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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: BANK OF AMERICA CALIFORNIA UNEMPLOYMENT BENEFITS LITIGATION	**Case No. 3:21-md-02992-LAB-MSB** **<u>CLASS ACTION</u>** **PLAINTIFFS' DISCOVERY POSITION STATEMENT** Date: August 5, 2021 Time: 9:30 a.m. Location: Zoom Judge: Hon. Michael S. Berg

Plaintiffs submit this Statement pursuant to the Court's Order, Dkt. No. 51.

Procedural Posture. Plaintiffs commenced this action in **January 2021**. On **May 17**, the district court in *Yick* issued an Order Re Preliminary Injunction finding that Plaintiffs "demonstrated a strong likelihood of success" on their EFTA, UCL, and breach of contract claims and established irreparable harm, and it provisionally certified a Rule 23(b)(2) class. *Yick*, Dkt. 89. The parties held a Rule 26(f) conference that same day, and on **May 18** the district court ordered: "Discovery may proceed in the case immediately." *Yick* Dkt. 93. On **May 21**, the court entered the parties' Stipulated Protective Order. *Yick* Dkt. 97. On **June 1**, the court entered a Preliminary Injunction. *Yick* Dkt. 101. On **June 9**, the parties exchanged initial disclosures and Plaintiffs served a First Set of Requests for Production. The parties are finalizing their ESI Protocol.

Plaintiffs' Claims. Plaintiffs assert two sets of claims. The first arises from BofA's inadequate security measures, including its use of outmoded magstripe cards and failure to prevent data breaches, which unreasonably exposed ***and continues to expose*** EDD cardholders to identity theft and fraudulent transactions that deprive them of access to their UI benefits. The second arises from BofA's response to EDD cardholders who complained about stolen UI benefits, which: (1) rejected the cardholders' claims of fraudulent transactions, and (2) froze the cardholders' accounts, depriving them of access to their UI funds. The Preliminary Injunction concerns this second set of claims, and is limited to claim denials and account freezes caused by BofA's automated "fraud filter." The Complaint is not so limited, and ***aggrieved EDD cardholders continue*** to contact Plaintiffs' counsel about unauthorized transactions and blocked accounts. Due to the vulnerable nature of the Class of UI benefits recipients, time is of the essence in restoring Plaintiffs' legal rights.

DISCOVERY CATEGORIES

1. **Plaintiffs' Files**. Plaintiffs need to access their BofA files, including account statements, call logs, account notes, and investigation findings, to show the classwide nature of BofA's violations and to respond to its anticipated challenges to standing.

2. Class Definition. Plaintiffs still need basic data about the impacts of BofA's practices, including how many class members have thus far been affected.

3. Account Freezing/Blocking. Plaintiffs need to know what it means for BofA to "freeze" or "block" an account, why it summarily freezes or blocks accounts, how many accounts were and ***continue to be affected***, and for how long.

4. Claims Making Process. Under EFTA and BofA's contracts, BofA must conduct a good faith investigation into each unauthorized-transaction claim and must provide provisional credit if its investigation is not completed within 10 business days. Plaintiffs need information regarding BofA's investigation policies, how and why those policies changed, and how many claims were denied and ***continue to be denied*** without adequate investigation.

5. Initial Claims Fraud Filter. Plaintiffs need information about BofA's fraud filter, including its content, error rate, and the number of claims/accounts it affected.

6. Compliance with Injunction. Plaintiffs need discovery "sufficient to show" BofA's compliance with the injunction to evaluate the need for further enforcement.

7. Data Breaches/Magstripe Cards. BofA's allegedly inadequate security measures continue to expose EDD cardholders to UI theft. Prompt discovery into these claims is needed to document the cases and evaluate the need for further interim relief.

Categories 1-6 relate to claims Judge Chhabria found had "a strong likelihood of success," but Plaintiffs still do not know how BofA's "fraud filter" operated, who it affected, or the scope and content of BofA's other challenged practices. Providing relevant discovery now rather than later will cause BofA no undue burden. **Category 7** discovery is particularly urgent because class members continue to have UI benefits stolen due to BofA's lax security measures and cannot obtain timely relief without targeted discovery. BofA's motion to dismiss will not eliminate Plaintiffs' principal claims, while the requested focused discovery will enable this case to proceed expeditiously while limiting the ongoing, irreparable harm to class members.

Respectfully submitted,

Dated: July 29, 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*
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