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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
BENEFITS LITIGATION

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

**DEFENDANT’S MOTION TO
FILE DOCUMENTS UNDER
SEAL IN SUPPORT OF ITS
MOTION TO RECONSIDER MAY
29, 2025 ORDER GRANTING IN
PART AND DENYING IN PART
DEFENDANT’S MOTION FOR
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 Motion to Reconsider the Court’s May 29, 2025 Order Granting in Part and Denying
5 in Part Defendant’s Motion for Protective Order (“Motion to Reconsider”).
6 Consistent with the Court’s prior sealing orders finding good cause to seal certain
7 exhibits filed with BANA’s Motion for Protective Order (ECF 453, 466), Plaintiffs’
8 Opposition to Defendant’s Motion for Protective Order (“Plaintiffs’ Opposition”)
9 (ECF 465, 467), and BANA’s Reply in Support of Motion for Protective Order
10 (“Reply”) (ECF 472, 477), BANA seeks to seal references within its Motion to
11 Reconsider relating to the contents of those already-filed and sealed exhibits.¹

12 As previously stated in BANA’s motions to seal submitted in connection with
13 class certification briefing and argument (ECF 328, 337, 344, 347, 383, 418) and
14 protective order briefing and argument (ECF 451, 463, 470), the public’s right to
15 inspect and copy judicial records is not absolute, and a party faced with the disclosure
16 of confidential or proprietary information may seek to file the documents under seal
17 to avoid disclosure of business information that might result in competitive harm or
18 be used for improper purposes. *See Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589,
19 598 (1978)) (denying disclosure); Local Civ. R. 79.2(c). A party seeking to seal
20 documents filed in connection with a discovery dispute must show “good cause” to
21 seal documents. Courts in this district have held that the good cause standard applies
22 even where the underlying dispute concerns so-called “apex” depositions of high-
23 level executives, as is the case here. *See, e.g., BAE Sys. San Diego Ship Repair Inc.*
24 *v. United States*, 670 F. Supp. 3d 1064, 1069 (S.D. Cal. 2023) (hereinafter “*BAE*”
25

26 ¹ BANA incorporates by reference its Motion 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).

1 *Systems*”) (finding “good cause” to seal exhibits filed with motion for protective
2 order).

3 Courts consistently seal documents where—as here—disclosure of the
4 confidential business information risks competitive harm to the litigant or improper
5 use of the information such as to commit fraud. *E.g.*, *E.W. Bank v. Shanker*, 2021
6 WL 3112452, at *18–19 (N.D. Cal. July 22, 2021) (finding compelling reasons to
7 seal confidential onboarding processes, verification of customer identities, and fraud
8 prevention measures); *Soria v. U.S. Bank N.A.*, 2019 WL 8167925, at *4 (C.D. Cal.
9 Apr. 25, 2019) (finding compelling reasons to seal internal fraud investigation
10 procedures because there was a “significant danger that someone could improperly
11 use this information to commit fraud and avoid detection.”). Indeed, this Court
12 largely granted the Parties’ prior motions to seal, finding good cause or compelling
13 reasons to seal documents concerning the same topics that BANA now seeks to seal,
14 including BANA’s fraud detection and prevention policies and strategies (including
15 the fraud filter), call center operations, prepaid fraud losses, state contract issues,
16 cardholder complaints and escalations, and certain of BANA’s interrogatory
17 responses. *See* ECF 266, 293, 365, 381, 390, 391, 397, 421, 466, 467, 477, 498 (the
18 “Sealing Orders”).

19 Consistent with this Court’s Sealing Orders, there is good cause to seal the
20 confidential documents and testimony at issue here (or references thereto), as well as
21 substantive discussions of already sealed exhibits filed in connection with BANA’s
22 Motion for Protective Order, Plaintiffs’ Opposition, or BANA’s Reply, because each
23 reflect topics that are likely to cause particularized competitive harm to BANA and
24 which could potentially enable future fraud, and thus pose a danger to BANA’s
25 business and the public. *See, e.g.*, *EWB*, 2021 WL 3112452, at *18–19 (finding
26 compelling reasons to seal where public disclosure of EWB’s confidential
27 onboarding processes, verification of customer identities and fraud prevention
28 measures would “harm [the bank’s] competitive standing”); *Soria*, 2019 WL

1 8167925, at *4 (finding compelling reasons to seal bank’s internal procedures for
2 investigating fraud because there was a “significant danger that someone could
3 improperly use this information to commit fraud and avoid detection”). Each
4 document was also properly designated as “Confidential” or “Highly Confidential –
5 Attorneys’ Eyes Only” under the Protective Order entered by this Court. *See BAE*
6 *Systems*, 670 F. Supp. 3d at 1069 (finding good cause to seal certain exhibits filed in
7 connection with an apex discovery dispute because “information in the exhibits fits
8 within ‘confidential information’ in the protective order”).

9 Specifically, the Confidential and Highly Confidential – Attorneys’ Eyes Only
10 documents and testimony that BANA seeks to seal, include but are not limited to, the
11 following categories of documents and information:

- 12 • Portions of the Motion to Reconsider reflect discussions of confidential
13 BANA fraud prevention strategies and policies that could be misused
14 by fraudsters to perpetrate future fraud or could be used by another
15 financial institution to BANA’s competitive disadvantage. *See* ECF 365
16 at 5–6, 12; ECF 466 at 1; ECF 467 at 1; ECF 477 at 1; Robart Decl.
17 (ECF 347-2) ¶¶ 3–5; Martin Decl. (ECF 347-1) ¶¶ 4–6; *see also Cowan*
18 *v. GE Cap. Retail Bank*, 2015 WL 1324848, at *2–3 (N.D. Cal. Mar. 24,
19 2015) (compelling reasons exist to seal bank’s internal procedures for
20 investigating fraud and addressing cardholder fraud notifications);
- 21 • Portions of the Motion to Reconsider show how BANA structures the
22 group responsible for fraud detection and monitoring strategies, among
23 other banking responsibilities. *See* ECF 365 at 13-14; ECF 466 at 1;
24 ECF 467 at 1; ECF 477 at 1; Robart Decl. (ECF 344-2) ¶ 5; Dkt. No.
25 344-1, Martin Decl. ¶ 9; *see also EWB*, 2021 WL 3112452, at *18-19
26 (sealing confidential onboarding processes, digital banking platform,
27 fraud management techniques, and verification of customer identities);
28 and

- Portions of the Motion to Reconsider reflect BANA's confidential discussions or analyses of its state prepaid unemployment program operations, including but not limited to, fraud volume, claims and call center operations, operational risks and losses, and approval of fraud strategies. *See* ECF 365 at 10–13, n. 14; ECF 466 at 1; ECF 467 at 1; ECF 477 at 1; Martin Decl. (ECF 344-1) ¶¶ 5, 7–10; Martin Decl. (ECF 347-1) ¶¶ 10–12; Robart Decl. (ECF 344-2) ¶ 4; *see Brady v. Grendene USA, Inc.*, 2015 WL 6828400, at *3 (S.D. Cal. Nov. 6, 2015) (J. Curiel) (sealing confidential business information that might harm the litigants' competitive standing including profit and loss data and contractual agreements).

BANA has also provisionally redacted and sealed portions of the Motion to Reconsider that quote or describe the confidential topics identified above, or those previously submitted or described in the Parties' prior briefing and motions to seal submitted in connection with BANA's Motion for Protective Order (ECF 451, 453, 463, 465, 470, 472). Those confidential topics include BANA's fraud analyses and strategies and BANA's analyses of its state prepaid unemployment program operations, including contractual negotiations, fraud volume, claims and call center operations, and operational risks and losses, among other topics. *See supra* at 3-4. This is consistent with the terms of the Stipulated Protective Order (ECF 82, § 3), with this Court's prior Sealing Orders (ECF 365, 381, 390, 466, 467, 477, 498), and with rulings in this Circuit. *See, e.g., Darisse v. Nest Labs, Inc.*, 2016 WL 11474174, at *2 (N.D. Cal. June 2, 2016) (sealing class certification motion and declarations that quote or reference confidential exhibits). For the reasons discussed above, there is good cause to seal discussions of those topics, testimony and documents discussed in the Parties' briefing. *See supra* at 1-4.

* * *

For the foregoing reasons and for the reasons set forth in the Court's Sealing

1 Orders in connection with class certification briefing and argument (ECF Nos. 365,
2 381, 390, 391, 397, 421, 498) and protective order briefing and argument (ECF 466,
3 467, 477), Plaintiffs' Motions to Seal (ECF Nos. 376, 384, 394, 463), BANA's prior
4 Motions to Seal (ECF Nos. 328, 337, 344, 347, 383, 418, 451, 470) and
5 accompanying declarations submitted in support thereof (ECF Nos. 344-1, 344-2,
6 344-3, 347-1, 347-2), all of which are incorporated herein by reference, BANA
7 respectfully requests that the Court grant Defendant's Motion to Seal Documents
8 Filed In Support of its Motion to Reconsider the Court's May 29, 2025 Order
9 Granting in Part and Denying in Part Defendant's Motion for Protective Order
10 because good cause supports sealing thereof.

11 Dated: June 26, 2025

Respectfully submitted,

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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 June 26, 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: June 26, 2025

s/ Matthew L. Riffie