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**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-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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TO BE FILED UNDER SEAL IN ITS ENTIRETY**

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
28