JAMES W. MCGARRY (*pro hac vice*)
JMcGarry@goodwinlaw.com
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
Tel.: +1 617 570 1000
Fax: +1 617 523 1231

SABRINA M. ROSE-SMITH (*pro hac vice*)
SRoseSmith@goodwinlaw.com
MATTHEW L. RIFFEE (*pro hac vice*)
MRiffee@goodwinlaw.com
GOODWIN PROCTER LLP
1900 N Street, NW
Washington, DC 20036
Tel.: +1 202 346 4000
Fax: +1 202 346 4444

Attorneys for Defendant
BANK OF AMERICA, N.A.

[*ADDITIONAL COUNSEL LISTED IN SIGNATURE BLOCK*]

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

IN RE: BANK OF AMERICA CALIFORNIA UNEMPLOYMENT BENEFITS LITIGATION	Case No. 21-MD-02992-GPC-MSB **DEFENDANT BANK OF AMERICA, N.A.'S NOTICE AND MOTION TO SEAL DOCUMENTS FILED IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT** Ctrm: 12A – 12th Floor Judge: Hon. Gonzalo P. Curiel

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

PLEASE TAKE NOTICE that, pursuant to Local Civil Rule 79.2(c), Defendant Bank of America, N.A. ("Defendant" or "BANA") hereby submits this Notice and Motion to Seal (the "Motion") certain documents and portions of other documents in connection with BANA's Motion for Partial Summary Judgment ("Summary Judgment Motion").[1]

I. STANDARD TO SEAL DOCUMENTS

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). The documents that BANA seeks to seal each contain information that qualifies as "Protected Material" pursuant to the Parties' Stipulated Protective Order ("Protective Order"), entered by the Court on September 24, 2021 (ECF 82).

It is acknowledged by courts, including many courts in this district, that a party seeking to seal documents filed in connection with a motion for summary judgment, a dispositive motion, must show "compelling reasons" to seal. *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006); *see Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 678-79 (9th Cir. 2010) (determining "compelling reasons" standard applies to motion to seal documents attached to cross-motion for summary judgment); *see also EpicentRx, Inc. v. Carter*, 2023 WL 4336695, at 1 (S.D. Cal. May 16, 2023) (applying "compelling reasons" standard to request to seal certain exhibits associated with motions for summary judgment).

In applying the "compelling reasons" standard, courts, including this Court,

[1] This Motion is based on Defendant's Notice of Motion and Motion to Seal, the documents filed in support of Defendant's Summary Judgment Motion, including the Declaration of Laura G. Brys ("Brys Decl.") submitted herewith, all pleadings and papers on file in this action, oral argument if requested by the Court, and any such other matters that the Court deems appropriate. Should the Court desire more detailed briefing to decide Defendant's Motion to Seal, BANA respectfully requests the opportunity to submit additional briefing in support of sealing.

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. *See 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"); *see also* ECF 266, 293, 365, 381, 390, 391, 397, 421, 466, 467, 548 (the "Sealing Orders").

II. COMPELLING REASONS EXIST TO SEAL THE CONFIDENTIAL DOCUMENTS.

Compelling reasons exist to file under seal each of the confidential documents (or portions thereof) filed in connection with BANA's Summary Judgment Motion, and any substantive discussion of those documents contained therein or in the documents filed in support thereof. Each of those documents were properly designated as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" under the Protective Order entered by this Court because each pertains to topics that are likely to cause particularized competitive harm to BANA and which could potentially enable future fraud, which poses a danger to BANA's business and the public. Many of the documents were also designated Confidential pursuant to the terms of BANA's contract and confidentiality agreement with the EDD (*see infra* at 13–14), because BANA was explicitly instructed by its regulators to keep the documents confidential because they implicate regulatory protections and concern ongoing remediation efforts (*see infra* at 15–16), and/or because their disclosure could implicate or interfere with potential or ongoing law enforcement investigations (*see infra* at 3).

All are compelling reasons which outweigh the public disclosure factors, and thus permit sealing of those documents. For example, in *East West Bank v. Shanker*, a California district court granted a motion to seal portions of exhibits concerning "confidential onboarding processes, digital banking platform[s], fraud management techniques, and verification of customer identities, which if made public would harm [the bank's] business," and found that public disclosure of EWB's confidential fraud prevention measures would "harm EWB's business." 2021 WL 3112452, at *18-19. Similarly, in *Soria v. U.S. Bank, N.A.*, another California district court found compelling reasons to file under seal information related to a bank's internal procedures for investigating incidents of fraud, explaining that "[a]lthough there is a public interest in [the b]ank's procedures concerning its fraud investigations, public disclosure of this information may impede [the b]ank's ability to identify and combat future instances of fraud" and that "[t]here is a significant danger that someone could improperly use this information to commit fraud and avoid detection." 2019 WL 8167925, at *4. Further, in *Shelley v. Cnty. of San Joaquin*, yet another California district court protected materials where "the public release of those documents could negatively impact" law enforcement investigations. 2015 WL 2082370, at *7 (E.D. Cal. May 4, 2015).

Similar compelling reasons exist here. Indeed, this court has already found, compelling reasons to seal documents just like those at issue here, which each relate to confidential business practices and fraud prevention measures that could be misused to commit future fraud or used by competitor banks to BANA's disadvantage. Earlier this year, Judge Berg determined that there are "compelling reasons" to seal a number of exhibits previously submitted with Plaintiffs' motion to compel discovery that concern the very same categories of confidential information that BANA seeks to seal here. *See* ECF 266. In doing so, Judge Berg found that compelling reasons existed to seal information concerning: the Claim Fraud Filter, other fraud and claims strategies, call center operations, prepaid fraud losses, state contract issues, prepaid updates and trackers, cardholder complaints and escalations, and certain of BANA's interrogatory responses—which are *precisely* the types of documents BANA seeks to seal here.

This Court also found compelling reasons to seal the same or similar documents related to analyses of claims fraud and potential strategies to combat that fraud including the Claim Fraud Filter and other fraud strategies, operational fraud losses, trainings for claims investigations, fraud detection and prevention policies and strategies, claims review policies and strategies and their implementation, BANA's analyses of transactional fraud, risk of competitor advantage concerning how BANA structures its claims and fraud teams and the review procedures, protocols and systems therein, its analyses of state prepaid unemployment program operations and contractual negotiations with vendors, fraud prevention programs, organizational charts, confidential regulator materials, and quotes or summary descriptions from sealed exhibits. *See* ECF 365, 381, 390. Those prior rulings are sufficient grounds alone to grant sealing here. *See Lundstrom v. Young*, 2022 WL 15524624, at *17 (S.D. Cal. Oct. 27, 2022) (J. Curiel) (considering prior sealing of exhibits when granting motion to seal); *Workplace Techs. Rsch., Inc. v. Project Mgmt. Inst., Inc.*, 2021 WL 6091272, at *3 (S.D. Cal. Oct. 20, 2021) (sealing references to document that court already granted sealing of).

Specifically, the Confidential and Highly Confidential – Attorneys' Eyes Only documents, testimony and declarations that BANA seeks to seal, include but are not limited to, the following categories of documents and information, which this Court has already found compelling reasons to seal:

- DX[2] 1, 4, 5, 12.A, 71, 85, 86, 90, 101, 104, 132, 133, 143, 144, 145, 149, 158, 159, 165, 168, 169, 176, and 184 reflect confidential BANA fraud detection and prevention strategies and policies, including the Claim Fraud Filter, and other current and former fraud strategies that could be misused by fraudsters to perpetrate future fraud or could be used by

[2] Exhibits to the Brys Declaration submitted in support of BANA's Summary Judgment Motion are referred to as "DX."

another financial institution to BANA's competitive disadvantage (*see* Amended Sealing Order (ECF 365) at 5–6, 12);

- DX 50, 51, 59, 60, 61, 64, 91, 92, 98, 120, 122, 126, 128, 135, 176, 177, and 178 reflect confidential BANA claims review policies and strategies and the implementation thereof, including reviewing complaint escalations and issuing provisional credits in compliance with regulations that could also be misused by fraudsters to perpetrate fraud or could be used by another financial institution to BANA's competitive disadvantage (*see* Amended Sealing Order (ECF 365) at 5–6, 12);
- DX 4, 5, 12.A, 62, 75, 76, 79, 83, 87, 88, 102, 105, 113, 114, 118, 121, 136, 140, and 183 reflect confidential BANA analyses pertaining to fraud, including card skimming, and potential fraud prevention and detection strategies to combat that fraud 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;
- DX 1, 2, 4, 5, 12.A, 24, 25, 63, 72, 84, 93, 94, 95, 96, 97, 99, 106, 107, 108, 109, 110, 111, 112, 116, 119, 124, 125, 127, 134, 137, 138, 139, 146, 147, 148, 150, 151, 152, 154, 155, 156, 157, 166, 167, 168, 169, 170, 171, 172, 173, 174, 178, 179, 180, 181, 183 and 184 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* Amended Sealing Order (ECF 365) at 10–13, n. 14);
- DX 2, 44, 45, 46, 47, 48 and 49 reflect confidential BANA general services agreements and statements of work between BANA and its call center vendors, which could be used to harm BANA's competitive

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

- DX 1, 12.A, 53, 54, 55, 70, 73, 74, 77, 78, 80, 81, 100, 115, 117, 123, 129, 130, 131, 134, 141, 142, 153, 161, 162, 163, 164 and 182 reflect confidential BANA communications with EDD regarding BANA's and/or EDD's fraud strategies, including the use of EMV chip technology and freezing and blocking of accounts which 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);
- DX 1, 55, 125, 134, 154, 155 and 170 reflect confidential BANA fraud and operational losses in connection with the unemployment insurance prepaid programs which 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 10–13, n. 14);
- DX 3, 7, 26, 27, 27.A, 27.B, 27.C, 27.D, 28, 28.A, 28.A.1, 29, 30, 30.A, 30.B, 31, 31.A, 31.B and 31.B.1 reflect confidential BANA interrogatory responses and data provided therein reflecting BANA's use of the Claim Fraud Filter to decision unauthorized transaction claims and to freeze or block EDD cardholder accounts, and any reconsideration by BANA of those claims and any compensation paid as a result which 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);
- DX 3, 14.P, 43.A, 43.B and 43.C reflect confidential BANA documents and testimony pertaining to BANA's Remediation Plan and Addenda 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 (*see* Amended Sealing Order (ECF 365) at 14–16);

- DX 14.AC, 14.AD, 14.AE, 14.T, 14.W, 15, 16, 17, 18, 19, 20, 21, 22, 23, 32, 33, 34, 35, 36, 37, 65, 66, 67, 68, 69, 82, 148 and 177 reflect confidential EDD cardholder account or personal information, including personal identifying information, the disclosure of which could expose those cardholders to harm or identity theft (*see* Amended Sealing Order (ECF 365) at 16–17; Sealing Order (ECF 381) at 1. Those exhibits also reflect the types of claims files or information that BANA considers in connection with investigating and processing unauthorized transaction and error claims. *See* Robart Decl. (ECF 347-2) ¶¶ 3–8. Further compelling reasons exist to seal that information because the disclosure of that information could provide potential fraudsters with insight into BANA's confidential claims processes or procedures, thereby enabling fraudsters to circumvent them and perpetrate future fraud, and disclosure could also enable other financial institutions to use that information to BANA's competitive disadvantage (*see id.*);
- DX 7.A, 8.A, 9.A, 10.A, 11.A, 11.B, 12.A, 12.B, 13.A, 14.AB, 14.AB.1, 14.AG, 14.C, 14.C.1, 14.C.2, 14.D, 14.F, 14.K, 14.N, 14.O.1, 14.R, 14.U, 14.U.1 and 14.Z reflect expert reports and excerpts of experts' deposition testimony, which include discussions of BANA's confidential documents, many of which contain the confidential information described above, including but not limited to: BANA's handling of unauthorized transaction claims and reconsiderations; BANA's contract with EDD and the responsibilities thereunder; BANA's communications with EDD regarding fraud-related measures;

BANA's fraud strategies, including the use of EMV chip technology and the freezing and blocking of accounts; and BANA's call center procedures and complaint escalation intake channels. This information 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); and

- DX 6, 14.A, 14.AA, 14.B, 14.E, 14.G, 14.H, 14.I, 14.J, 14.L, 14.M, 14.P, 14.Q, 14.S, 14.V, 14.X and 14.Y reflect excerpts of 30(b)(6) fact witnesses and EDD's deposition testimony, which include discussions of BANA's confidential documents, many of which contain the confidential information described above, including but not limited to: BANA's handling of unauthorized transaction claims and reconsiderations; BANA's contract with EDD and the responsibilities thereunder; BANA's communications with EDD regarding fraud-related measures; BANA's fraud strategies, including the use of EMV chip technology and the freezing and blocking of accounts; and BANA's call center procedures and complaint escalation intake channels. which 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);

Documents that risk future fraud. BANA moves to seal BANA's fraud and claims review policies, practices and strategies and any analyses thereof (*see* DX 4, 5, 12.A, 50, 51, 59, 60, 61, 62, 64, 71, 75, 76, 79, 83, 85, 86, 87, 88, 90, 91, 92, 98, 101, 102, 104, 105, 113, 114, 118, 120, 121, 122, 126, 128, 132, 133, 135, 136, 140, 143, 144, 145, 149, 158, 159, 165, 169, 176, 177, 183 and 184) because they could be misused to perpetrate future fraud against BANA and the public. As courts routinely find, and this court has previously found in this case (*see* ECF 266, 365, 381, 390, 391, 498), there are compelling reasons to limit public access to such documents because their disclosure could lead to future fraud that poses a harm not only to the Bank, but also the public. *See Soria*, 2019 WL 8167925, at *4 (granting sealing of bank's fraud investigations procedures); *see also Bohannon v Facebook, Inc.*, 2019 WL 188671, at *6 (N.D. Cal. Jan. 14, 2019) (finding compelling reasons to seal references to policies and methods used for refunds and to confirm identities because disclosure "might allow a third party to…undermine… protections against fraud, in turn causing harm to both Facebook and its users").

Public access to BANA's fraud and claims review strategies and any analyses of fraud and possible strategies to combat fraud (*see* DX 4, 5, 12.A, 50, 51, 59, 60, 61, 62, 64, 71, 75, 76, 79, 83, 85, 86, 87, 88, 90, 91, 92, 98, 101, 102, 104, 105, 113, 114, 118, 120, 121, 122, 126, 128, 132, 133, 135, 136, 140, 143, 144, 145, 149, 158, 159, 165, 169, 176, 177, 178, 183 and 184) could provide insight into BANA's fraud detection and prevention measures. ECF 344-2 (Robart Decl.) ¶¶ 4-5; ECF 344-1 (Martin Decl.) ¶¶ 7-10. That insight could be used by fraudsters to perpetrate future fraud and to circumvent BANA's security and fraud prevention procedures, and to otherwise cause harm to the Bank and its customers, which are compelling reasons to seal these documents. ECF 344-2 (Robart Decl.) ¶¶ 4-5; ECF 344-1 (Martin Decl.) ¶¶ 7-10. *See, e.g.*, *Soria*, 2019 WL 8167925, at *4 (granting motion to seal because, "[a]lthough there is a public interest in [the b]ank's procedures concerning its fraud investigations, public disclosure of this information may impede [the b]ank's ability to identify and combat future instances of fraud" and that "[t]here is a significant danger that someone could improperly use this information to commit fraud and avoid detection"); *see also Jasso v. Wells Fargo Bank, N.A.*, 2022 WL 2665979, at *2 (D. Nev. July 8, 2022) (granting motion to seal documents that "contain sensitive information . . . regarding Wells Fargo's business practices and procedures that could be used for an improper purpose if allowed into the public record"). This Court has previously found compelling reasons to limit public access to such documents because their disclosure could lead to future fraud that poses a harm not only to the

Bank, but also the public. *See* ECF 365, 381, 498, 516.

Similarly, BANA's communications with EDD regarding fraud strategies utilized in the EDD program, including the use of EMV chip technology and the freezing and blocking of accounts (*see* DX 1, 5, 12.A, 53, 54, 55, 70, 73, 74, 77, 78, 80, 81, 100, 115, 117, 123, 129, 130, 131, 134, 141, 142, 153, 161, 162, 163, 164 and 182) could also be misused by fraudsters to perpetrate future fraud and avoid detection. ECF 344-1 (Martin Decl.) ¶ 8. *See, e.g.*, *Soria*, 2019 WL 8167925, at *4; *Jasso*, 2022 WL 2665979, at *2. For example, BANA's internal analyses concerning the costs associated with and types of fraud that EMV chips may or may not prevent are not public knowledge (*see* DX 1, 12.A, 73, 74, 77, 78, 117, 123, 129, 131, 134, 141, 142, 164 and 182), and could still be misused by fraudsters to perpetrate fraud on cards with or without EMV chips. *See* ECF 344-1 (Martin Decl.) ¶ 8. This Court has previously found compelling reasons to limit public access to such documents because their disclosure could lead to future fraud that poses a harm not only to the Bank, but also the public. *See* ECF 365, 381.

Additionally, public access to information regarding BANA's call center operations and strategies, including its authentication procedures, trainings, and business controls and processes (*see* DX 2, 12.A, 24, 25, 44, 45, 46, 47, 48, 49, 63, 72, 84, 93, 94, 95, 96, 97, 106, 107, 108, 109, 110, 111, 112, 116, 119, 124, 125, 127, 134, 137, 138, 139, 146, 147, 148, 150, 151, 152, 154, 155, 156, 157, 166, 167, 169, 170, 171, 172, 173, 174, 178, 179, 180, 181, 183 and 184) could be used by fraudsters to perpetrate future fraud and to circumvent BANA's call center authentication and fraud prevention procedures *See, e.g.*, *Soria*, 2019 WL 8167925, at *4.[3] ECF 344-1

---

[3] There are compelling reasons to seal discontinued fraud and claim strategies, like the Claim Fraud Filter, because different indicators, features or components of those strategies could be used now or in the future, as part of BANA's many fraud prevention strategies. Moreover, BANA's past and present fraud strategies, and related rationales or analysis, could be misused by fraudsters and criminals to gain insight into BANA's inner workings to circumvent future fraud strategies to

(Martin Decl.) ¶ 10. This Court has previously found compelling reasons to limit public access to such documents because their disclosure would be used to execute fraud against BANA and its customers. *See* ECF 365, 381, 498.

Documents that risk competitive harm. The aforementioned categories of documents and testimony also contain sensitive business information that could be used to BANA's competitive or commercial disadvantage, which is yet another compelling reason to seal the documents. *See, e.g.*, *E.W. Bank*, 2021 WL 3112452, at *18-19 (granting motion to seal where public disclosure of EWB's confidential fraud prevention measures would "harm EWB's competitive standing"); *Adtrader, Inc. v. Google LLC*, 2020 WL 6391210, at *2 (N.D. Cal. Mar. 24, 2020) (sealing references to internal strategic decisions, policies, and processes related to detecting and responding to advertising fraud).

For example, documents, testimony or discovery responses demonstrating how BANA structures its claims and fraud teams and the review procedures, protocols, and systems used and implemented by those teams (*see* DX 6, 7.A, 8.A, 9.A, 10.A, 11.A, 11.B, 12.A, 12.B, 13.A, 14.A, 14. AA. 14.AB, 14.AB.1, 14.AG, 14.B, 14.C, 14.C.1, 14.C.2, 14.D, 14.E, 14.F, 14.G, 14.H, 14.I, 14.J, 14.K, 14.L, 14.M, 14.N, 14.O.1, 14.P, 14.Q, 14.R, 14.S, 14.U, 14.U.1, 14.V, 14.X, 14.Y, 14.Z, 50, 51, 59, 60, 61, 64, 91, 92, 98, 120, 122, 126, 128, 135, 176, 177, and 178) is sensitive business information that, if disclosed to the public, could be replicated by a competitor financial institution to BANA's competitive disadvantage (ECF 344-1 (Martin Decl.) ¶¶ 5, 7-10; ECF 344-2 (Robart Decl.) ¶¶ 4-5), and accordingly, compelling reasons exist to seal that information. *See, e.g.*, *E.W. Bank*, 2021 WL 3112452, at *18-19 (permitting sealing of confidential onboarding processes, digital banking platform, fraud management techniques, and verification of customer identities); *Medimpact Healthcare Sys., Inc. v. IQVIA Holdings, Inc.*, No. 3:19-cv-01865-GPC (DEB), ECF

---

perpetrate future fraud or crimes. ECF 344-3 (Lennon Dec.) ¶¶ 3-4; ECF 344-1 (Martin Decl.) ¶¶ 4–5, 7. *See, e.g.*, *Soria*, 2019 WL 8167925, at *4.

875 (S.D. Cal. Jan. 10, 2023) (J. Curiel) (finding compelling reasons to seal testimony on "policies and procedures regarding the preservation of electronic information" where party "d[id] business in an industry where the preservation and confidentiality of information is highly regulated") (ECF 344-7). This Court has previously found compelling reasons to limit public access to such documents because their disclosure could lead to future fraud that poses a harm not only to BANA's competitive advantage, but also the public. *See* ECF 365, 381.

Notably, certain claims review processes and trainings (*e.g.*, DX 1, 4, 5, 12.A, 71, 85, 86, 90, 101, 104, 132, 133, 143, 144, 145, 149, 158, 159, 165, 168, 169, 176, and 184) are utilized in the same or similar fashion for many of BANA's lines of business, not simply prepaid, and are still being utilized today. *See* ECF 344-2 (Robart Decl.) ¶ 3**.** Thus, compelling reasons exist to seal those procedures because their disclosure to other financial institutions or potential fraudsters could place BANA at a competitive disadvantage or risk future fraud. *See, e.g.*, *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). This Court has previously found compelling reasons to limit public access to such documents because their disclosure could be used by other financial institutions to BANA's competitive disadvantage. *See* ECF 365, 381.

Additionally, documents or testimony reflecting BANA's analyses of its state prepaid unemployment program operations, including but not limited to, contractual negotiations with the states, contracts with call center vendors, card and fraud volumes, and operational risks and losses (*see* DX 1, 2, 12.A, 44, 45, 46, 47, 48, 49, 53, 54, 55, 70, 73, 74, 77, 78, 80, 81, 100, 115, 117, 123, 129, 130, 131, 134, 141, 142, 153, 161, 162, 163, 164 and 182) could similarly be used by a competitor financial institution to BANA's competitive disadvantage (ECF 344-1 (Martin Decl.) ¶¶ 7–10; ECF 344-2 (Robart Decl.) ¶ 5; ECF 347-1 (Martin Decl.) ¶ 4), and thus require sealing. *See, e.g.*, *Xifin, Inc. v. Sunshine Pathways, LLC*, 2016 WL 5930313, at *3 (S.D. Cal. Oct. 12, 2016) (J. Curiel) (finding compelling reasons to seal services agreement that contained detailed information about pricing structure, nature of services, system security requirements, and how to use the cloud-based billing system "that could expose Plaintiff to a competitive disadvantage if revealed"); *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). This Court has previously found compelling reasons to limit public access to such documents because their disclosure could be used by other financial institutions to BANA's competitive disadvantage. *See* ECF 365, 381, 516.

As another example, BANA continues to operate call centers to answer cardholders' calls, both within prepaid and other lines of business (ECF 344-1 (Martin) ¶ 10), and thus details regarding BANA's call center operations and strategies, including the different types of call centers utilized by BANA, the roles and responsibilities of each, BANA's call center authentication procedures, and call center metrics (*see* DX 1, 2, 12.A, 44, 45, 46, 47, 48, 49, 53, 54, 55, 70, 73, 74, 77, 78, 80, 81, 100, 115, 117, 123, 129, 130, 131, 134, 141, 142, 153, 161, 162, 163, 164 and 182), are still commercially sensitive and warrant sealing. *See Xifin, Inc.*, 2016 WL 5930313, at *3. This Court has previously found compelling reasons to limit public access to such documents because their disclosure could lead to future fraud that poses a harm not only to the Bank, but also the public. *See* ECF 365, 381, 498.

Moreover, aggregated account statistics regarding the number of active EDD accounts, the balances on those cards, the fraud claims filed by EDD cardholders, and the combined monetary amounts of fraud associated therewith (*see* DX 1, 2, 4, 5, 12.A, 24, 25, 63, 72, 84, 93, 94, 95, 96, 97, 99, 106, 107, 108, 109, 110, 111, 112, 116, 119, 124, 125, 127, 134, 137, 138, 139, 146, 147, 148, 150, 151, 152, 154, 155, 156, 157, 166, 167, 169, 170, 171, 172, 173, 174, 178, 179, 180, 181, 183 and 184) are proprietary, confidential business information of EDD and/or BANA. ECF 344-

1 (Martin Decl.) ¶¶ 10-12. Public disclosure of the number of active EDD accounts, account balances and first party fraud could violate BANA's confidentiality agreement with EDD. Additionally, aggregated account statistics related to customer account balances, activity, and fraud claims is also commercially sensitive information, from which certain of BANA's revenues and fraud losses could be derived, and if disclosed, could be used by another financial institution to compete against BANA, which warrants sealing. *See, e.g.*, *Brady*, 2015 WL 6828400, at *3. This Court has previously found compelling reasons to limit public access to such documents because their disclosure could harm BANA's competitive advantage. *See* ECF 381.

Cardholders' personal account, transaction and claim information. Additional compelling reasons and good cause exist to seal DX 14.AC, 14.AD, 14.AE, 14.T, 14.W, 15, 16, 17, 18, 19, 20, 21, 22, 23, 32, 33, 34, 35, 36, 37, 65, 66, 67, 68, 69, 82, 148 and 177 because they reflect EDD cardholder account, transaction and claim information, which often include personal, sensitive and financial information that the customers did not intend to appear on a public docket. *See Nia v. Bank of Am., N.A.*, 2024 WL 171659, at *6 (S.D. Cal. Jan. 12, 2024) (permitting sealing of exhibit reflecting customer data such as internal deposit account and credit account closure data); *see also McAfee v. Experian Info. Sols.*, 2023 WL 8237364, at *2 (S.D. Ohio Nov. 28, 2023) (finding compelling reasons to seal documents in order to "protect Plaintiff's credit history and financial account information from public disclosure to maintain Plaintiff's privacy . . . [and] guard against the threat of identi[t]y theft…").[4] Moreover, BANA is obligated to keep such information confidential pursuant to the terms of its contract and confidentiality agreement with EDD. *See* ECF 324-106 at 5 (prohibiting "disclosure of the EDD's confidential

[4] BANA is provisionally sealing sensitive financial information of both named Plaintiffs and absent class members. If Plaintiffs request that their personal and financial information be made public, BANA can remove sealing over Plaintiffs' account, transaction and claims information, but not with respect to non-plaintiffs.

information to the public"); Robart Decl. ¶ 5.

For example, EDD cardholders' claim details and correspondence, account and transaction histories, ATM footage and call recordings (*see* DX 14.AC, 14.AD, 14.AE, 14.T, 14.W, 15, 16, 17, 18, 19, 20, 21, 22, 23, 32, 33, 34, 35, 36, 37, 65, 66, 67, 68, 69, 82 and 177) reflect not only personal identifying information, but also personal, transactional and claims information, such as cardholders' personal purchases, their telephone discussions with customer service, their receipt of unemployment benefits, the denial of their claims, suspicion of fraudulent behavior, repossession of property, foreclosure and eviction (Robart Decl., ¶¶ 3-8), which is sensitive, personal information that warrants sealing. *See, e.g.*, *Pryor v. City of Clearlake*, 2012 WL 3276992, at *2 (N.D. Cal. Aug. 9, 2012) (sealing non-litigant's prior arrest record). Similarly, BANA's responses and objections to Plaintiffs' interrogatories (and the exhibits thereto), including Exhibits 3, 7, 26, 27, 27.A, 27.B, 27.C, 27.D, 28, 28.A, 28.A.1 29, 30, 30.A, 30.B, 31, 31.A, 31.B, and 31.B.1, also reflect highly sensitive, personal and financial information of EDD cardholders. ECF 344-3 (Lennon Decl.) ¶¶ 4-5. This Court has previously found compelling reasons to limit public access to such documents. *See* ECF 381.

Finally, Plaintiffs themselves designated their own claim files and correspondence and deposition testimony as Confidential in many instances (*see, e.g.*, DX 15, 16, 17, 18, 19, 20, 21, 22 and 23), and under the Protective Order, BANA is required to file under seal documents or testimony that Plaintiffs designated confidential (ECF 82 § 12.5). Accordingly, cardholder claim and account details contain sensitive, personal information that overcomes the presumption of public access and warrants sealing.

Confidential regulator materials. Compelling reasons exist to seal Exhibits 3, 14.P, 43.A, 43.B and 43.C, which contain documents and information regarding BANA's implementation of its Remediation Plan and Addenda with the OCC and CFPB. The regulators designated the Plans "Highly Confidential – Attorneys' Eyes

Only" as a condition to BANA producing them to Plaintiffs, and they contain information the OCC deemed privileged and confidential under its statutes and regulations. Standing alone, the regulators' determination and designation—which Plaintiffs readily agreed to when they accepted the documents last year—should be a sufficient, compelling reason to seal the Plans and any documents quoting from or referencing those Plans. *See, e.g.*, *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). *See also* ECF 344-3 (Lennon Decl.) ¶¶ 3–4, 6. This Court has previously found compelling reasons to limit public access to such documents because they contain highly sensitive, and confidential information that would subject any disclosure to potential fraud. ECF 381, 498.

Moreover, notwithstanding the regulators' views, the details within the Plans and how BANA continues to implement the Plans are highly sensitive because they could provide fraudsters with a roadmap for how to fraudulently seek additional payments under the Plans. ECF 344-3 (Lennon) ¶ 3. Similarly, the data that BANA compiled to respond to Plaintiffs' discovery requests regarding BANA's implementation of the Remediation Plans (DX 3, 7, 26, 27, 27.A, 27.B, 27.C, 27.D, 28, 28.A, 28.A.1 29, 30, 30.A, 30.B, 31, 31.A, 31.B and 31.B.1) should also be sealed because BANA's efforts to implement the Plans is ongoing, and such data could be used to potentially back into the confidential formulas in the Plans, and because they contain sensitive personal information regarding cardholders. ECF 344-3 (Lennon Decl.) ¶ 4.

<u>BANA's Summary Judgment Motion, expert reports, and Appendix of Exhibits that quote and summarize confidential exhibits.</u> BANA has provisionally redacted and sealed portions of its Summary Judgment Motion, expert reports appended in support thereof, and Appendix of Exhibits to the Summary Judgment Motion that quote or describe the confidential documents, testimony and topics identified above, including BANA's fraud, claims and call center policies, strategies and practices, as well as BANA's implementation of the Remediation Plan and Addenda (*see* DX 5, 6, 7.A, 8.A, 9.A, 10.A, 11.A, 11.B, 12.A, 12.B, 13.A, 14.A, 14.AA, 14.AB, 14.AB.1, 14.AG, 14.B, 14.C, 14.C.1, 14.C.2, 14.D, 14.E, 14.F, 14.G, 14.H, 14.I, 14.J, 14.K, 14.L, 14.M, 14.N, 14.O.1, 14.P, 14.Q, 14.R, 14.S, 14.U, 14.U.1, 14.V, 14.X, 14.Y and 14.Z). *See supra*, pgs. 4–16. This is consistent with the terms of the Stipulated Protective Order (ECF 82, § 3), and with rulings in this circuit including by this Court. *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); ECF 365, 381.

For example, portions of the Summary Judgment Motion reference confidential deposition testimony of BANA's expert witnesses and provisionally sealed portions of Plaintiffs' expert reports pertaining to the details of the Claim Fraud Filter and other BANA claim investigation processes, as well as the Remediation Plan and Addenda; reference confidential documents and testimony related to the Claim Fraud Filter, the Remediation Plan and Addenda, and provisionally sealed portions of Plaintiffs' expert reports, among other confidential topics; and quote from or describe the Highly Confidential – Attorneys' Eyes Only Remediation Plan and Addenda summarize BANA's implementation of the Plans.

For the reasons discussed above, there are compelling reasons to seal discussions of those topics, testimony and documents, as well as others discussed in BANA's Summary Judgment Motion and the expert reports and Appendix of Exhibits appended in support thereof. *See supra*, pgs. 2–16.

III. <u>CONCLUSION</u>

For the foregoing reasons and for the reasons set forth in the Court's Sealing Orders (ECF 365, 381, 390, 391, 397, 421, 466, 467, 477, 498, 516), Plaintiffs' Motions to Seal (ECF 376, 384, 394, 463, 524, 527), BANA's prior Motions to Seal (ECF 328, 337, 344, 347, 383, 418, 451, 470, 501, 511, 539, 542) 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 Motion for Partial Summary Judgment because compelling reasons exist that support the sealing thereof.

Dated: October 17, 2025

Respectfully submitted,

By: *s/ Laura G. Brys*

LAURA G. BRYS (SBN 242100)
LBrys@goodwinlaw.com
GOODWIN PROCTER LLP
601 S Figueroa St., Suite 4100
Los Angeles, CA 90017
Tel.: +1 213 426 2500
Fax: +1 617 346 4444

JAMES W. MCGARRY (pro hac vice)
JMcGarry@goodwinlaw.com
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
Tel.: +1 617 570 1000
Fax: +1 617 523 1231

SABRINA M. ROSE-SMITH (*pro hac vice*)
SRoseSmith@goodwinlaw.com
MATTHEW L. RIFFEE (*pro hac vice*)
MRiffee@goodwinlaw.com
GOODWIN PROCTER LLP
1900 N St. NW
Washington, DC 20036
Tel: +1 202 346 4000
Fax: +1 202 346 4444

LINDSAY E. HOYLE (*pro hac vice*)
LHoyle@goodwinlaw.com
VALERIE A. HAGGANS (*pro hac vice*)
VHaggans@goodwinlaw.com
GOODWIN PROCTER LLP
620 Eighth Avenue
New York, NY 10018
Tel: +1 212 813-8800
Fax: +1 212 355-3333

YVONNE W. CHAN (pro hac vice)
YChan@jonesday.com
JONES DAY
100 High Street

Boston, MA 02110
Tel.: +1 617 960 3939
Fax: +1 617 449 6999

JANICE P. BROWN (SBN 114433)
jbrown@myersnave.com
MATTHEW B. NAZARETH (SBN 278405)
mnazareth@myersnave.com
MEYERS NAVE
600 B Street, Suite 1650
San Diego, CA 92101

Attorneys for Defendant
BANK OF AMERICA, N.A.

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 October 17, 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: October 17, 2025 *s/ Laura G. Brys*