

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANDREW CALCATERRA,
derivatively on behalf of BOFI
HOLDING, INC.,

Plaintiff,

vs.

GREGORY GARRABRANTS, *et al.*,

Defendants,

– and –

BOFI HOLDING, INC., a Delaware
corporation,

Nominal Defendant.

) Case No. 15cv2722 GPC (KSC)

) **ORDER:**

) **GRANTING PLAINTIFFS’**
) **MOTION TO CONSOLIDATE**
) **CASES AND APPROVE**
) **SELECTION OF LEAD COUNSEL**

) **DENYING DEFENDANTS’**
) **MOTION TO DISMISS**

) **DENYING PLAINTIFFS’ MOTION**
) **TO STRIKE DEFENDANTS’**
) **MOTION TO DISMISS**

) [ECF Nos. 22, 25, 27]

[Caption continues on following page.]

1 ZHANG YONG, derivatively on behalf)
of BOFI HOLDING, INC.,)

Case No. 16cv0241 GPC (KSC)

2)
3 Plaintiff,)

4 vs.)

5 GREGORY GARRABRANTS, *et al.*,)

6)
7 Defendants,)

8 – and –)

9 BOFI HOLDING, INC., a Delaware)
10 corporation,)

11)
12 Nominal Defendant.

13 LABORERS PENSION TRUST FUND)
OF NORTHERN NEVADA,)
14 derivatively on behalf of BOFI)
15 HOLDING, INC.,)

Case No. 16cv0259 GPC (KSC)

16)
17 Plaintiff,)

18 vs.)

19 GREGORY GARRABRANTS, *et al.*,)

20)
21 Defendants,)

22 – and –)

23 BOFI HOLDING, INC., a Delaware)
24 corporation,)

25)
26 Nominal Defendant.

1 Before the Court is Plaintiffs Andrew Calcaterra, Zhang Yong, and Laborers
2 Pension Trust Fund of Northern Nevada’s (“Plaintiffs”) motion to consolidate the
3 three cases above, to appoint a lead plaintiff, and to approve of selection of lead
4 counsel. Pl. Mot., *Calcaterra v. Garrabrants*, No. 3:15-cv-02722-GPC-KSC, ECF
5 No. 22. The motion is not opposed by Defendants. ECF No. 30.

6 I. Consolidation

7 Fed. R. Civ. P. Rule 42(a) states that “[i]f actions before the court involve a
8 common question of law or fact, the court may: (1) join for hearing or trial any or
9 all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other
10 orders to avoid unnecessary cost or delay. “To determine whether to consolidate, a
11 court weighs the interest of judicial convenience against the potential for delay,
12 confusion and prejudice caused by consolidation.” *In re Oreck Corp. Halo Vacuum*
13 *& Air Purifiers Mktg. & Sales Practices Litig.*, 282 F.R.D. 486, 490 (C.D. Cal. 2012)
14 (citing *Southwest Marine, Inc. v. Triple A Mach. Shop, Inc.*, 720 F. Supp. 805, 807
15 (N.D. Cal. 1989); *Huene v. United States*, 743 F.2d 703, 704, *on reh’g*, 753 F.2d
16 1081 (9th Cir. 1984)). A district court has “broad discretion” in determining whether
17 or not to consolidate actions. *See id.*; *see also Zhu v. UCBH Holdings, Inc.*, 682 F.
18 Supp. 2d 1049, 1052 (N.D. Cal. 2010) (citing *Southwest Marine*, 720 F. Supp. at
19 806–807).

20 Upon review of the moving papers, the record, and the applicable law, the
21 Court **GRANTS** parties’ joint motions to consolidate. Review of the operative
22 complaints show that these cases are shareholder derivative actions brought by
23 respective Plaintiffs against the same Defendants, concerning the same alleged
24 breaches of fiduciary duty committed by Defendants in relation to BofI Federal
25 Bank’s banking activities across the same time period, with substantially similar
26 factual allegations, causes of action, and requested relief. *Compare Calcaterra*
27 *Compl.*, No. 3:15-cv-02722-GPC-KSC, ECF No. 1, *with Yong Compl.*, No. 3:16-cv-

1 00241-GPC-KSC, ECF No. 1, and *Laborers* Compl., No. 3:16-cv-00259-GPC-KSC,
2 ECF No. 1.

3 **II. Approval of Selection of Lead Counsel**

4 Appointment of lead counsel in consolidated actions is particularly warranted
5 because it permits efficient utilization of the Court's and parties' resources and helps
6 eliminate any duplication. *See, e.g., MacAlister v. Guterma*, 263 F.2d 65, 69 (2d Cir.
7 1958) ("The benefits achieved by consolidation and the appointment of general
8 counsel, i.e., elimination of duplication and repetition and in effect the creation of a
9 coordinator of diffuse plaintiffs through whom motions and discovery proceedings
10 will be channeled, will most certainly redound to the benefit of all parties to the
11 litigation."); *Dollens v. Zionts*, Nos. 01 C 5931 et al., 2001 U.S. Dist. LEXIS 19966,
12 at *6 (N.D. Ill. Dec. 4, 2001) (granting plaintiffs' motion to consolidate and
13 appointing co-lead plaintiffs as well as colead and liaison counsel); *see also Sparano*
14 *v. Lief*, No. 10CV2079 BTM BLM, 2011 WL 830109, at *2 (S.D. Cal. Mar. 3, 2011).
15 The decision to establish a leadership structure is within the broad discretion of the
16 trial court. *See* Manual for Complex Litigation (Fourth) § 10.22 (2014).

17 Plaintiffs ask the Court to approve their selection of Bottini & Bottini, Inc. as
18 lead counsel. It appears that Bottini & Bottini has substantial experience litigating
19 shareholder derivative actions and has obtained substantial recoveries for a number
20 of clients in such actions. *See* Bottini Decl., Ex. D, ECF No. 22-2. In light of the
21 firm's substantial experience in shareholder derivative actions, the Court
22 **APPROVES** Plaintiffs' choice of counsel and **APPOINTS** Bottini & Bottini, Inc.
23 as Lead Counsel.

24 **CONCLUSION**

25 Accordingly, **IT IS HEREBY ORDERED** that:

26 1. Pursuant to Federal Rule of Civil Procedure 42(a)(2), the Court hereby
27 consolidates the above-captioned actions for all purposes under the "low numbered
28

1 case,” Case No. 3:15-CV-02722-GPC-KSC, and orders that the caption of the action
2 be amended as follows:

3
4 IN RE:

Case No. 3:15-CV-02722-GPC-KSC

Hon. Gonzalo P. Curiel

5 BofI HOLDING, INC.

6 SHAREHOLDER LITIGATION

7
8 2. The Court **GRANTS** Plaintiffs’ motion for approval of selection of lead
9 counsel. The Court **APPOINTS** Bottini & Bottini as Lead Counsel in the
10 consolidated action.

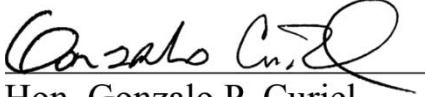
11 3. No defendant shall be required to answer, move against or otherwise
12 respond to the original Complaint filed in any of the above-captioned actions, except
13 as set forth below.

14 5. Within fourteen (14) days after the entry of this Order, counsel for the
15 plaintiffs and counsel for the defendants shall meet and confer regarding proposals
16 for (a) the time for plaintiffs to file a consolidated amended complaint or provide
17 notice of plaintiffs’ intent to rely upon the original Complaint in Case No. 3:15-CV-
18 02722-GPC-KSC [ECF No. 1] (the “operative complaint”); (b) the time for
19 defendants to respond to the operative complaint; and (c) a schedule for briefing any
20 motion to dismiss that may be filed by a defendant. Parties are directed to submit
21 their proposed schedule to the Court within seven (7) days following the meet and
22 confer.

23 6. Defendants’ motion to dismiss, ECF No. 25, and Plaintiff Calcaterra’s
24 ex parte motion to strike Defendants’ motion to dismiss, ECF No. 27, are **DENIED**
25 as moot.

26 **IT IS SO ORDERED.**

Dated: June 9, 2016


Hon. Gonzalo P. Curiel
United States District Judge

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