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13 [ADDITIONAL COUNSEL LISTED IN SIGNATURE BLOCK]

14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**
16 **SAN DIEGO DIVISION**

17 IN RE: BANK OF AMERICA
18 CALIFORNIA UNEMPLOYMENT
19 BENEFITS LITIGATION

Case No. 3:21-MD-02992-GPC-MSB

**DEFENDANT'S NOTICE OF
SUPPLEMENTAL AUTHORITY**

Ctrm: 2D – 2nd Floor
Judge: Hon. Gonzalo P. Curiel

DEFENDANT’S NOTICE OF SUPPLEMENTAL AUTHORITY

Defendant Bank of America, N.A. files this Notice of a development relevant to Plaintiffs’ Motion for Class Certification (Dkt. 324).

On January 24, 2025—after argument on the motion—the United States Supreme Court granted certiorari in *Laboratory Corp. of America Holdings v. Davis*, No. 24-0304. In *Laboratory Corp.*, the Supreme Court will address the following question on review from a decision of the Ninth Circuit: “Whether a federal court may certify a class action pursuant to Federal Rule of Civil Procedure 12(b)(3) when some members of the proposed class lack any Article III injury.” See Ex. A hereto. *Laboratory Corp.* is subject to a briefing schedule that will have the case argued this April and decided by the end of the current Term in June 2025.

The outcome of *Laboratory Corp.* will be relevant to the pending motion due to BANA’s argument that the presence of uninjured class members precludes certification when the process of identifying them before judgment would predominate over individual issues (Dkt. 349, at 34–35), and Plaintiffs’ response that Rule 23 “does [not] preclude certification of a class that potentially includes more than a de minimis number of uninjured class members” (Dkt. 378, at 3). Bank of America respectfully submits that a stay of proceedings in this action—including the issuance of the Court’s order on Plaintiffs’ motion—pending the Supreme Court’s decision in *Laboratory Corp.* would be appropriate based on its likely application here, and intends to file a motion to that effect. BANA will address this issue with Plaintiffs and provide a status update to the Court no later than February 7, 2025, as directed by the Court’s Order at Dkt. 408.

Dated: January 28, 2025

Respectfully submitted,

By: s/ James W. McGarry
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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 January 28, 2025. 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: January 28, 2025

s/ James W. McGarry