

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: BANK OF AMERICA
CALIFORNIA UNEMPLOYMENT
BENEFITS LITIGATION

Case No.: 21md2992-GPC (MSB)

**ORDER ISSUING AMENDED
SCHEDULING ORDER**

A Case Management Conference was held on **June 26, 2024**. After consulting with the attorneys of record and the chambers of the Honorable Gonzalo P. Curiel, the Court **ISSUES** the following Amended Scheduling Order using the timing previously set forth in ECF No. 275:

1. Plaintiffs shall file a Second Amended Master Consolidated Complaint (“SAMCC”) pursuant to the Court’s instructions in ECF No. 297 by **July 16, 2024**.
2. Defendant shall respond to the SAMCC by **August 15, 2024**.
3. Plaintiffs’ Motion for Class Certification is due **August 29, 2024**.
Defendant’s Opposition to Motion for Class Certification is due **October 24, 2024**.
Plaintiffs’ Reply in Support of Motion for Class Certification is due **November 21, 2024**.
Counsel for the moving party must obtain a motion hearing date from the law clerk of the judge who will hear the motion.

1 4. All fact discovery shall be completed by all parties on or before **December**
2 **12, 2024**. “Completed” means that all discovery under Rules 30-36 of the Federal Rules
3 of Civil Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient
4 period of time in advance of the cut-off date, **so that it may be completed** by the cut-off
5 date, taking into account the times for service, notice and response as set forth in the
6 Federal Rules of Civil Procedure.

7 Counsel shall promptly and in good faith meet and confer with regard to all
8 discovery disputes in compliance with Local Rule 26.1(a). All discovery motions must
9 be filed within **30 days** of the event giving rise to the dispute. For oral discovery, the
10 event giving rise to the dispute is the completion of the transcript of the relevant portion
11 of the deposition. For written discovery, the event giving rise to the discovery dispute is
12 the date of service of the response, **not** the date on which counsel reach an impasse in
13 meet and confer efforts. If a party fails to provide a discovery response, the event giving
14 rise to the discovery dispute is the date response was due.

15 The Court’s procedures for resolving discovery disputes are set forth in Magistrate
16 Judge Michael S. Berg’s Civil Chambers Rules, which are posted on the Court’s website.
17 **A failure to comply in this regard will result in a waiver of a party’s discovery issue.**
18 **Absent an order of the court, no stipulation continuing or altering this requirement**
19 **will be recognized by the court.**

20 5. The parties shall designate their respective experts in writing by **December**
21 **27, 2024**. Pursuant to Fed. R. Civ. P. 26(a)(2)(A), the parties must identify any person
22 who may be used at trial to present evidence pursuant to Rules 702, 703 or 705 of the
23 Fed. R. Evid. This requirement is not limited to retained experts. The date for exchange
24 of rebuttal experts shall be by **January 2, 2025**. The written designations shall include
25 the name, address and telephone number of the expert and a reasonable summary of the
26 testimony the expert is expected to provide. The list shall also include the normal rates
27 the expert charges for deposition and trial testimony.

28 6. By **January 16, 2025**, each party shall comply with the disclosure

1 provisions in Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This
2 disclosure requirement applies to all persons retained or specially employed to provide
3 expert testimony, or whose duties as an employee of the party regularly involve the
4 giving of expert testimony. **Except as provided in the paragraph below, any party**
5 **that fails to make these disclosures shall not, absent substantial justification, be**
6 **permitted to use evidence or testimony not disclosed at any hearing or at the time of**
7 **trial. In addition, the Court may impose sanctions as permitted by Fed. R. Civ. P.**
8 **37(c).**

9 7. Any party shall supplement its disclosure regarding contradictory or rebuttal
10 evidence under Fed. R. Civ. P. 26(a)(2)(D) and 26(e) by **February 13, 2025**.

11 8. All expert discovery shall be completed by all parties by **March 13, 2025**.
12 The parties shall comply with the same procedures set forth in the paragraph governing
13 fact discovery. Failure to comply with this section or any other discovery order of the
14 court may result in the sanctions provided for in Fed. R. Civ. P. 37, including a
15 prohibition on the introduction of experts or other designated matters in evidence.

16 9. All other pretrial motions, including those addressing Daubert issues related
17 to dispositive motions must be filed by **April 14, 2025**. Pursuant to Honorable Gonzalo
18 P. Curiel's Civil Pretrial & Trial Procedures, all motions for summary judgment shall be
19 accompanied by a separate statement of undisputed material facts. Any opposition to a
20 summary judgment motion shall include a response to the separate statement of
21 undisputed material facts. Counsel for the moving party must obtain a motion hearing
22 date from the law clerk of the judge who will hear the motion. Motion papers MUST be
23 filed and served the same day of obtaining a motion hearing date from chambers. A
24 briefing schedule will be issued once a motion has been filed. The period of time
25 between the date you request a motion date and the hearing date may vary. Please plan
26 accordingly. Failure to make a timely request for a motion date may result in the motion
27 not being heard.

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1 10. A Mandatory Settlement Conference shall be conducted on **July 1, 2025**, at
2 **9:30 a.m.**, in the chambers of **Magistrate Judge Michael S. Berg** located at **221 West**
3 **Broadway, second floor, San Diego, CA 92101**. Upon arrival, parties should check in
4 with Judge Berg's chambers using the callbox located by the second-floor elevators. All
5 discussions at the Mandatory Settlement Conference will be informal, off-the-record,
6 privileged, and confidential. Counsel for any non-English speaking party is responsible
7 for arranging for the appearance of an interpreter at the conference.

8 a. **Personal Appearance of Parties Required:** All named parties, party
9 representatives, claims adjusters for insured defendants, and the principal attorney(s)
10 responsible for the litigation, must be present **in person** and prepared to discuss and
11 resolve the case. Counsel appearing without their clients (whether or not counsel has
12 been given settlement authority) will be cause for immediate imposition of sanctions and
13 may also result in the immediate termination of the conference.

14 b. **Full Settlement Authority Required:** A party or party
15 representative with full settlement authority must be present at the conference. Retained
16 outside corporate counsel must not appear on behalf of a corporation as the party
17 representative who has the authority to negotiate and enter into a settlement. A
18 government entity may be excused from this requirement so long as the government
19 attorney who attends the Mandatory Settlement Conference has (1) primary responsibility
20 for handling the case, and (2) authority to negotiate and recommend settlement offers to
21 the government official(s) having ultimate settlement authority.

22 c. **Confidential Settlement Statements Required:** By
23 **June 24, 2025**, the parties shall submit directly to Magistrate Judge Berg's chambers (via
24 hand delivery or by e-mail to the Court at efile_berg@casd.uscourts.gov), confidential
25 settlement statements. The statements are limited to ten (10) pages, plus an additional ten
26 (10) pages of exhibits. Each party's settlement statement must outline (1) significant
27 facts established during discovery and the effect these facts have on the issues in the case;
28 (2) counsel's insights regarding how best to reach settlement; (3) a **specific**

1 **demand/offer for settlement;** and (4) any previous settlement negotiations or mediation
2 efforts. The Mandatory Settlement Conference statement **must not merely repeat** what
3 was contained in the Early Neutral Evaluation conference brief or any earlier settlement
4 brief. To the extent specific discovery responses, portions of deposition testimony, or
5 expert reports are pertinent to the Court's evaluation of the matter, these documents must
6 be attached as exhibits. Evidence supporting or refuting either party's claim for damages
7 must also be identified and included as an exhibit. A general statement, such as a party
8 will "negotiate in good faith," is **not** a specific demand or offer. The settlement
9 statement should be submitted confidentially and need not be shared with other parties.

10 **d. Requests to Continue a Mandatory Settlement Conference:**

11 Any request to continue the Mandatory Settlement Conference, or request for relief from
12 any of the provisions or requirements of this Order, must be sought by a **written**
13 **application. Absent good cause, requests for continuances will not be considered**
14 **unless submitted in writing no fewer than seven (7) calendar days prior to the**
15 **scheduled conference.**

16 **If the case is settled in its entirety before the scheduled date of the conference,**
17 **counsel and any unrepresented parties must still appear in person, unless a written**
18 **joint notice confirming the complete settlement of the case is filed no fewer than**
19 **twenty-four (24) hours before the scheduled conference.**

20 11. Pursuant to Honorable Gonzalo P. Curiel's Civil Pretrial & Trial Procedures,
21 the parties are excused from the requirement of Local Rule 16.1(f)(2)(a); no Memoranda
22 of Law or Contentions of Fact are to be filed.

23 12. Counsel shall comply with the pre-trial disclosure requirements of Fed. R.
24 Civ. P. 26(a)(3) by **July 18, 2025**. Failure to comply with these disclosure requirements
25 could result in evidence preclusion or other sanctions under Fed. R. Civ. P. 37.

26 13. Counsel shall meet and take the action required by Local Rule 16.1(f)(4) by
27 **July 25, 2025**. At this meeting, counsel shall discuss and attempt to enter into
28 stipulations and agreements resulting in simplification of the triable issues. Counsel shall

1 exchange copies and/or display all exhibits other than those to be used for impeachment.
2 The exhibits shall be prepared in accordance with Local Rule 16.1(f)(4)(c). Counsel shall
3 note any objections they have to any other parties' Pretrial Disclosures under Fed. R. Civ.
4 P. 26(a)(3). Counsel shall cooperate in the preparation of the proposed pretrial
5 conference order.

6 14. Counsel for plaintiff will be responsible for preparing the pretrial order and
7 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By **August 1,**
8 **2025**, plaintiff's counsel must provide opposing counsel with the proposed pretrial order
9 for review and approval. Opposing counsel must communicate promptly with plaintiff's
10 attorney concerning any objections to form or content of the pretrial order, and both
11 parties shall attempt promptly to resolve their differences, if any, concerning the order.

12 15. The Proposed Final Pretrial Conference Order, including objections to any
13 other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and
14 lodged with the assigned district judge by **August 8, 2025**, and shall be in the form
15 prescribed in and comply with Local Rule 16.1(f)(6).

16 16. The final Pretrial Conference is scheduled on the calendar of the **Honorable**
17 **Gonzalo P. Curiel** on **August 15, 2025** at **1:30 p.m.** The Court will set a trial date
18 during the pretrial conference. The Court will also schedule a motion in limine hearing
19 date during the pretrial conference.

20 17. The parties must review the chambers' rules for the assigned district judge
21 and magistrate judge.

22 18. A post trial settlement conference before a magistrate judge may be held
23 within 30 days of verdict in the case.

24 19. The dates and times set forth herein will not be modified except for good
25 cause shown.

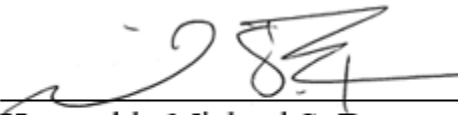
26 20. Briefs or memoranda in support of or in opposition to all motions noticed for
27 the same motion day shall not exceed twenty-five (25) pages in length, per party, without
28 leave of the judge who will hear the motion. No reply memorandum shall exceed ten

1 (10) pages without leave of a district court judge. Briefs and memoranda exceeding ten
2 (10) pages in length shall have a table of contents and a table of authorities cited.

3 21. Plaintiff's counsel shall serve a copy of this order on all parties that enter
4 this case hereafter.

5 **IT IS SO ORDERED.**

6 Dated: June 27, 2024

7 
8 Honorable Michael S. Berg
9 United States Magistrate Judge
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