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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 NATALIE LOEBNER

April 4, 2025

REDACTED PUBLIC VERSION

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I. ASSIGNMENT

1. I have been retained by Plaintiffs' counsel in connection with *In re Bank of America California Unemployment Benefits Litigation*, Case No. 3-12-md-02992-LAB-MSB. I was asked to address certain opinions and assumptions presented in the Expert Report of Russell Cronan, dated March 4, 2025 ("Cronan Expert Report"), and the Expert Report of Teresa A. Pesce, dated March 4, 2025 ("Pesce Expert Report"), regarding:

A. The reasonableness of Bank of America, N.A.'s ("Bank's") use of Claim Fraud Filter Indicator 1 ("CFF-1") to summarily deny customer-initiated unauthorized transaction claims, and

B. The reasonableness of the Bank's retroactive application of CFF-1 to overturn its approvals of previously investigated claims.

II. INFORMATION CONSIDERED

2. In addition to my own knowledge, training and experience, I relied on case-related materials provided to me by Plaintiffs' counsel. These materials are listed in Appendix A of this report. I reserve the right to supplement or amend my report should new information be provided to me.

III. HOURLY RATE

3. Plaintiffs' counsel retained me at the hourly rate of $900 per hour, which is not contingent on my opinions or the outcome of this case.

IV. QUALIFICATIONS

4. I am the principal of Loebner Consulting, LLC, a limited liability company based in Virginia that I founded in 2023. Through Loebner Consulting, I primarily offer subject-matter expertise to the federal government in complex financial investigations. My work is focused on software development, automation implementation, and leveraging data analytics to improve investigative processes. This work includes coordinating with teams that develop and implement rules-based systems and/or data models to identify unlawful conduct in pursuing criminal or civil investigations. Additionally, I advise private sector clients supporting financial crimes investigations through software development and/or data analytical services.

5. Prior to founding my own company, I offered similar consultation services through my previous employer, Eastport Analytics, Inc. I have over five years of experience consulting with federal law enforcement and government agencies.

6. Apart from my consulting work, I have extensive experience in financial investigations (criminal, civil fraud, and compliance), gained in part through my time as a Special Assistant United States Attorney (SAUSA) and as a Trial Attorney for the Department of Justice (DOJ) Tax Division. For example, in 2013, as a SAUSA in the Southern District of Alabama, I led an interagency

financial crimes task force shortly after the issuance of the Tax Division Directive 144 (issued September 18, 2012), which addressed Stolen Identity Refund Fraud (SIRF)[1] and increased exploitation of prepaid bank cards. As part of this effort, I coordinated with over 20 state and federal agencies and liaised with various U.S.-based financial institutions. From 2015 to 2018, I served as an Electronically Stored Information Coordinator for the DOJ Tax Division, supporting efforts to improve discovery requests issued to financial institutions with the aim of obtaining more compliant and useful responses from the institutions' core systems. I also provided training to DOJ attorneys on evaluating transactional data obtained from relational databases.

7. Private sector companies and law enforcement agencies, foreign and domestic, have relied upon my expertise—including my knowledge and experience concerning the exploitation of payment systems and eCommerce platforms by criminal actors—to better understand and investigate financial crimes. Based on my expertise, in the past two years I have made numerous presentations as a thought leader in my field, including at the Joint Chiefs of Global Tax Enforcement (the J5 Initiative), which is dedicated to combatting transnational tax

[1] U.S. Attorneys' Manual | 36. Tax Division Directive 144 (September 18, 2012)—Temporary Delegation of Authority to Authorize Grand Jury Investigations, Criminal Complaints, and Seizure Warrants for Certain Offenses Arising from Stolen Identity Refund Fraud | United States Department of Justice, https://www.justice.gov/archives/usam/tax-resource-manual-36-tax-directive-no-144

crime through increased enforcement collaboration, as well as to the Association of Certified Anti-Money Laundering Specialists (ACAMS) on organized retail crime and improving subpoenas to financial institutions. I have also led formal trainings with agents of the Internal Revenue Service (IRS), Federal Bureau of Investigation (FBI), Homeland Security Investigations (HSI), and the DOJ.

8. I advise several non-profit organizations focused on combatting financial crime and advocating for financial crime victims in a volunteer capacity, including organizations such as the Aspen Institute, the Knoble, Operation Shamrock, and the Survivor Inclusion Initiative.

9. I hold a Bachelor of Arts from Whitman College in Pure Mathematics as well as Rhetoric and Film Studies. As part of my mathematics degree, I studied and became familiar with computer coding, data modeling, and machine learning—skills I have since applied in my work with governmental and private entities combating financial crimes.

10. I received both a J.D. and LLM in Taxation from the University of Washington School of Law.

11. My resume, attached as Appendix B, has additional details and dates about my previous positions and professional experience.

V. SUMMARY OF FACTUAL BACKGROUND[2]

12. I understand that the Bank issued prepaid debit cards funded by the State of California's Employment Development Department ("EDD") prior to and during the COVID-19 pandemic. I further understand that the Bank was responsible by contract and statute to respond to unauthorized-transaction claims asserted by such cardholders, including claims that funds had been stolen from them through unauthorized use at an Automated Teller Machine (ATM).

13. It is my understanding that the Bank implemented a Claim Fraud Filter ("CFF") that, beginning on September 28, 2020, was applied to automatically deny cardholder unauthorized-transaction claims.

14. I understand the Bank's CFF had three different indicators of potential fraud:

A. Indicator 1 ("CFF-1"). An EDD cardholder makes an unauthorized transaction claim where at least one transaction is a PIN-enabled ATM cash withdrawal. No other facts were considered by the Bank before automatically denying claims that triggered CFF-1.

B. Indicator 2 ("CFF-2"). [redacted].

[2] This factual background is based on my review of documents and dispositions listed in Appendix A and other documents cited herein and is informed by my experience in working in financial fraud and criminal cases and investigations.

C. Indicator 3 ("CFF-3"). [redacted]:

(1) [redacted];

(2) [redacted];

(3) [redacted];

(4) [redacted]; or

(5) [redacted] cardholders share the same address (physical or email).[3]

15. I understand that an EDD cardholder's unauthorized-transaction claim could trigger more than one indicator but that the relevant population for this case are those cardholders whose claims triggered CFF-1 only.

16. I understand that from September 28, 2020, through June 8, 2021, all unauthorized-transaction claims that triggered CFF-1 only were summarily denied; that prior to March 18, 2021, the associated accounts were automatically frozen; and that from March 18, 2021, through June 8, 2021, the associated accounts were automatically blocked.

17. I understand that the Bank automatically rescinded permanent credits for EDD cardholder unauthorized-transaction claims that triggered CFF-1 only that were initiated on or after April 1, 2020, and before September 28, 2020.

[3] BANA_EDD_MDL_00090640

VI. SUMMARY OF OPINIONS

18. I disagree with Cronan's and Pesce's opinion that the Bank's use of CFF-1 to summarily deny an EDD cardholder claim based solely on the fact that at least one of the unauthorized transactions was a PIN-enabled ATM cash withdrawal (i.e., based on the Bank's implementation of its automated CFF-1) was reasonable for the following reasons:

A. In automatically denying unauthorized-transaction claims based solely on CFF-1, the Bank failed to account for well-known, common scenarios in which an EDD cardholder's unauthorized-transaction claim would have been legitimate. By not considering these scenarios, the Bank failed to consider customer/cardholder victims as required by their regulators.

B. The Bank was unreasonable in its characterization that any cash withdrawal at an ATM was inherently suspect and basing the development of CFF-1 on that unreasonable premise was flawed.

C. The Bank was unreasonable in its failure to consider or implement other tools it had available to address card skimming.

19. I disagree with Cronan's and Pesce's opinion that the deployment and methods to measure CFF-1's effectiveness were reasonable. The Bank did not have or implement an appropriate plan to measure the actual effectiveness of CFF-1 for the following reasons:

A. The Bank's [redacted] to measure the effectiveness of CFF-1 auto-denials was flawed because the metric was not reasonably representative of the impacted cardholder population.

B. The Bank's stated [redacted] was woefully inadequate because the Bank did not include sufficient details to review the metric during initial months CFF-1 was deployed.

C. The Bank unreasonably failed to leverage any proactive metric, like sampling or surveys, to ensure CFF-1 was effective and reasonably tailored given the size of the impacted cardholder population.

D. The Bank's documentation on its implementation of CFF-1 did not consistently and clearly describe the automation and decisioning process, and, therefore, failed to adhere to the documentation requirements for large banks.

20. The Bank's retroactive denial of previously approved and investigated unauthorized-transactions claims by EDD cardholders based solely on CFF-1 was not reasonable. The Bank applied an overly broad rule, failed to except previously decisioned cardholders from denials, and responded unreasonably when the Bank learned previously investigated cardholders had their permanent credits reversed.

21. It is my opinion that the Bank's above-described failures and oversights, when viewed collectively, demonstrate that the Bank's design, implementation, and methods to measure CFF-1's effectiveness were woefully inadequate and an extraordinary departure from well-established standards.

VII. CRONAN'S AND PESCE'S OPINION THAT THE BANK'S USE OF CFF-1 AS A MECHANISM FOR AUTOMATICALLY DENYING UNAUTHORIZED-TRANSACTION CLAIMS WAS REASONABLE IS WRONG.

22. Cronan opines that a reasonable investigation can "include automated features" to "aid or support an investigation."[4] Cronan goes on to say that he is "not aware of any specific prescriptive elements about of the nature of the investigation to be conducted, including any specific prescriptions about the use of automated features in fraud strategies."[5] Pesce similarly opines that "the Bank acted reasonably in devising an automated fraud detection solution" which she describes as "[redacted]."[6] While automated features are not uncommon fraud strategies, the strategies banks implement must be reasonably tailored and effective. Banks must take care at every stage—developing, deploying, and measuring the effectiveness—of any automation they implement. For the reasons

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[4] Cronan Expert Report ¶ 30. ("Cronan Rep")

[5] Cronan Rep. ¶33.

[6] Pesce Expert Report ¶ 56 ("Pesce Rep."); *see also id.* ¶ 53 (opining that "the fraud filter was a reasonable attempt to expeditiously address a growing fraud problem").

stated below, with respect to CFF-1, it is my opinion that the Bank was not only unreasonable at *each* stage but contrary to industry standards when considered collectively.

23. Pesce and Cronan present a fundamentally flawed assessment of the reasonableness of the Bank's use of CFF-1. They cite the Office of the Currency Comptroller of the Currency's ("OCC") Bulletin 2019-37[7] in an effort to support their opinions, but they fail to consider some of that Bulletin's more critical guidance when reaching their ultimate conclusions. Notably, the OCC in its bulletin highlights the different types of fraud (internal, external, third-party) and victims of fraud (a customer/cardholder, a bank, or a client) that banks must consider and account for when developing their fraud strategies.[8] Despite its awareness of this reality,[9] the Bank crafted a rule in the form of CFF-1 that categorically and unreasonably precluded the Bank from concluding that cardholders who complained about having money stolen from them through an unauthorized ATM transaction were telling the truth and that they were in fact

[7] Office of the Comptroller of the Currency, *OCC Bulletin 2019-37:* Operational Risk: Fraud Management Principals (July 24, 2019), https://www.occ.treas.gov/news-issuances/bulletins/2019/bulletin-2019-37.html

[8] *Id*.

[9] It is my understanding that the Bank incorporated the OCC's guidance in the form of internal standards instructing employees of their responsibility to protect cardholders from the three forms of fraud (e.g., internal, external, and third-party. *See* William Martin Deposition (Martin Tr.)150:1–153:24.

legitimate victims. In my opinion, this is not reasonable, especially because the Bank's regulator's guidance expressly calls out only three types of victims the Bank needed to consider, and the Bank only considered two when developing CFF-1.

24. Pesce's and Cronan's contention that the Bank's creation and implementation of CFF-1 was reasonable and appropriate rests upon a flawed data analysis that improperly relies on, and overemphasizes, a potential correlation between fraud and ATM cash withdrawals.[10] Further, their reports fail to explain why the Bank acted reasonably in failing to incorporate any of the available anti-fraud tools and methods that it used in other contexts to assess whether cardholder claimants were in fact victims of fraud.

25. The development of CFF-1 failed to consider well known scenarios where cardholders could be victims, a lopsided development for an automation to decision unauthorized-transaction claims. CFF-1's deployment was hurried, and the Bank failed to leverage well known strategies to prevent errors and confusion. Measurement of the effectiveness of the automation was woefully inadequate, providing the Bank with insufficient visibility into the impact and effectiveness of the automation.

[10] Cronan Rep., ¶48, 49, Pesce Rep., ¶56.

26. For the reasons stated below, CFF-1 was not a reasonable use of an automation as it fell woefully short of meeting industry standards to be reasonably tailored to minimize collateral damage to innocent cardholders which the Bank knew about. In my opinion, the unreasonable approach by the Bank at each stage of the CFF-1 development, implementation, and effectiveness measurement demonstrates this was a flawed automation from start to finish.

A. In developing and implementing CFF-1 automation, the Bank failed to consider well-known situations such as card skimming—a pervasive crime where a cardholder's PIN is compromised, enabling unauthorized cash withdrawals from an ATM—where a claimant cardholder would be a true victim.

27. Cronan and Pesce state in their reports that in their experience, banks use automations to support a wide variety of functions, including making otherwise manual efforts more streamlined, often by reducing or eliminating employee judgment and discretion from the decision-making process.[11] In my experience, it is highly problematic to rely on automations that are not reasonably tailored for the specific use case. Assessing whether CFF-1—or any rule—is reasonably tailored to achieve its desired objective requires assessing that rule's underlying presumptions. By categorically denying any unauthorized-transaction claim based on a PIN-enabled ATM cash withdrawal, CFF-1 treats such claims as inherently

[11] Cronan Rep., ¶16, Pesce Rep., ¶¶23, 24, and 55.

fraudulent. Cronan and Pesce both claim that this inherent conclusion of fraudulent conduct is reasonable. Their opinion, however, ignores that many such claims are valid and that the relevant claimant-cardholders are in fact victims of fraud. The awareness of card skimming and other legitimate claims related to unauthorized ATM transactions is demonstrated, for example, by the inclusion of [redacted][12]

28. One of the more obvious and notorious examples of a valid unauthorized-transaction claim in which EDD funds were stolen from a cardholder at an ATM involves card-skimming. Based on my experience supporting financial crime investigations, I am familiar with card skimming operations. Card skimming occurs when criminals compromise payment terminals or ATMs by installing card-reading devices. The cardholder's PIN can be compromised using different techniques, including pinhole cameras or keypad overlays. Criminals use information captured by a skimming device to generate a duplicate or cloned card to make unauthorized purchases or to make ATM withdrawals using the cardholder's compromised PIN. Card skimming has become so frequent an occurrence that the FBI, U.S. Secret Service, and other law enforcement agencies

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[12] BANA_EDD_MDL-00004996 ([redacted]).

and regulators have issued public warnings and brought numerous card skimming cases.[13] These compromises have been known to occur at ATMs, gas stations, and other locations with publicly accessible terminals accepting debit cards with PIN input.[14] PIN inputs are generally required at non-ATM terminals where the card or terminal is not EVM chip-enabled.

29. Based on my experience engaging with financial institutions, card skimming is a risk with which banks issuing debit and prepaid cards are familiar, both before and during the COVID-19 pandemic. Financial institutions reduce this risk by implementing processes and procedures to detect and mitigate the risk of card skimming. Common measures to identify and mitigate card skimming risks include: (1) monitoring transactions to detect point-of-sale (POS) terminal usage

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[13] The FBI Scams and Safety webpage, https://www.fbi.gov/how-we-can-help-you/scams-and-safety/common-frauds-and-scams/skimming, cautions the public on the various techniques used to compromise cardholder PINs. Similarly, the U.S. Secret Service webpage, https://www.secretservice.gov/investigations/skimming, states the Service investigates hundreds of cases a year and advises that PIN compromise occurs at a variety of common merchants like pharmacies, gas stations, and grocery stores. The webpage also highlights the recommendation to use chip enabled cards to reduce the exposure of the cardholder's PIN as merchant locations. In 2018, the Federal Trade Commission (FTC) issued a consumer alert related to card skimming, https://consumer.ftc.gov/consumer-alerts/2018/08/watch-out-card-skimming-gas-pump. The Office of the Comptroller of the Currency (OCC) identifies advances in card skimming technology in its Fiscal Year 2018 Bank Supervision Operating Plan, https://www.occ.gov/news-issuances/news-releases/2017/nr-occ-2017-113a.pdf, and 2019 Fall Semiannual Risk Perspective, https://www.occ.gov/publications-and-resources/publications/semiannual-risk-perspective/files/pub-semiannual-risk-perspective-fall-2019.pdf.

[14] United States Secret Service, U.S. Secret Service Serves up Cold Dish of Justice to Gas Pump Skimmers, U.S. Secret Service Media (November 22, 2018), https://www.secretservice.gov/press/releases/2018/11/us-secret-service-serves-cold-dish-justice-gas-pump-skimmers (Press release regarding a nationwide initiative called Operation Deep Impact to combat the targeting of gas stations noting the identification of nearly 200 skimmers.)

that connects numerous cards to suspicious ATM withdrawal or purchase patterns; (2) physically inspecting ATMs to identify skimming devices; (3) proactively flagging transactions associated with compromised ATMs and POS terminals; and (4) leveraging skimming indicators placed on transactions to streamline transaction holds and cardholder engagement.[15]

30. It is my opinion that the Bank was aware of and treated card skimming as a risk before and during the Bank's deployment of CFF-1. My opinion is supported by records I reviewed in this case in which Bank employees [redacted]. Further, the Bank was publicly highlighted in Department of Justice press releases during the relevant timeframe as either assisting law enforcement with card skimming investigations or otherwise acknowledging having customers as card-skimming victims.[16] Nonetheless, the

[15] BANA_EDD_MDL-00057505 (Email from [redacted]).

[16] A sampling of DOJ press releases illustrative of the prevalence of the risk before and during the Class Period: Twelve Individuals Charged in ATM Skimming Conspiracy (November 16, 2016), https://www.justice.gov/archives/opa/pr/twelve-individuals-charged-atm-skimming-conspiracy (a 2016 case where skimming devices were found at Bank of America locations.); Romanian Citizen Pleads Guilty in ATM Skimming Conspiracy (March 29, 2017), https://www.justice.gov/archives/opa/pr/romanian-citizen-pleads-guilty-atm-skimming-conspiracy (a 2017 case identifying both Bank of America and PNC Bank customers as victims); Romanian National Sentenced for Multi-State ATM Card Skimming Scheme (June 3, 2019), https://www.justice.gov/archives/opa/pr/romanian-national-sentenced-multi-state-atm-card-skimming-scheme (a 2019 case noting keypad overlays as one of the ways PINs were compromised); Seven Members and Associates of Large-Scale Gas Pump Skimming Device Organization Charged with Racketeering and Money Laundering Conspiracies (May 8, 2024), https://www.justice.gov/archives/opa/pr/seven-members-and-associates-large-scale-gas-pump-

Bank failed to account for this scenario when implementing CFF-1 in its unauthorized-transaction claim process.

31. Card-skimming is one of the more notable examples in which a cardholder-claimant would be the victim rather than the fraudster and is a situation of which the Bank was well aware. In my opinion, a reasonable automated process would have accounted for this real and well-known scenario; however, CFF-1 did not take this into account.

B. Even if there was a potential correlation between fraud and an ATM cash withdrawal, it was unreasonable for the Bank to use this correlation alone in developing CFF-1.

32. The Bank's reliance on its CFF-1 as a stand-alone basis for denying unauthorized-transaction claims rests on the incorrect assumption that all unauthorized-transaction claims based on ATM/PIN cash transactions are inherently false and fraudulent. Both Cronan and Pesce assert that the Bank conducted a thoughtful analysis to determine "[redacted]" indicative of fraud by identifying a strong correlation between PIN-enabled ATM cash activity and fraudulent unauthorized-transaction claim behavior, and that the Bank used that analysis in developing and implementing its CFF-1.[17] Pesce supports her

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skimming-device-organization-charged (a 2024 case cover conduct from 2014 to 2024 involving large scale gas station skimming operations).

[17] Pesce Rep. ¶56 and Fn. 129; Cronan Rep.¶49.

conclusions in part with a statement from the Letson Declaration "[redacted]."[18]

33. While it likely is true that some claims by cardholders that benefits funds were stolen from them through an unauthorized ATM transaction were fraudulent, the question in this case as I understand it is whether that factor alone (i.e., CFF-1's exclusive reliance on the fact that funds were allegedly stolen through a PIN-enabled ATM transaction as the basis for decision), is *alone* a reasonably sufficient indicator that the cardholder's asserted claims was fraudulent. Even if there were some correlation between ATM use and cardholder fraud, it does not follow that this feature/characteristic definitively identifies invalid fraudulent claims. The potential correlation to fraud does not necessarily mean the *claimant* is the fraudster and in my opinion, based on experience in working with the government and institutions in developing fraud strategies, it is an insufficient basis for CFF-1 which by design would have denied all legitimate ATM claims.

34. In an attempt to defend the contrary view, Pesce asserts that it would have been unusual for EDD debit card holders to convert their benefits distributions to cash at an ATM given the shift to cashless payments.[19] In offering

[18] Pesce Rep. Fn. 129; Cronan Rep. Fn.45.

[19] *Id*. at ¶52

that opinion, Pesce cites certain studies relating to national trends toward cashless payments. In my opinion, these studies do not support Pesce's ultimate conclusion. However, these studies show an overall reduction in the use of cash in 2019 and 2020 generally. They do not stand for the proposition that the use of cash by the UI benefits recipients at issue here is unusual or that the shift to cashless payments was so great that the use of cash should be categorically viewed as unusual. In fact, a subsequent study that specifically explored the Covid-19 timeframe notes that consumers use of cash increased in 2021 and that there was a higher correlation in the use of cash for households making under $150,000 and approximately a three times greater correlation for household making under $25,000.[20] This contradicts Pesce's claim that UI benefits recipients would not have converted their benefits distributions to cash.

35. Moreover, based on my review of the documents produced in this case, Bank employees with knowledge of the California EDD cardholder population noted their specific awareness that [redacted]. For example, a September 14, 2020, and internal Bank email from [redacted]

[20] Emily Cubides and Shaun O'Brian, The Federal Reserve, "2022 Findings from the Diary of Consumer Payment Choice" (May 5, 2022), 2022-Findings-from-the-Diary-of-Consumer-Payment-Choice-FINAL.pdf

[redacted][21]

36. The contemporaneous evidence I reviewed does not reasonably show that the mere fact that an unauthorized-transaction claim was based on an ATM cash transaction indicated a fraudulent claim. The Bank would have needed to identify additional information, obtained through a manual investigation or through other channels available to it, to have a reasonable basis to summarily deny unauthorized ATM transaction claims. The Bank's underlying premise is unsound because it ignores scenarios in which the cardholder would be the victim (e.g., a victim of card skimming).[22] The automatic presumption of fraud by the claimant is

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[21] BANA_EDD_MDL-00630750.

[22] BANA_EDD_MDL-00169902 (September 19, 2020, [redacted]; BANA_EDD_MDL-00125058 and 00125059 (September 24, 2020 email and slide deck [redacted]); BANA_EDD_MDL-00170045 and 0017046 (September 24, 2020 email and slide deck [redacted]); BANA_EDD_MDL-00087760, BANA_EDD_MDL-00087763 (September 25, 2020 email from [redacted] regarding GFC's proposal for a [redacted]);

particularly unreasonable given the Bank's awareness of card skimming at the time of its CFF-1 development and implementation,[23] and the tools available to the Bank to identify card-skimming.

C. The Bank failed to incorporate any of its various available tools and methods used in other contexts to inform CFF-1 denials and assess whether a cardholder-claimant was in fact a legitimate victim.

37. As Cronan acknowledges, large banks, such as Bank of America, have long implemented automated processes to identify fraud. This acknowledgment aligns with my experience as well. Cronan's report, however, omits any discussion of whether automated processes included the capability to identify card skimming. Regardless, the records I reviewed revealed the Bank did not incorporate any of the available card skimming detection processes in developing its CFF-1 automation policy. As I noted above, based on my experience, there are several means available to the Bank to detect and identify card skimming. None were

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BANA_EDD_MDL-00087766 and 00087767 (September 25, 2020 email and slide deck [redacted] BANA_EDD_MDL-00087779 and 00087780 (September 25, 2020, email and slide deck [redacted]

[23] BANA_EDD_MDL-00455617 (Email string initiated by [redacted] and noting [redacted]; BANA_EDD_MDL-00228914 – 15 (April 24, 2020 email [redacted].

incorporated into CFF-1. A financial institution of the Bank's size and sophistication should have been able to devise a process to identify card skimming claims and should have had typologies and detection rules in place to identify this type of activity prior to the Covid-19 pandemic.

38. The Bank's records reveal that several Bank employees raised concerns about using CFF-1 to auto-deny claims[24] and noted that CFF-1 [redacted][25] [redacted]

[24] BANA_EDD_MDL-00107267 (December 29, 2020, email from [redacted]; BANA_EDD_MDL-00107267 at -00107268 (January 11, 2021, email from [redacted]).

[25] *See e.g.*, BANA_EDD_MDL-00070242 (Slide deck entitled [redacted] dated September 2, 2020, [redacted]; *see also* BANA_EDD_MDL-00102789 (September 2, 2020, email from [redacted] BANA_EDD_MDL-00874835 and BANA_EDD_MDL-00885638 (September 13, 2020 email from [redacted]); BANA_EDD_MDL-00087718 and BANA_EDD_MDL-87719 (September 15, 2020, email from [redacted]

[redacted], as compared to the single-factor, automatic-denial approach incorporated into CFF-1, demonstrates that the Bank could have adopted a more tailored approach to address concerns about fraudulent unauthorized ATM transaction claims. Nonetheless, the Bank did not adopt any such nuanced considerations in CFF-1 and failed to consider any heightened risk factors to tie the activity to benefits fraud as with [redacted] or tie the activity to legitimate claims like card skimming for approval. [26]

39. Pesce highlights that the Bank also applied CFF-1 to cases in which EDD had verified the claimant-cardholder's identity. Pesce contends that the Bank's reliance on EDD's verification of the cardholder's identity was sufficient control to eliminate false positives, i.e., unauthorized ATM transaction claims that

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[redacted]; BANA_EDD_MDL-00076931 and BANA_EDD_MDL-00076932 (September 22, 2020 email [redacted] BANA_EDD_MDL-00125177 ([redacted].

[26] Pesce Rep. ¶41. Stating "accounts bore strong indicia that they belonged to fraudulent benefits recipients (e.g., because of their [redacted])."

the Bank automatically denied based on CFF-1 even though the claimant was an actual victim of ATM theft.[27] As a preliminary matter, EDD's verification of cardholder identity would have taken place *after* legitimate cardholders' claims were already auto-denied; thus, that procedure was not sufficient to constitute a reasonable control. The auto-denial would have occurred prior to the Bank taking any steps to determine whether there were transactions that may have occurred at a known compromised ATM or POS terminal or presented flags regarding a new compromise.

40. Further, unlike EDD, the Bank had exclusive access to the transactional data necessary to determine whether a cardholder was a victim of card skimming or otherwise a victim of another type of fraud (i.e., prior contested transactions, use of a compromised ATM, etc...).[28] Failure to leverage this transactional data and instead relying on a system that requires cardholders to exhaust efforts with the State before being permitted to regain access to critical benefits funds cannot reasonably be expected to accurately distinguish legitimate claims from illegitimate ones. This practice also increases the likelihood that information supporting the cardholders' assertions may become lost or inaccessible

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[27] *Id*. at. ¶ 59

[28] BANA_EDD_MDL-00417517 ([redacted].

(records proving where the cardholder was at the time of the unauthorized transaction, photos of individual that the ATM or POS terminal may be purged over time). These realities further undermine any contention that CFF-1 is reasonably scoped and tailored.

41. In my opinion, in designing CFF-1 to deny any claim based on a contested ATM cash withdrawal, the Bank took the most extreme approach to automation resulting in a blunt and overbroad filter that was not tailored to the task of identifying likely fraudulent claims and that foreseeably would impact many legitimate cardholders.

VIII. PESCE AND CRONAN'S OPINIONS ABOUT THE REASONABLENESS OF THE BANK'S AUTOMATED FRAUD DETECTION SYSTEMS IS FLAWED AS THE RECORD REFLECTS THE BANK MAINTAINED A FLAWED APPROACH TO DEPLOYING AND IMPLEMENTING THE CFF-1 AUTOMATION.

42. Both Cronan and Pesce acknowledge the Bank's regulator's expectation that banks identify, measure, monitor, and control risks. Cronan references the regulator's handbook series that includes guidance on effective control systems for insight into how to effectively measure and monitor the systems that are put in place.[29] The Bank's regulator emphasizes in the handbook

[29] Office of the Comptroller of the Currency, Administrator of National Banks, "Comptroller's Handbook: Internal Control, " (January 2001), available at https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/internal-control/index-internal-control.html.

that effective control systems are important to help detect possible mistakes, errors in judgment, or even distraction that might cut against the effectiveness of a bank's system of controls.[30]

43. Cronan and Pesce recognize that no fraud detection system or automation will be perfect and will have false positives.[31] That said, as discussed above, the controls and measures underlying an automation must be reasonably tailored for the specific purpose they are used, which CFF-1 was not. Similarly, a bank must be reasonable in its approach in identifying metrics to measure an automation's effectiveness and safeguards to identify and correct errors. This is true even when—and arguably, especially when—circumstances necessitate quick implementation. In my opinion, neither the Cronan nor the Pesce expert report provides a sufficiently comprehensive assessment of the reasonableness of the Bank's approach to the CFF automation generally, much less the CFF-1 automation.

44. Additionally, although automated features may be used to "aid an investigation,"[32] I understand that CCF-1 was used by the bank not to flag cardholder claims involving ATM transactions for priority review, but to

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[30] *Id*. at p.2.

[31] Cronan Rep. ¶12; Pesce Rep. ¶59.

[32] Cronan Rep. ¶ 30.

automatically deny those claims without any investigation. Accordingly, CFF-1 was not being used to "aid an investigation" but rather a substitute for conducting an investigation. Given the complete replacement of a previously manual multi-step investigation, it was not reasonable to have such a limited method to measure the impact and effectiveness of the CFF-1 automation.

45. As I detail below, the overall approach adopted by the Bank in automating CFF-1 was flawed. The Bank's reliance [redacted] was flawed at the outset because it was insufficient to address the complexities associated with the CFF automation and the effectiveness of CFF-1 in particular. The Bank compounded the negative effect of this flaw by failing to take a nuanced and concerted approach to understanding the impact of its CFF-1 on [redacted]. Based on my experience, the Bank was not sufficiently deliberate in its implementation of CFF-1 and did not make any meaningful effort to enhance CFF-1's effectiveness by incorporating other metrics or other proactive feedback mechanisms.

A. The Bank's heavy reliance on reconsideration rates to measure CFF-1 automation's effectiveness was a flawed approach and unreasonable.

46. Based on my review of the documents, I understand that the Bank [redacted]

[redacted].[33] "Reconsideration rate" as used in this report refers to the percentage of denied claimants who proactively asked for reconsideration of their claim denials. Pesce contends that [redacted] reconsideration rates to measure the effectiveness of its automated CFF decisional process was reasonable.[34] Pesce's assessment, however, fails to take into account certain obvious shortfalls and obstacles inherent in the metric's features in the context of administering state benefits.

47. At the outset, the process of reconsideration involves protracted delays. Based on my review of the records provided, it [redacted] the Bank to decision a reconsideration request once the cardholder was able to speak to a call center employee.[35] The significant delay was driven and possibly further increased by several factors, all known to the Bank. Prior to March 18, 2020, EDD cardholders had to reverify their identity with the state prior to requesting reconsideration by the Bank. Cardholders were explicitly instructed to take this step in the denial letters issued by the Bank, which required them to

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[33] Letson Deposition, at 184:2-20. ([redacted]).

[34] Pesce Rep. ¶58 ("In my opinion, the lack of prepaid cardholders seeking reconsideration would have provided the Bank with a good faith basis to believe the CFF was capturing fraudsters.").

[35] Renee Johnson Deposition at.190:6 – 192:11 ([redacted].); BANA_EDD_MDL-00417271-2 (email noting that the [redacted].)

contact the state of California to reverify their identity. Moreover, the phone lines at the Bank had significant waiting times. Given the Bank's extensive experience managing call centers, the Bank would have, or reasonably should have, known that these delays would cause many valid claimants to abandon their calls out of frustration or due to their own time constraints. The effect would be particularly pronounced for EDD cardholders, who tended to be low-income individuals who often had time constraints as well as budgetary constraints.[36] Further, the reality is that a process requiring affirmative reconsideration requests will almost never capture all erroneous denials. Language barriers, family or personal distractions, medical issues, limited phone plans, and other common everyday problems in our society lead people to delay pursuing or abandon altogether valid claims. This phenomenon is well known, and it is reasonable to conclude the Bank would have been aware of it. In my opinion, these factors make it unreasonable for the Bank to have relied on reconsideration rates alone to measure erroneous denials.

48. Pesce highlights the "low" percentage of individuals requesting reconsiderations in attempting to describe the reconsideration rates as a sufficient metric.[37] However, Pesce's characterization of the rate as a "low" number is

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[36] Anne Holt Deposition at. 134:20-135:11 [redacted], 94:11-95:25, 139:14-140:5, 226:21-227:1; Faiz Ahmad at. 56:1-7; 69:14-17

[37] Pesce Rep. Fn.138.

misleading. Although the percentage of individuals who requested reconsideration was approximately [redacted], this percentage represented a dramatic jump in the overall number of reconsideration requests after the implementation of CFF automation. In August and September 2020 (prior to CFF rollout), [redacted] individuals respectively requested reconsideration as compared to [redacted] in October 2020 and 3,262 in November 2020.[38] This jump represents a nearly [redacted] percent increase in the number of reconsideration requests in the first months following the Bank's CFF implementation. In my opinion, this sharp increase alone would have been a justification to question the reasonableness of the Bank's reliance on reconsideration rates as a sole measure of CFF's efficacy.

49. While reconsideration rates might provide some information, it was not reasonable for the Bank to [redacted] considering the known obstacles and the data showing a steep rise in reconsideration requests after CFF rollout. The Bank should have accounted for this and taken additional steps to improve the accuracy of its measurement. It was not reasonable for the Bank to [redacted]—a purely

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[38] BANA_ED_MDL-00203373 (On the "Exec Summary" tab row 22 columns AD and AE); BANA_EDD_MDL-00571086 (On the "Exec Summary" tab row 26 columns AH, and AI).

reactive measure—without simultaneously taking into account any additional proactively obtained metrics to better assess CFF's effectiveness.

B. The Bank's reliance on reconsideration rates was unreasonable because it failed to consider CFF-1's actual impact on those rates.

50. If the Bank chose to use reconsideration rates [redacted], it reasonably should follow that the Bank would utilize a system to monitor and track the effect CFF had on those rates. A bank implementing CFF or similar automation should want to know which reconsideration requests were driven by the new automation and which were not. As CFF had three indicators (CFF-1, CFF-2, and CFF-3), a bank should be reasonably interested in examining which reconsideration requests were tied to each indicator. When addressing reconsideration rates, neither Cronan's nor Pesce's report addresses how the Bank assessed the impact of CFF automations on those rates. In fact, Cronan and Pesce could not address it because, based on my review of the records provided, the Bank [redacted]. In the immediate months after implementing CFF, the Bank [redacted]. In my opinion, this failure/oversight is unreasonable.

51. In the first two and half months of the CFF automation deployment, the Bank did not [redacted].[39] Additionally, based on the records provided to me, the Bank was not reviewing reports that [redacted].[40] It further appears that the Bank's reports did not provide sufficient details to meaningfully measure the impact of each CFF indicator on the auto-decisioned population until May 2021—approximately seven months after its CFF rollout.[41] These reports reveal that in the initial months, the Bank did not have a clear

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[39] BANA_EDD_MDL-00203372, 00203373 (CR&R Report from October 28, 2020); BANA_EDD_MDL-00203434, -00203435 (CR&R Report from November 4, 2020); BANA_EDD_MDL-00203523, -00203527 (CR&R Report from November 12, 2020); BANA_EDD_MDL-00203585, -00203586 (CR&R Report From November 20, 2020); BANA_EDD_MDL-0023610, -0023612 (CR&R Report from November 25, 2020); BANA_EDD_MDL-00202637, 00202639 (CR&R Report from December 4, 2020); BANA_EDD_MDL-00203643-00203645 (CR&R Report from December 7, 2020).

[40] BANA_EDD_MDL-00571046, -0057104 (Email and attached presentation sent on December 16, 2020, [redacted]; BANA_EDD_MDL-00646320 at -646321 (Email string on January 21, 2020, [redacted]); BANA_EDD_MDL-00510141, BANA_EDD_MDL-00510142 at -510145(Email string with attachment starting on May 11, 2021, identifying that [redacted]); BANA_EDD_MDL-00118652-55 (Email string starting on May 10, 2021, highlighting [redacted].

[41] BANA_EDD_MDL-00510148; BANA_EDD_MDL-00118652; BANA_EDD_MDL-00159490; BANA_MDL_EDD-00166412, -00166413; BANA_EDD_MDL-00166432, -00166433.

understanding of what claims were auto-decisioned, much less the basis for auto-decisioning. The reports were patently insufficient to apprise recipients at the Bank on the CFF indicators' performance.

52. Without this critical information, it seems inconceivable that these report recipients could be reasonably informed about whether the Bank needed to improve or refine its CFF automation or where it should layer additional measurement strategies to account for information gaps. Had the Bank implemented appropriately detailed reporting from the outset, it would have been able to quickly appreciate the impact of the CFF indicators, particularly CFF-1. A meaningful review of the metrics would have made evident the disproportionate impact that CFF-1 had on the overall auto-decisioned population, both in the number of claims and dollar amounts. A presentation from May 2021 providing [redacted]).[42]

[42] BANA_MDL_EDD-00159490 at-159492 (Slide deck presentation from May 2021 that states that [redacted]; *see also* BANA_EDD_MDL-00159490 (A slide from the May 2021 presentation noting [redacted]).

53. As I noted above, the Bank's reliance on [redacted] as a measure of CFF automation's effectiveness was fundamentally flawed and shows the Bank was not reasonable in its approach to capturing accurate metrics. In my opinion, the Bank effectively doubled down on its unreasonable approach by failing to ensure its reporting of [redacted] was meaningfully tied to the CFF indicators.

C. The Bank's failure to employ additional generally accepted proactive strategies, such as sampling, surveys, or intentional feedback, to measure CFF-1 automations' effectiveness was unreasonable.

54. As I explained above, the Bank's failure to immediately capture and assess the impact of each CFF indicator on [redacted] was unreasonable and contrary to standard practices. Those analytical deficiencies are exacerbated by the fact that the Bank's later reports revealed that [redacted]. Additionally, as I noted above, CFF automation resulted in a dramatic upsurge in the overall number of reconsideration requests (again, a [redacted]).[43] This impact could not reasonably be dismissed as trivial or negligible.

[43] BANA_EDD_MDL-00571086 (On the "Exec Summary" tab rows 5 and 26, Columns AH, and AI).

55. The Bank was aware that CFF's impact could not be dismissed as trivial given the noticeable change in operations, and the Bank reasonably should have taken steps to inform itself of the impact's scope. In the initial months of the CFF automation, the Bank's reports [redacted]. But even if the Bank had implemented from the start its later-adopted method of reporting, its knowledge would have been limited to knowing how many claims were auto-decisioned and the basis for auto-decisioning. The Bank would not have been able to make reasonably informed conclusions about the underlying accuracy and would have had an incomplete picture of the effect of its new automation because, as explained above, the reconsideration metric is inherently incomplete. The Bank should have taken steps to evaluate a meaningful cross-section of claims that were being denied automatically that were not associated with reconsideration requests to ensure the automatic denials were effective and not negatively impacting legitimate claimants.

56. The Bank could have reasonably utilized any number of proactive methods, such as sampling, surveys, and/or intentional feedback to give it greater confidence in CFF's efficacy.[44] The OCC handbook identifies sampling and

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[44] Pesce Rep. ¶48 While Pesce notes raises "[redacted]" this is not related to the use of the CFF automations for the purpose of claim denials, but to prevent fraudulent transactions, a process that is not triggered by a cardholder contacting the bank asserting fraud.

surveys, also referred to as questionnaires, as additional ways to measure effectiveness.[45] Neither Cronan nor Pesce describe these efforts by the Bank, again because the records indicate that the Bank took no such efforts.

57. Sampling would have involved a process where the Bank examined and scrutinized a randomly selected group of denied claims (regardless of whether the claimants requested reconsideration). Had the Bank taken steps to sample automatically denied unauthorized transaction claims—specifically, those decisioned only using CFF-1—it could have identified issues like the improper reversal of permanent credits or observed legitimate victims with common attributes, like card skimming. Given the pure number of cardholders that were subject to the new automation, it is in my opinion wholly deficient to exclusively rely on reconsideration rates.

58. The Bank could also have implemented surveying, whereby it would have issued questionnaires or inquiries to front-line employees to determine whether they experienced any unexpected issues with the new automation. My examination of the records provided to me reveals that several Bank employees proactively communicated serious issues about CFF-1 without any prompting from

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[45] Office of the Comptroller of the Currency, Administrator of National Banks, "Comptroller's Handbook: Internal Control, " (January 2001), pgs. 23, 37, available at https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/internal-control/index-internal-control.html.

Bank supervision or management.[46] Given this reality, it stands to reason that sampling would have identified additional issues that could have reasonably informed changes to CFF-1 processes.

59. When implementing a new process, automated or otherwise, a bank's front-line employees are in an ideal position to provide feedback, as they are the ones dealing with the immediate fallout of any problems or issues. Recognizing this fact, many successful banks allow front-line employees to provide feedback, particularly in the early stages of a new process. These intentional and deliberate processes can include setting up email accounts or internal phone numbers specifically for feedback and tasking a team to evaluate the feedback to identify systemic issues, errors, and—in the cases of automated or technical process—code-based bugs.

60. Cronan and Pesce do not address this aspect of implementation in their reports. Once again, this is because the record indicates that the Bank made no effort to develop such processes; and to the extent the Bank's vendors supported

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[46] BANA_EDD_MDL-00057504 (Email string initiated on October 30, 2020 by Bradley Garfield [redacted]; BANA_MDL_EDD-00090640 (December 29, 2020 email [redacted]); BANA_EDD_MDL-00297295 (April 23, 2021, email [redacted]; BANA_EDD_MDL-00090683, at -9068586 (Email string starting on January 11, 2021 [redacted])

such feedback mechanisms, the record indicates that the Banks did not escalate these issues to consider modifying the overbroad scope of CFF-1. Based on my experience piloting automations and rolling out version updates, it is standard practice to solicit feedback in the initial rollout of new processes. Businesses often find intentional feedback processes critical and have established repeatable processes for collecting feedback. The alternative is to adjust processes based on unsolicited feedback obtained on an ad hoc basis, which can prove difficult if not impossible. My review of the documents provided reveals that the Bank's agents were aware of CFF-1 auto decisioning denials to victims and permanent credit holders having their credits reversed. However, it appears that these employees raised these issues sua sponte rather than in response to any concerted or proactive effort by the Bank. Had the Bank taken steps to solicit feedback, it likely would have become more aware of the problems with CFF-1 in the initial months of the CFF automation deployment. In my opinion, the Bank's failure to adopt a formal mechanism to apprise and obtain feedback from its employees is further evidence that its overall approach to implementing CFF was unreasonable.

61. Sampling, surveying, and soliciting proactive feedback would not necessarily have revealed all issues, but they are generally accepted—and typically low-cost—methods for a business to measure the effect of any new process, including automation. The record I reviewed indicates that the Bank made no

attempt to use these measures or any other proactive rather than reactive measures to assess CFF-1. In my opinion, this failure was unreasonable and is surprising for a financial institution with the Bank's sophistication and resources. The Bank's failure to reasonably assess the effectiveness and impacts of CFF-1 through standard, generally accepted processes that one would typically expect to see, further contradicts Cronan and Pesce's opinion that the Bank could have reasonably believed that the CFF was an acceptable use of automation.

D. The Bank's inaccurate documentation regarding the CFF-1 automation further highlights that the Bank's overall approach to implementing CFF was not reasonable.

62. The Bank's regulator requires banks to have well-documented processes that clearly describe the operations and the lines of responsibility.[47] Sound documentation better ensures processes can be properly implemented by the developers, understood by the employees, and effectively reviewed by management. Proper and accurate documentation assists a bank in identifying any errors or improper implementations.

63. Neither Cronan nor Pesce address whether the Bank's documentation of the CFF automation was accurate or reasonable. My review of the records

[47] Office of the Comptroller of the Currency, *OCC Bulletin 2019-37:* Operational Risk: Fraud Management Principals (July 24, 2019), https://www.occ.treas.gov/news-issuances/bulletins/2019/bulletin-2019-37.html ("Banks with significant and far-reaching retail-oriented business activities should have well-documented fraud risk management with appropriate monitoring measurements and reporting, and mitigation.")

provided revealed several documents indicating that CFF-1 was hastily created. In my overall estimation, the documents show a curtailed rollout process checkered with last-minute decisions resulting in a great deal of confusion regarding CFF-1's nature and scope. For example, email correspondence on the same day the CFF process was implemented demonstrates that the rollout team was [redacted].[48] The confusion is understandable, because the prior work of the group that developed fraud detection strategies had looked to [redacted] the mere fact that a claim involved an ATM transaction.[49]

[48] BANA_EDD_MDL-00709230([redacted]).

[49] *See e.g.*, BANA_EDD_MDL-00070242 (Slide deck entitled [redacted]; *see also* BANA_EDD_MDL-00102789 (September 2, 2020, email [redacted]; BANA_EDD_MDL-00874835 and BANA_EDD_MDL-00885638 ([redacted]

64. My understanding is that the Bank's [redacted][50] The confusion about whether the CFF-1 results were [redacted].[51] [redacted].[52]

00087718 and BANA_EDD_MDL-87719 ([redacted];
BANA_EDD_MDL-00076931 and BANA_EDD_MDL-00076932 ([redacted]
BANA_EDD_MDL-00125177 ([redacted].

[50] BANA_EDD_MDL-00497802.

[51] BANA_EDD_MDL-00592322, BANA_EDD_MDL-00592324 at. –592326 (November 9, 2020, email from [redacted]).

[52] BANA_EDD_MDL-00592324 at -592357(*see, e.g.,* §1.3 (Assumptions); §1.4 ([redacted])

65. In addition to inaccurately and inconsistently [redacted].[53] However, as discussed above, the Bank employees knew that reconsideration requests took on average [redacted], and potentially much longer considering the customer service obstacles experienced by cardholders in trying to verify their identity with the Bank and EDD. [redacted].

66. In my opinion, these inconsistencies and inaccuracies, when viewed collectively, further demonstrate that the Bank did not have a deliberate and well-executed approach to rolling out CFF-1. They therefore provide further support for

[53] Illustrative of presentations that included this same process visual. BANA_EDD_MDL-00077039, BANA_EDD_MDL-00077040 (December 12, 2020, email from [redacted]).

my opinion that the Bank's overall approach in implementing CFF-1 was not reasonable.

IX. THE BANK DID NOT REASONABLY RESPOND TO THE REVERSING OF CARDHOLDERS' PERMANENT CREDITS BASED ON CFF-1.

67. As explained above, the basis for automatically decisioning cardholder unauthorized-transaction claims based solely on CFF-1 is contrary to standard practices and flawed. Accordingly, I rely on the reasoning stated above, as well as the fact that this population of cardholders that had received permanent credits on prior unauthorized transaction claims also had an individualized investigation that identified information supporting the cardholder's assertion that the transactions in question were in fact unauthorized.

68. The Bank employees tasked with developing and implementing the code to retroactively apply the CFF filters to the cardholders who initiated claims starting on April 1, 2020, through September 27, 2020, should have considered this cross-section of cardholders that had already undergone evaluation and wrote code to exclude them from the automation. Although [redacted],[54] it does not

[54] BANA_EDD_MDL-00169953 at -16995 (September 21, 2020, email exchange from [redacted]).

appear from the documents I reviewed that this scenario was specifically provided to the employees developing the code as a necessary requirement.

69. The Bank's regulators require reasonably tailored systems of controls to ensure programs and processes operate effectively. Cronan and Pesce did not address—and I did not review records that demonstrated—that the Bank engaged in any meaningful quality assurance or scenario testing after the implementation of the retroactive CFF filters to ensure that the process worked as intended. As described above, the Bank did not apprise or solicit feedback from its front-line employees on CFF generally, much less the impact on specific cardholders who had claims initiated between April 1, 2020, and September 27, 2020.

70. Based on document data from as early as January 2021, the Bank was aware that [redacted].[55] Had the Bank deliberately sought out this type of oversight, it would have been possible for the Bank to issue corrective measures for the entire subpopulation in a timely manner.

[55] BANA_MDL_EDD-00571297, BANA_EDD_MDL-00571299 (Email exchange with attachment from January 2021 between [redacted].

71. The Bank's failure to implement proactive measures to identify issues and measure effectiveness was not reasonable with respect to the cardholders who had permanent credits reversed.

Dated: April 4, 2025

Natalie Loebner

APPENDIX A: MATERIALS RELIED UPON

Production Materials

BANA_EDD_MDL-0041755-00417558

BANA_EDD_MDL-00163307-163308

BANA_EDD_MDL-00004996-5020

BANA_EDD_MDL-00559693-559980

BANA_EDD_MDL-00228914-228915

BANA_EDD_MDL-00455617-455619

BANA_EDD_MDL-00154042-154044

BANA_EDD_MDL-00057504-57506

BANA_EDD_MDL-00166345

BANA_EDD_MDL-00087718-87720

BANA_EDD_MDL-00076931-76947

BANA_EDD_MDL-00070242-70247

BANA_EDD_MDL-00592322-592330

BANA_EDD_MDL-00127437-127441

BANA_EDD_MDL-00646320-646335

BANA_EDD_MDL-00225375-225393

BANA_EDD_MDL-00426407-426411

BANA_EDD_MDL-00297295

BANA_EDD_MDL-00273305-273307

BANA_EDD_MDL-00667102-667118

BANA_EDD_MDL-00667119-667120

BANA_EDD_MDL-00004535-4580

BANA_EDD_MDL-00100634-100679

BANA_EDD_MDL-00123235-123236

BANA_EDD_MDL-00090640-90647

BANA_EDD_MDL-00090683-90686

BANA_EDD_MDL-00708960-708962

BANA_EDD_MDL-00102786-102787

BANA_EDD_MDL-00874835-885639

BANA_EDD_MDL-00630749-630753

BANA_EDD_MDL-00169902-169904

BANA_EDD_MDL-00169912-169915

BANA_EDD_MDL-00630837-630838

BANA_EDD_MDL-00169953-169957

BANA_EDD_MDL-00087760-87765

BANA_EDD_MDL-00125058-125059

BANA_EDD_MDL-00170045-170047

BANA_EDD_MDL-00087766-87769

BANA_EDD_MDL-00087775-87778

BANA_EDD_MDL-00630880-630882

BANA_EDD_MDL-00125073-125075

BANA_EDD_MDL-00087779-87780

BANA_EDD_MDL-00709230-709234

BANA_EDD_MDL-00140948

BANA_EDD_MDL-00169898-169899

BANA_EDD_MDL-00371998

BANA_EDD_MDL-372000-372005

BANA_EDD_MDL-00705489-705492

BANA_EDD_MDL-00125177-125179

BANA_EDD_MDL-00162410-162411

BANA_EDD_MDL-00845906-845908

BANA_EDD_MDL-00497802-497804

BANA_EDD_MDL-00405158-405160

BANA_EDD_MDL-00510141-510148

BANA_EDD_MDL-00080294-80352

BANA_EDD_MDL-00087715-87716

BANA_EDD_MDL-00019602-19603

BANA_EDD_MDL-00019618-19628

BANA_EDD_MDL-00057837-57878

BANA _EDD_MDL-00631444-631446

BANA_EDD_MDL-00076996

BANA_EDD_MDL-00076997-70000

BANA_EDD_MDL-00118459

BANA_EDD_MDL-118460-61

BANA_EDD_MDL-00571029

BANA_EDD_MDL-571030-33

BANA_EDD_MDL-00077039

BANA_EDD_MDL-77040-43

BANA_EDD_MDL-00571046

BANA_EDD_MDL-571047-48

BANA_EDD_MDL-00159044-159050

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BANA_EDD_MDL-00510148

BANA_EDD_MDL-00118652-00118655

BANA_EDD_MDL-00159489

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BANA_EDD_MDL-00166412

BANA_EDD_MDL-166413-16

BANA_EDD_MDL-00166432

BANA_EDD_MDL-166433-38

BANA_EDD_MDL-00884198

BANA_EDD_MDL-00884199

BANA_EDD_MDL-00884200

BANA_EDD_MDL-00430148-0162

BANA_EDD_MDL-00154004-008

BANA_EDD_MDL-00102554-102587

BANA_EDD_MDL-00120424-120425

BANA_EDD_MDL-00570333–570334

BANA_EDD_MDL-00154700-154708

BANA_EDD_MDL-00205361

BANA_EDD_MDL-00088501–88505

BANA_EDD_MDL-0088506–88521

BANA_EDD_MDL-00088501–88505

BANA_EDD_MDL-00884198

BANA_EDD_MDL-00085694

BANA_EDD_MDL-00085786

BANA_EDD_MDL-00085788-BANA_EDD_MDL-00085789

BANA_EDD_MDL-00085803–85808

BANA_EDD_MDL-00086221–86225

BANA_EDD_MDL-00118436–118437

BANA_EDD_MDL-00416783–416784

BANA_EDD_MDL-00705503–705510

BANA_EDD_MDL-00055974–55981

BANA_EDD_MDL-00076984–76985

BANA_EDD_MDL-00076983

BANA_EDD_MDL-00117097–117099

BANA_EDD_MDL-00142730–142731

BANA_EDD_MDL-00158864-158865

BANA_EDD_MDL-00158866

BANA_EDD_MDL-00203324-203325

BANA_EDD_MDL-00203326

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BANA_EDD_MDL-00159092

BANA_EDD_MDL-00159120-159124

BANA_EDD_MDL-00159125

BANA_EDD_MDL-00159126-159127

BANA_EDD_MDL-00159128

BANA_EDD_MDL-00143388-143389

BANA_EDD_MDL-00143390

BANA_EDD_MDL-00143391-143392

BANA_EDD_MDL-00143393

BANA_EDD_MDL-00143416-143417

BANA_EDD_MDL-00143418

BANA_EDD_MDL-00143431-143432

BANA_EDD_MDL-00143433

BANA_EDD_MDL-00143518-143519

BANA_EDD_MDL-00143520

BANA_EDD_MDL-00143521-143522

BANA_EDD_MDL-00143523

BANA_EDD_MDL-00143569-143570

BANA_EDD_MDL-00143571

BANA_EDD_MDL-00143627-143628

BANA_EDD_MDL-00143629

BANA_EDD_MDL-00143661-143662

BANA_EDD_MDL-00143663

BANA_EDD_MDL-00159248-159250

BANA_EDD_MDL-00159251

BANA_EDD_MDL-00143718-143719

BANA_EDD_MDL-00143720

BANA_EDD_MDL-00143735-143736

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BANA_EDD_MDL-00143804

BANA_EDD_MDL-00143859-143860

BANA_EDD_MDL-00143861

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BANA_EDD_MDL-00143892

BANA_EDD_MDL-00143958-143959

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BANA_EDD_MDL-00144043

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BANA_EDD_MDL-00144076

BANA_EDD_MDL-00144109-144110

BANA_EDD_MDL-00144111

BANA_EDD_MDL-00144136-144137

BANA_EDD_MDL-00144138

BANA_EDD_MDL-00144187-144188

BANA_EDD_MDL-00144189

BANA_EDD_MDL-00144230-144231

BANA_EDD_MDL-00144232

BANA_EDD_MDL-00144236-144237

BANA_EDD_MDL-00144238

BANA_EDD_MDL-00144341-144342

BANA_EDD_MDL-00144343

BANA_EDD_MDL-00163440-163441

BANA_EDD_MDL-00163442

BANA_EDD_MDL-00163455-163455

BANA_EDD_MDL-00163457

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APPENDIX B

NATALIE M. LOEBNER

A driven leader with diverse subject matter expertise in data analytics, machine learning, software development, federal litigation (civil and criminal), government data (both enterprise and analytical environments), and complex financial fraud investigations. Eager to leverage existing relationships and domain expertise to build coalitions within and across federal agencies and the private sector. Proven track-record of bringing together the right mix of technical and domain experts to reduce communication frustrations. Armed with an understanding from both government and private sector work to develop collaborative environments that lead to meaningful improvements. History of success of inspiring reluctant stakeholders to adopt new technologies and approaches. Passion for developing accessible trainings for "non-data people" to understand how to communicate with technologists.

SELECTED ACCOMPLISHMENTS

- **Cross-Sector Projects:** Presently leading an initiative with the non-profit The Knoble, an anti-human crime organization, to assist financial institutions and law enforcement improve information sharing to address cyber enabled financial crimes. The objective of the project is to help law enforcement be more strategic in their requests and create a uniform taxonomy of terms to reduce miscommunication. Developed a "wish-list" of data fields maintain at financial institutions that would enable law enforcement to investigate cases more effectively and efficiently. The wish-list was developed in conjunction with numerous federal law enforcement agencies where I leveraged my understanding of agency operations to bring together analysts with the right skillsets and expertise. With the help of The Knoble's membership of financial institutions created a survey to evaluate the data fields that most institutions would be able to pilot in 2025.

- **IRS-CI Consolidated Report (CICR):** Personally, developed a proof-of-concept report demonstrating to stakeholders that agents needed a better way to immediately understand taxpayer interactions over a 10-year period. I worked with CI Agents, IRS Analysts, and software developers to perfect the report contents during a 4-month pilot. Resulting in a report that, based on a TIN, pulls validated data to present a 10-year history of the taxpayer's interactions with the IRS, FinCEN, and other available data sets. While also ensuring that all data elements were validated with system of record sources and hyper-linked to the data lake metadate tables. Oversaw and approved documentation and training materials for the users which included live training for every IRS-CI field office which also included how to leverage existing complementary tools. The training addressed a secondary need - to educate the field offices about analytical resources over and above the CICR. The report is currently available to all CI field offices and developing spin-off reports for civil functions. **Based on user feedback the report reduces at least 8 hours of manual research per target to ~1 minute. Over 15,000 reports have been requested since mid-2022.**

- **Optimizing Financial Record Requests (OFRR) [cross-agency effort to streamline discovery from financial institutions]:** The crux of the initiative is to remove the manual and time intensive process of converting PDF banks statements to tabular data so the information can be evaluated by obtaining structured data directly from the financial institutions. The genesis of the effort began as 1-hour free training I developed for law enforcement on the benefits of requesting structured transactional data maintained in banking core systems and how to modify the current subpoena attachments to obtain this electronically stored information using Federal Rules of Evidence 902(13) & (14). I independently researched the topic by engaging with treasury agencies, primarily regulators, and FinTechs that use API data hooks into banking systems. Based on my training the project grew to be a funded cross-agency initiative run by IRS-CI and involving FBI, Secret Service, Homeland Security, DEA, and the US Postal Service Criminal Investigations. I am currently serving as a domain expert to help law enforcement engage with private sector financial institutions which involve training and advocacy. Working with various law enforcement partners to survey existing tools that may be augmented to ingest the new data sets, researching commercially available solutions, and developing prototypes for custom analytical reports. To date the effort caused several financial institutions to voluntarily create CSV reports to pilot with law enforcement. There are already success stories where cases were solved in a fraction of the time with fewer investigative resources.

- **Longstanding Efforts:** Providing program management and guidance for longstanding projects with IRS to ensure mature platforms are housed in the appropriate environments, that technology stacks are periodically refreshed, and engaging end-users to update or expand functionality as operational needs change. This necessitates engaging with executives, data owners, IT security stakeholders, and the developers to ensure clear and complete communication. Example efforts:
    - Overseeing the team tasked with updating entity resolution processes to leverage newly added IRS data sets, utilize updated technology, and address shifts in IRS objectives.
    - Lead the initiative to successfully move a project inventory platform from the development environment to the IRS IT environment because it had matured into an enterprise solution.
    - Managed the update of a platform that needed to conform with new IT security requirements. I identified and worked with the power users and development team to implement additional changes to improve functionality of the tool to enhance the user experience while simultaneously completing the IT security refresh. Due to feature updates, usage of the tool increased from a handful of users to over 100 users.

CONSULTING EXPERIENCE

LOEBNER CONSULTING, LLC | Alexandria, VA | Nov. 2022 to Present
President/Owner: Consulting for RegTech and Financial Services companies that offer, or seek to offer, tools and platforms that support financial investigations, AML/BSA compliance, and complex financial litigation. Evaluate existing tools to help companies understand both public and private sector applications. Advise on future development needs and, in certain engagements, provide domain support for that development. Some recent examples of this include: (1) identifying when

tools will exceed the target userbase's technical skills and offer suggestions for teaming partners that can fill the services gap; (2) identify gaps in proposed workflows to ensure successful integrations for companies seeking to sell batch data; and (3) advising on customer engagement strategies to help companies effectively and honestly communicate to their offerings. Currently supporting several emerging businesses in the digital asset space – with a focus on companies that seek to address off chain analytics, evaluation of blockchain application protocols, conversion of digital assets to FIAT markers, and beneficial owner identification. Requested speaker at domestic and international conferences and summits by both government and private sector.

EASTPORT ANALYTICS, INC. | Washington, D.C. | Nov. 2019 to September 2023
Executive Director of Analytical Services: Responsible for the successful execution of analytical projects across all company engagements. Providing subject matter expertise in tax administration, litigation, permissible data usage, data modeling, solution architecture, and analytics. Working with clients to identify what problem they are really trying to solve – to put their needs in terms ("requirements") that a technical development team can execute, including working with government clients to translate internal manuals and standard operating procedures into technical terms. Engaging directly with stakeholders, end-users, data analysts, engineers, subject matter experts, and executives to ensure clients like the Department of Justice and the IRS obtain meaningful outcomes. See notable projects above for some examples. Focuses on helping law enforcement efficiently and programmatically identify crucial information, records, and trends buried in high-volume data sets or sometimes first-party data inaccessible to due current user tools. Leverages interdisciplinary background in technology, analytics, law, investigations, and training to address operational needs while allowing law enforcement to pierce through the mysterious "black box" often associated with technical support. Heavy emphasis on educating stakeholders so they become increasingly savvy consumers of technology.

RELEVANT LEGAL EXPERIENCE

US DISTRICT BANKRUPTCY COURT, E.D. CAL. | Sacramento, CA | Aug. 2018 to Oct. 2019 *Law Clerk to Judge Christopher Klein:* Was the sole law clerk who prepared bench notes, pre-hearing dispositions, and drafted orders, judgements, and opinions for the active docket often exceeding 200 matters a week**.** Personally developed templates and macros to efficiently handle routine matters, freeing up time to conduct in-depth research for more complex issues before the court relating to Chapter 11 and Chapter 15 (Cross-Border Insolvency) cases. Successfully trained successor to utilize time saving automations.

US DEPARTMENT OF JUSTICE, TAX DIVISION | Washington, D.C. | Nov. 2014 to Jul. 2018
Civil Trial Attorney: Lead attorney on over twenty active cases at any given time, including, but not limited to, suits to permanently enjoin unscrupulous tax return preparers and promoters, defend IRS claims in bankruptcy court, reduce federal tax assessments to judgment, enforce federal tax liens involving alter ego and nominee allegations, and enforce IRS administrative summonses. From 2015 to 2018 served as an Electronically Stored Information (ESI) Coordinator for the division, providing guidance and training to trial attorneys on topics such as technology assisted review (TAR),

discovery requests from relational databases, and leveraging data maintained in IRS databases.
Efforts with notable relevance to job:

- As an ESI Coordinator, supported cases with novel or voluminous data questions. Including supporting the John Doe Summons litigation team in the first digital asset case against Coinbase. Provided guidance on data that the exchange should be maintaining based on my prior work with FinCEN data at the US Attorney's Office and explained potential options for requesting data from relational data sets to ensure attributes needed to identify account holders could be mapped together.
- On a large national preparer injunction case worked closely with IRS Counsel, SB/SE, and IRS RAAS to craft data queries to substantiate habitual and systemic conduct allegations. The same case also necessitated discovery of back-end data sets from defendants' proprietary software tools, requiring technical expertise in both data and eDiscovery obligations when meetings with defendant's IT divisions to agree on production requirements. The two large datasets, when analyzed together quickly presented a strong story in favor of the IRS' position and resulted in a swift settlement. The resulting process has been leveraged for subsequent cases.

JEMISON & MENDELSOHN, P.C. | Montgomery, AL | Oct. 2013 to Oct. 2014
Contract Legal Research and e-Discovery Support: Provided legal research and analysis for pending *Qui Tam* matters involving tax violations of an international corporation. Conducted internal investigations to determine the veracity of allegations regarding embezzlement and trust mismanagement. Responsible for selecting experts and technology platforms to support the needs of ongoing litigation.

US ATTORNEY'S OFFICE, S.D. ALABAMA | Mobile, AL | Sep. 2012 to Sep. 2013
SAUSA (Civil Division): Predominately handled affirmative matters involving civil asset forfeitures, Bank Secrecy Act (BSA) violations, and False Claims Act violations. Supervised and managed monthly meetings of interagency financial crimes task force (21 law enforcement agencies represented). Delivered training on the BSA and FinCEN filings to federal agents and bank compliance departments. Replaced outdated FinCEN filing paper review with data-driven process, enabling cross-agency deconfliction, prompt identification of relevant new filings, and the cross-reference of CTR filings with outstanding restitution and judgment matters. Lead changes within the US Attorney Office and partnering agencies to adopt a new way of working with data and integrating data analyses from the agencies in efforts that were typically only attended by agents. Fostered confidence in long standing members for the task force with plain language explanations of technical terms to reduce barriers (often mental barriers) to adopting new technologies. Convinced the US Attorney and Criminal Chief to champion a new type of collaboration that led to increased identification of complex financial cases in the district.

UW LAW FEDERAL TAX CLINIC | Seattle, WA | Summer 2009 and Sep. 2011 to Apr. 2012
Taxpayer Advocate: Represented low-income taxpayers in disputes before the IRS involving both personal and employment tax matters. Successfully defended a non-profit organization contesting a tax liability assessed by the IRS predicated on drug-related proceeds surreptitiously laundered through its bank accounts. Leveraged timestamp and GPS metadata associated with ATM

transactions to demonstrate to the IRS that the problematic conduct was not associated with the operations of the entity.

LAW OFFICES OF SHEPPARD MULLIN | San Francisco, CA | Jan. 2007 to Jul. 2008
Paralegal/Electronic Discovery Specialist, Antitrust and Trade Regulation Practice Group: Supported attorneys in all aspects of litigation. Worked on state, federal, and international cases in both criminal and civil matters. Worked with attorneys to data mine large discovery productions with millions of records. Implemented creative use of Boolean logic to isolate key documents and leveraged automated scripts to run resource heavy computations overnight.

ADDITIONAL EXPERIENCE

STANFORD LINEAR ACCELERATOR CENTER | Stanford, CA | Summer 2003 and 2004
Summer Intern: Wrote computer code using C++, Fortran, OpenGL, and Hexadecimal to visually represent data generated in connection with the center's model for "The Next Linear Collider." The result was an interactive visual representation of a particle's path in the collider. Users could select different modes to display heat, magnetism, and positions in time.

EDUCATION

UNIVERSITY OF WASHINGTON SCHOOL OF LAW | Seattle, WA
Master of Laws in Taxation, March 2012 -- Roland Hjorth Merit Scholarship Recipient
Juris Doctor, Jun. 2011 -- ABA Janet D. Steiger Fellowship Recipient

WHITMAN COLLEGE | Walla Walla, WA
Bachelor of Arts, May 2006; Majors in Pure Mathematics and Rhetoric & Film Studies -- Penrose Merit Scholarship, Perry Research Grant
Specific mathematics course focus in linear algebra, mathematical modeling, and machine learning