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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  
JANE CLONINGER**

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 documents<sup>1</sup> in connection with BANA's  
4 Reply in Support of its Motion to Exclude the Purported Expert Opinions of Jane  
5 Cloninger (Cloninger Reply). In particular, BANA seeks to seal portions of one  
6 Hoyle Declaration Exhibit because compelling reasons support sealing of the  
7 identified document, as well as any references to that exhibit in the Cloninger 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 Jane Cloninger (ECF 598), BANA also seeks to seal references  
11 within the Cloninger Reply to the contents of those already-filed and sealed exhibits.<sup>2</sup>

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 filed in connection with a motion to exclude expert testimony must show "compelling  
22 reasons" to seal, as such motions may be effectively "dispositive of a motion for  
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24 <sup>1</sup> BANA's Exhibit to the Declaration of Lindsay E. Hoyle in Support of the Cloninger  
25 Reply (Hoyle Declaration) shall be referred to as "HX" or "Hoyle Declaration  
26 Exhibit" in this Motion and the forthcoming Cloninger Reply.

27 <sup>2</sup> BANA incorporates by reference its Motion to File Documents Under Seal (ECF  
28 577) in connection with its Motion to Exclude the Purported Expert Opinions of Jane  
Cloninger (Cloninger Motion) (ECF 563) and the Declaration of Lindsay E. Hoyle  
in Support thereof (ECF 563-2), and Plaintiffs' Motion to File Documents Under Seal  
(ECF 621) in connection with Plaintiffs' Opposition to Defendant's Motion to  
Exclude the Purported Expert Opinions of Jane Cloninger (ECF 623) and the  
Declaration of Katherine Bass in Support thereof (ECF 623-1).

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

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

26 Consistent with this Court’s Sealing Orders, there are compelling reasons to  
27 seal the confidential documents and testimony at issue here (or references thereto),  
28 as well as substantive discussions of already sealed exhibits filed in connection with

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

15 Specifically, the excerpted expert testimony (HX 50) that BANA seeks to seal  
16 includes discussions of BANA's confidential documents, which pertain to  
17 confidential topics, including but not limited to: BANA's handling of unauthorized  
18 transaction claims and reconsiderations; and BANA's fraud strategies, including the  
19 use of EMV chip technology and the freezing and blocking of accounts, which this  
20 Court has already found compelling reasons to seal. *See* ECF 365, 381 (finding  
21 compelling reasons to seal).

22 BANA has also provisionally redacted and sealed portions of the Cloninger  
23 Reply that quote, describe or reflect descriptions of the confidential documents,  
24 testimony and topics that were previously submitted or described in the Parties' prior  
25 briefing and motions to seal submitted in connection with the Cloninger Motion.  
26 Those confidential topics include BANA's fraud and claims analyses and strategies  
27 and BANA's analyses of its state prepaid unemployment program operations,  
28 including fraud volume and cardholder complaints, among other topics. This is

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

9 \* \* \*

10 For the foregoing reasons and for the reasons set forth in the Court's Sealing  
11 Orders in connection with class certification briefing and argument (ECF 365, 381,  
12 390, 391, 397, 421, 466, 467, 548), BANA's *Daubert* Motions (ECF 598, 599, 600,  
13 601, 602), BANA's Motion for Partial Summary Judgment (ECF 603), Plaintiffs'  
14 Motions to Seal (ECF 376, 384, 394, 463, 475, 524, 527, 569, 572, 609, 615, 618,  
15 630, 650), BANA's prior Motions to Seal (ECF 328, 337, 344, 347, 383, 418, 451,  
16 577, 579, 581, 583, 585, 587) and accompanying declarations submitted in support  
17 thereof (ECF 344-1, 344-2, 344-3, 347-1, 347-2), all of which are incorporated herein  
18 by reference, BANA respectfully requests that the Court grant BANA's Motion to  
19 Seal because compelling reasons support sealing thereof.

20  
21  
22 Dated: February 20, 2026

Respectfully submitted,

23 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