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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 No. 3:21-md-02992-GPC-MSB

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION TO STAY PENDING RESOLUTION OF RULE 23(f) PETITION

Judge: Hon. Gonzalo P. Curiel
Ctrm: 12A
Date: September 16, 2025
Time: 1:30 PM

REDACTED PUBLIC VERSION

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I. INTRODUCTION

Reprising arguments this Court already considered and rejected in issuing its 98-page class certification order, Defendant Bank of America, N.A. (the "Bank") once again seeks a stay of all proceedings in this now 4-1/2 year-old case—this time, to pursue a meritless petition for leave to appeal under Rule 23(f). ECF 510; ECF 513. The Bank's stay motion should be denied under the governing four-part test.

First, the Bank has not shown that its petition raises any serious legal questions, let alone that it has a likelihood of success on the merits. Interlocutory review is a "rare occurrence" that the Ninth Circuit grants "sparingly," *Chamberlan v. Ford Motor Co.*, 402 F.3d 952, 955, 959 (9th Cir. 2005), and the Bank's Petition does not meet any of the stringent criteria warranting this form of extraordinary relief. Rather than identifying any unsettled or serious legal questions, the Bank rests almost entirely on its disagreement with the Court's application of controlling Ninth Circuit law to the particular facts of this case. Such routine petitions do not justify a stay.

Second, the Bank comes nowhere close to showing it will suffer irreparable harm in the absence of a stay, let alone that the balance of hardships tips "sharply" in [its] favor." *See Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011). The Bank identifies no harm other than incurring the ordinary costs of litigation, which are not irreparable. The Bank also ignores that even if one or more of the five classes are modified or decertified, Plaintiffs' individual claims (and the claims of the dozens of Individual Plaintiffs who are presumptive opt-outs and whose claims have been stayed pending disposition of the class proceedings) would still proceed. Plaintiffs would also still be entitled to take the depositions of Moynihan and Montag for their individual claims for punitive damages; the Court would still need to resolve the same legal issues on summary judgment; and the Court would still need to resolve the same *Daubert* challenges to the parties' respective experts. Resolution of the Rule 23(f) petition (even in the Bank's favor) would not render these steps unnecessary. In addition, disseminating class notice before dispositive motions are filed and decided would avoid any one-way intervention complications.

Third, while the Bank will not be irreparably harmed in the absence of a stay, Plaintiffs and class members will suffer if the stay is granted. Staying the dissemination of class notice will deprive class members of the ability to be promptly informed about their rights in this litigation (while creating potential one-way intervention complications). In addition, the usual risk of absent class member contact information growing stale is especially acute for a population that has faced job loss, housing insecurity, and economic vulnerability. As more time passes, the risk that witnesses will become unavailable or unable to testify competently to key facts will also substantially grow. Further delaying the upcoming depositions and the pretrial filings will thus cause significant prejudice to Plaintiffs.

Finally, the public interest weighs heavily against a stay. This case concerns a state contractor's allegedly willful violation of Californians' statutory and constitutional rights. The public has a strong interest in the efficient and effective prosecution of consumer protection laws and in holding corporate wrongdoers to account. Meanwhile, staying depositions and dispositive and *Daubert* motions would serve no judicial economy purpose, because that discovery and those filings would be required even if Plaintiffs were required to pursue their claims individually.

In sum, none of the stay factors support a stay, and the balance of equities and the public interest weigh heavily against any further delay. Having failed to carry its burden, the Bank's motion should be denied.

II. RELEVANT BACKGROUND

This multi-district litigation is comprised of nine consolidated class actions and hundreds of individual plaintiff actions. On May 17, 2021, the district court in the consolidated *Yick* cases granted Plaintiffs' motion for a preliminary injunction and provisionally certified a Rule 23(b)(2) class. *Yick v. Bank of America, N.A.*, No. 3:21-cv-00376 (N.D. Cal. May 17, 2021), Dkt. No. 89. On May 18, 2021, the *Yick* court issued an order authorizing discovery to "proceed in the case immediately." *Yick*, Dkt. No. 93.

On June 4, 2021, the JPML transferred *Yick* and other related actions to this Court for consolidated pretrial proceedings. Following the preliminary case management conference, the Court directed Interim Co-Lead Counsel to file a single master consolidated complaint including all of the putative class members' and individual plaintiffs' claims. ECF 48 at 2; *see* ECF 72 (Master Consolidated Complaint). The Bank then filed a motion to dismiss and urged the Court to stay all discovery pending resolution of that motion, which the Court did, with only limited exceptions. ECF 58; ECF 67. Discovery was stayed for nearly two years pending the Court's ruling on the Bank's motion to dismiss, which finally issued on May 25, 2023, allowing nearly all of Class Plaintiffs' claims to proceed. ECF 126.

On August 29, 2024, Plaintiffs filed their motion for class certification. The parties submitted more than 260 pages of briefing and 5,000 pages of exhibits in connection with class certification. *See* ECF 324, 349–350, 378. In advance of the January 17, 2025 hearing on that motion, the Court issued a detailed tentative order thoroughly addressing the arguments raised by both parties, which the Bank was given a full and fair opportunity at that hearing to address. *See* 1/17/25 Hr'g Tr.

Before the Court could issue its class certification order, the Bank moved to stay all proceedings based on the Supreme Court's grant of certiorari in *Lab'y Corp. of Am. Holdings v. Davis.* The Court granted that stay request in part, while allowing expert discovery to continue. ECF 448. After the Supreme Court dismissed certiorari as improvidently granted in *Lab'y Corp*, the Court on June 5, 2025 lifted its partial stay and reiterated that "*Olean Wholesale Grocery Cooperative, Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 669 [(2022)] remains binding on this Court." ECF 492.

On June 16, 2025, the Court issued its 98-page class certification order, finding all requirements of Rule 23(b)(3) satisfied and certifying five classes. ECF 494. With regard to predominance, the Court carefully analyzed the evidence and found that, in light of "the reconsideration process, the PI and the Remediation Plan" processes, "[t]here is *no evidence* that many unearthed fraudulent claims will arise" beyond the "de minimis" number identified in the Martin Declaration (and that those identified by the time of trial would be excluded from the class by definition in any event). ECF 494 at 57-59 (emphasis added) (discussing, *inter alia*, *Van v. LLR, Inc.*, 61 F.4th 1053, 1067 (9th Cir. 2023); *True Health Chiropractic, Inc. v. McKesson Corp.*, 896 F.3d 923, 932 (9th Cir. 2018)). The Court addressed and rejected each of the Bank's arguments, applying binding Ninth Circuit law and concluding that the Bank's speculative assertion that the 109,000-member class may include unidentified fraudsters was not sufficient to defeat class certification where Plaintiffs established that common issues predominated over any individualized ones. *Id.* at 55-62, 82-83 (discussing, *inter alia*, *Olean*, 31 F.4th at 680-81).

On June 30, 2025, the Bank filed a Rule 23(f) petition seeking leave to appeal the class certification order with the Ninth Circuit, followed by this motion to stay the case in its entirety pending resolution of the petition and any subsequent appeal. ECF 510. Plaintiffs' answer to the Bank's petition is due July 29, 2025.

With the exception of Plaintiffs' depositions of current CEO Brian Moynihan and former COO Thomas Montag, all fact discovery and expert discovery has been completed. The parties have stipulated to a proposed notice plan, ECF 518, and have agreed to use Simpluris as the notice administrator, Decl. of Connie K. Chan ISO Pls.' Opp'n to Stay Motion ("Chan Decl.") ¶8. On July 17, 2025, the Court issued an Amended Scheduling Order setting deadlines of September 30, 2025 for the Moynihan and Montag depositions, October 17, 2025 for dispositive and *Daubert* motions, March 30, 2026 for a Mandatory Settlement Conference, and June 5, 2026 for a final Pretrial Conference, with a trial date to be set at that time. ECF 521.

III. LEGAL STANDARD

A Rule 23(f) petition for interlocutory review does not trigger an automatic stay. *See* Fed. R. Civ. P. 23(f). Rather, "[t]he party requesting a stay bears the burden of showing that the circumstances justify an exercise of [the Court's] discretion." *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012). In exercising its discretion, the Court considers four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); *accord Leiva-Perez v. Holder*, 640 F.3d 962, 964 (9th Cir. 2011); *Manier v. Medtech Prods, Inc.*, 29 F.Supp.3d 1284, 1287 (S.D. Cal. June 26, 2014); *Astiana v. Kashi Co.*, 2013 WL 12064548, at *2 (S.D. Cal. Sept. 18, 2013) (applying four-factor test to motion to stay pending resolution of Rule 23(f) petition); *Amaro v. Gerawan Farming, Inc.*, 2016 WL 10679467, at *2 (E.D. Cal. Nov. 14, 2016) (compiling cases within the Ninth Circuit adopting this standard).[1] These factors are weighed along a "continuum," *Leiva-Perez*, 640 F.3d at 964, but the first two "'are the most critical,'" *id.* (quoting *Nken*, 556 U.S. at 434). Where the movant establishes only "serious legal questions" rather than a strong likelihood of success, the movant must show that the "balance of hardships tips sharply in favor of a stay." *Id.* at 971. Moreover, it is a "bedrock requirement that stays must be denied to all petitioners who [do] not meet the applicable irreparable harm threshold, regardless of their showing on the other stay factors." *Id.* at 965.

[1] While acknowledging that most courts in the Ninth Circuit use the four-factor test outlined in *Leiva–Perez*, the Bank also addresses the stay factors set forth in *Landis v. North American Co.*, 299 U.S. 248, 254 (1936): (1) the possible damage resulting from granting a stay, (2) the hardship or inequity the moving party will suffer if the case proceeds, and (3) the degree to which issues or questions of law may be simplified or complicated as the result of a stay. The Bank cites no cases in which *Landis* has been applied to a motion to stay pending resolution of a Rule 23(f) petition, which is at issue here. Nevertheless, as the Bank notes, the outcome is often the same under either standard. ECF 513-1 at 8. The analysis below follows the four-factor test from *Leiva-Perez* most frequently adopted in this district, but because this test also addresses the equities of both parties and considerations of judicial economy, the outcome would be the same under *Landis*.

Ultimately, "[a] stay is not a matter of right" but rather "an exercise of judicial discretion, and the propriety of its issue is dependent upon the circumstances of the particular case." *Nken*, 556 U.S. at 433 (quotation marks and alterations omitted). Courts routinely deny motions to stay pending Rule 23(f) appeals where the defendant fails to carry its burden. *See, e.g.*, *Canchola v. Allstate Ins. Co.*, 2025 WL 1712395 (C.D. Cal. May 12, 2025); *McMorrow v. Mondelez Int'l, Inc.*, 2021 WL 1263957 (S.D. Cal. Apr. 5, 2021); *In re Coca-Cola Prods. Mktg. & Sales Practices Litig.*, 2020 WL 1478991, at *2 (N.D. Cal. Mar. 26, 2020); *Lopez v. Liberty Mut. Ins. Co.*, 2019 WL 1452906 (C.D. Cal. Jan. 9, 2019); *Andrews v. Plains All Am. Pipeline, L.P.*, 2018 WL 4191409 (C.D. Cal. Aug. 28, 2018); *In re Facebook Biometric Info. Privacy Litig.*, 2018 WL 2412176, at *2 (N.D. Cal. May 29, 2018); *Mauss v. NuVasive, Inc.*, 2017 WL 4838826 (S.D. Cal. Apr. 27, 2017); *Amaro v. Gerawan Farming, Inc.*, 2016 WL 10679467 (E.D. Cal. Nov. 14, 2016); *Astiana v. Kashi Co.*, 2013 WL 12064548 (S.D. Cal. Sept. 8, 2013); *Monaco v. Bear Stearns Companies, Inc.*, 2012 WL 12506860 (C.D. Cal. Dec. 5, 2012).

IV. ARGUMENT

A. The Bank's Petition Is Unlikely to be Granted and Raises No Serious Legal Questions.

To satisfy this first factor, the Bank must make a "strong showing that [it] is likely to succeed on the merits," or "at a minimum, … a substantial case for relief on the merits," meaning a "fair prospect" of success or a case that at least raises "serious legal questions." *Leiva-Perez*, 640 F.3d at 967-68. Because the Bank's Rule 23(f) petition is still pending, the Court must "consider the likelihood of whether the petition will be granted in the first instance, in addition to the likelihood that the Ninth Circuit will rule for [the Bank] on the merits." *Monaco*, 2012 WL 12506860, at *2.

The Bank has not shown that its Petition is likely to be granted or that it is likely to succeed on the merits. Interlocutory review under Rule 23(f) is an extraordinary and "disfavored" remedy that is "granted sparingly." *Chamberlan*, 402 F.3d at 959.[2] The Ninth Circuit has identified only three narrow circumstances that may justify such review: "(1) there is a death-knell situation … that is independent of the merits of the underlying claims, coupled with a class certification decision by the district court that is questionable; (2) the certification decision presents an unsettled and fundamental issue of law relating to class actions, important both to the specific litigation and generally, that is likely to evade end-of-the-case review; or (3) the district court's class certification decision is manifestly erroneous." *Id.* at 959. The Bank's Petition does not satisfy any of these grounds for interlocutory review.

First, the Bank provides no support for its implausible claim that denying its petition would sound the "death knell" of this litigation by forcing the Bank to settle. *See* Pet. § I. The Ninth Circuit has made clear that interlocutory review is not warranted simply because "the potential recovery … may be 'unpleasant to a behemoth' company" such as the Bank. *See Chamberlan*, 402 F.3d at 960 (quoting *Waste Mgmt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 294 (1st Cir. 2000)). Rather, a Rule 23(f) petitioner must make an evidentiary "showing that it lacks the resources to defend this case to a conclusion and appeal if necessary or that doing so would 'run the risk of ruinous liability.'" *Id.* (quoting Fed. R. Civ. P. 23, Advisory Cmte. Notes to 1998 Amendments, Subdivision (f)). The Bank has made no such showing here, nor could it credibly do so as the nation's second largest bank, reporting over $100 billion in annual revenue and over $3.2 trillion in consolidated assets in 2024.[3]

Second, the Bank's Petition does not identify any *unsettled* issue of class action

[2] The Ninth Circuit grants only 17% of such petitions for review by defendants and reverses fewer than half of those. *See* Bryan Lammon, *An Empirical Study of Class-Action Appeals*, 22 J. App. Prac. & Process 283, 310-11 (2022), available at https://ssrn.com/abstract=3589733.

[3] Bank of America Corp., Annual Report (Form 10-K), at 27 (Feb. 25, 2025), *available at* https://investor.bankofamerica.com/regulatory-and-other-filings/all-sec-filings/content/0000070858-25-000139/0000070858-25-000139.pdf.

law, just disagreement with the Court's application of settled Ninth Circuit law to the particular facts of this case. The fundamental premise of the Bank's Petition is that this Court "committed the same error … identified in *Van v. LLR, Inc.*, 61 F.4th 1053 (9th Cir. 2023)." Pet. at 14; *see id.* at 15-18 (arguing the Court misapplied *Olean*, 31 F.4th 651, and "committed precisely the same error" as in *Van*). *Olean* and *Van* are settled Ninth Circuit law. *See* ECF 492. The Bank will have ample opportunity to challenge the Court's application of those controlling precedents after entry of final judgment. *See Chamberlan*, 402 F.3d at 959 (interlocutory review under this prong warranted only where the unsettled question is "likely to evade end-of-the-case review"). There is no need for interlocutory review.

Third, the Bank's Petition comes nowhere close to demonstrating "manifest error" in this Court's carefully reasoned, 98-page class certification order, and it fails to identify any serious *legal* issues meriting interlocutory appellate review. To be "manifest," the asserted error must be "significant" and "easily ascertainable from the petition itself"; there is no manifest error if consideration of the petition would "devolve into a time consuming consideration of the merits[.]" *Chamberlan*, 402 F.3d at 959. "The kind of error most likely to warrant interlocutory review will be one of law, as opposed to an incorrect application of law to facts." *Id.* Manifest error is thus unlikely unless "the district court applies an incorrect Rule 23 standard or ignores a directly controlling case." *Id.* at 962.

There was no such manifest legal error, as the Court faithfully applied Rule 23 and the Ninth Circuit's controlling precedents, including *Olean* and *Van*.

1. The Bank principally argues that the Court "committed the same error [the Ninth Circuit] identified in *Van*" by "never requir[ing] Plaintiffs to prove predominance." Pet. at 14; *see id.* § II.A.1; ECF 513-1 ("Mot.") at 5. That argument, of course, ignores the 15 pages of the Court's order that carefully apply *Van* and *Olean* to the factual record presented by the parties. *See* ECF 494 at 48-62, 82-83.

In *Van*, the Ninth Circuit underscored that a plaintiff's initial burden is not to "rebut every individualized issue that could possibly be raised," but "merely [to] demonstrate by a preponderance of the evidence that a common question of law or fact exists—an issue that is capable of class-wide resolution." 61 F.4th at 1066-67. If plaintiff does so, the burden effectively shifts to the defendant to "invoke individualized issues and provide *sufficient evidence*" that individualized issues barring recovery on at least some claims will raise "the spectre of class-member-by-class-member *adjudication* of the issue." *Id.* at 1067 (emphases added) (citing *True Health Chiropractic,* 896 F.3d at 932 ("[W]e do not consider … defenses that [the defendant] *might* advance or for which it has presented no evidence.") (emphasis added in *Van*)). If the defendant meets its burden of providing sufficient evidence of individualized issues, "the district court must determine, based on the particular facts of the case, 'whether individualized questions…will overwhelm common ones and render class certification inappropriate under Rule 23(b)(3).'" *Id.* at 1067 (quoting *Olean*, 31 F.4th at 669). "[I]f the district court determines that the individualized issue is limited to a small number of class members or will otherwise be simple to investigate and present at trial, the district court might reasonably certify the class in the face of the individualized issue." *Id.* at 1067 n.11 (quoting *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016)).

In *Van*, the defendant demonstrated through its evidentiary submissions that individualized discovery would be needed "into the circumstances and motivations" for applying discounts to 13,680 of the 72,373 transactions at issue to determine which of those discounts were "for the purpose of offsetting the improper sales tax" rather than for some other purpose. *Id.* at 1067, 1069. Instead of considering whether adjudication of those individualized inquiries would overwhelm the class proceedings, the district court certified the class simply because "'the number of proposed class members for whom it can presently be determined received a discount to offset the sales tax being billed is de minim[i]s.'" *Id.* at 1068. The Ninth Circuit held that the district court erred by failing to consider the defendant's evidence and whether individualized issues would predominate as a result, and accordingly remanded for the district court to do so in the first instance. *Id.* at 1068 n.13, 1069.

This Court made no such error. To the contrary, it followed the Ninth Circuit's guidance in *Van* to the letter. First, the Court found that Plaintiffs had demonstrated by a preponderance of the evidence the existence of a multitude of common issues capable of class-wide resolution, including whether the Bank's policies of uniformly denying unauthorized transactions based solely on CFF-1, uniformly rescinding permanent credits based solely on CFF-1, and uniformly providing all class members the same form denial letter without an explanation of findings violated EFTA and gave rise to treble damages. *See* ECF 494 at 48-55.[4]

Next, the Court scrupulously analyzed the Bank's evidence and considered whether that evidence was sufficient to establish that class member-by-class member inquiries would be required and would predominate at trial. *Id.* at 62. The Court found that the Bank "has not sufficiently demonstrated *with evidence* that individual issues will predominate on the EFTA claim." ECF 494 at 59 (emphasis added) (citing *Van*, 61 F.4th at 1067). The Court further concluded that "the legal issue of whether [the Bank's] policies violate the EFTA predominates" over any "individual questions[] concerning non-injured and/or fraudulent class members," *id.* at 55-56, because: (1) "all putative class members were subject to Defendant's uniform practice and policy of applying CFF-1," *id.* at 55-56; (2) EFTA places the burden on the Bank to prove that class members' disputed transactions were in fact authorized, not the other way around, *id.* at 51 (citing 15 U.S.C. § 1693g(b)); (3) "claimants do not need to prove their unauthorized transaction claim" and therefore "[i]ndividual inquiries to EDD cardholders will not be necessary," *id.* at 60; (4) any individuals determined by the Bank to be fraudsters are by definition excluded from the class, *id.* at 56; (5) through

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[4] The Court also correctly rejected the Bank's argument that determining whether each cardholder's account was an "account" subject to EFTA is an individualized issue. *See* ECF 494 at 49-50.

its reconsideration, Preliminary Injunction, and Remediation Plan processes, the Bank has already had ample opportunity over the past four years to investigate cardholders and identify individuals meeting the exclusion criteria, *id.* at 56-57; (6) the Martin Declaration identifies at most a *de minimis* number of potential fraudsters remaining in the class, *id.* at 59; and (7) "[t]here is no evidence that many unearthed fraudulent claims will arise," *id.* at 57-58, given the Bank's failure to present credible evidence that those whom have not yet been investigated are likely to be fraudsters. While the Bank continues to disagree with the Court's analysis of the evidence, its fact-bound petition does not raise a "serious legal question" for interlocutory review.

2. In an attempt to manufacture a legal issue, the Bank makes a new argument—never raised before—that the Court erred by adopting a "fail-safe" class definition. *See* Mot. at 9; Pet. § II.A.2; *see generally* ECF 349; 1/17/25 Hr'g Tr. (never arguing that proposed classes were "fail-safe"). As an initial matter, an argument raised for the first time on appeal is deemed waived and will not be considered, absent "exceptional circumstances" not present here. *See Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 811 (9th Cir. 2020) (argument against class certification not raised in the district court deemed waived); *Club One Casino, Inc. v. Bernhardt*, 959 F.3d 1142, 1153 (9th Cir. 2020). Because the Bank did not make a "fail-safe" argument in opposing class certification, that argument cannot provide the basis for the extraordinary remedy of interlocutory review.

In any event, the waived argument is meritless. A fail-safe class is one that is defined to include only those who are entitled to relief, i.e., "the definition presupposes success on the merits." *Melgar v. CSK Auto, Inc.*, 681 F.App'x 605, 607 (9th Cir. 2017) (citing William B. Rubenstein, *Newberg on Class Actions* § 3:6 (5th ed. 2016)); *accord Velasquez v. HSBC Fin. Corp.*, 2009 WL 112919, at *4 (N.D. Cal. Jan. 16, 2009) ("Fail-safe classes are defined by the merits of their legal claims, and are therefore unascertainable prior to a finding of liability in the plaintiffs' favor.").[5]

The classes certified here are not fail-safe but rather are properly defined by reference to objective criteria ascertainable from the Bank's own records. *See Moore's Fed. Practice*, § 23.21[3] ("For a class to be sufficiently defined, the court must be able to resolve the question of whether class members are included or excluded from the class by reference to objective criteria."). The classes are defined as (1) those who were subject to the Bank's challenged policies and practices, excluding (2) those *who have been identified by the Bank* as having been disqualified by the State from Program eligibility, having previously engaged in fraudulent Program conduct, or having had their card frozen due to legal order processes or other specified processes. ECF 494 at 97. Membership in the classes can be ascertained from the Bank's own records and requires no finding of liability by a trier of fact. The exclusion of individuals identifiable from a defendant's own records is common in class definitions and does not render a class definition "fail-safe" simply because it excludes a certain subgroup of individuals as to whom the defendant might otherwise have a valid defense. *See, e.g.*, *Dulberg v. Uber Techs., Inc.*, 2018 WL 932761, at *3 (N.D. Cal. Feb. 16, 2018) (class was not "fail-safe" "because no finding of liability is required to determine its boundaries. Rather, … Uber's records can be used to precisely identify the members of the proposed redefined class."). Moreover, excluding individuals whom the Bank has already identified as having engaged in fraud does not establish liability for the class that remains; Plaintiffs will still have to prove to a trier of fact that the Bank's challenged policies and practices were unlawful. *See Melgar*, 681 F.App'x at 607 ("[T]he class definition did not presuppose its success, because the liability standard applied by the district court required class

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[5] For example, a class defined as "all persons … who purchased from Dell [products] that … Dell falsely advertised" is fail-safe because "[t]o determine who should be a member of these classes, it would be necessary for the court to reach a legal determination that Dell had falsely advertised." *Brazil v. Dell Inc.*, 585 F.Supp.2d 1158, 1167 (N.D. Cal. July 7, 2008).

members to prove more facts to establish liability than are referenced in the class definition.”). Because membership in the classes does not turn on any finding of liability by a trier of fact, the certified classes are not “fail-safe.”

3. The Bank’s final argument is simply a variant of its first two, and is equally meritless: the Bank complains that reviewing its records to identify excluded individuals will be unfairly time-consuming and will require “a wave of mini-trials” that will overwhelm the class trial. Pet. at 21; *see* Mot. at 10; Pet. § II.B. The Court properly rejected this argument.

The Bank falsely states in its Petition that “[i]f BANA’s records show that a class member should be disqualified, that class member would need an opportunity to contest the finding, and the district court would have to resolve that dispute.” Pet. at 21. That misconstrues the class definitions, which provide that any individual whom the Bank determines to have engaged in fraudulent conduct *will be excluded from the class*. There will be no need for credibility determinations and no disputes over class membership for the trier of fact to resolve.[6]

The Bank also fundamentally misconstrues the requirements for predominance. The predominance inquiry focuses on whether the time and complexity of adjudicating individualized issues at trial will so overwhelm the adjudication of common issues as to overcome the efficiencies of class adjudication. *See Olean*, 31 F.4th at 669. Here, any potential class member whom the Bank has identified as

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[6] *Bowerman v. Field Asset Servs., Inc.*, 60 F.4th 459, 469 (9th Cir. 2023), on which the Bank relies, is inapposite. There, after plaintiffs withdrew their expert, “class members were left relying on *individual testimony to establish the existence of an injury* and the amount of damages.” 60 F.4th at 469 (emphasis added). Here, there is no need for individual testimony to establish injury because, as the Court correctly held, EFTA places the burden on the Bank to prove that class members’ disputed transactions were in fact authorized, not the other way around. ECF 494 at 51 (citing 15 U.S.C. § 1693g(b)); *see id.* at 60 (“[T]he claimants do not need to prove their unauthorized transaction claim, it is BANA that needs to conduct the investigation by reviewing its own records.”). Unless the Bank comes forward with some evidence that a cardholder authorized the disputed transaction, the cardholder prevails.

having engaged in fraud (or whom the Bank so identifies between now and the time of trial) is by definition excluded from the class. The question, then, is whether the Bank has shown through actual, admissible evidence that there are an appreciable number of *other* potential class members who engaged in disqualifying fraud and, if so, that substantial *trial time* would be required to adjudicate those class members' status—given that the Bank for the past four-plus years has made such determinations based on evidence from its own files or otherwise readily available to it. The Bank has the right to continue reviewing its own records to determine whether any more absent class members may be subject to exclusion, but that will not require any trial time and is not a reason to deny class certification. *See, e.g.*, *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 539-40 (6th Cir. 2012) (citing cases and agreeing that "the need to review individual files to identify its members [is] not [a] reason[] to deny class certification").

As the court in *Young* explained, if the need to review individual files were sufficient to defeat certification, "defendants against whom claims of wrongful conduct have been made could escape class-wide review due solely to the size of their businesses or the manner in which their business records [are] maintained. … It is often the case that class action litigation grows out of systemic failures of administration, policy application, or records management that results in small monetary losses to large number of people. To allow that same systemic failure to defeat class certification would undermine the very purpose of class action remedies." 693 F.3d at 540. This logic is particularly salient in the context of EFTA, a remedial statute that Congress enacted to protect consumers by requiring prompt reimbursement for unauthorized transactions and by prohibiting any financial institution from denying a cardholder's unauthorized transaction claim without an investigation and a reasonable evidentiary basis for the denial. If the Bank's argument were accepted, any bank could ignore EFTA's carefully prescribed claim investigation requirements and instead adopt a policy of automatically and indiscriminately denying *every* unauthorized transaction claim without investigating—and a class could never be certified because the bank could assert that some class members' claims might have been denied even if the required "investigation" had been conducted, thus rendering EFTA's claim resolution requirements a dead letter.

As the Ninth Circuit has recognized, "[a] district court is in the best position to determine whether individualized questions, including those regarding class members' injury, 'will overwhelm common ones and render class certification inappropriate under Rule 23(b)(3),'" *Olean*, 31 F.4th at 669 (quoting *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 276 (2014)), and a district court's determination of predominance will be upheld on appeal so long as it "falls within a broad range of permissible conclusions," *id.* (citation omitted). Here, the Court faithfully applied controlling Ninth Circuit precedent in determining that Plaintiffs had satisfied their burden of showing that common questions predominate over any individualized ones and that the Bank had not overcome that showing.

For these reasons and those that will be set forth in Plaintiffs' forthcoming answer to the petition due July 29, the Bank is unlikely to succeed on its Rule 23(f) petition (or any subsequent appeal, in the unlikely event the petition is granted); it has not even shown that its petition raises a serious legal question. The Court may deny the stay on this basis alone and need not reach the remaining stay factors. *See, e.g.*, *Mt. Graham Coal. v. Thomas*, 89 F.3d 554, 558 (9th Cir. 1996) (denying stay pending appeal without addressing remaining factors because moving party failed to raise a substantial legal question).

B. The Bank Has Not Shown It Would Suffer Irreparable Harm Absent a Stay.

Even if the Bank had demonstrated a likelihood of success or the existence of a serious legal question, a stay would still be improper because the Bank has not shown that it will likely suffer any irreparable harm in the absence of a stay, let alone that the balance of hardships tips "sharply" in its favor. *See Leiva-Perez*, 640 F.3d at 964; Mot. at 10 (arguing only that the Bank's petition raises "serious legal questions," not a strong likelihood of success on the merits); *McMorrow*, 2021 WL 1263957, at *3 ("To the extent that [defendant] relies on a 'serious legal question' to satisfy the first prong of the stay analysis, [it] must show that the balance of harms tips *sharply* in its favor.") (emphasis added) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011)). If irreparable harm is not probable, "a stay may not issue, regardless of the [moving party's] proof regarding the other stay factors." *Leiva-Perez*, 640 F.3d at 965. Courts routinely deny stays, even after finding the presence of "serious legal issues," based on the equitable factors. *See, e.g.*, *Andrews*, 2018 WL 4191409, at *5 ("[A]lthough Defendants' Rule 23(f) appeal presents a serious legal question, the balance of hardships does not tip sharply in Defendants' favor, and the public's general interest weighs against a stay."); *Amaro*, 2016 WL 10679467, at *2–4 (same); *Ambrosio v. Cogent Commc'ns, Inc.*, 2016 WL 777775, at *5 (N.D. Cal. Feb. 29, 2016) (denying stay where "even assuming there are serious questions, the balance of hardships does not tip *sharply* in [defendant's] favor."); *In re Coca-Cola Prods.*, 2020 WL 1478991, at *2 (same).

The Bank falls far short of meeting its burden of showing irreparable harm. The Bank's only claim of injury is a vague and abstract assertion that it would be a "waste of time and resources for BANA to defend this case as a class action, only to have to alter its strategy and defend hundreds of individual suits should the Ninth Circuit grant the Rule 23(f) petition and ultimately overturn the class certification order." Mot. at 10:19-22. The argument is unpersuasive, for at least two reasons.

First, it is well established that ordinarily "litigation expenses, without more, do not constitute irreparable harm." *Canchola*, 2025 WL 1712395, at *5; *see also, e.g.*, *Tinsley v. McKay*, 2018 WL 11352146, at *7 (D. Ariz. Feb. 13, 2018) (expense of completing expert depositions and submitting dispositive and *Daubert* motions following class certification ruling was "insufficient to constitute an irreparable injury warranting a stay" pending Rule 23(f) appeal); *In re Facebook Biometric Info. Privacy Litig.*, 2018 WL 2412176, at *1 ("expense of trial" did not establish irreparable harm justifying stay pending Rule 23(f) petition). Like the Bank here, the defendants in *Monaco* protested that, absent a stay, they would "be forced to incur significant expense to defend against much broader claims than would otherwise be cognizable absent class certification," and would "have to 'review thousands of loan documents individually' to identify who is in the class, resulting in 'substantial and potentially unnecessary expenses.'" 2012 WL 12506860, at *4 (citations omitted). The court held this was "insufficient, as litigation costs in and [of] themselves generally do not constitute irreparable injury." *Id.*

Second, the Bank makes no attempt to explain how its defense of this case would be different if the classes were decertified, or how reversal of the class certification order would render the upcoming pretrial litigation tasks unnecessary. *See Mauss*, 2017 WL 4838826, at *1 (denying stay where "[d]efendants simply fail to explain how a denial of class certification will eliminate the necessity for discovery on Plaintiffs' individual claims"). It wouldn't. Even in the unlikely event the certified classes were modified or decertified, Class Plaintiffs would still be entitled to pursue their claims on an individual basis, as would the dozens of Individual Plaintiffs whose claims have been stayed pending resolution of the class proceedings, along with any other absent class members who may decide to file suit in the wake of decertification. The legal issues and the evidence relevant to Plaintiffs' claims are identical regardless of whether they are tried on an individual or class-wide basis. Plaintiffs would still be entitled to take the depositions of Moynihan and Montag for their individual claims for punitive damages; the Court would still need to resolve the same legal issues on summary judgment; and the Court would still need to resolve the same *Daubert* challenges to the parties' respective experts. Resolution of the Rule 23(f) petition (even in the Bank's favor) would not render these steps unnecessary. *See Astiana*, 2013 WL 12064548, at *3 (denying stay and finding no irreparable injury without evidence that potential costs of litigation "are unusual or particularly onerous").[7] When, as here, named Plaintiffs would have individual causes of action even if one or more classes are decertified, "the parties' work in summary judgment briefs will be of use even if the defendants prevail on their appeal." *Andrews*, 2018 WL 4191409, at *5 (cleaned up) (denying stay of dispositive motion deadline).

The Bank's reliance on *Alvarez v. NBTY, Inc.*, 2020 WL 804403 (S.D. Cal. Feb. 18, 2020) is misplaced. In *Alvarez*, the *plaintiffs* sought a stay after denial of class certification, and the court found that the risk of having to retry an individual case as a class action presented significant harm. *Id.* at *2. In that posture, where there is a prospect of appellate reversal of a class certification denial, proceeding with dispositive motions on an individual basis risks creating a one-way intervention problem. *See Williams v. Warner Music Grp. Corp.*, 2020 WL 2303099, at *2 n.2 (C.D. Cal. Apr. 14, 2020) (explaining that "[t]he one-way intervention doctrine provides that pre-certification motions for summary judgment are disfavored for two reasons: (1) they would only bind the named plaintiff and therefore subject the defendant to several other suits by any of the other putative class members and (2) it would allow the unnamed class members the unfair advantage to observe the viability of the named plaintiff's claim before deciding whether to join the suit as a class member or pursue their own claim."). There is no such one-way intervention concern here, where a class has already been certified and it is the defendant that seeks reversal.

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[7] Even *Durruthy v. Charter Commc'ns, LLC*, 2021 WL 254194, at *2 (S.D. Cal. Jan. 25, 2021), on which the Bank relies, recognizes that "the costs incurred through litigation are not usually considered irreparable harm," but found "this situation presents an exception" because the purpose of defendant's appeal was to enforce an arbitration agreement that would be "meaningless if the movant is required to litigate this case." 2021 WL 254194, at *2. That exception does not apply here.

C. A Stay Will Prejudice Plaintiffs and Harm Absent Class Members.

The balance of hardships tips sharply against a stay.[8]

First, a stay would prejudice Plaintiffs and harm class members—many of whom are economically vulnerable and face housing instability—by exacerbating the risk that class member contact information becomes outdated and class members become unlocatable. *See, e.g.*, *Blair v. Rent-A-Center, Inc.*, 2018 WL 2234049, at *3 (N.D. Cal. May 16, 2018) (denying stay in class action on behalf of low-income consumers where "delay would exacerbate the risk that putative class members could not be located by the time the case finishes"). Now that the classes have been certified (unlike previously, when this Court considered the Bank's request to stay issuance of the class certification decision pending the Supreme Court's ruling in *Lab'y Corp*), members of the certified classes have "an undeniable interest in receiving fulsome information" concerning the litigation and "clear and prompt notice" of their rights as class members. *Behar v. Northrup Grumman Corp.*, 2024 WL 5275027, at *1, 6 (C.D. Cal. Dec. 3, 2024) (denying stay). That is why "ordinarily, notice to class members should be given promptly after the certification order is issued." *Andrews*, 2018 WL 4191409, at *2 (quoting *Manual for Complex Litigation* (Fourth) § 21.311 (2004)).

A stay of class notice would interfere with these rights and interests and irreparably harm class members who may become unreachable with the growing passage of time. Allowing "contact information for putative class members" to

[8] The Bank relies heavily on the Court's prior stay order, ECF 448, but that motion was decided under a different standard (*Landis*) and in a different posture (pre-certification). Moreover, the Court previously found only that Plaintiffs would not be irreparably harmed by "a short, three-month stay" pending resolution of *Lab'y Corp*. ECF 448. The Bank now seeks a potentially far longer stay: According to the Ninth Circuit's website, a civil appeal will take six months to a year from the notice of appeal until oral argument and most cases are decided three months to a year thereafter, although "there is no time limit." *See* Frequently Asked Questions, Court of Appeals for the Ninth Circuit (available at www.ca9.uscourts.gov/general/faq/). The cumulative impact of seriatim delays compounds the growing risk that class members will become unreachable and witnesses will become unavailable. *See supra* at 2-4; *infra* at 19-20, 22-24.

"become outdated with time" can result in "denial of monetary recovery to those class members, as opposed to only delay." *D.C. by & through Garter v. Cnty. of San Diego*, 2017 WL 1365693, at *4 (S.D. Cal. Apr. 14, 2017) (denying stay where outdated class member contact information "work[s] damage" on them). Plaintiffs may also be prejudiced by the inability to obtain the testimony of class members, who are relevant witnesses. *See Amaro*, 2016 WL 10679467, at *4. The risk of class member contact information becoming stale is particularly acute here, as many in the class are economically vulnerable and more likely than other members of the population to be transient. *See E.A.R.R. v. U.S. Dep't of Homeland Sec.*, 2021 WL 4933264, at *3 (S.D. Cal. Feb. 19, 2021) (courts should consider "unique and specific hardships based on [plaintiffs] conditions" and if those conditions make harms associated with delayed justice "weightier"); ECF 324-17, Deposition of the Bank's Rule 30(b)(6) Designee Michael Letson, at 100:19-22 ("People that are receiving unemployment benefits are probably some of the most vulnerable customers we [the Bank] would have.").

The Court should reject the Bank's disingenuous suggestion that a stay would actually "benefit Plaintiffs" because "confusion will abound" if notice goes out and the class is subsequently modified or decertified. Mot. at 11:17-25.[9] As an initial matter, the Bank's speculation regarding potential harm to *Plaintiffs* absent a stay is not a relevant consideration. *See Amaro*, 2016 WL 10679467, at *3 (denying stay where "defendants have failed to demonstrate how *they* would be irreparably harmed by such confusion"). More to the point, the Bank's "concern that notifying class members now might cause confusion later is … overblown." *In re Facebook Biometric Info. Privacy Litig.*, 2018 WL 2412176, at *2 (rejecting Facebook's

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[9] The Bank makes no argument that providing class notice or any subsequent curative notice will cause irreparable harm *to the Bank*. Any such argument would also be meritless, *see, e.g.*, *In re Facebook Biometric Info. Privacy Litig.*, 2018 WL 2412176, at *2; *Montanez v. Gerber Childrenswear, LLC*, 2012 WL 12932032, at *2 (C.D. Cal. Feb. 2, 2012), but in any event is waived and cannot be asserted for the first time on reply.

"confusion" argument and denying stay pending Rule 23(f) appeal). As many courts have noted in rejecting this argument, "a class is at risk of being decertified at any point of the litigation" even without a Rule 23(f) appeal, and thus "[t]he risk of confusion decertification may have on class members is inherent in any class action suit." *Andrews*, 2018 WL 4191409, at *3 (denying stay of class notice pending Rule 23(f) appeal); *accord Lopez*, 2019 WL 1452906, at *4 (same). The Bank itself acknowledges that "class certification orders are 'inherently tentative' and subject to amendment or reconsideration 'at any time' before judgment." Mot. at 12:14-15. The mere possibility of subsequent modification or decertification is not a reason to withhold notice; if it were, class notice would never be sent. After all, a class may be subsequently decertified on appeal even after trial.

The Bank "has not proffered any evidence indicating that class members would be left in a state of disarray and befuddlement, as it suggests, if developments during trial or post-trial appellate review resulted in a change to or decertification of the class," and indeed "[c]ommon sense strongly advises to the contrary. It is highly doubtful any class member would be unable to understand subsequent changes in the case, or be thrown into confusion by such an event." *In re Facebook Biometric Info. Privacy Litig.*, 2018 WL 2412176, at *2; *see also, e.g.*, *Andrews*, 2018 WL 4191409, at *3 (denying stay, even after Rule 23(f) petition had been granted, because "the benefit of informing… subclass members of their rights and the state of the litigation outweighs the potential risk of confusion due to a revised notice) (citing William B. Rubenstein, *Newberg on Class Actions* § 8.11 (5th ed. 2018) ("Some courts have interpreted the need to send notice promptly as trumping even the possibility that the certification decision will be reversed on appeal.")); *Montanez*, 2012 WL 12932032, at *2 (denying stay because the potential for rescinding notice is "inherent in any appeal of any question," and "the [c]ourt believes that the public generally understands the concept of an appeal and that sometimes higher court review changes a previous outcome," finding "little possibility for any problematic confusion here");

West v. Cal. Serv. Bureau, Inc., 2018 U.S. Dist. LEXIS 6855, at *3 (N.D. Cal. Jan. 16, 2018) (denying stay pending Rule 23(f) petition; "[a]ny potential confusion among class members could be cured through dissemination of subsequent notice, if necessary").

The Bank has shown no particular risk associated with its pending petition that justifies departing from the ordinary course of prompt notice to the certified classes. Moreover, any potential risk of confusion is mitigated by language the parties jointly proposed in the Long-Form Notice explaining that the Bank has filed a petition seeking interlocutory review and directing class members to the case website for up-to-date information on the status of the Bank's petition and any appeal.[10] *See* ECF 518, 518-2 at 9; *Andrews*, 2018 WL 4191409, at *3 (rejecting defendant's bid to stay distribution of class notice pending resolution of Rule 23(f) appeal, noting that "any concerns of confusion can be cured by adding language to the class notice to advise the class members of the pending appeal") (citation omitted).

Second, Plaintiffs will also be prejudiced by a stay because any further delays will increase the likelihood that memories further fade and witnesses become unavailable by the time of trial. This risk of prejudice is particularly acute with respect to the depositions of current CEO Moynihan and former COO Montag, which Plaintiffs first noticed on October 11, 2024, and which the Bank has resisted at every turn. *See* ECF 465 at 3-4 (summarizing procedural history of this dispute); ECF 526. The Bank's stay request notes three times that discovery is "effectively complete," but omits that these critical depositions have not yet taken place. Moynihan and Montag are key witnesses whose testimony is central to Plaintiffs' claims for punitive damages, and the Cout has determined that Plaintiffs are entitled to "depose them as to their knowledge, motive and intent concerning these topics which are relevant on

[10] The *Manual* notes that a case-specific website is a "particularly cost-effective means to provide current information in a rapidly evolving situation." § 21.311.

the issue of punitive damages." ECF 488 at 18; *see* ECF 526. In a case where multiple Bank employees have repeatedly testified that they do not recall key facts and events,[11] allowing further postponement of the depositions of these two crucial witnesses—thereby increasing the risk that they will not remember key details of the 2020-21 events at issue—will significantly and irreparably prejudice Plaintiffs.

Moreover, in the years since the Claim Fraud Filter was deployed against class members, many of the key Bank witnesses (like Montag) have left the Bank's employ, and others may do so before the time of trial. As courts recognize, even when discovery is substantially complete, "case delays may compromise plaintiffs' ability to call relevant witnesses at trial… [and] memories may fade." *Andrews*, 2018 WL 4191409, at *4 (denying stay pending Rule 23(f) appeal); *see also Lopez*, 2019 WL 1452906, at *5 (same); *In re Coca-Cola Prods.*, 2020 WL 1478991, at *2 (same); *I.K. ex rel. E.K. v. Sylvan Union Sch. Dist.*, 681 F. Supp. 2d 1179, 1193 (E.D. Cal. 2010) (denying stay where "through no fault of the parties, relevant evidence could be lost or destroyed, memories could fade, and pertinent witnesses could move out of the

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[11] *See, e.g.*, Chan Decl. Ex. 1, Deposition of Paul Simpson at 12:10-17 ("I retired from Bank of America…[a]bout four years ago."), 64:12-15 [redacted], 101:22-102:1 [redacted]. [redacted], 106:4-5 [redacted]); *id.* Ex. 2, Deposition of Faiz Ahmad, 366:11-15 [redacted]), 366:16-20 [redacted]); *id.* Ex. 3, Deposition of William J. Fox, at 11:16-17 (Q: "When were you last employed by Bank of America?" A: "April 30th of 2024."), 71:5-8 ([redacted]); *id.* Ex. 4, Deposition of Bradley Garfield, at 223:4-8 [redacted]); *id.* Ex. 5, Deposition of Anne Holt, at 108:23-24 ([redacted]), 217:8-10 [redacted]); *id.* Ex. 6, Deposition of Renee Johnson, at 6:22-7:3 (Q: "You work for Bank of America?" A: "I'm retired from Bank of America…" Q: "And when did you retire?" A: "2022."), 43:15-18 ([redacted]).

jurisdiction"); *Dowkin v. City & Cnty. of Honolulu*, 2014 WL 4904952, at *6 (D. Haw. Sept. 30, 2014) (denying stay where "[p]laintiffs filed this action over four-and-a-half years ago," and asking them to wait longer "to resolve their claims and potentially obtain redress for their injuries is unreasonable" and may cause prejudice due to "potential loss of witnesses and other evidence due to the passage of time"). With each additional delay, the risk increases that witnesses no longer employed by the Bank will become uncooperative or unable to testify at trial, that class members who might otherwise be trial witnesses become unreachable, and that all witnesses struggle to testify with specificity about events that will have occurred nearly six years ago by the time of trial. *See* ECF 521.[12]

D. The Public Interest Weighs Against a Stay.

The public interest, too, weighs heavily against issuance of another stay in this 2021 consumer protection case that seeks to vindicate the rights of public benefits recipients. *See* 1/17/25 Hr'g Tr. at 54:5-7 ("[G]iven that this is a 2021 case, I'm eager to move this forward as quickly, as practical … as is prudent."). The Bank argues that the public has an interest in judicial efficiency, Mot. at 11-12, but this factor weighs *against* a stay, not in favor. As explained *supra* § IV.A, the Bank's petition is unlikely to be granted, and even if granted, the Bank is unlikely to succeed on appeal, so a stay of proceedings would only unnecessarily delay resolution of this already 4-1/2 year-old case. Moreover, even if any of the classes were to be modified or decertified on

[12] In pretending that a stay will not irreparably harm Plaintiffs, the Bank argues that "Plaintiffs seek only monetary damages" and the class has been partially compensated. ECF 513-1 at 7-8. But "it does not follow that a delay in monetary recovery…does not constitute *even some* damage to [p]laintiff and putative class members." *D.C. by & through Garter v. Cnty. of San Diego*, 2017 WL 1365693 at *4 (S.D. Cal. Apr. 14, 2017) (emphasis added); *see also, e.g.*, *Dowkin*, 2014 WL 4904952, at *6 ("[t]he fact that [p]laintiffs are not seeking injunctive relief does not negate [p]laintiffs' interest in obtaining relief within a reasonable time"). Moreover, "delaying a plaintiff's day in court constitute[s] a substantial injury" in and of itself. *Bradberry v. T-Mobile USA, Inc.*, 2007 WL 2221076, at *4 (N.D. Cal. Aug. 2, 2007); *accord Andrews*, 2018 WL 4191409, at *4.

appeal, the upcoming pretrial tasks, including the depositions of Moynihan and Montag and summary judgment and *Daubert* briefing, are as necessary for adjudication of the Plaintiffs' individual claims as they are for the classes'. *Supra* § IV.B. Because these pretrial proceedings will be inevitable regardless of the outcome of the Bank's petition, no judicial efficiency will be gained by a stay.

Meanwhile, "the public has an interest in the efficient prosecution of consumer laws," *McMorrow*, 2021 WL 1263957, at *3, and in "seeking to hold alleged corporate wrongdoers accountable," *Mauss*, 2017 WL 4838826, at *2 (denying stay where case was "nearly four-years old"). *See* 15 U.S.C. § 1693(b) (EFTA's "primary objective … is the provision of individual consumer rights"). The public's interest in the efficient and effective enforcement of the law is particularly strong where, as here, the case challenges a state contractor's willful maladministration of public benefits and violation of Californians' statutory and constitutional rights. Another federal court and two federal regulatory agencies have already determined that the Bank's challenged conduct was or was likely unlawful, yet the public is still waiting to see if the Bank will be held accountable for its pandemic-era malfeasance. *See Yick*, Dkt. No. 89; ECF 324-75 at 1-2 (CFPB Consent Order); ECF 324-76 at 1 (OCC Consent Order). Plaintiffs, absent class members, and the public deserve to have the Bank's liability determined by a trier of fact once and for all without further delay. *See Bradberry*, 2007 WL 2221076, at *5 (denying stay where delay harms putative class members and "materially affect[s] the public interest in vindicating the rights of consumers"); *McMorrow*, 2021 WL 1263957, at *3 (same).

V. CONCLUSION

The Bank has not carried its burden to justify further delaying proceedings in this case brought by vulnerable UI and other public benefits recipients who have already been waiting more than 4-1/2 years for their day in court. The motion to stay should be denied.

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Respectfully submitted,

Dated: July 25, 2025

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SIGNATURE ATTESTATION

Pursuant to section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I, Michael Rubin, 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: July 25, 2025

/s/ Michael Rubin
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