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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 572)**

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 572) (“Defendant’s Sealing
4 Joinder”) submitted in connection with Plaintiffs’ *Daubert* Motion to Exclude
5 Certain Testimony of Carl Pry (ECF 574) (“Plaintiffs’ Motion to Exclude”).¹ In
6 particular, BANA seeks to seal Exhibits 1, 2 and 3 in their entirety and portions of
7 Plaintiffs’ Motion to Exclude because compelling reasons support sealing of the
8 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 572) and the grounds stated therein for the sealing of Plaintiffs’ Motion to
28 Exclude, in part, and Exhibits 1, 2 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 Carl Pry, contains discussions
13 of and references to: (i) BANA’s analyses of its state prepaid
14 unemployment program operations, including fraud volume and claims,
15 and operational risks and losses (*see* ECF 365 at 10–13, n. 14 (finding
16 compelling reasons to seal); ECF 344-1 (Martin Decl.) ¶¶ 3–10; ECF
17 344-2 (Robart Decl.) ¶ 5; ECF 347-1 (Martin Decl.) ¶¶ 1-12),
18 (ii) BANA’s Remediation Plan and Addenda with the OCC and CFPB,
19 and its implementation of those Plans, which both agencies themselves
20 designated as “Highly Confidential – Attorneys’ Eyes Only” (*see* ECF
21 365 at 14–16 (finding compelling reasons to seal); ECF 344-3 (Lennon
22 Decl.) ¶¶ 3–4, 6), (iii) BANA’s interrogatory responses and data
23 provided therein reflecting any reconsideration by BANA of those
24 claims and any compensation paid as a result (*see* ECF 365 at 5–9, 12
25 (finding compelling reasons to seal); ECF 344-3 (Lennon Decl.) ¶ 4),
26 and (iv) testimony concerning aggregated statistics related to EDD
27 benefit recipients account balances, activity, and fraud claims that
28 BANA is obligated to maintain as confidential pursuant to its agreement

1 with EDD (ECF 324-106 at 5), and otherwise would keep as confidential
2 because its disclosure could cause competitive harm to BANA or its
3 customers (*see* ECF 365, 381 (finding compelling reasons to seal); ECF
4 344-1 (Martin Decl.) ¶¶ 5, 7-10; ECF 344-2 (Robart Decl.) ¶¶ 4-5);

- 5 • **Exhibit 2**, which is the excerpted deposition testimony of Carl Pry
6 together with referenced exhibits, contains discussions of and references
7 to: BANA’s confidential documents, many of which contain the
8 confidential information described herein, such as BANA’s handling of
9 unauthorized transaction claims and reconsiderations and BANA’s
10 contract with EDD and the responsibilities thereunder (*see* ECF 365 at
11 17-19 (finding compelling reasons to seal); ECF 344-2 (Robart Decl.)
12 ¶¶ 4-5); and

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

1 BANA is obligated to maintain as confidential pursuant to its agreement
2 with EDD (ECF 324-106 at 5), and otherwise would keep as confidential
3 because its disclosure could cause competitive harm to BANA or its
4 customers (*see* ECF 365, 381 (finding compelling reasons to seal); ECF
5 344-1 (Martin Decl.) ¶¶ 5, 7-10; ECF 344-2 (Robart Decl.) ¶¶ 4-5).

6 Additionally, there are compelling reasons to seal portions of Plaintiffs'
7 Motion to Exclude that quote from or summarize Exhibits 1, 2, and 3 or other
8 confidential exhibits because, as this Court has held, “[q]uotes or summary
9 descriptions from sealed exhibits should be filed under seal.” Amended Sealing
10 Order (ECF 365) at 18; *see also Darisse v. Nest Labs, Inc.*, 2016 WL 11474174, at
11 *2 (N.D. Cal. June 2, 2016) (sealing class certification motion and declarations that
12 quote or reference confidential exhibits).

13 For the foregoing reasons and for the reasons set forth in the Court’s sealing
14 orders in connection with class certification briefing (ECF 365, 381, 390, 391, 397,
15 421, 431, 460, 466, 467, 477, 498, 507, 516, 531, 532, 547, 548), Plaintiffs’ Motions
16 to Seal (ECF 322, 334, 376, 384, 394, 463, 569, 572), BANA’s prior Motions to Seal
17 (ECF 328, 337, 344, 347, 383, 418, 451, 457, 470, 481, 495, 501, 511, 539, 542, 577,
18 579, 581, 583, 585, 587) and accompanying declarations submitted in support thereof
19 (ECF 344-1, 344-2, 344-3, 347-1, 347-2), all of which are incorporated herein by
20 reference, BANA respectfully requests that the Court grant Plaintiffs’ Motion to Seal
21 and Defendant’s Sealing Joinder because compelling reasons support sealing of the
22 identified documents or portions thereof.

23 Dated: October 29, 2025

Respectfully submitted,

24 By: s/ James W. McGarry

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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 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