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

20 Plaintiffs,

21 vs.

22 BANK OF AMERICA  
23 CORPORATION, a Delaware  
corporation, and BANK OF AMERICA,  
24 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 Declaration of  
Danielle Williams 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 for Partial Summary Judgment of Invalidity Under  
 7 35 U.S.C. § 112 (the “112 Motion for Summary Judgment”):

Document Description	Nature of Information to be Sealed
<p>9 Exhibit A to Exhibit 3 to the Declaration            10 of Dustin Edwards in Support of the            11 Motion for Partial Summary Judgment            12 of Invalidity Under 35 U.S.C. § 112:            13 Excerpts of Expert Report of Nathaniel            14 Polish, Ph.D., Regarding the Invalidity            15 of Certain Claims of U.S. Patents Nos.            16 7,881,529, 7,899,252, 8,478,036,            17 9,324,004, and 9,031,278.</p>	<p>Designated by Plaintiffs as “HIGHLY            CONFIDENTIAL– ATTORNEYS’            EYES ONLY” under the parties’            stipulated protective order (Dkt. Nos.            102, 210), and contains excerpts of            documents designated by Bank of            America and third-party Mitek as            “Highly Confidential – Attorneys’ Eyes            Only”. Plaintiffs do not oppose sealing            this exhibit in its entirety.</p>
<p>19 Exhibit 4 to the Declaration of Dustin            20 Edwards in Support of the Motion for            21 Partial Summary Judgment of Invalidity            22 Under 35 U.S.C. § 112: Excerpts of            23 Expert Report of Dan Schonfeld, Ph.D.,            24 Regarding the Infringement of the            25 Asserted Claims.</p>	<p>Designated by Plaintiffs as “CONTAINS            HIGHLY CONFIDENTIAL SOURCE            CODE – ATTORNEYS’ EYES ONLY”            under the parties’ stipulated protective            order (Dkt. Nos. 102, 210), and contains            excerpts of documents designated by            Bank of America and third-party Mitek            as “Highly Confidential – Attorneys’            Eyes Only.” Plaintiffs and Mitek do not</p>

Document Description	Nature of Information to be Sealed
	oppose sealing this exhibit in its entirety.

## I. Background

As set forth in the Declaration of Danielle Williams 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 Danielle Williams (the "Williams Decl."), ¶¶ 2–6. Defendants make this application because materials nos. 1–8 contain information that is "Confidential," "Highly Confidential – Attorneys Eyes Only," and/or "Highly Confidential – Source Code" of Bank of America and/or its vendors. 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.*, ¶ 5. 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.*, ¶¶ 1–6. 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

1 seal documents containing “confidential . . . commercial information.” *See also IMAX*  
2 *Corp. v. Cinematech, Inc.*, 152 F.3d 1161, 1168 n.9 (9th Cir. 1998) (noting that  
3 confidential and proprietary business information is “to be filed under seal.”); *Sun*  
4 *Microsystems Inc. v. Network Appliance*, No. C-08-01641 EDL, 2009 WL 5125817, at  
5 \*9 (N.D. Cal. Dec. 21, 2009) (granting sealing requests because the documents “contain  
6 confidential [business] information, much of which has been designated as Confidential  
7 or Highly Confidential under the parties’ stipulated protective order, that could cause  
8 competitive harm if disclosed.”); *In re Adobe Systems, Inc. Securities Litigation Master*  
9 *File*, 141 F.R.D. 155, 161-162 (N.D. Cal. 1992) (“Protective orders and filings under  
10 seal are the primary means by which the courts ensure full disclosure of relevant  
11 information, while still preserving the parties’ (and third parties’) legitimate expectation  
12 that confidential business information, proprietary technology and trade secrets will not  
13 be publicly disseminated.”).

14 Bank of America respectfully requests that the Court grant its application to file  
15 under seal the foregoing materials on the grounds that the foregoing materials contain  
16 Bank of America’s and Mitek’s confidential commercial information, specifically, non-  
17 public, proprietary details about the design and functionality of their respective mobile  
18 check deposit, which includes excerpts and/or references to source code of Bank of  
19 America and its vendors designated “Highly Confidential – Source Code.” Williams  
20 Decl., ¶ 4. Accordingly, Bank of America has an important interest in maintaining the  
21 confidentiality of this information, and any public interest in its disclosure is rebutted.  
22 *See, e.g., Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006)  
23 (differentiating dispositive motions by explaining that, for such motions, “the private  
24 interests of the litigants are not the only weights on the scale”). If such information  
25 were made public, competitors of Bank of America and its vendors would gain access  
26 to Bank of America’s business practices regarding its product development and  
27 technical details regarding the design and functionality of its products. Williams Decl.,  
28 ¶ 6. Bank of America does not share this type of information publicly because it could

1 significantly harm Bank of America’s competitive standing. *Id.*

2 Accordingly, Defendants respectfully request that the Court grant the Application  
3 to File the aforementioned documents under seal.

4  
5 Dated: May 3, 2024

Respectfully submitted,

6 WINSTON & STRAWN LLP

7  
8 By: /s/ E. Danielle T. Williams

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