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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

**SUPPLEMENTAL DECLARATION
OF CONNIE K. CHAN IN SUPPORT
OF PLAINTIFFS' OBJECTIONS TO
AND MOTION TO REVERSE IN
PART MAGISTRATE JUDGE'S
APRIL 24, 2024 DISCOVERY
ORDER [ECF 268]**

20 This Document Relates to All Actions

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

**REDACTED VERSION FOR PUBLIC
FILING**

SUPPLEMENTAL DECLARATION OF CONNIE K. CHAN

I, Connie K. Chan, hereby declare as follows:

1. I am a partner at the San Francisco law firm of Altshuler Berzon LLP, which is co-lead counsel for Plaintiffs and the putative class in this action. I submit this supplemental declaration in support of Plaintiffs' Objections to and Motion to Reverse in Part Magistrate Judge Berg's April 24, 2024 Discovery Order regarding additional ESI custodians (ECF 268). I previously submitted a declaration in support of Plaintiffs' Motion to Compel Additional Custodians, attaching 23 exhibits, available at ECF 212-1 through 212-25. I have personal knowledge of the facts set forth in this declaration and if called as a witness in this action, I could and would testify competently to these facts.

2. An **Index of Supplemental Exhibits** to this declaration is attached to this declaration.

3. Attached hereto as **Exhibit 24** is a true and correct copy of a document produced by Defendant Bank of America, N.A. ("Defendant" or the "Bank") in this action Bates-stamped BANA_EDD_MDL-00169896-97.

4. Attached hereto as **Exhibit 25** is a true and correct copy of a document produced by Defendant on December 1, 2023, Bates-stamped BANA_EDD_MDL-00371977, which was Exhibit 83 to the deposition of the Bank's Rule 30(b)(6) designee, Michael Letson, taken on February 16, 2024.

5. Attached hereto as **Exhibit 26** is a true and correct copy of a document produced by Defendant on December 22, 2023, Bates-stamped BANA_EDD_MDL-00694889-90.

6. Attached hereto as **Exhibit 27** is a true and correct copy of a document produced by Defendant on December 1, 2023, Bates-stamped BANA_EDD_MDL-00372012-13.

7. Attached hereto as **Exhibit 28** is a true and correct copy of a document produced by Defendant on December 1, 2023, Bates-stamped BANA_EDD_MDL-

1 00421427–28.

2 8. Attached hereto as **Exhibit 29** is a true and correct copy of a document
3 produced by Defendant on December 1, 2023, Bates-stamped BANA_EDD_MDL-
4 00450516–18, which was Exhibit 85 to the deposition of the Bank’s Rule 30(b)(6)
5 designee, Michael Letson, taken on February 16, 2024.

6 9. Attached hereto as **Exhibit 30** is a true and correct copy of a document
7 produced by Defendant Bates-stamped BANA_EDD_MDL-00125863–64, which
8 was Exhibit 86 to the deposition of the Bank’s Rule 30(b)(6) designee, Michael
9 Letson, taken on February 16, 2024.

10 10. Attached hereto as **Exhibit 31** is a true and correct copy of a document
11 produced by Defendant on December 4, 2023, Bates-stamped BANA_EDD_MDL-
12 00570351, which was Exhibit 87 to the deposition of the Bank’s Rule 30(b)(6)
13 designee Michael Letson, taken on February 16, 2024.

14 11. Attached hereto as **Exhibit 32** is a true and correct copy of a document
15 produced by Defendant on December 4, 2023, Bates-stamped BANA_EDD_MDL-
16 00528602, which was Exhibit 88 to the deposition of the Bank’s Rule 30(b)(6)
17 designee Michael Letson, taken on February 16, 2024.

18 12. Attached hereto as **Exhibit 33** is a true and correct copy of excerpts from
19 the February 16, 2024 Rule 30(b)(6) deposition of Bank designee Michael Letson.

20 13. Attached hereto as **Exhibit 34** is a true and correct copy of a document
21 produced by Defendant on December 4, 2023, Bates-stamped BANA_EDD_MDL-
22 00497802–04.

23 14. Attached hereto as **Exhibit 35** is a true and correct copy of a document
24 produced by Defendant on December 4, 2023, Bates-stamped BANA_EDD_MDL-
25 00510141.

26 15. Attached hereto as **Exhibit 36** is a true and correct copy of a document
27 produced by Defendant on October 23, 2023, titled [REDACTED]
28 [REDACTED] Bates-stamped BANA_EDD_

1 MDL-00100634–79, which was Exhibit 17 to the deposition of the Bank’s Rule
2 30(b)(6) designee Shane Daniels, taken on February 6, 2024.

3 16. In a letter dated December 5, 2021 regarding the Bank’s production of
4 documents relating to the Bank’s compliance with the Preliminary Injunction issued
5 in *Yick v. Bank of America, N.A.*, No. 21-cv-00376-VC, counsel for the Bank
6 represented that “[REDACTED]

7 [REDACTED].”

8 17. Background on the parties’ current discovery dispute regarding ESI
9 custodians is set forth in my previous declaration at ECF 212-1, ¶¶24-37. I set forth
10 the following as additional context.

11 18. In response to Plaintiffs’ request that the Bank produce organizational
12 charts after the parties had agreed on an initial set of 20 custodians from whom the
13 Bank would collect and produce ESI, the Bank on October 20, 2023 produced 40
14 pages of organizational charts identifying [REDACTED]
15 [REDACTED] who were not among the initial 20 ESI custodians whose
16 electronic files the Bank had agreed to search. The parties agreed to meet and confer
17 about additional custodians once Plaintiffs had a reasonable opportunity to review
18 the documents produced by the Bank from the initial set of 20 custodians.

19 19. The Bank made its first substantial production of ESI on October 23,
20 2023, consisting of 11,960 documents.

21 20. On October 27, 2023, given the then-impending class certification
22 deadline of January 15, 2024, Judge Berg ordered the Bank to complete its
23 production of ESI from the initial set of 20 custodians no later than December 4,
24 2023, through weekly rolling productions.

25 21. Between October 23 and December 4, 2023, the Bank produced 190,652
26 documents. Of those, more than 94,000 were produced on December 1 and
27 December 4. The Bank made small additional productions on December 15 and
28 December 22, and the parties have continued to exchange discovery since then. A

1 schedule of the Bank's productions through December 22 is summarized below:

2	Volume	Date Produced	Bates Range	Documents
3				
4	Vol004	09/24/21	BANA_EDD_MDL-00000711-1045	36
5	Vol007	10/18/21	BANA_EDD_MDL-00001059-1231	55
6	Vol007_Suppl	12/02/21	BANA_EDD_MDL-00001190-1214	N/A
7	Vol008	11/22/21	BANA_EDD_MDL-00001232-1306	53
8	Vol009	12/03/21	BANA_EDD_MDL-00001307-1311	5
9	Vol010	12/05/21	BANA_EDD_MDL-00001312-1404	40
10	Vol011	12/05/21	BANA_EDD_MDL-00001405	1
11	Vol012	04/19/23	BANA_EDD_MDL-00001406-12722	1,131
12	Vol013	05/12/23	BANA_EDD_MDL-00012723-12790	1
13	Vol014	07/21/23	BANA_EDD_MDL-00012791-18383	314
14	Vol015	08/14/23	BANA_EDD_MDL-00018384-19732	329
15	Vol016	08/29/23	BANA_EDD_MDL-00019733-21173	128
16	Vol017	09/20/23	BANA_EDD_MDL-00021174-21180	4
17	Vol018	09/22/23	BANA_EDD_MDL-00021181-29727	2,466
18	Vol019	09/27/23	BANA_EDD_MDL-00029728-29839	19
19	Vol020	09/27/23	BANA_EDD_MDL-00029840-42575	2,804
20	Vol021	09/29/23	BANA_EDD_MDL-00042576-54575	1,255
21	Vol022	10/04/23	BANA_EDD_MDL-00054576-56912	243
22	Vol023	10/04/23	BANA_EDD_MDL-00056913-56936	24
23	Vol024	10/13/23	BANA_EDD_MDL-00056937-57836	304
24	Vol025	10/20/23	BANA_EDD_MDL-00057837-57878	1
25	Vol026	10/23/23	BANA_EDD_MDL-00057879-102471	11,960
26	Vol027	10/23/23	BANA_EDD_MDL-00102472-102587	6
27	Vol028	10/30/23	BANA_EDD_MDL-00102588-130475	10,732
28				

Vol029	11/02/23	BANA_EDD_MDL-00130476-139058	1,431
Vol030	11/06/23	BANA_EDD_MDL-00139059-186896	17,871
Vol031	11/13/23	BANA_EDD_MDL-00186897-231170	15,793
Vol032	11/20/23	BANA_EDD_MDL-00231171-233391	547
Vol033	11/20/23	BANA_EDD_MDL-00233392-367347	37,358
Vol034	12/01/23	BANA_EDD_MDL-00367348-485500	31,561
Vol035	12/04/23	BANA_EDD_MDL-00485501-694813	63,267
Vol036	12/15/23	BANA_EDD_MDL-00694814-694849	9
Vol037	12/22/23	BANA_EDD_MDL-00694850-695300	117
TOTAL			199,865

22. The parties submitted informal letter briefs on the issue of ESI custodians to Judge Berg, who conducted an IDC on January 3, 2024 and tentatively ruled that the Bank should be ordered to add three executive custodians of Plaintiffs' choosing. Plaintiffs would have accepted Judge Berg's tentative ruling as a compromise, but because the Bank informed Plaintiffs that it would seek leave to formally brief the issue, the parties jointly requested to brief Plaintiffs' request to add additional ESI custodians and the Bank's objections thereto on January 5, 2024. Judge Berg set a briefing schedule, pursuant to which the parties filed seven-page opening briefs on January 23, 2024 and three-page response briefs on January 30, 2024.

23. At the time Plaintiffs' IDC letter brief and motion to compel briefs were due, Plaintiffs had not yet completed their review of the 190,652 documents produced by the Bank between October 23 and December 4, 2023. Plaintiffs' review of the Bank's document productions was and still is ongoing.

24. After Plaintiffs submitted their January 30, 2024 response brief, and in the course of their ongoing review of the Bank's document productions, Plaintiffs

1 identified many more documents supporting their request to add Bank of America
2 CEO Brian Moynihan and Bank of America COO and President of Global Banking
3 and Markets (“GBAM”) until December 2021 Thomas Montag as ESI custodians.
4 Almost all of those newly identified documents were among the more than 94,000
5 produced by the Bank on December 1 and 4, or later. *See* Exs. 25, 26, 27, 28, 29, 31,
6 32, 34, 35. Plaintiffs identified several of these key documents in preparing for the
7 Rule 30(b)(6) deposition of Michael Letson, the Bank’s designee on various topics
8 related to the Bank’s “Claim Fraud Filter,” taken February 16, 2024. *See* Exs. 25,
9 29, 30, 31, 32.

10 25. On Tuesday, February 20, 2024, I contacted counsel for the Bank and
11 asked the Bank to consent to Plaintiffs’ submission of additional recently identified
12 evidence to support Plaintiffs’ then-pending motion to compel additional ESI
13 custodians. The Bank opposed and stated it would seek additional briefing if the
14 Court permitted Plaintiffs to submit additional evidence, to which I stated Plaintiffs
15 had no objection. The same day, the parties placed a joint call to Judge Berg’s
16 chambers, during which Plaintiffs requested leave to submit a limited number of
17 additional exhibits and agreed that the Bank should be allowed to submit a
18 responding brief, with no additional briefing from Plaintiffs.

19 26. The next day, Judge Berg informed the parties that he would not allow
20 any new evidence or briefing because “[b]riefing has been closed since January 30,
21 2024.” A true and correct copy of the notification from Magistrate Judge Berg’s
22 chambers denying Plaintiffs’ request to supplement the record is attached hereto as
23 **Exhibit 37.**

24 I declare under penalty of perjury that that the foregoing is true and correct.

25 Executed this 8th day of May, 2024 in Burlingame, California.

26 /s/ Connie K. Chan

27 Connie K. Chan
28