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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

**REPLY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PROTECTIVE ORDER RE:
128 DEPOSITIONS**

This Document Relates to All Actions

1 The Bank's brief (ECF 326) fails in three respects. *First*, the Bank fails to establish
2 good cause for *any* Individual Plaintiff deposition to be conducted (whether in person or
3 remotely) before Judge Curiel issues a ruling on the pending Motion to Stay, which is set
4 for hearing on September 9 and may moot the present discovery dispute altogether.
5 *Second*, the Bank fails to establish good cause for taking any more than the 10 depositions
6 permitted by Rule 30(a)(2)(A)(i), which it has already taken; and it has neither moved for
7 leave to take more nor made the requisite showing of need. *Third*, the Bank fails to
8 establish why, even assuming it were able to show the requisite need for more than 10
9 depositions, Plaintiffs should be subjected to the undue burden of having to defend 128
10 depositions taken on a compressed schedule of multiple depositions per day for two
11 months straight, at the same time the parties will be actively engaged in class certification
12 briefing and expert discovery—particularly when the Bank could have brought a motion
13 seeking leave to take these 128 Individual Plaintiff depositions at any time since the
14 discovery stay was lifted in May 2023, but never did. Because the Bank has not satisfied
15 and cannot satisfy its burden on any of these points, Plaintiffs' request for a protective
16 order (ECF 327) should be granted.

17 1. The Bank *agrees* with Class Plaintiffs that the “dispute before the Court at the
18 IDC was simply whether the Plaintiffs would be required to appear in person or remotely.”
19 ECF 126 at 3:15-16; *see* ECF 127 at 3:3-5. Nevertheless, the Bank improperly invited the
20 Court at the IDC to rule not just on the manner of depositions, but on the propriety and
21 timing of depositions themselves. In doing so, the Bank unnecessarily created the potential
22 for conflict and inconsistent rulings. Any ruling as to whether additional Individual
23 Plaintiff depositions shall be taken should be deferred until after Judge Curiel rules on the
24 pending Motion to Stay and determines the future course of those individuals' claims.

25 2. The Bank's assertion that it is “entitled” to 128 additional depositions (ECF 126
26 at 3) is contrary to the law and the facts. The Court has never ruled that “BANA is entitled
27 to take the deposition of each Individual Plaintiff” (*id.* at 3:19-20). To date, the Court's
28 only ruling regarding depositions was that consistent with Rule 30(a)(2)(A)(i), the Bank

1 could take only 10, in any combination, before Plaintiffs filed the Motion for Class
2 Certification. No preliminary discussion at a status conference “entitled” the Bank to take
3 additional depositions, and the Bank never received “leave of court” (*id.* at 3:22) as it
4 claims. The Bank bears the burden of making a “particularized showing of why the
5 discovery is necessary” to expand beyond the 10-deposition limit. *Acosta v. Southwest*
6 *Fuel Management, Inc.*, 2018 WL 1913772, at *6 (C.D. Cal. 2018); *Dowkin v. Honolulu*
7 *Police Dep’t*, 2012 WL 13168531, at *5 (D. Haw. 2012) (“Plaintiffs have cited no legal
8 authority to support its position that they are permitted to take 41 depositions as a result
9 of the number of named parties—presumably because no such legal authority exists.”).
10 Here, the parties have never briefed the propriety of taking additional depositions (let
11 alone 128 more) or what the timing should be, and the Court has never issued an order
12 after a fair opportunity for Class Plaintiffs to fully brief and be heard on those issues.¹

13 3. The Bank cannot justify the timing of the 128 additional depositions it now seeks
14 to take. The Bank cites the December 14 fact discovery cutoff, but the Bank itself waited
15 until July 11 to serve a deposition notice on 128 plaintiffs, and then noticed them all for
16 between September 16 and 27 (later amended to September 16 to November 7). ECF 321-
17 1 ¶¶56, 60. Because the Bank has made plain its intent to try to use these depositions in
18 opposing class certification (though they could just as easily support class certification),
19 Class Plaintiffs of course have both an “interest” and a right to prepare for, attend, and
20 participate in these depositions. See ECF 126 at 1-2, 5. Taking these depositions in parallel
21 with the class certification expert depositions and briefing would be not only wasteful, but
22 an extraordinary and unnecessary drain on Class Plaintiffs’ resources—all of which
23 benefits the Bank and severely prejudices the Class.

24
25 ¹ The Bank’s cases do not hold differently. *Moreno v. Autozone, Inc.*, 2007 WL 2288165
26 (N.D. Cal. 2007) concerned deposing those who “injected themselves into the class certifi-
27 cation motion” by “submitt[ing] declarations” (*id.* at *1), and similarly *Antoninetti v.*
28 *Chipotle, Inc.*, 2011 WL 2003292 (S.D. Cal. 2011) those who “submitted declarations in
support of...class certification and whom Plaintiff ha[d] identified as witnesses” (*id.* at
*2)— which is not the case with respect to any of the 128 presumptive *opt-outs* in this case.

Respectfully submitted,

Dated: September 6, 2024

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SIGNATURE ATTESTATION

Pursuant to section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I, Brian Danitz, attest that the other signatories listed, and on whose behalf this filing is submitted, concur in the filing content and have authorized this filing.

Dated: September 6, 2024

/s/ Brian Danitz

Brian Danitz