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

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.

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

**DEFENDANTS' SUPPLEMENT TO
JOINT STATUS REPORT**

Hon. George H. Wu

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1 Pursuant to this Court’s Scheduling Orders (Dkts. 157 and 201), and the Court’s
2 instructions during the January 6, 2022 Scheduling Conference, Defendants Bank of
3 America Corporation and Bank of America, N.A. (“Bank of America”) provide the
4 following status report on Plaintiffs’ Final Identification of Trade Secrets.

5 **INTRODUCTION**

6 Pursuant to the Court’s instruction at the January 6, 2022 Scheduling
7 Conference that the parties were to advise the Court what “needs to be done vis a vis
8 discovery” once Plaintiffs’ Final Identification of Trade Secrets were served (Jan. 6,
9 2022 Hr’g Tr. at 9-14), Defendants seek the Court’s guidance because Defendants are
10 in the same position as they were before the Court on January 6, 2022 with respect to
11 Plaintiffs’ trade secret claims. *See, e.g.*, Dkt. 155 at 13. Plaintiffs’ Final
12 Identification of Trade Secrets¹ and trade secret discovery responses have still not
13 identified the particulars of the trade secrets that are critical to Bank of America’s
14 ability to defend itself and Plaintiffs are again refusing to disclose those particulars
15 before the end of the agreed-on extension to fact discovery. If this issue is not
16 addressed in the schedule moving forward, the parties will undoubtedly be back in
17 front of this Court in another month seeking another extension.

18 **BACKGROUND**

19 At the January 6, 2022 Scheduling Conference, the parties presented their
20 respective positions on the timing of Plaintiffs’ Final Identification of Trade Secrets.
21 Plaintiffs proposed a deadline after the close of fact discovery, while Defendants
22 proposed a deadline before the close of fact discovery so that Defendants could take
23 depositions and conduct other discovery on the scope of Plaintiffs’ alleged trade
24 secrets. The Court agreed with Defendants and set the deadline before the close of
25 fact discovery and also set a status conference to address “whether or not anything
26

27 ¹ Plaintiffs’ Second Supplemental Trade Secret Disclosure, which Plaintiffs
28 deemed their Final Identification. is attached as Exhibit 1.

1 else needs to be done vis a vis discovery at that point in time” preceded by a joint
2 status report on “whether or not one side or the other is going to be arguing that some
3 additional fact discovery is necessary.” (Jan. 6, 2022 Hr’g Tr. at 9-14; Dkt. 157). The
4 post-stay schedule maintained the same deadlines: Plaintiffs’ Final Identification
5 (8/31/2023) followed by a joint status report (9/12/2023) and a scheduling conference
6 (9/18/2023). (Dkt. 201). Accordingly, Defendants provide this status report on
7 Plaintiffs’ Final Identification (Exh. 1).²

8 DEFENDANTS’ STATUS REPORT

9 **Plaintiffs’ Trade Secret Disclosures and Final Identification:** Plaintiffs
10 served their Initial Trade Secret Disclosures on March 4, 2021, and served their First
11 Supplement on September 28, 2021 after Defendants sought assistance from Judge
12 Castillo.³ Plaintiffs served their Second Supplement on June 1, 2023 pursuant to the
13 Scheduling Order (Dkt. 201). After receiving the Second Supplement, Bank of
14 America identified the deficiencies again to Plaintiffs on June 16, 2023 (Exh. 2 –
15 Williams 6/16/2023 letter to Huang). In response (Exh. 3 – Huang 6/29/2023 letter to
16 Williams), Plaintiffs took the position they adequately identified their trade secrets,
17 but noted that “[t]he case schedule in this matter includes a deadline for a Final
18 Identification of Trade Secrets well before the close of fact discovery.” On the day
19 Plaintiffs’ Final Identification was due, however, Plaintiffs deemed their Second
20 Supplement as their Final Identification and stated they intended to supplement
21 certain interrogatory responses related to trade secrets, but would not provide a date
22 certain or confirmation what responses would be supplemented (Exh. 4 – Heller
23

24
25 ² Plaintiffs objected to filing a joint status report with Defendants’ complete
26 report on the status of Plaintiffs’ Final Identification, which necessitated
27 Defendants’ supplemental filing.

28 ³ Before the stay, Defendants repeatedly identified to Plaintiffs the deficiencies
in their trade secret disclosures and discovery responses. Defendants have raised the
issues in this Status Report with Plaintiffs post-stay, from June 2023 to present.

1 8/31/2023 email). Plaintiffs have thus left the door open to amend the scope of their
2 trade secret disclosures via amended interrogatory responses at any time—including
3 at the end of fact discovery.

4 **Defendants’ Discovery Requests Related to Trade Secrets:** Given the
5 parties’ disagreement over the sufficiency of Plaintiffs’ trade secret disclosures,
6 Defendants served discovery seeking the specific information they believed
7 Plaintiffs’ trade secret disclosures should have included from the start. Aware of the
8 August 31, 2023 deadline for Plaintiffs’ Final Identification, Defendants asked
9 Plaintiffs on August 24, 2023 to supplement their discovery responses to Interrogatory
10 Nos. 3 and 6, which requested Plaintiffs to identify, among others things, where in
11 Plaintiffs’ documents and source code their trade secrets are set forth and to identify
12 where and how Defendants allegedly misappropriated and used Plaintiffs’ trade
13 secrets (Exh. 4 – Email Correspondence Between Dale and Heller). In addition, on
14 August 23, 2023, Defendants renewed their request to inspect the Google Analytics
15 database and asked Plaintiffs to give third-party Google consent to produce
16 information related to the Google Analytics database or to produce that information
17 directly if it was in Plaintiffs’ possession, custody, or control. Plaintiffs have not yet
18 responded. (Exh. 5 – Sullivan 8/23/2023 email)

19 In short, Defendants have no more information about Plaintiffs’ trade secrets
20 than they did in September 2021 notwithstanding (a) Court-ordered deadlines to serve
21 a supplement on June 1, 2023 and a Final Identification on August 31, 2023 and (b)
22 Defendants’ 2021 written discovery requests. The Court’s schedule was intended to
23 prevent this exact situation. Defendants have no assurances at this point that Plaintiffs
24 will not attempt to amend their trade secret disclosures at the close of fact discovery—
25 as they have specifically reserved the right to do. Defendants seek the Court’s
26 assistance to set an amended schedule that puts Defendants in a position to complete
27 the discovery remaining in this case with the benefit of Plaintiffs’ actual “Final”
28 Identification, including taking depositions of Plaintiffs’ witnesses and presenting its

1 own witnesses for deposition. Plaintiffs should not be permitted to wait until the
2 very last day of discovery to provide the information Defendants need.⁴

3 Respectfully submitted,

4 Dated: September 13, 2023 _____ WINSTON & STRAWN LLP

6 By: /s/ E. Danielle T. Williams

7 E. Danielle T. Williams

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

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24 ⁴ Plaintiffs argue that Defendants should seek relief through Magistrate Judge
25 Castillo’s discovery dispute process, but Plaintiffs ignore that the Court originally set
26 this particular conference to address any discovery issues remaining after Plaintiffs’
27 Final Identification. Jan. 6, 2022 Hr’g Tr. at 9-14. Further, this is not just about the
28 sufficiency of Plaintiffs’ trade secret identification—it is about setting a schedule that
will permit Defendants to take discovery with the benefit of this information and to
avoid asking the Court for another extension of the case schedule. Plaintiffs could not
dispute that the case schedule is solely a matter for the District Judge.