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21 SIGNATURE BLOCK]

22 **UNITED STATES DISTRICT COURT**
23 **SOUTHERN DISTRICT OF CALIFORNIA**
24 **SAN DIEGO DIVISION**

25 IN RE: BANK OF AMERICA

26 CALIFORNIA UNEMPLOYMENT
27 BENEFITS LITIGATION

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

**DEFENDANT'S UNOPPOSED
MOTION TO SEAL PORTIONS OF
CLASS CERTIFICATION
HEARING TRANSCRIPT**

Ctrm: 2D – 2nd 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”) hereby submits this
3 Unopposed Motion to Seal Portions of the Class Certification Hearing Transcript as
4 set forth in the concurrently lodged under seal Exhibit A to this Motion. In particular,
5 BANA seeks to seal, and Plaintiffs do not oppose the sealing of, portions of the
6 transcript (the “Hearing Transcript” or “Hr’g Tr.”) of the January 17, 2025 hearing
7 on Plaintiffs’ Motion for Class Certification (the “Hearing”) because compelling
8 reasons support sealing of those portions of the Hearing Transcript.

9 At the Hearing, both BANA and Plaintiffs (together, the “Parties”) agreed in
10 open court to submit a proposal for sealing of the Hearing Transcript in accordance
11 with the guidance set forth in the Court’s prior sealing orders. *See, e.g.,* Hr’g Tr. at
12 56:7-57:14. Consistent with the Parties’ representations at the Hearing, the Parties
13 subsequently met and conferred regarding which portions of the Hearing Transcript
14 are confidential and warrant sealing, and the Parties have agreed on the portions of
15 the Hearing Transcript that are confidential and should remain sealed. Those portions
16 that the Parties propose sealing are highlighted in the concurrently lodged Exhibit A.

17 As previously stated in BANA’s motions to seal submitted in connection with
18 class certification briefing, the public’s right to inspect and copy judicial records is
19 not absolute, and a party faced with the disclosure of confidential or proprietary
20 information may seek to file the documents under seal to avoid disclosure of business
21 information that might result in competitive harm or be used for improper purposes.
22 *See Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978) (denying disclosure);
23 Local Civ. R. 79.2(c). Accordingly, the Parties filed various motions to seal (the
24 “Motions to Seal,” ECF Nos. 328, 337, 344, 347, 376, 383, 384, 394) certain
25 documents (or portions thereof) in connection with briefing on Plaintiffs’ Motion for
26 Class Certification (ECF Nos. 324, 349, 378). The Court largely granted those
27 Motions to Seal, finding compelling reasons to seal documents concerning BANA’s
28 fraud detection and prevention policies and strategies, BANA’s analyses of claims

1 fraud and potential strategies to combat that fraud, and BANA's Remediation Plans
2 with the regulators and documents showing BANA's implementation of those Plans,
3 among other categories of confidential information. *See* ECF Nos. 365, 381, 390,
4 391, 397 (the "Sealing Orders").

5 Consistent with the Court's Sealing Orders, there are compelling reasons to
6 seal portions of the Hearing Transcript at issue here, which reflect topics that are
7 likely to cause particularized competitive harm to BANA and which could potentially
8 enable future fraud, and thus pose a danger to BANA's business and the public. *See*,
9 *e.g.*, *East West Bank v. Shanker*, 2021 WL 3112452, at *18-19 (N.D. Cal. July 22,
10 2021) (finding compelling reasons to seal where public disclosure of EWB's
11 confidential onboarding processes, verification of customer identities and fraud
12 prevention measures would "harm [the bank's] competitive standing"); *Soria v. U.S.*
13 *Bank N.A.*, 2019 WL 8167925, at *4 (C.D. Cal. Apr. 25, 2019) (finding compelling
14 reasons to seal bank's internal procedures for investigating fraud because there was
15 a "significant danger that someone could improperly use this information to commit
16 fraud and avoid detection").

17 The portions of the Hearing Transcript that BANA seeks to seal reflect
18 information derived from previously sealed documents (or portions thereof),
19 including but not limited to, BANA's Remediation Plans with the regulators (ECF
20 324-77, 324-150), the Declaration of William M. Martin in Support of Defendant's
21 Opposition to Class Certification (ECF 350-8), and data reflecting certain
22 populations of cardholders subject to BANA's remediation efforts (ECF 350-44).
23 Each of those documents was designated Confidential or Highly Confidential –
24 Attorneys' Eyes Only by BANA, and in the case of the Remediation Plans, by the
25 regulators as well. And each of those documents and the discussions thereof reflect
26 BANA's confidential fraud review processes, BANA's Remediation Plans with the
27 regulators, and/or details regarding BANA's implementation of the Plans, which are
28 the same categories of information that this Court has already found compelling

1 reasons to seal. *See* ECF 365, 381, 390, 391, 397; *see also* 344-3 (Lennon Decl.),
2 347-1 (Martin Decl.).

3 For the foregoing reasons and for the reasons set forth in the Court's Sealing
4 Orders in connection with class certification briefing (ECF Nos. 365, 381, 390, 391,
5 397), Plaintiffs' Motions to Seal (ECF Nos. 376, 384, 394), BANA's prior Motions
6 to Seal (ECF Nos. 328, 337, 344, 347, 383) and accompanying declarations submitted
7 in support (ECF Nos. 344-1, 344-2, 344-3, 347-1, 347-2), and the argument presented
8 at the hearing on Plaintiffs' Motion for Class Certification, all of which are
9 incorporated herein by reference, BANA respectfully requests that the Court grant
10 Defendant's Unopposed Motion to Seal Portions of the Class Certification Hearing
11 Transcript because compelling reasons support sealing thereof.

12
13 Respectfully submitted,

14 Dated: February 12, 2025

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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 February 12, 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: February 12, 2025 s/ James W. McGarry