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18 **BANK OF AMERICA, N.A.**

19 [*ADDITIONAL COUNSEL LISTED IN SIGNATURE BLOCK*]

20 **UNITED STATES DISTRICT COURT**
21 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
22 **SAN DIEGO DIVISION**

23 IN RE: BANK OF AMERICA
24 CALIFORNIA UNEMPLOYMENT
25 BENEFITS LITIGATION

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

**DEFENDANT BANK OF AMERICA,
N.A.'S MOTION TO SEAL
DOCUMENTS FILED IN
OPPOSITION TO PLAINTIFFS'
DAUBERT MOTION TO EXCLUDE
CERTAIN TESTIMONY OF VICTOR
STANGO**

Ctrm: 12A – 12th 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 Notice
3 and Motion to Seal (Motion) certain documents and portions of other documents¹ in
4 connection with BANA's Opposition (Opposition) to Plaintiffs' *Daubert* Motion to
5 Exclude Certain Testimony of Victor Stango. In particular, BANA seeks to seal
6 certain Hoyle Declaration Exhibits² (in whole or in part) because compelling reasons
7 supports sealing of the identified documents or portions thereof, as well as any
8 references to those exhibits in BANA's Opposition and the Hoyle Declaration filed
9 in support. Consistent with the Court's prior sealing orders finding compelling
10 reasons to seal certain exhibits filed with BANA's *Daubert* Motions (ECF 598, 599,
11 600, 601, 602) and BANA's Motion for Partial Summary Judgment (ECF 603),
12 BANA also seeks to seal references within its Opposition and the Hoyle Declaration
13 to the contents of those already-filed and sealed exhibits or portions thereof.³

14 As previously stated in BANA's motions to seal submitted in connection with
15 class certification briefing and argument (ECF 328, 337, 344, 347, 383, 418, 451)
16 and BANA's motions to seal submitted in connection with summary judgment
17 briefing (ECF 577, 579, 581, 583, 585, 587), the public's right to inspect and copy
18 judicial records is not absolute, and a party faced with the disclosure of confidential
19 or proprietary information may seek to file the documents under seal to avoid
20 disclosure of business information that might result in competitive harm or be used
21 for improper purposes. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598
22

23 ¹ Defendants' Exhibits to the Declaration of Lindsay E. Hoyle in Support of the
24 Opposition to Plaintiffs' *Daubert* Motion to Exclude Certain Testimony of Victor
25 Stango shall be referred to as "HX" in this Motion and the forthcoming Opposition
26 and supporting documents. Plaintiffs' Exhibits to the Declaration of James Baltzer in
27 Support of Plaintiffs' *Daubert* Motion to Exclude Certain Testimony of Victor
28 Stango shall be referred to as "BX" in this Opposition and supporting documents.

² Exhibits HX 41 and 42 were previously sealed by this Court (ECF 602) in
connection with BANA's Motion to Exclude the Purported Expert Opinions of Greg
J. Regan (ECF 567). BANA refiles these exhibits as a courtesy for the Court.

³ BANA incorporates by reference Plaintiffs' Motion to File Documents Under Seal
(ECF 618) in connection with Plaintiffs' *Daubert* Motion to Exclude Certain
Testimony of Victor Stango (Stango Motion, ECF 569).

1 (1978) (denying disclosure); Local Civ. R. 79.2(c). A party seeking to seal documents
2 filed in connection with a motion to exclude expert testimony must show “compelling
3 reasons” to seal, as such motions may be effectively “dispositive of a motion for
4 summary judgment.” *Lust ex rel. Lust v. Merrell Dow Pharm., Inc.*, 89 F.3d 594, 597
5 (9th Cir. 1996) (noting that Daubert ruling was dispositive); *see Rink v. Cheminova,*
6 *Inc.*, 400 F.3d 1286, 1288 (11th Cir. 2005) (affirming a grant of summary judgment
7 on grounds that plaintiff failed to prove causation after the plaintiff’s expert was
8 excluded under *Daubert*).

9 Courts, including this Court, consistently seal documents where—as here—
10 disclosure of confidential business information risks competitive harm to the litigant
11 or improper use of the information such as to commit fraud. ECF 603; *see e.g., E.W.*
12 *Bank v. Shanker*, 2021 WL 3112452, *18-19 (N.D. Cal. July 22, 2021) (finding
13 compelling reasons to seal confidential onboarding processes, verification of
14 customer identities, and fraud prevention measures); *Soria v. U.S. Bank N.A.*, 2019
15 WL 8167925, *4 (C.D. Cal. Apr. 25, 2019) (finding compelling reasons to seal
16 internal fraud investigation procedures because there was a “significant danger that
17 someone could improperly use this information to commit fraud and avoid
18 detection.”). Indeed, this Court largely granted the Parties’ prior motions to seal,
19 finding good cause or compelling reasons to seal documents concerning the same
20 topics that BANA now seeks to seal, including but not limited to, BANA’s fraud
21 detection and prevention strategies and policies, BANA’s claim review and
22 compensation policies, and BANA’s implementation of the Remediation Plan and
23 Addenda. *See* ECF 266, 293, 365, 381, 390, 391, 397, 421, 466, 467, 548, 598, 599,
24 600, 601, 602, 603, 638, 639, 641, 642 (Sealing Orders). Those prior rulings are
25 sufficient grounds alone to grant sealing here. *See Lundstrom v. Young*, 2022 WL
26 15524624, *17 (S.D. Cal. Oct. 27, 2022) (J. Curiel) (considering prior sealing of
27 exhibits when granting motion to seal); *Workplace Techs. Rsch., Inc. v. Project*
28 *Mgmt. Inst., Inc.*, 2021 WL 6091272, *3 (S.D. Cal. Oct. 20, 2021) (sealing references

1 to document that court already granted sealing of).

2 Consistent with this Court's Sealing Orders, there are compelling reasons to
3 seal the confidential documents and testimony at issue here (or references thereto),
4 as well as substantive discussions of already sealed exhibits filed in connection the
5 Stango Motion, because each document reflects topics that are likely to cause
6 particularized competitive harm to BANA and which could potentially enable future
7 fraud, and thus pose a danger to BANA's business and the public. *See, e.g., Soria*,
8 2019 WL 8167925, *4 (finding compelling reasons to seal bank's internal procedures
9 for investigating fraud because there was a "significant danger that someone could
10 improperly use this information to commit fraud and avoid detection"). Each
11 document was also properly designated as "Confidential" or "Highly Confidential –
12 Attorneys' Eyes Only" under the Protective Order entered by this Court. *See BAE*
13 *Systems*, 670 F. Supp. 3d at 1069 (finding good cause to seal certain exhibits filed in
14 connection with an apex discovery dispute because "information in the exhibits fits
15 within 'confidential information' in the protective order").

16 Specifically, the Confidential documents and testimony that BANA seeks to
17 seal include, but are not limited to, the following categories of documents and
18 information, for which this Court has already found compelling reasons to seal:

- 19 • HX 41, HX 41.A, HX 48, and HX 49 reflect confidential BANA fraud
20 detection and prevention strategies and policies, including the Claim
21 Fraud Filter, and other current and former fraud strategies that could be
22 misused by fraudsters to perpetrate future fraud or could be used by
23 another financial institution to BANA's competitive disadvantage (*see*
24 *Amended Sealing Order (ECF 365) at 5-6, 12; Sealing Order (ECF 598,*
25 *599, 600, 601, 602, 603))*);
- 26 • HX 41, HX 41.A, HX 48, and HX 49 reflect confidential BANA
27 documents pertaining to BANA's Remediation Plan and Addenda with
28 the Office of the Comptroller of the Currency (OCC) and the Consumer

1 Financial Protection Bureau (CFPB)—which were designated Highly
2 Confidential – Attorneys’ Eyes Only at those regulators’ requests—
3 which this Court has found compelling reasons to seal (*see* Amended
4 Sealing Order (ECF 365) at 14–16; Sealing Orders (ECF 598, 599, 600,
5 601, 602, 603));

- 6 • HX 42 reflects BANA’s interrogatory responses and data provided
7 therein reflecting any reconsideration by BANA of those claims and any
8 compensation paid as a result (*see* ECF 365 at 5-9, 12 (finding
9 compelling reasons to seal); Sealing Orders (ECF 602, 603)); and
- 10 • HX 41, HX 41.A, HX 48, and HX 49 reflect expert reports and excerpts
11 of experts’ deposition testimony, which include discussions of BANA’s
12 confidential documents, many of which contain the confidential
13 information described above, including but not limited to: BANA’s
14 handling of unauthorized transaction claims and reconsiderations. This
15 information could be misused by fraudsters to perpetrate future fraud or
16 could be used by another financial institution to BANA’s competitive
17 disadvantage (*see* Amended Sealing Order (ECF 365) at 5-9, 12; Sealing
18 Orders (ECF 598, 599, 601, 602, 603)).

19 BANA has also provisionally redacted and sealed portions of the Opposition
20 and Hoyle Declaration that quote, describe or reflect descriptions of the confidential
21 documents, testimony and topics identified above, for which the Parties have
22 previously sought to seal in connection with BANA’s summary judgment briefings
23 (ECF 577, 579, 581, 583, 585, 587) and the Stango Motion (ECF 569). These
24 provisional redactions and seals are consistent with the terms of the Stipulated
25 Protective Order (ECF 82, § 3), with this Court’s prior Sealing Orders (ECF 266,
26 293, 365, 381, 390, 391, 397, 421, 466, 467, 548, 598, 599, 600, 601, 602, 603), and
27 with rulings in this Circuit. *See, e.g., Darisse v. Nest Labs, Inc.*, 2016 WL 11474174,
28 at *2 (N.D. Cal. June 2, 2016) (sealing class certification motion and declarations

1 that quote or reference confidential exhibits). For the reasons discussed above, there
2 are compelling reasons to seal quotes from and discussions of those topics, testimony
3 and documents discussed in the Parties' briefing. *See supra* at 3-4.

4 * * *

5 For the foregoing reasons and for the reasons set forth in the Court's Sealing
6 Orders in connection with class certification briefing and argument (ECF 365, 381,
7 390, 391, 397, 421, 466, 467, 548), the Court's Sealing Orders in connection with
8 BANA's *Daubert* Motions (ECF 598, 599, 600, 601, 602), the Court's Sealing Orders
9 in connection with BANA's Motion for Partial Summary Judgment (ECF 603),
10 Plaintiffs' Motions to Seal (ECF Nos. 376, 384, 394, 463, 475, 524, 527, 569, 572,
11 609, 615, 618), BANA's prior Motions to Seal (ECF Nos. 328, 337, 344, 347, 383,
12 418, 451, 577, 579, 581, 583, 585, 587) and accompanying declarations submitted in
13 support thereof (ECF Nos. 344-1, 344-2, 344-3, 347-1, 347-2), all of which are
14 incorporated herein by reference, BANA respectfully requests that the Court grant
15 Defendant's Motion to Seal Documents Filed in Support of its Opposition to
16 Plaintiffs' *Daubert* Motion to Exclude Certain Testimony of Victor Stango because
17 compelling reasons support sealing thereof.

18
19 Dated: February 5, 2026

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 **February 5, 2026**. 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.

Dated: February 5, 2026

s/ Lindsay E. Hoyle

LINDSAY E. HOYLE