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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-GPC-MSB **PLAINTIFFS' SUPPLEMENTAL BRIEF REGARDING PENDING MOTION FOR RECONSIDERATION** [Re: ECF 264]
This Document Relates to All Actions	Judge: Hon. Gonzalo P. Curiel

Pursuant to the Court's Order Directing Parties to Submit Supplemental Briefing on Pending Motion for Reconsideration (ECF 264), Plaintiffs respond as follows:

Plaintiffs' Unfair Competition Law ("UCL") claim was one of the statutory claims that supported the Court's preliminary injunction in June 2021, which has provided significant relief and protection to millions of Defendant Bank of America's (the "Bank") EDD debit cardholders for nearly three years now. *See* ECF 136, First. Am. Master Consol. Compl. ("FAMCC"), Ex. B (Prelim. Inj.); ECF 248, Pls.' Response to Mot. to Dissolve Prelim. Inj. at 3-5. That preliminary injunction rested in part upon Judge Vince Chhabria's express finding that Plaintiffs and the provisionally certified class had established a "strong likelihood of success" on several of their claims for relief, including under the federal Electronic Fund Transfers Act ("EFTA") and California's UCL. FAMCC, Ex. B (Order Re Prelim. Inj.) ¶1.

As this Court knows, the EDD recently terminated its contract with the Bank, and the Bank is thus winding down its EDD debit card accounts that are the subject of this litigation. *See* ECF 255, Order Granting Mot. to Dissolve Prelim. Inj. at 1-2. The Bank has represented that no Plaintiffs or class members will be able to conduct transactions on their Bank-issued EDD debit cards and accounts after April 30, 2024, at which point the accounts will be closed and the Bank's only relevant continuing operations will be to provide customer service to EDD debit cardholders seeking to obtain a check for funds remaining in their closed account before the funds escheat to the state. *See* ECF 225-1, Def.'s Mot. to Dissolve Prelim. Inj. at 3-4. Those developments were the principal reason the parties agreed that this Court could dissolve the preliminary injunction effective June 1, 2024. ECF 255, Order at 1-2.

Given these developments, Plaintiffs acknowledge that their UCL claim seeking *prospective injunctive relief* against the Bank on behalf of EDD debit cardholders will become moot as of June 1, 2024, assuming the Bank's winding down of its EDD debit card accounts follows the schedule set forth above. *Cf.* FAMCC ¶584 (seeking prospective injunctive relief "(a) prohibiting the Bank from continuing its unfair and unlawful business practices, and (b) requiring the Bank to take reasonable measures to prevent future unauthorized use of EDD Debit Cards and Accounts, and requiring the Bank to ensure timely and adequate processing of Cardholders' [unauthorized transaction] claims"). However, neither those developments nor any others have any effect on the continuing viability of Plaintiffs' UCL *"unfair" prong claim seeking equitable restitution and disgorgement*, which remains a well-pleaded claim for all the reasons argued in Plaintiffs' pending motion for reconsideration. *See* ECF 151, Mot. for Reconsid. at 6-9; ECF 161, Reply ISO Mot. for Reconsid. at 7-9; FAMCC ¶¶577-578, 584. As Plaintiffs explained in that reconsideration motion, Plaintiffs continue to seek the equitable remedy of restitution under the UCL to remedy the Bank's challenged practices on the theory that, even if the Court ultimately concludes that the practices alleged in the FAMCC were not *unlawful*, the Court could still find them to be actionable under the UCL as *unfair* business practices. In that circumstance, Plaintiffs would have no legal remedies, and their only available remedy would be equitable restitution and disgorgement.

For these reasons, while Plaintiffs' UCL claim seeking prospective injunctive relief against the Bank on behalf of EDD debit cardholders will likely become moot as of June 1, 2024, Plaintiffs reiterate that the Court should grant reconsideration to permit Plaintiffs' alternative claim under the UCL that they are entitled to pursue equitable restitution under the UCL's "unfair" business practice prong.

Respectfully submitted,

Dated: April 26, 2024

COTCHETT, PITRE & McCARTHY, LLP

By: /s/ *Andrew F. Kirtley*
ANDREW F. KIRTLEY

Co-Lead Counsel for Plaintiffs and the Proposed Class

Dated: April 26, 2024

ALTSHULER BERZON LLP

By: /s/ *Michael Rubin*
MICHAEL RUBIN

Co-Lead Counsel for Plaintiffs and the Proposed Class

SIGNATURE CERTIFICATION

Pursuant to Section 2(f)(4) of this Court's Electronic Case Filing Administrative Policies and Procedures Manual, I certify that the content of this document is acceptable to all signatories, and that all signatories authorized their electronic signatures to be affixed to this document.

/s/ Andrew F. Kirtley
ANDREW F. KIRTLEY