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

16 IN RE: BANK OF AMERICA
CALIFORNIA UNEMPLOYMENT
17 BENEFITS LITIGATION
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Case No. 21-MD-02992-GPC-MSB

**DEFENDANT’S MOTION TO
FILE DOCUMENTS UNDER
SEAL IN ITS REPLY IN
SUPPORT OF ITS MOTION TO
STAY PENDING RESOLUTION
OF RULE 23(f) PETITION**

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 Reply in Support of its Motion to Stay Pending Resolution of Rule 23(f) Petition
5 (“Reply”). In particular, BANA seeks to seal portions of the Reply and Exhibit 1 of
6 the Declaration of Valerie Haggans (“Haggans Decl.”), which is Defendant’s Reply
7 in Support of its Rule 23(f) Petition, because good cause and compelling reasons
8 support the sealing of the identified document. All portions of the Reply and Exhibit
9 1 of the Haggans Decl. that BANA seeks to seal reference documents already found
10 to warrant sealing by this Court.¹ See ECF 365, 381, 390, 391, 498, and 516 (the
11 “Sealing Orders”).

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

23 Courts consistently seal documents where—as here—disclosure of the
24 confidential business information risks competitive harm to the litigant or improper
25 use of the information such as to commit fraud. *E.g., E.W. Bank v. Shanker*, 2021
26 WL 3112452, at *18–19 (N.D. Cal. July 22, 2021) (finding compelling reasons to

27 ¹ BANA incorporates by reference its Motion to File Documents Under Seal (ECF
28 511) in connection with its Motion to Stay Pending Resolution of Rule 23(f)
Petition (ECF 513).

1 seal confidential onboarding processes, verification of customer identities, and fraud
2 prevention measures); *Soria v. U.S. Bank N.A.*, 2019 WL 8167925, at *4 (C.D. Cal.
3 Apr. 25, 2019) (finding compelling reasons to seal internal fraud investigation
4 procedures because there was a “significant danger that someone could improperly
5 use this information to commit fraud and avoid detection.”). Indeed, this Court
6 largely granted the Parties’ prior motions to seal, finding good cause or compelling
7 reasons to seal documents concerning the same topics that BANA now seeks to seal,
8 including but not limited to, BANA’s fraud detection and prevention policies and
9 strategies; claims review policies and strategies and their implementation; analyses
10 of transactional fraud; analyses of claims fraud and potential strategies to combat that
11 fraud; and BANA’s implementation of the Remediation Plans. *See* ECF 365, 381,
12 390, 391, 498, and 516.

13 Consistent with this Court’s Sealing Orders, there is good cause to seal
14 portions of the Reply and Exhibit 1 filed therewith because they reflect topics that
15 are likely to cause particularized competitive harm to BANA and which could
16 potentially enable future fraud, and thus pose a danger to BANA’s business and the
17 public. *See, e.g., EWB*, 2021 WL 3112452, at *18–19 (finding compelling reasons
18 to seal where public disclosure of EWB’s confidential onboarding processes,
19 verification of customer identities and fraud prevention measures would “harm [the
20 bank’s] competitive standing”); *Soria*, 2019 WL 8167925, at *4 (finding compelling
21 reasons to seal bank’s internal procedures for investigating fraud because there was
22 a “significant danger that someone could improperly use this information to commit
23 fraud and avoid detection”). Each underlying document was also properly designated
24 as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” under the
25 Protective Order entered by this Court.

26 Specifically, the Confidential and Highly Confidential – Attorneys’ Eyes Only
27 documents and testimony that BANA relied upon in drafting Exhibit 1 of the
28 Haggans Decl. (Expert Class Certification Report of Greg J. Regan; Declaration of

1 William M. Martin; the Remediation Plans and Addenda; Plaintiffs’ Motion for Class
2 Certification; Plaintiffs’ Reply in Support of Motion for Class Certification; and
3 District Court’s Order Granting Class Plaintiffs’ Motion for Class Certification) were
4 previously sealed by this Court. *See* ECF 365, 381, 390, 391, 498, 516. The portions
5 of the Reply and Exhibit 1 that BANA seeks to seal now include references to and
6 discussions of the following categories of documents and information:

- 7 • Portions of Exhibit 1 reflect confidential BANA fraud prevention
8 strategies and policies that could be misused by fraudsters to perpetrate
9 future fraud or could be used by another financial institution to BANA’s
10 competitive disadvantage. *See* Amended Sealing Order (ECF 365) at
11 5–6, 12; *see also* *Cowan v. GE Cap. Retail Bank*, 2015 WL 1324848, at
12 *2–3 (N.D. Cal. Mar. 24, 2015) (compelling reasons to seal bank’s
13 internal procedures for investigating fraud and addressing cardholder
14 fraud notifications);
- 15 • Portions of the Reply and Exhibit 1 reflect confidential BANA analyses
16 pertaining to fraud on prepaid unemployment cards that similarly could
17 be misused by fraudsters to perpetrate future fraud or could be used by
18 another financial institution to BANA’s competitive disadvantage. *See*
19 Amended Sealing Order (ECF 365) at 5–9, 12; *see also* *Cowan*, 2015
20 WL 1324848, at *2–3 (compelling reasons to seal bank’s internal
21 procedures for investigating fraud and addressing cardholder fraud
22 notifications);
- 23 • Portions of Exhibit 1 reflect BANA’s confidential analyses of its state
24 prepaid unemployment program operations, including but not limited to,
25 contractual negotiations, fraud volume, claims and call center
26 operations, and operational risks and losses. *See* Amended Sealing
27 Order (ECF 365) at 10–13, n. 14; *see* *Brady v. Grendene USA, Inc.*, 2015
28 WL 6828400, at *3 (S.D. Cal. Nov. 6, 2015) (J. Curiel) (sealing

1 confidential business information that might harm the litigants’
2 competitive standing including profit and loss data and contractual
3 agreements);

- 4 • Portions of the Reply and Exhibit 1 reflect confidential BANA
5 testimony pertaining to BANA’s Remediation Plans with the Office of
6 the Comptroller of the Currency (“OCC”) and the Consumer Financial
7 Protection Bureau (“CFPB”)—which were designated Highly
8 Confidential – Attorneys’ Eyes Only at those regulators’ requests—and
9 BANA’s implementation of the Plans, which this Court has found
10 compelling reasons to seal. Amended Sealing Order (ECF 365) at 14–
11 16; *see also Erhart v. BofI Fed. Bank*, 2019 WL 4534701, at *3 (S.D.
12 Cal. Sept. 19, 2019) (sealing information that the OCC asserted bank
13 examination privilege over but permitted to be produced subject to
14 confidentiality protections).

15 * * *

16 For the foregoing reasons and for the reasons set forth in the Court’s Sealing
17 Orders (ECF 365, 381, 390, 391, 498, 516), Plaintiffs’ Motions to Seal (ECF 376,
18 384, 394, 463), BANA’s prior Motions to Seal (ECF 328, 347, 376, 383, 495, 511)
19 and accompanying declarations submitted in support thereof (ECF 344-1, 344-2,
20 344-3, 347-1, 347-2), all of which are incorporated herein by reference, BANA
21 respectfully requests that the Court grant Defendant’s motion to seal portions of
22 Defendant’s Reply in Support of its Motion to Stay Pending Resolution of the Rule
23 23(f) Petition and Exhibit 1 filed therewith because good cause supports sealing
24 thereof.

25 Dated: August 8, 2025

26 Respectfully submitted,

27 By: s/ Valerie A. Haggans

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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 August 8, 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: August 8, 2025

s/ Valerie A. Haggans