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2
3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF CALIFORNIA
5

6 Mohammad Farshad Abdollah Nia,
7 Plaintiff,
8 v.
9 BANK OF AMERICA, N.A.,
10 Defendant.

Case No.: 21-cv-01799-BAS-BGS

**ORDER GRANTING IN PART
PLAINTIFF’S MOTION TO
COMPEL**

[ECF 38]

11
12 On January 17, 2023, at the Court’s instruction, Plaintiff, Mohammad Farshad
13 Abdollah Nia, moved to compel responses to Requests for Production 4, 6, 8, 9, and 41 in
14 his Amended First Set of Requests for Production of Documents (RFPs), to which
15 Defendant, Bank of America, N.A., had objected on November 21, 2023.¹ (ECF 38 at 1.)

16 **I. Plaintiff’s RFPs 4, 6, 8, 9, and 41**

17 RFP 4 generally seeks documents identifying all transactions of accountholders in
18 the last six months before the accountholder’s account was closed or suspended,
19 including information about the location of the transaction. (*See* ECF 38-4 at 12-13.)
20 RFPs 6, 8, and 9 seek Defendant’s communications to Iranian-citizen accountholders that
21 relate to establishing residency in the United States or notify them of requirements or
22 failures to submit residency documentation. (*See* ECF 38-4, 13-14.) RFP 41 seeks “[a]ll
23 records of communications between you and Plaintiff or between you and Class
24 Members, including records and transcriptions of telephone calls.” (*See* ECF 38-4 at 26.)
25

26
27 ¹ On February 22, 2023, the District Court granted Plaintiff’s motion for leave to amend
28 his complaint, and on February 23, 2023, Plaintiff filed his First Amended Complaint
(FAC). (ECF 46-47.) Defendant answered on March 9, 2023. (ECF 51.)

1 Plaintiff agrees to narrow RFP 4 to all such communications that relate to the suspension
2 or closure of the Class Members' accounts because of failure to submit proof of
3 residency. (*See* ECF 38-1 at 11.)

4 **A. Scope of Discovery: Relevance and Proportionality**

5 Rule 26(b)(1) provides that “[p]arties may obtain discovery regarding any non-
6 privileged matter that is relevant to any party’s claim or defense and proportional to the
7 needs of the case, considering the importance of the issues at stake in the action, the
8 amount in controversy, the parties’ relative access to relevant information, the parties’
9 resources, the importance of the discovery in resolving the issues, and whether the burden
10 or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P.
11 26(b)(1). “District courts have broad discretion in controlling discovery” and “in
12 determining relevancy.” *Laub v. Horbaczewski*, 331 F.R.D. 516, 521 (C.D. Cal. 2019)
13 (citing *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002), and *Survivor Media, Inc. v.*
14 *Survivor Prods.*, 406 F.3d 625, 635 (9th Cir. 2005)).

15 Following the 2015 Amendments to Rule 26, it is clear that “[r]elevancy alone is
16 no longer sufficient—discovery must also be proportional to the needs of the case.” *In re*
17 *Bard IVC Filters Prods. Liability Litig.*, 317 F.R.D. 562, 564 (D. Ariz. 2016). “The
18 court’s responsibility, using all the information provided by the parties, is to consider . . .
19 [undue burden or expense and importance of information sought,] and all the other
20 factors in reaching a case-specific determination of the appropriate scope of discovery.”
21 Fed. R. Civ. P. 26(b)(1) advisory committee’s note to 2015 amendment. In deciding
22 whether a request is unduly burdensome, a court must balance the burden to the
23 responding party against the benefit to the party seeking the discovery. *Thomas v. Cate*,
24 715 F. Supp. 2d 1012, 1032 (E.D. Cal. 2010) (collecting cases).

25 Rule 26(b)(2) also requires the court, on motion or on its own, to limit the
26 frequency or extent of discovery otherwise allowed by the rules if it determines that (1)
27 “the discovery sought is unreasonably cumulative or duplicative, or can be obtained from
28 some other source that is more convenient, less burdensome, or less expensive;” (2) “the

1 party seeking discovery has had ample opportunity to obtain the information by discovery
2 in the action;” or (3) “the proposed discovery is outside the scope permitted by Rule
3 26(b)(1).” *See* Fed. R. Civ. P. 26(b)(2)(C)(i)-(iii).

4 **B. Relevance of RFPs 6, 8, 9, and 41**

5 Plaintiff’s RFPs 6, 8, and 9 seek Defendant’s communications to Iranian citizen
6 accountholders that relate to establishing residency in the United States or notify them of
7 requirements or failures to submit residency documentation. (ECF 38-4 at 12-13.)

8 Plaintiff’s RFP 41 seeks “[a]ll records of communications between you and Plaintiff or
9 between you and Class Members, including records and transcriptions of telephone
10 calls.” (ECF 38-4 at 24-25.)

11 Plaintiff argues the non-template communications are relevant to the Equal Credit
12 Opportunity Act (ECOA), 42 U.S.C. § 1981, the California Unruh Civil Rights Act and
13 California Unfair Competition Law claims. (*Id.*) Plaintiff also argues that proof of
14 statements similar to those Plaintiff alleges were made to him is relevant to show class
15 members’ applications were denied pursuant to a discriminatory policy and that
16 Plaintiff’s claims are typical of the class.² (*Id.* at 12-13.) These non-template
17 communications are relevant to the merits of Plaintiff’s UCL claims that Defendant
18 misrepresents the requirements of its proof of residency policies and to establish the
19 class-wide uniformity and typicality of the representations. (*Id.* at 14.)

20 Defendant argues the RFP class definition is overly broad and hence the discovery
21 requests are overly broad. (ECF 43 at 7.)

22 The class as defined in Plaintiff’s RFPs is the following:

23 ‘Class Member’ or ‘Class Members,’ for purposes of this First
24 Set of Requests, means current or former Bank of America credit
25 or checking account holders who were known to BANA to be, or
26 suspected by BANA of being, current or former Iranian citizens.

27 ² The deadline to file a motion for class certification in this case is May 5, 2023. (*See*
28 ECF 31 at 6.)

1 For purposes of this definition, ‘suspected by BANA of being’
2 includes all credit or checking account holders who were
3 evaluated, scrutinized, or monitored in any way by BANA on the
4 basis of their actual or potential residence in, financial activity
in, or other association with the Islamic Republic of Iran.

5 (ECF 38-4 at 4.) RFPs 6, 8, 9, and 41 incorporate the RFP class definition. (See 38-4 at
6 13-14, 25-26.) Thus, the broad definition of “Class Members” from the RFPs applies to
7 RFPs 6, 8, 9, and 41.³

8 As the Court noted, Plaintiff was granted leave to and did file a FAC after filing
9 this motion. (See ECF at 46-47.) Plaintiff’s FAC defines the Nationwide Class and
10 California Subclass differently than the operative complaint at the time Plaintiff filed this
11 motion had defined those classes.⁴ Because Plaintiff’s FAC is the operative complaint,
12 the Court cites to it.

13 Plaintiff’s FAC defines the Nationwide Class as,

14 All present or former Bank of America (“BANA”) credit-card or
15 checking-account holders whose accounts were restricted or
16 closed by BANA, and for whom BANA’s records or
17 correspondence with the accountholder show the account was
18 restricted or closed due to inadequate proof of residency, and
19 who were citizens of the Islamic Republic of Iran and were
present in the United States on the date(s) when the restriction or
closure was imposed.

21 ³ RFP 4 generally seeks documents identifying all transactions of accountholders in the
22 last six months before the accountholder’s account was closed or suspended, including
23 information about the location of the transaction. (See ECF 38-4 at 12-13.) RFP 4, then,
24 narrows the scope of the RFP class definition by including only Plaintiff and all Class
25 Members “whose credit or checking accounts were closed or suspended.” (ECF 38-4 at
13.)

26 ⁴ Plaintiff’s Complaint defines the Nationwide Class as, “All present or former Bank of
27 America credit card or checking account holders with a first or last name of Iranian or
28 Middle Eastern origin who had an account closed within six months after Bank of
America sent a request for documents establishing residency in the United States (the
“Nationwide Class”).” (ECF 1-2 at 31.)

1 (Am. Compl. ¶ 63; *see also* ECF 47 at 29.) Plaintiff’s FAC defines the Nationwide
2 Subclass⁵ as,

3 All present or former Bank of America (“BANA”) credit card
4 account holders whose accounts were restricted or closed by
5 BANA, and for whom BANA’s records or correspondence with
6 the accountholder show that the account was restricted or closed
7 due to inadequate proof of residency, and who were citizens of
8 the Islamic Republic of Iran and were present in the United States
9 on the date(s) when the restriction or closure was imposed.

10 (Am. Compl. ¶ 64; *see also* ECF 47 at 30.) Plaintiff’s FAC defines the California
11 Subclass as,

12 All present or former Bank of America (“BANA”) credit-card or
13 checking-account holders whose accounts were restricted or
14 closed by BANA, and for whom BANA’s records or
15 correspondence with the accountholder show the account was
16 restricted or closed due to inadequate proof of residency, and
17 who were citizens of the Islamic Republic of Iran and were
18 present in California on the date(s) when the restriction or closure
19 was imposed.

20 (Am. Compl. ¶ 65; *see also* ECF 47 at 30.)

21 Plaintiff’s FAC defines class to include accountholders whose accounts were
22 closed *or restricted at any time*, due to inadequate proof of residency and who were
23 *present in the United States on the date the restriction or closure was imposed.* (See Am.
24 Compl. ¶¶ 63, 65; *see also* ECF 47 at 28-29.) Thus, the FAC class definition appears to
25 be both broader than the original complaint’s class definition⁶—it now includes restricted

26 ⁵ Plaintiff’s Amended Complaint adds a “Nationwide Subclass.” (Am. Compl. ¶ 64; *see*
27 *also* ECF 47 at 30.)

28 ⁶ Again, Plaintiff’s Complaint defines the Nationwide Class as, “All present or former
Bank of America credit card or checking account holders with a first or last name of
Iranian or Middle Eastern origin who had an account closed within six months after Bank
of America sent a request for documents establishing residency in the United States (the
“Nationwide Class”).” (ECF 1-2 at 31.)

1 accounts and closed accounts—and narrower than the original complaint class
2 definition—it includes only those accountholders present in the United States on the date
3 the restriction or closure was imposed. (*Compare* Compl. ¶¶ 2-3, and Am. Compl. ¶¶ 63,
4 65.)

5 As regards relevance, the discovery may show class members experienced a
6 similar course of conduct. This is relevant to show typicality. *See In re Outlaw Lab 'ys,*
7 *LP Litig.*, No. 18CV840 GPC (BGS), 2020 WL 1083403, at *12 (S.D. Cal. Mar. 5, 2020)
8 (holding that showing that class members experienced a similar course of conduct by the
9 opposing party is relevant to show typicality, i.e. class members suffered the same event
10 or practice or course of conduct that gave rise to the claims of other class members and
11 their claims were based on the same legal theory).

12 Further, the Court concludes that the requested discovery is also relevant to show
13 whether Defendant complied or not with ECOA's notice requirement. It is also relevant
14 to show whether Defendant discriminated against other class members as Plaintiff has
15 alleged in his FAC or made similar alleged misrepresentations to other class members. In
16 sum, this discovery is potentially relevant to Plaintiff's claims.

17 **C. Proportionality of RFPs 6, 8, 9, and 41**

18 Plaintiff requests all written communications sent to Iranian account holders. (ECF
19 38-1 at 11.) Defendant has provided templates used for all written communications. (ECF
20 43 at 9.) Defendant has proffered that all written communications come from the
21 templates and argues that to provide the actual written communications would be
22 duplicative and costly. (*Id.*) Plaintiff argues that the templates do not demonstrate
23 whether the Defendant failed to send ECOA-mandated notifications of adverse action.
24 (ECF 38-1 at 12.) He also claims that the templates sent do not match what was actually
25 sent to the accountholders. (*Id.*)

26 The Court has found that written communications are relevant to Plaintiff's causes
27 of action. Defendant suggests that a Federal Rule of Civil Procedure 30(b)(6) witness or
28 interrogatories are less intrusive methods. While the Court agrees that there may be

1 duplicative discovery, the Court finds that neither a Rule 30(b)(6) witness nor an
2 interrogatory will cover the actual communications sent to the account holders.

3 Plaintiff also seeks non-template communications from phone calls. (ECF 38-1 at
4 11.) He alleges that discriminatory comments and comments contradictory to the written
5 communications were made to him. (*Id.* at 12.) He argues that proof of similar statements
6 supports his allegations. (*Id.* at 12-13.)

7 The Court has found that these communications are relevant. Defendant concedes
8 that unlike the written communications, recordings of phone calls would include varied
9 content. (ECF 43 at 11.) However, Defendant argues that identifying these recordings
10 would entail production of thousands of hours of them. (*Id.*) He argues such would cause
11 undue burden such that expense of collecting and redacting these communications
12 significantly outweighs Plaintiff's benefit. (*Id.* at 12.) Defendant notes that without the
13 six-month provision in the original complaint, it would have to review communications
14 to every Iranian-citizen accountholder, which Defendant estimates would involve
15 reviewing communications of 33,500 Iranian-citizen accountholders since 2016. (*Id.*)

16 The Court finds Plaintiff's RFPs 6, 8, 9, and 41 are overly broad, and limits
17 Plaintiff's RFPs to communications to all present or former Iranian citizen Bank of
18 America credit card or checking account holders who had an account restricted or closed
19 and who were present in the United States on the date(s) when the restriction or closure
20 was imposed. This is the class as defined in Plaintiff's FAC. (*See* ECF 47 at 29-30.)

21 Defendant estimates there are 2700 closed Iranian accounts based on the proposed
22 class in Plaintiff's original complaint,⁷ which was Iranian-citizen accountholders whose
23 accounts were closed for failure to submit residency documentation (ECF 43 at 13),
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25
26 ⁷ Again, Plaintiff's original complaint defines class to include accountholders whose
27 accounts were closed within six months of Defendant sending a request for proof of
28 residency, and Plaintiff's FAC defines class to include accountholders whose accounts
were closed *or restricted any time*, due to inadequate proof of residency and who were
present in the United States on the date the restriction or closure was imposed.

1 accountholders whose “account[s] closed within six months after [Defendant] sent a
 2 request for documents establishing residency” (*see* ECF 1 at 2-3). (ECF 43 at 13.)

	RFP Class	Complaint Class	20% of Complaint Class	Amended Complaint Class
Total Class Size	33,500	2,700	540 (2,700 x .2)	Unknown
Total Written Communications (30)	1,005,000 (30 x 33,500)	81,000 (30 x 2,700)	16,200 (30 x 540)	Unknown
Total Phone Calls (12)	402,000 (12 x 33,500)	32,400 (12 x 2,700)	6,480 (12 x 540)	Unknown

11
 12 (ECF 43 at 15.)

13 Plaintiff has proposed that if this Court is persuaded by Defendant’s arguments
 14 regarding the burden to produce the discovery sought, the Court order that Defendant
 15 produce a sampling of 20% of the Iranian-citizen accountholders whose accounts were
 16 closed for failure to submit residency documentation (ECF 38-1 at 16). Those
 17 accountholders are represented by the 540 figure above.

18 Defendant notes that vendor costs to process, review, redact, and produce the
 19 proposed sample—20% of the 2,700 closed accounts, or 540 closed accounts—are
 20 significant. (ECF 43 at 15.) For the written communications from the proposed sample,
 21 the cost is between \$33,300 and \$37,300. (*Id.* at 16; *see also* Decl. of Cheryl Cote in
 22 Support of Defendant’s Opposition to Plaintiff’s Motion to Compel, Attachment #3 [ECF
 23 43-3 at 7-8].) For the phone call communications from the proposed sample, the cost is
 24 between \$66,100 and \$87,600. (*Id.* at 16; *see also* Cote Decl. ECF 43-3 at 7-8.)

25 The Court notes that Plaintiff’s proposal was made when the original complaint
 26 was operative. With the new class definition in the FAC, it is unclear to this Court what
 27 an accurate estimate of closed and restricted accounts would be. In fact, Defendant notes
 28 that “[T]he cost [to produce written communications and phone calls] could potentially

1 double if the figures were adjusted to also include Iranian-citizen Accountholders whose
2 accounts were . . . restricted but not closed.” (ECF 43 at 16 n.6, 8.) Based on
3 Defendant’s estimate, then, the FAC class could be approximately 5,400.

4 Given the burden on the Defendant to produce this discovery, the Court finds a
5 10% random sample size to be sufficient and reasonable in light of the estimated class
6 size indicated by Defendant if the figures were adjusted to also include Iranian-citizen
7 Accountholders whose accounts were restricted but not closed. Thus, Defendant must
8 produce the requested discovery in RFPs 6, 8, 9, and 41 for 10% of the FAC class. *See*
9 *Talavera v. Sun Maid Growers of Cal.*, 15-cv-00842-AWI-SAB, 2017 WL 495635, at *4
10 (E.D. Cal. Feb. 6, 2017) (ordering a 10% sample in a putative class of 5,309); see also
11 *Tinnin v. Sutter Valley Med. Found.*, No. 1:20-cv-00482-NONE-EPG, 2021 WL 1315435
12 (E.D. Cal. Apr. 7, 2021) (ordering that the plaintiff produce the requested discovery for
13 20% of the class of 7,400); *Aldapa v. Fowler Packing Co.*, 310 F.R.D. 583, 589 (E.D.
14 Cal. Oct. 29, 2015) (ordering production of discovery related to 25% of employees);
15 *Brum v. MarketSource, Inc.*, No. No. 2:17-cv-241-JAM-EFB, 2018 WL 3861558, at *4-6
16 (E.D. Cal. Aug. 14, 2018) (ordering discovery for 10% of wage statements and 30% of
17 electronic time and payroll records for class of 7,400); *Romo v. GMRI, Inc.*, No. EDCV-
18 12-0715-JLQ, 2013 WL 11310656, at *16-17 (ordering a 20% sample in a putative class
19 of 21,000).

20 **II. RFP 4 – Customer Transaction Data**

21 Plaintiff’s RFP 4 in pertinent part requests all transactions undertaken by account
22 holders in the last six months before the account was closed, including information
23 concerning the location of the transactions. (ECF 38-4 at 11-12.)

24 Plaintiff contends that the occurrence of the credit transaction by itself indicates
25 that the card user was not located in Iran. (ECF 38-1, at 17.) Plaintiff, however, notes that
26 technical restrictions on the use of credit cards from Iran would prevent any of these
27 transactions from occurring if the accountholder was in Iran. (*Id.* at 13.) Plaintiff argues
28 the discovery is relevant to show Defendant adhered to the practice of applying its proof

1 of residency requirements to Iranian citizens while they were not located in Iran. (*Id.* at
2 12.) It is also relevant to show Plaintiff’s claims are typical to the class members like
3 Plaintiff who were not in Iran when their accounts were closed. (*Id.* at 13.)

4 Defendant argues that the transactional data is not relevant. (ECF 43 at 17.) The
5 issue of whether the account holders used their accounts while in Iran is not contested.
6 (*Id.*) Transactions to and from Iran are prohibited by law and cannot occur. (*Id.*)
7 Defendant has not contended that any class member was conducting transactions in Iran.
8 (*Id.*) Defendant’s policy is to establish where the account holder is ordinarily a resident,
9 not where the account holder conducted transactions. (*Id.* at 18.) The proof of residency
10 documentation is to show that the account holder is ordinarily a resident of the United
11 States. (*Id.*) Defendant’s proof of residency requirements are applied to account holders
12 who are not residents in Iran. (*Id.*) Defendant also claims undue burden were this
13 discovery ordered. (*See id.* at 19 (“[I]t would cost Defendant between \$30,530 and
14 \$41,760 to produce transactional data for the closed accounts”).)

15 Rule 26(b)(1) provides that “[p]arties may obtain discovery regarding any non-
16 privileged matter that is relevant to any party’s claim or defense and proportional to the
17 needs of the case, considering the importance of the issues at stake in the action, the
18 amount in controversy, the parties’ relative access to relevant information, the parties’
19 resources, the importance of the discovery in resolving the issues, and whether the burden
20 or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P.
21 26(b)(1).

22 The Court finds the requested discovery is not proportional to the needs of the
23 case. Plaintiff requests this discovery to show that the class members were not in Iran
24 when they conducted credit transactions. However, Plaintiff concedes that technical
25 restrictions on the use of credit cards from Iran would prevent any of these transactions
26 from occurring if the accountholder were located in Iran, thus the occurrence of the credit
27 transaction by itself indicates the card user was not located in Iran. Further, Defendant is
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1 not contending that class members were in Iran when Defendant sent the proof of
2 residency requirements. The cost of complying creates an undue burden on Defendant.

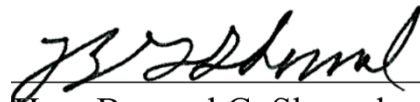
3 The Court finds there are less intrusive and costly ways of obtaining this discovery
4 such as an interrogatory, a Rule 30(b)(6) witness, or a stipulation. Rule 26(b)(2) requires
5 the court, on motion or on its own, to limit the frequency or extent of discovery otherwise
6 allowed by the rules if it determines that the discovery can be obtained from some other
7 source that is more convenient, less burdensome, or less expensive.

8 **III. Conclusion**

9 The discovery Plaintiff seeks in RFPs 6, 8, 9, and 41 is potentially relevant to
10 Plaintiff's claims. Given the burden on the Defendant to produce this discovery, the
11 Court finds a 10% random sample size to be sufficient and reasonable in light of the
12 estimated class size indicated by Defendant if the figures were adjusted to also include
13 Iranian-citizen Accountholders whose accounts were restricted but not closed. Thus,
14 Defendant must produce the requested discovery in RFPs 6, 8, 9, and 41 for 10% of the
15 FAC class. As regards Plaintiff's RFP 4, the Court finds the requested discovery is not
16 proportional to the needs of the case.

17 **IT IS SO ORDERED.**

18 Dated: March 20, 2023

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20 Hon. Bernard G. Skomal
21 United States Magistrate Judge
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