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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**IN RE BANK OF AMERICA
CALIFORNIA UNEMPLOYMENT
BENEFITS LITIGATION**

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

**DECLARATION OF CONNIE K.
CHAN IN SUPPORT OF JOINT
MOTION TO EXTEND
CASE SCHEDULE**

This Document Relates to All Actions

Judge: Hon. Larry Alan Burns

DECLARATION OF CONNIE K. CHAN

I, Connie K. Chan, hereby declare as follows:

1. I am a partner at the law firm of Altshuler Berzon LLP, co-lead counsel for Plaintiffs and the putative class in this action. I submit this declaration in support of the parties' Joint Motion to Extend the Case Schedule. I have personal knowledge of the facts set forth in this declaration and if called as a witness in this action, I could and would testify competently to these facts.

2. The parties have been actively engaged in discovery since the Court issued its order granting in part and denying in part Defendant Bank of America, N.A.'s ("Defendant" or "Bank") motion to dismiss the Master Consolidated Complaint and lifting the discovery stay on May 25, 2023 (ECF 126). Despite the parties' diligence in pursuing and responding to discovery, and Magistrate Judge Berg's considerable assistance in conducting status and discovery conferences every few weeks to facilitate the expeditious resolution of the parties' discovery disputes, the parties require an extension of the current case deadlines to enable them to complete critical discovery, including core discovery that Plaintiffs assert is needed for their forthcoming motion for class certification, which is currently due January 15, 2024.

The Parties' Diligent Discovery Efforts to Date

3. On June 12, 2023, Plaintiffs served their Second Set of Requests for Production of Documents (RFPs 31-73) on the Bank. The Bank served its responses and objections on July 12, 2023, and pursuant to the parties' stipulated ESI Protocol, the Bank proposed ESI custodians and search terms for the RFPs that required electronic searches on July 31, 2023. Plaintiffs proposed additional ESI custodians and search terms on August 2 and 3, and the parties met and conferred extensively (in writing and by telephone/video conference) about their respective ESI proposals as well as the Bank's objections to Plaintiffs' RFPs Set Two. Although the parties

1 made considerable progress through their meet-and-confer efforts, they were unable
2 fully to resolve their disputes. Magistrate Judge Berg held an informal discovery
3 conference (IDC) with the parties on August 17, 2023 regarding five issues arising
4 from Plaintiff's RFP Set Two, and held another IDC on September 7, 2023
5 regarding the parties' dispute regarding certain ESI custodians.

6 4. In addition to participating in these two IDCs, the parties continued to
7 meet and confer about various issues relating to Plaintiffs' RFP Set Two, including
8 to reach agreement concerning the appropriate number and identity of ESI
9 custodians and the search terms that should be used. The parties continued to meet
10 and confer about proposed search terms to be used on this initial set of ESI
11 custodians, and on September 15 the Bank produced a preliminary search term hit
12 report. Following additional IDCs and efforts to meet and confer, the Bank
13 produced a partial custodial report on October 4 and an updated custodial report on
14 October 9. The Bank made its first substantial production of ESI documents on
15 October 23 and continued making significant weekly productions thereafter until the
16 December 4 deadline set by the Court for production of responsive documents from
17 the first set of agreed-upon custodians.

18 5. During this time, Plaintiffs also served on the Bank a First Set of
19 Interrogatories (Interrogatories 1-18) on August 4, 2023, a Third Set of Requests for
20 Production of Documents (RFPs 74-84) on August 15, 2023, and a Second Set of
21 Interrogatories (Interrogatories 19-20) on October 6, 2023, to which the Bank timely
22 responded.

23 6. After the Bank served its responses and objections to Plaintiffs' First
24 Set of Interrogatories, the parties met and conferred about those responses, in
25 writing and by video conference. Plaintiffs then modified several interrogatories to
26 which the Bank had objected, and on October 5, the Bank served its First
27 Supplemental Responses and Objections to Plaintiffs' First Set of Interrogatories.

1 On October 13 and December 1, the Bank then supplemented those responses. The
2 parties are presently still meeting and conferring about the Bank's December 1
3 supplemental responses.

4 7. Defendant has also sought discovery from Plaintiffs. On September 19,
5 2023, Defendant served Defendant's First Set of Requests for Production of
6 Documents (Requests No. 1-56), First Set of Interrogatories (Interrogatories No. 1-
7 25), and First Set of Requests for Admission (Requests No. 1-14), to which
8 Plaintiffs timely responded. Plaintiffs requested, and the Bank granted, extensions of
9 time to respond to certain of the discovery responses, and Plaintiffs have been
10 making rolling productions of responsive documents, and the parties are continuing
11 to meet and confer about Plaintiffs' responses and objections.

12 8. Magistrate Judge Berg has been instrumental in facilitating discovery.
13 Since August 17, 2023, Judge Berg has held 12 status conferences and informal
14 discovery conferences, meeting with the parties approximately once every 10 days.
15 See ECF Nos. 164, 170, 172, 179, 181, 184, 185, 187, 190, 192, 195 (August 17,
16 August 25, September 7, September 20, September 29, October 6, October 17,
17 October 27, November 9, November 22, December 5, and December 18).

18 **Outstanding Discovery Plaintiffs Contend is Relevant to Class**
19 **Certification**

20 9. While the parties have been working diligently and cooperatively, there
21 is still a significant amount of discovery remaining to be completed that Plaintiffs
22 contend will be highly relevant to class certification briefing. Also pending are
23 several ongoing discovery disputes that Plaintiffs contend pertain to class
24 certification issues that cannot be resolved until after the New Year, due to the
25 holidays and counsel's pre-scheduled holiday travel plans and other commitments.
26 Additional time is needed to resolve these discovery disputes and complete
27 additional discovery that Plaintiffs contend is relevant to class certification.

28 10. For example, Plaintiffs contend that additional time is needed for

Plaintiffs to complete their review of the Bank's significant document production, which includes review of more than 165,000 documents (comprising more than 560,000 pages) produced by the Bank in November and December 2023, as set forth in the table below.

Production	Date Produced	Bates Range	Documents
Vol004	9/24/21	BANA_EDD_MDL-00000711-1045	36
Vol007	10/18/21	BANA_EDD_MDL-00001059-1231	55
Vol007 _Suppl	12/02/21	BANA_EDD_MDL-00001190-1214	N/A
Vol008	11/22/21	BANA_EDD_MDL-00001232-1306	53
Vol009	12/03/21	BANA_EDD_MDL-00001307-1311	5
Vol010	12/05/21	BANA_EDD_MDL-00001312-1404	40
Vol011	12/05/21	BANA_EDD_MDL-00001405	1
Vol012	4/19/23	BANA_EDD_MDL-00001406-12722	1,131
Vol013	5/12/23	BANA_EDD_MDL-00012723-12790	1
Vol014	7/21/23	BANA_EDD_MDL-00012791-18383	314
Vol015	8/14/23	BANA_EDD_MDL-00018384-19732	329
Vol016	8/29/23	BANA_EDD_MDL-00019733-21173	128
Vol17	9/20/23	BANA_EDD_MDL-00021174-21180	4
Vol18	9/22/23	BANA_EDD_MDL-00021181-29727	2,466
Vol19	9/27/23	BANA_EDD_MDL-00029728-29839	19
Vol20	9/27/23	BANA_EDD_MDL-00029840-42575	2,804
Vol21	9/29/23	BANA_EDD_MDL-00042576-54575	1,255
Vol22	10/4/23	BANA_EDD_MDL-00054576-56912	243
Vol23	10/4/23	BANA_EDD_MDL-00056913-56936	24
Vol24	10/13/23	BANA_EDD_MDL-00056937-57836	304
Vol25	10/20/23	BANA_EDD_MDL-00057837-57878	1
Vol26	10/23/23	BANA_EDD_MDL-00057879-102471	11,960
Vol27	10/23/23	BANA_EDD_MDL-00102472-102587	6
Vol28	10/30/23	BANA_EDD_MDL-00102588-130475	10,732
Vol29	11/02/23	BANA_EDD_MDL-00130476-139058	1,431
Vol30	11/06/23	BANA_EDD_MDL-00139059-186896	17,871
Vol31	11/13/23	BANA_EDD_MDL-00186897-231170	15,793

Vol32	11/20/23	BANA_EDD_MDL-00231171-233391	547
Vol33	11/20/23	BANA_EDD_MDL-00233392-367347	37,358
Vol34	12/01/23	BANA_EDD_MDL-00367348-485500	31,561
Vol35	12/04/23	BANA_EDD_MDL-00485501-694813	63,267
Vol36	12/15/23	BANA_EDD_MDL-00694814-694849	9
Total			199748

11. Plaintiffs are reviewing the Bank's document productions as quickly as possible, but given the volume, there is insufficient time before the current January 15, 2024 class certification deadline for Plaintiffs' counsel to complete their review and for their experts to analyze the documents Plaintiffs consider necessary to inform their opinions in support of class certification.

12. Additional time is also needed to enable Plaintiffs to take the Rule 30(b)(6) deposition of the Bank before moving for class certification. On Friday December 8, Plaintiffs served a Notice of Deposition of Defendant Bank of America, N.A., pursuant to Federal Rule of Civil Procedure 30(b)(6) seeking testimony on 32 categories of information. During the parties' December 18 meet and confer, counsel for the Bank stated that due to the number of topics sought by the deposition notice, the Bank anticipates designating between five and seven Bank representatives pursuant to Rule 30(b)(6). Due in part to the holidays, the Bank stated that it is not realistically possible to schedule these depositions before mid-January 2024.

13. Plaintiffs are also expecting the Bank's responses and objections to several other pending discovery requests in the next few weeks that Plaintiffs believe will also be highly relevant to their class certification motion, including responses to Plaintiffs' Third Set of Interrogatories, served November 20; responses to Plaintiffs' Fourth Set of Interrogatories, served December 1, 2023; and responses to Plaintiffs' First Set of Requests for Admission, served December 12.

14. Plaintiffs' requests, which were informed by their review of documents

1 produced by the Bank in November and December 2023 and propounded as soon
2 thereafter as reasonably practicable, seek information they believe is highly relevant
3 to class certification, including information about the Bank's policies and practices
4 for handling EDD debit cardholders' unauthorized transaction claims and the Bank's
5 policies and practices for freezing and blocking EDD debit cardholders' accounts
6 during the putative class period. It is highly likely that, even after the Bank serves its
7 responses, the parties will need to meet and confer about the Bank's responses and
8 objections to Plaintiffs' discovery requests, which Plaintiffs believe may give rise to
9 the need for additional discovery requests. It is not realistically feasible for the
10 parties to complete this process before the current January 15, 2024 deadline for
11 class certification.

12 15. The parties also have several pending discovery disputes on which they
13 are actively meeting and conferring, including additional ESI custodians, as well as
14 several disputes for which Magistrate Judge Berg has set an IDC for January 3,
15 2024.

16 16. Finally, Plaintiffs contend they will also need time to conduct
17 additional discovery after the pleadings are settled and the Bank has filed an
18 Answer. Because Defendant has not yet filed its Answer, Plaintiffs do not at this
19 time know what affirmative defenses the Bank intends to assert. Additionally,
20 Plaintiffs believe they cannot brief the issues related to class-wide treatment of the
21 UCL claim that is subject to a pending motion for reconsideration, or of the
22 affirmative defenses that the Bank might assert in its Answer, until the pending
23 motions to dismiss and for reconsideration are decided and the Bank has filed its
24 Answer.

25 I declare under penalty of perjury that that the foregoing is true and correct.

26 Executed this 21st day of December, 2023 in Burlingame, California.

27 /s/ Connie K. Chan

28 Connie K. Chan