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14 BANK OF AMERICA
CORPORATION
and BANK OF AMERICA, N.A.

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

18 NantWorks, LLC, a Delaware limited
19 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 association,

25 Defendants.
26
27
28

Case No. 2:20-CV-7872-GW-PVC

**DEFENDANTS' UNOPPOSED
APPLICATION TO FILE
DOCUMENTS UNDER SEAL**

Local Rule 79-5.2.2(b)

[Filed concurrently with Application to
File Under Seal and Proposed Order]

1 TO THE COURT, PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

2 NOTICE IS HEREBY GIVEN that, pursuant to Local Rule 79-5.2.2.(b),
 3 Defendants, Bank of America Corporation and Bank of America, N.A. (collectively,
 4 “Defendants” or “Bank of America”), hereby request that this Court enter an order
 5 permitting them to file under seal the materials described below that are filed in
 6 connection with Defendants’ Motion to Exclude the Expert Report of Cathy C.
 7 Glassman (the “Motion to Exclude”):

Document Description	Nature of Information to be Sealed
10 Exhibit 1 to the Declaration of William 11 Fox in Support of the Motion to 12 Exclude: Expert Report of Cathy C. 13 Glassman.	Designated by Plaintiffs as “CONFIDENTIAL AND HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the parties’ stipulated protective order (Dkt. Nos. 102, 210).
16 Exhibit 2 to the Declaration of William 17 Fox in Support of the Motion to 18 Exclude: Excerpts of Transcript of the 19 April 5, 2024 Deposition of Cathy C. 20 Glassman.	Designated by Plaintiffs as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the parties’ stipulated protective orders (Dkt. Nos. 102, 210).
21 Exhibit 3 to the Declaration of William 22 Fox in Support of the Motion to 23 Exclude: Plaintiffs’ Corrected Third 24 Supplemental Objections and Responses 25 to Defendants’ Third Set of 26 Interrogatories (21).	Designated by Plaintiffs as “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” under the parties’ stipulated protective orders (Dkt. Nos. 102, 210).
27 Exhibit 5 to the Declaration of William	Designated by Plaintiffs as

Document Description	Nature of Information to be Sealed
<p>1 2 3 4 5 6 7 8 9</p> <p>Fox in Support of the Motion to Exclude: Excerpts of Expert Report of Dan Schonfeld, Ph.D., Regarding the Infringement of the Asserted Claims, attached as Exhibit 2 to the April 10, 2024 Deposition of Dan Schonfeld, Ph.D.</p>	<p>“CONFIDENTIAL” under the parties’ stipulated protective orders (Dkt. Nos. 102, 210).</p>
<p>10 11 12 13 14 15 16</p> <p>Exhibit 6 to the Declaration of William Fox in Support of the Motion to Exclude: Excerpts of Rebuttal Expert Report of Dan Schonfeld, Ph.D., Regarding the Validity of and Non-Infringing Alternatives to the Asserted Claims</p>	<p>Designated by Plaintiffs as “CONFIDENTIAL” under the parties’ stipulated protective orders (Dkt. Nos. 102, 210).</p>
<p>17 18 19 20 21 22</p> <p>Exhibit 8 to the Declaration of William Fox in Support of the Motion to Exclude: Excerpts of Expert Report of Patrick F. Kennedy, Ph.D., attached as Exhibit 1 to the April 5, 2024 Deposition of Patrick Kennedy, Ph.D.</p>	<p>Designated by Plaintiffs as “CONFIDENTIAL – ATTORNEY EYES ONLY” under the parties’ stipulated protective orders (Dkt. Nos. 102, 210).</p>
<p>23 24 25 26 27 28</p> <p>Exhibit 9 to the Declaration of William Fox in Support of the Motion to Exclude: Excerpts of Rebuttal Expert Report of Patrick F. Kennedy, Ph.D.</p>	<p>Designated by Plaintiffs as “CONFIDENTIAL – ATTORNEY EYES ONLY” under the parties’ stipulated protective orders (Dkt. Nos. 102, 210).</p>

Document Description	Nature of Information to be Sealed
Memorandum in Support of the Motion to Exclude	Designated by Defendants in its entirety as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Plaintiffs do not oppose sealing this exhibit in its entirety.

I. Background

As set forth in the Declaration of William Fox in Support of Plaintiffs’ Application to File Under Seal submitted herewith, Defendants make this application because the foregoing documents are marked and designated as “Confidential” or “Highly Confidential – Attorneys Eyes Only” and/or “Highly Confidential – Source Code” as follows pursuant to the parties’ Stipulated Protective Order (Dkt. No. 210). *See* Declaration of William Fox (the “Williams Decl.”), ¶¶ 2–12. Defendants make this application because materials nos. 1–10 contain information that is “Confidential,” “Highly Confidential – Attorneys Eyes Only,” and/or “Highly Confidential – Source Code” of Bank of America. As required by Local Rule 79-5.2.2(b), counsel for Plaintiffs and Defendants conferred about Defendants’ filing these materials to limit, if not entirely avoid, the necessity of this Application. *Id.*, ¶ 2. Plaintiffs’ counsel does not oppose filing the entirety of these materials under seal.

The Williams declaration sets forth the information Defendants seek to file under seal, the basis for the Application, and good cause to seal Bank of America confidential information. *Id.*, ¶¶ 1–12. Due to the sensitive nature of the information in the foregoing materials, good cause exists to approve Bank of America’s application to file these materials under seal pursuant to Local Rule 79-5.2.2(a), and, pursuant to Local Rule 79-5.2.2(b)(i).

II. Good Cause Exists to File Materials Under Seal

The decision to seal records is left to the discretion of the District Court. *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995) (citing *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 599 (1978)). Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure allows parties, upon a showing of “good cause,” to file under seal documents containing “confidential . . . commercial information.” *See also IMAX Corp. v. Cinematech, Inc.*, 152 F.3d 1161, 1168 n.9 (9th Cir. 1998) (noting that confidential and proprietary business information is “to be filed under seal.”); *Sun Microsystems Inc. v. Network Appliance*, No. C-08-01641 EDL, 2009 WL 5125817, at *9 (N.D. Cal. Dec. 21, 2009) (granting sealing requests because the documents “contain confidential [business] information, much of which has been designated as Confidential or Highly Confidential under the parties’ stipulated protective order, that could cause competitive harm if disclosed.”); *In re Adobe Systems, Inc. Securities Litigation Master File*, 141 F.R.D. 155, 161-162 (N.D. Cal. 1992) (“Protective orders and filings under seal are the primary means by which the courts ensure full disclosure of relevant information, while still preserving the parties’ (and third parties’) legitimate expectation that confidential business information, proprietary technology and trade secrets will not be publicly disseminated.”).

Bank of America respectfully requests that the Court grant its application to file under seal the foregoing materials on the grounds that the foregoing materials nos. 1–8 contain Bank of America’s confidential commercial information, specifically, non-public, proprietary details about the design and functionality of Bank of America’s mobile check deposit, which includes excerpts and/or references to source code of Bank of America and its vendors designated “Highly Confidential – Source Code.” Williams Decl., ¶ 12. Accordingly, Bank of America has an important interest in maintaining the confidentiality of this information, and any public interest in its disclosure is rebutted. *See, e.g., Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (differentiating dispositive motions by explaining that, for such motions, “the private

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