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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE BANK OF AMERICA CALIFORNIA UNEMPLOYMENT BENEFITS LITIGATION	Case No. 3:21-md-02992-GPC-MSB **PLAINTIFFS' *DAUBERT* MOTION TO EXCLUDE TESTIMONY OF CARL PRY**
This Document Relates to All Actions	Date: April 17, 2026 Judge: Hon. Gonzalo P. Curiel Ctrm: 2D (2nd Floor)

REDACTED - PUBLIC VERSION

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs move to exclude the purported expert opinions and testimony of Bank expert Carl Pry on the dual grounds that: (1) they are not based on reliable principles and methods, and (2) Mr. Pry has not otherwise explained why his experience supports his opinions absent a reliable methodology. Mr. Pry's report and testimony merely restate factual assertions made by various defense witnesses, all of which the trier of fact can weigh for itself. The credibility of those assertions, and any conclusions to be drawn from those assertions, should be left to the trier of fact and not amplified through the testimony of a purported expert witness who conducted no independent investigation or evaluation of his own; but, by own admission, rested many of his disputed assertions on what he described as "common sense" rather than any specialized expertise or accepted methodology.

The Bank retained Mr. Pry to rebut the opinions of Plaintiffs' experts, Bill Abernathy and Greg Regan. Mr. Abernathy is a banking consultant and former senior federal regulator at the Office of the Comptroller of the Currency. Based on more than five decades of banking and regulatory experience, including as the Director of Compliance and Bank Analysis and Director of Bank Supervision for the OCC, Mr. Abernathy offered his opinion that federal regulators do not tolerate payments to fraudsters pursuant to regulatory consent orders and remediation plans. Ex. 3 (Abernathy Rpt.) ¶ 4. Mr. Regan is Plaintiffs' damages expert.

Mr. Pry, who was never a regulator, opines that Mr. Abernathy's "[redacted]" Ex. 1 (Pry Rpt.) ¶16.[1] Mr. Pry also opines that Mr. Regan's opinion improperly assumes "[redacted]

[1] "Ex._" refers to exhibits to the Declaration of Brian Danitz in support of this motion; "Pry Rpt" refers to the Expert Rebuttal Report of Carl Pry (Ex. 1); "Pry Dep." refers to excerpts of the deposition of Carl Pry (Ex.2), including exhibits referenced in those deposition excerpts.

[redacted]. *Id.* at ¶14.

Mr. Pry's only support for these opinions are the declarations of three Bank employees submitted in support of the Bank's opposition to Plaintiffs' Motion for Class Certification: i.e., the declarations of Michael Letson, William Martin, and Jennifer Lennon. Mr. Pry's deposition testimony confirmed that he did not apply any particular expert methodology in reaching his opinions and his opinions were based only on what the Bank representives previously stated in opposing class certification. Mr. Pry thus simply parrots the testimony of the Bank's witnesses without independent analysis, essentially taking the Bank's representatives at face value and then stating their assertions as an expert's ultimate conclusion.

At his deposition, Mr. Pry readily admitted that in preparing his opinions he did not request any data from the Bank and that he did not perform any independent analysis of any data in preparing his report. Ex. 2 (Pry Dep.) 115:2-116:10. Accordingly, Mr. Pry's testimony merely functions as a mouthpiece for the Bank's positions on ultimate questions and does not apply any reliable expert principles and methods to the facts of this case. Mr. Pry's testimony fails to satisfy the requirements of *Daubert v. Merrell Dow Pharms., Inc.*, 43 F.3d 1311 (9th Cir. 1995), and should be excluded.

ARGUMENT

A. Mr. Pry's Opinions Are Not Based on Any Independent Analysis

Experts "may not restate or summarize record evidence and then state a conclusion without applying a methodology that is reliable and which evinces his/her expertise." *Siqueiros v. General Motors, LLC*, 2022 WL 74182 (N.D. Cal. Jan. 7, 2022); *see also Holley v. Gilead Scis., Inc.*, 2023 WL 2469632 (N.D. Cal. Feb. 27, 2023) (noting that it is improper for experts to "merely read, selectively quote from, or regurgitate evidence"). That is just what Mr. Pry did throughout his report and testimony—he impermissibly "parrots the evidence in the record and does not actually offer any technical opinions." *Pelican Int'l, Inc. v. Hobie Cat Co.*, 655 F. Supp. 3d 1002, 1030 (S.D. Cal. 2023) (explaining that "[s]uch 'unhelpful restatement[s] of the facts as [the expert] sees them' are inadmissible") (citation omitted). Where, as here, the trier of fact is in as good a position as the expert to draw conclusions from the evidence, and the expert's testimony is not helpful, there is no need for the expert testimony and it should be excluded. *Huawei Techs., Co. v Samsung Elecs. Co.,* 340 F. Supp. 3d 934, 992 (N.D. Cal. 2018).

At deposition, Mr. Pry repeatedly testified that he based his opinions about regulator expectations and potential [redacted] on the statements of the Bank's witnesses that he simply accepted without any independent investigation or evaluation. Examples of Mr. Pry merely acting as a mouthpiece for the Bank's positions, without any independent basis for his opinions, are pervasive in his report.

Testimony on [redacted]**.** Mr. Pry agrees with the Bank's Rule 30(b)(6) representative William Martin that the decision to [redacted]. Ex. 1 (Pry Rpt.) ¶¶ 60-61; Ex. 2 (Pry Dep.) 184:23-185:1. At his deposition, Mr. Pry conceded that he actually had "[redacted]." Ex. 2 (Pry Dep.) 186:16-21. Nor had he asked the Bank for any information about any [redacted]. *Id*. 186:22-187:1. Mr. Pry also admitted that he had no independent basis for his assertion that the Bank had acted based on [redacted]. *Id*. 208:5-9. At deposition, Mr. Pry conceded that he never bothered to request or to analyze any data on these issues. *Id*. 212:2-22.

Significantly, Mr. Pry's deposition testimony revealed that his opinion that the Bank's [redacted] was based on no methodology whatsoever aside from what he called "common sense." Ex. 2 (Pry Dep.) 211:9-17. There is no such thing as a "common sense" expert; that is the jury's function. In addition to being an improper restatement of Mr. Martin's declaration, where, as here, an expert offers an opinion based only on common sense—which is quintessentially "within the ken of the jury's knowledge"—that opinion is properly excluded under Rule 702. *United States v. Fuentes-Cariaga*, 209 F.3d 1140, 1142 n.3 (9th Cir. 2000).

Testimony on [redacted]. Mr. Pry states that the Bank had "[redacted]" Ex. 1 (Pry Rpt.) ¶51. According to Mr. Pry, this "[redacted]. *Id*. However, at his deposition, Mr. Pry admitted that the only factual basis for his statement that [redacted] was a single email from one Bank employee regarding "[redacted]" Ex. 2 (Pry Dep.) 222:4-224:10 and exhibit 14 to Pry Dep. This email states in part that "[redacted]" *Id*. Mr. Pry did not look at, analyze, or ask for data that would support the observations in the email, nor did he request or obtain information that would explain what specifically the email was referring to. Instead, he simply repeated the e-mail's assertion as his own opinion. Ex. 2 (Pry Dep.) 224:5-25. Mr. Pry's opinions related to [redacted] is thus just an impermissible "parroting" of evidence in the record, without any independent analysis.

Testimony on [redacted]. Mr. Pry opines that the Bank's [redacted]" Ex. 1 (Pry Rpt.) ¶ 60. This opinion is also unsupported by any methodology other than citing a declaration prepared by Bank representative Martin. When Mr. Pry was asked at his deposition about the basis for this "opinion," Mr. Pry conceded that he did not know how many [redacted], Ex. 2 (Pry Dep.) 237:21-23 and exhibit 11 to Pry Dep.; that he did not request any documents explaining the Bank's [redacted], *id.* at 238:7-9, and that he did not apply any methodology to validate the Bank's claims regarding [redacted], *id.* at 238:10-13. Indeed, Mr. Pry was admittedly "[redacted]" the information contained in Mr. Martin's declaration.

[redacted]

Ex. 2 (Pry Dep.) 236:8-10.

[redacted]

Ex. 2 (Pry Dep.) 238:21-25.

A trier of fact is perfectly capable of evaluating Mr. Martin's testimony without hearing it repeated as an "expert opinion" from Mr. Pry.

[redacted] Mr. Pry also opined that the relatively low numbers of applicants for [redacted]. Ex. 1 (Pry Rpt.) ¶64. To arrive at this conclusion, Mr. Pry testified that he simply took the Declaration of Jennifer Lennon at face value and performed no independent analysis or investigation. He also testified that he never asked the Bank for any information about [redacted] and that he does not even know what those [redacted] require. Ex. 2 (Pry Dep.) 243:19-24 and exhibit 15 to Pry Dep. Mr. Pry never conducted any analysis; nor did he investigate Lennon's analysis. Mr. Pry further testified that he did not know why Ms. Lennon's report used the numbers it did, that he did not independently perform any calculations, and that he did not know why those numbers do not align with the class number generated by Plaintiffs' damages expert Greg Regan. *Id.* 246:13-25.

Mr. Pry so often repeated in his deposition that he had not performed any independent inquiry into the data underlying his opinions that eventually he offered to stipulate to the fact that he did no independent analysis:

[redacted]

Ex. 2 (Pry Dep.) 116:5-10.

As Mr. Pry's opinions are merely restating the Bank's own positions through an "expert" mouthpiece, his testimony is being offered "more in the role of an advocate and not as a scientifically valid opinion." *United States v. Rincon*, 28 F.3d 921, 923 (9th Cir. 1994). As such, Mr. Pry's report should be excluded under Rule 702 and *Daubert v. Merrell Dow Pharms., Inc.*, 43 F.3d 1311 (9th Cir. 1995).

B. Mr. Pry's Opinions Are Not Based on Relevant Experience

Expert testimony that does not rely on a particular methodology or framework is sometimes admissible because it relies instead on the witness's expert knowledge and experience. *See Hangarter v. Provident Life & Acc. Ins. Co.*, 373 F.3d 998, 1018 (9th Cir. 2004). However, even in those cases, the expert must still demonstrate "the basis for his specialized knowledge." *United States v. Sayre*, 434 Fed. Appx 622, 624 (9th Cir. 2011); *see also Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 137 (1997) ("[N]othing in either *Daubert* [*v. Merrell Dow Pharms*., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993)] or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert."). Here, Mr. Pry fails to demonstrate how his experience "leads to the conclusions reached, why that experience is a sufficient basis for his opinion, and how that experience is reliably applied to the facts." Adv. Comm. Note to 2020 Amendment to F.R.E. 702. It is not enough to present "only the expert's qualifications, their conclusions and their assurances of reliability." *Daubert v. Merrell Dow Pharms., Inc.*, 43 F.3d 1311, 1319 (9th Cir. 1995). Indeed, Mr. Pry's repeated invocations of "common sense" confirm that his opinions are not based on specialized knowledge or experience.

Banks [redacted] Mr. Pry has no basis other than his purported experience for his opinion that in [redacted]. Ex. 2 (Pry Dep.) 157:12-21. Mr. Pry, who has never been a regulator, states [redacted], and that Mr. Abernathy's opinion (based on years of experience as a regulator and supervisor of regulators) that [redacted]. Ex. 1 (Pry Rpt.) ¶43. However, when Mr. Pry was asked whether [redacted]" Pry Dep. 162:22-163:2. Mr. Pry also agreed that [redacted]. Ex. 2 (Pry Dep.) 48:6-9. While he then tried to soften the impact of his answer by asserting that [redacted]" (Ex. 2 (Pry Dep.) 48:10-20 and exhibit 7 to Pry Dep.), he was unable to cite to any specific experience or to any documents or methodology to support this opinion.

In sum, Mr. Pry's report cannot even properly be labeled "junk science," because it lacks any scientific pretense at all. Instead, Mr. Pry's report—which seeks to amplify the impact of the Bank's representative's testimony by re-stating it through an "expert" mouthpiece—stands "more in the role of an advocate and not as a scientifically valid opinion." *United States v. Rincon*, 28 F.3d 921, 923 (9th Cir. 1994). For these reasons, Mr. Pry's report should be excluded under Rule 702 and *Daubert*.

Respectfully submitted,

Dated: October 17, 2025

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Brian Danitz, attest that concurrence in the filing of this document has been obtained from the other signatory. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 17th day of October 2025, at Burlingame, California.

/s/ *Brian Danitz*

BRIAN DANITZ