

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 IN RE BANK OF AMERICA
12 CALIFORNIA UNEMPLOYMENT
13 BENEFITS LITIGATION
14
15

Case No.: 21md2992-LAB (MSB)

16
17 **SCHEDULING ORDER**
18 **REGULATING DISCOVERY**
19 **AND OTHER PRE-TRIAL**
20 **PROCEEDINGS**
21

22 A Case Management Conference was held on June 14, 2023. After consulting
23 with the chambers of the Honorable District Judge Larry Alan Burns, **IT IS HEREBY**
24 **ORDERED:**
25

26 1. The Court **SETS** a Zoom Case Management Conference ("CMC") with
27 Interim Co-Lead Counsel, Interim Liaison Counsel, and counsel for Defendant,
28 (collectively, "the Parties") on August 28, 2023, at 10:30 a.m. No later than noon on
August 21, 2023, counsel for the Parties must send an e-mail to
efile_berg@casd.uscourts.gov, including the names, email addresses, and contact
telephone numbers for all attorneys who plan to attend the CMC.

2. Any motion for class certification must be filed on or before January 15,
2024. Counsel for the moving party must obtain a motion hearing date from the law
clerk of the judge who will hear the motion. The period of time between the date you

1 request a motion date and the hearing date may vary from one district judge to another.
2 Please plan accordingly. Failure to make a timely request for a motion date may result in
3 a motion not being heard.

4 3. All fact discovery shall be completed by all parties on or before **March 15,**
5 **2024.** “Completed” means that all discovery under Rules 30-36 of the Federal Rules of
6 Civil Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient
7 period of time in advance of the cut-off date, **so that it may be completed** by the cut-off
8 date, taking into account the times for service, notice and response as set forth in the
9 Federal Rules of Civil Procedure. All interrogatories, requests for admission, and
10 document production requests must be served by **January 15, 2024.**

11 Counsel shall promptly and in good faith meet and confer about all discovery
12 disputes in compliance with Local Rule 26.1(a). All discovery disputes must be raised
13 with the Court within **30 days** of the event giving rise to the dispute. For oral discovery,
14 the event giving rise to the dispute is the completion of the transcript of the relevant
15 portion of the deposition. For written discovery, the event giving rise to the discovery
16 dispute is the date of service of the response, **not** the date on which counsel reach an
17 impasse in meet and confer efforts. If a party fails to provide a discovery response, the
18 event giving rise to the discovery dispute is the date response was due.

19 The Court’s procedures for resolving discovery disputes are set forth in Magistrate
20 Judge Michael S. Berg’s Civil Chambers Rules, which are posted on the Court’s website.
21 **A failure to comply in this regard will result in a waiver of a party’s discovery issue.**
22 **Absent an order of the court, no stipulation continuing or altering this requirement**
23 **will be recognized by the court.**

24 4. By **April 19, 2024,** each party shall comply with the disclosure provisions in
25 Rule 26(a)(2)(B) and (C) of the Federal Rules of Civil Procedure. This disclosure
26 requirement applies to all persons retained or specially employed to provide expert
27 testimony, or whose duties as an employee of the party regularly involve the giving of
28 expert testimony. **Except as provided in the paragraph below, any party that fails to**

1 **make these disclosures shall not, absent substantial justification, be permitted to use**
2 **evidence or testimony not disclosed at any hearing or at the time of trial. In**
3 **addition, the Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

4 5. Any party shall supplement its disclosure regarding contradictory or rebuttal
5 evidence under Rule 26(a)(2)(D) by **May 10, 2024**.

6 6. All expert discovery shall be completed by all parties by **May 31, 2024**. The
7 parties shall comply with the same procedures set forth in the paragraph governing fact
8 discovery.

9 7. Failure to comply with this section or any other discovery order of the court
10 may result in the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on
11 the introduction of experts or other designated matters in evidence.

12 8. All other pretrial motions must be filed by **June 28, 2024**. Counsel for the
13 moving party must obtain a motion hearing date from the law clerk of the judge who will
14 hear the motion. The period of time between the date you request a motion date and the
15 hearing date may vary from one district judge to another. Please plan accordingly.
16 Failure to make a timely request for a motion date may result in the motion not being
17 heard. Motions in limine are to be filed as directed in the Local Rules, or as otherwise set
18 by the district judge.

19 9. A Mandatory Settlement Conference shall be conducted on **September 17,**
20 **2024**, at **9:30 a.m.**, in the chambers of **Magistrate Judge Michael S. Berg** located at **221**
21 **West Broadway, second floor, San Diego, CA 92101**. All discussions at the Mandatory
22 Settlement Conference will be informal, off the record, privileged, and confidential.
23 Counsel for any non-English speaking party is responsible for arranging for the
24 appearance of an interpreter at the conference.

25 a. **Personal Appearance of Parties Required:** All named parties, party
26 representatives, including claims adjusters for insured defendants, as well as the principal
27 attorney(s) responsible for the litigation, must be present **in person** and legally and
28 factually prepared to discuss and resolve the case. Counsel appearing without their

clients (whether or not counsel has been given settlement authority) will be cause for immediate imposition of sanctions and may also result in the immediate termination of the conference.

b. **Full Settlement Authority Required:** A party or party representative with full settlement authority¹ must be present at the conference. Retained outside corporate counsel shall not appear on behalf of a corporation as the party representative who has the authority to negotiate and enter into a settlement. A government entity may be excused from this requirement so long as the government attorney who attends the Mandatory Settlement Conference has (1) primary responsibility for handling the case, and (2) authority to negotiate and recommend settlement offers to the government official(s) having ultimate settlement authority.

c. **Confidential Settlement Statements Required:** On or before **September 10, 2024**, the parties shall submit directly to Magistrate Judge Berg's chambers (via hand delivery or by e-mail to the Court at efile_berg@casd.uscourts.gov), confidential settlement statements. The statements are limited to ten (10) pages, plus an additional ten (10) pages of exhibits. Each party's settlement statement must outline (1) the nature of the case and the claims, (2) position on liability or defenses; (3) position regarding settlement of the case with a **specific demand/offer for settlement**, and (4) any previous settlement negotiations or mediation efforts. The Mandatory Settlement Conference statement **must not merely repeat** what was contained in the Early Neutral Evaluation conference brief or any earlier settlement brief. The settlement statement **must specifically identify what the discovery process revealed** and the effect that the

¹ "Full settlement authority" means that the individuals at the settlement conference must be authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered discretion and authority" to change the settlement position of a party. Pitman v. Brinker Int'l, Inc., 216 F.R.D. 481, 485–86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference contemplates that the person's view of the case may be altered during the face to face conference. Id. at 486. A limited or a sum certain of authority is not adequate. See Nick v. Morgan's Foods, Inc., 270 F.3d 590, 595–97 (8th Cir. 2001).

1 evidence has on the issues in the case. To the extent specific discovery responses,
2 portions of deposition testimony, or expert reports are pertinent to the Court's evaluation
3 of the matter, these documents must be attached as exhibits. Evidence supporting or
4 refuting either party's claim for damages must also be identified and included as an
5 exhibit.

6 If a specific demand or offer cannot be made at the time the settlement statement is
7 submitted, then the reasons as to why a demand or offer cannot be made must be stated.
8 Further, the party must explain when they will be in a position to state a demand or offer.
9 General statements such as a party will "negotiate in good faith" is **not** a specific demand
10 or offer. The settlement statement should be submitted confidentially and need not be
11 shared with other parties.

12 **d. Requests to Continue a Mandatory Settlement Conference:**

13 Any request to continue the Mandatory Settlement Conference, or request for relief from
14 any of the provisions or requirements of this Order, must be sought by a **written**
15 **application. Absent good cause, requests for continuances will not be considered**
16 **unless submitted in writing no fewer than seven (7) calendar days prior to the**
17 **scheduled conference.**

18 **If the case is settled in its entirety before the scheduled date of the conference,**
19 **counsel and any unrepresented parties must still appear in person, unless a written**
20 **joint notice confirming the complete settlement of the case is filed no fewer than**
21 **twenty-four (24) hours before the scheduled conference.**

22 10. Despite the requirements of Civil Local Rule 16.1(f)(2), neither party is
23 required to file a Memorandum of Contentions of Fact and Law at any time. The parties
24 shall instead focus their efforts on drafting and submitting a proposed pretrial order by
25 the time and date specified by Civil Local Rule 16.1(f)(6)(b). The proposed pretrial order
26 shall comply with Civil Local Rule 16.1(f)(6) and the Standing Order in Civil Cases
27 issued by the assigned district judge.

28 ///

1 11. Counsel shall comply with the pre-trial disclosure requirements of Fed. R.
2 Civ. P. 26(a)(3) by **September 30, 2024**. Failure to comply with these disclosure
3 requirements could result in evidence preclusion or other sanctions under Fed. R. Civ. P.
4 37.

5 12. Counsel shall meet and take the action required by Local Rule 16.1(f)(4) by
6 **October 7, 2024**. At this meeting, counsel shall discuss and attempt to enter into
7 stipulations and agreements resulting in simplification of the triable issues. Counsel shall
8 exchange copies and/or display all exhibits other than those to be used for impeachment.
9 The exhibits shall be prepared in accordance with Local Rule 16.1(f)(4)(c). Counsel shall
10 note any objections they have to any other parties' Pretrial Disclosures under Fed. R. Civ.
11 P. 26(a)(3). Counsel shall cooperate in the preparation of the proposed pretrial
12 conference order.

13 13. Counsel for plaintiff will be responsible for preparing the pretrial order and
14 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By **October 14,**
15 **2024**, plaintiff's counsel must provide opposing counsel with the proposed pretrial order
16 for review and approval. Opposing counsel must communicate promptly with plaintiff's
17 attorney concerning any objections to form or content of the pretrial order, and both
18 parties shall attempt promptly to resolve their differences, if any, concerning the order.

19 14. The Proposed Final Pretrial Conference Order, including objections to any
20 other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and
21 lodged with the assigned district judge by **October 21, 2024**, and shall be in the form
22 prescribed in and comply with Local Rule 16.1(f)(6).

23 15. The final Pretrial Conference is scheduled on the calendar of the **Honorable**
24 **Larry Alan Burns** on **October 28, 2024** at **12:00 p.m.**

25 16. The parties must review the chambers' rules for the assigned district judge
26 and magistrate judge.

27 17. A post trial settlement conference before a magistrate judge may be held
28 within 30 days of verdict in the case.

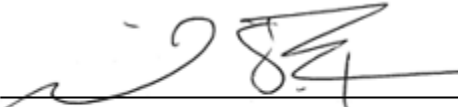
1 18. The dates and times set forth herein will not be modified except for good
2 cause shown.

3 19. Briefs or memoranda in support of or in opposition to any pending motion
4 shall not exceed twenty-five (25) pages in length without leave of a district court judge.
5 No reply memorandum shall exceed ten (10) pages without leave of a district court judge.
6 Briefs and memoranda exceeding ten (10) pages in length shall have a table of contents
7 and a table of authorities cited.

8 20. Plaintiff's counsel shall serve a copy of this order on all parties that enter
9 this case hereafter.

10 **IT IS SO ORDERED.**

11 Dated: June 15, 2023

12 
13 _____
14 Honorable Michael S. Berg
15 United States Magistrate Judge
16
17
18
19
20
21
22
23
24
25
26
27
28