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13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**
15 **SAN DIEGO DIVISION**

16 IN RE: BANK OF AMERICA
17 CALIFORNIA UNEMPLOYMENT
18 BENEFITS LITIGATION

Case No. 21-MD-02992-GPC-MSB

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
OPPOSITION TO PLAINTIFFS'
MOTION FOR A PROTECTIVE
ORDER**

Date: N/A, per Dkt. 319
Time: N/A, per Dkt. 319
Ctrm: 2C
Judge: Hon. Michael S. Berg

1 Nothing in Class Counsel’s Motion for Protective Order, ECF 327 (“Mot.”),
2 justifies reversal of the Tentative Order.¹

3 **Prematurity.** Class Counsel complains that the 10 previously-ordered
4 depositions are premature because BANA did not move for leave to take them (Mot.
5 at 4), but there was no need for BANA to file a formal motion. Individual Counsel—
6 who actually represents the would-be deponents in this action—*did not* object to the
7 taking of 10 depositions pending the Court’s ruling on the Stay Motion. *See Health*
8 *v. Nautilus Ins. Co.*, 2022 WL 18031825, at *2–3 (S.D. Cal. Dec. 31, 2022) (no
9 formal motion necessary in light of “tacit understanding and agreement” among
10 parties for additional depositions). Despite having multiple opportunities to raise this
11 issue before the Court (in the IDC briefing, at the IDC itself, in the Stay Motion, and
12 in the Stay Reply), Individual Counsel has never objected to the relevance of the
13 depositions. Rather, Individual Counsel’s concerns have been limited to the timing
14 (now or later) and method (in person or remote) of the depositions that Individual
15 Counsel, presumably, understands are a natural consequence of their clients’ decision
16 to sue BANA. Indeed, prior to Class Counsel’s improper intervention, Individual
17 Counsel *offered seven Individual Plaintiffs available for deposition in Los Angeles*
18 *in September and offered to immediately identify three more.* *See* Brys Decl., ¶¶ 61,
19 65. Regardless, Rule 30 permits a party to take more than 10 depositions upon “leave
20 of Court” which is what the Tentative Order provided. *See* BANA Br. at 4.

21 Class Counsel’s arguments that no depositions should happen until after a
22 ruling on the Stay Motion (Mot. at 4) have already been considered and rejected.
23 The Court was well aware of the pendency of the Stay Motion when it issued the
24 Tentative Order, and nonetheless found that it was appropriate to allow the 10
25 depositions to go forward now, in light of the fact that BANA has been trying to
26 schedule these depositions for months and that Individual Counsel objected only to
27 whether the depositions should proceed in person. *See* BANA Br. at 3. As explained,

28 ¹ Defined terms have the same meaning as in ECF 326 (“BANA Br.”).

1 BANA must begin scheduling the depositions now if they are to be completed before
2 or near the close of fact discovery in December. *See id.*²

3 **Need.** Class Counsel also incorrectly say that BANA “can cite no legal
4 authority” to support its position (Mot. at 5). BANA cited *Agena v. Cleaver-Brooks,*
5 *Inc.*, 2020 WL 6929671 (D. Haw. June 15, 2020), and *Chavez v. Wis Holdings Corp.*,
6 2013 WL 2181214 (S.D. Cal. May 20, 2013), cases wherein courts permitted
7 defendants to depose 73 and 30 plaintiffs, respectively, given the relevance of the
8 unique, otherwise unavailable information to be gained from those depositions to the
9 parties’ claims and defenses, including to oppose class certification. *See* BANA Br.
10 at 4–5. In contrast, it is *Class Counsel* who offer no legal authority for why they have
11 any right to object to depositions of people they do not represent.

12 **Burden.** Since the Tentative Order finding no Individual Plaintiff made any
13 showing of burden, *no plaintiff filing*—either by Individual or Class Counsel—has
14 attempted to remedy this failure. The best argument Class Counsel can come up with
15 is that the depositions of Individual Plaintiffs (who they do not represent, and do not
16 have to prepare for testimony) are “plainly calculated to harass *Class Plaintiffs*”
17 during the time that *BANA will be writing its opposition* to the class certification
18 motion. Mot. at 6. It is hard to see how this can be so when Class Counsel *failed to*
19 *participate* in the previous five Individual Plaintiff depositions. *See* Brys Decl. ¶¶ 40,
20 42–45. Class Counsel’s burden arguments further contemplate *128 depositions*
21 (which are appropriate for the reasons in the Stay Opp.), but say nothing at all about
22 the burden associated with the *10 depositions* contemplated by the Tentative Order.
23 Regardless, Class Counsel’s inability to allocate resources to multiple workflows at
24 once is not a reason to deny BANA discovery to which it is entitled.

25 For these, reasons the Court should deny the Motion, affirm the Tentative
26 Order, and order that the 10 depositions at issue proceed as noticed.

27 ² After pushing the Court for months to order BANA to comply with their ceaseless
28 discovery demands, Class Counsel casually suggest that the “discovery deadline may
be extended to accommodate” *Plaintiffs’* compliance. Mot. at 3.

1 Dated: September 6, 2024

Respectfully submitted,

2 By: s/ Laura G. Brys

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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 September 6. 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: September 6, 2024 s/ Laura G. Brys