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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

**CLASS PLAINTIFFS' NOTICE OF
JOINDER AND JOINDER IN
INDIVIDUAL PLAINTIFFS' MOTION
TO STAY PROCEEDINGS PENDING
RESOLUTION OF RELATED CLASS
ACTION CERTIFICATION [ECF 311]**

Date: September 9, 2024
Time: 2:30 p.m.
Ctrm: 2D (2nd Floor)
Judge: Hon. Gonzalo P. Curiel

This Document Relates to All Actions

ORAL ARGUMENT REQUESTED

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that the Class Plaintiffs in this multidistrict litigation
3 (“MDL”) hereby join in the Motion to Stay Individual Plaintiffs’ Cases (“Motion”) (ECF 311),
4 and all submissions filed in support of that Motion, which seeks a temporary stay of the
5 133 Individual Plaintiff cases and thus appropriately seeks to place these 133 cases on the
6 same track as the nearly-identical 257 individual plaintiff cases that have already been
7 stayed pending the outcome of the Class proceedings.¹

8 The 133 Individual Plaintiffs’ Motion sets forth many compelling reasons why their
9 cases should be temporarily stayed until after this Court rules on class certification and
10 dispositive motions in the Class Case, including: (1) the absence of any prejudice to Bank
11 of America (the “Bank”), which has still not explained why it needs to take 128 of those
12 Individual Plaintiffs’ depositions *now*, on a compressed schedule in the middle of class
13 certification briefing;² (2) the likelihood of substantial prejudice to the 133 Individual
14 Plaintiffs; and (3) the inefficiencies and burdens on the court system and the litigants of
15 engaging in full-blown discovery on the claims and defenses applicable to each of the 133
16 Individual Plaintiffs before this Court issues threshold rulings in the Class Case on common
17 issues that will necessarily impact the scope of discovery, the issues that may be pursued
18 in these MDL proceedings, and the number of the Individual Plaintiffs who will ultimately
19 decide to have their cases adjudicated on an individual rather than classwide basis. Class
20 Plaintiffs will not repeat the arguments made by Individual Plaintiffs, but respectfully
21 request that the Court consider two additional points.

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24 ¹ See ECF 311-1 (MP&A iso Mot.) at 4-5 (listing 257 individual plaintiffs whose cases are
25 stayed); *see, e.g., Abila v. Bank of Am., N.A.*, No. 3:21-cv-01766 GPC-MSB, ECF 1 (Oct.
26 13, 2021) (case brought by 244 individual plaintiffs), *stayed by* ECF 8 (Oct. 22, 2021)
(ordering “all deadlines in this matter STAYED pending resolution of the related MDL”).

27 ² The Bank already took five of the 133 Individual Plaintiffs’ depositions as part of its
28 presumptive limit of ten non-expert depositions per side in the Class Case under Fed. R.
Civ. P. 30(a)(2)(A)(i).

1 1. Granting the requested stay will best serve the purposes of this MDL, which
2 is to “‘promote the just and efficient conduct’ of ‘civil actions involving one or more
3 common questions of fact [that] are pending in different districts[.]’” *In re Uber Techs.,*
4 *Inc., Passenger Sexual Assault Litig.*, 2024 WL 2269321, at *8-9 (N.D. Cal. 2024)
5 (“*Uber*”) (quoting *In re Korean Air Lines Co., Ltd.*, 642 F.3d 685, 698-99 (9th Cir. 2011));
6 *see also id.* at *8, quoting H.R. Rep. No. 1130, 90th Cong., 2d Sess., p. 2 (1968) (Judiciary
7 Committee report recommending MDL bill) (“The committee believes that the possibility
8 for conflict and duplication in discovery and other pretrial procedures in related cases can
9 be avoided or minimized by such centralized management.”).

10 Here, the Class Plaintiffs and the Individual Plaintiffs are jointly requesting that the
11 Court sequence pretrial proceedings in a way that furthers these purposes, by allowing the
12 Court to make determinations on common issues of law and fact that are presented in the
13 consolidated Class Case in the first instance. Those threshold determinations will then
14 establish the contours of this MDL, including which (if any) classes will be certified and
15 what claims will go forward. In the event one or more classes are certified, the Court’s
16 rulings on dispositive motions will be binding on all members of the certified class(es),
17 including those individual plaintiffs who are members of a certified class and do not opt
18 out. Sequencing pretrial proceedings to prioritize the resolution of common issues in the
19 Class Case is consistent with “[t]he theory behind the MDL process,” which is “to
20 ‘eliminate duplication in discovery, avoid conflicting rulings and schedules, reduce
21 litigation cost, and save the time and effort of the parties, the attorneys, the witnesses, and
22 the courts.’” *Uber*, 2024 WL 2269321, at *9 (quoting *Gelboim v. Bank of Am. Corp.*, 574
23 U.S. 405, 410 (2015)).

24 2. Without a stay, the Bank will continue to press its position that it is entitled
25 to take the depositions of 128 non-class representative plaintiffs,³ for use *in this Class*

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27
28 ³ These depositions were the subject of a discovery conference on August 20 and will be
further addressed after briefing if not mooted by the Court’s order on this Motion to Stay.

1 *Action*,⁴ in the middle of class certification briefing and related expert discovery.⁵ In
2 addition to evading the Federal Rules' ten-deposition limit without any showing of need,
3 this would impose an extraordinary burden that is unfair to Class Plaintiffs and entirely
4 wasteful of party resources, particularly because Class Counsel would need to prepare for
5 and participate in these Individual Plaintiff depositions.

6 * * *

7 These are just the foremost of many conflicts, inefficiencies, and prejudice that
8 would arise from simultaneously litigating both the Class Case and the 133 Individual
9 Plaintiff cases before the Court has had an opportunity to rule on common issues of law
10 and fact affecting all of the claims in this MDL.

11
12 For the foregoing reasons, Class Plaintiffs respectfully request that the Court grant
13 the Individual Plaintiffs' Motion and stay the 133 Individual Cases—just as the claims of
14 257 other individual plaintiffs have been stayed—until after the Court rules on the Motion
15 for Class Certification and any dispositive motions in the Class Case.

16 Respectfully submitted,

17 Dated: August 22, 2024

COTCHETT, PITRE & McCARTHY, LLP

18 By: /s/ Brian Danitz
19 JOSEPH W. COTCHETT
20 BRIAN DANITZ
21 KARIN B. SWOPE
22 ANDREW F. KIRTLEY
VASTI S. MONTIEL

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

25 _____
26 ⁴ The Bank has refused to stipulate that it will not use the 128 *Individual* Plaintiffs'
27 depositions to oppose *Class* Plaintiffs' motion for class certification.

28 ⁵ See ECF 302 (class certification motion due August 29, opposition due October 24, and
reply due November 21, 2024).

1 Dated: August 22, 2024

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2 By: /s/ Michael Rubin
3 MICHAEL RUBIN
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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: August 22, 2024

/s/ Brian Danitz

Brian Danitz