

1 JOSEPH W. COTCHETT (SBN 36324)

2 jcotchett@cpmlegal.com

3 BRIAN DANITZ (SBN 247403)

4 bdanitz@cpmlegal.com

5 KARIN B. SWOPE (Pro Hac Vice)

6 kswope@cpmlegal.com

7 ANDREW F. KIRTLEY (SBN 328023)

8 akirtley@cpmlegal.com

9 **COTCHETT, PITRE & McCARTHY, LLP**

10 840 Malcolm Road, Suite 200

11 Burlingame, CA 94010

12 Telephone: (650) 697-6000

13 Fax: (650) 697-0577

MICHAEL RUBIN (SBN 80618)

mrubin@altber.com

STACEY M. LEYTON (SBN 203827)

sleyton@altber.com

MATTHEW MURRAY (SBN 271461)

mmurray@altber.com

CONNIE K. CHAN (SBN 284230)

cchan@altber.com

ALTSHULER BERZON LLP

177 Post Street, Suite 300

San Francisco, CA 94108

Telephone: (415) 421-7151

Fax: (415) 362-8064

14 *Co-Lead Counsel for Plaintiffs and the Proposed Class*
15 *(Additional Counsel Listed Below)*

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

18 **IN RE BANK OF AMERICA**
19 **CALIFORNIA UNEMPLOYMENT**
20 **BENEFITS LITIGATION**

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

DECLARATION OF JACLYN L.
SCHOEN IN OPPOSITION TO
DEFENDANT'S MOTION TO
PRECLUDE ADDITIONAL ESI
DISCOVERY

21 This Document Relates to All Actions

Judge: Hon. Larry Alan Burns

1 I, **Jaclyn L. Schoen**, declare as follows:

2 1. I am the Vice President of Strategy and Augmented Intelligence at
3 Trustpoint. I make this declaration of my own personal knowledge and, if called to
4 testify as a witness, could and would testify competently to the matters stated herein.

5 2. I have seventeen years of experience consulting in all aspects of
6 electronic discovery including the use of multiple technologies in the areas of
7 electronic discovery processing, multi-modal searching, review, and production. Over
8 the last ten years I have focused on defensible use of augmented intelligence tools
9 with both technology assisted review (TAR) as well as multi-modal search and
10 identification of documents for defensible data reduction and document production. I
11 have consulted on hundreds of matters. I also regularly provide consulting services in
12 the creation and negotiation of ESI processes including working with clients and
13 discussing any questions or points of interest with the opposing parties and their
14 eDiscovery experts.

15 3. In multi-district litigation complex civil litigation cases, it is quite
16 typical for most projects, after applying search terms, for a producing party to end up
17 producing 25%, or less, of the total document review population (i.e. the number of
18 documents the search terms hit upon) after doing a relevance and responsive review.

19 4. Moreover, the Bank used Brainspace and the process that Brainspace
20 refers to as CMML (Continuous Multi-Modal Learning). The Bank disclosed to
21 Plaintiffs that they did a random prevalence test (a random sample designed to
22 predict the richness) at the beginning of their review that predicted responsiveness
23 prior to a full review. The Bank should have known that the responsiveness rate
24 would be close to 25% at the time, and did not raise it as an issue to the Court or to
25 Plaintiffs.

26 5. In using TAR, the trained TAR system identified 765,000 likely relevant
27 documents. If that entire set fell within the TAR project, then either the Bank was
28 inefficient in how they reviewed the documents, or the documents themselves were

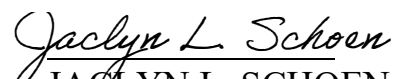
1 close and complex determinations such that the system required all that additional
2 review for training. Either way, the Bank's TAR review was not the result of
3 Plaintiffs' search terms, which as discussed above, were not overbroad by industry
4 standards.

5 6. Moreover, in many class actions of this size, a party reviews 765,000 or
6 more documents. Indeed, in many class actions of comparable size and complexity to
7 this case that I or my colleagues have worked on, millions of documents have been
8 reviewed and/or produced by a responding party.

9 7. While BANA claims that it spent \$4.5 million dollars for 400 contract
10 attorneys to review documents in addition to the hosting and management of the
11 platform, Anderson Decl. ¶6, BANA could have run the review in a more efficient
12 manner. Moreover, BANA could have avoided the costly second-level review
13 altogether and produced the documents directly after running a privilege log filter and
14 implementing a claw back provision immediately after search terms had been
15 finalized and run across the dataset.

16 8. If BANA collects documents from additional custodians, BANA's ESI
17 discovery vendor can isolate any documents that have already been reviewed or
18 produced by other custodians, and those documents need not be reviewed again.
19 Moreover, BANA's TAR system has already been trained. Accordingly, the cost of
20 reviewing the documents of additional custodians at this stage is likely to be
21 substantially less than the cost of reviewing the documents of the original 20
22 custodians.

23 I declare, under penalty of perjury, that the foregoing is true and correct.
24 Executed this 30th day of January 2024 in Chicago, Illinois.

25
26 
27 JACLYN L. SCHOEN
28