. Cronan's line of thinking. To the contrary, the OCC's Consent Order of July 2022 concluded:

> The Bank "applied an automated fraud filter … to decision UI Prepaid Card error claims that met certain criteria ("Fraud Filter") without conducting a sufficient investigation…,"[1] and the Bank engaged in "(i) unsafe or unsound practice(s), including deficiencies in its risk management, operational processes and controls, internal audit, and investigation and resolution of consumer claims of unauthorized transactions; and (ii) unfair and deceptive

[1] (OCC Consent Order), p.3.

practices in violation(s) of Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §45(a)(1)…."[2]

18. In addition, the Bank's two federal regulators, OCC and CFPB, jointly decided to assess a Civil Money Penalty against Bank of America totaling $225 million dollars due to the Bank's failure to comply with its regulatory obligations. Mr. Cronan's opinions about what the Bank's regulators would consider a "reasonable investigation" under the circumstances present in 2020-21 are completely contradicted by the regulators' actual findings and standards. Inexplicably, Mr. Cronan does not mention those findings and standards, or the resulting $225 million fine, at any point in his Report.

19. Also, in part C, Mr. Cronan states that over his career "some of the very real challenges banks' faced included … distressed economic conditions, and the scarcity of qualified personnel …." Cronan Rep. ¶27. In other parts of his Report he also states or implies that, because of the pandemic and increased fraud, the regulators should have "lowered the standards" required to satisfy Regulation E. *See* Cronan Rep. ¶29 ("As an examiner, I did not apply a rigid set of criteria … the reasonableness of a bank's investigative process was dependent on the conditions

[2] (OCC Consent Order), p.1.

and circumstances … and the bank needed latitude to be able to adapt its approach accordingly.").

20. I agree that the banks have faced many difficult challenges over the years and that the pandemic created many hardships for people and companies in a range of industries. However, in my experience, and based on my understanding of the governing requirements, bank regulators do not change their standards for supervising the banks they oversee, even during challenging periods. As an example, due to the impact of the economic recession of 2007-2009, the regulators closed 504 banks over the next seven years (2008-2014). Bank regulators did not "change or lower their standards" due to the severe economic conditions of the "Great Recession." Regulators did not "lower the standards" because of the pandemic or due to increased fraud. Nor did they lower their supervisory standards for safety and soundness, or for what constitutes a reasonable investigation of claims for Regulation E. The regulators do exercise judgment, but the "standards" are the "standards." In my opinion, Mr. Cronan's suggestions in this regard are inaccurate and unsupported.

21. The heading of Section IV, part D, "Reasonable Investigations Can Include Automated Features" and the accompanying narrative tries to support this statement. For example, in paragraph 31, Mr. Cronan states:

"During my 30 years working with each of the current federal banking regulatory agencies, no regulator to my knowledge took the position that such automated features were inherently unreasonable in terms of a Regulation E investigation."

22. First, there is general agreement that the use of automated tools in the *early* stages of a legally compliant Regulation E investigation are appropriate to use *as an initial screening device* to identify accounts that require further review. However, the Bank's use of Indicator 1 of its automated Claim Fraud Filter as the sole basis for denying claims, rescinding permanent credit, and freezing accounts sets it apart from the use of automated tools as a warning or red flag requiring manual follow-up. In my opinion, Mr. Cronan's comparison of the fraud filter that was used to decision claims, rescind credits, and freeze accounts with standard screening devices to alert the Bank of suspicious activity is an entirely unsupportable false equivalent.

23. Second, the absence of any basis for Mr. Cronan's opinion equating the fraud filter to standard screening tools is demonstrated by the fact that the OCC found that, "Specifically, the Bank (a) applied an automated fraud filter … to decision UI Prepaid Card error claims that met certain criteria ("Fraud Filter") without conducting a sufficient investigation to: (i) deny many consumers' claims… and (ii) "freeze" or "block" the UI Prepaid Card accounts associated with the

claims." Again, Mr. Cronan's speculation about what the Bank thought the OCC and CFPB might do is directly contradicted by what those regulators actually did, a critical fact he never mentions.

B. The Bank's Total Reliance on an Automated Claim Fraud Filter was Unprecedented and Inexcusable.

24. The Bank's use of an Automated Claim Fraud filter beginning in late September of 2020 to automatically deny consumers' claims of unauthorized transactions, rescind permanent credits, and freeze accounts in the circumstances covered by this case was without precedent both in the Bank's own past practice and, in my experience, as a banking industry practice. Banks have long used automated systems to assist them as a first step in targeting potentially fraudulent unauthorized-transaction claims, but they have not used computer models to automatically deny claims of unauthorized transactions, which requires a reasonable or adequate investigation under EFTA and Regulation E. Instead, automated systems have historically been used to [redacted].[3] Prior to September of 2020, the Bank followed its [redacted]

[3] (Martin Tr.) 286:17-288:8.

[redacted].[4] Conducting an EFTA-complaint investigation to ensure that claims investigations decisions are "consistent," based in fact, and use "all pertinent, available details" is historically how the Bank – like other financial institutions throughout the United States – addressed claims of unauthorized transactions and is also industry standard. The Bank's employee training materials during the relevant time period further stated: [redacted][5] The Bank's decision to implement Indicator 1 of its automated Claim Fraud Filter, [redacted], was unprecedented in the Bank's own history and in industry practice.

C. The Bank Could Have Asked Its Regulators Whether its Claim Fraud Filter Complied with The Bank's Obligations Under EFTA.

24. The Bank's appointed 30(b)(6) representative Michael Letson testified that the Bank never sought out or received approval from any of its regulators,

[4] *See e.g.*, BANA_EDD_MDL-00559693 (April. 2021 [redacted]) ("[redacted]")

[5] BANA_EDD_MDL-00006484 (Apr. 2020 training); BANA_EDD_MDL-00003890 (Sept. 2020 training); BANA_EDD_MDL-00100637 (Oct. 2020 training); BANA_EDD_MDL-00004542 (Mar. 2021 training)

including the CFPB and OCC, before deciding to use Indicator 1 of its automated Claim Fraud Filter to deny unauthorized-transaction claims, claw back permanent credit, and freeze accounts of EDD cardholders:

> [redacted][6]

25. Banks can easily request an official interpretation from the OCC by writing, emailing or calling the OCC's Washington Office or the bank's supervisory office. The CFPB has a similar process where banks can request an official interpretation in writing from its Washington Office. For Bank of America in

[6] (30(b)(6) Deposition of the Bank by its designee Michael Letson) at 26:5-22.

particular, the process of requesting examiner feedback or an official interpretation from the OCC is even easier and more straightforward. The OCC's Large Bank Supervision Program has examiners who are permanently on-site at the largest national banks, like Bank of America. So, Bank management could have literally "walked down the hall" to ask the OCC's examiners if their proposed use of the Claim Fraud Filter to deny EDD cardholders' claims and rescind permanent credits complied with EFTA and Reg E, or asked them to forward their request to the Washington Office for an official interpretation. Indeed, Bank of America's former Head of Global Financial Crimes, William Fox, testified that the bank examiners "live with us," and that "we communicated with the OCC just about everyday."[7]

26. Perhaps the reason that the Bank did not ask the regulators that they "live with" at OCC or CFPB is because the Bank's management knew or anticipated an answer from the regulators that they did not want to hear or accept. In my opinion, the Bank knew or should have known that it would be told that use of Indicator 1 of the Claim Fraud Filter as the sole basis for denying EDD cardholders' claims, rescinding their credits, and freezing their accounts would be unacceptable – as it later turned out to be, once OCC and CFPB found out what the Bank had done.

[7] (Bill Fox Tr.) 19:14-19.

D. The Bank Could Not Reasonably Have Believed That Its Use of The Claim Fraud Filter Would Be Acceptable to The Bank's Regulators.

27. In my opinion, it was unreasonable for the Bank to fail to communicate with its regulators that it was about to implement a new process of automatically denying its customers' unauthorized transaction claims based solely on a "Claim Fraud Filter," and based solely on the fact that the disputed transaction occurred at an ATM utilizing a PIN. In my opinion, the fact that the Bank could have easily communicated this plan to its regulators, but did not, indicates that the Bank was aware and concerned that the Claim Fraud Filter *did not* comply with the Bank's obligations and that the Bank's regulators would likely advise that implementing the Claim Fraud Filter would violate the adequate investigation requirement under Reg E.

28. The fact that the Bank could have and reasonably should have communicated its intentions regarding the Claim Fraud Filter to its regulators, but failed to do so, is completely ignored by the Bank's expert, Mr. Cronan. In my opinion, Mr. Cronan's assertion that "it was reasonable for Bank of America to believe" the Claim Fraud Filter "would have been acceptable to its regulators" is absolute malarkey. In my opinion, a reasonable bank in these circumstances would have communicated with its regulators and cleared the use of this new process that replaced the Bank's long-standing "adequate investigation" procedures with a

process of automated "systemic denials" based on limited data. The Bank's failure to do so renders any such "belief" completely unreasonable.

29. The unreasonableness of any "belief" by Mr. Cronan regarding the Bank's assumption of regulatory approval is confirmed by the fact that in July 2022, two years before he wrote his Report, OCC issued a Consent Order against the Bank because the Bank:

> "…applied an automated fraud filter … to decision UI Prepaid Card error claims that met certain criteria ("Fraud Filter") without conducting a sufficient investigation to: (i) deny many consumers' claims … and (ii) freeze or block the UI Prepaid Card accounts associated with the claims."[8]

The OCC, the Bank's primary Regulator, further stated in the notice of charges in the Consent Order that:

> "[T]he OCC intends to initiate cease and desist proceedings against the Bank … related to: (1) the administration of the Bank's prepaid cards for unemployment benefits, specifically engagement in (i) unsafe or unsound practice(s), including deficiencies in its risk management, operational processes and controls, internal audit, and investigation and resolution of consumer claims of unauthorized transactions; and (ii) unfair and deceptive practices in violation(s) of Section 5 of the Federal Trade Commission Act

[8] (OCC Consent Order) at p.3.

("FTC Act") … (2) engaging in unsafe or unsound practices related to deficiencies in its enterprise-wide complaints risk management framework…."[9]

30. Further, the OCC fined the Bank $125 million and the CFPB fined the Bank an additional $100 million for this conduct, so Bank of America was required to pay a Civil Money Penalty totaling $225 million dollars for their actions.

31. The OCC and CFPB do not levy fines for hundreds of millions of dollars for conduct they determine was reasonable. For example, the OCC Consent Order found that:

"…the Bank engaged in unsafe or unsound practices and engaged in unfair and deceptive practices in Section 5 of the FTC Act, 15 U.S.C. §45(a)" and that "[t]hese violations and practices support actions against the Bank under 12 U.S.C. § 1818(b) and (i)(2)(B)."[10]

32. The specific provision cited, 12 U.S.C. § 1818(i)(2)(B), authorizes second-tier penalties for "reckless" violations of law or "breaches of fiduciary duty" that are "part of a pattern of misconduct" or "results in pecuniary gain or other benefit" to the bank. The fact that the Bank's regulators levied significant second-tier penalties based on this level of misconduct, is also completely ignored by Mr.

[9] (OCC Consent Order) at p.1.
[10] (OCC Civil Money Penalty Order), p.5 (Article II, §6).

Cronan. In my opinion, Mr. Cronan's assertion that "it was reasonable for Bank of America to believe" the Claim Fraud Filter "would have been acceptable to its regulators" is unsupportable given the unprecedented nature of the Claim Fraud Filter, the fact that the Bank avoided asking the opinion of its regulators when it easily could have at the time, and given the significant adverse findings listed in the OCC's Consent Order, and the assessment of $225 million in Civil Money Penalties imposed by the OCC and CFPB against the Bank.

E. Regulators Do Not Expect or Tolerate Payments to Be Made to Fraudsters Under a Regulatory Consent Order and Remediation Plan.

33. The Bank's Remediation Plan pursuant to the CFPB and OCC Consent Orders provides that "[redacted]" or "[redacted]." "[redacted]

[redacted]."[11]

34. Based on my experience as a long-time senior federal regulator at the OCC, which included substantial compliance matters, it is my opinion that when regulators require a bank to [redacted]. The regulators expect the bank to develop and implement a reliable and lawful process that will effectively identify "[redacted]" and exclude fraudsters. Regulators do not expect or tolerate payments to be made to fraudsters pursuant to a regulatory consent order and remediation plan, especially where the bank has agreed [redacted] as the Bank did here. Based on my experience, when a bank such as Bank of America represents to its regulators that it will do something ([redacted]) they do it.

35. Mr. Cronan's Opinion that the Remediation plan did not exclude fraudsters because it was designed to be "generous" (Cronan Rep. ¶63), and because "regulators do not expect financial institution processes to identify and exclude 100% of illicit activity, including fraud," (Cronan Rep. ¶65) is also absolute malarkey. It is frankly ridiculous to believe that regulators would not only tolerate,

[11] (Remediation Plan) at 3.

but expect banks to create unreliable and ineffective processes that provide "generous" benefits to fraudsters.

Executed on April 3, 2025

WILLIAM J. ABERNATHY, JR.

APPENDIX A

WILLIAM J. ABERNATHY, JR.

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SUMMARY QUALIFICATIONS and ACCOMPLISHMENTS:

- **50-year** career in Banking Industry **-** experienced OCC Bank Regulator, Banker (Chief Risk Officer), Bank Consultant, Expert Witness & Bank Director
- **Technical Focus**: Risk Management; Regulatory Expertise; Board Governance; Expert Witness **Management Focus**: Leadership; Division & C-Level Management; Led High Performance Teams
- Successfully **Led & Directed** Strategic and Day-to-Day Operations of **twelve (12)** different **Start-up & Turn-around Divisions** for Banks, Federal Bank Regulator and Consulting Firm.
- **Innovative Leadership** in solving complex problems and implementing lasting solutions. Led/served on **eight (8)** national-scope OCC project teams; Led **six (6)** major bank-wide initiatives/teams.
- Received numerous high-performance awards; Taught OCC's top-rated national management school.
- AMA Executive Assessment identified Strongest Management Competencies: Concern with Impact, Proactive, Positive Regard for Others, Use of Verbal Presentations, and Managing Group Processes.

PROFESSIONAL EXPERIENCE:

Principal - Executive Consultant & Expert Witness, 2013- present & 2004-06
Abernathy Bank Consulting, LLC (ABC), Atlanta, GA
http://abernathybankconsulting.com/

Abernathy Bank Consulting provides services across a broad spectrum, specializing in helping banks with Risk Management, Regulatory Issues, & Serve as Banking Expert Witness. Highlights include:

- Expert Witness work with Attorneys, Write Expert Reports & Deposition Experience. Expert in Regulatory & Industry Standards, Frauds, Ponzi Schemes, BSA/AML Issues, Elder Financial Abuse
- Independent Board & Management Studies, Board & Employee Training, Enhanced Board Governance, Management Organizational Structure
- Bank Turnaround, Coordinate Compliance Committee, Monitor & Comply w/ Regulatory Orders
- Enhanced Risk Management Processes, including Bank Policies, Procedures, & Board Reporting
- **Bank Director - Colorado National Bank; Denver, Colorado (2018-19) - Chair of Compliance Committee, Audit Committee (Recruited as Director for Change of Control & Strategic Focus)**
- **Bank Director - Loyal Trust Bank; Johns Creek, Georgia (2019-2023) – Chair of Loan Committee, BSA Compliance, Executive Committee, Audit Committee (Multicultural De Novo Bank)**

Executive VP & Chief Risk Officer, 2009 – 2013 **State Bank & Trust Company, Atlanta, GA**

Chief Risk Officer reporting to Vice Chairman/President. Led and Managed: Audit, BSA, Consumer Compliance, Policy Governance, Loan Review, Regulatory Relations, & Loss Share ($2.7 Billion Assets)

- Organized, Centralized, Staffed, Automated Systems…4 departments within 90 days
- Develop & Control all Policies & Procedures Bank-wide; Lead initiatives to control Fair Lending Risk
- Lead initiative in non-credit areas to quickly unify 13 acquired banks into a One-Bank Operating Culture
- Established & Chaired ERM Committee, Served on Senior Management, Credit & IT Steering Committees

Chief Risk Officer – Senior VP, 2007 – 2009 **Brand Banking Company, Lawrenceville, GA**

Chief Risk Management Officer reporting to Board & CEO. Led and Managed Audit, BSA, Compliance, Loan Review and Regulatory Relations ($1+ Billion Assets)

- Led major turnaround in BSA, two months from Regulatory Issue to Correction (first assignment at bank)
- Hired Top-Flight Staff to Lead Compliance and Internal Audit (Reduced Consultant Expense)
- Chaired the Risk Management Committee, Member of Executive, Loan & IT Committees

Senior Vice President – Risk Management, 2006 – 2007 **Flag Bank, Atlanta, GA**

Senior Risk Officer reporting to Vice Chairman. Led and managed BSA, Compliance, Credit Administration, Loan Review, and Regulatory Relations ($1.7Billion Assets)

- Led major improvements in Loan Portfolio MIS to analyze trends, concentrations, asset quality, etc.
- Improved Independent Loan Review and strengthened Compliance Focus and Fair Lending Processes.

Senior Vice President – Retail Banking, 2003-2004 **Fidelity Bank, Atlanta, GA**

Senior Officer reporting to CEO, Led bank's 19 Branches, Retail Lending, Branch Administration, ATMs, Internet Banking, Telephone Banking, and Corporate Cash Management ($1.2 Billion Assets)

- Increased bank's DDAs by $100 million, 35% annual growth rate in first 6 months of 2004
- Led, motivated and directed 130 people, 40% of bank's staff
- Developed focused Commercial and Retail Lending Training for all Branch Lenders & Managers
- Served on bank's ALCO, CRA, and Senior Management Committees

Assistant Deputy Comptroller - 1997– 2003 **Comptroller of the Currency (OCC), Atlanta, GA**

Led & Managed District Lead Technical Experts (Commercial Credit, Retail Credit, Capital Markets, Compliance, Bank Information Technology & Asset Management), and directed internal district Operations for ***OCC's (Federal Regulator of National Banks) Southeastern District (9 southern states).***

- Served as #2 Executive for district, led nine-state operations, coordinated with Washington Headquarters, other banking & insurance regulators, and led Examiner Development Program
- Hired and managed top technical experts who examined the largest and most complex banks, provided advanced technical training and advise to examiners . . .most successful group in nation
- Served on District Risk Management Committee, Problem Bank Committee, & Senior Management Group

Director for Compliance and Bank Analysis (300+ banks), 1992-1997 **OCC, Atlanta, GA**

Led District's Compliance, Trust, IT supervision & implemented bank supervision policy. Managed and directed district's analysis of banks' corporate expansion (mergers, new de novo bank charters, etc.).

- Designed an operational and communication system for Compliance Team, which was used as national "blueprint" for new compliance examiner teams
- Developed and implemented risk management processes for corporate expansion unit which significantly improved customer service to banks and reduced application processing time by 25 percent

Director for Bank Supervision, 1988-1992, **OCC, Atlanta, GA**

Led and directed the supervision of the 15 largest regional banks in the Southeast USA (each ranging $5-$70 Billion in assets…$250 Billion total assets) and most serious problem banks (rated 4 & 5)

- Focused examinations and meetings with CEOs & boards of directors at largest regional banks on strengthening risk management systems, bank management & structure, and board supervision
- Led district using Risk-Focused Supervision to evaluate banks use of Policies & Systems to Manage Risks
- Developed and implemented a process that reduced the average timeframes for rehabilitation of problem banks by 40 percent (during major economic recession)

Director, Atlanta Field Office, 1983-1988, **OCC, Atlanta, GA**

Established new Field Office, directed the supervision of 100+ community banks and led a professional staff of 60 National Bank Examiners in Georgia, North Carolina and South Carolina.

- Strengthened Bank Supervision by Examiners. Developed and implemented improved internal management systems, organizational structure, and staffing for this new three-state organizational unit
- Organized and chaired first statewide banker CEO & director meetings to communicate supervisory issues

Regional Director for Human Resources, 1979-1982, **OCC, Memphis, TN**

Redirected & provided leadership for five-state region in areas of: performance management, compensation, recruiting, EEO, employee relations, training, and career development.

- Maintained lowest examiner turnover levels in history of region – strong, direct communications system
- Significantly increased recruiting and exceeded EEO hiring goals for minorities and women

Regional Director for Corporate Activities (Expansion Licensing), 1976-1979, **OCC, Memphis, TN**

National Bank Examiner & Assistant National Banker Examiner, 1970-1976 & 1982-1983, **OCC, Nashville & Memphis, TN, and Washington, DC**

EDUCATION AND PROFESIONAL ORGANIZATIONS:

- **University of Alabama, BS Degree, Banking and Finance,** Tuscaloosa, Alabama (1970)
- **ABA Stonier Graduate School of Banking, Rutgers University,** New Brunswick, NJ (1980), Written Senior Thesis: *"Increasing Your Bank's Equity Capital Coverage"*
- **Commissioned National Bank Examiner, U. S. Treasury Department Certification** (1975)
- **PRMIA - Professional Risk Managers' International Association,** Co-Regional Director, Steering Committee of Atlanta Chapter, *Conference Speaker & Member*
- **Risk Management Association (RMA),** *Conference Speaker & Member*

SPECIALIZED TRAINING:

- Checks – Endorsements, Fraud, and Compliance Issues, Deborah Crawford, 2021
- Certified At-Risk Adult Crime Specialist (Senior Elder Abuse), State of Georgia, 2021
- Seven Things an Expert Witness Must Know, Expert.com, 2020
- How to be an Effective Expert Witness, Depositions & Trials, SEAK, Inc., 2020
- How to Write a Bullet Proof Expert Witness Report, SEAK, Inc., 2020
- The BSA Experience, Georgia Bankers Association & Secura Risk Management, 2019
- Board & Executive Oversight: Compliance and BSA, Alabama Bankers Association, 2016
- Being an Effective Expert Witness, SEAK, Inc., Falmouth, MA, 2015
- Developing a Successful Expert Witness Practice, SEAK, Inc., 2015
- Southeastern Bank Management & Directors Conference, University of Georgia
- Risk Management Summit, American Strategic Management Institute
- Executive Effectiveness Course, American Management Association
- Commercial Lending, American Bankers Association
- Commercial Real Estate Review School, Comptroller of the Currency
- Advanced Management Seminar, Comptroller of the Currency
- Influencing People, College of Business, University of South Carolina
- Management Workshop, Federal Financial Institutions Examination Council
- Director's Leadership for Change, Comptroller of the Currency
- Instructor Training, Comptroller of the Currency
- Interview Techniques & Recruitment Workshop, Comptroller of the Currency
- Performance Appraisal: Counseling & Feedback, Office of Personal Management

SPEAKING ENGAGEMENTS:

- "Enterprise Risk Management: Where to Start", Virginia Bankers Association, 2014
- "Compliance Risk", Panel Moderator, Risk Management Association, 2014
- "Bank Regulator Hot Topics", GA Community Bankers Association, numerous dates
- "Management of FDIC Loss Share Agreements", Risk Management Association
- "Role of Chief Risk Officer", Panelist, Profession Risk Managers International Association
- "OCC Management School", Instructor, Comptroller of the Currency, numerous dates

OTHER RECOGNITION (SAMPLES):

- Recipient of InCommunity Foundation, Scruggs-Abernathy Generosity Award, Awarded to Bill & Shirley Abernathy, Excellence in Philanthropy Award, 2022
- Albert Gallatin Award, Esteemed Federal Service, U.S. Treasury Department, 2003
- Making A Difference Award, Training, OCC, 2003
- On-the-Spot Award, National Task Force, Bridge to Large Bank Supervision, OCC
- Special Act Award, Resolution of Major Issues at Independent IT Data Center, OCC
- Special Act Awards, OCC, Awarded Numerous Times for Leadership on National Task Teams
- On-the-Spot Award, Instructor, Structurally Weak Loan Training, OCC
- Certificate of Appreciation, Instructor for OCC Management School, OCC
- Bank Supervision Operations Manager Award, "Year 2000" Work, OCC

VOLUNTEER EXPERIENCE:

- **InCommunity, Inc.** – *Board of Directors, 2018-present (Vice-Chairman-2022, Chairman-2021, Executive Committee, Finance Committee), InCommunity Foundation (2018-present)* – Meeting the Needs of 2,500+ Disabled Adults in Metro-Atlanta by providing Housing, Caregivers, Transportation, Day-Programs, Job Support, Social & Sports Activities, etc.
- **InCommunity, Inc. –** *Presenting Sponsor & Co-Chairman*; *31st Annual Gala – 2019 Benefit Night,* Major Fundraiser for Non-Profit Supporting Disabled Adults (raised new record level $$)
- **enAble of Georgia, Inc. –** *Sponsor & Co-Chairman*; *30th Annual Gala - Founders Ball 2018,* Major Fundraiser for Non-Profit Supporting Disabled Adults (raised $300K)
- **Georgia Community Support and Solutions –** *Board of Directors, Chairman Emeritus (2010), Chairman (2009), Vice Chairman (2008), Member (5 Years)*, Largest Non-profit in State of Georgia Serving Disable People and Their Families (Serving 20 Metro Atlanta Counties)
- **Associated Credit Union, Atlanta, GA -** *Board of Directors (served 3-year term); Credit Committee, Chairman (2 years) and member (8 years)*
- **Murphey Candler Little League, Atlanta, GA -** *Board of Directors & Challenger League Director (2 years); Managed and Coached* Baseball Team for disabled children (8 years)
- **Canine Assistants, Alpharetta** - *Certified Volunteer* Service Dog Trainer…to help disabled children and adults
- **Atlanta Track Club –** *Member & Runner*: marathon, several Half-Marathons, 21 Peachtree Road Races (10K)

APPENDIX B: MATERIALS RELIED UPON

Production Materials

BANA_EDD_MDL-00004996
BANA_EDD_MDL-00005390
BANA_EDD_MDL-00005509
BANA_EDD_MDL-00020097
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BANA_EDD_MDL-00559693
BANA_EDD_MDL-00006484
BANA_EDD_MDL-00003890
BANA_EDD_MDL-00004542

Publicly available materials
Corrected Declaration of Shane Daniels [N.D. Cal. Dkt. 76-16]
OCC Consent Order (#2022-024)
Order re Preliminary Injunction [N.D. Cal., Dkt. 89]
Order re Motion to Dismiss [Dkt. 126]
Order re Prelminary Injunction [N.D. Cal., Dkt. 103]
First Amended Master Consolidated Complaint [Dkt. 136]
CFPB Consent Order
OCC Consent Order (#2022-023)
CFPB Press Release
Plaintiffs' Notice of Motion and Motion for Class Certification
Memorandum of Points and Authorities in Support of Motion for Class Certification
Ex 16 to the Declaration of Connie Chan in support of Plaintiffs' Motion for Class Certification
Ex 36 to the Declaration of Connie Chan in support of Plaintiffs' Motion for Class Certification
Ex 47 to the Declaration of Connie Chan in support of Plaintiffs' Motion for Class Certification
Ex 74 to the Declaration of Connie Chan in support of Plaintiffs' Motion for Class Certification
Ex 80 to the Declaration of Connie Chan in support of Plaintiffs' Motion for Class Certification
Ex 82 to the Declaration of Connie Chan in support of Plaintiffs' Motion for Class Certification
Ex 84 to the Declaration of Connie Chan in support of Plaintiffs' Motion for Class Certification

Ex 6 to the Declaration of Laura Brys in support of Defendant’s Opposition to Plaintiffs’ Motion for Class Certification
Defendant's Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion for Class Certification

Discovery
Bank of America's Responses to Plaintiffs' Interrogatories, Set 1
BofA's Revised Supplemental Responses to Interrogatories 2-6, 14-15
Matthew Riffee Email re BofA Response to Plaintiffs' Interrogatories, Set 3
BofA's Responses and Objections to Plaintiffs' Interrogatories, Set 3
BofA's Responses and Objections to Plaintiffs Third Set of Interrogatories
Exhibit 6 - BofA's Response to Interrogatory 21
Exhibit 7 - BofA's Response to Interrogatory 22
Exhibit 8 - BofA's Response to Interrogatory 27
Matthew Riffee Email re BofA's Responses to ROGs, Set 4 & Exs 9-10
BofA's Responses and Objections to Plaintiffs' Interrogatories, Set 4
Exhibit 9 - BofA's Response to Interrogatory 30 (pt 1)
Exhibit 10 - BofA's Response to Interrogatory 30 (pt 2)
BofA's Responses and Objections to Plaintiffs Fifth Set of Interrogatories
Exhibit 11 - BofA's Response to Interrogatory 32
Exhibit 12 - BofA's Response to Interrogatory 33
Transcript of Rule 30(b)(6) Deposition of Michael Letson
Declaration of Russell Cronan
Deposition Transcript of Matthew Martin
Deposition Transcript of William Fox
Expert Report of Russell Cronan (March 4, 2025)