

EXHIBIT A

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

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.
 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

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

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

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

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

- 22 (a) the Company's internal controls were frequently disregarded;
- 23 (b) BofI's borrowers included foreign nationals who should have
 24 been off-limits under federal anti-money-laundering laws;
- 25 (c) many BofI accounts lacked required tax identification numbers;
- 26 (d) in violation of the anti-retaliation laws contained in the Sarbanes-
 27 Oxley Act of 2002 ("Sarbanes-Oxley" or "SOX") and the Dodd-Frank Wall
 28 Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act").

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
 writing regarding the Company’s violations of laws;
- 15 • Erhart was instructed by senior officers at BofI, including Tolla,
 16 to label anything he did in his audit function which might be
 17 incriminating to the Company as “attorney client work
 18 product/communication” in order to shield such documents
 19 from later production;
- 20 • BofI’s borrowers included foreign nationals who should have
 21 been off-limits under federal anti-money-laundering laws;
- 22 • Erhart had seen a spreadsheet that contained as many as 200
 23 accounts without tax identification numbers, contrary to BofI’s
 24 representations to the Office of the Comptroller of the Currency
 25 (“OCC”), its primary regulator;
- 26 • BofI at times failed to provide full and timely information to
 27 regulators; and
- 28 • after Erhart revealed wrongdoing at BofI to management and
 29 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.

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.

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.

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 Garrabrant ("Garrabrant") has served at all
 12 relevant times as the Company's President, Director, and Chief Executive Officer
 13 ("CEO"). Garrabrant 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

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
28

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

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

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 BofI'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 BofI'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 BofI'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).

28

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;

(e) ensure that BofI was operated in a diligent, honest, and prudent manner in compliance with all applicable laws, rules, and regulations; and

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

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:

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

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

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

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

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

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 BoFI'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.

29 While the Board has retained the responsibility for general oversight of
 30 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
 from employee compensation policies and practices. Each standing
 committee provides reports to the full Board at regular meetings
 concerning the activities of the committee and actions taken by the
 committee since the last regular meeting.

8 **II. The Individual Defendants Caused the Company to Issue False and**
 9 **Misleading Statements**

10 61. [REDACTED]

11 [REDACTED]

12 [REDACTED] [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED] [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED] [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

<i>(Dollars in thousands, except per share data)</i>	At or for the Three Months Ended		At or for the Six Months Ended	
	December 31,		December 31,	
	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	\$ 9,768	\$ 6,660	\$ 18,757	\$ 13,193
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
2	Loan purchases	—	—	1,541	—
3	Return on average assets	1.45%	1.23%	1.45%	1.26%
4	Return on average common stockholders' equity	17.32%	15.86%	17.85%	16.55%
5	Interest rate spread ¹	3.69%	3.44%	3.63%	3.47%
6	Net interest margin ²	3.81%	3.60%	3.76%	3.62%
7	Efficiency ratio	40.98%	41.70%	40.23%	41.85%
8	<i>Capital Ratios:</i>				
9	Equity to assets at end of period	8.44%	8.71%	8.44%	8.71%
10	Tier 1 leverage (core) capital to adjusted tangible assets ³	8.52%	8.27%	8.52%	8.27%
11	Tier 1 risk-based capital ratio ³	13.95%	13.19%	13.95%	13.19%
12	Total risk-based capital ratio ³	14.60%	13.77%	14.60%	13.77%
13	Tangible capital to tangible assets ³	8.52%	8.27%	8.52%	8.27%
14	<i>Asset Quality Ratios:</i>				
15	Net annualized charge-offs to average loans outstanding	0.13%	0.39%	0.28%	0.41%
16	Non-performing loans to total loans	0.95%	0.76%	0.95%	0.76%
17	Non-performing assets to total assets	0.79%	0.64%	0.79%	0.64%
18	Allowance for loan losses to total loans at end of period	0.52%	0.53%	0.52%	0.53%
19	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

4 Other key comparisons between our operating results for the three and
 5 six months ended December 31, 2012 and 2011 are:
 6

- 7 • Net interest income increased \$5.9 million and \$10.2 million in
 8 the quarter and six months ended December 31, 2012 due to a
 9 23.4% and 22.7%, increase in average earning assets primarily
 10 from the growth in our loan portfolio in those respective
 11 periods. Our net interest margin increased 21 basis points and
 12 14 basis points in the quarter and six months ended December
 13 31, 2012 compared to December 31, 2011. The overall rate on
 14 interest earning assets was lower by 27 and 37 basis points in the
 15 three and six month periods ended December 31, 2012 compared
 16 to December 31, 2011, primarily because loan rates
 17 have been pushed lower by the economy and competition. This
 18 reduction on the asset side was more than offset by a 52 and 53
 19 basis point reduction in rates paid on interest bearing liabilities
 20 for the three and six months ending December 31, 2012 compared
 21 to December 31, 2011. The primarily reduction was
 22 due to a decrease in the rates paid on time deposits of 57 and 52
 23 basis points, respectively, as we allowed the higher rate time
 24 deposits to roll of the books.
 25
- 26 • Non-interest income increased \$3.3 million and \$5.5 million for
 27 the three and six months ended December 31, 2012 compared
 28 to the three and six months ended December 31, 2011. The
 29 increase in non-interest income for the quarter was primarily the
 30 result of a \$2.5 million increase in mortgage banking income, a
 31 \$448,000 increase in prepayment penalty income and a \$507,000
 32 increase in banking service fees. The increase in non-interest
 33 income for the six months ended December 31, 2012 compared
 34 to December 31, 2011 was primarily the result of a \$4.2 million
 35 increase in mortgage banking income, a \$589,000 increase in
 36 prepayment penalty income and a \$756,000 increase in banking
 37 service fees.
 38
- 39 • Non-interest expense increased \$3.6 million and \$5.6 million for
 40 the three and six months ended December 31, 2012 compared
 41 to the three and six months ended December 31, 2011. For the
 42 three months ended December 31, 2012 compared to the three
 43 months ended December 31, 2011 salaries and compensation
 44 was up \$2.0 million primarily due to the overall increase in staff,
 45

mainly in our production areas to support the overall growth of the Bank. Advertising and promotions were up \$510,000 mainly due to the cost of lead generation in the mortgage area. Other general and administration expenses were \$689,000 higher primarily due to an increase of \$258,000 in loan related expenses, an increase of \$144,000 related to software, licenses and associated costs, an increase of \$72,000 in expenses related travel, and an increase of \$53,000 in losses on deposit accounts. For the six months ended December 31, 2012 compared to the six months ended December 31, 2011 salaries and compensation was up \$3.6 million primarily due to the overall increase in staff, mainly in our production areas to support the overall growth of the Bank. Advertising and promotions were up \$846,000 mainly due to the cost of lead generation in the mortgage area. Other general and administration expenses were \$1.4 million higher primarily due to an increase of \$708,000 in loan related expenses, an increase of \$198,000 related to software, licenses and associated costs, an increase of \$77,000 in expenses related travel, and an increase of \$57,000 in losses on deposit accounts.

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

FINANCIAL CONDITION **Balance Sheet Analysis**

Our total assets increased \$487.5 million, or 20.4%, to \$2,874.3 million, 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.

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:

<i>(Dollars in thousands)</i>	<u>December 31, 2012</u>		<u>June 30, 2012</u>	
	<u>Amount</u>	<u>Percent</u>	<u>Amount</u>	<u>Percent</u>
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 Garrabrant 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
 29 the financial condition, results of operations and cash flows of the
 30 registrant as of, and for, the period presented in this report;

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

- (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting or, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures, and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

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 Garrabrant and Micheletti, which
2 stated that Garrabrant 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] [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] [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] [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
 29 management, with the participation of its Chief Executive Officer [Garrabrants] and
 30 Chief Financial Officer [Micheletti], conducted an evaluation of the effectiveness of
 31 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 Garrabrant, Micheletti,
4 Allrich, Mosich, Argalas, Burke, 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:

REGULATION OF BOFI FEDERAL BANK

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

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
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 Garrabrant and Micheletti, which were identical to the
 6 certifications signed by Garrabrant 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
 controls over financial reporting.

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

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 78. [REDACTED]

20 [REDACTED]

21 [REDACTED] [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]

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

15 80. The 2014Q1 Form 10-Q contained certifications pursuant to Sarbanes-
 16 Oxley signed by defendants Garrabrants and Micheletti, which were identical to the
 17 certifications signed by Garrabrants and Micheletti for the February 6, 2013 Form
 18 10-Q (quoted *supra*), certifying that the financial information contained in the
 19 2014Q1 Form 10-Q was accurate and that the Company had disclosed all significant
 20 deficiencies and material weaknesses in the design or operation of the Company's
 21 internal controls over financial reporting. [REDACTED]
 22 [REDACTED]
 23 [REDACTED]

24 81. On December 4, 2013, BofI filed a Form 8-K with the SEC, signed by
 25 defendant Micheletti, containing as an attachment an Investor Presentation
 26 concerning the Company's Q1 2014 financial and operating results (the "2014Q1
 27 Investor Presentation") which indicated it was presented by defendant Garrabrants
 28

1 and that investors should contact Garrabrant for more information. Among other
 2 things, the 2014Q1 Investor Presentation contained the following statements:
 3

- 4 • BofI is “Consistently Ranked among the Best of the Biggest
 Thrifts by SNL Financial”;
- 5 • BofI is “a Top Performer among the Broader Universe of All
 Public Banks and Thrifts”;
- 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.”

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

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

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28

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

- 1 • The Company’s “Asset Growth has been Driven by Strong and
 2 Profitable Organic Loan Production.”
 3 90. [REDACTED]
- 4 [REDACTED]
- 5 [REDACTED]
- 6 [REDACTED]
- 7 [REDACTED]
- 8 [REDACTED]
- 9 [REDACTED]
- 10 [REDACTED]
- 11 [REDACTED]
- 12 [REDACTED]
- 13 [REDACTED]
- 14 [REDACTED]
- 15 [REDACTED]
- 16 [REDACTED]
- 17 [REDACTED]

18 91. On May 6, 2014, BofI filed a quarterly report on Form 10-Q with the
 19 SEC announcing the Company’s financial and operating results for the quarter
 20 ended March 31, 2014 (the “2014Q3 Form 10-Q”). The Form 10-Q was reviewed
 21 and approved by the Board, and prepared and signed by defendants Garrabrants and
 22 Micheletti. For the quarter, the Company reported net income of \$14.61 million, or
 23 \$1.00 per diluted share, on net revenue of \$40.88 million, compared to net income of
 24 \$10.40 million, or \$0.74 per diluted share, on net revenue of \$33.04 million for the
 25 same period in the prior year.

26 92. The 2014Q3 Form 10-Q contained certifications pursuant to Sarbanes-
 27 Oxley signed by defendants Garrabrants and Micheletti, which were identical to the
 28 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]

27 [REDACTED]

28

1 [REDACTED]

2 [REDACTED] [REDACTED]

3 [REDACTED]

4 [REDACTED]

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

16 96. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28

1

2 [REDACTED]

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

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

9 **REGULATION OF BOFI FEDERAL BANK**

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

20 * * *

21

22 **Anti-Money Laundering and Customer Identification.** The U.S.
 23 government enacted the Uniting and Strengthening America by
 24 Providing Appropriate Tools Required to Intercept and Obstruct
 25 Terrorism Act of 2001 (“USA Patriot Act”) on October 26, 2001 in
 26 response to the terrorist events of September 11, 2001. The USA
 27 Patriot Act gives the federal government broad powers to address
 28 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.

29

30 99. The 2014 Form 10-K contained certifications pursuant to Sarbanes-
 31 Oxley signed by defendants Garrabrants and Micheletti, which were identical to the
 32 certifications signed by Garrabrants and Micheletti for the February 6, 2013 Form
 33 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
 with the initials ETIA LLC ("ETIA").

26 106. On or about December 18, 2014, BofI responded to the SEC that it
 27 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]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED].

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

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

24 113. In or about February 2015, the OCC requested that BofI disclose all
 25 correspondence with federal and state banking agencies and law enforcement,
 26 including any and all subpoenas, criminal or otherwise. BofI responded that it had
 27 not received any such documents for the review period in question. However,
 28

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
 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.”

21 115. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 116. [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]

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

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

24 119. On May 6, 2015, BofI filed Form 8-K with the SEC, signed by
 25 defendant Micheletti, containing an Investor Presentation concerning the Company's
 26 2015 Q3 financial and operating results (the "2015 Q3 Investor Presentation"). The
 27 2015 Q3 Investor Presentation was prepared by defendants Garrabrants and

28

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

- 2
- 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
 - 9 The Company’s “Asset Growth has been Driven by Strong and
10 Profitable Organic Loan Production.”

10 120. [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 [REDACTED]

27 [REDACTED]

28

1 121. 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.

11 122. 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."

25 123. 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 Garrabrant 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. Garrabrant 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. Garrabrant 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. Garrabrant, 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.

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

35 * * *

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

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

17 * * *

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

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

36
 37 Regulators have not publicly warned or penalized the bank for its
 38 lending to foreign nationals, and Mr. Garrabrant often sounds
 39 exasperated when defending that business. In his view, short-sellers
 40 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 Garrabrant, 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-
 127 Oxley signed by defendants Garrabrant and Micheletti, stating that the financial
 128

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/respondent 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-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. Garrabrant 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 Garrabrant 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;

- 1 • Bank of Internet at times failed to provide full and timely
2 information to regulators; and
3 • Erhart was fired after he revealed wrongdoing at Bank of
4 Internet to management and federal regulators.

5 135. On this news, shares of BofI fell \$42.87, or 30.2%, to close at \$99.13
6 on October 14, 2015.

7 136. As a result of the Individual Defendants' wrongful acts and omissions,
8 the Company has suffered significant losses and damages.

DAMAGES TO BOFI

9 137. BofI has been, and will continue to be, severely damaged and injured
10 by the Individual Defendants' misconduct.

11 138. As a direct and proximate result of the Individual Defendants' conduct,
12 BofI has expended and will continue to expend significant sums of money. Such
13 expenditures include, but are not limited to:

- 14 (a) legal fees associated with the lawsuits filed against the Company
15 for violations of the federal securities laws and for violation of the anti-
16 retaliation provisions of the Dodd-Frank Act and Sarbanes-Oxley by Mr.
17 Erhart;
- 18 (b) loss of reputation and goodwill, and a "liar's discount" that will
19 plague the Company's stock in the future due to the Individual Defendants'
20 false statements and lack of candor to the marketplace;
- 21 (c) amounts paid to outside lawyers, accountants, and investigators
22 in connection with BofI's internal investigation; and
- 23 (d) loss of revenues and profits due to any subsequent restatements.

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1 DERIVATIVE ALLEGATIONS

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. Garrabrant 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. Garrabrant 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 Garrabrant 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, Garrabrant 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, Garrabrant is interested because he prepared, signed, or
 12 caused the Company to issue many of the false and misleading statements. In fact,
 13 Garrabrant 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, Garrabrant 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

1 involves management or other employees who have a significant role in
2 [Bofi'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 [BofI]”; 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. Garrabrant also participated in conference calls with analysts and
17 investors during the Relevant Period. Garrabrant therefore faces a substantial
18 likelihood of liability for breaching his fiduciary duties. Consequently, Garrabrant
19 cannot disinterestedly consider a demand.

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

1 brushed aside by Garrabrant, 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 Garrabrant, 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
 28

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]

28

1 [REDACTED]
2 [REDACTED]
3 [REDACTED] [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] [REDACTED]
15 [REDACTED]
16 156. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 157. Less than three weeks later, despite having actual knowledge of
24 Erhart's whistleblowing activity, and despite knowing that Dodd-Frank, Sarbanes-
25 Oxley, and other laws prohibit retaliation against employees who report alleged
26 wrongdoing, the Board authorized and approved the firing of Erhart on June 9,
27 2015.

28

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.

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.

28

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,
 28

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
For Breaches of Fiduciary Duties
Against All Defendants

7

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

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

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

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

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

26 172. The Individual Defendants had actual or constructive knowledge that
 27 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.

COUNT II
For Abuse of Control
Against All Defendants

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

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

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

186. Those breaches of duty consisted of the conduct alleged in this
complaint including, without limitation, their conduct in causing the Company to
issue false statements regarding its operations and financial results, misstate the fact
that the Company maintained adequate internal controls, fire whistleblower Erhart
in violation of the Dodd-Frank and Sarbanes-Oxley laws, and cause the Company to
make other false and misleading statements during the Relevant Period. Defendants
benefitted from their wrongdoing because they were allowed to retain their jobs in
exchange for their unlawful conduct and because they received compensation that
was directly tied to the Company’s financial performance, which was greater than it
would have been absent the Defendants’ wrongful conduct.

11 187. The Company was harmed by these Defendants' breaches of the
12 undivided duty of loyalty.

13 188. By reason of the foregoing, the Company was harmed and will
14 continue to suffer harm as described in greater detail above.

PRAYER FOR RELIEF

16 WHEREFORE, Plaintiffs pray for judgment in favor of Plaintiffs and the
17 Company and against all Individual Defendants as follows:

18 A. Declaring that Plaintiffs may maintain this action on behalf of BofI and
19 that Plaintiffs are adequate representatives of the Company;

20 B. Declaring that the Individual Defendants have breached and/or aided
21 and abetted the breaches of their fiduciary duties to BofI;

22 C. Determining and awarding to BofI the damages sustained by it as a
23 result of the violations set forth above from each of the Individual Defendants,
24 jointly and severally, together with pre-judgment and post-judgment interest thereon;

25 D. Directing BofI and the Individual Defendants to take all necessary
26 actions to reform and improve its corporate governance and internal procedures to
27 comply with applicable laws and to protect BofI and its shareholders from a repeat

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

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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.

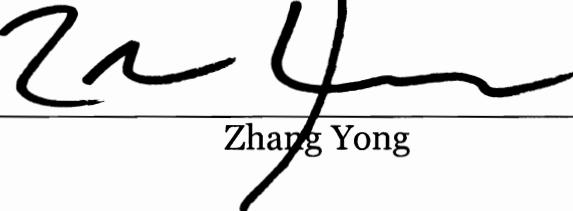


Andrew Calcaterra

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

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

9
10 *Lead Counsel for Plaintiffs*

11
12
13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15
16 IN RE: BOFI HOLDING, INC.) Case No. 15cv2722 GPC (KSC)
17 SHAREHOLDER LITIGATION)
18 _____) **Proof of Service**
19 This Document Relates To:) Date: N/A
20) Time: N/A
21 ALL ACTIONS) Judge: Hon. Gonzalo P. Curiel
22) Courtroom: 2D (Schwartz)
23)
24)
25)
26)
27)
28)

1 I am employed in the County of San Diego. I am over the age of eighteen
2 (18) years and am not a party to the within entitled action. My business address is
3 7817 Ivanhoe Avenue, Suite 102, La Jolla, CA 92037.

4 On August 26, 2016, I served a copy of the following:

5 1. Verified Consolidated Shareholder Derivative Complaint (Redacted)

6 [BY ELECTRONIC ACCESS] I hereby certify that the foregoing
7 document was filed electronically with the Clerk of the Court to be served by
8 operation of the Court's electronic filing system upon all parties on the electronic
9 service list maintained for this case.

10 I declare under penalty of perjury that the foregoing is true and correct.
11 Executed on August 26, 2016 in La Jolla, California.

12
13
14 _____ s/ Francis A. Bottini, Jr.
15 Francis A. Bottini, Jr.
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