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15 Attorneys for Defendant

16 BANK OF AMERICA, N.A.

17 *[ADDITIONAL COUNSEL LISTED IN SIGNATURE BLOCK]*

18 **UNITED STATES DISTRICT COURT**
19 **SOUTHERN DISTRICT OF CALIFORNIA**
20 **SAN DIEGO DIVISION**

21 IN RE: BANK OF AMERICA
22 CALIFORNIA UNEMPLOYMENT
23 BENEFITS LITIGATION

24 Case No. 21-MD-02992-LAB-MSB
25 **DEFENDANT BANK OF**
26 **AMERICA, N.A.'S NOTICE OF**
27 **SUPPLEMENTAL AUTHORITY**

28 Date: October 2, 2023

Time: 11:30 a.m. PST

Ctrm: 14A – 14th Floor

Judge: Hon. Larry A. Burns

1 In connection with the Court’s consideration of Defendant Bank of America,
2 N.A.’s (“BANA”) Partial Motion to Dismiss (“Partial MTD”) (Dkt. 146-1), BANA
3 provides this notice of the recent decision in *Creager v. Bank of America, N.A.*,
4 No. 2:21-cv-2101-PHX-SPL (D. Ariz.), ECF No. 30 (Sept. 25, 2023), attached
5 hereto as Exhibit A.

6 In *Creager*, the district court dismissed with prejudice certain claims for
7 violation of the Electronic Fund Transfer Act (“EFTA”), and claims for negligence,
8 breach of contract, breach of implied contract, and breach of the implied covenant of
9 good faith and fair dealing, all of which arose out of BANA’s issuance and servicing
10 of prepaid debit cards for unemployment benefits recipients in Arizona. Those
11 claims are also asserted, in nearly identical fashion, in *In re: Bank of America*
12 *California Unemployment Benefits Litigation* (see ECF No. 72 (Master Consolidated
13 Complaint) at ¶¶ 533–545 (alleging violations of EFTA), ¶¶ 585–602 (alleging
14 negligence and negligent hiring), ¶¶ 603–610 (alleging breach of contract), ¶¶ 134–
15 140 (alleging breach of implied contract), ¶¶ 611–618 (alleging breach of implied
16 covenant)).

17 Given the similarities between the cases, BANA believes the *Creager* decision
18 is highly instructive on the issues pending before the Court, particularly BANA’s
19 arguments for dismissal of the EFTA claims (see Partial MTD at 8–11). If it would
20 be helpful to the Court, BANA is happy to provide briefing on the specific
21 applicability of the *Creager* decision to the pending motion to dismiss.

22
23 Dated: September 29, 2023

Respectfully submitted,

24 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 **September 29, 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: September 29, 2023

s/ James W. McGarry
JAMES W. MCGARRY