JOSEPH W. COTCHETT (SBN 36324)
jcotchett@cpmlegal.com
BRIAN DANITZ (SBN 247403)
bdanitz@cpmlegal.com
KARIN B. SWOPE (Pro Hac Vice)
kswope@cpmlegal.com
VASTI S. MONTIEL (SBN 346409)
vmontiel@cpmlegal.com
CAROLINE A. YUEN (SBN 354388)
cyuen@cpmlegal.com
COTCHETT, PITRE & McCARTHY, LLP
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Fax: (650) 697-0577

MICHAEL RUBIN (SBN 80618)
mrubin@altber.com
STACEY M. LEYTON (SBN 203827)
sleyton@altber.com
CONNIE K. CHAN (SBN 284230)
cchan@altber.com
JAMES BALTZER (SBN 332232)
jbaltzer@altber.com
KATHERINE BASS (SBN 344748)
kbass@altber.com
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Fax: (415) 362-8064

Co-Lead Counsel for Plaintiffs and the Class

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' RESPONSE TO DEFENDANT'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF 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

Plaintiffs submit this response to Defendant Bank of America, N.A.'s statement of undisputed material facts in opposition to its Motion for Partial Summary Judgment.[1]

UNDISPUTED MATERIAL FACTS	PLAINTIFFS' RESPONSE
I. THE EDD AGREEMENT AND ACCOUNT AGREEMENTS	
1. The Employment Development Department (EDD) administers federal and state unemployment insurance (UI) in California. DX 39 at -2355-56, -2373, -2412; DX 40.A at -1500.	Disputed as incomplete. EDD administers the issuance of UI, disability benefits, and other public benefits in California and delegated authority to the Bank to administer the distribution of these benefits to beneficiaries in California from 2010 to 2024. DX 39.
2. EDD made benefits available in two ways: via paper check or via a prepaid debit card (prepaid card) issued by BANA. DX 14.B 32:10-14, 76:22-24; RJN 13 at 6; *see, e.g.*, DX 14.AF 58:19-60:13; DX 16 at No. 3; DX 14.T 83:5-84:1; DX 14.W 242:1-7; DX 14.AC 61:8-12.	Disputed. The Bank's prepaid debit card was the default method of receiving EDD benefits and was presented on EDD's website as the exclusive method. Beneficiaries had to affirmatively contact EDD to request paper checks instead of using the Bank-issued EDD debit card. The vast majority ([redacted]) of EDD benefits recipients received benefits by debit card. PX 39 at -153670; PX 13 (Chestnut) at 136:2-21; PX 36; PX 37; PX 38; PX 40 (Rivera) 61:2-6; PX 41 (McClure) 81:16-20; PX 231 (Oosthuizen) 58:15-18.
3. EDD benefits recipients could choose whether to receive benefits via check or via a prepaid card. RJN 13 at 6; *see, e.g.*, DX 14.B 32:10-14, 76:22-24; DX 14.AF 60:9-13; DX 16 at No. 3; DX 14.T 83:5-84:1; DX 14.W 242:1-7; DX 14.AC 61:8-12.	Disputed. *See* RSUF 2.
4. In 2010, EDD issued a Request for Proposal (RFP) with requirements for prepaid card services for its UI program. BANA submitted a proposal, EDD selected BANA, and EDD and BANA entered into a contract. DX 1 ¶ 5; *see* DX 14.B 54:19-24.	Undisputed.
5. In 2015, EDD issued an RFP to extend	Undisputed.

[1] PX refers to exhibits to the Chan Declaration in Opposition to BANA's Motion. Pursuant to ECF 559, the column with Plaintiff's Response is 50 pages.

the contract and to specify new requirements for its prepaid card program. BANA submitted a proposal, EDD selected BANA, and EDD and BANA entered into a new contract. The 2010 contract, as modified by the 2015 RFP, collectively, are the EDD Agreement. DX 39 at -2286, -2349-523, -2524-837; DX 14.B 54:12-55:20; DX 1 ¶ 6.	
6. [redacted]. DX 157 at -0333; DX 14.Q 72:22-73:2, 112:16-20; DX 11.B ¶¶ 17, 29-30; DX 1 ¶ 7; *see* DX 39 at -2356, -2373, -2694; DX 14.Y 52:21-53:8.	Disputed. The Bank worked jointly with EDD in 2020-2021 to detect suspected benefits enrollment fraud, freeze accounts, and require EDD re-verification as a condition of regaining access to benefits, and made eligibility determinations when it cut off EDD cardholders from accessing or receiving benefits based on the CFF. PX 33 at 251-53; PX 42; PX 43 at -452826; PX 44 at -421427; PX 45 at -71588; PX 46 at -705534; PX 29 (EDD) 50:21-54:20; PX 13 (Chestnut) 105:9-21, 108:18-109:19, 146:17-25; PX 20 (Garfield) 46:2-6, 47:16-48:2; PX 15 (Letson) 79:5-80:18, 166:3-25; PX 280 at -169161; PX 281 at -71120; PX 13; PX 29; PX 15; RSUF 7.
7. The EDD Agreement stated that BANA should "flag . . . account[s] for further review" to "alert [EDD] of the possibility of benefits enrollment fraud and allow [EDD] to conduct further investigation." DX 39 at -2760.	Disputed. The complete statement reads: "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." DX 39 at -2760.
8. BANA typically [redacted]. DX 4 ¶ 16; DX 159 at -2326; DX 11.B ¶ 49; DX 14.Y 165:8-166:16.	Undisputed.

9. BANA did not [redacted]. DX 4 ¶ 16; DX 159 at -2326; DX 11.B ¶ 49; *see* DX 14.Y 51:25-52:20, 165:8-166:16.	Disputed. The Bank had many sources of information and methods for verifying the identity and transaction history of EDD cardholders. In addition, [redacted]. PX 12 (Daniels) 155:23-156:21; PX 23 (Holt) 127:9-25, 276:19-277:1; PX 14 (Martin) 301:18-302:25, 30:8-33:13, 188:4-190:16, 208:14-21, 218:2-220:7, 220:17-20, 268:2-4; PX 1 (Kreis Rpt) ¶66; PX 8 (Kreis Reb) ¶¶23, 36-37, 43; PX 136 at -00090723; PX 146 at -00405160; PX 147 at -00169898; PX 148 at -00417556-57; PX 149 at -00631444-45; PX 150 at -125921; PX 26 (Simpson) 84:15-85:4; PX 10 (Loebner Reb) ¶40.
10. The EDD Agreement did not require EMV chips. DX 39 at -2462, -2741; DX 14.S 65:15-20, 78:13-22; *see* DX 5 ¶ 11.	Disputed. In the EDD Agreement, the Bank promised to provide "the highest level of security and fraud safeguards" at "the forefront of fraud and data security strategies" which by 2020 reasonably would include industry-standard security measures such as EMV chips. DX 39 at -2761; PX 33 at 251-56; PX 2 (Cloninger Rpt) ¶¶29-55, 94-95; PX 178 at -163307; PX 166 at -228914.
11. The EDD Agreement stated that EDD prepaid cards must be equipped with "no less than an ISO 7811-compliant high coercivity magnetic strip." DX 39 at -2462, -2741; DX 1 ¶ 17.	Disputed as incomplete. "[redacted]." EDD confirmed [redacted]. PX 201 at -59312; PX 29 (EDD) 38:3-39:10, 39:12-40:17, 61:9-62:17.
12. Throughout the EMV Class period, BANA's EDD prepaid cards included no less than ISO 7811-compliant high coercivity magnetic stripes. DX 39 at -2741, -2850; DX 14.C 120:14-16, 125:12-127:1; DX 14.N 182:15-22,183:11-184:2.	Undisputed.
13. ISO 7811 does not require EMV chips. DX 39 at -2850; DX 14.C 120:14-16,	Undisputed.

125:12-126:12.	
14. The EDD Agreement stated that any "significant change . . . to the project scope" or amendment to the EDD Agreement required EDD's prior approval and an executed modification. DX 39 at -2423, -2651; DX 14.B 186:8-188:4.	Disputed. *See* RSUF 11.
15. Based on the contract provisions referenced in SUF ¶ 14, [redacted]. DX 1 ¶ 18; DX 14.B 186:8-188:4; DX 39 at -2423, -2462, -2651, -2741; DX 14.S 65:15-20, 78:13-22; *see* DX 117 at -8289.	Disputed. *See* RSUF 11. The Bank did not convert to EMV prior to 2021 because it [redacted]. PX 201 at -59312; PX 29 (EDD) 38:3-39:10, 39:12-40:17, 40:19-42:3, 61:9-62:17; PX 26 (DX 130 at -370150; DX 131 at -370154; PX 20 (Garfield) 392:18-394:20; PX 173 at -123235; PX 171 at -167019-24; PX 181 at -351839-40; PX 182 at -116001; PX 185 at -124142; PX 186 at -352396; PX 287.
16. In March 2021, EDD and BANA entered into a letter agreement to modify the "ISO 7811-compliant" requirement. It stated that [redacted] DX 39 at -2850; *see* DX 14.B 187:22-190:17.	Disputed. EDD and BANA did not agree "to modify the 'ISO 7811-compliant' requirement." *See* RSUF 11. PX 201 at -59312; DX 39 at -2850. PX 29 (EDD) 38:3-39:10, 39:12-40:17, 61:9-62:17. PX 201; RSUF 10.
17. In August 2020, [redacted]. DX 39 at -2845-49; DX 54; DX 14.B 68:17-70:5.	Disputed. The August 2020 agreement provided, *inter alia*, that [redacted]," another disputed fact. And it does not state this was "[redacted]. DX 39 at -2845-49; PX 3 (Minnucci Rpt) ¶¶47-81.
18. BANA did not charge EDD for its services under the EDD Agreement. DX 39 at -2286, -2413, -2458, -2738; DX 1 ¶ 13.	Disputed. The Bank retained a 50% revenue share derived from the "[redacted]. The Bank also

	retained [redacted] of "interchange fees" and cardholder fees generated by the EDD prepaid card program. PX 5 (Regan Rpt) ¶¶61-62 and Sch. 2; PX 13 (Chestnut) 45:25-47:23, 166:24-170:12.
19. The EDD Agreement provided for a "revenue share," derived from the [redacted] which was split 50/50 between EDD and BANA. DX 14.B 46:11-49:11; DX 1 ¶ 13; *see* DX 170; DX 55.	Undisputed.
20. The EDD Agreement stated that a "Trust Account" for EDD prepaid funds would be used "[f]or the purpose of calculating [EDD's] revenue share." DX 39 at -2482, -2518, -2832-37.	Disputed. The "UI trust account" contained "all funds held 'in trust'" for EDD cardholders. The total of those funds was used to calculate revenue share on a monthly basis. DX 39 at -2518, -2440, -2507, -2790, -2836
21. BANA's estimated total losses in support of the EDD program [redacted] were approximately [redacted]. DX 155; DX 55; DX 1 ¶ 12.	Disputed as immaterial. The time period is over-inclusive and the accounting is a disputed question of fact.
22. BANA's expenses for the EDD prepaid program in [redacted] were approximately [redacted] and its losses were approximately [redacted]. DX 1 ¶ 12; DX 170; DX 154; DX 125.	Disputed. The time period is over-inclusive and the accounting is a disputed question of fact. PX 27 (Montag) 62:5-16
23. In late 2023, EDD and BANA agreed that the EDD Agreement would not be renewed, and that BANA would cease providing prepaid cards for EDD. DX 3 ¶ 15; RJN 9.	Undisputed.
24. EDD stopped funding benefits through BANA-issued cards on February 15, 2024. DX 3 ¶ 17; RJN 9.	Undisputed.
25. By April 30, 2024, BANA closed all EDD prepaid cards and accounts. DX 1 ¶ 10; *see* RJN 9.	Undisputed.
26. The EDD Agreement expired in July	Undisputed.

2025. DX 1 ¶ 10.	
27. BANA had a contract (Account Agreement) with each EDD benefits claimant that was provided with each prepaid card and was also available online. DX 40.A; DX 40.B; DX 1 ¶ 8.	Undisputed.
28. The Account Agreement said that BANA could freeze EDD prepaid cards if it "suspect[ed] irregular, unauthorized or unlawful activities may be involved with [the] Account," and that BANA could maintain the freeze "pending an investigation of such suspected activities." DX 40.A § 2.	Disputed as to the applicability of § 2 to this case as it neither states nor reasonably conveys that the Bank would automatically freeze accounts when card holders reported they were victims of fraud, and it does not state that the Bank would *not* investigate those claims, verify card holder identities or discuss the matter with them. DX 40.A § 2; PX 142; PX 26 (Simpson) 80:8-82:12.
29. The Account Agreement also said "[BANA] may restrict access to your Card if [BANA] notice[s] suspicious activity." DX 40.A § 3.	Disputed. § 3 specifically addresses "Frequency of Transfers" and it neither reasonably encompasses a blanket automatic application to all cardholders' claims that they had experienced unauthorized ATM transactions, nor permits an indefinite freeze of accounts. DX 40.A § 3.
30. The Account Agreement stated "[i]f funds to which you are not entitled are deposited to your Account by mistake or otherwise, [BANA] may deduct these funds from your Account." DX 40.A § 2.	Undisputed that § 2 addresses mistaken deposits; Disputed, however, as to the applicability of § 2 to this case.
31. Section 5 of the Account Agreement stated "[y]ou will . . . [n]ot disclose your PIN or record it on your Card or otherwise make it available to any one else." It further stated "you will . . . [p]romptly notify us of any loss or theft of your Card or PIN[] and [b]e liable for the authorized or permitted use of your Card and PIN." DX 40.A § 5.	Undisputed that § 5 addresses authorized or permitted access to PINs; Disputed as to the applicability of § 5 to this case.
32. The Account Agreement limited BANA's liability for unauthorized transactions to the "face amount of any	Disputed. The limitation on liability applied only to section 9, "Bank of America's 'Zero Liability' Policy for Unauthorized

unauthorized card transaction," and stated that BANA is "not liable for any claims of special, indirect or consequential damages." DX 40.A § 9.	Transactions." The Account Agreement did not limit liability under Reg E or outside of that policy or under the implied covenant of good faith and fair dealing or other common law or statutory provisions. DX 40.A § 9.
33. The Account Agreement did not include requirements for call centers or cards with EMV chips. DX 40.A.	Disputed. The Account Agreement concerned the "Government Prepaid Debit Card issued by [the Bank] on behalf of California [EDD] to enable [beneficiaries] to receive Unemployment or State Disability benefits." Although the Account Agreement did not expressly require a call center or EMV chips, reasonable security and call center access (via the number printed on the card itself) were essential to the ability to enjoy the benefits of the agreement and therefore are subject to the implied covenant and the Bank's other common law and statutory duties. DX 40.A; PX 3 (Minucci Rpt) ¶¶23-27; PX 16 (Golden) at 100:2-9; *see also* RSUF 10.
II. PUA EXPANDED BANA'S EDD PREPAID CARD PROGRAM.	
34. The U.S. unemployment rate rose from 4.4% in March 2020 to 14.8% in April 2020, and to over 16% in California. RJN 7 at 7; RJN 15 at 6-7.	Undisputed.
35. In March 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which created the Pandemic Unemployment Assistance program (PUA). RJN 12 at 14-15; DX 11.B ¶ 25; DX 8.A ¶¶ 25-26.	Undisputed.
36. PUA extended unemployment benefits to those not previously eligible under traditional unemployment systems, including self-employed individuals, contract workers, gig workers, and under-employed workers. RJN 12 at 14-15; DX 11.B ¶ 25; DX 8.A ¶¶ 25-26; RJN 15 at 5-6.	Undisputed.
37. PUA allowed claimants to file for	Undisputed.

benefits without former employer verification of wage or salary history. *See* DX 4 ¶ 20; RJN 12 at 25; DX 11.B ¶¶ 25-26; DX 8.A ¶ 27.	
38. Beginning mid-March 2020, EDD loosened its own requirements for verification of former employment, prioritizing rapid distribution of benefits even though it acknowledged the cost of an increased risk of fraud. RJN 12 at 28-29; DX 11.B ¶¶ 26-27.	Undisputed that it was State and Federal policy at the outset of the pandemic to expedite public benefit payments to the unemployed. *See* PX 50. Disputed on the ground that the cited evidence does not support the statement that "[EDD] acknowledged the cost of an increased risk of fraud."
39. In March 2020, there were approximately [redacted] active EDD prepaid cardholders, with a total monthly fund load of about [redacted]. DX 167; DX 11.B ¶ 31; DX 111 at -4701.	Undisputed.
40. By [redacted], the total monthly fund load on EDD prepaid cards was over [redacted]. DX 167.	Undisputed.
41. By [redacted], there were approximately [redacted] active EDD prepaid cardholders. DX 111 at -4701; DX 11.B ¶ 31.	Undisputed.
42. Between [redacted], BANA loaded approximately [redacted] in benefits onto more than [redacted] EDD prepaid cards. DX 119.	Undisputed.
43. Brad Garfield, the executive responsible for overseeing commercial cards product management, testified [redacted]. DX 14.I 21:15-18, 25:18-28:11, 133:19-134:6, 203:18-205:16.	Disputed. The Bank implemented a policy of deliberately increasing wait times and creating "[redacted]" in the call centers. PX 152 at -118438 ([redacted]); PX 153 at -106093-94 ("[redacted].")

44. In Spring 2020, [redacted]. DX 106; DX 137; DX 1 ¶ 22; DX 14.B 31:8-32:9.	<u>Undisputed</u>.
45. In Spring 2020, [redacted]. DX 14.B 31:8-32:22, 78:19-79:7; DX 1 ¶ 23; *see* DX 110; DX 166; DX 138; DX 93; DX 115 at -7034.	<u>Disputed</u> as immaterial. The Bank had the exclusive contractual right and duty to provide electronic benefits services for EDD. EDD beneficiaries did not have the option of receiving electronic benefits via direct deposit or card from any other bank. PX 13 (Chestnut) 75:4-13; PX 33 at 16; PX 34; PX 35 at -187054, -187057.
III. PUA WAS TARGETED BY FRAUDSTERS.	
A. Fraudsters Targeted EDD and PUA.	
46. Congress, federal regulators, and California's State Auditor (CA Auditor) all concluded that the PUA and failings by UI benefits administration agencies (including EDD) resulted in fraud losses that other agencies estimated reached at least $200 billion. *See* RJN 12 at 28-46, RJN 2 at 1-3; DX 11.B ¶¶ 32-36.	<u>Disputed</u> as immaterial. This case concerns unauthorized transaction claims, not enrollment fraud. Additionally, "'[s]afety and soundness' is not a regulatory obligation that competes with the Bank's obligations under Reg E and is not a valid justification for the Bank to have believed it could violate EFTA and Reg E in response to pandemic-era fraud targeting the prepaid card program or to have believed that EFTA and Reg E did not apply or applied with lesser force because of the pandemic circumstances." PX 4 (Abernathy Rpt) ¶13; *see also id.* at ¶16 ("bank regulators do not change their standards for supervising the banks they oversee, even during challenging periods"); PX 8 (Kreis Reb) ¶¶16-17, 38-41; PX 1 (Kreis Rpt) ¶34.
47. Some estimated that California incurred approximately $32 billion in fraud losses, and the CA Legislative Analyst's Office attributed the "[o]verwhelming majority" of fraud to PUA's "lower standard of identity and wage information" "due to federal policymakers' decision to prioritize	<u>Disputed</u> as immaterial. *See* RSUF 46.

immediate assistance." RJN 16; RJN 11 at 5; *see also* DX 11.B ¶ 21.	
48. The Department of Labor (DOL) reported that PUA had an improper payment rate of 35.9%. RJN 12 at 6, 22, 27.	Disputed as immaterial. *See* RSUF 46. Also, the DOL report "focused on the broad category of improper payments, including overpayments [and] underpayments ..." and specifically stated it "should not be considered a fraud estimate for the PUA program." RJN 12 at 7.
49. The U.S. House Ways and Means Committee reported in 2025 that improper PUA payments were estimated to be up to $400 billion nationwide, approximately a 40% loss. RJN 14 at 1; RJN 19 at 1, 4.	Disputed as immaterial. *See* RSUF 46.
50. In September 2024, the U.S. House Oversight Committee reported that "EDD staff . . . 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." RJN 12 at 7, 28.	Disputed as immaterial. *See* RSUF 46.
51. The CA Auditor reported in January 2021 that EDD failed to implement fraud detection or identity verification technology until late October 2020, ignored repeated warnings from DOL's Office of Inspector General, and approved approximately $10.4 billion in benefits with no identity verifications. RJN 2 at 1, 8-9, 14-17, 20, 29.	Disputed as immaterial. *See* RSUF 46.
52. The CA Auditor discovered and reported that EDD had mailed at least 51 million documents to benefits claimants between 2017 and 2020 that included their full Social Security numbers.	Disputed as immaterial. *See* RSUF 46.

RJN 1 at 1-2.	
53. The Secret Service issued an alert in May 2020 stating that a Nigerian fraud ring was exploiting the pandemic to commit "large-scale fraud against state unemployment insurance programs." RJN 5; DX 4 ¶ 13.	Disputed as immaterial. *See* RSUF 46.
54. By Summer 2020, BANA was notified by federal, state, and local law enforcement that personal information stolen during past data breaches at other companies and sold on the dark web was being used by fraudsters to apply for PUA and other UI benefits. [redacted]. RJN 5; RJN 4 at 1; DX 134 at -2982; DX 136 at -0162; DX 4 ¶¶ 11-15; DX 11.B ¶¶ 32-36.	Disputed as immaterial. *See* RSUF 46.
55. BANA deployed [redacted]. DX 151; DX 14.B 99:16-19.	Disputed and immaterial. The cited evidence does not support the statement. DX 151 on its face [redacted], after the class period, and the remaining evidence does not fully support the statement.
56. Because the pandemic-related fraud targeted federal and state funds, BANA considered itself obligated to take measures to protect taxpayers. *See* DX 134 at 2981-83; DX 53; DX 153; DX 134; DX 100; DX 80.	Disputed. The Bank implemented the Claim Fraud Filter policies primarily to protect its own financial bottom line. PX 27 (Montag) 23:25-24:20, 25:11-27:18, 59:6-60:23, 65:4-66:11, 102:2-106:17, 112:5-113:25, 115:13-22, 117:22-121:11; PX 104 at -882712-13; PX 157 at -881853; PX 68 at -701418-19; PX 23 (Holt) 116:6-11, 117:7-19; PX 235; PX 77 at -371977; PX 234 at -426660; PX 44 at -421427; PX 83 at -118367; PX 84 at -694889; PASF 32-95.
57. BANA's antifraud experts in its Global Financial Crimes (GFC) group conducted their own investigation into the reports of pandemic-related fraud. By Summer 2020, GFC observed that the fraud was facilitated by: [redacted]	Disputed and immaterial. The referenced exhibits concern benefits eligibility fraud, not unauthorized transaction claims. [redacted], either before or after its implementation, as a means of detecting eligibility or transaction fraud.

[redacted]. DX 14.Q 113:4-113:8; DX 102; DX 4 ¶ 20; DX 11.B ¶¶ 25, 32-36.	PX 19 (Schwartz) 208:22-209:9, 212:3-214:5, 255:4-12; 262:12-24, 265:4-7; PX 15 (Letson) 173:3-175:7; PASF 57-66.
58. GFC, along with BANA's Global Information Security (GIS) team, conducted research that revealed [redacted]. DX 4 ¶¶ 17-20; DX 102; DX 88; DX 87; DX 11.B ¶ 46.	Disputed as immaterial. *See* RSUF 46.
59. By Summer 2020, [redacted]. DX 4 ¶ 18; *see* RJN 22; RJN 21; DX 11.B ¶ 46.	Disputed as immaterial. *See* RSUF 46.
60. In Summer 2020, [redacted]. DX 4 ¶ 18; RJN 22; RJN 21; RJN 12 at 45; DX 11.B ¶ 46.	Undisputed but immaterial that there were two music videos posted on YouTube.
61. In Summer 2020, GFC analyzed data to identify [redacted]. *See, e.g.*, DX 98, DX 136, DX 83; DX 14.H 15:9-17:1; DX 14.Q 134:4-10; DX 14.AD 31:9-20, 35:3-18; DX 4 ¶¶ 17-20; DX 11.B ¶¶ 50-51.	Disputed as immaterial. In Summer 2020 GFC analyzed data such as [redacted], not CFF-1. PX 23 (Holt) 225:15-226:23; PX 15 (Letson) 237:6-239:1; PX 14 (Martin) 127:8-132:15; PX 233 at -76932; PX 19 (Schwartz) 212:3-214:24; PX 93 (Resp to Yick Rog. 28) at 7-

	8; PX 237 at -70245; PX 236 at -102786.
62. In July 2020, based on GFC's investigations, [redacted]. DX 79; DX 134 at -2985; DX 14.B 82:13-25; DX 1 ¶ 26; DX 4 ¶ 21.	Undisputed but immaterial because CFF-1 did not consider factors such as [redacted]. Instead, CFF-1 looked at only a single fact—whether the claim involved a disputed ATM transaction. PX 93 (Resp to Yick Rog 28) at 7-8; PX 23 (Holt) 225:15-226:23; PX 89 at -12577-78; PX 15 (Letson) 237:6-239:1; PX 14 (Martin) 127:8-132:15; PX 19 (Schwartz) 212:3-214:24.
63. Beginning in July 2020, [redacted]. DX 4 ¶ 21; DX 134 at -2985; *see, e.g.*, DX 77; DX 161; DX 162; DX 14.B 124:16-19; DX 11.B ¶ 41.	Undisputed that the Bank worked with EDD in July 2020 to identify potential benefits enrollment fraud. Disputed as immaterial because [redacted], that had nothing to do with CFF-1. PX 23 (Holt) 225:15-226:23; PX 15 (Letson) 237:6-239:1; PX 14 (Martin) 127:8-132:15; PX 233 at -76932; PX 199.
64. BANA came to the belief by August 2020 that [redacted]. DX 4 ¶ 22; DX 14.Q 105:8-109:15; DX 14.B 126:13-127:12; DX 168; *see* RJN 15 at 15, 49-55.	Disputed. The Bank did not reasonably believe [redacted] the lack of EMV chips made the mag-stripe only EDD debit cards a particularly vulnerable target for fraud and that increased fraud rates. PX 166 at -228914; PX 162 at -455617; PX 174 at -154043; PX 180 at -297295; PX 173 at -123235; PX 164 at -370154; PX 14 (Martin) 81:7-83:13, 84:16-85:6; PX 27 at -351839; PX 10 (Loebner Reb Rpt) ¶¶25-31; PX 21 (Ahmad) 50:22-51:15, PX 202; PX 21 (Ahmad) 78:17-21; PX 247; PX 23 (Holt) 280:20-283:3; PASF 109-119.
65. On September 18, 2020, [redacted]	Undisputed that the Bank [redacted]. Disputed that [redacted] was in any way related to CFF-1 as the Bank [redacted]

[redacted]. DX 77; DX 161; DX 162; DX 142; DX 14.B 124:16-19; DX 134 at -2985; DX 100 at -4522; *see also* DX 61; DX 97; DX 4 ¶ 21.	[redacted], which was unrelated to CFF-1. PX 237 at -70245; PX 236 at -102786; PX 233 at -76932; PX 89 at -125177; PX 43 at -452826; PX 10 (Loebner Reb) ¶38, fn. 25.
66. On September 25, 2020, on EDD's direction, BANA froze approximately 325,000 EDD accounts—nearly all of which were identified by BANA. DX 14.B 124:16-24; DX 134 at -2985; DX 11.B ¶ 41.	Undisputed that the Bank [redacted], and froze 325,000 UI accounts. *See* RSUF 65.
67. [redacted]. DX 79 at -6223; DX 11.B ¶ 41.	Disputed as immaterial. *See* RSUF 65.
68. In mid-September 2020, California's governor shut down EDD for two weeks, so that EDD could [redacted]. RJN 8; DX 84 at -7750; DX 112; DX 4 ¶ 22; DX 14.Q 109:7-109:10; *see also* DX 11.B ¶ 26.	Undisputed but immaterial that [redacted].
69. Throughout the pandemic, FinCEN and the Secret Service issued alerts to BANA and others about rising UI fraud, encouraging banks to perform additional inquiries and investigations to identify "red flags" indicating fraud, including suspicious, rapid disbursements from benefits accounts. *See e.g.*, RJN 3; RJN 5; *see* SUF ¶ 53.	Disputed as immaterial. RJN 3 does not address UI fraud and even if it did, the "red flags" advised *against* using a single factor to identify suspicious activity (such as CFF-1), "[a]s no single red flag is necessarily indicative of illicit or suspicious activity..." Also, a bank's AML obligations do not compete with and do not excuse a bank's obligations under EFTA and Reg E. RJN 3; PX 4 (Abernathy Rpt) ¶¶13-16; PX 8 (Kreis Reb) ¶¶16-17, 38-41; PX 1 (Kreis Rpt) ¶34.

B. Fraudsters Targeted BANA's Claims System.	
70. EFTA and Reg E protect prepaid card users from certain losses if the use was unauthorized. Unauthorized transaction claims, and certain other account errors, are defined by Reg E as "error claims." *See* 15 U.S.C. § 1693 *et seq.*; 12 C.F.R. pt. 1005; *see also* DX 10.A ¶¶ 20-22.	Undisputed that the Bank is subject to EFTA and Reg E which protect individual consumers engaging in electronic fund transfers, including through ATMs. 15 U.S.C. § 1693 *et seq.*; 12 C.F.R. pt. 1005.
71. Prior to the pandemic and through September 2020, [redacted]. DX 14.E 59:8-61:9; DX 50 at -2863-66; DX 14.G 19:6-12; DX 14.Y 142:3-25.	Undisputed that prior to implementing the CFF on September 28, 2020, the Bank followed the procedures in the [redacted] to comply with EFTA/Reg E, and that ended when the Bank implemented CFF-1. PX 1 (Kreis Rpt) ¶¶21-41; PX 60 ([redacted]) at -559893–901; PX 57; PX 58; PX 59; PX 61; PX 62; PX 12 (Daniels) 120:16-21, 146:16-21, 234:24-236:5; PX 216 at -6484; PX 214 at -3890; PX 105 at -100637; PX 18 (Johnson) 41:23-43:13, 55:24-56:18, 196:22-197:23; PX 8 (Kreis Reb) ¶10.
72. In January 2020, BANA received approximately [redacted] error claims per week from EDD prepaid cardholders; by September 2020, BANA received approximately [redacted] error claims per week, [redacted]. DX 30.A at No. 32; DX 14.E 60:25-61:9.	Undisputed.
73. [redacted]. DX 14.E 59:8-61:9; DX 14.G 32:12-33:3; DX 14.M 55:13-58:8; DX 14.Y; *see* DX 10.A ¶ 46.	Disputed. The Bank was not [redacted]. The Bank decided to do so, as a business decision, as it had done in the past and would in the future. The Bank could have hired sufficient staff and taken other steps to investigate and prioritize claims but chose not to do so. PX 72 (Rog 38); PX 18 (Johnson) 65:8-17, 69:5-8, 212:6-22; PX 1 (Kreis Rpt) ¶¶52-54; PX 232 (Kreis) 174:22-176:15; PX 28; PX 69 at -225377; PX 70 at -426407; PX 71 at -181662; PX 24 (Ehresman) 34:8-36:2, 36:14-38:6, 97:4-23; PX 28 (Moynihan) 238:16-

	239:2; PX 8 (Kreis Reb) ¶¶44-46; PASF 37.
74. [redacted]. *See* DX 4 ¶¶ 26, 30; DX 14.Q 145:4-149:19; DX 14.E 60:25-61:9; DX 133; DX 145 at -0517; DX 11.B ¶ 46.	Disputed. The Bank's analysts recognized "[redacted]." RSUF 91.
75. BANA's investigations determined many EDD error claims were likely fraudulent based on certain factors including: [redacted]. DX 62; DX 98; DX 136; DX 83; DX 146; DX 86.	Disputed as immaterial. CFF-1 did not consider factors such as [redacted]. CFF-1 looked at only a single fact—whether the claim involved a disputed ATM transaction. PX 93 (Rog 28) at 8; PX 23 (Holt) 225:15-226:23; PX 89 at -12577-78; PX 15 (Letson) 94:2-5, 220:10-16, 237:6-239:1, 333:14-20; PX 14 (Martin) 127:8-132:15; PX 19 (Schwartz) 212:3-214:24; PX 10 (Loebner Rpt) ¶¶38, 41; PX 90 -50517.
76. By late Summer 2020, BANA's investigations determined that [redacted]. DX 84; DX 171 at -7599-60; DX 140; DX 14.Q 145:4-149:19; DX 14.AD 131:9-132:2; DX 14.L 293:12-15; DX 4 ¶ 26; DX 11.B ¶ 48; DX 10.A ¶ 43; DX 14.Y 204:13-22.	Disputed. "Double-dipping is a well-known risk in the financial services industry, which EFTA-compliant manual investigation protocols such as [redacted] are designed to identify." The Bank [redacted] regarding the frequency of this practice. PX 8 (Kreis Reb) ¶21; PX 23 (Holt) 161:24-162:25, 179:5-181:16, 228:24-230:12; PX 87 at -87767 [redacted]"); PX 19 (Schwartz) 201:11 - 205:20, 212:3-214:24; PX 30 (Pesce) 150:22-153:24, 192:5-194:4, 201:22-202:11, 204:14-205:24.
IV. BANA'S CLAIM FRAUD FILTER	
77. AML laws require BANA to monitor transactions, report on suspicious financial activity, and deter criminals where fraudulent activity is suspected. 31 U.S.C. §§ 5311-5336; 12 U.S.C. §§ 1829b, 1951-1960; 31 C.F.R. pt. 1020; DX 14.H 16:18-17:12; DX 4 ¶ 4; DX 11.B	Disputed as immaterial. A bank's AML obligations do not compete with and do not excuse a bank's failure to comply with its obligations under EFTA and Reg E. PX 4 (Abernathy Rpt) ¶¶13-16; PX 8 (Kreis Reb) ¶¶16-17, 38-41; PX 1 (Kreis Rpt) ¶ 34.

¶¶ 16, 22.	
78. BANA also has safety-and-soundness obligations that require it to respond to frauds directed against BANA itself. 12 C.F.R. pt. 30; DX 10.A ¶¶ 14-19; DX 14.Y 169:24-170:2.	Disputed and immaterial. *See* RSUF 77. Additionally, there is no evidence the Bank was ever unsafe or unsound.
79. By late Summer 2020, [redacted]. DX 4 ¶¶ 26-29; DX 14.Q 75:9-77:18, 98:14-21, 145:4-149:19; DX 14.AD 131:9-132:2; DX 14.L 293:12-15; DX 84; DX 11.B ¶ 48.	Disputed. The Bank's principal concern animating its CFF-1 policies was reducing its own operational losses resulting from payment of EFTA-required losses. PX 198 at -171973; PX 84 at -694889–90; PX 44 at -421427; PX 63; PX 67 at -416779; PX 73 at -706201; PX 74 at -371658–59; PX 75 at -695594; PX 77 at -371977; PX 81 at -87749–50; PX 82 at -372013; PX 83 -118367; PX 202 at -706213; PX 203 at -140413; PX 270 at -883608–09; PX 27 (Montag) 96:10-97:3; PASF 32-66.
80. In late Summer 2020, GFC and GIS were tasked [redacted]. DX 75; DX 14.Q 42:22-45:3, 299:12-301:19; DX 14.L 173:2-174:9; DX 14.S 136:17-137:3, 138:17-140:7, 141:15-142:21, 143:10-144:9, 145:24-146:12; DX 14.A 136:3-137:14; DX 4 ¶ 29; *see* DX 83, DX 146.	Disputed as immaterial to CFF-1, the only indicator at issue. The referenced evidence identifies factors such as [redacted] (DX 75); [redacted] (DX 83 and 146), none of which are factors considered by CFF-1. *See also* RSUF 81, 84, 85; PX 23 (Holt) 161:24-162:25, 179:5-181:16, 230:6-12; PX 87 -87767; PX 19 (Schwartz) 201:11-205:20, 212:3-214:24.
81. [redacted], GFC and GIS determined that the following characteristics were indicative of fraud: [redacted]	Disputed. The Bank [redacted] the extent to which a claim of an unauthorized PIN-enabled transaction was "indicative of fraud." Otherwise disputed as immaterial. CFF-1 did not target claims involving a [redacted] and did not consider factors such as [redacted]

[redacted]. DX 83; DX 146; DX 86; DX 62; DX 98; DX 136; DX 4 ¶ 30; *see* SUF ¶ 31.	[redacted]. Instead, CFF-1 looked at only a single fact—whether the claim involved a disputed ATM transaction. PX 93 (Resp to Rog. 28) at 8; PX 23 (Holt) 179:5-181:16, 225:15-226:23, 230:6-12; PX 89 at -12577-78; PX 15 (Letson) 237:6-239:1; PX 14 (Martin) 127:8-132:15; PX 87 at -87767; PX 19 (Schwartz) 201:11-205:20, 212:3-214:24; PX 233 at -76932.
82. The indicia of fraud identified by GFC and GIS were ultimately developed into the fraud strategy known as the Claim Fraud Filter (CFF), [redacted]. DX 145; DX 14.Q 97:17-99:20, 177:1-181:13; DX 14.H 52:3-53:8; DX 14.AA 31:17-22; DX 4 ¶¶ 31-32.	<u>Disputed</u>. CFF-1 looked at only a single fact—whether the claim involved a disputed ATM transaction. The Bank [redacted] the extent to which a claim of an unauthorized PIN-enabled transaction was "indicative of fraud." Instead, CFF-1 was "[redacted]. PX 19 (Schwartz) 201:11-205:20, 212:3-214:24; PX 23 (Holt) 161:24-162:25, 179:5-181:16, 192:22-194:20, 230:6-12; PX 15 (Letson) 144:11-146:16; PX 27 (Montag) 41:22-25; PX 85 at -125059; PX 86 at -170046; PX 87 at -87766, -87767; PX 88 at -87780; PX 90 at -450517; PX 91 at -87760.
83. The development of the CFF was led by [redacted]. DX 14.H 16:18-17:12, 43:13-25; DX 14.Q 73:40-75:3; DX 14.AD 71:21-78:9, 235:15-23.	<u>Disputed</u>. Senior executives, including COO Montag, directed mid-level executives within GBAM/GTS to "[redacted]" and "[redacted]. GBAM then directed GFC to develop a "[redacted] to freeze accounts, claw back previously paid credits "[redacted]," and summarily deny claims going forward. GBAM selected the "[redacted]" option. Fox, the head of GFC, and Letson, his direct report, [redacted]. PX 77 at -371977; PX 83 at -118367; PX 27 (Montag) 102:2-106:17, 106:23-107:8, 111:4-6, 112:5-113:25, 115:13-22, 117:22-

	121:11; PX 76 at -630836; PX 272 at -63799; PX 282; PX 19 (Schwartz) 38:24-39:5; PX 221 at -87742; PX 15 (Letson) 241:9-243:5; PX 23 (Holt) 242:2-245:16, 260:8-17; PX 229 at -57488; PX 285.
84. Based on their research and review of claim and account data, [redacted]. DX 14.H 27:5-23, 47:5-17; DX 4 ¶ 33; DX 14.Y 55:2-56:19; DX 11.B ¶ 52; *see* DX 149.	Disputed. *See* RSUF 82-83. The Bank's antifraud experts [redacted], let alone any basis to assert a [redacted]. GFC analyst Ryan Schwartz "[redacted]." The Bank's Model Risk Management committee deemed CFF "[redacted]." [redacted] CFF-1 would erroneously deny valid claims by legitimate EDD cardholders, yet [redacted]. 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 215 at -592330; PX 92 at -881824; PX 23 (Holt) 92:6-19, 180:15-181:16, 228:24-229:21, 275:11-276:4; PX 15 (Letson) 144:11-145:3, 169:12-16, 170:7-176:14, 179:9-180:16, 220:20-222:3, 334:21-335:4; PX 22 (Fox) 49:23-50:10, 53:10-21; PX 20 (Garfield) 271:23-278:16, 282:4-23. After implementation, reconsiderations, itself an underinclusive gauge, showed high false positive rates of approximately [redacted], later shown to be [redacted]. PX 227 at -159492; PX 112 at -90640; PX 1 (Kreis Rpt) ¶¶71, 73; PX-10 (Loebner Reb) ¶¶ 46-53.
85. [redacted]	Disputed. *See* RSUF 84. The Bank knew that triggering CFF-1 was not "[redacted]" of fraud, that CFF-1 would erroneously deny valid claims by legitimate cardholders who were victims of counterfeit fraud, and that a manual investigation [redacted] would yield additional

[redacted]. DX 14.E 18:17-25; *see* DX 149.	relevant evidence necessary to correctly decision the claim in accordance with the Bank's Reg E obligations (as confirmed by the high overturn rates on manual reconsideration). PX 14 (Martin) 127:8-132:15; PX 19 (Schwartz) 201:11-205:20, 212:3-214:24; PX 23 (Holt) 161:24-162:25, 179:5-181:16, 230:6-12; PX 93 (Rog. 28) at 8; PX 215; PX 43 at -452826; PX-10 (Loebner Reb) ¶¶ 46-61, 63; PX 278 at -87719.
86. [redacted]. DX 4 ¶ 34; DX 14.H 68:10-76:11; DX 14.A 128:8-130:7.	Disputed. [redacted]. The Bank has not raised advice of counsel as an affirmative defense; instead, it has relied on the privilege to withhold all attorney-client communications relevant to this case. PX 101 at -497802-04; PX 97 at -876417; PX 21 (Ahmad) 193:8-195:25; PX 90 at -450517 ("[redacted]."); PX 28 (Moynihan) 117:17-118:6; PX 27 (Montag) 23:25-24:20, 28:25-29, 48:2-16; PX 102; PX 103; PX 104 at -882713.
87. [redacted]. One—known as CFF-1 or Indicator 1—was triggered if a cardholder claimed that a [redacted] ATM transaction was unauthorized [redacted]. DX 28 at No. 28; DX 86; DX 143; DX 71 at -7488; DX 158 at -0209; DX 14.AA	Undisputed.

30:3-6.	
88. [redacted] DX 85; DX 86; DX 101; DX 14.L 192:14-194:8; DX 14.H 52:3-53:8; DX 14.Q 187:10-24; DX 4 ¶ 30.	Disputed. The Bank's [redacted]. The Bank knew many EDD cardholders were victims of skimming and card-present counterfeit fraud, including unauthorized ATM transactions. CFF-1 was [redacted]. PX 23 (Holt) 161:24-162:25, 179:5-181:16, 230:6-12, 275:11-276:4; PX 87 at -87767 [redacted]"); PX 262; PX 19 (Schwartz) 201:11-205:20, 212:3-214:24; PX 91 at -87763; PX 89 at -125177; PX 15 (Letson) 165:1-10, 195:2-12, 199:22-201:7; PX 19 (Schwartz) 212:3-214:24 ([redacted]); PX 1 (Kreis Rpt) ¶¶71, 73; PX 60 (AISOP) -559893-901; PX 168 at -5007; PX 192; PX 105 -100643-44, 100649-51; PX 10 (Loebner Reb) ¶¶27-31, 35-38, & n.46; *see also* RSUF 90, 247-48.
89. For BANA EDD prepaid cards, [redacted]. *See* DX 14.E 289:7-20; DX 144.	Disputed and immaterial. The Bank's cited evidence does not support the statement. A PIN may be required for point-of-sale (POS) transactions, such as at gas stations.
90. [redacted]. *See* DX 14.S 50:22-51:7; DX 12.A ¶ 103; DX 12.B ¶¶ 39, 43-44.	Disputed. As noted in [redacted] and FBI publications, the well-known criminal practice of "skimming" typically involves pairing a skimming device (which captures the unencrypted card data on the magnetic stripe) with a PIN pad overlay or pinhole camera (which captures the PIN). The Bank implemented CFF-1 despite [redacted] the magstripe-only EDD cards were vulnerable to skimming and counterfeit fraud. *See* RSUF 247-48; PX 2 (Cloninger Rpt) ¶¶18-25; PX 166 at -228914; PX 162 at -

	455617; PX 174 at -154043; PX 14 (Martin) 51:8-19; PX 10 (Loebner Reb) ¶¶27-31, 35-38, & n.46); PX 165.
91. GFC determined that [redacted]. DX 139 at -6913-14; DX 79 at -6222; DX 86; DX 136; DX 14.Q 97:6-98:21, 115:9-117:24; DX 4 ¶¶ 26-28; *see* DX 11.B ¶ 52.	Disputed. GFC determined that [redacted]. The Bank observed even pre-pandemic, the "[redacted]. PX 13 (Chestnut) 63:5-14, 53:24-64:4; PX 65 at -630750-51 [redacted]"); PX 19 (Schwartz) 78:11-19, 93:2-96:7 ("[redacted]."); PX 254 at -169848 ([redacted]").
92. GFC also determined that [redacted]. DX 139 at -6913-14; DX 79 at -6222; DX 63 at -9846, -9850; DX 156; DX 183; DX 4 ¶¶ 32-33; DX 14.Q 145:4-147:6; DX 14.L 228:11-229:2; DX 14.D 125:23-127:14; *see also* SUF ¶ 65.	Disputed. [redacted] that EDD cardholders' magstripe-only cards were vulnerable to skimming and counterfeit fraud, including unauthorized ATM transactions. Nonetheless, [redacted] what percentage of ATM claims were submitted by legitimate cardholders vs criminals who had engaged in benefits enrollment fraud using stolen identities, even though [redacted]). *See* RSUF 88, 90, 91, 84-85; PX 194; PX 14 (Martin) 102:21-103:14, 108:23-111:3.
93. From September 28, 2020 through on or around June 8, 2021, BANA applied the CFF [redacted]	Disputed. From September 28, 2020 until preliminarily enjoined effective June 8, 2021, the Bank applied the CFF to new unauthorized-transaction claims, and if the

[redacted]. DX 28 at No. 28; DX 14.E 18:9-19:17; DX 14.Q 19:16-20:1.	claim triggered the CFF, the Bank automatically denied the claim without taking any further "[redacted]" to investigate the claim as required by Reg E. For claims that triggered the CFF, the Bank did not take any of the steps prescribed in its [redacted]. PX 90 at -50517 ("[redacted]."); PX 15 (Letson) 94:2-5, 220:10-16, 333:14-20.
94. Because BANA believed that [redacted]. DX 14.Q 178:1-181:25; DX 62; DX 14.H 27:20-22; *see* DX 4 ¶¶ 33, 35.	Disputed. The Bank's antifraud experts had [redacted]. *See* RSUF 84-85. Undisputed that the Bank summarily denied all claims that triggered CFF-1 and never issued provisional credit on such claims.
95. After the claim was closed, BANA mailed the cardholder a letter informing them of the claim decision and the reasons for it, and told the cardholder they could request reconsideration of the claim if they disagreed. DX 28 at No. 28; DX 52.	Disputed. The Bank did not provide cardholders whose claims it denied based on CFF-1 any explanation of the reasons for the claim denial or the results of any investigation, since no investigation was done. The Bank's "reconsideration" process was not an adequate substitute for compliance with Reg E, which requires an investigation-based decision or provisional credit within 10 business days. As a result of the Bank's CFF-1 claim denial policy, approximately [redacted] of Claim Denial class members' claims were not paid for more than [redacted], and the median duration of benefits deprivation for Claim Denial class members was [redacted]. *See* PX 291 (claim denial letter template); PX 155; PX 12 (Daniels) 220:12-224:22; PX 18 (Johnson) 191:8-12 ([redacted]); PX 5 (Regan Rpt) ¶45 & Schedule 1.
96. BANA's [redacted]. DX 177 at -5876; DX 14.E 247:16-248:14; *see also* 12 C.F.R. § 1005.11(e).	Disputed. Prior to implementation of the CFF, the Bank's standard practice was to [redacted]. PX 24 (Ehresman) 19:6-20:2.

97. The claim denial letter sent to EDD cardholders whose claims triggered the CFF said: "If you contact us by phone or in writing, you may request that we reopen your claim for further consideration. You will be asked to give us information, including any documents you may have, to support your claim." DX 52; *see* DX 14.E 276:14-277:19.	The contents of the form claim denial letter are undisputed. Disputed that the form letter or the Bank's "reconsideration" process provided CFF-denied claimants the required explanation of why their claims were denied or any meaningful relief. Those who called the Bank were subject to extraordinarily long wait times and ineffectual customer service. *See* RSUF 95.
98. BANA recognized no fraud strategy can be 100% effective at identifying only fraudulent activity. DX 14.L 274:4-20; DX 4 ¶ 7; DX 10.D 240:18-25; *see* DX 14.Q 165:1-10; DX 11.B ¶ 59.	Disputed. The Bank chose to implement the "[redacted]" option GFC presented and "[redacted]. The Bank's senior leaders adopted CFF-1 because it would enable them to avoid paying credit on approximately [redacted]. The Bank's senior leaders chose to use CFF-1 to summarily deny claims, rescind credits, and freeze accounts over other reasonably available alternatives [redacted]. The Bank's senior leaders dismissed [redacted] and harm to legitimate cardholders and maintained its CFF-1 policies until preliminarily enjoined, even in the face of mounting evidence and personal knowledge of the extraordinary harms those policies were causing legitimate cardholders. PX 206 at -87750; PX 76 at -630836; PX 80 at -125014; PX 79 at -630837; PX 91 at -87760; PX 114 at -107327; PX 66 at -169914; PX 113 at -107261; PX 19 (Schwartz) 121:22-122:8, 137:9-138:20, 126:9-127:17, 148:14-149:6, 152:5-155:8, 158:23-159:12, 161:10-162:25, 170:2-171:25, 173:3-175:12, 176:8-19, 180:21-183:18, 189:8-14, 195:12-196:3, 199:25-202:6, 203:17-205:20, 212:3-214:24; PX 270

	at -883608–09; PX 271; PX 289; PX 24 (Ehresman) 32:12-38:6, 97:4-23; PX 69 at -225375; PX 18 (Johnson) 195:17-197:23; PX 14 (Martin) 308:9-311:15; PX 112 at -90640; PX 113 at -107261; PX 274 at -62175; PX 114 at -107327; PX 115 at -90683; PX 116 at -273305; PX 117; *see, e.g.*, PX 51; PX 52; PX 53; PX 54; PX 55; PX 117; PX 118; PX 119; PX 120; PX 121; PX 122; PX 123; PX 124; PX 125; PX 128; PX 129; PX 130; PX 131; PX 132; PX 133; PX 134; PX 135.
99. [redacted]. DX 14.L 226:11-227:16; *see* DX 14.Q 284:18-285:13; DX 4 ¶ 35.	Disputed. The Bank [redacted]. The Bank also knew wait times at the Call Center could be [redacted] or more, causing many to give up before ever being able to speak with a customer service representative, and that cardholders whose accounts were frozen based on CFF-1 were stuck in a "[redacted]" of fruitless calls between the Bank and EDD. PX 14 (Martin) 226:17-227:18, 231:15-236:1, 272:16-274:13; PX 16 (Golden) 146:7-147:19, 149:10-21, 150:20-151:6, 165:18-167:17; PX 15 (Letson) 186:4-16, 287:24-289:2; PX 21 (Ahmad) 359:8-360:14; PX 136 at -90722; PX 137 -452795; PX 267; PX 10 (Loebner Reb) ¶¶ 46-61; PX 280.
100. [redacted]. DX 109; DX 4 ¶ 35; *see also* DX 95 at -7099; DX 97 at -8437; DX 107.	Disputed. In October 2020, the Bank received [redacted] reconsideration requests, a nearly [redacted] increase over the [redacted] requests received in September 2020, prior to the CFF rollout. These reconsiderations had a nearly [redacted] overturn rate ([redacted]), demonstrating the CFF's unreliability. Moreover, in October 2020, the average speed to answer (ASA) for the

	Claims Call Center (the exclusive channel for EDD cardholders to seek reconsideration) ranged from [redacted] on average, and the average call abandonment rate ranged from [redacted] The Bank failed to take this data into account even though it knew the high abandonment rates made the reconsideration statistics [redacted]. *See also* RSUF 99. DX 109; PX 1 (Kreis Rpt) ¶72; PX 24 (Ehresman) 90:9-17; PX 105; PX 245 at -870099; PX 107 at -556536; PX 108 at -143393; PX 109 at -76994; PX 110 at -510145; PX 111 at -77127; PX 15 (Letson) 186:4-16, 287:24-289:2; PX 21 (Ahmad) 359:8-360:14; PX 3 (Minnucci Rpt) Appx. F; PX 156 at -00719115; PX 15 (Letson) 185:1-17, 186:4-13; PX 10 (Loebner Reb) ¶¶ 46-61; PX 286.
101. [redacted]. DX 109; DX 4 ¶ 35; *see also* DX 95 at -7099; DX 97 at -8437; DX 107.	Disputed. From October until November 21, the ASA for the Claims Call Center (the exclusive channel for EDD cardholders to seek reconsideration) was [redacted] on average, and the average call abandonment rate was [redacted]. Beginning December 3, 2020, the Bank resumed its policy of automatically freezing accounts whose claims triggered the CFF and refused to assist any cardholder whose account was in a frozen status. The Bank failed to take this data into account in calculating what percentage of CFF-denied claimants sought reconsideration. *See* PX 245 at -870099; PX 3 (Minnucci Rpt) Appx. F; PX 156 at -00719115; PX 10 (Loebner Reb) ¶¶ 46-53.
102. [redacted]. DX 180; DX 4 ¶ 35.	Disputed as immaterial. CFF-2 and CFF-3 are irrelevant to this case. Additionally, the Bank obstructed cardholder claims through excessively long wait times and dropped calls. Instead of using CFF-1 to auto-deny every ATM and ATM/combo claim, the Bank could have conducted a manual adequate investigation of every such claim within 10 business days of claim submission, [redacted],

	and [redacted]. Lower claim numbers would have required even fewer resources to manually investigate, yet the Bank maintained its CFF-1 claim denial policies until enjoined June 8, 2021. *See* RSUF 99, 100; PASF 89. PX 24 (Ehresman) 32:12-38:6, 97:4-23; PX 70 (Garfield Ex. 224); PX 28 (Moynihan) 238:16-239:2; PX 20 (Garfield) 199:9-201:15; PX 209; PX 210.
103. [redacted]. DX 4 ¶ 31.	Disputed as immaterial. CFF-2 and CFF-3 are irrelevant to this case. CFF-1 denied legitimate beneficiaries of access to approximately $[redacted] in claims, $[redacted] in rescinded permanent credits, and $[redacted] in frozen account balances for significant lengths of time that caused legitimate beneficiaries extraordinary and irreparable harm. PX 5 (Regan Rpt) ¶¶39, 45, 67-68, 79, 83 (median duration of benefits deprivation was [redacted] for Claim Denial class members and [redacted] for Credit Rescission class members; [redacted] of Account Freeze class members frozen more than [redacted]); *see* PX 209.
104. On September 28, 2020, the CFF was [redacted]. DX 76 at -7224; DX 135 at -8995; DX 14.I 246:13-249:14; DX 14.G 113:25-114:8.	Disputed. The reversal of credits was intentional. *See* RSUF 105-106.
105. The September 28, 2020 rescission of permanent credits [redacted]. DX 135 at -8995; DX 14.I 246:13-249:8; DX 14.G 113:25-114:8.	Disputed. The reversal of credits was intentional. GBAM/GTS directed GFC to develop a "[redacted] Although the Bank's head of claims processing [redacted]

	[redacted] PX 76 at -630836; PX 225 at -169948; PX 20 (Garfield) at 243:24-246:13, 251:3-18; PX 64 at -169954; PX 47 at -125177 ("[redacted]."); PX 10 (Loebner REB) ¶¶67-71; *see* RSUF ¶106.
106. BANA corrected the [redacted]. DX 31 at No. 39; DX 76 at -7224.	Disputed. The reversal of credits was intentional. The Bank did not automatically re-issue credits to all affected cardholders, only [redacted]," DX 31 at No. 39, and the Bank did so only because [redacted], DX 76 at -7224. Reimbursement dates spanned from [redacted], with many Credit Rescission class members not reimbursed until various times in [redacted]. Approximately [redacted] of Credit Rescission class members were denied access to rescinded credits for more than [redacted], and the median duration of credit rescission was [redacted]. PX 139; PX 140 at -571310; PX 141 at -417490; DX 31 at No. 39; DX 76 at -7224; PX 64 at -169954; PX 5 (Regan Rpt) ¶68.
107. Every member of the Credit Rescission Class, by definition, has been re-credited for the full amount of their rescinded permanent credit and also [redacted]. ECF 494 at 42; DX 14.AB.1 ¶¶ 32, 36, 65; DX 43.A at -2557; DX 7 ¶ 6c; SUF ¶¶ 106, 172.	Disputed. Credit Rescission class members have not been paid treble damages or punitive damages to which they are entitled. PX 5 ¶¶13-16, 68-71; PX 6 ¶¶43-45; PX 7 ¶¶36-37; *see also* PX 15 at 236:3-240:24, 249:16-251:14; PX 44 at -421427; PX 76 at -630836; PX 206 at -87750; PX 90 at -450517; PX 207 at -125863; PX 101 at -497803-04; PX 217 at -663735.
108. All Credit Rescission Class members' whose accounts were accidentally frozen on September 28, 2020 were [redacted]	Disputed. The reversal of credits was intentional. Credit Rescission class members' accounts, which were frozen by

[redacted]. DX 92; *see* DX 27 at Nos. 2&6; SUF ¶¶ 106-107.	the Bank on September 28, 2020, were unfrozen by the Bank only [redacted]. *See* RSUF 105-106, 120; PX 283 at -631430; PX 47 at -139423 ("[redacted]."); PX 19 (Schwartz) 243:5-19.
109. BANA stopped using the CFF to [redacted]. DX 28 at No. 28; DX 4 ¶ 37.	Disputed. The Bank did not voluntarily stop using the CFF to deny error claims. The Bank stopped using the CFF because Plaintiffs obtained a preliminary injunction enjoining the Bank from continuing to use the CFF to deny claims or freeze accounts. PX 209; PX 210.
110. BANA CEO Brian Moynihan testified [redacted]. DX 14.X 14:18-21, 72:18-24, 73:9-19, 81:16-83:17, 88:14-89:20, 91:7-92:25, 105:4-12, 107:23-111:6, 132:23-133:15, 138:14-23, 139:4-8; *see id.* 97:1-8, 130:8-131:13, 198:7-9, 232:7-233:4.	Disputed. Contemporaneous statements show that CEO Moynihan was involved in [redacted]. PX 98 at -293818 ([redacted]); PX 99 at -162397 ([redacted]"); PX 22 (Fox) 65:6-66:13; PX 24 ("[redacted]"); PX 100; PX 224 at -882713; PX 28 (Moynihan) at 115:7-116:17, 117:17-118:6; PX 104 at -882713.
111. Moynihan testified [redacted] DX 14.X 53:6-54:2; *see id.* 63:8-13.	Disputed. Contemporaneous statements by Montag and others show that the Bank implemented the CFF policies [redacted]." PX 27 (Montag) 23:25-24:20, 25:11-27:18, 59:6-60:23, 65:4-66:11, 102:2-106:17, 112:5-113:25, 115:13-22, 117:22 -121:11; PX 104 at -882712-13; PX 157 at –881853; PX 68 at -701418-19; PX 23 (Holt) 116:6-11,

	117:7-19; PX 235; PX 77 at -371977; PX 234 at -426660; PX 44 at -421427; PX 83 at -118367; PX 84 at -694889.
112. BANA COO Thomas Montag testified [redacted]. DX 14.V 11:9-12:3, 50:17-51:15; *see id.* 13:6-11.	<u>Disputed</u>. Montag testified "[redacted] Contemporaneous documents show updates regarding the CFF "[redacted]. PX 27 (Montag) 8:5-14, 9:23-10:7, 11:9-12:6, 32:21-34:11, 47:18-48:16, 81:19-83:19, 106:23-107:8, 119:20-121:11, 125:8-11, 128:14-22; PX 90 at -450516 ("[redacted]."); PX 246 at-371949 ("[redacted]"); PX 97 at -876417; PX 21 (Ahmad) 180:23-182:24, 193:8-195:25; PX 101 at -497802; PX 76 at -00630836; PX 96 at -00706496; PX 242 at -293818; PX 44 at -421427; PX 98 at -293819–20; PX 101; PX 276 at 714621.
113. Montag testified [redacted]. DX 14.V 17:20-20:3.	<u>Disputed</u>. Contemporaneous statements by Montag and others show that the Bank implemented the CFF policies [redacted] or to mitigate the impact on legitimate cardholders. PX 27 (Montag) 23:25-24:20, 25:11-27:18, 59:6-60:23, 65:4-66:11, 102:2-106:17, 112:5-113:25, 115:13-22, 117:22-121:11; PX 104 at -882712-13; PX 157 at -881853; PX 68 at -701418-19; PX 23 (Holt) 116:6-11, 117:7-19, 275:11-276:4; PX 235; PX 77 at -371977; PX 234 at -426660; PX 44 at -421427; PX 83 at 118367; PX 84 at -694889; PX 15 (Letson) 144:11-146:16, 169:12-16, 170:7-176:14, 179:9-180:16; PX 22 (Fox)

	49:23-50:10, 53:10-21; PX 19 (Schwartz) 37:20-38:20, 108:7-110:18, 212:3-214:24, 260:6-263:16, 265:4-15; PX 92 at -881824. Reconsideration, which was itself an inadequate process, showed high false positive rates of approximately [redacted], later shown to be [redacted]. PX 227 (-159492); PX 112 at -90640; PX 1 (Kreis Rpt) ¶¶71, 73; PX 10 (Loebner Reb) ¶¶ 46-53.
114. Montag testified that [redacted]. DX 14.V 17:20-18:6.	<u>Disputed</u>. Montag did not testify that [redacted] Additionally, Montag's rote testimony that [redacted]. PX 27 (Montag) 23:17-25:5, 29:6-32:17, 32:21-34:22, 38:7-40:7, 47:2-48:16; PX 101 at -7802-04; PX 104 at -882713.
V. THE ACCOUNT-FREEZE RESPONSE	
115. When the CFF was implemented on September 28, 2020 through October 3, 2020, a CFF-triggering [redacted]. DX 5 ¶¶ 5-6; DX 1 ¶ 30; DX 30.B at 17; *see also* DX 14.S 159:15-18; DX 40.A § 2; DX 60 at -5435.	<u>Disputed</u> that the CFF-1-triggered account freezes at issue were authorized under the Account Agreement and disputed that CFF-1 provided a reasonable basis for freezing accounts based on suspicion of fraud. *See* RSUF 28.
116. [redacted].	<u>Disputed</u>. Many EDD cardholders whose accounts the Bank froze based on CFF-1 could not reach EDD as EDD's call centers were understaffed and overwhelmed, a fact

DX 14.S 226:17-228:9; DX 5 ¶ 5; DX 60 at -5435; *see* DX 14.AE 83:14-18; *see* DX 30.B at 17.	the Bank knew at the time it implemented its CFF policies. Even after cardholders re-verified eligibility, the Bank in many instances still refused to unfreeze their accounts. The Bank knowingly trapped frozen cardholders in a "[redacted]" of calling the Bank and EDD, to no avail. PX 13 (Chestnut) 154:11-157:14; PX 143 at 17-18; PX 144 (Garfield Ex 249) at -71396; PX 138 at -874570; PX 136 at -90722 ("[redacted]"); PX 137 at -452795; PX 14 (Martin Tr.) 272:7-15, 294:23-295:10; PX 244 (Golden Ex. 108) at -127417, -127420 ("[redacted]"); PX 16 (Golden) 161:7-162:4; 165:1-167:17; *see, e.g.*, PX 228 (-37137); PX 226 ¶10; PX 119; PX 52; PX 53; PX 281.
117. [redacted]. DX 5 ¶ 5; DX 14.H 27:5-23, 47:9-17; DX 14.Q ¶ 33; DX 14.S 227:19-228:9; DX 11.B ¶ 52; DX 149; DX 14.Y 55:2-56:13; SUF ¶ 116; *see also* DX 60 at -5435.	Disputed. *See* RSUF 84-85.
118. [redacted]. SUF ¶ 6; DX 5 ¶ 5; *see* DX 60 at -5435.	Disputed. The principal form of benefits enrollment fraud during the pandemic involved [redacted]. The Bank has [redacted]. PX 12 (Daniels) 155:23-156:21; PX 23 (Holt) 127:9-17, 276:19-277:1; PX 14 (Martin) 301:18-302:25, 30:8-33:13, 188:4-190:16, 208:14-21, 218:2-220:7, 220:17-20, 268:2-4; PX 1 (Kreis Rpt) ¶66; X 8 (Kreis Reb) ¶¶23, 36; PX 136 at -90723; PX 146 at -405160; PX 147 at -169898; PX 148 at -417555; PX 149 (Holt Ex 297) at -00631444-45; PX 150 at -125921; PX 26 (Simpson)

	84:15-85:4; PX 241 at -881957.
119. [redacted]. DX 60 at -5435; DX 91 at -7343; DX 5 ¶ 5.	Disputed. *See* RSUF 116.
120. [redacted]. DX 78; DX 92; DX 182; DX 1 ¶¶ 31-32.	Undisputed that [redacted]. Disputed that the Bank "[redacted]. The Bank [redacted]. PX 283; PX 47 at -139424 ("[redacted]."); PX 46; PX 19 (Schwartz) 243:5-19.
121. Between October 4, 2020 and December 2, 2020, [redacted]. During that time, if a cardholder called BANA [redacted]. DX 14.B 52:2-53:1, 92:15-94:1; DX 14.S 132:20-133:3, 223:10-17; DX 30.B at 17; DX 14.E 231:11-233:2; DX 14.L 226:21-227:16; *see* DX 11.A ¶ 27.	Disputed that the Bank [redacted]. PX 231 (Oosthuizen) at 83:8-84:15; PX 250 (Oosthuizen Rog Resp) at 17-18; PX 55; PX 243 at -105271-72; PX 125 at -105900; PX 128 at -284155; PX 238 at -491410-11; PX 239 at -127312-14; PX 267.
122. During Fall 2020, BANA determined that [redacted]. DX 14.H 26:12-20; DX 14.S 227:19-228:9; DX 14.L 105:3-25, 269:18-270:3; DX 129.	Disputed. The Bank implemented its CFF-1 policies [redacted]. The Bank [redacted]. The Bank's use of an automated filter to freeze, rather than block, accounts was [redacted]. PX 15 (Letson) 25:12-26:22, 75:9-17, 94:5-96:7, 134:4-10; PX 22 (Fox) 19:3-20:6; PX 14 (Martin) 182:20-183:17, 198:4-201:19, 205:1-206:8, 207:25-210:5, 236:13-25, 281:21-283:24, 286:2-19; PX 9 (Abernathy

	Reb) ¶¶24-26; PX 277.
123. Beginning on December 3, 2020 through March 17, 2021, [redacted]. DX 59 ; DX 1 ¶ 33; DX 14.B 18:11-19:5; DX 52; DX 30.B at 18; *see* DX 150 at -0173.	<u>Disputed</u> that the Bank [redacted]. *See* RSUF 136; PX 49 at -417556; PX 29 (EDD) 30:17-32:5.
124. From December 3, 2020 through March 17, 2021, [redacted]. DX 14.B 18:11-19:5; DX 1 ¶ 33; *see* DX 150.	<u>Disputed</u> because the Bank's cited evidence does not support the asserted fact. *See* RSUF 123, 136.
125. After several months, [redacted]. DX 14.S 306:9-308:8; DX 5 ¶ 6.	<u>Disputed</u>. *See* RSUFs 123 and 136. The Bank knew at the time it re-implemented its CFF-1 freeze policy in December 2020 that [redacted] The Bank knew by January 2021 that CFF-frozen cardholders were [redacted], yet the Bank delayed until March 18, 2021 before changing to a "block" policy. PX 136 at -90722; PX 137 at -452795; PX 138 at -874570.
126. BANA first [redacted]. BANA also [redacted]. DX 14.S 232:13-20, 234:4-6; DX 14.E 264:5-266:2; DX 30.B at 17; DX 81 at -6931; DX 122; DX 82.	<u>Disputed</u>. The Bank required all cardholders whose accounts it froze based on CFF-1 to reverify with EDD. The Bank [redacted] The Bank's CFF-1 policies caused hardship to all class members. PX 49 at -417556; PX 7 (East Rpt) ¶¶8-9, 11-15; PX 238 at -491410; PX 14 (Martin) 234:19-236:1; PX 239 at -127312-14; PX 15

	(Letson) 100:13-22; PX 13 (Chestnut) 128:14-129:15.
127. Beginning on March 18, 2021 through June 8, 2021, [redacted]. DX 43.A at -2556; DX 14.S 307:14-308:8; DX 57; DX 5 ¶ 6; DX 4 ¶ 37.	<u>Undisputed</u> that the Bank delayed until March 18, 2021 before changing its procedures to "block," rather than "freeze," EDD cards that triggered CFF-1, despite the fact that (1) [redacted], (2) [redacted]; and (3) [redacted]. PX 14 (Martin) 307:14-308:8; PASF 92-95.
128. Beginning on March 18, 2021, BANA [redacted]. DX 30.B at 18; DX 5 ¶ 6; *see* DX 57.	<u>Undisputed</u>. *See* RSUF 127.
129. [redacted]. DX 14.S 30:25-31:3, 268:2-4; DX 5 ¶ 4.	<u>Undisputed</u>. *See* RSUF 127.
130. [redacted]. DX 14.S 30:25-31:3; DX 14.H 83:24-84:17; DX 5 ¶ 7.	<u>Undisputed</u>. *See* RSUF 127.
131. [redacted]. DX 58; DX 30.B at 12-13.	<u>Undisputed</u>. *See* RSUF 127.

132. [redacted]. DX 184 at -5282.	Disputed. The Bank [redacted]. Undisputed that the Bank [redacted], and that once the Bank finally reconsidered CFF-denied claims post-unblocking, [redacted], further confirming the inaccuracy of CFF-1 in identifying fraud. *See, e.g.*, PX 54 ([redacted]); PX 135 ([redacted]).
133. [redacted]. DX 14.S 307:14-308:8; DX 30.B at 18.	Disputed. The Bank was [redacted], the principal perpetrators engaged in benefits enrollment fraud. *See* RSUF 123, 125, 127, 136; PX 14 (Martin) 314:15-315:11; PX 22 (Fox) 83:24-84:13; PX 145; PX 273; PX 275.
134. [redacted]. DX 5 ¶ 7; DX 14.H 83:24-84:17.	Disputed. The Bank's [redacted], which was the type of fraud responsible for the wave of benefits enrollment fraud during the pandemic. There is no evidence of significant numbers of individuals using their own identities to apply for benefits to which they were not entitled. *See* RSUF 9, 133; PX 15 (Letson) 77:10-18; PX 174 at -154043; PASF 92-95.
135. [redacted]. DX 5 ¶ 7.	Disputed. There is no contemporaneous evidence that the Bank had any significant concerns that there were large numbers of individuals using their own identities to apply for UI benefits to which they were not entitled. The principal form of benefits enrollment fraud discussed at the time involved the use of stolen identities to

	fraudulently apply for benefits. RSUF 134.
136. EDD testified that it was EDD's policy to convert UI benefits payments to paper checks following an account freeze, to the extent the claimant remained eligible for benefits. DX 14.AF 37:15-23; *see also* DX 14.AB.1 ¶ 83.	Disputed. EDD did not testify to a "policy" of conversion. Cardholders whose accounts the Bank froze based on CFF-1 were forced to overcome onerous hurdles and endure long delays in converting to paper checks and regaining access to their frozen accounts. CFF-frozen cardholders were required to reverify with EDD, but the Bank knew that many were unable to get through to EDD's overwhelmed call centers, and those that were became trapped in a "[redacted]" of fruitless calls between EDD and the Bank. Also, EDD did not issue paper checks for the amount of funds frozen in a CFF-frozen account. The Bank knew that many cardholders whose accounts it froze based on CFF-1 went months without being able to regain access to their crucial EDD benefits. PX 49 at -41755; DX 81 & DX 82 ([redacted]); PX 136 at -90725; PX 222 at -169161; PX 240 at -2000632; PX 205; PX 138 at -874570; PX 13 (Chestnut) 155:10-156:15; PX 274; PX 284.
137. BANA understood that EDD [redacted]. DX 43.A at -2563; DX 30.B at 16.	Disputed. *See* RSUF 136. GFC made its CFF recommendations [redacted]." The GFC analyst stated, [redacted] but the Bank [redacted]. PX 292 at -874835; PX 65 at -630749; PX 19 (Schwartz) 64:6-71:13.
138. Account Freeze Class representative	Disputed in part. Chong's account was

Chong's EDD prepaid account [redacted]. DX 65 at PDF p. 10.	frozen for 7 days, from September 28, 2020 to October 4. However, his permanent credits were rescinded on October 4, 2020, and he did not receive credit for the stolen funds until December 10, 2020, after this class action lawsuit was filed. PX 126 ¶¶9-14; PX 255 (Rog 5); PASF 91-93.
139. Account Freeze Class representative Moore's EDD prepaid account [redacted]. DX 68 at PDF p. 6.	Disputed in part. Moore's account was frozen for 7 days, from September 28, 2020 to October 4. However, her permanent credits were rescinded on October 4, 2020, and she did not receive credit for the stolen funds until December 9, 2020, after this class action lawsuit was filed. PX 293 ¶¶8-12; PX 256 (Rog 5); PASF 91-93.
140. Account Freeze Class representative Yuan's EDD prepaid account was [redacted]. DX 69 at PDF p. 6.	Disputed in part. Yuan's EDD prepaid account was frozen for 7 days, from September 28, 2020 to October 4, 2020. Yuan's account was then re-frozen on December 17, 2020, and finally unfrozen again on January 15, 2021. However, disputed to the extent that Yuan did not have access to his funds from October 4, 2020 to November 10, 2020 because the Bank rescinded the credit for the fraudulently stolen $1,800. This caused his account balance to go negative and kept him from receiving additional funds placed into the account. Additionally, disputed to the extent that there was a "[redacted]" beyond calling the Bank, experiencing long wait times, dropped calls, and getting elusive responses. PX 294 ¶¶4-20, 10-12; PX 257 (Rog 5); PASF 91-93.
141. Account Freeze Class representative Koole's EDD prepaid account was [redacted]. DX 66 at PDF p. 6; DX 33; *see* DX 14.S	Disputed in part. Koole's prepaid account was frozen on or around December 31, 2020 (the same day she reported unauthorized withdrawals) and unfrozen on March 18, 2021. [redacted]

244:4-8.	[redacted]. Additionally, instead of using CFF-1 to freeze accounts, the Bank could have used CFF-1 to block accounts, which would have allowed cardholders to verify their identities with the Bank. DX 66 at 3; PX 295 ¶5; PX 251 (Koole's Supp. Rog. Resp. No. 5); PASF 91-93; RSUF 99, 116, 125, 136.
142. Account Freeze Class representative Moon's EDD prepaid account was [redacted]. DX 67 at PDF p. 14; DX 34; DX 35; DX 36; DX 37; *see* DX 14.S 244:4-8.	<u>Disputed in part</u>. Moon's account was frozen on or about December 17, 2020 and the freeze was converted to a block on March 18, 2021. However, Moon did not receive his credit until April 5, and Moon's account was not unblocked until April 15, 2021, after this class action lawsuit was filed. [redacted]. Instead of using CFF-1 to freeze accounts, the Bank could have used CFF-1 to block accounts, which would have allowed cardholders to verify their identities with the Bank. PX 296 ¶14; PX 252 (Rog 5); PX 230 (Moon) 102:14-20; See PASF 91-93; RSUF 99, 116, 125, 136
143. All Account Freeze Class members regained full access to their prepaid accounts [redacted]. DX 14.AB.1 ¶ 73; DX 7.A ¶ 90; *see* DX 14.AB 131:6-13, 132:4-16, 133:12-134:1; ECF 349 at 37; DX 27 at No. 4.	<u>Disputed in part.</u> Undisputed that Account Freeze Class members eventually regained access to their prepaid accounts by verifying their identities with the Bank after the Bank unfroze class members' accounts on March 18, 2021. However, Account Freeze Class members were harmed by the Bank's delay in granting cardholders' access to their prepaid accounts and funds due to the opportunity cost of losing access to their funds. RSUF 175, 189; ECF 494 at 85-87.
144. Upon request to EDD, Account Freeze Class representative Koole [redacted]. DX 16 at No. 3.	<u>Disputed in part</u>. [redacted]

	[redacted]. Koole's account remained frozen until April 5, 2021 restricting her access to any of the EDD benefits that were in her account. DX 16 at No. 3; PX 251 (Koole's Supp. Rog. Resp. No. 5); PX 295 ¶7; RSUF 99, 116, 125, 136.
145. Upon request to EDD, Account Freeze Class representative McClure [redacted]. DX 14.T 83:5-84:1.	Disputed in part. [redacted]. Also, on January 27, 2021, the Bank credited McClure's EDD debit card account with the $1,003 that had been stolen from her account in November 2020. However, as her account was still frozen, McClure was unable to access those reimbursed funds. DX 14.T 83:5-84:1; PX 299 ¶10; PX 41 (McClure) 82:17-83:4, 83:5-13; PX 259 at 9-11.
146. Account Freeze Class representative Moon [redacted]. DX 14.W 242:1-7.	Disputed in part. [redacted]. Additionally, the Bank did not unblock Moon's account until April 15, 2021. DX 14.W 242:1-7; PX 296 ¶14; PX 252 (Moon's Supp. Rog. Resp. No. 3); PX 230 (Moon) 126:4-16.
147. Upon request to EDD, [redacted]. DX 14.AC 61:8-20.	Disputed in part. [redacted]. The Bank froze Rivera's account on February 5, 2021. PX 40 (Rivera) 61:13-25; PX 260 at 7-10, 18-21; PX 11 ¶10.
VI. THE COMPENSATION PAID TO CLASS MEMBERS	
148. BANA reconsidered error claims denied by the CFF if [redacted]	Disputed. The account had to be unfrozen *and* cardholders had to affirmatively make a request before the Bank would initiate a

[redacted]. DX 126; DX 91; DX 184; DX 51 at -5518; DX 14.E 232:8-233:2; DX 14.M 42:18-43:3, 176:16-177:2; DX 14.Y 73:8-15, 302:17-303:9, 304:9-16.	reconsideration which was voluntary and not subject to statutory timelines prior to the preliminary injunction in this case. PX 105 at -100641-642 ("[redacted]"); PX 1 (Kreis Rpt) at 14 n.26; PX 232 (Kreis) 191:5-15.
149. Some error claims [redacted]. DX 31 at No. 39; DX 14.AG 101:22-102:2; DX 14.M 232:12-22; DX 14.Y 61:1-20; DX 3 ¶ 7.	<u>Disputed</u>. The Bank did not automatically re-issue credits to all cardholders whose permanent credits had been rescinded, only those "[redacted]," DX 31 at No. 39, and the Bank did so [redacted], DX 76 at -7224. Reimbursement dates spanned from [redacted], with many Credit Rescission class members not reimbursed until various times [redacted]. PX 139 (Rog Ex. 2); PX 140at -571310; PX 141 at -417490; PX 64 at -169954.
150. Other error claims [redacted]. DX 43.A at -2557-58; DX 3 ¶ 7; *see also* DX 31 at No. 39.	<u>Undisputed</u> that the Bank manually investigated and paid some claims that had been automatically denied by CFF-1. <u>Disputed</u> on the grounds that, prior to the preliminary injunction in this case, the Bank erected obstacles to obtaining relief, and the reconsideration process itself was not subject to any timeline. PX 12 (Daniels) 247:13-248:14; PX 1 (Kreis Rpt) at 14 n.26; PX 232 (Kreis) 191:5-15PX 186; PX 153 at -106093-94.
151. BANA entered into consent orders with the OCC and CFPB in July 2022. DX 41; DX 42; DX 3 ¶ 3; *see* DX 14.P 57:20-58:20.	<u>Undisputed</u> that on July 14, 2022, the OCC and CFPB entered consent orders that levied $225 million in fines and required consequential-harm payments for violations of EFTA and abusive acts or practices related to the CFF. PX 211; PX 212.
152. In connection with the consent orders, BANA submitted a Remediation Plan and Addenda [redacted]. DX 43.A; DX 43.B; DX 43.C; DX 14.P	<u>Undisputed</u>. PX 213 (Remediation Plan).

57:20-60:19; DX 3 ¶ 4.	
153. Among other things, the Remediation Plan [redacted]. DX 43.A; DX 14.P 61:2-17, 66:4-67:10, 68:5-70:22, 93:16-25; DX 3 ¶ 5.	Undisputed that the Remediation Plan [redacted]. Disputed that the automated-denial CFF "investigated" any claims and disputed that the Remediation Plan pertained to cardholders "[redacted]." The Consent Orders limited relief to harmed "Affected Consumers" and the Remediation Plan [redacted] PX 213 at -02557, 102559; PX 211 at 3; PX 212 at 14-15.
154. [redacted] DX 43.A at -2556; *see* DX 14.P 86:6-87:20, 90:19-91:1, 93:1-95:12; DX 3 ¶ 6.	Undisputed that is stated in the Remediation Plan. PX 213 at -2556.
155. The Remediation Plan was [redacted] DX 43.A at -2556, -2563, -2566; *see* DX 14.P 65:25-66:21, 77:7-25, 78:14-79:6, 86:6-87:20, 90:19-91:1, 109:9-22; DX 3 ¶¶ 6, 9.	Disputed. The quoted statement regarding [redacted]. PX 213 at -2556, -2563, -2566.
156. BANA's priority in designing the Remediation Plan was to [redacted]. DX 43.A at -2558 n.16; *see also* DX 14.P 58:16-60:10, 66:4-21, 69:16-25, 77:7-25; DX 14.D 239:25-242:7; DX 14.Z 172:2-	Disputed. Remediation Plan footnote 16 states that [redacted]." PX 213 at -2558 n.16.

173:3; DX 3 ¶ 12.	
157. Pursuant to the Remediation Plan, the [redacted]. DX 43.A at -2556 n.6, -2556-64; DX 41 § IX(2)(b)(i); DX 42 §VIII(95)(b).	Undisputed that the Remediation Plan stated [redacted]. Disputed that the amounts paid were fully compensatory, including because EFTA treble damages are not available in public enforcement actions. 2 U.S.C. §5565(a)(3); 15 U.S.C. §1693o(a)(5).
158. As referenced in SUF ¶¶ 148-150, prior to the implementation of the Remediation Plan, [redacted]. DX 31 at No. 39; DX 43.A at -2561, -2563-64; DX 14.P 78:14-79:20, 87:13-20, 90:19-91:1, 93:1-8; 298:1-18; DX 3 ¶ 7.	Undisputed that pursuant to the preliminary injunction in this case, prior to the Remediation Plan, the Bank was required to reconsider claims that had been automatically denied by CFF-1 in accordance with EFTA's timelines. PX 209; PX 210.
159. Pursuant to the Remediation Plan, [redacted]. DX 43.A at -2557, -2558 n.9 & n.14, -2559, -2561, -2563-64; DX 14.P 285:23-286:8; DX 3 ¶ 8.	Undisputed that under the Remediation Plan [redacted].
160. Pursuant to the Remediation Plan, [redacted]	Undisputed.

[redacted]. DX 43.A at -2559; DX 3 ¶ 8; DX 14.P 129:6-23.	
161. Pursuant to the Remediation Plan, [redacted]. DX 3 ¶ 9; DX 43.A at -2558; DX 14.P 108:21-111:5, 317:2-20.	Disputed. [redacted]" PX 213 at -102558
162. Pursuant to the Remediation Plan, [redacted] DX 43.A at -2561, -2564; *see also* DX 9.A ¶ 33.	Undisputed.
163. BANA [redacted] DX 43.A at -2561 & n.25.	Disputed. [redacted] PX 213 at -2561 & n.25.
164. Pursuant to the Remediation Plan, [redacted] DX 43.A at -2562-64; *see* DX 9.A ¶ 33.	Undisputed.
165. Pursuant to the Remediation Plan, [redacted]	Disputed. [redacted]

[redacted]. DX 43.A at -2556, -2566; *see* DX 14.P 95:20-96:11, 127:5-19; DX 3 ¶ 11.	[redacted]. DX 7 ¶¶ 6f-g.
166. As of September 29, 2025, only [redacted] of [redacted] class members [redacted] DX 7 ¶ 6f.	Disputed. *See* RSUF 165.
167. As of September 29, 2025, [redacted] of the [redacted] class members [redacted]. DX 7 ¶ 6g.	Disputed. *See* RSUF 165.
168. As defined, every Claim Denial Class member received payment for their claim(s) that triggered CFF-1 [redacted]. DX 7 ¶ 6b, d, e; DX 14.AG 122:18-123:6; DX 14.AB 112:11-113:10, 122:9-24; DX 43.A at -2557; ECF 494 at 96-97.	Undisputed.
169. The Credit Rescission, Account Freeze, Customer Service, and EMV Chip Classes are defined as subsets of the Claim Denial Class. ECF 494 at 96-97; DX 14.AB.1 ¶¶ 4, 88, 89, 97, 98.	Disputed. ECF 494 at 96-97; PX 5 ¶ 4.
170. As of September 29, 2025, pursuant to the Remediation Plan, [redacted]. DX 7 ¶ 6d.	Undisputed that [redacted]. DX 7 ¶ 6d.
171. [redacted]	Disputed. The Regan Report provides a methodology for calculating damages based on the lost time value of money that can be applied to whatever interest rate the factfinder ultimately adopts. PX 5 (Regan Rpt) ¶¶ 9, 13, 17, 44.

[redacted].[2] DX 7 ¶ 6d; DX 14.AB.1 ¶¶ 50, 69, 85.	
172. All members of the Claim Denial and Credit Rescission Classes [redacted] [redacted]. DX 27 at Nos. 2&6; DX 27.A; DX 7 ¶ 6b; *see* DX 14.AB 122:17-123:8.	Undisputed.
173. BANA's expert economist Victor Stango opined that the measure of "economic damages" or "the difference between actual consumer outcomes and consumer outcomes in a 'but-for' hypothetical world absent the at-issue conduct" does not include repaid principal amounts when "a consumer has not lost funds, but rather has lost access to funds for some period of time." Therefore, Stango opines that it would be "economically illogical" to treat principal claim amounts already received as actual damages sustained as a result of CFF-1. DX 7.A ¶¶ 31-32.	Disputed. The cited opinions are legal argument inconsistent with this Court's prior rulings and controlling precedent. They are not proper subjects of expert testimony and should be excluded. The cited opinions are also inadmissible as unreliable and not grounded in sound principles or methods. ECF 94 at 84 and cases cited; ECF 571.
174. Nearly [redacted] of the Claim Denial Class members were paid [redacted] of initiating their error claim. DX 7.A ¶ 64.	Undisputed.
175. All members of the Account Freeze	Undisputed that members of the Account

[2] The calculations included in SUF ¶¶ 170-171 are provided pursuant to Fed. R. Evid. 1006. As explained in the Stango Declaration, the calculations are based on data produced in BANA's Second Revised Second Supplemental Response to Interrogatory Nos. 2, 4, 5, 6, 14 and 15 (Set 1) (DX 27), First Supplemental Response to Interrogatory No. 21 (Set 3) (DX 28.A), and First Supplemental Response to Interrogatory No. 46 (Set 7) (DX 31.B), and reflect calculations for the certified class members, applying Plaintiffs' expert Regan's proposed methodology for identification, as of September 29, 2025. BANA represents that the three exhibits to BANA's Updated Responses (Exs. 1, 4, and 5) and the three exhibits to BANA's Revised Supplemental Set 1, 3, and 7 Responses (Exs. 3, 6, and 16) contain source data in voluminous excel documents that cannot be conveniently filed using the Court's ECF system. *See* DX 27.A, DX 27.B, DX 27.C, DX 27.D, DX 28.A.1, DX 31.B.1. Copies of BANA's Updated Responses and the accompanying exhibits have been served and made available to Plaintiffs. Should the Court desire to review the source data contained in BANA's Updated Responses, BANA will provide it to the Court electronically in its preferred medium and at its convenience.

Class were [redacted]. DX 14.S 294:23-302:25; DX 89; DX 175; DX 104; DX 105.	Freeze Class were unable to regain full access to their accounts by verifying their identifies with the Bank until the Bank unfroze accounts on March 18, 2021.
176. All members of the Claim Denial, Credit Rescission, and Account Freeze Classes [redacted]. DX 43.A at -2557-28, -2560-64; ECF 394 at 96-97; DX 7 ¶ 6e.	Disputed. Under the Remediation Plan "[redacted]. PX 213 at -102561, -102563-65.
177. All members of the Customer Service and EMV Chip Classes are also members of at least one of the Claim Denial, Credit Rescission, or Account Freeze Classes, and [redacted]. DX 14.AB.1 ¶¶ 88, 98.	Disputed. The payments provided to class members [redacted] Customer Service and EMV Chip class members [redacted] as calculated in the Regan Report. *See* PX 4 (Regan Rpt) ¶¶91-96, 99-101.
178. [redacted]. DX 43.A at -2560-61; DX 14.P 65:17-66:25, 77:7-25, 79:21-81:14; DX 3 ¶ 14; DX 7.A ¶ 67.	Disputed. The CFPB and OCC Consent Orders limited relief to harmed "Affected Consumers" and the Remediation Plan pertained to "[redacted]." PX 213 at -02557, 102559; PX 211 at 3; PX 212 at 14-15.
179. [redacted]. DX 9.A ¶¶ 13, 16, 47 n.73 & n.74; DX 27 at Nos. 2&6; DX 31 at No. 39.	Disputed. The analysis is wrong as it fails to consider that under the Remediation Plan, cardholders with "[redacted] PX 204 at No. 39; PX 213 at -02558; PX 32 (Pry) 194:2-196:19.
180. [redacted]	Disputed. Lennon's prepared-for-litigation

[redacted]. DX 43.A at -2557; DX 14.P 65:25-66:21, 77:7-25, 78:14-79:6, 109:9-22, 298:2-18; DX 14.Z 172:2-173:3; DX 3 ¶ 12; ECF 350-9 ¶ 11; ECF 350-8 ¶ 11.	statement, quoted here (DX 3 ¶ 12), is contradicted by the record which demonstrates that the Bank's [redacted]. PX 105 at -100643-44, 100649-51; PX 24 (Ehresman) 90:9-17; PX 18 (Johnson) 190:22-192:8; PX 248 at -417272; PX 1 (Kreis Rpt) ¶¶34-37; PX 60 at -559893-901; PX 32 (Pry) 215:20-22.
181. [redacted] ECF 350-8 ¶¶ 8-12, 14, 16-21; *see also* DX 5 ¶ 7.	<u>Disputed</u>. In discussing "[redacted] Martin Declaration (ECF 350-8) does not distinguish between the CFF indicators or combinations of CFF indicators. Because only CFF-1 is at issue here, there is no evidence that those individuals are class members. The cited paragraph of the current Martin Declaration (DX 5 ¶ 7) does not present any evidence or belief specific to CFF-1. DX 5 ¶ 7; ECF 350-8; ECF 494 at 58-59.
182. With respect to error claims that triggered CFF-1, BANA determined to [redacted]. ECF 350-8 ¶¶ 9, 14, 16-21; *see also* DX 9.A ¶¶ 51-54.	<u>Disputed</u>. The cited paragraphs of the Martin Declaration (ECF 350-8) concern the Bank's "[redacted]" Pry's report and testimony simply characterize the Martin Declaration, and Pry is "not an expert on claims processing." PX 105 at -100643-644, 100649-651; PX 24 (Ehresman) 90:9-17; PX 18 (Johnson) 190:22-192:8; PX 248 [Johnson Ex. 174] at -417272; PX 1 (Kreis Rpt) ¶¶34-37; PX 60 (AISOP) at -559893-901; PX 32(Pry) 215:20-22.
183. For many error claims that triggered	<u>Disputed</u>. *See* RSUF 182. Additionally, the

CFF-1, [redacted]. ECF 350-8 ¶¶ 9, 14; DX 14.Z 215:4-13; DX 9.A ¶¶ 51-54.	Martin Declaration (ECF 350-8) does not say "[redacted]." ECF 350-8 ¶¶ 9, 14; PX 32 (Pry) 215:20-22.
VII. PLAINTIFFS' EXPERTS' OPINIONS	
184. Plaintiffs offer damages opinions from three expert witnesses: Greg Regan, David Levine, and Chloe East. *See* DX 14.AB.1; DX 14.R.1; DX 14.F.1; DX 14.AB 12:17-18:20; DX 14.R 153:3-154:23; DX 14.F 23:14-24:8.	Undisputed.
185. Plaintiffs' experts purport to quantify the consequential harm suffered by the Claim Denial, Credit Rescission, and Account Freeze Classes by estimating the cost of borrowing substitute funds during the time class members were without access to their EDD benefits. DX 14.AB.1 ¶¶ 9, 13, 17, 40-51, 66-69, 78-86; DX 14.R.1 ¶¶ 10-13, 17-18, 31-32, 34, 44; DX 14.F.1 ¶¶ 9-10, 14, 21, 28-31, 35; DX 14.AB 135:6-17, 136:18-140:14, 159:10-161:24, 184:13-185:15, 225:16-227:8; DX 14.R 22:3-12, 23:17-25:20, 41:16-42:6; DX 14.F 58:19-62:4, 126:14-129:2, 132:21-133:5, 135:9-136:22, 172:18-177:15.	Disputed. Plaintiffs' experts do not purport to quantify the precise consequential harms experienced by each individual class member by "estimating the cost of borrowing substitute funds…." As to consequential damages, they opine as to an appropriate interest rate that may be used to approximate on a classwide basis the lost time value of the money to which the class members were denied access. In so opining, Plaintiffs' experts relied upon an extensive economic literature and data showing that the typical UI recipient affected by the Bank's challenged conduct would have needed either to borrow money *or* to forgo spending on basic necessities such as food, housing, and medical care; that many class members did not have access to credit sufficient to cover their lost UI benefits, but would have preferred to rely on credit rather than forgo spending on basic needs; and that the credit card interest rates were therefore a conservative measure of the time value of the UI benefits at issue. PX 5 (Regan Rpt) ¶¶9, 13, 17, 21, 40-51, 69, 80, 99; PX 7 (East Rpt) ¶¶8-10, 15-37; PX 6 (Levine Rpt) ¶¶9-45.
186. Regan does not offer an opinion on the appropriate interest rate to estimate class members' consequential damages, but states that 10% is consistent with California	Disputed. Regan does not opine that a 10% interest rate is "consistent with California law" specifically applicable to this context; he opines that it is consistent with the interest

law and that 20% would be "reasonable" based on available credit card interest rates during the class period and the assumption that "the most likely source of funds accessible to an impacted cardholder would have been increased credit card utilization." DX 14.AB 12:17-18:20, 30:23-31:3, 56:15-57:1,165:17-167:5, 168:12-18; *see also* DX 14.AB 144:18-145:2, 153:23-154:16; DX 14.AB.1 ¶¶ 46-51.	rate "applied to judgments in California." He further opines that a 10% interest rate "likely understates the cost a consumer would have incurred during" the relevant period, and that, based on his review of an extensive economic literature concerning the affected population and his previous experience studying unsecured consumer debt, a 20% interest rate is a conservative measure of the time value of the money to which class members were denied access. PX 5 (Regan Rpt) ¶¶40-51.
187. Levine opines that the appropriate interest rate to estimate consequential damages is 15.9% based on the assumption that "[w]hen UI payments disappear, most UI recipients turn to credit cards to cover those expenses." DX 14.R.1 ¶¶ 12, 45; *see also* DX 14.R 69:9-19, 135:7-136:20.	Disputed. Levine's opinion that 15.9% compound interest rate is "an appropriate proxy for the opportunity cost of losing access to UI" is not based on "assumption[s]" about the specific financial circumstances of individual class members. He based his opinion on an extensive economic literature showing that, consistent with "common practice in the field of economics," the typical UI recipient whose access to benefits was denied would have been forced to borrow or forgo spending on basic necessities, and that, if credit card borrowing were not available, most class members "would have turned to even higher-cost forms of borrowing." to make ends meet. PX 6 (Levine Rpt) ¶¶9-45.
188. East opines that the appropriate interest rate to estimate consequential damages is 20.8% based on the assumption that "most" class members will have "turn[ed] to borrowing" in response to the temporary loss of funds. DX 14.F.1 ¶¶ 10b, 10f, 36; *see also* DX 14.F 59:22-62:4, 133:16-134:14.	Disputed. East's opinion is that a 20.8% compound interest rate is "an appropriate figure to use" to approximate the time value of the UI benefits at issue to the median UI recipient. She based that opinion upon her analyses of an extensive economic literature and of data from the U.S. Census Bureau and Federal Reserve showing that California UI recipients during the relevant period generally had "low levels of savings" and would therefore likely have needed to resort to "borrowing, or cutting back on necessities, or some combination of the two" if they lost access to their UI benefits. Relying on that same literature and data—which shows that the population of UI recipients is especially likely to be denied credit, to receive less credit than they seek, and to be forced to cut

	spending on necessities such as food and medical care—Dr. East concludes that a 20.8% interest rate would be a conservative approximation of the time value of UI benefit money for the median UI recipient. PX 7 (East Rpt) ¶¶8-10, 15-37
189. BANA's Interrogatory (ROG) No. 14 to Class Representative Plaintiffs asked that they state [redacted] *See, e.g.*, DX 15 at No. 14; DX 18 at No. 14; DX 19 at No. 14.	Undisputed and immaterial. As this Court and the Ninth Circuit have held, damages arising from the lost time value of money may be measured on a classwide basis by use of a compound interest rate. Any interest rate necessarily reflects a generalization about the time value of money that is not strictly tied to the specific economic circumstances of each individual to whom it is paid. There is no requirement that individual class members personally propose an interest rate for such an interest rate to be used to approximate damages on a classwide basis. Rather, the question of "which interest rates should be applied is an issue for the fact finder." ECF 494 at 86-87.
190. In response to ROG No. 14, class representative Moore said [redacted]. DX 19 at No. 14.	Undisputed and immaterial. *See* RSUF 189
191. In response to ROG No. 14, class representative Moon said [redacted]. DX 18 at No. 14.	Undisputed and immaterial. *See* RSUF 189
192. In response to ROG No. 14, class representative Chong said he [redacted] DX 15 at No. 14.	Undisputed and immaterial. *See* RSUF 189
193. In response to ROG No. 14, class representative Koole said she [redacted]	Undisputed and immaterial. *See* RSUF 189

[redacted]. DX 16 at No. 14.	
194. In response to ROG No. 14, class representative McClure said she [redacted] DX 17 at No. 14.	Undisputed and immaterial. *See* RSUF 189
195. In response to ROG No. 14, class representative Rivera said she [redacted] DX 21 at No. 14.	Undisputed and immaterial. *See* RSUF 189
196. In response to ROG No. 14, class representative Oosthuizen said he [redacted] DX 20 at No. 14.	Undisputed and immaterial. *See* RSUF 189
198. In response to ROG No. 14, class representative Yuan said he [redacted] DX 23 at No. 14.	Undisputed and immaterial. *See* RSUF 189
199. Regan, Levine, and East testified that they do not know how many class members needed to borrow money or pay credit card interest, or if any did. DX 14.AB 171:1-176:14; DX 14.R 71:13-16, 140:17-141:4; DX 14.F 141:12-143:21.	Undisputed and immaterial. *See* RSUF 189
200. Regan, Levine, and East testified that not all class members paid credit card interest, or any interest, at the rates they proposed. DX 14.AB 160:22-161:24, 182:9-185:24, 214:23-215:5; DX 14.R 44:24-46:12, 140:16-141:3; DX 14.F 152:2-14, 176:15-177:15.	Undisputed and immaterial. *See* RSUF 189
201. Regan, Levine, and East testified that their damages methods did not reflect the consequential harm suffered by any specific class member or members, including class representatives.	Undisputed and immaterial. *See* RSUF 189

DX 14.AB 48:19-49:15, 167:7-17, 169:16-172:25, 190:9-21, 197:10-25; DX 14.R 71:13-16, 74:8-75:25, 123:2-18; 140:17-141:4; DX 14.F 30:16-31:7, 59:17-62:4, 103:1-4, 109:13-110:7, 118:1-23.	
202. Regan, Levine, and East testified that their damages methods overstated the consequential harm suffered by at least some class members. DX 14.AB 186:16-187:5, 223:21-224:16; DX 14.R 35:21-43:1, 43:12-46:12; DX 14.F 122:23-123:18, 124:14-24, 136:4-22.	Undisputed and immaterial. *See* RSUF 189
203. Regan, Levine and East testified that their damages methods likely understated the consequential harm suffered by some class members. DX 14.AB 184:13-185:15; DX 14.R 94:17-97:2; DX 14.F 124:14-24.	Undisputed and immaterial. *See* RSUF 189
204. Regan, Levine and East stated their methods are a "conservative" estimate of class members' consequential harm. DX 14.AB.1 ¶¶ 9, 13, 17, 19, 49, 51, 69, 86, 93; DX 14.R.1 ¶¶ 11-14, 31-32, 43-45, 53; DX 14.F.1 ¶¶ 10e, 37; DX 14.AB 143:8-20, 156:9-157:20, 227:9-20; DX 14.R 19:19-20:1, 40:8-23, 42:14-20, 43:12-44:1, 48:16-49:21, 50:25-54:17, 72:14-73:20, 79:20-80:9, 85:8-25, 88:6-25, 143:3-144:23; DX 14.F 59:2-24, 146:13-147:21, 162:18-164:3.	Undisputed and immaterial. Regan, East, and Levine do state that their proposed interest rates reflect a conservative approximation of the time value of the money to which class members were denied access, but they do not state that their proposed interest rates are appropriate merely because they are conservative. As each expert's report explains, the typical UI recipient affected by the Bank's challenged conduct would have needed either to borrow money or to forgo spending on basic necessities such as food, housing, and medical care; that many class members did not have access to credit sufficient to cover their lost UI benefits, but would have preferred to rely upon credit rather than forgo spending on basic needs; and that the credit card interest rates were therefore a conservative measure of the time value of the UI benefits at issue. PX 5 (Regan Rpt) ¶¶9, 13, 17, 21, 40-51, 69, 80, 99; PX 7 (East Rpt) ¶¶8-10, 15-37; PX 6 (Levine Rpt) ¶¶9-45.
205. Regan, Levine, and East testified that they did not review any record evidence of consequential harm suffered by class	Disputed. Regan's expert opinions are based in part on the class-member-specific data included as Sched. 1 to his reports. This data

members. DX 14.AB 48:7-49:7, 59:7-14, 139:25-140:14, 171:1-172:2, 173:16-176:14, 180:4-181:15, 182:9-25, 190:9-21; DX 14.R 30:4-32:6; DX 14.F 142:6-24, 150:25-153:8.	provides crucial inputs for the formulas he proposes. East and Levine specifically reviewed Regan's reports, including the class-member-specific data included in Schedule 1, in reaching their own opinions. Regan, East, and Levine also relied on aggregate data and on an extensive economic literature that is applicable to the population of class members as a whole. PX 5 (Regan Rpt) ¶¶5-6 & Schedule 1; PX 7 (East Rpt) ¶7 & Appendix B; PX 6 (Levine Rpt) ¶8 & Appendix B.
206. None of Plaintiffs' experts offer any proposed methodology to identify, assess, calculate, or quantify emotional distress or any other alleged consequential harms for the classes beyond (1) alleged interest rate charges, and (2) alleged lost opportunity costs while members of the Customer Service Class were on hold. DX 14.AB 117:14-118:14; DX 14.F 59:2-11; *see generally* DX 14.AB.1; DX 14.R.1; DX 14.F.1; DX 14.F 23:14-24:8, 27:16-28:2, 29:10-15, 35:2-12, 41:1-7, 42:1-13; DX 14.R 153:3-154:23; DX 14.AB 12:17-18:20, 30:23-31:3, 56:15-57:1.	Disputed. Regan, East, and Levine do not purport to assess any "alleged interest rate charges" or specific "alleged lost opportunity costs while members of the Customer Service Class were on hold." As explained above, they propose to measure the lost time value of money on a classwide basis by use of a compound interest rate, which—again, like all interest rates—necessarily reflects a generalization that is not strictly tied to the specific economic circumstances of each individual class member. Regan and Levine further propose to use the minimum wage as a proxy for the lost opportunity costs inflicted by the Bank's challenged conduct as to members of the Customer Service Class—a methodology many other economists have used to measure the value of lost time. PX 5 (Regan Rpt) ¶¶9, 13, 17, 21, 40-51, 69, 80, 99; PX 7 (East Rpt) ¶¶8-10, 15-37; PX 6 (Levine Rpt) ¶¶9-45.
207. The consequential harm damages Regan calculated for the EMV Chip Class overlap with the consequential harm damages he calculated for the Claim Denial and Credit Rescission Classes because they are based on the same fully reimbursed claims. DX 14.AB.1 ¶¶ 40-51, 69, 99; DX 14.AB 303:2-13, 304:15-305:1.	Undisputed and immaterial. Regan makes clear that although class members "may have more than one claim or may belong to more than one class," including the EMV Chip Class, he is not proposing that any class member recover "the same damages multiple times," and that "it may be appropriate to disaggregate the damages amounts" if an award is made. He also makes clear that the damages figures he proposes "require an offset for the amounts that the Bank has paid or presently expects to pay pursuant to the Remediation Plan," but, for the reasons

	explained in the accompanying briefing, he does not and could not opine on the legal questions of how such an offset is to be applied (including the question of whether any offset is applied before or after the principal amounts of damages are trebled). PX 5 (Regan Rpt) ¶¶6, 50 & n.60.
208. Regan purports to quantify the amount that BANA allegedly profited by providing EDD prepaid cards without EMV chips during the EMV Chip Class period as [redacted]. DX 14.AB.1 ¶ 101; *see* DX 55 at -4101.	Undisputed. Profits attributable to avoided costs—here, the costs the Bank avoided by refusing to include EMV chips in its EDD debit cards—are a standard way of calculating disgorgement damages. ECF 392 at 20-21.
209. Plaintiffs' expert witness Daniel Kreis opined that BANA's [redacted] were consistent with industry standards and compliant with EFTA. DX 14.O.1 ¶¶ 1, 10, 36-39; DX 14.O 17:11-21, 28:17-30:11.	Disputed. The Kreis Report states "'reconsideration' investigations-i.e., when a financial institution re-investigates a denied claim at the cardholder's request-are widely deemed in the industry not to be required by EFTA/Reg E, but to be a voluntary customer service measure. Accord Daniels Tr. 247:16-248:14." PX 1 at 14 & n.26.
VIII. BANA'S CALL CENTERS	
210. BANA's call centers transitioned from a [redacted]. DX 14.J 278:17-20; DX 118; DX 116; DX 128.	Disputed as immaterial. The Bank's [redacted]. Claims Call Center lapsed in fall 2020 due to deliberate understaffing. PX 3 (Minnucci Rpt) ¶¶67-72; PX 203; *see also* RSUF 221.
211. The change to a work-from-home environment created [redacted]. *See* DX 121; DX 124; DX 178.	Disputed as immaterial. *See* RSUF 210. Additionally, the Bank's management of the switch from in-office to remote work for call center workers was inadequate and exacerbated the increased risk of fraud from call center staff working at home. PX 3 (Minnucci Rpt) ¶¶100-105.
212. In March 2020, BANA's call centers for its EDD prepaid card program were staffed with approximately [redacted] full-time	Undisputed.

equivalents (FTEs) handling approximately [redacted] calls per month. DX 2 ¶ 7; *see also* DX 173; DX 174; DX 25; DX 24.	
213. Between March 2020 and September 2020, call volumes for BANA's prepaid call centers [redacted]. DX 2 ¶ 7; *see also* DX 173; DX 174; DX 25; DX 24.	Undisputed.
214. By the end of 2020, BANA's call centers for its prepaid cards were staffed with [redacted] FTEs representing [redacted] from March to December 2020. DX 2 ¶ 12; DX 173; DX 174; DX 25; DX 24.	Disputed as immaterial. One period of extremely poor Claims Call Center performance is relevant to the Customer Service Class: September 28-November 29, 2020. Dkt. 78 at 1-2. The Bank's [redacted] no bearing on the performance of the Bank's call centers at other times of the year.
215. BANA's Claims Call Center handled calls related to potentially unauthorized transactions and billing errors. DX 2 ¶ 6.	Undisputed.
216. In February 2020, the Claims Call Center was staffed with [redacted] full-time equivalents handling [redacted] calls per month. By October 2020, [redacted] incoming calls in October. *See* DX 173.	Disputed as incomplete. Although call levels did increase, the Bank [redacted]. PX 3 (Minnucci Rpt) ¶¶60-65; PX 16 (Golden) 66:8-68:6; PX 297 at -60339.
217. The Claims Call Center was staffed with [redacted] FTEs by December 13, 2020. *See* DX 173; *see also* DX 2 ¶ 15.	Disputed as immaterial. *See* RSUF 214.
218. In March 2020, the average speed to answer (ASA) for BANA's prepaid call centers were at or below [redacted]. *See* DX 2 ¶ 7; DX 173; DX 174; DX 25; DX 24.	Undisputed.
219. By the end of December 2020, the ASA for BANA's prepaid call centers, including the Claims Call Center, were at or	Disputed as immaterial. *See* RSUF 214.

below [redacted]. DX 173; *see* DX 2 ¶ 21.	
220. [redacted]. DX 154 at -4405; DX 179; *see* DX 14.V 57:6-60:2.	<u>Disputed</u> as immaterial. The Bank's [redacted] has no bearing on whether the Bank adequately or reasonably staffed the Claims Call Center at critical points of 2020. Moreover, the Bank avoided approximately [redacted] in expenditures that it would have spent had it staffed the Claims Call Center sufficiently from September 28 to November 29, 2020. PX 3 (Minnucci) ¶¶106-113; PXs 158-60.
221. BANA [redacted]. DX 14.A 327:2-9; DX 14.J 82:5-83:8; DX 14.I 204:19-204:21; DX 14.Y 76:17-77:3; *see* DX 2 ¶ 18; *see also* DX 148.	<u>Disputed</u>. Despite [redacted] before implementing the CFF on September 28, 2020—an event the Bank knew would drive up call volume as cardholders attempted to report claims and to call back when claims were denied. [redacted]. PX 3 (Minnucci Rpt) ¶¶60-68; 72-77; PX 152 at -118438; PX 153 at -106094; PX 16 (Golden) 75:8-22; 124:22-125:1.
222. CEO Moynihan testified that [redacted]. DX 14.X 158:14-25, 182:9-183:15.	<u>Disputed.</u> Moynihan did not testify that he [redacted]. PX 28 (Moynihan) 160:11-20, 165:9-25. PX 3 (Minnucci Rpt) ¶¶60-66; *see also* PX 288.

223. Jenn Ehresman, who was not responsible for or involved in staffing decisions for the Claims Call Center, testified that [redacted]. DX 14.G 20:25-21:5, 21:11-23, 55:2-6, 57:20-58:2.	Disputed as immaterial. *See* RSUF 221.
224. Faiz Ahmad testified [redacted] DX 14.A 327:2-9; *see* DX 14.J 82:5-83:8; DX 14.I 204:19-204:21.	Disputed as immaterial. *See* RSUF 221.
225. Bill Golden, the executive responsible for BANA's prepaid call centers between August 2020 and November 2021, testified that [redacted]. DX 14.J 318:16-17.	Disputed as immaterial. The Bank's [redacted] fell far below industry standards due to deliberate understaffing. *See* RSUF 221.
226. In August 2020, [redacted]. DX 179; DX 14.V 57:6-61:11.	Disputed as immaterial. *See* RSUF 220.
227. BANA [redacted]. DX 2 ¶ 16; *see* DX 48; DX 49; *see also* DX 45; DX 46.	Undisputed.
228. Plaintiffs' expert Jay Minnucci purported to calculate [redacted] of costs avoided by BANA as a result of the alleged understaffing of the Claims Call Center. *See* DX 14.U.1 ¶¶ 108-113; *see also*	Undisputed.

DX 13.A ¶¶ 27, 36.	
229. BANA does not have records of [redacted]. DX 6 ¶ 7; *see* DX 14.U 137:21-138:4, 141:12-20, 396:20-401:18; DX 14.K 25:22-26:12.	Disputed. The phone systems used by the Bank call centers [redacted], had the Bank chosen to utilize this feature. PX 3 (Minnucci Rpt) ¶106; PX 219 at -205620; PX 220 at -12841-42; PX 218 at -13135-36, sections 21.2 and 21.7.
230. [redacted]. *See* DX 6 ¶ 7.	Disputed. *See* RSUF 229.
231. Each member of the Customer Service Class is also a member of at least one of either the Claim Denial or Credit Rescission Classes. Thus, by definition, each member of the Customer Service Class was able to reach BANA to report a claim with the Claims Call Center. *See* ECF 494 at 97; DX 14.AB 106:16-107:7.	Disputed as immaterial. The Customer Service Class alleges violations based on intentional and sub-industry-standard call center performance, including extremely long and unprecedented hold times–not a total inability to reach the call center.
IX. MAGNETIC STRIPES AND EMV CHIPS	
232. At the time BANA entered into the EDD Agreement and throughout the EMV Chip Class period, most prepaid cards in the U.S. market did not contain EMV chips, including prepaid cards issued under public benefits programs. DX 12.A ¶¶ 42, 45; *see also* DX 147; DX 141.	Disputed. "Prepaid cards" is not a cognizable or coherent grouping for determining industry standards for card security. Even if it were, as of the 2014 Executive Order, all prepaid debit cards used to deliver federal government benefits were required to include EMV chips. PX 2 (Cloninger Rpt) ¶53; PX 11 (Cloninger Reb) ¶¶8-23; Exec. Order No. 13681, 79 F.R. 63491 (Oct. 23, 2014).
232A. In December 2015, the CFPB advised that EMV chips were not required in any type of card, and noted the "cost" and slow "merchant adoption" as factors that may be considered by financial	Disputed as immaterial. Given their widespread adoption, EMV chips were industry-standard card security by at least 2019. The CFPB in 2015 in fact noted that "credit card issuers are quickly adopting the

institutions in deciding whether to include chips. RJN 6 at 270-73.	new technology, with estimates of 32% of credit cards being EMV-compliant in 2014 growing to near 100% by 2018." PX 2 (Cloninger Rpt) ¶¶46-55; PX 11 (Cloninger Reb) ¶¶8-23; RJN 6 at 271-272; PX 171 at -167021; PX 15 (Letson) 161:7-162:3, 162:14-25.
233. Federal Reserve payment studies show that between 2019 and 2020, 65%-74% of in-person prepaid card transactions were completed without an EMV chip. RJN 10; DX 12.A ¶¶ 45-46.	<u>Disputed</u> as immaterial. Prepaid cards are not a cognizable category for determining industry standard card security. Even were comparison to other prepaid cards useful, the 2022 Federal Reserve Depository and Financial Institutions Payments Survey encompasses a mix of cards that are not analogous to EDD debit cards, including, for example, gift cards. RSUF 232; PX 11 (Cloninger Reb) ¶¶24-45.
234. [redacted]. DX 147 at -8505.	<u>Disputed as immaterial</u>. Prepaid cards are not a cognizable category for determining industry-standard card security. The Bank issued EMV chip cards to all of its consumer and small business debit cardholders beginning in 2014. *See* RSUF 232; PX 11 (Cloninger Reb) ¶¶24-45; PX 14 (Martin) 61:19-23, 64:7-13, 65:4-66:3; PX 161; PX 18 (Johnson) 53:20-54:20; PX 15 (Letson) 161:7-162:3, 162:14-15; PX 196 at -632771 ("[redacted].")
235. Prior to the 2021 letter agreement referenced in SUF ¶ 16, [redacted]. DX 14.B 188:17-189:21; DX 14.S 65:15-20, 78:13-22; DX 94 at -7095; DX 26 at No. 24; *see* DX 39 at -2850.	<u>Disputed</u>. In the EDD Agreement, the Bank expressly promised [redacted]." It also promised to be [redacted] which, by 2020 reasonably would include industry-standard security measures such as EMV chips. DX 39 at -2761; PX 33 at 251-256; PX 2 (Cloninger Rpt) ¶¶ 29-55, 94-95; PX 166 at -228914; PX 13 (Chestnut) 80:14-25, 85:12-86:9, 86:18-87:4, 87:11-20.

236. [redacted]. DX 130 at -0150; DX 131 at -0154; DX 14.S 78:23-79:1; DX 1 ¶ 19.	Disputed. The Bank asked [redacted]. PX 164 (DX 130 at -370150; DX 131 at -370154); PX 29 (EDD) 40:19-42:3; PX 20 (Garfield) 392:18-394:20; PX 181 at -351839-40; PX 182 at -116001; PX 173 at -123235 ("[redacted]."); PX 171 at -1670129-24; PX 185 at -124142; PX 186 at -352396; PX 187 at -357755; PX 188 at -353034; PX 189 at -678774; PX 269.
237. [redacted]. DX 169; DX 72; DX 106; DX 94; DX 12.A ¶¶ 61-63; DX 127.	Disputed. The Bank did not begin EMV conversion before the pandemic. [redacted]. The Bank points to no evidence that it took any steps to prepare for EMV before the COVID-19 pandemic. PX 173 at -123235; PX 171 at -167022, -167029-24; PX 181 at -351839-40; PX 182 at -116001; PX 185 at -124142; PX 186 at -352396; PX 166 at -228914; PX 14 82:8-83:13; PX 178 at -154043, -163307; PX 164 at -370154; PX 14 (Martin) 81:7-83:18, 84:16-85:6, 86:9-24; PX 2 (Cloninger Rpt) ¶¶60-64; PX 11 (Cloninger Reb) ¶¶61, 65-67, 85, 87; PX 31 (Joseph) 149:21-150:8; PX 188 at -353034; PX 196 at -632771; PX 174 at -154043 ("[redacted]."); PX 184 at –104742, -104744 (estimate of [redacted] per card); PX 177 at -104749 ("[redacted]

	[redacted]."); PX 183 at -406995 ([redacted]).
238. [redacted] DX 163; DX 164 at -4542-43; DX 165; DX 14.S 114:4-7.	Disputed. When the Bank raised converting the EDD debit card portfolio to EMV chip cards in January 2021, it was the first time it raised EMV conversion with EDD outside the context of [redacted]. PX 164 at -370150; DX 131 at -370154; PX 20 (Garfield) 392:18-394:20; PX 29 (EDD) 40:19-42:3; PX 195; RSUF 236.
239. [redacted] DX 39 at -2850; DX 14.B 188:17-190:2.	Disputed. Nothing in the Bank-EDD contract required EDD authorization for conversion to EMV technology. PX 29 (EDD) 38:3-39:10; 39:12-40:17; 61:9-62:17. PX 201 at -59312; RSUF 16.
240. [redacted] DX 74 at -4993; DX 14.S 65:4-7, 114:12-14.	Undisputed.
241. EMV chip technology does not prevent all fraudulent transactions. DX 123; DX 14.S 56:20-24; DX 5 ¶¶ 8-11; DX 12.A ¶¶ 73, 93-100; DX 181.	Disputed as immaterial. EMV chip technology is highly effective at preventing card-present counterfeit card, the type of fraud relevant here. The Bank knew that non-EMV magnetic stripe cards were "[redacted]" and [redacted]" and that [redacted]." PX 2 (Cloninger Rpt) ¶¶ 18-25, 29-55, 94-95, 104; PX 14 (Martin) 65:21-66:3, 112:1-113:25; PX 20 (Garfield) 384:1-385:6, 385:19-386:6, 386:11-15; PX 161; PX 173 at -123235; PX 171 at -167019-22; PX 166 at -228914; PX 180 at -297295; PX 174 at -154043; PX 170at -170413, 170416; PX 176 at –EDD2375; PX 172 at -401309; PX 167 at –495785; PX 178 at -163307; PX 21 (Ahmad) 50:22-51:15, 79:9-16; PX 23 (Holt) 280:20-283:3; PX 175 at -166345; PX 179 at -417363; PX 190 at -166417.
242. EMV chip technology does not	Disputed as immaterial. The Bank has not

prevent [redacted]. DX 123 at -7048; DX 73; DX 12.A ¶¶ 94-96, 105-07, 116-17; DX 14.S 55:14-56:9, 113:1-21; DX 5 ¶ 8.	produced any evidence showing that lost or stolen cards comprise any significant portion of the EMV class and [redacted]. PX 163 at -205593; PX 223 at -1199; RSUF 241.
243. EMV chip technology does not prevent [redacted]. DX 12.A ¶¶ 56, 83, 85, 89-90, 104, 117; DX 5 ¶ 9; *see also* RJN 17; RJN 18; RJN 20.	Disputed. EMV technology is effective at preventing unauthorized card-present transactions because the counterfeit card lacks the dynamic code from the EMV chip that is required to carry out transactions. PX 2 (Cloninger Rpt) ¶104; *see also* PX 197 at -1724716; PX 185 at 124142; RSUF 241.
244. "Shimming" machines allow criminals to read identifying data, including card numbers, from EMV chips and produce counterfeit cards. DX 12.A ¶¶ 56, 83, 85, 89-90, 104, 117; *see also* RJN 17; RJN 18; RJN 20.	Disputed. Use of a shimming device does not facilitate the production of usable counterfeit cards as a shimming machine is incapable of replicating the EMV chip's dynamic CVV code. Without the dynamic EMV chip code, the card would only be able to be used to complete closely controlled fallback transactions. For comparison, [redacted]. PX 2 (Cloninger Rpt) ¶¶29-42; PX 11 (Cloninger Reb) ¶¶82-89; PX 180 at -297295; PX 162 at -455617; PX 166 at -228914; PX 193 at -431011; PX 200 at -57504; RSUF 241.
245. EMV chip technology does not [redacted]. DX 113; DX 114; DX 12.A ¶¶ 16, 65, 74, 76-81; DX 14.S 55:14-56:9, 59:1-5; DX 14.Q 157:7-158:15; DX 5 ¶ 9.	Disputed. EMV reduces skimming because counterfeit versions of EMV chip cards created from skimming cannot be used to carry out ATM or other card-present transactions. As a result, and as the Bank was aware, skimming fraud increasingly targeted mag-stripe-only card portfolios. PX 2 (Cloninger Rpt) ¶¶79-83; RSUF 237, 241; PX 164 at -370154; PX 182 at 116001; PX 171 at 167019-22; PX 173 at 123235; PX 191.
246. [redacted]	Undisputed.

[redacted]. DX 14.S 125:22-126:6; DX 12.A ¶ 103.	
247. [redacted]. DX 14.S 51:3-19; DX 12.A ¶¶ 76, 84; DX 5 ¶ 10.	Disputed. Skimming devices are paired with PIN pad overlays or pinhole cameras to capture cardholder information and PIN. PX 2 (Cloninger Rpt) ¶¶18-25; PX 31 (Joseph) 90:20-91:8; PX 162 at -455617; PX 163 at -205593; PX 10 (Loebner) ¶28.
248. Skimming devices [redacted]. DX 12.A ¶¶ 76-81, 84; DX 14.S 51:3-19, 55:8-57:23; DX 5 ¶ 10; DX 113 at -4188; DX 114.	Disputed. *See* RSUF 247.
X. PLAINTIFFS' REMAINING ALLEGATIONS	
249. At all relevant times, and throughout the class periods, [redacted]. *See* DX 64.	Disputed as to EDD debit cards which, unlike the consumer and business cards, did not include industry-standard EMV security chips which made them a particularly vulnerable target for fraud and resulted in a significant increase in fraud rates. PX 2 (Cloninger Rpt) ¶¶ 29-55, 94-95, 104; PX 166 at -228914; PX 162 at -455617; PX 174 at -154043; PX 180 at -297295; PX 173 at -123235; PX 164 at -370154; PX 14 (Martin) 81:7-83:13, 84:16-85:6; PX 10 (Loebner Reb) ¶¶ 25-31.
250. BANA required its prepaid card vendors to adhere to [redacted]. DX 44; DX 47.	Disputed as immaterial.
250A. From March 2020 to October 2020, various state and local offices and courts, which were responsible for handling state and local background checks, [redacted]. During this time, [redacted].	Disputed as immaterial.

DX 14.J; DX 2 ¶¶ 10-11; DX 152.	
251. There is no evidence that [redacted]. *See* DX 2 ¶ 11; DX 14.J 292:2-19, 293:15-19.	Disputed as immaterial.
252. There is no evidence of a [redacted] *See* DX 29 at No. 47.	Disputed. *See* RSUF 249.

Respectfully submitted,

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

By: /s/ *Brian Danitz*
JOSEPH W. COTCHETT
BRIAN DANITZ
KARIN B. SWOPE
BLAIR V. KITTLE
VASTI S. MONTIEL
CAROLINE A. YUEN

Dated: January 9, 2026 **ALTSHULER BERZON LLP**

By: /s/ *Michael Rubin*
MICHAEL RUBIN
STACEY M. LEYTON
CONNIE K. CHAN
JAMES BALTZER
KATHERINE BASS

Co-Lead Counsel for Plaintiffs and the Class

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

/s/ Brian Danitz
BRIAN DANITZ