# DX 49

# REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED PURSUANT TO STIPULATED PROTECTIVE ORDER

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

**SAN DIEGO DIVISION**

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| IN RE: BANK OF AMERICA CALIFORNIA UNEMPLOYMENT BENEFITS LITIGATION | Case No. 1-MD-02992-GPC-MSB |

# EXPERT REBUTTAL REPORT OF CARL PRY

**April 4, 2025**

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**Appendices:**

## I. ASSIGNMENT AND ROLE

1. This matter is a proposed class action brought forth by certain proposed classes of plaintiffs ("Plaintiffs") against Bank of America, N.A. ("Defendant" or "BANA"). Plaintiffs allege that BANA mishandled reports of unauthorized transaction claims[1] brought by prepaid debit cardholders ("Cardholders") who were deemed eligible by and received unemployment insurance benefits from California's Employment Development Department ("EDD") during the height of the COVID-19 pandemic in 2020-21.

2. I have been retained by counsel to BANA, Goodwin Procter LLP ("Counsel"), to serve as an expert in regulatory compliance practices within the banking industry. Specifically, I was asked to review and respond to certain opinions and assertions set forth in the expert report of Greg Regan dated March 4, 2025 (the "Regan Report") as well as the expert report of William Abernathy, Jr. dated March 3, 2025 (the "Abernathy Report").

## II. QUALIFICATIONS

3. I have worked for more than 35 years in the banking industry. I have served in many positions both for and with banks of all sizes, and other financial service organizations, including as a compliance officer, Fair Lending officer, compliance department head, and related positions focused on consumer protection, fair lending, UDAP/UDAAP, and other regulatory compliance areas. In my many years as a banking compliance and risk management consultant and advisor, I have assisted hundreds of banks and nonbank clients in many areas, including program design and implementation, development of compliance policies, procedures, and program protocols, coordinating regulatory examinations and compliance audits, and managing responses to findings, among many other tasks and responsibilities. In addition, I have coordinated resolution of customer disputes and complaints, and explained bank functions and procedures to federal regulatory examination teams and to the public.

4. I am currently an Independent Advisor, most recently providing advisory services and expert witness analysis and testimony for FTI Consulting, Inc. ("FTI"). Previously, I was

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[1] This rebuttal report sometimes uses the term "error claims" for unauthorized transaction claims. This rebuttal report also uses the general term "claim" to mean an unauthorized transaction claim.

with Treliant LLC, a regulatory and risk management compliance consulting firm headquartered in Washington, D.C., as a Senior Advisor and Managing Director (*i.e.*, a partner of the firm) for twelve years. For many of those years, I was the leader of the firm's Consumer Compliance and Fair Lending practice areas.

5. I have assisted hundreds of financial institutions, of all asset sizes, including nonbank financial institutions, in fulfilling their regulatory compliance obligations. This involved advising and training staff, management, and Boards of Directors on the detailed requirements of complex banking laws and regulations, plus associated guidance and best practice recommendations.

6. I am a Certified Regulatory Compliance Manager ("CRCM"), a nationally recognized compliance credential managed by the American Bankers Association ("ABA") that requires passing a standardized examination of an individual's ability to apply all banking regulatory compliance requirements in situation-based questions. I was named ABA's annual Distinguished Service Award winner in 2015 in recognition of my contributions to the banking industry across the country. Only one individual is named annually for this prestigious award, reflecting ethical leadership and critical impact on financial institutions across the country.

7. My curriculum vitae, which is attached as **Appendix 1**, further describes my professional credentials and includes a listing of cases in which I was deposed and/or have testified as an expert in the last five years as well as publications that I have authored for the last ten years. FTI is being compensated at a rate of $715 per hour in this matter for my time. My compensation is not conditioned on the substance or outcome of the opinions I have issued in this report.

## III. <u>INFORMATION RELIED UPON</u>

8. This report is based on my experience and the information considered herein. The conclusions described in this report are mine. The work was performed by me or other professionals under my direct supervision. The team of people assisting me included accountants and other professionals employed by FTI. This report should not be construed to constitute or contain opinions on matters of law.

9. In arriving at my opinions, I relied upon the information and documents referenced throughout this rebuttal report, which are summarized in **Appendix 2** of this rebuttal report.

10. The information and opinions set forth in this expert rebuttal report are based upon materials made available to me and my staff, working at my direction, to date. If additional materials or data relevant to this report are subsequently provided to me and/or my staff, I reserve the right to revise, supplement, or amend my analysis and opinions. Specifically, I reserve the right to revise, supplement, or amend my analysis and opinions if additional information or data is provided to me regarding potential fraudster or uninjured class members.

## IV. EXECUTIVE SUMMARY

11. Pursuant to BANA's remediation plan in response to consent orders filed by the Consumer Financial Protection Bureau ("CFPB") and the Office of the Comptroller of the Currency ("OCC"),[2] BANA provided compensation to certain Cardholders, [redacted][3]

12. As discussed further in Section V.C below, the Remediation Plan allowed (but did not require) BANA to exclude Cardholders from compensation if the Cardholder: "(i) [was] disqualified by the state from Program eligibility; (ii) [was] previously engaged in fraudulent Program conduct, such as submission of fraudulent claims or other abuse of the

[2] The two consent orders filed by the CFPB (Declaration of Connie K. Chan in Support of Plaintiffs' Motion for Class Certification Ex. ("PX") 72, CFPB Consent Order) and the OCC (PX 73, OCC Consent Order) are hereinafter referred to as the "Consent Orders." [redacted]

claims process; or (iii) [had] their card frozen due to legal order processes, as a result of Internal/Vendor fraud investigations, or by Global Financial Crimes Compliance."[4]

13. The Regan Report calculates damages in this matter for the proposed Claim Denial Class [redacted]

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

14. [redacted]

15. Mr. Abernathy opines: "Regulators do not expect or tolerate payments to be made to fraudsters under a regulatory consent order and resulting remediation plan. Rather, regulators expect the financial institution to develop and implement reliable processes for effectively identifying 'harmed consumers' and excluding fraudsters."[5] In support for this opinion, Mr. Abernathy cites the criteria for the Remediation Plan Excluded Cardholders and states:

[4] PX 74, [redacted]

[5] Abernathy Report, p. 8.

> Based on my experience as a long-time senior federal regulator at the OCC, which included substantial compliance matters, it is my opinion that when regulators require a bank to identify a population of "harmed consumers" for remediation the bank is expected to exclude from that population individuals who have engaged in fraud. The regulators expect the bank to develop and implement a reliable and lawful process that will effectively identify "harmed consumers" and exclude fraudsters. Regulators do not expect or tolerate payments to be made to fraudsters pursuant to a regulatory consent order and remediation plan, especially where the bank has agreed [redacted] as the Bank did here. Based on my experience, when a bank such as Bank of America represents to its regulators that it will do something ([redacted]) they do it.[6]

16. Based on a review and analysis of the documents as set forth in Appendix 2, along with my over 35 years of experience in the banking industry—including my experience as a compliance officer, compliance department head, and related positions focused on consumer protection and other regulatory compliance areas—I am of the opinion [redacted] It is also my opinion that Mr. Abernathy's assertions relating to regulators' expectations and tolerations are misaligned. Specifically, Messrs. Regan and Abernathy fail to consider:

- As set forth in Section V.A, the COVID-19 pandemic, Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), and Pandemic Unemployment Assistance ("PUA") program resulted in an unprecedented surge in unemployment insurance fraud in California and across the United States. The rampant fraud occurred at both the eligibility and claim level, where fraudsters would both falsify information to become eligible for unemployment insurance benefits and improperly submit unauthorized transaction claims to BANA asserting that unauthorized funds were withdrawn from the Cardholders' account when, in fact, those withdrawals were authorized.

[6] Abernathy Report, ¶ 34.

- As set forth in Section V.B, [redacted][7] Additionally, it has been well documented that given the unprecedent events around the COVID-19 pandemic, EDD was not able to keep up with the volume of unemployment insurance applications and struggled to implement suitable eligibility and identity verification procedures. Further, given the extent and scope of the fraud that infiltrated the EDD program during the pandemic, government agencies have concluded that much of the fraud remains undetected and will never be recovered.

- As set forth in Section VI.A, when financial institutions respond to consent orders, they almost always prioritize ensuring prompt compensation to all potentially affected consumers. Financial institutions are more inclined to overcompensate (including paying consumers who may not have been harmed) rather than risk undercompensating or failing to pay consumers who were legitimately harmed.

- As set forth in Section VI.B, BANA's [redacted] For example, I estimate that around [redacted] There are valid reasons for BANA to adopt this approach, including [redacted]

[7] Deposition of Michael Letson (Managing Director in BANA's Global Financial Crimes) ("Letson Deposition") dated February 16, 2024, 105:18-20.

- As set forth in Section VI.C, BANA [redacted] These factors led to BANA [redacted]

- As set forth in Section VI.D, [redacted] Moreover, [redacted][8]

- As set forth in Section VI.E, [redacted]

17. For all these reasons, which are summarized in Section VII, it is my opinion [redacted]

[8] Declaration of Laura Brys in Support of Defendants' Memorandum in Opposition to Plaintiffs' Motion for Class Certification, Ex. ("DX") 7, Declaration of William M. Martin, ¶ 14.

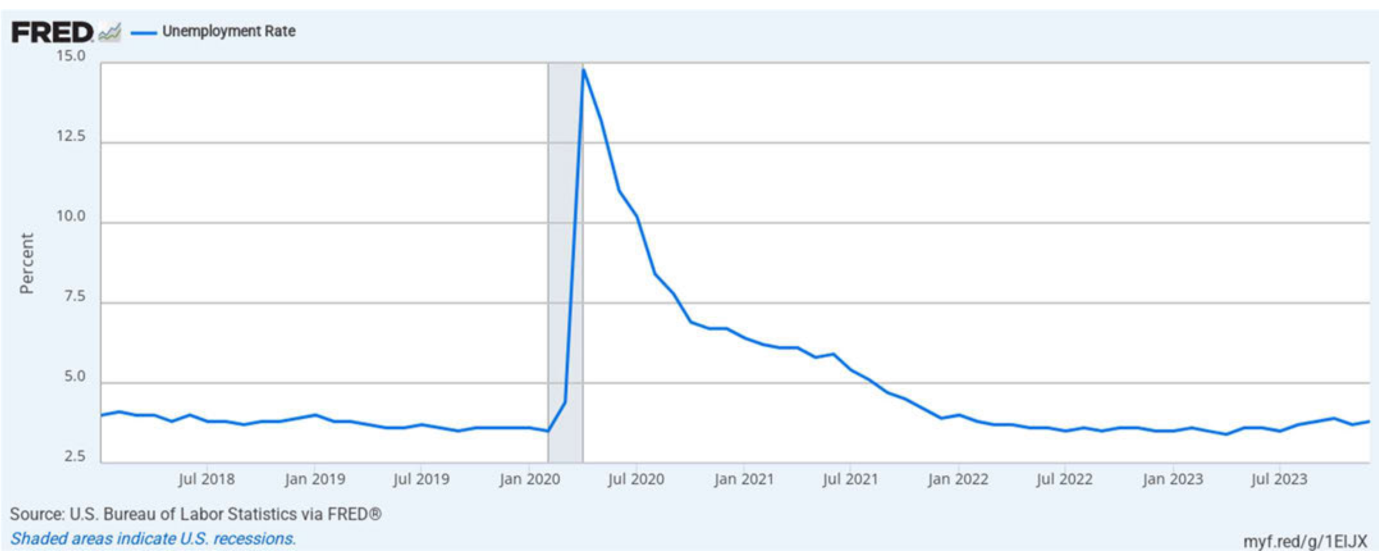
[redacted]

## V. BACKGROUND

### A. Unemployment Insurance Fraud

18. The EDD administers unemployment insurance, disability insurance, and workforce development programs to support job seekers and employers across California. Individuals deemed eligible by the EDD were able to access unemployment benefits through an EDD prepaid debit card issued by BANA. [redacted].[9]

19. The COVID-19 Pandemic sparked a surge in widespread unemployment beginning in the spring of 2020, with the national unemployment rate reaching almost 15% in April of 2020:[10]




[9] *See* Letson Deposition, pp. 105-109.
[10] PX 72, CFPB Consent Order, p. 9. *See also* the unemployment rate information published by Federal Reserve Bank of St. Louis (Federal Reserve Bank of St. Louis, *Unemployment Rate*).

20. In response to the sharp rise in unemployment across the country, Congress enacted the CARES Act in March 2020. The CARES Act, *inter alia*, created the PUA program,[11] which expanded unemployment benefits eligibility and provided greater benefit amounts than previously available.[12] "The PUA program provided unemployment insurance benefits for workers not eligible under regular UI rules for benefits—such as self-employed workers and independent contractors—who were unable to work as a result of the COVID-19 pandemic."[13] Notably, whereas unemployment benefits recipients previously had to provide employment and wage records *from their employer* to verify eligibility, "PUA claimants could *self-certify* their employment history and eligibility."[14]

21. As a result of the surge in unemployment, the CARES Act, and the PUA, there was an unprecedented increase in the number of individuals seeking unemployment benefits from the EDD. For example:

- The number of unique EDD cards increased from less than one million in January of 2020 to over six million by July 2020.[15]
- The amount of benefits loaded onto the EDD cards increased from approximately $1 billion in January 2020 to over $27 billion in July 2020.[16]

22. Unfortunately, these changes also led to unprecedented increases and levels of fraud. This included fraud at the eligibility level [redacted] as well as at the unauthorized transaction claim level, where individuals would submit improper claims of unauthorized transactions to BANA with the goal of

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[11] "In March of 2020, millions became unemployed and Congress enacted the Coronavirus Aid, Relief, and Economic Security Act ('CARES Act'), which created the new Pandemic Unemployment Assistance ('PUA') benefit." (PX 73, OCC Consent Order, p. 2).
[12] *See* 15 U.S. Code § 9021. *See also* "Covered by PUA [...] People not eligible for, or who have exhausted all rights to, regular unemployment compensation or extended benefits under state or federal law or Pandemic Emergency Unemployment Compensation." (U.S. Department of Labor. (n.d.). *Pandemic Unemployment Assistance*).
[13] United States Government Accountability Office, *Pandemic Unemployment Assistance: States' Controls to Address Fraud* (July 23, 2024), p. 2.
[14] United States Government Accountability Office, *Pandemic Unemployment Assistance: States' Controls to Address Fraud* (July 23, 2024), p. 2 (emphasis added).
[15] PX 73, OCC Consent Order, pp. 2-3.
[16] *Id.*

getting BANA to provide credit for the allegedly unauthorized transactions that the fraudsters would then abscond with.

23. This fraud was well publicized. Public articles, court documents, and government reports summarize the widespread nature of the fraud that occurred in California and across the country:

- "In March 2020, millions became unemployed and Congress enacted the [CARES Act], which created the new [PUA] benefit. The CARES Act and PUA expanded unemployment benefits eligibility and provided greater benefit amounts than previously available […] Along with the increases in Program participants and benefits, the [BANA EDD Prepaid] Program experienced an increase in fraud, including with respect to unauthorized transaction claims."[17]
- By January of 2021, nearly $10.4 billion in fraudulent unemployment benefits claims and over $32 billion of unemployment benefits were stolen and illegally issued in California.[18]
- "While the total amount of UI fraud is unknown, since April 2021, 23 states have reported estimates that total $60.4 billion."[19]
- "Nationally, the total amount of unemployment insurance fraud is staggering. The U.S. Department of Labor, Office of Inspector General earlier this year told Congress that 'at least $163 billion in pandemic UI benefits could have been paid improperly, with a significant portion attributable to fraud.'"[20]
- "In California alone, fraudsters using stolen social security numbers and stolen or made up names made off with what state officials conservatively estimate is $20

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[17] PX 73, OCC Consent Order, pp. 2-3.
[18] DX 6, Declaration of Michael J. Letson, p. 6. *See also* California State Auditor, *Employment Development Department*: *Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments* (January 2021), p. 9.
[19] Pandemic Oversight, *Pandemic Unemployment Insurance: How much has been paid to fraudsters?* (January 22, 2025).
[20] NPR, *Pandemic-related fraud totaled billions. California is trying to get some of it back* (October 18, 2022), p. 4.

billion. That's about 11% of the $177 billion in jobless benefits paid out for COVID-19 relief."[21]

- "In September 2023, [the United States Government Accountability Office ("GAO")] estimated that the amount lost to fraud in DOL's UI programs during the pandemic—from April 2020 through May 2023—was likely between $100 billion and $135 billion."[22]

- "Of the 4 states we [the U.S. Department of Labor] tested, from March 28, 2020, through September 30, 2020, we estimated $30.4 billion of the $71.7 billion in PUA and FPUC benefits were paid improperly (42.4 percent). We estimated $9.9 billion of that was paid to likely fraudsters (13.8 percent). Notably, in the 4 states, 1 in 5 dollars initially paid in PUA benefits went to likely fraudsters. The percentages of improper payments identified during this audit applied only to the 4 states and were not projected to the nation."[23]

- "Paying claimants accurately and preventing improper payments, including fraud, continued to challenge states throughout the effective period for the CARES Act and CAA—March 28, 2020, through March 14, 2021. To assess eligibility, we [the U.S Department of Labor] statistically sampled and tested 214 cases in the 4 states where claimants received either PUA or regular UI with an FPUC supplement between March 28, 2020, and September 30, 2020. Additionally, we judgmentally selected 40 cases (10 from each of the 4 states) from January 1, 2021, through March 14, 2021, to assess any impact of legislative changes after CAA required proof of wages for PUA rather than relying solely on self-certification. From March

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[21] *Id.*
[22] United States Government Accountability Office, *Pandemic Unemployment Assistance: States' Controls to Address Fraud* (July 23, 2024), p. 1.
[23] U.S Department of Labor, *Report to the Employment and Training Administration, COVID-19: ETA and States did not Protect Pandemic-Related UI Funds from Improper Payments Including Fraud or from Payment Delays*, (September 30, 2022), p. 3.

28, 2020 through September 30, 2020, we found the 4 states paid 118 of 214 cases improperly—\$1,435,132 of the total \$3,381,823 (42.4 percent) paid."[24]

- "The unprecedented demand for UI benefits and the need to quickly implement the new programs increased the risk of fraud. In February 2023, the Comptroller General of the United States testified before the Committee on Ways and Means of the U.S. House of Representatives that DOL and the states were not adequately prepared to handle UI fraud risks when the pandemic began. In March 2023, we [the GAO] were asked to continue our work to develop a comprehensive estimate of UI fraud during the pandemic and address DOL and states' efforts for identifying and recovering UI overpayments. In September 2023, we estimated that the amount lost to fraud in DOL's UI programs during the pandemic—from April 2020 through May 2023—was likely between \$100 billion and \$135 billion. Additionally, our analysis found higher fraud rates for PUA payments than for other UI program payments."[25]
- "States faced challenges in rapidly implementing their new PUA programs and in establishing effective antifraud controls in response to the unprecedented unemployment caused by the COVID-19 pandemic."[26]

**B. BANA's Response to the Widespread Fraud**

24. BANA investigated the fraud discussed in Section V.A and found detailed instructions on the dark web[27] [redacted][28] Additionally, BANA, government committees, and the California State Auditor observed:

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[24] U.S Department of Labor, *Report to the Employment and Training Administration, COVID-19: ETA and States did not Protect Pandemic-Related UI Funds from Improper Payments Including Fraud or from Payment Delays*, (September 30, 2022), p. 4.
[25] United States Government Accountability Office, *Pandemic Unemployment Assistance: States' Controls to Address Fraud* (July 23, 2024), p. 1.
[26] *Id.*
[27] *See* DX 103, Dark Web Materials *Id.me Bypass* and DX 121, Dark Web Materials.
[28] DX 6, Declaration of Michael J. Letson, pp. 8-9.

- [redacted][29]
- [redacted][30]
- [redacted][31]
- "EDD […] adopted a 'pay and chase' model and processed incoming claims quickly; EDD staff understood that less time should be spent on checking eligibility of claimants as this would slow down paying out benefits. This led to many bad actors like international organized crime and individual criminals cashing in while eligible claimants were unable to obtain their benefits."[32]
- "California was […] one of the states that failed to cross reference applicants with incarcerated individuals, another poor decision that occurred […]. The California Auditor estimates the state lost around $810 million dollars in fraudulent claims to incarcerated individuals alone."[33]
- "Due to outdated IT systems, staffing shortages, and new programs being implemented, many states did not deploy any anti-fraud measures, leading to criminals being able to successfully file fraudulent claims and avoid detection."[34]
- "Organized crime played a major role in the proliferation of UI fraud by targeting preexisting system vulnerabilities. Foreign nations, organized criminal gangs, prison inmates, and those acting on their behalf, filed fraudulent claims in multiple states."[35]

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[29] DX 6, Declaration of Michael J. Letson, pp. 8-9.
[30] DX 6, Declaration of Michael J. Letson, p. 9.
[31] DX 7, Declaration of William M. Martin, p. 3. *See also* California State Auditor, *Employment Development Department: Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments* (January 2021), p. 15.
[32] DX 14, *Examining Widespread Fraud in Pandemic Unemployment Relief Programs* (September 10, 2024), p. 28.
[33] DX 14, *Examining Widespread Fraud in Pandemic Unemployment Relief Programs* (September 10, 2024), p. 30.
[34] DX 14, *Examining Widespread Fraud in Pandemic Unemployment Relief Programs* (September 10, 2024), p. 6.
[35] DX 14, *Examining Widespread Fraud in Pandemic Unemployment Relief Programs* (September 10, 2024), p. 7.

- "EDD's disjointed approach to fraud prevention has placed its UI program at a higher risk for fraudulent activity. It has not established a centralized unit to manage its fraud detection efforts, and it does not reliably track suspicious claims to ensure that it is taking appropriate action to resolve any issues, including those that suggest fraud has occurred."[36]
- "EDD has not assigned responsibility to any single departmental unit for ensuring that its fraud detection efforts operate as intended, contributing to its disjointed approach to stopping fraud."[37]

25. As indicated above in Section V.A, [redacted][38] [redacted][39]

26. [redacted]"[40] [redacted][41] [redacted][42] Further, given the

[36] California State Auditor, *Employment Development Department: Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments* (January 2021), p. 33.
[37] *Id.*
[38] DX 6, Declaration of Michael J. Letson, pp. 11-12.
[39] DX 6, Declaration of Michael J. Letson, pp. 11-12.
[40] Letson Deposition, 105:18-20.
[41] Letson Deposition, 105:22-23.
[42] Letson Deposition, 108:19-109:15.

extent and scope of the fraud that infiltrated the EDD program during the pandemic, government agencies have concluded that much of the fraud remains undetected and will never be recovered.[43]

27. [redacted][44] Pursuant to Regulation E, once a consumer notified BANA of any "error" or "unauthorized electronic fund transfer,"[45] BANA was required to "investigate the alleged error, determine whether an error has occurred, and report or mail the results of such investigation and determination to the consumer within ten business days."[46] [redacted][47] [redacted][48] [redacted]

28. In response, [redacted][49] [redacted][50] [redacted]

[43] "Although the full extent of this fraud and the money lost may never be fully known, the U.S. Government Accountability Office (GAO) estimates that about 11 to 15 percent of total benefits paid during the pandemic were fraudulent, totaling between $100 to $135 billion." (DX 14, *Examining Widespread Fraud in Pandemic Unemployment Relief Programs* (September 10, 2024)). *See also* California State Auditor, *Employment Development Department: Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments* (January 2021), p. 15 ("[I]t seems highly unlikely that EDD will be able to investigate more than a small fraction of these fraudulent claims, let alone recover a significant portion of the lost funds.").
[44] DX 6, Declaration of Michael J. Letson, pp. 11-12. *See also* DX 103, Dark Web Materials Id.me Bypass. and DX 121, Dark Web Materials.
[45] 15 U.S.C. § 1693f(f)(1).
[46] 15 U.S.C. § 1693f(a)(3).
[47] DX 6, Declaration of Michael J. Letson, p. 11.
[48] 15 U.S.C. § 1693f(c).
[49] I understand the Plaintiffs have only challenged and sought to certify a proposed class based on Indicator 1.
[50] Deposition of William Martin dated February 14, 2024 ("Martin Deposition"), 125:18-21.

[redacted][51] [redacted][52]

### C. Consent Orders and Remediation Plan

29. In July of 2022, the OCC and the CFPB issued the Consent Orders against BANA, relating, in part, to BANA's use of the CFF. Article IX of OCC Consent Order and Section VII of the CFPB Consent Order obligated BANA to submit a comprehensive remediation and redress plan to resolve the issues identified in the respective Consent Orders.

30. BANA submitted [redacted][55] [redacted][56]

31. [redacted]

[51] BANA PowerPoint titled Benefits Fraud | Patterns Observed (BANA_EDD_MDL-00430148) at 148-150.
[52] DX 6, Declaration of Michael J. Letson, p. 12. *See also* Deposition of Shane Daniels (Head of Consumer and Small Business Claims Operations) ("Daniels Deposition"), 153:4-10, [redacted] and Daniels Deposition, 174:3-5, [redacted]
[53] [redacted] PX 74, Remediation Plan, p. 2).
[54] [redacted] (PX 74, Remediation Plan, p. 2).
[55] [redacted] (PX 74, Remediation Plan, p. 2).
[56] PX 74, Remediation Plan, p. 15.

[redacted]

[redacted]

[redacted]

32. Removed from the population identified above were the Remediation Plan Excluded Cardholders—*i.e.*, Cardholders who: "(i) [were] disqualified by the state from Program eligibility; (ii) [BANA was able to determine were] previously engaged in fraudulent Program conduct, such as submission of fraudulent claims or other abuse of the claims process; or (iii) [] had their card frozen due to legal order processes, as a result of Internal/Vendor fraud investigations, or by Global Financial Crimes Compliance."[57]

33. [redacted][59]

34. [redacted][60]

[57] PX 74, Remediation Plan, p. 3.
[58] PX 74, Remediation Plan, pp. 6-8.
[59] PX 74, Remediation Plan, p. 12.
[60] For further discussion of the IRP, see Section VI.E.

**1.** [redacted]

35. [redacted]

- [redacted][61]
- [redacted]

36. [redacted][63]

**2.** [redacted]

37. [redacted]

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[61] PX 74, Remediation Plan, p. 4. [redacted] (PX 74, Remediation Plan, p. 4.) [redacted]
[62] PX 74, Remediation Plan, p. 5.
[63] PX 74, Remediation Plan, footnote 16.

- [redacted]
- [redacted]
- [redacted][64]

**3.** [redacted]

38. [redacted]

[64] DX 43, BANA's Second Set of Responses to Plaintiffs' Seventh Set of ROGs (ROG 39), pp. 8-10. [redacted]

[65] *See* DX 7, Martin Declaration, ¶ 8 and PX 74, Remediation Plan, pp. 4-5.

## VI. OPINIONS

### A. Financial Institutions Prioritize Prompt Compensation, Even if it Results in Overcompensation, in Responding to Consent Orders.

39. When financial institutions respond to consent orders, they almost always prioritize ensuring prompt compensation to all potentially affected consumers. Financial institutions are more inclined to overcompensate (including paying consumers who may not have been harmed) rather than risk undercompensating or failing to pay consumers who were legitimately harmed.

40. Enforcement actions, such as consent orders issued by federal banking regulators (especially ones that are made public, such as the ones here issued by the CFPB and OCC), almost always provide for remedial actions financial institutions must take to resolve alleged violations. Alleged violations and public enforcement of consumer protection laws and regulations (like EFTA and Regulation E) can carry a high degree of reputation risk[66] for the institution. Reputation risk is in addition to compliance risk[67] (*i.e.*, risk of criticism by the bank's examiners, which will be enhanced in the years after an enforcement action is issued), as well as litigation risk (the risk the bank may be sued by its customers). Therefore, in order to reduce these risks, banks typically take an extremely generous and consumer-friendly position when agreeing to and implementing remediation plans required by and agreed to pursuant to regulatory consent orders. Put simply, in my experience, banks try their best to remediate the alleged wrongdoing and put these significant matters behind them as soon as possible, even if that means compensating individuals who were not actually harmed by the alleged conduct.

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[66] *See e.g.*, "Litigation can expose a bank to negative public opinion. A damaged reputation may affect the bank's ability to establish new relationships or services or to continue servicing existing relationships, which may adversely affect current and future earnings. Widely publicized litigation, regardless of its ultimate outcome, can affect a bank's community standing, limit its business opportunities, and impair its basic franchise value. Some banks have elected to settle litigation rather than be subject to prolonged court cases. Settlement is designed to limit negative publicity and avoid prolonged reputation damage. Limiting reputation damage is particularly important for business lines, such as asset management, that depend on a sound reputation." (Office of Comptroller of the Currency, *Comptroller's Handbook: Safety and Soundness* (January 2015), p. 3.

[67] *See e.g.*, "Compliance risk is the threat to an organization's finances, organization, and reputation due to violations of rules, regulations, and laws governing its activity. Compliance risk can attract the attention of local, state, and federal regulators and result in fines, penalties, and civil and criminal court proceedings. A compliance failure can also expose an organization to reputational risk, which can impact its stock price and the public's perception of the brand and alienate customers and employees." (Dow Jones, *What is Compliance Risk*?).

41. In the present situation, where BANA was addressing public enforcement actions that involved a consumer protection rule (Regulation E), and which also involved financial remuneration to potentially impacted consumers, it would be expected that it would act in a manner to quickly and comprehensively satisfy the conditions of the CFPB's and OCC's Consent Orders and the Remediation Plans above all else. This would mean almost always choosing to err on the side that would benefit a potentially impacted consumer even if it would result in them getting overpaid.[68] Further, compensation would be provided to a consumer in many instances even without conclusive information that the consumer was legitimately financially harmed at all. The risk that a consumer, whom the bank's regulators believed may have been legitimately harmed, would not receive compensation required by the consent orders far outweighs the negative financial impact on the bank that would result from compensating consumers that are not entitled to it (or where it is debatable or unclear whether compensation is justified or required by the consent orders or any other applicable rule or law). As discussed further below, [redacted]

42. This fact is ignored by Mr. Abernathy when he opines that regulators expect banks to exclude fraudsters when implementing remediation plans and that regulators would not "tolerate" payments to fraudsters.[69] The primary purpose of remediation plans is to remediate consumers who were potentially affected by the alleged conduct. While I agree that regulators do not *want* banks to make payments to fraudsters, they do not want to relieve banks from making payments to those entitled to receive them, and there may be many practical reasons to err on the side of being overinclusive to avoid being underinclusive or to avoid delays in making payments.

43. Mr. Abernathy fails to properly consider all of the circumstances as to why making some payments to fraudsters was unavoidable in this case. For example, as discussed above, BANA frequently did not possess evidence necessary to reach a conclusion, one way or

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[68] [redacted] PX 74, Remediation Plan, p. 5).
[69] Abernathy Report, p. 18.

the other, as to whether the person holding the account was a legitimate EDD benefits recipient, or one of the hundreds of thousands of EDD cardholders who obtained benefits through fraud. Additionally, as discussed further herein, BANA [redacted] Mr. Abernathy's logic is entirely inconsistent with this premise and the facts and circumstances surrounding these Consent Orders. *I.e.*, [redacted][70]

44. To further reiterate the points discussed above, both regulators and banks generally wish to remediate harmed cardholders as quickly as possible. Mr. Abernathy's opinion is also counter to this premise, [redacted] As such, Mr. Abernathy's opinion is misaligned.

**B.** [redacted]

45. BANA's [redacted] There are valid reasons for BANA to adopt this approach, [redacted]

[70] PX 74, Remediation Plan, footnote 16.

[redacted]

46. For any bank, when responding to a consent order or other enforcement action (whether public or not), a primary goal is to act expeditiously and to err on the side of consumers so as to not trigger or invite unnecessary scrutiny from enforcement or supervisory regulators reviewing the implementation of a consent order and remediation plan. In BANA's case, [redacted]

47. [redacted][71] While I understand BANA [redacted][72] The analysis performed indicates that approximately [redacted].[73] This number includes some Cardholders that are not part of the proposed Claim Denial Class. As such, [redacted]

[71] PX 74, Remediation Plan, p. 4.
[72] BANA's Response to Interrogs. 2 and 6 dated December 1, 2023, Exhibit 1.
[73] [redacted]

[redacted][74]

48. As BANA noted in the Remediation Plan, [redacted][75] This is consistent with the testimony provided by Jennifer Lennon, Senior Vice President and a Product Management and State Liaison at BANA. Ms. Lennon stated: [redacted][76]

49. Moreover, [redacted][77] it is reasonable for a bank to conclude that the manual review is not worthwhile. Also, recall that BANA [redacted][78] [redacted]

[74] [redacted]

[75] PX 74, Remediation Plan, footnote 16.

[76] Deposition of Jennifer Lennon dated February 23, 2024 ("Lennon Deposition"), 77:7-17. *See also* Lennon Deposition, 80:7-15, [redacted]

[77] *See e.g.,* Daniels Deposition, pp. [redacted]

[78] *See* Section VI.C for further discussion of the limited evidence available during manual reviews.

[redacted]

50. In summary, BANA's decision to [redacted] While reasonable and consistent with regulator expectations, [redacted]

**C. [redacted].**

51. BANA had limited time to complete its investigation of claims under Regulation E and often had limited evidence to review, leading to BANA [redacted]

52. [redacted]

53. The CFPB Consent Order described BANA's manual review process prior to the implementation of the CFF as follows:

> From January 2020 until late-September 2020, upon receiving a notice of error from an unemployment insurance benefit prepaid debit cardholder concerning alleged unauthorized EFTs, [BANA] would conduct an investigation that could include, among other steps: comparing the location

> of the transaction with the consumer's residence or habitual transactions; accessing ATM camera footage (if the alleged unauthorized activity occurred at a [BANA] ATM); and contacting the cardholder for further information.[79]

54. [redacted][80] [redacted][81] [redacted][82]

55. The other step mentioned in the CFPB Consent Order (*i.e.*, comparing the withdrawal location to principal residence or previous withdrawals) is a reasonable step, [redacted]

[79] PX 72, CFPB Consent Order, ¶ 12. *See also* PX 82, Adequate Investigation Standard Operating Procedure and Expert Class Certification Report of J. Daniel Kreis, dated August 29, 2024, Section VII.B., in which Mr. Kreis opined "[redacted] provide sensible procedures for EFTA/Reg E compliance that are consistent with well-established industry standards for investigating unauthorized transaction claims."

[80] *See* Email from Christine Channels to William Fox, Faiz Ahmad and Paul Simpson dated October 6, 2020 (BANA_EDD_MDL-00120424).

[81] The Martin Declaration discusses this point with respect the [redacted]: [redacted]

[82] *See* [redacted] (BANA_EDD_MDL_00137712), [redacted] (BANA_EDD_MDL_00698618), and [redacted] (BANA_EDD_MDL_00137325).

[redacted].[83]

**D.** [redacted]

56. The Additional Fraud Review, [redacted][84]

57. As mentioned above in Section V.C.3, [redacted]

[redacted][85]

[83] Email from Christine Channels to William Fox, Faiz Ahmad and Paul Simpson dated October 6, 2020 (BANA_EDD_MDL-00120424).
[84] DX 7, Martin Declaration, ¶ 14.
[85] DX 7, Martin Declaration, ¶ 8.

58. The Martin Declaration indicates that, [redacted][86]

59. Importantly, [redacted][87] [redacted][88] [redacted][89]

60. The Bank's [redacted]

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[86] DX 7, Martin Declaration, ¶ 12.
[87] *See e.g.*:
- Daniels Deposition, [redacted]
- DX 58, [redacted]
- DX 59, [redacted]

[redacted] (DX 7, Martin Declaration, ¶ 14).
[89] Lennon Deposition, 112:12-113:8 and 105:10-20. *See also* DX 6, Declaration of Michael J. Letson, p. 7.

[redacted][90] The Martin Declaration concludes by stating:

> [redacted][91]

61. I agree with Mr. Martin's conclusion. [redacted]

**E.** [redacted]

62. [redacted]

63. [redacted]

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[90] DX 7, Martin Declaration, ¶ 13.
[91] DX 7, Martin Declaration, ¶ 14.

[redacted]

64. The evidence reviewed indicated that, [redacted][93]

65. [redacted][94]

## VII. CONCLUSION

66. Given the analysis set forth above, it is improper, in my opinion, for Mr. Regan to assume that a Cardholder is not a fraudster, or that BANA has already determined that a cardholder

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[92] DX 8, Declaration of Jennifer Lennon dated January 17, 2025, pp. 4-5.
[93] DX 8, Declaration of Jennifer Lennon, p. 5.
[94] [redacted] (PX 147, 1st Addendum to the Remediation Plan (October 12 version), p. 8). [redacted] can be found on page 8 of PX 147, 1st Addendum to the Remediation Plan.

is an "Affected Consumer"[95] or submitted a legitimate unauthorized transaction claim under the EFTA, [redacted][96] Similarly, I disagree with Mr. Abernathy's assertion that regulators do not tolerate payments to fraudsters or persons who were not actually harmed in remediation orders.

67. [redacted]

- As set forth in Section V.A, the COVID-19 pandemic, CARES Act, and PUA program resulted in an unprecedented surge in unemployment insurance fraud in California and across the United States. The rampant fraud occurred at both the eligibility and claim level, where fraudsters would both falsify information to become eligible for unemployment insurance benefits and improperly submit unauthorized transaction claims to BANA asserting that unauthorized funds were withdrawn from the Cardholders' account when, in fact, those withdrawals were authorized.

- [redacted][97] Additionally, it has been well documented that given the unprecedent events around the COVID-19 pandemic, EDD was not able to keep up with the volume of unemployment insurance applications and struggled to

[95] Affected Consumer "means a consumer who during the Relevant Period: (1) qualified for and received government unemployment insurance benefit payments electronically though prepaid debit cards issued by Respondent; (1) filed a notice of error concerning alleged unauthorized EFTs with Respondent; and (3) for whom Respondent incorrectly determined, based solely on the results of Respondent's Fraud Filter, that no error occurred, and, as a result, Respondent (i) denied the consumer's error claim or reversed permanent credits previously granted to the consumer and (ii) froze or, after March 17, 2021, blocked the consumer's unemployment insurance benefit prepaid debit card account." (PX 72, CFPB Consent Order, p. 3).
[96] Regan Report, ¶ 54.
[97] Letson Deposition, 105:18-20.

implement suitable eligibility and identity verification procedures. Further, given the extent and scope of the fraud that infiltrated the EDD program during the pandemic, government agencies have concluded that much of the fraud remains undetected and will never be recovered.

- As set forth in Section VI.A, when financial institutions respond to consent orders, they almost always prioritize ensuring prompt compensation to all potentially affected consumers. Financial institutions are more inclined to overcompensate (including paying consumers who may not have been harmed) rather than risk undercompensating or failing to pay consumers who were legitimately harmed.
- As set forth in Section VI.B, BANA's [redacted]
- As set forth in Section VI.C, BANA [redacted]

[redacted]

- As set forth in Section VI.D, [redacted][98]
- As set forth in Section VI.E, [redacted]

## VIII. SIGNATURE

Carl Pry

Executed April 4, 2025

[98] DX 7, Declaration of William M. Martin, ¶ 14.

# Carl Pry, CRCM, CRP

Curriculum Vitae

Introduction

Experienced and well-rounded compliance, consumer protection, anti-fraud, and fair lending executive with over 35 years of experience in banking law and regulatory compliance. Possesses managerial experience and thought leadership, with extensive presentation and writing background. Versed in all aspects of consumer and commercial banking law and compliance, including consumer protection and fair lending, UDAP/UDAAP, deposits/operations, lending, financial crimes, anti-fraud measures, investment, operational risk, privacy, tax, legal issues, electronic/online banking, payments, and risk management issues.

Education, Licenses and Certifications

- Bowling Green State University, Bachelor of Science in Business Administration (specialization in Finance)
- University of Toledo, Juris Doctor (passed the Florida Bar Exam)
- University of Toledo, Master of Business Administration (specialization in Financial Management)
- Certified Regulatory Compliance Manager (CRCM), current
- Certified Risk Professional (CRP), current

Experience

Throughout Mr. Pry's more than thirty-five years in the banking industry, he has worked in many positions both for and with banks of all sizes, and other financial service organizations, in positions such as teller, customer service representative, loan officer, branch manager, compliance officer, Fair Lending officer, department head (commercial compliance), and related positions focused on customer service, consumer protection, fair lending and UDAP/UDAAP, anti-fraud measures, deposit, lending and marketing, branch operations, financial fraud and crime, and regulatory compliance. In his many years as a banking compliance and risk management consultant, he has assisted dozens of banks and nonbank clients in many areas, including program design and implementation, development of compliance policies, procedures, and program protocols, coordinating regulatory examinations and compliance audits, and managing responses to findings, among many other tasks and responsibilities. In addition, he has coordinated resolution of customer disputes, complaints, explained bank functions and procedures to federal regulatory examination teams, and to the public.

Mr. Pry is an Independent Advisor, most recently providing expert witness testimony for FTI Consulting, Inc. Previously, he was with Treliant LLC, a regulatory and risk management compliance consulting firm headquartered in Washington, D.C., as a Senior Advisor and Managing Director (i.e., a partner of the firm) for twelve years. For many of these years he was the leader of the firm's Consumer Compliance and Fair Lending practice areas. He has assisted hundreds of financial institutions, of all asset sizes, and nonbank financial institutions, in fulfilling their regulatory compliance obligations. To a great degree this has involved training staff, management, and Boards of Directors on the detailed requirements of complex banking laws and regulations, plus associated guidance and best practice recommendations.

During the last thirty years, he has provided a great deal of regulatory compliance and operational training for national and state banking associations, federal and state banking agencies and many individual financial institutions across the United States, as well for various federal regulatory agencies such as the FDIC and NCUA, where he provided instruction in laws and regulations such as Fair Lending (ECOA/Regulation B and FHA), and the Bank Secrecy Act (BSA) and anti-money laundering (AML) provisions, including anti-fraud measures, among others. He has also conducted hundreds of training sessions for the American Bankers Association, Consumer Banking Association, Mortgage Bankers Association, over two dozen individual state banking and bar associations, and various other industry trade groups and associations. He has trained newly-commissioned FDIC examiners at their examiner school, and in 2023 he trained staff at the Federal Home Loan Bank of Topeka. He has also been vetted and approved by both the OCC and Department of Justice to deliver training for related to a consent order.

He is a Certified Regulatory Compliance Manager (CRCM), a nationally recognized compliance credential managed by the American Bankers Association (ABA) that requires passing a standardized examination of an individual's ability to apply all banking regulatory compliance requirements in situation-based questions. The CRCM candidate is only eligible to take the test and become certified after obtaining sufficient industry experience and must maintain continuing professional education over the life of the certification. The CRCM is widely recognized as the standard of professional expertise in the financial institution regulatory compliance field. He also served on the ABA's CRCM Board for over twelve years. This Board determines the subject matter content of the CRCM examination, authors test questions, and evaluates standards for certification. He is also a Certified Risk Professional (CRP), which is a certification of the Bank Administration Institute (BAI), which recognizes a professional's expertise and experience in the area of banking risk management.

He has also served for over eighteen years on the ABA Bank Compliance magazine's Editorial Advisory Board, and currently serves as its Co-Chair. He has authored more than ninety feature articles and columns on regulatory compliance matters impacting the banking industry. He has also authored dozens of additional articles and columns for various other industry publications, including the ABA Banking Journal, the American Banker, the ABA Bank Marketing magazine, and various state bar association journals and publications.

He has also served as an Instructor at the ABA's Foundational, Intermediate, and Advanced Compliance Schools, where he has provided instruction on laws and regulations including the Truth in Lending Act (TILA; Regulation Z), the Equal Credit Opportunity Act (ECOA; Regulation B), the Home Mortgage Disclosure Act (Regulation C; HMDA), Community Reinvestment Act (CRA), and the Bank Secrecy Act (BSA), among others. He also serves as an adjunct member of the ABA's Compliance School Board.

He was named ABA's annual Distinguished Service Award winner in 2015 in recognition of his contributions to the banking industry across the country. Only one individual is named annually for this prestigious award, reflecting ethical leadership and critical impact on financial institutions across the country.

Qualifications

- Executive, Senior Leadership and Department/Service Line Leader
- Fair Lending Officer
- Fair Lending Analytics and Reporting
- Compliance Program Director
- Operations Officer
- Regulatory Compliance Senior Management

- Tax Reporting and Analysis
- Risk Management and Risk Assessment Specialist
- Retail Branch Management Professional, Branch Manager
- Mortgage Regulatory Compliance Specialist
- Regulatory Compliance Litigation Support

Regulatory Compliance Publications

Mr. Pry has authored and published over one hundred risk management, tax, Internet banking, and regulatory compliance articles and reference materials in national and regional financial institution and bar association publications. Mr. Pry also serves on the editorial advisory board of the American Bankers Association's Bank Compliance magazine.

Mr. Pry's publications within the last ten years include the following:

- Reconsideration of value (ROV): A critical component of appraisal review, ABA Bank Compliance, May 2025, Print.
- New FDIC Signage Rules for Digital Channels: Ensuring Digital Signage is Compliant, ABA Bank Compliance, March 2025, Print.
- Preparing for 2025: Navigating Compliance in a Time of Change, Cover Story, ABA Bank Compliance, January 2025, Print.
- So You Want to Be a Certified Regulatory Compliance Manager? ABA Bank Compliance, April 2024, Print.
- Compliance Priorities for 2024, ABA Bank Compliance, January 2024, Print. (Reprinted in ABA Banking Journal, January 2024)
- Fair Lending Data Requirements for Fannie/Freddie Servicers, Column, ABA Bank Compliance, March 2023, Print.
- Compliance Priorities for 2023, Cover Story, ABA Bank Compliance, January 2023, Print. (Reprinted in ABA Banking Journal, January 2023)
- Understanding Digital Redlining, Feature, ABA Bank Compliance, October 2022, Print.
- Appraisal Bias – What Can Banks Do About It? Column, ABA Bank Compliance, May 2022, Print
- 2022: On the Horizon, Feature, ABA Bank Compliance, March 2022, Print.
- Fair Servicing – More Important Than Ever, Column, ABA Bank Compliance, Jan. 2022, Print.
- Fair Lending and Prohibited Bases – New Developments, Feature, ABA Bank Compliance, Nov. 2021; Print.
- 2020's In the Rearview (Finally); What's in Store for 2021? Feature, ABA Bank Compliance, Jan. 2021; Print.
- What Can We Expect for HMDA in 2020? Feature, ABA Bank Compliance, Jan. 2020; Print.
- 2018 HMDA Data is Submitted – Now What? Feature, ABA Bank Compliance June 2019; Print.
- Compliance in 2019: What to Expect, and Where Should Your Focus Be? Feature, ABA Bank Compliance Jan. 2019; Print.

- Magically-Expanding LARs: Increased Data Collection and Submission Responsibilities under HMDA and ECOA, Feature, ABA Bank Compliance, August 2017, Print.
- What is a REMA and What Should You Do About It? Column, ABA Bank Compliance, June 2017, Print.
- Is There No Such Thing as a Preapproval Anymore? Column, ABA Bank Compliance, Jan. 2017, Print.
- Don't Overlook the Military Lending Act, Column, ABA Bank Compliance, June 2016, Print.
- Conducting Drawings and Contests: Can We Do It? Feature, ABA Bank Compliance, June 2016, Print.
- Planning for 2016 – 10 Issues to Put on Your List, Feature, ABA Bank Compliance, Jan. 2016, Print.
- The Natural Next Step: Fair Lending in Servicing, Column, ABA Bank Compliance, Jan. 2016, Print.
- Obscure Corner of TRID – Trust Coverage - Column, ABA Bank Compliance, Nov. 2015, Print.
- How to Deal with ApplyPay? Column, ABA Bank Compliance, Sept. 2015, Print.
- TRID Round 2, Column, ABA Bank Compliance, June 2015, Print.
- Not Just a Paperwork Switch: TRID Involve Critical Process Changes that Banks Should be Working on Now, Column, ABA Bank Compliance, April 2015, Print.
- 3 Shades of Red(lining), Column, ABA Bank Compliance, March 2015, Print.
- Understanding the Total Exceptions Picture, Column, ABA Bank Compliance, March 2015, Print.

Regulatory Compliance Teaching Experience and Industry Appearances

Mr. Pry develops and delivers extensive risk management, tax, accounting, regulatory compliance, and bank operations training materials for multiple organizations across the country. His resource materials and additional job aids, charts, guides, and interpretive summaries are widely used by industry professionals in banks and other financial institutions across the country.

A sampling of the organizations includes:

- AllRegs – Compliance Instructor
- American Bankers Association – Lead Instructor for Private CFPB-Regulated In-Bank Compliance Schools for large financial institutions
- American Bankers Association – Instructor, Foundational Compliance School
- American Bankers Association – Instructor, Intermediate Compliance School
- American Bankers Association – Regulatory Compliance Webinar Instructor for multiple webinars
- Alabama Bar Association – Guest Speaker
- Alabama Bankers Association – Compliance Instructor
- American Land Title Association (ALTA) – Guest Speaker
- American Strategic Learning Institute – Compliance Instructor

- Bank Administration Institute – Compliance Instructor
- Bank Compliance Association of Connecticut – Compliance Instructor
- BankersOnline – Compliance Instructor
- California Bankers Association – Compliance Instructor
- Center for Financial Training – Compliance Instructor
- Central Florida Compliance Association – Compliance Instructor
- Chicagoland Compliance Association, Inc. – Compliance Instructor
- Connecticut Bankers Association – Compliance Instructor
- Credit Union Executive Society (CUES) – Compliance Instructor, instructor for multiple webinars
- Dallas Area Compliance Association – Compliance Instructor
- Eastern Massachusetts Compliance Network – Compliance Instructor
- Federal Deposit Insurance Corporation (FDIC) – Compliance Instructor
- Federal Home Loan Bank (FHLB) – Keynote Speaker
- Florida Bankers Association –Compliance Instructor
- Georgia Bankers Association – Compliance School and Compliance Conference Instructor
- Heartland Compliance Association – Compliance Instructor
- Illinois Bankers Association – Compliance Instructor
- Indiana Bankers Association – Compliance Instructor
- Indiana Department of Financial Institutions – Compliance Instructor
- Iowa Bankers Association – Compliance Instructor
- Kansas Bankers Association – Compliance Instructor
- Massachusetts Bankers Association – Compliance Instructor
- Michigan Bankers Association – Compliance Instructor
- Missouri Bankers Association – Compliance Instructor
- Mississippi Bankers Association – Compliance Instructor
- Montana Bankers Association – Compliance Instructor
- National Credit Union Administration (NCUA) – Backup Instructor for NCUA Compliance School
- Nebraska Bankers Association – Compliance Instructor
- New Hampshire Bankers Association – Compliance Instructor
- New Jersey Bankers Association – Compliance Instructor
- New York Bankers Association – Compliance Instructor

- North Carolina Bankers Association – Compliance Instructor
- Ohio Bankers Association – Compliance Instructor
- OnCourse Learning (formerly Total Training Solutions) – Compliance Lecturer and instructor for hundreds of webinars
- Oregon Bankers Association – Compliance Instructor
- Sioux Falls (South Dakota) Compliance Professionals Organization – Compliance Speaker
- South Carolina Bankers Association – Compliance Instructor
- South Florida Compliance Association – Compliance Instructor
- Suncoast Bankers Compliance Association (Florida) – Compliance Instructor
- Tennessee Bankers Association – Compliance Instructor
- Texas Bankers Association – Compliance Instructor
- Tri-State League of Financial Institutions – Compliance Instructor
- Utah Bankers Association – Compliance Instructor and Keynote Speaker
- Virginia Association of Community Bankers – Compliance Instructor
- Virginia Bankers Association – Compliance Instructor
- Washington Bankers Association – Compliance Instructor
- Western Massachusetts Bankers Association – Compliance Instructor

<u>Litigation Support</u>

Mr. Pry has served as litigation support for various law firms to defend financial institutions on subject matters including, but not limited to:

- Bank Core Processing Servicing and Operations
  - Commercially-reasonable policies, procedures, and practices
- Check fraud and related financial fraud
- Equal Credit Opportunity Act (ECOA) and Regulation B
  - Fair lending principles, including disparate treatment and disparate impact
  - Statistical analyses and reporting
- Electronic Fund Transfer Act (EFTA) and Regulation E
  - Disputes and fraud
  - Resolution timeframes
- Bank Secrecy Act (BSA), USA PATRIOT Act and Anti-Money Laundering (AML)
  - Reporting responsibilities
  - Customer Identification Program (CIP) responsibilities

   - Identification of suspicious activities
   - Identity verification, identity theft, and synthetic identity theft
- Fair Credit Reporting Act (FCRA)
   - Meaning of "consumer report" and "consumer report information"
   - Identify Theft Prevention Program
   - Use of consumer reports
- Real Estate Settlement Procedures Act (RESPA) and Regulation X
   - Escrow accounting
   - Kickbacks and unearned fees
   - Servicing requirements
- Truth in Lending Act (TILA) and Regulation Z
   - Coverage of consumer-purpose loans
   - Calculation of Annual Percentage Rate
   - Reimbursement

<u>Recent Expert Witness Services (Last Five Years)</u>

*Rodeo Electrical Service, Inc., and Scott Rosenberg v. Sunflower Bank.* State of New Mexico Case No. D-101-CV-2020-1341. Testified at Trial

*Marco A. Fernandez, individually and as a representative of the class, Plaintiff, vs. Corelogic Credco, LLC, Defendant*. United States District Court, Southern District of California, Case No. 3:20-cv-1262-JM-AGS). Expert Witness Reports.

*Paul H. Hulsey and Hulsey Law Group, LLC, Plaintiffs. vs. Frank M. Cisa; Cisa & Dodds, LLP; Pinnacle Bank, Successor in Interest to Southcoast Community Bank; Robert A. Daniel, Jr.; Lawton Limehouse, Sr.; Lawton Limehouse, Jr.; L&L Services, LLC; WLL, LLC; Richard B. Homes; Richard B. Homes, CPA, LLC; United Bank, Successor in Interest to CresCom Bank, Defendants*. United States District Court for the District of South Carolina, Charleston Division, Civil Docket No. 2:17-cv-03095-JD. Expert Witness Reports and Deposition.

*Sparkman v. Comerica Bank, Conduent,* United States District Court, Northern District of California, Case No. 4:23-cv-02028-DMR. Expert Witness Report and Deposition; potential Testimony.

*Scroggins v. LexisNexis Risk Solutions FL, Inc.,* United States District Court, Eastern District of Virginia, Civil Action No. 3:22-cv-545-MHL. Expert Witness Reports and Deposition; potential Testimony.

*Naufal v. Navy Federal Credit Union*, United States District Court, South Carolina District, Case No. 3:23-cv-02357-MGL. Expert Witness Reports and Deposition; potential Testimony.

*Spectrum v. Capital One Bank, N.A.,* Supreme Court of the State of New York, Index No.: 653779/2023. Expert witness report and Deposition.

*CFPB v. FirstCash*, United States District Court, Northern District of Texas, Civil Action No. 21-2151. Expert Witness Report and potential Deposition.

*Leyva v. Space Coast Credit Union*, United States District Court, Southern District of Florida, Case No. 2:24-cv-14168-DMM. Expert Witness Report and Deposition.

* Note other litigation support-related work done pursuant to position at Treliant LLC, and is therefore restricted under confidentiality provisions of contract with Treliant LLC.

I reviewed or supervised FTI in its review of the following documents, in whole or in part, in forming the expert opinions set forth in my rebuttal report:

***Expert Reports***

1. Expert Class Certification Report of J. Daniel Kreis, filed *In re Bank of America California Unemployment Benefits Litigation* (August 29, 2024), Case No. 3:21-md-02992-GPC-MSB.
2. Expert Report of Greg J. Regan, CPA/CFF, CFE, filed *In re Bank of America California Unemployment Benefits Litigation* (March 4, 2025), Case No. 3-21-md-02992-GPC-MSB.
3. Expert Report of William J. Abernathy Jr., filed *In re Bank of America California Unemployment Benefits Litigation* (March 3, 2025), Case No. 3:21-md-02992-GPC-MSB.

***Depositions and Related Exhibits***

4. Deposition of Jennifer Lennon dated February 23, 2024, filed *In re: Bank of America California Unemployment Benefits Litigation*, No. 3:21-02992-md-LAB-MSB.
5. Deposition of Michael Letson dated February 16, 2024, filed *In re: Bank of America California Unemployment Benefits Litigation*, Case No. 3:21-md-02992-LAB-MSB.
6. Deposition of Shane Daniels dated February 6, 2024, filed *In re: Bank of America California Unemployment Benefits Litigation*, Case No. 3:21-md-02992-LAB-MSB.
7. Deposition of William Matthew Martin dated February 14, 2024, filed *In re: Bank of America's California Unemployment Litigation*, Case No. 3:21-md-02992-LAB-MSB.

***Declarations***

1. Declaration of Laura Brys in Support of Defendant's Memorandum in Opposition to Plaintiffs' Motion for Class Certification, Ex. ("DX") 6, Declaration of Michael J. Letson.
2. DX 7, Declaration of William M. Martin.
3. DX 8, Declaration of Jennifer Lennon.

***Court Documents, Consent Orders, and Remediation Plan***

4. BANA Response to Interrogs. 2 and 6 dated December 1, 2023, Exhibit 1.
5. DX 14, Examining Widespread Fraud in Pandemic Unemployment Relief Programs (September 10, 2024).
6. DX 103, Dark Web Materials Id.me Bypass.
7. DX 121, Dark Web Materials.
8. DX 43, BANA's Second Set of Responses to Plaintiffs' Seventh Set of ROGs (ROG 39).
9. PX 147, 1st Addendum to the Remediation Plan (October 12 version).
10. Declaration of Connie K. Chan in Support of Plaintiffs' Motion for Class Certification, Ex. ("PX") 72, Consumer Financial Protection Bureau ("CFPB") Consent Order.
11. PX 73, Office of Comptroller of the Currency ("OCC") Consent Order.
12. PX 74, Unemployment Insurance Prepaid Card Program Remediation Plan.
13. PX 82, Adequate Investigation Standard Operating Procedure.

***Publications***

14. California State Auditor, *Employment Development Department: Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments* (January 2021).
15. Dow Jones, *What is Compliance Risk?*
16. Federal Reserve Bank of St. Louis, *Unemployment Rate*.
17. NPR, *Pandemic-related fraud totaled billions. California is trying to get some of it back* (October 18, 2022).
18. Office of Comptroller of the Currency, *Comptroller's Handbook: Safety and Soundness* (January 2015).
19. Pandemic Oversight, *Pandemic Unemployment Insurance: How much has been paid to fraudsters?* (January 22, 2025).
20. U.S Department of Labor, *Report to the Employment and Training Administration, COVID-19: ETA and States did not Protect Pandemic-Related UI Funds from Improper Payments Including Fraud or from Payment Delays* (September 30, 2022).
21. U.S. Department of Labor. (n.d.), *Pandemic Unemployment Assistance.*
22. United States Government Accountability Office, *Pandemic Unemployment Assistance: States' Controls to Address Fraud* (July 23, 2024).

***Other***

23. 15 U.S. Code § 1693f.
24. 15 U.S. Code § 9021.
25. BANA PowerPoint titled Benefits Fraud | Patterns Observed (BANA_EDD_MDL-00430148).
26. Denial Evidence Template for Cardholder Eric Kessler (BANA_EDD_MDL_00698618).
27. Denial Evidence Template for Cardholder Michael Sims II (BANA_EDD_MDL_00137325).
28. Denial Evidence Template for Cardholder Richard Caton (BANA_EDD_MDL_00137712).
29. DX 58, R.S. Additional Fraud Review PowerPoint Presentation (BANA_EDD_MDL-00884193).
30. DX 59, D.D. Additional Fraud Review PowerPoint Presentation (BANA_EDD_MDL-00884004).
31. DX 62, K.S. Additional Fraud Review PowerPoint Presentation (BANA_EDD_MDL-0084006).
32. Email from Christine Channels to William Fox, Faiz Ahmad and Paul Simpson dated October 6, 2020 (BANA_EDD_MDL-00120424).