UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

IN RE: BANK OF AMERICA CALIFORNIA UNEMPLOYMENT BENEFITS LITIGATION	Docket No. 21-md-2992-GPC-MSB
	May 21, 2026 1:30 p.m.
	San Diego, California

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE GONZALO P. CURIEL
UNITED STATES DISTRICT JUDGE
(PAGES 1 THROUGH 42, INCLUSIVE.)

A-P-P-E-A-R-A-N-C-E-S

For the Plaintiffs:

Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, California 94108
By: MICHAEL RUBIN, ESQ.
CONNIE K. CHAN, ESQ.
JAMES BALTZER, ESQ.

- and -

Cotchett, Pitre & McCarthy
San Francisco Airport Office Center
840 Malcolm Road
Burlingame, California 94010
By: BRIAN DANITZ, ESQ.
REGINA WANG, ESQ.
VASTI S. MONTIEL, ESQ.

- and -

CaseyGerry
110 Laurel Street
San Diego, California 92101
By: DAVID S. CASEY JR., ESQ.
GAYLE M. BLATT, ESQ.

A-P-P-E-A-R-A-N-C-E-S (CONTINUED)

For the Defendant Bank of America, N.A.:

Goodwin Proctor LLP
1900 N Street, N.W.
Washington, DC 20036
By: SABRINA M. ROSE-SMITH, ESQ.
MATTHEW L. RIFFEE, ESQ.

- and -

Goodwin Proctor LLP
100 Northern Avenue
Boston, Massachusetts 02210
By: JIM McGARRY, ESQ.

- and -

Goodwin Proctor LLP
601 South Figueroa Street, Suite 4100
Los Angeles, California 90017
By: LAURA BRYS, ESQ.

- and -

Goodwin Proctor LLP
The New York Times Building
620 Eighth Avenue
New York, New York 10018
By: VALERIE A. HAGGANS, ESQ.

Court Reporter: Chari Bowery, RPR, CRR
USDC Clerk's Office
333 West Broadway, Suite 420
San Diego, California 92101
chari_bowery@casd.uscourts.gov

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SAN DIEGO, CALIFORNIA; MAY 21, 2026; 1:30 P.M.

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THE CLERK: Number one on the calendar, 21-md-2992, In Re: Bank of America California Unemployment Benefits Litigation, for status.

THE COURT: Appearances, please.

MR. RUBIN: Thank you, Your Honor.

For plaintiffs -- maybe we will do it by firm. Michael Rubin, from Altshuler Berzon. With me are my colleagues, Connie Chan and James Baltzer; and Jess Levy, who is going to be sworn into the bar within the next week or two.

THE COURT: Congratulations.

MR. DANITZ: Good afternoon, Your Honor.

Brian Danitz of Cotchett, Pitre & McCarthy, and with me today are Regina Wang and Vasti Montiel.

THE COURT: Good afternoon.

MR. CASEY: Good afternoon, Your Honor. Dave Casey of CaseyGerry. My partner, Gayle Blatt, is here, Your Honor.

THE COURT: Good afternoon, Mr. Casey.

And then, from the defense side?

MS. ROSE-SMITH: Good afternoon, Your Honor. Sabrina Rose-Smith, with Goodwin Proctor, on behalf of Bank of America.

With me are Matthew Riffee, Valerie Haggans, Jim McGarry, and Laura Brys, all with Goodwin Proctor. And also with me is Sunik Pour (phonetic).

THE COURT: Good afternoon to you all.

And I will let you know that we had been working very hard on the pending motion for summary judgment and the motions to exclude expert testimony, and we were finalizing all of our work so that we could issue a tentative in advance of what would have been the hearing at this time. However, as we all know, there was a filing the night before last related to -- if not developments, related to ongoing reviews by the Department of Labor and inquiries being made of Bank of America, and it relates to an issue that has surfaced throughout these proceedings -- at the class certification stage and even now -- as to the existence of fraudsters within the certified class and whether or not there exists any number of fraudsters and whether or not, moving forward, we would end up tied up with individualized determinations, mini trials, as to these potential fraudsters.

We have addressed the issue in the past, and the Court would respond and say that, as of this time, Bank of America hasn't provided any concrete evidence to that effect. So this notice appears to respond to that finding, that conclusion, that ongoing response from the Court.

And, certainly, the Court could have gone forward with the motion for summary judgment. We could have had a full hearing and we could have issued an opinion. At the same time, the question would be, you know, why, given that we now have this

issue, that it appears it is evolving even as we speak; that there are additional developments, I believe, in the declaration of Jennifer Lennon.

She notes that just recently, in May, [redacted]

And at the same time, it just begs for a response from the plaintiff, and then an opportunity to consider how this affects where we are.

So with respect to that, looks to me like, Mr. Rubin, you are ready to address that.

MR. RUBIN: I am, Your Honor.

THE COURT: Please.

MR. RUBIN: Thank you for the opportunity to at least present a preliminary response to the bank's Tuesday night filing and for those preliminary comments by Your Honor.

Let me start with the bottom line, and then I will explain how we get there, because we have given thought to both what was included in the Lennon declaration and to the various procedural mechanisms that can be affected going forward.

Our position is that the Tuesday night filing does not affect the summary judgment analysis in any way, and in fact,

we advised the bank this morning, since we have, by my count, 15 attorneys here and lots of binders of documents, if the Court were willing to entertain argument on summary judgment and withhold decision until the Court is ready to issue it, that would be fine with us, because we are here and we have had some difficulty scheduling. We have obviously moved this several times.

Our position is also that the bank's filing does not require decertification or partial decertification; but that, as a procedural matter, if the bank were to choose to file a motion for full or partial decertification, that would probably be the most appropriate motion for us to use to provide our response to however the bank intends to rely upon this new information.

We would request -- and I can go through later some of the specifics -- the opportunity to reopen discovery so we can probe some of the ambiguities in the declaration and the attachments so that when we respond to any file the bank -- to any motion the bank ultimately files, we can respond factually, because this, as you note, doesn't really explain what the bank has determined, what DOL has determined, let alone what EDD has determined. But that is probably the best procedural mechanism for addressing these issues.

But let me place this in context. It's been more than five years. This case is longstanding. The first case was

filed in November 2020, [redacted]. That started causing injury to plaintiffs five and a half years ago. And so, we, like Your Honor, want to move this case along.

The bank's summary judgment motion, as you recall, doesn't actually seek summary judgment as to its liability under EFTA. It challenges damages. It challenges various other causes of action. But there is no significant dispute that the bank did not conduct the statutorily required investigation of the claimants' unauthorized claims within the required ten days.

So Your Honor will issue your decision on summary judgment, but I think it's pretty clear as we go forward that we have a strong liability case. Certainly, there's no contention by the bank that there's no liability as a matter of law as to the EFTA claim.

So the existence or nonexistence of fraudsters is not a question of whether there's a violation of EFTA. It is really a question of, what is the class size? Who does this affect? Who is in and who is out?

And we have known that for a while. We have known that since your class certification decision just about a year ago. It was the end of June 2025, after all the LabCorp stuff before

the Supreme Court.

In that class certification ruling, as you recall, you quoted EFTA, 15 U.S.C. 1693g(b), and you said, on several occasions -- initially on page 4, in the introduction, and then in greater detail at pages 51 to 52 -- what you just said earlier in this hearing, which is that the bank has the burden of demonstrating that one or more of these class members should be excluded because they are, themselves, criminals. And we know that in denying all the claims of class members and freezing their accounts back in the fall of 2020, [redacted]

Well, you gave the bank the opportunity, as the statute provides, to demonstrate who is in fact a criminal. And you went beyond that. You accepted our proposed class definition. And as you recall, our class definition expressly excludes class members who commit fraud. So we already have a mechanism in place.

If at any point prior to trial the bank is able, through whatever mechanism, to meet its burden of proof as to demonstrating that some class members should not be entitled to recover because they are criminals, they are fraudsters, they are out of the class. There's no dispute about that.

The question now is, what has changed? What did we learn from the Tuesday night filing?

We learned a couple of things, as far as we can tell.

We learned for the first time [redacted] when DOL first subpoenaed records from [redacted] in September 2025.

We also know that [redacted] And we now know, from looking at Exhibit B to the Lennon declaration, that the Department of Labor, under this administration, has relied upon four criteria set forth in a 2022 memo that could be used to identify potential fraudsters.

Now, Department of Labor has not found that anyone is a fraudster. It has not found that anyone is a probable fraudster. It has identified, as you pointed out, [redacted] I'm just doing subtraction here.

So, at a minimum -- and this is one of the reasons it doesn't have an impact on summary judgment -- we know that we have got a class, we think -- plaintiffs contend that's 109,000; but at a minimum, [redacted] and all of the liability issues can be determined as to them, as we work through who is in and who is out of the class.

But let's focus for a moment on those four criteria.

There's nothing new. There's nothing sophisticated. There's nothing unknown about those criteria. [redacted].

The EDD, since July of 2021 -- the Court may be familiar with McGregor Scott; used to be the U.S. Attorney in the Eastern District of California. Mr. Scott has been the fraud special counsel for EDD since July 2021. The state auditor's report, which is in the summary judgment record -- it's a Request for Judicial Notice Number 2 -- talks about the analysis that EDD has done.

EDD has gone through these factors, but most importantly, [redacted]. Again, you pointed out in the class certification order, the bank has been working [redacted] issued in July 2022, and I think Your Honor's order said that they began actually looking for fraudsters [redacted] in October 2022 -- what is that? Three and a half years ago -- to see if they can identify fraudsters.

[redacted], in its September 2022, Exhibit B, [redacted] Well, of course, it does.

THE COURT: Let me ask you about that.

Looking at the 2022 memo --

MR. RUBIN: Sure.

THE COURT: -- it appears that there's frustration expressed by the Department of Labor with respect to, I guess, this sister agency and whether or not they are doing enough to obtain and furnish information to the Department of Labor regarding fraud. And so there's repeated -- if not criticisms, complaints about what is being provided by the ETA.

And the ETA, that is a federal agency, correct?

MR. RUBIN: That's right. That's part of the Department of Labor.

THE COURT: And so, the Department of Labor that is otherwise involved in this process of identifying the fraudsters, they are relying on the ETA to furnish information that then would help identify fraudsters. And as of 2022, they are not satisfied, and for good reason.

And so then, to the extent that ETA wasn't providing that sort of information, then I think there's later references to these state work agencies that they themselves aren't providing sufficient information.

So it sounds like Bank of America would be kind of arguing that, at the end of the day, they themselves were being denied the information that would have assisted them in identifying fraud.

So what is your response to that?

MR. RUBIN: My response is that that is incorrect based on what the existing record demonstrates.

So what does the existing record demonstrate?

First, [redacted]. That's -- when someone calls up a call center, if they are able to get through after that 80-some-odd-minute average wait, [redacted]. That's Defendant's Exhibit 39.

[redacted]

You don't need ETA to do anything. And you -- what has -- why was all this triggered in January of 2026 by the then Secretary of Labor, Ms. Chavez-DeRemer? We don't know.

We do know that there's been an effort by the administration to try to find fraud committed in blue states. It's not in the record. We don't know whether this was anything to do with it, but the process was going along.

[redacted], if it wanted to challenge class member status or if it wanted to keep

someone [redacted], to conduct the investigation. And it did, in fact -- again, as you point out in your order, the class certification order -- manually investigate every class member whose claim was $2,000 or more and it couldn't find fraudsters.

[redacted] In addition, one of the factors is, is there an email address -- and again, we have no idea, [redacted], which of the criteria the Department of Labor now believes that a potential fraudster may have violated and we would find that out in discovery, when we ask for all the communications, all the data, all the distribution.

But one of the factors is, if someone has an email address with a domain that doesn't reveal their identity, well, I don't know -- and we can easily find out what the email addresses are -- [redacted].

[redacted]

These are presumably the databases and the inquiries that the bank has been undertaking since October 2022.

[redacted]

[redacted] [redacted] [redacted] There is nothing in the Department of Labor's suggestion that these four categories indicate potential fraud [redacted], that the California EDD, under the special fraud counsel, hasn't been able to figure out.

If, between now and the time of trial -- and we hope that's not too delayed; as Your Honor knows, we have a mandatory settlement conference scheduled for June 24; this case has been going on for a while. But if, at the time of trial, EDD or the bank finds that someone is not a potential fraudster but a real fraudster, a real criminal, then they don't meet the definition, and the bank will have met its burden. But that's the process that's in place.

And I just want to get back for a moment to summary judgment because we are here, prepared. Even though I understand that you are close to finished with a tentative and that would certainly benefit the parties to have the tentative to argue in support of or against, given that we are here and prepared, it may be useful to the Court to hear the arguments and ask the questions on summary judgment. Because if you think about what is actually before the Court, the basic issues as to what constitutes damages, have the various parties met their respective burdens, you are going to -- regardless of what happens with respect to this ongoing inquiry into

following up on the DOL request to conduct further review for those class members, there is going to be a class of a greater or lesser size. The parties, I guess, disagree about what that is. But the size of the class only affects the amount of total damages.

As you know, the way the damages are calculated, we have these extensive charts based on each class member's loss, the date of the loss, and the application of whatever the jury finds is the appropriate interest rate times that period of time. And the expert has made clear that if any fraudster is identified, they are just lopped off. So it doesn't affect any of the issues before the Court on summary judgment.

Obviously, if Your Honor would like us to come back and would like us to consider it --

THE COURT: Let me ask you something.

The easy case is the situation where a fraudster is identified; both sides agree that he is a fraudster, and he is gone.

To the extent that this ongoing process identifies individuals who it is not that clean, and those are then the ones that Bank of America will say, "We have the right to have the jury decide whether or not they are in fact a fraudster." And now, given where we are, they are so numerous that we would end up having enough mini trials where the predominance can no longer be found to exist with respect to these claims.

What is your response to that type of argument?

MR. RUBIN: It is a two-level response. The facile response is you can easily bifurcate a case like this and have any individual adjudications as to damages resolved later, once you determine the class-wide liability.

But the more important response is the bank has an affirmative burden that it doesn't satisfy merely by showing that there's a potential that certain class members are fraudsters.

The bank has been through all 109,000 individuals. It has conducted its manual investigation as to a great many of them. The bank chose [redacted] -- each of these 109 -- this is part of their damages argument.

The bank has [redacted] to all of the class members. There is a question as to the legal significance of that.

The bank has decided that it is not -- [redacted] as EFTA requires, [redacted].

But I think the real answer to your question is, under the

class definition and under your orders and under the section of EFTA that places the burden on the bank, the bank actually has to prove it.

Now, there have been people excluded from the class. At the outset of the case, unrelated to the case, [redacted].

But if we end up with people in a gray area, what do we know about those people? We know that they made claims that someone stole money from their account. We know that those claims were denied by the bank within a day or two, without conducting any investigation, simply because CFF1 automatically caused their claim to be rejected simply because they had a card-present ATM transaction. So we know there was a violation of EFTA, and all the other violations that we go through on summary judgment, [redacted].

Now, it is not exactly clear what the bank is saying. It may be saying that, "Oh, yeah, it is true that we didn't conduct any investigation other than applying CFF1 within the first ten days, but had we done what the law requires us to and had we conducted that complete investigation, we would have

found that they are fraudsters."

But they can't say that as to any of the [redacted] because [redacted]. So it is now, I think, taking a different position, which even though EFTA provides statutory damages, as a matter of equity, it is not appropriate to allow someone to recover the EFTA single and treble damages -- although single have been largely paid -- if it turns out that they are actual fraudsters.

And we have greed with that. And, Your Honor, you have agreed with that. If they can prove actual fraud, then the person is out. But if the bank can't meet that statutory burden, then they are entitled to recovery.

And, again, I come back to the point I made earlier, at a minimum, we have got the [redacted]. And those folks have been waiting a long time for this trial.

So whatever Your Honor decides to do, would the -- the bank, obviously, with permission of the Court, can file whatever motion it files. We will respond with probably a more detailed presentation, including case law, to explain why there should be no stay, why summary judgment shouldn't be disrupted, why we should proceed for liability.

But the pretrial schedule, as currently exists, should stay on. The mandatory settlement conference, before Judge Berg, for June 24, should stay on. We should be allowed to

pursue discovery into everything that Ms. Lennon has said here to try to figure it out in more detail.

There's a lot of hand waving about fraud and there has been from the start of the case. And every time we have specifically undertaken to focus on it and to drill down in the details, we found an insufficiency of proof on the bank's part, as has Your Honor. And we think they are still there. These are large numbers. There's a commonsense reaction.

[redacted]

We will drill down. We will try to figure out the answers. But as yet, we haven't seen anything that would warrant taking this case off the current course or delaying things further.

THE COURT: All right. And I appreciate your remarks, your analysis.

Ultimately, to the extent there was this filing, the Court considered it would be irresponsible to not hear from you, either in person or in writing. To the extent that you wished to inquire further or consider this further and file something, I would have been happy to accommodate that request. It sounds

like you are not making that request and that, instead, you are prepared to have the Court decide the pending motions as to summary judgment and the motions to exclude experts and to maintain the schedule that we currently have with respect to settlement conference and moving forward to pretrial conference.

MR. RUBIN: That's correct.

And if Your Honor expresses a willingness to entertain a motion for decertification or partial decertification, then we would ask that the Court now allow us to reopen discovery so that, when it comes time for us to respond to such a motion, we will have sufficient information to enable us to do so without further delaying the case.

THE COURT: All right. And it is clear from the papers filed by Bank of America that they do expect to file a motion for decertification. And under the law, they are entitled to, to the extent that it is based upon a new body of facts or evidence.

And so, then as far as discovery, it sounds like, depending upon what it is or what information that Bank of America's relying upon, new information, that the plaintiffs would have an opportunity to test it or to learn more about the reliability of that information.

All right. Thank you.

MR. RUBIN: Thank you.

THE COURT: And then, let me turn to defense counsel. Is that going to be you, Ms. Rose-Smith?

MS. ROSE-SMITH: Yes, Your Honor. Thank you.

THE COURT: So, first of all, with respect to timing, as it relates to the 2022 memorandum, that was a memorandum, as I mentioned previously, where the Department of Labor was expressing dissatisfaction, frustration with the ETA and their efforts in supplying information about trying to tamp down, trying to end this campaign of fraud that was taking place.

And then there was the reference to the four-factor test, back then, so that's not new.

In terms of the January 2026 memo, it sounds like [redacted] back in January 2026; and, further, that there would have been some level of communication between [redacted] and the Department of Labor. Is that correct?

MS. ROSE-SMITH: That's correct, Your Honor.

There was -- [redacted]

[redacted]

THE COURT: Do you have any understanding as to why the Department of Labor [redacted]

[redacted]

MS. ROSE-SMITH: So, it is a good question, Your Honor.

From what we understand, [redacted]

[redacted]

[redacted]

THE COURT: There is some sense of urgency that is expressed in this memo that I detected, that the DOL authorities were concerned about, you know, the lack of urgency with its partners and that something needed to be done quickly.

And to the extent that that message is being conveyed, and then, meanwhile, they asserted that they have identified fraudsters, that they wouldn't then take all means of moving forward; and, having identified where the money is, having identified a fraudster, taken the next step, which is to now have those funds, that are earmarked to a particular fraudster, and have them returned to the government so that they can be used for good.

MS. ROSE-SMITH: I -- I don't disagree with you, Your Honor.

I just -- this is the inner workings of the federal government, and I don't know -- [redacted]

[redacted]

THE COURT: [redacted]

[redacted]

And so, with respect to the work that's being performed [redacted]

[redacted]

And to the extent that the answer is "no," [redacted]

[redacted]

MS. ROSE-SMITH: So, from when we were informed, on May 8th, [redacted]

[redacted]

[redacted]

So there wasn't, from that May 8 --

THE COURT: Sorry. That was May 18?

MS. ROSE-SMITH: No. May 8.

THE COURT: [redacted]

[redacted]

MS. ROSE-SMITH: Actually, [redacted]

[redacted]

And then, from beginning -- [redacted]

THE COURT: Okay. So then that explains why this filing was just presented within the last couple of days versus in April or March or February or January.

MS. ROSE-SMITH: Yes, Your Honor.

THE COURT: All right. So then, as to what to make of it and how it affects the proceedings that are before the Court -- the motion for summary judgment, partial summary judgment, and motions for excluding witnesses -- do you agree with Mr. Rubin that, at this point, there really isn't a good reason to hold up proceedings and to otherwise modify our schedule as it relates to the motion for summary judgment?

MS. ROSE-SMITH: You won't be surprised, Your Honor, to discover that, in fact, I don't agree with that.

Our view is -- and we put this in our notice. Our view is that we think that this evidence bears directly on some of the arguments we made in our summary judgment motion and some of our *Daubert* motions.

In particular, we have argued at summary judgment that the plaintiffs have the burden to prove causation, class-wide, in order to recover damages, and they haven't because they can't distinguish between who is a legitimate or not legitimate class member. And before, we had struggled with being able to prove to Your Honor that in fact that class was as riddled with fraud as we thought it was, but now we can. And I would like to say

for a minute why that is, because counsel for plaintiff spent a lot of time saying we could have figured this out.

But you have to understand that all of the work that the bank has been doing has been to try and understand claims fraud. So what -- so all of the work that they did [redacted] was to try and validate whether or not these were legitimate claims; [redacted]

And that information, we think, is actually critical because if these are not legitimate beneficiaries, then they don't have valid claims, and then they don't have claims against Bank of America.

THE COURT: [redacted]

MS. ROSE-SMITH: That's right.

And you will note that even the federal government had trouble getting that data.

THE COURT: [redacted]

MS. ROSE-SMITH: No.

We did -- at the time, one of the things that the bank's fraud analytics department was looking at was [redacted]

THE COURT: Is part of the investigation that was undertaken by Bank of America -- did it include [redacted]

MS. ROSE-SMITH: They did try and identify, inasmuch as they could, but they don't have the complete data that would tell them that.

[redacted]

[redacted]

THE COURT: [redacted]

MS. ROSE-SMITH: [redacted]

[redacted]

THE COURT: So we know these four factors that have given credence to the notion that some of these funds were applied for by fraudsters, this litmus test, it's existed for a significant period of time, at least the last four years. And so now, at this point -- and [redacted]

[redacted] How do things change now, moving forward, from what they have been previously?

MS. ROSE-SMITH: So, unfortunately, Your Honor, [redacted]

[redacted] -- [redacted]

[redacted] It's all they publicly said they have looked at.

[redacted]

THE COURT: So, in moving forward, to decertify the classes that have been approved by the Court, are you going to be in a position to rely upon the actual identification of fraudsters in this group of class members? Or is it just going to be that, [redacted] and it gives credence, it gives license to this argument that we have been presenting for the last number of years, [redacted]

MS. ROSE-SMITH: So the bank is looking at whatever

it can do because it understands that it has -- it has this obligation to prove the fraud in the class. But there -- in the end, this information has got to come from the federal government or EDD, at least from where we sit right now.

[redacted]

THE COURT: But you just said that, at the end, [redacted]

[redacted]

MS. ROSE-SMITH: [redacted]

[redacted]

[redacted]

But, certainly, one of the things that we would like to do is to try to have the opportunity to show that there -- [redacted]

THE COURT: It seems to me we are still left with generalities and the lack of something more individualized that would then give rise to supporting evidence for these positions, either on predominance or causation.

How do you respond to Mr. Rubin's argument that [redacted]

MS. ROSE-SMITH: So I would respond to that in two ways, Your Honor.

First, as I noted, the reason that the bank has not been able to identify these is not because we don't think they are fraudsters. It is because what we have the ability to look at

and what we have the ability to discern from the files that we have really bears on claims fraud. [redacted] and we -- and we -- and we have briefed extensively the holes in the data we have there. [redacted] We don't have all of those things.

So the idea that, "Well, we have had all this time to prove it, and we can't," my response to that is, that's because what we would really like to prove in these populations is eligibility fraud; in other words, they never should have gotten these benefits in the first place.

You are right that there is not at this point, as I stand here today, some way in which Bank of America can do that for the entire class. But it doesn't mean that Bank of America shouldn't be allowed to try, and that is the problem that we have with mini trials and the manageability and whether or not a class action is the superior way of resolving these disputes.

Certainly, we would like to be able to reach out to the DOL and ask them [redacted]

And so, I guess, the response there is twofold. One, it

isn't that we have sat on our hands and not looked. We have tried. We have every reason to believe there's fraud. [redacted]

[redacted]

Second, now that there is -- there are some criteria that are showing up that are -- [redacted], we would like the opportunity to try and get additional information from the Department of Labor, from EDD, [redacted] We have not previously been able to do that. [redacted]. We are still having discussions with them.

But I do think, given that it is our burden, we should be allowed to try. And particularly, as to each individual person, we should be allowed to question individuals, to ask these questions, [redacted], and that's why we would move to decertify this class, one of the reasons.

THE COURT: So this idea of being allowed to try, certainly, this Court has allowed Bank of America to try to develop this information. And at this point, it sounds like you are not blaming the Court at all for denying you the ability to learn the information that you are seeking. [redacted]

[redacted]

[redacted]

[redacted] then we are left in this situation where we are in a holding pattern. And to be in a holding pattern five years into litigation seems crazy, to wait an additional month or two or three to see [redacted] So I don't see at this point that there's a good reason to hold off considering what is before the Court.

To the extent that the Court issues its rulings, and [redacted], then whether or not that constitutes grounds for the Court to reconsider based upon new evidence, we can deal with that at the appointed time.

But at this point, to hold up the proceedings or to modify the schedule we have in place, I don't think serves a good purpose. I mean, certainly, Bank of America being outfitted with the information that it needs to defend itself is a good reason; but ultimately, balancing that with the amount of time that we have already taken in these proceedings, ultimately, the Court, as a steward, as someone who is managing this litigation, I have to think about getting this case forward, getting it to trial.

So at this point, then, given that the plaintiff isn't asking for the opportunity to file anything, and having heard the parties with respect to their views on whether or not we should suspend these proceedings on the motion for partial summary judgment, I will deny the request to suspend the proceedings.

What I will do, I think, at this time, is -- I can do one of two things. I can take a ten-minute break and then return to the bench and then entertain arguments that you all would make with some questioning by the Court on these motions. Or, in the alternative, I can reschedule the matter where, then, you would have, in advance of the hearing, a tentative, so that you could direct yourself to it.

Do you have a view on that?

MS. ROSE-SMITH: Sure. So, a couple of things.

We are not asking the Court to suspend these proceedings indefinitely. We do intend to move for decertification. And so the real request that the bank was asking is to pause the proceedings for that purpose.

I understand from the Court's --

THE COURT: When you say "pause the proceedings," you mean to suspend the proceedings as it relates to the motion for summary judgment?

MS. ROSE-SMITH: So that we could move for decertification.

THE COURT: No. I definitely would not be willing to do that.

MS. ROSE-SMITH: So in that event, I do think that the Court's -- the Court's tentative, the Court's hearing of argument should be informed by how we think this does impact summary judgment because we do think that the existence of potential fraudsters does impact us. So I think the parties would benefit from seeing a tentative that has considered this information and being able to present arguments to the Court about that.

So our request, then, would be for the Court to schedule this. It doesn't need to be some lengthy delay, but to schedule it. That would allow us to be able to present arguments about why we think this impacts the summary judgment briefing and the *Daubert* motions.

THE COURT: All right. Thank you.

Mr. Rubin, your take? What is your view?

I would be inclined to reset this matter for a week or two so that then, in terms of our tentative that we would issue for your benefit, that it would refer to this most recent development and set of arguments that support the positions.

MR. RUBIN: The only practical concern I have -- and we would welcome Your Honor's tentative thoughts; they will make it a more effective argument and a speedier argument -- is that the parties have had enormous difficulty scheduling. When

Your Honor took this hearing off calendar on April 17th and --

THE COURT: I apologize for that --

MR. RUBIN: No, and we had our own problems with scheduling.

So if we could get a firm date while we are all here in the courtroom, within the next week or two -- I understand different people on both sides are arguing different parts of the motion, but if we have to reshuffle a little bit to accommodate the Court's schedule, that would be our preference.

THE COURT: I can hold a hearing on this on May 29th. Are parties are available on May 29th, 1:30?

MR. RUBIN: Yes, Your Honor.

THE COURT: Although I think I just saw from my judicial law clerk, she might not be with me on that date.

MS. ROSE-SMITH: Your Honor, we had previous --

THE COURT: Go ahead.

MS. ROSE-SMITH: Parties previously had talked about June 5th. I don't know if the Court is available on that date, but that is one date the parties were previously discussing. We could do it then, I believe.

MR. RUBIN: Your Honor, would either tomorrow or the 28th work? Since we are here, and people would otherwise be taking red-eyes back home.

MS. ROSE-SMITH: We have some mediations that we have to be at tomorrow.

(Court and law clerk confer.)

THE COURT: I can't give you tomorrow.

I can give you either June 5th or June 10th, June 11th, June 12th. Those days would work.

MR. RUBIN: May I consult with co-counsel, please?

(Counsel confer.)

THE COURT: Oh, actually, my clerk is just reminding me, I will be attending my daughter's graduation on June 12, so that is no longer available. But June 5, 10, and 11.

MR. RUBIN: So the 5th works for us, Your Honor.

MS. ROSE-SMITH: We can all do the 10th for sure. I think we have -- we have one member who has a conflict on the 5th, that we can't do.

MR. RUBIN: I am unavailable on the 10th, Your Honor.

THE COURT: You are unavailable on the 10th?

MR. RUBIN: But the 11th works.

THE COURT: So there was one attorney that's unavailable on the 5th, did you say?

MS. ROSE-SMITH: Yes. I don't know about the 11th. I heard, I was -- while we were trying, I don't know if you decided the 11th was available.

THE COURT: I think plaintiffs' counsel is available on the 11th. Let's inquire about the 11th.

(Counsel confer.)

MS. ROSE-SMITH: We can all do the 11th, Your Honor.

THE COURT: Let's do that then. We will do June 11 at 1:30 p.m.

MR. RUBIN: Thank you, Your Honor.

THE COURT: Thank you.

And I believe we have a settlement conference on the 24th.

MR. RUBIN: The 24th.

THE COURT: So I expect that we will have a tentative. And then to the extent that there's tweaking of it, it will be completed by no later than the 15th, so you will have that already taken care of when you go to the settlement conference.

MR. RUBIN: And do I understand, Your Honor, that there will be no further briefing on these issues unless and until the bank moves for partial decertification?

THE COURT: I think so. I don't think that there is anything more to be written that has not otherwise been said.

So, at this point let me inquire, is there any need for a briefing, Ms. Smith?

MS. ROSE-SMITH: No, Your Honor. We have identified -- I mean, I am a defense attorney; I always want another opportunity. But in this particular instance, I think we have identified for you in the filing that we made why we think that this is impactful for summary judgment and the *Daubert* motions.

THE COURT: So with respect to a request that

Mr. Rubin made as to discovery in the event of a motion for decertification, at this point, what is your view on that issue?

As I mentioned, I would be inclined to permit reopening up discovery to address the issues that relate to a motion for decertification. And I am not sure if we are in a position to identify the parameters as of this moment.

But what is your take?

MS. ROSE-SMITH: So we did discuss that, Your Honor, and if -- because we do intend to move for decertification. We understand that discovery might need to be opened for the limited purpose of addressing these newly raised issues.

We, of course, would want there to be some parameters of that sort, but we do understand that that would be the plaintiffs' request.

THE COURT: I guess, can I ask you to meet and confer with respect to this --

MR. RUBIN: Yes, that's what I was going to suggest. That makes sense.

THE COURT: -- and to the extent there's some dispute -- you can't agree on everything -- then you can present that to the Court and I will decide.

MR. RUBIN: We will do that, Your Honor.

MS. ROSE-SMITH: Yes, Your Honor.

THE COURT: Thank you. Anything else?

MR. RUBIN: No. Appreciate it.

THE COURT: Thank you, all.

MS. ROSE-SMITH: Thank you, Your Honor.

(End of proceedings at 2:38 p.m.)

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C-E-R-T-I-F-I-C-A-T-I-O-N

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated: May 28, 2026.

/s/ Chari Bowery

Chari Bowery, CSR No. 9944, RPR, CRR