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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 NOTICE AND MOTION TO
SEAL PORTIONS OF ITS REPLY IN
SUPPORT OF ITS MOTION TO
EXCLUDE PURPORTED EXPERT
OPINIONS OF GREG J. REGAN**

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. (BANA) hereby submits this Notice and Motion
3 to Seal (Motion to Seal) portions of BANA's Reply in Support of its Motion to
4 Exclude Purported Expert Opinions of Greg J. Regan (Regan Reply). In particular,
5 consistent with the Court's prior sealing Order finding compelling reasons to seal
6 certain exhibits filed with BANA's Motion to Exclude Purported Expert Opinions of
7 Greg J. Regan (ECF 602), BANA seeks to seal references within the Regan Reply to
8 the contents of those already-filed and sealed exhibits.¹

9 As previously stated in BANA's motions to seal submitted in connection with
10 class certification briefing and argument (ECF 328, 337, 344, 347, 383, 418, 451)
11 and BANA's motions to seal submitted in connection with summary judgment
12 briefing (ECF 577, 579, 581, 583, 585, 587), the public's right to inspect and copy
13 judicial records is not absolute, and a party faced with the disclosure of confidential
14 or proprietary information may seek to file the documents under seal to avoid
15 disclosure of business information that might result in competitive harm or be used
16 for improper purposes. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598
17 (1978) (denying disclosure); Local Civ. R. 79.2(c). A party seeking to seal documents
18 filed in connection with a motion to exclude expert testimony must show "compelling
19 reasons" to seal, as such motions may be effectively "dispositive of a motion for
20 summary judgment." *Lust ex rel. Lust v. Merrell Dow Pharm., Inc.*, 89 F.3d 594, 597
21 (9th Cir. 1996) (noting that *Daubert* ruling was dispositive); *see Rink v. Cheminova,*
22 *Inc.*, 400 F.3d 1286, 1288 (11th Cir. 2005) (affirming a grant of summary judgment
23 on grounds that plaintiff failed to prove causation after the plaintiff's expert was
24 excluded under *Daubert*).

25 ¹ BANA incorporates by reference its Motion to Seal Documents (ECF 585) filed in
26 connection with its Motion to Exclude Purported Expert Opinions of Greg J. Regan
27 (Regan Motion) (ECF 567) and the Declaration of Lindsay E. Hoyle in Support
28 thereof (ECF 567-2), and Plaintiffs' Motion to File Documents Under Seal (ECF 618)
in connection with Plaintiffs' Opposition to BANA's Motion to Exclude the
Purported Expert Opinions of Greg J. Regan (ECF 620) and the Declaration of James
Baltzer in Support thereof (ECF 620-1).

1 Courts, including this Court, consistently seal documents where—as here—
2 disclosure of confidential business information risks competitive harm to the litigant
3 or improper use of the information such as to commit fraud. *See, e.g.*, ECF 602; *E.W.*
4 *Bank v. Shanker*, 2021 WL 3112452, *18-19 (N.D. Cal. July 22, 2021) (finding
5 compelling reasons to seal confidential onboarding processes, verification of
6 customer identities, and fraud prevention measures); *Soria v. U.S. Bank N.A.*, 2019
7 WL 8167925, *4 (C.D. Cal. Apr. 25, 2019) (finding compelling reasons to seal
8 internal fraud investigation procedures because there was a “significant danger that
9 someone could improperly use this information to commit fraud and avoid
10 detection.”). Indeed, this Court largely granted the Parties’ prior motions to seal,
11 finding good cause or compelling reasons to seal documents concerning the same
12 topics that BANA now seeks to seal, including BANA’s fraud detection and
13 prevention policies and strategies (including the fraud filter), claim reconsideration
14 policies and strategies, analyses of its state prepaid unemployment program,
15 discussions of the Remediation Plan and Addenda, cardholder account information,
16 and cardholder complaints and escalations, among other topics. *See* ECF 266, 293,
17 365, 381, 390, 391, 397, 421, 466, 467, 548, 598, 599, 600, 601, 602, 603 (Sealing
18 Orders). Those prior rulings are sufficient grounds alone to grant sealing here. *See*
19 *Lundstrom v. Young*, 2022 WL 15524624, *17 (S.D. Cal. Oct. 27, 2022) (J. Curiel)
20 (considering prior sealing of exhibits when granting motion to seal); *Workplace*
21 *Techs. Rsch., Inc. v. Project Mgmt. Inst., Inc.*, 2021 WL 6091272, *3 (S.D. Cal. Oct.
22 20, 2021) (sealing references to document that court already granted sealing of).

23 Consistent with this Court’s Sealing Orders, there are compelling reasons to
24 seal references to the confidential documents and testimony at issue here that were
25 already sealed in connection with the Regan Motion, because each reflects topics that
26 are likely to cause particularized competitive harm to BANA and which could
27 potentially enable future fraud, and thus pose a danger to BANA’s business and the
28 public. *See, e.g.*, *EWB*, 2021 WL 3112452, *18-19 (finding compelling reasons to

1 seal where public disclosure of EWB’s confidential onboarding processes,
2 verification of customer identities and fraud prevention measures would “harm [the
3 bank’s] competitive standing”); *Soria*, 2019 WL 8167925, *4 (finding compelling
4 reasons to seal bank’s internal procedures for investigating fraud because there was
5 a “significant danger that someone could improperly use this information to commit
6 fraud and avoid detection”). Each document was also properly designated as
7 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” under the Protective
8 Order entered by this Court. *See BAE Systems*, 670 F. Supp. 3d at 1069 (finding good
9 cause to seal certain exhibits filed in connection with an apex discovery dispute
10 because “information in the exhibits fits within ‘confidential information’ in the
11 protective order”).

12 BANA has provisionally redacted and sealed portions of the Regan Reply that
13 quote, describe or reflect descriptions of the confidential documents, testimony and
14 topics previously submitted or described in the Parties’ prior briefing and motions to
15 seal submitted in connection with the Regan Motion. Those confidential topics
16 include the following categories of documents and information, for which this Court
17 has already found compelling reasons to seal:

- 18 • BANA’s analyses of its state prepaid unemployment program
19 operations, including but not limited to operational risks and losses (*see*
20 ECF 365 at 10-13, n. 14 (finding compelling reasons to seal); ECF 602
21 (same));
- 22 • BANA’s Remediation Plan and Addenda with the OCC and CFPB, and
23 its implementation of those Plans, which both agencies themselves
24 designated as “Highly Confidential – Attorneys’ Eyes Only” (*see* ECF
25 365 at 14-16 (finding compelling reasons to seal); ECF 602 (same));
- 26 • BANA’s interrogatory responses and data provided therein reflecting
27 any reconsideration by BANA of those claims and any compensation
28 paid as a result (*see* ECF 365 at 5-9, 12 (finding compelling reasons to

1 seal); ECF 602 (same));

- 2 • Testimony concerning aggregated statistics related to EDD benefit
3 recipients account balances, activity, and fraud claims that BANA is
4 obligated to maintain as confidential pursuant to its agreement with
5 EDD (ECF 324-106 at 5), and otherwise would keep as confidential
6 because its disclosure could cause competitive harm to BANA or its
7 customers (*see* ECF 365, 381 (finding compelling reasons to seal); ECF
8 602 (same));
- 9 • Individual EDD cardholder account, transactions, and claim
10 information, which often include personal, sensitive, or financial
11 information (*see* ECF 365, 381 (finding compelling reasons to seal);
12 ECF 602 (same)); and
- 13 • Expert reports and excerpts of experts' deposition testimony, which
14 include discussions of BANA's confidential documents, many of which
15 contain the confidential information described above: BANA's handling
16 of unauthorized transaction claims and reconsiderations; BANA's
17 contract with EDD and the responsibilities thereunder; BANA's
18 communications with EDD regarding fraud-related measures; BANA's
19 fraud strategies, including the use of EMV chip technology and the
20 freezing and blocking of accounts; and BANA's call center procedures
21 and complaint escalation intake channels (*see* ECF 365, 381 (finding
22 compelling reasons to seal); ECF 602 (same)).

23 This is consistent with the terms of the Stipulated Protective Order (ECF 82 §
24 3), with this Court's prior Sealing Orders (ECF 266, 293, 365, 381, 390, 391, 397,
25 421, 466, 467, 548, 598, 599, 600, 601, 602, 603), and with rulings in this Circuit.
26 *See, e.g., Darisse v. Nest Labs, Inc.*, 2016 WL 11474174, *2 (N.D. Cal. June 2, 2016)
27 (sealing class certification motion and declarations that quote or reference
28 confidential exhibits). For the reasons discussed above, there are compelling reasons

1 to seal discussions of those topics, testimony and documents discussed in the Parties'
2 briefing. *See supra* at 3-4.

3 * * *

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

15
16
17 Dated: February 20, 2026

Respectfully submitted,

18 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 **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/ Lindsay E. Hoyle

LINDSAY E. HOYLE