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11 *[ADDITIONAL COUNSEL LISTED IN SIGNATURE BLOCK]*

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**
14 **SAN DIEGO DIVISION**

15 IN RE: BANK OF AMERICA
16 CALIFORNIA UNEMPLOYMENT
17 BENEFITS LITIGATION

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

18 **DEFENDANT BANK OF**
19 **AMERICA, N.A.’S NOTICE OF**
20 **MOTION AND PARTIAL MOTION**
21 **TO DISMISS THE FIRST**
22 **AMENDED MASTER**
23 **CONSOLIDATED COMPLAINT**
24 **PURSUANT TO FED. R. CIV. P.**
25 **12(b)(6)**

26 Date: October 2, 2023
27 Time: 11:30 a.m. PST
28 Ctrm: 14A – 14th Floor
Judge: Hon. Larry A. Burns

Filed/Lodged Concurrently with:
1. Memorandum of Points and
Authorities
2. [Proposed] Order

NOTICE OF MOTION AND PARTIAL MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on October 2, 2023, at 11:30 a.m. or as soon thereafter as counsel may be heard, in Courtroom 14A, 14th Floor, of the United States District Court for the Southern District of California, located at 221 West Broadway, San Diego, California, before the Honorable Judge Larry A. Burns, defendant Bank of America, N.A., will, and hereby does, move in part to dismiss the First Amended Master Consolidated Complaint under Federal Rule of Civil Procedure 12(b)(6), with respect to the following claims and theories:

- EFTA claims for those Plaintiffs who allege only an account freeze or restriction (Claim 1);
- All Plaintiffs' claims for violations of the California Consumer Privacy Act based on Plaintiffs' unsecure data collection and storage theory (Claim 2);
- All Plaintiffs' claims for violation of the California Customer Records Act (Claim 3);
- All Plaintiffs' claims for negligence per se based on violations of the California Information Privacy Act and California Customer Records Act (Claim 5); and
- All breach of contract claims for all Plaintiffs except for the Section 9 and 11 claims for Plaintiffs Smith, Burns and Horath (Claim 7).

This Motion is based on this Notice of Motion and Partial Motion, the accompanying Memorandum of Points and Authorities in support thereof, all papers from this case on file with the Court, all other matters of which the Court may take judicial notice, any further evidence or argument offered to the Court at the hearing on this Motion, and any other evidence and argument the Court may consider.

1 Dated: July 11, 2023

Respectfully submitted,

2 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 July 11, 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: July 11, 2023

s/ James W. McGarry

James W. McGarry