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

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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 THE PURPORTED
EXPERT OPINIONS OF CHLOE N.
EAST**

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 the Purported Expert Opinions of Chloe N. East (East 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 the Purported Expert Opinions of
7 Chloe N. East (ECF 638), BANA seeks to seal references within the East 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 581) filed in
26 connection with its Motion to Exclude the Purported Expert Opinions of Chloe N.
27 East (East Motion) (ECF 565) and the Declaration of Lindsay E. Hoyle in Support
28 thereof (ECF 565-2), and Plaintiffs' Motion to File Documents Under Seal (ECF 609)
in connection with Plaintiffs' Opposition to Defendant's Motion to Exclude the
Purported Expert Opinions of Chloe N. East (ECF 611) and the Declaration of Regina
Wang in Support thereof (ECF 611-1).

Courts, including this Court, consistently seal documents where—as here—disclosure of confidential business information risks competitive harm to the litigant or improper use of the information such as to commit fraud. *See, e.g.*, ECF 603; *E.W. Bank v. Shanker*, 2021 WL 3112452, *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, *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.”). Indeed, this Court largely granted the Parties’ prior motions to seal, finding good cause or compelling reasons to seal documents concerning the same topics that BANA now seeks to seal, including discussions of BANA’s Remediation Plan and Addenda, and individual cardholder account information, among other topics. *See* ECF 266, 293, 365, 381, 390, 391, 397, 421, 466, 467, 548, 598, 599, 600, 601, 602, 603 (Sealing Orders). Those prior rulings are sufficient grounds alone to grant sealing here. *See Lundstrom v. Young*, 2022 WL 15524624, *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, *3 (S.D. Cal. Oct. 20, 2021) (sealing references to document that court already granted sealing of).

Consistent with this Court’s Sealing Orders, there are compelling reasons to seal references to the confidential documents and testimony at issue here that were already sealed in connection with the East Motion, because each reflects topics that are likely to cause particularized competitive harm to BANA and which could potentially enable future fraud, and thus pose a danger to BANA’s business and the public. *See, e.g., EWB*, 2021 WL 3112452, *18-19 (finding compelling reasons to seal where public disclosure of EWB’s confidential onboarding processes, verification of customer identities and fraud prevention measures would “harm [the

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

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

- 16 • BANA's Remediation Plan and Addenda with the OCC and CFPB, and
17 its implementation of those Plans, which both agencies themselves
18 designated as "Highly Confidential – Attorneys' Eyes Only" (*see* ECF
19 365 at 14-16 (finding compelling reasons to seal)); and
- 20 • Excerpts of experts' deposition testimony, which include discussions of
21 BANA's confidential documents, many of which contain confidential
22 information on topics, including but not limited to: BANA's handling
23 of unauthorized transaction claims and reconsiderations; BANA's
24 contract with EDD and the responsibilities thereunder; BANA's
25 communications with EDD regarding fraud-related measures; BANA's
26 fraud strategies, including the use of EMV chip technology and the
27 freezing and blocking of accounts; and BANA's call center procedures
28 and complaint escalation intake channels (*see* ECF 365, 381 (finding

1 compelling reasons to seal)).

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

10 * * *

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

22
23
24 Dated: February 20, 2026

Respectfully submitted,

25 By: /s/ Lindsay E. Hoyle

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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 **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