

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

Dustin J. Edwards (*pro hac vice*)
dedwards@winston.com
WINSTON & STRAWN LLP
800 Capitol St., Suite 2400
Houston, TX 77002-2925
Telephone: (713) 651-2600
Facsimile: (713) 651-2700

5 E. Danielle T. Williams (*pro hac vice*)
dwilliams@winston.com
6 WINSTON & STRAWN LLP
300 South Tryon Street, 16th Floor
7 Charlotte, NC 28202
Telephone: (704) 350-7700
8 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

9 Michael S. Elkin (*pro hac vice*)
melkin@winston.com
10 WINSTON & STRAWN LLP
200 Park Avenue
11 New York, NY 10166
Telephone: (212) 294-6700
12 Facsimile: (212) 294-4700

13 *Attorneys for Defendants*
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.
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27
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Case No. 2:20-CV-7872-GW-PVC

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

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 J. Edwards in Support of the 11 Motion for Partial Summary Judgment 12 of Invalidity Under 35 U.S.C. § 112: 13 Expert Report of Nathaniel Polish, 14 Ph.D., Regarding the Invalidity of 15 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 Defendants as “HIGHLY CONFIDENTIAL– ATTORNEYS’ EYES ONLY” under the parties’ stipulated protective order (Dkt. No. 210), and contains or references information 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 J. 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. No. 210), and contains or references information 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 Exhibit numbers 3 and 4 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.*, ¶ 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.*, ¶¶ 1–6. 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

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

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

1 products. Williams Decl., ¶ 6. Bank of America does not share this type of information
2 publicly because it could significantly harm Bank of America’s competitive standing.
3 *Id.*

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

6
7 Dated: May 6, 2024

Respectfully submitted,

8 WINSTON & STRAWN LLP

9
10 By: /s/ E. Danielle T. Williams

George C. Lombardi (*pro hac vice*)

Michael S. Elkin (*pro hac vice*)

E. Danielle T. Williams (*pro hac vice*)

Dustin J. Edwards (*pro hac vice*)

Diana Hughes Leiden

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13 *Attorneys for Defendants*

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