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13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**
15 **SAN DIEGO DIVISION**

16 IN RE: BANK OF AMERICA
17 CALIFORNIA UNEMPLOYMENT
18 BENEFITS LITIGATION

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

**DEFENDANT’S MOTION TO
FILE UNDER SEAL PORTIONS
OF ITS RESPONSE IN
OPPOSITION TO PLAINTIFFS’
EX PARTE MOTION FOR LEAVE
TO FILE SURREPLY TO
DEFENDANT’S MOTION FOR A
PROTECTIVE ORDER**

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 File Documents Under Seal (the “Motion”) in connection with Defendant’s
4 Response in Opposition to Plaintiffs’ *Ex Parte* Motion for Leave to File Surreply to
5 Defendant’s Motion for a Protective Order (the “Response”). Consistent with the
6 Court’s prior sealing orders finding good cause to seal portions of the parties’ briefing
7 and exhibits submitted in connection with BANA’s Motion for Protective Order
8 (ECF 466, 467, 477), BANA also seeks to seal the portions of its Response that
9 discuss those already-filed and sealed exhibits.¹

10 As previously stated in BANA’s motions to seal submitted in connection with
11 class certification briefing and argument (ECF 328, 337, 344, 347, 383, 418) and
12 BANA’s Motion for Protective Order (ECF 451, 470), the public’s right to inspect
13 and copy judicial records is not absolute, and a party faced with the disclosure of
14 confidential or proprietary information may seek to file the documents under seal to
15 avoid disclosure of business information that might result in competitive harm or be
16 used for improper purposes. *See Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589,
17 598 (1978) (denying disclosure); Local Civ. R. 79.2(c). A party seeking to seal
18 documents filed in connection with a discovery dispute must show “good cause” to
19 seal documents. Courts in this district have held that the good cause standard applies
20 even where the underlying dispute concerns so-called “apex” depositions of high-
21 level executives, as is the case here. *See, e.g., BAE Sys. San Diego Ship Repair Inc.*
22 *v. United States*, 670 F. Supp. 3d 1064, 1069 (S.D. Cal. 2023) (hereinafter “*BAE*
23 *Systems*”) (finding “good cause” to seal exhibits filed with motion for protective
24 order).

25
26 ¹ BANA incorporates by reference its Motions to File Documents Under Seal (ECF
27 451) in connection with its Motion for a Protective Order (ECF 453), Plaintiffs’
28 Motion to File Documents Under Seal (ECF 463) in connection with Plaintiffs’
Opposition to Defendant’s Motion for Protective Order (ECF 465), and BANA’s
Motion to File Documents Under Seal (ECF 470) in connection with its Reply in
Support of Motion for Protective Order (ECF 472).

Courts consistently seal documents where—as here—disclosure of the confidential business information risks competitive harm to the litigant or improper use of the information such as to commit fraud. *E.g., E.W. Bank v. Shanker*, 2021 WL 3112452, at *18–19 (N.D. Cal. July 22, 2021) (finding compelling reasons to seal confidential onboarding processes, verification of customer identities, and fraud prevention measures); *Soria v. U.S. Bank N.A.*, 2019 WL 8167925, at *4 (C.D. Cal. Apr. 25, 2019) (finding compelling reasons to seal internal fraud investigation procedures because there was a “significant danger that someone could improperly use this information to commit fraud and avoid detection.”). Indeed, this Court has already found good cause to seal the documents and testimony that are summarized in BANA’s Response. (*See* ECF 466, 467, 477.)

* * *

For the foregoing reasons and for the reasons set forth in the Court’s Sealing Orders in connection with class certification briefing and argument (ECF 365, 381, 390, 391, 397, 421) and BANA’s Motion for Protective Order (ECF 466, 467, 477), Plaintiffs’ Motions to Seal (ECF Nos. 376, 384, 394, 463, 475), BANA’s prior Motions to Seal (ECF Nos. 328, 337, 344, 347, 383, 418, 451, 470) and accompanying declarations submitted in support thereof (ECF Nos. 344-1, 344-2, 344-3, 347-1, 347-2), all of which are incorporated herein by reference, BANA respectfully requests that the Court grant Defendant’s Motion to Seal portions of its Response in Opposition to Plaintiffs’ *Ex Parte* Motion for Leave to File Surreply to Defendant’s Motion for a Protective Order because good cause supports sealing thereof.

Dated: May 9, 2025

Respectfully submitted,

By: s/ Matthew L. Riffée

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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 May 9, 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: May 9, 2025

s/ Matthew L. Riffie