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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE BANK OF AMERICA CALIFORNIA UNEMPLOYMENT BENEFITS LITIGATION

This Document Relates to All Actions

Case No. 3:21-md-02992-GPC-MSB

PLAINTIFFS' ADDITIONAL STATEMENT OF FACTS IN OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT

[ORAL ARGUMENT REQUESTED]

Date: April 17, 2026
Time: 1:30 p.m.
Judge: Hon. Gonzalo P. Curiel
Ctrm: 2D (2nd Floor)

REDACTED PUBLIC VERSION

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Pursuant to Fed. R. Civ. P. 56(c) and this Court's Civil Pretrial & Trial Procedures, Plaintiffs respectfully submit this additional statement of facts ("PASF") in opposition to Defendant Bank of America's Motion for Partial Summary Judgment.[1]

PLAINITFFS' ADDITIONAL STATEMENT OF FACTS
A. THE BANK PERFORMED A GOVERNMENTAL FUNCTION AND ENGAGED IN JOINT ACTION WITH EDD
1. The California Employment Development Department ("EDD") administers the issuance of unemployment insurance ("UI"), disability benefits, and other public benefits (collectively, "EDD benefits") in California. From 2010 to 2024, EDD delegated to Bank of America (the "Bank") the authority to administer the distribution of UI and other EDD benefits to beneficiaries in California via electronic payment services. PX 33; PX 34.
2. From 2010 until 2024, the Bank had the exclusive contractual right and duty to provide electronic benefits payment services for EDD. During that time, EDD beneficiaries did not have the option of receiving electronic benefits payments ("EBP") via direct deposit into their own personal banking account, nor did they have the option of receiving EBP via a debit card issued by any other bank or financial institution other than Bank of America. PX 13 (Chestnut) 75:4-13; PX 33 at 16; PX 34; PX 35 at -187054, 187057.
3. In 2020 and 2021, EDD's website presented Bank-issued debit cards as the exclusive means to receive EDD payments, and both EDD and the Bank promoted the benefits of receiving EDD benefits via a Bank-issued debit card. PX 36; PX 37; PX 38.
4. The Bank's prepaid debit card was the default method of receiving EDD benefits. Requesting payment by check required affirmatively contacting EDD to make that request, and that option was neither well publicized nor easily accessed. As a result, the vast majority ([redacted]) of EDD benefits recipients received benefits by debit card. PX 39 at -153670; PX 13 (Chestnut) 136:2-21; PX 40 (Rivera) 61:2-6; PX 41 (McClure) 81:16-20.
5. Under the EDD-Bank Contract, Bank-issued debit cards and associated accounts could receive deposits only from the EDD, not from any other source. PX 33 at 233.
6. The EDD-Bank Contract required the Bank to work jointly with EDD in identifying and investigating potential benefits enrollment fraud. The Bank contractually agreed, "Upon detection of suspicious circumstances (such as recipient spending time in prison), the fraud team will flag the account for further review. Our fraud team will contact EDD's Investigation Division to alert you of the possibility of benefits enrollment fraud and allow you to conduct further investigation."

[1] PX # are exhibits to the Declaration of Connie Chan in Opposition to BANA's Mot. for Partial Summary Judgment.

PX 33 at 253.

7. The Bank promised, in the EDD-Bank Contract, to engage in efforts with EDD to "[c]ombat[] fraud with proactive initiatives and ongoing communication," including quarterly and bi-weekly meetings with EDD. EDD required the Bank to provide personnel "to work with … EDD … to assist in [fraud] investigation, detection, deterrence and prevention activity," and to "cooperate with the EDD's Investigation Division and/or its contractors with regard to fraud investigations to the extent permissible by law."

PX 33 at 8, 251-52.

8. During 2020-2021, the Bank and EDD were engaged in an ongoing and jointly undertaken process to detect suspected benefits enrollment fraud, freeze accounts, and require re-verification as a condition of regaining access to benefits.

PX 42; PX 29 (EDD) 50:21-54:20; PX 13 (Chestnut) 105:9-21, 146:17-25; PX 20 (Garfield) 46:2-6, 47:16-48:2; PX 15 (Letson) 79:5-80:18; PX 280 at -169161; PX 281 at -71120.

9. In September 2020 (pre-CFF), the Bank provided EDD [redacted].

PX 43 at -452826; PX 15 (Letson) 118:2-125:23, 130:5-132:5; PX 22 (Fox) 36:8-25; PX 44 at -421427; PX 42 at -71233.

10. On September 28, 2020 and the following days, the Bank used its CFF to make benefits enrollment determinations and to freeze approximately [redacted] prepaid UI accounts. The Bank later unfroze most of those accounts [redacted], but only after first clawing back any previously paid credits.

PX 13 (Chestnut) 107:10-110:10, 110:14-113:17, 114:24-115:13, 116:21-118:22; PX 45 at -71588; PX 46 at -705534; PX 47 at -139424 ("[redacted]"); PX 280 at -169161; PX 283 at -631430.

11. From December 3, 2020 to March 17, 2021, the Bank resumed using CFF-1 to make benefits enrollment fraud determinations and automatically froze the account of any EDD cardholder who submitted a claim that triggered CFF-1.

PX 14 (Martin) 223:23-224:4; PX 266 at -159383.

12. On or about December 17, 2020, the Bank used CFF-1 to make benefits enrollment fraud determinations and froze the account of any EDD cardholder who had submitted a claim between October 4, 2020 and December 2, 2020 that triggered CFF-1 [redacted]. The Bank knew that [redacted].

PX 48 at -77224; PX 14 (Martin) 221:1-224:4; PX 20 (Garfield) at 342:22-343:9; PX 266 at -159383; PX 277 ([redacted]).

13. EDD and the Bank engaged in an ongoing and jointly undertaken process of requiring

cardholders whose accounts the Bank froze based on CFF-1 to re-verify their eligibility with EDD as a condition of regaining access to their EDD benefits.	PX 49 at -417556 [redacted]"); PX 29 (EDD) 23:12-17, 53:4-9; PX 13 (Chestnut) 146:17-25; DX 5 ¶5; PX 14 (Martin) 226:17-227:18, 232:2-12, 235:15-24; PX 16 (Golden) 149:10-21.
14. The EDD-Bank Contract had a revenue-sharing agreement providing for a 50-50 split between the Bank and EDD on all "float revenue" ([redacted]), which [redacted], creating a relationship of financial interdependency between EDD and the Bank. The Bank also retained [redacted] of "interchange fees" and cardholder fees generated by the EDD prepaid card program.	PX 33 at Attachment V1.1; RSUF 19; PX 13 (Chestnut) 45:25-47:23, 166:24-167:23, 169:1-170:13; PX 20 (Garfield) 138:2-21; PX 5 (Regan Rpt) ¶¶61-62 & Schedule 2.

B. THE BANK OWED A FIDUCIARY DUTY TO EDD CARDHOLDERS, WHOM THE BANK KNEW WERE PARTICULARLY VULNERABLE

15. The EDD-Bank Contract expressly required the Bank to maintain one or multiple "trust account[s]" with "funds held 'in trust'" "for the cardholders."	DX 39 at -2518.
16. UI recipients are a highly vulnerable and financially precarious group. UI is a critical safety net program provided by the government to ensure that individuals who lose their job can afford food, health care, transportation, housing, and other life necessities. The typical UI recipient does not have enough savings to cover their essential expenses during unemployment and relies on UI benefits to pay for their daily living expenses.	PX 7 (East Rpt) ¶¶8-9, 11-15.
17. EDD cardholders rely on their EDD benefits to "[redacted]" The Bank recognizes that EDD cardholders "[redacted]"	PX 15 (Letson) 100:13-22; PX 13 (Chestnut) 128:14-129:15; PX 50 at -153421 ("[redacted]"); *e.g.*, PX 51; PX 52; PX 53; PX 54; PX 55.

C. THE BANK KNEW ITS CFF-1 CLAIM DENIAL AND CREDIT RESCISSION POLICIES WERE INCONSISTENT WITH ITS REG E OBLIGATIONS AND WOULD ERRONEOUSLY DENY VALID CLAIMS

18. [redacted] under the EDD-Bank Contract, the Cardholder Agreement, and EFTA and Reg E, it was required to reimburse EDD cardholders for any unauthorized transactions on their EDD debit card, including unauthorized ATM transactions. Under the EDD-Bank Contract, the Bank promised EDD it would (i) follow "[a]ll Regulation E requirements and timelines" for resolving "dispute claims by a claimant" and (ii) offer Cardholders "Zero Liability" for "unauthorized use of debit cards or debit card accounts," "including ATM and pinned POS [point of sale] transactions."

PX 33 at 8, 175, 199; PX 34 at –518187; PX 13 (Chestnut) 88:9-14; PX 56 §§10-11.	
19. [redacted] it was required to investigate EDD cardholders' claims and to provide cardholders with provisional credit within 10 business days of claim submission if the Bank could not complete its investigation and make a final decision within that time. [redacted] any provisional credit paid on an ATM or ATM/combo claim was to be made a permanent credit on the 45th day after claim submission, unless the Bank had determined based on a reasonable and good faith investigation that the cardholder had in fact authorized the transaction. PX 33 at 8, 199 ("Per Regulation E, within 10 business days of the initial dispute, we will promptly correct the error."), 232, 235, 253; PX 27 (Montag) 128:18-22; PX 20 (Garfield) at 86:24-87:17; PX 57 at -167414; PX 24 (Ehresman) 34:8-35:18; PX 18 (Johnson) 8:18-24; PX 12 (Daniels) 31:17-32:10, 199:10-200:13.	
20. Before implementing its CFF-1 policies on September 28, 2020, the Bank's standard practice had always been to [redacted] ("[redacted]") and to make a pay or deny decision or to issue provisional credit within 10 business days of claim submission. The Bank's [redacted] were consistent with industry standards and reflected the Bank's understanding of "[redacted]" PX 12 (Daniels) 123:7-21, 124:24-125:6, 133:16-134:11, 135:21-136:10; PX 58 at -1312 (AISOP); PX 59 at -4543; PX 60; PX 24 (Ehresman) 17:8-19:12; PX 1 (Kreis Rpt) ¶¶27-41.	
21. To ensure that the Bank's claims analysts would review all relevant records, [redacted] PX 12 (Daniels) 120:16-121:1, 122:24-123:6, 147:16-150:11.	
22. Within each claim type, [redacted]" PX 59 at -4539, -4549; PX 12 (Daniels) 137:9-25, 147:21-151:20; PX 1 (Kreis Rpt) ¶¶31-36.	
23. The Bank's training materials emphasize that [redacted]" PX 59 at -4542, -4543 ([redacted]"); PX 12 (Daniels) 136:11-24, 141:14-142:15; PX 61; PX 62.	
24. [redacted] absent evidence that the cardholder authorized the disputed transaction, the Bank was required to provide permanent credit in the amount of the claim, [redacted]"	

PX 63 at -290332; PX 12 (Daniels) 202:23-203:13; PX 15 (Letson) 245:25-246:5, 248:25-249:14.
25. The Bank's [redacted]. PX 1 (Kreis Rpt) ¶¶34-37; PX 60 (AISOP) at -559893–901.
26. The [redacted]. PX 1 (Kreis Rpt) ¶¶34-36; PX 60 (AISOP) at –559893-95, -559898–901.
27. [redacted] PX 60 (AISOP) at -00559897, -559901 ("Use as supporting only"); PX 12 (Daniels) 138:14-140:4; PX 1 (Kreis Rpt) ¶¶38-39.
28. [redacted] EFTA and Reg E prohibited the Bank from rescinding credits issued on an ATM claim more than 45 days after notice of the claim or after the Bank had already informed the claimant that provisional credit had been made permanent, whichever came first. *See, e.g.*, PX 64 at -169954–56 ("[redacted]"); PX 18 (Johnson) 49:18-50:8.
29. [redacted] the CFF indicators [redacted] denying ATM and ATM/combo claims based solely on CFF-1 would result in erroneous denials of valid claims by legitimate EDD cardholders. PX 22 (Fox) 49:23-50:2 ("[redacted]"); PX 14 (Martin) 103:7-14, 308:9-18 ("[redacted]"); PX 65 at -630750); PX 21 (Ahmad) 64:25-65:15, 69:14-17; PX 66 at -169914; PX 23 (Holt) 134:5-135:23, 138:10-140:5.
30. [redacted] due to its own decision not to issue EMV chip cards, EDD cardholders were particularly vulnerable to skimming and card-present counterfeit fraud

such as unauthorized ATM withdrawals—the precise type of claim that CFF-1 would automatically deny. *See* PASF 109-112, 117; PX 21 (Ahmad) 50:22-52:16; PX 15 (Letson) 155:24-157:5, 164:6-165:10.	
31. [redacted] CFF-1 could not distinguish between valid claims submitted by legitimate cardholders and fraudulent claims submitted by criminals engaged in benefits enrollment fraud using stolen identities. [redacted] the only way to differentiate between the two categories was to conduct a manual investigation of each claim, including [redacted] PX 278 at –87719 ("[redacted]"); PX 19 (Schwartz) 108:7-110:18; PX 14 (Martin) 286:25-288:8; PX 23 (Holt) 103:14-25, 127:9-25)	
D. THE BANK WAS CAPABLE OF MANUALLY INVESTIGATING ALL ATM CLAIMS IN ACCORDANCE WITH REG E	
32. Because the Bank, before July 2021, issued all EDD cardholders magstripe-only cards that did not have an EMV chip, EDD cardholders were vulnerable to skimming and card-present counterfeit fraud, which led to [redacted] *See* PASF 109-119; PX 21 (Ahmad) 78:12-79:16; PX 247 at -372043.	
33. Under the applicable Visa liability shift rules, losses from unauthorized ATM transactions on the Bank's mag-stripe-only cards [redacted] Had the Bank issued EMV chip cards to EDD cardholders, the EMV chip would have prevented counterfeit fraud at chip-enabled points of transaction (including the vast majority of ATMs), and under the Visa liability shift rules, [redacted] *See* PASF 109-119; PX 2 (Cloninger Rpt) ¶49; PX 24 (Ehresman) 29:3-30:8, 30:18-32:10; PX 67 at -416779 ([redacted]"); PX 68 at -701418-19.	
34. [redacted], which would have enabled the Bank to determine which claims were valid and which were fraudulent claims submitted by criminals engaged in benefits enrollment and identity theft *before* having to pay any provisional or permanent credit. CR&R, as the Bank's Reg E experts, understood that "[redacted]" PX 67 at -416779; PX 69; PX 24 (Ehresman) 34:8-35:18.	

35. The head of the Bank's claims processing division, Renee Johnson, estimated that the [redacted] PX 70 at -426407.	
36. On September 17, 2020, [redacted] PX 69 at -225377; PX 71 at -181662; PX 18 (Johnson) 65:8-17, 69:5-8.	
37. The Bank [redacted]" PX 24 (Ehresman) 34:8-36:2, 36:14-38:6, 97:4-23 (confirming that "[redacted]); PX 70 at -426407 ([redacted]); PX 28 (Moynihan) 238:16-239:2 ([redacted]").	
38. CR&R's [redacted]. PX 69 at -225375; PX 18 (Johnson) 195:17-197:23; *see* PASF 40-75, 87-95.	
E. THE BANK CHOSE NOT TO COMPLY WITH REG E AND INSTEAD TO IMPLEMENT ITS CFF POLICIES OF AUTOMATIC CLAIM DENIALS AND CREDIT RESCISSIONS BECAUSE ITS PRIORITY WAS REDUCING ITS REG E LIABILITY-RELATED OPERATIONAL LOSSES	
39. Under the EDD-Bank Contract, the Bank (not the State) was solely liable for any losses due to transaction fraud on EDD debit cards (also known as "fraud losses"). PX 33 at 8 ("Bank of America is responsible for external transaction fraud on cards that we issue"), 142 ("EDD shall not be liable for … fraud, misuse, and/or lost or stolen debit	

cards."), 235 ("The [Bank] shall not charge the EDD for … fraud, misuse, and lost or stolen debit cards."), 253; PX 63 at -290330; PX 13 (Chestnut) 87:21-88:14.	
40. The EDD card program was part of the Bank's Global Transaction Services (GTS) group, run by Faiz Ahmad, which was part of the Global Banking and Markets (GBAM) division, run by then-COO Thomas Montag. [redacted] PX 27 (Montag) 6:18-7:16; PX 28 (Moynihan) 25:1-26:5, 36:1-5, 51:7-23; PX 20 (Garfield) 98:16-101:20, 103:2-6.	
41. During the spring and summer of 2020, [redacted]" PX 68 (-701418) ([redacted]); PX 268 at -171973; PX 27 (Montag) 15:8-16:13, 113:18-114:6, 115:14-22, 116:12-14; PX 282 ("[redacted]").	
42. The Bank created a [redacted] PX 72 at 8-9 (Rog 35 Resp.); PX 24 (Ehresman) 22:22-24:13.	
43. COO Tom Montag [redacted] PX 27 (Montag) 9:23-10:7, 10:18-11:16, 12:7-14, 123:23-124:12, 125:8-11; PX 28 (Moynihan) 25:1-27:2, 43:2-11; PX 21 (Ahmad) 27:11-28:11.	
44. [redacted] which in 2020-21 [redacted] CEO and Bank Chairman Brian Moynihan and his direct reports, including then-COO Thomas Montag, Cathy Bessant, Paul Dinofrio, Dean Athanasia, and Chief Risk Officer Geoffrey Greener. PX 28 (Moynihan) 9:24-10:3, 16:7-23, 27:22-28:2; PX 27 (Montag) 7:5-8:16; PX 21 (Ahmad) 27:11-28:11; PX 26 (Simpson) 13:22-14:2; PX 22 (Fox) 21:25-22:13; PX 24 (Ehresman) 52:13-53:24.	
45. Starting in mid-August 2020, the Bank's projected fraud losses in the UI card program [redacted]" As of August 14, 2020, the projected losses	

for November were $[redacted]"

PX 73 at -706201; PX 202 at -706213; PX 20 (Garfield) 119:6-122:14 ([redacted]"), 125:19-126:17; PX 203 at -140413 ("[redacted]"); PX 270 at -883608–09 ([redacted]").

46. By mid-September 2020, the Bank's projected losses in the UI card program [redacted]" Chief Risk Officer Geoffrey Greener knew that [redacted]"

PX 74 at -371658–59; PX 75 at -695594.

47. The Bank's senior leaders directed their subordinates to develop a claims-screening mechanism that would enable the Bank "[redacted]" and to stop issuing credit on certain claims.

PX 76 at -630836; PX 77 at -371977; PX 271 at -874614–15.

48. [redacted]

[redacted]

49. GBAM turned to GFC to develop an automated "filter" that the Bank could use to automatically deny claims and rescind credits without a manual adequate investigation. Late on Friday, September 18, 2020, [redacted]" i.e. on September 21, 2020.

PX 76 at –630836; PX 19 (Schwartz) 126:9-127:17, 137:21-138:16; PX 23 (Holt) 119:23-120:14.

50. GBAM instructed GFC to create a "[redacted].

PX 76 at -630836; PX 23 (Holt) 117:7-19.

51. On Sunday, September 20, 2020, [redacted] GFC analyst Ryan Schwartz, who conducted and presented the analysis, testified that [redacted] Schwartz testified that "[redacted]"

PX 79 at -630837; PX 19 (Schwartz) 152:5-155:8, 173:3-175:12, 178:3-183:18 ([redacted]; PX 80 at -125014; PX 15 (Letson) 236:25-238:20, 241:9-24, 243:20-244:7.

52. GBAM/GTS leaders [redacted]" Instead, "[redacted] which was the screening thresholds that would capture [redacted] GBAM/GTS "[redacted]" "[redacted]. The selected criteria became CFF-3.

PX 80 at -125014; PX 19 (Schwartz) 152:5-155:8, 178:3-183:18, 214:14-216:15; PX 79 ("[redacted]"); PX 81 at -87749–50 ("[redacted]"); PX 66 at -169914 ("[redacted]").

53. After the September 20 meeting, GFC (Schwartz) provided GBAM additional information showing that [redacted]" Nevertheless, [redacted] for Indicator 3. When it

later adopted CFF-1 (*see* PASF 57-66), the Bank did not apply *any* minimum dollar threshold to CFF-1.	PX 79 at -630837; PX 19 (Schwartz) 158:23-162:25; PX 290 at 8 (Rog 28 Resp.).
54. On September 21, 2020, the chief officers learned [redacted]" The chief officers immediately briefed CEO Moynihan on [redacted], which were "[redacted]"	PX 82 at -372013; PX 28 (Moynihan) 66:4-67:23; PX 83 -118367; PX 44 at -421427.
55. With the next board meeting approaching on [redacted] and the CEO's [redacted], the Bank's senior officers intensified their pressure on subordinates to "[redacted] in the prepaid UI program. That same day (September 21), Montag directed Ahmad and Lawlor to "[redacted]"	PX 77 at -371977; PX 27 (Montag) 96:10-97:3, 110:18-111:6; PX 28 (Moynihan) 28:18-29:25.
56. The next day, Lawlor told other managers he was "[redacted]" and that "[redacted]"	PX 84 at -694889-90.
F. THE BANK KNEW CFF-1 WOULD WRONGLY DENY VALID CLAIMS YET MADE NO ATTEMPT TO ASSESS OR VALIDATE THE ACCURACY OF CFF-1 IN IDENTIFYING FRAUD, EITHER BEFORE OR AFTER IMPLEMENTATION	
57. Following the directive that "[redacted]" In addition to the multi-factored CFF-3, the proposed CFF included CFF-1, which would "[redacted]	PX 85 at -125059; PX 86 at -170046; PX 87 at -87766 ("[redacted]"), -87767 ("[redacted]"); PX 3 (Holt) 192:22-194:20; PX 19 (Schwartz) 204:10-205:20; *see* PASF 61-62.
58. The CFF proposal was updated [redacted]	

[redacted] (which would become part of CFF-3). PX 262 at -87776; PX 88 at -87780; PX 91 at -87760; PX 19 (Schwartz) 199:25-208:21.	
59. The final version of the CFF was [redacted]" PX 135 at -125177; PX 90 at -450517.	
60. On the final version of the CFF proposal [redacted]. The Bank conducted *no* analysis as to what percentage of those ATM claims were actually fraudulent. PX 90 at -450517; PX 91 at -87760; PX 19 (Schwartz) 199:25-208:21, 211:25-214:24; PX 20 (Garfield) 173:6-22, 271:23-278:1, 282:4-23; PX 15 (Letson) 199:22-201:7; PASF 57-58, 61-62.	
61. No one at GFC (or anyone else at the Bank) ever analyzed [redacted]. PX 23 (Holt) 92:6-19, 180:15-181:16, 191:3-194:20, 275:11-276:4; PX 19 (Schwartz) 37:20-38:20, 108:7-110:18, 201:11-205:20, 212:3-214:24, 260:6-263:16, 265:4-15; PX 92 at -881824; PX 15 (Letson) 144:11-145:3, 170:7-176:14, 179:9-180:16; PX 22 (Fox) 53:10-21; PX 21 (Ahmad) 68:14-16; PX 20 (Garfield) 173:6-22, 271:19-278:1, 282:4-23.	
62. Bill Fox, Michael Letson, Anne Holt, and Ryan Schwartz were the GFC personnel who worked on developing the CFF indicators. Schwartz was [redacted]	

PX 19 (Schwartz) 37:20-38:20, 72:2-8, 77:3-7, 77:22-24, 108:7-110:18, 201:11-205:20, 212:3-214:24, 260:6-263:16, 265:4-15.

63. [redacted] CFF-1 would incorrectly deny legitimate cardholders' valid ATM and ATM/combo claims, particularly because the Bank-issued mag-stripe-only cards were highly susceptible to skimming and card-present counterfeit fraud, including unauthorized ATM transactions. [redacted]

PX 22 (Fox) 49:23-50:6; *see* PASF 109-112, 117; PX 14 (Martin) 127:8-132:15, 287:14-288:8; PX 43 at -452826 ("[redacted]"); PX 19 (Schwartz) 178:3-183:18, 201:11-205:20; 212:3-214:24; PX 23 (Holt) 161:24-162:25; 179:5-181:16; PX 21 (Ahmad) 64:25-65:15, 68:14-16; PX 93 (Rog 28 Resp.) at 8; PX 14 (Letson) 170:7-176:14; PX 105 at -100644–70 ([redacted]); PASF 29-31.

64. The Bank was aware that using the CFF to summarily deny claims would [redacted] The Bank also knew that denying cardholders of access to their EDD benefits without notice and hearing would [redacted]

PX 66 at -169912 ("[redacted]…."); PX 95 at -429789 ("[redacted]"); PX 18 (Johnson) 78:10-81:10; PX 78 at -57708; PX 277.

65. [redacted] despite having [redacted] of CFF-1 in identifying fraud.

PX 27 (Montag) 17:14-19:8, 56:5-57:4; PX 22 (Fox) 81:1-82:1, 82:7-83:8; *see* PASF 60-63, 68.

66. After the CFF was implemented, [redacted].

PX 19 (Schwartz) 260:6-263:16, 265:4-15 ([redacted]); PX 15 (Letson) 312:4-313:14 ([redacted]); PX 24 (Ehresman) 92:23-93:14 ([redacted]).

G. THE BANK'S SENIOR LEADERS DIRECTED, AUTHORIZED, AND RATIFIED THE BANK'S CFF-1 POLICIES

67. "[redacted] including CEO Brian T. Moynihan, then-COO Thomas Montag, Cathy Bessant, Paul Dinofrio, Dean Athanasia, and Chief Risk Officer Geoffrey Greener, were executive officers of the Bank.

PX 28 (Moynihan) 9:24-10:3, 16:7-23, 27:22-28:2; PX 27 (Montag) 6:18-8:16; PX 21 (Ahmad) 26:7-19; PX 22 (Fox) 21:25-22:13; PX 24 (Ehresman) 52:13-53:24.	
68. In addition to executive officers, "[redacted]" (i.e. direct reports to the CEO's direct reports), and others with comparable levels of responsibility within their units, [redacted]. During 2020-21, this included Faiz Ahmad, who ran GTS (which included the prepaid UI card program); Brad Garfield, who was responsible for overseeing the GTS prepaid product development team; John Lawlor, who was responsible for public sector banking; Paul Simpson, who was responsible for the Bank's call centers servicing prepaid cardholders; William Fox, who was head of GFC; Michael Letson, who was head of financial crimes analytics within GFC; Jennifer Ehresman, who was head of Consumer Client Protection; and Renee Johnson, who ran the Claims Resolution & Recovery unit. PX 28 (Moynihan) 21:7-23, 23:1-19, 25:1-26:5 ([redacted]), 27:12-21 ([redacted]), 41:6-24, 83:5-15, 86:1-2, 133:25-134:21, 138:4-139:13, 187:1-188:25, 235:8-15; PX 21 (Ahmad) 21:10-22:2; PX 20 (Garfield) 25:24-29:4, 35:4-37:18; PX 26 (Simpson) 9:12-11:5, 13:22-14:4; 16:7-17; PX 22 (Fox) 12:15-21, 13:1-23, 71:11-20; PX 15 (Letson) 37:1-9, 52:4-23 ([redacted]), 257:14-20, 258:10-16; PX 24 (Ehresman) 11:22-12:23, 14:20-16:19 ([redacted]), 22:22-24:17, 36:14-37:5, 41:1-42:1; PX 18 (Johnson) 7:4-10; PX 17 (Lennon) 192:1-192:23; PX 285.	
69. [redacted]. PX 96 at -706496 ([redacted]"); PX 272 at -163799 ("[redacted]"); PX 276 at -714621 ([redacted]").	
70. [redacted]. PX 97 at -876417 ("[redacted]"); PX 21 (Ahmad) 193:8-15, 195:8-18; PX 27 (Montag) 7:5-8:14, 82:10-18.	
71. [redacted] PX 98 at -293818 (S[redacted]"), -29319-20 ([redacted]"); PX 99 at -162397 ([redacted]"); PX 22 (Fox) 64:21-66:13 ([redacted]), 68:10-71:10, 71:11-23 ([redacted]"); PX 100 ([redacted]").	

72. At [redacted].	PX 101 at -497802 ([redacted]), 497804 ("[redacted]"); PX 27 (Montag) 12:15-24 ([redacted]"), 30:13-20 ([redacted], 47:19-48:16, 128:7-11); PX 28 (Moynihan) 16:24-19:24 ([redacted]).
73. In an [redacted], Moynihan provided an update on "[redacted]" At the [redacted]" The Board allowed the CFF policies to proceed.	PX 103 at -882978 (CEO Memo; content redacted for attorney-client privilege); PX 104 at -882713 ([redacted]); PX 27 (Montag) 23:25-24:20, 28:25-29 ([redacted]); PX 28 (Moynihan) 28:18-29:25; PX 102 at -878451 ([redacted]").
74. The Board continued to be updated regularly on [redacted]" and permitted the CFF-1 policies to continue until enjoined by a federal court. On January 20, 2021, executive risk committee board members were notified of a "[redacted]" Board risk committee members were informed that "[[redacted]"	PX 102 at -878451; PX 270 at -883608–09; PX 271 at -874614–15; PX 209; PX 210.
H. THE BANK'S SENIOR LEADERS DISMISSED EMPLOYEE CONCERNS AND MAINTAINED THE CFF-1 POLICIES DESPITE MOUNTING EVIDENCE OF CFF-1'S INACCURACY AND HARMFUL CONSEQUENCES	
75. After CFF-1, the Bank was inundated with calls from cardholders seeking reconsideration of claims that had been summarily denied without explanation.	PX 105 at -100641 ("[redacted]"), -100644 ("[redacted]"); PX 106 at -158953; PX 12 (Daniels) 252:5-10, 253:10-25 ([redacted].

76. If a cardholder succeeded in contacting the Bank's Claims Call Center and requested reconsideration of their CFF-denied claim, and the Bank actually investigated the claim on reconsideration (rather than summarily denying the claim again based on the CFF, as it did for cardholders whose accounts were also frozen based on the CFF), the Bank's CR&R department [redacted]. [redacted].

PX 24 (Ehresman) 90:9-17; *see generally* PX 105 ([redacted]; PX 267; PX 18 (Johnson) 191:8-12.

77. Although many cardholders were unable to get through to the Claims Call Center to request reconsideration, of those who did, [redacted].

PX 21 (Ahmad) 336:13-337:23; PX 15 (Letson) 292:9-298:8, 306:9-307:24; PX 107 at -556536; PX 108 at -143393.

78. The [redacted] CFF-1's extraordinarily high false positive rate. As of December 11, 2020, the Bank's data showed that approximately "[redacted]" [redacted]. Of claims submitted January to March 2021, [redacted].

PX 109 at -76994; PX 110 at -510145 ([redacted]); PX 24 (Ehresman) 87:24-89:16; PX 111 at -77127; PX 21 (Ahmad) 336:13-337:23, 355:13-360:9 ([redacted]); PX 227 at -159493; PX 1 (Kreis Rpt) ¶72 ("[S]uch rates are incredibly high and virtually unheard of in the industry.").

79. The Bank knew that wait times in its Claims Call Center were extraordinarily long from September 28 until November 21, leading many callers to give up before ever reaching a customer service representative ("CSR"). [redacted] a failure to seek reconsideration does not prove a claim was fraudulent and that there are many reasons a legitimate cardholder might not seek reconsideration of a CFF-denied claim.

PX 21 (Ahmad) 359:8-360:14; PX 10 (Loebner Reb Rpt) ¶¶ 46-61; *see* PASF 96-108.

80. The Bank's mid-level managers were aware of the resulting harsh consequences on innocent cardholders and asked [redacted]."

PX 14 (Martin) 308:9-311:15; PX 112 at -90640 (12/29/20: "[redacted]"); PX 113 at -107261 (1/11/21: "[redacted]]); PX 274 at -62175 (1/14/21: "[redacted]); PX 114 at –107327 ([redacted]

[redacted]"); PX 115 at -90683 ([redacted]").	
81. Senior leaders dismissed concerns that the CFF-1 policies were harming legitimate cardholders. PX 116 at -273305 ([redacted]").	
82. The Bank received thousands of calls from EDD cardholders seeking to regain access to CFF-denied or CFF-frozen funds. Many broke down in tears on the phone with the Bank's CSRs, explaining the hardship caused by their denied accesss, sometimes for months on end. Cardholders explained that they relied on their EDD benefits to feed their families, pay rent, and buy diapers and other daily necessities, and that because they were unable to access those benefits, they were at risk of eviction or homelessness. One Bank CSR explained to the press, "We're actually no longer allowed to tell them a timeframe [for when they'll regain access to their funds], because we have no clue …. Every day, I talk to 30 people with the same story. I just pray for them after my shift, honestly." PX 117; *e.g.*, PX 51; PX 53; PX 54; PX 55; PX 118; PX 119; PX 120.	
83. On November 24, 2020, CEO Moynihan received a letter from all 56 California state legislators reporting that "[e]very legislative office in our state has experienced an unprecedented number of constituents contacting them requesting assistance to resolve issues with … their Bank of America debit cards. …. EDD reports to legislative staff that Bank of America has a proprietary formula to detect fraud and has taken it upon themselves to freeze cards and take money from recipients. … [C]onstituents report they are unable to get through to your call centers, or when they do, the issue is not resolved. Many of our own staff have also tried to reach Bank of America to no avail. It is simply unacceptable that Californians entitled to benefits are suddenly not able to obtain them due to a Bank of America determination that is impossible to appeal." PX 121 at -58621.	
84. Moynihan [redacted] many communications from EDD cardholders harmed by the Bank's CFF policies and seeking assistance in regaining access to their EDD funds. Many of these cardholders explained to Moynihan that they had tried calling the Bank's call centers and EDD to no avail, that they were desperate to regain access to their funds, and that they relied on their EDD benefits to pay for food, rent, and other necessities. *See, e.g.*, PX 28 (Moynihan) 143:25-147:21, 150:23-151:25, 152:5-18, 152:20-154:12, 159:1-5, 169:19-171:23; PX 122 at -105556; PX 123 at -373787-88; PX 124 at -188717-78; PX 125 at -105900; PX 51; PX 128 at -284155; PX 129 at -41664; PX 130 at -27088; ; PX 131 at -41705; PX 132 at -27124; PX 133 at -41795; PX 134 at -27231-32; PX 135 at -29021-22.	
85. In December 2020, the Bank knew that EDD "[redacted]" Shortly after resuming its CFF-1 account freeze policy, the Bank learned that CFF-frozen cardholders were unable to get unfrozen, even after reverifying with EDD, because they were stuck in a "[redacted]" of fruitless calls to EDD and the Bank who would each refer the cardholder to the other. Managers proposed as early as January 2021 that the Bank "[redacted], yet the Bank delayed	

until March 18, 2021 before changing to a "block" policy.

PX 138 at -874570; PX 273 at -127438; PX 114 at -107328 (1/14/21: "[redacted]"); PX 275 at -646321 (1/21/21: "[redacted]"), -646333 ([redacted]; PX 136 at -90722, -90725; PX 137 at -452795; PX 14 (Martin) 302:2-303:23, 308:9-310:4.

86. Once the Bank began to allow cardholders to authenticate their identities with the Bank after March 18, 2021, [redacted]" Nevertheless, the Bank continued to use CFF-1 to auto-deny all ATM claims until enjoined by a federal court.

PX 289 at -406129; PX 209; PX 210.

I. THE BANK INTENTIONALLY ADOPTED ITS CFF-1 POLICIES OVER OTHER REASONABLY AVAILABLE ALTERNATIVES

87. On or about September 28, 2020, relying solely on CFF-1, the Bank clawed back nearly $[redacted] in permanent credits that it had previously paid on ATM and ATM/combo claims submitted by approximately 6,100 Credit Rescission class members. The Bank's rescission of previously paid credit on any claim that triggered CFF-1 was intentional. Approximately [redacted] of Credit Rescission class members were denied access to rescinded credits for more than [redacted]. The median duration of credit rescission was [redacted].

PX 64 at -169954–55; PX 139 ; PX 140 at -571310; PX 141 at -417490; DX 31 at No. 39; DX 76 at -7224; PX 24 (Ehresman) 72:1-72:15 ([redacted]"); PX 18 (Johnson) 60:20-24 (recalls "[redacted]"); PX 14 (Martin) 177:4-178:23, 179:13-180:1; PX 5 (Regan Rpt) ¶¶65, 67-68 & Schedule 1; PX 284.

88. From September 28, 2020 until June 8, 2021, the Bank relied solely on CFF-1 to auto-deny without investigation or issuance of provisional credit all ATM and ATM/combo claims submitted by EDD cardholders and sending cardholders a form claim denial letter with no explanation of the reasoning for the denial. Pursuant to this policy, the Bank summarily denied without investigation the ATM and ATM/combo claims of approximately 104,300 Claim Denial class members, worth approximately $[redacted]. Approximately [redacted] of class members' claims were not paid for more than [redacted]. The median duration of deprivation for class members was [redacted]

PX 14 (Martin) 124:10-126:8, 127:20-132:17, 132:20-133:17; PX 5 (Regan Rpt) ¶¶37, 39, 45 & Schedule 1; PX 284; PX 291; PX 155.

89. Instead of automatically denying claims that hit the fraud filter, the Bank could have prioritize" ATM claims for investigation in accordance with [redacted] within 10 business days, [redacted]. The Bank [redacted] manually investigate all ATM and ATM/combo claims within 10 business days of claim submission, thereby complying with its Reg E obligations and not having to pay

provisional (or permanent) credit for fraudulent claims submitted by those engaged in benefits enrollment fraud. Nevertheless, the Bank deliberately chose to implement its CFF-1 claim denial policy.

PX 24 (Ehresman) 32:12-38:6, 97:4-23; PX 70 at -426407; PX 28 (Moynihan) 238:16-239:2 ([redacted]”); PX 20 (Garfield) 199:9-201:15; PX 66 at -169914 ([redacted]).

90. From September 28 to October 3, 2020, and again from December 3, 2020 to March 17, 2021, the Bank automatically froze the account of every EDD cardholder who submitted an ATM or ATM/combo claim; refused to allow such cardholders to authenticate their identity with the Bank and instead directed cardholders to call EDD's call centers and authenticate their identity with EDD; and refused to unfreeze CFF-frozen accounts unless the EDD cardholder reverified their identity with EDD and EDD directed the Bank to unfreeze the account ("CFF-1 account freeze policy"). Pursuant to this policy, the Bank froze the accounts of approximately 65,800 Account Freeze class members, who were denied access to their frozen account balances totaling approximately $[redacted]. Approximately [redacted]f Account Freeze class members were frozen for more than [redacted], and [redacted] were frozen for more than [redacted].

PX 14 (Martin) 222:9-225:2, 232:2-12, 235:15-236:1; PX 142 (Simpson Ex 395) at -845906-07; PX 49 at -41755 ([redacted]”); PX 29 (EDD) 23:12-23; PX 13 (Chestnut) 146:17-25; PX 5 (Regan Rpt) ¶¶77, 79, 83 & Schedule 1; PX 284.

91. When the Bank implemented its CFF-1 account freeze policy requiring frozen cardholders to call EDD to authenticate their identity to regain access to their account, it knew that EDD's call centers were overwhelmed and understaffed and unable to answer the vast majority of calls received.

PX 13 (Chestnut) 154:11-157:14; PX 143 at 17-18; PX 144 at -71396 ("[redacted]"); PX 138 at -874570 (as of December 2, 2020, EDD "[redacted]").

92. Instead of using CFF-1 to freeze cardholder accounts and require reverification with EDD, the Bank could have [redacted] used CFF-1 to "block" cardholders and allowed them to authenticate their identities through the Banks' own [redacted], which involve "[redacted]"

PX 14 (Martin) 224:5-16, 242:22-247:2, 255:23-256:17; PX 145 (Bank's Rog 34 Response); *see* PASF 93.

93. Prior to its CFF policies, the Bank had [redacted]. Instead, [redacted]

PX 14 (Martin) 198:4-201:19, 205:1-206:8, 207:25-210:5, 236:13-25, 281:21-283:24, 286:2-19; PX 15 (Letson) 220:20-222:3 ([redacted]"), 334:21-335:4;

PX 215 at -592330 ([redacted]"); PX 145 (Rog 34 Resp.).	
94. The Bank's [redacted] is an effective tool for authenticating the true cardholder. The Bank also had numerous other sources of information for verifying the identity and transaction history of EDD cardholders, including information in the Bank's possession for EDD cardholders who also had consumer accounts with the Bank, which the Bank estimated was approximately [redacted].	PX 145 (Rog 34 Resp.) ([redacted]"); PX 25 (Ramirez) 23:5-8; PX 12 (Daniels) 155:23-156:21; PX 26 (Simpson) 84:15-85:4; PX 23 (Holt) 127:9-17, 276:13-277:1 PX 149 at -631445 ("[[redacted]]."); PX 14 (Martin) 30:25-31:3, 188:4-190:16, 218:2-220:7, 268:2-4, 301:18-302:25; PX 1 (Kreis Rpt) ¶ 66; PX 8 (Kreis Reb. Rpt) ¶¶ 23, 36; PX 136 at -90723 ([redacted]"); PX 146 at -405160 (same); PX 147 at -169898 ("[redacted]"); PX 148 at -417556-57; PX 138 at -125921; PX 273 at -127438.
95. The Bank was capable of authenticating legitimate EDD cardholders and identifying individuals using a stolen identity through its [redacted] and other processes and resources, and was aware that its CFF-1 freeze policy was trapping cardholders in a "[redacted]," but deliberately chose to implement and maintain its CFF-1 freeze policy until March 18, 2021.	*See* PASF 85-86, 93-94.
J. THE BANK DELIBERATELY UNDERSTAFFED ITS CLAIMS CALL CENTER TO CREATE LONG WAIT TIMES	
96. The Bank required EDD cardholders to call the telephone number on the back of their EDD debit card to report an unauthorized transaction (i.e. file a claim).	PX 56 §§10-11; PX 33 §V at 198 ("Claims initiation can only be handled via a live representative within our Customer Service Center."); PX 3 (Minnucci Rpt) ¶¶23, 26, 47; PX 16 (Golden) 99:11-100:1; 100:2-9; PX 151 at -172243; PX 145 (Rog 34 Resp.).
97. When EDD cardholders called the Bank's customer service number, they first navigated an IVR system (i.e., a pre-recorded menu of options) and then waited on hold for the Main Call Center. If the Main Call Center agent determined that the call was regarding an unauthorized transaction or unauthorized transaction claim, the agent would again place the caller on hold and transfer them to the Bank's Claims Call Center. All EDD cardholder calls seeking to submit a claim regarding an unauthorized transaction, to request reconsideration of a CFF-denied claim, or to inquire about the status of a pending claim were routed to the Claims Call Center.	PX 3 (Minnucci Rpt) ¶¶22-26; PX 24 (Ehresman) 21:8-20; PX 16 (Golden) 32:5-21, 100:16-21, 168:5-17; PX 145 at 14-15 (Rog 34 Resp).
98. In late summer 2020, the Bank implemented a policy of intentionally understaffing its Claims Call center, thereby increasing wait times and creating "[redacted]" in the Claims Call	

Center, making it more difficult for EDD cardholders to submit claims of unauthorized transactions, as a strategy "[redacted]"	PX 152 at -118438 ([redacted]"); PX 153 at -106093-94 ([redacted]"); PX 154 at-876475; PX 24 (Ehresman) 50:5-13, 54:1-15, 62:21-63:3.
99. The Bank's deliberate understaffing policy in late summer 2020 is reflected in its [redacted]. In response to the surge in call volume in Spring 2020, the Bank increased the number of CSRs until it [redacted] Rather than maintain an adequate staffing level in its Claims Call Center, the Bank then sharply reversed course and d[redacted] as of September 27, 2020.	PX 3 (Minnucci Rpt) ¶¶52-54, 58-81, 84, Tbls. 5 & 6, Fig. 3, Appx. F; PX 152 at –118438; PX 153 at -106094; PX 16 (Golden) 75:14-76:2; 85:25-87:2; 124:11-125:1; PX 156 at -719115; PX 286.
100. [redacted] its Claims Call Center staffing policies did not distinguish between deterring calls from legitimate and illegitimate claimants, and that "[redacted]," but it implemented its strategy of intentionally "[redacted]" anyway.	PX 16 (Golden) 85:25-87:2; PX 24 (Ehresman) 24:7-13, 58:23-60:17; PX 152 at -118438.
101. The Bank assumed that legitimate EDD Cardholders would tolerate long wait times, reasoning EDD "[redacted]"	PX 152 at -118438 ("[redacted]").
102. Deliberately subjecting customers to intentionally prolonged wait times is contrary to industry standards and "unheard of in the call center industry."	PX 3 (Minnucci Rpt) ¶¶75-76.
103. When the Bank implemented its CFF on September 28, 2020, the Bank knew that its Claims Call Center was already understaffed and that wait times were already extraordinarily elevated. [redacted] implementing its CFF policies would cause a surge in call volume from cardholders impacted by the CFF.	PX 16 (Golden) 75:8-22; 124:22-125:1; PX 3 (Minnucci Rpt) ¶72; PX 21 (Ahmad) 103:13-104:19; 285:5-25, 287:14-288:4.
104. From the CFF's implementation until November 21, 2020, EDD cardholders who called the Bank seeking to submit a claim, inquire about the status of a claim, or request reconsideration of a CFF-denied claim were required to wait on hold approximately [redacted] simply to speak with an agent in the Claims Call Center, with average	

wait times peaking in late October 2020 at [redacted], compared to an industry average ASA in 2020 of 1.25 minutes. PX 3 (Minnucci Rpt) ¶¶36, 39-40, 52-54, Appx. E; PX 156 at -719115; PX 288.
105. As a result of these extraordinarily long wait times, the average call abandonment rate (i.e., the percentage of callers who hang up or are disconnected before their call is answered) in the Bank's Claims Call Center from September 13 to November 21, 2020 was [redacted], compared to an industry average of 6.1%. PX 3 (Minnucci Rpt) ¶¶14, 36, 39-40, 53, Fig. 2; PX 156 at -719115.
106. Understaffing was the root cause of the extreme performance failures of the Bank's Claims Call Center in the Fall of 2020, which fell far below industry standards. PX 3 (Minnucci Rpt) ¶¶58, 91-99.
107. Although the Bank had highly accurate and reliable forecasting based on the unemployment insurance daily average, and although onboarding a new call center staff person required at least [redacted], the Bank [redacted]. PX 3 (Minnucci Rpt) ¶¶46, 60-67; PX 297 at -60339 ("[redacted]); PX 16 (Golden) 66:8-68:6, 69:5-20; PX 28 (Moynihan) 160:11-20; PX 160 at -13097, section 3.5; PX 158 at -90040, section 3.4; PX 159 at -13086, section 3.4; PX 160 at -13097, section 3.5.
108. The Bank's Claims Call Center staffing policies were directed by Paul Simpson and Faiz Ahmad, who were delegated authority over those policy decisions, and were authorized and/or ratified by then-COO Thomas Montag, [redacted]. Montag testified that [redacted]. PX 26 (Simpson) 9:12-11:5; PX 24 (Ehresman) 21:22-22:2; PX 27 (Montag) 21:21-25, 22:8-16, 59:2-16, 60:3-23; PX 157 at -881851; PX 28 (Moynihan) 41:6-24.
K. THE BANK DELIBERATELY DELAYED ISSUANCE OF EMV CHIP CARDS FOR SELF-INTERESTED FINANCIAL REASONS
109. The Bank issued all EDD cardholders cards containing only a magnetic stripe and no EMV chip ("mag-stripe-only cards"), even though the Bank had included EMV chips on its other consumer and business account customers' debit cards since 2014. The Bank did not issue EDD debit cards with EMV chips until July 2021. PX 14 (Martin) 61:19-23, 64:7-13, 65:4-66:3; PX 161; PX 2 (Cloninger Rpt) ¶52; PX 18 (Johnson) 53:20-54:20; PX 15 (Letson) 161:7-162:3, 162:14-15.
110. Because mag-stripe-only cards contain cardholder information on the unencrypted magnetic stripe and have no other security mechanism to complete transactions, they are easy for criminals to steal and counterfeit. For decades, criminals have stolen magstripe card data through "skimming," which involves installing inconspicuous "skimming" devices on payment terminals, typically in conjunction with the installation of a device to capture entry of PIN numbers, such as a pinhole camera or PIN pad overlay. EMV-chip

cards, which require a fully encrypted, dynamic code specific to each transaction, cannot be counterfeited and are extremely effective at preventing card-present counterfeit fraud.	PX 2 (Cloninger Rpt) ¶¶18-25 (citing FBI Overview of ATM Skimming report), 26-35, 58-75; PX 31 (Joseph) 94:5-9; PX 162 at -455617 ("[redacted][.]"); PX 163 at -205594 ("[redacted])."); PX 14 (Martin Dep) 65:21-66:3; PX 10 (Loebner Reb Rpt) ¶¶27-30; PX 164 at -370154 ("[redacted]"); PX 165 at -463207 ("[redacted]"); PX 166 at -228914 ("[redacted]"); PX 167PX 168 at -5007 ("[redacted]"); PX 170 at -170413, 170416 ([redacted]t"); PX 171 at 167019-24 ("[[redacted]); PX 172 at -401309; PX 161; PX 20 (Garfield) 384:1-385:6, 385:19-386:6, 386:11-15; PX 173 at -123235 ([redacted]); PX 174 at -154043 ("[redacted]"); PX 175 at -166345 ("[redacted]); PX 176 at -EDD2375 ("[redacted]); PX 167 at -495785 ("[redacted]"); PX 177 at -104749; PX 178 at -163307 ("[redacted]."); PX 179 at -417363 ("[redacted]"); PX 166; PX 180; PX 177 at -104749; PX 21 (Ahmad) 50:22-51:15, 79:9-16; PX 23 (Holt) 280:20-283; Exec. Order No. 13681, 79 F.R. 63491 (Oct. 23, 2014).
111. EMV chips have been the industry standard for card security since at least 2019.	PX 2 (Cloninger Rpt) ¶¶42-45, 46-55; PX 11 (Cloninger Reb Rpt) ¶¶8-45; PX 15 (Letson) 161:7-162:3, 162:14-25; PX 172 at -401309; PX 171 at -167021.
112. By 2020, even before the pandemic, the Bank was aware that [redacted]	PX 2 (Cloninger Rpt) ¶¶61-62, 85, 87; PX 164 at -370154; PX 181 at -351839; PX 182 at -116001; PX 171 at -167022 ([redacted]"); PX 173 at -123235 ("[redacted]"); PX 183 at -406995 ([redacted]).
113. In early January 2020, the Bank's [redacted], that	

[redacted]. Once the pandemic began and the number of EDD cards and their load value grew, the Bank's [redacted] because fraud would foreseeably increase as a result of those changes. PX 14 (Martin) 81:7-83:13, 84:16-85:6, 86:9-24; PX 184 at -104744; PX 181 at -351839; PX 2 (Cloninger Rpt) ¶¶60-64, PX 2 Rpt)76; PX 11 (Cloninger Reb Rpt) ¶¶65-67; PX 31 (Joseph) 149:21-150:8; PX 177 at -104749 ("[redacted].").	
114. The Bank promised EDD to (i) be "at the forefront of fraud and data security strategies"; (ii) provide "immediate response to emerging fraud trends" and "industry best-in-class" fraud investigation; and (iii) "employ the highest level of security and fraud safeguards" with "multiple layers of extensive security" to "provide significant risk reduction associated with misuse of stolen [cardholder] information." PX 13 (Chestnut) 80:14-25, 85:12-86:9, 86:18-87:4, 87:11-20; DX 39 at -2761; PX 33 at 252-254; *see* RSUF 10.	
115. The Bank did not offer to issue EMV chip cards before January 2021. The Bank's strategy was to [redacted]. PX 29 (EDD) 40:19-42:3; PX 20 (Garfield) 392:18-394:20; PX 171 at -167023 ([redacted]"); PX 185 at -124142 ("[redacted]."); PX 186 at -352396 ("[redacted]."); PX 164 at -370154 ("[redacted]"); PX 269 at -698454–55; PX 287; PX 187 at -357755; PX 188 at -353034 ("[redacted]; PX 189 at -678774; PX 173 at -123235 ("[redacted]; PX 2 (Cloninger Rpt) ¶¶68-74; PX 181 at -351839-40; PX 182 at -116001; *see* RSUF 11, 15, 236.	
116. The Bank [redacted]. PX 173 at -123235 ([redacted]"); PX 171 at -167019-24; PX 20 (Garfield) 390:9-391:23 ("[redacted]."); *cf.* PX 161.	
117. During the pandemic, mag-stripe-only EDD cards presented "[redacted]" in California. The Bank saw [redacted] resulted from low-security mag-stripe-only EDD debit cards.	

	PX 180 at -297295; PX 175 at -166345; PX 162 at -455617; PX 169 at -82602 ("[redacted]."); PX 166 at -228914 ("[redacted]"); PX 165 at -463207 ([redacted]); PX 190 at -166417 ("[redacted]"); PX 191 at -297351 ("[redacted]"); PX 192 at -82642 ([redacted]); PX 193 at -431012 ([redacted]"); PX 167 at -495785 ; PX 2 (Cloninger Rpt) ¶¶14(g), 96-102; PX 194 at -218256 ([redacted]; PX 195 at -166408 ("[redacted]").
	118. EMV would have prevented most, if not all, of the card-present fraud that EDD cardholders reported to the Bank. Had the Bank converted to EMV, any counterfeit fraud would have been extremely limited due to [redacted] PX 162 at -455617 ("[redacted]"); PX 185 at -124142 ("[redacted]"); PX 178 at -163307 ("[redacted]"); PX 2 (Cloninger Rpt) ¶¶14(j), 82-88, 103-113; PX 198 at -171973; PX 199 at -570314; PX 190 at -166417 ([redacted]."); PX 180 at -297295 ("[redacted]"); PX 166 at -228914 ([redacted]); PX 193 at -431012 ([redacted]"); PX 136 at -57505 ([redacted]); PX 11 (Cloninger Reb Rpt) ¶89; PX 14 (Martin) 112:1-113:25.
	119. When the Bank proposed to EDD that they amend their contract to allow the Bank to migrate EDD cards to EMV technology in 2021, EDD responded that it "[redacted]" PX 29 (EDD) 38:3-39:10; 39:12-40:17; 61:9-62:17; PX 201 at –59312.

Respectfully submitted,

Dated: January 9, 2026 **COTCHETT, PITRE & McCARTHY, LLP**

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SIGNATURE ATTESTATION

Pursuant to section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I, Brian Danitz, attest that the other signatories listed, and on whose behalf this filing is submitted, concur in the filing content and have authorized this filing.

Dated: January 9, 2026

<u>/s/ Brian Danitz</u>
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