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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

**DEFENDANT BANK OF
AMERICA, N.A.'S NOTICE OF
SUPPLEMENTAL AUTHORITY**

15 Ctrm: 14A - 14th Floor
16 Judge: Hon. Larry Alan Burns
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NOTICE OF SUPPLEMENTAL
AUTHORITY

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

1 In connection with the Court’s consideration of the motion to dismiss filed by
2 Defendant Bank of America, N.A. (“BANA”), ECF No. 84 (“MTD Brief”), BANA
3 provides this notice of the recent decision in *Hardin v. Bank of America*, Case
4 No. 2:22-cv-10023, 2022 WL 3568568 (E.D. Mich. Aug. 18, 2022), attached hereto
5 as Exhibit A. In *Hardin*, the district court dismissed with prejudice claims for
6 violation of the Electronic Fund Transfer Act (“EFTA”), negligence, breach of
7 contract, breach of implied contract, and breach of the implied covenant of good faith
8 and fair dealing, all of which arose out of BANA’s issuance and servicing of prepaid
9 debit cards for unemployment benefits recipients in Michigan. Those claims are also
10 asserted, in nearly identical fashion, in *In re: Bank of America California*
11 *Unemployment Benefits Litigation* (see ECF No. 72 (Master Consolidated
12 Complaint) at ¶¶ 533-545 (alleging violations of EFTA), ¶¶ 585-602 (alleging
13 negligence and negligent hiring), ¶¶ 603-610 (alleging breach of contract), ¶¶ 134-
14 140 (alleging breach of implied contract), ¶¶ 611-618 (alleging breach of implied
15 covenant)).

16 Given the similarities between the cases, BANA believes the *Hardin* decision
17 is instructive on the issues pending before the Court, particularly BANA’s arguments
18 for dismissal of the EFTA and contract-based claims (see MTD Brief at pp. 17-20
19 (arguing EFTA claim should be dismissed); pp. 7-17 (arguing contract, implied
20 contract, and implied covenant claims should be dismissed)). If it would be helpful
21 to the Court, BANA is happy to provide briefing on the applicability of the *Hardin*
22 decision to the pending motion to dismiss.

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25 Date: September 7, 2022

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 September 7, 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: September 7, 2022

s/ James W. McGarry