

1 JAMES W. MCGARRY (*pro hac vice*)
2 *JMcGarry@goodwinlaw.com*
3 **GOODWIN PROCTER LLP**
4 100 Northern Avenue
Boston, MA 02210
Tel.: +1 617 570 1000
Fax: +1 617 523 1231

5 SABRINA M. ROSE-SMITH (*pro hac vice*)
6 *SRoseSmith@goodwinlaw.com*
7 MATTHEW L. RIFFEE (*pro hac vice*)
8 *MRiffee@goodwinlaw.com*
9 **GOODWIN PROCTER LLP**
10 1900 N Street, NW
Washington, DC 20036
Tel.: +1 202 346 4000
Fax: +1 202 346 4444

11 Attorneys for Defendant
12 BANK OF AMERICA, N.A.

13 [ADDITIONAL COUNSEL LISTED IN SIGNATURE BLOCK]

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

17 IN RE: BANK OF AMERICA
18 CALIFORNIA UNEMPLOYMENT
19 BENEFITS LITIGATION

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

**DEFENDANT'S JOINDER IN
PLAINTIFFS' MOTION TO FILE
DOCUMENTS UNDER SEAL
(ECF 569)**

Ctrm: 12A – 12th Floor
Judge: Hon. Gonzalo P. Curiel

1 PLEASE TAKE NOTICE that, pursuant to Local Civil Rule 79.2(c),
2 Defendant Bank of America, N.A. (“Defendant” or “BANA”) submits this Joinder in
3 Plaintiffs’ Motion to File Documents Under Seal (ECF 569) (“Defendant’s Sealing
4 Joinder”) submitted in connection with Plaintiffs’ *Daubert* Motion to Exclude
5 Certain Testimony of Victor Stango (ECF 571) (“Plaintiffs’ Motion to Exclude”).¹
6 In particular, BANA seeks to seal Plaintiffs’ Exhibits 1 and 3 in their entirety and
7 portions of Plaintiffs’ Motion to Exclude because compelling reasons support sealing
8 of the identified documents or portions thereof.

9 As previously stated in BANA’s motions to seal submitted in connection with
10 summary judgment briefing (ECF 577, 579, 581, 583, 585, 587), the public’s right to
11 inspect and copy judicial records is not absolute, and a party faced with the disclosure
12 of confidential or proprietary information may seek to file the documents under seal
13 to avoid disclosure of business information that might result in competitive harm or
14 be used for improper purposes. *See Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589,
15 598 (1978) (denying disclosure); Local Civ. R. 79.2(c). There are compelling reasons
16 to seal the documents at issue here—each of which contain information that qualifies
17 as “Protected Material” pursuant to the Parties’ Stipulated Protective Order
18 (“Protective Order”), entered by the Court on September 24, 2021 (ECF No. 82)—
19 because each pertains to topics that are likely to cause particularized competitive
20 harm to BANA and which could potentially enable future fraud, which poses a danger
21 to BANA’s business and the public. *See, e.g., East West Bank v. Shanker*, 2021 WL
22 3112452, at *18-19 (N.D. Cal. July 22, 2021) (finding compelling reasons to seal
23 where public disclosure of EWB’s confidential onboarding processes, verification of
24 customer identities and fraud prevention measures would “harm [the bank’s]

25
26 ¹ This Joinder is based on and incorporates by reference Plaintiffs’ Motion to Seal
27 (ECF 569) and the grounds stated therein for the sealing of Plaintiffs’ Motion to
28 Exclude, in part, and Exhibits 1 and 3 in their entirety, Defendant’s prior sealing
motions (ECF 577, 579, 581, 583, 585, 587), and accompanying declarations
submitted in support, all pleadings and papers on file in this action, oral argument if
requested by the Court, and any such other matters that the Court deems appropriate.

1 competitive standing”); *Soria v. U.S. Bank N.A.*, 2019 WL 8167925, at *4 (C.D. Cal.
2 Apr. 25, 2019) (finding compelling reasons to seal bank’s internal procedures for
3 investigating fraud because there was a “significant danger that someone could
4 improperly use this information to commit fraud and avoid detection”).

5 Moreover, each of the Exhibits that Plaintiffs and BANA seek to seal reflect
6 information pertaining to BANA’s confidential fraud analyses, BANA’s revenue
7 share with EDD, BANA’s Remediation Plans or BANA’s implementation of the
8 Plans, or EDD cardholders’ claim information, which are the same categories of
9 information that this Court has already found compelling reasons to seal in
10 connection with briefing for class certification. *See* ECF 365 (Amended Sealing
11 Order); ECF 381 (Sealing Order). In particular:

- 12 • **Exhibit 1**, which is the expert report of Victor Stango, contains
13 discussions of and references to: (i) BANA’s analyses of its state
14 prepaid unemployment program operations, including fraud volume and
15 claims and call center operations, and operational risks and losses (*see*
16 ECF 365 at 10–13, n. 14 (finding compelling reasons to seal); ECF 344-
17 1 (Martin Decl.) ¶¶ 3–10; ECF 344-2 (Robart Decl.) ¶ 5; ECF 347-1
18 (Martin Decl.) ¶¶ 1-12), (ii) BANA’s Remediation Plan and Addenda
19 with the OCC and CFPB, and its implementation of those Plans, which
20 both agencies themselves designated as “Highly Confidential –
21 Attorneys’ Eyes Only” (*see* ECF 365 at 14–16 (finding compelling
22 reasons to seal); ECF 344-3 (Lennon Decl.) ¶¶ 3–4, 6), (iii) BANA’s
23 interrogatory responses and data provided therein reflecting any
24 reconsideration by BANA of those claims and any compensation paid
25 as a result (*see* ECF 365 at 5–9, 12 (finding compelling reasons to seal);
26 ECF 344-3 (Lennon Decl.) ¶ 4), (iv) testimony concerning aggregated
27 statistics related to EDD benefit recipients account balances, activity,
28 and fraud claims that BANA is obligated to maintain as confidential

1 pursuant to its agreement with EDD (ECF 324-106 at 5), and otherwise
2 would keep as confidential because its disclosure could cause
3 competitive harm to BANA or its customers (*see* ECF 365, 381 (finding
4 compelling reasons to seal); ECF 344-1 (Martin Decl.) ¶¶ 5, 7-10; ECF
5 344-2 (Robart Decl.) ¶¶ 4-5), and (v) individual EDD cardholder
6 account, transactions, and claim information, which often include
7 personal, sensitive, or financial information (*see* ECF 365, 381 (finding
8 compelling reasons to seal); ECF 344-3 (Lennon Decl.) ¶¶ 4-5), and
9 (vi) excerpts of experts' deposition testimony, which include
10 discussions of BANA's confidential documents, many of which contain
11 the confidential information described above, such as BANA's handling
12 of unauthorized transaction claims and reconsiderations and BANA's
13 contract with EDD and the responsibilities thereunder (*see* ECF 365,
14 381 (finding compelling reasons to seal)); and

- 15 • **Exhibit 3**, which is the excerpted deposition testimony of Victor Stango,
16 contains discussions of and references to BANA's confidential
17 documents, many of which contain the confidential information
18 described above, such as BANA's handling of unauthorized transaction
19 claims and reconsiderations and BANA's contract with EDD and the
20 responsibilities thereunder (*see* ECF 365 at 17-19 (finding compelling
21 reasons to seal); ECF 344-2 (Robart Decl.) ¶¶ 4-5).

22 Additionally, there are compelling reasons to seal portions of Plaintiffs'
23 Motion to Exclude that quote from or summarize Exhibits 1 and 3 or other
24 confidential exhibits because, as this Court has held, "[q]uotes or summary
25 descriptions from sealed exhibits should be filed under seal." Amended Sealing
26 Order (ECF 365) at 18; *see also Darisse v. Nest Labs, Inc.*, 2016 WL 11474174, at
27 *2 (N.D. Cal. June 2, 2016) (sealing class certification motion and declarations that
28 quote or reference confidential exhibits).

For the foregoing reasons and for the reasons set forth in the Court's sealing orders in connection with class certification briefing (ECF 365, 381, 390, 391, 397, 421, 431, 460, 466, 467, 477, 498, 507, 516, 531, 532, 547, 548), Plaintiffs' Motions to Seal (ECF 322, 334, 376, 384, 394, 463, 569, 572), BANA's prior Motions to Seal (ECF 328, 337, 344, 347, 383, 418, 451, 457, 470, 481, 495, 501, 511, 539, 542, 577, 579, 581, 583, 585, 587) and accompanying declarations submitted in support thereof (ECF 344-1, 344-2, 344-3, 347-1, 347-2), all of which are incorporated herein by reference, BANA respectfully requests that the Court grant Plaintiffs' Motion to Seal and Defendant's Sealing Joinder because compelling reasons support sealing of the identified documents or portions thereof.

Dated: October 29, 2025

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

SABRINA M. ROSE-SMITH (*pro hac vice*)
SRoseSmith@goodwinlaw.com
MATTHEW L. RIFFEE (*pro hac vice*)
MRiffee@goodwinlaw.com
GOODWIN PROCTER LLP
1900 N St. 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

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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 October 29, 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: October 29, 2025

s/ James W. McGarry