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20
21 **UNITED STATES DISTRICT COURT**
22 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
23 **SAN DIEGO DIVISION**
24

25 IN RE: BANK OF AMERICA
26 CALIFORNIA UNEMPLOYMENT
27 BENEFITS LITIGATION
28

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

**DEFENDANT BANK OF AMERICA,
N.A.'S NOTICE AND MOTION TO
SEAL DOCUMENTS FILED IN ITS
REPLY IN SUPPORT OF ITS
MOTION FOR PARTIAL SUMMARY
JUDGMENT (ECF 589)**

Ctrm: 12A – 12th Floor
Judge: Hon. Gonzalo P. Curiel

PLEASE TAKE NOTICE that, pursuant to Local Civil Rule 79.2(c), Defendant Bank of America, N.A. (BANA) hereby submits this Notice and Motion to Seal (Motion to Seal) certain documents and portions of other documents in connection with BANA's Reply in Support of Its Motion for Partial Summary Judgment (Reply). In particular, BANA seeks to seal certain Brys Declaration Exhibits¹ in their entirety and portions of certain Brys Declaration Exhibits because compelling reasons supports sealing of the identified documents, as well as any references to those exhibits in BANA's Reply, BANA's Response to Plaintiffs' Additional Statement of Facts in Opposition to Its Motion for Partial Summary Judgment (RAF), and BANA's Response to Plaintiffs' Objections to Evidence to Its Motion for Partial Summary Judgment (RO). Consistent with the Court's prior sealing Orders finding compelling reasons to seal certain exhibits filed with both BANA's Motion for Partial Summary Judgment (ECF 603), as well as Plaintiffs' Opposition to BANA's Motion for Partial Summary Judgment (MSJ Opp.) (ECF 639, 654), BANA also seeks to seal references within its Reply, RAF, and RO to the contents of those already-filed and sealed Brys and Chan Declaration Exhibits.²

As previously stated in BANA's motions to seal submitted in connection with class certification briefing and argument (ECF 328, 337, 344, 347, 383, 418, 451) and BANA's motions to seal submitted in connection with summary judgment briefing (ECF 577, 579, 581, 583, 585, 587), the public's right to inspect and copy

¹ The exhibits submitted in support of BANA's Reply are appended to the Brys Declaration (Brys Decl.) and shall be referred to as "DX" or "Brys Declaration Exhibits" in this Motion and the forthcoming Reply and supporting documents. DX 1-184 are exhibits to the Declaration of Laura G. Brys (ECF 591) in Support of BANA's Mot. for Partial Summary Judgment (MSJ) (ECF 589). DX 185-192 are exhibits to the Declaration of Laura G. Brys in Support of the Reply. Plaintiffs' Exhibits to the Declaration of Connie K. Chan in Opposition to BANA's MSJ (ECF 634-1) shall be referred to as "PX" in the forthcoming Reply and supporting documents.

² BANA incorporates by reference its Motion to File Documents Under Seal (ECF 587) in connection with its Motion for Partial Summary Judgment (ECF 589) and Plaintiffs' Motion to File Documents Under Seal (ECF 630, 650) in connection with Plaintiffs' Opposition to BANA's Motion for Partial Summary Judgment (ECF 652).

1 judicial records is not absolute, and a party faced with the disclosure of confidential
2 or proprietary information may seek to file the documents under seal to avoid
3 disclosure of business information that might result in competitive harm or be used
4 for improper purposes. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598
5 (1978) (denying disclosure); Local Civ. R. 79.2(c). A party seeking to seal documents
6 filed in connection with a motion for summary judgment, a dispositive motion, must
7 show “compelling reasons” to seal documents. *Kamakana v. City & Cnty. of*
8 *Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006); *see also Pintos v. Pacific Creditors*
9 *Ass'n*, 605 F.3d 665, 678-79 (9th Cir. 2010) (determining “compelling reasons”
10 standard applies to motion to seal documents attached to cross-motion for summary
11 judgment); *EpicientRx, Inc. v. Carter*, 2023 WL 4336695, *1 (S.D. Cal. May 16,
12 2023) (applying “compelling reasons” standard to request to seal certain exhibits
13 associated with motions for summary judgment).

14 Courts, including this Court, consistently seal documents where disclosure of
15 confidential business information risks competitive harm to the litigant or improper
16 use of the information such as to commit fraud. *See, e.g.,* ECF 603; *E.W. Bank v.*
17 *Shanker*, 2021 WL 3112452, *18-19 (N.D. Cal. July 22, 2021) (finding compelling
18 reasons to seal confidential onboarding processes, verification of customer identities,
19 and fraud prevention measures); *Soria v. U.S. Bank N.A.*, 2019 WL 8167925, at *4
20 (C.D. Cal. Apr. 25, 2019) (finding compelling reasons to seal internal fraud
21 investigation procedures because there was a “significant danger that someone could
22 improperly use this information to commit fraud and avoid detection.”). Indeed, this
23 Court largely granted the Parties’ prior motions to seal, finding good cause or
24 compelling reasons to seal documents concerning the same topics that BANA now
25 seeks to seal, including BANA’s fraud detection and prevention policies and
26 strategies (including the fraud filter), discussions or analyses of its state prepaid
27 unemployment program operations, including call center operations, prepaid fraud
28 losses, and cardholder complaints and escalations, among other topics. *See* ECF 266,

1 293, 365, 381, 390, 391, 397, 421, 466, 467, 548, 598, 599, 600, 601, 602, 603 (the
2 Sealing Orders). Those prior rulings are sufficient grounds alone to grant sealing
3 here. *See Lundstrom v. Young*, 2022 WL 15524624, *17 (S.D. Cal. Oct. 27, 2022)
4 (Curiel, J.) (considering prior sealing of exhibits when granting motion to seal);
5 *Workplace Techs. Rsch., Inc. v. Project Mgmt. Inst., Inc.*, 2021 WL 6091272, *3
6 (S.D. Cal. Oct. 20, 2021) (sealing references to document that court already granted
7 sealing of).

8 Consistent with this Court’s Sealing Orders, there are compelling reasons to
9 seal the confidential documents, declaration and testimony at issue here (or
10 references thereto), as well as substantive discussions of already sealed exhibits filed
11 in connection with BANA’s MSJ and Plaintiffs’ MSJ Opp., because each reflects
12 topics that are likely to cause particularized competitive harm to BANA and which
13 could potentially enable future fraud, and thus pose a danger to BANA’s business
14 and the public. *See, e.g., EWB*, 2021 WL 3112452, *18-19 (finding compelling
15 reasons to seal where public disclosure of EWB’s confidential onboarding processes,
16 verification of customer identities and fraud prevention measures would “harm [the
17 bank’s] competitive standing”); *Soria*, 2019 WL 8167925, *4 (finding compelling
18 reasons to seal bank’s internal procedures for investigating fraud because there was
19 a “significant danger that someone could improperly use this information to commit
20 fraud and avoid detection”). Each document was also properly designated as
21 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” under the Protective
22 Order entered by this Court. *See BAE Systems*, 670 F. Supp. 3d at 1069 (finding good
23 cause to seal certain exhibits filed in connection with an apex discovery dispute
24 because “information in the exhibits fits within ‘confidential information’ in the
25 protective order”).

26 Specifically, the Confidential documents, declaration and testimony that
27 BANA seeks to seal include, but are not limited to, the following categories of
28 documents and information, for which this Court has already found compelling

1 reasons to seal:

- 2 • DX 186, 187, and 189 reflect confidential BANA fraud detection and
3 prevention strategies and policies, including the Claim Fraud Filter, and
4 other current and former fraud strategies that could be misused by
5 fraudsters to perpetrate future fraud or could be used by another
6 financial institution to BANA's competitive disadvantage (*see*
7 Amended Sealing Order (ECF 365) at 5-6, 12; Sealing Order (ECF
8 603));
- 9 • DX 188 reflects confidential BANA claims review policies and
10 strategies and the implementation thereof, including reviewing
11 complaint escalations and issuing provisional credits in compliance with
12 regulations that could also be misused by fraudsters to perpetrate fraud
13 or could be used by another financial institution to BANA's competitive
14 disadvantage (*see* Amended Sealing Order (ECF 365) at 5-6, 12; Sealing
15 Order (ECF 603));
- 16 • DX 191 and 192 reflect BANA's confidential analyses of its state
17 prepaid unemployment program operations, including but not limited to,
18 contractual negotiations, fraud volume, claims and call center
19 operations, and operational risks and losses (*see* Amended Sealing
20 Order (ECF 365) at 10-13, n.14; Sealing Order (ECF 603));
- 21 • DX 192 reflects confidential BANA fraud and operational losses in
22 connection with the unemployment insurance prepaid programs which
23 could be misused by fraudsters to perpetrate future fraud or could be
24 used by another financial institution to BANA's competitive
25 disadvantage (*see* Amended Sealing Order (ECF 365) at 10-13, n.14;
26 Sealing Order (ECF 603));
- 27 • DX 185 reflects an expert witness's sworn declaration discussing
28 confidential BANA interrogatory responses and data provided therein

1 reflecting BANA's use of the Claim Fraud Filter to decision
2 unauthorized transaction claims and to freeze or block EDD cardholder
3 accounts, and any reconsideration by BANA of those claims and any
4 compensation paid as a result which could be misused by fraudsters to
5 perpetrate future fraud or could be used by another financial institution
6 to BANA's competitive disadvantage (*see* Amended Sealing Order
7 (ECF 365) at 5-9, 12; Sealing Order (ECF 603));

- 8 • DX 190 reflects excerpts of an experts' deposition testimony, which
9 includes discussions of BANA's confidential documents, many of
10 which contain the confidential information described above, including
11 but not limited to: BANA's handling of unauthorized transaction claims
12 and reconsiderations. This information could be misused by fraudsters
13 to perpetrate future fraud or could be used by another financial
14 institution to BANA's competitive disadvantage (*see* Amended Sealing
15 Order (ECF 365) at 5-9, 12; Sealing Order (ECF 603)); and
- 16 • DX 186, 187, 188, 189, 191, and 192 reflect excerpts of 30(b)(6) and
17 fact witnesses' deposition testimony, which include discussions of
18 BANA's confidential documents, many of which contain the
19 confidential information described above, including but not limited to:
20 BANA's handling of unauthorized transaction claims and
21 reconsiderations; BANA's contract with EDD and the responsibilities
22 thereunder; BANA's communications with EDD regarding fraud-
23 related measures; BANA's fraud strategies, including the use of EMV
24 chip technology and the freezing and blocking of accounts; and BANA's
25 call center procedures and complaint escalation intake channels. This
26 information could be misused by fraudsters to perpetrate future fraud or
27 could be used by another financial institution to BANA's competitive
28 disadvantage (*see* Amended Sealing Order (ECF 365) at 5-9, 12; Sealing

1 Order (ECF 603)).

2 BANA has also provisionally redacted and sealed portions of the Reply, RAF,
3 and RO that quote, describe or reflect descriptions of the confidential documents,
4 testimony and topics identified above, or those previously submitted or described in
5 the Parties' prior briefing and motions to seal submitted in connection with BANA's
6 MSJ and Plaintiffs' MSJ Opp. Those confidential topics include: BANA analyses
7 pertaining to fraud, including card skimming, and potential fraud prevention and
8 detection strategies to combat that fraud; confidential BANA general services
9 agreements and statements of work between BANA and its call center vendors;
10 confidential BANA communications with EDD regarding BANA's and/or EDD's
11 fraud strategies, including the use of EMV chip technology and freezing and blocking
12 of accounts; confidential BANA documents and testimony pertaining to BANA's
13 Remediation Plan and Addenda with the Office of the Comptroller of the Currency
14 (OCC) and the Consumer Financial Protection Bureau (CFPB)—which were
15 designated Highly Confidential – Attorneys' Eyes Only at those regulators'
16 requests—which this Court has found compelling reasons to seal; and confidential
17 EDD cardholder account or personal information, including personal identifying
18 information, the disclosure of which could expose those cardholders to harm or
19 identity theft, as well as the types of claims files or information that BANA considers
20 in connection with investigating and processing unauthorized transaction and error
21 claims, disclosure of which could provide the public with insight into BANA's
22 confidential claims processes or procedures, thereby enabling fraudsters to
23 circumvent them and perpetrate future fraud, and the disclosure of which could also
24 enable other financial institutions to use that information to BANA's competitive
25 disadvantage, among other topics. This is consistent with the terms of the Stipulated
26 Protective Order (ECF 82 § 3), with this Court's prior Sealing Orders in favor of
27 BANA (ECF 266, 293, 365, 381, 390, 391, 397, 421, 466, 467, 548, 598, 599, 600,
28 601, 602, 603) and in favor of Plaintiffs (ECF 376, 384, 394, 463, 475, 524, 527, 569,

1 572, 609, 615, 618 ,630, 650), and with rulings in this Circuit. *See, e.g., Darisse v.*
2 *Nest Labs, Inc.*, 2016 WL 11474174, *2 (N.D. Cal. June 2, 2016) (sealing class
3 certification motion and declarations that quote or reference confidential exhibits).
4 For the reasons discussed above, there are compelling reasons to seal discussions of
5 those topics, testimony and documents discussed in the Parties' briefing. *See supra*
6 at 3-4.

7 * * *

8 For the foregoing reasons and for the reasons set forth in the Court's Sealing
9 Orders in connection with class certification briefing and argument (ECF 365, 381,
10 390, 391, 397, 421, 466, 467, 548) and BANA's Motion for Partial Summary
11 Judgment (ECF 603), Plaintiffs' prior Motions to Seal (ECF 376, 384, 394, 463, 475,
12 524, 527, 569, 572, 609, 615, 618 ,630, 650), BANA's prior Motions to Seal (ECF
13 328, 337, 344, 347, 383, 418, 451, 577, 579, 581, 583, 585, 587) and accompanying
14 declarations submitted in support thereof (ECF 344-1, 344-2, 344-3, 347-1, 347-2),
15 all of which are incorporated herein by reference, BANA respectfully requests that
16 the Court grant BANA's Motion to Seal because compelling reasons support sealing
17 thereof.

18
19 Dated: February 20, 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 20, 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 20, 2026

s/ Laura G. Brys
LAURA G. BRYs