

1 BOTTINI & BOTTINI, INC.
 2 Francis A. Bottini, Jr. (SBN 175783)
 3 Albert Y. Chang (SBN 296065)
 4 Yury A. Kolesnikov (SBN 271173)
 5 7817 Ivanhoe Avenue, Suite 102
 6 La Jolla, California 92037
 Telephone: (858) 914-2001
 Facsimile: (858) 914-2002

7 *Lead Counsel for Plaintiffs*

8 [Additional counsel listed on signature page.]

9
 10 UNITED STATES DISTRICT COURT
 11 SOUTHERN DISTRICT OF CALIFORNIA

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|----|---------------------------|---|--|
| 12 | IN RE: BOFI HOLDING, INC. |) | Case No. 15cv2722 GPC (KSC) |
| 13 | DERIVATIVE LITIGATION |) | |
| 14 | _____ |) | Verified Consolidated Shareholder |
| 15 | This document relates to: |) | Derivative Complaint |
| 16 | ALL ACTIONS. |) | Demand for Jury Trial |
| 17 | _____ |) | REDACTED |

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1 Plaintiffs Andrew Calcaterra, Robylee Doherty, and Zhang Yong (collectively,
2 “Plaintiffs”), derivatively on behalf of BofI Holding, Inc. (hereafter “BofI,” the
3 “Bank,” or the “Company”), respectfully submit this Consolidated Verified
4 Shareholder Derivative Complaint against the members of BofI’s Board of
5 Directors (the “Board”) (collectively, the “Individual Defendants”) for breaches of
6 their fiduciary duties, gross mismanagement, abuse of control, and unjust
7 enrichment. Plaintiffs make the following allegations, except as to allegations
8 pertaining to Plaintiffs (which are based on personal knowledge), based on their
9 investigation and the investigation of their counsel, including a review of:

10 (a) legal and regulatory filings, press releases, and media reports
11 about BofI;

12 (b) the pleadings and other papers filed in the suit and counter-suit
13 between BofI Federal Bank and its former Staff Internal Auditor, Charles
14 Matthew Erhart (“Erhart”), captioned *Erhart v. BofI Federal Bank*, No.
15 15cv2287 BAS (NLS) (S.D. Cal.), and *BofI Federal Bank v. Erhart*, No.
16 15cv2353 BAS (NLS) (S.D. Cal.), as well as the consolidated securities-fraud
17 class action against BofI and its officers captioned *Houston Municipal Employees*
18 *Pension System v. BofI Holding, Inc.*, 15cv2324 GPC (KSC) (S.D. Cal.);

19 (c) documents produced by BofI in response to plaintiff Calcaterra’s
20 shareholder inspection demand under Section 1601 of the California
21 Corporations Code and the common law; and

22 (d) other public statements issued by BofI.

23 Plaintiffs believe that substantial additional evidentiary support will exist for the
24 allegations set forth herein after a reasonable opportunity for discovery. In support
25 of these derivative claims, Plaintiffs allege as follows:

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NATURE OF THE ACTION

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2 1. This is a shareholder derivative action to remedy the wrongdoing
3 committed by BofI's directors and officers between February 6, 2013 and the
4 present (the "Relevant Period").

5 2. Founded in 1999 and headquartered in San Diego, BofI operates as the
6 holding company for BofI Federal Bank, a provider of consumer and business
7 banking products through the Internet in the United States. BofI Federal Bank's
8 deposit products include consumer and business checking, demand, savings, and
9 time deposit accounts. Its loan portfolio comprises residential single family and
10 multifamily mortgage loans; commercial real estate secured and commercial lending
11 products; specialty finance factoring products; and consumer lending products
12 consisting of prime loans to purchase new and used recreational vehicles and
13 automobiles, as well as deposit-related overdraft lines of credit.

14 3. BofI Federal Bank's most significant business is making mortgages to
15 high-net-worth individuals for the purchase of high-end properties through BofI
16 Federal Bank's Bank of Internet USA ("Bank of Internet") brand.

17 4. Throughout the Relevant Period, the Individual Defendants caused
18 BofI, whose shares are traded on the NASDAQ under the ticker symbol "BOFI," to
19 make false and/or misleading statements, and failed to disclose material adverse facts
20 about the Company's business, operations, prospects, and performance. Specifically,
21 during the Relevant Period, Defendants caused the Company to make false and/or
22 misleading statements and/or failed to disclose that:

23 (a) the Company's internal controls were frequently disregarded;

24 (b) BofI's borrowers included foreign nationals who should have
25 been off-limits under federal anti-money-laundering laws;

26 (c) many BofI accounts lacked required tax identification numbers;

27 (d) in violation of the anti-retaliation laws contained in the Sarbanes-
28 Oxley Act of 2002 ("Sarbanes-Oxley" or "SOX") and the Dodd-Frank Wall

1 Street Reform and Consumer Protection Act (“Dodd-Frank Act”), the Board
2 caused the Company to fire an internal auditor who raised the foregoing
3 issues to senior management and to federal regulators; and

4 (e) as a result of the above, the Company’s statements regarding
5 BofI’s internal controls and other financial statements were materially false
6 and misleading at all relevant times.

7 5. On October 13, 2015, after the close of trading, *The New York Times*
8 reported that Erhart, who worked for approximately two years as an internal auditor
9 at BofI Federal Bank, had filed a lawsuit against the bank for violating federal laws
10 designed to protect whistleblowers (the “*Erhart* Complaint”). The *Erhart* Complaint
11 alleged, *inter alia*, that:

- 12 • Erhart was instructed by senior officers at BofI, including
13 defendant John C. Tolla (“Tolla”), BofI’s Chief Governance
14 Risk and Compliance Officer, to refrain from putting anything in
15 writing regarding the Company’s violations of laws;
- 16 • Erhart was instructed by senior officers at BofI, including Tolla,
17 to label anything he did in his audit function which might be
18 incriminating to the Company as “attorney client work
19 product/communication” in order to shield such documents
20 from later production;
- 21 • BofI’s borrowers included foreign nationals who should have
22 been off-limits under federal anti-money-laundering laws;
- 23 • Erhart had seen a spreadsheet that contained as many as 200
24 accounts without tax identification numbers, contrary to BofI’s
25 representations to the Office of the Comptroller of the Currency
26 (“OCC”), its primary regulator;
- 27 • BofI at times failed to provide full and timely information to
28 regulators; and
- after Erhart revealed wrongdoing at BofI to management and
federal regulators, his work performance evaluation was
downgraded, and he was eventually fired.

6. On this news, shares of BofI fell \$42.87, or 30.2%, to close at \$99.13

1 on October 14, 2015.

2 7. As a result of the Individual Defendants' wrongful acts and omissions,
3 the Company has been named as a defendant in at least two securities class action
4 lawsuits filed in this Court and has suffered significant losses and damages.

5 JURISDICTION AND VENUE

6 8. Subject-matter jurisdiction exists under 28 U.S.C. § 1332(a) because
7 there is complete diversity between plaintiffs and defendants and because the
8 amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and
9 costs.

10 9. Venue is proper in the Southern District of California under 28 U.S.C.
11 §§ 1391 and 1401 because BofI maintains its principal executive offices in this
12 District and because a substantial portion of the acts and conduct complained of
13 herein — including the dissemination of materially false and misleading information
14 to the investing public — occurred in this District.

15 10. Each defendant has minimum contacts with this District, as they have
16 entered into contracts in this District, or have frequently traveled here, on BofI's
17 business, or have authorized acts and actions that have had a sufficient impact in this
18 District or on BofI's shareholders and investors residing here to justify the exercise
19 of jurisdiction over them.

20 PARTIES

21 I. Plaintiffs

22 11. Plaintiff Andrew Calcaterra is a current shareholder of BofI and has
23 continuously held BofI stock since at least January 2013. Plaintiff Calcaterra is a
24 citizen of Michigan.

25 12. Plaintiff Robylee Doherty is a current shareholder of BofI and has
26 continuously held BofI stock since at least July 2014. Plaintiff Doherty is a citizen of
27 Washington.

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1 13. Plaintiff Zhang Yong is a current shareholder of BofI and has
2 continuously held BofI stock since at least July 2012. Plaintiff Zhang is a citizen of
3 the People’s Republic of China.

4 **II. Nominal Defendant**

5 14. Nominal defendant BofI Holding, Inc. is a Delaware corporation
6 headquartered and operating at 4350 La Jolla Village Drive, Suite 140, San Diego,
7 California 92122. BofI’s shares trade on the NASDAQ under the ticker symbol
8 “BOFI.” At all material times to this action, BOFI is a publicly-traded company.
9 BofI is a citizen of California and Delaware.

10 **III. The Individual Defendants**

11 15. Defendant Gregory Garrabrants (“Garrabrants”) has served at all
12 relevant times as the Company’s President, Director, and Chief Executive Officer
13 (“CEO”). Garrabrants is a citizen of California.

14 16. Defendant Andrew J. Micheletti (“Micheletti”) has served at all relevant
15 times as the Company’s Executive Vice President and Chief Financial Officer
16 (“CFO”). Micheletti is a citizen of California.

17 17. Defendant Theodore C. Allrich (“Allrich”) has served as Chairman of
18 the Board since October 2009 and served as Vice Chairman of the Board from 1999
19 to 2009. Allrich also serves as a member of the Compensation Committee of the
20 Board. Allrich is a citizen of California.

21 18. Defendant Nicholas A. Mosich (“Mosich”) has served as Vice
22 Chairman of the Board since October 2010 and as a member of the Board since May
23 2009. Mosich is a member of the Board’s Audit Committee during the entire
24 Relevant Period. Mosich is a citizen of California.

25 19. Defendant James S. Argalas (“Argalas”) has served as a member of the
26 Board since August 19, 2011. Argalas has served as a member of the Company’s
27 Internal Asset Review Committee. Argalas is also a member of the Board’s Audit
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1 Committee during the entire Relevant Period. Argalas is a citizen of California.

2 20. Defendant John Gary Burke (“Burke”) has served as a member of the
3 Board since October 2005 and is a member of the Compensation Committee of the
4 Board and the Chairman of the Internal Assets Review Committee of the Board.
5 Upon information and belief, Burke is a citizen of Ohio.

6 21. Defendant Paul J. Grinberg (“Grinberg”) has served as a member of
7 the Board since April 2004. Grinberg is a member of the Board’s Compensation
8 Committee. Grinberg is also a member of the Board’s Audit Committee during the
9 entire Relevant Period. Grinberg is a citizen of California.

10 22. Defendant James J. Court (“Court”) has served as a member of the
11 Board since April 2011. Court is a citizen of California.

12 23. Defendant Edward J. Ratinoff (“Ratinoff”) has served as a member of
13 the Board and as a member of the Nominating Committee since 2010. Ratinoff is a
14 citizen of California.

15 24. Defendant Eshel Bar-Adon (“Bar-Adon”) is an officer of the
16 Company, holding the titles of Executive Vice President and Chief Legal Officer.
17 Bar-Adon is a citizen of California.

18 25. Defendant John C. Tolla is an officer of BofI who has served as Chief
19 Governance Risk and Compliance Officer at BofI since December 2013. Tolla is a
20 citizen of California.

21 26. Defendant Uzair Dada (“Dada”) has served as a member of the Board
22 since January 22, 2015. Dada is a citizen of California.

23 27. Defendant Derrick K. Walsh (“Walsh”) is an officer of BofI and has
24 served as its Chief Accounting Officer and Senior Vice President since February
25 2015. Walsh also served as BofI’s First Vice President, Financial Reporting, from
26 July 2013 until February 2015. Walsh is a citizen of California.

27 28. The defendants referenced in paragraphs 15 through 27 are sometimes
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1 referred to herein, collectively, as the “Individual Defendants.” The Individual
2 Defendants, because of their positions with the Company, possessed the power and
3 authority to control the contents of BofI’s reports to the U.S. Securities and
4 Exchange Commission (“SEC”), press releases, and presentations to securities
5 analysts, money and portfolio managers, and institutional investors, *i.e.*, the market.
6 The Individual Defendants caused the Company to make specific false and
7 misleading statements and/or reviewed and approved the Company’s reports and
8 press releases alleged herein to be misleading prior to, or shortly after their issuance,
9 and had the ability and opportunity to prevent their issuance or cause them to be
10 corrected. Because of their positions and access to material non-public information
11 available to them, the Individual Defendants knew that the adverse facts specified
12 herein had not been disclosed to, and were being concealed from, the public, and
13 that the positive representations which were being made were then materially false
14 and/or misleading.

15 29. Defendants Allrich, Mosich, Argalas, Garrabrants, Burke, Grinberg,
16 Court, Ratinoff, and Dada are collectively referred to as the “Director Defendants.”

17 30. BofI and the Individual Defendants are collectively referred to herein
18 as the “Defendants.”

19 **THE INDIVIDUAL DEFENDANTS’ FIDUCIARY DUTIES**

20 **I. General Duties as Directors and Officers**

21 31. By reason of their positions as BofI’s officers and directors and
22 because of their ability to control BofI’s business and corporate affairs, the
23 Individual Defendants owed BofI and its shareholders fiduciary obligations of trust,
24 loyalty, good faith, and due care, and were required to use their utmost ability to
25 control and manage BofI in a fair, just, honest, and equitable manner. The
26 Individual Defendants were required to act in furtherance of the best interests of
27 BofI and its shareholders so as to benefit all shareholders equally and not in
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1 furtherance of their personal interest or benefit.

2 32. Each director and officer defendant owes to BofI and its shareholders
3 the fiduciary duty to exercise good faith and diligence, as well as the highest
4 obligations of fair dealing, in the administration of BofI's affairs and in the use and
5 preservation of its property and assets.

6 33. The Individual Defendants, because of their positions of control and
7 authority as directors and officers of BofI, were able to and did, directly and/or
8 indirectly, exercise control over the wrongful acts complained of herein.

9 34. To discharge their duties, the Individual Defendants, as BofI's officers
10 and directors, were required to exercise reasonable and prudent supervision over the
11 management, policies, practices, and controls of the affairs of the Company. By
12 virtue of such duties, the Individual Defendants were required to, among other
13 things:

14 (a) ensure that BofI was operated in a diligent, honest, and prudent
15 manner in accordance with its bylaws and charter, as well as the laws and
16 regulations of Delaware and the United States;

17 (b) conduct the affairs of the Company in an efficient, business-like
18 manner so as to make it possible to provide the highest quality performance
19 of BofI's business, to avoid wasting the Company's assets, and to maximize
20 the value of the Company's stock;

21 (c) fully inform themselves as to how BofI conducted its operations,
22 and, upon receipt of notice or information of imprudent or unsound
23 conditions or practices, to make reasonable inquiry in connection therewith,
24 and to take steps to correct such conditions or practices;

25 (d) establish and maintain systematic and accurate records and
26 reports of the business and internal affairs of BofI and procedures for the
27 reporting of the business and internal affairs and to periodically investigate, or
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1 cause independent investigation to be made of, said reports and records;

2 (e) maintain and implement an adequate and functioning system of
3 internal legal, financial, and management controls, such that Boff's operations
4 and financial statements comply with all laws;

5 (f) exercise reasonable control and supervision over the public
6 statements made by the Company's officers and employees and any other
7 reports or information that the Company was required by law to disseminate;
8 and

9 (g) examine and evaluate any reports of examinations, audits, or
10 other financial information concerning the financial affairs of the Company
11 and to make full and accurate disclosure of all material facts concerning, *inter*
12 *alia*, each of the subjects and duties set forth above.

13 35. Each Individual Defendant, by virtue of his or her position as a
14 director or officer, owed to the Company and to its shareholders the highest
15 fiduciary duties of loyalty, good faith, and the exercise of due care and diligence in
16 the management and administration of the affairs of the Company, as well as in the
17 use and preservation of its property and assets. The Individual Defendants'
18 misconduct complained of herein involves a knowing and culpable violation of their
19 obligations as Boff's directors and officers, the absence of good faith on their part,
20 or a reckless disregard for their duties to the Company and its shareholders that the
21 Individual Defendants were aware or should have been aware posed a risk of serious
22 injury to the Company. The conduct of the Individual Defendants who were also
23 officers and directors of the Company has been ratified by the remaining Individual
24 Defendants who collectively comprised Boff's Board at all relevant times.

25 36. As senior executive officers and directors of a publicly-traded company
26 whose common stock was registered with the SEC pursuant to the Securities
27 Exchange Act of 1934 (the "Exchange Act") and traded on NASDAQ, the
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1 Individual Defendants had a duty to disseminate accurate and truthful information
2 with respect to the Company's financial condition and performance, growth,
3 operations, financial statements, business, products, management, earnings, and
4 present and future business prospects; and to correct any previously issued
5 statements that had become materially misleading or untrue, so that the market price
6 of the Company's common stock would be based upon truthful and accurate
7 information. The Individual Defendants' conduct in causing the Company to make
8 misrepresentations and omissions during the Relevant Period violated these specific
9 requirements and obligations. Accordingly, the Individual Defendants breached
10 their fiduciary duties including their duties of good faith, candor, and loyalty.

11 37. At all times relevant hereto, the Individual Defendants were the agents
12 of each other and were at all times acting within the course and scope of such
13 agency.

14 **II. Compliance with the Generally Accepted Accounting Principles**

15 38. In issuing its financial statements, BofI was required to comply with
16 Generally Accepted Accounting Principles ("GAAP") — a common set of
17 accounting principles, standards, and procedures recognized by the accounting
18 profession and used to compile financial statements.

19 39. GAAP are those principles recognized by the accounting profession as
20 the conventions, rules, and procedures necessary to define accepted accounting
21 practices at a particular time. SEC Regulation S-X (17 C.F.R. § 210.4-01(a)(1)) states
22 that financial statements filed with the SEC that are not prepared in compliance with
23 GAAP are presumed to be misleading and inaccurate, despite footnotes and other
24 disclosures. Regulation S-X requires that interim financial statements must also
25 comply with GAAP, with the exception that interim financial statements need not
26 include disclosures that would be duplicative of disclosures accompanying annual
27 disclosures, per 17 C.F.R. § 210.10-01(a).

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1 40. During the Relevant Period, BofI stated in its annual reports on Forms
2 10-K dated September 4, 2013, August 28, 2014, and August 26, 2015 that its
3 financial statements were “prepared in accordance with accounting principles
4 generally accepted in the United States of America.”

5 41. In reality, however, the Individual Defendants failed to ensure that
6 BofI adhered to GAAP during the Relevant Period.

7 **III. The Duty of Reasonable and Prudent Supervision**

8 42. The Individual Defendants were required to exercise reasonable and
9 prudent supervision over the management, policies, practices, and internal controls
10 of the Company. By virtue of such duties, the Individual Defendants were required
11 to, among other things:

12 (a) ensure that the Company complied with its legal obligations and
13 requirements, including acting only within the scope of legal authority and
14 disseminating truthful and accurate statements to the investing public;

15 (b) conduct the affairs of the Company in an efficient, business-like
16 manner so as to make it possible to provide the highest quality performance
17 of its business, to avoid wasting the Company’s assets, and to maximize the
18 value of the Company’s stock;

19 (c) properly and accurately guide investors and analysts as to the
20 true financial condition of the Company at any given time, including making
21 accurate statements about the Company’s financial results and internal
22 controls;

23 (d) remain fully informed as to how BofI conducted its operations,
24 and, upon receipt of notice or information of imprudent or unsound
25 conditions or practices, make reasonable inquiry in connection therewith, and
26 take steps to correct such conditions or practices and make such disclosures
27 as necessary to comply with securities laws;
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1 (e) ensure that BofI was operated in a diligent, honest, and prudent
2 manner in compliance with all applicable laws, rules, and regulations; and

3 (f) refrain from breaching their duty of loyalty to the Company to
4 benefit themselves at the expense of the Company.

5 **BREACHES OF FIDUCIARY DUTIES**

6 43. Each Individual Defendant, by virtue of his or her position as a
7 director and/or officer, owed to BofI and to its shareholders the fiduciary duties of
8 loyalty and good faith and the exercise of due care and diligence in the management
9 and administration of the affairs of BofI, as well as in the use and preservation of
10 BofI's property and assets. The conduct of the Individual Defendants complained
11 of herein involves a knowing and culpable violation of their obligations as directors
12 and officers of BofI, the absence of good faith on their part, or a reckless disregard
13 for their duties to BofI and its shareholders that the Individual Defendants were
14 aware or should have been aware posed a risk of serious injury to BofI.

15 44. The Individual Defendants each breached their duties of loyalty and
16 good faith by causing the Company to make false and/or misleading statements
17 and/or failing to disclose that:

18 (a) the Company was doing business with foreign nationals who
19 should have been off-limits under federal anti-money-laundering laws;

20 (b) the Company had as many as 200 customer accounts without tax
21 identification numbers, contrary to BofI's representations to the OCC, its
22 primary regulator;

23 (c) as a result, the Company's revenue and financial results were
24 overstated;

25 (d) the Company's financial statements were not prepared in
26 accordance with GAAP;

27 (e) the Company lacked adequate internal and financial controls;
28

1 and

2 (f) as a result of the foregoing, the Company's financial statements
3 were materially false or misleading at all relevant times.

4 45. In addition, as a result of the Individual Defendants' actions and course
5 of conduct, the Company is now the subject of class action lawsuits that allege
6 violations of federal securities laws, and a whistleblower lawsuit alleging violations of
7 federal law. As a result, BofI has expended, and will continue to expend, significant
8 sums of money to rectify the Individual Defendants' wrongdoing.

9 **CONTROL, ACCESS, AND AUTHORITY**

10 46. The Individual Defendants, because of their positions of control and
11 authority, were able to and did, directly or indirectly, exercise control over the
12 wrongful acts complained of herein, as well as the contents of the various public
13 statements issued by BofI.

14 47. Because of their advisory, executive, managerial, and directorial
15 positions with BofI, each of the Individual Defendants had access to adverse, non-
16 public information about the financial condition, operations, and improper
17 representations of BofI.

18 48. Each of the Individual Defendants was the agent of each of the other
19 Defendants and of BofI, and was at all times acting within the course and scope of
20 such agency.

21 **CONSPIRACY, AIDING AND ABETTING, AND**
22 **CONCERTED ACTION**

23 49. In committing the wrongful acts alleged herein, the Individual
24 Defendants have pursued, or joined in the pursuit of, a common course of conduct,
25 and have acted in concert with and conspired with one another in furtherance of
26 their wrongdoing. The Individual Defendants further aided and abetted and/or
27 assisted each other in breaching their respective duties.

28 50. During all times relevant hereto, the Individual Defendants collectively

1 and individually initiated a course of conduct that was designed to and did conceal
2 the fact that: (a) the Company was doing business with foreign nationals who should
3 have been off-limits under federal anti-money-laundering laws; (b) the Company had
4 as many as 200 customer accounts without tax identification numbers, contrary to
5 Boff's representations to the OCC, its primary regulator; (c) as a result, the
6 Company's revenue and financial results were overstated; (d) the Company's
7 financial statements were not prepared in accordance with GAAP; (e) the Company
8 lacked adequate internal and financial controls; and (f) as a result of the foregoing,
9 the Company's financial statements were materially false or misleading at all relevant
10 times. In furtherance of this plan, conspiracy, and course of conduct, the Individual
11 Defendants collectively and individually took the actions set forth herein.

12 51. The purpose and effect of the Individual Defendants' conspiracy,
13 common enterprise, and/or common course of conduct was, among other things,
14 to: (a) disguise the Individual Defendants' violations of law, including breaches of
15 fiduciary duties, and unjust enrichment; and (b) disguise and misrepresent the
16 Company's future financial results and prospects.

17 52. The Individual Defendants accomplished their conspiracy, common
18 enterprise, and/or common course of conduct by causing the Company to falsely
19 represent that the Company had adequate internal controls in place, and by
20 purposefully, recklessly, or negligently causing the Company to release improper
21 statements. Because the actions described herein occurred under the authority of
22 the Board, each of the Individual Defendants was a direct, necessary, and substantial
23 participant in the conspiracy, common enterprise, and/or common course of
24 conduct complained of herein.

25 53. Each of the Defendants aided and abetted and rendered substantial
26 assistance in the wrongs complained of herein. In taking such actions to
27 substantially assist the commissions of the wrongdoing complained of herein, each
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1 Individual Defendant acted with knowledge of the primary wrongdoing, substantially
2 assisted the accomplishment of that wrongdoing, and was aware of his or her overall
3 contribution to and furtherance of the wrongdoing.

4 **FACTUAL ALLEGATIONS**

5 54. BofI Holding, Inc. is the holding company for BofI Federal Bank, a
6 nationwide bank that provides financing for single and multifamily residential
7 properties, small-to-medium size businesses in target sectors, and selected specialty
8 finance receivables. With approximately \$6.3 billion in assets, BofI Federal Bank
9 provides consumer and business banking products through its low-cost distribution
10 channels and affinity partners. BofI common stock is listed on the NASDAQ
11 Global Select Market and is a component of the Russell 2000® Index and the S&P
12 SmallCap 600® Index.

13 55. BofI operates in a highly-regulated field. It is regulated by, among
14 others, the OCC, the Board of Governors of the Federal Reserve System (“Federal
15 Reserve”), the Federal Deposit Insurance Corporation (“FDIC”), the SEC, the
16 Financial Industry Regulatory Authority (“FINRA”), and the Consumer Financial
17 Protection Bureau (“CFPB”). BofI is subject to a variety of statutory schemes
18 including, without limitation, the Bank Secrecy Act of 1970 (“BSA”), the USA
19 Patriot Act, including the Know Your Customer Rule (“KYC”), Dodd-Frank Act,
20 Sarbanes-Oxley, the Securities Act of 1933, and the Exchange Act.

21 56. BofI Federal Bank’s most significant business is making mortgages to
22 high-net-worth individuals for the purchase of expensive properties through BofI
23 Federal Bank’s Bank of Internet brand.

24 **I. The Individual Defendants Were Charged with the Responsibilities of** 25 **Overseeing Risk Management at BofI**

26 57. According to BofI’s 2015 Proxy Statement, the Board, together with
27 the Audit Committee, the Nominating Committee, and the Compensation
28 Committee, as well as four risk committees (which are the Credit, the IAR, the

1 Operations and Technology, and the ALCO committees), are to provide enterprise-
2 wide oversight of the Company's management and handling of risk.

3 58. These committees report regularly to the Board on risk-related matters
4 and provide the Board with insight about BofI's management of strategic, credit,
5 interest rate, financial reporting, technology, liquidity, compliance, operational, and
6 reputational risks. These risk-related matters include BofI's lending standards and
7 practices, such as its compliance with federal laws and regulations and its dealings
8 with special purpose entities and lending partners, as well as its disclosure of risk
9 oversight.

10 59. In addition, at meetings of the Board and its committees, directors
11 receive regular updates and reports from management regarding risk management
12 practices, including credit quality, financial reporting, internal controls, compliance,
13 legal matters, asset liability, and liquidity management, among others. Furthermore,
14 current risk management issues are discussed regularly with the Board and its
15 committees.

16 60. BofI's 2015 Proxy Statement represented that:

17 Our Board is actively involved in oversight and review of the
18 Company's risk management efforts either directly or through its
19 standing committees. The Company's management is responsible for
20 assessing and managing risk and communicating risks to the Board.
21 The Enterprise Risk Management ("ERM") program, led by certain
22 officers of the Company, including Mr. Garrabrants, our President and
23 CEO, with oversight from the Board, identifies and evaluates key
24 business risks within the financial, operational, regulatory and strategic
25 arenas and to develop risk monitoring processes and response
26 strategies to transfer, avoid, reduce or accept individual risks as
27 appropriate. The ERM program assists management in determining
28 appropriate risk tolerance levels which balance risk mitigation with
opportunities to create stockholder value. ERM program leaders make
regular reports to the Board regarding the ERM program's risk
identification, management and mitigation strategy recommendations.

While the Board has retained the responsibility for general oversight of
risks and of our ERM program, the Board's standing committees

1 support the Board by regularly addressing various risks in their
2 respective areas of oversight. Specifically, the Audit Committee
3 primarily oversees those risks that may directly or indirectly impact our
4 financial statements, including the areas of financial reporting, internal
5 controls and compliance with public reporting requirements, while the
6 Compensation Committee assists the Board in fulfilling its risk
7 management oversight responsibilities associated with risks arising
8 from employee compensation policies and practices. Each standing
9 committee provides reports to the full Board at regular meetings
10 concerning the activities of the committee and actions taken by the
11 committee since the last regular meeting.

12 **II. The Individual Defendants Caused the Company to Issue False and**
13 **Misleading Statements**

14 61. [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 62. On February 6, 2013, the Individual Defendants caused BofI to file a
24 Form 10-Q with the SEC, disclosing BofI's financial results for the quarter ending
25 December 31, 2012. The Quarterly Report was reviewed and approved by the
26 Board, and signed by Defendants Garrabrants and Micheletti, and represented the
27 following to be BofI's financial results for the quarter:

28

BOFI HOLDING, INC. AND SUBSIDIARY
SELECTED CONSOLIDATED FINANCIAL INFORMATION

| | At or for the Three Months Ended December 31, | | At or for the Six Months Ended December 31, | |
|--|---|-----------------|---|------------------|
| <i>(Dollars in thousands, except per share data)</i> | 2012 | 2011 | 2012 | 2011 |
| <i>Selected Income Statement Data:</i> | | | | |
| Interest and dividend income | \$ 33,567 | \$ 28,616 | \$ 64,556 | \$ 56,381 |
| Interest expense | 8,631 | 9,530 | 17,135 | 19,118 |
| Net interest income | 24,936 | 19,086 | 47,421 | 37,263 |
| Provision for loan losses | 1,950 | 1,600 | 4,500 | 3,963 |
| Net interest income after provision for loan losses | 22,986 | 17,486 | 42,921 | 33,300 |
| Non-interest income | 6,249 | 2,986 | 13,010 | 7,556 |
| Non-interest expense | 12,781 | 9,204 | 24,313 | 18,756 |
| Income before income tax expense | 16,454 | 11,268 | 31,618 | 22,100 |
| Income tax expense | 6,686 | 4,608 | 12,861 | 8,907 |
| Net income | <u>\$ 9,768</u> | <u>\$ 6,660</u> | <u>\$ 18,757</u> | <u>\$ 13,193</u> |
| Net income attributable to common stock | \$ 9,436 | \$ 6,280 | \$ 18,348 | \$ 12,687 |
| <i>Per Share Data:</i> | | | | |
| Net income: | | | | |
| Basic | \$ 0.71 | \$ 0.56 | \$ 1.44 | \$ 1.15 |
| Diluted | \$ 0.70 | \$ 0.54 | \$ 1.37 | \$ 1.14 |
| Book value per common share | \$ 17.08 | \$ 14.80 | \$ 17.08 | \$ 14.80 |
| Tangible book value per common share | \$ 17.08 | \$ 14.80 | \$ 17.08 | \$ 14.80 |
| <i>Weighted average number of shares outstanding:</i> | | | | |
| Basic | 13,224,612 | 11,174,947 | 12,707,837 | 11,036,046 |
| Diluted | 13,824,440 | 12,304,628 | 13,538,503 | 11,415,793 |
| Common shares outstanding at end of period | 12,824,195 | 11,419,584 | 12,824,195 | 11,419,584 |
| Common shares issued at end of period | 13,665,957 | 12,162,604 | 13,665,957 | 12,162,604 |
| <i>Performance Ratios and Other Data:</i> | | | | |
| Loan originations for investment | \$ 331,999 | \$ 132,153 | \$ 611,696 | \$ 384,779 |

| | | | | | |
|----|--|---------|---------|---------|---------|
| 1 | Loan originations for sale | 280,569 | 227,810 | 535,365 | 318,179 |
| | Loan purchases | — | — | 1,541 | — |
| 2 | Return on average assets | 1.45% | 1.23% | 1.45% | 1.26% |
| 3 | Return on average common stockholders' equity | 17.32% | 15.86% | 17.85% | 16.55% |
| 4 | Interest rate spread ¹ | 3.69% | 3.44% | 3.63% | 3.47% |
| 5 | Net interest margin ² | 3.81% | 3.60% | 3.76% | 3.62% |
| | Efficiency ratio | 40.98% | 41.70% | 40.23% | 41.85% |
| 6 | <i>Capital Ratios:</i> | | | | |
| 7 | Equity to assets at end of period | 8.44% | 8.71% | 8.44% | 8.71% |
| 8 | Tier 1 leverage (core) capital to adjusted tangible assets ³ | 8.52% | 8.27% | 8.52% | 8.27% |
| 9 | Tier 1 risk-based capital ratio ³ | 13.95% | 13.19% | 13.95% | 13.19% |
| 10 | Total risk-based capital ratio ³ | 14.60% | 13.77% | 14.60% | 13.77% |
| | Tangible capital to tangible assets ³ | 8.52% | 8.27% | 8.52% | 8.27% |
| 11 | <i>Asset Quality Ratios:</i> | | | | |
| 12 | Net annualized charge-offs to average loans outstanding | 0.13% | 0.39% | 0.28% | 0.41% |
| 13 | Non-performing loans to total loans | 0.95% | 0.76% | 0.95% | 0.76% |
| 14 | Non-performing assets to total assets | 0.79% | 0.64% | 0.79% | 0.64% |
| 15 | Allowance for loan losses to total loans at end of period | 0.52% | 0.53% | 0.52% | 0.53% |
| 16 | Allowance for loan losses to non- performing loans | 54.92% | 68.79% | 54.92% | 68.79% |

17 63. The Form 10-Q also stated the following with respect to the quarter's
18 financial results:

19 **RESULTS OF OPERATIONS**

20 **Comparison of the Three and Six Months Ended December 31, 2012
21 and December 31, 2011**

22 For the three months ended December 31, 2012, we had net income of
23 \$9.8 million compared to net income of \$6.7 million for the three
24 months ended December 31, 2011. Net income attributable to
25 common stockholders was \$9.4 million or \$0.70 per diluted share
26 compared to net income attributable to common shareholders of \$6.3
27 million or \$0.54 per diluted share for the three months ended
28 December 31, 2012 and 2011, respectively. For the six months ended
December 31, 2012, we had net income of \$18.8 million compared to
net income of \$13.2 million for the six months ended December 31,
2011. Net income attributable to common stockholders was \$18.3
million or \$1.37 per diluted share compared to net income attributable

1 to common shareholders of \$12.7 million or \$1.14 per diluted share for
2 the six months ended December 31, 2012 and 2011, respectively.

3 Other key comparisons between our operating results for the three and
4 six months ended December 31, 2012 and 2011 are:

- 5 • Net interest income increased \$5.9 million and \$10.2 million in
6 the quarter and six months ended December 31, 2012 due to a
7 23.4% and 22.7%, increase in average earning assets primarily
8 from the growth in our loan portfolio in those respective
9 periods. Our net interest margin increased 21 basis points and
10 14 basis points in the quarter and six months ended December
11 31, 2012 compared to December 31, 2011. The overall rate on
12 interest earning assets was lower by 27 and 37 basis points in the
13 three and six month periods ended December 31, 2012
14 compared to December 31, 2011, primarily because loan rates
15 have been pushed lower by the economy and competition. This
16 reduction on the asset side was more than offset by a 52 and 53
17 basis point reduction in rates paid on interest bearing liabilities
18 for the three and six months ending December 31, 2012
19 compared to December 31, 2011. The primarily reduction was
20 due to a decrease in the rates paid on time deposits of 57 and 52
21 basis points, respectively, as we allowed the higher rate time
22 deposits to roll of the books.
- 23 • Non-interest income increased \$3.3 million and \$5.5 million for
24 the three and six months ended December 31, 2012 compared
25 to the three and six months ended December 31, 2011. The
26 increase in non-interest income for the quarter was primarily the
27 result of a \$2.5 million increase in mortgage banking income, a
28 \$448,000 increase in prepayment penalty income and a \$507,000
increase in banking service fees. The increase in non-interest
income for the six months ended December 31, 2012 compared
to December 31, 2011 was primarily the result of a \$4.2 million
increase in mortgage banking income, a \$589,000 increase in
prepayment penalty income and a \$756,000 increase in banking
service fees.
- Non-interest expense increased \$3.6 million and \$5.6 million for
the three and six months ended December 31, 2012 compared
to the three and six months ended December 31, 2011. For the
three months ended December 31, 2012 compared to the three
months ended December 31, 2011 salaries and compensation
was up \$2.0 million primarily due to the overall increase in staff,

1 mainly in our production areas to support the overall growth of
2 the Bank. Advertising and promotions were up \$510,000 mainly
3 due to the cost of lead generation in the mortgage area. Other
4 general and administration expenses were \$689,000 higher
5 primarily due to an increase of \$258,000 in loan related expenses,
6 an increase of \$144,000 related to software, licenses and
7 associated costs, an increase of \$72,000 in expenses related
8 travel, and an increase of \$53,000 in losses on deposit accounts.
9 For the six months ended December 31, 2012 compared to the
10 six months ended December 31, 2011 salaries and compensation
11 was up \$3.6 million primarily due to the overall increase in staff,
12 mainly in our production areas to support the overall growth of
13 the Bank. Advertising and promotions were up \$846,000 mainly
14 due to the cost of lead generation in the mortgage area. Other
15 general and administration expenses were \$1.4 million higher
16 primarily due to an increase of \$708,000 in loan related expenses,
17 an increase of \$198,000 related to software, licenses and
18 associated costs, an increase of \$77,000 in expenses related
19 travel, and an increase of \$57,000 in losses on deposit accounts.

20 64. The Form 10-Q filed on February 6, 2013 contained the following
21 disclosure: “During fiscal year 2011, the Bank changed its growth strategy to
22 originate more mortgage loans rather than purchasing loans.” With respect to its
23 loans and other assets held as of the end of the quarter which closed on December
24 31, 2012, the Form 10-Q represented the following:

25 **FINANCIAL CONDITION**

26 **Balance Sheet Analysis**

27 Our total assets increased \$487.5 million, or 20.4%, to \$2,874.3 million,
28 as of December 31, 2012, up from \$2,386.8 million at June 30, 2012.
The increase in total assets was primarily due to an increase of \$434.7
million in net loans held for investment. Total liabilities increased a
total of \$451.5 million, primarily due to an increase in deposits of
\$353.2 million and an increase in borrowings of \$105.0 million from
the Federal Home Loan Bank of San Francisco (the “FHLB”). Our
deferred income taxes increased \$2.0 million to \$17.0 million primarily
due to the impairment in our securities portfolio, loan loss provision,
and state taxes.

29 **Loans**

1 Net loans held for investment increased 25.3% to \$2,155.3 million at
 2 December 31, 2012 from \$1,720.6 million at June 30, 2012. The
 3 increase in the loan portfolio was due to loan originations and
 4 purchases of \$613.2 million, offset by loan repayments of \$215.1
 5 million, net transfers from our held for sale portfolio of \$42.2 million
 6 and a net increase in the allowance of \$1.8 million during the six
 7 months ended December 31, 2012.

8 The following table sets forth the composition of the loan portfolio as of the
 9 dates indicated:

| | December 31, 2012 | | June 30, 2012 | |
|--|-------------------|---------|---------------|---------|
| <i>(Dollars in thousands)</i> | Amount | Percent | Amount | Percent |
| Residential real estate loans: | | | | |
| Single family (one to four units) | \$1,215,744 | 55.6% | \$ 863,624 | 49.6% |
| Home equity | 25,742 | 1.2% | 29,167 | 1.7% |
| Multifamily (five units or more) | 766,247 | 35.0% | 687,661 | 39.5% |
| Commercial real estate | 28,681 | 1.3% | 35,174 | 2.0% |
| Consumer—Recreational vehicle | 21,494 | 1.0% | 24,324 | 1.4% |
| Commercial secured and other | 128,267 | 5.9% | 100,549 | 5.8% |
| Total loans held for investment | \$2,186,175 | 100.0% | \$1,740,499 | 100.0% |
| Allowance for loan losses | (11,449) | | (9,636) | |
| Unamortized premiums/discounts, net of deferred loan fees | (19,420) | | (10,300) | |
| Net loans held for investment | \$2,155,306 | | \$1,720,563 | |

17 65. The February 6, 2013 Form 10-Q also contained Sarbanes-Oxley
 18 Section 302 certifications signed by defendants Garrabrants and Micheletti which
 19 stated the following:

20 I have reviewed this quarterly report on Form 10-Q of BofI Holding,
 21 Inc. (the “registrant”);

22 Based on my knowledge, this report does not contain any untrue
 23 statement of a material fact or omit to state a material fact necessary to
 24 make the statements made, in light of the circumstances under which
 25 such statements were made, not misleading with respect to the period
 26 covered by this report;

27 Based on my knowledge, the financial statements, and other financial
 28 information included in this report, fairly present in all material respects
 the financial condition, results of operations and cash flows of the
 registrant as of, and for, the period presented in this report;

1 The registrant's other certifying officer and I are responsible for
2 establishing and maintaining disclosure controls and procedures (as
3 defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal
4 control over financial reporting (as defined in Exchange Act Rules 13a-
5 15(f) and 15d -15(f)) for the registrant and have:

6 (a) Designed such disclosure controls and procedures, or caused
7 such disclosure controls and procedures to be designed under our
8 supervision, to ensure that material information relating to the
9 registrant, including its consolidated subsidiaries, is made known to us
10 by others within those entities, particularly during the period in which
11 this report is being prepared;

12 (b) Designed such internal control over financial reporting or, or
13 caused such internal control over financial reporting to be designed
14 under our supervision, to provide reasonable assurance regarding the
15 reliability of financial reporting and the preparation of financial
16 statements for external purposes in accordance with generally accepted
17 accounting principles;

18 (c) Evaluated the effectiveness of the registrant's disclosure controls
19 and procedures, and presented in this report our conclusions about the
20 effectiveness of the disclosure controls and procedures, as of the end
21 of the period covered by this report based on such evaluation; and

22 (d) Disclosed in this report any change in the registrant's internal
23 control over financial reporting that occurred during the registrant's
24 most recent fiscal quarter (the registrant's fourth fiscal quarter in the
25 case of an annual report) that has materially affected, or is reasonably
26 likely to materially affect, the registrant's internal control over financial
27 reporting.

28 The registrant's other certifying officer and I have disclosed, based on
our most recent evaluation of internal control over financial reporting,
to the registrant's auditors and the audit committee of registrant's
board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design
or operation of internal control over financial reporting which are
reasonably likely to adversely affect the registrant's ability to record,
process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management
or other employees who have a significant role in the registrant's
internal controls over financial reporting.

66. The February 6, 2013 Form 10-Q also contained Sarbanes-Oxley

1 Section 906 certifications signed by defendants Garrabrants and Micheletti, which
2 stated that Garrabrants and Micheletti had reviewed the Form 10-Q and that “the
3 information contained in the Report fairly presents, in all material respects, the
4 financial condition and results of operations of the Company as of the dates and for
5 the periods presented in the financial statements included in such Report.”

6 [REDACTED]

7 [REDACTED]

8 67. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 68. On May 8, 2013, the Individual Defendants caused BofI to file a Form
27 10-Q with the SEC, disclosing BofI’s financial results for the quarter ending March
28

1 31, 2013. The Quarterly Report was reviewed and approved by the Board, and
2 signed by Defendants Garrabrants and Micheletti, and represented the following to
3 be BOFI's financial results for the quarter:

4 For the three months ended March 31, 2013, we had net income of
5 \$10.4 million compared to net income of \$7.7 million for the three
6 months ended March 31, 2012. Net income attributable to common
7 stockholders was \$10.1 million or \$0.74 per diluted share compared to
8 net income attributable to common shareholders of \$7.3 million or
9 \$0.58 per diluted share for the three months ended March 31, 2013 and
10 2012, respectively. For the nine months ended March 31, 2013, we had
11 net income of \$29.2 million compared to net income of \$20.9 million
12 for the nine months ended March 31, 2012. Net income attributable to
13 common stockholders was \$28.4 million or \$2.12 per diluted share
14 compared to net income attributable to common shareholders of \$20.0
15 million or \$1.68 per diluted share for the nine months ended March 31,
16 2013 and 2012, respectively.

17 69. The May 8, 2013 Form 10-Q also stated: "Net interest income
18 increased \$5.9 million and \$16.0 million in the quarter and nine months ended
19 March 31, 2013 due to a 28.3% and 24.6%, increase in average earning assets
20 primarily from the growth in our loan portfolio in those respective periods."

21 70. The May 8, 2013 Form 10-Q also contained certifications signed by
22 defendants Garrabrants and Micheletti under Sections 302 and 906 of Sarbanes-
23 Oxley which were identical to the certifications signed by Garrabrants and Micheletti
24 for the February 6, 2013 Form 10-Q (referenced *supra*). [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 71. In addition to these SOX certifications by Garrabrants and Micheletti,
28 the May 8, 2013 Form 10-Q specifically stated, at page 63: "The Company's
management, with the participation of its Chief Executive Officer [Garrabrants] and
Chief Financial Officer [Micheletti], conducted an evaluation of the effectiveness of
the design and operation of the Company's disclosure controls and procedures,

1 pursuant to Exchange Act Rule 13a-15(e). Based upon that evaluation, our Chief
2 Executive Officer along with our Chief Financial Officer concluded that, as of the
3 end of the period covered by this report, the Company’s disclosure controls and
4 procedures were effective to ensure that information required to be disclosed by the
5 Company in reports that it files or submits under the Exchange Act is recorded,
6 processed, summarized and reported within the time periods specified by the
7 Securities and Exchange Commission’s rules and forms, and that such information is
8 accumulated and communicated to our management, including our Chief Executive
9 Officer and Chief Financial Officer, as appropriate, to allow timely decisions
10 regarding required disclosure. There were no changes in the Company’s internal
11 control over financial reporting that occurred during the quarter ended March 31,
12 2013 that have materially affected, or are reasonably likely to materially affect our
13 internal control over financial reporting.”

14 72. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 73. On September 4, 2013, BofI filed an annual report on Form 10-K with
28

1 the SEC announcing the Company's financial and operating results for the quarter
2 and fiscal year ended June 30, 2013 (the "2013 Form 10-K"). The Form 10-K
3 Annual Report was prepared and signed by defendants Garrabrants, Micheletti,
4 Allrich, Mosich, Argalas, Burke, Court, Grinberg, and Ratinoff.

5 74. For the quarter, the Company reported net income of \$11.13 million,
6 or \$0.78 per diluted share, on net revenue of \$35.87 million, compared to net income
7 of \$8.57 million, or \$0.64 per diluted share, on net revenue of \$26.55 million for the
8 same period in the prior year. For fiscal year 2013, the Company reported net
9 income of \$40.29 million, or \$2.89 per diluted share, on net revenue of \$129.34
10 million, compared to net income of \$29.48 million, or \$2.33 per diluted share, on net
11 revenue of \$95.56 million for fiscal year 2012.

12 75. Among other things, the 2013 Form 10-K described that the BofI
13 Federal Bank was subject to extensive federal regulation, as follows:

14 **REGULATION OF BOFI FEDERAL BANK**

15 *General.* As a federally-chartered savings and loan association whose
16 deposit accounts are insured by the Federal Deposit Insurance
17 Corporation ("FDIC"), BofI Federal Bank is subject to extensive
18 regulation by the FDIC and . . . the [Office of the Comptroller of the
19 Currency]. Under the Dodd-Frank Act, the examination, regulation
20 and supervision of savings associations, such as BofI Federal Bank,
21 were transferred from the OTS to the OCC, the federal regulator of
22 national banks under the National Bank Act. The following discussion
23 summarizes some of the principal areas of regulation applicable to the
24 Bank and its operations.

25 * * *

26 *Anti-Money Laundering and Customer Identification.* The U.S.
27 government enacted the Uniting and Strengthening America by
28 Providing Appropriate Tools Required to Intercept and Obstruct
Terrorism Act of 2001 ("USA Patriot Act") on October 26, 2001 in
response to the terrorist events of September 11, 2001. The USA
Patriot Act gives the federal government broad powers to address
terrorist threats through enhanced domestic security measures,

1 expanded surveillance powers, increased information sharing, and
2 broadened anti-money laundering requirements. In February 2010,
3 Congress re-enacted certain expiring provisions of the USA Patriot Act.

4 76. The 2013 Form 10-K contained certifications pursuant to Sarbanes-
5 Oxley signed by defendants Garrabrants and Micheletti, which were identical to the
6 certifications signed by Garrabrants and Micheletti for the February 6, 2013 Form
7 10-Q (quoted *supra*), certifying that the financial information contained in the Form
8 10-K was accurate and that the Company had disclosed all significant deficiencies
9 and material weaknesses in the design or operation of the Company's internal
10 controls over financial reporting.

11 77. Beginning on September 23, 2013, Erhart, a former FINRA examiner,
12 began working for BofI as an internal auditor, performing audits of a variety of
13 aspects of BofI's operations. Erhart's job duties included conducting Sarbanes-
14 Oxley testing at BofI. During his tenure at BofI, Erhart directly reported to Ball, VP
15 of Internal Audit at BofI, who had over 20 years of experience as an auditor for
16 banks. [REDACTED]

17 [REDACTED]
18 [REDACTED]

19 78. [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

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[REDACTED]

79. On November 5, 2013, BofI filed a quarterly report on Form 10-Q with the SEC announcing the Company’s financial and operating results for the quarter ended September 30, 2013 (the “2014Q1 Form 10-Q”). The Form 10-Q Quarterly Report was reviewed and approved by the Board, and prepared and signed by defendants Garrabrants and Micheletti. For the quarter, the Company reported net income of \$12.18 million, or \$0.85 per diluted share, on net revenue of \$35.09 million, compared to net income of \$8.99 million, or \$0.67 per diluted share, on net revenue of \$29.25 million for the same period in the prior year.

80. The 2014Q1 Form 10-Q contained certifications pursuant to Sarbanes-Oxley signed by defendants Garrabrants and Micheletti, which were identical to the certifications signed by Garrabrants and Micheletti for the February 6, 2013 Form 10-Q (quoted *supra*), certifying that the financial information contained in the 2014Q1 Form 10-Q was accurate and that the Company had disclosed all significant deficiencies and material weaknesses in the design or operation of the Company’s internal controls over financial reporting. [REDACTED]

[REDACTED]

81. On December 4, 2013, BofI filed a Form 8-K with the SEC, signed by defendant Micheletti, containing as an attachment an Investor Presentation concerning the Company’s Q1 2014 financial and operating results (the “2014Q1 Investor Presentation”) which indicated it was presented by defendant Garrabrants

1 and that investors should contact Garrabrants for more information. Among other
2 things, the 2014Q1 Investor Presentation contained the following statements:

- 3 • BofI is “Consistently Ranked among the Best of the Biggest
4 Thrifts by SNL Financial”;
- 5 • BofI is “a Top Performer among the Broader Universe of All
6 Public Banks and Thrifts”;
- 7 • BofI is “a Top Quartile Performer Versus Bank Peer Group”;
- 8 • The Company’s “Business Model is More Profitable Because
9 [the Company’s] Costs are Lower”; and
- 10 • The Company’s “Asset Growth has been Driven by Strong and
11 Profitable Organic Loan Production.”

12 82. On or about December 19, 2013, Erhart completed an internal audit of
13 BofI’s Structured Settlements and Lottery practice, pursuant to which BofI, through
14 its subsidiary Anfed Bank, has a team that calls individuals receiving structured
15 settlements in litigation or lottery payments with the goal of purchasing those
16 income streams in return for a lump sum. One of Erhart’s major findings during the
17 internal audit was that BofI’s callers were not notifying the individuals they called
18 that the calls were being recorded, in violation of California Penal Code § 632.
19 Defendant Garabrants, BofI’s CEO and Board member, was apparently made aware
20 of Erhart’s findings because Erhart received a telephone call from Garabrants within
21 15 minutes after Erhart requested a standard meeting to conclude his audit.

22 83. Less than two hours after Erhart sent the meeting request, he and his
23 direct supervisor, VP Ball, were summoned to a meeting with defendant Bar-Adon,
24 BofI’s Chief Legal Officer. Bar-Adon instructed both employees to remove
25 evidence of the violation of California Penal Code § 632 from the Structured
26 Settlements and Lottery audit. When Ball informed him that an internal auditor
27 could not do that, Bar-Adon instructed Erhart to mark the entire report “Attorney
28 Client Privileged,” stating that the finding could be discoverable in class action

1 litigation against BofI and that the Company wanted to prevent that. In addition,
2 Bar-Adon instructed Erhart not to speak to any employee in the Structured
3 Settlements and Lottery Department with whom he was friendly.

4 84. On the same day, defendant Tolla instructed Erhart to never state in an
5 audit report that BofI had violated a federal or state law.

6 85. In or about January 2014, Thomas Constantine, BofI's Chief Credit
7 Officer, told Erhart, Ball, and others at a meeting that he could not be responsible
8 for any of BofI's numbers after they are turned over to the CFO, defendant
9 Micheletti. Constantine reiterated that he could not and would not vouch for the
10 accuracy of the numbers once they had been delivered to defendant Micheletti.
11 Erhart understood this comment to mean that Constantine believed that Micheletti
12 changed the numbers after he received them.

13 86. [REDACTED]
14 [REDACTED]
15 [REDACTED] [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

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1 87. On February 5, 2014, BofI filed a quarterly report on Form 10-Q with
2 the SEC announcing the Company's financial and operating results for the quarter
3 ended December 31, 2013 (the "2014Q2 Form 10-Q"). The Form 10-Q was
4 prepared and signed by defendants Garrabrants and Micheletti, and reviewed and
5 approved by BofI's Board. For the quarter, the Company reported net income of
6 \$13.15 million, or \$0.91 per diluted share, on net revenue of \$38.37 million,
7 compared to net income of \$9.77 million, or \$0.70 per diluted share, on net revenue
8 of \$31.19 million for the same period in the prior year.

9 88. The 2014Q2 Form 10-Q contained certifications pursuant to Sarbanes-
10 Oxley signed by defendants Garrabrants and Micheletti, which were identical to the
11 certifications signed by Garrabrants and Micheletti for the February 6, 2013 Form
12 10-Q (quoted *supra*), certifying that the financial information contained in the
13 2014Q2 Form 10-Q was accurate and disclosed any material changes to the
14 Company's internal control over financial reporting. [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 89. On February 6, 2014, BofI filed Form 8-K with the SEC containing an
18 Investor Presentation concerning the Company's 2014Q2 financial and operating
19 results (the "2014Q2 Investor Presentation"). The Form 8-K and the 2014Q2
20 Investor Presentation were prepared and signed by defendant Micheletti and
21 contained, in part, the following statements:

- 22 • BofI is "Consistently Ranked among the Best of the Biggest
23 Thrifts by SNL Financial";
- 24 • BofI is "a Top Performer among the Broader Universe of All
25 Public Banks and Thrifts";
- 26 • BofI is "a Top Quartile Performer Versus Bank Peer Group";
- 27 • The Company's "Business Model is More Profitable Because
28 [the Company's] Costs are Lower"; and

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- The Company’s “Asset Growth has been Driven by Strong and Profitable Organic Loan Production.”

90. [REDACTED]

91. On May 6, 2014, BofI filed a quarterly report on Form 10-Q with the SEC announcing the Company’s financial and operating results for the quarter ended March 31, 2014 (the “2014Q3 Form 10-Q”). The Form 10-Q was reviewed and approved by the Board, and prepared and signed by defendants Garrabrants and Micheletti. For the quarter, the Company reported net income of \$14.61 million, or \$1.00 per diluted share, on net revenue of \$40.88 million, compared to net income of \$10.40 million, or \$0.74 per diluted share, on net revenue of \$33.04 million for the same period in the prior year.

92. The 2014Q3 Form 10-Q contained certifications pursuant to Sarbanes-Oxley signed by defendants Garrabrants and Micheletti, which were identical to the certifications signed by Garrabrants and Micheletti for the February 6, 2013 Form

1 10-Q (quoted *supra*), certifying that the financial information contained in the
2 2014Q3 Form 10-Q was accurate and that the Company had disclosed all significant
3 deficiencies and material weaknesses in the design or operation of the Company's
4 internal controls over financial reporting. [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 93. On May 7, 2014, BofI filed Form 8-K with the SEC containing an
8 Investor Presentation concerning the Company's third quarter 2014 financial and
9 operating results (the "2014 Q3 Investor Presentation"). The Form 8-K and the
10 2014 Q3 Investor Presentation were prepared and signed by defendant Micheletti,
11 and contained, in part, the following statements:

- 12 • BofI is "Consistently Ranked among the Best of the Biggest
13 Thrifts by SNL Financial";
- 14 • BofI is "a Top Performer among the Broader Universe of All
15 Public Banks and Thrifts";
- 16 • BofI is "a Top Quartile Performer Versus Bank Peer Group";
- 17 • The Company's "Business Model is More Profitable Because
18 [the Company's] Costs are Lower"; and
- 19 • The Company's "Asset Growth has been Driven by Strong and
20 Profitable Organic Loan Production."

21 94. [REDACTED]
22 [REDACTED]
23 [REDACTED] [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
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[REDACTED]

95. On August 7, 2014, BofI issued a press release and filed a Form 8-K with the SEC announcing the Company’s financial and operating results for the quarter and fiscal year ended June 30, 2014 (the “2014 Form 8-K”). The Form 8-K and the accompanying press release were prepared by defendants Garrabrants and Micheletti, and signed by Micheletti. For the quarter, the Company reported net income of \$16.01 million, or \$1.09 per diluted share, on net revenue of \$45.22 million, compared to net income of \$11.13 million, or \$0.78 per diluted share, on net revenue of \$35.87 million for the same period in the prior year. For fiscal year 2014, the Company reported net income of \$55.96 million, or \$3.85 per diluted share, on net revenue of \$159.55 million, compared to net income of \$40.29 million, or \$2.89 per diluted share, on net revenue of \$129.34 million for fiscal year 2013.

96. [REDACTED]

1 [REDACTED]
2 97. On August 28, 2014, BofI filed an annual report on Form 10-K with
3 the SEC (the “2014 Form 10-K”). The Form 10-K Annual Report was prepared
4 and signed by defendants Garrabrants, Micheletti, Allrich, Mosich, Argalas, Burke,
5 Court, Grinberg, and Ratinoff. The 2014 Form 10-K reiterated the financial and
6 operating results previously announced in the 2014 Form 8-K.

7 98. Among other things, the 2014 Form 10-K described that the BofI
8 Federal Bank was subject to extensive federal regulation, as follows:

9 **REGULATION OF BOFI FEDERAL BANK**

10 *General.* As a federally-chartered savings and loan association whose
11 deposit accounts are insured by FDIC, BofI Federal Bank is subject to
12 extensive regulation by the FDIC and, as of the Transfer Date, the
13 OCC. Under the Dodd-Frank Act, the examination, regulation and
14 supervision of savings associations, such as BofI Federal Bank, were
15 transferred from the OTS to the OCC, the federal regulator of national
16 banks under the National Bank Act. The following discussion
17 summarizes some of the principal areas of regulation applicable to the
18 Bank and its operations.

19 * * *

20 *Anti-Money Laundering and Customer Identification.* The U.S.
21 government enacted the Uniting and Strengthening America by
22 Providing Appropriate Tools Required to Intercept and Obstruct
23 Terrorism Act of 2001 (“USA Patriot Act”) on October 26, 2001 in
24 response to the terrorist events of September 11, 2001. The USA
25 Patriot Act gives the federal government broad powers to address
26 terrorist threats through enhanced domestic security measures,
27 expanded surveillance powers, increased information sharing, and
28 broadened anti-money laundering requirements. In February 2010,
Congress re-enacted certain expiring provisions of the USA Patriot Act.

99. The 2014 Form 10-K contained certifications pursuant to Sarbanes-
Oxley signed by defendants Garrabrants and Micheletti, which were identical to the
certifications signed by Garrabrants and Micheletti for the February 6, 2013 Form
10-Q (quoted *supra*), certifying that the financial information contained in the 2014

1 Form 10-K was accurate and that the Company had disclosed all significant
2 deficiencies and material weaknesses in the design or operation of the Company's
3 internal controls over financial reporting.

4 100. On September 3, 2014, BofI filed Form 8-K with the SEC containing
5 an Investor Presentation concerning the Company's 2014 Q4 financial and operating
6 results (the "2014 Q4 Investor Presentation"). The Form 8-K and the 2014 Q4
7 Investor Presentation were prepared and signed by defendant Micheletti, and
8 contained, in part, the following statements:

- 9 • BofI is "Consistently Ranked among the Best of the Biggest
10 Thrifts by SNL Financial";
- 11 • BofI is "a Top Performer among the Broader Universe of All
12 Public Banks and Thrifts";
- 13 • BofI is "a Top Quartile Performer Versus Bank Peer Group";
- 14 • The Company's "Business Model is More Profitable Because
15 [the Company's] Costs are Lower"; and
- 16 • The Company's "Asset Growth has been Driven by Strong and
17 Profitable Organic Loan Production."

18 101. On November 4, 2014, BofI filed a quarterly report on Form 10-Q
19 with the SEC announcing the Company's financial and operating results for the
20 quarter ended September 30, 2014 (the "2015 Q1 Form 10-Q"). The Form 10-Q
21 Quarterly Report was reviewed and approved by the Board, and prepared and signed
22 by defendants Garrabrants and Micheletti. For the quarter, the Company reported
23 net income of \$17.84 million, or \$1.20 per diluted share, on net revenue of \$50.12
24 million, compared to net income of \$12.18 million, or \$0.85 per diluted share, on net
25 revenue of \$35.09 million for the same period in the prior year.

26 102. The 2015 Q1 Form 10-Q contained certifications pursuant to
27 Sarbanes-Oxley signed by defendants Garrabrants and Micheletti, which were
28 identical to the certifications signed by Garrabrants and Micheletti for the February

1 6, 2013 Form 10-Q (quoted *supra*), certifying that the financial information contained
2 in the 2015 Q1 Form 10-Q was accurate and disclosed that the Company had
3 disclosed all significant deficiencies and material weaknesses in the design or
4 operation of the Company's internal controls over financial reporting.

5 103. On November 17, 2014, BofI filed a Form 8-K with the SEC
6 containing an Investor Presentation concerning the Company's 2015 Q1 financial
7 and operating results (the "2015 Q1 Investor Presentation"). Among other things,
8 the 2015 Q1 Investor Presentation contained the following statements:

- 9 • BofI is "Consistently Ranked among the Best of the Biggest
10 Thrifts by SNL Financial";
- 11 • BofI is "a Top Performer among the Broader Universe of All
12 Public Banks and Thrifts";
- 13 • BofI is "a Top Quartile Performer Versus Bank Peer Group";
- 14 • The Company's "Business Model is More Profitable Because
15 [the Company's] Costs are Lower"; and
- 16 • The Company's "Asset Growth has been Driven by Strong and
17 Profitable Organic Loan Production."

18 104. On or about November 21, 2014, Erhart sent an e-mail to BofI's Chief
19 Risk Officer, SVP Williams, in preparation for the upcoming Enterprise Risk
20 Management ("ERM") audit. Erhart asked whether Williams thought BofI had a
21 deposit concentration risk. Erhart was concerned and reported that a mere four
22 customers accounted for approximately 25% of total deposits, and nine customers
23 accounted for approximately 40% of total deposits.

24 105. On or about December 12, 2014, the SEC served a subpoena on BofI,
25 requesting account-identifying information for a certain investment advisory firm
26 with the initials ETIA LLC ("ETIA").

27 106. On or about December 18, 2014, BofI responded to the SEC that it
28 did not have any information regarding ETIA.

1 107. In or about early January 2015, Erhart became aware of the SEC
2 subpoena, and knew that BofI did indeed have a loan file containing information
3 regarding ETIA. Erhart further learned that a file had been created in response to
4 the SEC subpoena, containing the information regarding ETIA. Erhart learned
5 from a BofI employee that she had informed the Bank’s legal department of the
6 existence of the file on or about December 17, 2014, *before* the Bank sent its
7 response to the SEC denying the existence of any such files.

8 108. On or about January 15, 2015, BofI’s principal regulator, the OCC,
9 requested information on bank accounts at BofI with no Tax Identification
10 Numbers (“TINs”). BofI responded to the OCC that there were no accounts
11 without TINs. Erhart had viewed a spreadsheet in the BSA folder disclosing
12 approximately 150–200 accounts where the borrowers did not have a TIN.

13 109. In or about January 2015, Erhart conducted a Loan Origination Audit.
14 During the Loan Origination Audit, Erhart discovered that BofI was making
15 substantial loans to foreign nationals including Politically Exposed Persons (“PEPs”)
16 in potential violation of BSA/KYC rules. Erhart was able to readily uncover
17 information that many of the borrowers were criminals and other suspicious persons
18 who put the Bank at high risk for violating the BSA’s Anti-Money Laundering Rules
19 (“AML Rules”), as well as exposing BofI to reputational risk. The purpose of the
20 AML Rules is to help detect and report suspicious activity including the predicate
21 acts to money laundering and terrorist financing. The PEPs included very high-level
22 foreign officials from major oil-producing countries and war zones.

23 110. [REDACTED]
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111. On January 29, 2015, BofI filed a quarterly report on Form 10-Q with the SEC announcing the Company’s financial and operating results for the quarter ended December 31, 2014 (the “15Q2 Form 10-Q”). The Form 10-Q Quarterly Report was reviewed and approved by the Board and Audit Committee members Grinberg, Argalas, and Mosich, and prepared and signed by defendants Garrabrants and Micheletti. For the quarter, the Company reported net income of \$19.37 million, or \$1.26 per diluted share, on net revenue of \$54.81 million, compared to net income of \$13.15 million, or \$0.91 per diluted share, on net revenue of \$38.37 million for the same period in the prior year.

112. The 15Q2 Form 10-Q contained certifications pursuant to Sarbanes-Oxley signed by defendants Garrabrants and Micheletti, stating that the financial information contained in the 15Q2 Form 10-Q was accurate and disclosed any material changes to the Company’s internal control over financial reporting.

113. In or about February 2015, the OCC requested that BofI disclose all correspondence with federal and state banking agencies and law enforcement, including any and all subpoenas, criminal or otherwise. BofI responded that it had not received any such documents for the review period in question. However,

1 Erhart alleges that the Bank had a BSA spreadsheet Erhart had seen that identified
2 many subpoenas, including from law enforcement agencies, grand juries, and even
3 from the U.S. Department of the Treasury, of which OCC is a part. Erhart also
4 knew that the Bank indeed had been served with subpoenas.

5 114. On March 2, 2015, BofI filed Form 8-K with the SEC containing an
6 Investor Presentation concerning the Company's 2015 Q2 financial and operating
7 results (the "2015 Q2 Investor Presentation"). The Form 8-K was signed by
8 defendant Micheletti, and the 2015 Q2 Investor Presentation was prepared by
9 defendants Micheletti and Garrabrants, and presented by defendant Garrabrants.
10 Among other things, the 2015 Q2 Investor Presentation contained the following
11 statements:

- 12 • BofI is "Consistently Ranked among the Best of the Biggest Thrifts by SNL Financial";
- 13 • BofI is "a Top Performer among the Broader Universe of All Public Banks and Thrifts";
- 14 • BofI is "a Top Quartile Performer Versus Bank Peer Group";
- 15 • The Company's "Business Model is More Profitable Because [the Company's] Costs are Lower"; and
- 16 • The Company's "Asset Growth has been Driven by Strong and Profitable Organic Loan Production."
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20 115. [REDACTED]

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22 [REDACTED]

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117. On April 30, 2015, BofI filed a quarterly report on Form 10-Q with the SEC announcing the Company’s financial and operating results for the quarter ended March 31, 2015 (the “2015 Q3 Form 10-Q”). The Form 10-Q Quarterly Report was reviewed and approved by the Board, including defendant Dada (who had joined the Board effective January 22, 2015), and prepared and signed by defendants Garrabrants and Micheletti. For the quarter, the Company reported net income of \$21.07 million, or \$1.35 per diluted share, on net revenue of \$59.03 million, compared to net income of \$14.61 million, or \$1.00 per diluted share, on net revenue of \$40.88 million for the same period in the prior year.

118. The 2015 Q3 Form 10-Q contained certifications pursuant to Sarbanes-Oxley signed by defendants Garrabrants and Micheletti, stating that the financial information contained in the 2015 Q3 Form 10-Q was accurate and disclosed that the Company had disclosed all significant deficiencies and material weaknesses in the design or operation of the Company’s internal controls over financial reporting.

119. On May 6, 2015, BofI filed Form 8-K with the SEC, signed by defendant Micheletti, containing an Investor Presentation concerning the Company’s 2015 Q3 financial and operating results (the “2015 Q3 Investor Presentation”). The 2015 Q3 Investor Presentation was prepared by defendants Garrabrants and

1 Micheletti and contained, in part, the following statements:

- 2 • BofI is “Consistently Ranked among the Best of the Biggest Thrifts by SNL Financial”;
- 3
- 4 • BofI is “a Top Performer among the Broader Universe of All Public Banks and Thrifts”;
- 5
- 6 • BofI is “a Top Quartile Performer Versus Bank Peer Group”;
- 7 • The Company’s “Business Model is More Profitable Because [the Company’s] Costs are Lower”; and
- 8 • The Company’s “Asset Growth has been Driven by Strong and Profitable Organic Loan Production.”
- 9

10 120. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

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19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28

1 21. On July 30, 2015, BofI issued a press release and filed a Form 8-K with
2 the SEC, prepared by defendants Garrabrants and Micheletti, announcing the
3 Company's financial and operating results for the quarter and fiscal year ended June
4 30, 2015. For the quarter, the Company reported net income of \$24.40 million, or
5 \$1.54 per diluted share, on net revenue of \$65.57 million, compared to net income of
6 \$16.01 million, or \$1.09 per diluted share, on net revenue of \$45.22 million for the
7 same period in the prior year. For fiscal year 2015, the Company reported net
8 income of \$82.68 million, or \$5.37 per diluted share, on net revenue of \$229.54
9 million, compared to net income of \$55.96 million, or \$3.85 per diluted share, on net
10 revenue of \$159.55 million for fiscal year 2014.

11 22. On August 10, 2015, BofI filed Form 8-K with the SEC containing an
12 Investor Presentation concerning the Company's 2015 Q4 financial and operating
13 results (the "2015 Q4 Investor Presentation"). The Form 8-K and the 2015 Q4
14 Investor Presentation were prepared by defendants Garrabrants and Micheletti and
15 contained, in part, the following statements:

- 16 • BofI is "Consistently Ranked among the Best of the Biggest
17 Thrifts by SNL Financial";
- 18 • BofI is "a Top Performer among the Broader Universe of All
19 Public Banks and Thrifts";
- 20 • BofI is "a Top Quartile Performer Versus Bank Peer Group";
- 21 • The Company's "Business Model is More Profitable Because
22 [the Company's] Costs are Lower"; and
- 23 • The Company's "Asset Growth has been Driven by Strong and
24 Profitable Organic Loan Production."

25 23. On August 22, 2015, *The New York Times* published an article
26 concerning BofI's strong growth during defendant Garrabrants's tenure as CEO.
27 The article was entitled "An Internet Mortgage Provider Reaps the Rewards of
28 Lending Boldly" and stated, in relevant part:

1 As the leader of Bank of Internet USA, based in San Diego, Mr.
2 Garrabrants has been issuing big mortgages to high earners whom
3 other lenders might not necessarily welcome with open arms. But
4 because its financial performance has, in many ways, been spectacular,
5 Bank of Internet has been turning heads — and setting off alarm bells
6 as well. *The bank has made loans to people who were later found
7 to have run afoul of the law*, and Mr. Garrabrants has had to reassure
8 investors that the bank has good relations with regulators.

9 Bank of Internet's loans have increased fivefold, to nearly \$5 billion,
10 over the last five years — an almost unheard-of rate of growth for
11 these tepid times in banking. Its losses from bad loans are practically
12 nonexistent, and profits are surging, in part because it charges a much
13 higher interest rate than the bigger banks operating in the same market.

14 * * *

15 [Some investors] contend that the bank is attracting people who simply
16 can't get cheaper loans — borrowers who may be more risky. *Bank of
17 Internet also makes large mortgages to wealthy foreigners, a
18 practice that requires meticulous controls to comply with federal
19 regulations aimed at stopping money laundering.* The bank's
20 critics wonder whether its compliance department is up to the task,
21 though Mr. Garrabrants vigorously defended its practices. They also
22 take issue with the bank's funding, contending that the lender is too
23 dependent on customer deposits that could evaporate if turbulence
24 returns to the banking world.

25 * * *

26 Mr. Garrabrants, who has also worked at Goldman Sachs and
27 McKinsey & Company, says the critics are spreading disinformation —
28 and losing money — as they bet against his firm's soaring stock.

“Here's the problem for them: They are going into an earnings juggernaut that has none of the things that they're talking about,” Mr. Garrabrants said. And he says the bank is as judicious as any other lender in picking its borrowers. “It's about being thoughtful about what risks you take and watching them and being careful,” he said, adding that Bank of Internet's deposits are a reliable source of funding.

* * *

1 Still, *Bank of Internet has lent money to some unsavory characters.*
2 For example, in 2012 it issued a \$5 million mortgage to Purna Chandra
3 Aramalla on a house in Sands Point, an affluent section of Long Island,
4 according to local property records. In 2013, federal law enforcement
5 authorities in New York charged Mr. Aramalla with Medicare and
6 Medicaid fraud. In March, he was sentenced to three years in prison.

7 In mid-2014, Bank of Internet lent \$1.05 million to Frederick Elm for a
8 house in Fort Lauderdale, Fla., property records show. In January, the
9 Securities and Exchange Commission accused Mr. Elm of running a
10 “Ponzi-like” scheme that had raised \$17 million since November 2013.
11 Mr. Elm partly settled with the agency in June.

12 And in 2012, Bank of Internet issued a \$1.26 million mortgage to
13 Deepal Wannakuwatte, a Sacramento businessman who received a 20-
14 year prison sentence last year for operating, for more than 10 years,
15 what the F.B.I. called a Ponzi scheme.

16 * * *

17 *Then there are questions about Bank of Internet’s marketing of*
18 *itself as a lender to “foreign nationals.” It does not disclose exactly*
19 *what proportion of its loans are made to foreigners.* When asked,
20 Mr. Garrabrants said it was “nowhere near the majority.” *Banks that*
21 *do this sort of lending can expect extra scrutiny from federal*
22 *regulatory agencies, which have punished banks for not properly*
23 *applying bank secrecy and anti-money-laundering laws when*
24 *vetting their international customers.*

25 In recent months there has been unrest in the division of Bank of
26 Internet that deals with regulatory compliance. *Earlier this year, a*
27 *senior internal auditor, Jonathan Ball, and another employee in*
28 *the division, Matt Erhart, left the bank. Mr. Ball did not respond*
to requests for comment. Mr. Erhart’s lawyer, Carol L. Gillam,
said that she had communicated with regulators, including the
Office of the Comptroller of the Currency, the bank’s primary
regulator. She declined to provide details.

Regulators have not publicly warned or penalized the bank for its
lending to foreign nationals, and Mr. Garrabrants often sounds
exasperated when defending that business. In his view, short-sellers
had sought to stir up concerns about those loans to try to persuade

1 regulators to stop Bank of Internet from acquiring parts of H&R
2 Block's banking unit. The deal was concluded this month.

3 [Emphases added.]

4 124. On August 26, 2015, BofI filed an annual report on Form 10-K with
5 the SEC (the "2015 Form 10-K"). The Form 10-K Annual Report was prepared
6 and signed by defendants Garrabrants, Micheletti, Allrich, Mosich, Argalas, Burke,
7 Court, Grinberg, Dada, and Ratinoff. The 2015 Form 10-K reiterated the financial
8 and operating results previously announced in the Form 8-K filed with the SEC on
9 July 30, 2015.

10 125. Among other things, the 2015 Form 10-K described that the BofI
11 Federal Bank was subject to extensive federal regulation, as follows:

12 **REGULATION OF BOFI FEDERAL BANK**

13 *General.* As a federally-chartered savings and loan association whose
14 deposit accounts are insured by FDIC, BofI Federal Bank is subject to
15 extensive regulation by the FDIC and, as of the Transfer Date, the
16 OCC. Under the Dodd-Frank Act, the examination, regulation and
17 supervision of savings associations, such as BofI Federal Bank, were
18 transferred from the OTS to the OCC, the federal regulator of national
19 banks under the National Bank Act. The following discussion
20 summarizes some of the principal areas of regulation applicable to the
21 Bank and its operations.

22 * * *

23 *Anti-Money Laundering and Customer Identification.* The U.S.
24 government enacted the Uniting and Strengthening America by
25 Providing Appropriate Tools Required to Intercept and Obstruct
26 Terrorism Act of 2001 ("USA Patriot Act") on October 26, 2001 in
27 response to the terrorist events of September 11, 2001. The USA
28 Patriot Act gives the federal government broad powers to address
terrorist threats through enhanced domestic security measures,
expanded surveillance powers, increased information sharing, and
broadened anti-money laundering requirements. In February 2010,
Congress re-enacted certain expiring provisions of the USA Patriot Act.

126. The 2015 Form 10-K contained certifications pursuant to Sarbanes-
Oxley signed by defendants Garrabrants and Micheletti, stating that the financial

1 information contained in the 2015 Form 10-K was accurate and that the Company
2 had disclosed all significant deficiencies and material weaknesses in the design or
3 operation of the Company's internal controls over financial reporting.

4 127. The statements above were materially false and misleading because the
5 Individual Defendants caused the Company to make false and/or misleading
6 statements, as well as failed to disclose material adverse facts about the Company's
7 business, operations, prospects, and performance. Specifically, during the Relevant
8 Period, the Individual Defendants made false and/or misleading statements and/or
9 failed to disclose that: (a) the Company's internal controls were frequently
10 disregarded; (b) BofI's borrowers included foreign nationals who should have been
11 off-limits under federal anti-money-laundering laws; (c) many BofI accounts lacked
12 required tax identification numbers; (d) BofI fired an internal auditor who raised the
13 foregoing issues to management and to federal regulators; and (e) as a result of the
14 above, the Company's statements regarding its internal controls and other financial
15 statements were materially false and misleading at all relevant times.

16 **III. The Individual Defendants Covered Up the Criminal Background of a** 17 **Senior Officer**

18 128. According to an article published on November 18, 2015 by *Seeking*
19 *Alpha* entitled "Undisclosed Executive History May Be Final Blow for BOFI,"¹ a
20 senior executive who had been running the "wholesale/correspondent lending
21 business (brokered mortgages) at BofI for the past five years was found guilty in a
22 court of law for multiple felony crimes including Grand Theft, Forgery of a Credit
23 Card Receipt, Burglary, and Dealing in Stolen Property." The article linked to police
24 reports from Broward County, Florida, mugshots, signatures from public documents
25 and publicly available date of birth information. This article also claims that BofI
26 issued two loans to this individual for more than \$700,000. Multiple felony

27 ¹ Available at [http://seekingalpha.com/article/3695396-undisclosed-executive-](http://seekingalpha.com/article/3695396-undisclosed-executive-history-may-final-blow-bofi)
28 [history-may-final-blow-bofi](http://seekingalpha.com/article/3695396-undisclosed-executive-history-may-final-blow-bofi) (last visited Aug. 24, 2016).

1 convictions would be reported for any credit check, especially for a loan of this size,
2 strongly implying that the Individual Defendants knew of this individual's criminal
3 history yet continued to employ him.

4 129. This employment is more than just embarrassing for BofI because
5 Section 19 of the FDIA provides that a person convicted of criminal offenses
6 involving "dishonesty or a breach of trust or money laundering," or who has agreed
7 to enter into a pretrial diversion or similar program in connection with a prosecution
8 for such offense," may not: (i) become, or continue as, an institution-affiliated party
9 with respect to any insured depository institution; (ii) own or control, directly or
10 indirectly, any insured depository institution; or (iii) otherwise participate, directly or
11 indirectly, in the conduct of the affairs of any insured depository Institution. (12
12 U.S.C. § 1829(a)(1)(A)). An insured bank cannot permit any such person to engage in
13 prohibited conduct or continue any relationship described above. (12 U.S.C.
14 § 1829(a)(1)(B)).

15 130. A regulated bank may file an application for the FDIC's consent for
16 the individual to become an officer or director of the bank, or the individual may
17 seek a waiver from the FDIC from complying with Section 19. Anyone who
18 knowingly violates Section 19 "shall be fined not more than \$1,000,000 for each day
19 such prohibition is violated or imprisoned for not more than 5 years, or both." (12
20 U.S.C. § 1829(b)).

21 131. Plaintiffs' Counsel was unable to locate an order granting a waiver for
22 this individual in the FDIC's database. For almost six years of employment, the
23 potential fines would be substantial.

24 **IV. Garrabrants Abused His Position for Personal Financial Gain**

25 132. According to his complaint, Erhart, who had conducted an audit in
26 early 2015 of senior management's personal accounts at BofI, "discovered that CEO
27 Gregory Garrabrants was depositing third-party checks for structured settlement
28

1 annuity payments into a personal account, including nearly \$100,000 in checks made
2 payable to third parties.” Erhart detailed these findings in a memo to his superiors.
3 Erhart also alleged that “learned that the issue of Mr. Garrabrants’s depositing of
4 third-party checks had previously been raised to the Audit Committee before he
5 started working at the Bank, and that restrictions were imposed on him.” The
6 Board’s direct knowledge of and involvement with defendant Garrabrants’ potential
7 criminal misconduct has serious consequences for the demand futility analysis,
8 discussed herein below.

9 133. Erhart further alleged that he discovered that defendant Garrabrants
10 was the signatory of a BofI consumer account opened in the name of his brother,
11 Steven Garrabrants, with a balance of approximately \$4 million — the largest
12 consumer account at BofI at the time. Erhart noted that \$4 million was wired into
13 the account but he could not find any evidence of how Steven Garrabrants came
14 into possession of such a large amount of money given that his profession was a
15 former minor league baseball player who signed with the Arizona Diamondbacks in
16 2003 for \$50,000 per year and became a free agent in 2007. Erhart expressed
17 concerns that “CEO Garrabrants could be involved in tax evasion and/or money
18 laundering.”

19 **V. The Emergence of the Truth**

20 134. On October 13, 2015, after the close of trading on the stock market,
21 *The New York Times* reported that Erhart, a former internal auditor at BofI, had filed
22 a lawsuit in this Court against the Company for violating federal laws designed to
23 protect whistleblowers. The *Erhart* Complaint alleged, *inter alia*, that:

- 24 • Bank of Internet’s borrowers included foreign nationals who
25 should have been off-limits under federal anti-money-laundering
26 laws;
- 27 • Erhart had seen a spreadsheet that contained as many as 200
28 accounts without tax identification numbers, contrary to Bank of
Internet’s representations to the OCC, its primary regulator;

DERIVATIVE ALLEGATIONS

1
2 139. Plaintiffs incorporate by reference and re-allege each and every
3 allegation set forth above, as though fully set forth herein.

4 140. Plaintiffs bring this action for the benefit of BofI to redress injuries
5 suffered as a result of the Individual Defendants' breaches of fiduciary duties and
6 violations of law, as well as the aiding and abetting thereof.

7 141. BofI is named solely as a nominal party in this action. This is not a
8 collusive action to confer jurisdiction on this Court that it would not otherwise have.
9 Plaintiffs will adequately and fairly represent the interests of BofI in enforcing and
10 prosecuting its rights.

11 142. BofI's Board at the time this action was initiated consisted of the
12 following nine directors: Theodore C. Allrich, Nicholas A. Mosich, James S. Argalas,
13 Gregory Garrabrants, John G. Burke, Paul J. Grinberg, James J. Court, Edward J.
14 Ratinoff, and Uzair Dada. Plaintiffs have not made any demand on the Board to
15 institute this action against the Individual Defendants because, for the reasons set
16 forth below, such demand would be a futile and useless act.

17 143. Where the board consists of nine directors, Plaintiffs need only show
18 that five of the directors lack independence or face a substantial likelihood of liability
19 to establish that a demand on the board would be futile. As shown below, the
20 demand in this case would be futile because at least five of the Director Defendants
21 lack independence or face a substantial likelihood of liability.

22 **I. Demand Is Futile Because a Majority of the Director Defendants Lacks 23 Independence and Faces a Substantial Likelihood of Liability**

24 **A. Garrabrants Lacks Independence**

25 144. Demand is futile as to Garrabrants because he lacks independence. As
26 admitted by BofI in its 2015 Proxy Statement: "Mr. Garrabrants is not an
27 independent director because he is our President and Chief Executive Officer."
28 This decision as to Garrabrants's lack of independence was made by the Board itself.

1 145. Garrabrants is also interested in this litigation for purposes of demand
2 futility because he faces a substantial likelihood of liability for his individual
3 misconduct. Garrabrants is a named defendant in the currently-pending federal class
4 actions, alleging that he violated § 10(b) of the Exchange Act and Rule 10b-5 when
5 he disseminated or approved the false and misleading statements set forth above.

6 146. If Garrabrants pursued these derivative claims, then that would expose
7 his own misconduct in the class action for violations of the federal securities laws.
8 As such, Garrabrants is fatally conflicted and, therefore, unable to render a
9 disinterested decision as to whether the Company should pursue these derivative
10 claims. Thus, demand is futile.

11 147. Additionally, Garrabrants is interested because he prepared, signed, or
12 caused the Company to issue many of the false and misleading statements. In fact,
13 Garrabrants signed the Company's SEC filings that contained false and misleading
14 statements, including the Forms 10-K dated September 3, 2013, August 28, 2014,
15 and August 26, 2015, and the Forms 10-Q dated November 5, 2013, February 5,
16 2014, May 6, 2014, November 4, 2014, January 29, 2015, and April 30, 2015.
17 Moreover, in conjunction with the filing of each of the above Forms 10-K and
18 Forms 10-Q, Garrabrants signed certifications as required by Sarbanes-Oxley that,
19 *inter alia*:

20 (a) affirmed that he was “responsible for establishing and
21 maintaining disclosure controls and procedures ... and internal control over
22 financial reporting” for BofI;

23 (b) certified that he has disclosed to BofI's auditors and the audit
24 committee “[a]ll significant deficiencies and material weaknesses in the design
25 or operation of internal control over financial reporting which are reasonably
26 likely to adversely affect [BofI's] ability to record, process, summarize and
27 report financial information,” and “[a]ny fraud, whether or not material, that
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1 involves management or other employees who have a significant role in
2 [Boff's] internal controls over financial reporting"; and

3 (c) certified that, to the best of his knowledge: (i) the Annual and
4 Quarterly Reports did not "contain any untrue statement of a material fact or
5 omit to state a material fact necessary to make the statements made, in light of
6 the circumstances under which such statements were made, not misleading";
7 (ii) "the financial statements, and other financial information included in
8 [each] report, fairly present in all material respects the financial condition,
9 results of operations and cash flows of [Boff]"; and (iii) the information
10 contained in the Forms 10-K and Forms 10-Q "fairly presents, in all material
11 respects, the financial condition and results of operations of the Company."

12 The above representations were false and misleading (and thereby violated Sarbanes-
13 Oxley) because, as noted above, during the Relevant Period, the Company's internal
14 controls were frequently disregarded, and the Company's statements regarding its
15 internal controls and other financial statements were materially false and misleading.

16 148. Garrabrants also participated in conference calls with analysts and
17 investors during the Relevant Period. Garrabrants therefore faces a substantial
18 likelihood of liability for breaching his fiduciary duties. Consequently, Garrabrants
19 cannot disinterestedly consider a demand.

20 **B. The Entire Board Faces a Substantial Likelihood of Liability for**
21 **Retaliating Against Whistleblower Erhart in Violation of the**
22 **Sarbanes-Oxley Act**

23 149. As alleged in detail by Erhart in a whistleblower complaint pending in
24 this District (and of which the Court can take judicial notice), Erhart brought
25 numerous specific violations of the law by Boff senior officers, including
26 Garrabrants, Bar-Adon, and Tolla, to the attention of the Company, in the course of
27 performing his duties as Boff's Staff Internal Auditor, which specifically included
28 Sarbanes-Oxley testing. After Erhart's good-faith whistleblower complaints were

1 brushed aside by Garrabrants, Bar-Adon, and Tolla, Erhart lodged his complaints
2 with the OCC and SEC.

3 150. Section 806 of the Sarbanes-Oxley Act prohibits employers such as
4 BofI from discharging, constructively discharging, demoting, threatening, harassing,
5 or in any manner discriminating or retaliating against any employee because he or
6 she provided information, caused information to be provided, or assisted in an
7 investigation by a federal regulatory or law enforcement agency, or an internal
8 investigation by the company relating to alleged mail fraud, wire fraud, bank fraud,
9 securities fraud, violations of SEC rules and regulations, or violations of federal law
10 relating to fraud against shareholders. In addition, an employer may not discharge or
11 in any manner retaliate against an employee because he or she filed, caused to be
12 filed, participated in, or assisted in a proceeding relating to alleged mail fraud, wire
13 fraud, bank fraud, securities fraud, violations of SEC rules and regulations, or
14 violations of federal law relating to fraud against shareholders. If an employer takes
15 retaliatory action against an employee because he or she engaged in any of these
16 protected activities, the employee can file a complaint with the Secretary, United
17 States Department of Labor, Occupational Safety and Health Administration
18 (“OSHA”).

19 151. Erhart filed a complaint with OSHA regarding the retaliation he was
20 faced with after reporting allegedly unlawful activities at BofI to federal agencies and
21 regulators.

22 152. Since at least December 2014, the Audit Committee (comprised of
23 defendants Grinberg (Chair), Mosich, and Argalas) was aware of the details of
24 Erhart’s complaints of violations of law committed by BofI senior officers, including
25 Garrabrants, Bar-Adon, and Tolla. In mid-December 2014, Tolla revised a draft
26 evaluation of Erhart’s job performance prepared by Ball. As a result of these
27 revisions, Tolla downgraded Erhart’s performance in retaliation for his
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1 whistleblowing activities. Concerned about the propriety of Tolla’s conduct, Ball
2 directly advised the Audit Committee about Tolla’s downgrading of Erhart’s
3 performance evaluation. Upon information and belief, the Audit Committee ratified
4 and approved the retaliation against Erhart by failing to instruct Tolla to restore
5 Erhart’s performance grade to the level determined by Ball.

6 153. In addition, on March 12, 2015, defendant Bar-Adon met with Erhart
7 and told him he was acting as General Counsel to the Audit Committee. Thus,
8 Grinberg, Mosich, and Argalas had actual knowledge of Erhart’s whistleblower
9 complaints, and had directed Bar-Adon to meet with Erhart regarding such activities.
10 Moreover, Grinberg, as the Chair of the Audit Committee, is the person at BofI to
11 whom all employee complaints regarding suspected unlawful conduct are directed.
12 Thus, all complaints at BofI were directed to Grinberg, who then shared them with
13 the other Audit Committee members and later the full Board, as indicated below.

14 154. As noted by BofI in its 2015 Proxy Statement, the Audit Committee
15 “reports to the full Board at regular meetings concerning the activities of the
16 committee and actions taken by the committee since the last regular meeting.”

17 155. [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

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[REDACTED]

156. [REDACTED]

157. Less than three weeks later, despite having actual knowledge of Erhart's whistleblowing activity, and despite knowing that Dodd-Frank, Sarbanes-Oxley, and other laws prohibit retaliation against employees who report alleged wrongdoing, the Board authorized and approved the firing of Erhart on June 9, 2015.

1 158. All Board members thus face a substantial likelihood of liability for
2 breaching their fiduciary duties by causing the Company to violate the anti-retaliation
3 provisions of Sarbanes-Oxley, Dodd-Frank, and other laws.

4 159. Moreover, all Board members can reasonably be charged with actual
5 knowledge or reckless disregard of the unlawful activity alleged by Erhart during the
6 Relevant Period because the wrongdoing concerned the Company's core (and only)
7 business — consumer and business banking products and services.

8 **C. Additional Reasons Demonstrating Futility of Demand**

9 160. The entire Board has demonstrated its inability to act in compliance
10 with their fiduciary obligations and/or to sue themselves and/or their fellow
11 directors and allies in the top ranks of the Company for the violations of law
12 complained of herein. Every Board member has acted in violation of their fiduciary
13 duties to the Company's shareholders, as described herein.

14 161. For example, in addition to Garrabrants, defendants Allrich, Mosich,
15 Argalas, Garrabrants, Burke, Grinberg, Court, and Ratinoff approved and signed the
16 Company's SEC filings that contained false and misleading statements, including the
17 Forms 10-K dated September 3, 2013, August 28, 2014, and August 26, 2015.²
18 Therefore, no reasonable stockholder would reasonably believe that a majority of the
19 members of the Board would be able to independently and properly consider a
20 demand in good faith and, accordingly, demand is excused.

21 162. Every member of the Board declined to inform themselves of the
22 misconduct complained of herein, even when they had a reasonable basis to believe
23 that further investigation was warranted, as is evidenced for example by the Board's
24 approval of the firing of Erhart just months after he filed whistleblower complaints
25 against the Company with the OCC and SEC and claimed whistleblower protection.

26
27 ² Defendant Dada, who joined the Board on January 22, 2015, only signed the
28 false and misleading Form 10-K dated August 26, 2015.

1 Thus, demand is excused. Intentionally causing the Company to violate the anti-
2 retaliation protection of multiple federal laws amply demonstrates the Board's
3 disloyal and bad faith conduct. Any conduct evidencing bad faith and a lack of
4 loyalty to the Company is outside the protection of the business judgment rule and
5 constitutes conduct that is non-indemnifiable. Thus, demand is excused as to the
6 entire Board.

7 163. Defendants Grinberg, Mosich, and Argalas are members of the Audit
8 Committee and therefore had a clear duty to be kept informed about the Company's
9 accounting procedures, and yet just as clearly they disregarded such duties.
10 Grinberg, Mosich, and Argalas have violated the terms of the Audit Committee
11 Charter, which, among other things, required Grinberg, Mosich, and Argalas to
12 "[r]eview the Company's annual audited financial statements with management,
13 including a review of major issues regarding accounting and auditing principles and
14 practices, and evaluate the adequacy and effectiveness of internal controls that could
15 significantly affect the Company's financial statements, as well as the adequacy and
16 effectiveness of the Company's disclosure controls and procedures and
17 management's reports thereon." [REDACTED]

18 [REDACTED]
19 [REDACTED] As such, Grinberg, Mosich, and Argalas are
20 incapable of disinterestedly and independently considering a demand to commence
21 and vigorously prosecute this action.

22 164. Although the Company has been and will continue to be exposed to
23 significant losses due to the Individual Defendants' wrongdoing, the Board has not
24 filed any lawsuits against any directors or officers who were responsible for the
25 losses. Thus, the Director Defendants are breaching their fiduciary duties to the
26 Company and face a substantial likelihood of liability for their breaches. Yet, the
27 Director Defendants continue to maintain their lucrative position as directors.
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1 According to BofI's Proxy Statement dated September 4, 2015, the Director
2 Defendants' compensation for fiscal 2015 are as follows: Allrich, \$514,598; Argalas,
3 \$188,210; Burke, \$188,210; Court, \$188,210; Dada, \$85,061; Grinberg, \$281,133;
4 Mosich, \$253,970; and Ratinoff, \$188,210. And Garrabrants's compensation as
5 CEO was \$6,310,485. Indeed, the Director Defendants are more interested in
6 protecting themselves than they are in protecting the Company by bringing this
7 action. Thus, demand on the Board is futile.

8 165. In addition, during the Relevant Period, Allrich, Argalas Burke,
9 Garrabrants, Grinberg, and Mosich participated in the BofI's mortgage-lending
10 program designed for its directors, officers, and employees. Through this program,
11 Allrich, Argalas Burke, Garrabrants, Grinberg, and Mosich each obtained a mortgage
12 on their primary residence at interest rates that are below market rates. [REDACTED]

13 [REDACTED]
14 [REDACTED] [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 166. Grinberg is further interested in this litigation for purposes of demand
18 futility because he breached his fiduciary duty by failing to disclose a related party
19 transaction between BofI and his employer Encore Capital. Grinberg, who is a
20 member of the Audit Committee of the BofI Board, is also Group Executive,
21 Internal and Corporate Development, and the former CFO of Encore Capital. On
22 or about May 2014, BofI provided a \$31.9 million loan to Encore Capital's affiliate
23 Propel Tax to finance the purchase of tax liens. Under Encore Capital's executive
24 compensation plan, defendant Grinberg's incentive-based compensation is linked to
25 Encore Capital's achievement of performance targets. In 2014, Grinberg received a
26 cash bonus of \$975,385 based on Encore Capital's achievement of the performance
27 target established for that year, driven, in part, by Encore Capital's tax lien business,
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1 Propel Tax. Defendants, including Grinberg, were required to disclose this related
2 party transaction. However, they did not. As a result, Grinberg is disabled from
3 fairly and objectively considering a pre-suit demand because he faces a substantial
4 likelihood of liability for failing to disclose the \$31.9 million Encore Capital/Propel
5 Tax loan, and, therefore, is interested in the outcome of this litigation.

6 **COUNT I**
7 **For Breaches of Fiduciary Duties**
8 **Against All Defendants**

9 167. Plaintiffs incorporate by reference and re-allege each and every
10 allegation set forth above, as though fully set forth herein.

11 168. Each Individual Defendant owed to the Company the duty to exercise
12 candor, good faith, and loyalty in the management and administration of BofI's
13 business and affairs, particularly with respect to issues regarding the Company's
14 compliance with laws.

15 169. Each of the Individual Defendants violated and breached his or her
16 fiduciary duties of candor, good faith, and loyalty.

17 170. The Individual Defendants' conduct set forth herein was due to their
18 intentional, reckless, or negligent breach of the fiduciary duties they owed to the
19 Company, as alleged herein. The Individual Defendants intentionally, recklessly, or
20 negligently breached or disregarded their fiduciary duties to protect the rights and
21 interests of BofI.

22 171. In breach of their fiduciary duties owed to BofI, the Individual
23 Defendants willfully participated in misrepresentation of the Company's financial
24 condition, failed to correct the Company's public statements, and failed to properly
25 oversee BofI's business, rendering them personally liable to the Company for
26 breaching their fiduciary duties.

27 172. The Individual Defendants had actual or constructive knowledge that
28 they had caused the Company to improperly misrepresent its financial condition and

1 they failed to correct the Company’s public statements. Defendants had actual
2 knowledge of the misrepresentations and omissions of the material facts set forth
3 herein, or acted with reckless disregard for the truth, in that they failed to ascertain
4 and to disclose such facts, even though such facts were available to them. Such
5 material misrepresentations and omissions were committed knowingly or recklessly.

6 173. These actions were not a good-faith exercise of prudent business
7 judgment to protect and promote the Company’s corporate interests.

8 174. As a direct and proximate result of the Individual Defendants’ breaches
9 of their fiduciary obligations, BofI has sustained and continues to sustain significant
10 damages. As a result of the misconduct alleged herein, the Individual Defendants
11 are liable to the Company.

12 **COUNT II**
13 **For Abuse of Control**
14 **Against All Defendants**

15 175. Plaintiffs incorporate by reference and re-allege each and every
16 allegation set forth above, as though fully set forth herein.

17 176. The Individual Defendants’ misconduct alleged herein constituted an
18 abuse of their ability to control and influence BofI, for which they are legally
19 responsible.

20 177. As a direct and proximate result of the Individual Defendants’ abuse of
21 control, BofI has sustained significant damages. As a direct and proximate result of
22 the Individual Defendants’ breaches of their fiduciary obligations of candor, good
23 faith, and loyalty, BofI has sustained and continues to sustain significant damages.
24 As a result of the misconduct alleged herein, the Individual Defendants are liable to
25 the Company.

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COUNT III
For Unjust Enrichment
Against All Defendants

178. Plaintiffs incorporate by reference and re-allege each and every allegation set forth above, as though fully set forth herein.

179. By their wrongful acts and omissions, the Individual Defendants were unjustly enriched at the expense of, and to the detriment of, BofI.

180. During the Relevant Period, the Individual Defendants either received bonuses, stock options, or similar compensation from BofI that was tied to the financial performance of BofI or received compensation that was unjust in light of the Individual Defendants' bad faith conduct.

181. Plaintiffs, as shareholders and representatives of BofI, seek restitution from the Individual Defendants and seek an order from this Court disgorging all profits, benefits, and other compensation, including any performance-based compensation, obtained by the Individual Defendants due to their wrongful conduct and breach of their fiduciary duties.

COUNT IV
For Breach of the Duty of Honest Services
Against Defendants Garrabrants, Micheletti, Bar-Adon, Tolla, and Walsh

182. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

183. This claim is brought derivatively on behalf of the Company against Defendants Garrabrants, Micheletti, Bar-Adon, Tolla, and Walsh for breach of their undivided duty of loyalty to their employer.

184. Garrabrants, Micheletti, Bar-Adon, Tolla, and Walsh were employees of the Company during the Relevant Period.

185. Garrabrants, Micheletti, Bar-Adon, Tolla, and Walsh breached their duty of loyalty to the Company by not acting solely in the Company's interests in performing their employment duties.

1 of the damaging events described herein, including, but not limited to, putting
2 forward for shareholder vote the following resolutions for amendments to the
3 Company's Bylaws or Articles of Incorporation and the following actions as may be
4 necessary to ensure proper corporate governance policies:

5 (1) a proposal to strengthen the Board's supervision of operations
6 and develop and implement procedures for greater shareholder input into the
7 policies and guidelines of the Board;

8 (2) a provision to permit the shareholders of BofI to nominate at
9 least two candidates for election to the Board;

10 (3) a proposal to strengthen the Board's supervision of the
11 Company's CEO;

12 (4) a provision to appropriately test and then strengthen the internal
13 audit and control functions; and

14 (5) a proposal to ensure the establishment of effective oversight of
15 compliance with applicable laws, rules, and regulations.

16 E. Awarding BofI restitution from the Individual Defendants, and each of
17 them;

18 F. Awarding Plaintiffs the costs and disbursements of this action,
19 including reasonable attorneys' and experts' fees, costs, and expenses; and

20 G. Granting such other and further relief as the Court may deem just and
21 proper.

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DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

Dated: August 26, 2016

Respectfully submitted,
BOTTINI & BOTTINI, INC.
Francis A. Bottini, Jr. (SBN 175783)
Albert Y. Chang (SBN 296065)
Yury A. Kolesnikov (SBN 271173)

s/ Francis A. Bottini, Jr.

Francis A. Bottini, Jr.

7817 Ivanhoe Avenue, Suite 102
La Jolla, California 92037
Telephone: (858) 914-2001
Facsimile: (858) 914-2002

Lead Counsel for Plaintiffs

THE SHUMAN LAW FIRM
Kip B. Shuman (SBN 145842)
1 Montgomery Street, Suite 1800
San Francisco, California 94104
Telephone: (303) 861-3033
Facsimile: (303) 536-7849

Additional Counsel for Plaintiff Zhang Yong

VERIFICATION

I, Andrew Calcaterra, verify that I am a shareholder of nominal defendant BofI Holding, Inc. ("BofI"), and that I have continuously owned BofI stock since January 14, 2013. I have reviewed the allegations in this Verified Consolidated Shareholder Derivative Complaint (the "Complaint"). As to those allegations of which I have personal knowledge, I believe them to be true; as to those allegations of which I lack personal knowledge, I rely upon my counsel and counsel's investigation, and believe them to be true. Having received a copy of the Complaint and reviewed it with counsel, I authorize its filing.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 25, 2016, at Rochester, Michigan.



Andrew Calcaterra

VERIFICATION

I, Zhang Yong, verify that I am a shareholder of nominal defendant BofI Holding, Inc., and that I have continuously owned BofI stock since July 16, 2012. I have reviewed the allegations in this Verified Consolidated Shareholder Derivative Complaint (the "Complaint"). As to those allegations of which I have personal knowledge, I believe them to be true; as to those allegations of which I lack personal knowledge, I rely upon my counsel and counsel's investigation, and believe them to be true. Having received a copy of the Complaint and reviewed it with counsel, I authorize its filing.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 25, 2015.



Zhang Yong

VERIFICATION

I, Robylee Doherty, verify that I am a shareholder of nominal defendant BofI Holding, Inc. ("BofI"), and that I have continuously owned BofI stock since July 2014. I have reviewed the allegations in this Verified Consolidated Shareholder Derivative Complaint (the "Complaint"). As to those allegations of which I have personal knowledge, I believe them to be true; as to those allegations of which I lack personal knowledge, I rely upon my counsel and counsel's investigation, and believe them to be true. Having received a copy of the Complaint and reviewed it with counsel, I authorize its filing.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 25, 2016, at University Place, Washington.



Robylee Doherty