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13 **UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15
16 NANTWORKS, LLC, a Delaware
17 limited liability company, and NANT
HOLDINGS IP, LLC, a Delaware
18 limited liability company,

19 Plaintiffs,

20 vs.

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

24 Defendants.

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

**PLAINTIFFS' EX PARTE
APPLICATION FOR RELIEF
REGARDING DEFENDANTS'
EXCESSIVE NUMBER OF
DISPOSITIVE MOTIONS**

Hon. George H. Wu

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1 Pursuant to Local Rule 7-19, Plaintiffs NantWorks, LLC, and Nant Holdings
2 IP, LLC (together, “NantWorks”) respectfully submit this application for relief from
3 the excessive number of dispositive motions filed by Defendants Bank of America
4 Corp. and Bank of America, N.A. (together, “Bank of America”) on May 3-4, 2024
5 (re-filed on May 6, 2024), which are noticed to be heard June 6, 2024. Bank of
6 America filed eight dispositive motions (and three Daubert motions) on May 3 and 4,
7 2024, giving Nantworks under three weeks to oppose these motions and the Court less
8 than a week to prepare to hear these motions after briefing is complete. The number
9 of motions is excessive and not feasible under the current case schedule.

10 In order to keep the case on schedule and address the excessive burden imposed
11 by Bank of America’s filings, NantWorks seeks an expedited order directing Bank of
12 America to identify, by May 10, 2024, three of the eight dispositive motions it filed
13 on which to proceed. The number of motions Bank of America filed is calculated to
14 exceed the word limits imposed by Local Rule 11-6.1, and is onerous and burdensome
15 to both NantWorks, who must oppose eight dispositive motions by May 23, 2024, and
16 the Court who is set to hear argument on these motions on June 6, 2024. NantWorks
17 respectfully requests that this application be heard on Thursday, May 9, 2024 or at the
18 Court’s earliest convenience. NantWorks has conferred with Bank of America, as
19 discussed in more detail below, and Bank of America has indicated that it opposes the
20 relief sought in this Application and plans to file a response.

21 **Background and the Parties’ Efforts to Resolve the Issue**

22 This is a patent infringement and breach of contract case involving five
23 patents-in-suit set for trial August 20, 2024. Dispositive motions were due on May
24 3, 2024. Dkt. 315. The parties conferred on their planned dispositive and *Daubert*
25 motions on May 1, 2024. In advance of the call, NantWorks sent an email
26 identifying the motions it planned to file: one dispositive motion and one motion to
27 exclude expert opinions relating to damages. It also identified a motion to strike
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1 that had been the subject of previous correspondence. Thirty minutes before the
2 meet and confer, Bank of America sent its email and identified nine dispositive
3 motions and three motions to exclude expert opinions.¹ This email, two days
4 before the deadline for these motions, was the first time that Bank of America
5 disclosed the number and content of the motions it intended to file.

6 During the call,² NantWorks expressed concern that Bank of America's
7 anticipated motions were numerous and calculated to evade the word limits under
8 L.R. 11-6.1, which imposes a 7,000-word limit on dispositive and Daubert briefs.
9 On the evening of May 2, 2024, NantWorks reiterated its concern in writing and
10 asked that Bank of America limit the number of its dispositive motions to, at most,
11 five motions, believing it to be fair given the grounds Bank of America raised. Bank
12 of America did not respond to NantWorks' email.

13 On May 3 and 4, 2024, Bank of America filed eight dispositive motions (Dkt.
14 319, 336, 345, 354, 364, 367, 377, and 382)³ and three motions to exclude certain
15 expert opinions (Dkt. 316, 325, and 346), to be heard June 6, 2024. NantWorks
16 filed one dispositive motion (Dkt. 355), one motion to exclude (Dkt. 327), and one
17 motion to strike on May 3, 2024 (Dkt. 334). The parties also have two motions to
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22 ¹ Bank of America had identified on May 1 two separate motions concerning NantWorks' breach
23 of contract claim. It appears the subject matter for those motions was combined into Dkt. 377
when the motions were filed.

24 ² In early April 2024, the parties discussed these motions, including the Court's approach to
25 such motions. The parties agreed that it was not clear from the rules whether the parties were
26 limited in the number of dispositive motions filed, and NantWorks agreed that the rules and Judge
27 Wu's prior practice did not appear to limit the parties to one dispositive motion per side. At no
time, however, did NantWorks agree to an unlimited number of dispositive motions or waive the
word count limits

28 ³ Bank of America refiled corrected versions of four of its dispositive motions on May 6 and
May 7 due to documents that were, in error, initially filed on the public docket.

1 strike already pending that are also noticed to be heard on June 6, 2024. As a
2 result, sixteen motions are noticed to be heard June 6.⁴

3 In an email on May 4, NantWorks reiterated its objection to the number and
4 nature of the motions Bank of America filed because they circumvent the word
5 limits of L.R. 11-6.1 by splitting single issues into separate motions and because the
6 number of motions will burden both the Court and the parties with work that cannot
7 be completed within the small window of time provided under the current case
8 schedule. In this email NantWorks informed BoA that if it did not agree to agree to
9 jointly seek the Court's assistance in resolving this issue, that NantWorks intended
10 to file an *ex parte* application for relief. NantWorks also proposed approaching the
11 Court and possibly submitting a joint stipulation to help the parties resolve the
12 dispute.

13 On May 5, Bank of America responded via email, arguing that NantWorks
14 effectively consented to the numerous dispositive motions, that Bank of America
15 had no time to change course on its briefing when it was informed of the issue, and
16 that there was no other recourse for Bank of America to resolve the issues raised in
17 the motions it has filed, and suggesting that NantWorks concede the grounds of at
18 least four of the eight motions filed by Bank of America to resolve this issue.

19 The parties conferred on Monday, May 6, at 11 a.m. Eastern Time. During the
20 conference, Bank of America reiterated its position and denied that the motions
21 were filed to evade page limits. It was not able to articulate, however, a reason why
22 the motions on single issues such as invalidity were filed in separate motions other
23 than to say that it had a right to seek resolution of all these issues. Because of the
24 urgency, NantWorks proposed a joint stipulation to Bank of America to present the
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27 ⁴ In addition to the motions filed May 3 by the parties, NantWorks' Motion to Strike Certain
28 Opinions of Dr. Polish, Dkt. 302, and BoA's Motion to Strike Certain Opinions of Dr. Schonfeld,
Dkt. 311, are also set to be heard by the Court on June 6.

1 issue to the Court and sent the draft insert to Bank of America just prior to the call.
2 Bank of America suggested on the call reaching out to the Courtroom Deputy for
3 guidance. NantWorks agreed but also informed Bank of America that given the fast-
4 approaching deadline for opposition briefs that an *ex parte* application for relief
5 would be necessary if a different process was not suggested by the Court. As of the
6 close of business May 7, the parties have not heard from the Court. Because of the
7 urgency and because there appears to be no other applicable procedure, NantWorks
8 makes this application seeking urgent resolution of the issue by the Court. The
9 parties discussed the substantive relief sought by phone on May 6, 2024. On May
10 7, 2024, Nantworks sent Bank of America an email confirming that it intended to
11 file this application and Bank of America responded to the email indicating that it
12 opposes the relief sought and would file a response, but did not indicate it opposed
13 the process for seeking such relief. Eric Huang, counsel for NantWorks
14 subsequently called Dustin Edwards, counsel for Bank of America to confirm orally
15 in a voice mail that NantWorks planned to file this *ex parte* application.

16 Argument

17 This Court has broad authority to manage its docket and calendar. *Doe K.G.*,
18 2021 WL 6882383, at *1 (“The Court concludes that a decision to limit successive
19 summary judgment motions and briefing falls within its sound discretion to manage
20 its docket and secure the efficient resolution of this proceeding.”); *Ancora Techs.,*
21 *Inc. v. TCT Mobile (US), Inc.*, 2020 WL 13900673, at *1 (C.D. Cal. Nov. 12, 2020)
22 (“Courts have discretion to control their dockets and ensure that their cases are
23 managed in the interest of justice.”); *Johnson v. Mammoth Recreations, Inc.*, 975
24 F.2d 604, 607 (9th Cir. 1992) (district court has broad discretion to manage its
25 docket).

26 Although the Court and the Local Rules do not impose an express limit on the
27 number of dispositive motions a party can bring, the rules limit the word count on
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