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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

IN RE: BANK OF AMERICA 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 STAY PENDING RESOLUTION OF RULE 23(f) PETITION** Ctrm: 2D – 2nd Floor Judge: Hon. Gonzalo P. Curiel

PLEASE TAKE NOTICE that, pursuant to Local Civil Rule 79.2(c), Defendant Bank of America, N.A. (“Defendant” or “BANA”) hereby submits this Motion to File Documents Under Seal (the “Motion”) in connection with Defendant’s Motion to Stay Pending Resolution of Rule 23(f) Petition (“Stay Motion”). In particular, BANA seeks to seal portions of Exhibit 1 to the Declaration of Valerie Haggans in Support of Defendant’s Motion to Stay Pending Resolution of Rule 23(f) Petition and references within its Stay Motion relating to the sealed contents of Exhibit 1 because good cause and compelling reasons support the sealing of the identified document.

As previously stated in BANA’s motions to seal submitted in connection with class certification briefing, argument, and the Court’s order (ECF 328, 344, 347, 495), the public’s right to inspect and copy judicial records is not absolute, and a party faced with the disclosure of confidential or proprietary information may seek to file the documents under seal to avoid disclosure of business information that might result in competitive harm or be used for improper purposes. *See Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)) (denying disclosure); Local Civ. R. 79.2(c). A party seeking to seal documents filed in connection with a discovery dispute must show “good cause” to seal documents. *Provide Com., Inc. v. Hartford Fire Ins. Co.*, 2014 WL 1877438, at *2 (S.D. Cal. May 9, 2014) (applying the good cause standard in granting motion to seal portions of motion to stay).

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 largely granted the Parties' prior motions to seal, finding good cause or compelling reasons to seal documents concerning the same topics that BANA now seeks to seal, including but not limited to, BANA's fraud detection and prevention policies and strategies; claims review policies and strategies and their implementation; analyses of transactional fraud; analyses of claims fraud and potential strategies to combat that fraud; and BANA's implementation of the Remediation Plans. *See* ECF 365, 381, 498 (the "Sealing Orders").

Consistent with this Court's Sealing Orders, there is good cause to seal portions of the document filed in connection with BANA's Stay Motion (or references thereto) because they reflect topics that are likely to cause particularized competitive harm to BANA and which could potentially enable future fraud, and thus pose a danger to BANA's business and the public. *See, e.g.*, *EWB*, 2021 WL 3112452, at *18–19 (finding compelling reasons to seal where public disclosure of EWB's confidential onboarding processes, verification of customer identities and fraud prevention measures would "harm [the bank's] competitive standing"); *Soria*, 2019 WL 8167925, at *4 (finding compelling reasons to seal bank's internal procedures for investigating fraud because there was a "significant danger that someone could improperly use this information to commit fraud and avoid detection"). Each underlying document was also properly designated as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" under the Protective Order entered by this Court.

Specifically, the Confidential and Highly Confidential – Attorneys' Eyes Only documents and testimony that BANA relied upon in drafting Exhibit 1 (Memorandum of Points and Authorities in Support of Motion for Class Certification; Order Granting Class Plaintiffs' Motion for Class Certification; Expert Declaration of Teresa A. Pesce; Declarations of Michael J. Letson, William Martin, and Jennifer Lennon; Bank of America's Responses and Objections to Plaintiff

Yick's Fourth Set of Interrogatories and Second Set of Responses (ROG Nos. 28 and 29); Bank of America's Second Set of Responses and Objections to Plaintiff Yick's Seventh Set of Interrogatories (ROG Nos. 39); and the Remediation Plan and Addenda were previously sealed by this Court.[1] *See* ECF 365, 381 and 498. The document (and references thereto) BANA seeks to seal now include the following categories of documents and information:

- Exhibit 1 (and portions of the Stay Motion) reflect confidential BANA fraud prevention strategies and policies that could be misused by fraudsters to perpetrate future fraud or could be used by another financial institution to BANA's competitive disadvantage. *See* Amended Sealing Order (ECF 365) at 5–6, 12; *see also Cowan v. GE Cap. Retail Bank*, 2015 WL 1324848, at *2–3 (N.D. Cal. Mar. 24, 2015) (compelling reasons to seal bank's internal procedures for investigating fraud and addressing cardholder fraud notifications);
- Exhibit 1 (and portions of the Stay Motion) reflect confidential BANA analyses pertaining to fraud on prepaid unemployment cards that similarly could be misused by fraudsters to perpetrate future fraud or could be used by another financial institution to BANA's competitive disadvantage. *See* Amended Sealing Order (ECF 365) at 5–9, 12; *see also Cowan*, 2015 WL 1324848, at *2–3 (compelling reasons to seal bank's internal procedures for investigating fraud and addressing cardholder fraud notifications);
- Exhibit 1 (and portions of the Stay Motion) reflect BANA's confidential analyses of its state prepaid unemployment program operations, including but not limited to, contractual negotiations, fraud volume, claims and call center operations, and operational risks and losses. *See*

[1] After consent from Plaintiffs' Counsel, BANA previously filed an Unopposed Motion to Seal the very Petition that is the subject of this Motion in the Ninth Circuit Court of Appeals. *See Chong, et al. v. Bank of America, N.A.*, No. 25-4072, ECF 3.

Amended Sealing Order (ECF 365) at 10–13, n. 14; *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);

- Exhibit 1 (and portions of the Stay Motion) reflect confidential BANA testimony pertaining to BANA's Remediation Plans with the Office of the Comptroller of the Currency ("OCC") and the Consumer Financial Protection Bureau ("CFPB")—which were designated Highly Confidential – Attorneys' Eyes Only at those regulators' requests—which this Court has found compelling reasons to seal. Amended Sealing Order (ECF 365) at 14–16; *see also Erhart v. BofI Fed. Bank*, 2019 WL 4534701, at *3 (S.D. Cal. Sept. 19, 2019) (sealing information that the OCC asserted bank examination privilege over but permitted to be produced subject to confidentiality protections).

* * *

For the foregoing reasons and for the reasons set forth in the Court's Sealing Orders (365, 381, 498), Plaintiffs' Motions to Seal (ECF Nos. 376, 384, 394, 463), BANA's prior Motions to Seal (ECF Nos. 328, 337, 344, 347, 383, 418, 451, 470, 501) 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 Documents Filed in Support of its Motion to Stay Pending Resolution of the Rule 23(f) Petition because good cause supports sealing thereof.

Dated: July 3, 2025 Respectfully submitted,

By: *s/ James W. McGarry*

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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 July 3, 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: July 3, 2025 *s/ James W. McGarry*