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10 *America, N.A., 3:21-cv-01092-LAB*

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11
12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 **In re BANK OF AMERICA**
15 **CALIFORNIA UNEMPLOYMENT**
16 **BENEFITS LITIGATION**

Case No. 3:21-md-2992-LAB

CLASS ACTION PLAINTIFFS'
STATUS CONFERENCE STATEMENT
PROPOSED AGENDA

Date: July 19, 2021

Time: 11:30 a.m.

Judge: Hon. Larry Alan Burns

Courtroom: 14A

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Pursuant to the Court’s Order Setting Status Conference entered on June 15, 2021 (“Order”) (Dkt. No. 16), Plaintiffs in *Yick v. Bank of America, N.A.*, No. 3:21-cv-01092-LAB-MSB (“*Yick*”) (the consolidated class action comprising nine related class actions), *Zoelle v. Bank of America, N.A.*, No. 3:21-cv-01097-LAB-MSB (“*Zoelle*”), *Wiggins v. Bank of America, N.A.*, No. 3:21-cv-01084-LAB-MSB (“*Wiggins*”), and *Smith v. Bank of America, N.A.*, No. 3:21-cv-01137-LAB-MSB (“*Smith*”) (collectively, “Class Action Plaintiffs”), by and through their respective attorneys of record, submit Class Action Plaintiffs’ Status Conference Report. This Report provides a brief procedural background to the class action component of this litigation, summarizes the parties’ recent meet-and-confer efforts, and responds to the items listed in the Court’s June 15 Order.

I. Procedural Background

On January 14, 2021, Plaintiff Jennifer Yick commenced the class action titled *Yick v. Bank of America, N.A.*, No. 3:21-cv-00376, in the Northern District of California. *See Yick* Dkt. No. 1. After the filing of *Yick*, eight related class actions were filed in the Northern District of California,¹ two related class actions were

¹ *See Rodriguez v. Bank of America, N.A.*, No. 21-cv-00494 (N.D. Cal. filed Jan. 20, 2021); *Willrich v. Bank of America, N.A.*, No. 21-cv-00547 (N.D. Cal. filed Jan. 22, 2021); *McClure v. Bank of America, N.A.*, No. 21-cv-00572 (N.D. Cal. filed Jan. 25, 2021); *Oosthuizen & Matthews v. Bank of America, N.A.*, No. 21-cv-00615 (N.D. Cal. filed Jan. 26, 2021); *Wilson v. Bank of America, N.A.*, No. 21-cv-00699 (N.D. Cal. filed Jan. 28, 2021); *Mosson v. Bank of America, N.A.*, No. 21-cv-00743 (N.D. Cal. filed Jan. 29, 2021); *Cajas v. Bank of America, N.A.*, No. 21-cv-00869

1 filed in the Central District of California (*Zoelle* and *Smith*), and one was filed in
2 the Eastern District of California (*Wiggins*).² Individual actions were also filed:
3 four in the Central District of California (*Wood*, *Hart*, *Verdun*, and *Alvarez*), and
4 nine in the Southern District of California (*Meza*, *Brotman*, *Robinson*, *Morrell*,
5 *Lawrence*, *Payton*, *Talia*, *Rojas de Charolet*, and *Abarr*).³

6 On February 24, 2021, Plaintiff Yick commenced MDL No. 2992, titled *In re*
7 *Bank of America California Unemployment Benefits Litigation*, before the Judicial
8 Panel On Multidistrict Litigation (“JPML”).

9
10 (N.D. Cal. filed Feb. 3, 2021); *Smith v. Bank of America, N.A.*, No. 21-cv-01466
(N.D. Cal. filed Mar. 1, 2021).

11 ² See *Zoelle v. Bank of America, N.A.*, No. 2:21-cv-00518 (C.D. Cal. filed Jan. 20,
12 2021) (“*Zoelle*”); *Smith v. Bank of America, N.A.*, No. 2:21-cv-03385 (C.D. Cal. filed
13 Apr. 26, 2021) (“*Smith*”); *Wiggins v. Bank of America, N.A.*, No. 2:21-cv-00319
(E.D. Cal. filed Feb. 18, 2021) (“*Wiggins*”).

14 ³ *Wood v. Bank of America, N.A.*, No. 2:21-cv-01929 (C.D. Cal. filed March 2, 2021)
15 (“*Wood*”); *Verdun v. Bank of America, N.A.*, No. 2:21-cv-04494 (C.D. Cal. filed May
16 28, 2021) (“*Verdun*”); *Alvarez v. Bank of America, N.A.*, No. 2:21-cv-004643 (C.D.
17 Cal. filed June 7, 2021) (“*Alvarez*”); *Hart v. Bank of America, N.A.*, No. 2:21-cv-
18 04678 (C.D. Cal. filed June 8, 2021) (“*Hart*”); *Meza v. Bank of America, N.A.*, No.
19 3:21-cv-00484 (S.D. Cal. filed March 19, 2021) (“*Meza*”); *Brotman v. Bank of*
20 *America, N.A.*, No. 3:21-cv-00520 (S.D. Cal. filed March 24, 2021) (“*Brotman*”);
21 *Robinson v. Bank of America, N.A.*, No. 3:21-cv-00541 (S.D. Cal. filed March 29,
2021) (“*Robinson*”); *Morrell v. Bank of America, N.A.*, No. 3:21-cv-00542 (S.D. Cal.
filed March 29, 2021) (“*Morrell*”); *Lawrence v. Bank of America, N.A.*, No. 3:21-cv-
00597 (S.D. Cal. filed April 6, 2021) (“*Lawrence*”); *Payton v. Bank of America, N.A.*,
No. 3:21-cv-00644 (S.D. Cal. filed April 13, 2021) (“*Payton*”); *Talia v. Bank of*
America, N.A., No. 3:21-cv-00676 (S.D. Cal. filed April 5, 2021) (“*Talia*”); *Rojas de*
Charolet v. Bank of America, N.A., No. 3:21-cv-00925 (S.D. Cal. filed May 14, 2021)
 (“*Rojas de Charolet*”); *Abarr et al. v. Bank of America, N.A.*, No. 3:21-cv-01203-
BEN-AGS (S.D. Cal. filed July 1, 2021) (“*Abarr*”).

1 On March 29, 2021, the district court consolidated the eight related Northern
2 District actions into *Yick* for all purposes, ordered that “[t]he other cases will be
3 terminated,” and appointed Cotchett, Pitre & McCarthy, LLP, and Altshuler Berzon
4 LLP as Interim Co-Lead Counsel. *Yick*, Dkt. No. 60.

5 On April 1, 2021, Plaintiffs in *Yick* filed a Consolidated Class Action
6 Complaint with fifteen named plaintiffs (*id.*, Dkt. No. 63) and filed a Motion for
7 Preliminary Injunction and Provisional Class Certification (*id.*, Dkt. No. 64).

8 On May 17, 2021, the district court in *Yick* issued an Order Re Preliminary
9 Injunction in which it held that Plaintiffs “have demonstrated a strong likelihood of
10 success” on claims for violation of the federal Electronic Funds Transfers Act, for
11 violations of California’s Unfair Competition Law, and for breach of contract; that
12 Plaintiffs had shown irreparable injury; and that provisional class certification was
13 warranted. *Id.*, Dkt. No. 89. The district court ordered the parties to meet and confer
14 regarding the appropriate scope of a preliminary injunction. *Id.*

15 On June 1, 2021, after the *Yick* parties engaged in an extensive meet-and-
16 confer process, including a two-day settlement conference before U.S. Magistrate
17 Judge Sallie Kim, the district court entered the parties’ joint submission as a
18 Preliminary Injunction. *Id.*, Dkt. Nos. 101, 103.

19 On June 4, 2021, the JPML transferred the related class actions and four of
20 the related individual actions (*Wood, Hart, Alvarez, and Verdun*) to this Court for
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1 coordinated or consolidated pretrial proceedings. *See in re Bank of America*
2 *California Unemployment Benefits Litig.*, Lead Case No. 21-md-02992-LAB-MSB
3 (S.D. Cal.), Dkt. No. 1. Since then, seven individual actions originally filed in the
4 Southern District of California (*Meza, Brotman, Robinson, Morrell, Payton, Talia,*
5 *and Charolet*) have been transferred to this Court and *Lawrence* and *Wood* were
6 voluntarily dismissed. *Abarr*, which was filed on July 1, 2021, is currently assigned
7 to Judge Whelan and Magistrate Judge Schopler.

8 On June 15, 2021, this Court set a status conference for July 19, 2021, and
9 stayed all deadlines, all discovery, and all motion practice until after entry of a case
10 management order. *Id.*, Dkt. No. 16.

11 **II. Parties' Recent Meet-and-Confer Efforts**

12 Since the transfer order, Interim Co-Lead Counsel for Plaintiffs and the
13 Proposed Class in the consolidated *Yick* matter ("Interim Co-Lead Counsel in
14 *Yick*") have been meeting and conferring with plaintiffs' counsel in the Central and
15 Eastern District class actions (i.e., *Zoelle, Smith, and Wiggins*), as well as with all
16 counsel in the Northern District class actions, regarding organizational structure and
17 other matters relevant to the litigation. As a result of these efforts, the Class Action
18 Plaintiffs have reached agreement on the proposed organizational structure set forth
19 in Section III.A below.

1 On June 29, July 1, and July 6, 2021, Interim Co-Lead Counsel in *Yick* met and
2 conferred with counsel for the eleven individual actions regarding coordinating the
3 individual and class actions in this MDL and reached agreement as set forth in
4 Section III.C below.

5 On June 24 and July 2, 2021, Interim Co-Lead Counsel in *Yick* met and
6 conferred with counsel for Defendant Bank of America, N.A., about the items listed
7 in the Court's June 15 Order and other matters concerning the efficient conduct of
8 this MDL.

9 **III. Responses to the Court's Order Setting Status Conference**

10 **A. Proposed Organizational Structure**

11 All Class Action Plaintiffs agree that the Class Actions should be
12 consolidated for pretrial purposes with the following organizational structure:

- 13 (1) appointment of Interim Co-Lead Counsel in *Yick*, Cotchett, Pitre &
14 McCarthy, LLP ("CPM") and Altshuler Berzon LLP ("Altshuler"), as Interim
15 Co-Lead Counsel for Class Action Plaintiffs and the proposed class; and
16 (2) appointment of Casey Gerry Schenk Francavilla Blatt & Penfield LLP
17 ("Casey Gerry"), counsel for plaintiff Carlos Rodriguez in the consolidated
18 *Yick* matter, as Interim Liaison Counsel.

19 Class Action Plaintiffs propose that, under this proposed structure, Interim
20 Co-Lead Counsel CPM and Altshuler would be responsible for: (a) determining the
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1 litigation strategy on behalf of Class Action Plaintiffs; (b) promoting the orderly
2 and efficient conduct of this litigation and avoiding unnecessary duplication and
3 unproductive efforts; (c) acting as spokesperson (either personally or by designee)
4 for the Plaintiff class at pretrial conferences; (d) delegating work responsibilities;
5 (e) entering into stipulations (either personally or by designee) necessary for the
6 conduct of the litigation with opposing counsel; and (f) communicating with
7 Defendant's counsel and the Court on behalf of Class Action Plaintiffs and the
8 class. Class Action Plaintiffs further propose that Defendant's counsel may rely on
9 all agreements made with Interim Co-Lead Counsel, and that no Class Action
10 plaintiff may make any request for or response to discovery, initiate or file any
11 other pretrial or trial proceedings, or respond to any dispositive motion or response
12 to any dispositive motion, except through Interim Co-Lead Counsel.

13 Under the proposal, Interim Liaison Counsel Casey Gerry would have the
14 following responsibilities: (a) working with Interim Co-Lead Counsel to delegate
15 work responsibilities to other Class Action Plaintiffs' counsel in a fair and orderly
16 manner; (b) monitoring the activities of all Class Action Plaintiffs' counsel to
17 ensure that Class Action Plaintiffs' pretrial preparation is conducted effectively,
18 efficiently, and economically, that schedules are met, and that unnecessary
19 expenditures of time and expense are avoided; (c) being available for
20 communications to and from this Court, including by distributing orders and other
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1 directions from the Court to counsel; (d) providing Class Action Plaintiffs' counsel
2 (as required by applicable Court rules) with the local rules, standing orders, and
3 guidelines of the U.S. District Court for the Southern District of California, and any
4 other judge's rules and standing orders of the Court, and ensuring that any updates
5 and changes to the local rules, standing orders, and guidelines of this District or the
6 Court are timely communicated to counsel as needed; (e) working with all Class
7 Action Plaintiffs' counsel where it is appropriate and relevant to their
8 responsibilities; (f) creating and maintaining a master service list of all Class Action
9 Parties and their respective counsel, and promptly advising the Court and
10 Defendant's counsel of any changes to the same; (g) distributing to counsel, as
11 appropriate, any orders, notices, and correspondence from the Court that are not
12 electronically filed, as well as any discovery, pleadings, correspondence, or other
13 documents from Defendant's counsel that are not electronically filed; (h) obtaining
14 and maintaining time records for Class Action Plaintiffs' counsel, and preparing
15 and submitting related reports to the Court as requested; (i) communicating with the
16 Court as delegated by Interim Co-Lead Counsel; and (j) participating in any
17 settlement conferences together with Interim Co-Lead Counsel.

18 **B. Filing of a Master Consolidated Class Action Complaint**

19 Class Action Plaintiffs believe that efficiency will be served if the Class
20 Actions, including any tag-along class actions that may be subsequently filed in or
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1 transferred to this Court, are consolidated for pretrial purposes pursuant to Rule 42(a)
2 of the Federal Rules of Civil Procedure. The Class Action Parties further propose that
3 a Master Consolidated Class Action Complaint be filed within fourteen (14) days
4 after the Court enters the case management order (“CMO”).

5 **C. Coordination with Individual Actions**

6 After meeting and conferring, Interim Co-Lead Counsel in *Yick* and counsel
7 for the eleven individual actions that are currently pending (*Meza, Brotman,*
8 *Robinson, Morrell, Payton, Talia, Charolet, Abarr, Hart, Verdun* and *Alvarez*) agree
9 that the plaintiffs in the individual actions will be bound by the Court’s legal
10 determinations regarding causes of action that are asserted in the consolidated class
11 action. Counsel further agree that, with the exception of discovery relating to the
12 specific records of the individual plaintiffs at Bank of America, all discovery requests
13 and depositions will be made by and through interim co-lead counsel for the Class
14 Action Plaintiffs in coordination with counsel for the individual plaintiffs.

15 **D. Content and Timing for Submission of a Proposed CMO**

16 Class Action Plaintiffs respectfully suggest that the parties jointly submit a
17 proposed CMO within seven (7) days after the July 19 Status Conference and that
18 the proposed CMO provide, in addition to the matters set forth in Civil Local Rule
19 16.1(d), the following:
20
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- 1 (a) consolidation for pretrial purposes of the pending class actions (i.e., the
2 consolidated *Yick* action together with *Zoelle*, *Smith*, and *Wiggins*) and
3 any tag-along class actions that may be subsequently filed in or
4 transferred to this Court;
- 5 (b) appointment of the organizational structure proposed herein by Class
6 Action Plaintiffs;
- 7 (c) that the Clerk of the Court administratively close the eight class actions
8 previously consolidated for all purposes into *Yick*;
- 9 (d) that Defendant is not required to answer or otherwise respond to the
10 current complaints in any of the Class Actions, or in any tag-along class
11 actions that the JPML may transfer to this Court;
- 12 (e) that Class Action Plaintiffs shall file a Master Consolidated Class Action
13 Complaint within fourteen (14) days after entry of the CMO; and
- 14 (f) a schedule for resolution of future dispositive motions, as set forth below.

15 **E. Proposed Schedule for Resolution of Future Dispositive Motions**

16 Class Action Plaintiffs allege that Defendant engaged in practices that
17 unlawfully deprived class members of statutory, constitutional, and common law
18 rights under state and federal law, including their right to unemployment insurance
19 and other benefits. In the consolidated *Yick* matter in the Northern District,
20 Plaintiffs successfully moved for provisional class certification and obtained a
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1 preliminary injunction on behalf of plaintiffs and the provisionally certified class.
2 On May 17, 2021, the Parties in *Yick* held their Rule 26(f) conference. On May 18,
3 2021, the district court ordered that “[d]iscovery may proceed in the case
4 immediately.” *Yick* Dkt. No. 93. On June 9, 2021, Interim Co-Lead Counsel in *Yick*
5 served written discovery on Defendant. On June 15, 2021, this Court stayed all
6 discovery and deadlines in this matter until after entry of the CMO.

7 Class Action Plaintiffs propose the following schedule:

EVENT	DATE
MCCAC Filed	14 days after CMO
Motion to Dismiss MCCAC Filed	30 days after filing of MCCAC
MTD Opposition	30 days after filing of MTD
Reply ISO MTD	20 days after filing of Opposition
Close of Fact Discovery	02/25/2022
Close of Expert Discovery	03/25/2022
Motion for Class Certification Filed	04/22/2022
Motions for Summary Judgment Filed	07/22/2022

IV. Proposed Agenda Items for the July 19 Status Conference

Class Action Plaintiffs propose the following agenda items for the July 19, 2021 Status Conference:

1. Proposed Organizational Structure for the Class Actions:

a. Whether the Court should appoint Cotchett, Pitre & McCarthy, LLP (“CPM”) and Altshuler Berzon LLP (“Altshuler”), as Interim Co-Lead Counsel for Class Action Plaintiffs and the proposed class;

b. Whether the Court should appoint Casey Gerry Schenk Francavilla Blatt & Penfield LLP, counsel for plaintiff Carlos Rodriguez in the consolidated *Yick* matter, as Interim Liaison Counsel

2. Administrative closing of eight cases previously consolidated into *Yick*.

3. Consolidation of Class Actions for pretrial purposes.

4. Filing of a Master Consolidated Class Action Complaint.

5. Schedule for motion to dismiss the MCCAC.

6. Discovery.

7. Case Schedule.

8. Coordination of Class Actions with individual actions.

Respectfully submitted,

Dated: July 6, 2021

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ATTESTATION OF E-FILED SIGNATURE

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I, Brian Danitz, hereby certify that the content of this document is acceptable to counsel for Plaintiff and that I have obtained counsel's authorization to affix his electronic signature to this document.

/s/ Brian Danitz

BRIAN DANITZ