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*Liaison Counsel for Individual Plaintiffs*

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

IN RE BANK OF AMERICA  
CALIFORNIA  
UNEMPLOYMENT BENEFITS  
LITIGATION

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This Document Relates to All  
Actions

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

**DECLARATION OF JOSHUA B.  
SWIGART IN SUPPORT OF  
MOTION TO STAY INDIVIDUAL  
PLAINTIFFS' CASES**

Date: September 27, 2024  
Time: 1:30 p.m.  
Dept.: C  
Judge: Hon. Gonzalo P. Curiel

**DECLARATION OF JOSHUA B. SWIGART**

I, JOSHUA B. SWIGART, declare and state as follows:

1. I am an attorney duly licensed to practice law before all of the courts of the State of California. I am the founder and managing attorney for Swigart Law Group, APC.
2. I am licensed to practice law in California, Washington, Michigan, Washington D.C., and Wisconsin.
3. I have personal knowledge of the matters set forth herein, and I could and would competently testify under oath to the information provided herein.
4. I make this declaration in support of Individual Plaintiff's Motion to Stay the remaining unstayed individual matters.
5. I am co-counsel for the Plaintiffs named in the following actions, which have now been consolidated as a result of this Court's July 19, 2021 order ("the July 2021 Order")

| Case                                                 | Date Filed     |
|------------------------------------------------------|----------------|
| Meza v. Bank of America, N.A. No. 21cv484            | March 18, 2021 |
| Brotman v. Bank of America, N.A. No. 21-cv-00520     | March 24, 2021 |
| Morrell v. Bank of America, N.A. No. 21-cv-00542     | March 26, 2021 |
| Payton v. Bank of America, N.A. No. 21-cv-00644      | April 13, 2021 |
| Talia v. Bank of America, N.A. No. 21-cv-00676       | April 15, 2021 |
| Abarr et al v. Bank of America, N.A. No. 21-cv-01203 | July 1, 2021   |

|   |                                                  |                  |
|---|--------------------------------------------------|------------------|
| 1 | Alvarez v. Bank of America, N.A. No. 21-cv-01176 | June 7, 2021     |
| 2 |                                                  |                  |
| 3 | Abila v. Bank of America, N.A. No. 21-cv-01766   | October 13, 2021 |
| 4 |                                                  |                  |

5

6 6. As a result of the July 2021 Order, my co-counsel Daniel G. Shay was

7 appointed Interim-Liaison Counsel for the Individual Plaintiffs. After this order

8 was entered, I caused to be filed an *ex parte* application to be appointed as

9 Interim- Co-Liaison Counsel for the Individual Plaintiffs, along with attorney

10 Shay. The Court was gracious enough to grant my request.

11 7. Pursuant to the Court's July 20, 2021 Case Management Order (July 2021

12 Order), my responsibilities include:

13 (a) working with Class Counsel to delegate work responsibilities to other

14 plaintiffs' counsel in a fair and orderly manner;

15 (b) monitoring the activities of all plaintiffs' counsel to ensure that plaintiffs'

16 pretrial preparation is conducted effectively, efficiently, and economically, that

17 schedules are met, and that unnecessary expenditures of time and expense are

18 avoided;

19 (c) being available for communications to and from this Court, including by

20 distributing orders and other directions from the Court to counsel;

21 (d) providing plaintiffs' counsel (as required by applicable Court rules) with the

22 local rules, standing orders, and guidelines of the U.S. District Court for the

23 Southern District of California, standing orders of the Court, and the rules of the

24 undersigned District Judge and Magistrate Judge Berg, and ensuring that any

25 updates and changes to the local rules, standing orders, and guidelines of this

26 District or the Court are timely communicated to counsel as needed;

27 (e) working with all plaintiffs' counsel where it is appropriate and relevant to their

28 responsibilities;

(f) creating and maintaining a master service list of all Class Action Parties and

their respective counsel, and promptly advising the Court and Defendant's counsel

of any changes to the same;

(g) distributing to counsel, as appropriate, any orders, notices, and correspondence

from the Court that are not electronically filed, as well as any discovery, pleadings,

correspondence, or other documents from Defendant's counsel that are not

electronically filed;

1 (h) for Class Interim Liaison counsel only, obtaining and maintaining time records  
2 for class plaintiffs' counsel, and preparing and submitting related reports to the  
3 Court as requested;

4 (i) communicating with the Court as delegated by Interim Co-Lead Counsel; and

5 (j) participating in any settlement conferences together with Interim Co-Lead  
6 Counsel.

7 8. I reviewed the July 2021 Order carefully and it was made clear to me by Interim  
8 Co-Lead Counsel on more than one occasion that Interim Co-Liaison counsel  
9 was not permitted to conduct discovery. This was based on the following  
10 language contained in the July 2021 Order.

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

15 9. In accordance with July 2021 Order, Interim Co-Lead Counsel has been solely  
16 responsible for drafting and serving all discovery in this case. They have  
17 received and reviewed responses, and have engaged in numerous meet and  
18 confer sessions to address discovery deficiencies, including issues related to  
19 document requests. This process has entirely excluded me and any other Interim  
20 Co-Liaison Counsel for the Individual Plaintiffs from participating in discovery  
21 activities.

22 10. My understanding is that Defendant produced 282,442 documents containing  
23 883,905 pages. I was only permitted to review a portion of these documents as  
24 they pertained to the BANA files for my clients. Out of the 282,442  
25 documents, I was only permitted to view just over 4,000 documents. Less than  
26 2%. I understand there are nearly 850,000 pages that my office still needs to  
27 review.

28 11. I have not been allowed to be involved in the strategy, drafting, service, or the  
scope and manner of any discovery, or been included in any meet and confer

process between Interim Co-Lead Counsel and Defendant as a result July 2021 Order being in place.

12. After requesting to be served copies of all deposition notices served on Defendant, I have been able to attend and observe all BANA witness depositions, but not afforded the opportunity to request certain topics of testimony or ask any follow up questions.

13. This has not been of particular concern, as the Court, through Magistrate Judge Berg's chambers has continually held status conferences regarding the progress of this action. One particular point of contention was the number of depositions that would be allowed, prior to class certification. A total of five (5) individual plaintiffs have had their depositions taken.

14. Defendant has served written discovery requests on all non-stayed Individual Plaintiffs, which have been responded to and many supplemented after the meet and confer process.

15. After the issuance of the Court's Amended Scheduling Order setting the briefing schedule for class certification to be completed by November 21, 2024 and fact discovery (for both the class and the non-stayed individual actions), Defendant is demanding the depositions of the remaining individual plaintiffs, (in excess of approximately 120) before the discovery cutoff. Attached hereto as **Exhibit A** is the deposition notice of 128 Individual Plaintiffs all to take place before the discovery cutoff.

16. The discovery cutoff date set for December 12, 2024, which would affect only the non-stayed Individual Plaintiffs, will not allow for the determination of class certification before that deadline runs. All non-stayed Individual Plaintiffs (who are currently putative class members) will need to have their depositions taken (a burdensome process for each Plaintiff and counsel to complete in such a short time) and will not allow each Individual Plaintiff to consider the results of any class certification motion before the depositions take place.

1 17. Additionally, I represent a number of Individual Plaintiffs. A number of those  
2 Individual Plaintiffs' actions have been stayed, while an equal amount are  
3 subject to the consolidated master complaint filed and the current discovery  
4 deadlines.

5 18. For the purpose of equal treatment of all Individual Plaintiffs I would request all  
6 Individual Plaintiffs be stayed pending the outcome of the class action. This  
7 will allow each putative class member to be fully informed if and when the  
8 class is certified. They will have the option to remain in the class, or opt out.  
9 Additionally, the discovery process was streamlined by the court early on, only  
10 allowing Interim-Lead Counsel to conduct discovery (which is focused on the  
11 class allegations). Holding the current discovery cut-off to apply to all non-  
12 stayed Individual Plaintiffs will have the result of denying them the opportunity  
13 to 1) review the discovery that has thus been produced; 2) propound their own  
14 written discovery; 3) notice and take required depositions; and 4) properly  
15 prepare their individual cases for trial.

16  
17 I declare under the penalty of perjury of the laws of California and the United  
18 States that the foregoing is true and correct.

19  
20 Respectfully submitted,

21  
22 Date: August 13, 2024

**SWIGART LAW GROUP**

By: s/ Joshua Swigart

Joshua B. Swigart, Esq.

[Josh@SwigartLawGroup.com](mailto:Josh@SwigartLawGroup.com)

Liaison Counsel for Individual Plaintiffs