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IN RE: BANK OF AMERICA
CALIFORNIA UNEMPLOYMENT
BENEFITS LITIGATION

Case No. 21-MD-02992-GPC-MSB
**DEFENDANT BANK OF
AMERICA, N.A.'S
SUPPLEMENTAL BRIEF ON
PLAINTIFFS' MOTION FOR
RECONSIDERATION**

Ctrm: 2D – 2nd Floor
Judge: Hon. Gonzalo P. Curiel

1 Defendant Bank of America, N.A. (“BANA”) submits this brief in response to
2 the Court’s April 16, 2024 Order, Dkt. No. 264, regarding whether Plaintiffs’ claims
3 under California’s Unfair Competition Law (“UCL”) seeking a prospective
4 injunction are still viable in light of the dissolution of the preliminary injunction
5 issued in *Yick v. Bank of America, N.A.*, Case No. 21-cv-1092 (the “PI Order”), and
6 the conclusion of the contract between EDD and BANA.

7 As the Court’s Order suggests, the dissolution of the PI Order and BANA’s
8 exit from the EDD program render Plaintiffs’ UCL claims seeking a prospective
9 injunction completely moot. The only “prospective injunction” sought by Plaintiffs
10 in connection with their UCL claims (or otherwise) in either the Master Consolidated
11 Complaint (“MCC”), Dkt. No. 72, or in the First Amended Master Consolidated
12 Complaint (“FAMCC”), Dkt. No. 136, is an order regarding BANA’s management
13 of the EDD program that is substantively identical to the PI Order. The MCC
14 explicitly seeks “an order making the existing [PI Order] permanent.” MCC at Prayer
15 for Relief ¶ 2. The FAMCC similarly states that the UCL claims are necessary
16 because legal remedies are inadequate to protect Plaintiffs from “future harm . . . that
17 is or would be ongoing but for the [PI Order].” FAMCC ¶ 285. Indeed, the
18 FAMCC’s efforts to plead “facts” supporting Plaintiffs’ request for a prospective
19 injunction reveal that Plaintiffs’ efforts to require BANA to do anything at all begin
20 and end with the EDD accounts that will soon all be closed. See FAMCC ¶ 584.

21 As the Court noted, “Plaintiffs don’t oppose” BANA’s request to dissolve the
22 PI Order because the requirements of the PI Order are no longer necessary and no
23 longer serve any purpose in light of BANA’s forthcoming exit from the EDD
24 program. Dkt. No. 255, at 1. The PI Order will be fully dissolved as of June 1, 2024,
25 see *id.* at 2, at which time all of the EDD accounts that Plaintiffs complain about will
26 have been closed for at least a month, obviating any need for a prospective injunction.

27 For all the reasons stated in BANA’s Opposition to Plaintiffs’ Motion for
28 Reconsideration, Dkt. No. 158, Plaintiffs’ remaining arguments for reconsideration

1 of the dismissal of their UCL claims also fail. The Court's May 23, 2023 Order
2 granting in part and denying in part BANA's motion to dismiss the MCC, Dkt. No.
3 126, correctly found that Plaintiffs had not plausibly alleged an entitlement to any
4 type of equitable relief because they included *neither* a boilerplate allegation that
5 legal remedies are inadequate *nor* facts to support such an allegation. See Dkt. No.
6 126, at 33. Indeed, as BANA argued, the crux of Plaintiffs' complaint is that they
7 were deprived of money. It is therefore no surprise that they cannot articulate (even
8 now) why money is inadequate to make them whole. The Court's Order dismissing
9 Plaintiffs' UCL claims was correct last May, and it remains correct now.

10
11 Dated: April 26, 2024

Respectfully submitted,

12 By: s/ Matthew L. Riffée

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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 **April 26, 2024**. 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: April 26, 2024

s/ Matthew L. Riffie
MATTHEW L. RIFFEE