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

IN RE BANK OF AMERICA
CALIFORNIA
UNEMPLOYMENT BENEFITS
LITIGATION

This Document Relates to All
Actions

CASE: 3:21-md-02992-GPC-MSB

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
INDIVIDUAL PLAINTIFFS'
MOTION TO STAY
PROCEEDINGS PENDING
RESOLUTION OF RELATED
CLASS ACTION CERTIFICATION**

Date: September 27, 2024

Time: 1:30 p.m.

Dept.: C

Judge: Hon. Gonzalo P. Curiel

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I. INTRODUCTION

The 133 Individual Plaintiffs¹ in this multi-district litigation respectfully request that the Court stay their cases until the common issues of law and fact are adjudicated in the consolidated Class Case. A temporary stay will serve the interests of judicial and party economy in several ways. First, Class Plaintiffs’ motion for class certification is due to be filed on August 29. If a class is certified, some of the Individual Plaintiffs may choose not to opt out and may dismiss their separate lawsuits in order to participate in the class proceedings, decreasing the number of individual cases to be litigated. Second, because the individual and class claims substantially overlap, the Court’s rulings in the Class Case will significantly streamline all proceedings in the Individual Cases, including discovery.

The current state of discovery demonstrates the need for a temporary stay of the Individual Plaintiffs’ cases. To date, the majority of Plaintiffs’ discovery has concentrated on issues of fact that are common to the Class and Individual Plaintiffs. While some of the Individual Plaintiffs’ records have been produced by the Bank, that production has been spotty and is not complete for the 133 Individual Plaintiffs. Notably, Judge Burns’s original case management order [ECF 48] permitted only the Interim Co-Lead Counsel for the Class Plaintiffs to conduct discovery; counsel for the Individual Plaintiffs were specifically ordered that they “may [not] make any request for or response to discovery.” [*Id.* at 3.] Additionally, to avoid duplication of efforts as ordered by the Court [*id.* at 2], Liaison Counsel for the Individual Plaintiffs have only reviewed those records that relate directly to the Individual Plaintiffs and a small subset of other documents. Liaison Counsel and other counsel for the Individual Plaintiffs have

¹ The Second Amended Master Consolidated Complaint includes 21 class plaintiffs (“Class Plaintiffs”) and 133 individual plaintiffs (the “Individual Plaintiffs”). An additional 257 individual plaintiffs have asserted claims in later-filed cases that are not included in the consolidated pleading and are stayed pursuant to the July 20, 2021 Order RE: Case Management [ECF 48 at 2 (“Any individual plaintiff’s claims alleged in a member case but not included in the consolidated pleading are STAYED.”)]

1 not had an opportunity to review the vast majority of the nearly one million pages of
2 documents produced to date that relate to issues common to the Class and Individual
3 Plaintiffs. This approach to discovery only makes sense if the efficiencies anticipated in
4 the adjudication of common issues of fact and law take place in the Class Case in the
5 first instance. If these common issues are not prioritized in the Class case, the Individual
6 Plaintiffs will be prejudiced.

7 Third, on August 9, 2024, BANA issued notices to take the depositions of 128
8 Individual Plaintiffs to be taken four-per-day over the course of two months. In addition
9 to being premature given BANA's failure to produce all relevant records, the 128
10 deposition notices demonstrate the wastefulness of litigating the 133 individual cases
11 prior to the Courts' adjudication of the Class claims which will narrow the issues to be
12 litigated and decrease the number of Individual Plaintiffs who will proceed on an
13 individual basis. The fact discovery cut-off is currently scheduled for December 12,
14 2024. [ECF 302.] At this point, even if the Court were to permit the Individual Plaintiffs
15 to conduct discovery for each of the 133 cases, without the benefit of the Court's ruling
16 in the Class case, this four-month window would severely undermine the Individual
17 Plaintiffs' ability to present their case.

18 Finally, as detailed in the table below, pursuant to the original case management
19 order in this case, the claims of 257 *other* plaintiffs who joined this MDL after the
20 Master Complaint was filed are currently stayed in their entirety. [See Order RE: Case
21 Management, ECF 48 at 2 ("Any individual plaintiff's claims alleged in a member case
22 but not included in the consolidated pleading are STAYED.")] Each of these cases
23 were stayed upon filing by order of the Court. *See, e.g., Abila et al v. Bank of America,*
24 *N.A.*, 3:21-cv-01766-GPC-MSB, Dkt. No. 8 ("The Court orders all deadlines in this
25 matter STAYED pending resolution of the related multidistrict litigation"). It makes
26 little sense to proceed with the claims of 133 Individual Plaintiffs when 257 other
27 individual plaintiffs' cases are stayed and the only difference is that some filed before
28 the MDL cut off and some filed afterwards. None of these individual cases should

1 proceed until after this Court has decided whether to certify a class and on what issues,
2 and the Court has ruled on the pre-trial issues of fact and law that are common to all of
3 the plaintiffs in the consolidated multi-district litigation, narrowing the issues to be
4 decided in all the individual cases.

5 Accordingly, the Individual Plaintiffs respectfully request that their actions be
6 stayed pending adjudication of common issues of fact and law in the Class Case.

7 **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

8 This multi-district litigation arises from Bank of America's ("BANA" or
9 "Defendant") mishandling of the prepaid debit card accounts meant to disburse EDD
10 benefits to Californians who became unemployed during the Covid-19 pandemic. In
11 violation of its statutory, common law, and contractual obligations to Plaintiffs and
12 Class Members, BANA failed to take protect Plaintiffs from fraudulent transactions and
13 then deprived Plaintiffs of access to the EDD benefits to which they were entitled.

14 More than eighteen (18) actions were filed and then consolidated in this MDL,
15 including the *Yick* consolidated class action. Several of the individual actions included
16 hundreds of plaintiffs in a single complaint while others included only a few plaintiffs.
17 All actions not already in this district were transferred to for consolidated pretrial
18 proceedings by the Judicial Panel on Multidistrict Litigation. [Dkt. No. 1].

19 On July 19, 2021, the Court in the Southern District held a preliminary conference.
20 After hearing from counsel, the Court issued a case management order directing that a
21 master consolidated complaint be filed and that it include the Class Action *and* certain
22 individual plaintiffs' cases ("the July 2021 Order"). [Dkt. No. 48, p. 2]. Pursuant to
23 the July 2021 Order, "Any individual plaintiff's claims alleged in a member case but
24 not included in the consolidated pleading are STAYED." Accordingly, all cases filed
25 after the filing of the Master Consolidated Complaint were effectively stayed pursuant
26 to the Court's Order.

27 //

28 //

The following table provides a summary of the Individual Plaintiffs' cases, including the 133 Individual Plaintiffs whose claims are currently not stayed and the 257 individual plaintiffs whose claims are currently stayed.

Case	Date Filed	# of Plaintiffs	Stayed
Meza v. Bank of America, N.A. No. 21-cv-00484	March 18, 2021	1	No.
Brotman v. Bank of America, N.A. No. 21-cv-00520	March 24, 2021	1	No.
Morrell v. Bank of America, N.A. No. 21-cv-00542	March 26, 2021	1	No.
Payton v. Bank of America, N.A. No. 21-cv-00644	April 13, 2021	1	No.
Talia v. Bank of America, N.A. No. 21-cv-00676	April 15, 2021	1	No.
Abarr et al v. Bank of America, N.A. No. 21-cv-01203	July 1, 2021	230 (initially) 108 dismissed	No.
Rojas de Charolet v. Bank of America, N.A. No. 21-cv-00925	May 14, 2021	1	No.
Hart v. Bank of America, N.A. No. 21-cv-01175	June 8, 2021	1	No.
Alvarez v. Bank of America, N.A. No. 21-cv-01176	June 7, 2021	1	No.
Verdun v. Bank of America, N.A. No. 21-cv-01196	May 28, 2021	1	No.
Adams v. Bank of America, N.A. No. 21-cv-01327	July 7, 2021	1	No.
Abila v. Bank of America, N.A. No. 21-cv-01766	Oct. 13, 2021	244	Yes.

1	Woodears v. Bank of America, N.A. No. 21-cv-01659	Aug. 16, 2021	1	Yes.
2				
3	Delapaz v. Bank of America, N.A. No. 21-cv-01660	Aug. 13, 2021	1	Yes.
4				
5	Boyd v. Bank of America, N.A. No 22-cv-00820	Jan. 5, 2021	1	Yes.
6				
7	Holbrook v. Bank of America, N.A. No. 22-cv-00168	Jan. 7, 2022	1	Yes.
8				
9	Connor v. Bank of America, N.A. No. 22-cv-00295	Jan. 27, 2022	1	Yes.
10				
11	Cruz v. Bank of America, N.A. No. 22-cv-00761	Oct. 15, 2021	1	Yes.
12				
13	Gardner v. Bank of America, N.A. No. 22-cv-01014	June 1, 2022	1	Yes.
14				
15	Delaney v. Bank of America, N.A. No. 22-cv-01509	August 4, 2022	1	Yes.
16				
17	Manukyan v. Bank of America, N.A. No. 22-cv-01760	September 1, 2022	1	Yes.
18				
19	Collom v. Bank of America, N.A. No. 22-cv-01894	October 25, 2022	1	Yes.
20				
21	Elekes v. Bank of America, N.A. No. 22-cv-00754	April 14, 2022	1	Yes.
22				
23	Tapper v. Bank of America, N.A. No. 22-cv-00858	April 2022	1	Yes.
24				
25				
26				
27				
28				
	Gaitan v. Bank of America, N.A., No. 24-cv-01088	March 12, 2024	1	Yes.

The July 2021 Order designated Cotchett, Pitre, & McCarthy LLP and Altshuler Berzon LLP as interim co-lead counsel (“Class Counsel”) to represent the interests of the Class. That Order also appointed an interim liaison counsel (“Liaison Counsel”) to

1 represent the interests of the Individual Plaintiffs. Liaison Counsel was comprised of
2 two of the attorneys who represented the individual cases.²

3 Under the July 2021 Order, the Class Counsel's responsibilities included: (a)
4 determining the litigation strategy on behalf of Class Action Plaintiffs; (b) promoting
5 the orderly and efficient conduct of this litigation and avoiding unnecessary duplication
6 and unproductive efforts; (c) acting as spokesperson (either personally or by designee)
7 for the Plaintiff class at pretrial conferences; (d) delegating work responsibilities; (e)
8 entering into stipulations (either personally or by designee) necessary for the conduct
9 of the litigation with opposing counsel; and (f) communicating with Defendant's
10 counsel and the Court on behalf of Class Action Plaintiffs and the class. [Dkt. No. 48,
11 pp. 2-3].

12 The July 2021 Order established that while BANA could engage in discovery
13 concerning both the Class Action and the Individual Plaintiffs, the authority to conduct
14 discovery was exclusively granted to Class Counsel. This restriction meant that only
15 Class Counsel had the ability to propound written discovery or notice depositions.
16 Notably, the July 2021 Order expressly restricted any other Plaintiff from engaging in
17 the discovery process. That Order provides,

18 No plaintiff may make any request for or response to discovery, initiate
19 or file any other pretrial or trial proceedings (except that individual
20 plaintiffs not already involved in a member case may file new
21 complaints), or file or respond to any dispositive motion except through
Interim Co-Class Counsel.

22 [Dkt. No. 48, p. 3].

23 Under the July 2021 Order, despite being tasked with representing the interests
24 of individual plaintiffs, Liaison Counsel was constrained from actively engaging in the
25

26
27 ² The Order provides, The Law Office of Daniel G. Shay was appointed and Joshua B. Swigart was
28 later appointed as co-Interim Liaison Counsel for individual plaintiffs. (Counsel then filed an Ex
Parte Motion to add as individual plaintiffs' Co-Interim Liaison Counsel, Swigart Law Group which
motion the court granted [dkt. No56]).

1 discovery process. This included being barred from propounding discovery, noticing
2 depositions, issuing subpoenas, or participating in any meaningful way. While Liaison
3 Counsel could attend depositions noticed by BANA or Class Counsel, their role was
4 limited to mere observation without the ability to actively participate. BANA
5 consistently reinforced these limitations. Liaison Counsel, anticipating a fair
6 opportunity to engage in discovery once this partial stay was lifted, did not contest the
7 terms set forth in the July 21 Order or the positions taken by BANA on discovery
8 matters.

9 Following the Court's ruling on BANA's initial motion to dismiss, discovery
10 between BANA and the Class Action commenced in June 15, 2023. [Dkt. No. 139]
11 During this process, Class Counsel received access to over two hundred sixty-two
12 thousand (262,000) files which equals nearly one million pages produced by BANA
13 and third parties. However, to avoid duplication of efforts until common issues of law
14 and fact are determined by the Court, Liaison Counsel was restricted from reviewing
15 the entirety of these documents. Instead, they were granted access only to files
16 specifically related to the Individual Plaintiffs and a small set of other documents.
17 Consequently, although a significant volume of files was produced, Liaison Counsel
18 could examine less than three percent of them.

19 The documents that Liaison Counsel were permitted to view were limited to
20 correspondence between BANA and some Individual Plaintiffs, computer print outs and
21 investigation notes that pertained to only that Individual Plaintiff. The reason for this
22 is because the files that Liaison Counsel was permitted to view were specific to a certain
23 plaintiff, not to BANA generally. The files did not contain any documents regarding
24 BANA's policy and procedures, internal communications and memo, or other
25 documents that would assist in the prosecution of the cases of Individual Plaintiffs
26 whose cases had not been stayed. Additionally, the Bank's production of the Individual
27 Plaintiffs' records continues to be incomplete.

28 //

1 On June 25, 2024, the Court issued a ruling granting in part and denying in part
2 Defendant's motion to dismiss. [Dkt. No. 297.] On June 27, 2024, the Court issued an
3 Amended Scheduling Order (the "June 2024 Order") setting forth dates for, *inter alia*,
4 the class certification briefing schedule (to be completed by November 21, 2024) and
5 the completion of discovery for the class and Individual Plaintiffs (to be completed by
6 December 12, 2024). [Dkt. No. 302].

7 Despite precluding Liaison Counsel from independently conducting discovery of
8 BANA, on August 9, 2024, BANA issued notices to take the depositions of 128
9 Individual Plaintiffs. BANA noticed *four Individual Plaintiff depositions per day every*
10 *day for two months*: two depositions at 9:00 AM and two depositions at 1:30 PM,
11 commencing on September 16 and continuing over consecutive days until November 7,
12 2024. Liaison Counsel objected to this unduly burdensome and prejudicial proposal and
13 proposed that the parties jointly seek a stay of discovery of the Individual Plaintiffs'
14 cases pending resolution of the class claims. BANA refused to agree to a stay.

15 Although Individual Plaintiffs do not oppose the delegation of litigation
16 responsibilities to Class Counsel—understanding the logic of allowing the class action
17 to proceed first—they respectfully ask for a stay to allow common issues of fact and
18 law to be adjudicated in the Class Case in the first instance. Liaison Counsel and other
19 counsel for the Individual Plaintiffs have not had an opportunity to review the vast
20 majority of the nearly one million pages of documents produced to date. This approach
21 to discovery only makes sense if the efficiencies anticipated in the adjudication of
22 common issues of fact and law take place in the Class Case in the first instance. If these
23 common issues are not prioritized in the Class case, the Individual Plaintiffs will be
24 unduly prejudiced in having to proceed without the benefit of full discovery and without
25 the benefit of the Court's rulings on common issues of fact and law that are presented
26 in the Class Case.

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28 //

III. LEGAL STANDARD

Federal courts have the inherent power to manage their dockets. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Incidental to this power is the discretion to stay proceedings. *See id.*; *see also Leyva v. Certified Grocers of Cal. Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979) (“A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case.”).

That discretion is guided by balancing the harms and benefits that may arise from a stay. In particular, courts weigh three factors: (1) “the possible damage which may result from the granting of a stay;” (2) “the hardship or inequity which a party may suffer in being required to go forward;” and (3) “the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962)).

IV. ARGUMENT

The Individual Plaintiffs request that this Court stay their cases pending resolution of common issues of law and fact in the class action. As explained below, the equities support granting a stay. That is, there is minimal, if any, possible damage from granting the stay, whereas the Individual Plaintiffs would suffer extreme hardship and have their due process rights violated by a denial of the stay. Furthermore, a stay would promote judicial economy and efficiency, and streamline the issues in dispute.

A. There Would Be Minimal (if any) Damage from Granting a Stay

There is minimal, if any, possible damage should this Court grant a stay. The Bank would not have to expend extra resources. Instead, Defendant would benefit by not having to respond to discovery requests from the approximate 133 Individual Plaintiffs (and 257 additional plaintiffs whose cases are currently stayed), freeing it to focus on its response to the Interim Class Counsel’s upcoming motion for class certification. Even if class certification is not granted, or, if granted, some or all of the

1 Individual Plaintiffs (putative class members) choose to opt out of the class, any
2 prejudice against Defendant is nonexistent but for a brief delay in litigation.

3 BANA has stated that it opposes this request for stay. One has to wonder why.
4 The most likely reason is that BANA has recently been seeking to take 128 individual
5 class members' depositions as an end-run around the presumptive ten deposition limits
6 in the Class Case. Class Counsel has asked BANA to compromise by agreeing that the
7 depositions of Individual Plaintiffs will not be used by either side with respect to class
8 certification, but BANA has declined. Despite Judge Berg's explicit guidance to BANA
9 that it could only take 10 depositions before filing its opposition to the Class Plaintiffs'
10 motion for class certification (which could be a combination of Class Representatives
11 and Individual Plaintiffs), BANA's position that it must take 128 depositions, as soon
12 as possible, is an obvious attempt to end run around Judge Berg's sequencing of the
13 case, calculated to evade the presumptive limits provided in the Federal Rules of Civil
14 Procedure.

15 **B. The Hardship or Inequity from Denying a Stay Is Much More Severe**

16 The Individual Plaintiffs would suffer extreme hardship and inequity should this
17 Court deny a stay, including having to defend 128 deposition without having had access
18 to all of the Individual Plaintiffs' records and to the hundreds of thousands of documents
19 comprising nearly a million pages that the Bank has produced to date, and without the
20 anticipated benefit of the Court's rulings on common issues of law and fact in the Class
21 Case. It cannot reasonably be disputed that the Individual Plaintiffs have been unable
22 to meaningfully participate in discovery following Judge Burns's July 2021 Order.
23 Without permission to "make any request for or response to discovery," the Individual
24 Plaintiffs have not been permitted to draft, serve, and/or receive any written discovery
25 from Defendant. Swigart Decl. ¶¶ 9-11. They have also not been involved in the
26 drafting, reviewing, or discussion with Interim Class Counsel of any discovery
27 propounded on Defendant. *Id.* Moreover, the Individual Plaintiffs have had extremely
28 limited access to discovery produced by Defendant in response to Interim Class

1 Counsel’s discovery requests. *Id.* ¶ 10. Even more, the Individual Plaintiffs have not
2 been invited to the many meet and confer conferences held between Interim Class
3 Counsel and Defendant. *Id.* ¶ 11. At most, counsel for the Individual Plaintiffs have
4 been invited to “observe” the depositions of BANA’s Rule 30(b)(6) witnesses, but they
5 were not allowed to ask any questions. *Id.* ¶ 12. In fact, the Individual Plaintiffs’
6 participation in the discovery process has been limited to requesting only their
7 individual files, responding to written discovery served by Defendant, and sitting for
8 their depositions.³ Swigart Decl. ¶¶ 11–12, 14–15.

9 With the June 2024 Amended Scheduling Order, a hard discovery cut off
10 deadline has been set. However, the Individual Plaintiffs have been hamstrung from
11 conducting any discovery due to Judge Burns’s July 2021 Order. Without a stay, they
12 would be forced to scramble to propound and respond to discovery in 133 cases (let
13 alone the 257 individual cases that are currently stayed), review hundreds of thousands
14 of pages of documents, bring motions to compel (should they become necessary), and
15 conduct an unwieldy number of depositions, all in the next three months. This would
16 cause severe prejudice to the Individual Plaintiffs, and it is not necessary for the efficient
17 litigation of their claims.

18 Individual Plaintiffs accordingly request a stay in order to sequence the case and
19 promote judicial and party efficiencies by having common issues of law and fact
20 determined in the Class Case in the first instance. Many of the Individual Plaintiffs may
21 be absent class members of the Class Case, and, in any event, the substantive issues of
22 fact and law in the Class Case and the Individual Cases substantially overlap. In the
23 event the Court certifies a class, Individual Plaintiffs who are members of the class may
24 dismiss their individual claims to join the class, decreasing the number of individual
25 cases to be litigated. Because the individual and class claims substantially overlap, the
26 Court’s rulings in the Class Case will significantly streamline all proceedings in the

27
28 ³ This issue is particularly acute now as Defendant is demanding the remaining depositions of over 120 Individual Plaintiffs before the discovery cut off.

1 Individual Cases, including discovery. On the other hand, without the benefit of the
2 Court's rulings, if the common issues are not prioritized in the Class Case, the
3 Individual Plaintiffs will be severely prejudiced in their attempt to play "catch up" in a
4 very short amount of time.

5 The Individual Plaintiffs thus seek a stay of their cases until common issues of
6 law and fact are determined in the Class Case. Granting the Individual Plaintiffs' stay
7 request will preserve the Individual Plaintiffs' due process rights and streamline the
8 future discovery process of the Individual Plaintiffs after the class certification question
9 is resolved.

10 There does not appear to be any prejudice to the Bank if the Court stays the
11 Individual Plaintiffs' cases pending resolution of common issues in the Class case. The
12 Bank has stated that it must complete the individual depositions before the end of fact
13 discovery, but the Court can sequence Individual Plaintiffs' fact discovery after the
14 Class Case claims have been adjudicated, and the discovery at that time will be
15 significantly reduced by virtue of the Class Case going first. In fact, as discussed below,
16 it would streamline litigation for BANA, as well as the Court, to stay the Individual
17 Plaintiffs' cases. Denying this motion, on the other hand, will greatly prejudice the
18 Individual Plaintiffs' ability to litigate their individual cases by forcing them to conduct
19 extensive discovery during in extremely short timeframe without having the benefit of
20 BANA's produced discovery in this case to date.

21 **C. A Stay Promotes Judicial Economy and Efficiency**

22 The interests of "simplifying or complicating issues, proof and questions of law"
23 all dictate granting a stay in this instance. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110
24 (9th Cir. 2005) (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962)). Federal
25 courts routinely exercise their power to stay a proceeding where it would promote
26 judicial economy and efficiency. *See, e.g., McDaniels v. Stewart*, 2017 WL 132454
27 (W.D.WA. January 13, 2017) (staying plaintiffs' individual case during pendency of
28 class action for purposes of judicial economy). That is especially so when a related case

1 is “likely to have a substantial or controlling effect on the claims and issues in the stayed
2 case,” *Miccosukee Tribe of Indians of Fla. v. S. Fla. Water Mgmt. Dist.*, 559 F.3d 1191,
3 1198 (11th Cir. 2009), and a stay would therefore “avoid duplicative litigation,” *Colo.*
4 *River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976); *see also*
5 *I.A. Durbin, Inc. v. Jefferson Nat’l Bank*, 793 F.2d 1541, 1551 (11th Cir. 1986) (“It is
6 well established that as between federal district courts, the general principle is to avoid
7 duplicative litigation.” (alterations and internal quotation marks omitted)).

8 Here, the direct impact of the ruling on the class certification and the dispositive
9 motions of a class action lawsuit on the Individual Plaintiffs’ cases weighs in favor of
10 granting a stay. *See Miccosukee Tribe of Indians of Fla. v. S. Fla. Water Mgmt. Dist.*,
11 559 F.3d 1191, 1198 (11th Cir. 2009)).

12 The Interim Class Counsel is scheduled to file a motion for class certification on
13 August 29, 2024, and briefing will be completed by the end of November 2024. The
14 resolution of the class certification question will have a substantial or controlling effect
15 on the Individual Plaintiffs’ lawsuits. *Taunton Gardens Co. v. Hills*, 557 F.2d 877 (1st
16 Cir. 1977). Additionally, the Courts’ orders on any dispositive motions will reduce
17 issues for the Individual Plaintiffs to litigate and will streamline this multi-district
18 litigation for the Court and all the parties, including BANA. Many of the Individual
19 Plaintiffs are absent class members who have brought the same claims as the Class
20 Plaintiffs and the issue of fact and law are substantially identical. The Court’s rulings
21 on common issues of law and fact will necessarily reduce the issues to be litigated by
22 those Individual Plaintiffs, if any, who choose to opt out of the Class. Indeed, the
23 Individual Plaintiffs’ complaints were consolidated with the class action based on the
24 common questions of facts as prescribed by 28 U.S. Code § 1407. Because of the
25 similarity of the questions, a risk of overlap and duplication is indisputable. Conversely,
26 litigating the individual cases concurrent to the class action, while these absent class
27 members may choose to become part of the class action, will necessarily result in
28 redundancy in the parties’ and judicial resources. *Richard K. v. United Behavioral*

1 *Health*, 2019 WL 3083019, at *7 (S.D.N.Y. June 28, 2019). Similarly, allowing the
2 individual lawsuits to proceed would undermine the efficiency goals of the multidistrict
3 litigation. Specifically, requiring the Individual Plaintiffs to pursue the discovery
4 process while the class certification question is still pending creates the risk of
5 duplicates and would drain the Court’s resources without any apparent benefit to
6 Defendant.

7 In sum, a temporary stay will serve the interests of judicial and party economy.
8 In the event the Court certifies a class, Individual Plaintiffs who are members of the
9 class may dismiss their individual claims to join the class, decreasing the number of
10 individual cases to be litigated. And because the individual and class claims
11 substantially overlap, the Court’s rulings in the Class Case will significantly streamline
12 all proceedings in the Individual Cases, including discovery.

13 **D. Courts Routinely Stay Individual Cases Pending Resolution of Related**
14 **Class Actions**

15 Finally, courts routinely stay an individual case in favor of a class action. Indeed,
16 this Court previously determined that a stay is warranted as to the member cases. The
17 Individual Plaintiffs now request that this Court likewise stay their cases.

18 A stay here would be consistent with other courts’ recognition that a stay is
19 generally warranted where “resolution of the issues raised in” a related class action “will
20 necessarily impact” the case before them. *Aleman ex rel. Ryder Sys., Inc. v. Sancez*, 21-
21 cv-20539, 2021 WL 917969, at *2 (S.D. Fla. Mar. 10, 2021) (noting that “the Court
22 entered an order staying proceedings” pending resolution of a related class action,
23 “recognizing that the cases are related, and that the resolution of the issues raised in the
24 Class Action will necessarily impact the proceedings in” the case); *Richard K. v. United*
25 *Behavioral Health*, 2019 WL 3083019, at *7 (S.D.N.Y. June 28, 2019), report and
26 recommendation adopted, 2019 WL 3080849 (S.D.N.Y. July 15, 2019) (explaining that
27 stay and dismissal without prejudice “are routinely found appropriate where, as here,
28

1 the claims made in an individual lawsuit overlap with the claims being pursued by a
2 certified class of which the individual plaintiff is a member”).

3 These remedies are routinely found appropriate where the claims made in an
4 individual lawsuit overlap with the claims being pursued by a certified class of which
5 the individual plaintiff is a member. *See Mackey v. Bd. of Educ. for Arlington Cent. Sch.*
6 *Dist.*, 112 F. App’x 89, 91 (2d Cir. 2004) (affirming dismissal without prejudice “based
7 on the rule against duplicative litigation” where plaintiff’s allegations “duplicated
8 claims that had been included in separate class actions” against the defendant, and
9 plaintiffs “were members of those classes”); *Walker v. Long Island Railroad, Inc.*, 1982
10 WL 180, at *2 (S.D. NY 1982) (dismissing individual claim of race discrimination
11 “without prejudice” to plaintiff’s ability “to pursue his rights as a member of the plaintiff
12 class in [the earlier-filed certified class action]”); *Taunton Gardens Co. v. Hills*, 557
13 F.2d 877, 879 (1st Cir. 1977) (affirming stay of individual proceedings pending
14 resolution of related class action proceeding). “The standard in such circumstances does
15 not require that the parties be identical, only that . . . there be overlapping issues and
16 parties.” *Id.*; *see also Ali v. Wells Fargo Bank, N.A.*, 2014 WL 819385, at *3 (W.D.
17 Okla. Mar. 3, 2014) (“[c]ourts routinely exercise this power and grant stays” when a
18 pending class action settlement could impact the claims in the case before them)
19 (collecting cases). Accordingly, Individual Plaintiffs request to stay their cases pending
20 the resolution of common questions of law and fact in the Class Case is well-supported
21 by the law and imminently reasonable under the circumstances outlined above.

22 V. CONCLUSION

23 The Individual Plaintiffs request that a temporary stay be granted in their cases
24 pending resolution of common issues of law and fact in the Class Case. Granting the
25 motion would not harm Defendant or impair its ability to litigate any of their individual
26 cases. However, denying a stay will greatly impact the Individual Plaintiffs’ ability to
27 litigate their respective cases by forcing them to conduct extensive discovery during an
28 extremely short timeframe without the benefit of the Court’s rulings on common issues

1 of law and fact that will necessarily streamline this litigation. Finally, granting the
2 motion would promote judicial economy and efficiency by focusing the litigation on
3 issues common to both the putative class and the Individual Plaintiffs, reducing
4 duplication of efforts, and the expenditure of judicial and party resources.

5
6 Respectfully submitted,

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8 Date: August 13, 2024

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