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

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

Attorneys for Defendant
BANK OF AMERICA, N.A.

[*ADDITIONAL COUNSEL LISTED IN SIGNATURE BLOCK*]

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

IN RE: BANK OF AMERICA CALIFORNIA UNEMPLOYMENT BENEFITS LITIGATION	Case No. 21-MD-02992-GPC-MSB **DEFENDANT BANK OF AMERICA, N.A.'S NOTICE OF NEW EVIDENCE CONCERNING CLASS MEMBERS RELEVANT TO ITS PENDING MOTION FOR SUMMARY JUDGMENT, ITS MOTION TO EXCLUDE EXPERTS, AND THE CERTIFICATION OF THE CLASSES** Date: May 21, 2026 Time: 1:30 p.m. Ctrm: 12A – 12th Floor Judge: Hon. Gonzalo P. Curiel FILED PROVISIONALLY UNDER SEAL PURSUANT TO STIPULATED PROTECTIVE ORDER

DEFENDANT'S NOTICE

Defendant Bank of America, N.A. ("BANA") files this notice of a development relevant to (1) BANA's pending Motion for Partial Summary Judgment (ECF 589-1, "BANA Partial MSJ"), (2) BANA's pending Motion to Exclude Greg Regan (ECF 567-1, "BANA MTE Regan"), and (3) the Court's Opinion and Order certifying the classes in the above captioned-matter (ECF 494, "Class Cert. Order").

On June 16, 2025, the Court issued an opinion and order certifying five classes. In certifying the classes, the Court held that BANA had not sufficiently demonstrated with evidence that individual issues would predominate because its evidence only "amount[ed] to a de minimis number of uninjured class members." Class Cert Order at 58-59. The Court further determined that "[t]here is no evidence that many unearthed fraudulent claims will arise." *Id.* at 57-58.

On October 17, 2025, BANA filed a motion for partial summary judgment and motions to exclude five of Plaintiffs' experts, including Plaintiffs' damages expert Greg Regan, who purports to calculate "actual damages" for class members under the Electronic Funds Transfer Act ("EFTA") and based on certain other claims. In its motions, among other things, BANA argued that it should be granted summary judgment and that Regan's opinions should be excluded because they relied on assumptions, rather than evidence, of actual harm—and particularly because Plaintiffs' and Regan's damages models and calculations could not distinguish between injured and uninjured cardholders (including those who obtained their accounts through fraud), or show that BANA's alleged actions resulted in any actual harm (as required to recover actual damages under the EFTA). *See, e.g.,* BANA Partial MSJ at 21-22; BANA MTE Regan at 10-13; ECF 693 at 9-10; ECF 684 at 2-3.

In support of those motions, BANA put forth evidence of the pervasive fraud in the prepaid unemployment insurance (UI) programs, and particularly in the prepaid UI program administered by the California Employment Development

Department ("EDD") in 2020 and 2021. *See, e.g.,* ECF 589-2 ¶¶ 46-51 ("BANA SUF ISO Partial MSJ"). BANA has long argued that many of these fraudsters are included in the certified classes. However, because BANA had no role in making eligibility determinations and does not have access to UI claimants' benefits applications or eligibility information, BANA has not been able to determine how many or which class members had engaged in UI benefits fraud (and therefore were uninjured). *See, e.g., id.* ¶¶ 6, 9, 118, 129, 135.

Circumstances have changed considerably since then. The United States Department of Labor Office of Inspector General ("DOL OIG") has released information confirming the worst of BANA's suspicions: the classes are full of fraudsters. As indicated in the Declaration of Jennifer Lennon ("Lennon Decl.") attached hereto as Exhibit 1, [redacted]. Lennon Decl. ¶¶ 6-9.

As stated in the 2022 DOL OIG Alert Memorandum (which was included in BANA's summary judgment filing), the DOL OIG has long suspected and has been investigating significant fraud in the prepaid UI populations. *See* BANA SUF ISO Partial MSJ ¶¶ 47-49; ECF 590; *see also* Lennon Decl. ¶¶ 4-7 & Ex. B. [redacted]. Lennon Decl. ¶¶ 5-6. [redacted]. *Id.* ¶ 9. [redacted]

[redacted]. *Id.* ¶¶ 9-10.

A public alert memorandum was issued about the DOL OIG's investigation of [redacted] Prepaid Accounts on January 30, 2026. *See id.* ¶¶ 5-6 & Ex. A. [redacted]. *Id.* ¶ 6.

On May 8, 2026, [redacted]. *Id.* ¶ 8. [redacted]. *Id.* ¶ 9. [redacted].

[redacted] because EDD (and not BANA) is in possession of UI benefits eligibility information, and is and was at all relevant times responsible for making UI benefits eligibility determinations. *Id.* ¶ 10. As of today's date, [redacted]. *Id.* ¶ 11.

BANA submits this Notice because it believes it is highly relevant to questions at issue in its pending dispositive motion and motions to exclude Plaintiffs' experts, and to Plaintiffs' ability to pursue claims and damages on behalf of the classes in this action. BANA further reserves its right to and intends to seek decertification of the classes because they clearly contain a significant number of uninjured fraudsters.

Dated: May 19, 2026

Respectfully submitted,

By: *s/ James W. McGarry*

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

MATTHEW L. RIFFEE (*pro hac vice*)
MRiffee@goodwinlaw.com
SABRINA M. ROSE-SMITH (*pro hac vice*)
SRoseSmith@goodwinlaw.com
KEITH LEVENBERG (*pro hac vice*)
KLevenberg@goodwinlaw.com
GOODWIN PROCTER LLP
1900 N Street NW
Washington, DC 20036
Tel: +1 202 346 4000
Fax: +1 202 346 4444

LAURA G. BRYS (SBN 242100)
LBrys@goodwinlaw.com
GOODWIN PROCTER LLP
601 S. Figueroa St., Suite 4100
Los Angeles, CA 90017
Tel.: +1 213 426 2500
Fax: +1 617 346 4444

VALERIE A. HAGGANS (*pro hac vice*)
VHaggans@goodwinlaw.com
LINDSAY E. HOYLE (*pro hac vice*)
LHoyle@goodwinlaw.com
GOODWIN PROCTER LLP
620 Eighth Avenue
New York, NY 10018
Tel: +1 212 813-8800
Fax: +1 212 355-3333

YVONNE W. CHAN (*pro hac vice*)
YChan@jonesday.com

JONES DAY
100 High Street
Boston, MA 02110
Tel.: +1 617 960 3939
Fax: +1 617 449 6999

JANICE P. BROWN (SBN 114433)
jbrown@myersnave.com
MATTHEW B. NAZARETH (SBN 278405)
mnazareth@myersnave.com
MEYERS NAVE
600 B Street, Suite 1650
San Diego, CA 92101

Attorneys for Defendant
BANK OF AMERICA, N.A.

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 May 19, 2026. 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.

Dated: May 19, 2026

s/ James W. McGarry
JAMES W. MCGARRY