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20 **UNITED STATES DISTRICT COURT**

21 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

22 **SAN DIEGO DIVISION**

23 IN RE: BANK OF AMERICA
24 CALIFORNIA UNEMPLOYMENT
25 BENEFITS LITIGATION

26 Case No. 21-MD-02992-GPC-MSB

27 **RESPONSE TO PLAINTIFFS'**
28 **OBJECTIONS TO EVIDENCE IN**
SUPPORT OF BANK OF AMERICA,
N.A.'S MOTION FOR PARTIAL
SUMMARY JUDGMENT (ECF 633-3)

Date: April 17, 2026

Time: 1:30 p.m.

Ctrm: 12A – 12th Floor

Judge: Hon. Gonzalo P. Curiel

FILED PROVISIONALLY UNDER SEAL
PURSUANT TO STIPULATED PROTECTIVE
ORDER

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
A. The Objections to Chestnut’s Declaration Should Be Overruled.	6
B. The Objections to Golden’s Declaration Should Be Overruled.	10
C. The Objections to Lennon’s Declaration Should Be Overruled.	12
D. The Objections to Letson’s Declaration Should Be Overruled.	14
E. The Objections to Martin’s Declaration Should Be Overruled.	33
F. The Objection to Robart’s Declaration Should Be Overruled.	37
CONCLUSION.....	38

1 Defendant Bank of America, N.A. (BANA) hereby submits this Response to
2 Plaintiffs' Objections to Evidence in Support of BANA's Motion for Partial
3 Summary Judgment (ECF 633-3) (Objections).

4 As a threshold matter, the Objections are procedurally improper, and the Court
5 should decline to consider them on that basis. In lieu of lodging the Objections within
6 the 50 pages they were allotted by this Court to respond to BANA's Separate
7 Statement of Undisputed Facts (SUF) (*see* ECF 560), Plaintiffs filed the 28-page
8 Objections on top of a 65-page response to the SUF (ECF 652-1) *and* 28 more pages
9 of additional "facts" (ECF 652-2). The Court should not countenance this brazen end-
10 run around the page limitations negotiated by the parties, and ordered by the Court.
11 The Court should overrule the Objections on this basis alone.

12 If this threshold deficiency is not dispositive, the majority of Plaintiffs'
13 Objections are also due to be overruled because they do not comply with the 2010
14 Amendment to Rule 56 of the Federal Rules of Civil Procedure. As amended, Rule
15 56 permits parties to object "that the material cited to support or dispute a fact **cannot**
16 be presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2)
17 (emphasis added); *see also id.* 56(c)(4) ("[a]n affidavit or declaration used to support
18 or oppose a motion must be made on personal knowledge, set out facts that **would be**
19 **admissible** in evidence, and show that the affiant or declarant is competent to testify
20 on the matters stated") (emphasis added). Since the 2010 Amendment was enacted,
21 this Court has consistently emphasized that "[a]t the summary judgment stage,
22 evidence **need not** be authenticated or otherwise presented in an admissible form."
23 *Theweny v. Mercedes-Benz USA, LLC*, 2024 WL 1161696, *1 n.1 (S.D. Cal. Mar.
24 18, 2024) (Curiel, J.) (emphasis added, internal quotations omitted). "[A]t the
25 summary judgment stage, district courts consider evidence with content that would
26 be admissible at trial, even if the form of the evidence as presented would not be
27 admissible at trial." *Kekona v. City of San Diego*, 2024 WL 5227734, *3 (S.D. Cal.
28 Dec. 26, 2024); *see also Cherewick v. State Farm Fire and Cas. Ins.*, 578 F. Supp.

3d 1136, 1155 (S.D Cal. 2022) (similar). Many of the Objections attack the form in which BANA's evidence is presented, not the admissibility of the underlying facts, and therefore should be overruled as these facts may be properly considered by the Court in ruling on BANA's MSJ. *See Kekona*, 2024 WL 5227734, *3 (objections at the summary judgment stage for "lack of foundation, speculation, hearsay, relevance, or that evidence . . . constitutes an improper legal conclusion" are "unnecessary to consider"). Further, if Plaintiffs actually believed that some of BANA's declarations were improper, they should have moved to strike them and articulated the specific basis for doing so. *See, e.g., Colby v. Newman*, 2013 WL 12124390, *9 (C.D. Cal. June 11, 2013) (overruling objections and noting that "the Court need not consider boilerplate recitations and blanket objections submitted without analysis applied to specific items of evidence") (internal quotations omitted). But they did not do in the Objections (or anywhere else in the 93 other pages they submitted with their Opposition to BANA's Motion for Partial Summary Judgment (MSJ)).

Instead, Plaintiffs repeatedly rely on the same eight categories of objections, each of which is generally improper at this stage and should be overruled. These general responses are incorporated in each of the below specific responses to Plaintiffs' specific Objections, by reference to the end note number indicated in each of the preceding paragraphs.*

Authentication.¹ Plaintiffs' Objections based on authentication are quintessentially the kinds of objections to form and not substance that amended Rule 56 and subsequent caselaw consider improper or unnecessary at summary judgment. *See Romero v. Nevada Dep't of Corr.*, 673 F. App'x 641, 644 (9th Cir. 2016) (noting that 2010 amendment "eliminate[d] the unequivocal requirement that evidence submitted at summary judgment must be authenticated," and only "requires that such

* For example, BANA's response to Plaintiffs' first Objection to DX 1 in the following chart includes a reference to "lack of foundation," including the end note number of "2" (among other responses), indicating that BANA's response incorporates the information included in the paragraph beginning with "**Lack of Foundation and Personal Knowledge**" below.

evidence ‘would be admissible in evidence’ at trial”); *see also Morton v. Cnty. of San Diego*, 2024 WL 5126281, *5 (S.D. Cal. Dec. 16, 2024) (overruling “lacks authentication” objection where the objected-to evidence “will be admissible in some form at trial”). All of the documents to which Plaintiffs object as lacking authentication were produced in this case in response to Plaintiffs’ discovery requests, directed either at BANA or third parties, and Plaintiffs do not contend that any of the objected-to documents are not what they purport to be or that BANA will be unable to authenticate these documents at trial. *See Burch v. Regents of Univ. of Cali.*, 433 F. Supp. 2d 1110, 1123-24 (E.D. Cal. 2006) (declining to consider authenticity objections where “the court is confident [proponent] *would* be able to authenticate [the documents] at trial”). These Objections should be overruled.

Lack of Foundation and Personal Knowledge.² Plaintiffs object to portions of five of BANA’s declarations submitted as evidence, arguing that those declarations lack foundation for, or personal knowledge of, the facts therein. These objections ignore that “the requirement of personal knowledge imposes only a minimal burden on a witness” at summary judgment. *Bogavac v. El Pollo Loco, Inc.*, 2025 WL 1177541, *2 (S.D. Cal. Apr. 23, 2025) (internal quotation omitted) (finding statement by declarant that he is familiar with the relevant documents, items, and processes sufficient to establish personal knowledge and foundation at summary judgment). Further, objections to lack of foundation are routinely overruled by courts in this district as “not appropriate at summary judgment” given that amended Rule 56’s focus is on the *substance* of evidence, not its *form*. *Morton*, 2024 WL 5126281, *4, *see also Kekona*, 2024 WL 5227734, *3-4. These Objections also should be overruled.

Hearsay.³ Plaintiffs’ hearsay objections also improperly elevate evidentiary form over substance. None of them contend that the actual facts contained in the supposed “hearsay” evidence are inadmissible in any form at trial. Thus, the evidence may be properly considered by the court at summary judgment. *See Kekona*, 2024

1 WL 5227734, *4 (overruling hearsay objections where the relevant evidence is “in
2 one way or another, admissible for non-hearsay purposes or through exceptions to
3 the rule against hearsay, even if the form of the evidence may not be”); *Cherewick*,
4 578 F. Supp. 3d at 1157 (“as long as a court finds that hearsay evidence could be
5 presented in an admissible form at trial (*i.e.*, through testimony from a witness laying
6 the foundation for an exception or because the Court finds the evidence to be non-
7 hearsay), it may consider the evidence when ruling on the motion for summary
8 judgment”). Plaintiffs’ hearsay Objections should be overruled.

9 **Relevance.**⁴ Plaintiffs relevance objections ignore that such objections “are
10 unnecessary at the summary judgment stage because there is no jury that can be
11 misled and no danger of confusing the issues.” *Morton*, 2024 WL 5126281, *4. These
12 objections should also be overruled as superfluous and “redundant of the summary
13 judgment standard itself.” *See Cherewick*, 578 F. Supp. 3d at 1156. Rather than
14 objecting to the evidence as irrelevant, caselaw instructs that Plaintiffs should instead
15 “simply *argue* that the facts are not material.” *Id.* (quoting *Burch*, 433 F. Supp. 2d at
16 1119) (emphasis in original). Of course, Plaintiffs do this too, in their response to
17 BANA’s SUF, further demonstrating that is where the Objections should have been
18 properly lodged. For these reasons, the relevance Objections should be overruled.

19 **Ultimate Fact/Legal Conclusion.**⁵ Like objections based on hearsay and
20 relevance, the Objections that testimonial or declaratory evidence provides an
21 ultimate fact or legal conclusion are not appropriate or considered at the summary
22 judgment stage. *See Kekona*, 2024 WL 5227734, *4; *Tan v. Quick Box, LLC*, 2024
23 WL 1121795, *4 (S.D. Cal. Mar. 14, 2024). These, too, should be overruled.

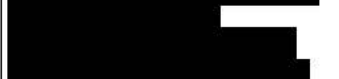
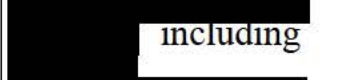
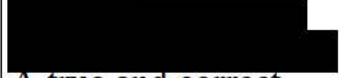
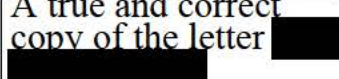
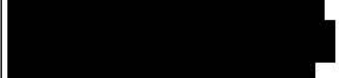
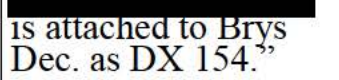
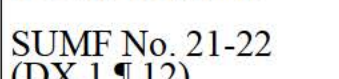
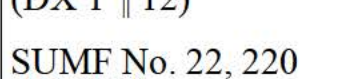
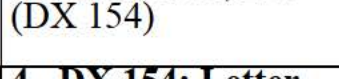
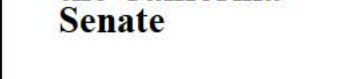
24 **Best Evidence Rule.**⁶ Plaintiffs’ Objections based on the “Best Evidence
25 Rule” again focus on the form of the evidence presented rather than the substance
26 and should be overruled as unnecessary. *See Bogavac*, 2025 WL 1177541, *3; *see*
27 *also Insalaco v. Fire Ins. Exch.*, 2022 WL 17968763, *3 (N.D. Cal. July 15, 2022)
28 (noting the best evidence rule “is a rule of preference and not a rule of absolute

1 exclusion”). Further, these Objections are aimed at evidence and testimony *not*
2 seeking to prove the contents of documents, which is the only thing Federal Rule of
3 Evidence 1002 prohibits. *See Bogavac*, 2025 WL 1177541, *3 (overruling best
4 evidence rule objections because “while there may be documents relating to [the
5 declarant’s] statements, [d]efendant does not attempt to prove their contents through
6 [those] statements”). Moreover, many of these Objections address documents that
7 are “not closely related to a controlling issue” and so are exempted from Rule 1002
8 anyway. *See Fed. R. Evid. 1004(d)*. Each of these reasons independently warrants
9 overruling these Objections.

10 **Mischaracterizes Evidence.**⁷ Plaintiffs purport to “object” to certain portions
11 of the declarations as mischaracterizing cited evidence, but such objections are
12 plainly improper as they do not bear on the admissibility of the objected-to evidence.
13 *See Morton*, 2024 WL 5126281, *4 (argument that summary judgment evidence
14 mischaracterizes evidence is “not an objection to the admissibility of the evidence
15 but a challenge to the import of the evidence and is therefore not an appropriate
16 evidentiary objection”); *Stonefire Grill, Inc. v. FGF Brands, Inc.*, 987 F. Supp. 2d
17 1023, 1033 (C.D. Cal. 2013) (similar). For this reason, these Objections should be
18 overruled.

19 **Improper Lay Witness Testimony.**⁸ Plaintiffs object to several statements by
20 BANA’s declarants as impermissible lay witness opinions. These Objections are
21 misplaced, as Federal Rule of Evidence 701 permits opinion testimony from lay
22 witnesses where such testimony is “(a) rationally based on the witness’s perception;
23 (b) helpful to . . . determining a fact in issue; and (c) not based on scientific, technical,
24 or other specialized knowledge within the scope of Rule 702.” Each of the statements
25 objected to as improper lay witness opinions are rationally based on the witnesses’
26 perception and personal knowledge as laid out in their declarations, and not based on
27 any technical or scientific knowledge under Rule 702. These Objections should be
28 overruled too.

1	SUMF No. 19, 21, 208 (DX 55)			
2				
3	2. DX 55: Letter	Authenticity (Fed. R.	Improper objection	Sustained:
4	from Dawn	Evid. 901(a)). This	after 2010	—
5	Haddock, Senior	letter is not	amendment to Fed.	Overruled:
6	Vice President	automatically	R. Civ. P. 56:	—
7	and Senior Client	authenticated under	hearsay ³	
8	Manager at	the FRE and BANA	Inapplicable:	
9	BANA, to Carole	has not otherwise	authenticity, ¹ best	
10	Vigne, General	sufficiently	evidence rule ⁶	
11	Counsel of EDD	authenticated the		
12	dated May 26,	letter as admissible		
13	2021	evidence, e.g., a		
14		business or public		
15		record. (FRE 803(6)-		
16		(8), 901, 902.)		
17		Hearsay (Fed. R.		
18		Evid. 801, 802). DX		
19		55 relies on		
20		extraneous hearsay		
21		documents for the		
22		truth of the matter.		
23		Best Evidence (Fed.		
24		R. Ev. 1002). Instead		
25		of producing original		
26		documents upon		
27		which it relies, DX 55		
28		presents summary		
		calculations, theories,		
		and methods without		
		presenting original		
		evidence.		
19	3. DX 1: Chestnut	Relevance (Fed. R.	Improper objection	Sustained:
20	Decl., Page 3,	Evid. 402, 403). The	after 2010	—
21	Lines 17-27, ¶ 12;	testimony's probative	amendment to Fed.	Overruled:
22	"As a result of the	value is substantially	R. Civ. P. 56: lack of	—
23	pandemic and	outweighed by a	foundation, ²	
24	resulting fraud that	danger of confusing	relevance, ⁴ hearsay ³	
25	plagued the EDD	the issues and wasting	Inapplicable: best	
26	program.	time.	evidence rule ⁶ ,	
27		Lack of Foundation	personal knowledge, ²	
28		and Personal		
		Knowledge (Fed. R.		
		Evid. 104(b), 602;		
		Fed. R. Civ. P.		
		56(c)(4)). No		
		evidence of		
		declarant's personal		
		knowledge.		

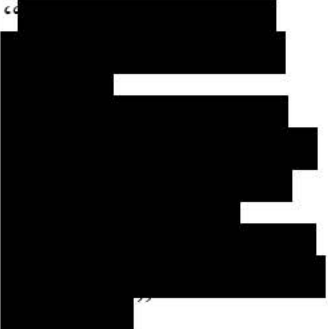
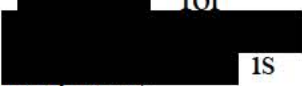
1		Best Evidence Rule (Fed. R. Evid. 1002). Declarant offers improper summary testimony about contents of a document that speaks for itself.		
2				
3				
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6		Hearsay (Fed. R. Evid. 801, 802). Declarant cites an inadmissible document for the truth of its content		
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	4. DX 154: Letter from BANA to the California Senate	Authentication (Fed. R. Evid. 901(a)). This letter is not automatically authenticated under the FRE and BANA has not otherwise sufficiently authenticated the letter as admissible evidence, e.g., a business or public record. Hearsay (Fed. R. Evid. 801, 802). This letter references other	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: hearsay ³ Inapplicable: authenticity, ¹ best evidence rule ⁶	Sustained: — Overruled: —

1		documents for the truth of their content.		
2				
3		Best Evidence Rule (Fed. R. Evid. 1002). This letter presents summary calculations without presenting original evidence of underlying data.		
4				
5				
6				
7	5. DX 1: Chestnut Decl., Page 4, Lines 1-11, ¶ 13; DX 55, DX 170	Lack of Personal Knowledge (Fed. R. Evid. 104(b), 602; Fed. R. Civ. P. 56(c)(4)). No evidence of declarant's personal knowledge.	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: hearsay ³	Sustained: —
8				Overruled: —
9	“Additionally, EDD did not pay fees to BANA under the EDD Agreement. In fact, EDD received additional amounts (i.e., a revenue share) from BANA under the EDD Agreement. The revenue earned was derived [REDACTED]	Best Evidence Rule (Fed. R. Evid. 1002). Declarant offers improper summary testimony about contents of a document that speaks for itself.	Inapplicable: personal knowledge, ² best evidence rule ⁸	
10	[REDACTED]			
11	[REDACTED]			
12	[REDACTED]			
13	[REDACTED]			
14	[REDACTED]			
15	[REDACTED]			
16	[REDACTED]	Hearsay (Fed. R. Evid. 801, 802). Declarant cites an inadmissible document for the truth of its content.		
17	[REDACTED]			
18	[REDACTED]			
19	Under the terms of the EDD Agreement, BANA and EDD split this revenue 50/50. This revenue share arrangement had, by late May 2021, required BANA to pay California a [REDACTED]			
20	[REDACTED]			
21	[REDACTED]			
22	[REDACTED]			
23	[REDACTED]			
24	[REDACTED]			
25	[REDACTED] including [REDACTED]			
26	[REDACTED]			
27	DX 55. A true and correct copy of data produced by [REDACTED]			
28	[REDACTED]			

1 2 3 4 5 6 7	is attached to Brys Dec. as DX 170.” SUMF No. 18-19 (DX ¶ 13) SUMF No. 19, 21, 208 (DX 55) SUMF No. 19, 22 (DX 170)			
8 9 10 11 12 13 14	6. DX 170: Data produced by BANA	Authentication (Fed. R. Evid. 901(a)). This data is not automatically authenticated under the FRE and BANA has not otherwise sufficiently authenticated the data as admissible evidence.	Inapplicable: authenticity¹	Sustained: — Overruled: —

B. The Objections to Golden’s Declaration Should Be Overruled.

Objectionable Evidence	Grounds for Objection	Response	Ruling
7. DX 2: Golden Decl., Page 3, Lines 23-25, ¶ 12 “As a result of BANA’s efforts, BANA was able to grow its UI prepaid call center staffing from FTE in March 2020 to over FTE by December 2020. See DX 173; DX 174; DX 25; DX 24.” SUMF No. 212-214, 216-219	Mischaracterizes Evidence (Fed. R. Evid. 403). The declarant claims FTE for March 2020 and over FTE for December 2020 but DX 173 shows and DX 174 shows and DX 24 shows	Inapplicable: mischaracterizes evidence⁷	Sustained: — Overruled: —

1				
2				
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4				
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6	8. DX 2: Golden	Relevance (Fed. R.	Improper objection	Sustained:
7	Decl., Page 5,	Evid. 402). The	after 2010	—
8	Lines 9-11, ¶ 18	probative value of	amendment to Fed.	Overruled:
9		Golden's " " or	R. Civ. P. 56:	—
10		" " for	relevance ⁴	
11				
12		is		
13		irrelevant.		
14	SUMF No. 221			
15	9. DX 2: Golden	Legal	Improper objection	Sustained:
16	Decl., Page 5,	Conclusion/Ultimate	after 2010	—
17	Lines 17-19, ¶ 20	Fact (Fed. R. Evid.	amendment to Fed.	Overruled:
18	"Although some	701). Golden's lay	R. Civ. P. 56: legal	—
19	callers experienced	testimony provides	conclusion/ultimate	
20	extended wait times	an inadmissible legal	fact ⁵	
21	during spikes in call	conclusion about		
22	volumes, those spikes	necessity, causation,		
23	were not avoidable	and the absence of		
24	under these	reasonable		
25	circumstances given	alternatives.		
26	the impact of the			
27	global pandemic."			
28	SUMF No. 43			
	10. DX 25 (titled	Authentication (Fed.	Inapplicable:	Sustained:
		R. Evid. 901(a)). No	authenticity ¹	—
		custodian or other		Overruled:
		qualified witness has		—
	SUMF No. 212-214,	authenticated the data		
	218	provided.		

C. The Objections to Lennon's Declaration Should Be Overruled.

Jennifer Lennon has personal knowledge of the facts set forth in her Declaration, including the documents cited therein, and will provide foundation at trial. Lennon is BANA's Prepaid Unemployment Programs Executive. DX 3 ¶ 1. The basis of Lennon's knowledge of the Consent Orders, the Remediation Plan, and BANA's implementation of the same is provided in her Declaration. *See id.* ¶ 2. Lennon explained in her declaration that in her role, she is responsible for leading particular functions, including "prepaid call center, complaints, fraud policy, and return of funds process; and prepaid claims processing, [REDACTED] management, and cardholder communications." *Id.* The Objections related to Lennon's Declaration should be overruled.

Evidence	Objection	Response	Ruling
11.DX 43.A: [REDACTED] SUMF No. 107, 127, 137, 150, 152-165, 168, 176, 178, 180	Hearsay (Fed. R. Evid. 801, 802, 805). BANA impermissibly attempts to use the Remediation Plan's description of [REDACTED] to prove the truth that [REDACTED] Best Evidence Rule (Fed. R. Evid. 1002, 1006). BANA impermissibly attempts to use the Remediation Plan (DX 43.A)'s description of [REDACTED] to prove the truth of those efforts instead of providing originals of the documents showing [REDACTED]	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: hearsay ³ Inapplicable: best evidence rule ⁶	Sustained: — Overruled: —

1	12.DX 3: Lennon Decl., Page 4, Lines 9-12, ¶ 12	Lack of Foundation and Personal Knowledge (Fed R. Evid. 104(b); Fed R. Civ. 602; Fed. R. Civ. 56(c)(4)). Declarant does not explain the basis for her statements about what BANA's remediation efforts were [REDACTED]	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: lack of foundation, ² legal conclusion/ultimate fact ⁵ Inapplicable: personal knowledge ²	Sustained: — Overruled: —
2				
3	"BANA's remediation efforts and implementation of the Remediation Plan were [REDACTED]			
4				
5				
6				
7				
8				
9		Legal Conclusion/Ultimate Fact (Fed. R. Evid. 701). Declarant offers her improper lay opinion about how BANA's remediation efforts [REDACTED].		
10	SUMF No. 156, 180			
11				
12				
13				
14	13.DX 3: Lennon Decl., Page 4, Lines 16-21 ¶ 14	Relevance (Fed. R. Evid. 402).	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: relevance, ⁴ lack of foundation, ² legal conclusion/ultimate fact ⁵ Inapplicable: personal knowledge ²	Sustained: — Overruled: —
15		Lack of Foundation and Personal Knowledge (Fed R. Evid. 104(b); Fed R. Civ. 602; Fed. R. Civ. 56(c)(4)). Declarant does not explain the basis for her statements about [REDACTED]		
16	"BANA's remediation efforts and implementation of the Remediation Plan were [REDACTED]			
17				
18				
19				
20				
21				
22				
23				
24		Legal Conclusion/Ultimate Fact (Fed. R. Evid. 701 – 702). Declarant offers her improper lay opinion about [REDACTED]		
25				
26				
27	SUMF No. 178			
28				

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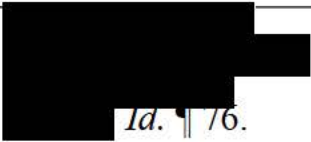
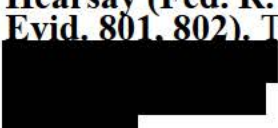
D. The Objections to Letson's Declaration Should Be Overruled.

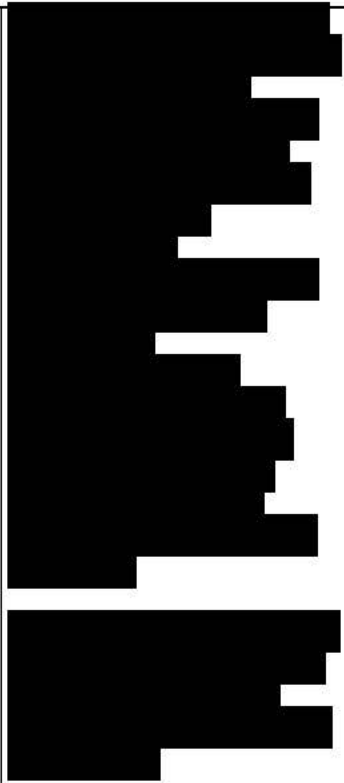
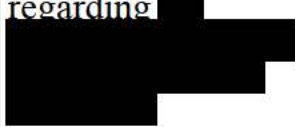
Michael Letson has personal knowledge of the facts set forth in his Declaration, including the documents cited therein, and will provide foundation at trial. Letson was at the relevant times head of BANA's Global Financial Crimes (GFC) group's Financial Crimes Analytics team and is now GFC's Managing Director. DX 4 ¶ 1. Letson's knowledge of BANA's fraud identification and prevention strategies—and implementation of the same—is detailed in his Declaration. *See id.* ¶¶ 3-4. Letson clearly identified that he “manage[s] the GFC business operations group at BANA whose mission is to lead the efforts of the institution to detect and deter criminal misconduct and fraud and support compliance with the Bank Secrecy Act and anti-money laundering (BSA/AML) obligations.” *Id.* ¶ 3. Letson also explained that he, through his role, is “familiar with—and in many instances developed, directed, or implemented—BANA's fraud detection capabilities and efforts, including its use of anti-fraud strategies.” *Id.* The Objections related to Letson's Declaration should be overruled.

Evidence	Objection	Response	Ruling
14.DX 4: Letson Decl. Pg. 2, lines 21-27, ¶ 7 “Any fraud strategy can impact persons whose card activities or observable characteristics appear to be fraudulent or suspicious but are not, in fact, fraudulent for a particular cardholder. In my experience, it is never BANA's intention to inconvenience valid benefits recipients; however, no fraud strategy is 100%	Lack of Foundation and Personal Knowledge (Fed R. Evid. 104(b); Fed R. Civ. 602; Fed. R. Civ. 56(c)(4)). Declarant lacks personal knowledge of all of BANA's intentions such that he can opine on what was “never BANA's intention.” Nor does Declarant provide the basis of his belief about how any fraud strategy can impact cardholders.	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: lack of foundation, ² relevance, ⁴ legal conclusion ⁵ Inapplicable: personal knowledge ²	Sustained: — Overruled: —

1	effective at	Relevance (Fed. R. Evid. 402). Letson's subjective belief is irrelevant.		
2	identifying only			
3	fraudulent activity.			
4	That is the nature of	Legal Conclusion (Fed. R. Evid. 701). Letson's statement describing the CFF as a "reasonable strateg[y]" is a legal conclusion.		
5	reasonable strategies			
6	(like the Claim Fraud Filter (CFF) described below), which are an important tool used for fraud deterrence across the American economy."			
7	SUMF No. 98			
8				
9	15.DX 4: Letson Decl. Pg. 3, lines 1-8, ¶ 8	Lack of Foundation and Personal Knowledge (Fed R. Evid. 104(b); Fed R. Civ. 602; Fed. R. Civ. 56(c)(4)). Declarant lacks personal knowledge [REDACTED] "at all times."	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: lack of foundation, ² relevance ⁴	Sustained: —
10	"At all times when assessing and implementing fraud strategies across all of BANA's products (including UI [unemployment insurance] prepaid cards). [REDACTED]"	Letson's testimony that "[REDACTED]" is an improper expert opinion is contradicted by [REDACTED]	Inapplicable: personal knowledge ² improper opinion testimony ⁸	Overruled: —
11	[REDACTED]			
12	[REDACTED]			
13	[REDACTED]			
14	[REDACTED]			
15	[REDACTED]			
16	[REDACTED]			
17	[REDACTED]			
18	[REDACTED]			
19	[REDACTED]			
20	[REDACTED]			
21	[REDACTED]	Relevance (Fed. R. Evid. 402). Letson's subjective belief about BANA's goal "[a]t all times" is irrelevant.		
22	[REDACTED]			
23	[REDACTED]	Improper Opinion Testimony (Fed. R. Evid. 701, 702). Letson's testimony that "[REDACTED]"		
24	[REDACTED]			
25	[REDACTED]			
26	[REDACTED]			
27	[REDACTED]			
28	[REDACTED]			

1		that it [REDACTED]		
2		[REDACTED] is		
3		an improper expert		
4		opinion.		
5	16.DX 4: Letson	Lack of Foundation	Improper objection	Sustained:
6	Decl. Pg. 4, lines	and Personal	after 2010	—
7	6-22, ¶ 11	Knowledge (Fed R.	amendment to Fed.	Overruled:
8	“Starting in Spring	Evid. 104(b); Fed R.	R. Civ. P. 56: lack of	—
9	2020, BANA	Civ. 602; Fed. R.	foundation,²	
10	observed, and was	Civ. 56(c)(4)).	relevance,⁴ hearsay³	
11	informed by law	Declarant has not	Inapplicable:	
12	enforcement agencies	established personal	personal knowledge²	
13	and other third-party	knowledge of what		
14	sources of massive	“BANA observed.”	Even if these	
15	fraud and illegality in	Relevance (Fed. R.	Objections were	
16	UI programs and	Evid. 402). The	proper (they are not),	
17	affecting BANA	testimony is	BANA further	
18	prepaid cards issued	irrelevant as the fraud	responds as follows:	
19	to distribute benefits	described is about	Plaintiffs’ relevance	
20	for UI programs in 12	benefits eligibility	Objection should also	
21	states. The fraud was	while this case	be overruled because	
22	different in type and	concerns	there is no real dispute	
23	in scale from anything	unauthorized ATM	that this evidence is	
24	BANA had seen	transactions.	relevant. CFF-1, [REDACTED]	
25	previously in its UI	Hearsay (Fed. R.	[REDACTED]	
26	prepaid programs. In	Evid. 801, 802). The	[REDACTED], was	
27	my professional	NBC article, “‘Easy	developed and	
28	experience, the scale	money’: How	implemented in	
	of this fraud and	international scam	response to an	
	misuse was	artists pulled off an	explosion in observed	
	unprecedented. These	epic theft of Covid	benefits fraud (see	
	sentiments appear to	benefits” and Jeremy	SUF ¶¶ 46-57; <i>id.</i>	
	be shared by law	Sheridan’s	¶¶ 64-65). which itself	
	enforcement: the then-	pronouncement	[REDACTED] See <i>id.</i>	
	chief of Secret Service	therein consists of out	¶¶ 60, 76. The general	
	investigations Jeremy	of court statements	pattern BANA	
	Sheridan pronounced	that are being offered	observed was that [REDACTED]	
	that pandemic-era	for their truth.	[REDACTED]	
	unemployment benefit		[REDACTED]	
	abuse was “the largest		[REDACTED]	
	fraud scheme that I’ve		[REDACTED]	
	ever encountered.”		[REDACTED]	
	‘Easy money’: How		[REDACTED]	
	international scam		[REDACTED]	
	artists pulled off an		[REDACTED]	
	epic theft of COVID		[REDACTED]	
	benefits, NBC, Aug.		[REDACTED]	
	15, 2021,		[REDACTED]	
	https://www.nbcnews.		[REDACTED]	
	com/news		[REDACTED]	
	/usnews/easy money-		[REDACTED]	
	howinternational-		[REDACTED]	

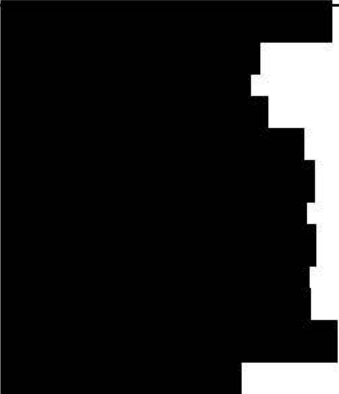
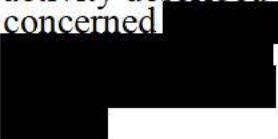
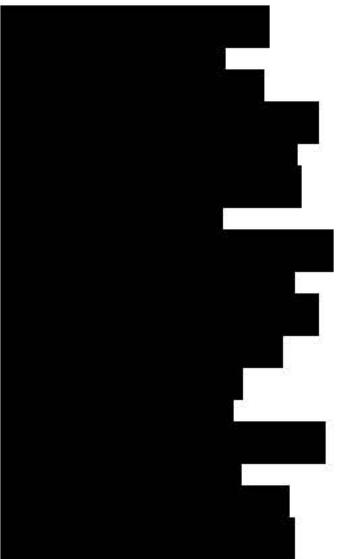
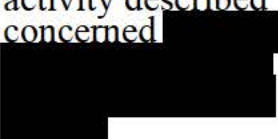
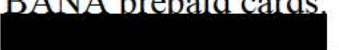
1	scam-artists-pulled- epic-theft-covid- n1276789. This was not a situation where fraud was more common simply because the programs had grown larger.		 <i>Id.</i> ¶ 16.	
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6	Instead, the pandemic created opportunities for benefits eligibility and unauthorized transaction claims (Error Claims) fraud types that had not been prevalent before and, in the case of benefits eligibility fraud, was not even possible on a wide scale before.”			
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12	SUMF No. 54			
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14	17. DX 4: Letson Decl. Pg. 5, lines 1- 12, ¶ 13	Lack of Foundation and Personal Knowledge (Fed R. Evid. 104(b); Fed R. Civ. 602; Fed. R. Civ. 56(c)(4)). Declarant has not established personal knowledge.	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: lack of foundation, ² relevance, ⁴ hearsay ³	Sustained: —
15	“Also in May 2020, BANA was first alerted to benefits eligibility fraud when the U.S. Secret Service issued an alert about massive fraud being perpetrated against state unemployment programs. A true and correct copy of the alert is attached to the Declaration of Laura G. Brys in Support of BANA’s Request for Judicial Notice (the “Brys RJN Decl.”) as RJN 5 (BANA EDD MDL 0020536T).	Relevance (Fed. R. Evid. 402). The testimony is irrelevant as the fraud described is about benefits eligibility while this case concerns unauthorized ATM transactions.	Inapplicable: personal knowledge ² Even if these Objections were proper (they are not) BANA further responds as follows: Plaintiffs’ relevance Objection should also be overruled because there is no real dispute that this evidence is relevant. <i>See</i> Resp. to Obj. 16.	Overruled: —
16		<u>RJN 5</u>		
17		Hearsay (Fed. R. Evid. 801, 802). The	Further, Plaintiffs’ hearsay Objection should also be overruled because these statements are not being offered for their truth, but for	
18			 are out of court statements	
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1 2 3 4 5 6 7 8 9 10 11 12 13 14	 SUMF No. 53, 54	being offered for their truth.	their effect on BANA's state of mind and as a basis for BANA's actions. <i>See Highfields Cap. I, LP v. SeaWorld Ent., Inc.</i> , 2022 WL 1037210, *6 (S.D. Cal. Apr. 6, 2022) (overruling hearsay objection where statement is offered "to establish the effect on the listener or a basis in fact for the listener's subsequent actions") (internal quotations omitted). Specifically, these statements are offered to support BANA's reasonable belief at the time regarding 	
15 16 17 18 19 20 21 22 23 24 25 26 27 28	18.DX 4: Letson Decl. Pg. 5, lines 13-19, ¶ 14 "Ultimately, law enforcement uncovered criminal conduct stretching across the globe, and domestic networks of "money mules" who occupied themselves all day long with applying for unemployment or making cash withdrawals using wrongfully obtained BANA UI prepaid cards." FinCEN, <i>Advisory on Imposter Scams and Money Mule Schemes Related to Coronavirus Disease 2019 (COVID-19)</i> (July 7, 2020), https://www.fincen.gov/sites/de	Mischaracterizes Evidence (Fed. R. Evid. 403). The cited evidence does not support the statement. Relevance (Fed. R. Evid. 402) . This FinCEN advisory concerns impersonation of government agents and charities which is irrelevant to this case. Hearsay (Fed. R. Evid. 801, 802) . The article from FinCEN, titled "Advisory on Imposter Scams and Money Mule Schemes Related to Coronavirus Disease 2019 (COVID-19)," consists of out of court statements that are being offered for	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: relevance, ⁴ hearsay ³ Inapplicable: mischaracterizes evidence ⁷ Even if these Objections were proper (they are not) BANA further responds as follows: Plaintiffs' hearsay Objection should also be overruled because these statements are not being offered for their truth, but for their effect on BANA's state of mind and as a basis for BANA's actions. <i>See</i> Resp. to Obj. 17.	Sustained: — Overruled: —

1	fault/files/advisory/20	their truth.		
2	20-07-07/Advisory –			
3	%20Imposter and –			
4	Money MuTE			
5	COVID_19_508_FIN			
6	AL.pdf.”			
7	SUMF No. 54			
8	19.DX 4: Letson	Lack of Foundation	Improper objection	Sustained:
9	Decl. Pg. 5-6, lines	and Personal	after 2010	—
10	19-2, ¶ 14	Knowledge (Fed R.	amendment to Fed.	Overruled:
11	“PUA fraud also	Evid. 104(b); Fed R.	R. Civ. P. 56: lack of	—
12	occurred within	Civ. 602; Fed. R.	foundation,²	
13	California’s state	Civ. 56(c)(4)).	relevance,⁴ hearsay³	
14	prison system, as	Declarant has not	Inapplicable:	
15	PBANA observed	established personal	personal knowledge,²	
16	(and California’s State	knowledge.		
17	Auditor and various	Relevance (Fed. R.	Even if these	
18	news organizations	Evid. 402). The	Objections were	
19	later reported) that an	testimony is	proper (they are not)	
20	estimated \$810	irrelevant as the fraud	BANA further	
21	million in benefits	described is about	responds as follows:	
22	was fraudulently	benefits eligibility	Plaintiffs’ relevance	
23	obtained by prisoners	while this case	Objection should also	
24	making fraudulent	concerns	be overruled because	
25	unemployment	unauthorized ATM	there is no real dispute	
26	claims. As of January	transactions.	that this evidence is	
27	2021, California’s	<u>RJN 5</u>	relevant. <i>See</i> Resp. to	
28	State Auditor	Hearsay (Fed. R.	Obj. 16.	
	estimated nearly \$10.4	Evid. 801, 802). The		
	billion in fraudulent	“information from		
	claims.	federal, state, and		
	Subsequent reports	local law		
	have estimated in	enforcement” are out		
	excess of \$32 billion	of court statements		
	of unemployment	being offered for		
	benefits were stolen	their truth.		
	and illegitimately	Hearsay (Fed. R.		
	issued in California.	Evid. 801, 802). The		
	Auditor of the State of	report from Auditor		
	California, <i>Significant</i>	of the State of		
	<i>Weaknesses in EDD’s</i>	California, titled		
	<i>Approach to Fraud</i>	“Significant		
	<i>Prevention Have Led</i>	<i>Weaknesses in</i>		
	<i>to Billions of Dollars</i>	<i>EDD’s Approach to</i>		
	<i>in Improper Benefit</i>	<i>Fraud Prevention</i>		
	<i>Payments</i> (Jan.	<i>Have Led to Billions</i>		
	2021), https://information.audito	<i>of Dollars in</i>		
	r.ca.gov/pdfs/reports/	<i>Improper Benefit</i>		
		<i>Payments” consists</i>		

1	2020-628.2.pdf.	of out of court		
2	SUMF No. 54	statements that are		
3		being offered for		
4		their truth.		
5	20.DX 4: Letson	Lack of Foundation	Improper objection	Sustained:
6	Decl. Pg. 6, lines	and Personal	after 2010	—
7	7-17, ¶ 16	Knowledge (Fed R.	amendment to Fed.	Overruled:
8	“Despite BANA’s	Evid. 104(b); Fed R.	R. Civ. P. 56: lack of	—
9	best efforts.	Civ. 602; Fed. R.	foundation,²	
10		Civ. 56(c)(4)).	relevance⁴	
11		Declarant lacks	Inapplicable:	
12		personal knowledge	personal knowledge, ²	
13		of what information		
14		the State has and its		
15		responsibilities.		
16		Relevance (Fed. R.		
17		Evid. 402). The		
18		testimony is		
19		irrelevant as the fraud		
20		described is about		
21				
22		while this case		
23		concerns		
24		unauthorized ATM		
25		transactions.		
26				
27				
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1	SUMF No. 8, 9			
2	21.DX 4: Letson	Relevance (Fed. R.	Improper objection	Sustained:
3	Decl. Pg. 6-7, lines	Evid. 402). The	after 2010	—
4	18-4 ¶ 17	testimony is	amendment to Fed.	Overruled:
5		irrelevant as the	R. Civ. P. 56:	—
6		activity described	relevance ⁴	
7		concerned	Even if these	
8			Objections were	
9			proper (they are not)	
10			BANA further	
11			responds as follows:	
12			Plaintiffs' relevance	
13			Objection should also	
14			be overruled because	
15			there is no real dispute	
16			that this evidence is	
17			relevant. <i>See</i> Resp. to	
18			Obj. 16.	
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7	SUMF No. 58, 61			
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9	22.DX 4: Letson Decl. Pg. 8, lines 1-5, ¶ 19	Relevance (Fed. R. Evid. 402). The testimony is irrelevant as the activity described concerned 	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: relevance ⁴ Even if these Objections were proper (they are not) BANA further responds as follows: Plaintiffs' relevance Objection should also be overruled because there is no real dispute that this evidence is relevant. <i>See</i> Resp. to Obj. 16.	Sustained: — Overruled: —
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19	SUMF No. 58, 61			
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21	23.DX 4: Letson Decl. Pg. 8, lines 6-15, ¶ 20	Relevance (Fed. R. Evid. 402). The testimony is irrelevant as the activity described concerned 	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: relevance ⁴ Even if these Objections were proper (they are not) BANA further responds as follows: Plaintiffs' relevance Objection should also be overruled because there is no real dispute that this evidence is	Sustained: — Overruled: —
22	"GFC's and law			
23	enforcement's			
24	investigations in the			
25	first six months of the			
26	pandemic yielded two			
27	key observations that			
28	were themes of fraud			
	and suspicious			
	activity in State UI			
	programs that used			
	BANA prepaid cards;			
				

1			relevant. <i>See</i> Resp. to	
2			Obj. 16.	
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15	SUMF No. 37, 57, 58,			
16	61			
17	24.DX 4: Letson	Lack of Foundation	Improper objection	Sustained:
18	Decl. Pg. 8-9, lines	(Fed R. Evid. 104(b);	after 2010	—
19	24-2, ¶ 21	Fed R. Civ. 602; Fed.	amendment to Fed.	Overruled:
20		R. Civ. 56(c)(4)).	R. Civ. P. 56: lack of	—
21		Declarant lacks	foundation, ²	
22		personal knowledge	relevance ⁴	
23		that	Inapplicable:	
24			personal knowledge, ²	
25			best evidence rule ⁸	
26		Relevance (Fed. R.	Even if these	
27		Evid. 402). The	Objections were	
28		testimony is	proper (they are not)	
		irrelevant as the	BANA further	
		activity described	responds as follows:	
		concerned	Plaintiffs' relevance	
		and had	Objection should also	
		nothing to do with	be overruled because	
		CFF-1	there is no real dispute	
			that this evidence is	
			relevant. <i>See</i> Resp. to	
			Obj. 16.	

1		Best Evidence Rule (Fed. R. Evid. 1002).		
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3	SUMF No. 62, 63, 65	are the best evidence of its contents, and testimony evidence is not admissible to prove its contents.		
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6	25.DX 4: Letson Decl. Pg. 9, lines 11-21, ¶ 22	Relevance (Fed. R. Evid. 402). The testimony is irrelevant as it concerns benefits eligibility and had nothing to do with CFF-1	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: relevance,⁴ hearsay³	Sustained: —
7				Overruled: —
8	“As a report issued by the United States House Committee on Oversight and Accountability recently explained:	Hearsay (Fed. R. Evid. 801, 802). The report issued by the United States House Committee on Oversight and Accountability titled “ <i>Examining Widespread Fraud in Pandemic Unemployment Relief Programs</i> ” consists of unauthenticated out of court statements that are being offered for their truth.	Even if these Objections were proper (they are not) BANA further responds as follows: Plaintiffs’ relevance Objection should also be overruled because there is no real dispute that this evidence is relevant. <i>See</i> Resp. to Obj. 16.	
9	EDD staff under Su’s leadership 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.			
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23	H. Comm. on Oversight and Accountability Majority Staff, <i>Examining Widespread Fraud in Pandemic Unemployment Relief Programs</i> (Sept. 10, 2024), https://oversight.house.gov/wp-			
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1	content/uploads/2024/09/UI - Report-FINAL.pdf.”			
2				
3	SUMF No. 64, 68			
4	26.DX 4: Letson Decl. Pg. 9, lines 21-27, ¶ 22	Relevance (Fed. R. Evid. 402). The testimony is irrelevant as it concerns benefits eligibility and had nothing to do with CFF-1	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: relevance, ⁴ hearsay ³	Sustained: —
5	“By mid-September 2020, the Governor shut down EDD so it could take two weeks to implement a new process to fight fraudulent applications for benefits and clean a backlog of pending applications. See EDD Announces Reset in Response to Strike Team Recommendations to Process Claims Faster, Reduce Fraud and Tackle Backlog Issue, EDD, New Release No. 20-49, Sept. 19, 2020, https://edd.ca.gov/About_EDD/pdf/news-20-49.pdf .”	Lack of Personal Knowledge (Fed R. Evid. 104(b); Fed R. Civ. 602; Fed. R. Civ. 56(c)(4)). Declarant lacks personal knowledge of the Governor’s internal directives or the operational motivations of the EDD.	Inapplicable: personal knowledge ²	Overruled: —
6			Even if these Objections were proper (they are not) BANA further responds as follows: Plaintiffs’ relevance Objection should also be overruled because there is no real dispute that this evidence is relevant. See Resp. to Obj. 16.	
7			Further, in response to Plaintiffs’ Objection that the link to the EDD Announcement in Letson’s Declaration does not work, the EDD Announcement is available at https://www.labor.ca.gov/2020/09/19/edd-announces-reset/ .	
8	SUMF No. 64, 68	Hearsay (Fed. R. Evid. 801, 802). The EDD Announcement consists of out of court statements that are being offered for their truth. Letson does not even provide the EDD Announcement as the link does not work.		
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22	27.DX 4: Letson Decl. Pg. 10, lines 1-5, ¶ 23	Lack of Foundation and Personal Knowledge (Fed R. Evid. 104(b); Fed R. Civ. 602; Fed. R. Civ. 56(c)(4)). Declarant does not explain the basis for his testimony that BANA	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: lack of foundation, ² legal conclusion ³	Sustained: —
23	“To further combat the staggering level of UI fraud and to meet its responsibilities under BSA/AML laws. BANA		Inapplicable: personal knowledge, ² best evidence rule ⁸	Overruled: —
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1 2 3 4 5 6 7 8 9 10 11	[REDACTED] SUMF No. 7-8, 55-58, 80, 82, 94	[REDACTED] Legal Conclusion (Fed. R. Evid. 701). Letson's testimony that BANA [REDACTED] is a legal conclusion, not an evidentiary fact. Best Evidence Rule (Fed. R. Evid. 1002). Declarant tries to prove the content of BANA's strategies via testimony rather than providing these documents.		
12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	28.DX 4: Letson Decl. Pg. 10-11, lines 27-18, ¶ 26 "Around that time, and in part [REDACTED] This scheme involved situations where [REDACTED]"	Lack of Foundation and Personal Knowledge (Fed R. Evid. 104(b); Fed R. Civ. 602; Fed. R. Civ. 56(c)(4)). Letson does not identify how [REDACTED] Best Evidence Rule (Fed. R. Evid. 1002). Declarant tries to prove [REDACTED]	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: lack of foundation² Inapplicable: personal knowledge,² best evidence rule⁸	Sustained: — Overruled: —

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[REDACTED]
[REDACTED] BANA
was required to
investigate those Error
Claims and, as I
understand the legal
requirements, if
BANA was unable to
complete the
investigation in 10
business days, BANA
was required to issue
a "provisional" credit
to the account.

[REDACTED]

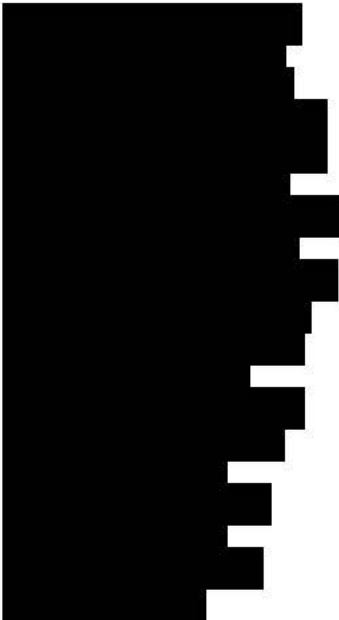
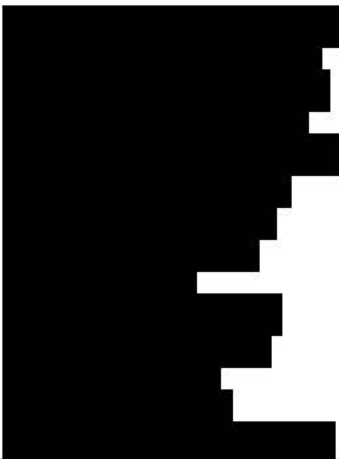
We found that

[REDACTED]

[REDACTED] via
testimony rather than
providing these
documents.

1	SUMF No. 74, 76, 79, 91			
2				
3	29.DX 4: Letson	Lack of Foundation	Improper objection	Sustained:
4	Decl. Pg. 11-12,	and Personal	after 2010	—
5	lines 19-4, ¶ 27	Knowledge (Fed R.	amendment to Fed.	Overruled:
6		Evid. 104(b); Fed R.	R. Civ. P. 56: lack of	—
7		Civ. 602; Fed. R.	foundation²	
8		Civ. 56(c)(4)).	Inapplicable:	
9		Declarant does not	personal knowledge,²	
10		explain	best evidence rule⁸	
11				
12		Best Evidence Rule		
13		(Fed. R. Evid. 1002).		
14		Declarant tries to		
15		prove		
16				
17		rather than		
18		providing these		
19		documents.		
20				
21				
22				
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24				
25				
26				
27	SUMF No. 79, 91			

1	30.DX 4: Letson	Lack of Foundation	Improper objection	Sustained:
2	Decl. Pg. 12, lines	and Personal	after 2010	—
3	5-16, ¶ 28	Knowledge;	amendment to Fed.	Overruled:
4	“BANA’s experienced	Relevance (Fed R.	R. Civ. P. 56: lack of	—
5	fraud detection	Evid. 104(b); Fed R.	foundation,² hearsay³	
6	specialists	Civ. 602; Fed. R.		
7		Civ. 56(c)(4); 402).	Inapplicable:	
8		Declarant does not	personal knowledge²	
9		explain		
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1	31. DX 4: Letson	Relevance (Fed. R.	Improper objection	Sustained:
2	Decl. Pg. 13, lines	Evid. 402). Letson	after 2010	—
3	7-13, ¶ 31	does not explain how	amendment to Fed.	Overruled:
4		his testimony about	R. Civ. P. 56:	—
5			relevance, ⁴ lack of	
6			foundation, ² hearsay ³	
7			Inapplicable:	
8			personal knowledge ²	
9		Lack of Foundation		
10		and Personal		
11		Knowledge (Fed R.		
12		Evid. 104(b); Fed R.		
13	SUMF No. 82, 103	Civ. 602; Fed. R.		
14		Civ. 56(c)(4)).		
15		Declarant does not		
16		explain how he has		
17		personal knowledge		
18		about what BANA's		
19		experts and Fraud		
20		teams believe.		
21		Hearsay (Fed. R.		
22		Evid. 801, 802, 805).		
23		Declarant purports to		
24		repeat out-of-court		
25		statements by		
26		BANA's experts and		
27		Fraud teams to prove		
28		the truth of the matter		
		asserted.		
		Relevance (Fed. R.	Improper objection	Sustained:
	32. DX 4: Letson	Evid. 402). Letson	after 2010	—
	Decl. Pg. 13, lines	does not explain how	amendment to Fed.	Overruled:
	14-18, ¶ 32		R. Civ. P. 56:	—
			relevance, ⁴ lack of	
			foundation ²	
		Lack of Foundation	Inapplicable:	
		and Personal	personal knowledge, ²	
		Knowledge (Fed R.	best evidence rule, ⁶	
		Evid. 104(b); Fed R.	improper lay opinion ⁸	
		Civ. 602; Fed. R.		
		Civ. 56(c)(4)).		
		Declarant does not		
		explain how he has		
		personal knowledge		

1	[REDACTED]	that [REDACTED]		
2	[REDACTED]	[REDACTED]		
3	SUMF No. 82, 92	Improper Lay		
4		Opinion (Fed. R. Evid. 701). Declarant offers his improper lay opinion that [REDACTED]		
5		[REDACTED]		
6		[REDACTED]		
7		[REDACTED]		
8		[REDACTED]		
9		[REDACTED]		
10		[REDACTED]		
11		[REDACTED]		
12		Best Evidence Rule (Fed. R. Evid. 1002). Declarant tries to prove [REDACTED] via		
13		testimony rather than providing documents [REDACTED]		
14		[REDACTED]		
15				
16				
17	33.DX 4: Letson	Lack of Foundation and Personal Knowledge (Fed R. Evid. 104(b); Fed R. Civ. 602; Fed. R. Civ. 56(c)(4)). Declarant does not explain how he has personal knowledge that [REDACTED]	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: lack of foundation, ² relevance ⁴	Sustained: —
18	Decl. Pg. 13, lines 19-23, ¶ 33			Overruled: —
19	“At the time the CFF was implemented, in late September 2020, [REDACTED]		Inapplicable: personal knowledge ²	
20	[REDACTED]			
21	[REDACTED]			
22	[REDACTED]			
23	[REDACTED]			
24	[REDACTED]			
25	[REDACTED]	The statement is also unreliable as it is [REDACTED]		
26	[REDACTED]	[REDACTED]		
27	[REDACTED]			
28	[REDACTED]			

1 2 3 4 5 6	SUMF No. 84, 92, 93 Relevance (Fed. R. Evid. 402). Letson does not explain how which is at issue in this case.		
7 8 9 10 11 12	34.DX 180: SUMF 102	Lack of Foundation (Fed R. Evid. 104(b); Fed R. Civ. 602; Fed. R. Civ. 56(c)(4)). The Declaration does not identify who prepared attached to the Brys SJ Declaration as DX 180.	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: lack of foundation ² Sustained: — Overruled: —
13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	35.DX 4: Letson Decl. Pg. 14, lines 23-27, ¶ 36 “Given the clear evidence of massive fraud specifically designed to exploit BANA’s obligations to issue provisional credit, BANA determined that SUMF No. 82, 84-86, 122	Improper Lay Opinion (Fed. R. Evid. 701). Declarant offers his improper lay opinion that there was “clear evidence of massive fraud” and that Lack of Foundation and Personal Knowledge (Fed R. Evid. 104(b); Fed R. Civ. 602; Fed. R. Civ. 56(c)(4)). Declarant does not explain constituted “clear evidence” and this statement is contradicted by the testimony of analysts and managers that they were unaware of or could not recall	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: lack of foundation ² Inapplicable: personal knowledge, ² improper lay opinion ⁸ Sustained: — Overruled: —

E. The Objections to Martin's Declaration Should Be Overruled.

William M. Martin has personal knowledge of the facts set forth in his Declaration, including the documents cited therein, and will provide foundation at trial. Martin served at relevant times as a BANA Prepaid Fraud Operations Executive. DX 5 ¶ 1. Martin's knowledge of and experience with BANA's fraud detection and anti-fraud strategies as applied to the EDD prepaid card program is clearly laid out in his Declaration. *Id.* ¶¶ 2-3. Martin established that he has personal knowledge regarding the "fraud associated with unauthorized transaction claims" in his current and prior roles at BANA, and he is "[s]pecifically . . . familiar with the [REDACTED] [REDACTED] [REDACTED]" *Id.* Martin also established that he has personal knowledge regarding "[REDACTED] [REDACTED]" and has "been directly and personally involved in the development and implementation of BANA's fraud detection capabilities and efforts." *Id.* ¶ 3. The Objections related to Martin's Declaration should be overruled.

Evidence	Objection	Response	Ruling
36.DX 5: Martin Decl., Page 4, Lines 5-15, ¶ 7 [REDACTED]	Lack of Foundation and Personal Knowledge (Fed R. Evid. 104(b); Fed R. Civ. 602; Fed. R. Civ. 56(c)(4)). Lack of foundation for declarant's testimony that [REDACTED]	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: lack of foundation ² Inapplicable: personal knowledge, ² improper lay opinion ⁸	Sustained: — Overruled: —

1	[REDACTED]	[REDACTED]		
2	[REDACTED]	[REDACTED]		
3	[REDACTED]	[REDACTED]		
4	[REDACTED]	[REDACTED]		
5	[REDACTED]	[REDACTED]		
6	[REDACTED]	[REDACTED]		
7	[REDACTED]	[REDACTED]		
8	[REDACTED]	[REDACTED]		
9	[REDACTED]	Improper Lay		
10	[REDACTED]	Opinion (Fed. R.		
11	[REDACTED]	Evid. 702). Improper		
12	[REDACTED]	lay opinion regarding		
13	[REDACTED]	[REDACTED]		
14	[REDACTED]	[REDACTED]		
15	[REDACTED]	[REDACTED]		
16	[REDACTED]	[REDACTED]		
17	SUMF No. 130, 134- 135, 181			
18	37.DX 5: Martin	Lack of Foundation	Improper objection	Sustained:
19	Decl., Page 4,	and Personal	after 2010	—
20	Lines 17-20, ¶ 8	Knowledge (Fed R.	amendment to Fed.	Overruled:
21	“EMV chip	Evid. 104(b); Fed R.	R. Civ. P. 56: lack of	—
22	technology can deter	Civ. 602; Fed. R.	foundation²	
23	certain types of third-	Civ. 56(c)(4)). Lack	Inapplicable:	
24	party fraud, but it does	of foundation for	personal knowledge, ²	
25	not eradicate all	declarant’s testimony	improper lay opinion ⁸	
26	fraudulent	regarding abilities		
27	transactions. For	and limitations of		
28	example, EMV chip	EMV chip		
	technology does not	technology.		
	prevent first-party	Improper Lay		
	benefits enrollment	Opinion (Fed. R.		
	fraud, card-not-	Evid. 702). Improper		
	present fraudulent	lay opinion regarding		
	transactions, or the	abilities and		
	fraudulent use of the	limitations of EMV		
	card if lost or stolen.”	chip technology.		

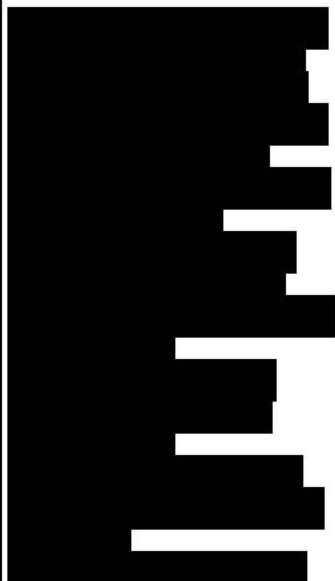
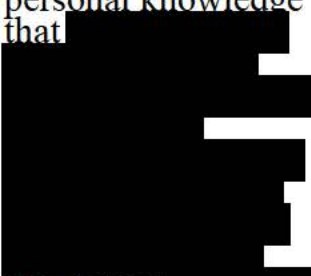
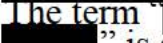
1	SUMF No. 242			
2	38.DX 5: Martin	Lack of Foundation	Improper objection	Sustained:
3	Decl., Page 4,	and Personal	after 2010	—
4	Lines 21-25, ¶ 9	Knowledge (Fed R.	amendment to Fed.	Overruled:
5	“While EMV chip	Evid. 104(b); Fed R.	R. Civ. P. 56: lack of	—
6	technology makes it	Civ. 602; Fed. R.	foundation ²	
7	more difficult to	Civ. 56(c)(4)). Lack	Inapplicable:	
8	create counterfeit	of foundation for	personal knowledge, ²	
9	cards, it does not	declarant’s testimony	improper lay opinion ⁸	
10	prevent the [REDACTED]	regarding abilities		
11	[REDACTED]	and limitations of		
12	[REDACTED]	EMV chip		
13	[REDACTED]	technology.		
14	[REDACTED]	Improper Lay		
15	[REDACTED]	Opinion (Fed. R.		
16	[REDACTED]	Evid. 702). Improper		
17	[REDACTED]	lay opinion regarding		
18	[REDACTED]	abilities and		
19	[REDACTED]	limitations of EMV		
20	[REDACTED]	chip technology.		
21	[REDACTED]			
22	[REDACTED]			
23	[REDACTED]			
24	[REDACTED]			
25	[REDACTED]			
26	[REDACTED]			
27	[REDACTED]			
28	SUMF No. 243, 245			
16	39.DX 5: Martin	Lack of Foundation	Improper objection	Sustained:
17	Decl., Pages 4-5,	and Personal	after 2010	—
18	Lines 26-2, ¶ 10	Knowledge (Fed R.	amendment to Fed.	Overruled:
19	“EMV chip	Evid. 104(b); Fed R.	R. Civ. P. 56: lack of	—
20	technology [REDACTED]	Civ. 602; Fed. R.	foundation ²	
21	[REDACTED]	Civ. 56(c)(4)). Lack	Inapplicable:	
22	[REDACTED]	of foundation for	personal knowledge, ²	
23	[REDACTED]	declarant’s testimony	improper lay opinion ⁸	
24	[REDACTED]	regarding abilities		
25	[REDACTED]	and limitations of		
26	[REDACTED]	EMV chip		
27	[REDACTED]	technology compared		
28	[REDACTED]	to the magnetic		
	[REDACTED]	stripe.		
	[REDACTED]	Improper Lay		
	[REDACTED]	Opinion (Fed. R.		
	[REDACTED]	Evid. 702). Improper		
	[REDACTED]	lay opinion regarding		
	[REDACTED]	abilities and		
	[REDACTED]	limitations of EMV		
	[REDACTED]	chip technology		
	[REDACTED]	compared to the		
	[REDACTED]	magnetic stripe.		
	SUMF No. 247, 248			

1	40.DX 5: Martin Decl., Page 5, Lines 3-10, ¶ 11; DX 181	Relevance (Fed. R. Evid. 402). Events in July 2021 occurred outside of the Class period and are not relevant.	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: relevance, ⁴ hearsay ³	Sustained: — Overruled: —
2	“After receiving approval from California EDD, in July 2021, BANA began issuing [REDACTED] EDD prepaid debit cards with EMV chip technology. [REDACTED]	Hearsay (Fed. R. Evid. 801, 802, 805). Declarant cites to his own out-of-court statement in DX 181 for the truth of its assertions that [REDACTED]		
3	[REDACTED]	[REDACTED]		
4	[REDACTED]	[REDACTED]		
5	[REDACTED]	[REDACTED]		
6	[REDACTED]	[REDACTED]		
7	[REDACTED]	[REDACTED]		
8	[REDACTED]	[REDACTED]		
9	[REDACTED]	[REDACTED]		
10	[REDACTED]	[REDACTED]		
11	[REDACTED] A true and accurate copy of an email dated August 31, 2021 that I sent concerning [REDACTED]	Declarant has not established that DX 181 is admissible under a hearsay exception.		
12	[REDACTED]			
13	[REDACTED]			
14	[REDACTED]			
15	[REDACTED] is attached as an Exhibit to the Declaration of Laura G. Brys as DX 181 , Bates stamped BANA EDD MDL-00654305. [REDACTED]			
16	[REDACTED]			
17	[REDACTED]			
18	[REDACTED]			
19	[REDACTED]			
20	SUMF No. 10 (DX 5 ¶ 11), 241 (DX 181)			
21				
22	41.DX 181: E-mail from declarant to BANA on August 31, 2021 about fraud claims	Relevance (Fed. R. Evid. 402). Events in July 2021 occurred outside of the Class period and are not relevant.	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: relevance, ⁴ hearsay ³	
23	SUMF No. 241	Authentication (Fed. R. Evid. 901(a)). Declarant does not establish DX 181 as a	Inapplicable: authentication ¹	
24				
25				
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28				

1		business record. (FRE 901.)	
2			
3		Hearsay (Fed. R. Evid. 803, 805). DX 181 is an out-of-court statement asserted for the truth of its content that relies on unidentified data that cannot be authenticated as a business record or other exception to hearsay exclusion. (FRE 803, 805.)	
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F. The Objection to Robart's Declaration Should Be Overruled.

Don Robart has personal knowledge of the facts set forth in his Declaration, including the documents cited therein, and will provide foundation at trial. Robart is an Operations Executive in Claims Processing for BANA. DX 6 ¶ 1. Robart's knowledge of and experience with BANA's Business Records and the systems and processes that produce those Records is clearly laid out in his Declaration. *See id.* ¶¶ 3-4. The Objection to Robart's Declaration should be overruled.

Evidence	Objection	Response	Ruling
42.DX 6: Robart Decl., Pages 2-3, Lines 24-2, ¶ 7 	Lack of Foundation and Personal Knowledge (Fed R. Evid. 104(b); Fed R. Civ. 602; Fed. R. Civ. 56(c)(4)). Declarant does not explain how he has personal knowledge that  The term "  " is also ambiguous.	Improper objection after 2010 amendment to Fed. R. Civ. P. 56: lack of foundation ² Inapplicable: personal knowledge, ² improper lay opinion ⁸	Sustained: — Overruled: —

1 [REDACTED] 2 Therefore, between 3 September 13, 2020 4 and November 21, 5 2020, Bank of 6 America cannot 7 determine the 8 individual wait or hold time for a caller through a simple systematic data pull of its own records. SUMF No. 229-230	Improper Lay Opinion (Fed. R. Evid. 702). Declarant offers improper lay opinion regarding [REDACTED]		
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CONCLUSION

For the foregoing reasons, BANA respectfully requests the Court overrule all of Plaintiffs' Objections and consider all of its evidence as appropriate in resolving its Motion for Partial Summary Judgment (ECF 589).

Dated: February 20, 2026

Respectfully submitted,

By: s/ Laura G. Brys

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Attorneys for Defendant

BANK OF AMERICA, N.A.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the clerk of the court for the United States District Court for the Southern District of California by using the CM/ECF system on February 20, 2026. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system. I certify under penalty of perjury that the foregoing is true and correct.

Dated: February 20, 2026

s/ Laura G. Brys

LAURA BRYs