JOSEPH W. COTCHETT (SBN 36324)
jcotchett@cpmlegal.com
BRIAN DANITZ (SBN 247403)
bdanitz@cpmlegal.com
KARIN B. SWOPE (Pro Hac Vice)
kswope@cpmlegal.com
BLAIR V. KITTLE (SBN 336367)
akirtley@cpmlegal.com
VASTI S. MONTIEL (SBN 346409)
vmontiel@cpmlegal.com
COTCHETT, PITRE & McCARTHY, LLP
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Fax: (650) 697-0577

MICHAEL RUBIN (SBN 80618)
mrubin@altber.com
STACEY M. LEYTON (SBN 203827)
sleyton@altber.com
CONNIE K. CHAN (SBN 284230)
cchan@altber.com
KATHERINE G. BASS (SBN 344748)
kbass@altber.com
COLIN C. JONES (SBN 354301)
cjones@altber.com
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Fax: (415) 362-8064

Co-Lead Counsel for Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE BANK OF AMERICA CALIFORNIA UNEMPLOYMENT BENEFITS LITIGATION

This Document Relates to All Actions

Case No. 3:21-md-02992-GPC-MSB

MOTION TO FILE DOCUMENTS UNDER SEAL RE: PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

Judge: Hon. Gonzalo P. Curiel
Ctrm: 2D (2nd Floor)

MOTION TO FILE DOCUMENTS UNDER SEAL

Pursuant to Local Rule 79.2 and Section 12.5 of the Stipulated Protective Order (ECF 82) in this case and the Court's Civil Pretrial & Trial Procedures, Plaintiffs move to file under seal (1) portions of Plaintiffs' Reply in support of Plaintiffs' Motion for Class Certification ("Motion"); (2) portions of the Index of Exhibits and Exhibits 158-162, 174, and 178 attached to the Supplemental Declaration of Connie K. Chan in support of the Reply ("Supplemental Declaration"); and (3) Exhibits 164-168, 177, 179, and 180-183 attached to the Supplemental Declaration in full.

Plaintiffs tailored this motion pursuant to the guidance provided by the Court's Order granting in part and denying in part Motions to Seal materials relating to Plaintiffs' Motion for Class Certification (ECF 365), and in compliance with the Stipulated Protective Order in this case. Portions of documents lodged provisionally under seal designated Confidential are highlighted yellow and those designated Highly Confidential are highlighted green.

I. LEGAL STANDARD

There is a strong presumption in favor of public access to court records. *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978) ("[T]he courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." (cleaned up)); *see also Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) ("Unless a particular court record is one 'traditionally kept secret,' a 'strong presumption in favor of access' is the starting point."). This presumption in favor of access is at its strongest when the documents sought to be sealed are "more than tangentially related to the merits of a case," such as a class certification motion. *Nia v. Bank of Am., N.A.*, No. 21-cv-1799-BAS-BGS, 2024 WL 171659, at *2 (S.D. Cal. Jan. 12, 2024). The party seeking to seal a court record has the burden of "articulat[ing] compelling reasons [to seal a document] supported by specific factual findings . . . that outweigh the general history of access and the public policies favoring disclosure, such as the public interest in understanding the judicial process." *Kamakana*, 447 F.3d at 1178-79 (cleaned up).

/ /

II. PLAINTIFFS' IDENTIFYING INFORMATION

The public filing of "sensitive identifying information" could expose individuals to harm or identity theft, and courts will seal such information. *Kamakana*, 447 F.3d at 1184; *see also Stiner v. Brookdale Senior Living, Inc.*, No. 17-cv-03962-HSG, 2022 WL 1180216, at *2 (N.D. Cal. Mar. 30, 2022) (sealing documents with personally identifying information such as names, emails, and phone numbers).

Here, Plaintiffs seek to seal the following exhibits attached to the Supplemental Declaration which contain PII and which the Bank has designated Confidential:

- **Exhibit 167** (name, card account number, claim number; designated Confidential);
- **Exhibit 177** (Bank email with multiple recipients including consumer name and id number and agent name and PRC ID number; designated Confidential).

Plaintiffs also seek to seal portions of the following exhibits to the Supplemental Declaration:

- **Exhibit 174** (customer names together with card alias ids, Bank agent names together with PRC ID numbers of agents);
- **Exhibit 178** (Visa Account History including cardholder's address, government ID, DOB, account number, identification numbers and Visa client number for the Bank).

Courts have also found compelling reasons to seal documents relating to individuals' private financial information. *See Nia v. Bank of Am., N.A.*, No. 21-cv-1799-BAS-BGS, 2024 WL 171659, at *6 (S.D. Cal. Jan. 12, 2024) (finding compelling reason to seal document "contain[ing] personal financial information and other sensitive personal information").

Plaintiffs thus seek to seal the following exhibits attached to the Supplemental Declaration, containing supplemental Plaintiff interrogatory responses which Plaintiffs designated Confidential, that contain critical details about their financial status, including account balances and other sensitive information:

- **Exhibit 181** (Candace Koole Supplemental Interrogatory Responses);
- **Exhibit 182** (Lindsay McClure Supplemental Interrogatory Responses);

- **Exhibit 183** (Vanessa Rivera Supplemental Interrogatory Respones).

III. SENSITIVE BANK INFORMATION

Plaintiffs seek to seal portions of their Reply, the Index of Exhibits, and the following expert rebuttal reports attached to the Supplemental Declaration: William Abernathy (**Ex. 158**), J. Daniel Kreis (**Ex. 159**), Jane Cloninger (**Ex. 160**), Jay Minnucci (**Ex. 161**), and Greg J. Regan (**Ex. 162**).

Plaintiffs also seek to seal the following exhibits attached to the Supplemental Declaration which were designated by the Bank as Confidential and/or Highly Confidential: **Exhibits 164, 165, 166, 167, 168, 179, 180.**

These materials contain information the Bank designated as Confidential and/or Highly Confidential, including material that reflect or analyze the risk of future fraud to the Bank, pertain to internal analyses of fraud detection strategies, risk competitor disadvantage to the Bank, refer to testimony by Rule 30(b)(6) witnesses that the Bank has designated Confidential or Highly Confidential, and refer to materials designated "Highly Confidential-Attorneys' Eyes Only" by the Consumer Finance Protection Board ("CFPB") and Office of the Comptroller of Currency ("OCC").

Respectfully submitted,

Dated: November 21, 2024

COTCHETT, PITRE & McCARTHY, LLP

By: /s/ *Brian Danitz*
JOSEPH W. COTCHETT
BRIAN DANITZ
KARIN B. SWOPE
DAVID G. HOLLENBERG
BLAIR V. KITTLE
VASTI S. MONTIEL

Co-Lead Counsel for Plaintiffs and the Proposed Class

Dated: November 21, 2024

ALTSHULER BERZON LLP

By: /s/ *Michael Rubin*
MICHAEL RUBIN
STACEY M. LEYTON
CONNIE K. CHAN
JAMES BALTZER
KATHERINE G. BASS
COLIN C. JONES

Co-Lead Counsel for Plaintiffs and the Proposed Class

SIGNATURE ATTESTATION

Pursuant to section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I, Brian Danitz, attest that the other signatories listed, and on whose behalf this filing is submitted, concur in the filing content and have authorized this filing.

Dated: November 21, 2024 *__/s/ Brian Danitz__*
Brian Danitz