

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

Attorneys for Defendants
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]

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

2 NOTICE IS HEREBY GIVEN that, pursuant to the Court’s Order (Dkt. 502),
 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 redacting the Tentative Order (Dkt. 502) as indicated in the attached Proposed Redacted
 6 Tentative Order below that are filed in connection with the Joint Statement Regarding
 7 Sealing Portions of the Tentative Order Pursuant to the Court’s Request:

Document Description	Nature of Information to be Sealed
9 Parties’ Proposed Redacted Tentative 10 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.

22 **I. Background**

23 As set forth in the Declaration of Danielle Williams in Support of Application to
 24 File Under Seal submitted herewith, Defendants make this application because the
 25 foregoing document includes information marked and/or designated as “Highly
 26 Confidential – Attorneys Eyes Only” and/or “Highly Confidential – Source Code” as
 27 follows pursuant to the parties’ Stipulated Protective Order (Dkt. No. 210). *See*
 28

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
25 Attorneys for Defendants
BANK OF AMERICA CORPORATION
26 and BANK OF AMERICA, N.A.
27
28