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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 MOTION TO SEAL
DOCUMENTS FILED IN REPLY IN
SUPPORT OF ITS MOTION TO
EXCLUDE THE PURPORTED
EXPERT OPINIONS OF JAY
MINNUCCI**

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 to Seal) portions of certain documents¹ in connection
4 with BANA's Reply in Support of its Motion to Exclude the Purported Expert
5 Opinions of Jay Minnucci (Minnucci Reply). In particular, BANA seeks to seal
6 portions of one Hoyle Declaration Exhibit because compelling reasons support
7 sealing of the identified document, as well as any references to that exhibit in the
8 Minnucci Reply filed in support. Consistent with the Court's prior sealing Order
9 finding compelling reasons to seal certain exhibits filed with BANA's Motion to
10 Exclude the Purported Expert Opinions of Jay Minnucci (ECF 599), BANA also
11 seeks to seal references within the Minnucci Reply to the contents of those already-
12 filed and sealed exhibits.²

13 As previously stated in BANA's motions to seal submitted in connection with
14 class certification briefing and argument (ECF 328, 337, 344, 347, 383, 418, 451)
15 and BANA's motions to seal submitted in connection with summary judgment
16 briefing (ECF 577, 579, 581, 583, 585, 587), the public's right to inspect and copy
17 judicial records is not absolute, and a party faced with the disclosure of confidential
18 or proprietary information may seek to file the documents under seal to avoid
19 disclosure of business information that might result in competitive harm or be used
20 for improper purposes. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598
21 (1978) (denying disclosure); Local Civ. R. 79.2(c). A party seeking to seal documents
22 filed in connection with a motion to exclude expert testimony must show "compelling
23

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

27 ² BANA incorporates by reference its Motion to File Documents Under Seal (ECF
28 579) in connection with its Motion to Exclude the Purported Expert Opinions of Jay
Minnucci (Minnucci *Daubert* Motion) (ECF 564) and the Declaration of Lindsay E.
Hoyle in Support thereof (ECF 564-2), and Plaintiffs' Motion to File Documents
Under Seal (ECF 612) in connection with Plaintiffs' Opposition to Defendant's
Motion to Exclude Certain Expert Opinions of Jay Minnucci (ECF 614) and the
Declaration of Regina Wang in Support thereof (ECF 614-1).

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

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

27 Consistent with this Court’s Sealing Orders, there are compelling reasons to
28 seal the confidential testimony at issue here (or references thereto), as well as

1 substantive discussions of already sealed exhibits filed in connection with the
2 Minnucci Motion, because each reflects topics that are likely to cause particularized
3 competitive harm to BANA and which could potentially enable future fraud, and thus
4 pose a danger to BANA's business and the public. *See, e.g., EWB*, 2021 WL
5 3112452, *18-19 (finding compelling reasons to seal where public disclosure of
6 EWB's confidential onboarding processes, verification of customer identities and
7 fraud prevention measures would "harm [the bank's] competitive standing"); *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 excerpted expert testimony (HX 51) that BANA seeks to seal
17 includes discussions of BANA confidential documents, which pertain to confidential
18 topics, including but not limited to: BANA's call center operations and strategies and
19 complaint escalation intake channels, which this Court has already found compelling
20 reasons to seal. *See* ECF 365, 381 (finding compelling reasons to seal).

21 BANA has also provisionally redacted and sealed portions of the Minnucci
22 Reply that quote, describe or reflect descriptions of the confidential documents
23 previously submitted or described in the Parties' prior briefing and motions to seal
24 submitted in connection with the Minnucci Motion. Those confidential topics include
25 BANA's fraud and claims analyses and strategies, BANA's call center operations
26 and strategies, communications between EDD and BANA, among other topics. This
27 is consistent with the terms of the Stipulated Protective Order (ECF 82 § 3), with this
28 Court's prior Sealing Orders (ECF 266, 293, 365, 381, 390, 391, 397, 421, 466, 467,

1 548, 598, 599, 600, 601, 602, 603), and with rulings in this Circuit. *See, e.g., Darisse*
2 *v. 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), the Court's Sealing Orders in connection with
11 BANA's *Daubert* Motions (ECF 598, 599, 600, 601, 602), the Court's Sealing Orders
12 in connection with BANA's Motion for Partial Summary Judgment (ECF 603),
13 Plaintiffs' Motions to Seal (ECF 376, 384, 394, 463, 475, 524, 527, 569, 572, 609,
14 615, 618), BANA's prior Motions to Seal (ECF 328, 337, 344, 347, 383, 418, 451,
15 577, 579, 581, 583, 585, 587) and accompanying declarations submitted in support
16 thereof (ECF 344-1, 344-2, 344-3, 347-1, 347-2), all of which are incorporated herein
17 by reference, BANA respectfully requests that the Court grant BANA's Motion to
18 Seal because compelling reasons support sealing thereof.

19
20
21 Dated: February 20, 2026

Respectfully submitted,

22 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