

1 Richard M. Heimann (Cal. Bar No. 063607)  
 rheimann@lchb.com  
 2 Katherine C. Lubin (Cal. Bar No. 259826)  
 kbenson@lchb.com  
 3 LIEFF CABRASER HEIMANN &  
 BERNSTEIN, LLP  
 4 275 Battery Street, 29th Floor  
 San Francisco, CA 94111-3339  
 5 Telephone: (415) 956-1000  
 Facsimile: (415) 956-1008  
 6

7 Daniel P. Chiplock (admitted *pro hac vice*)  
 dchiplock@lchb.com  
 8 Michael J. Miarmi (admitted *pro hac vice*)  
 mmiarmi@lchb.com  
 9 LIEFF CABRASER HEIMANN &  
 BERNSTEIN, LLP  
 10 250 Hudson Street, 8th Floor  
 New York, NY 10013-1413  
 Telephone: (212) 355-9500  
 11 Facsimile: (212) 355-9592

12 *Counsel for Lead Plaintiff Houston Municipal*  
 13 *Employees Pension System and Lead Counsel for*  
 14 *the Proposed Class*

15 **UNITED STATES DISTRICT COURT**  
 16 **SOUTHERN DISTRICT OF CALIFORNIA**

17  
 18  
 19 IN RE Bofi HOLDING, INC.  
 20 SECURITIES LITIGATION  
 21  
 22  
 23

Case No. 3:15-cv-02324-GPC-KSC

**CLASS ACTION**

**THIRD AMENDED CLASS  
 ACTION COMPLAINT FOR  
 VIOLATIONS OF THE  
 FEDERAL SECURITIES LAWS**

**DEMAND FOR JURY TRIAL**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. NATURE OF THE ACTION.....	1
II. JURISDICTION AND VENUE.....	10
III. PARTIES.....	11
IV. DEFENDANTS MADE MATERIALLY FALSE AND MISLEADING STATEMENTS RELATING TO BOFI’S INTERNAL CONTROLS, COMPLIANCE INFRASTRUCTURE, AND RISK MANAGEMENT .....	13
A. Statements Relating to Bofi’s Internal Controls, Compliance Infrastructure, and Risk Management.....	13
1. Bofi’s Form 10-Ks.....	14
2. Bofi’s Form 10-Qs.....	15
3. Bofi’s Proxy Statements .....	16
4. SOX Certifications.....	18
5. Bofi’s Form 8-Ks.....	19
6. Bofi’s Investor Presentations.....	19
7. Bofi’s Earnings Conference Calls .....	20
8. Statements Relating to Related Party Loans in Bofi’s Proxy Statements .....	21
B. Bofi’s Ineffective Internal Controls.....	22
1. Bofi’s Internal Controls Were “Non-Existent” and Its Audit Department Inadequately Staffed.....	24
2. Bofi’s Audit Committee and Internal Audit Program Were Materially Inadequate And Often Overridden by Management. ....	26
a. Bofi’s Audit Committee Lacks Independence and Does Not Provide Adequate Oversight. ....	27
b. Bofi’s Violations of the Flood Disaster Protection Act. ....	31
c. Bofi Failed to Adequately Disclose Related-Party Transactions and Related-Party Loans to Audit Committee Members. ....	32

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

**(continued)**

**Page**

3.	BofI Failed To Disclose The Criminal Background Of A Senior Officer and Violations of the FDIA. ....	35
4.	Garrabrants Routinely Intimidated BofI Personnel, Including Members of the Audit Department. ....	37
5.	BofI Falsely Responded to Regulatory Subpoenas and Requests. ....	42
C.	Defendants’ Misrepresentations About the Company’s Internal Controls, Risk Management and Compliance Infrastructure Caused Investors’ Losses .....	42
1.	The Erhart Complaint Reveals BofI’s Inadequate Internal Controls, Risk Management and Compliance Infrastructure.....	43
2.	Additional Disclosures Reveal The Falsity of BofI’s Misrepresentations About Its Internal Controls, Risk Management and Compliance Infrastructure. ....	46
V.	DEFENDANTS MADE MATERIALLY FALSE AND MISLEADING STATEMENTS RELATING TO UNDERWRITING STANDARDS AND CREDIT QUALITY .....	48
A.	Statements Relating to Underwriting Standards and Credit Quality .....	48
B.	BofI Engaged in Unlawful Lending Practices. ....	53
1.	BofI Violated the “Ability-to-Repay” Rule.....	53
2.	BofI Maintained a Deficient Customer-Identification Program and Violated Federal Laws and Regulations. ....	59
a.	BofI’s Deficient Customer Identification Program.....	59
b.	Loans to Foreign Nationals .....	61
c.	Missing or Unverifiable Customer TINs.....	63
3.	BofI Engaged in, and Concealed, Illicit Lending Partnerships.....	64
a.	OnDeck.....	64
b.	Quick Bridge .....	68
c.	Center Street .....	73
d.	Propel Tax .....	75
C.	Defendants’ Misrepresentations About BofI’s Underwriting Standards And Credit Quality Caused Investors’ Losses .....	76

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

**(continued)**

**Page**

VI. DEFENDANTS MADE MATERIALLY FALSE AND MISLEADING STATEMENTS RELATING GOVERNMENT AND REGULATORY INVESTIGATIONS..... 81

    A. Statements Regarding Government and Regulatory Investigations ..... 81

    B. Defendants’ Misrepresentations About Government and Regulatory Investigations Caused Investors’ Losses. .... 85

VII. ADDITIONAL SCIENTER ALLEGATIONS ..... 87

VIII. PLAINTIFF’S CLASS ACTION ALLEGATIONS ..... 89

IX. FRAUD-ON-THE-MARKET PRESUMPTION ..... 90

X. ADDITIONAL CONTROL-PERSON ALLEGATIONS ..... 91

COUNT I (AGAINST BOFI AND GARRABRANTS FOR VIOLATIONS OF SECTION 10(B) OF THE EXCHANGE ACT AND RULE 10B-5 PROMULGATED THEREUNDER)..... 94

COUNT II (VIOLATIONS OF SECTION 20(A) OF THE EXCHANGE ACT AGAINST THE INDIVIDUAL DEFENDANTS)..... 97

PRAYER FOR RELIEF ..... 98

DEMAND FOR TRIAL BY JURY..... 99

1           Lead Plaintiff Houston Municipal Employees Pension System (“Plaintiff” or  
2 “HMEPS”), individually and on behalf of all other entities and individuals  
3 similarly situated, by its undersigned attorneys, alleges the following against BofI  
4 Holding, Inc. (“BofI” or the “Company”) and the other defendants identified below  
5 (collectively, “Defendants”) based on personal knowledge as to itself and its own  
6 acts, and information and belief as to all other matters. Plaintiff’s allegations are  
7 premised on, *inter alia*, the investigation conducted by and through its attorneys,  
8 which includes a review of:

- 9           • public filings with the United States Securities and Exchange Commission  
10           (“SEC”) by BofI, as well as other regulatory and government filings  
11           concerning BofI or related entities, and information obtained through the  
12           Freedom of Information Act (“FOIA”);
- 13           • wire and press releases, public conference calls, and media and news reports  
14           concerning BofI;
- 15           • securities analysts’ reports and advisories about BofI; and
- 16           • pleadings and other documents filed in lawsuits involving BofI, including in  
17           *Charles Matthew Erhart v. BofI Holding Inc., et al.*, No. 3:15-cv-2287-BAS-  
18           NLS (S.D. Cal.) (“Erhart Action”), *BofI Federal Bank v. Charles Matthew*  
19           *Erhart, et al.*, No. 3:15-cv-2353-BAS-NLS (S.D. Cal.), and *In re BofI*  
20           *Holding, Inc. Derivative Litigation*, No. 3:15-cv-2722-GPC-KSC (S.D.  
21           Cal.), as well as related information readily obtainable on the Internet.

22           Plaintiff’s counsel also conducted or caused to be conducted interviews with  
23           former BofI employees, who are identified in this Complaint as confidential  
24           witnesses (“CWs”). Plaintiff believes further substantial evidentiary support will  
25           exist for the allegations set forth in this Complaint after a reasonable opportunity  
26           for discovery.

## 27           **I. NATURE OF THE ACTION**

28           1.       This is a securities fraud class action brought under Sections 10(b)  
and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”), as well as  
SEC Rule 10b-5, on behalf of all individuals and entities who purchased or  
otherwise acquired the publicly traded common stock of BofI between September  
4, 2013 and February 3, 2016, inclusive (the “Class Period”), as well as purchasers

1 of BofI call options and sellers of BofI put options during the Class Period. As  
2 detailed in this Complaint, BofI and those who ran it—particularly its CEO and  
3 President, Gregory Garrabrants—touted BofI’s purportedly effective internal  
4 controls, conservative loan-underwriting standards, and compliance with legal and  
5 regulatory obligations when, in fact, they were routinely overriding BofI’s internal  
6 controls (which former employees described as “non-existent”), engaging in  
7 substandard lending practices, and secretly flouting banking laws and other  
8 directives. When investors ultimately became aware that Defendants were  
9 engaging in this behavior, contrary to numerous statements Defendants had made  
10 during the Class Period, the price of BofI shares declined significantly, and  
11 Plaintiff and other Class members suffered damages.

12 2. BofI is the holding company for BofI Federal Bank (the “Bank”),<sup>1</sup> a  
13 federal savings association that provides consumer and business banking products  
14 through various distribution channels and affinity group partners (such as Costco).  
15 BofI offers various types of consumer and business checking, savings and time-  
16 deposit accounts, as well as financing for single-family and multi-family  
17 residential properties, small-to-medium size businesses in certain sectors, state  
18 lottery prize and structured-settlement annuity payments, and consumer auto and  
19 recreational vehicles.

20 3. Founded in 1999 during the dot-com boom, BofI is not the typical  
21 thrift bank with multiple brick-and-mortar branch locations. Rather, BofI operates  
22 primarily from its headquarters in San Diego, California and relies on various  
23 distribution channels such as banking websites promoting the Company’s “Bank of  
24 Internet,” “NetBank,” “Bank X,” and other brands, relationships with mortgage  
25 brokers, and salespeople, to generate business.

26  
27  
28 <sup>1</sup> References herein to “BofI” include BofI Federal Bank, unless otherwise indicated.

1           4.     BoFI generates fee income from consumer and business products,  
2 including fees from loans it originates for sale and transaction fees from processing  
3 payments on loans it retains. BoFI's loan portfolio also generates interest income.

4           5.     In recent years, BoFI has consistently reported extraordinary growth  
5 and record profitability while other banks faced small and shrinking net interest  
6 margins (the difference between what a bank pays depositors and its loan rates)  
7 amid low interest rates and a flattening yield curve.<sup>2</sup> In the five years leading up to  
8 December 31, 2015, BoFI's total deposits increased nearly 235% to \$5.2 billion  
9 and its total loan portfolio increased more than 270% to \$5.715 billion. BoFI's  
10 earnings also increased year-over-year, from \$20.6 million for its fiscal year  
11 ending June 30, 2011 to \$82.7 million for fiscal year ending June 30, 2015, driven  
12 primarily by growth in the Company's interest-earning loan portfolio. As of  
13 December 30, 2015, approximately 59% of BoFI's loan portfolio consisted of  
14 single-family residential secured mortgages and approximately 21% consisted of  
15 multi-family real estate secured loans.

16           6.     BoFI's stock price also skyrocketed on the Company's purportedly  
17 strong performance. During the Class Period, it reached a high of \$142.54 per  
18 share, or more than 1,100% above its initial public offering price of \$11.50 per  
19 share in 2005.<sup>3</sup>

20           7.     BoFI's success has been attributed to its ability to attract money by  
21 offering relatively high deposit rates and then using the money to make mortgage  
22 loans, often to wealthy borrowers with blemished or no credit history, at high  
23 interest rates. The Company also prides itself on significant cost savings and  
24 operational efficiencies derived from its purported branchless business model, as

25 \_\_\_\_\_  
26 <sup>2</sup> See John Carney, *Fed Stance Squeezes Bank Profits*, *The Wall St. J.*, Sept. 21,  
2015.

27 <sup>3</sup> On or around November 18, 2015, BoFI completed a forward 4:1 stock split and  
28 the stock began trading on a split-adjusted basis. BoFI's stock price in ¶ 6 is  
reported on a pre-split basis. Unless otherwise indicated, all other BoFI references  
in this Complaint to BoFI share prices are adjusted for the stock split.



1 well as low loan losses, which the Company has attributed to its adherence to  
2 conservative loan-underwriting standards, effective internal controls, and its  
3 remarkably low 60% effective weighted average loan-to-value (“LTV”)  
4 percentage—the ratio of the loan amount to the value of the property securing the  
5 loan—across its entire loan portfolio.

6 8. As detailed in this Complaint, however, Defendants’ representations  
7 portraying BofI as a careful, prudent institution masked a troubled entity that  
8 resorted to high-risk lending practices and disregarding internal controls to  
9 fraudulently boost its loan volume and earnings. In doing so, BofI was subject to  
10 substantial regulatory and compliance risk, as well as concealed risk of loss that it  
11 masked in part during the Class Period through the use of undisclosed special  
12 purpose entities (“SPEs”).

13 9. The allegations of troubling conduct at BofI are informed by first-  
14 hand witness accounts by numerous former BofI employees, a number of whom  
15 describe senior management (particularly Garrabrants, either directly or through  
16 his subordinates) as improperly pressuring or directing (a) audit personnel to alter  
17 or bury their reports and findings so as to hide compliance issues from regulators  
18 and (b) lending personnel to approve loans that otherwise would or should not  
19 have been approved.

20 10. For starters, on October 13, 2015, *The New York Times* reported that a  
21 former internal auditor at BofI, Charles Matthew Erhart, had filed an action against  
22 BofI for violating federal laws designed to protect whistleblowers, which alleged  
23 widespread misconduct and a stunning deficiency in internal controls at the  
24 Company. Among other things, Erhart’s complaint (the “Erhart Complaint”)  
25 alleged that (i) BofI’s Chief Executive Officer (Garrabrants) engaged in “grossly  
26 inappropriate” and intimidating contact with audit personnel, combined with  
27 similarly improper pressure tactics by other BofI senior officers, in order to  
28 interfere with the auditors’ independent functions and findings, including by



1 pressuring such personnel not to put their concerns “in writing”; (ii) BofI made  
2 substantial loans to foreign nationals and “politically exposed persons,” in  
3 violation of the Bank Secrecy Act of 1970 (“BSA”); (iii) senior officers (including  
4 Chief Performance Officer Jan Durrans) knowingly presented BofI’s audit  
5 personnel with documents falsely indicating that the Bank’s Fiscal 2015 strategic  
6 plan had been properly and timely approved by the Bank’s Board of Directors; (iv)  
7 BofI compliance personnel found Flood Disaster Protection Act of 1973 (“FDPA”)  
8 issues with 49 out of 51 sample loans reviewed, but BofI purposefully “buried”  
9 and hid from the Office of the Comptroller of the Currency (“OCC”) the  
10 compliance review identifying many of those issues, causing several compliance  
11 employees to quit over the “Bank’s nonexistent culture of compliance”; (v) BofI’s  
12 senior officers directed that “bad” Customer Identification Program (“CIP”)  
13 information from a third-party vendor be withheld from the OCC, and that a  
14 “sanitized” list be generated and produced instead, in contravention of proper audit  
15 practices; (vi) Garrabrants improperly deposited third-party checks into his  
16 personal account; (vii) BofI falsely responded to an SEC subpoena and OCC  
17 request for information concerning customer account information; and (viii)  
18 Jonathan Ball, BofI’s Vice President of Internal Audit and Erhart’s supervisor,  
19 resigned abruptly on March 5, 2015 after refusing Garrabrants’s order “to engage  
20 in what Ball reasonably viewed to be unlawful conduct to cover up the Bank’s  
21 wrongdoing.” Erhart alleged that he “went up the chain of command” in order to  
22 “get the Bank into compliance” concerning these and other issues, only to be  
23 “repeatedly threatened, harassed and ultimately fired” after revealing wrongdoing  
24 at BofI to management as well as the SEC, the OCC, and the U.S. Department of  
25 Labor, Occupational Safety and Health Administration.<sup>4</sup>

26  
27 <sup>4</sup> BofI has responded aggressively to Erhart’s suit, immediately filing a countersuit  
28 of its own against Erhart on October 19, 2015. *BofI Federal Bank v. Erhart*, No.  
15-cv-02353-BAS(NLS) (S.D. Cal.) (“*BofI v. Erhart*”), in which the Bank sought  
direct and consequential damages and “exemplary and punitive damages,” in

1           11. Other former BofI employees confirm that Garrabrants and other  
2 members of senior management routinely overrode the Company’s internal  
3 controls and interfered with employees’ ability to perform their jobs properly.  
4 They also report that the Company’s audit department was chronically  
5 understaffed. In sum, BofI failed to implement adequate internal controls, and  
6 routinely flouted those risk management and compliance procedures it did have,  
7 rendering false and misleading the Bank’s and Garrabrants’s numerous statements  
8 during the Class Period that the Company was committed to “strong risk  
9 management” and regulatory compliance.

10           12. Additional former BofI employees knowledgeable about BofI’s loan-  
11 origination and underwriting activities and operations have recounted to Plaintiff’s  
12 counsel that BofI’s claims that its lending standards were “conservative” and  
13 “disciplined,” and that the Bank was focused on “credit quality,” were false and  
14 misleading when made. These former employees describe BofI’s routine practice  
15 of flouting its own underwriting guidelines and originating risky loans in order to  
16 pad the Bank’s loan origination volume.

17           13. BofI’s improper lending and other practices violated numerous federal  
18 banking regulations and consumer protection laws and subjected the Company to  
19 significant risk of regulatory and government action. For example, the CWs  
20 confirm that BofI (i) issued loans to borrowers whose ability to repay was  
21 demonstrably doubtful, in violation of the Truth-In-Lending Act (“TILA”); (ii)  
22 issued loans to foreign nationals who had criminal or suspicious backgrounds or  
23

---

24 addition to a broad injunction, and moving repeatedly not only to throw Erhart’s  
25 case out of court completely, but also to summarily adjudicate his defenses to  
26 BofI’s countersuit. These efforts to date have failed in their mission to eliminate  
27 Erhart’s suit and destroy him financially, although BofI’s motion for  
28 reconsideration of the Court’s order partially denying summary adjudication of  
Erhart’s defenses is still pending. BofI also aggressively sought to depose Erhart’s  
lawyer, accusing her of acting in concert with shortsellers of BofI and having  
improper communications with a *New York Times* reporter, but that subpoena was  
quashed. See Order Granting Mot. To Quash BofI’s Subpoena to Testify at a  
Deposition (Dkt. No. 86) in *BofI v. Erhart* (filed Mar. 2, 2017).

1 lacked sufficient identifying information, in violation of the BSA; (iii) issued loans  
2 for properties that failed to comply with the FDPA; and (iv) employed a convicted  
3 felon as a senior officer without obtaining a waiver required by the Federal Deposit  
4 Insurance Act (“FDIA”).

5 14. In addition, BofI had undisclosed lending partnerships with a number  
6 of entities such as On Deck Capital, Inc. (“OnDeck”), Quick Bridge Funding LLC  
7 (“Quick Bridge”), Center Street Lending (“Center Street”), and Propel Tax, each  
8 of which engaged in predatory lending or other high risk practices, including  
9 offering “liar loan” products, which resulted in riskier loans and lower credit  
10 quality.

11 15. BofI reaped significant benefits from these lending partnerships,  
12 including millions of dollars in loan-origination fees and the ability to report  
13 growth in its loan originations and overall improved efficiency. However, the  
14 undisclosed lending partnerships with OnDeck and Quick Bridge, in particular,  
15 created significant risks of regulatory actions by the OCC or others against BofI  
16 arising from BofI’s origination of loans pursuant to a “Rent-A-Charter” scheme.  
17 The OCC has publicly condemned and sought to eliminate through enforcement  
18 actions such schemes involving arrangements between non-bank lenders and  
19 national banks, such as BofI, in which the lenders seek to evade state usury laws  
20 by partnering with banks (which are not subject to state law interest rate limits)  
21 and paying them a fee to “rent” their bank charter to make high interest rate loans.

22 16. In addition, the Bank’s undisclosed lending partnership with Quick  
23 Bridge created significant credit risk borne by BofI. BofI originated high interest,  
24 high risk loans brought to it by Quick Bridge, and then sold or assigned the loans  
25 to Quick Bridge or an affiliated entity (collectively, “Quick Bridge”). Because  
26 BofI also provided funding to Quick Bridge to buy those types of loans from BofI,  
27 and those funds were collateralized by the loans Quick Bridge bought from BofI,  
28 BofI ultimately bore the credit risk of the loans defaulting, unbeknownst to

1 investors. Indeed, BofI's lending partnership with Quick Bridge was tantamount  
2 to a Ponzi scheme, because BofI required its lending partners to replace loans  
3 collateralizing the funding BofI provided to them if the loans became delinquent.  
4 BofI did not properly disclose nor account for the risk that its lending partners  
5 would not be able to adequately replace such delinquent loans that collateralized  
6 funding BofI provided to them.

7 17. These lending partners' substandard underwriting standards are at  
8 odds with BofI's statements touting its own high underwriting standards and loan  
9 credit quality throughout the Class Period. BofI's failures to disclose these  
10 relationships and to acknowledge that it was funding loans through partners that  
11 utilized substandard underwriting standards additionally render the Bank's  
12 statements concerning its underwriting standards and credit quality false and  
13 misleading.

14 18. Finally, throughout the Class Period the Bank refused to acknowledge  
15 the presence of nonpublic government investigations of the Company, including  
16 investigations by the OCC and SEC, and that the Company had received  
17 government-issued subpoenas. Indeed, Plaintiff recently obtained (*via* FOIA  
18 request) from the SEC a document confirming that, contrary to Defendants'  
19 express representations to the contrary during the Class Period, BofI was the  
20 subject of SEC investigation no later than May 2015. Furthermore, that  
21 investigation (which was formalized by February 2016) expressly did *not* confirm,  
22 as Defendants falsely represented in a previous court filing in this matter, that  
23 allegations of mismanagement and regulatory violations against BofI were "false."  
24 *See* MPA in Support of Defs. Mot. for Judgment on the Pleadings [Dkt. No. 123-1]  
25 at 14 n.8.<sup>5</sup>

26 \_\_\_\_\_  
27 <sup>5</sup> In its letter to BofI dated June 28, 2017, which Plaintiff only recently obtained  
28 *via* FOIA request, the SEC confirmed that BofI had been the subject of a formal  
investigation, and expressly stated that "the attempted use of [its] communication"  
that its investigation was being concluded "as a purported defense in any action  
that might subsequently be brought against the party, either civilly or criminally,

1           19. The previously undisclosed material facts were revealed to the market  
2 through a series of corrective disclosures beginning on August 28, 2015 and  
3 ending on February 3, 2016, each of which caused the price of BofI shares to  
4 decline significantly.

5           20. Following the revelations in the Erhart Complaint, for instance, the  
6 price of BofI common stock declined \$10.72 per share, or 30.2%, to close at  
7 \$24.78 on October 14, 2015, on extremely high trading volume, for a one-day  
8 market capitalization loss of more than \$675 million.

9           21. BofI's stock price continued to plummet through February 3, 2016,  
10 the last day of the Class Period, as the market learned additional details about  
11 Defendants' prior misrepresentations and omissions. For example, a series of  
12 articles published in late 2015 and early 2016 revealed BofI's substandard  
13 underwriting practices, including its relationships with third-party lenders that  
14 originated loans for the Bank and subjected the Bank to additional regulatory risk.  
15 Additional reports revealed BofI's disregard for internal controls and risk  
16 management procedures, and disclosed conflicts of interest within the Audit  
17 Committee and senior management as a result of related party loans. The market  
18 also learned that BofI was misleading it about the existence of regulatory  
19 investigations into the Bank's practices.

20           22. From the time that the truth about Defendants' wrongful conduct first  
21 emerged until the time the market learned of BofI's true financial condition, the

---

22 **would be clearly inappropriate and improper** since such a communication, at the  
23 most, can mean that, as of its date, the staff of the Commission does not regard  
24 enforcement action as called for based upon whatever information it then has.  
25 Moreover, this conclusion may be based upon various reasons, some of which,  
26 such as workload considerations, **are clearly irrelevant to the merits of any**  
27 **subsequent action.**" (emphases supplied). This did not stop BofI from improperly,  
28 and falsely, representing in its recent motion for judgment on the pleadings in this  
matter that the SEC's June 28, 2017 decision not to recommend enforcement  
action proved the "fals[ity]" of allegations of "mismanagement" and "regulatory  
violations" against it. *See* Dkt. No. 123-1, at 14, n.8. Notably, BofI improperly  
referenced (and mischaracterized) the SEC's June 28, 2017 letter in its motion  
without actually providing a copy to the Court or to Plaintiff by way of a request  
for judicial notice, as is required when citing materials beyond the pleadings.

1 price of BofI common stock declined in a series of material steps from \$30.38 per  
2 share (the closing price on August 27, 2015, one trading day immediately  
3 preceding August 28, 2015), to \$15.92 per share on February 3, 2016, the last day  
4 of the Class Period—*a total decline of over 47.6%*—as the market processed each  
5 set of previously undisclosed facts. Each disclosure and/or materialization of  
6 previously concealed risks removed a portion of the artificial inflation from the  
7 price of BofI’s common stock caused by Defendants’ prior material  
8 misrepresentations and omissions, and directly caused Plaintiff and the Class to  
9 suffer damages.

10 23. Defendants’ misconduct gives rise to (i) claims under Section 10(b) of  
11 the Exchange Act against Defendants BofI and Garrabrants, arising from those  
12 Defendants’ making of false or misleading statements of material fact with  
13 scienter, *i.e.*, knowingly or with deliberately reckless disregard for their falsity and  
14 (ii) claims for “control person liability” under Section 20(a) of the Exchange Act  
15 against Defendants Garrabrants, Micheletti, Grinberg, Mosich, and Argalas  
16 (collectively, the “Individual Defendants”). As this Court has already held,  
17 consistent with Ninth Circuit precedent, establishing a controlling person’s liability  
18 under Section 20(a) does *not* require establishing that person’s scienter distinct  
19 from the controlled corporation’s scienter. Accordingly, because BofI is liable  
20 under Section 10(b), each Individual Defendant is liable as a “controlling person”  
21 of BofI under Section 20(a) regardless of whether he is also liable under Section  
22 10(b).

## 23 **II. JURISDICTION AND VENUE**

24 24. This Court has jurisdiction over the subject matter of this action  
25 pursuant to 28 U.S.C. §§ 1331 and 1337 and Section 27 of the Exchange Act  
26 (15 U.S.C. § 78aa).

27 25. Venue is proper in this District pursuant to Section 27 of the  
28 Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b), as BofI is



1 headquartered in this District and many of the acts and practices complained of in  
2 this Complaint occurred in substantial part in this District.

3 26. In connection with the misconduct alleged in this Complaint,  
4 Defendants, directly or indirectly, used the means and instrumentalities of  
5 interstate commerce, including the United States mails, interstate telephone  
6 communications, and the facilities of the national securities markets.

7 **III. PARTIES**

8 27. By order entered on February 1, 2016, this Court appointed HMEPS  
9 as Lead Plaintiff (Dkt. No. 23). As set forth in its certification filed in connection  
10 with its motion for appointment as Lead Plaintiff (Dkt. No. 12-3 (Ex. B)), HMEPS  
11 purchased BofI common stock during the Class Period and, as a result of  
12 Defendants' misconduct alleged in this Complaint, suffered damages in connection  
13 with those purchases.

14 28. Defendant BofI is a Delaware company that maintains its corporate  
15 headquarters at 4350 La Jolla Village Drive, Suite 140, San Diego, California  
16 92122. Founded in 1999, BofI is the holding company for BofI Federal Bank, a  
17 federally chartered savings association that purportedly operates from its single  
18 location in San Diego. As of December 31, 2015, BofI held \$5.2 billion in  
19 deposits.

20 29. BofI also offers various types of consumer and business loans,  
21 including: (i) Single Family Mortgage Secured Lending—mortgages secured by  
22 first liens on single-family residential properties for consumers and for businesses  
23 (*i.e.*, lender-finance loans), as well as consumer home equity loans secured by  
24 second liens on single-family mortgages; (ii) Multifamily Mortgage Secured  
25 Lending—multi-family residential mortgage loans; and (iii) Commercial Real  
26 Estate Secured and Commercial Lending—loans secured by first liens on  
27 commercial real estate and commercial and industrial (“C&I”) loans based on  
28 business cash flow and asset-backed financing.



1           30. On or around August 31, 2015, BofI closed a purchase-and-  
2 assumption transaction with H&R Block, a federal savings bank, and its parent  
3 company, pursuant to which BofI purchased certain assets and assumed certain  
4 liabilities, including all of H&R Block's deposit liabilities. It also received \$419  
5 million of cash and assumed an equal amount of deposit liabilities and acquired a  
6 small amount of non-cash assets. Additionally, BofI entered into a program-  
7 management agreement with H&R Block under which BofI would provide H&R  
8 Block-branded financial services products through H&R Block's retail and digital  
9 channels.

10           31. BofI's common stock is listed on NASDAQ Global Select Market  
11 under the ticker "BOFI" and is a component of the Russell 2000® Index and the  
12 S&P SmallCap 600® Index.

13           32. Defendant Gregory Garrabrants has served at all relevant times as  
14 President, CEO, and a Director of BofI. He has also served as President, CEO, and  
15 a Director of BofI Federal Bank, and a member of its Board's Credit Committee,  
16 Asset and Liability Committee ("ALCO"), and Operations and Technology  
17 Committee. Garrabrants is an attorney and member of the State Bar of California;  
18 he also has a Master's of Business Administration degree and is a Chartered  
19 Financial Analyst ("CFA").

20           33. Defendant Andrew J. Micheletti has served at all relevant times as the  
21 Company's Executive Vice President and Chief Financial Officer. He is licensed  
22 as a Certified Public Accountant ("CPA") (inactive) in California and has held  
23 various licenses issued by the National Association of Securities Dealers.

24           34. Garrabrants and Micheletti signed Sarbanes-Oxley Act of 2002  
25 ("SOX") certifications accompanying Forms 10-Q and 10-K that BofI filed with  
26 the SEC during the Class Period, and made other false or misleading statements of  
27 material fact to investors, including in press releases issued by BofI and during  
28 BofI conference calls with analysts and investors.

1           35. Defendant Paul J. Grinberg has served at all relevant times as a  
2 member of BofI's Board of Directors and as Chairman of the Board's Audit  
3 Committee, Chairman of the Board's Compensation Committee, and a member of  
4 the Board's Nominating Committee. He also serves as Chairman of the Audit  
5 Committee of the Board of Directors of BofI Federal Bank. Grinberg is a former  
6 partner of Deloitte & Touche LLP and has an MBA degree and a bachelor's degree  
7 in accounting. He is also licensed as a CPA in New York.

8           36. Defendant Nicholas A. Mosich has at all relevant times served as Vice  
9 Chairman of BofI's Board of Directors and as member of the Board's Audit  
10 Committee. He also serves as a member of the Audit Committee, the ALCO, the  
11 Credit, and the Operations and Technology Committees of the Board of Directors  
12 of BofI Federal Bank, and holds an MBA.

13           37. Defendant James S. Argalas has at all relevant times served as a  
14 member of BofI's Board of Directors and as a member of the Board's Audit  
15 Committee. He also serves as a member of the Audit Committee and the Internal  
16 Assets Review Committee of the Board of Directors of BofI Federal Bank, and  
17 holds an MBA.

18 **IV. DEFENDANTS MADE MATERIALLY FALSE AND MISLEADING**  
19 **STATEMENTS RELATING TO BOFI'S INTERNAL CONTROLS,**  
20 **COMPLIANCE INFRASTRUCTURE, AND RISK MANAGEMENT**

21 **A. Statements Relating to BofI's Internal Controls, Compliance**  
22 **Infrastructure, and Risk Management**

23           38. Throughout the Class Period, Defendants made numerous false and  
24 misleading statements that BofI had adequate internal controls over financial  
25 reporting, and was committed to risk management and establishing an adequate  
26 compliance infrastructure. The truth, as described further below, was that BofI  
27 violated banking laws and regulations requiring banks to establish and maintain  
28 effective internal controls. Specifically, Defendants' statements were false and  
misleading when made because Defendants knew, but failed to disclose, that: (i)

1 BofI's internal controls were deficient (indeed, former employees described them  
 2 as "non-existent") and its Audit department was inadequately staffed; (ii) BofI's  
 3 Audit Committee and internal audit program were materially inadequate and the  
 4 Audit Committee lacked independence; (iii) BofI's Audit Committee members  
 5 suffered from conflicts of interest by having benefitted from related-party loans  
 6 from BofI on favorable terms; (iv) BofI failed to disclose the criminal background  
 7 of a senior officer and violated the FDIA; (v) Garrabrants and other senior officers  
 8 routinely intimidated BofI personnel, including Audit department members, and  
 9 interfered with audit functions; and (vi) BofI falsely responded to regulatory  
 10 subpoenas and requests.

11 **1. BofI's Form 10-Ks**

12 39. BofI's Form 10-K for the period ending June 30, 2014 ("2014 Form  
 13 10-K") contained the following statements:

14 Standards for Safety and Soundness. The federal banking regulatory  
 15 agencies have prescribed, by regulation, guidelines for all insured  
 16 depository institutions relating to: (i) ***internal controls, information  
 17 systems and internal audit systems***; (ii) loan documentation; (iii)  
 18 credit underwriting; (iv) interest rate risk exposure; (v) asset growth;  
 19 (vi) asset quality; (vii) earnings; and (viii) compensation, fees and  
 20 benefits. ***The guidelines set forth safety and soundness standards  
 21 that the federal banking regulatory agencies use to identify and  
 22 address problems at FDIC member institutions before capital  
 23 becomes impaired.*** If the OCC determines that the Bank fails to meet  
 24 any standard prescribed by the guidelines, the OCC may require us to  
 25 submit to it an acceptable plan to achieve compliance with the  
 26 standard. OCC regulations establish deadlines for the submission and  
 27 review of such safety and soundness compliance plans in response to  
 28 any such determination. We are not aware of any conditions relating  
 to these safety and soundness standards that would require us to  
 submit a plan of compliance to the OCC.

23 Item 9A. Controls and Procedures. Evaluation of Disclosure Controls  
 24 and Procedures. Our management, under supervision and with the  
 25 participation of the Chief Executive Officer and the Chief Financial  
 26 Officer, evaluated the effectiveness of our disclosure controls and  
 27 procedures, as defined under Exchange Act Rule 13a-15(e). ***Based  
 28 upon this evaluation, the Chief Executive Officer and Chief  
 Financial Officer concluded that, as of June 30, 2014, the  
 disclosure controls and procedures were effective*** to ensure that  
 information required to be disclosed in the Company's Exchange Act

<sup>6</sup> Unless otherwise specified, all emphases to quoted excerpts herein are supplied.

1 reports is recorded, processed, summarized and reported within the  
 2 time periods specified in the Securities Exchange Commission's rules  
 and forms, and that such information is accumulated and  
 3 communicated to our management, including the Chief Executive  
 Officer and Chief Financial Officer, as appropriate, to allow timely  
 4 decisions regarding required disclosure.

5 Management's Report On Internal Control Over Financial Reporting.  
***Management is responsible for establishing and maintaining***  
***adequate internal control over financial reporting.*** Internal control  
 6 over financial reporting is defined in Rule 13a-15 (1) promulgated  
 under the Securities Exchange Act of 1934 as a process designed by,  
 7 or under the supervision of; our principal executive and principal  
 financial officers and effected by the board of directors, management  
 8 and other personnel, to provide reasonable assurance regarding the  
 reliability of financial reporting and the preparation of financial  
 9 statements for external purposes in accordance with U.S. generally  
 accepted accounting principles and includes those policies and  
 10 procedures that:

- 11 • Pertain to the maintenance of records that in reasonable detail  
 accurately and fairly reflect the transactions of our assets;
- 12 • Provide reasonable assurance that transactions are recorded as  
 13 necessary to permit preparation of financial statements in  
 accordance with U.S. generally accepted accounting principles,  
 14 and that our receipts and expenditures are being made only in  
 accordance with authorizations of our management and  
 15 directors; and
- 16 • Provide reasonable assurance regarding prevention or timely  
 17 detection of unauthorized acquisition, use or disposition of our  
 assets that could have a material effect on the financial  
 18 statements.

19 40. BofI's Form 10-K for the period ended June 30, 2015 ("2015 Form  
 20 10-K") contained these same disclosures.<sup>7</sup>

## 21 **2. BofI's Form 10-Qs**

22 41. BofI's Form 10-Q filed September 30, 2013 contained the following  
 23 statement concerning BofI's internal controls:

24 **ITEM 4. CONTROLS AND PROCEDURES.** The Company's  
 25 management, with the participation of its Chief Executive Officer and  
 Chief Financial Officer, ***conducted an evaluation of the effectiveness***  
 26 ***of the design and operation of the Company's disclosure controls***  
***and procedures***, pursuant to Exchange Act Rule 13a-15(e). ***Based***

27 <sup>7</sup> For clarity and brevity, Plaintiff has included examples of false and misleading  
 28 statements in the body of the Complaint. A complete list of Defendants' alleged  
 false and misleading statements appears in the accompanying Appendix.

1 *upon that evaluation, our Chief Executive Officer along with our*  
 2 *Chief Financial Officer concluded that, as of the end of the period*  
 3 *covered by this report, the Company's disclosure controls and*  
 4 *procedures were effective* to ensure that information required to be  
 5 disclosed by the Company in reports that it files or submits under the  
 6 Exchange Act is recorded, processed, summarized and reported within  
 7 the time periods specified by the Securities and Exchange  
 8 Commission's rules and forms, and that such information is  
 9 accumulated and communicated to our management, including our  
 10 Chief Executive Officer and Chief Financial Officer, as appropriate,  
 11 to allow timely decisions regarding required disclosure.

12 There were no changes in the Company's internal control over  
 13 financial reporting that occurred during the quarter ended September  
 14 30, 2013 that have materially affected, or are reasonably likely to  
 15 materially affect our internal control over financial reporting.

16 42. BofI's Form 10-Qs for the periods ending December 31, 2013, March  
 17 31, 2014, September 30, 2014, December 31, 2014, March 21, 2015, September  
 18 30, 2015, and December 31, 2015 contained the same statements. *See App'x at*  
 19 Section I.

### 20 3. BofI's Proxy Statements

21 43. The Proxy Statements (Form DEF 14A) contained the following  
 22 statements about BofI's internal controls:

- 23 • "The Board's Role in Risk Oversight. . . the Audit Committee  
 24 primarily oversees those risks that may directly or indirectly  
 25 impact our financial statements, including the areas of financial  
 26 reporting, *internal controls* and compliance with public  
 27 reporting requirements . . ."
- 28 • "Report of the Audit Committee . . . The primary  
 responsibilities of the Audit Committee are to oversee and  
 monitor the integrity of the Company's financial reporting  
 process, financial statements and *systems of internal controls*;  
 the Company's compliance with legal and regulatory  
 requirements; the independent auditor's qualifications,  
 independence and performance; and the *performance of the*  
*Company's internal audit function.*"

44. These statements appeared in BofI's Proxy Statements dated  
 September 9, 2013 ("2013 Proxy Statement"), September 8, 2014 ("2014 Proxy  
 Statement"), and September 4, 2015 ("2015 Proxy Statement"). The Proxy  
 Statements were signed by Garrabrants, and the Report of the Audit Committee

1 contained therein was signed by Defendants Grinberg, Argalas, and Mosich. *See*  
2 App'x at Section I.

3 45. The Proxy Statements also included a statement explaining that “[t]he  
4 Audit Committee operates under a written charter adopted by the Board of  
5 Directors.” The Audit Committee Charter, available on BofI’s website, sets forth  
6 the duties and responsibilities of the Audit Committee as follows, in relevant part:

7 1. Review available policies and procedures adopted by the  
8 Company to fulfill its responsibilities regarding the fair and accurate  
9 presentation of financial statements in accordance with generally  
10 accepted accounting principles and applicable rules and regulations of  
the Securities and Exchange Commission (SEC) and the Financial  
Industry Regulatory Authority (FINRA) applicable to Nasdaq-listed  
issuers;

11 2. Oversee the Company’s accounting and financial reporting  
12 process;

13 \* \* \*

14 6. Confirm that the Company’s principal executive officer and  
15 principal financial officers are satisfying the certification  
16 requirements of Sections 302 and 906 of the Sarbanes-Oxley Act;  
17 *review disclosure made to the Audit Committee by the CEO and  
CFO about significant deficiencies and material weaknesses in the  
design or operation of internal control over financial reporting and  
any fraud involving management or other employees who have a  
role in the Company’s internal control over financial reporting;*

18 \* \* \*

19 19. Review the Company’s annual audited financial statements  
20 with management, including a review of major issues regarding  
21 accounting and auditing principles and practices, *and evaluate the  
adequacy and effectiveness of the Company’s disclosure controls  
and procedures and management’s reports thereon;*

22 \* \* \*

23 22. Review the significant reports to management prepared by the  
24 Company’s internal auditing department and management’s  
responses;

25 \* \* \*

26 25. Establish procedures for: (a) the receipt, retention and treatment  
27 of complaints received by the Company regarding accounting,  
28 *internal accounting controls* or auditing matters; and (b) the  
confidential, anonymous submission by employees of the Company of  
*concerns regarding questionable accounting or auditing matters;*



1 26. Review reports prepared by Management concerning all related  
2 party transactions for potential conflicts of interest situations on an  
3 ongoing basis and approve all such transactions (if such transactions  
4 are not approved by another independent body of the Board)

4 **4. SOX Certifications**

5 46. Throughout the Class Period, BofI's filings with the SEC included  
6 certifications pursuant to Sections 302 and 906 of SOX by Defendants Garrabrants  
7 and Micheletti. The Section 302 certifications were identical but for Defendants'  
8 names and titles listed therein, and provided as follows, in pertinent part:

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

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

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

17 47. The Section 906 certifications were also identical but for Defendants'  
18 names and titles listed therein and stated, with respect to each Defendant, that "to  
19 the best of my knowledge":

20 (a) the [Form 10-K] Report fully complies with the requirements of  
21 Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

21 (b) the information contained in the Report fairly presents, in all  
22 material respects, the financial condition and results of operations of  
23 the Company.

23 48. These SOX certifications were included with the Company's 10-Q  
24 and 10-K filings during the Class Period.<sup>8</sup>

25 \_\_\_\_\_  
26 <sup>8</sup> Specifically, these certifications were filed with BofI's 2013, 2014, and 2015  
27 Form 10-Ks, BofI's Form 10-Q for the Quarterly Period ended September 30,  
28 2013 (filed on November 5, 2013), Form 10-Q For the Quarterly Period ended  
December 31, 2013 (filed on February 5, 2014), Form 10-Q for the Quarterly  
Period ended March 31, 2014 (filed on May 6, 2014), Form 10-Q for the Quarterly  
Period ended September 30, 2014 (filed on November 4, 2014), Form 10-Q for the



1                   **5.     Boff's Form 8-Ks**

2           49.     Boff's Form 8-Ks during the Class Period contained the following  
3 statement about Boff's internal controls. These statements appeared in Boff's  
4 Form 8-Ks dated July 22, 2014 and February 23, 2015:

5           (15) Disclosure Controls and Procedures; Internal Controls. *The*  
6 *Company and the Significant Subsidiaries have established and*  
7 *maintain disclosure controls and procedures* (as such term is defined  
8 in Rule 13a-15 and 15d-15 under the Exchange Act); such disclosure  
9 controls and procedures are designed to ensure that material  
10 information relating to the Company and the Significant Subsidiaries is  
11 made known to the Company's Chief Executive Officer and its Chief  
12 Financial Officer by others within those entities, *and such disclosure*  
13 *controls and procedures are effective to perform the functions for*  
14 *which they were established*; the Company's auditors and the Audit  
15 Committee of the Board of Directors have been advised of: (i) any  
16 significant deficiencies in the design or operation of internal controls  
17 which could adversely affect the Company's ability to record, process,  
18 summarize, and report financial data; and (ii) *any fraud, whether or*  
*not material, that involves management or other employees of the*  
*Company who have a role in the Company's internal controls* and  
any fraud that is material or known to the Company that involves  
persons other than management or employees of the Company who  
have a role in the Company's internal controls; *any material weakness*  
*or other material significant deficiency in internal controls have*  
*been identified for the Company's auditors and disclosed in the*  
*Registration Statement and the Prospectus*; and *since the date of the*  
*most recent evaluation of such disclosure controls and procedures,*  
*there have been no significant changes in internal controls or in*  
*other factors that could significantly affect internal controls,*  
*including any corrective actions with regard to any material*  
*weakness or significant deficiency.*

19                   **6.     Boff's Investor Presentations**

20           50.     Throughout the Class Period, Garrabrants and Micheletti gave  
21 investor presentations in connection with the release of quarterly and yearly  
22 earnings. In each of those investor presentations, Garrabrants and Micheletti made  
23 the following statement about Boff's internal controls and risk management  
24 systems:

25  
26  
27           Quarterly Period ended December 31, 2014 (filed on January 29, 2015), Form 10-  
28           Q for the Quarterly Period ended March 31, 2015 (filed on April 30, 2015), Form  
          10-Q for the Quarterly Period ended September 30, 2015 (filed on October 29,  
          2015), and Form 10-Q for the Quarterly Period ended December 31, 2015 (filed on  
          January 28, 2016). *See App'x at Section I.*

- 1 • BofI’s “[r]obust risk management systems and culture has resulted in lower  
2 credit, counterparty and regulatory risks.”<sup>9</sup>

3 **7. BofI’s Earnings Conference Calls**

4 51. Throughout the Class Period, Garrabrants and Micheletti made  
5 statements about BofI’s internal controls, compliance infrastructure, and risk  
6 management during earnings conference calls, including the following:<sup>10</sup>

- 7 • “We continue to make investments in our people, systems, and  
8 processes to ensure that we will appropriately manage our risk, and  
9 remain on sound regulatory footing as we enjoy the continued success  
10 of what we believe is the right business banking model for the future.”
- 11 • “We have made significant investments in our overall compliance  
12 infrastructure over the past several quarters, including BSA and AML  
13 [“Anti-Money Laundering”] compliance. We believe that we are on  
14 the same page with our regulators about their expectations[.]”
- 15 • “We have spent a significant amount of money on BSA/AML  
16 compliance upgrades and new systems and new personnel. We have  
17 also been beefing up our compliance teams.”
- 18 • “But we want to make sure we stay ahead of our risk management  
19 needs and make sure that certainly we stay out of BSA trouble and  
20 things like that.”
- 21 • “[A]s our regulators always say, we have to make sure that we have  
22 the risk management, ahead of growth and those sorts of things and  
23 we’re very focused on that[.]”
- 24 • “[w]e are working hard to maintain our culture of continuous  
25 improvement, strong risk management, process orientation and  
26 disciplined capital allocation. . . . Our risk infrastructure is more  
27 mature and more capable and we will continue to invest to ensure that  
28 we maintain our strong regulatory relationships and ensure that we are  
operating the bank in a risk conscious manner.”
- “We have a culture that focuses very strongly on ethics[.]”

52. The above statements concerning BofI’s internal controls, risk  
management and compliance infrastructure in BofI’s SEC filings, investor  
presentations, and earnings conference calls were false and misleading because

<sup>9</sup> This statement appeared in BofI’s Investor Presentations dated December 2013, January 2014, February 2014, March 2014, May 2014, July 2014, September 2014, December 2014, February 2015, March 2015, August 2015, September 2015, November 2015, December 2015, and February 2016. See App’x at Section I.

<sup>10</sup> Additional substantially similar statements appear in Appendix at Section I.

1 Defendants knew, but failed to disclose, that: (i) BofI's internal controls were  
 2 deficient (indeed, former employees described them as "non-existent") and its  
 3 Audit department was inadequately staffed; (ii) BofI's Audit Committee and  
 4 internal audit program were materially inadequate and the Audit Committee lacked  
 5 independence; (iii) BofI's Audit Committee members suffered from conflicts of  
 6 interest by having benefitted from related-party loans from BofI on favorable  
 7 terms; (iv) BofI failed to disclose the criminal background of a senior officer and  
 8 violated the FDIA (indicating a lack of internal controls); (v) Garrabrants and other  
 9 senior officers routinely intimidated BofI personnel, including Audit department  
 10 members, and interfered with audit functions; and (vi) BofI falsely responded to  
 11 regulatory subpoenas and requests.

12 **8. Statements Relating to Related Party Loans in BofI's Proxy**  
 13 **Statements**

14 53. BofI's Proxy Statements during the Class Period described the  
 15 Company's policy and procedures on related party transactions, which includes an  
 16 evaluation of "whether it is on terms no less favorable than terms generally  
 17 available to an unaffiliated third-party under the same or similar circumstances."  
 18 BofI represented:<sup>11</sup>

19 **Related Party Transaction Policy and Procedures**

20 Pursuant to the Company's Related Party Transaction Policy and  
 21 Procedures, the Company's Board of Directors is responsible for  
 22 reviewing and approving or ratifying all related party transactions that  
 23 are subject to such policy. This policy applies to certain transactions  
 24 involving over \$100,000 in any calendar year with related parties,  
 25 which includes our officers, directors and director nominees, and  
 26 members of their immediate family. The policy also applies to certain  
 27 transactions with Company stockholders who own more than 5% of  
 the Company's stock. In determining whether to approve or ratify a  
 related party transaction, the Board of Directors will take into account  
 material facts of the transaction, ***including whether it is on terms no  
 less favorable than terms generally available to an unaffiliated  
 third-party under the same or similar circumstances***, and the extent  
 of the related party's interest in the transaction.

28 <sup>11</sup> This statement appeared in BofI's 2013, 2014 and 2015 Proxy Statements. See App'x at Section II.

1           54. In the 2015 Proxy Statement in particular, BofI went on to represent  
2 that it made \$12.5 million in loans to directors, principal officers and their  
3 affiliates and described these and other related party loans as follows:

4           In the ordinary course of its business and subject to applicable  
5 banking regulations, the Bank makes loans to and engages in other  
6 banking transactions with its directors, officers and employees and  
7 their associates. *Such loans and other banking transactions are  
8 generally made on the same terms as those prevailing at the time for  
9 comparable transactions with persons of comparable  
10 creditworthiness that have no affiliation with the Company or the  
11 Bank. Loans are made only to persons affiliated with the Company  
12 and the Bank if they do not involve more than the normal risk of  
13 collectibility of loans made to non-affiliated persons and if they do  
14 not present any other unfavorable features.*

15           55. The statements regarding related party loans from the 2013, 2014 and  
16 2015 Proxy Statements, in particular, were false and misleading when made  
17 because, as described in Section IV.B.2.c *infra*, Defendants knew, but failed to  
18 disclose, that the related-party loans were not made on the same terms as those  
19 generally prevailing at the time for comparable transactions with non-affiliated  
20 persons, and that related-party loans to members of management and the Audit  
21 Committee created conflicts of interest that imperiled the Bank's internal controls.

22           **B. BofI's Ineffective Internal Controls**

23           56. Contrary to Defendants' representations cited above, BofI, including  
24 members of senior management, failed to implement and enforce adequate internal  
25 controls at the Company, and systematically disregarded whatever internal controls  
26 were ostensibly in place. In doing so, BofI violated the following banking laws  
27 and regulations requiring banks to establish and maintain effective internal  
28 controls: 12 C.F.R. § 30, Safety and Soundness Standards; 12 C.F.R. § 363,  
Annual Independent Audits and Reporting Requirements; and Section 13 of the  
Exchange Act. Further, Defendants' failure to maintain proper internal controls—  
as with the other misconduct alleged in this Complaint—undermined their  
portrayal to investors of BofI as an institution committed to sound business

1 practices that minimized risk. Defendants’ statements concerning the Bank’s  
2 internal controls and compliance infrastructure during the Class Period, as  
3 specified above, were accordingly false and misleading.

4 57. 12 C.F.R. § 30.2 provides that Section 39 of the FDIA requires the  
5 OCC to establish safety and soundness standards. Those standards are set forth in  
6 Appendix A to Part 30, and establish certain managerial and operational standards  
7 for all insured national banks, including standards for internal controls.  
8 Specifically, Appendix A provides, in relevant part, that a bank should have  
9 internal controls that are appropriate to the bank’s size and the nature, scope, and  
10 risk of its activities, and that provide for, among other things, “effective risk  
11 assessment” and “compliance with applicable laws and regulations.”<sup>12</sup>  
12 12 C.F.R. § 363, Annual Independent Audits and Reporting Requirements,  
13 mandates that banks with more than \$500 million in total assets must submit an  
14 annual report to the OCC and the FDIC that includes a report describing  
15 management’s role in “establishing and maintaining internal controls,”  
16 “management’s assessment of the effectiveness of the bank’s internal control [and]  
17 “the bank’s compliance with designated laws and regulations . . .” (Internal  
18 Control Handbook at 4).

19 58. Section 13 of the Exchange Act concerning “Periodical and Other  
20 Reports,” 15 U.S.C. § 78m, requires companies with registered securities develop  
21 and maintain a system of internal accounting controls that ensure, among other  
22 things, that “[t]ransactions are executed in accordance with management’s general  
23 or specific authorization.” (Internal Control Handbook at 4-5); 15 U.S.C.  
24 § 78m(b)(2).

25  
26  
27 <sup>12</sup> See Internal Control, Comptroller’s Handbook at 3, January 2001 (the “Internal  
28 Control Handbook”), available at <http://www.occ.gov/publications/publications-by-type/comptrollers-handbook/intcntrl.pdf>.

1                   **1. BofI’s Internal Controls Were “Non-Existent” and Its**  
2                   **Audit Department Inadequately Staffed.**

3                   59. Several BofI former employees related that BofI’s internal controls  
4 were woefully deficient or non-existent. According to CW 5, a former BofI officer  
5 who worked in the Company’s San Diego headquarters and left shortly before the  
6 Class Period (“CW 5”), and who reported directly to Garrabrants, “internal  
7 controls were whatever Greg [Garrabrants] wanted them to be. . . We have internal  
8 controls on paper, but were they ever followed? No.” CW 5 indicated that  
9 Garrabrants disregarded internal control protocols and was more concerned about  
10 BofI reaching performance targets and that some numbers were changed to reach  
11 performance targets. CW 5 described BofI’s internal controls as the worst CW 5  
12 had ever seen. CW 5 also indicated that BofI’s Compliance department was  
13 staffed with only one person.

14                   60. A former BSA and Third Party Risk Officer who worked at BofI’s  
15 San Diego headquarters prior to and during part of the Class Period (“CW 3”)  
16 described the BSA and Third Party Risk Department Team CW 3 oversaw as  
17 consisting of only three people during CW 3’s tenure at BofI. CW 3 was also  
18 responsible for development of bank staff and remediation of regulatory issues of  
19 BSA examinations and internal audits. CW 3 reported to John Tolla (BofI’s Chief  
20 Governance Risk and Compliance Officer and Senior Vice President, Compliance  
21 and Audit) during CW 3’s last four to five months working at BofI.

22                   61. CW 3 related that CW 3 attended a meeting a couple of weeks after  
23 CW 3 joined BofI at which 10 to 12 other people were present, including  
24 Garrabrants and other BofI executives. CW 3 related that during the meeting,  
25 Garrabrants introduced CW 3 and said that CW 3’s tombstone is going to read  
26 “[CW 3] died understaffed.” According to CW 3, Garrabrants’s comment was in  
27 response to CW 3’s assertion that CW 3 needed a lot more people in the BSA  
28 department because of the risk Garrabrants was causing BofI to take on.



1           62. A former BofI Lending Compliance Officer who worked in the  
2 Company’s San Diego headquarters prior to and during part of the Class Period  
3 (“CW 7”), and who previously worked as an FDIC auditor and compliance  
4 examiner, described BofI’s internal controls as “non-existent.”

5           63. A former BofI Chief Information Security Officer and Bank Security  
6 Officer who worked at BofI’s San Diego headquarters prior to and during part of  
7 the Class Period (“CW 8”), and reported to BofI’s Chief Operating Officer/Head of  
8 Technology and Information Systems Adrian Van Zyl until early 2014 and then to  
9 Jan Durrans, stated that BofI’s internal controls “weren’t as important as making  
10 the money.” CW 8 related that CW 8 attended senior staff meetings with  
11 Garrabrants and other BofI employees at the Senior Vice President level or higher  
12 and that BofI’s executive management made it very clear that their purpose in life  
13 was to make money and ensured that all of BofI’s numbers “created the right  
14 numbers.” According to CW 8, BofI’s management was constantly concerned  
15 with how BofI’s Form 10-K or Form 10-Q appeared and made decisions based on  
16 those concerns.

17           64. A former BofI senior accounting officer who worked in the  
18 Company’s San Diego headquarters just prior to the Class Period and who reported  
19 to Garrabrants (“CW 9”) described Garrabrants as “very heavy handed” in  
20 managing certain aspects of CW 9’s department, including restructuring the  
21 department and reassigning personnel without explanation to CW 9. CW 9  
22 indicated that CW 9’s department was short-staffed and Garrabrants did not allow  
23 CW 9 to hire additional personnel.

24  
25  
26  
27  
28



1                   2.     **BoFI’s Audit Committee and Internal Audit Program Were**  
2                                   **Materially Inadequate And Often Overridden by**  
3                                   **Management.**

4                   65.     Defendants failed to establish, maintain, and operate an effective  
5     Audit Committee and audit programs at BoFI as required by numerous federal laws  
6     and regulations.<sup>13</sup>

7                   66.     The Comptroller’s Handbook on Internal and External Audits (the  
8     “Audit Handbook”), issued by the OCC, provides important guidance on effective  
9     audit functions based on those laws and regulations.<sup>14</sup> The Audit Handbook (at 5)  
10    provides that a bank’s board of directors has non-delegable responsibilities for  
11    establishing, overseeing, and maintaining audit functions. With respect to a bank’s  
12    audit committee, the Audit Handbook notes that 12 C.F.R. § 363 requires national  
13    banks with more than \$500 million in assets (such as BoFI) to have an audit  
14    committee consisting entirely of outside directors that are independent of bank  
15    management, and that SOX and the Exchange Act impose specific requirements on  
16    audit committees aimed at strengthening their independence, effectiveness, and  
17    accountability. With respect to internal auditors, the OCC explains that their  
18    primary role is “to independently and objectively review and evaluate bank  
19    activities to maintain or improve the efficiency and effectiveness of a bank’s risk  
20    management, internal controls, and corporate governance.” The OCC emphasizes  
21    that internal auditors “must be independent of the activities they audit so that they

22                   <sup>13</sup> The following are the relevant regulations establishing minimum requirements  
23    for internal and external audit programs: 12 C.F.R. § 9, Fiduciary Activities of  
24    National Banks (requiring annual audit for national banks acting as fiduciaries); 12  
25    C.F.R. § 21.21, BSA Compliance (requiring a BSA compliance program); 12  
26    C.F.R. § 30, Safety and Soundness Standards (establishing operational and  
27    managerial standards for internal audit systems for insured national banks); 12  
28    C.F.R. § 363 (establishing requirements for independent financial statement audits;  
29    board of directors’ audit committee structure and responsibilities); 12 C.F.R. §§  
30    210, 228, 229, and 240 (S.E.C. regulations establishing requirements for, among  
31    other things, independent financial statement audits, qualifications, responsibilities,  
32    and disclosures of audit committees); and SOX (addressing auditor independence).

33                   <sup>14</sup> See Internal and External Audits, Comptroller’s Handbook, Apr. 2003, available  
34    at [http://www.occ.treas.gov/publications/publications-by-type/comptrollers-](http://www.occ.treas.gov/publications/publications-by-type/comptrollers-handbook/2003AuditHB.pdf)  
35    [handbook/2003AuditHB.pdf](http://www.occ.treas.gov/publications/publications-by-type/comptrollers-handbook/2003AuditHB.pdf).

1 can carry out their work freely and objectively” and “render impartial and unbiased  
 2 judgments.” (*Id.* at 23). Accordingly, the bank’s “chief financial officer,  
 3 controller, or other similar positions”—including, of course, the CEO—“should  
 4 generally be excluded from overseeing the internal audit activities[.]” (*Id.* at 14).  
 5 The OCC’s guidance is consistent with the “Interagency Policy Statement On  
 6 External Auditing Programs of Banks and Savings Associations” on the FDIC’s  
 7 website which provides, in relevant part, that “[b]oth the staff performing an  
 8 internal audit function and the independent public accountant or other external  
 9 auditor should have unrestricted access to the board or audit committee without the  
 10 need for any prior management knowledge or approval.”<sup>15</sup>

11 67. BofI’s Audit Committee, which consists of three members—  
 12 Defendants Grinberg (Audit Committee Chair), Argalas, and Mosich—failed to  
 13 oversee and maintain audit functions at BofI. Each member suffered conflicts of  
 14 interest by having benefitted from undisclosed BofI loans issued to them on terms  
 15 far more favorable than the terms available to borrowers unaffiliated with BofI.  
 16 Further, BofI’s internal audit function was ineffective because Garrabrants and  
 17 other senior executives interfered with the Company’s internal audit function and  
 18 BofI’s internal audit department was significantly understaffed.

19 a. **BofI’s Audit Committee Lacks Independence and**  
 20 **Does Not Provide Adequate Oversight.**

21 68. BofI’s internal controls and risk management procedures were  
 22 inadequate as a result of the Audit Committee’s lack of independence and  
 23 Garrabrants’s improper meddling in the Committee’s activities.

24 69. Erhart revealed in a court-filed declaration that in a discussion with  
 25 Jonathan Ball during his employment at BofI, Ball said to Erhart that the “real  
 26

27 <sup>15</sup> See FDIC’s “Interagency Policy Statement On External Auditing Programs of  
 28 Banks and Savings Associations,” *available at*  
[https://www.fdic.gov/regulations/laws/rules/5000-2400.html#fdicfoot3\\_3\\_link](https://www.fdic.gov/regulations/laws/rules/5000-2400.html#fdicfoot3_3_link).

1 problem is that the Audit Committee is not independent.”<sup>16</sup> (Erhart Decl. ¶ 6).

2 According to Erhart, Ball told him that he would no longer address key issues over  
3 the phone during Audit Committee meetings because on at least one occasion,  
4 unbeknownst to Ball, Garrabrants listened in on the call and chimed in. (*Id.*).

5 70. CW 5 similarly recalled that Garrabrants often interfered with the  
6 Audit Committee’s duties. Garrabrants also ignored internal audit personnel’s  
7 findings and warnings about BofI’s policies concerning depositing third party  
8 checks. For example, Erhart, who had conducted another audit in early 2015 of  
9 senior management’s personal accounts at BofI, “discovered that CEO Gregory  
10 Garrabrants was depositing third-party checks for structured settlement annuity  
11 payments into a personal account, including nearly \$100,000 in checks made  
12 payable to third parties.” (Erhart Compl. ¶ 44).

13 71. Erhart documented his findings in a memorandum to Jonathan Ball  
14 dated January 20, 2015. (*Id.*). Erhart also confronted Ball about Garrabrants’s  
15 deposits of third-party checks, to which Ball responded, “Is he still doing that? He  
16 was supposed to stop.” (Erhart Decl. ¶ 45).

17 72. Erhart “also learned that the issue of Mr. Garrabrants’s depositing of  
18 third-party checks had previously been raised to the Audit Committee before he  
19 started working at the Bank, and that restrictions were imposed on him.” (Erhart  
20 Compl. ¶ 44). Erhart was concerned Garrabrants may have been evading taxes.  
21 (*Id.*)

22 73. CW 7 recounted an instance in which Garrabrants and other senior  
23 managers falsified audit reports provided to OCC examiners. CW 7 related that  
24 CW 7 and another auditor worked on an audit of BofI’s Fair Lending Program in  
25 the fall of 2013 in anticipation of an expected OCC examination, and that in  
26

---

27 <sup>16</sup> See Declaration of Charles Matthew Erhart In Support of His Opposition to  
28 Motion for Preliminary Injunction, ¶ 6 (“Erhart Declaration” or “Erhart Decl.”)  
(Dkt. No. 27-4 (Ex. 5), filed in *BofI vs. Erhart* (Jan. 19, 2016).

1 September/October 2013, when OCC examiners were on-site at BofI’s San Diego  
2 headquarters, CW 7 and the other auditor gathered loan documents, some of which  
3 had problem items, placed them in a folder and then presented them to the  
4 examiners. CW 7 related that CW 7 and the other auditor were immediately  
5 “called on the carpet” by BofI executive management members who yelled at them  
6 both for providing the loan documents to the OCC without management review.  
7 CW 7 indicated that Garrabrants, Brian Swanson, and a mortgage department head  
8 “cleaned up” the loan documents and they were then given to the OCC examiners.  
9 CW 7 related that CW 7 noticed that the documents had been altered.

10 74. Erhart relates that he was responsible for reviewing BofI’s CIP with  
11 respect to Global Cash Card (“GCC”), which, Erhart alleges, was a vendor that  
12 provides cash cards that companies can use for various purposes, including paying  
13 employees in lieu of traditional paychecks. (Erhart Compl. ¶ 40). BofI’s business  
14 indeed includes a Prepaid Card division that provides card issuing and bank  
15 identification number (“BIN”) sponsorship services to companies who have  
16 developed payroll, general purpose reloadable, incentive and gift card programs  
17 serving consumers. (2015 Form 10-K at 3).

18 75. During the week of January 26, 2015, Erhart and a co-worker met  
19 with BofI’s Deputy BSA Officer, Third Parties to discuss GCC CIP reviews for  
20 high-risk customers. (Erhart Compl. ¶ 40). Erhart and his co-worker then  
21 prepared an internal audit memorandum of their findings on or about February 12,  
22 2015, during which time the OCC was conducting an on-site examination of BofI  
23 and had asked that third party vendors, such as GCC, to rate their customers. (*Id.* ¶  
24 41). GCC provided BofI with a list of high-risk customers, 30% of whom BofI  
25 found presented verification problems. (*Id.*)

26 76. The GCC list was presented to John Tolla, who “demanded that a new  
27 list be produced” that did not feature any “bad” CIP data. (*Id.* ¶ 42). BofI also did  
28 not submit the original list to the OCC and, instead, a “new, sanitized list was.”

1 (*Id.*). BofI proceeded to terminate its relationship with GCC and, according to  
2 Erhart, “Tolla repeatedly instructed staff not to inform the OCC about why the  
3 relationship was terminated.” (*Id.*) Erhart alleged on information and belief that  
4 Garrabrants was party to the discussion when the “bad” CIP data was discovered.  
5 (*Id.*)

6 77. Erhart and a coworker attached the original GCC list as an exhibit to  
7 their February 12, 2015 internal audit memorandum that was intended to be  
8 presented to BofI’s Audit Committee but Tolla and others at BofI prevented that  
9 from occurring. (*Id.* ¶ 43).

10 78. In addition, Erhart discovered in early 2015 that John Tolla “had  
11 repeatedly changed the findings on numerous reports required under the Bank  
12 Secrecy Act’s Quality Control (‘QC’) requirements.” (*Id.* ¶ 35).

13 79. CW 9 related that CW 9 had read the Erhart Complaint. CW 9 related  
14 that it was common, in CW 9’s experience, to be asked to “fix” items in audit  
15 reports. CW 9 related that Micheletti would “walk in and say ‘Here are these four  
16 things on the whatever, get it fixed before it goes to, get it fixed’ or do whatever.  
17 That was very common. . . .” CW 9 “fixed” what CW 9 felt comfortable doing but  
18 left the other items alone.

19 80. The deliberate efforts by Garrabrants, Micheletti, and others to  
20 manipulate internal reports and other documents, as well as the Audit Committee’s  
21 inability or unwillingness to prevent or rectify that misconduct, belied Defendants’  
22 repeated representations to investors regarding BofI’s allegedly conservative  
23 business practices and purported focus on establishing adequate internal controls  
24 and adequate risk management procedures, in addition to BofI’s, Garrabrants’s and  
25 Micheletti’s statements regarding the soundness of the Company’s internal  
26 controls. *See supra* Section IV.A.

1                                   **b.    BofI’s Violations of the Flood Disaster Protection Act.**

2           81.    BofI failed to comply with the Flood Disaster Protection Act of 1973  
3 (as defined above, the FDPA) in issuing loans, and then “buried” audit results  
4 revealing FDPA violations.

5           82.    The National Flood Insurance Act of 1968 and the FDPA, as  
6 amended, govern the National Flood Insurance Program (“NFIP”).<sup>17</sup> These  
7 statutes require the purchase of flood insurance on certain properties and make  
8 available federally subsidized flood insurance to owners of improved real estate or  
9 mobile homes located in special flood hazard areas in communities that participate  
10 in the NFIP.

11           83.    Erhart discovered in performing an FDPA audit at BofI that a  
12 “previous Compliance employee had found issues with 49 of the 51 samples she  
13 pulled” and that “another employee previously produced a Compliance Review  
14 identifying many issues.” (Erhart Compl. ¶ 37). Erhart discovered that BofI “had  
15 buried and never issued the reviews.” (*Id.*)

16           84.    After investigating and verifying the negative findings, Erhart  
17 presented them to BofI management “who caused most of the negative findings to  
18 be excluded from the Audit Report, leaving in only a small fraction of the  
19 findings.” (*Id.* ¶ 38).

20           85.    CW 7 related that CW 7 conducted a complete FDPA audit because,  
21 according to CW 7, there had been a lot of issues with FDPA compliance at  
22 BofI. CW 7 related that CW 7 found that almost every loan CW 7 reviewed had a  
23 potential non-compliance issue.

24           86.    CW 7 related that CW 7 wrote a report of the audit but that CW 7’s  
25 superior, who was BofI’s Compliance Manager and First Vice President, refused to  
26 release the report to management because of the negative findings. CW 7 related

27 \_\_\_\_\_  
28 <sup>17</sup> See Flood Disaster Protection, Comptroller’s Handbook, May 1999 (the “Flood Handbook”), available at <http://www.occ.treas.gov/publications/publications-by-type/comptrollers-handbook/flood.pdf>.



1 that CW 7 and CW 7's superior met with Garrabrants, Bar-Adon, Swanson, and a  
2 couple of other BofI employees about the audit findings. According to CW 7,  
3 Garrabrants brushed the findings under the rug and indicated that other examiners  
4 had conducted audits and did not find the issues CW 7 had found. CW 7 related  
5 that in response, CW 7 and CW 7's superior indicated to Garrabrants that a real  
6 examiner would have found the same issues.

7 87. CW 7 also estimated the potential fines BofI faced for the FDPA  
8 compliance issues to be a couple of hundred thousand dollars, based on \$2,000 per  
9 fine. CW 7 indicated that Garrabrants dismissed the audit findings and CW 7 did  
10 not hear anything further about them.

11 c. **BofI Failed to Adequately Disclose Related-Party**  
12 **Transactions and Related-Party Loans to Audit**  
13 **Committee Members.**

14 88. BofI's internal controls were also compromised because BofI's Audit  
15 Committee members suffered from undisclosed, debilitating conflicts of interest by  
16 having benefitted from undisclosed related-party loans from BofI on terms far  
17 more favorable than the terms available to borrowers unaffiliated with BofI. For  
18 example, Defendants Garrabrants, Micheletti, Grinberg, Argalas, and Mosich, as  
19 well as other BofI senior executives, obtained related-party loans, including  
20 apparent non-Qualified Mortgage ("QM") loans and loans with LTVs higher than  
21 BofI's reported average LTV for single family mortgages, from BofI on far better  
22 terms than available to persons unaffiliated with BofI, in direct contravention of  
23 BofI's express statements otherwise.

24 89. In its 2015 Proxy Statement, BofI revealed that, as of June 30, 2015, it  
25 made \$29.1 million in loans, at below market interest rates, to directors, executive  
26 officers and employees who elected to participate in the Company's employee loan  
27 program, and that \$12.5 million of those loans were made to directors, principal  
28 officers, and their affiliates. Total principal payments on related-party loans were



1 \$0.3 million, which reflects an average interest rate of approximately only 1%  
2 across all loans in the loan program.

3 90. As described above, BofI's 2015 Proxy Statement described the terms  
4 of those related-party loans as follows, in relevant part: "Such loans and other  
5 banking transactions are *generally made on the same terms as those prevailing at*  
6 *the time for comparable transactions* with persons of comparable creditworthiness  
7 that have no affiliation with the Company or the Bank."

8 91. However, an article published on *Seeking Alpha* on November 4, 2015  
9 entitled "Buyer Beware: BOFI Related Party Loans" (the "November 4 Article")  
10 makes clear that BofI's loans to BofI executives and directors involved far greater  
11 risk of collectability and more favorable terms than available to unaffiliated  
12 borrowers at the time.<sup>18</sup>

13 92. Some of BofI's related-party loans included a "Balloon Rider." The  
14 CFPB's website describes "Balloon Loans" as "a mortgage that requires a larger-  
15 than-usual one-time payment at the end of the term," which can make the  
16 borrower's payments lower in the years before the balloon payment, but require  
17 large payments, possibly in the tens of thousands of dollars, at the end of the loan  
18 term.

19 93. During the Class Period, BofI's website advertised "Conventional,  
20 FHA, VA and Jumbo loan products" available for consumers wishing to purchase  
21 or refinance a home, but there was no mention of "Balloon Loan" or "Balloon  
22 Rider" as an available product or loan feature.

23 94. The following summarizes related-party loans BofI issued to its  
24 executive officers and directors as reported in the November 4, 2015 Article, most  
25 of which were on terms that were not comparable to BofI's non-related party  
26 loans, and many of which had "Balloon Riders":<sup>19</sup>

27 <sup>18</sup> Real Talk Investments, *Buyer Beware: BOFI Related Party Loans*, Seeking  
28 Alpha, Nov. 4, 2015.

<sup>19</sup> The LTVs (i.e., the ratio of loan amount to the value of the property securing the

	<b>BoFI Insider</b>	<b>Loan Amount (Year)</b>	<b>Implied LTV</b>	<b>Balloon Rider</b>
1	Nicholas A. Mosich	\$985,000	78%	No
2	Vice Chairman of Board	(July 11, 2013)		
3	of Directors and Audit			
4	Committee Member			
5	Brian Swanson	\$568,000	79.8%	Yes
6	Executive Vice	(January 25, 2011)		
7	President, Chief Lending			
8	Officer			
9	Gregory Garrabrants	\$1,853,000	(Construction	Yes
10	President and CEO (as	(2009); Refinanced for	loan; LTV not	
11	trustee of Apollo Trust-	\$1,870,000	indicated)	
12	Two)	(September 2010)		
13	Andrew J. Micheletti	\$1,547,000	(Not applicable)	Yes
14	Chief Financial Officer	(June 2011)		
15		(Cash-out refinance)		
16	James S. Argalas	\$1,510,000	(Not indicated)	Yes
17	Director and Audit	(February 22, 2013)		
18	Committee Member			
19	Theodore Allrich	\$600,000	(Construction	No
20	Chairman of Board of	(June 18, 2014)	loan; LTV not	
21	Directors		indicated)	
22	Thomas Constantine	\$648,000	84%	No
23	Chief Credit Officer	(February 2012)		
24	Paul Grinberg	\$2,192,000	80%	Yes
25	Director and Audit	(November 2012)		
26	Committee Member			
27	Rama Bar-Adon	\$936,000	80%	Yes
28	Sister of BoFI's Chief	(December 2012)		
	Legal Officer Eshel Bar-			
	Adon <sup>20</sup>			

loan) of many of these related party loans were also significantly higher than the weighted average and median LTVs BoFI reported in its SEC filings. For example, in its 2015 Form 10-K, BoFI reported that as of June 30, 2015, the weighted average LTV for BoFI's single-family mortgages was only 57.76% and that the median LTV for the same loans was 58.87%.

<sup>20</sup> According to the November 4, 2015 Article, which contained images of certain

1 95. BofI also reportedly made a loan to Jonathan Ball in March 2012  
2 during which time he was Vice President of Internal Audit.<sup>21</sup>

3 96. These related-party loans to BofI's Audit Committee imperiled the  
4 Committee's independence, and therefore the effectiveness of BofI's audit, risk  
5 management, and compliance infrastructure programs and procedures.

6 **3. BofI Failed To Disclose The Criminal Background Of A**  
7 **Senior Officer and Violations of the FDIA.**

8 97. BofI's lax risk management and internal controls were also evidenced  
9 and compromised by BofI's employment of a convicted felon as BofI's Senior  
10 Vice President of Wholesale/Correspondent Lending during part of the Class  
11 Period ("SVP 1"). BofI failed to disclose that it was in violation of the FDIA for  
12 failing to obtain a required waiver under that Act for SVP 1's employment.

13 98. Section 19 of the FDIA provides that a person convicted of criminal  
14 offenses involving "dishonesty or a breach of trust or money laundering," or who  
15 has agreed to enter into a pretrial diversion or similar program in connection with a  
16 prosecution for such offense," may not:

17 (i) become, or continue as, an institution-affiliated party with respect  
to any insured depository institution;

18 (ii) own or control, directly or indirectly, any insured depository  
19 institution; or

20 (iii) otherwise participate, directly or indirectly, in the conduct of the  
affairs of any insured depository institution;

21 12 U.S.C. § 1829(a)(1)(A). An insured bank cannot permit any such person to  
22 engage in prohibited conduct or continue any relationship described above. (12  
23

---

24 pages of the loan documents, Eshel Bar-Adon is listed as "Borrower" on the  
25 Balloon Rider to the loan and apparently signed it; however, on other pages, his  
26 name is crossed out and his sister, Rama Bar-Adon, who reportedly is a practicing  
27 attorney in Texas and apparently does not live in San Diego, appeared to have  
signed as the borrower. The November 4, 2015 Article also included an image of a  
"Notice of Federal Tax Lien" listing Eshel Bar-Adon as the Taxpayer, which likely  
had a negative impact on his credit history and may be a reason why the loan was  
not taken out in his name.

28 <sup>21</sup> Aurelius, *BofI: Undisclosed Related Party Dealings Found to Infect Audit  
Committee*, Seeking Alpha, Jan. 6, 2016.

1 U.S.C. § 1829(a)(1)(B)).

2 99. Notwithstanding clear statutory requirements to the contrary, SVP 1  
3 served as the Senior Vice President of Wholesale and Correspondent Lending at  
4 BofI during the Class Period. According to his LinkedIn profile, SVP 1 began  
5 working at BofI in October 2010, and before that, at IndyMac Bank as a Senior  
6 Vice President.

7 100. According to CW 5, who worked at BofI at the same time as SVP 1  
8 and was familiar with him, SVP 1 served as a Vice President of Wholesale and  
9 Correspondent Lending from early/mid-2010 through April 2013. CW 5 explained  
10 that “Correspondent Lending” referred to BofI’s Foreign Nationals Loan program.  
11 SVP 1 was promoted to Senior Vice President in May 2013 and became the head  
12 of the Foreign Nationals Loan program. SVP 1 reported to Swanson.

13 101. A background search of SVP 1 performed on Lexis-Nexis revealed  
14 that SVP 1 has been convicted of numerous crimes, including grand theft,  
15 burglary, fraud and forgery involving credit cards, dealing in stolen property, and  
16 petit theft in Broward County, Florida in 1990. SVP 1 was sentenced and served  
17 time in a California prison. He has also filed for Chapter 7 bankruptcy twice (in  
18 October 2011 and in June 2000), and has been a debtor in at least four actions  
19 involving judgments, and state and federal tax liens against him.

20 102. CW 5 indicated that SVP 1 was hired by BofI despite his criminal  
21 history and background check, which included fingerprints and an FBI background  
22 scan. CW 5 related that CW 5 saw the results of the background check when they  
23 were received by BofI and that Garrabrants’s executive assistant brought the  
24 results to CW 5 and noted that SVP 1 had been in jail for theft. CW 5 related that  
25 the executive assistant said that Garrabrants and Swanson wanted “to sweep it  
26 under the table and give him a chance.”

27 103. A former BofI Senior Underwriter (“CW 1”) who worked at BofI’s  
28 San Diego headquarters during part of the Class Period, and who worked with SVP

1 1 in BofI's in Multifamily lending group when SVP 1 became head of the group's  
2 sales division, also noted that BofI's senior management knew about SVP 1's  
3 criminal background and that BofI did not disclose his background to the FDIC.  
4 CW 1 noted that prior to BofI, SVP 1 worked at IndyMac while Garrabrants was  
5 there. CW 1 also recalled SVP 1 telling CW 1 of his criminal background and his  
6 imprisonment in Florida, which, according to CW 1, was "common knowledge" at  
7 BofI and "not a secret – everyone knew." CW 1 also recalled SVP 1 telling CW 1  
8 that because of his felony conviction, no other bank aside from BofI would hire  
9 him.

10 104. An article published on November 18, 2015 by *Seeking Alpha* entitled  
11 "Undisclosed Executive History May Be Final Blow for BOFI" (the "November  
12 18, 2015 Article") described the background and employment history of an  
13 unidentified BofI Senior Vice President matching that of SVP 1.

14 105. The November 18, 2015 Article also noted that despite SVP 1's  
15 criminal history and bankruptcies, BofI issued two loans to him for more than  
16 \$700,000.

17 **4. Garrabrants Routinely Intimidated BofI Personnel,**  
18 **Including Members of the Audit Department.**

19 106. BofI's internal controls, compliance infrastructure and risk  
20 management were also made ineffective by the culture of fear and unethical  
21 conduct at BofI, created by Garrabrants. He also used his power to benefit himself  
22 financially, including overriding members of the Audit Department.

23 107. Former BofI employees who interacted with Garrabrants recall  
24 attending weekly management meetings in which Garrabrants threatened  
25 retaliatory action against anyone who challenged his actions or directives, and in  
26 which he uttered obscenities and used other vulgar language to disparage and scorn  
27 people whom he believed had done so.  
28

1           108. CW 5 recalled attending weekly management meetings at BofI every  
2 Friday at noon. Garrabrants, Micheletti, and every Senior Vice President and  
3 higher level employees attended those meetings, for a total of approximately 15  
4 participants. CW 5 indicated that while the topics discussed at the meetings  
5 varied, on several occasions Garrabrants ranted about an employee leaving the  
6 bank and Garrabrants's plans to sue the employee. CW 5 relayed that Garrabrants  
7 reminded those at the meeting that he has more money than they, *and that he*  
8 *would stop at nothing to destroy them if they came after him.* On another  
9 occasion in which CW 5, Garrabrants, and Ball were in the same room, CW 5  
10 witnessed Garrabrants calling Ball a "f[\*\*\*]ing idiot" and telling him, "You will  
11 do as I say." CW 5 noted that Garrabrants has intimidated a lot of people at BofI.

12           109. CW 5, who left BofI in May 2013, also described an incident in  
13 December 2015 in which CW 5 was served a search warrant by local authorities,  
14 who searched CW 5's home for allegedly stolen BofI property that CW 5 did not  
15 possess. The local authorities nevertheless took with them all of CW 5's  
16 computers and other property belonging to CW 5. CW 5 believed that the search  
17 warrant was issued at Garrabrants's behest, and was done as retaliation by  
18 Garrabrants, who believed CW 5 was responsible for the sharing details of BofI's  
19 business, including SVP 1's criminal background (described above), with  
20 shortsellers. A criminal complaint was subsequently filed against CW 5 in  
21 California Superior Court, San Diego County—again, inexplicably, more than two  
22 years after CW 5 had left the Bank—resulting in CW 5 (who is a parent with  
23 minor children) ultimately entering a plea and receiving a suspended sentence  
24 rather than continuing a prohibitively expensive legal defense.

25           110. CW 3 had similar recollections of Garrabrants. CW 3 noted that  
26 Garrabrants "is an attorney, very smart guy. He tried to scare everybody."  
27 According to CW 3, BofI employees feared that there would be repercussions if  
28



1 they spoke out about BofI's improper practices. *CW 3 heard Garrabrants say he*  
 2 *would destroy people.*

3 111. CW 8 also attended weekly senior staff meetings with Garrabrants  
 4 and others and witnessed crude behavior by him. According to CW 8, if  
 5 Garrabrants disliked how something was done, he would disrespect the person  
 6 responsible in a very crude and vile manner. Garrabrants also belittled Ball on  
 7 more than one dozen occasions during the weekly meetings and used obscene  
 8 language to describe him, CW 8 recalled. One of those occasions occurred after  
 9 Ball had written up Garrabrants for engaging in unauthorized activity. CW 8 also  
 10 indicated there was high employee turnover at BofI.<sup>22</sup>

11 112. CW 9 reflected on the negative environment at BofI and said, "It was  
 12 just a horrible place." CW 9 related that Garrabrants scares people if they speak  
 13 negatively about BofI.

14 113. A Senior Underwriter who worked in BofI's Multifamily lending  
 15 group in the Company's San Diego headquarters just prior to the Class Period  
 16 ("CW 10"), described BofI as a "sweatshop" where the turnover was high.

17 <sup>22</sup> In his defense of this action, Garrabrants and his counsel have also utilized  
 18 intimidation tactics directed at Plaintiff's Lead Counsel, its investigator, and  
 19 certain CWs. On August 26, 2016, Judge Crawford granted Plaintiff's requested  
 20 protective order (Dkt. 49) after finding Defense counsel's statements to at least two  
 21 of the CWs indicating that their names had appeared in the First Amended  
 22 Complaint were "***very concerning***" because they "***portray[ed] an effort to mislead***  
 23 ***witnesses, potentially under false pretenses, into cooperating with defendants.***"  
 24 Defendants also attempted to improperly impede Plaintiff's investigation of its  
 25 claims by sending a letter to Lead Counsel's investigator falsely accusing him of  
 26 "defaming" BofI and threatening legal action against him. Garrabrants's and  
 27 Defense Counsel's tactics clearly intimidated certain CWs. Prior to the filing of  
 28 the First Amended Complaint in this matter, CW 8, after confirming what is  
 attributed to him/her herein as completely accurate, expressed apprehension about  
 being discovered by Garrabrants and commented that Garrabrants "***is a very***  
***vindictive man . . . if he knows somebody did something to him, you know, he's***  
***like, I guess, like Donald Trump, if you hit him, he hits you back hard [.]***" (Dkt.  
 No. 45-2). Ironically, after the filing of that Complaint, CW 8 submitted a  
 declaration (Dkt. 42-2) claiming to recant his/her testimony, strongly suggesting  
 he/she had been "hit" with the very intimidation tactics about which he/she had  
 warned Lead Counsel. The foregoing is entirely consistent with the culture of fear  
 and intimidation inculcated by senior management at BofI (specifically,  
 Garrabrants) that is described by Erhart and numerous CWs.

1 According to CW 10, Garrabrants’s approach was if “*you look at me wrong*  
2 *you’re out of here.*”

3 114. CW 1 also confirmed there was high turnover at BofI.

4 115. According to a former National Account Executive who worked at  
5 BofI prior to and during part of the Class Period (“CW 11”) and reported to SVP 1,  
6 there was a fear-based culture at BofI and there was a high rate of employee  
7 turnover. CW 11 described the management style at BofI as “*terrible.*”

8 116. Other BofI employees described Garrabrants’s illicit conduct using  
9 BofI accounts, including, as discussed above in Section IV.B.2.a, depositing third  
10 party checks into his personal account.

11 117. Erhart also discovered that Garrabrants was the signatory of a BofI  
12 consumer account opened in the name of his brother, Steven Garrabrants, with a  
13 balance of approximately \$4 million – the largest consumer account at BofI at the  
14 time. (*Id.* ¶ 45). Erhart noted that \$4 million was wired into the account but he  
15 could not find any evidence of how Steven Garrabrants came into possession of  
16 such a large amount of money. (*Id.*) Steven Garrabrants is a former minor league  
17 baseball player who signed with the Arizona Diamondbacks in 2003 for \$50,000  
18 per year and became a free agent in 2007.<sup>23</sup> He also has an interest in a Plano,  
19 Texas-based manufacturer of baseball, sports flooring, rubber flooring and  
20 artificial turf industry named Kodiak Sports, LLC. As recently as December 2014  
21 (shortly before Erhart began his audit of senior management accounts), Steven  
22 Garrabrants took out a loan for \$116,800.00.<sup>24</sup> Erhart was concerned that the

23  
24 \_\_\_\_\_  
25 <sup>23</sup> See Steve Garrabrants’s profile on Minor League Baseball’s website, *available*  
26 *at* [http://www.milb.com/player/index.jsp?sid=milb&player\\_id=451790#/career/R/hitting/2007/ALL](http://www.milb.com/player/index.jsp?sid=milb&player_id=451790#/career/R/hitting/2007/ALL).

27 <sup>24</sup> See Document No. 2014-22820, filed with the County Clerk’s Office in Grayson  
28 County, Texas, attaching a Deed of Trust, dated November 21, 2014, listing Steven  
Garrabrants as “Borrower,” GMH Mortgage Services LLC as “Lender,” and a  
“Note” amount of \$116,800.00 owed to the Lender.

1 activity in Steven Garrabrants's account was another indication that Defendant  
2 Garrabrants was engaged in tax evasion. (*Id.*)<sup>25</sup>

3 118. CW 5 also witnessed similar suspicious activity by Defendant  
4 Garrabrants. According to CW 5, Garrabrants repeatedly instructed personnel to  
5 conduct unethical activities for his benefit. CW 5 recounted that the head of bank  
6 deposit operations at BofI, who reported to CW 5, notified CW 5 that Garrabrants  
7 attempted to deposit third-party checks and checks made payable to his wife into  
8 his own account at BofI. Garrabrants's wife, however, was not a joint account  
9 holder on the account, according to CW 5.

10 119. CW 5 recalled one instance in which Garrabrants attempted to deposit  
11 a \$100,000 check made payable to his wife into his BofI account. The head of  
12 deposit operations advised Garrabrants that his wife's name needed to be added to  
13 the account, but Garrabrants declined. CW 5 confronted Garrabrants about the  
14 \$100,000 check and notified him that CW 5 could not process such a transaction  
15 unless Garrabrants's wife signed the check. Garrabrants instructed CW 5 to  
16 deposit the check anyway.

17 120. According to CW 5, a BofI employee informed CW 5 that  
18 Garrabrants proceeded to forge his wife's signature on the \$100,000 check and  
19 returned the check immediately for deposit.

20  
21  
22 <sup>25</sup> Contrary to Garrabrants's claims on BofI's October 14, 2015 earnings  
23 conference call that his Form 4's explain the balance in his brother's account, a  
24 review of Form 4's filed by or on behalf of Garrabrants for transactions between  
25 June 30, 2012 and February 9, 2016 shows that he acquired 500,404 shares of BofI  
26 stock during that period, including 362,417 shares acquired through the exercise of  
27 stock options and 20,275 shares purchased on the open market.<sup>25</sup> The Form 4's  
28 reviewed further indicate that during the same period, Garrabrants sold 94,856  
shares in the open market (on December 31, 2012) at \$26.30 per share, for  
proceeds of approximately \$2.494 million, and disposed of 306,709 shares through  
non-open market transactions. Accordingly, Garrabrants's Form 4's do not  
explain the source of the \$4 million balance allegedly in his brother's bank account  
over which Garrabrants has authority. Notably, Garrabrants did not specifically  
dispute the alleged account balance or his authority over the account during the  
October 14, 2015 conference call.

1            121. CW 5 indicated that the head of bank deposit operations informed  
2 Jonathan Ball of the incident and that although Ball explained BofI's policy on  
3 third-party checks to Garrabrants, Garrabrants ignored the explanation and  
4 instructed Ball to deposit such checks.

5            **5. BofI Falsely Responded to Regulatory Subpoenas and**  
6            **Requests.**

7            122. In his complaint, Erhart provided details of other misconduct at BofI  
8 during the Class Period, including: (i) BofI falsely responded to an SEC subpoena  
9 issued in December 2014 by indicating it did not have information which the SEC  
10 sought regarding an entity named ETIA LLC despite the existence of a loan file at  
11 BofI concerning ETIA that was provided to BofI's legal counsel; and (ii) BofI  
12 falsely responded to the OCC's request for any correspondence from banking  
13 agencies and law enforcement by indicating it had not received any government or  
14 regulatory subpoenas despite the fact that Erhart had seen a BSA spreadsheet  
15 identifying many such subpoenas. These activities implicated BofI's internal  
16 controls, and rendered false Defendants' statements that BofI's internal controls  
17 were adequate and that the Company valued risk management and compliance.

18            **C. Defendants' Misrepresentations About the Company's Internal**  
19            **Controls, Risk Management and Compliance Infrastructure**  
20            **Caused Investors' Losses**

21            123. Beginning on October 13, 2015, Defendants' misrepresentations  
22 about BofI's internal controls, risk management and compliance infrastructure  
23 were revealed to the market, causing the Company's stock price to decline and  
24 causing investors', including Lead Plaintiff's, losses.

1                   1.     **The Erhart Complaint Reveals BofI's Inadequate Internal**  
 2                                   **Controls, Risk Management and Compliance**  
 3                                   **Infrastructure.**

4                   124. On October 13, 2015, a former auditor at BofI filed a whistleblower  
 5 complaint.<sup>26</sup> The Erhart Complaint alleged widespread misconduct at BofI and by  
 6 senior BofI officers and directors, including Garrabrants.

7                   125. Specifically, the Erhart Complaint revealed the falsity of BofI and  
 8 Garrabrants's previous statements relating to the adequacy of BofI's internal  
 9 controls over financial reporting, risk management programs, and compliance  
 10 infrastructure by detailing systematic disregard for internal control processes and  
 11 compliance with federal law. For example, the Erhart Complaint disclosed:

- 12                   • BofI had a "*nonexistent culture of compliance*" that forced multiple  
 13 members of the audit department to leave their jobs;
- 14                   • BofI's Chief Legal Officer Bar-Adon and Vice President of Internal Audit  
 15 Ball instructed Erhart to remove evidence of BofI's violation of the  
 16 California Penal Code from audit documents, as well as to mark the entire  
 17 document Attorney-Client Privileged in order to protect it from discovery in  
 18 subsequent litigation;
- 19                   • BofI's Chief Credit Officer told Erhart, Ball and others that he was not  
 20 responsible for the Bank's financials after they were submitted to Defendant  
 21 Micheletti, and that he would not vouch for such numbers thereafter;
- 22                   • BofI failed to make timely payments to employees' 401k accounts without  
 23 notifying the Internal Revenue Service and the Department of Labor to take  
 24 corrective action;
- 25                   • BofI failed to obtain the signatures of the Board of Directors on the Fiscal  
 26 2015 Strategic Plan at the May, July, and September 2014 Board meeting,  
 27 and then BofI's Chief Performance Officer Jan Durrans presented the Audit  
 28 Department with a document that "copied and pasted" the Board members'  
 signatures onto a document falsely reflecting approval as of July 2014;
- BofI's Senior Vice President of Audit and Compliance John Tolla instructed  
 Erhart not to put audit questions or concerns in writing;
- BofI falsely responded to a subpoena from the SEC requesting information  
 about a specific account by indicating it did not have such information when  
 Erhart had seen a loan file containing information on the account;

26 <sup>26</sup> The *New York Times* also reported that Erhart had filed the lawsuit on the same day, and summarized some of its allegations.

- 1 • BofI falsely responded to a request from the OCC for information on bank  
2 accounts with no TINs by indicating no such accounts existed, when Erhart  
3 had seen a spreadsheet listing accounts without TINs;
- 4 • BofI falsely told the OCC that the Bank had not received any  
5 correspondence or subpoenas from federal and state banking agencies and  
6 law enforcement when Erhart had seen a list of such subpoenas;
- 7 • BofI made undisclosed substantial loans to foreign nationals with criminal  
8 histories, in violation of the BSA's Anti-Money Laundering Rules;
- 9 • SVP Tolla repeatedly changed the findings on several reports required under  
10 the BSA's Quality Control requirements;
- 11 • BofI hid negative findings in a Flood Disaster Protection Act audit before  
12 submitting it to the OCC;
- 13 • SVP Tolla instructed a report on third party customers who were involved in  
14 BofI's Global Cash Card program be "sanitized" by removing information  
15 suggesting the customers were not real before it was provided to the OCC;  
16 and
- 17 • SVP Tolla prohibited members of the audit department from using email to  
18 avoid creating a paper trail.

19 126. On the filing of the Erhart Complaint and disclosure of the audit and  
20 internal controls violations described therein, shares of BofI declined \$10.72 per  
21 share, or 30.2%, from their closing price of \$35.50 on October 13, 2015, to close at  
22 \$24.78 on October 14, 2015, on extremely high trading volume.<sup>27</sup>

23 127. On October 14, 2015, during a BofI conference call with analysts and  
24 investors to discuss the allegations made by former auditor Erhart, Garrabrants  
25 stated the following concerning BofI's and its auditor's investigation of Erhart's  
26 allegations: BofI "*conducted its own review for the audit committee of what  
27 happened, and I think that conclusion is difficult to argue with.*" Garrabrants  
28 also claimed that "we have a culture that focuses very strongly on ethics[.]"  
Garrabrants further stated: "*We did our own investigation of this. All that was  
provided to our external auditors, and the external auditors reviewed it, and they  
found it to be completely without merit, which it is, completely without merit.*"

---

<sup>27</sup> On a pre-split adjusted basis, BofI's stock price declined \$42.87 per share from  
its closing price of \$142.00 on October 13, 2015, to close at \$99.13 on October 14,  
2015.



1           128. On the same October 14 call, Garrabrants also assured investors that  
2 “[t]here is nothing ongoing” by way of regulatory investigation by the OCC and  
3 “there is no continuity to this,” in describing BofI’s relations with its regulators.

4           129. On October 22, 2015, BofI conducted its annual stockholders  
5 meeting. During the meeting, Theodore Allrich, Chairman of BofI’s Board of  
6 Directors, contradicted statements Garrabrants had made during the October 14,  
7 2015 earnings conference call regarding the Company’s internal investigation of  
8 Erhart’s allegations and the purported review and conclusion of its external  
9 auditors. The Chairman’s repudiation of Garrabrants’s statements concerning  
10 evaluation of Erhart’s claims reveals the inadequacy of the Company’s internal  
11 controls, in particular with respect to the Audit Committee’s independence and  
12 investigation of Erhart’s allegations. Specifically, Allrich stated:

13           I would like to clarify certain statements made on our analyst call on  
14 October 14, 2015, regarding our external auditors’ awareness of the  
15 allegations of our former junior internal auditor. Management orally  
16 shared with our external auditors a summary of the early conclusions  
17 of our internal review of the internal auditor matter, which concluded  
18 that the internal auditor was merely a disgruntled employee making a  
19 series of baseless allegations. ***Until recently, the written report  
20 setting forth the details of our investigation was not discussed with  
21 or provided to our External Auditors.*** Subsequently, we have  
22 provided a final written report of our internal review to our External  
23 Auditors. ***To date, our External Auditors have not evaluated the  
24 allegations and the report.*** Our early conclusions, shared with our  
25 external auditors,<sup>28</sup> were wholly consistent with the final conclusions in  
26 our written report.

27           130. The Chairman’s repudiation of Garrabrants’ statements concerning  
28 evaluation of Erhart’s claims further illustrates the inadequacy of the Company’s  
internal controls, in particular with respect to the Audit Committee’s independence  
and investigation of Erhart’s allegations.

<sup>28</sup> See Transcript of BofI Holding, Inc. Annual Meeting of Stockholders, Thursday, October 22, 2015, 2:00 pm PT, San Diego, California 92122 on BofI’s website, available at <http://www.sn1.com/Cache/1500077112.PDF?O=PDF&T=&Y=&D=&FID=1500077112&iid=4055785>.

1                   2.     **Additional Disclosures Reveal The Falsity of BofI's**  
2                             **Misrepresentations About Its Internal Controls, Risk**  
3                             **Management and Compliance Infrastructure.**

4             131.    On October 29, 2015, *Seeking Alpha* published an article entitled  
5             “Buyer Beware: More Odd Behavior from BOFI,” which notes differences  
6             between certain statements Garrabrants made on the October 14, 2015 conference  
7             call and the transcript of the call BofI filed with the SEC next day.<sup>29</sup> Most  
8             critically, the article notes that while the audio of the October 14 conference call  
9             reflects, when discussing whether the OCC is investigating Erhart’s allegations,  
10            Garrabrants stating “*there is nothing ongoing*” and “*there is no continuity to*  
11            *this*,” (see ¶ 128) the BofI transcript filed with the SEC does not contain either  
12            statement. As the article explains: “So is the investigation ongoing or not? A  
13            reader of the financial statements would likely consider the existence of an OCC  
14            investigation (or lack thereof) to be material in light of last week’s developments.”  
15            Following the news on October 29, 2015, the price of BofI common stock declined  
16            \$1.91 per share, or approximately 7.6%, from its closing price of \$25.18 on  
17            October 28, 2015, to close at \$23.26 on October 29, 2015, on unusually high  
18            trading volume.

19            132.    The October 29, 2015 *Seeking Alpha* article relied on information that  
20            the market had failed to previously appreciate and incorporate into the Company’s  
21            stock price. While the BofI transcript and the webcast were both available prior to  
22            October 29, the market did not appreciate the small but significant differences in  
23            the two—including in particular the removal of Garrabrants’s statements regarding  
24            the presence of a regulatory investigation from the official transcript—until the  
25            article compared the discrepancies side-by-side. The fact that BofI failed to  
26            include critical statements concerning whether an investigation by the OCC was  
27

28            <sup>29</sup> Real Talk Investments, *Buyer Beware: More Odd Behavior From BOFI*,  
*Seeking Alpha*, Oct. 29, 2015.

1 ongoing additionally implicates the Company's lack of internal controls over  
2 financial reporting and risk management.

3 133. On January 6, 2016, before the market opened, *Seeking Alpha*  
4 published an article that exposed BofI's lending relationship with Propel Tax  
5 (described further *infra* at Section V.B.3.d). The article also revealed Defendant  
6 Grinberg's ties to Propel Tax through his executive role at Encore Capital, making  
7 the \$31.9 million loan facility BofI provided Propel Tax a related-party transaction  
8 that should have been disclosed.<sup>30</sup> The transaction also compromised the internal  
9 investigation of Erhart's allegations by Grinberg and Bar-Adon. In addition, the  
10 article noted that BofI made a mortgage loan to Jonathan Ball in March 2012,  
11 which likely created a conflict of interest (Plaintiff has since independently  
12 confirmed that BofI made a mortgage loan to Ball). On this news, BofI stock  
13 opened on January 6, 2016 at \$20.04 per share, which was \$0.32, or 1.6%, lower  
14 than its closing price of \$20.36 on January 5, 2016.

15 134. The January 6, 2016 *Seeking Alpha* article relied on information that  
16 the market had failed to previously appreciate and incorporate into the Company's  
17 stock price. Specifically, the article identified the relationships between BofI and  
18 Propel Tax, as well as Defendant Grinberg's relationship with Propel Tax, which  
19 could have compromised the Audit Committee and Company's investigation of the  
20 Erhart Complaint and therefore called into question the adequacy of the  
21 Company's internal controls and risk management provisions.

22  
23  
24 <sup>30</sup> BofI's failure to disclose the related-party loan to Propel also violated: (i) Item  
25 404 of Regulation S-K, 17 C.F.R. § 229.404, which requires public disclosure of  
26 certain information concerning "any transaction, since the beginning of the  
27 registrant's last fiscal year, or any currently proposed transaction, in which the  
28 registrant was or is to be a participant and the amount involved exceeds \$120,000,  
and in which any related person had or will have a direct or indirect material  
interest" and (ii) U.S. GAAP. The FASB's Accounting Standards Codification  
("ASC") 850, concerning "Related Party Disclosures," provides, generally, that  
information about transactions with related parties must be disclosed in public  
financial statements, so that those who rely on the statements can evaluate the  
loans' significance. (ASC 850-10-10-1).

1 **V. DEFENDANTS MADE MATERIALLY FALSE AND MISLEADING**  
 2 **STATEMENTS RELATING TO UNDERWRITING STANDARDS**  
 3 **AND CREDIT QUALITY**

4 **A. Statements Relating to Underwriting Standards and Credit**  
 5 **Quality**

6 135. Throughout the Class Period, Defendants represented that BofI had  
 7 established and complied with demanding underwriting standards and therefore  
 8 had excellent loan credit quality. However, as explained in Section V.B, *infra*, the  
 9 following statements were false and misleading when made because Defendants  
 10 knew, but failed to disclose, (i) BofI engaged in unsound lending practices that  
 11 subjected the Company to significant risk of loss and potential regulatory and  
 12 government actions, (ii) BofI's off-balance sheet activities included undisclosed  
 13 lending partnerships with third party lenders that originated loans using  
 14 substandard underwriting practices and that subjected BofI to significant credit risk  
 15 and risk of potential regulatory or government actions, and (iii) BofI violated  
 16 federal banking regulations and laws and other laws by failing to maintain an  
 17 adequate Customer Identification Program ("CIP") as part of the Bank's  
 18 BSA/AML compliance program and by lending to borrowers who failed to provide  
 19 sufficient identifying information.

20 136. The Class Period begins on September 4, 2013, when BofI filed an  
 21 annual report on Form 10-K with the SEC for the fiscal year ending June 30, 2013  
 22 ("2013 Form 10-K"), in which BofI stated:

- 23 • "Our loan underwriting policies and procedures are written and adopted by  
 24 our board of directors and our loan committee. ***Each loan, regardless of  
 25 how it is originated, must meet underwriting criteria set forth in our  
 26 lending policies and the requirements of applicable lending regulations of  
 27 our federal regulators***";
- 28 • "In the underwriting process ***we consider the borrower's credit score, credit  
 history, documented income, existing and new debt obligations, the value  
 of the collateral, and other internal and external factors***. For all  
 multifamily and commercial loans, we rely primarily on the cash flow from  
 the underlying property as the expected source of repayment, but we also  
 endeavor to obtain personal guarantees from all borrowers or substantial  
 principals of the borrower. In evaluating multifamily and commercial loans,  
 we review the value and condition of the underlying property, as well as the

1 financial condition, credit history and qualifications of the borrower. In  
 2 evaluating the borrower's qualifications, we consider primarily the  
 3 borrower's other financial resources, experience in owning or managing  
 4 similar properties and payment history with us or other financial institutions.  
 5 In evaluating the underlying property, we consider primarily the net  
 6 operating income of the property before debt service and depreciation, the  
 7 ratio of net operating income to debt service and the ratio of the loan amount  
 8 to the appraised value."

- 9 • "Credit-Related Financial Instruments. The Company is a party to credit-  
 10 related financial instruments with off-balance- sheet risk in the normal  
 11 course of business to meet the financing needs of its customers. . . . The  
 12 Company's exposure to credit loss is represented by the contractual amount  
 13 of these commitments [to extend credit]. *The Company follows the same*  
 14 *credit policies in making commitments as it does for on-balance-sheet*  
 15 *instruments.*"

16 137. These statements concerning BofI's underwriting standards appeared  
 17 in substantially the same form in BofI's 2014 and 2015 Form 10-Ks. *See* App'x at  
 18 Section II.

19 138. On November 5, 2013, BofI conducted a Q1 2014 conference call  
 20 with analysts and investors, during which Garrabrants represented:

- 21 • "We are pleased with the increase in credit quality at the bank";
- 22 • "We continue to remain focused on credit quality at the bank, and have not  
 23 sacrificed credit quality to increase originations"; and
- 24 • The new Ability-to-Repay and Qualified Mortgage ("QM") rule adopted by  
 25 the Consumer Financial Protection Bureau ("CFPB") "solidified our ability  
 26 to continue to do the prudent originations that we have, and not allowed  
 27 other institutions to come in and basically mess up this business by sort of  
 28 racing to the bottom on credit. Because you can't any more do a -- it is  
 illegal now to do a state[d]-income loan. . . . And we never did that. *We've*  
*always done full documentation loans.* . . . I don't believe in low  
 documentation, and no documentation loans. From my perspective, I want  
 to see everything. If we're making a judgment and a trade off about a  
 particular aspect of something, that's fine. But we can do that with the  
 holistic picture, and have that picture documented."

139. On February 5, 2014, BofI filed with the SEC its Form 10-Q for the  
 second quarter ending December 31, 2013 ("Q2 2014 Form 10-Q"), which  
 contained a nearly identical description of BofI's off-balance sheet activities as  
 included in its 2013 Form 10-K (¶ 136). BofI described its off-balance  
 commitments as of December 31, 2013 to consist of "commitments to originate  
 loans with an aggregate outstanding principal balance of \$125.3 million, and

1 commitments to sell loans with an aggregate outstanding principal balance of  
 2 \$38.8 million.” BofI further stated that it has “no commitments to purchase loans,  
 3 investment securities or any other unused lines of credit.” BofI stated in the Form  
 4 10-Q that “[t]he fair value of off-balance sheet items is not considered material.”

5 140. On February 5, 2014, BofI conducted a Q2 2014 conference call with  
 6 analysts and investors. During the call, Garrabrants repeated several of the same  
 7 statements regarding credit quality that he had on the November 5, 2013 call, again  
 8 highlighting the fact that BofI “never” does “no documentation” loans. *See App’x*  
 9 at Section II.

10 141. Continuing through the remainder of 2014, including on earnings calls  
 11 held on May 6, 2014, August 7, 2014, and November 4, 2014, BofI, and in  
 12 particular Garrabrants, made similar statements concerning BofI’s underwriting  
 13 standards and credit quality, including the following:<sup>31</sup>

- 14 • “[w]e achieved our loan growth without reducing our credit standards while  
 15 improving our net interest margin”;
- 16 • “we continue to originate only full documentation, high credit quality, low  
 17 loan-to-value, jumbo single-family mortgages and have not reduced our loan  
 18 rates for these products”;
- 19 • “we believe that we can continue to grow our portfolio at similar yields in  
 20 this coming year as we have in the prior year and maintain our conservative  
 21 credit guidelines”;
- 22 • “[w]e continue to have an unwavering focus on credit quality of the bank  
 23 and have not sacrificed credit quality to increase origination”; and
- 24 • “strong loan growth was achieved while maintaining high credit quality  
 25 standards.”

26 142. Throughout 2015, Defendants continued touting the purportedly high  
 27 quality of BofI’s loans and its strong underwriting practices. On January 29, 2015,  
 28 BofI held a conference call to discuss its Form 10-Q for the second quarter ending  
 December 31, during which Garrabrants touted BofI’s “strong credit discipline.”

---

<sup>31</sup> Section II of the Appendix contains a complete list of BofI’s false and misleading statements concerning underwriting standards and credit quality.



1 143. On April 30, 2015, BofI conducted a Q3 2015 conference call, during  
 2 which Garrabrants again emphasized BofI's purportedly stringent underwriting  
 3 standards and again insisted "[w]e only originate full documentation loans[.]" See  
 4 App'x at Section II.

5 144. In investor presentations throughout the Class Period, including in  
 6 February 2014, March 2014, May 2014, September 2014, and February 2015,  
 7 Micheletti made numerous statements regarding the Company's purported  
 8 financial condition and prudent practices, including:

- 9 • Representing that for single-family loans, BofI used "common sense'  
 10 underwriting"; and
- 11 • Representing that for multi-family loans, BofI worked with "[h]igh quality  
 12 originators with average experience of 15+ years" and had "high credit  
 13 quality[.]"

14 145. Defendants also sought to reassure investors when questions  
 15 regarding BofI's lending practices arose. On August 22, 2015, *The New York*  
 16 *Times* published an article concerning BofI's robust growth and unsavory lending  
 17 practices during Defendant Garrabrants's tenure as CEO.<sup>32</sup> According to the  
 18 *Times*, Garrabrants stated that "[w]e try to run a good, ethical shop and I want  
 19 people to know that." In addition, in response to investor concerns about BofI's  
 20 potentially risky loan portfolio, in particular loans to foreign nationals, Garrabrants  
 21 reportedly stated that "the critics are spreading disinformation," and the article  
 22 continued:

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

\* \* \*

Then there are questions about Bank of Internet's marketing of itself

<sup>32</sup> Peter Eavis, *An Internet Mortgage Provider Reaps the Rewards of Lending Boldly*, N.Y. Times, Aug. 22, 2015 (the "August 2015 NY Times article").

1 as a lender to “foreign nationals.” It does not disclose exactly what  
2 proportion of its loans are made to foreigners. When asked, Mr.  
3 Garrabrants said it was “*nowhere near the majority.*”

4 146. On August 5, 2015, BofI issued a press release announcing that it had  
5 received approval from the OCC to proceed with the definitive purchase and  
6 assumption transaction with H&R Block Bank. In the release, Garrabrants touted  
7 BofI’s “branchless” model, stating that:

- 8 • “[o]nce completed and closed, these H&R Block agreements will add to the  
9 strength and diversity of our deposit, lending and fee income businesses.  
10 We believe our nationwide low-cost branchless bank is well aligned with  
11 H&R Block’s desire to provide their clients with affordable banking  
12 products and services.”

13 147. These statements concerning BofI’s agreements with H&R Block and  
14 BofI’s “branchless business” model being “well aligned” with H&R Block were  
15 false and misleading when made because Defendants knew, but failed to disclose,  
16 that BofI created a phantom Nevada branch location to issue and book hundreds of  
17 millions of dollars in H&R Block financial products and to take advantage of  
18 Nevada usury law which does not limit interest rates in express written contracts.

19 148. On October 29, 2015, BofI conducted a Q1 2016 conference call with  
20 analysts and investors during which Garrabrants made statements touting the  
21 Bank’s credit quality. *See* App’x at Section II.

22 149. The above statements concerning BofI’s underwriting standards and  
23 credit quality were false and misleading when made because, as described in  
24 Section V.B *infra*, Defendants knew, but failed to disclose, that (i) BofI engaged in  
25 unsound lending practices that subjected the Company to significant risk of loss  
26 and potential regulatory and government actions, (ii) BofI’s off-balance sheet  
27 activities included undisclosed lending partnerships with third party lenders that  
28 originated loans using substandard underwriting practices and that subjected BofI  
to significant credit risk and risk of potential regulatory or government actions, and  
(iii) BofI violated federal banking regulations and laws and other laws by failing to  
maintain an adequate CIP as part of the Bank’s BSA/AML compliance program

1 and by lending to borrowers who failed to provide sufficient identifying  
2 information.

3 **B. BoFI Engaged in Unlawful Lending Practices.**

4 150. BoFI Federal Bank began as a small consumer-focused, nationwide  
5 savings bank operating primarily through the Internet. Between fiscal 2011 and  
6 2015, BoFI's total deposits grew 232% (from \$1.34 billion to \$4.45 billion) and its  
7 total loan portfolio grew 274% (from \$1.33 billion to \$5.0 billion). The primary  
8 driver of BoFI's increased earnings during that time was growth of its loan  
9 portfolio and increasing net interest margin.

10 151. BoFI is subject to extensive regulation by its principal regulator, the  
11 OCC, as well as the FDIC, the Federal Reserve, the SEC, the CFPB, and FINRA.  
12 Two major focuses of banking supervision and regulation are the safety and  
13 soundness of a bank and its compliance with consumer protection laws. Bank  
14 examiners perform on-site examinations to review the Bank's performance based  
15 on its management and financial condition, as well as its compliance with  
16 regulations.

17 152. During the Class Period, BoFI engaged in deliberately lax lending  
18 practices and issued loans to borrowers with poor credit history whose ability to  
19 repay the high-interest loans issued to them was, as Defendants knew, doubtful.  
20 These lending practices were inconsistent with BoFI's claims, described above, that  
21 its lending standards were "conservative" and "disciplined," and that the Bank was  
22 focused on "credit quality."

23 153. Through those and other statements, Defendants knowingly misled  
24 investors as to the extent of the true risks entailed in investing in BoFI.

25 **1. BoFI Violated the "Ability-to-Repay" Rule.**

26 154. In January 2013, the CFPB adopted a rule (effective on January 10,  
27 2014) amending 12 C.F.R. § 1026, or "Regulation Z" (which implements TILA),  
28 to implement sections of the Dodd-Frank Wall Street Reform and Consumer

1 Protection Act (“Dodd-Frank Act”) requiring, among other things, that creditors  
2 make a reasonable, good faith determination of a consumer’s ability to repay, with  
3 limited exclusions, any consumer credit transaction secured by a dwelling.  
4 12 C.F.R. § 1026.43(c). The rule also establishes certain protections from liability  
5 under this requirement for “qualified mortgages” or “QMs.” 12 C.F.R.  
6 § 1026.43(e).

7 155. The ability-to-repay/QM rule requires lenders to make a reasonable,  
8 good-faith determination before or when a mortgage loan is issued that the  
9 borrower has a reasonable ability to repay the loan, considering such factors as the  
10 borrower’s income or assets and employment status (if relied on) against: (i) the  
11 mortgage loan payment; (ii) ongoing expenses related to the mortgage loan or the  
12 property that secures it, such as property taxes and hazard insurance; (iii) payments  
13 on other loans secured by the same property; and (iv) the borrower’s other debt  
14 obligations. 12 C.F.R. § 1026.43(c)(2). The rule also requires the lender to verify  
15 the borrower’s credit history. 12 C.F.R. § 1026.43(c)(3).

16 156. The rule contains a presumption that the lender has complied with the  
17 rule if it originates a QM. QMs generally cannot contain certain risky features,  
18 such as interest-only payments or balloon payments.<sup>33</sup> Additionally, points and  
19 fees on QMs are limited.

20 157. As described below, Defendants routinely disregarded borrowers’  
21 ability to repay in making mortgage loans.

22 158. Former BofI employees, including loan underwriters, provided  
23 detailed accounts of the Company’s deliberately lax lending practices. According  
24 to CW 1, who worked primarily on financings for apartment buildings and mixed-  
25 use buildings, as well as some commercial properties, beginning in early 2014,  
26 CW 1 and CW 1’s group were being pressured by BofI’s Executive Vice President

27  
28 <sup>33</sup> See CFPB’s *Basic guide for lenders What is a Qualified Mortgage?*, [http://files.consumerfinance.gov/f/201310\\_cfpb\\_qm-guide-for-lenders.pdf](http://files.consumerfinance.gov/f/201310_cfpb_qm-guide-for-lenders.pdf).

1 and Chief Credit Officer Thomas Constantine, as well as Leigh Porter, who was in  
2 charge of BofI's Multifamily – Income Property Lending group, to underwrite  
3 loans that CW 1 was not comfortable signing off on and that did not make  
4 economic sense for BofI to issue.

5 159. One such loan on which CW 1 worked in mid-2014 involved a multi-  
6 family property located in Laguna Beach, California that was highly leveraged, at  
7 approximately 70% to 75% LTV. According to CW 1, the borrower sought a  
8 cash-out refinancing loan of several million dollars but had bad credit and no cash.  
9 CW 1 reviewed bank statements provided by the borrower that showed less than a  
10 \$100 balance in some accounts, including one account that had a negative balance.  
11 According to CW 1, it was clear that the borrower “was using the property  
12 basically to support a lifestyle the borrower no longer had the money to support.”  
13 CW 1's review of the operating standards of the property showed barely any cash  
14 flow. Despite CW 1's recommendation against financing the property, BofI issued  
15 the loan.

16 160. Further, BofI already had issued a highly leveraged refinancing loan  
17 for a mixed-use property to the same borrower, and soon after BofI made the  
18 second loan to that borrower, CW 1 was told by co-workers in BofI's loan-  
19 servicing department that the borrower had not yet made the first payment owed on  
20 the first loan.

21 161. CW 1 worked on the second refinancing loan and noticed on an  
22 updated credit report concerning the borrower that since the first cash-out  
23 refinancing loan from BofI, the borrower had taken on an additional \$80,000 in  
24 debt from Mercedes-Benz, which CW 1 believed indicated the borrower had  
25 recently purchased a new luxury vehicle. CW 1 was concerned, regarding those  
26 two loans, that the borrower's spending habits outstripped her income. According  
27  
28

1 to CW 1, the debt-service coverage ratio was not good with respect to both  
2 properties.<sup>34</sup>

3 162. CW 1 expressed concerns about the two loans to Constantine.  
4 According to CW 1, Constantine's response was that the transaction was a good  
5 deal for BofI, even if it had to foreclose on the underlying properties. Constantine  
6 noted to CW 1 that it did not matter to BofI if the first loan defaulted because the  
7 underlying property was located in Laguna Beach (one of the most expensive real  
8 estate markets in California).

9 163. Constantine's comment was at odds with the ability-to-repay/QM  
10 rule, which does not include a property's foreclosure value among the factors that  
11 should be considered in determining a borrower's ability to repay a loan.

12 164. CW 1 described other improper lending practices at BofI, including  
13 its use of the same appraiser, Brendan Flynn and his appraisal company, The Flynn  
14 Group, to perform appraisals for the vast majority of loans BofI made. CW 1  
15 noted that Flynn was a friend of Constantine and that even though The Flynn  
16 Group was located in Southern California, it performed appraisals for BofI for  
17 properties located elsewhere, including in Oregon and Las Vegas. CW 1 recalled  
18 instances in which CW 1 saw an initial appraisal by The Flynn Group that  
19 appraised a property for a certain value, and later saw an "updated appraisal" by  
20 The Flynn Group with a higher appraisal value of the same property.

21 165. CW 1 worked on an average of 10 to 15 loans per month at BofI and,  
22 beginning in February 2014, CW 1 was uncomfortable with approximately 10% to  
23 20% of those loans because of the process BofI used to approve loans. "It started  
24 to become very rare that we would deny a loan," according to CW 1.

25 166. Another Senior Underwriter who worked in BofI's San Diego  
26 headquarters prior to and during part of the Class Period ("CW 2") provided  
27

28 <sup>34</sup> The debt-service coverage ratio is the ratio of cash available for debt servicing to interest, principal, and lease payments.



1 similar accounts of BofI's lending practices. CW 2 worked in the same lending  
2 group as CW 1 for part of the Class Period, and then, also during the Class Period,  
3 transferred to BofI's C&I Lending Group, where CW 2 reported to Constantine.  
4 According to CW 2, Constantine and Garrabrants approved deals that CW 2 and  
5 other underwriters recommended against doing, including loans CW 2 and other  
6 BofI underwriters believed were unlikely to be repaid.

7 167. In mid-2014, CW 2 worked on a multimillion dollar C&I loan for a  
8 large property located in the 700 block of Broadway Street in downtown San  
9 Diego, California. The property had been listed for sale for three years at  
10 approximately \$13 million, which, according to CW 2, indicated that the property  
11 was not worth \$13 million. The property was owned by an individual who had  
12 planned to work with Starwood Hotels to build a hotel on the property, but having  
13 not done so, the individual was forced by Starwood to sell the property.

14 168. The borrower was a limited liability company ("LLC"). CW 2 noted  
15 that the appraiser whom BofI hired for the deal was Brendan Flynn of The Flynn  
16 Group, the same appraiser identified by CW 1 as performing the vast majority of  
17 appraisals for BofI loans. CW 2 similarly noted that Flynn was a friend of  
18 Constantine and was the only appraiser BofI used for all multifamily property  
19 appraisals. According to CW 2, Flynn called CW 2 stating that the property  
20 needed to be appraised for \$18 million to satisfy the LTV required for BofI to  
21 proceed with the loan. CW 2 refused to recommend the loan with a property  
22 valuation of \$18 million, particularly after reviewing the borrower's LLC  
23 agreement, which contained a suspicious clause indicating that the property owner  
24 was also making a loan to the borrower above the purchase price, that the  
25 difference between the loan amount and purchase price would be paid to the owner  
26 by the borrower within 24 months, and if the borrower failed to do so, the owner  
27 would assume ownership of the property. CW 2 voiced concerns about the clause,  
28

1 which CW 2 thought was part of a scam designed for the owner to regain  
2 ownership of the property, to BofI's Chief Legal Officer, Eshel Bar-Adon.

3 169. After CW 2 informed Constantine and the BofI loan originator  
4 working on the same loan that CW 2 would not approve the loan, CW 2 received a  
5 call from the loan originator at approximately 3:00 a.m. the following day asking if  
6 CW 2 would approve the loan, to which CW 2 responded "Absolutely not." CW 2  
7 then received a call from Constantine pressuring CW 2 to approve the loan.  
8 Again, CW 2 refused.

9 170. A review of the June 2014 Brendan Flynn appraisal report revealed  
10 that the Broadway property was ultimately appraised at \$18 million. According to  
11 CW 2, the loan was approved by Garrabrants upon recommendation by  
12 Constantine and the loan was funded for between \$11 million and \$13 million.  
13 CW 2 subsequently expressed concerns about the transaction to Constantine,  
14 BofI's Executive Vice President and Chief Lending Officer Brian Swanson, and  
15 other BofI managers. CW 2 also left a copy of the loan documents and a list of  
16 CW 2's concerns with Garrabrants's assistant, as Garrabrants was in Italy at the  
17 time.

18 171. CW 2 also described another loan BofI issued to a borrower whom  
19 CW 2 knew had poor credit and a FICO score in the 400 range.<sup>35</sup> The interest rate  
20 on the \$24,000 loan was approximately 20%. According to CW 2, the loan was  
21 signed by an underwriter whom CW 2 knew and who, when confronted about the  
22 loan, denied any knowledge that his name was on the loan documents.

23 172. CW 10 confirmed that BofI executive management funded loans that  
24 CW 10 and other BofI underwriters declined to sign off on.

25  
26  
27 <sup>35</sup> A FICO score is a type of credit score between 300 and 850 that lenders use to  
28 assess an applicant's credit risk. The higher the score, the lower the applicant's  
credit risk.

1                   2.     **BoFI Maintained a Deficient Customer-Identification**  
 2                   **Program and Violated Federal Laws and Regulations.**

3                   a.     **BoFI's Deficient Customer Identification Program**

4                   173.   BoFI routinely opened customer deposit and loan accounts for  
 5 individuals and entities with suspicious or criminal backgrounds and who failed to  
 6 provide sufficient identifying information. Those banking practices violated  
 7 various federal regulations and laws, including (i) the BSA; (ii) the Uniting and  
 8 Strengthening America by Providing Appropriate Tools Required to Intercept and  
 9 Obstruct Terrorism Act of 2001 (also known as the USA Patriot Act) (Pub. L. No.  
 10 107-56, 115 Stat. 272) ("Patriot Act"); (iii) regulations of The Office of Foreign  
 11 Assets Control ("OFAC") of the U.S. Department of the Treasury ("U.S.  
 12 Treasury"); and (iv) FDIC rules and regulations concerning BSA/AML compliance  
 13 programs.

14                  174.   The BSA requires banks to maintain appropriate records and file  
 15 certain reports involving currency transactions and its customer relationships.  
 16 According to the FDIC's Risk Management Manual of Examination Policies (the  
 17 "FDIC Manual"), the BSA requires banks to maintain sufficient records to  
 18 reconstruct customer account transactions and activity, if necessary.<sup>36</sup>

19                  175.   The scope and enforcement of the BSA and AML measures have been  
 20 expanded by several acts and regulations, including Section 326 of the Patriot Act.  
 21 The Patriot Act requires banks to implement a written and board-approved CIP  
 22 into the bank's BSA/AML compliance program, which must also be board-  
 23 approved. The purpose of the CIP Program is to allow a bank to form a reasonable  
 24 belief that it knows the true identity of each customer.<sup>37</sup>

25 <sup>36</sup> See Section 8.1 of the FDIC Manual, *available at*  
<https://www.fdic.gov/regulations/safety/manual/>.

26 <sup>37</sup> See FDIC Manual; *see also* Federal Financial Institutions Examination Council  
 27 (the "FFIEC"), *Bank Secrecy Act/Anti-Money Laundering Examination Manual*,  
 28 Feb. 27, 2015 (the "FFIEC Manual"), *available at*  
[https://www.fdic.gov/regulations/examinations/bsa/FFIEC\\_CIP.pdf](https://www.fdic.gov/regulations/examinations/bsa/FFIEC_CIP.pdf). According to  
 the FFIEC's website, it "is a formal interagency body empowered to prescribe  
 uniform principles, standards, and report forms for the federal examination of

1 176. The CIP must contain account-opening procedures that specify the  
2 following identifying information obtained from each customer before opening an  
3 account: (i) name; (ii) date of birth for individuals; (iii) physical address; and (iv)  
4 identification number, including a Social Security Number (“SSN”), Tax  
5 Identification Number (“TIN”), Individual Tax Identification Number (“ITIN”), or  
6 Employer Identification Number (“EIN”). (*Id.* at 8.1-10).

7 177. Further, the CIP requires banks to develop procedures to verify the  
8 identity of each customer. Significantly, the CIP “must include procedures for  
9 determining whether the customer appears on any list of known or suspected  
10 terrorists or terrorist organizations issued by any Federal government agency and  
11 designated as such by the Treasury in consultation with the other Federal  
12 functional regulators.” (*Id.* at 8.1-12). Banks are contacted by the U.S. Treasury  
13 when such a list is issued and are required to compare customer names against the  
14 list and follow any accompanying directives. (FFIEC Manual at 51).

15 178. Part 326.8 of the FDIC’s Rules and Regulations also requires banks to  
16 maintain a system of internal controls that is designed to, among other things,  
17 “[e]stablish procedures for screening accounts and transactions for OFAC  
18 compliance that include guidelines for responding to identified matches and  
19 reporting those to OFAC.”

20 179. OFAC maintains and publishes a number of sanctions lists, including  
21 a list of specially designated nationals (“SDNs”) that consists of individuals and  
22 companies owned or controlled by, or acting for or on behalf of, targeted countries,  
23 as well as individuals, groups, and entities, such as terrorists and narcotics  
24 traffickers designated under programs that are not country-specific. (*Id.*) SDN

25  
26 financial institutions by the Board of Governors of the Federal Reserve System  
27 (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit  
28 Union Administration (NCUA), the Office of the Comptroller of the Currency  
(OCC), and the Consumer Financial Protection Bureau (CFPB), and to make  
recommendations to promote uniformity in the supervision of financial  
institutions.”

1 assets are blocked and U.S. persons are generally prohibited from dealing with  
2 them. (*Id.*) As alleged in the Erhart Complaint and described in further detail  
3 below, BofI made loans to foreign nationals with suspicious or unverifiable  
4 backgrounds, including criminals and politically exposed persons and persons who  
5 failed to provide sufficient identifying information. As described above, BofI did  
6 not allocate sufficient resources to maintain a robust and effective BSA/AML  
7 compliance program to minimize the risk of BofI making such loans.

8 **b. Loans to Foreign Nationals**

9 180. BofI made loans to foreign nations with suspicious or unverifiable  
10 backgrounds, including criminals and politically exposed persons and persons who  
11 failed to provide sufficient identifying information. According to Erhart, in or  
12 around January 2015, he discovered in his audit of BofI's loan originations that  
13 "the Bank was making substantial loans to foreign nationals including Politically  
14 Exposed Persons ('PEP's') in potential violation of BSA/Know Your Customer  
15 rules." (*Id.* ¶ 34). Erhart found information showing that "many of the borrowers  
16 were criminals, even notorious criminals, and other suspicious persons" and also  
17 included "very high level foreign officials from major oil-producing countries and  
18 war zones." (*Id.*)

19 181. CW 5 confirmed that BofI did not have sufficient internal controls to  
20 comply with anti-money laundering laws and regulations. CW 5 noted that there  
21 were a lot of foreign national loans at BofI, some of which lacked TINs.  
22 According to CW 5, foreign national loans required the borrower to open a bank  
23 account at BofI and payments on the loan were processed through a BofI business  
24 account. CW 5 related that CW 5 attended meetings with Garrabrants and other  
25 BofI banking personnel where the issue of missing TINs on foreign national loans  
26 was discussed. According to CW 5, Garrabrants issued instructions at the  
27 meetings "to do it anyway" and that "it's got to be done." CW 5 stated that  
28

1 Constantine pressured CW 5's department to push loans through at Garrabrants's  
2 instruction.

3 182. CW 1 described a refinancing loan that BofI made in mid-2015 to a  
4 borrower that participated in a gambling ring operated by a Salvadoran gang. The  
5 borrower had accumulated gambling debt, which the Salvadoran gang permitted  
6 the borrower to pay back by recruiting new gamblers for the gambling ring. CW 1  
7 recalled conducting a background search on the borrower using online search  
8 engines and discovering that the borrower had been convicted of a crime and  
9 entered into a plea deal a couple years before applying for a BofI loan. BofI  
10 nevertheless issued the loan to the borrower.

11 183. CW 2 recalled underwriting a loan for the purchase of a vacant lot in  
12 Pasadena that was partially funded by a Venezuelan family trust. According to  
13 CW 2, the property previously housed a plastics factory that left the property  
14 contaminated. CW 2 indicated that a phase I environmental report about the  
15 property recommended obtaining a phase II report to further assess the safety of  
16 the property. Constantine searched for and found an environmental inspection  
17 company that concluded no further assessment was necessary, and therefore, a  
18 phase II report was not ordered, CW 2 recalled.

19 184. According to CW 2, the Venezuelan family trust provided equity to  
20 the borrower for the purchase. CW 2, however, did not receive any documents  
21 about the trust other than a financial statement. CW 2 was not provided with the  
22 names of the persons behind the trust or any TIN and, therefore, CW 2 was not  
23 able to run an OFAC report to check for matching names on the OFAC list. CW 2  
24 notified Constantine of those issues and refused to approve the loan. CW 2 stated  
25 that Constantine approved the loan anyway, apparently in violation of OFAC.

26 185. A slide presentation by BofI's National Sales Executive in 2014  
27 confirms that BofI issued many loans to foreign nationals and was "flexible" in the  
28



1 types of identifying and credit information it accepted from foreign borrowers.<sup>38</sup>  
 2 Specifically, the BofI Presentation included the following about loans to Chinese  
 3 nationals without TINs: “we have lent to a lot of Chinese foreign nationals – we  
 4 know they don’t have to file tax returns and we accept letters of employment  
 5 translated into English by certified translators.”

6 186. As described in an article published by *Seeking Alpha* on August 28,  
 7 2015 (the “August 28, 2015 Article”), BofI’s willingness to make loans to foreign  
 8 nationals in violation of OFAC regulations is further demonstrated by doing  
 9 business with a South Florida mortgage broker, A&D Mortgage LLC, whose  
 10 website includes the images of the flag of Russia, among other national flags, on a  
 11 page advertising “Foreign National Loans.”<sup>39</sup> A review of the U.S. Treasury’s  
 12 website reveals that OFAC issued directives in 2014 imposing sanctions on  
 13 specified persons operating in sectors of the Russian economy and prohibiting U.S.  
 14 persons from engaging in certain financing transactions in the U.S. with those  
 15 persons.<sup>40</sup> The August 28, 2015 Article also noted that BofI’s issuance of loans to  
 16 foreign nationals from Russia is inconsistent with Garrabrants’s claim that BofI’s  
 17 foreign national loans consist primarily of loans made to Western Europeans and  
 18 Canadians.

19 **c. Missing or Unverifiable Customer TINs**

20 187. Erhart also discovered that BofI opened and maintained hundreds of  
 21 accounts without TINs. According to Erhart, on or about January 15, 2015, the  
 22 OCC requested that BofI provide information about bank accounts without TINs.

23  
 24 <sup>38</sup> See Maurice Totry, National Sales Executive, *BofI’s Comprehensive Overview*  
 25 *of Our Wholesale Business*, 2014, formerly available at  
 26 [https://www.dropbox.com/s/wpxip6e91rfhqaj/BofIFederal\\_Presentation-  
 %20MT%20Version%2003%2011%202014.pdf?dl=0](https://www.dropbox.com/s/wpxip6e91rfhqaj/BofIFederal_Presentation-%20MT%20Version%2003%2011%202014.pdf?dl=0). Plaintiff has retained a  
 copy of the document.

27 <sup>39</sup> The Friendly Bear, *The New York Times Has Only Scratched The Surface On*  
*BofI Holding...*, *Seeking Alpha*, Aug. 28, 2015.

28 <sup>40</sup> See *Ukraine-/Russia-related Sanctions*, U.S. Treasury website, available at  
<https://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx>.

1 “The Bank responded to the OCC that there were no accounts without TIN’s.”  
 2 (Erhart Compl. ¶ 32). BofI’s response was knowingly false, Erhart alleged, as he  
 3 “saw a spreadsheet in the BSA [Bank Secrecy Act] folder disclosing  
 4 approximately 150-200 accounts where the borrower does not have a TIN.” (*Id.*)

5 188. Erhart showed his supervisor, Jonathan Ball, on Erhart’s work  
 6 computer the OCC’s request as well as the loan spreadsheet Erhart found that  
 7 contained a column titled “account number.” (Erhart Decl. ¶ 32). According to  
 8 Erhart’s allegations, Erhart counted the number of loans lacking TINs for Ball and  
 9 Ball appeared surprised. (*Id.*)

### 10 **3. BofI Engaged in, and Concealed, Illicit Lending** 11 **Partnerships.**

12 189. BofI also worked with undisclosed SPEs and lending partners such as  
 13 OnDeck, Quick Bridge, Center Street, and Propel Tax in making high-risk, high  
 14 interest rate loans to borrowers with poor credit profiles and/or limited or no ability  
 15 to repay that were inconsistent with BofI’s purported “conservative” and  
 16 “disciplined” lending standards. The lending partnerships also created credit risks  
 17 borne by BofI and risks of regulatory or government actions against BofI which  
 18 defendants failed to disclose.

#### 19 **a. OnDeck**

20 190. BofI engaged in an undisclosed lending partnership with OnDeck as  
 21 part of an illicit “Rent-A-Charter” scheme that exposed BofI to significant risks of  
 22 regulatory or government actions. BofI worked with OnDeck to expand BofI’s  
 23 C&I Lending business, one of the Company’s fastest-growing segments during the  
 24 Class Period. OnDeck is a publicly traded company whose common stock is listed  
 25 on the New York Stock Exchange under the ticker “ONDK.” OnDeck was  
 26 profiled in a Bloomberg article entitled “*Is OnDeck Capital the Next Generation of*  
 27 *Lender or Boiler Room?*” that described OnDeck’s business as “essentially payday  
 28 lending for businesses[.]” at a high cost – the average interest rate on OnDeck’s

1 business loans was 54%.<sup>41</sup> OnDeck worked with independent mortgage brokerage  
 2 firms that recommended loans to BofI in exchange for lucrative fees. According to  
 3 Bloomberg, “OnDeck has teamed up with brokers convicted of stock scams,  
 4 insider trading, embezzlement, gambling, and dealing ecstasy, according to  
 5 interviews with the brokers and court records.”<sup>42</sup>

6 191. In December 2014, in connection with its initial public offering,  
 7 OnDeck filed a prospectus with the SEC in which it described its partnership with  
 8 BofI. OnDeck revealed that pursuant to the lending partnership, BofI issued  
 9 commercial loans in states and jurisdictions in which OnDeck is not licensed to do  
 10 so:

11 [N]ine states and jurisdictions, namely Alaska, California, Maryland,  
 12 Nevada, North Dakota, Rhode Island, South Dakota, Vermont, and  
 13 Washington, D.C., require a license to make certain commercial loans  
 14 and may not honor a Virginia choice of law. . . . In such states and  
 15 jurisdictions and in some other circumstances, term loans are made by  
 16 an issuing bank partner that is not subject to state licensing, primarily  
 17 BofI Federal Bank (a federally chartered bank), or BofI, and may be  
 18 sold to us.

19 \* \* \*

20 BofI establishes its underwriting criteria for the issuing bank partner  
 21 program in consultation with us. We recommend term loans to BofI  
 22 that meet BofI’s underwriting criteria, at which point BofI may elect  
 23 to fund the loan. If BofI decides to fund the loan, BofI retains the  
 24 economics on the loan for the period that it owns the loan. BofI earns  
 25 origination fees from the customers who borrow from it and in  
 26 addition retains the interest paid during the period BofI holds the loan  
 27 before sale. In exchange for recommending loans to BofI, we earn a  
 28 marketing referral fee based on the loans recommended to, and  
 funded by, BofI. BofI has the right to hold the loans or sell the loans  
 to us or other purchasers, though it generally sells the loans<sup>43</sup> to us on  
 the business day following its origination of the loan. . . .

192. BofI’s partnership with OnDeck is tantamount to a “Rent-a-Charter”  
 scheme, which the OCC has publicly condemned and sought to eliminate at other

41 Zeke Faux and Dune Lawrence, *Is OnDeck Capital the Next Generation of Lender or Boiler Room?*, Bloomberg, Nov. 13, 2014.

42 *Id.*

43 OnDeck Form 424B4 (Prospectus) filed with the SEC on December 17, 2014.

1 banks through enforcement actions.<sup>44</sup> The OCC has found “a number of abuses in  
 2 these relationships. Of primary concern was the inability of small banks to  
 3 properly oversee the third parties who were making loans in their names. Among  
 4 the abuses: deceptive marketing practices, failure to secure confidential customer  
 5 files, and unsafe and unsound lending.”<sup>45</sup>

6 193. The OCC has issued advisory letters that warned against Rent-A-  
 7 Charter schemes, which applied to BofI. In OCC Advisory Letter AL 2000-10, for  
 8 example, the OCC noted that “[s]uch third-party arrangements significantly  
 9 increase risks to the bank and the OCC’s supervisory concerns. . . . Payday lenders  
 10 entering into such [Rent-a-Charter] arrangements with national banks should not  
 11 assume that the benefits of a bank charter, particularly with respect to the  
 12 application of the state and local law, would be available to them.”<sup>46</sup> Further, the  
 13 OCC Advisory Letter provided guidelines for such arrangements, including:

14 If payday lending is done indirectly through a third party, the  
 15 agreement between the bank and a third party must establish adequate  
 16 controls over the loan transactions, and should clearly delineate the  
 17 services to be provided by the third party, including compliance with  
 the bank’s underwriting and servicing standards, funding procedures,  
 reporting requirements, compensation, and other terms.

18 194. Additionally, in advisory letter AL 2003-3, which is also applicable to  
 19 BofI, the OCC cautioned against “mak[ing] loans through brokers or obtain[ing]  
 20 loans through purchase transactions that contain terms or reflect practices that may  
 21 be characterized as abusive or ‘predatory.’”<sup>48</sup> The OCC’s concerns included,

22 <sup>44</sup> Aurelius, *BofI: Boiler Rooms, Bad Loans, And Off-Balance Sheet Maneuvers*  
 23 *Underpin Poorly Understood Risks, Seeking Alpha*, Nov. 10, 2015.

24 <sup>45</sup> OCC website, *Payday Lending*, <http://www.occ.treas.gov/topics/consumer-protection/payday-lending/index-payday-lending.html>.

25 <sup>46</sup> *OCC Advisory Letter, AL-2000-10*, Nov. 27, 2000, available at <http://www.occ.gov/static/news-issuances/memos-advisory-letters/2000/advisory-letter-2000-10.pdf>.

26 <sup>47</sup> *Id.*

27 <sup>48</sup> *OCC Advisory Letter, AL 2003-3*, Feb. 21, 2003, available at  
 28 <http://www.occ.gov/static/news-issuances/memos-advisory-letters/2003/advisory-letter-2003-3.pdf>.

1 among other things, that such loans “present significant legal, reputation, and other  
2 risks, in addition to the heightened credit risk assumed in cases where the borrower  
3 lacks the ability to repay the loan without resorting to liquidation of the  
4 collateral.”<sup>49</sup>

5 195. As mentioned above in ¶ 190 and reported by Bloomberg, the average  
6 interest rate on OnDeck’s business loans was 54%. OnDeck acknowledged in its  
7 2015 Form 10-K that a May 22, 2015 Second Circuit Court decision, *Madden v.*  
8 *Midland Funding*,<sup>50</sup> poses an additional threat to its “Rent-a-Charter” business  
9 model. In *Madden*, the court held that the federal pre-emption of state usury laws  
10 does not apply in a case where consumer debt originated by a federally chartered  
11 bank is subsequently acquired by a non-bank debt collector. Although the case is  
12 about credit card debt, the holding is broad, and according to legal experts it could  
13 also apply to commercial loans.<sup>51</sup> OnDeck’s risk disclosure in pertinent part states:

14 Any extension of Second Circuit’s decision, either within or without  
15 the states in the Second Circuit, could challenge the preemption of  
16 state laws setting interest rate limitations for those loans made by our  
issuing bank partners.

17 196. BofI did not disclose its partnership with OnDeck pursuant to which  
18 BofI made millions of dollars in high-risk loans. As OnDeck disclosed in its Form  
19 10-K for the year ending December 31, 2014, loans made in states in which  
20 OnDeck was not licensed were “primarily” made by BofI, and, further, such loans  
21 by issuing bank partners totaled approximately \$184.08 million, or 15.9% of  
22 OnDeck’s \$1.157 billion in total originations in 2014.<sup>52</sup>

23 \_\_\_\_\_  
24 <sup>49</sup> *Id.*

25 <sup>50</sup> 786 F.3d 246 (2d Cir. 2015).

26 <sup>51</sup> See <http://www.paulhastings.com/publications-items/details/?id=e695e469-2334-6428-811c-ff00004cbded>: “However, the broad language of the Appeals  
27 Court’s holding in the *Madden* case is not limited to the specific facts of the case  
and, thus, has potential applicability to commercial as well as consumer loans  
originated by national banks and federal thrifts relying on federal preemption from  
state usury laws, (...)”

28 <sup>52</sup> OnDeck Form 10-K filed with the SEC on March 10, 2015, at p. 16.

1           197. Contrary to Garrabrants’s assertions about BofI’s C&I lending  
 2 business that, among other things, “[w]e are the sole agent for the vast majority of  
 3 our C&I loans,” “the vast majority of our C&I loan books is sole sourced,  
 4 originated and agented by us,” and “[w]e believe there will be opportunities to  
 5 work more closely with other institutions to growing our C&I loan portfolio either  
 6 through club deals on a shared national credit basis,” a significant portion of BofI’s  
 7 C&I loan originations during the Class Period were actually pursuant to BofI’s  
 8 partnership with OnDeck as part of a Rent-a-Charter scheme.<sup>53</sup>

9                                   **b.     Quick Bridge**

10           198. BofI also originated C&I loans recommended by Quick Bridge in an  
 11 undisclosed lending arrangement that was akin to a Ponzi scheme and that created  
 12 significant credit risks ultimately borne by BofI, as well as risks of regulatory or  
 13 government actions against BofI. Quick Bridge is an Irvine, California-based  
 14 “alternative lending company” that provides short-term loans to small and  
 15 medium-sized businesses that are unable to obtain traditional loans. Quick  
 16 Bridge’s website advertises, “Poor Credit? No problem. We base our financing off  
 17 of a business’s cash flow, rather than a business’s credit, because we understand  
 18 the obstacles that modern business owners face.”<sup>54</sup>

19           199. According to an article published on *Seeking Alpha* on November 10,  
 20 2015, entitled *BofI: Boiler Rooms, Bad Loans, And Off-Balance Sheet Maneuvers*  
 21 *Underpin Poorly Understood Risks* (the “November 10, 2015 Article”), Quick  
 22 Bridge previously did business as “BlackRock Lending Group” (“BLG”),<sup>55</sup> which  
 23 “the State of Washington has publicly accused of perpetrating ‘an advance fee loan  
 24

25 <sup>53</sup> See BofI’s CEO Greg Garrabrants on Q4 2015 Results - Earnings Call  
 26 Transcript.

27 <sup>54</sup> See Quick Bridge website, *formerly available at* <http://quickbridgefunding.com/>.  
 Plaintiff has retained a copy of the document.

28 <sup>55</sup> BlackRock Lending Group is not related to asset-management firm BlackRock, Inc.



1 scam’ whereby ‘consumers are told to wire the funds and the consumers never  
2 receive their loans.’”<sup>56</sup>

3 200. The relationship between Quick Bridge and BLG is confirmed by (i)  
4 Plaintiff’s review of more than 200 loan foreclosure lawsuits filed by “BlackRock  
5 Lending Group, LLC d/b/a Quick Bridge Funding”; and (ii) an amendment to a  
6 UCC Financing Statement initially listing BLG as the debtor and BofI Federal  
7 Bank as the secured party, but later amended to change the debtor to Quick Bridge  
8 Funding, LLC.<sup>57</sup>

9 201. Quick Bridge relied on a network of brokers to recommend loans that  
10 “come with ridiculously high interest rates, must be paid daily, and have  
11 significant fees and penalties.”<sup>58</sup> Quick Bridge then reportedly passed the loans to  
12 BofI for origination, which immediately assigned the loans off-balance sheet to  
13 WCL Holdings I, LLC (“WCL”), a wholly-owned subsidiary of BLG (d/b/a Quick  
14 Bridge) and an apparent SPE managed by Quick Bridge that was financed by BofI.  
15 The loans were then reportedly serviced by Quick Bridge, which also managed  
16 collections.<sup>59</sup>

17 202. According to the November 10, 2015 Article, “[c]ourt documents  
18 reveal that many borrowers appear to have never been capable of meeting the  
19 onerous terms of the loans and, in some cases, have defaulted within days of the  
20 loans being issued. As a result, the courts have been flooded with collections

21 \_\_\_\_\_  
22 <sup>56</sup> Aurelius, *BofI: Boiler Rooms, Bad Loans, And Off-Balance Sheet Maneuvers*  
*Underpin Poorly Understood Risks*, Seeking Alpha (Nov. 10, 2015).

23 <sup>57</sup> See UCC Financing Statement, Filing No. 14-7399509037, Document No.  
24 4162438002, filed with the California Secretary of State on February 14, 2014  
25 (showing BlackRock Lending Group as debtor, and BofI Federal Bank as secured  
26 party), amended by UCC Financing Statement, Filing No. 14-74267595,  
Document No. 44681230002, filed with the California Secretary of State on  
September 3, 2014 (changing BlackRock Lending Group to Quick Bridge Funding  
LLC as debtor).

27 <sup>58</sup> See *supra* footnote 56.

28 <sup>59</sup> Roddy Boyd, *BOFI Federal Savings: Annals of the Bank of Misery, Part I*,  
Southern Investigative Reporting Foundation, June 28, 2017 (the “June 28, 2017  
Article”).

1 actions and/or bankruptcies of small business owners related to loans originated by  
2 BOFI.”<sup>60</sup>

3 203. Plaintiff’s review of court filings in 420 foreclosure actions filed by  
4 Quick Bridge, BLG, and/or WCL concerning defaulted loans reveals that 229 out  
5 of 420 of the loans at issue, or 55%, were originated by BofI, and the total  
6 remaining balance owed and demanded on the BofI-originated loans was  
7 approximately \$11.78 million. A nearly identical form loan agreement was used in  
8 each of the 420 BofI-originated loans Plaintiff reviewed. In one case involving a  
9 loan originated by BofI, the “Business Loan Agreement,” dated May 12, 2014,  
10 showed BofI Federal Bank as the “Lender,” Quick Bridge Funding as the  
11 “Servicer,” and System Solding (USA) Inc. as the “Borrower,” and listed a “Loan  
12 Amount” of \$150,000, a “Total Repayment Amount” of \$198,000, an “Origination  
13 Fee” of \$3,000, and a payment schedule requiring “\$2,357.14 Daily Payment  
14 Amount (Weekday)” and “84 Daily Payments.”<sup>61</sup> The loan was modified 10  
15 months later with a “Restructure Agreement,” dated March 27, 2015, in which the  
16 borrower agreed to make 12 remaining monthly payments of \$8,652.39. Less than  
17 two months later, however, on May 15, 2015, the borrower allegedly defaulted on  
18 the loan with a remaining unpaid loan balance of \$78,723.38.<sup>62</sup> Many of the  
19 borrowers of the aforementioned BofI-originated loans defaulted within weeks of  
20 obtaining their loan—the average term of those loans was 167 calendar days and  
21 the amount of time before the borrowers defaulted was, on average, 52 days.  
22 Significantly, some of the borrowers of the loans BofI originated did not even  
23 make their first loan payment due. A review of all 229 loans revealed that the  
24 average annual effective interest rate on these BofI originated loans is 248%,

25 \_\_\_\_\_  
26 <sup>60</sup> See *supra* footnote 56.

27 <sup>61</sup> See Complaint filed in *Quick Bridge Funding, LLC v. System Solding (USA)*  
28 *Inc., et al.*, Case No. 30-2015-00795980-CU-BC-CJC (Cal. Super. Ct. filed June  
29, 2015).

<sup>62</sup> *Id.*

1 which is a marked contrast to the average interest rate which appears to apply on  
2 the face of the loan agreement (29%).<sup>63</sup>

3 204. As demonstrated by the “Loan Assignment Schedule” (with  
4 redactions) attached to a filing in a collections action and included in the  
5 November 10, 2015 Article, many loans originated by BofI are non-performing  
6 and have been assigned to WCL.

7 205. Constantine and BofI’s Assistant General Counsel Seth Bayles  
8 approved the assignments of BofI loans to WCL, as demonstrated in a document  
9 entitled “Bulk Assignment” signed by Bayles and Constantine on behalf of BofI  
10 referenced in the November 10, 2015 Article.

11 206. A review of Uniform Commercial Code Financing Statements (“UCC  
12 Financing Statements”) filed by BofI with various states’ Secretaries of State  
13 shows that BofI has provided secured financing to WCL and BLG.<sup>64</sup> In addition,  
14 on December 8, 2015, *Seeking Alpha* published an article confirming the lending  
15 relationship between BofI and Quick Bridge.<sup>65</sup> The article included an image of a  
16 UCC Financing Statement showing BLG as the Debtor and BofI Federal Bank as  
17 the Secured Party, and a “Master Loan and Security Agreement dated February 12,  
18 2014” between BofI Federal Bank, which is identified as the lender and secured  
19 party, and WCL Holdings I, LLC as the Borrower.

20 207. By lending to WCL (which is controlled by Quick Bridge), whose  
21 primary purpose is apparently to purchase BofI loans, BofI was effectively funding

22 <sup>63</sup> The average borrower will assume that the difference between “Total  
23 Repayment Amount” and “Loan Amount” represents interest, but the average  
24 borrower will not realize the excessively high effective annual interest rate, since it  
is not disclosed.

25 <sup>64</sup> See, e.g., UCC Financing Statement, Document No. 41624380002, Filing No.  
26 14-7399509037 with California Secretary of State (Feb. 14, 2014) (showing BLG  
27 as debtor and BofI Federal Bank as secured party), amended by Document No.  
44681230002, Filing No. 14-74267595 (Sept. 3, 2014), and UCC Financing  
Statement, Initial Filing No. 2014 0603993, filed with Delaware Secretary of State  
(Feb. 14, 2014) (showing WCL Holdings I, LLC as debtor, BofI Federal Bank as  
secured party).

28 <sup>65</sup> Aurelius, *BofI Confirmed To Finance Undisclosed, Off Balance Sheet SPE To  
Which It Transfers Bad Loans*, Seeking Alpha (Dec. 8, 2015).

1 its own loan originations and ultimately bore the credit risk of default on those  
2 loans, unbeknownst to investors. The lending partnership with Quick Bridge  
3 involved high interest, high risk loans which Quick Bridge brought to BofI and  
4 which BofI originated. In originating those loans, BofI earned substantial fees.  
5 BofI then sold or assigned the loans to WCL/Quick Bridge. BofI also provided  
6 funding to WCL/Quick Bridge to buy those types of high risk, high interest loans  
7 from BofI. Those loans, therefore, served as collateral for the funding WCL/Quick  
8 Bridge obtained from BofI. Through this circuitous arrangement, BofI ultimately  
9 bore the credit risk of default of the high risk, high interest loans it assigned to  
10 WCL/Quick Bridge because if the borrowers defaulted, WCL/Quick Bridge would  
11 not be able to pay back the funding it had obtained from BofI. Accordingly, the  
12 ultimate risk for the assigned loans rested with BofI.

13 208. In BofI's third quarter of 2016 earnings conference call on April 28,  
14 2016, Garrabrants provided additional details about its suspicious C&I third party  
15 lending relationships, such as with WCL/Quick Bridge, that indicated that the  
16 lending relationships were akin to a Ponzi scheme. Specifically, Garrabrants stated  
17 that "[i]n the event [C&I] loans or receivables and the collateral pool fail to  
18 perform as required by the loan documents, we require our borrowers to replace  
19 the delinquent loan with a different loan that meets our eligibility criteria[.]" BofI  
20 did not properly disclose nor account for the risk that its lending partners would  
21 not be able to adequately replace delinquent loans that collateralized the funding  
22 BofI provided to those lending partners. Instead, defendants touted the purported  
23 growth of BofI's C&I loan portfolio and falsely and misleadingly claimed that the  
24 loans were "well secured" and "backed by hard collateral, receivables, real estate  
25 or other loans" when they were not. The lending partnership with Quick Bridge  
26 also subjected BofI to risks of OCC or other regulatory action as it involved loans  
27 originated by BofI pursuant to an illicit "Rent-A-Charter" scheme. The  
28 bankruptcy trustee of the bankrupt estate of Lam Cloud Management, LLC, which

1 allegedly obtained a loan from Quick Bridge through such a scheme, described the  
 2 transaction as follows: “In a blatant and transparent attempt to evade state usury  
 3 laws, QB engaged in a ‘rent a charter scheme’ by retaining BofI, a federally  
 4 chartered bank, to originate the QB Loan.”<sup>66</sup>

5 **c. Center Street**

6 209. BofI made single-family lender finance loans to Center Street that  
 7 were inconsistent with BofI’s statements about its conservative underwriting  
 8 standards and high credit quality loans. Center Street is a private lender that  
 9 provides “first lien short-term financing within 24 hours for residential real estate  
 10 investors purchasing properties at discounted prices through trustee sales, pre-  
 11 foreclosures, short sales, bank REO’s, or just about any other kind of discounted  
 12 sale.”<sup>67</sup>

13 210. According to an article published by *Seeking Alpha* on November 19,  
 14 2015 (the “November 19, 2015 Article”), Center Street and several of its SPEs  
 15 were recently sued by the receiver of a California “flip and fix” real estate fund  
 16 named Capital Cove Bancorp which the SEC alleged was a Ponzi scheme and shut  
 17 down in June 2015.<sup>68</sup> The receiver’s action reportedly alleges that for several  
 18 years, “Center Street was ‘enabling and assisting’ the perpetuation of the Ponzi  
 19 scheme” by, among other things, lending money to Capital Cove on at least 86  
 20 occasions when Center Street knew, or should have known, Capital Cove could not  
 21 have profited from the properties it purchased given “all of the liens placed against  
 22 the properties, the cost of refurbishment, the carrying costs for the properties” and  
 23 other costs. The action reportedly also alleged that despite defaults on most loans

24 \_\_\_\_\_  
 25 <sup>66</sup> See Complaint to Avoid and Recover Transfers Pursuant to 11 U.S.C. §§ 547,  
 26 548 AND 550 and for Damages Pursuant to Applicable Law, filed in *In re:*  
 27 *Lam Cloud Management, LLC*, Case No. 15-19010 (MBK) (Bankr. D.N.J.) (Doc.  
 28 No. 50) (Mar. 23, 2017).

<sup>67</sup> See Center Street website at  
<http://www.centerstreetlending.com/loan-solutions1.html>.

<sup>68</sup> Aurelius, *BofI: Risky Loan To Undisclosed, Off-Balance Sheet SPEs Found Disguised Within Mortgage Warehouse Portfolio*, Seeking Alpha, Nov. 19, 2015.



1 Center Street had already issued to Capital Cove, Center Street continued to issue  
 2 new fix and flip loans to Capital Cove’s operator, Rashid Khalfani, whom Center  
 3 Street knew had a criminal record, to assist Khalfani in perpetuating a scheme to  
 4 attract capital from unsuspecting investors and using proceeds to pay Center Street  
 5 BofI issued single-family lender finance loans to Center Street. A review of UCC  
 6 Financing Statements filed by BofI confirms that BofI provided financing to  
 7 Center Street through its SPEs.<sup>69</sup>

8 211. The November 19, 2015 Article also noted that nearly \$300 million in  
 9 in risky single-family lender finance loans BofI made to Center Street SPEs were  
 10 disguised as “Warehouse and other” loans on BofI’s financial statements. Those  
 11 loans appear to be included in BofI’s “Warehouse and Other” loans on its financial  
 12 statements without any attribution to Center Street. Rather, BofI reports its total  
 13 loan portfolio composition in amounts and percentages by type of loan at the end  
 14 of each fiscal year-end. Under the loan type “Single Family Real Estate Secured,”  
 15 there is a subtype of loans called “Warehouse and Other,” which BofI explains in a  
 16 footnote is comprised of warehouse loans (short terms loans to mortgage bankers

---

17  
 18 <sup>69</sup> See UCC Financing Statement, Document No. 42609120002, Filing No. 14-  
 19 7508068361, filed with the California Secretary of State on April 17, 2014,  
 20 (showing Center Street Lending Fund IV, LLC as debtor, BofI Federal Bank as  
 21 secured party); UCC Financing Statement, Document No. 3896360002, Filing No.  
 22 13-7370912629, filed with the California Secretary of State on July 22, 2013  
 23 (showing Center Street Lending RE I, LLC as debtor, BofI Federal Bank as  
 24 secured party); UCC Financing Statement, Filing No. 20141513506, filed with the  
 25 Delaware Secretary of State on April 17, 2014 (showing Center Street Lending  
 26 Fund IV SPE, LLC as debtor, BofI Federal Bank as secured party); UCC  
 27 Financing Statement, Filing No. 20133378503, filed with the Delaware Secretary  
 28 of State on August 29, 2013 (showing Center Street Lending MP III SPE, LLC as  
 debtor, BofI Federal Bank as secured party); UCC Financing Statement, Filing No.  
 20133378677, filed with the Delaware Secretary of State on August 29, 2013  
 (showing Center Street Lending MP III, LLC as debtor, BofI Federal Bank as  
 secured party); UCC Financing Statement, Filing No. 20141191949, filed with the  
 Delaware Secretary of State on March 26, 2014 (showing Center Street Lending  
 MP IV SPE, LLC as debtor, and BofI as secured party); UCC Financing  
 Statement, Filing No. 20141191923, filed with the Delaware Secretary of State on  
 March 26, 2014 (showing Center Street Lending MP IV, LLC as debtor, and BofI  
 as secured party); and UCC Financing Statement, Filing No. 20132822568, filed  
 with the Delaware Secretary of State on July 22, 2013 (showing Center Street  
 Lending RE I SPE, LLC as debtor, and BofI as secured party).



1 to fund loans) and single-family lender finance loans (“loans to businesses secured  
2 by first liens on single family mortgage loans from cross selling, retail direct and  
3 through third-parties.”) (2015 Form 10-K at 2).

4 **d. Propel Tax**

5 212. BofI also failed to disclose its lending relationship with Propel Tax, a  
6 lender based in San Antonio, Texas that also does business as “Rio Tax.” On May  
7 12, 2012, Propel Tax was acquired by Encore Capital Group, Inc. (“Encore  
8 Capital”), a publicly traded company. Defendant Paul Grinberg, who is Chairman  
9 of the BofI Board’s Audit Committee and Compensation Committee, and a  
10 member of the Nominating Committee, is also currently Group Executive,  
11 International and Corporate Development of Encore Capital.

12 213. Propel Tax’s business reportedly consists of acquiring delinquent tax  
13 liens and then issuing complex, high-interest loans to unsuspecting borrowers to  
14 pay down their debt.<sup>70</sup> Propel Tax’s controversial business has recently caught the  
15 attention of regulators. In January 2015, Encore Capital reached a settlement with  
16 New York Attorney General Eric Schneiderman over concerns that the company  
17 filed thousands of flawed debt collection lawsuits against state residents.<sup>71</sup> In  
18 September 2015, the CFPB brought an enforcement action against Encore Capital  
19 for using deceptive tactics to collect delinquent accounts. The CFPB required  
20 Encore Capital to pay \$42 million in consumer refunds and a \$10 million penalty  
21 and to stop collections on debts totaling more than \$125 million.<sup>72</sup>

22 214. BofI’s relationship with Propel Tax and Encore Capital is evidenced  
23 by several UCC Financing Statements and a Term Loan Facility of the same date,  
24 May 2, 2014, showing “Propel Financial 1, LLC” or “Propel Funding Holdings 1,

25 <sup>70</sup> See Aurelius, *BofI: Undisclosed Related Party Dealings Found to Infect Audit*  
26 *Committee, Seeking Alpha*, Jan. 6, 2016.

27 <sup>71</sup> See Jessica Silver-Greenberg, *Debt Buyer Faces Fine and Loss of Thousands of*  
*Court Judgments*, N.Y. Times, Jan. 8, 2015.

28 <sup>72</sup> See Ann Carrns, *Debt Collectors to Pay \$61 Million in Consumer Refunds and*  
*Amend Their Practices*, N.Y. Times, Sept. 9, 2015.

1 LLC” (both of which are subsidiaries of Encore Capital) as the debtor, and “BoFI  
2 Federal Bank” as the secured party.<sup>73</sup>

3 215. The relationship is further evidenced in Encore Capital’s Form 10-K  
4 for the fiscal year ending December 31, 2014 in which Encore Capital reported  
5 that on the same day that the UCC Financing Statements were dated, May 2, 2014,  
6 Encore Capital, through affiliates of Propel, entered into a \$31.9 million term loan  
7 facility to fund the acquisition of a portfolio of tax liens. The term loan facility  
8 reportedly had a fixed 5.5% interest rate and matures in October 2016. Encore  
9 Capital further disclosed that at December 31, 2014, the outstanding balance on the  
10 term loan facility was \$19.2 million.

11 216. The term-loan facility constituted a related-party transaction and  
12 should have been disclosed by BoFI in its financial statements pursuant to  
13 Accounting Standards Codification (“ASC”) 850 by the Financial Accounting  
14 Standards Board (“FASB”), as well as SEC Staff Accounting Bulletin No. 99, but  
15 was not (*see* footnote 30 (discussing ASC 850)).

16 **C. Defendants’ Misrepresentations About BoFI’s Underwriting**  
17 **Standards And Credit Quality Caused Investors’ Losses**

18 217. Beginning on August 28, 2015, Defendants’ misrepresentations about  
19 BoFI’s underwriting standards and credit quality were revealed to the market,  
20 causing the Company’s stock price to decline and causing investors’, including  
21 Lead Plaintiff’s, losses.

22 218. On August 28, 2015, before the market opened, *Seeking Alpha*  
23 published an article entitled “The New York Times Has Only Scratched The  
24 Surface on BoFI Holding...” that, as described in ¶ 186, revealed, among other  
25 things, that the SEC’s recent response to the author’s FOIA request suggested that  
26 the agency was investigating BoFI and that BoFI did business with a mortgage

27 <sup>73</sup> *See* UCC Financing Statement, Filing No. 20141730068, May 2, 2014 (filed  
28 with Delaware Secretary of State) (Propel Financial 1, LLC), and UCC Financing  
Statement, Filing No. 20141730241, May 2, 2014 (filed with Delaware Secretary  
of State) (Propel Funding Holdings I, LLC).

1 company that advertised loans available to borrowers from Russia, a country  
2 appearing on OFAC’s sanctions list.<sup>74</sup> The article also posited that BofI was  
3 potentially the subject of a whistleblower lawsuit, that BofI’s lending standards  
4 and LTV were “gimmicks,” and that BofI had overstated its earnings by under-  
5 reserving and funding high-risk brokered loans with high-cost deposits. Following  
6 this article, the price of BofI’s common stock declined \$0.97 per share, or 3.1%,  
7 from its closing price of \$30.38 on August 27, 2015, to close at \$29.41 on August  
8 28, 2015, on elevated trading volume.

9 219. The August 28, 2015 *Seeking Alpha* article relied on information that  
10 the market had failed to previously appreciate and incorporate into the Company’s  
11 stock price. The author of the article “pored through hundreds of loans that BOFI  
12 has written over the past several years,” as well as analyzed public records, had  
13 “conversations with mortgage brokers,” and reviewed other online materials,  
14 which led the author to conclude that BofI’s foreign national program includes  
15 countries such as Russia and the Ukraine that are under U.S. sanctions. The article  
16 further explained why loans to foreign nationals might be risky for BofI: because  
17 such loans are at “high risk of inadvertently running afoul of banking laws” and  
18 therefore require “extensive upfront due diligence and ongoing monitoring,” which  
19 the author believed “BOFI is understaffed to handle.” While information relating  
20 to loans to foreign nationals may have been publicly available, the market did not  
21 previously appreciate why BofI was ill-equipped to handle loans to individuals  
22 from countries subject to U.S. sanctions, and how those loans added additional risk  
23 to BofI’s loan portfolio.

24 220. On November 10, 2015, *Seeking Alpha* published an article that, as  
25 described in ¶¶ 199-202, 204, detailed BofI’s suspicious lending relationships with  
26 OnDeck and Quick Bridge. The article also notes that BofI’s list of subsidiaries

27  
28 <sup>74</sup> See *Ukraine-/Russia-related Sanctions*, U.S. Treasury website, available at  
<https://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx>.

1 cannot be located on the SEC's EDGAR system.<sup>75</sup> Following this news, the price  
2 of BofI stock fell \$0.72 per share, or 2.94%, from its closing price of \$24.48 on  
3 November 9, 2015 to close at \$23.76 on November 10, 2015, on high trading  
4 volume.

5 221. The November 10, 2015 *Seeking Alpha* article relied on information  
6 that the market had failed to previously appreciate and incorporate into the  
7 Company's stock price. The article identified the relationships between BofI and  
8 the third-party lenders by studying those lender's own SEC filings, rather than  
9 BofI's. The article also analyzed how the third party lenders' substandard  
10 underwriting standards would increase the risk in BofI's loan portfolio.

11 222. On November 18, 2015, *Seeking Alpha* published its article that, as  
12 described in ¶¶ 104-05, revealed that BofI had employed a felon convicted of  
13 grand theft, forgery of a credit card receipt, burglary, and dealing in stolen  
14 property, in violation of Section 19 of the FDIA. The article further noted that  
15 BofI issued two loans to the individual, even after he filed for bankruptcy. A  
16 search for individuals with the same background revealed that the article was  
17 referring to an individual who served as BofI's Senior Vice President of Wholesale  
18 and Correspondent Lending during the Class Period. Following this news, the  
19 price of BofI stock declined \$0.93 per share, or 4.47%, from its closing price of  
20 \$20.82 on November 17, 2015 to close at \$19.89 on November 18, 2015, on  
21 unusually elevated trading volume.

22 223. The November 18, 2015 *Seeking Alpha* article relied on information  
23 that the market had failed to previously appreciate and incorporate into the  
24 Company's stock price. The article analyzed loan files to uncover that BofI had  
25 employed a felon (without disclosing that fact) and issued two loans to him after  
26 he filed for bankruptcy, and then further conducted background checks to reveal

27 <sup>75</sup> BofI's 2015 Form 10-K, which refers to Exhibit No. 21.1 which cannot be  
28 located, states that the "[s]ubsidiaries of the Company consist of Bank of Internet  
USA (federal charter) and BofI Trust I (Delaware charter)."

1 that the individual served as a senior vice president at the company. The market  
2 did not appreciate that this conduct had occurred, or that the individual held a high-  
3 level position at the Bank, until the article's investigation revealed this fact.

4 224. On November 19, 2015, as described in ¶¶ 210-11, BofI's lending  
5 relationship with Center Street, which was known for fix and flip, "no doc" and  
6 "no FICO," and "no income verification" loans, was revealed in an article  
7 published by *Seeking Alpha*. The article noted that nearly \$300 million in risky  
8 single-family lender finance loans BofI made to Center Street SPEs were disguised  
9 as "Warehouse and other" loans on BofI's financial statements. Following this  
10 news, the price of BofI stock fell \$0.49 per share, or 2.4%, from its closing price of  
11 \$19.89 on November 18, 2015 to close at \$19.40 on November 19, 2015.

12 225. The November 19, 2015 *Seeking Alpha* article relied on information  
13 that the market had failed to previously appreciate and incorporate into the  
14 Company's stock price. Specifically, the article provided detailed analysis of how  
15 BofI's relationship with Center Street was likely to increase the amount of risk in  
16 the portfolio. The market did not previously appreciate how the relationship with  
17 Center Street related to the accuracy of BofI's statements concerning its  
18 underwriting standards.

19 226. On December 8, 2015, *Seeking Alpha* published an article confirming  
20 the lending relationship between BofI and Quick Bridge. The article included an  
21 image of a UCC Financing Statement showing BLG as the Debtor and BofI  
22 Federal Bank as the Secured Party. According to the article, the second page of  
23 the UCC Financing Statement referred to a "Master Loan and Security Agreement  
24 dated February 12, 2014" between BofI Federal Bank, which is identified as the  
25 lender and secured party, and WCL Holdings I, LLC as the Borrower. The article  
26 notes that BofI's failure to disclose its relationship with Quick Bridge or WCL  
27 may be in violation of applicable accounting standards and that WCL may require  
28 consolidation. On December 8, 2015, BofI's stock fell another \$0.15 per share, or

1 approximately 1%, from its closing price of \$19.12 on December 7, 2015 to close  
2 at \$18.97 on December 8, 2015.

3 227. The December 8, 2015 *Seeking Alpha* article relied on information  
4 that the market had failed to previously appreciate and incorporate into the  
5 Company's stock price. Specifically, the article identified the relationships  
6 between BofI and Quick Bridge, and explained how BofI's undisclosed  
7 relationship with these lenders would affect the risk associated with its loan  
8 portfolio and be in violation of accounting standards, thereby revealing to the  
9 market the falsity in BofI's, Garrabrants's, and Micheletti's statements touting  
10 BofI's credit quality and loan underwriting standards.

11 228. On February 3, 2016, an article appearing on *Seeking Alpha* reported  
12 that BofI was no longer "branchless," as it had opened its first branch location in  
13 Reno, Nevada that, according to the FDIC's website, was supposed to be a "full  
14 service" branch, but an in-person inspection by the author indicated otherwise.<sup>76</sup>  
15 According to the author, the Nevada branch was located in shared and tightly  
16 compacted office space housing dozens of small businesses and BofI's office was  
17 approximately 75 square feet in size. The office was reportedly staffed with only  
18 one person who confirmed she worked for BofI but declined to provide any other  
19 information. The article noted that BofI's program management agreement with  
20 H&R Block required that BofI establish a Nevada branch where BofI "will issue  
21 and book the Financial Products and take all reasonable actions at the Nevada  
22 Branch necessary for [BofI] Bank to export Nevada interest rates (and rely upon  
23 Nevada usury rates) on the Emerald Advance and other credit products[.]" The  
24 article concluded that BofI's H&R Block related credit products totaling hundreds  
25 of millions of dollars were likely being "booked" through its "phantom" Nevada  
26 branch potentially to take advantage of the laws of Nevada, which does not limit

27  
28 <sup>76</sup> Aurelius, *Why BOFI Created A Phantom "Full Service Branch" In The Nevada Desert*, *Seeking Alpha*, Feb. 3, 2016.



1 interest rates in express written contracts.<sup>77</sup> Following this news, the price of BofI  
 2 stock declined \$1.06 per share, or 6.2%, from its closing price of \$16.98 on  
 3 February 2, 2016, to close at \$15.92 on February 3, 2016, on elevated trading  
 4 volume.

5 229. The February 3, 2016 *Seeking Alpha* article relied on information that  
 6 the market had failed to previously appreciate and incorporate into the Company's  
 7 stock price. The market did not appreciate that BofI was opening the Nevada  
 8 "branch" for the purpose of taking advantage of Nevada's usury laws, and was  
 9 only made aware of BofI's real motives once an individual from *Seeking Alpha*  
 10 investigated the branch in person and reported the true purpose behind the opening  
 11 of this "branch."

12 **VI. DEFENDANTS MADE MATERIALLY FALSE AND MISLEADING**  
 13 **STATEMENTS RELATING GOVERNMENT AND REGULATORY**  
 14 **INVESTIGATIONS**

15 **A. Statements Regarding Government and Regulatory Investigations**

16 230. During the Class Period, BofI misrepresented and failed to disclose to  
 17 investors information concerning government and regulatory investigations, risk,  
 18 and subpoenas, including the SEC's investigation which commenced in May 2015  
 19 and escalated into a formal investigation in February 2016. In fact, Defendants,  
 20 specifically Garrabrants, affirmatively misrepresented the status of ongoing  
 21 investigations into BofI by regulators, falsely claiming that there were none when  
 in fact regulators were investigating BofI.<sup>78</sup>

22 <sup>77</sup> See Nevada Revised Statutes ("NRS") 99.040(1), which provides, generally,  
 23 and with respect to contracts:

24 When there is no express contract in writing fixing a different rate of  
 25 interest, interest must be allowed at a rate equal to the prime rate at  
 26 the largest bank in Nevada, as ascertained by the Commissioner of  
 27 Financial Institutions, on January 1 or July 1, as the case may be,  
 immediately preceding the date of the transaction, plus 2 percent,  
 upon all money from the time it becomes due, in the following cases:

28 (a) Upon contracts, express or implied, other than book accounts[.]

<sup>78</sup> Statements regarding government and regulatory investigations appear in  
 Section III of the Appendix.

1           231. BofI’s filings with the SEC during the Class Period do not contain any  
 2 mention of subpoenas or government or regulatory investigations of the Company.  
 3 For example, in the section entitled “Legal Proceedings” in its Q1 2016 Form 10-  
 4 Q, filed with the SEC on October 29, 2015 (five months after the SEC commenced  
 5 its investigation) BofI failed to disclose the SEC investigation, or any other  
 6 investigation of the Company. Instead, BofI stated vaguely in the Form 10-Q that  
 7 “from time to time we may be a party to other claims or litigation that arise in the  
 8 ordinary course of business, such as claims to enforce liens, claims involving the  
 9 origination and servicing of loans, and other issues related to the business of the  
 10 Bank” and assured that “[n]one of such matters are expected to have a material  
 11 adverse effect on the Company’s financial condition, results of operations or  
 12 business.” The only legal proceeding BofI specifically disclosed in the Form 10-Q  
 13 was the first-filed putative securities class action against Defendants that was  
 14 consolidated into the instant action.

15           232. On August 22, 2015, as discussed at ¶ 145, Garrabrants made  
 16 statements in an article published by *The New York Times* concerning BofI’s  
 17 relationship with its regulators:

- 18           • “We’ve had full a regulatory review of that process [of vetting loans to  
 19 foreigners] and specific compliments on it [from regulators]. . . . ***It is  
 beyond a nonissue.***”

20           233. On October 14, 2015, as discussed at ¶¶ 127-28, during a BofI  
 21 conference call with analysts and investors to discuss the allegations made by  
 22 former auditor Erhart, Garrabrants assured “[t]here is nothing ongoing” by way of  
 23 regulatory investigation by the OCC and “there is no continuity to this,” and  
 24 responded to an analyst’s question about OCC review as follows:

25           BOB RAMSEY: Okay. And so, they’ve [the OCC] let you know that  
 26 there is nothing ongoing related to these concerns that he raised, that  
 they are still investigating at this point?

27           GREG GARRABRANTS: Well, I have to be very careful about  
 28 stating exactly what the OCC is doing. But the fact is, is that all of  
 these were investigated. ***There is nothing ongoing.*** And the OCC

1 comes in, and regularly reviews these things. If any of it were true, we  
 2 wouldn't have gotten these deals done. You can take as absolute  
 3 confirmation, by the fact that we got those deals done in the month --  
 4 one deal done in the month that these allegations were there, and then  
 5 the next deal, that *there is no continuity to this. We have great*  
 6 *regulatory relations. We are under no regulatory orders, no*  
 7 *regulatory restrictions on our business, and we continue to have*  
 8 *great dialogue with our regulators.* And there's no issues [sic] with  
 9 any of -- the idea that we are not providing information or something  
 10 like that.

11 234. On the same call, Garrabrants also represented that “[t]here are *no*  
 12 *regulatory issues of any kind* that have arisen from Mr. Erhart’s contact with the  
 13 OCC.”

14 235. These statements and omissions regarding legal proceedings belied  
 15 the fact that BofI, as it would later admit, was indeed subject to government and  
 16 regulatory investigation, including a matter under SEC investigation that began no  
 17 later than May 2015.

18 236. On October 30, 2015, BofI finally confirmed, if only indirectly, the  
 19 existence of government and regulatory investigations concerning BofI when BofI  
 20 filed supporting documents to its motion in its countersuit against Erhart in this  
 21 District, *BofI v. Erhart*. In a memorandum in support of BofI’s motion to file  
 22 certain documents under seal (the “BofI Sealing Brief”), BofI revealed that an  
 23 accompanying declaration by a forensic investigator hired by BofI to examine  
 24 Erhart’s computer for confidential information “contain[s] the file names of BofI  
 25 documents” that are confidential because, among other reasons provided by BofI,  
 26 some file names evidence communications with regulators, which are nonpublic  
 27 and not to be disclosed, per agency rules. (*Id.*) Similarly, file names containing  
 28 the term “subpoena” evidence nonpublic agency investigations, which BofI is not  
 permitted to disclose.<sup>79</sup>

---

<sup>79</sup> See Memorandum of Points and Authorities In Support of BofI Federal Bank’s Ex Parte Motion to File Portions of the Declarations of Michael D. Armstrong, John C. Tolla, and James W. Tomlinson, and the Entirety of Exhibits 2, 3, 4, and 7 Under Seal, at p. 5-6 (Dkt. No. 8-1), filed in *BofI v. Erhart* (filed Oct. 30, 2015).

1           237. The BofI Sealing Brief also indicated that other declarations,  
 2 including a declaration by BofI’s Chief Governance Risk and Compliance Officer  
 3 John Tolla, that BofI sought to file under seal included purportedly confidential  
 4 information showing “records identifying the existence (and, in some cases, the  
 5 subject matter) of investigations by the OCC.” (BofI Sealing Brief at 4-5). The  
 6 BofI Sealing Brief contained a chart listing BofI’s reasons for seeking to seal the  
 7 documents, including “Reveals existence and nature of confidential regulator  
 8 communications (12 C.F.R. § 4.3.7(b)(1)(i)); reveals confidential government  
 9 subpoenas[.]” (*Id.* at 6-8).

10           238. The SEC recently released documents concerning BofI in response to  
 11 another FOIA request that confirmed the SEC’s investigation of matters pertaining  
 12 to BofI, that the investigation began on May 28, 2015 and became a formal  
 13 investigation on February 11, 2016, and that the SEC issued at least two subpoenas  
 14 to BofI on February 22, 2016 and October 19, 2016.<sup>80</sup>

15           239. A review of the February 22, 2016 subpoena shows that the SEC’s  
 16 investigation was indeed serious as the subpoena sought a wide range of  
 17 documents from BofI concerning many of the same or similar subject matters that

18  
 19 <sup>80</sup> See Letters from the SEC Division of Enforcement to BofI Holding, Inc., in *In*  
 20 *the Matter of BofI Holding, Inc. (LA-4548)*, dated February 22, 2016 (attaching  
 21 subpoena for documents “in connection with the above-referenced formal  
 22 investigation”), and dated October 19, 2016 (attaching subpoena “issued pursuant  
 23 to a formal order”); and SEC Division of Enforcement Investigation Summary  
 24 regarding “Inv. No. LA-04548-A, BofI Holding, Inc.” (noting Open Date of  
 25 5/28/15). In a June 28, 2017 letter to Bar-Adon, the SEC’s Los Angeles Regional  
 26 Office notified BofI of the conclusion of its investigation and that it did not intend  
 27 to recommend to the SEC to bring an enforcement action, but warned that the  
 28 notice was provided under the guidelines of Securities Act Release No. 5310 (the  
 “SEC Release”) which states, in relevant part, that “[t]he attempted use of such a  
 communication as a purported defense in any action that might subsequently be  
 brought against the party, either civilly or criminally, would be clearly  
 inappropriate and improper.” See Letter from Diana K. Tani, Assistant Regional  
 Director of SEC’s Los Angeles Regional Office to Eshel Bar-Adon, dated June 28,  
 2017, available at ProbesReporter.com. Defendants nevertheless referred to and  
 relied on the June 28, 2017 letter in support of its motion for judgment on the  
 pleadings in this litigation, without actually submitting a copy of or requesting  
 judicial notice of the letter itself for the Court’s own review. See Defendants’  
 Memorandum of Points and Authorities In Support of Defendants’ Motion for  
 Judgment On The Pleadings (Dkt. No. 123-1) at 14 n.8.

1 underlie the allegations in this Complaint and the Erhart Complaint, including:  
 2 “Bofi’s policies, procedures, and practices for identifying, reviewing and  
 3 disclosing transactions with related parties”; internal controls over approval and  
 4 disclosure of related-person transactions”; “internal controls over conflicts of  
 5 interests”; “All Board of Director, Audit Committee, and Compensation  
 6 Committee meeting minutes”; “any loan made between Bofi and Encore Capital  
 7 Group, Inc. or Propel Financial Services, LLC”; among other documents.

8 240. The October 19, 2016 subpoena sought documents pertaining to loans  
 9 Bofi made to foreign nationals, which are a focus of this Complaint and the Erhart  
 10 Complaint.<sup>81</sup>

11 **B. Defendants’ Misrepresentations About Government and**  
 12 **Regulatory Investigations Caused Investors’ Losses.**

13 241. Beginning on August 28, 2015, Defendants’ misrepresentations about  
 14 government and regulatory investigations of Bofi were revealed to the market,  
 15 causing the Company’s stock price to decline and causing investors’, including  
 16 Lead Plaintiff’s, losses.

17 242. On August 28, 2015, *Seeking Alpha* published an article by an author  
 18 who indicated that earlier that month, the SEC responded to the author’s FOIA  
 19 request and reportedly invoked a “law enforcement” exemption in refusing to turn  
 20 over potentially responsive documents, as follows:

21 We are withholding records that may be responsive to your request  
 22 under 5 U.S.C. § 552(7), 17 CFR § 200.80(7)(i). This exemption  
 23 protects from disclosure records compiled for law enforcement  
 24 purposes, the release of which could reasonably be expected to  
 interfere with enforcement activities. Since Exemption 7 protects the  
 records from disclosure, we have not determined if other exemptions  
 apply. Therefore, we reserve the right to assert other exemptions when

25 <sup>81</sup> Specifically, the subpoena sought documents concerning: “the percentage of  
 26 Bofi’s single-family residential loans (“SFRs”) extended to non-resident aliens  
 27 (NRAs)””; “Bofi’s underwriting standards for SFRs to NRAs”; “historical  
 28 performance of SFRs to NRAs”; “Analysis of risk associated with lending to  
 NRAs”; and “Communications Concerning risks associated with lending to  
 NRAs,” including communications with “Bofi’s internal auditors,” “Bofi’s SEC  
 reporting personnel,” “Bofi’s CFO,” Bofi’s Audit Committee,” and “Bofi’s  
 external auditors[.]”

1 Exemption 7 no longer applies.<sup>82</sup>

2 243. The author noted in the August 28, 2015 Article that the SEC's  
3 response in this instance differed from its previous responses that "there are no  
4 records responsive to your request" to earlier requests the author had made for the  
5 same information. Following this article, the price of BofI's common stock  
6 declined \$0.97 per share, or 3.1%, from its closing price of \$30.38 on August 27,  
7 2015, to close at \$29.41 on August 28, 2015, on elevated trading volume.

8 244. The August 28, 2015 *Seeking Alpha* article relied on information that  
9 the market had failed to previously appreciate and incorporate into the Company's  
10 stock price. It was only after the author made a FOIA request to the SEC, and then  
11 compared that response to previous responses received from the SEC for similar  
12 requests, that the market became aware of BofI's false and misleading statements  
13 regarding the existence of government and regulatory investigations.

14 245. As described above at ¶¶ 124-26, on October 13, 2015, Erhart filed a  
15 Complaint in which he alleged he "saw a BSA spreadsheet that identified many  
16 subpoenas, including from law enforcement agencies, grand juries, and even from  
17 the U.S. Department of Treasury." (Erhart Compl. ¶ 33). According to Erhart, he  
18 sat next to a BofI employee who received and logged subpoenas and heard  
19 comments about how many subpoenas BofI had received and how frequently BofI  
20 received subpoenas. (*Id.*). On the filing of the Erhart Complaint and disclosure  
21 about the government and regulatory subpoenas BofI received, the price of BofI's  
22 stock declined \$10.72 per share, or 30.2%, from its closing price of \$35.50 on  
23 October 13, 2015, to close at \$24.78 on October 14, 2015, on extremely high  
24 trading volume.<sup>83</sup>

25  
26 <sup>82</sup> The Friendly Bear, *The New York Times Has Only Scratched The Surface on*  
*BofI Holding. . .*," *Seeking Alpha*, Aug. 28, 2015 (the "August 28, 2015 Article").

27 <sup>83</sup> On a pre-split adjusted basis, BofI's stock price declined \$42.87 per share from  
28 its closing price of \$142.00 on October 13, 2015, to close at \$99.13 on October 14,  
2015.



1           246. On October 30, 2015, as described in ¶¶ 236-37, BofI filed the BofI  
 2 Sealing Brief in its countersuit against Erhart, which confirmed the existence of  
 3 “nonpublic agency investigations,” “investigations by the OCC,” and “confidential  
 4 government subpoenas.”<sup>84</sup> BofI’s stock price declined another \$3.26 per share, or  
 5 14%, from its closing price on October 29, 2015 to close at \$20.00 on October 30,  
 6 2015, on extremely high trading volume.

## 7 **VII. ADDITIONAL SCIENTER ALLEGATIONS**

8           247. Garrabrants, as the Company’s CEO, is liable as a direct participant in  
 9 all of the wrongs complained of herein. Through his position of control and  
 10 authority, as well as his stock ownership, Garrabrants was in a position to, and did,  
 11 control all of the Company’s false and misleading statements and omissions,  
 12 including the contents of the Form 10-Ks, Form 10-Qs, press releases, and other  
 13 public statements, as set forth above.

14           248. Garrabrants also possessed the power and authority to, and did,  
 15 control the contents of BofI’s reports to the SEC, press releases and presentations  
 16 to securities analysts, money and portfolio managers and institutional investors,  
 17 *i.e.*, the market. Garrabrants was provided with copies of the Company’s reports  
 18 and press releases alleged herein to be materially false and misleading prior to, or  
 19 shortly after, their issuance and had the ability and opportunity to prevent their  
 20 issuance or cause them to be corrected.

21           249. Garrabrants knew and/or recklessly disregarded that public statements  
 22 made by him and by BofI concerning BofI’s business, operations, financial results,  
 23 and prospects were false and misleading when made.

24           250. As described herein, Garrabrants knew but failed to disclose that the  
 25 Company did not maintain adequate internal controls, and that the Audit

26 \_\_\_\_\_  
 27 <sup>84</sup> A November 5, 2015 *Seeking Alpha* article highlighted that BofI’s filing  
 28 revealed the existence of undisclosed subpoenas and non-public government  
 investigations. *See Aurelius*, “Recent BOFI Court Filing Confirms Existence of  
 Undisclosed Subpoenas And Nonpublic Government Investigations,” *Seeking  
 Alpha*, Nov. 5, 2015.

1 Committee and Board were not performing their functions with respect to internal  
2 controls and risk management, as stated in BofI's SEC filings. Knowledge of the  
3 Company's misstated earnings may rightfully be attributed to BofI and its key  
4 officers and directors, including Garrabrants, who was the Bank's CEO.

5 251. Garrabrants was also motivated to engage in the fraud alleged herein  
6 because he was eligible to receive, and did receive, cash bonuses during the Class  
7 Period pursuant to BofI's "Incentive Cash Bonus Plan." In fact throughout the  
8 Class Period, BofI disclosed in its 2013, 2014 and 2015 Proxy Statements that  
9 Garrabrants's salary is significantly below his peer group but with the incentive-  
10 based compensation added to his salary his total compensation is in line with his  
11 peers. The Incentive Cash Bonus Plan awarded bonus compensation up to 105%  
12 of Garrabrants's base salary if he met five metrics, including "increas[ing] non-  
13 GAAP securities adjusted earnings per share," which was weighted between 0%  
14 and 20% out of 105%. (2015 Proxy Statement at 18). For fiscal 2015, BofI's  
15 Compensation Committee determined that a bonus equal to 97.5% of Garrabrants's  
16 base salary of \$375,000 in 2015 was appropriate. (*Id.*) The Compensation  
17 Committee determined that Garrabrants scored the maximum 20% for the metric  
18 of increasing non-GAAP securities adjusted earnings per share. (*Id.*) However,  
19 with respect to a different metric, that is, "maintain[ing] the Bank's history of good  
20 regulatory relations," which was also weighted between 0% and 20%, Garrabrants  
21 scored only 10%. (*Id.*)

22 252. Defendant Garrabrants also participated in Audit Committee meetings  
23 and was therefore aware of BofI's misstatements concerning its internal controls  
24 and negative findings by the committee and by internal auditors.

25 253. Defendant Garrabrants also had the requisite experience and expertise  
26 to understand and prepare BofI's financial statements. According to the 2015  
27 Proxy Statement and BofI's website, Garrabrants has an MBA degree and is a  
28

1 CFA. Accordingly, Garrabrants possessed the training and experience to  
2 understand that BofI's financial statements were misstated.

3 **VIII. PLAINTIFF'S CLASS ACTION ALLEGATIONS**

4 254. Plaintiff brings this action as a class action pursuant to Federal Rule  
5 of Civil Procedure 23(a) and (b)(3) on behalf a Class of all persons and entities  
6 who purchased or acquired BofI's publicly traded common stock between  
7 September 4, 2013 and February 3, 2016, inclusive, as well as purchasers of BofI  
8 call options and sellers of BofI put options, (the "Class"). Excluded from the Class  
9 are Defendants herein, the officers and directors of the Company, at all relevant  
10 times, members of their immediate families and their legal representatives, heirs,  
11 successors or assigns, and any entity in which Defendants have or had a  
12 controlling interest.

13 255. The members of the Class are so numerous that joinder of all  
14 members is impracticable. Throughout the Class Period, BofI common stock  
15 actively traded on NASDAQ. While the exact number of Class members is  
16 unknown to Plaintiff at this time and can be ascertained only through appropriate  
17 discovery, Plaintiff believes that there are hundreds or thousands of members in  
18 the proposed Class. Record owners and other members of the Class may be  
19 identified from records maintained by BofI or its transfer agent and may be  
20 notified of the pendency of this action by mail, using the form of notice similar to  
21 that customarily used in securities class actions.

22 256. Plaintiff's claims are typical of the claims of the members of the  
23 Class, as all members of the Class are similarly affected by Defendants' wrongful  
24 conduct in violation of federal law that is complained of herein.

25 257. Plaintiff will fairly and adequately protect the interests of the  
26 members of the Class and has retained counsel competent and experienced in class  
27 and securities litigation. Plaintiff has no interests antagonistic to or in conflict with  
28 those of the Class.

1           258. Common questions of law and fact exist as to all members of the  
2 Class and predominate over any questions solely affecting individual members of  
3 the Class. Among the questions of law and fact common to the Class are:

- 4           • whether the federal securities laws were violated by Defendants' acts as  
5           alleged herein;
- 6           • whether statements made by Defendants to the investing public during the  
7           Class Period misrepresented material facts about the business, operations  
8           and management of BofI;
- 9           • whether the Individual Defendants caused BofI to issue false and misleading  
10          financial statements during the Class Period;
- 11          • whether Defendants acted knowingly or recklessly in issuing false and  
12          misleading financial statements;
- 13          • whether the prices of BofI common stock during the Class Period were  
14          artificially inflated because of Defendants' conduct complained of herein;  
15          and
- 16          • whether the members of the Class have sustained damages and, if so, what is  
17          the proper measure of damages.

18           259. A class action is superior to all other available methods for the fair  
19 and efficient adjudication of this controversy because joinder of all members is  
20 impracticable. Furthermore, as the damages suffered by individual Class members  
21 may be relatively small, the expense and burden of individual litigation make it  
22 impossible for members of the Class to individually redress the wrongs done to  
23 them. There will be no difficulty in the management of this action as a class  
24 action.

## 25 **IX. FRAUD-ON-THE-MARKET PRESUMPTION**

26           260. Plaintiff will rely upon the presumption of reliance established by the  
27 fraud-on-the-market doctrine, in that:

- 28           a. Defendants made public misrepresentations or failed to disclose  
            material facts during the Class Period;
- b. the misrepresentations and omissions were material;
- c. BofI common stock was traded in an efficient market during  
            the Class Period;

1 d. the Company's shares were liquid and traded with moderate to  
2 heavy volume during the Class Period;

3 e. the Company traded on the NASDAQ, and was covered by  
4 multiple analysts;

5 f. the misrepresentations and omissions alleged would tend to  
6 induce a reasonable investor to misjudge the value of the Company's securities;  
7 and

8 g. Plaintiff and members of the Class purchased and/or sold BofI  
9 common stock between the time Defendants failed to disclose or misrepresented  
10 material facts and the time the true facts were disclosed, without knowledge of the  
11 misrepresented or omitted facts.

12 261. Based upon the foregoing, Plaintiff and the Class are entitled to a  
13 presumption of reliance upon the integrity of the market.

14 262. Alternatively, Plaintiff and the Class are entitled to the presumption of  
15 reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of*  
16 *Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted  
17 material information in their Class Period statements in violation of a duty to  
18 disclose such information, as detailed above.

19 **X. ADDITIONAL CONTROL-PERSON ALLEGATIONS**

20 263. As detailed above, each of the Individual Defendants was a  
21 "controlling person" of BofI during the Class Period within the meaning of Section  
22 20(a) of the Exchange Act.

23 264. Defendant Garrabrants served throughout the Class Period as  
24 President, CEO, and a director of BofI; was intimately involved in the day-to-day  
25 management of the Company; and bore responsibility for the truthfulness and  
26 accuracy of the Company's financials and other statements. Among other things,  
27 Garrabrants signed SOX certifications included in SEC filings by the Company  
28 attesting that, to the best of his knowledge, the reports "fully compl[y] with the

1 requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934”  
2 and “the information contained in the Report[s] fairly presents, in all material  
3 respects, the financial condition and results of operations of the Company.” *See* ¶¶  
4 46-49, *supra*. Garrabrants made numerous other statements on BofI’s behalf  
5 during the Class Period. *See* Sections IV.A, V.A, VI.A, *supra*. Additionally, as  
6 detailed throughout this Complaint, Garrabrants directly participated in, knew of,  
7 or recklessly disregarded the misconduct giving rise to liability under Section  
8 10(b) of the Exchange Act.

9       265. Defendant Micheletti served throughout the Class Period as Executive  
10 Vice President and CFO of BofI, was intimately involved in the day-to-day  
11 management of the Company, and bore responsibility for the truthfulness and  
12 accuracy of the Company’s financials and other statements. Among other things,  
13 Micheletti signed SOX certifications included in SEC filings by the Company  
14 attesting that, to the best of his knowledge, the reports “fully compl[y] with the  
15 requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934”  
16 and “the information contained in the Report[s] fairly presents, in all material  
17 respects, the financial condition and results of operations of the Company.” *See* ¶¶  
18 46-49, *supra*. Micheletti made numerous other statements on BofI’s behalf during  
19 the Class Period. *See* Sections IV.A, V.A, VI.A, *supra*. Micheletti accordingly is  
20 liable under Section 20(a) as a “controlling person” of BofI, which is a primary  
21 violator of the securities laws, as detailed in this Complaint.

22       266. Defendant Grinberg served throughout the Class Period as a director  
23 of BofI as well as Chairman of the Board’s Audit Committee, Chairman of the  
24 Board’s Compensation Committee, and a member of the Board’s Nominating  
25 Committee. He also serves as Chairman of the Audit Committee of the Board of  
26 Directors of BofI Federal Bank. Further, BofI’s Board determined Grinberg  
27 “meets the definitions of ‘audit committee financial expert’ adopted by the SEC  
28



1 and included in NASDAQ’s rules for listed companies.” (2015 Proxy Statement at  
2 9).

3 267. Defendant Mosich served throughout the Class Period as Vice  
4 Chairman of BofI’s Board and as a member of the Board’s Audit Committee. He  
5 also serves as a member of the Audit Committee, ALCO, Credit, and Operations  
6 and Technology Committees of the Board of BofI Federal Bank.

7 268. Defendant Argalas served throughout the Class Period as a director of  
8 BofI and as a member of the Board’s Audit Committee. He also serves as a  
9 member of the Audit Committee and the Internal Assets Review Committee of the  
10 Board of BofI Federal Bank.

11 269. As described above, Grinberg, Mosich, and Argalas signed the Report  
12 of the Audit Committee included in BofI’s 2013, 2014, and 2015 Proxy  
13 Statements, which contained false or misleading statements of material fact. *See*  
14 ¶¶ 43-45, *supra*.

15 270. As members of BofI’s Board and the Audit Committee, Grinberg,  
16 Mosich, and Argalas were charged with overseeing the Company’s risk exposure.

17 271. Those committees, the Proxy Statements continued, “report regularly  
18 to the Board of Directors on risk-related matters and provide the Board of  
19 Directors with insight about our management of strategic, credit, interest rate,  
20 financial reporting, technology, liquidity, compliance, operational and reputational  
21 risks.” (*Id.*) The Board “is actively involved in oversight and review of the  
22 Company’s risk management efforts either directly or through its standing  
23 committees.” (*Id.*) Further, the Audit Committee—on which Grinberg, Mosich,  
24 and Argalas served during the Class Period—“primarily oversees those risks that  
25 may directly or indirectly impact [BofI’s] financial statements, including the areas  
26 of financial reporting, internal controls and compliance with public reporting  
27 requirements.” (*Id.*)  
28



1 acquire BofI common stock and call options, and to sell BofI put options, at  
2 artificially inflated prices. In furtherance of this unlawful scheme, plan and course  
3 of conduct, BofI and Garrabrants, and each of them, took the actions set forth  
4 herein.

5 276. Pursuant to the above plan, scheme, conspiracy and course of  
6 conduct, BofI and Garrabrants participated directly or indirectly in the preparation  
7 and/or issuance of the quarterly and annual reports, SEC filings, press releases and  
8 other statements and documents described above, including statements made to  
9 securities analysts and the media that were designed to influence the market for  
10 BofI securities. Such reports, filings, releases and statements were materially false  
11 and misleading in that they failed to disclose material adverse information and  
12 misrepresented the truth about BofI's internal controls and compliance with federal  
13 law.

14 277. By virtue of his position at BofI, Garrabrants had actual knowledge of  
15 the materially false and misleading statements and material omissions alleged  
16 herein and intended thereby to deceive Plaintiff and the other members of the  
17 Class, or, in the alternative, acted with deliberately reckless disregard for the truth  
18 in that he failed or refused to ascertain and disclose such facts as would reveal the  
19 materially false and misleading nature of the statements made, although such facts  
20 were readily available to Garrabrants. Said acts and omissions of Defendants were  
21 committed willfully or with deliberately reckless disregard for the truth. In  
22 addition, each Defendant knew or deliberately recklessly disregarded that material  
23 facts were being misrepresented or omitted as described above.

24 278. Garrabrants was personally motivated to make false statements and  
25 omit material information necessary to make the statements not misleading in  
26 order to personally benefit from the sale of BofI securities from his personal  
27 portfolio.  
28

1           279. Information showing that Defendants acted knowingly or with  
2 deliberately reckless disregard for the truth is peculiarly within Defendants'  
3 knowledge and control. As a senior manager of BofI, Garrabrants had knowledge  
4 of the details of BofI's internal affairs.

5           280. Garrabrants is liable both directly and indirectly for the wrongs  
6 complained of herein. Because of his position of control and authority,  
7 Garrabrants was able to and did, directly or indirectly, control the content of the  
8 statements of BofI. As an officer of a publicly held company, Garrabrants had a  
9 duty to disseminate timely, accurate, and truthful information with respect to  
10 BofI's business, operations, future financial condition and future prospects. As a  
11 result of the dissemination of the aforementioned false and misleading reports,  
12 releases and public statements, the market price of BofI securities was artificially  
13 inflated throughout the Class Period. In ignorance of the adverse facts concerning  
14 BofI's operations and quality control processes which were concealed by  
15 Defendants, Plaintiff and the other members of the Class purchased or otherwise  
16 acquired BofI common stock or call options at artificially inflated prices, or sold  
17 BofI put options at artificially inflated prices, and relied upon the price of the  
18 stock, the integrity of the market for the stock and/or upon statements disseminated  
19 by Defendants, and were damaged thereby.

20           281. During the Class Period, BofI common stock was traded on an active  
21 and efficient market. Plaintiff and the other members of the Class, relying on the  
22 materially false and misleading statements described herein, which the Defendants  
23 made, issued or caused to be disseminated, or relying upon the integrity of the  
24 market, purchased or otherwise acquired BofI shares or call options, or sold BofI  
25 put options, at prices artificially inflated by Defendants' wrongful conduct. Had  
26 Plaintiff and the other members of the Class known the truth, they would not have  
27 purchased or otherwise acquired said stock or call options, or would not have  
28 purchased or otherwise acquired them at the inflated prices that were paid or would

1 not had sold said put options or would not have sold them at the inflated prices  
2 they received. At the time of those transactions by Plaintiff and the Class, the true  
3 value of BofI stock was substantially lower than the prices paid by Plaintiff and the  
4 other members of the Class for stock or call options, or the prices at which Class  
5 members sold put options. The market price of BofI securities declined sharply  
6 upon public disclosure of the facts alleged herein, to the injury of Plaintiff and  
7 Class members.

8 282. By reason of the conduct alleged herein, BofI and Garrabrants  
9 violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated  
10 thereunder.

11 283. As a direct and proximate result of Defendants' wrongful conduct,  
12 Plaintiff and the other members of the Class suffered damages in connection with  
13 their respective purchases, acquisitions and sales of the Company's securities  
14 referenced above during the Class Period, upon the disclosures that the Company  
15 had been disseminating misrepresented financial statements to the investing public.

16 **COUNT II**

17 **(Violations of Section 20(a) of the Exchange Act**  
18 **Against the Individual Defendants)**

19 284. Plaintiff repeats and realleges each and every allegation contained in  
20 the foregoing paragraphs as if fully set forth herein.

21 285. During the Class Period, the Individual Defendants participated in the  
22 operation and management of BofI, and conducted and participated, directly and  
23 indirectly, in the conduct of BofI's business affairs. Because of their senior  
24 positions, they knew the adverse non-public information alleged herein about  
25 BofI's business and quality control.

26 286. As officers and/or directors of a publicly owned company, the  
27 Individual Defendants had a duty to disseminate accurate and truthful information  
28

1 with respect to BofI's internal controls and to correct promptly any public  
2 statements issued by BofI which had become materially false or misleading.

3 287. Because of their positions of control and authority as senior officers  
4 and/or directors, the Individual Defendants were able to, and did, control the  
5 contents of the various reports, press releases and public filings BofI disseminated  
6 in the marketplace during the Class Period concerning BofI's results of operations  
7 and internal controls. Throughout the Class Period, the Individual Defendants  
8 exercised their power and authority to cause BofI to engage in the wrongful acts  
9 complained of herein, which caused the market price of BofI securities to be  
10 artificially inflated. The Individual Defendants, therefore, were "controlling  
11 persons" of BofI within the meaning of Section 20(a) of the Exchange Act.

12 288. Each of the Individual Defendants, therefore, acted as a controlling  
13 person of BofI. By reason of their senior management positions and/or being  
14 directors of BofI, each of the Individual Defendants had the power to direct the  
15 actions of BofI, and exercised the same to cause BofI to engage in the unlawful  
16 acts and conduct complained of herein. Each of the Individual Defendants  
17 exercised control over the general operations of BofI and possessed the power to  
18 control the specific activities comprising the primary violations about which  
19 Plaintiff and the other members of the Class complain.

20 289. By reason of the above conduct, the Individual Defendants are liable  
21 pursuant to Section 20(a) of the Exchange Act for the violations committed by  
22 BofI.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiff demands judgment against Defendants as follows:

25 A. Determining that the instant action may be maintained as a class  
26 action under Rule 23 of the Federal Rules of Civil Procedure, and certifying  
27 Plaintiff as the Class representative;

28 B. Requiring Defendants to pay damages sustained by Plaintiff and the



1 Class by reason of the acts and transactions alleged herein;

2 C. Awarding Plaintiff and the other members of the Class pre-judgment  
3 and post-judgment interest, as well as their reasonable attorneys' fees, expert fees  
4 and other costs; and

5 D. Awarding such other and further relief as this Court may deem just  
6 and proper.

7 **DEMAND FOR TRIAL BY JURY**

8 Plaintiff hereby demands a trial by jury on all issues so triable.

9  
10 Dated: December 22, 2017 **LIEFF CABRASER HEIMANN &**  
11 **BERNSTEIN, LLP**

12  
13 By: /s/ Richard M. Heimann  
14 Richard M. Heimann  
15 Attorney for Lead Plaintiff Houston  
16 Municipal Employees Pension System  
17 Email: rheimann@lchb.com

18 Richard M. Heimann (Cal. Bar No. 063607)  
19 rheimann@lchb.com  
20 Katherine C. Lubin (Cal. Bar No. 259826)  
21 kbenson@lchb.com  
22 275 Battery Street, 29th Floor  
23 San Francisco, CA 94111-3339  
24 Telephone: (415) 956-1000  
25 Facsimile: (415) 956-1008

26 Daniel P. Chiplock (admitted *pro hac vice*)  
27 dchiplock@lchb.com  
28 Michael J. Miarmi (admitted *pro hac vice*)  
mmiarmi@lchb.com  
250 Hudson Street, 8th Floor  
New York, NY 10013  
Telephone: (212) 355-9500  
Facsimile: (212) 355-9592

*Counsel for Lead Plaintiff Houston Municipal  
Employees Pension System and Lead Counsel for  
the Proposed Class*

1484159.1

## APPENDIX

TO THIRD AMENDED CLASS ACTION COMPLAINT**I. STATEMENTS REGARDING TO BOFI'S INTERNAL CONTROLS, COMPLIANCE INFRASTRUCTURE, AND RISK MANAGEMENT**

Document/"Maker(s)" of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
<p><b>Bofi Form 10-K for the period ended June 30, 2014, Bofi Form 10-K for the period ended June 30, 2015</b></p> <p><u>Maker(s) of Statements:</u> Bofi; Garrabrants (signed)</p>	<p>(1) <u>Standards for Safety and Soundness</u>. The federal banking regulatory agencies have prescribed, by regulation, guidelines for all insured depository institutions relating to: (i) internal controls, information systems and internal audit systems; (ii) loan documentation; (iii) credit underwriting; (iv) interest rate risk exposure; (v) asset growth; (vi) asset quality; (vii) earnings; and (viii) compensation, fees and benefits. The guidelines set forth safety and soundness standards that the federal banking regulatory agencies use to identify and</p>	<p>Defendants knew, but failed to disclose, that: (i) Bofi's internal controls were deficient (indeed, former employees described them as "non-existent") and its Audit department was inadequately staffed; (ii) Bofi's Audit Committee and internal audit program were materially inadequate and the Audit Committee lacked independence; (iii) Bofi's Audit Committee members suffered from conflicts of interest by having benefitted from related-party loans from Bofi on favorable terms; (iv) Bofi failed to disclose the criminal background of a senior officer and violated the</p>	<p>These statements correspond with the following disclosures:</p> <p><i>First</i>, on October 13, 2015, the Erhart Complaint revealed details about Bofi's "nonexistent culture of compliance," including, among other things: that (i) Bofi's management may have falsified the Company's financial statements; (ii) Bofi's Senior Vice President of Audit and Compliance changed the findings in several reports relating to BSA's quality control requirements; (iii) Bofi made substantial loans to foreign nationals and "politically</p>

<sup>1</sup> Unless otherwise specified, all emphases to quoted excerpts herein are supplied.



Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	<p>address problems at FDIC member institutions before capital becomes impaired. If the OCC determines that the Bank fails to meet any standard prescribed by the guidelines, the OCC may require us to submit to it an acceptable plan to achieve compliance with the standard. OCC regulations establish deadlines for the submission and review of such safety and soundness compliance plans in response to any such determination. We are not aware of any conditions relating to these safety and soundness standards that would require us to submit a plan of compliance to the OCC.</p> <p>(2) <u>Item 9A. Controls and Procedures</u>. Evaluation of Disclosure Controls and Procedures. Our management, under</p>	<p>FDIA; (v) Garrabrants and other senior officers routinely intimidated BofI personnel, including Audit department members, and interfered with audit functions; and (vi) BofI falsely responded to regulatory subpoenas and requests.</p>	<p>exposed persons,” in violation of the BSA; (iv) BofI compliance personnel found FDPA issues with 49 out of 51 sample loans reviewed, and BofI “buried” a compliance review identifying many FDPA issues; (v) Garrabrants deposited third-party checks into his personal account and was the signatory of his brother’s account with a \$4 million balance—Erhart could not verify the source of those funds; (vi) BofI falsely responded to an SEC subpoena and an OCC request for information concerning customer account information; and (vii) Jonathan Ball, BofI’s Vice President of Internal Audit and Erhart’s supervisor, resigned abruptly on March 5, 2015 after refusing Garrabrants’s order “to engage in what Ball reasonably viewed to be unlawful conduct to cover up the Bank’s wrongdoing.”</p>

Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	<p>supervision and with the participation of the Chief Executive Officer and the Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures, as defined under Exchange Act Rule 13a-15(e). Based upon this evaluation, the Chief Executive Officer and Chief Financial Officer concluded that, as of June 30, 2014, the disclosure controls and procedures were effective to ensure that information required to be disclosed in the Company’s Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the Securities Exchange Commission’s rules and forms, and that such information is accumulated and communicated to our management, including the Chief Executive Officer and</p>		<p>Bofi’s stock price declined on release of this information.</p> <p><i>Second</i>, a October 29, 2015 <i>Seeking Alpha</i> article noted differences between statements Garrabrants made at the October 14, 2015 earnings conference call and the transcript of that call Bofi filed with the SEC the next day. Bofi’s stock price declined on release of this information.</p> <p><i>Third</i>, on January 6, 2016 <i>Seeking Alpha</i> reported on Bofi’s relationship with Propel Tax, including Defendant Grinberg’s ties to Propel Tax, which may have compromised the Audit Committee’s internal investigation of Erhart’s allegations. Bofi’s stock price declined on release of this information.</p>



Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	<p>Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.</p> <p>Management’s Report On Internal Control Over Financial Reporting. Management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is defined in Rule 13a-15 (1) promulgated under the Securities Exchange Act of 1934 as a process designed by, or under the supervision of; our principal executive and principal financial officers and effected by the board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial</p>		

Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	<p>statements for external purposes in accordance with U.S. generally accepted accounting principles and includes those policies and procedures that:</p> <ul style="list-style-type: none"> <li>• Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions of our assets;</li> <li>• Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and</li> <li>• Provide reasonable</li> </ul>		



Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.		
<p><b>Boff Form 10-Qs for the periods ending December 31, 2013, March 31, 2014, September 30, 2014, December 31, 2014, March 21, 2015, September 30, 2015, and December 31, 2015</b></p> <p><u>Maker(s) of Statements:</u> Boff; Garrabrants (signed)</p>	<p>(1) ITEM 4. CONTROLS AND PROCEDURES. The Company’s management, with the participation of its Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of the design and operation of the Company’s disclosure controls and procedures, pursuant to Exchange Act Rule 13a-15(e). Based upon that evaluation, our Chief Executive Officer along with our Chief Financial Officer concluded that, as of the end of the period covered by this report, the Company’s disclosure controls and procedures were effective to</p>	Same as above.	Same as above.

Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	<p>ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified by the Securities and Exchange Commission’s rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.</p> <p>There were no changes in the Company’s internal control over financial reporting that occurred during the quarter ended [September 30, 2013] that have materially affected, or are reasonably likely to materially affect our internal control over financial</p>		

Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	reporting.		
<p><b>Bofi Proxy Statements dated September 9, 2013, September 8, 2014, and September 4, 2015</b></p> <p><u>Maker(s) of Statements:</u> Bofi; Garrabrants (signed)</p> <p>Report of the Audit Committee signed by Grinberg, Mosich, and Argalas</p>	<p>(1) “The Board’s Role in Risk Oversight . . . the Audit Committee primarily oversees those risks that may directly or indirectly impact our financial statements, including the areas of financial reporting, internal controls and compliance with public reporting requirements . . . .”</p> <p>(2) “Report of the Audit Committee . . . . The purpose of the Audit Committee is to assist the Board of Directors in its general oversight of the Company. The primary responsibilities of the Audit Committee are to oversee and monitor the integrity of the Company’s financial reporting process, financial statements and systems of internal controls; the Company’s compliance with legal and regulatory requirements; the independent auditor’s qualifications, independence</p>	Same as above.	Same as above.



Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	and performance; and the performance of the Company’s internal audit function.”		
<p><b>Boff Proxy Statements dated September 9, 2013, September 8, 2014, and September 4, 2015</b></p> <p><u>Maker(s) of Statements:</u> Boff; Garrabrants (signed)</p>	<p>(1) Related Party Transaction Policy and Procedures. Pursuant to the Company’s Related Party Transaction Policy and Procedures, the Company’s Board of Directors is responsible for reviewing and approving or ratifying all related party transactions that are subject to such policy. This policy applies to certain transactions involving over \$100,000 in any calendar year with related parties, which includes our officers, directors and director nominees, and members of their immediate family. The policy also applies to certain transactions with Company stockholders who own more than 5% of the Company’s stock. In determining whether to approve or ratify a related party transaction, the Board of</p>	Same as above.	Same as above.

Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	<p>Directors will take into account material facts of the transaction, including whether it is on terms no less favorable than terms generally available to an unaffiliated third-party under the same or similar circumstances, and the extent of the related party’s interest in the transaction.</p> <p style="text-align: center;">* * *</p> <p>In the ordinary course of its business and subject to applicable banking regulations, the Bank makes loans to and engages in other banking transactions with its directors, officers and employees and their associates. Such loans and other banking transactions are generally made on the same terms as those prevailing at the time for comparable transactions with persons of comparable creditworthiness that have no affiliation with the Company or the Bank. Loans are made only to</p>		



Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	persons affiliated with the Company and the Bank if they do not involve more than the normal risk of collectibility of loans made to non-affiliated persons and if they do not present any other unfavorable features.		
<b>SOX Certifications<sup>2</sup></b>  <u>Maker(s) of Statements:</u> Boffi; Garrabrants (signed); Micheletti (signed)	(1) 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	Same as above.	Same as above.

<sup>2</sup> Filed with the BOFI 10-K for the fiscal year ended June 30, 2013, filed on September 4, 2013, BOFI 10-K for the fiscal year ended June 30, 2014, filed on August 28, 2014, BOFI 10-K for the fiscal year ended June 30, 2015, filed on August 26, 2015, BOFI 10-Q for the Quarterly Period ended September 30, 2013, filed on November 5, 2013, BOFI 10-Q For the Quarterly Period ended December 31, 2013, filed on February 5, 2014, BOFI 10-Q for the Quarterly Period ended March 31, 2014, filed on May 6, 2014, BOFI 10-Q for the Quarterly Period ended September 30, 2014, filed on November 4, 2014, BOFI 10-Q for the Quarterly Period ended December 31, 2014, filed on January 29, 2015, BOFI 10-Q for the Quarterly Period ended March 31, 2015, filed on April 30, 2015, BOFI 10-Q for the Quarterly Period ended September 30, 2015, filed on October 29, 2015, and BOFI 10-Q for the Quarterly Period ended December 31, 2015, filed on January 28, 2016.



Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	<p>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</p> <p>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.</p> <p>* * *</p> <p>(a) the [Form 10-K] Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and</p> <p>(b) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.</p>		
<b>Boff Form 8-Ks dated July</b>	(1) Disclosure Controls and	Same as above.	Same as above.

Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
22, 2014 and February 23, 2015	<p>Procedures; Internal Controls. <i>The Company and the Significant Subsidiaries have established and maintain disclosure controls and procedures</i> (as such term is defined in Rule 13a-15 and 15d-15 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Company and the Significant Subsidiaries is made known to the Company’s Chief Executive Officer and its Chief Financial Officer by others within those entities, <i>and such disclosure controls and procedures are effective to perform the functions for which they were established</i>; the Company’s auditors and the Audit Committee of the Board of Directors have been advised of: (i) any significant deficiencies in the design or operation of internal controls which could adversely affect</p>		

Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	<p>the Company’s ability to record, process, summarize, and report financial data; and (ii) any fraud, whether or not material, that involves management or other employees of the Company who have a role in the Company’s internal controls and any fraud that is material or known to the Company that involves persons other than management or employees of the Company who have a role in the Company’s internal controls; <i>any material weakness or other material significant deficiency in internal controls have been identified for the Company’s auditors and disclosed in the Registration Statement and the Prospectus; and since the date of the most recent evaluation of such disclosure controls and procedures, there have been no significant changes in internal controls or in other</i></p>		



Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	<i>factors that could significantly affect internal controls, including any corrective actions with regard to any material weakness or significant deficiency.</i>		
<p><b>Investor Presentations dated December 2013, January 2014, February 2014, March 2014, May 2014, July 2014, September 2014, December 2014, February 2015, March 2015, August 2015, September 2015, November 2015, December 2015, and February 2016</b></p> <p><u>Maker(s) of Statements:</u> Boff; Micheletti</p>	(1) Boff’s “[r]obust risk management systems and culture has resulted in lower credit, counterparty and regulatory risks.”	Same as above.	Same as above.
<p><b>November 5, 2013 Earnings Conference Call</b></p> <p><u>Maker(s) of Statements:</u> Boff; Garrabrants</p>	(1) “We continue to make investments in our people, systems, and processes to ensure that we will appropriately manage our risk, and remain on sound regulatory footing as we enjoy the continued success of what we believe is the right business banking model for	Same as above.	Same as above.

Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	the future.”		
<p><b>May 6, 2014 Earnings Conference Call</b></p> <p><u>Maker(s) of Statements:</u> BofI; Garrabrants</p>	<p>(1) “We have another senior BSA office, three new BSA analysts, which is a substantial increase. . . . We’re continuing to focus on risk personnel and making sure infrastructure’s in good shape for our growth.”</p>	Same as above.	Same as above.
<p><b>August 7, 2014 Earnings Conference Call</b></p> <p><u>Maker(s) of Statements:</u> BofI; Garrabrants</p>	<p>(1) “We have made significant investments in our overall compliance infrastructure over the past several quarters, including BSA and AML compliance. We believe that we are on the same page with our regulators about their expectations[.]”</p> <p>(2) “We have spent a significant amount of money on BSA/AML compliance upgrades and new systems and new personnel. We have also been beefing up our compliance teams.”</p> <p>“But we want to make sure we stay ahead of our risk</p>	Same as above.	Same as above.



Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	management needs and make sure that certainly we stay out of BSA trouble and things like that.”		
<p><b>November 4, 2014 Earnings Conference Call</b></p> <p><u>Maker(s) of Statements:</u> Bofl; Garrabrants; Micheletti</p>	<p>(1) “From the people perspective, there may be a few more folks that are brought on in particular capacities based on work load balancing around BSA alert monitoring and things like that. But we’ve really decided that we really bulked up our compliance team, IT team and others over the last year. And we really decided that these folks given the regulatory environment that exists and all the opportunities that we have as a bank and how quickly we’re growing that we’re committed to those individuals and obviously we expect our deal [H&amp;R Block Deal] to close, but whether we do or not, whether that deal closes or not we believe that these folks are valuable parts of our organization[.]”</p>	<p>Same as above.</p>	<p>Same as above.</p>

Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	<p>(2) “[W]e’ve been spending a lot of money on enhancements to our management team, enhancements to our compliance infrastructure, our damage management capabilities, our research teams to continue to make sure we’re staying ahead of our growth from an infrastructure perspective.”</p> <p>(3) “I think it’s always a balance between investing in the future and optimizing short-term earnings. And so we’ve been spending a lot of money on enhancements to our management team, enhancements to our compliance infrastructure, our data management capabilities, our research teams to continue to make sure that we’re staying ahead of our growth from a infrastructure perspective. .”</p>		
<b>January 29, 2015 Earnings</b>	(1) “We have invested	Same as above.	Same as above.

Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
<p><b>Conference Call</b></p> <p><u>Maker(s) of Statements:</u> Boff; Garrabrants</p>	<p>significantly in our regulatory and compliance infrastructure, management and personnel to meet heightened regulatory demands and prepare ourselves for our relationship with H&amp;R Block.”</p> <p>(2) “We’re investing in a new BSA system, which we think is going to be a lot more -- better at detecting suspicious activity and those sorts of things.”</p>		
<p><b>April 30, 2015 Earnings Conference Call</b></p> <p><u>Maker(s) of Statements:</u> Boff; Garrabrants</p>	<p>(1) “[A]s our regulators always say, we have to make sure that we have the risk management, ahead of growth and those sorts of things and we’re very focused on that[.]”</p> <p>(2) “We have no regulatory impediments of any kind continuing to execute to our business plan. We have a deep and talented management team that continues to do a great job executing each quarter, while continuing to</p>	Same as above.	Same as above.



Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	<p>focus on the future[.]”</p> <p>(3) “[W]hat keeps us from doubling our mortgage banking income is just getting people in seats and building space and things like that. So we always have to think about making sure that we’re bringing along those sort of - that production force, at the same time we’re bringing along our risk management side.”</p>		
<p><b>July 30, 2105 Earnings Conference Call</b></p> <p><u>Maker(s) of Statements:</u> Bofl; Garrabrants</p>	<p>(1) “We are working hard to maintain our culture of continuous improvement, strong risk management, process orientation and disciplined capital allocation. . . . Our risk infrastructure is more mature and more capable and we will continue to invest to ensure that we maintain our strong regulatory relationships and ensure that we are operating the bank in a risk conscious manner.”</p>	<p>Same as above.</p>	<p>Same as above.</p>

Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
<p><b>October 14, 2015 Conference Call</b></p> <p><u>Maker(s) of Statements:</u> Bofl; Garrabrants</p>	<p>(1) “We have a culture that focuses very strongly on ethics[.]”</p> <p>(2) When asked by an analyst about internal oversight over audit: “I don’t have low standards with regard to these things. They’ve done a great job of the creation of a plan, which included an implementation of the system which is currently in place, that very specifically monitors the performance of internal auditors[.]”</p> <p>(3) “I think that the Audit Committee has done a fantastic job of putting in place a very serious program. And I would also say that the level of improvement that we have just in</p>	<p>Same as above.</p>	<p>Same as above.</p>



Document/“Maker(s)” of the Statement(s)	Statements Regarding Internal Controls, Compliance Infrastructure, and Risk Management <sup>1</sup>	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	<p>general related to Mr. Tolla, that he’s made in the audit and compliance function. And then, the enhancements of the audit function have been going very well.”</p>		

## II. STATEMENTS REGARDING UNDERWRITING STANDARDS AND CREDIT QUALITY

Document/“Maker(s)” of the Statement(s)	Statements Regarding Underwriting Standards and Credit Quality	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
<p><b>2013 Form 10-K, 2014 Form 10-K, 2015 Form 10-K</b></p> <p><u>Maker(s) of Statements:</u> BofI, Garrabrants (signed)</p>	<p>(1) “Our loan underwriting policies and procedures are written and adopted by our board of directors and our loan committee. Each loan, regardless of how it is originated, must meet underwriting criteria set forth in our lending policies and the requirements of applicable lending regulations of our federal regulators”</p> <p>(2) “In the underwriting process we consider the borrower’s credit score, credit history, documented income, existing and new debt obligations, the value of the collateral, and other internal and external factors.” For all multifamily and commercial loans, we rely primarily on the cash flow from the underlying property as the expected source of repayment, but we</p>	<p>Defendants knew, but failed to disclose, that (i) BofI engaged in unsound lending practices that subjected the Company to significant risk of loss and potential regulatory and government actions, (ii) BofI’s off-balance sheet activities included undisclosed lending partnerships with third party lenders that originated loans using substandard underwriting practices and that subjected BofI to significant credit risk and risk of potential regulatory or government actions, and (iii) BofI violated federal banking regulations and laws and other laws by failing to maintain an adequate Customer Identification Program (“CIP”) as part of the Bank’s BSA/Anti-Money Laundering (“AML”) compliance program</p>	<p>These statements correspond with the following disclosures:</p> <p><i>First</i>, an August 28, 2015 <i>Seeking Alpha</i> article reported that BofI’s lending standards were “gimmicks” and the Bank did business with a mortgage company that advertised loans available to Russia. BofI’s stock price declined on release of this information.</p> <p><i>Second</i>, on November 10, 2015 <i>Seeking Alpha</i> reported BofI’s relationships with third party lenders OnDeck and QuickBridge. BofI’s stock price declined on release of this information.</p> <p><i>Third</i>, on November 18, 2015 <i>Seeking Alpha</i> reported that BofI employed a convicted</p>



Document/“Maker(s)” of the Statement(s)	Statements Regarding Underwriting Standards and Credit Quality	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	<p>also endeavor to obtain personal guarantees from all borrowers or substantial principals of the borrower. In evaluating multifamily and commercial loans, we review the value and condition of the underlying property, as well as the financial condition, credit history and qualifications of the borrower. In evaluating the borrower’s qualifications, we consider primarily the borrower’s other financial resources, experience in owning or managing similar properties and payment history with us or other financial institutions. In evaluating the underlying property, we consider primarily the net operating income of the property before debt service and depreciation, the ratio of net operating income to debt service and the ratio of the loan amount to the appraised value.”</p>	<p>and by lending to borrowers who failed to provide sufficient identifying information.</p>	<p>felon as Senior Vice President of Wholesale and Correspondent Lending and made two loans to the individual. BofI’s stock price declined on release of this information.</p> <p><i>Fourth</i>, on November 19, 2015 <i>Seeking Alpha</i> reported on BofI’s undisclosed lending partnership with Center Street, and revealed that nearly \$300 million in in risky single-family lender finance loans BofI made to Center Street SPEs were disguised as “Warehouse and other” loans on BofI’s financial statements. BofI’s stock price declined on release of this information.</p> <p><i>Fifth</i>, on December 8, 2015, <i>Seeking Alpha</i> reported on BofI’s undisclosed lending partnership with Quick Bridge. BofI’s stock price declined on release of this information.</p>

Document/“Maker(s)” of the Statement(s)	Statements Regarding Underwriting Standards and Credit Quality	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	<p>(3) “Credit-Related Financial Instruments. The Company is a party to credit-related financial instruments with off-balance- sheet risk in the normal course of business to meet the financing needs of its customers. . . . The Company’s exposure to credit loss is represented by the contractual amount of these commitments [to extend credit]. The Company follows the same credit policies in making commitments as it does for on-balance-sheet instruments.”</p>		<p><i>Sixth</i>, on February 3, 2016, <i>Seeking Alpha</i> released an article revealing that the author had visited what was supposed to be BofI’s “full service” branch in Reno, Nevada to discover that it was staffed by a single individual and was only 75 square feet, and explaining that the “branch” was in Nevada for the purpose of allowing BofI to take advantage of Nevada’s usury laws, which do not limit interest rates in express written contracts.</p>
<p><b>November 5, 2013 Earnings Conference Call</b></p> <p><u>Maker(s) of Statements:</u> BofI, Garrabrants</p>	<p>(1) “We are pleased with the increase in credit quality at the bank”;</p> <p>(2) “We continue to remain focused on credit quality at the bank, and have not sacrificed credit quality to</p>	<p>Same as above.</p>	<p>Same as above.</p>



Document/“Maker(s)” of the Statement(s)	Statements Regarding Underwriting Standards and Credit Quality	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	<p>increase originations”</p> <p>(3) “The new Ability-to-Repay and Qualified Mortgage (“QM”) rule adopted by the Consumer Financial Protection Bureau (“CFPB”) “solidified our ability to continue to do the prudent originations that we have, and not allowed other institutions to come in and basically mess up this business by sort of racing to the bottom on credit. Because you can’t any more do a -- it is illegal now to do a state[d]-income loan. . . And we never did that. We’ve always done full documentation loans. . . . I don’t believe in low documentation, and no documentation loans. From my perspective, I want to see everything. If we’re making a judgment and a trade off about a particular aspect of something, that’s fine. But we can do that with the holistic</p>		



Document/“Maker(s)” of the Statement(s)	Statements Regarding Underwriting Standards and Credit Quality	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	picture, and have that picture documented.”		
<p><b>February 5, 2014 Earnings Call</b></p> <p><u>Maker(s) of Statements:</u> BofI, Garrabrants</p>	<p>(1) “We continue to be pleased with the increase in the credit quality at the bank”;</p> <p>(2) “We remain highly focused on credit quality at the bank and have not sacrificed credit quality to increase originations”;</p> <p>(3) Commenting on the growth in BofI’s C&amp;I loans, Garrabrants explained that “the vast majority of those loans are loans that have been self-originated by the bank, sourced by our team and they are a significant portion of those are lender financed loans that are backed by hard collateral, receivables, real estate or other loans”; and</p> <p>(4) In response to a question from an analyst regarding QM, Garrabrants described his understanding of the new</p>	Same as above.	Same as above.

Document/“Maker(s)” of the Statement(s)	Statements Regarding Underwriting Standards and Credit Quality	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	ability to pay/QM rule, and stated “in our case, we never did no documentation loans. We always collected every piece of documentation that we possibly could including tax returns from the IRS and everything else, so that really didn’t change anything that we did.”		
<p><b>May 6, 2014 Earnings Conference Call</b></p> <p><u>Maker(s) of Statements:</u> BofI; Garrabrants</p>	<p>(1) “We are pleased with the increase in the credit quality at the bank”</p> <p>(2) “We remain highly focused on credit quality at the Bank and have not sacrificed credit quality to increase originations nor loosen our underwriting standards[.]”</p>		
<p><b>August 7, 2014 Earnings Conference Call and Press Release</b></p> <p><u>Maker(s) of Statements:</u> BofI; Garrabrants</p>	<p>(1) “[w]e achieved our loan growth without reducing our credit standards while improving our net interest margin.”</p> <p>(2) With respect to BofI’s single-family loan origination</p>	Same as above.	Same as above.

Document/“Maker(s)” of the Statement(s)	Statements Regarding Underwriting Standards and Credit Quality	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	<p>practices: “we continue to originate only full documentation, high credit quality, low loan-to-value, jumbo single-family mortgages and have not reduced our loan rates for these products”</p> <p>(3) With respect to BofI’s C&amp;I loan portfolio: “we believe that we can continue to grow our portfolio at similar yields in this coming year as we have in the prior year and maintain our conservative credit guidelines”</p> <p>(4) “[w]e are pleased with the increase in the credit quality at the bank[.]”</p>		
<p><b>February 2014, March 2014, May 2014, September 2014, and February 2015 Investor Presentations</b></p> <p><u>Maker(s) of Statements:</u> BofI; Micheletti</p>	<p>(1) Representing that for single-family loans, BofI used “‘common sense’ underwriting”; and</p> <p>(2) Representing that for</p>	Same as above.	Same as above.



Document/“Maker(s)” of the Statement(s)	Statements Regarding Underwriting Standards and Credit Quality	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	multi-family loans, Boff worked with “[h]igh quality originators with average experience of 15+ years” and had “high credit quality[.]”		
<p><b>November 4, 2014 Press Release and Earnings Conference Call</b></p> <p><u>Maker(s) of Statements:</u> Boff; Garrabrants</p>	<p>(1) Boff’s “strong loan growth was achieved while maintaining high credit quality standards.”</p> <p>(2) “[w]e continue to be pleased with the credit quality at the bank,” noting a decline in non-performing assets as a percentage of total assets year-over-year.”</p> <p>(3) “[w]e continue to have an unwavering focus on credit quality of the bank and have not sacrificed credit quality to increase origination.”</p> <p>(4) “[o]ur strong credit discipline and low loan to value ratio of portfolio had resulted in consistently low credit losses and servicing costs.”</p>	Same as above.	Same as above.

Document/“Maker(s)” of the Statement(s)	Statements Regarding Underwriting Standards and Credit Quality	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
<p><b>January 29, 2015 Earnings Call</b></p> <p><u>Maker(s) of Statements:</u> BofI; Garrabrants</p>	<p>(1) “Our strong credit discipline and low loan-to-value portfolios have resulted in consistently low credit losses and servicing costs.”</p>	<p>Same as above.</p>	<p>Same as above.</p>
<p><b>April 30, 2015 Earnings Call</b></p> <p><u>Maker(s) of Statements:</u> BofI; Garrabrants</p>	<p>(1) “We continue to maintain our conservative underwriting criteria and have not loosened credit quality to enhance yields or increase loan volumes. . . Risk is not hidden in the tail for the portfolio. Only 8% of the single-family has a loan-to-value ratio greater than 70%, less than 1% greater than 80% and no loans with a loan-to-value ratio of greater than 90%. . .”</p> <p>(2) “We only originate full documentation loans that include borrower personal and business tax returns, bank statements and one full appraisal for multi-family loans and single-family loans under \$1 million and two appraisals for all single-family loans above \$1 million.”</p>	<p>Same as above.</p>	<p>Same as above.</p>



Document/“Maker(s)” of the Statement(s)	Statements Regarding Underwriting Standards and Credit Quality	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	<p>(3) With respect to Boff’s C&amp;I loans and lender finance loans, Garrabrants stated that they “are well secured by marketable collateral at much lower leverage ratios than industry averages for similar portfolios.”</p> <p>(4) With respect to C&amp;I loans, Garrabrants stated that: “Because we focus on select C&amp;I niches that provide good risk adjusted returns, the average yields in our C&amp;I loans are solidly accretive to our consolidated loan yield. With a healthy loan pipeline and extensive experience across a variety of C&amp;I loan types, we remain optimistic regarding expansion of our C&amp;I portfolio.”</p>		
<p><b>July 30, 2015 Earnings Call</b></p> <p><u>Maker(s) of Statements:</u> Boff; Garrabrants</p>	<p>(1) “Currently, the vast majority of our C&amp;I loan book is sole sourced, originated and agented by us.”</p>	<p>Same as above.</p>	<p>Same as above.</p>

Document/“Maker(s)” of the Statement(s)	Statements Regarding Underwriting Standards and Credit Quality	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
<p><b>August 22, 2015 <i>New York Times</i> Article</b></p> <p><u>Maker(s) of Statements:</u> Boff; Garrabrants (quoted)</p>	<p>(1) “[w]e try to really run a good, ethical shop and I want people to know that.”</p> <p>(2) “Here’s the problem for them: They are going into an earnings juggernaut that has none of the things that they’re talking about,” Mr. Garrabrants said. And he says the bank is as judicious as any other lender in picking its borrowers. “It’s about being thoughtful about what risks you take and watching them and being careful,” he said, adding that Bank of Internet’s deposits are a reliable source of funding.</p> <p style="text-align: center;">* * *</p> <p>Then there are questions about Bank of Internet’s marketing of itself as a lender to “foreign nationals.” It does not disclose exactly what proportion of its loans are made to foreigners. When asked, Mr. Garrabrants said it was “nowhere near the</p>	<p>Same as above.</p>	<p>Same as above.</p>



Document/“Maker(s)” of the Statement(s)	Statements Regarding Underwriting Standards and Credit Quality	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	majority.”		
<p><b>October 29, 2015 Earnings Call</b></p> <p><u>Maker(s) of Statements:</u> Boff; Garrabrants</p>	<p>(1) “portfolio credit quality is very strong. Our strong credit discipline and low loan-to-value portfolio have resulted in consistently low-credit losses and servicing costs”</p> <p>(2) “[w]e continue to maintain our conservative underwriting criteria and have not loosened credit quality to increase loan volume.”</p>	Same as above.	Same as above.
<p><b>August 5, 2015 Press Release regarding H&amp;R Block</b></p> <p><u>Maker(s) of Statements:</u> Boff; Garrabrants</p>	<p>(1) “Once completed and closed, these H&amp;R Block agreements will add to the strength and diversity of our deposit, lending and fee income businesses. We believe our nationwide low-cost branchless bank is well aligned with H&amp;R Block’s desire to provide their clients with affordable banking products and services.”</p>	<p>These statements concerning Boff’s agreements with H&amp;R Block and Boff’s “branchless business” model being “well aligned” with H&amp;R Block were false and misleading when made because Defendants knew, but failed to disclose, that Boff created a phantom Nevada branch location to issue and book hundreds of millions of dollars in H&amp;R Block financial products and to take advantage of Nevada usury laws, which do not limit</p>	<p>On February 3, 2016, <i>Seeking Alpha</i> released an article revealing that the author had visited what was supposed to be Boff’s “full service” branch in Reno, Nevada to discover that it was staffed by a single individual and was only 75 square feet, and explaining that the “branch” was in Nevada for the purpose of allowing Boff to take advantage of Nevada’s usury laws, which do not limit interest rates in express written contracts.</p>

<b>Document/“Maker(s)” of the Statement(s)</b>	<b>Statements Regarding Underwriting Standards and Credit Quality</b>	<b>Why Statements Were False or Misleading When Made</b>	<b>Corresponding Corrective Disclosure(s)</b>
		interest rates in express written contracts.	



### III. STATEMENTS REGARDING GOVERNMENT AND REGULATORY INVESTIGATIONS

Document/“Maker(s)” of the Statement(s)	Statements Regarding Government and Regulatory Investigations	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
<p><b>August 22, 2015 <i>New York Times</i> Article</b></p> <p><u>Maker(s) of Statements:</u> BoFI; Garrabrants</p>	<p>(1) “We’ve had full regulatory review of that process [of vetting loans to foreigners] and specific compliments on it [from regulators]. . . . It is beyond a nonissue.”</p>	<p>Garrabrants affirmatively represented that the Bank was not the subject of government and regulatory investigation, when BoFI and Garrabrants knew that BoFI was under investigation by the SEC as of May 28, 2015, and under formal investigation by the SEC as of February 11, 2016.</p>	<p>This statement corresponds with the following three disclosures:</p> <p><i>First</i>, on August 28, 2015, <i>Seeking Alpha</i> published an article reporting that the SEC had responded to the author’s FOIA request by invoking a “law enforcement” exception. BoFI’s stock price declined on release of this information.</p> <p><i>Second</i>, on October 13, 2015, the Erhart Complaint revealed that Erhart “saw a BSA saw a BSA spreadsheet that identified many subpoenas, including from law enforcement agencies, grand juries, and even from the U.S. Department of Treasury.” BoFI’s stock price declined on release of this information.</p> <p><i>Third</i>, on October 30, 2015, BoFI filed the BoFI Sealing</p>



Document/“Maker(s)” of the Statement(s)	Statements Regarding Government and Regulatory Investigations	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
			Brief in its action against Erhart, which confirmed the existence of “nonpublic agency investigations,” “investigations by the OCC,” and “confidential government subpoenas.” BofI’s stock price declined on release of this information.
<p><b>October 14, 2015 Earnings Conference Call</b></p> <p><u>Maker(s) of Statements:</u> BoFI; Garrabrants</p>	<p>(1) BOB RAMSEY: Okay. And so, they’ve [the OCC] let you know that there is nothing ongoing related to these concerns that he raised, that they are still investigating at this point?</p> <p>GREG GARRABRANTS: Well, I have to be very careful about stating exactly what the OCC is doing. But the fact is, is that all of these were investigated. <i>There is nothing ongoing.</i> And the OCC comes in, and regularly reviews these things. If any of it were true, we wouldn't have gotten these deals done. You can take as absolute confirmation, by the</p>	Same as above.	Same as above.

Document/“Maker(s)” of the Statement(s)	Statements Regarding Government and Regulatory Investigations	Why Statements Were False or Misleading When Made	Corresponding Corrective Disclosure(s)
	<p>fact that we got those deals done in the month -- one deal done in the month that these allegations were there, and then the next deal, that <i>there is no continuity to this. We have great regulatory relations. We are under no regulatory orders, no regulatory restrictions on our business, and we continue to have great dialogue with our regulators.</i> And there’s no issues [sic] with any of -- the idea that we are not providing information or something like that.</p> <p>(2) “[t]here are <i>no regulatory issues of any kind</i> that have arisen from Mr. Erhart’s contact with the OCC.”</p>		

1480780.2

1 Richard M. Heimann (Cal. Bar No. 063607)  
rheimann@lchb.com  
2 Katherine C. Lubin (Cal. Bar No. 259826)  
kbenson@lchb.com  
3 LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP  
4 275 Battery Street, 29th Floor  
San Francisco, CA 94111-3339  
5 Telephone: (415) 956-1000  
Facsimile: (415) 956-1008

6 LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP  
7 Daniel P. Chiplock (admitted *pro hac vice*)  
dchiplock@lchb.com  
8 Michael J. Miarmi (admitted *pro hac vice*)  
mmiarmi@lchb.com  
9 250 Hudson Street, 8th Floor  
10 New York, NY 10013-1413  
Telephone: (212) 355-9500  
11 Facsimile: (212) 355-9592

12 *Counsel for Lead Plaintiff Houston Municipal*  
13 *Employees Pension System and Lead Counsel for*  
*the Proposed Class*

14 **UNITED STATES DISTRICT COURT**  
15 **SOUTHERN DISTRICT OF CALIFORNIA**

17 IN RE:  
18  
19 BofI HOLDING, INC. SECURITIES  
LITIGATION.  
20  
21

Case No. 3:15-cv-02324-GPC-KSC

**CLASS ACTION**

**CERTIFICATE OF SERVICE**

22  
23  
24  
25  
26  
27  
28

1 I am employed in the County of San Francisco, State of California. I am  
2 over the age of eighteen (18) years and not a party to the within action; my  
3 principal business address is 275 Battery Street, 29<sup>th</sup> Floor, San Francisco,  
4 California 94111-3339.

5 On December 22, 2017 I caused to be served via electronic transmission  
6 through the website for the U.S. District Court, Southern District of California, a  
7 copy of the below-referenced document(s) upon parties registered in the action for  
8 e-service:

9 **THIRD AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF**  
10 **THE FEDERAL SECURITIES LAWS**

11 with the Clerk of the Court using the CM/ECF system which will send notification  
12 of such filing to the attorneys of record who are registered users of CM/ECF.

13 I declare under penalty of perjury that the foregoing is true and correct.

14 Executed in San Francisco, December 22, 2017.

15  
16 Dated: December 22, 2017 LIEFF CABRASER HEIMANN & BERNSTEIN,  
LLP

17  
18 By: s/ Katherine C. Lubin

19  
20 Richard M. Heimann (State Bar No. 063607)  
rheimann@lchb.com  
21 Katherine C. Lubin (State Bar No. 259826)  
kbenson@lchb.com  
22 275 Battery Street, 29th Floor  
San Francisco, CA 94111-3339  
23 Telephone: (415) 956-1000  
24  
25  
26  
27  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Daniel P. Chiplock (admitted *pro hac vice*)  
dchiplock@lchb.com  
Michael J. Miarmi (admitted *pro hac vice*)  
mmiarmi@lchb.com  
250 Hudson Street, 8th Floor  
New York, NY 10013  
Telephone: (212) 355-9500  
Facsimile: (212) 355-9592

*Counsel for Lead Plaintiff Houston Municipal  
Employees Pension System and Lead Counsel for  
the Proposed Class*