

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

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  
8 Telephone: (704) 350-7700  
Facsimile: (704) 350-7800

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

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

*Attorneys for Defendants*  
BANK OF AMERICA CORPORATION  
and BANK OF AMERICA, N.A.

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

13 NANTWORKS, LLC, a Delaware  
14 limited liability company, and NANT  
15 HOLDINGS IP, LLC, a Delaware  
limited liability company,

16 Plaintiffs,

17 vs.

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

21 Defendants.

Case No. 2:20-cv-07872-GW-PVC

**DEFENDANTS' SUPPLEMENT IN  
SUPPORT OF DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT AS TO PLAINTIFFS'  
BREACH OF CONTRACT CLAIM**

Judge: Honorable George H. Wu

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24 **REDACTED VERSION OF DOCUMENT PROPOSED**  
25 **TO BE FILED UNDER SEAL IN ITS ENTIRETY**  
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1 Pursuant to the Court’s Supplemented Omnibus Tentative Rulings, Defendants’  
2 respectfully submit the following supplement listing three cases that establish Plaintiffs  
3 should not be permitted a do-over and sixth shot at damages to proceed on a new  
4 nominal damages theory raised for the first time at oral argument. Dkt. 666 at 62.

5 The Court’s Omnibus Tentative Ruling accurately notes that “[i]t does not appear  
6 that either party cites any California authority answering [the nominal damages]  
7 question in their briefing.” *Id.* The simple reason for this is that **until oral argument**,  
8 Plaintiffs never pled nominal damages, never asserted entitlement to nominal damages,  
9 and never sought nominal damages. Indeed, Plaintiffs never mention nominal damages  
10 in Plaintiffs’: (1) Original Complaint (Dkt. 1); (2) Amended Complaint (Dkt. 40), (3)  
11 Interrogatory Responses (Dkt. 427-5 at 129-30, 158-60), (4) Objections and Responses  
12 to Defendants’ 30(b)(6) Deposition Notice (Dkt. 533-2 at 95-96), or (5) Opposition to  
13 Defendants’ Motion, wherein Plaintiffs doubled-down and claim “Plaintiffs can and  
14 will prove **restitution damages** under California law.” Dkt. 522 at § E.2. (emphasis  
15 added). The Court should grant summary judgment on Plaintiffs’ breach of contract  
16 claim.

17 **1. *Copenbarger v. Morris Cerullo World Evangelism, Inc.*, 29 Cal. App. 5th 1,**  
18 **15-16 (2018).**

19 First, Plaintiffs are not entitled to proceed on a nominal damages theory because  
20 they failed to plead or argue for nominal damages in their briefing as noted above. *See*  
21 *Copenbarger v. Morris Cerullo World Evangelism, Inc.*, 29 Cal. App. 5th 1, 15-16  
22 (2018) (noting that “a plaintiff **might** recover nominal damages for breach of contract,”  
23 but directing entry of judgment in favor of the defendant where plaintiff did not plead  
24 or argue it was entitled to nominal damages. (emphasis added).

25 **2. *Race Winning Brands, Inc. v. Gearhart*, No. SACV 22-1446-FWS-DFM,**  
26 **2023 WL 4681539, at \*8-9, n. 10 (C.D. Cal. Apr. 21, 2023).**

27 Second, in addressing an alleged breach of confidentiality agreement and  
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