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20 [ADDITIONAL COUNSEL LISTED IN
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 MOTION TO SEAL
PORTIONS OF STAY 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 Motion to Seal Portions of the Stay Hearing Transcript as set forth in the concurrently
4 lodged under seal Exhibit A to this Motion. In particular, BANA seeks to seal
5 portions of the transcript (the “Hearing Transcript” or “Hr’g Tr.”) of the March 28,
6 2025 hearing on Defendant’s Motion to Stay (the “Hearing”) because good cause and
7 compelling reasons support sealing of those portions of the Hearing Transcript.

8 Consistent with the Court’s prior instructions concerning the sealing of hearing
9 transcripts and the guidance set forth in the Court’s prior sealing orders, BANA
10 proposes sealing the highlighted portions of the Hearing Transcript concurrently
11 lodged as Exhibit A. As previously stated in BANA’s motions to seal, the public’s
12 right to inspect and copy judicial records is not absolute, and a party faced with the
13 disclosure of confidential or proprietary information may seek to file the documents
14 under seal to avoid disclosure of business information that might result in competitive
15 harm or be used for improper purposes. *See Nixon v. Warner Commc’ns, Inc.*, 435
16 U.S. 589, 598 (1978) (denying disclosure); Local Civ. R. 79.2(c). Accordingly, the
17 Parties filed various motions to seal (the “Motions to Seal,” ECF Nos. 328, 337, 344,
18 347, 376, 383, 384, 394, 418) certain documents (or portions thereof) in connection
19 with briefing on Plaintiffs’ Motion for Class Certification and argument (ECF Nos.
20 324, 349, 378). The Court largely granted those Motions to Seal, finding compelling
21 reasons to seal documents concerning BANA’s fraud detection and prevention
22 policies and strategies, BANA’s analyses of claims fraud and potential strategies to
23 combat that fraud, and BANA’s Remediation Plans with the regulators and
24 documents showing BANA’s implementation of those Plans, among other categories
25 of confidential information. *See* ECF Nos. 365, 381, 390, 391, 397, 421 (the “Sealing
26 Orders”).

27 Consistent with the Court’s Sealing Orders, there are compelling reasons to
28 seal portions of the Hearing Transcript at issue here, which reflect topics that are

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

11 The portions of the Hearing Transcript that BANA seeks to seal reflect
12 information derived from previously sealed documents (or portions thereof),
13 including but not limited to, the Declaration of William M. Martin in Support of
14 Defendant's Opposition to Class Certification (ECF 350-8), the Declaration of
15 Jennifer Lennon in Support of Defendant's Opposition to Class Certification (ECF
16 350-9), and data reflecting certain populations of cardholders subject to BANA's
17 remediation efforts (ECF 386-4; ECF 350-44). Each of those documents was
18 designated Confidential or Highly Confidential – Attorneys' Eyes Only by BANA,
19 and in the case of the Remediation Plans and its implementation, by the regulators as
20 well. And each of those documents and the discussions thereof reflect BANA's
21 confidential fraud review processes and details regarding BANA's implementation
22 of the Plans, which are the same categories of information that this Court has already
23 found compelling reasons to seal. *See* ECF 365, 381, 390, 391, 397, 421; *see also*
24 344-3 (Lennon Decl.), 347-1 (Martin Decl.).

25 For the foregoing reasons and for the reasons set forth in the Court's Sealing
26 Orders in connection with class certification briefing and argument (ECF Nos. 365,
27 381, 390, 391, 397), Plaintiffs' Motions to Seal (ECF Nos. 376, 384, 394), BANA's
28 prior Motions to Seal (ECF Nos. 328, 337, 344, 347, 383, 418) and accompanying

1 declarations submitted in support (ECF Nos. 344-1, 344-2, 344-3, 347-1, 347-2), and
2 the argument presented at the hearing on Defendant's Motion to Seal, all of which
3 are incorporated herein by reference, BANA respectfully requests that the Court
4 grant Defendant's Motion to Seal Portions of the Stay Hearing Transcript because
5 good cause and compelling reasons support sealing thereof.

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7 Respectfully submitted,

8 Dated: April 23, 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 April 23, 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: April 23, 2025

s/ James W. McGarry