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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

IN RE BANK OF AMERICA CALIFORNIA UNEMPLOYMENT BENEFITS LITIGATION	)	Case No. 21-MD-02992 LAB-MSB
This Document Relates to All Actions	)	

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VIDEO-RECORDED DEPOSITION OF JANE CLONINGER

Wednesday, June 11, 2025
San Francisco, California

Stenographically Reported By:
Hanna Kim, CLR, CSR No. 13083
Job No. 7413877

A. Other than Pam Joseph's.
Q. Have you reviewed the expert reports for any of the experts retained by Plaintiffs?
A. No.
MS. Y. CHAN: Why don't we go off the record for a few minutes. Is that okay? 10:43:52
THE VIDEOGRAPHER: This marks the end of Media Unit 1. We are going off the record. The time is 10:43 a.m.
(Short recess taken.) 10:44:04
THE VIDEOGRAPHER: This marks the beginning of Media Unit 2. We are going back on the record. The time is 11:11 a.m.
BY MS. Y. CHAN:
Q. Ms. Cloninger, you've offered an opinion in this case regarding the industry standard. 11:11:08
A. Mm-hmm.
Q. Do you know what I'm referring to?
A. I -- maybe but --
Q. Okay. 11:11:19
A. -- continue.
Q. So my -- my question for you is, when you say "standard," what do you mean by that?
A. I think an industry standard is something that's used by -- or the majority of the industry. 11:11:29

It doesn't have to be all of the industry, but it applies to the industry. And people set some -- ma- -- the majority may be following it. It -- it may take time to be implemented, but it -- it -- you may be aware that it's going to be implemented and going to be the standard. 11:11:55

And so, there may be a -- a -- varying lengths of implementation periods, but it's a -- it's -- it's more than a best practice. It's -- it's -- it is a best practice, but it's more than that. It's -- because it's such a -- it is the standard. 11:12:09

Q. Okay. So you said used by a majority of the industry, meaning more than half?

A. Not more than half. I just think a -- a lot of the industry. No -- there's no -- I don't have a cutoff or a -- a metric that says, ah, that's now a -- now an industry standard. 11:12:21

Q. But something can be industry standard even though there are parts of the industry that have not adopted it -- 11:12:41

A. Yes.

Q. -- according to your view?

And industry standard does not necessarily mean that something is required? 11:12:50

A. It doesn't have to be required to be an industry standard.

Q. So industry standard is different from industry requirement?

A. Right. It's different than a mandate. 11:13:01

Q. And with respect to EMV chips and -- would you agree with me that there is not a requirement in the payment card industry to have EMV chips on cards?

MS. C. CHAN: Objection. Calls for a 11:13:22 legal conclusion.

THE WITNESS: I'm not a lawyer, but there is -- it's my understanding as a nonlawyer that it is an -- it is not required that vari- -- each -- each participant in the industry, merchants and 11:13:40 issuers both, have to make their own decision. There are incentives that have been put in place to encourage the adoption of the EMV standards. And those incentives are significant incentives that really do motivate in -- all players in the industry 11:14:04 to migrate.

BY MS. Y. CHAN:

Q. Okay. But none of the players in the industry are required to migrate?

A. Right -- 11:14:15

MS. C. CHAN: Objection. Calls for a legal conclusion. Vague as to time period.
BY MS. Y. CHAN:
Q. Okay. Let's try to get this cleanly.
At any point, has there been a requirement 11:14:25 for any player in the payment card industry to migrate to EMV chip technology?
MS. C. CHAN: Objection. Calls for a legal conclusion.
THE WITNESS: It is my understanding as a 11:14:39 nonlegal person that there -- that EMV is not a requirement.
BY MS. Y. CHAN:
Q. And you mentioned incentives for adoption of EMV. And I just want to make sure we have a 11:15:00 clean answer there too. Those incentives also do not require anyone in the card industry to adopt EMV tech- -- chip technology; correct?
MS. C. CHAN: Same objections. Vague as to time. 11:15:14
THE WITNESS: Are you talking about a timeframe?
BY MS. Y. CHAN:
Q. At any point. Has -- has any -- have any of those incentives ever required anyone to adopt 11:15:25

EMV chip technology?

A. The incentives make it potentially very costly not to adopt EMV, because they put the liability for fraud on the party with the least strong security measures. So if you're a magstripe and a chip card is presented, if you're a merchant, and it's a magstripe terminal and a chip card is presented, the -- any fraud on that card -- on that transaction, rather, is the liability of that merchant who has the least -- doesn't adhere to the standard EMV. 11:16:20 11:16:05

The opposite is true if it's the issuer that has a magstripe card and is presented at an EMV terminal, then that issuer is liable for the fraud that might occur on that card in that transaction. 11:16:21

Q. Okay. I'm going to ask you to -- to listen to my question because we -- we are going to be here most of the day, but I am going to try to get us out at a reasonable hour. But I need you to listen to my questions and -- and try your best to answer them. 11:16:38

So my question was, the incentives you described, at any point, have any of those incentives required anyone in the card payment industry to adopt EMV chips? 11:16:47

A. No --

MS. C. CHAN: Same objections. Asked and answered. Just give me a second to make my objections for the record.

BY MS. Y. CHAN: 11:16:55

Q. And what was your answer for the record?

MS. C. CHAN: Asked -- objection. Asked and answered.

MS. Y. CHAN: I -- I just missed it.

THE WITNESS: It's not a requirement, but 11:17:00 they provide strong incentives to comply.

BY MS. Y. CHAN:

Q. And you mentioned the liability rules. You're referring to the Visa Mastercard and card payment network rules? 11:17:16

A. In this case, yes. But additional brands and -- also have similar rules.

Q. Now those brands, Visa and Mastercard in this case, they also have not issued a requirement that issuers include EMV chips in their cards; 11:17:32 correct?

A. I think what I answered before stands, that -- that they don't.

Q. Now, Visa and Mastercard are capable of issuing a requirement as to other aspects of payment 11:17:48

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

CERTIFICATE OF REPORTER

I, Hanna Kim, a Certified Shorthand Reporter, do hereby certify:

That prior to being examined, the witness in the foregoing proceedings was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said proceedings were taken before me at the time and place therein set forth and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

I further certify that I am neither counsel for, nor related to, any party to said proceedings, not in anywise interested in the outcome thereof.

Further, that if the foregoing pertains to the original transcript of a deposition in a federal case, before completion of the proceedings, review of the transcript [X] was [ ] was not requested.

In witness whereof, I have hereunto subscribed my name.

Dated: June 25, 2025.

Hanna Kim CLR, CSR No. 13083