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

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

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

Plaintiffs,

vs.

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

Defendants.

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

**APPLICATION TO FILE UNDER  
 SEAL PORTIONS THE COURT'S  
 TENTATIVE ORDER (DKT. 502)**

Local Rule 79-5.2.2(b)

[Filed concurrently with Declaration of  
 Danielle Williams and Proposed Order]

TO THE COURT, PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that, pursuant to the Court's Order (Dkt. 502), Defendants Bank of America Corporation and Bank of America, N.A. (collectively, "Defendants" or "Bank of America"), hereby request that this Court enter an order redacting the Tentative Order (Dkt. 502) as indicated in the attached Proposed Redacted Tentative Order below that are filed in connection with the Joint Statement Regarding Sealing Portions of the Tentative Order Pursuant to the Court's Request:

| Document Description                                  | Nature of Information to be Sealed  |
|---|---|
| Parties' Proposed Redacted Tentative Order (Dkt. 502) | Contains information designated by Defendants and Plaintiffs as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" and "HIGHLY CONFIDENTIAL – SOURCE CODE," and contains excerpts of documents designated by Bank of America and third-party Mitek as "Highly Confidential – Attorneys' Eyes Only" under the parties' stipulated protective order (Dkt. No. 210). Mitek and Plaintiffs do not oppose sealing this document. |

### **I. Background**

As set forth in the Declaration of Danielle Williams in Support of Application to File Under Seal submitted herewith, Defendants make this application because the foregoing document includes information marked and/or designated as "Highly Confidential – Attorneys Eyes Only" and/or "Highly Confidential – Source Code" as follows pursuant to the parties' Stipulated Protective Order (Dkt. No. 210). *See*

1 Declaration of Danielle Williams (the “Williams Decl.”), ¶¶ 3–4. Defendants make this  
2 application because these materials contain information that is “Highly Confidential –  
3 Attorneys Eyes Only” and/or “Highly Confidential – Source Code” to Bank of America,  
4 as well as information that is “Highly Confidential – Attorneys Eyes Only” and/or  
5 “Highly Confidential – Source Code” of Mitek Systems, Inc. (“Mitek”). *Id.*, ¶¶ 3–4.  
6 Plaintiffs’ counsel does not oppose redacting these materials as indicated in the  
7 attached.

8 The Williams Declaration sets forth the information Defendants seek to file under  
9 seal, the basis for the Application, and good cause to seal Bank of America confidential  
10 information. *Id.*, ¶¶ 3–4.

## 11 II. Good Cause Exists to Redact These Materials

12 The decision to seal records is left to the discretion of the District Court.  
13 *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995) (citing *Nixon v. Warner*  
14 *Communications, Inc.*, 435 U.S. 589, 599 (1978)). Rule 26(c)(1)(G) of the Federal  
15 Rules of Civil Procedure allows parties, upon a showing of “good cause,” to file under  
16 seal documents containing “confidential . . . commercial information.” *See also IMAX*  
17 *Corp. v. Cinematech, Inc.*, 152 F.3d 1161, 1168 n.9 (9th Cir. 1998) (noting that  
18 confidential and proprietary business information is “to be filed under seal.”); *Sun*  
19 *Microsystems Inc. v. Network Appliance*, No. C-08-01641 EDL, 2009 WL 5125817, at  
20 \*9 (N.D. Cal. Dec. 21, 2009) (granting sealing requests because the documents “contain  
21 confidential [business] information, much of which has been designated as Confidential  
22 or Highly Confidential under the parties’ stipulated protective order, that could cause  
23 competitive harm if disclosed.”); *In re Adobe Systems, Inc. Securities Litigation Master*  
24 *File*, 141 F.R.D. 155, 161-162 (N.D. Cal. 1992) (“Protective orders and filings under  
25 seal are the primary means by which the courts ensure full disclosure of relevant  
26 information, while still preserving the parties’ (and third parties’) legitimate expectation  
27 that confidential business information, proprietary technology and trade secrets will not  
28 be publicly disseminated.”).

1 Defendants respectfully request that the Court grant their application to redact  
2 the Tentative Order (Dkt. 502) on the grounds that the foregoing materials contain Bank  
3 of America's confidential commercial information, specifically, non-public, proprietary  
4 details about the design and functionality of Bank of America's mobile check deposit,  
5 which includes excerpts and/or references to source code of Bank of America and its  
6 vendors designated "Highly Confidential – Source Code." Williams Decl., ¶ 3-4.  
7 Accordingly, Bank of America has an important interest in maintaining the  
8 confidentiality of this information, and any public interest in its disclosure is rebutted.  
9 *See, e.g., Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006)  
10 (differentiating dispositive motions by explaining that, for such motions, "the private  
11 interests of the litigants are not the only weights on the scale"). If such information  
12 were made public, competitors of Bank of America and its vendors would gain access  
13 to Bank of America's business practices regarding its product development and  
14 technical details regarding the design and functionality of its products. Williams Decl.,  
15 ¶ 4. Bank of America does not share this type of information publicly because it could  
16 significantly harm Bank of America's competitive standing and, with respect to  
17 information designated Highly Confidential by Mitek, is subject to contractual  
18 obligations of confidentiality to its vendor. *Id.*

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

21  
22 Dated: June 12, 2024

WINSTON & STRAWN LLP

23  
24 By: /s/ Danielle T. Williams

E. Danielle T. Williams

Attorneys for Defendants

25 BANK OF AMERICA CORPORATION  
26 and BANK OF AMERICA, N.A.  
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