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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. 3:21-MD-02992-GPC-MSB

**DEFENDANT BANK OF
AMERICA, N.A.'S OPPOSITION
TO PLAINTIFFS' *EX PARTE*
APPLICATION TO FILE A 30-
PAGE REPLY**

1 Nearly four weeks after receipt of Defendant Bank of America, N.A.’s
2 (“BANA”) Opposition to Plaintiffs’ Motion for Class Certification, nine months after
3 the parties negotiated page limits for class certification briefing, and two days before
4 the due date, Plaintiffs ask the Court to increase the size of their already oversized
5 reply brief by 50% and file a 30-page reply brief. Good cause does not exist to triple
6 the size of a reply brief as permitted under the Local Rules. Plaintiffs’ eleventh hour
7 *ex parte* application should be denied.

8 I. Background

9 Local Civil Rule 7.1(h) limits reply briefs to ten pages. Upon a showing of
10 good cause demonstrating the need for additional pages, the court has discretion
11 expand the limits. *See, e.g., Fleming v. Coverstone*, No. 08CV355 WQH (NLS),
12 2009 WL 764887 at *2 (S.D. Cal. Mar. 18, 2009) (permitting an 11-page reply where
13 necessary to address defendant’s response).

14 Nine months ago, in February 2024, the parties negotiated expanded page
15 limits for class certification briefing. Specifically, BANA proposed page limits of
16 35-35-15 for the Motion, Opposition and Reply, respectively, but ultimately agreed
17 to compromise at page limits of 45-45-20, for a total of 110 pages of briefing in
18 connection with class certification. Declaration of Laura G. Brys (“Brys Decl.”) ¶ 4.
19 Five months later, after obtaining additional extensions of the case schedule,
20 Plaintiffs followed up on the parties’ February agreement with a proposed joint
21 motion. *Id.* ¶ 5. On July 25, 2024, the parties jointly moved for the current negotiated
22 page limits, ECF 306, which the Court entered, ECF 309, (the “Ordered Limits”).

23 Pursuant to the Ordered Limits, Plaintiffs filed a 45-page Motion on August
24 29. ECF 324. The Motion was accompanied by four expert reports totaling 265
25 pages, in addition to 153 exhibits totaling 2,151 pages. ECF 342-4 to 342-163. In
26 response, BANA worked diligently to comply with the agreed-upon and Court-
27 ordered schedule, as well as the Ordered Limits, and filed its 45-page Opposition on
28 October 24, 2024. ECF 360. Like Plaintiffs’ Motion, BANA’s Opposition was

1 accompanied by ancillary documents, including 124 exhibits, among them expert
2 reports that responded to the reports filed by Plaintiffs. ECF 360-3 to 360-124.

3 Four days later, on October 28, 2024, Plaintiffs asked BANA to stipulate to a
4 two-week extension for Plaintiffs' Reply. Brys Decl. ¶ 6. BANA responded the next
5 day, requesting a copy of the proposed motion and Plaintiffs' grounds for requesting
6 an extension, given that the briefing schedule had already been subject to negotiation
7 and ordered by the Court. *Id.* ¶ 7. Plaintiffs never provided either the requested
8 motion or grounds for an extension. *Id.* Instead, three weeks later, and less than
9 three days before the deadline for their Reply, Plaintiffs asked BANA to stipulate to
10 a 50% increase of their page limits for their Reply, for a total of 30 pages. ECF 369-
11 1 ¶ 3.

12 II. Plaintiffs' Application Should Be Denied.

13 There is no good cause for Plaintiffs to file a Reply in excess of the Ordered
14 Limits. In lieu of explaining why any particular argument in BANA's Opposition
15 was unforeseen or why any piece of evidence in support thereof was unexpected, thus
16 requiring additional pages beyond what the parties negotiated and the Court ordered,
17 Plaintiffs support their request with a barebones recital of the filing: BANA filed a
18 45-page Opposition (as agreed by the parties and ordered by the Court), 122 exhibits
19 (Plaintiffs filed 153) and five expert reports (which responded to Plaintiffs' own four
20 experts, whose reports totaled 60 *more* pages than BANA's five reports). ECF 369
21 at 1, ECF 36-1 ¶ 6. The filing of a 45-page Opposition – to which the parties already
22 agreed – does not constitute good cause for a 30-page Reply. *See, e.g., Siegler v.*
23 *Sorrento Therapeutics, Inc.*, 2019 WL 4261054, at *2 (S.D. Cal. Sept. 9, 2019)
24 (denying ex parte motion for leave to file excess pages in forthcoming brief where
25 plaintiff “failed to explain in sufficient detail why this is necessary” and where
26 “[g]ranting this request would double the page length of her reply”); *see also Traylor*
27 *Bros. v. San Diego Unified Port Dist.*, 2012 WL 1019966, at *3 (S.D. Cal. Mar. 26,
28 2012); *Laryngeal Mask Co. Ltd. v. Ambu A/S*, No. 07CV1988-DMS (NLS), 2009 WL

1 10672405, at *1 (S.D. Cal. July 17, 2009).

2 Plaintiffs' application should also be denied because Plaintiffs' request comes
3 too late. In July 2024, when the parties filed their joint motion for additional pages,
4 and in August 2024, when Plaintiffs filed their 45-page Motion, 153 exhibits, and
5 four expert reports, Plaintiffs were clearly aware of the issues and the likely evidence
6 BANA would submit in response. Likewise, Plaintiffs have now had BANA's
7 application for nearly four weeks, and their application cites no support for allowing
8 a 50% increase to the already double-the-presumptive-limit page limitations on their
9 Reply two days before the due date.

10 Because there is no good cause to grant Plaintiffs' belated request to file a 30-
11 page Reply, the Application should be denied.¹

12 Dated: November 19, 2024 Respectfully submitted,

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26 ¹ BANA opposes Plaintiffs' application and believes that 110 pages of briefing is
27 more than sufficient to address class certification. However, if the Court grants
28 Plaintiffs' ten additional pages for their Reply, BANA reserves the right to seek leave
to file a sur-reply, not to exceed ten pages, after review of Plaintiffs' filing.

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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 November 19, 2024. 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: November 19, 2024 s/ Laura G. Brys