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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

20 **MEMORANDUM OF POINTS**
21 **AND AUTHORITIES IN**
22 **SUPPORT OF DEFENDANT'S**
23 **MOTION TO STAY PENDING**
24 **RESOLUTION OF RULE 23(f)**
25 **PETITION**

26 Date: September 16, 2025
27 Time: TBD
28 Ctrm: 2D – 2nd Floor
Judge: Hon. Gonzalo P. Curiel

29 **FILED PROVISIONALLY UNDER SEAL PURSUANT**
30 **TO STIPULATED PROTECTIVE ORDER**

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1 Bank of America, N.A. (BANA) respectfully moves to stay all proceedings in
2 this case pending final resolution of BANA's Petition for Leave to Appeal Under
3 Fed. R. Civ. P. 23(f), currently pending before the United States Court of Appeals
4 for the Ninth Circuit. Dkt. 510 (USCA Case No. 25-4072).

5 As the Court is aware, BANA opposed Plaintiffs' motion for class certification
6 on the grounds that Plaintiffs' class included not just uninjured individuals, but also
7 likely criminal fraudsters, and Plaintiffs proposed no class-wide method for
8 separating the uninjured from the injured, destroying predominance. Dkt. 349, Class
9 Cert. Opp., at 34-35. BANA supported its objections with examples of individuals
10 who met Plaintiffs' class definition and, as the evidence strongly suggests, committed
11 fraud against California's Employment Development Department (EDD) or
12 BANA—or both—by submitting fraudulent claims for unemployment benefits
13 and/or fraudulent unauthorized transaction claims. *Id.* at 21-23. In granting Plaintiffs'
14 motion, the Court misconstrued the Ninth Circuit's decision in *Olean Wholesale*
15 *Grocery Cooperative, Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651 (9th Cir. 2022)
16 (en banc), to hold that there is no obstacle to certifying a class containing numerous
17 "uninjured" class members. Dkt. 494, Class Cert. Order, at 61 (*citing Olean*, 31 F.4th
18 at 669). BANA has filed a timely Rule 23(f) petition for permission to appeal the
19 Court's class certification order to the Ninth Circuit, asking the Court of Appeals to
20 answer the following question: "Whether this Court should review a class-
21 certification grant that puts [REDACTED] at stake and allows
22 criminals to share in a class recovery without proposing any mechanism for removing
23 these ineligible plaintiffs from the class."¹

24 This Court has previously held that the prospect of appellate guidance on
25 "what standard to apply to assess predominance where there are an 'appreciable'
26 number of uninjured class members" supported a stay of this case. Dkt. 448, Stay

27 ¹ BANA's Rule 23(f) Petition is Exhibit 1 to the Declaration of Valerie A. Haggans
28 submitted herewith.

1 Order, at 7. As the Court explained, when an appellate “decision will likely inform
2 on the proper standard to apply,” “the orderly course of justice and judicial economy”
3 support staying this action pending the higher court’s decision. *Id.* The same is true
4 of BANA’s Rule 23(f) petition, should the Ninth Circuit accept it.

5 Meanwhile, discovery in this MDL is effectively complete, and dispositive
6 motion deadlines were vacated (*id.* at 9) and have yet to be re-set. It would be
7 extremely inefficient and would likely cause significant prejudice to BANA to force
8 this case to barrel further toward a class trial or a class-wide decision on the merits
9 under Rule 56 when there is a substantial likelihood that the Ninth Circuit will review
10 whether this case can proceed on a class-wide basis in the first place. Moreover,
11 staying proceedings pending the Ninth Circuit’s Rule 23(f) review would cause no
12 harm or prejudice to Plaintiffs because, as this Court is well aware, *every single class*
13 *member has already received more than full compensation for their alleged damages.*
14 *E.g.*, Dkt. 448, Stay Order, at 8. District courts routinely stay proceedings pending a
15 request for Rule 23(f) review.² This Court should do the same here, and wait to issue
16 a revised scheduling order until after the Ninth Circuit decides whether to accept
17 BANA’s petition.

18 **RELEVANT BACKGROUND**

19 Plaintiffs filed their motion for class certification on August 29, 2024. Dkt.
20 324, Class Cert. Mot. BANA opposed on October 24, 2024, arguing in part that the
21 Supreme Court’s decision in *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021),
22 precludes class certification in this case. Dkt. 349, Class Cer. Opp., at 34-35. BANA
23 posited that *TransUnion* established that “[e]very class member must have Article III

24 ² See *e.g.*, *Alvarez v. NBTY, Inc.*, 2020 WL 804403, at *3 (S.D. Cal. Feb. 18, 2020)
25 (staying case “in its entirety pending resolution of Plaintiff’s Rule 23(f) petition, and
26 if the petition is granted, Plaintiff’s Ninth Circuit appeal”); *Salhotra v. Simpson*
27 *Strong-Tie Co., Inc.*, 2022 WL 1091799, at *3 (N.D. Cal. Apr. 12, 2022) (staying
28 litigation pending ruling on Rule 23(f) petition); *Flo & Eddie, Inc. v. Sirius XM*
Radio, Inc., 2015 WL 4397175, *5 (C.D. Cal. June 8, 2015) (staying case “pending
the resolution of [defendant]’s forthcoming Rule 23(f) petition to the Ninth Circuit
and possible appellate proceedings”).

1 standing”—*i.e.*, a “concrete injury in fact”—“in order to recover individual
2 damages,” and that “Plaintiffs’ putative classes include multiple types of cardholders
3 with no injury,” including specific individuals that BANA identified within the class
4 where the evidence strongly suggested that they defrauded EDD with fraudulent
5 benefits claims and BANA with fraudulent unauthorized transaction disputes. *Id.*
6 (citing *TransUnion*, 594 U.S. at 431-33). Moreover, BANA asserted that the
7 consumer-specific evidentiary process required to distinguish class members who
8 were actually injured from those who were not “defeats predominance,” and
9 therefore precludes certification. *Id.*

10 In response, Plaintiffs pointed the Court repeatedly to *Olean*, arguing that
11 under the Ninth Circuit’s precedent, “Rule 23 does not preclude ‘certification of a
12 class that potentially includes more than a de minimis number of uninjured class
13 members,’” even when faced with evidence that their class as defined includes not
14 just members lacking Article III injury but *known criminal fraudsters*. Dkt. 378,
15 Class Cert. Reply, at 2 (quoting *Olean*, 31 F.4th at 669); *see also id.* at 3, 15. Plaintiffs
16 did not dispute that these class members lack injury or standing under Article III—
17 they just claimed it “would not be enough to preclude certification” and is a “tiny
18 percentage,” anyway. *Id.* at 15. The Court heard argument on Plaintiffs’ motion on
19 January 17, 2025. Dkt. 408.

20 After the hearing on Plaintiffs’ motion, and before the Court issued its
21 decision, the United States Supreme Court granted certiorari to review the Ninth
22 Circuit’s decision in *Davis v. Laboratory Corp. of America Holdings*, specifically to
23 decide “[w]hether a federal court may certify a class action pursuant to Federal Rule
24 of Civil Procedure 23(b)(3) when some members of the proposed class lack any
25 Article III injury.” 2024 WL 489288 (9th Cir. Feb. 8, 2024), *cert. granted in part*,
26 2025 WL 288305 (U.S. Jan. 24, 2025). BANA moved to stay class certification and
27 dispositive motion practice in this case pending the Supreme Court’s decision in
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1 *Laboratory Corp.* Dkt. 415, Stay Mot. The Court granted BANA’s motion because
2 “the orderly course of justice and judicial economy” supported a stay where the
3 Supreme Court’s “decision will likely inform on the proper standard . . . to apply to
4 assess predominance when there are an ‘appreciable’ number of uninjured class
5 members.” Dkt. 448, Stay Order, at 7. On June 5, 2025, the Supreme Court dismissed
6 the writ of certiorari in *Laboratory Corp.* as improvidently granted due to a
7 procedural issue specific to that case. 605 U.S. ___, 2025 WL 1583302 (2025).

8 On June 16, 2025, having lifted the stay, the Court granted Plaintiffs’ motion
9 for class certification. Dkt. 494, Class Cert. Order. On June 30, 2025, BANA timely
10 filed a petition for permission to appeal under Rule 23(f) in the United States Court
11 of Appeals for the Ninth Circuit. The Rule 23(f) petition asks the Ninth Circuit to
12 resolve the following question: “Whether this Court should review a class-
13 certification grant that puts [REDACTED] at stake and allows
14 criminals to share in a class recovery without proposing any mechanism for removing
15 these ineligible plaintiffs from the class.” 23(f) Petition at 12.

16 BANA’s petition argues that the Court’s class certification decision rests on a
17 misinterpretation of Rule 23 and Ninth Circuit precedent, including *Olean*, in at least
18 three different ways. See Rule 23(f) Petition at § II.A. First, BANA argues that the
19 Court held that the presence of uninjured class members—even those who are likely
20 criminal fraudsters—was no problem for Plaintiffs because the Court construed
21 *Olean* to hold that there is no obstacle to certifying a class containing numerous
22 “uninjured” class members. Petition at § II.A.1.; Dkt. 494, Class Cert. Order, at 59.
23 Because *TransUnion* clearly states that no damages can be *awarded* to uninjured
24 plaintiffs, *Olean* permits a class to be certified only if there is some method for
25 identifying uninjured class members before judgment that will not devolve into
26 hundreds of mini-trials. *Olean*, 31 F.4th at 680-81; *Van v. LLR, Inc.*, 61 F.4th 1053,
27 1067-69 (9th Cir. 2023). But no such method was proposed here. Instead, Plaintiffs
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1 argued—and the Court agreed—that they didn’t *need* one, because BANA had
2 already done it for them in connection with its regulatory settlement. Dkt. 494, Class
3 Cert. Order, at 57-59. The Court therefore never required Plaintiffs to prove
4 predominance, as required by Rule 23(b)(3). *See* Rule 23(f) Petition at § II.A.1.

5 *Second*, BANA argues that in adopting Plaintiffs’ proposed class definition
6 that “already excludes any person who . . . has previously engaged in fraudulent
7 Program conduct” (Dkt. 494, Class Cert. Order, at 56), the Court created “a ‘fail safe’
8 class that is defined to include only those individuals who were injured by the
9 allegedly unlawful conduct.” *Olean*, 31 F.4th at 669 n.14 (quoting *Ruiz Torres v.*
10 *Mercer Canyons Inc.*, 835 F.3d 1125, 1138 n.7 (9th Cir. 2016)). Excluding fraudsters
11 from the class only once BANA identifies them gets the issue backwards, and is not
12 what the law requires. District courts must assess the necessity of “a class-member-
13 by-class-member assessment of the individualized issue” once such an individualized
14 issue is identified. *Van*, 61 F. 4th at 1069. The Court did not conduct this assessment
15 here. And the Court’s misunderstanding of the degree to which EFTA requires
16 Plaintiffs to shoulder individualized proof compounds the predominance problems.
17 For example, the Court concluded that class members need not show that their
18 accounts were “created for personal, family or household purposes”—rather than for
19 fraudulent or criminal purposes—because EDD accounts are “prepaid accounts.”
20 Dkt. 494, Class. Cert. Order, at 49-50. But as the CFPB explained when it removed
21 the phrase “established primarily for personal, family, or household purposes” from
22 the regulation governing prepaid accounts (12 C.F.R. § 1005.2(b)(3)), the phrase was
23 “unnecessary here as it already appears in the main definition of account in [12
24 C.F.R.] § 1005.2(b)(1), and prepaid accounts are expressly included as a subcategory
25 within that broader definition.” Prepaid Accounts Under the Electronic Fund Transfer
26 Act (Regulation E) and the Truth in Lending Act (Regulation Z), 81 Fed. Reg. 83968
27 (Nov. 22, 2016). Correctly interpreted, EFTA requires individualized proof by
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1 Plaintiffs, which destroys predominance here—a problem that cannot be avoided by
2 Plaintiffs’ fail-safe class definition. *See* Rule 23(f) Petition at § II.A.2.

3 *Third*, BANA’s Rule 23(f) petition seeks review of the Court’s determination
4 that “many mini-trials will not overwhelm the proceedings,” because the necessary
5 fact-intensive analysis will come from BANA’s own records. Dkt. 494 Class Cert.
6 Order, at 60. Even though BANA has some records, other critical information about
7 individual class members’ claims will come from either the cardholders themselves
8 or EDD, not BANA. *See* Dkt. 494, Class Cert. Order, at 60 (recognizing that EDD
9 has information regarding cardholders’ entitlement to benefits). Moreover, even if
10 the whole universe of relevant materials came from BANA’s records, the class-
11 member-by-class-member review of those records is still exactly the type of
12 individualized inquiry that defeats predominance. The Court further held that these
13 mini-trials were irrelevant by holding that Plaintiffs only needed to satisfy Rule 23
14 when it comes to their “prima facie case.” Dkt. 494, Class Cert. Order, at 51-52.
15 BANA seeks appellate review of this determination, which is “directly at odds with
16 the way the Ninth Circuit has interpreted Rule 23(b)(3). The important inquiry is not
17 whether common issues predominate with respect to plaintiff’s prima facie case, but
18 rather will common issues predominate in the entire litigation.” *In re Wells Fargo*
19 *Home Mortg. Overtime Pay Litig.*, 268 F.R.D. 604, 612 (N.D. Cal. 2010) (citing
20 *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001)). “Simply
21 because the plaintiff may be able to establish the prima facie case using some form
22 of common proof does not mean that defendant is limited to common proof when
23 asserting relevant defenses.” *Id.* The common issues here pale in comparison to
24 individual ones regarding Plaintiffs’ entitlement to damages. *See also* Rule 23(f)
25 Petition at § II.B.

26 Class discovery in the MDL is effectively complete. Fact discovery concluded
27 earlier this year, and expert discovery concluded on June 11, 2025. In connection
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1 with the *Laboratory Corp.* stay, the Court vacated the existing deadlines for
2 dispositive motions, which have yet to be re-set. Dkt. 448, Stay Order, at 9. The Court
3 has scheduled a Case Management Conference for July 17, 2025. Dkt. 509.

4 ARGUMENT

5 **I. Judicial Efficiency Supports Staying Proceedings Until the Ninth Circuit** 6 **Decides the Propriety of Class Certification.**

7 Some courts in this circuit evaluate stay requests pursuant to the “power
8 inherent in every court to control the disposition of the causes on its docket with
9 economy of time and effort for itself, for counsel, and for litigants,” as guided by
10 *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). *See, e.g., Great Am. E&S*
11 *Ins. Co. v. Dye Precision, Inc.*, 2024 WL 4529578 at *3 (S.D. Cal. Oct. 16, 2024);
12 *Wang v. Abbott Lab'ys*, 2022 WL 16951658 at *3 (S.D. Cal. Nov. 15, 2022); *Hart v.*
13 *Charter Commc'ns, Inc.*, 2019 WL 7940684, at *4 (C.D. Cal. Aug. 1, 2019)
14 (collecting cases); *McFaddin v. E.A. Renfroe & Co.*, 2015 WL 13774232, at *1 (C.D.
15 Cal. Oct. 1, 2015). These courts have reasoned that “the *Landis* test applies where,
16 as here, a party seeks only to stay the court’s proceedings, rather than the effect of a
17 judgment.” *Hart*, 2019 WL 7940684, at *4. The *Landis* factors include “(1) ‘the
18 possible damage which may result from the granting of a stay,’ (2) ‘the hardship or
19 inequity which a party may suffer in being required to go forward,’ and (3) ‘the
20 orderly course of justice measured in terms of the simplifying or complicating of
21 issues, proof, and questions of law which could be expected to result from a stay.’”
22 *Dye Precision, Inc.*, 2024 WL 4529578, at *3 (quoting *CMAX, Inc. v. Hall*, 300 F.2d
23 265, 268 (9th Cir. 1962)). These factors all point in favor of a stay:

24 *First*, there is no “meaningful harm from a stay of this action.” *Id.* at *4. As
25 explained *infra* at 11, and as this Court is well aware, Plaintiffs’ class is defined to
26 include *only those people who have already been paid*. *See* Dkt. 448, Stay Order, at
27 8. Thus, Plaintiffs cannot demonstrate hardship. *Id.* (finding no hardship to Plaintiffs
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1 because allegedly “injured class members have received direct compensation, and if
2 sought and approved, consequential damages”). Moreover, any injury Plaintiffs may
3 suffer from a short delay can be remedied through prejudgment interest on any
4 monetary damages.

5 *Second*, the “hardship” and “inequity” that will result without a stay is patent;
6 in fact, “both parties could suffer harm if proceedings are not stayed. Depending on
7 the ruling of the Ninth Circuit on appeal,” “both parties could be required to engage
8 in duplicative and unnecessary . . . motions practice.” *Hart*, 2019 WL 7940684, at
9 *5. As this Court previously found, such hardship and inefficiency supports a stay.
10 Dkt. 448, Stay Order, at 8-9 (citing cases, and finding that “it would be an
11 unnecessary waste of resources to continue [to] litigate the class action issues,”
12 including dispositive motion practice, during appellate review of “an issue that will
13 impact the legal analysis on Rule 23(b)(3)”).

14 *Third*, courts are persuaded that the orderly administration of justice weighs in
15 favor of granting a stay where “a stay [would] simplify the issues.” *Wang*, 2022 WL
16 16951658 at *6. It “does not make sense for this Court to expend its time and energy”
17 deciding dispositive and *Daubert* motions only for the Ninth Circuit to hold that class
18 certification is inappropriate. *Durruthy v. Charter Commc'ns, LLC*, 2021 WL
19 254194, at *2 (S.D. Cal. Jan. 25, 2021) (quoting *C.B.S. Emps. Fed. Credit Union v.*
20 *Donaldson, Lufkin & Jenrette Sec. Corp.*, 716 F. Supp. 307, 310 (W.D. Tenn. 1989));
21 *see also* Dkt. 448, Stay Order, at 8-9 (granting stay of dispositive motions).

22 **II. This Case Satisfies the *Nken* Standard for a Stay.**

23 Some courts in this Circuit have evaluated motions for a stay of proceedings
24 pending a Rule 23(f) appeal using the four factors set out in *Nken v. Holder*, 556 U.S.
25 418 (2009). There is “substantial overlap” between the two standards and the
26 outcome is often “the same under either standard.” *Romero v. Securus Techs., Inc.*,
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1 383 F. Supp. 3d 1069, 1073 (S.D. Cal. 2019). This is such a case: a stay is warranted
2 under the *Nken* standard as well.

3 Under that standard, the court considers four factors in deciding whether to
4 grant a stay pending appeal: “(1) whether the stay applicant has made a strong
5 showing that [it] is likely to succeed on the merits; (2) whether the applicant will be
6 irreparably injured absent a stay; (3) whether issuance of the stay will substantially
7 injure the other parties interested in the proceeding; and (4) where the public interest
8 lies.” *Romero*, 383 F. Supp. 3d at 1073 (quoting *Nken*, 556 U.S. at 434); *see Alvarez*,
9 2020 WL 804403 at *1 (granting motion to stay case in its entirety pending resolution
10 of the plaintiff’s Rule 23(f) petition). All four factors weigh in favor of staying this
11 case in this Court while the Ninth Circuit decides BANA’s Rule 23(f) Petition, and
12 any subsequent appeal if permitted.

13 *First*, BANA’s appeal is likely to succeed on the merits. In order “to justify a
14 stay, [parties] need not demonstrate that it is more likely than not that they will win
15 on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011). Instead,
16 parties need only show that they have a “substantial case for relief on the merits,”
17 meaning a case that raises “serious legal questions” or has a “fair prospect” of
18 success. *Id.* at 967-68. BANA’s Rule 23(f) petition easily satisfies this standard. The
19 Court’s class certification order misconstrued *Olean* by failing to require Plaintiffs
20 to propose a method of separating the uninjured from the injured pre-judgment that
21 would not require thousands of mini-trials, as Rule 23 predominance requires. *See*
22 Rule 23(f) Petition at § II.A.1. It also used Plaintiffs’ class definition, which excluded
23 certain class members determined by BANA to have previously engaged in
24 fraudulent conduct, but failed to address the relevant question of *how* Plaintiffs and
25 the Court would ensure that everyone who engaged in such conduct or was uninjured
26 would be excluded without individualized inquiries, resulting in a fail-safe class.
27 These errors were compounded by the Court’s misinterpretation of the degree to
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1 which EFTA requires Plaintiffs to shoulder individualized proof. *See id.* at § II.A.2.
2 Finally, the class certification order’s conclusion that mini-trials will not overwhelm
3 the proceedings because the evidence for the mini-trials will come from BANA’s
4 own records is both wrong (other, critical evidence will come from the cardholders
5 themselves and EDD) and irrelevant (the mini-trials will happen regardless of the
6 source of the evidence to be presented). *See id.* at § II.B. These are all “serious legal
7 questions” that have a “fair prospect” of success on appeal. *Leiva-Perez*, 640 F.3d at
8 967-68.

9 *Second*, BANA will be irreparably harmed without a stay, as it faces the risk
10 of having to litigate this case on a classwide basis while the Ninth Circuit is deciding
11 whether this case should proceed as a class action at all. Courts in this district have
12 found that “[t]he costs of pretrial litigation may amount to an irreparable harm . . .
13 when the costs would impose serious burdens that an appeal would avoid.” *Alvarez*,
14 2020 WL 804403 at *2. Indeed, this Court concluded the same when it granted
15 BANA’s request to stay the matter pending the Supreme Court’s consideration of
16 *Laboratory Corp.* *See* Dkt. 448, Stay Order, at 8-9 (granting stay, and finding that
17 engaging in “unnecessary ‘motion practice, planning and preparing for trial’” would
18 be an “unnecessary waste of resources” while class action issues remained
19 undecided). It would be a monumental waste of time and resources for BANA to
20 defend this case as a class action, only to have to alter its strategy and defend
21 hundreds of individual suits should the Ninth Circuit grant the Rule 23(f) petition and
22 ultimately overturn the class certification order. *See id.*; *Alvarez*, 2020 WL 804403
23 at *2-3 (granting motion to stay where risk of having to retry an individual case as a
24 class action sufficiently established irreparable harm). “It is more efficient for both
25 parties to know the Ninth Circuit’s decision before proceeding.” *Alvarez*, 2020 WL
26 804403 at *2. Because “further dispositive motion practice and trial preparation
27 would prove both costly and premature in the event of remand,” BANA faces
28

1 irreparable harm if this stay is not granted. *Pena v. Taylor Farms Pacific, Inc.*, 2015
2 WL 5103157, *5 (E.D. Cal. Aug. 31, 2015) (granting motion to stay); *see also* Dkt.
3 448, Stay Order, at 8-9.

4 *Third*, as this Court previously found, issuance of a stay will not harm
5 Plaintiffs. Since Plaintiffs seek only monetary damages on behalf of the class which
6 was defined to include only those people who have *already been reimbursed* for their
7 unauthorized transaction claims, and who have *already received additional*
8 *consequential harm payments* pursuant to BANA’s regulatory remediation plan, any
9 harm from delaying that potential recovery does not justify denying the stay. Dkt.
10 448, Stay Order, at 8. A stay would delay only Plaintiffs’ attempts to treble those
11 damages they have already been paid. Dkt. 415-1, Stay Mot. Mem., at 9. As Courts
12 routinely hold, that is not a sufficient basis to deny a stay. *See* Dkt. 448, Stay Order,
13 at 8; *Ludlow v. Flowers Foods, Inc.*, 2020 WL 773253, at *2 (S.D. Cal. Feb. 18,
14 2020) (“Mere delay in receiving damages is an insufficient basis to deny a stay.”);
15 *see also* *Nguyen v. Marketsource, Inc.*, 2018 WL 2182633, at *6 (S.D. Cal. May 11,
16 2018) (plaintiff “will . . . not be unduly prejudiced or harmed by a delay in receiving
17 monetary relief”). In fact, a stay has the potential to benefit Plaintiffs by preventing
18 unnecessary confusion in the event the class certification order is reversed. Absent a
19 stay, notice will go out to class members across the state of California. If that class is
20 later decertified, confusion will abound and Plaintiffs will be confronted with a class
21 they have communicated with but no longer represent. *See Brown v. Wal-Mart*
22 *Stores, Inc.*, 2012 WL 5818300, *4-5 (N.D. Cal. Nov. 15, 2012) (finding “that the
23 balance of hardships tips sharply toward a stay in this action” where class
24 certification notice will go out to 22,000 class members who may require a curative
25 notice if the Ninth Circuit reverses).

26 *Fourth*, the public’s “interest in efficient use of judicial resources” justifies a
27 stay here. *Romero*, 383 F. Supp 3d at 1077. Staying this case pending appeal would
28

1 “ensure the proper resolution of the important issues raised in this case by preventing
2 potentially wasteful work on the part of the court and the parties while the Ninth
3 Circuit considers the serious legal question raised by Defendant's Rule 23(f)
4 petition.” *Brown*, 2012 WL 5818300, at *5 (internal quotation marks omitted); *see*
5 *e.g.*, *Ludlow*, 2020 WL 773253, at *3. Indeed, the Court has already decided that
6 staying this case for the purpose of potential appellate clarity on the predominance
7 standard served “the orderly course of justice and judicial economy.” Dkt. 448, Stay
8 Order, at 7. Those reasons are just as compelling now. The Court should stay this
9 action pending resolution of BANA’s Rule 23(f) petition and, if the petition is
10 granted, the appeal. Indeed, discovery is effectively complete and there are no
11 dispositive motion or pretrial deadlines that would need to be vacated if the stay is
12 granted. Judicial economy is plainly served by delaying the imposition of new
13 deadlines while the Ninth Circuit decides whether to review this case. Given that
14 class certification orders are “inherently tentative” and subject to amendment or
15 reconsideration “at any time” before judgment, it likewise makes little sense for the
16 litigation to continue under a class certification order that this Court may very well
17 need to reconsider or revise under a new legal standard after BANA’s 23(f) petition
18 is decided. *See Davidson v. O'Reilly Auto Enters., LLC*, 968 F.3d 955, 964 n.7 (9th
19 Cir. 2020) (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469 n.11 (1978)).

20 CONCLUSION

21 For the forgoing reasons, BANA respectfully requests that the Court grant this
22 motion and stay all proceedings in this action, including class notice and dispositive
23 motion practice, pending the resolution of BANA’s Rule 23(f) petition and, if the
24 petition is granted, BANA’s appeal.

25 Dated: July 3, 2025

Respectfully submitted,

27 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 July 3, 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: July 3, 2025

s/ James W. McGarry