

1 QUINN EMANUEL URQUHART  
& SULLIVAN, LLP  
2 Kevin P.B. Johnson (Bar No.  
177129)  
3 kevinjohnson@quinnemanuel.com  
Todd M. Briggs (Bar No. 209282)  
4 toddbriggs@quinnemanuel.com  
555 Twin Dolphin Drive, 5th Floor  
5 Redwood Shores, California 94065  
Telephone: (650) 801-5000  
6 Facsimile: (650) 801-5100

7 QUINN EMANUEL URQUHART  
& SULLIVAN, LLP  
8 Eric Huang (*pro hac vice*)  
erichuang@quinnemanuel.com  
9 51 Madison Avenue, 22nd Floor  
New York, New York 10010  
10 Telephone: (212) 849-7000  
Facsimile: (212) 849-7100

11 *Attorneys for Plaintiffs*  
12 NANTWORKS, LLC and NANT  
HOLDINGS IP, LLC

George C. Lombardi (*pro hac vice*)  
glombardi@winston.com  
WINSTON & STRAWN LLP  
35 West Wacker Drive  
Chicago, IL 60601-9703  
Telephone: (312) 558-5600  
Facsimile: (312) 558-5700

E. Danielle T. Williams (*pro hac vice*)  
dwilliams@winston.com  
WINSTON & STRAWN LLP  
300 South Tryon Street, 16th Floor  
Charlotte, NC 28202  
Telephone: (704) 350-7700  
Facsimile: (704) 350-7800

Diana Hughes Leiden (SBN: 267606)  
dhleiden@winston.com  
WINSTON & STRAWN LLP  
333 S. Grand Avenue, 38th Floor  
Los Angeles, CA 90071-1543  
Telephone: (213) 615-1700  
Facsimile: (213) 615-1750

*Attorneys for Defendants*  
BANK OF AMERICA CORPORATION  
and BANK OF AMERICA, N.A.

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14  
15 **UNITED STATES DISTRICT COURT**  
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
17

18 NANTWORKS, LLC, a Delaware  
19 limited liability company, and NANT  
HOLDINGS IP, LLC, a Delaware  
20 limited liability company,

21 Plaintiffs,

22 vs.

23 BANK OF AMERICA  
CORPORATION, a Delaware  
24 corporation, and BANK OF  
AMERICA, N.A., a national banking  
25 association,

26 Defendants.  
27  
28

CASE NO. 2:20-cv-7872-GW-PVC

**JOINT MOTION TO AMEND CASE  
SCHEDULE & JOINT STATUS  
REPORT**

Hon. George H. Wu

1 Pursuant to Federal Rule of Civil Procedure 16, Plaintiffs NantWorks LLC and  
2 Nant Holdings IP, LLC (“NantWorks”) and Defendants Bank of America Corporation  
3 and Bank of America, N.A. (“Bank of America”) jointly move for an order amending  
4 the case schedule set forth in the Court’s Minutes of the May 8, 2023 Scheduling  
5 Conference (Dkt. 201). Furthermore, pursuant to that schedule, the parties also  
6 jointly submit this brief as their joint status report.

7 “A schedule may be modified only for good cause and with the judge’s  
8 consent.” Fed. R. Civ. P. 16(b)(4). “The district court is given broad discretion in  
9 supervising the pretrial phase of litigation.” *Acosta v. Ethicon, Inc.*, No.  
10 CV205992DSFGJSX, 2021 WL 6104865, at \*1 (C.D. Cal. Sept. 15, 2021). Good  
11 cause exists for this request.

### 12 **Joint Status Report**

13 The Court lifted the stay on May 1, 2023, setting the close of fact discovery for  
14 September 29, 2023. *See* Dkts. 196, 201. The parties argued supplemental claim  
15 construction on July 27, 2023, and the Court issued its supplemental claim  
16 construction order on August 11, 2023. Dkt. 236. Since the stay was lifted, the  
17 parties have been diligently working to complete discovery in accordance with the  
18 current schedule. This includes additional document production, additional source  
19 code review, and serving the parties’ respective patent contentions. To date, the  
20 parties have propounded a total of approximately 52 interrogatories, 300 requests for  
21 production, 32 requests for admission, and four sets of request for production of  
22 emails, including one set that was served August 8, 2023 on Plaintiffs. Despite  
23 diligent efforts of the parties, some of these discovery requests remain pending, and  
24 the parties are still working to produce emails.

25 In addition, the parties have served subpoenas on 17 third parties seeking  
26 documents and depositions, not counting former employees of the parties; however,  
27 only one third-party deposition has been completed to date – IBM. The parties have  
28 also noticed or subpoenaed the depositions of 23 individuals and served a corporate

1 notice of deposition of the other side (Plaintiffs' Rule 30(b)(6) notice contains 56  
2 topics; Defendants' Rule 30(b)(6) notice contains 116 topics). Given these  
3 subpoenas and notices, there are at least 39 depositions sought by the parties in total  
4 (assuming topics are covered by individuals noticed by the parties) that still need to  
5 be completed.

6 The parties have also agreed to mediate before the Hon. Layn Phillips on  
7 October 31, 2023.

8 The parties have further agreed that no new discovery requests shall be made  
9 on the parties, provided the parties have an opportunity to seek leave to serve limited  
10 discovery should good cause arise for serving such discovery based on the discovery  
11 of new information in upcoming depositions or yet-to-be-produced materials.

12 Furthermore, Defendants have raised issues with Plaintiffs' Final Identification  
13 of Trade Secrets and trade secret discovery responses. Plaintiffs disagree that their  
14 Final Identification of Trade Secrets and trade secrets discovery responses are  
15 deficient. The parties are continuing to meet and confer on these disputes, and, should  
16 they be unable to resolve them:

- 17 • Defendants' position is that Plaintiffs failed to provide a proper  
18 identification of its trade secrets and respond to trade secret discovery,  
19 which is prejudicing Defendants' ability to complete discovery even under  
20 the extended case schedule. Defendants believe these issues are  
21 appropriate matters for discussion at the status conference pursuant to the  
22 Court's scheduling order.
- 23 • Plaintiffs' position is that Defendants' efforts to raise this complaint at the  
24 status conference is improper and that any discovery disputes regarding the  
25 disclosures should be submitted to Judge Castillo for resolution when they  
26 are ripe and follow the process set forth for such disputes, which provides  
27 both parties the opportunity to heard.

28

1 At this time, as discussed below, the parties do not believe they can complete  
2 discovery under the current schedule.

3 **Good Cause Exists to Amend the Case Schedule**

4 Despite the efforts of the parties, the parties require an extension to allow for  
5 completion of fact discovery.

6 Although the parties have produced documents, there are categories of  
7 documents that are pending production, including emails requested recently by  
8 Defendants from two more custodians. The parties have conferred regarding search  
9 terms and are working toward production of emails by Plaintiffs. Furthermore,  
10 although the parties have produced code for inspection and have spent significant time  
11 reviewing code to prepare their cases, there remain some issues relating to code  
12 production that the parties (and third parties) are working to resolve.

13 Furthermore, although the parties have noticed or subpoenaed over 20  
14 individuals and served corporate notices of deposition pursuant to Rule 30(b)(6), the  
15 scheduling of witnesses for deposition has been challenging given constraints on  
16 witness availability and the short time frame for remaining fact discovery. In  
17 addition, at least one witness is handling a family emergency overseas. Also,  
18 twenty-four third parties who were subpoenaed for deposition have yet to be deposed.  
19 The parties are working to exchange available dates for all of these witnesses and  
20 third-parties, however, when some of the witnesses can be deposed will depend on  
21 the completion of document productions. Without an amendment to the schedule,  
22 both parties will be significantly prejudiced as neither party will obtain necessary  
23 documents and testimony.

24 Thus, both parties will benefit from additional time to complete depositions and  
25 other discovery. As proposed below, the requested amendments to the case schedule  
26 will not impact the Court's pre-trial conference on July 25, 2024 or the scheduled start  
27 of trial on August 20, 2024. The only hearing that would require a change is the  
28

1 hearing on the parties' summary judgment motions and Daubert motions, currently  
2 scheduled for March 25, 2024.

3 The parties jointly request that the Court adopt the below new schedule:

4 <b>Event</b>	<b>Current Schedule</b>	<b>Proposed New Dates</b>
5 Status Conference	September 18, 2023	No change
6 Joint Status Report	n/a	Tuesday, October 17, 2023
7 Status Conference	n/a	Thursday, October 19, 2023
8 Fact Discovery 9 Complete	September 29, 2023	November 16, 2023
10 Opening Expert Reports	October 26, 2023	December 14, 2023
11 Mediation Deadline	January 4, 2024	January 4, 2024
12 Post-Mediation Status 13 Conference	January 18, 2024 at 8:30 a.m.	January 18, 2024 at 8:30 a.m. (same)
14 Rebuttal Expert Reports	November 20, 2023	February 8, 2024
15 Expert Discovery 16 Complete	December 22, 2023	February 22, 2024
17 Summary Judgment and 18 Daubert Motions Due	February 5, 2024	March 14, 2024
19 Oppositions to Summary 20 Judgment and Daubert 21 Motions Due	February 29, 2024	April 4, 2024
22 Replies to Summary 23 Judgment and Daubert 24 Motions Due	March 7, 2024	April 11, 2024
25 Hearing on Summary 26 Judgment and Daubert 27 Motions	March 25, 2024	April 25, 2024
28 Exchange of Pretrial Materials	April 30, 2024	May 23, 2024
Motions <i>in Limine</i>	June 4, 2024	June 18, 2024
Pretrial Order Filing Deadline	June 11, 2024	June 18, 2024
Oppositions to Motions <i>in Limine</i>	June 25, 2024	July 2, 2024

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