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

13 **IN RE BANK OF AMERICA**
14 **CALIFORNIA UNEMPLOYMENT**
15 **BENEFITS LITIGATION**

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

16 **PLAINTIFFS' NOTICE OF**
17 **OBJECTIONS TO AND MOTION TO**
18 **REVERSE IN PART MAGISTRATE**
19 **JUDGE'S APRIL 24, 2024**
20 **DISCOVERY ORDER**

21 This Document Relates to All Actions

Judge: Hon. Gonzalo P. Curiel
Date: July 19, 2024
Time: 1:30 PM
Ctrm: 2D (2d floor)

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on July 19, 2024 at 1:30 p.m., or at such other
3 time as the Court may be available to hear this motion, in the U.S. District Court for
4 the Southern District of California, located at 211 West Broadway, San Diego,
5 California, 92101, in Courtroom 2D (2d floor), before the Honorable Gonzalo P.
6 Curiel, Plaintiffs, by and through their counsel, will and hereby do object, pursuant to
7 Federal Rule of Civil Procedure 72(a), to Magistrate Judge Michael Berg's April 24,
8 2024 Discovery Order (ECF 268).

9 Plaintiffs object to the Discovery Order to the extent it denies Plaintiffs' request
10 to compel the Bank to search and produce the electronically stored information
11 ("ESI") of Bank executives Brian Moynihan and Thomas Montag in response to
12 Plaintiffs' Requests for Production of Documents (RFPs) Nos. 76-79, as set forth in
13 Plaintiffs' Motion to Compel Additional ESI Custodians (ECF 212). Plaintiffs object
14 on the ground that such denial was contrary to law and clearly erroneous within the
15 meaning of Rule 72(a) because (1) the Discovery Order applies the wrong legal
16 standard for compelling production of documents, and (2) under any potentially
17 applicable legal standard, Plaintiffs have shown entitlement to Moynihan and
18 Montag's requested documents. Plaintiffs further object to Judge Berg's February 20,
19 2024 denial of Plaintiffs' request for leave to submit additional evidence in support
20 of their Motion to Compel as an abuse of discretion, and respectfully request that the
21 Court exercise its discretion to consider the additional evidence attached to the
22 accompanying Supplemental Declaration of Connie K. Chan ("Supp. Decl.") in ruling
23 on Plaintiffs' instant objections and motion to reverse in part.

24 For the same reasons, Plaintiffs further move this Court to modify the
25 Discovery Order to add Moynihan and Montag as ESI custodians whose documents
26 the Bank must search and produce in response to Plaintiffs' RFP Nos. 76-79. In the
27 alternative, Plaintiffs request that the matter be remanded to Judge Berg to reconsider
28 the Discovery Order in light of (1) the proper legal standard, and (2) Plaintiffs'

1 supplemental evidence attached to the Supplemental Declaration.

2 These Objections and this Motion are based on this Notice, the accompanying
3 Memorandum of Points and Authorities, the accompanying Supplemental Declaration
4 of Connie K. Chan and exhibits thereto, the records and files in this case (including
5 (1) Plaintiffs' Opening Brief in Support of Motion to Compel Additional ESI
6 Custodians (ECF 212); (2) the Declaration of Connie K. Chan in Support of Plaintiffs'
7 Motion to Compel Additional ESI Custodians and all Exhibits attached thereto (ECF
8 212-1 through 212-25); (3) Plaintiffs' Opposition to Defendant's Motion to Preclude
9 Additional Discovery (ECF 215); and (4) the Declaration of Jaclyn L. Schoen in
10 Opposition to Defendant's Motion to Preclude Additional Discovery (ECF 215-1)),
11 and any other written and oral argument as may be presented to the Court.

12 Dated: May 8, 2024

COTCHETT, PITRE & McCARTHY, LLP

13 By: /s/ Brian Danitz

14 JOSEPH W. COTCHETT
15 BRIAN DANITZ
16 KARIN B. SWOPE
ANDREW F. KIRTLEY

17 Dated: May 8, 2024

ALTSHULER BERZON LLP

18 By: /s/ Connie K. Chan

19 MICHAEL RUBIN
20 STACEY M. LEYTON
21 CONNIE K. CHAN
22 COLIN C. JONES

23 *Co-Lead Counsel for Plaintiffs and the*
24 *Proposed Class*
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SIGNATURE CERTIFICATION

Pursuant to Section 2(f)(4) of this Court's Electronic Case Filing Administrative Policies and Procedures Manual, I, Connie K. Chan, hereby certify that the content of this document is acceptable to all the signatories herein and that I have obtained counsel's authorization to affix their electronic signatures to this document.

/s/ Connie K. Chan

CONNIE K. CHAN