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

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

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

17 Plaintiffs,

18 vs.

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

22 Defendants.

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

**DEFENDANTS' UNOPPOSED
APPLICATION TO FILE
DOCUMENTS UNDER SEAL IN
CONNECTION WITH
DEFENDANTS' MEMORANDUM
OF LAW IN OPPOSITION TO
NANTWORKS' MOTION TO
EXCLUDE CERTAIN EXPERT
OPINIONS AND TESTIMONY OF
DAWN HALL AND DR. JAMES
STORER**

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’ Memorandum of Law in Opposition to NantWorks’
 7 Motion to Exclude Certain Expert Opinions and Testimony of Dawn Hall and Dr. James
 8 Storer (“Opposition”):

Document Description	Nature of Information to be Sealed
11 Exhibit 1 to the Declaration of Danielle 12 Williams in Support of the Opposition: 13 Excerpts of the Transcript of the 14 Deposition of Dawn Hall dated May 17, 15 2024.	Designated by Defendants as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the parties’ stipulated protective order (Dkt. No. 210).
16 Memorandum of Law in Opposition.	Designated by Defendants in its entirety as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the parties’ stipulated protective order (Dkt. No. 210).

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 22 **I. Background**

23 As set forth in the Declaration of Danielle Williams in Support of Plaintiffs’
 24 Application to File Under Seal submitted herewith, Defendants make this application
 25 because the foregoing documents are marked and designated as “Highly Confidential –
 26 Attorneys Eyes Only” pursuant to the parties’ Stipulated Protective Order (Dkt. No.
 27 210). *See* Declaration of Danielle Williams (the “Williams Decl.”), ¶¶ 2–5. Defendants

1 make this application because Exhibit 1 and the Opposition contain information that is
2 “Highly Confidential – Attorneys Eyes Only” and/or “Highly Confidential – Source
3 Code” of Bank of America. *Id.*, ¶¶ 2–4. As required by Local Rule 79-5.2.2(b), counsel
4 for Plaintiffs and Defendants conferred about Defendants’ filing the information in
5 these materials to limit, if not entirely avoid, the necessity of this Application. *Id.*, ¶ 2.
6 Plaintiffs’ counsel does not oppose filing the entirety of these materials under seal.

7 The Williams Declaration sets forth the information Defendants seek to file under
8 seal, the basis for the Application, and good cause to seal Bank of America’s
9 confidential information. *Id.*, ¶¶ 1–5. Due to the sensitive nature of the information in
10 the foregoing materials, good cause exists to approve Bank of America’s application to
11 file these materials under seal pursuant to Local Rule 79-5.2.2(a).

12 II. Good Cause Exists to File Materials Under Seal

13 The decision to seal records is left to the discretion of the District Court.
14 *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995) (citing *Nixon v. Warner*
15 *Communications, Inc.*, 435 U.S. 589, 599 (1978)). Rule 26(c)(1)(G) of the Federal
16 Rules of Civil Procedure allows parties, upon a showing of “good cause,” to file under
17 seal documents containing “confidential . . . commercial information.” *See also IMAX*
18 *Corp. v. Cinematech, Inc.*, 152 F.3d 1161, 1168 n.9 (9th Cir. 1998) (noting that
19 confidential and proprietary business information is “to be filed under seal.”); *Sun*
20 *Microsystems Inc. v. Network Appliance*, No. C-08-01641 EDL, 2009 WL 5125817, at
21 *9 (N.D. Cal. Dec. 21, 2009) (granting sealing requests because the documents “contain
22 confidential [business] information, much of which has been designated as Confidential
23 or Highly Confidential under the parties’ stipulated protective order, that could cause
24 competitive harm if disclosed”); *In re Adobe Systems, Inc. Securities Litigation Master*
25 *File*, 141 F.R.D. 155, 161–62 (N.D. Cal. 1992) (“Protective orders and filings under
26 seal are the primary means by which the courts ensure full disclosure of relevant
27 information, while still preserving the parties’ (and third parties’) legitimate expectation
28

1 that confidential business information, proprietary technology and trade secrets will not
2 be publicly disseminated.”).

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

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

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4 Dated: July 18, 2024

Respectfully submitted,

5 WINSTON & STRAWN LLP

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

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