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

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

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

**DEFENDANT'S MOTION TO  
FILE DOCUMENTS UNDER  
SEAL IN ITS REPLY BRIEF IN  
SUPPORT OF ITS MOTION TO  
RECONSIDER THE 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 Reply Brief in Support of its Motion to Reconsider the Court’s May 29, 2025 Order  
5 Granting in Part and Denying in Part Defendant’s Motion for Protective Order (the  
6 “Reply”). Consistent with the Court’s prior sealing orders finding good cause to seal  
7 certain exhibits filed with BANA’s Motion for Protective Order (ECF 452, 466),  
8 Plaintiffs’ Opposition to Defendant’s Motion for Protective Order (ECF 464, 467),  
9 BANA’s Reply in Support of Motion for Protective Order (ECF 471, 477), BANA’s  
10 Motion to Reconsider (ECF 502, 507), and Plaintiffs’ Opposition to Defendant’s  
11 Motion to Reconsider (ECF 525, 531), BANA seeks to seal portions of the Reply that  
12 discuss, reference or reflect the contents of those already-filed and sealed exhibits  
13 and portions of the Declaration of Lindsay Hoyle in Support of Defendant’s Reply  
14 Brief in Support of Motion to Reconsider the Court’s May 29, 2025 Order Granting  
15 in Part and Denying in Part Defendant’s Motion for Protective Order (“Hoyle  
16 Decl.”).<sup>1</sup>

17 As previously stated in BANA’s motions to seal submitted in connection with  
18 class certification briefing and argument (ECF 328, 337, 344, 347, 383, 418) and  
19 protective order briefing and argument (ECF 451, 463, 470), the public’s right to  
20 inspect and copy judicial records is not absolute, and a party faced with the disclosure  
21 of confidential or proprietary information may seek to file the documents under seal  
22 to avoid disclosure of business information that might result in competitive harm or  
23 be used for improper purposes. *See Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589,

24 <sup>1</sup> BANA incorporates by reference its Motion to File Documents Under Seal (ECF  
25 451) in connection with its Motion for a Protective Order (ECF 452), Plaintiffs’  
26 Motion to File Documents Under Seal (ECF 463) in connection with Plaintiffs’  
27 Opposition to Defendant’s Motion for Protective Order (ECF 464), BANA’s Motion  
28 to File Documents Under Seal (ECF 470) in connection with its Reply in Support of  
Motion for Protective Order (ECF 471), BANA’s Motion to File Documents under  
Seal (ECF 501) in connection with its Motion to Reconsider (ECF 502), and  
Plaintiffs’ Motion to File Documents Under Seal (ECF 524) in connection with  
Plaintiffs’ Opposition to Defendant’s Motion to Reconsider (ECF 525).

1 598 (1978) (denying disclosure); Local Civ. R. 79.2(c). A party seeking to seal  
2 documents filed in connection with a discovery dispute must show “good cause” to  
3 seal documents. Courts in this district have held that the good cause standard applies  
4 even where the underlying dispute concerns so-called “apex” depositions of high-  
5 level executives, as is the case here. *See, e.g., BAE Sys. San Diego Ship Repair Inc.*  
6 *v. United States*, 670 F. Supp. 3d 1064, 1069 (S.D. Cal. 2023) (hereinafter “*BAE*  
7 *Systems*”) (finding “good cause” to seal exhibits filed with motion for protective  
8 order).

9 Courts consistently seal documents where—as here—disclosure of the  
10 confidential business information risks competitive harm to the litigant or improper  
11 use of the information such as to commit fraud. *E.g., E.W. Bank v. Shanker*, 2021  
12 WL 3112452, at \*18–19 (N.D. Cal. July 22, 2021) (finding compelling reasons to  
13 seal confidential onboarding processes, verification of customer identities, and fraud  
14 prevention measures); *Soria v. U.S. Bank N.A.*, 2019 WL 8167925, at \*4 (C.D. Cal.  
15 Apr. 25, 2019) (finding compelling reasons to seal internal fraud investigation  
16 procedures because there was a “significant danger that someone could improperly  
17 use this information to commit fraud and avoid detection.”). Indeed, this Court  
18 largely granted the Parties’ prior motions to seal, finding good cause or compelling  
19 reasons to seal documents concerning the same topics that BANA now seeks to seal,  
20 including BANA’s fraud detection and prevention policies and strategies (including  
21 the fraud filter), call center operations, prepaid fraud losses, state contract issues,  
22 cardholder complaints and escalations, and certain of BANA’s interrogatory  
23 responses. *See* ECF 266, 293, 365, 381, 390, 391, 397, 421, 466, 467, 477, 498, 507,  
24 531 (the “Sealing Orders”).

25 Consistent with this Court’s Sealing Orders, there is good cause to seal the  
26 confidential documents and testimony at issue here (or references thereto), as well as  
27 substantive discussions of already sealed exhibits filed in connection with BANA’s  
28 Motion for Protective Order, Plaintiffs’ Opposition to Defendant’s Motion for

1 Protective Order, BANA’s Reply in Support of Protective Order, BANA’s Motion to  
2 Reconsider, or Plaintiffs’ Opposition to Defendants’ Motion to Reconsider because  
3 each reflect topics that are likely to cause particularized competitive harm to BANA  
4 and which could potentially enable future fraud, and thus pose a danger to BANA’s  
5 business and the public. *See, e.g., EWB*, 2021 WL 3112452, at \*18–19 (finding  
6 compelling reasons to seal where public disclosure of EWB’s confidential  
7 onboarding processes, verification of customer identities and fraud prevention  
8 measures would “harm [the bank’s] competitive standing”); *Soria*, 2019 WL  
9 8167925, at \*4 (finding compelling reasons to seal bank’s internal procedures for  
10 investigating fraud because there was a “significant danger that someone could  
11 improperly use this information to commit fraud and avoid detection”). Each  
12 document was also properly designated as “Confidential” or “Highly Confidential –  
13 Attorneys’ Eyes Only” under the Protective Order entered by this Court. *See BAE*  
14 *Systems*, 670 F. Supp. 3d at 1069 (finding good cause to seal certain exhibits filed in  
15 connection with an apex discovery dispute because “information in the exhibits fits  
16 within ‘confidential information’ in the protective order”).

17 Specifically, the portions of the Reply and Hoyle Declaration that BANA seeks  
18 to seal refer to or discuss Confidential and Highly Confidential – Attorneys’ Eyes  
19 Only documents and testimony pertaining to the following categories of documents  
20 and information:

- 21 • Portions of the Reply reflect discussions of confidential BANA fraud  
22 prevention strategies and policies that could be misused by fraudsters to  
23 perpetrate future fraud or could be used by another financial institution  
24 to BANA’s competitive disadvantage. *See* ECF 365 at 5–6, 12; ECF  
25 466 at 1; ECF 467 at 1; ECF 477 at 1; Robart Decl. (ECF 347-2) ¶¶ 3–  
26 5; Martin Decl. (ECF 347-1) ¶¶ 4–6; *see also Cowan v. GE Cap. Retail*  
27 *Bank*, 2015 WL 1324848, at \*2–3 (N.D. Cal. Mar. 24, 2015)  
28 (compelling reasons exist to seal bank’s internal procedures for

investigating fraud and addressing cardholder fraud notifications);

- Portions of the Reply and the Hoyle Declaration show how BANA structures the group responsible for fraud detection and monitoring strategies, among other banking responsibilities. *See* ECF 365 at 13-14; ECF 466 at 1; ECF 467 at 1; ECF 477 at 1; Robart Decl. (ECF 344-2) ¶ 5; Martin Decl. (ECF 344-1) ¶ 9; *see also EWB*, 2021 WL 3112452, at \*18-19 (sealing confidential onboarding processes, digital banking platform, fraud management techniques, and verification of customer identities); and
- Portions of the Reply 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's requested sealing of portions of the Reply and Hoyle Declaration 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, 507, 531), 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 Orders in connection with class certification briefing and argument (ECF 365, 381, 390, 391, 397, 421, 498), protective order briefing and argument (ECF 466, 467, 477), and reconsideration briefing and argument (ECF 507, 531), Plaintiffs' Motions to Seal (ECF 376, 384, 394, 463, 524), BANA's prior Motions to Seal (ECF 328, 337, 344, 347, 383, 418, 451, 470, 501) and accompanying declarations submitted in support thereof (ECF 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 Reply Brief in Support of its Motion to Reconsider the Court's May 29, 2025 Order Granting in Part and Denying in Part Defendant's Motion for Protective Order because good cause supports sealing thereof.

Dated: August 8, 2025

Respectfully submitted,

By: s/ Lindsay E. Hoyle

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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/ Lindsay E. Hoyle