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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 DOCUMENTS FILED IN
REPLY IN SUPPORT OF ITS
MOTION TO EXCLUDE THE
PURPORTED EXPERT OPINIONS OF
DAVID I. LEVINE**

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 certain documents¹ filed in connection with
4 BANA's Reply in Support of its Motion to Exclude the Purported Expert Opinions
5 of David I. Levine (Levine Reply). In particular, BANA seeks to seal portions of one
6 Hoyle Declaration Exhibit² because compelling reasons supports sealing of the
7 identified document, as well as any references to that exhibit in the Levine Reply
8 filed in support. Consistent with the Court's prior sealing Order finding compelling
9 reasons to seal certain exhibits filed with BANA's Motion to Exclude the Purported
10 Expert Opinions of David I. Levine (ECF 601), BANA also seeks to seal references
11 within the Levine Reply to the contents of those already-filed and sealed exhibits.³

12 As previously stated in BANA's motions to seal submitted in connection with
13 class certification briefing and argument (ECF 328, 337, 344, 347, 383, 418, 451)
14 and BANA's motions to seal submitted in connection with summary judgment
15 briefing (ECF 577, 579, 581, 583, 585, 587), the public's right to inspect and copy
16 judicial records is not absolute, and a party faced with the disclosure of confidential
17 or proprietary information may seek to file the documents under seal to avoid
18 disclosure of business information that might result in competitive harm or be used
19 for improper purposes. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598
20 (1978) (denying disclosure); Local Civ. R. 79.2(c). A party seeking to seal documents
21

22 ¹ BANA's Exhibit to the Declaration of Lindsay E. Hoyle in Support of the Levine
23 Reply (Hoyle Declaration) shall be referred to as "HX" or "Hoyle Declaration
Exhibit" in this Motion and the forthcoming Levine Reply.

24 ² Exhibit HX 40 was previously sealed by this Court (ECF 602) in connection with
25 BANA's Motion to Exclude the Purported Expert Opinions of Greg J. Regan (ECF
567). BANA refiles HX 40 as a courtesy for the Court.

26 ³ BANA incorporates by reference its Motion to File Documents Under Seal (ECF
27 583) in connection with its Motion to Exclude the Purported Expert Opinions of
28 David I. Levine (Levine Motion) (ECF 566) and the Declaration of Lindsay E. Hoyle
in Support thereof (ECF 566-2), and Plaintiffs' Motion to File Documents Under Seal
(ECF 615) in connection with Plaintiffs' Opposition to Defendant's Motion to
Exclude the Purported Expert Opinions of David I. Levine (ECF 617) and the
Declaration of Vasti S. Montiel in Support thereof (ECF 617-1).

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

8 Courts, including this Court, consistently seal documents where—as here—
9 disclosure of confidential business information risks competitive harm to the litigant
10 or improper use of the information such as to commit fraud. *See, e.g.*, ECF 603; *E.W.*
11 *Bank v. Shanker*, 2021 WL 3112452, *18-19 (N.D. Cal. July 22, 2021) (finding
12 compelling reasons to seal confidential onboarding processes, verification of
13 customer identities, and fraud prevention measures); *Soria v. U.S. Bank N.A.*, 2019
14 WL 8167925, *4 (C.D. Cal. Apr. 25, 2019) (finding compelling reasons to seal
15 internal fraud investigation procedures because there was a “significant danger that
16 someone could improperly use this information to commit fraud and avoid
17 detection.”). Indeed, this Court largely granted the Parties’ prior motions to seal,
18 finding good cause or compelling reasons to seal documents concerning the same
19 topics that BANA now seeks to seal, including BANA’s fraud detection and
20 prevention policies and strategies (including the fraud filter), discussions of BANA’s
21 Remediation Plan and Addenda, and individual cardholder account information,
22 among other topics. *See* ECF 266, 293, 365, 381, 390, 391, 397, 421, 466, 467, 548,
23 598, 599, 600, 601, 602, 603 (Sealing Orders). Those prior rulings are sufficient
24 grounds alone to grant sealing here. *See Lundstrom v. Young*, 2022 WL 15524624,
25 *17 (S.D. Cal. Oct. 27, 2022) (J. Curiel) (considering prior sealing of exhibits when
26 granting motion to seal); *Workplace Techs. Rsch., Inc. v. Project Mgmt. Inst., Inc.*,
27 2021 WL 6091272, *3 (S.D. Cal. Oct. 20, 2021) (sealing references to document that
28 court already granted sealing of).

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

18 Specifically, the Confidential expert report (HX 40) that BANA seeks to seal
19 includes discussions of BANA’s confidential documents, which pertain to
20 confidential topics, including but not limited to: BANA’s handling of unauthorized
21 transaction claims and reconsiderations, and BANA’s fraud strategies, including the
22 use of EMV chip technology and the freezing and blocking of accounts, which this
23 Court has already found compelling reasons to seal. *See* ECF 365, 381, 602 (finding
24 compelling reasons to seal).

25 BANA has also provisionally redacted and sealed portions of the Levine Reply
26 that quote, describe or reflect descriptions of the confidential documents, testimony
27 and topics previously submitted or described in the Parties’ prior briefing and
28 motions to seal submitted in connection with the Levine Motion. Those confidential

1 topics include individual EDD cardholder account, transactions, and claim
2 information, which often include personal, sensitive, or financial information, among
3 other topics. This is consistent with the terms of the Stipulated Protective Order (ECF
4 82 § 3), with this Court's prior Sealing Orders (ECF 266, 293, 365, 381, 390, 391,
5 397, 421, 466, 467, 548, 598, 599, 600, 601, 602, 603), and with rulings in this
6 Circuit. *See, e.g., Darisse v. Nest Labs, Inc.*, 2016 WL 11474174, *2 (N.D. Cal. June
7 2, 2016) (sealing class certification motion and declarations that quote or reference
8 confidential exhibits). For the reasons discussed above, there are compelling reasons
9 to seal discussions of those topics, testimony and documents discussed in the Parties'
10 briefing. *See supra* at 3-4.

11 * * *

12 For the foregoing reasons and for the reasons set forth in the Court's Sealing
13 Orders in connection with class certification briefing and argument (ECF 365, 381,
14 390, 391, 397, 421, 466, 467, 548), the Court's Sealing Orders in connection with
15 BANA's *Daubert* Motions (ECF 598, 599, 600, 601, 602), the Court's Sealing Orders
16 in connection with BANA's Motion for Partial Summary Judgment (ECF 603),
17 Plaintiffs' Motions to Seal (ECF 376, 384, 394, 463, 475, 524, 527, 569, 572, 609,
18 615, 618), BANA's prior Motions to Seal (ECF 328, 337, 344, 347, 383, 418, 451,
19 577, 579, 581, 583, 585, 587) and accompanying declarations submitted in support
20 thereof (ECF 344-1, 344-2, 344-3, 347-1, 347-2), all of which are incorporated herein
21 by reference, BANA respectfully requests that the Court grant BANA's Motion to
22 Seal because compelling reasons support sealing thereof.

23
24
25 Dated: February 20, 2026

Respectfully submitted,

26 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