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## BofA Still Can't Block Exec Depositions In COVID Fraud MDL

By **Hailey Konnath**

Law360 (September 11, 2025, 10:15 PM EDT) -- A California federal judge has refused to rethink his earlier order requiring Bank of America NA's CEO and former chief operating officer to sit for depositions in multidistrict litigation over alleged security failures at the bank during the COVID-19 pandemic, ruling the bank hasn't shown he erred.

U.S. District Judge Gonzalo P. Curiel on Wednesday **denied the bank's motion** for reconsideration of the May order, which allows plaintiffs to depose CEO Brian Moynihan and former COO Thomas Montag. According to the judge, Bank of America was merely "relitigating the record" and disagrees with the court's conclusion. It hasn't shown that the court clearly erred, he said.

In the 2021 case, the plaintiffs claimed security failures exposed their unemployment and disability benefits cards to fraud, and led the bank to breach their contracts by freezing all accounts during the pandemic. The bank has been fighting the depositions of the executives for a year and a half, arguing that neither has information that can't be obtained via "less-burdensome" means.

However, Judge Curiel held Wednesday that Moynihan could be deposed for up to four hours, and Montag could sit for a deposition of up to two hours. And he said Bank of America hasn't pointed to any real problems with his analysis.

For one, the bank took issue with the judge's holding that the burden is on the bank to show why the depositions shouldn't go forward. Even if that was incorrect, and the plaintiffs are the ones who must show why they need the depositions, Judge Curiel said he had also determined the plaintiffs met that burden.

"Therefore, even if the court erred by placing the initial burden on BANA, it nonetheless considered BANA's argument," Judge Curiel said. "Furthermore, even though BANA failed to articulate any prejudice or harm, the court continued to address whether class plaintiffs had shown that the deponents have 'unique first-hand, non-repetitive knowledge of the facts at issue in the case.'"

The judge additionally rejected the bank's argument that the court erred by placing too high a burden on the bank or too low a burden on plaintiffs.

"BANA's argument is not a basis for reconsideration because it is merely rearguing its contentions ... and disagrees with the court's application of the legal standard," Judge Curiel said.

Judge Curiel on Wednesday also refused to certify his order so the bank can immediately appeal it, holding that the bank hasn't shown it is raising controlling questions of law nor has it convinced him that the appeal would "advance the termination of the litigation."

"The depositions of Mr. Moynihan and Mr. Montag are for the limited purpose of supporting plaintiffs' claim for punitive damages on their due process, breach of fiduciary duty and breach of the implied covenant of good faith and fair dealing causes of action," the judge said. "If the Ninth Circuit were to reverse the court's ruling, the case will still proceed with or without these apex depositions. Instead, allowing an appeal of the court's ruling will only delay resolution of the case."

Wednesday's order comes a few months after Judge Curiel **certified five different classes** of thousands of recipients of unemployment benefits during the pandemic. The classes include a "claim

denial class," which consists of all Bank of America prepaid debit cardholders who notified the bank that an unauthorized transaction had occurred on their card at an ATM and whose claim the bank denied between Sept. 28, 2020, and June 8, 2021.

Another certified class, named the "account freeze class," covers all Bank of America prepaid debit cardholders who had their card account frozen by the bank between Sept. 28, 2020, and March 17, 2021.

Brian Danitz, one of the attorneys for the plaintiffs, said Thursday his clients "look forward to moving this case quickly to trial to hold the bank accountable for its unlawful actions during the pandemic, which had devastating consequences for more than 100,000 vulnerable Californians."

Bank of America declined to comment.

According to the benefits recipients, the bank had a contract with the state to provide electronic benefits payment services via prepaid debit cards, or EDD cards, for the California Employment Development Department. However, the consumers have claimed the bank's failure to implement basic security measures, such as using standard security card chips, led to a spike in fraudulent transactions.

Instead of investigating each cardholder's claims of unauthorized transactions, the bank denied claims and froze thousands of accounts, then failed to manage the high volume of customer service calls from cardholders, depriving cardholders of access to crucial benefits for months, they alleged.

Last year, Judge Curiel trimmed several **information privacy and consumer protection claims** from the suit but kept alive a claim asserted under the Electronic Fund Transfer Act, saying the complaint sufficiently alleges a qualifying error for those class members whose bank accounts were frozen.

Judge Curiel has named Cotchett Pitre & McCarthy LLP and Altshuler Berzon LLP as co-lead counsel in the suit.

The classes are represented by Joseph W. Cotchett, Brian Danitz, Karin B. Swope, Vasti S. Montiel and Caroline A. Yuen of Cotchett Pitre & McCarthy LLP, Michael Rubin, Connie K. Chan, Stacey M. Leyton and Colin C. Jones of Altshuler Berzon LLP, and Lindsay E. Hoyle, James W. McGarry, Michelle T. Briggs, Sabrina M. Rose-Smith and Matthew L. Riffie of Goodwin Procter LLP.

Bank of America is represented by Matthew L. Riffie, Thomas M. Hefferon, Sabrina M. Rose-Smith, James W. McGarry, Laura G. Brys, Valerie A. Haggans and Lindsay E. Hoyle of Goodwin Procter LLP, and Janice P. Brown and Matthew B. Nazareth of Meyers Nave.

The case is In re Bank of America California Unemployment Benefits Litigation, case number 3:21-md-02992, in the U.S. District Court for the Southern District of California.

--Additional reporting by Katryna Perera. Editing by Lakshna Mehta.