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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA -**
10 **SAN DIEGO DIVISION**

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

Case No. 3:21-MD-02992-LAB-MSB

**JOINT MOTION TO MODIFY
PRELIMINARY INJUNCTION
ORDER**

15 Ctrm: 14A - 14th Floor
16 Judge: Hon. Larry Alan Burns

**No oral argument pursuant to Civil
Local Rule 7.2.**

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18 Filed/Lodged Concurrently with:
19 1. Proposed Order

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JOINT MOTION TO MODIFY
PRELIMINARY INJUNCTION
ORDER

CASE No. 21-MD-02992-LAB-MSB

Pursuant to Civil Local Rule 7.2, Plaintiffs in the multi-district litigation captioned *In re: Bank of America California Unemployment Benefits Litigation*, Case No. 3:21-MD-02992 (“Plaintiffs”) and Defendant Bank of America, N.A. (“Defendant” and, together with Plaintiffs, the “Parties”), through their undersigned counsel, stipulate and jointly move this Court for an order modifying one provision of the Preliminary Injunction Order (Ex. A, the “PI Order”) entered June 2, 2021 in *Yick v. Bank of America, N.A.*, Case No. 3:21-cv-00376-VC (N.D. Cal.), which encompassed 9 consolidated cases that are now member cases in the multidistrict litigation captioned *In re: Bank of America California Unemployment Benefits Litigation*, MDL No. 2992. The parties have met and conferred about the proposed modification. While Plaintiffs continue to recognize that the PI Order has ongoing importance in protecting the rights of cardholders, they do not oppose Defendant’s request for this limited modification as set forth herein and in the accompanying proposed order.

BACKGROUND

On April 1, 2021, plaintiffs in the class action litigation captioned *Yick v. Bank of America, N.A.*, Case No. 3:21-cv-00376-VC (N.D. Cal.) (the “Yick Plaintiffs”) filed a Motion for Preliminary Injunction and Provisional Class Certification. *See* Case No. 3:21-cv-00376-VC (N.D. Cal.), ECF No. 64.

On May 17, 2021, the *Yick* court entered an order finding that “plaintiffs have demonstrated a strong likelihood of success” on their Electronic Funds Transfer Act (“EFTA”) and breach of contract claims, that “[t]he harm being suffered by the class members is irreparable,” and that “[t]he balance of hardships and the public interest almost certainly support some form of preliminary injunctive relief.” *Id.* at ECF No. 89. The order required Defendant and the *Yick* Plaintiffs to participate in a settlement conference with a magistrate judge to “carefully review and discuss” the specific terms of Plaintiffs’ proposed preliminary injunction to “ensure that it does not interfere with [Defendant’s] operations more than is necessary to sufficiently

1 minimize the risk of innocent cardholders being improperly deprived of their
2 benefits.” *Id.* at ECF No. 89.

3 After an extensive meet-and-confer process, Defendant and the *Yick* Plaintiffs
4 jointly submitted a proposed preliminary injunction order on May 28, 2021. *Id.* at
5 ECF No. 100. The *Yick* court approved the proposed order and entered the PI Order
6 on June 2, 2021, finding that “[t]he hardship to the defendant from this injunction is
7 outweighed by its benefits to the class members” and that the injunction was in the
8 public interest. *Id.* at ECF No. 103; *see also* Ex. A.

9 On June 4, 2021, the United States Judicial Panel on Multidistrict Litigation
10 consolidated the *Yick* litigation and several other related cases into a multidistrict
11 litigation captioned *In re: Bank of America California Unemployment Benefits*
12 *Litigation*, MDL No. 2992, transferred the consolidated cases to the Southern
13 District of California, and assigned the multidistrict litigation to Judge Burns for
14 consolidated pretrial proceedings.

15 **RELIEF REQUESTED**

16 Paragraph 7 of the PI Order, entered June 2, 2021 pursuant to the stipulation
17 of all parties to the consolidated *Yick* litigation, requires Defendant to give written
18 notice “by mail, within three (3) business days, and email, if available, within one
19 (1) business day” to class members whose accounts are blocked solely based upon
20 Defendant’s Claims Fraud Filter. Ex. A, ¶ 7. The written notice must explain to the
21 recipient that Defendant will promptly unblock their account if the recipient
22 authenticates his or her identity with Defendant. *Id.*

23 Defendant has informed Plaintiffs that it requires additional time to send the
24 notices due to various operational and technological reasons, including the timing of
25 when certain information is received from a vendor that, according to Defendant,
26 prevent Defendant from meeting the original deadlines. Defendant and Plaintiffs
27 have conferred about this issue and Defendant has provided Plaintiffs with
28 information relating to the mailing of the Paragraph 7 notices, including a sworn

1 declaration. The Parties have agreed to the following changes to the first sentence
2 of Paragraph 7 of the PI Order (language to be deleted is denoted with a
3 strikethrough, and new language is denoted in bold):

4 Within 10 days of the entry of this Order (by mail and email, if available) or
5 after the date of the blocking (by mail, within ~~three (3)~~ **four (4)** business days,
6 and email, if available, within ~~one (1)~~ **two (2)** business days), whichever is
7 later, Defendant shall give written notice to class members whose accounts
8 are blocked solely based upon its Claims Fraud Filter that explains that the
9 Bank will promptly unblock their account if the class member authenticates
10 their identity, **unless there are technology issues or delays in receiving data**
11 **regarding blocked accounts that prevent Defendant from meeting those**
12 **deadlines, in which case Defendant will give written notice by mail within**
13 **five (5) business days and email, if available, within three (3) business**
14 **days after the date of the blocking.**

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16 The proposed revised language for the first sentence of Paragraph 7 is
17 reflected in the Proposed Order submitted herewith.

18 **CONCLUSION**

19 For the reasons stated above, the Parties respectfully request that the Court
20 enter the Proposed Order approving the modifications set forth herein.

1 Dated: June 14, 2022

Respectfully submitted,

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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, James W. McGarry, 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/ James W. McGarry
James W. McGarry

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the clerk of the court for the United States District Court for the Southern District of California by using the CM/ECF system on June 14, 2022. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system. I certify under penalty of perjury that the foregoing is true and correct.

Executed: June 14, 2022

s/ James W. McGarry