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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

20 **DEFENDANT'S NOTICE AND**
21 **MOTION TO SEAL CORRECTED**
22 **DOCUMENTS FILED IN**
23 **SUPPORT OF PLAINTIFFS'**
24 **MOTION FOR CLASS**
25 **CERTIFICATION**

26 Ctrm: 2D – 2nd Floor
27 Judge: Hon. Gonzalo P. Curiel
28

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 Notice
3 and Motion to Seal Corrected Documents in response to Plaintiffs’ September 13,
4 2024 filing of Corrected Documents (ECF Nos. 333, 335, 336) in support of
5 Plaintiffs’ Motion for Class Certification (ECF Nos. 324, 335).¹ In particular, BANA
6 seeks to seal Plaintiffs’ Corrected Exhibits 14-16 and 107, as well as any references
7 to the contents of those exhibits.

8 As previously stated, the public’s right to inspect and copy judicial records is
9 not absolute, and a party faced with the disclosure of confidential or proprietary
10 information may seek to file the documents under seal to avoid disclosure of business
11 information that might result in competitive harm or be used for improper purposes.
12 *See Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)) (denying
13 disclosure); Local Civ. R. 79.2(c). As Defendants explained in their Notice and
14 Motion (ECF No. 328 at 3-10 & n.4), the Corrected Documents and testimony
15 referenced in Plaintiffs’ Motion to Seal (ECF No. 334) each contain information that
16 qualifies as “Protected Material” pursuant to the Parties’ Stipulated Protective Order
17 (“Protective Order”), entered by the Court on September 24, 2021 (ECF No. 82)
18 because each pertains to topics that are likely to cause particularized competitive
19 harm to BANA and which could potentially enable future fraud, which poses a danger
20 to BANA’s business and the public. *See, e.g., East West Bank v. Shanker*, No. 20-

21 ¹ Plaintiffs filed two Motions to Seal (ECF Nos. 322, 334) the same documents
22 submitted with their Motion for Class Certification (ECF Nos. 324, 335), but
23 Plaintiffs improperly filed two proposed orders *denying* those motions contrary to the
24 Parties’ Protective Order (ECF No. 82) and the Local Rules. Accordingly, Defendant
25 is filing this Motion to Seal Corrected Documents and a separate Proposed Order for
26 the reasons set forth in its September 5, 2024 Notice and Motion to Seal (ECF No.
27 328). This Notice and Motion is based on and incorporates by reference Defendant’s
28 Notice of Motion and Motion to Seal (ECF No. 328) and the grounds stated therein
for sealing Exhibits 14-16 and 107, and is further based on the documents filed in
support of Plaintiffs’ Motion for Class Certification (ECF Nos. 324, 335), 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. Should the Court desire
more detailed briefing in order to decide Defendant’s Motion to Seal, BANA
respectfully requests the opportunity to submit additional briefing and declarations
in support of sealing.

1 CV-07364-WHO, 2021 WL 3112452, at *18-19 (N.D. Cal. July 22, 2021) (finding
2 compelling reasons to seal where public disclosure of EWB’s confidential
3 onboarding processes, verification of customer identities and fraud prevention
4 measures would “harm [the bank’s] competitive standing”); *Soria v. U.S. Bank N.A.*,
5 No. SACV 17-00603-CJC(KESx), 2019 WL 8167925, at *4 (C.D. Cal. Apr. 25,
6 2019) (finding compelling reasons to seal bank’s internal procedures for
7 investigating fraud because there was a “significant danger that someone could
8 improperly use this information to commit fraud and avoid detection”).

9 For the foregoing reasons and for the reasons set forth in BANA’s September
10 5, 2024 Motion to Seal (ECF No. 328), BANA respectfully requests that the Court
11 grant Defendant’s Motion to Seal Corrected Documents (Exhibits 14-16 and 107)
12 because compelling reasons support sealing of the identified documents or portions
13 thereof. Defendant has lodged a Proposed Order separately with the Court.

1 Dated: September 17, 2024

Respectfully submitted,

2 By: s/ James W. McGarry

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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 September 17, 2024. 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: September 17, 2024

s/ James W. McGarry