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13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**
15 **SAN DIEGO DIVISION**

16 IN RE: BANK OF AMERICA
CALIFORNIA UNEMPLOYMENT
17 BENEFITS LITIGATION

Case No. 21-MD-02992-GPC-MSB

**DEFENDANT’S MOTION TO
FILE DOCUMENTS UNDER
SEAL IN REPLY IN SUPPORT OF
MOTION FOR A PROTECTIVE
ORDER**

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21 Ctrm: 2D – 2nd Floor
22 Judge: Hon. Gonzalo P. Curiel
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1 PLEASE TAKE NOTICE that, pursuant to Local Civil Rule 79.2(c),
2 Defendant Bank of America, N.A. (“Defendant” or “BANA”) hereby submits this
3 Motion to File Documents Under Seal (the “Motion”) in connection with Defendant’s
4 Reply in Support of its Motion for a Protective Order (the “Reply”). In particular,
5 BANA seeks to seal Hoyle Declaration Exhibits 18 and 19 in their entirety and
6 portions of Hoyle Declaration Exhibits 20 and 21 because good cause supports
7 sealing of the identified documents, as well as any references to those exhibits in
8 BANA’s Reply and the Declaration of Lindsay E. Hoyle (“Hoyle Decl.”) filed in
9 support.¹ Consistent with the Court’s prior sealing orders finding good cause to seal
10 certain exhibits filed with BANA’s Motion for Protective Order and with Plaintiffs’
11 Opposition to Defendant’s Motion for Protective Order (“Plaintiffs’ Opposition”)
12 (ECF 466, 467), BANA also seeks to seal references within its Reply and the Hoyle
13 Declaration to the contents of those already-filed and sealed exhibits.²

14 As previously stated in BANA’s motions to seal submitted in connection with
15 class certification briefing and argument (ECF 328, 337, 344, 347, 383, 418) and
16 BANA’s Motion for Protective Order (ECF 451), the public’s right to inspect and
17 copy judicial records is not absolute, and a party faced with the disclosure of
18 confidential or proprietary information may seek to file the documents under seal to
19 avoid disclosure of business information that might result in competitive harm or be
20 used for improper purposes. *See Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589,
21 598 (1978) (denying disclosure); Local Civ. R. 79.2(c). A party seeking to seal
22 documents filed in connection with a discovery dispute must show “good cause” to
23 seal documents. Courts in this district have held that the good cause standard applies
24

25 ¹ The exhibits submitted in support of BANA’s Reply in Support of its Motion for
26 Protective Order are appended to the Hoyle Declaration and are referred to herein as
the “Hoyle Declaration Exhibits.”

27 ² BANA incorporates by reference its Motion to File Documents Under Seal (ECF
28 451) in connection with its Motion for a Protective Order (ECF 453) and Plaintiffs’
Motion to File Documents Under Seal (ECF 463) in connection with Plaintiffs’
Opposition to Defendant’s Motion for Protective Order (ECF 465).

1 even where the underlying dispute concerns so-called “apex” depositions of high-
2 level executives, as is the case here. *See, e.g., BAE Sys. San Diego Ship Repair Inc.*
3 *v. United States*, 670 F. Supp. 3d 1064, 1069 (S.D. Cal. 2023) (hereinafter “*BAE*
4 *Systems*”) (finding “good cause” to seal exhibits filed with motion for protective
5 order).

6 Courts consistently seal documents where—as here—disclosure of the
7 confidential business information risks competitive harm to the litigant or improper
8 use of the information such as to commit fraud. *E.g., E.W. Bank v. Shanker*, 2021
9 WL 3112452, at *18–19 (N.D. Cal. July 22, 2021) (finding compelling reasons to
10 seal confidential onboarding processes, verification of customer identities, and fraud
11 prevention measures); *Soria v. U.S. Bank N.A.*, 2019 WL 8167925, at *4 (C.D. Cal.
12 Apr. 25, 2019) (finding compelling reasons to seal internal fraud investigation
13 procedures because there was a “significant danger that someone could improperly
14 use this information to commit fraud and avoid detection.”). Indeed, this Court
15 largely granted the Parties’ prior motions to seal, finding good cause or compelling
16 reasons to seal documents concerning the same topics that BANA now seeks to seal,
17 including BANA’s fraud detection and prevention policies and strategies (including
18 the fraud filter), organizational charts, and discussions or analyses of its state prepaid
19 unemployment program operations, including call center operations, prepaid fraud
20 losses, and cardholder complaints and escalations, among other topics. *See* ECF 266,
21 293, 365, 381, 390, 391, 397, 421, 466, 467 (the “Sealing Orders”).

22 Consistent with this Court’s Sealing Orders, there is good cause to seal the
23 confidential documents and testimony at issue here (or references thereto), as well as
24 substantive discussions of already sealed exhibits filed in connection with BANA’s
25 Motion for Protective Order or Plaintiffs’ Opposition, because each reflects topics
26 that are likely to cause particularized competitive harm to BANA and which could
27 potentially enable future fraud, and thus pose a danger to BANA’s business and the
28 public. *See, e.g., EWB*, 2021 WL 3112452, at *18–19 (finding compelling reasons

1 to seal where public disclosure of EWB’s confidential onboarding processes,
2 verification of customer identities and fraud prevention measures would “harm [the
3 bank’s] competitive standing”); *Soria*, 2019 WL 8167925, at *4 (finding compelling
4 reasons to seal bank’s internal procedures for investigating fraud because there was
5 a “significant danger that someone could improperly use this information to commit
6 fraud and avoid detection”). Each document was also properly designated as
7 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” under the Protective
8 Order entered by this Court. *See BAE Systems*, 670 F. Supp. 3d at 1069 (finding good
9 cause to seal certain exhibits filed in connection with an apex discovery dispute
10 because “information in the exhibits fits within ‘confidential information’ in the
11 protective order”).

12 Specifically, the Confidential documents and testimony that BANA seeks to
13 seal include, but are not limited to, the following categories of documents and
14 information:

- 15 • Hoyle Declaration Exhibits 20 and 21 reflect discussions of confidential
16 BANA fraud prevention strategies and policies that could be misused
17 by fraudsters to perpetrate future fraud or could be used by another
18 financial institution to BANA’s competitive disadvantage. *See*
19 Amended Sealing Order (ECF 365) at 5–6, 12; Robart Decl. (ECF 347-
20 2) ¶¶ 3–5; Martin Decl. (ECF 347-1) ¶¶ 4–6; *see also Cowan v. GE Cap.*
21 *Retail Bank*, 2015 WL 1324848, at *2–3 (N.D. Cal. Mar. 24, 2015)
22 (compelling reasons exist to seal bank’s internal procedures for
23 investigating fraud and addressing cardholder fraud notifications);
- 24 • Hoyle Declaration Exhibit 19 reflects excerpts of BANA’s
25 organizational charts and shows how BANA structures the group
26 responsible for fraud detection and monitoring strategies, among other
27 banking responsibilities. *See* Amended Sealing Order (ECF 365) at 13-
28 14; Robart Decl. (ECF 344-2) ¶ 5; Dkt. No. 344-1, Martin Decl. ¶ 9; *see*

1 also *EWB*, 2021 WL 3112452, at *18-19 (sealing confidential
2 onboarding processes, digital banking platform, fraud management
3 techniques, and verification of customer identities); and

- 4 • Hoyle Declaration Exhibits 20 and 21 reflect BANA's confidential
5 discussions or analyses of its state prepaid unemployment program
6 operations, including but not limited to, fraud volume, claims and call
7 center operations, operational risks and losses, and approval of fraud
8 strategies. See Amended Sealing Order (ECF 365) at 10–13, n. 14;
9 Martin Decl. (ECF 344-1) ¶¶ 5, 7–10; Martin Decl. (ECF 347-1) ¶¶ 10–
10 12; Robart Decl. (ECF 344-2) ¶ 4; see *Brady v. Grendene USA, Inc.*,
11 2015 WL 6828400, at *3 (S.D. Cal. Nov. 6, 2015) (J. Curiel) (sealing
12 confidential business information that might harm the litigants'
13 competitive standing including profit and loss data and contractual
14 agreements).

15 BANA has also provisionally redacted and sealed portions of the Reply and
16 Hoyle Declaration that quote, describe or reflect privilege log descriptions of the
17 confidential documents, testimony and topics identified above, or those previously
18 submitted or described in the Parties' prior briefing and motions to seal submitted in
19 connection with BANA's Motion for Protective Order (ECF 451, 453, 463, 465).
20 Those confidential topics include BANA's fraud and claims analyses and strategies
21 and BANA's analyses of its state prepaid unemployment program operations,
22 including contractual negotiations, fraud volume, claims and call center operations,
23 cardholder complaints, operational risks and losses, and approval of fraud strategies,
24 among other topics. This is consistent with the terms of the Stipulated Protective
25 Order (ECF 82, § 3), with this Court's prior Sealing Orders (ECF 365, 381, 390, 466,
26 467), and with rulings in this Circuit. See, e.g., *Darisse v. Nest Labs, Inc.*, 2016 WL
27 11474174, at *2 (N.D. Cal. June 2, 2016) (sealing class certification motion and
28 declarations that quote or reference confidential exhibits). For the reasons discussed

1 above, there is good cause to seal discussions of those topics, testimony and
2 documents discussed in the Parties' briefing. *See supra* at 3-4.

3 * * *

4 For the foregoing reasons and for the reasons set forth in the Court's Sealing
5 Orders in connection with class certification briefing and argument (ECF 365, 381,
6 390, 391, 397, 421) and BANA's Motion for Protective Order (ECF 466, 467),
7 Plaintiffs' Motions to Seal (ECF Nos. 376, 384, 394, 463), BANA's prior Motions
8 to Seal (ECF Nos. 328, 337, 344, 347, 383, 418, 451) and accompanying declarations
9 submitted in support thereof (ECF Nos. 344-1, 344-2, 344-3, 347-1, 347-2), all of
10 which are incorporated herein by reference, BANA respectfully requests that the
11 Court grant Defendant's Motion to Seal Documents Filed In Support of its Reply in
12 Support of its Motion for Protective Order because good cause supports sealing
13 thereof.

14 Dated: May 2, 2025

Respectfully submitted,

15 By: s/ Lindsay E. Hoyle

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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 May 2, 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: May 2, 2025

s/ Lindsay E. Hoyle