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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 *Conaway v. Bank of America, N.A.*,
4 No. 2:22-cv-1387-BHH (D.S.C.), ECF No. 17 (March 23, 2023), attached hereto as
5 Exhibit A.

6 In *Conaway*, the district court dismissed with prejudice claims for violation of
7 the Electronic Fund Transfer Act (“EFTA”), breach of contract, breach of implied
8 contract, breach of the implied covenant of good faith and fair dealing, negligence,
9 and negligent hiring, retention, and supervision, all of which arose out of BANA’s
10 issuance and servicing of prepaid debit cards for unemployment benefits in South
11 Carolina.

12 Those claims are also asserted, in nearly identical fashion, in *In re: Bank of*
13 *America California Unemployment Benefits Litigation* (see ECF No. 72 (Master
14 Consolidated Complaint) at ¶¶ 533-545 (alleging violations of EFTA), ¶¶ 585-602
15 (alleging negligence and negligent hiring), ¶¶ 603-610 (alleging breach of contract),
16 ¶¶ 134-140 (alleging breach of implied contract), ¶¶ 611-618 (alleging breach of
17 implied covenant)).

18 Given the similarities between the cases, BANA believes the *Conaway*
19 decision is instructive on the issues pending before the Court, particularly BANA’s
20 arguments for dismissal of the EFTA, contract, and negligence-based claims (see
21 MTD Brief at pp. 17-20 (arguing EFTA claim should be dismissed); pp. 12-14, 16-
22 17 (arguing contract and implied contract claims should be dismissed); pp. 25-26
23 (arguing negligence claims should be dismissed)). If it would be helpful to the Court,
24 BANA is happy to provide briefing on the applicability of the *Conaway* decision to
25 the pending motion to dismiss.
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1 Dated: March 28, 2023

Respectfully submitted,

3 By: *s/ James W. McGarry*

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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 March 28, 2023. 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: March 28, 2023

s/ James W. McGarry