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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 **PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS MASTER CONSOLIDATED COMPLAINT**
This Document Relates to All Actions	Date: January 10, 2022 Time: 11:30 a.m. Crtm: 14A – 14th Floor Judge: Hon. Larry Alan Burns

Plaintiffs request that the Court take judicial notice of and consider the following documents as incorporated by reference into Plaintiffs' Master Consolidated Complaint ("MCC") in connection with Plaintiffs' Opposition to Defendant's Motion to Dismiss.

1. The California Employment Development Department Debit Card Account Agreement ("Cardholder Agreement"), effective March 1, 2018, available on Bank of America's EDD Debit Card website at: https://www.visaprepaidprocessing.com/eddcard/Program/Terms, and attached as **Exhibit A** to the Declaration of Brian Danitz In Support of Plaintiffs' (1) Request for Judicial Notice; (2) Plaintiffs' Opposition to Defendant's Request for Judicial Notice ("Danitz Decl."). *See* Danitz Decl. ¶ 2 and Ex. A. The Cardholder Agreement is referenced in the MCC at the following paragraphs: ¶¶ 4, 5, 70, 71, 72, 73, 94, 99, 121, 126, 154, 209, 313, 433, 441, 452, 475, 497, 531(b)(xii), 604, 605, 606, 607, 606, 607, 608, 620, 621, 646.
2. Excerpts of the agreement between Bank of America, N.A. ("BofA") and the California Employment Development Department ("EDD"), Agreement No. M6100352, executed October 13, 2015 ("EDD-BofA Contract"), produced by EDD in response to Plaintiffs' Public Records Act Request and attached as **Exhibit B** to the Danitz Declaration. *See* Danitz Decl. ¶ 3 and Ex. B. The Edd-BofA Contract is referenced in the MCC at the following paragraphs: ¶¶ 2, 35, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 53, 54, 88, 98, 209, 289, 389, 531(b)(xii-iii), 595, 599, 627, 638, 639, 640, 641, 642, 643, 647, 659.

Under, the incorporation by reference doctrine, a court may consider an extrinsic document "the complaint 'necessarily relies' on if (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no

party questions the authenticity of the copy attached to the 12(b)(6) motion." *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) (citations omitted). As set forth above, and in the accompanying declaration, the MCC refers extensively to, and relies upon, the Cardholder Agreement and the 2015 EDD-BofA Agreement. A court may take judicial notice of an "adjudicative fact . . . not subject to reasonable dispute." Fed. R. Evid. 201. A fact is "not subject to reasonable dispute" if it is "generally known" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201.

Defendants submitted versions of these documents as exhibits 1 and 2 to the Chestnut Declaration. However, as set forth more fully in Plaintiffs' Opposition to Defendants' Request for Judicial Notice, those versions of the Cardholder Agreement and the EDD-BofA Contract raise disputed factual issues concerning authenticity. In particular, the version of the Cardholder Agreement relied upon by Plaintiffs appears on BofA's public EDD Debit Card website and provides that California law governs the Cardholder Agreement; whereas the version submitted by BofA does not appear on its website and it provides that North Carolina law applies. The two versions are otherwise substantially the same. *See* Danitz Decl. ¶ 2 and Ex. A.

With respect to the EDD-BofA Contract, Defendant's Exhibit 2 includes redline edits, indicating it is not the final version of the document. Specifically, the cover page to EDD's Request for Proposal includes a redline striking out "**April 21, 2015**" and adding in (in redline) "**August 14, 2015**." (Chestnut Decl., Ex. 2 at 8). The equivalent page of Plaintiffs' Exhibit B is simply dated **August 14, 2015** without any redlining, indicating that it is the final version of the document. Accordingly, Plaintiffs submit Exhibit B which contains equivalent excerpts of the pages of the version submitted by BofA, with one additional page, which document was produced by California EDD in response to Plaintiffs' Public Records Act request. *See* Danitz Decl. ¶ 3 and Ex. B.

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Request for Judicial Notice.

Dated: November 15, 2021 **COTCHETT, PITRE & McCARTHY, LLP**

By: /s/ *Brian Danitz*

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SIGNATURE ATTESTATION

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 all the signatories herein and that I have obtained counsel's authorization to affix their electronic signatures to this document.

/s/ Brian Danitz
BRIAN DANITZ