

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: BANK OF AMERICA CALIFORNIA
UNEMPLOYMENT BENEFITS LITIGATION

Case No.: 21md2992-LAB (MSB)

**NOTICE AND ORDER FOR ZOOM EARLY
NEUTRAL EVALUATION CONFERENCE
BETWEEN BANK OF AMERICA AND
INDIVIDUAL PLAINTIFFS REPRESENTED
BY JOSHUA SWIGART, DANIEL SHAY,
RONALD WILCOX, AND ANDRE VERDUN**

The Court held an Early Neutral Evaluation (“ENE”) Scheduling Conference with Counsel for Defendant Bank of America (“BofA”), Co-Liaison Counsel for Individual Plaintiffs Joshua Swigart, and Andre Verdun on August 2, 2021. Based on the discussions with counsel, the Court **SETS** an ENE Conference on **September 29, 2021**, at **9:30 a.m.**, to be held via **video conference**, through the Court’s ZoomGov account. Counsel for Defendant, Joshua Swigart, and Andre Verdun are **ORDERED** to participate, and Daniel Shay and Ronald Wilcox may attend. All discussions at the ENE Conference will be informal, off the record, privileged, and confidential. Counsel for any non-English speaking party is responsible for arranging for the appearance of an interpreter at the conference. The following rules and deadlines apply:

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1 **1.** To prepare for a productive ENE, the following deadlines for limited
2 discovery apply:

3 a. No later than **August 6, 2021**, Joshua Swigart and counsel for BofA
4 must exchange their lists of ten individual plaintiffs represented by Swigart whose cases
5 will be addressed in detail at the ENE.

6 b. No later than **August 13, 2021**, Joshua Swigart must provide to BofA
7 detailed information regarding each of the 20 individual plaintiffs selected by Swigart
8 and BofA, including names, addresses, account numbers, detailed information about
9 each claim (including dates and amounts of any purported unauthorized transactions),
10 and a settlement demand. By the same date, Andre Verdun must provide BofA with the
11 same information regarding the three plaintiff he represents.

12 c. No later than **September 13, 2021**, BofA must provide the applicable
13 Plaintiffs' counsel with the following discovery regarding the identified 23 individual
14 plaintiffs:

15 i. Account statements for the relevant time period

16 ii. Call logs relevant to specified claims

17 iii. Account notes relevant to specified claims

18 iv. Investigation findings relevant to specified claims

19 d. Counsel for the 23 individual plaintiffs must provide any revised
20 settlement demands as soon as practicable if the information provided by BofA changes
21 counsel's appraisal of an individual plaintiff's case.

22 **2. Telephonic Availability of Parties Required:** All named parties, party
23 representatives, including claims adjusters for insured defendants, must be available to
24 their counsel by telephone for the duration of the conference, and be legally and
25 factually prepared to discuss and resolve the case and have full settlement authority.¹

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28 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

1 **3. Confidential ENE Statements Required:** No later than **September 22, 2021**,
2 the parties shall submit directly to Magistrate Judge Berg’s chambers (via hand delivery
3 or by e-mail to the Court at efile_berg@casd.uscourts.gov), confidential settlement
4 statements. The ENE statement is limited to **five (5) pages or less of general statement,**
5 **and up to one page of specifics per individual plaintiff.** Each party’s ENE statement
6 must outline (1) the nature of the case and the claims, (2) position on liability or
7 defense, (3) position regarding settlement of the case with a **specific demand/offer for**
8 **settlement**, and (4) any previous settlement negotiations or mediation efforts.

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

15 **4.** No later than **September 22, 2021**, counsel for each party shall send an e-
16 mail to the Court at efile_berg@casd.uscourts.gov containing the names, email
17 addresses and contact telephone numbers of all attendees.

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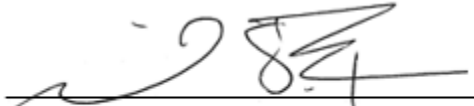
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25 acceptable to the parties. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989).
26 The person needs to have “unfettered discretion and authority” to change the settlement position of a
27 party. Pitman v. Brinker Int’l, Inc., 216 F.R.D. 481, 485–86 (D. Ariz. 2003). The purpose of requiring a
28 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 **5. Requests to Continue an ENE Conference:** Requests to continue ENEs are
2 rarely granted. An ENE may be rescheduled only upon a showing of good cause and
3 adequate notice to the Court. **Absent good cause, requests for continuances will not**
4 **be considered unless submitted in writing no fewer than seven (7) calendar days prior**
5 **to the scheduled conference.**

6 **IT IS SO ORDERED.**

7 Dated: August 2, 2021

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Honorable Michael S. Berg
United States Magistrate Judge