

1 JAMES W. MCGARRY (pro hac vice)
2 *JMcGarry@goodwinlaw.com*
3 **GOODWIN PROCTER LLP**
4 100 Northern Avenue
5 Boston, MA 02210
6 Tel.: +1 617 570 1000
7 Fax: +1 617 523 1231

5 SABRINA M. ROSE-SMITH (pro hac vice)
6 *SRoseSmith@goodwinlaw.com*
7 MATTHEW L. RIFFEE (pro hac vice)
8 *MRiffee@goodwinlaw.com*
9 **GOODWIN PROCTER LLP**
10 1900 N Street, NW
11 Washington, DC 20036
12 Tel.: +1 202 346 4000
13 Fax: +1 202 346 4444

10 Attorneys for Defendant
11 BANK OF AMERICA, N.A.

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**
14 **SAN DIEGO DIVISION**

15 IN RE: BANK OF AMERICA
16 CALIFORNIA UNEMPLOYMENT
17 BENEFITS LITIGATION

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

**DECLARATION OF
MATTHEW L. RIFFEE IN
SUPPORT OF DEFENDANT'S
MOTION FOR A PROTECTIVE
ORDER**

1 I, Matthew L. Riffée, state and declare as follows:

2 1. I am a partner with the law firm of Goodwin Procter LLP, and counsel
3 of record for Defendant Bank of America, N.A. (“BANA”) in the above-captioned
4 lawsuit.

5 2. I have personal knowledge of the facts set forth in this declaration, and
6 if called upon to do so, I could and would competently testify thereto.

7 3. I make this declaration in support of BANA’s Motion for a Protective
8 Order.

9 **I. There Were Few Responsive Documents in the Apex Executives’ ESI**
10 **Custodial Files.**

11 4. As of April 11, 2025, BANA has responded to 212 class written
12 discovery requests in this action, including 145 document requests, 36 interrogatories
13 with at least 173 discrete subparts, and 31 requests for admission with at least 33
14 discrete subparts.

15 5. As of April 11, 2025, BANA has produced approximately 270,000
16 documents to Plaintiffs in this action.

17 6. On July 26, 2024 and August 5 and 16, 2024, BANA produced a total
18 of 556 ESI documents from Messrs. Moynihan’s and Montag’s custodial files.

19 7. The custodial files collected and reviewed for Messrs. Moynihan and
20 Montag were almost entirely irrelevant to the issues in this case—approximately 3%
21 of Mr. Moynihan’s reviewed documents were responsive to Plaintiffs’ discovery
22 requests, and less than 1% of Mr. Montag’s reviewed documents were responsive.

23 8. Almost one-third of the documents produced from Mr. Moynihan’s ESI
24 custodial files consisted of executive escalations—*i.e.*, unsolicited complaints
25 emailed by individuals directly to Mr. Moynihan’s personal email address.

26 **II. The Depositions Taken and Ordered by the Court Do Not Support**
27 **Depositions of the Apex Executives.**

28 9. As of April 11, 2025, Plaintiffs have taken 15 depositions in this case,

1 including six depositions taken in response to Plaintiffs' Rule 30(b)(6) deposition
2 notice, and nine individual fact depositions.

3 10. As of April 11, 2025, Plaintiffs have taken Rule 30(b)(6) depositions of
4 the following witnesses designated to testify on BANA's behalf: Shane Daniels (on
5 February 6, 2024); Robert Chestnut (on February 8, 2024); W. Matthew Martin (on
6 February 14, 2024); Michael Letson (on February 16, 2024); William Golden (on
7 February 22, 2024); and Jennifer Lennon (on February 23, 2024).

8 11. As of April 11, 2025, Plaintiffs have taken fact depositions of the
9 following witnesses: Renee Johnson (on May 7, 2024); Ryan Schwartz (on December
10 4, 2024); Bradley Garfield (on December 10, 2024); Anne Holt (on January 8, 2025);
11 Faiz Ahmad (on January 29, 2025); Melissa Ramirez (on February 11, 2025);
12 William Fox (on February 13, 2025); Jennifer Ehresman (on February 19, 2025); and
13 Paul Simpson (on February 21, 2025).

14 12. On December 8, 2023, Plaintiffs served a notice of Rule 30(b)(6)
15 deposition for BANA in this case, which was revised and re-noticed on February 4,
16 2024.

17 13. On March 13, 2024, Plaintiffs served a notice of deposition for Renee
18 Johnson in this case, which was revised and re-noticed on April 22, 2024.

19 14. On October 11, 2024, Plaintiffs served notices of deposition for Messrs.
20 Moynihan and Montag in this case. Plaintiffs simultaneously noticed depositions of
21 Bradley Garfield, Anne Holt, and Ryan Schwartz. On November 8, 2024, BANA
22 served objections to the deposition notices of Messrs. Moynihan and Montag, and
23 specifically notified Plaintiffs of BANA's objections to the depositions based on the
24 apex doctrine. The parties subsequently met and conferred to discuss BANA's
25 objections, and specifically BANA's objections to the depositions of Messrs.
26 Moynihan and Montag.

27 15. On December 2, 2024, Plaintiffs served a notice of deposition for Faiz
28 Ahmad.

1 16. Plaintiffs did not notice or otherwise take the deposition of BANA
2 employee Jennifer Boussuge in this case.

3 17. Plaintiffs did not notice or otherwise take the deposition of BANA
4 employee Christine Channels in this case.

5 18. Plaintiffs did not notice or otherwise take the deposition of BANA
6 employee John Denning in this case.

7 19. Plaintiffs did not notice or otherwise take the deposition of BANA
8 employee Ruchira Ghosh in this case.

9 20. Plaintiffs did not notice or otherwise take the deposition of BANA
10 employee John Lawlor in this case.

11 21. Plaintiffs did not notice or otherwise take the deposition of BANA
12 executive James DeMare in this case.

13 22. Plaintiffs did not notice or otherwise take the deposition of BANA
14 employee Jose Firpi in this case.

15 23. On December 5, 2024, after meeting and conferring, the parties notified
16 the Honorable Magistrate Judge Berg of their dispute regarding the depositions of
17 Messrs. Moynihan and Montag, and BANA's intent to move for a protective order
18 precluding their depositions under the apex doctrine. Judge Berg ordered the parties
19 to submit informal letter briefs on or before December 16, 2024, and scheduled an
20 informal discovery conference for December 23, 2024 to hear argument on the issue.

21 24. On December 16, 2024, the parties submitted their informal letter briefs
22 to Judge Berg, and BANA respectfully requested a protective order from the court
23 precluding the depositions of Messrs. Moynihan and Montag.

24 25. On December 23, 2024, Judge Berg issued a tentative ruling granting
25 BANA's request because Plaintiffs had not satisfied the apex doctrine's requirement
26 to exhaust efforts to take discovery through less burdensome means, including
27 because Plaintiffs had not noticed or deposed the majority of the individuals BANA
28 had identified as involved in the development, approval, and implementation of the

1 fraud filter. Judge Berg further ruled that Plaintiffs must take limited two-hour
2 depositions of witnesses that BANA identified as involved in the development,
3 approval, and implementation of the fraud filter before he would reconsider
4 Plaintiffs' request to depose Messrs. Moynihan and Montag. The Parties
5 subsequently met and conferred, and agreed to accept Judge Berg's tentative ruling.

6 26. After Judge Berg's December 23, 2024 tentative ruling, Plaintiffs
7 deposed six additional witnesses that BANA previously identified as involved in the
8 development, approval, and/or implementation of the fraud filter and/or other
9 relevant aspects of the EDD prepaid program. This included the previously noticed
10 depositions of Faiz Ahmad and Anne Holt, and four two-hour depositions of Jennifer
11 Ehresman, William Fox, Melissa Ramriez, and Paul Simpson.

12 27. On February 14, 2025, the parties appeared before the Honorable Judge
13 Gonzalo Curiel for a case status conference. During the conference, the District
14 Court directed that, should either party wish to challenge Judge Berg's forthcoming
15 tentative ruling on BANA's motion for a protective order, the dispute regarding apex
16 depositions may be raised directly to the District Court, rather than through formal
17 briefing before the Magistrate Judge.

18 28. On March 7, 2025, after the conclusion of the depositions referenced in
19 paragraph ¶ 26, and Plaintiffs confirmed that they were still seeking depositions of
20 Messrs. Moynihan and Montag, BANA renewed its request for a protective order
21 precluding the depositions, and the parties engaged in additional informal briefing on
22 this issue before the Magistrate Judge. That same day, BANA and Plaintiffs each
23 submitted an informal letter brief to Judge Berg.

24 29. Affixed to Plaintiffs' March 7, 2025 informal letter brief were 53
25 exhibits. 46 of Plaintiffs' exhibits are ESI documents that BANA produced to
26 Plaintiffs in this case; seven of Plaintiffs' exhibits are excerpts of transcripts from
27 depositions that Plaintiffs have taken in this case. With respect to Plaintiffs' 53
28 exhibits:

- a. When deposed, Plaintiffs did not ask Mr. Ahmad about Plaintiffs' Exhibit 7.
- b. When deposed, Plaintiffs did not ask Mr. Simpson about Plaintiffs' Exhibit 7.
- c. Plaintiffs' Exhibit 14 is a copy of a document BANA produced at Bates label BANA_EDD_MDL-00293818 on November 20, 2023;
- d. When deposed, Plaintiffs did not ask Ms. Johnson about Plaintiffs' Exhibit 14.
- e. Plaintiffs' Exhibit 15 is the only exhibit that was produced from Mr. Moynihan's custodial ESI files;
- f. When deposed, Plaintiffs did not ask Ms. Ehresman about Plaintiffs' Exhibit 14.
- g. When deposed, Plaintiffs did not ask Ms. Ehresman about Plaintiffs' Exhibit 48.
- h. When deposed, Plaintiffs did not ask Mr. Garfield about Plaintiffs' Exhibit 48.

30. On March 12, 2025, the parties appeared before Judge Berg for a second informal discovery conference regarding BANA's motion for a protective order. During the conference, the Magistrate Judge issued a second tentative ruling allowing Plaintiffs to depose Mr. Moynihan for two hours and Mr. Montag for one hour, with both depositions to be limited to the issue of punitive damages. In so ruling, the Magistrate Judge found no reason for either executive to sit for a lengthy deposition given the dearth of evidence in the record concerning any unique, non-repetitive knowledge either Mr. Moynihan or Mr. Montag may have.

31. Later that same day, Plaintiffs unilaterally emailed Judge Berg, rejecting the Magistrate Judge's March 12, 2025 tentative ruling and requested formal briefing on BANA's motion for a protective order precluding the depositions of Messrs. Moynihan and Montag.

1 **III. Exhibits**

2 32. Attached hereto as **Exhibit 1** is a true and correct copy of an informal
3 letter brief from counsel for BANA to Judge Berg, dated December 16, 2024
4 (“BANA Apex IDC Letter 1”).

5 33. Attached hereto as **Exhibit 2** is a true and correct copy of an informal
6 letter brief from counsel for Plaintiffs to Judge Berg, dated December 16, 2024 (“Pls.
7 Apex IDC Letter 1”).

8 34. Attached hereto as **Exhibit 3** is a true and correct copy of an informal
9 letter brief from counsel for BANA to Judge Berg, dated March 7, 2025 (“BANA’s
10 Apex IDC Letter 2”), including the 11 exhibits that BANA affixed thereto.

11 35. Attached hereto as **Exhibit 4** is a true and correct copy of an informal
12 letter brief from counsel for Plaintiffs to Judge Berg, dated March 7, 2025 (“Pls. Apex
13 IDC Letter 2”), including the 53 exhibits that Plaintiffs affixed thereto.

14 36. Attached hereto as **Exhibit 5** is a true and correct copy of excerpts of
15 the official transcript of the deposition of Faiz Ahmad, dated January 29, 2025.¹

16 37. Attached hereto as **Exhibit 6** is a true and correct copy of excerpts of
17 the official transcript of the deposition of Shane Daniels, dated February 6, 2024.

18 38. Attached hereto as **Exhibit 7** is a true and correct copy of an excerpt of
19 BANA’s Responses and Objections to Plaintiff Jennifer Yick’s First Set of
20 Interrogatories.

21 39. Attached hereto as **Exhibit 8** is a true and correct copy of excerpts of
22 the official transcript of the deposition of Jennifer Ehresman, dated February 19,
23 2025.

24 40. Attached hereto as **Exhibit 9** is a true and correct copy of excerpts of
25 the official transcript of the deposition of William Fox, dated February 13, 2025.

26 41. Attached hereto as **Exhibit 10** is a true and correct copy of excerpts of

27 ¹ Should the Court desire a full copy of the Ahmad transcript or any other transcript
28 attached hereto as an exhibit, BANA will provide a full copy to the Court upon
request.

1 the official transcript of the deposition of Bradley Garfield, dated December 10,
2 2024.

3 42. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts of
4 the official transcript of the deposition of Ryan Schwartz, dated December 4, 2024.

5 43. Attached hereto as **Exhibit 12** is a true and correct copy of excerpts of
6 the official transcript of the deposition of Renee Johnson, dated May 7, 2024.

7 44. Attached hereto as **Exhibit 13** is a true and correct copy of excerpts of
8 the official transcript of the deposition of Paul Simpson, dated February 21, 2025.

9 45. Attached hereto as **Exhibit 14** is a true and correct copy of excerpts of
10 the official transcript of the deposition of Michael Letson, dated February 16, 2024.

11 46. Attached hereto as **Exhibit 15** is a true and correct copy of excerpts of
12 the official transcript of the deposition of Melissa Ramirez (formerly Gargagliano),
13 dated February 11, 2025.

14 47. Attached hereto as **Exhibit 16** is a true and correct copy of excerpts of
15 the official transcript of the deposition of Anne Holt, dated January 8, 2025.

16 48. Attached hereto as **Exhibit 17** is a true and correct copy of excerpts of
17 the official transcript of the deposition of William Martin, dated February 14, 2024.

1 I declare under penalty of perjury under the laws of the United States that the
2 foregoing is true and correct. Executed on April 11, 2025, in Washington, DC.

3
4
5 By: s/ Matthew L. Riffie

6 MATTHEW L. RIFFEE (pro hac vice)
7 *MRiffie@goodwinlaw.com*
8 **GOODWIN PROCTER LLP**
9 1900 N Street, NW
10 Washington, DC 20036
11 Tel.: +1 202 346 4000
12 Fax: +1 202 346 4444

13
14
15 Attorneys for Defendant
16 BANK OF AMERICA, N.A.
17
18
19
20
21
22
23
24
25
26
27
28