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*Attorneys for Plaintiff*

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

25 STEVEN GOLDEN, Individually and  
26 on Behalf of All Others Similarly  
27 Situated,

28 Plaintiff,

29 v.

30 BOFI HOLDING, INC., GREGORY  
31 GARRABRANTS, and ANDREW J.  
32 MICHELETTI,

33 Defendants.

No. '15CV2324 GPC KSC

**CLASS ACTION**

**COMPLAINT FOR  
VIOLATION OF THE  
FEDERAL SECURITIES  
LAWS**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Steven Golden (“Plaintiff”), individually and on behalf of all other  
2 persons similarly situated, by his undersigned attorneys, for his complaint against  
3 defendants, alleges the following based upon personal knowledge as to himself and  
4 his own acts, and information and belief as to all other matters, based upon, *inter*  
5 *alia*, the investigation conducted by and through his attorneys, which included,  
6 among other things, a review of the defendants’ public documents, conference calls  
7 and announcements made by defendants, United States Securities and Exchange  
8 Commission (“SEC”) filings, wire and press releases published by and regarding  
9 BofI Holding, Inc. (“BofI” or the “Company”), analysts’ reports and advisories  
10 about the Company, and information readily obtainable on the Internet. Plaintiff  
11 believes that substantial evidentiary support will exist for the allegations set forth  
12 herein after a reasonable opportunity for discovery.

### 13 **NATURE OF THE ACTION**

14 1. This is a federal securities class action brought on behalf of a class  
15 consisting of all persons and entities, other than defendants and their affiliates, who  
16 purchased the securities of BofI from September 4, 2013 to October 13, 2015,  
17 inclusive (the “Class Period”). Plaintiff seeks to pursue remedies against BofI and  
18 certain of its officers and directors for violations of the federal securities laws under  
19 the Securities Exchange Act of 1934 (the “Exchange Act”).

20 2. BofI operates as the holding company for BofI Federal Bank, a  
21 provider of consumer and business banking products through the Internet in the  
22 United States. BofI Federal Bank’s deposits products include consumer and  
23 business checking, demand, savings, and time deposit accounts. Its loan portfolio

1 comprises residential single family and multifamily mortgage loans; commercial  
2 real estate secured and commercial lending products; specialty finance factoring  
3 products; and consumer lending products consisting of prime loans to purchase new  
4 and used recreational vehicles and automobiles, as well as deposit-related overdraft  
5 lines of credit.

6 3. BofI Federal Bank’s most significant business is making mortgages to  
7 high-net-worth individuals for the purchase of expensive properties through BofI  
8 Federal Bank’s Bank of Internet USA (“Bank of Internet”) brand.

9 4. The Company was incorporated in 1999. BofI is headquartered in San  
10 Diego, California, and its shares trade on the NASDAQ under the ticker symbol  
11 “BOFI.”

12 5. Throughout the Class Period, defendants made false and/or misleading  
13 statements, and failed to disclose material adverse facts about the Company’s  
14 business, operations, prospects and performance. Specifically, during the Class  
15 Period, defendants made false and/or misleading statements and/or failed to disclose  
16 that: (i) the Company’s internal controls were frequently disregarded; (ii) Bank of  
17 Internet’s borrowers included foreign nationals who should have been off-limits  
18 under federal anti-money-laundering laws; (iii) many Bank of Internet accounts  
19 lacked required tax identification numbers; (iv) Bank of Internet fired an internal  
20 auditor who raised the foregoing issues to management and to federal regulators;  
21 and (v) as a result of the above, the Company’s statements regarding its internal  
22 controls and other financial statements were materially false and misleading at all  
23 relevant times.

1           6.     On October 13, 2015, post-market, *The New York Times* reported that  
2 Matt Erhart (“Erhart”), a former internal auditor at Bank of Internet, had filed a  
3 lawsuit against the Company for violating federal laws designed to protect whistle-  
4 blowers (the “Erhart Complaint”). The Erhart Complaint alleged, *inter alia*, that:

- 5           • Bank of Internet’s borrowers included foreign nationals who should  
6           have been off-limits under federal anti-money-laundering laws;
- 7           • Erhart had seen a spreadsheet that contained as many as 200  
8           accounts without tax identification numbers, contrary to Bank of  
9           Internet’s representations to the Office of the Comptroller of the  
10           Currency (“OCC”), its primary regulator;
- 11           • Bank of Internet at times failed to provide full and timely  
12           information to regulators; and
- 13           • Erhart was fired after he revealed wrongdoing at Bank of Internet to  
14           management and federal regulators.

15           7.     On this news, shares of BofI fell \$42.87, or 30.2%, to close at \$99.13  
16 on October 14, 2015.

17           8.     As a result of defendants’ wrongful acts and omissions, and the  
18 precipitous decline in the market value of the Company’s securities, Plaintiff and  
19 other Class members have suffered significant losses and damages.

### **JURISDICTION AND VENUE**

20           9.     The claims asserted herein arise under and pursuant to §§10(b) and  
21 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5  
22 promulgated thereunder by the SEC (17 C.F.R. §240.10b-5).  
23



1 16. Defendant Andrew J. Micheletti (“Micheletti”) has served at all  
2 relevant times as the Company’s Executive Vice President and Chief Financial  
3 Officer (“CFO”).

4 17. The Defendants referenced in ¶¶ 15-16 are sometimes referred to  
5 herein, collectively, as the “Individual Defendants.”

6 **SUBSTANTIVE ALLEGATIONS**

7 **Background**

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

17 19. BofI Federal Bank’s most significant business is making mortgages to  
18 high-net-worth individuals for the purchase of expensive properties through BofI  
19 Federal Bank’s Bank of Internet brand.

20 20. The Company was incorporated in 1999. BofI is headquartered in San  
21 Diego, California, and its shares trade on the NASDAQ under the ticker symbol  
22 “BOFI.”



1 Terrorism Act of 2001 ("USA Patriot Act") on October 26, 2001 in  
2 response to the terrorist events of September 11, 2001. The USA Patriot  
3 Act gives the federal government broad powers to address terrorist  
4 threats through enhanced domestic security measures, expanded  
5 surveillance powers, increased information sharing, and broadened  
6 anti-money laundering requirements. In February 2010, Congress re-  
7 enacted certain expiring provisions of the USA Patriot Act.'

8 23. The 2013 10-K contained signed certifications pursuant to the  
9 Sarbanes-Oxley Act of 2002 ("SOX") by the Individual Defendants, stating that the  
10 financial information contained in the 2013 10-K was accurate and disclosed any  
11 material changes to the Company's internal control over financial reporting.

12 24. On November 5, 2013, BofI filed a quarterly report on Form 10-Q with  
13 the SEC announcing the Company's financial and operating results for the quarter  
14 ended September 30, 2013 (the "Q1 2014 10-Q"). For the quarter, the Company  
15 reported net income of \$12.18 million, or \$0.85 per diluted share, on net revenue of  
16 \$35.09 million, compared to net income of \$8.99 million, or \$0.67 per diluted share,  
17 on net revenue of \$29.25 million for the same period in the prior year.

18 25. The Q1 2014 10-Q contained signed certifications pursuant to SOX by  
19 the Individual Defendants, stating that the financial information contained in the Q1  
20 2014 10-Q was accurate and disclosed any material changes to the Company's  
21 internal control over financial reporting.

22 26. On December 4, 2013, BofI filed Form 8-K with the SEC containing  
23 an Investor Presentation concerning the Company's Q1 2014 financial and  
operating results (the "Q1 2014 Investor Presentation"). The Q1 2014 Investor  
Presentation contained, in part, the following statements:



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

10 27. On February 5, 2014, BofI filed a quarterly report on Form 10-Q with  
11 the SEC announcing the Company's financial and operating results for the quarter  
12 ended December 31, 2013 (the "Q2 2014 10-Q"). For the quarter, the Company  
13 reported net income of \$13.15 million, or \$0.91 per diluted share, on net revenue of  
14 \$38.37 million, compared to net income of \$9.77 million, or \$0.70 per diluted share,  
15 on net revenue of \$31.19 million for the same period in the prior year.

16 28. The Q2 2014 10-Q contained signed certifications pursuant to SOX by  
17 the Individual Defendants, stating that the financial information contained in the Q2  
18 2014 10-Q was accurate and disclosed any material changes to the Company's  
19 internal control over financial reporting.

20 29. On February 6, 2014, BofI filed Form 8-K with the SEC containing an  
21 Investor Presentation concerning the Company's Q2 2014 financial and operating  
22 results (the "Q2 2014 Investor Presentation"). The Q2 2014 Investor Presentation  
23 contained, in part, the following statements:

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

10 30. On May 6, 2014, BofI filed a quarterly report on Form 10-Q with the  
11 SEC announcing the Company's financial and operating results for the quarter  
12 ended March 31, 2014 (the "Q3 2014 10-Q"). For the quarter, the Company  
13 reported net income of \$14.61 million, or \$1.00 per diluted share, on net revenue of  
14 \$40.88 million, compared to net income of \$10.40 million, or \$0.74 per diluted  
15 share, on net revenue of \$33.04 million for the same period in the prior year.

16 31. The Q3 2014 10-Q contained signed certifications pursuant to SOX by  
17 the Individual Defendants, stating that the financial information contained in the Q3  
18 2014 10-Q was accurate and disclosed any material changes to the Company's  
19 internal control over financial reporting.

20 32. On May 7, 2014, BofI filed Form 8-K with the SEC containing an  
21 Investor Presentation concerning the Company's Q3 2014 financial and operating  
22 results (the "Q3 2014 Investor Presentation"). The Q3 2014 Investor Presentation  
23 contained, in part, the following statements:

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

10 33. On August 7, 2014, BofI issued a press release and filed a Form 8-K  
11 with the SEC announcing the Company's financial and operating results for the  
12 quarter and fiscal year ended June 30, 2014 (the "2014 8-K"). For the quarter, the  
13 Company reported net income of \$16.01 million, or \$1.09 per diluted share, on net  
14 revenue of \$45.22 million, compared to net income of \$11.13 million, or \$0.78 per  
15 diluted share, on net revenue of \$35.87 million for the same period in the prior year.  
16 For fiscal year 2014, the Company reported net income of \$55.96 million, or \$3.85  
17 per diluted share, on net revenue of \$159.55 million, compared to net income of  
18 \$40.29 million, or \$2.89 per diluted share, on net revenue of \$129.34 million for  
19 fiscal year 2013.

20 34. On August 28, 2014, BofI filed an annual report on Form 10-K with  
21 the SEC (the "2014 10-K"). The 2014 10-K reiterated the financial and operating  
22 results previously announced in the 2014 8-K.

23 35. In the 2014 10-K, the Company stated, in part:

**REGULATION OF BOFI FEDERAL BANK**

1  
2 **General.** As a federally-chartered savings and loan association whose  
3 deposit accounts are insured by FDIC, BofI Federal Bank is subject to  
4 extensive regulation by the FDIC and, as of the Transfer Date, the OCC.  
5 Under the Dodd-Frank Act, the examination, regulation and  
6 supervision of savings associations, such as BofI Federal Bank, were  
7 transferred from the OTS to the OCC, the federal regulator of national  
8 banks under the National Bank Act. The following discussion  
9 summarizes some of the principal areas of regulation applicable to the  
10 Bank and its operations.

11 ...

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

22 36. The 2014 10-K contained signed certifications pursuant to SOX by the  
23 Individual Defendants, stating that the financial information contained in the 2014  
24 10-K was accurate and disclosed any material changes to the Company's internal  
25 control over financial reporting.

26 37. On September 3, 2014, BofI filed Form 8-K with the SEC containing  
27 an Investor Presentation concerning the Company's Q4 2014 financial and  
28 operating results (the "Q4 2014 Investor Presentation"). The Q4 2014 Investor  
29 Presentation contained, in part, the following statements:

- 30 • BofI is Consistently Ranked among the Best of the Biggest Thrifts  
31 by SNL Financial...;

- 1
- 2 • ...and is also a Top Performer among the Broader Universe of All Public Banks and Thrifts;
- 3
- 4 • BofI is a Top Quartile Performer Versus Bank Peer Group;
- 5 • Our Business Model is More Profitable Because Our Costs are Lower; and
- 6
- 7 • Our Asset Growth has been Driven by Strong and Profitable Organic Loan Production

8 38. On November 4, 2014, BofI filed a quarterly report on Form 10-Q with  
9 the SEC announcing the Company's financial and operating results for the quarter  
10 ended September 30, 2014 (the "Q1 2015 10-Q"). For the quarter, the Company  
11 reported net income of \$17.84 million, or \$1.20 per diluted share, on net revenue of  
12 \$50.12 million, compared to net income of \$12.18 million, or \$0.85 per diluted  
13 share, on net revenue of \$35.09 million for the same period in the prior year.

14 39. The Q1 2015 10-Q contained signed certifications pursuant to SOX by  
15 the Individual Defendants, stating that the financial information contained in the Q1  
16 2015 10-Q was accurate and disclosed any material changes to the Company's  
17 internal control over financial reporting.

18 40. On November 17, 2014, BofI filed Form 8-K with the SEC containing  
19 an Investor Presentation concerning the Company's Q1 2015 financial and  
20 operating results (the "Q1 2015 Investor Presentation"). The Q1 2015 Investor  
21 Presentation contained, in part, the following statements:

- 22 • BofI is Consistently Ranked among the Best of the Biggest Thrifts  
23 by SNL Financial...;

- 1 • ...and is also a Top Performer among the Broader Universe of All  
2 Public Banks and Thrifts;
- 3 • BofI is a Top Quartile Performer Versus Bank Peer Group;
- 4 • Our Business Model is More Profitable Because Our Costs are  
5 Lower; and
- 6 • Our Asset Growth has been Driven by Strong and Profitable Organic  
7 Loan Production

8 41. On January 29, 2015, BofI filed a quarterly report on Form 10-Q with  
9 the SEC announcing the Company's financial and operating results for the quarter  
10 ended December 31, 2014 (the "Q2 2015 10-Q"). For the quarter, the Company  
11 reported net income of \$19.37 million, or \$1.27 per diluted share, on net revenue of  
12 \$54.81 million, compared to net income of \$13.15 million, or \$0.91 per diluted  
13 share, on net revenue of \$38.37 million for the same period in the prior year.

14 42. The Q2 2015 10-Q contained signed certifications pursuant to SOX by  
15 the Individual Defendants, stating that the financial information contained in the Q2  
16 2015 10-Q was accurate and disclosed any material changes to the Company's  
17 internal control over financial reporting.

18 43. On March 2, 2015, BofI filed Form 8-K with the SEC containing an  
19 Investor Presentation concerning the Company's Q2 2015 financial and operating  
20 results (the "Q2 2015 Investor Presentation"). The Q2 2015 Investor Presentation  
21 contained, in part, the following statements:

- 22 • BofI is Consistently Ranked among the Best of the Biggest Thrifts  
23 by SNL Financial...;

- 1 • ...and is also a Top Performer among the Broader Universe of All  
2 Public Banks and Thrifts;
- 3 • BofI is a Top Quartile Performer Versus Bank Peer Group;
- 4 • Our Business Model is More Profitable Because Our Costs are  
5 Lower; and
- 6 • Our Asset Growth has been Driven by Strong and Profitable Organic  
7 Loan Production

8 44. On April 30, 2015, BofI filed a quarterly report on Form 10-Q with the  
9 SEC announcing the Company's financial and operating results for the quarter  
10 ended March 31, 2015 (the "Q3 2015 10-Q"). For the quarter, the Company  
11 reported net income of \$21.07 million, or \$1.35 per diluted share, on net revenue of  
12 \$59.03 million, compared to net income of \$14.61 million, or \$1.00 per diluted  
13 share, on net revenue of \$40.88 million for the same period in the prior year.

14 45. The Q3 2015 10-Q contained signed certifications pursuant to SOX by  
15 the Individual Defendants, stating that the financial information contained in the Q3  
16 2015 10-Q was accurate and disclosed any material changes to the Company's  
17 internal control over financial reporting.

18 46. On May 6, 2015, BofI filed Form 8-K with the SEC containing an  
19 Investor Presentation concerning the Company's Q3 2015 financial and operating  
20 results (the "Q3 2015 Investor Presentation"). The Q3 2015 Investor Presentation  
21 contained, in part, the following statements:

- 22 • BofI is Consistently Ranked among the Best of the Biggest Thrifts  
23 by SNL Financial...;

- 1 • ...and is also a Top Performer among the Broader Universe of All  
2 Public Banks and Thrifts;
- 3 • BofI is a Top Quartile Performer Versus Bank Peer Group;
- 4 • Our Business Model is More Profitable Because Our Costs are  
5 Lower; and
- 6 • Our Asset Growth has been Driven by Strong and Profitable Organic  
7 Loan Production

8 47. On July 30, 2015, BofI issued a press release and filed a Form 8-K  
9 with the SEC announcing the Company's financial and operating results for the  
10 quarter and fiscal year ended June 30, 2015 (the "2015 8-K"). For the quarter, the  
11 Company reported net income of \$24.40 million, or \$1.54 per diluted share, on net  
12 revenue of \$65.57 million, compared to net income of \$16.01 million, or \$1.09 per  
13 diluted share, on net revenue of \$45.22 million for the same period in the prior year.  
14 For fiscal year 2015, the Company reported net income of \$82.68 million, or \$5.37  
15 per diluted share, on net revenue of \$229.54 million, compared to net income of  
16 \$55.96 million, or \$3.85 per diluted share, on net revenue of \$159.55 million for  
17 fiscal year 2014.

18 48. On August 10, 2015, BofI filed Form 8-K with the SEC containing an  
19 Investor Presentation concerning the Company's Q4 2015 financial and operating  
20 results (the "Q4 2015 Investor Presentation"). The Q4 2015 Investor Presentation  
21 contained, in part, the following statements:

- 22 • BofI is Consistently Ranked among the Best of the Biggest Thrifts  
23 by SNL Financial...;



- 1 • ...and is also a Top Performer among the Broader Universe of All  
2 Public Banks and Thrifts;
- 3 • BofI is a Top Quartile Performer Versus Bank Peer Group;
- 4 • Our Business Model is More Profitable Because Our Costs are  
5 Lower; and
- 6 • Our Asset Growth has been Driven by Strong and Profitable Organic  
7 Loan Production

8 49. On August 22, 2015, *The New York Times* published an article, titled  
9 “An Internet Mortgage Provider Reaps the Rewards of Lending Boldly,”  
10 concerning BofI’s robust growth during defendant Garrabrants’ tenure as CEO.

11 The article stated, in relevant part:

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

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

22 “I am passionate about what we do here, and I believe in it,” Mr.  
23 Garrabrants said in one of several telephone interviews in recent weeks.  
“We are proud of what we are doing here. *We try to really run a good,*  
*ethical shop, and I want people to know that.*”

...

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

8 ...

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

11  
12 "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.  
13 Garrabrants said. And **he says the bank is as judicious as any other**  
14 **lender in picking its borrowers.** "It's about being thoughtful about  
what risks you take and watching them and being careful," he said,  
15 adding that Bank of Internet's deposits are a reliable source of funding.

16 ...

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

21  
22 In mid-2014, Bank of Internet lent \$1.05 million to Frederic Elm for a  
house in Fort Lauderdale, Fla., property records show. In January, the  
23 Securities and Exchange Commission accused Mr. Elm of running a

1 “Ponzi-like” scheme that had raised \$17 million since November 2013.  
2 Mr. Elm partly settled with the agency in June.

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

7 Mr. Garrabrants defended his practices in an email. *“It is unfair to*  
8 *characterize our borrowers’ profiles as different than other banks*  
9 *that serve high-net-worth customers,”* he said. “You would easily be  
10 able to find lawsuits and an occasional legal issue if you scanned First  
11 Republic or another bank with high-net-worth borrowers as well.”

12 ...

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

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

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

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

3 And, *according to Mr. Garrabrants, regulators have inspected Bank*  
4 *of Internet’s processes for vetting loans to foreigners — and given the*  
5 *bank positive feedback. “We’ve had full regulatory review of that*  
6 *process and specific compliments on it,”* he said, noting that the review  
7 took place after the two internal auditors left. *“It is beyond a nonissue.”*  
8 The Office of the Comptroller of the Currency declined to comment on  
9 Bank of Internet or any interactions with the bank.

10 50. On August 26, 2015, BofI filed an annual report on Form 10-K with  
11 the SEC (the “2015 10-K”). The 2015 10-K reiterated the financial and operating  
12 results previously announced in the 2015 8-K.

13 51. In the 2015 10-K, the Company stated, in part:

#### 14 **REGULATION OF BOFI FEDERAL BANK**

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

...

24 *Anti-Money Laundering and Customer Identification.* The U.S.  
25 government enacted the Uniting and Strengthening America by  
26 Providing Appropriate Tools Required to Intercept and Obstruct  
27 Terrorism Act of 2001 (“USA PATRIOT Act”) on October 26, 2001 in  
28 response to the terrorist events of September 11, 2001. The USA  
29 PATRIOT Act gives the federal government broad powers to address  
30 terrorist threats through enhanced domestic security measures,  
31 expanded surveillance powers, increased information sharing, and

1 broadened anti-money laundering requirements. In February 2010,  
2 Congress re-enacted certain expiring provisions of the USA PATRIOT  
3 Act.

4 52. The 2015 10-K contained signed certifications pursuant to SOX by the  
5 Individual Defendants, stating that the financial information contained in the 2015  
6 10-K was accurate and disclosed any material changes to the Company's internal  
7 control over financial reporting.

8 53. The statements referenced in ¶¶ 21-52 were materially false and  
9 misleading because defendants made false and/or misleading statements, as well as  
10 failed to disclose material adverse facts about the Company's business, operations,  
11 prospects and performance. Specifically, during the Class Period, defendants made  
12 false and/or misleading statements and/or failed to disclose that: (i) the Company's  
13 internal controls were frequently disregarded; (ii) Bank of Internet's borrowers  
14 included foreign nationals who should have been off-limits under federal anti-  
15 money-laundering laws; (iii) many Bank of Internet accounts lacked required tax  
16 identification numbers; (iv) Bank of Internet fired an internal auditor who raised the  
17 foregoing issues to management and to federal regulators; and (v) as a result of the  
18 above, the Company's statements regarding its internal controls and other financial  
19 statements were materially false and misleading at all relevant times.

### 20 **The Truth Emerges**

21 54. On October 13, 2015, post-market, *The New York Times* reported that  
22 Erhart, a former internal auditor at Bank of Internet, had filed a lawsuit against the  
23 Company for violating federal laws designed to protect whistle-blowers. The Erhart  
Complaint alleged, *inter alia*, that:

- 1 • Bank of Internet’s borrowers included foreign nationals who should  
2 have been off-limits under federal anti-money-laundering laws;
- 3 • Erhart had seen a spreadsheet that contained as many as 200  
4 accounts without tax identification numbers, contrary to Bank of  
5 Internet’s representations to the OCC, its primary regulator;
- 6 • Bank of Internet at times failed to provide full and timely  
7 information to regulators; and
- 8 • Erhart was fired after he revealed wrongdoing at Bank of Internet to  
9 management and federal regulators.

10 55. On this news, shares of BofI fell \$42.87, or 30.2%, to close at \$99.13  
11 on October 14, 2015.

12 56. As a result of defendants’ wrongful acts and omissions, and the  
13 precipitous decline in the market value of the Company’s securities, Plaintiff and  
14 other Class members have suffered significant losses and damages.

15 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

16 57. Plaintiffs bring this action as a class action pursuant to Federal Rule of  
17 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who  
18 purchased or otherwise acquired BofI securities during the Class Period (the  
19 “Class”); and were damaged upon the revelation of the alleged corrective  
20 disclosures. Excluded from the Class are Defendants herein, the officers and  
21 directors of the Company, at all relevant times, members of their immediate families  
22 and their legal representatives, heirs, successors or assigns and any entity in which  
23 Defendants have or had a controlling interest.

1           58. The members of the Class are so numerous that joinder of all members  
2 is impracticable. Throughout the BofI Class Period, securities of BofI were actively  
3 traded on the NASDAQ Global Select Market. While the exact number of Class  
4 members is unknown to Plaintiffs at this time and can only be ascertained through  
5 appropriate discovery, Plaintiffs believe that there are hundreds or thousands of  
6 members in the proposed Class. Record owners and other members of the Class  
7 may be identified from records maintained by BofI or their transfer agents and may  
8 be notified of the pendency of this action by mail, using the form of notice similar  
9 to that customarily used in securities class actions.

10           59. Plaintiff's claims are typical of the claims of the members of the Class  
11 as all members of the Class are similarly affected by defendants' wrongful conduct  
12 in violation of federal law complained of herein.

13           60. Plaintiff will fairly and adequately protect the interests of the members  
14 of the Class and have retained counsel competent and experienced in class action  
15 and securities litigation.

16           61. Common questions of law and fact exist as to all members of the Class  
17 and predominate over any questions solely affecting individual members of the  
18 Class. Among the questions of law and fact common to the Class are:

- 19           • whether the federal securities laws were violated by Defendants'  
20           acts as alleged herein;
- 21           • whether statements made by Defendants to the investing public  
22           during the Class Period misrepresented material facts about the  
23           business, operations and management of BofI;
- whether the Individual Defendants caused BofI to issue false and  
          misleading financial statements during the Class Period;

- 1 • whether Defendants acted knowingly or recklessly in issuing false  
and misleading financial statements;
- 2 • whether the prices of BofI securities during the Class Period were  
3 artificially inflated because of the Defendants' conduct  
4 complained of herein; and
- 5 • whether the members of the Class have sustained damages and, if  
so, what is the proper measure of damages.

6 62. A class action is superior to all other available methods for the fair and  
7 efficient adjudication of this controversy since joinder of all members is  
8 impracticable. Furthermore, as the damages suffered by individual Class members  
9 may be relatively small, the expense and burden of individual litigation make it  
10 impossible for members of the Class to individually redress the wrongs done to  
11 them. There will be no difficulty in the management of this action as a class action.

12 63. Plaintiff will rely, in part, upon the presumption of reliance established  
13 by the fraud-on-the-market doctrine in that:

- 14 • Defendants made public misrepresentations or failed to disclose  
15 material facts during the Class Period;
- 16 • the omissions and misrepresentations were material;
- 17 • BofI securities are traded in efficient markets;
- 18 • the Company's shares were liquid and traded with moderate to  
heavy volume during the Class Period;
- 19 • the Company traded on the NASDAQ, and was covered by  
multiple analysts;
- 20 • the misrepresentations and omissions alleged would tend to induce  
21 a reasonable investor to misjudge the value of the Company's  
securities; and
- 22 • Plaintiff and members of the Class purchased and/or sold BofI  
23 securities between the time the Defendants failed to disclose or  
misrepresented material facts and the time the true facts were



1 disclosed, without knowledge of the omitted or misrepresented  
2 facts.

3 64. Based upon the foregoing, Plaintiff and the members of the Class are  
4 entitled to a presumption of reliance upon the integrity of the market.

5 65. Alternatively, Plaintiffs and the members of the Class are entitled to  
6 the presumption of reliance established by the Supreme Court in *Affiliated Ute*  
7 *Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972),  
8 as Defendants omitted material information in their Class Period statements in  
9 violation of a duty to disclose such information, as detailed above.

10 **COUNT I**

11 **(Against All Defendants For Violations of**  
12 **Section 10(b) And Rule 10b-5 Promulgated Thereunder)**

13 66. Plaintiff repeats and realleges each and every allegation contained  
14 above as if fully set forth herein.

15 67. This Count is asserted against defendants and is based upon Section  
16 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated  
17 thereunder by the SEC.

18 68. During the Class Period, defendants engaged in a plan, scheme,  
19 conspiracy and course of conduct, pursuant to which they knowingly or recklessly  
20 engaged in acts, transactions, practices and courses of business which operated as a  
21 fraud and deceit upon Plaintiff and the other members of the Class; made various  
22 untrue statements of material facts and omitted to state material facts necessary in  
23 order to make the statements made, in light of the circumstances under which they  
were made, not misleading; and employed devices, schemes and artifices to defraud

1 in connection with the purchase and sale of securities. Such scheme was intended  
2 to, and, throughout the Class Period, did: (i) deceive the investing public, including  
3 Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and  
4 maintain the market price of BofI securities; and (iii) cause Plaintiff and other  
5 members of the Class to purchase or otherwise acquire BofI securities and options  
6 at artificially inflated prices. In furtherance of this unlawful scheme, plan and  
7 course of conduct, defendants, and each of them, took the actions set forth herein.

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

17         70. By virtue of their positions at BofI, defendants had actual knowledge  
18 of the materially false and misleading statements and material omissions alleged  
19 herein and intended thereby to deceive Plaintiff and the other members of the Class,  
20 or, in the alternative, defendants acted with reckless disregard for the truth in that  
21 they failed or refused to ascertain and disclose such facts as would reveal the  
22 materially false and misleading nature of the statements made, although such facts  
23 were readily available to defendants. Said acts and omissions of defendants were

1 committed willfully or with reckless disregard for the truth. In addition, each  
2 defendant knew or recklessly disregarded that material facts were being  
3 misrepresented or omitted as described above.

4 71. Defendants were personally motivated to make false statements and  
5 omit material information necessary to make the statements not misleading in order  
6 to personally benefit from the sale of BofI securities from their personal portfolios.

7 72. Information showing that defendants acted knowingly or with reckless  
8 disregard for the truth is peculiarly within defendants' knowledge and control. As  
9 the senior managers and/or directors of BofI, the Individual Defendants had  
10 knowledge of the details of BofI's internal affairs.

11 73. The Individual Defendants are liable both directly and indirectly for  
12 the wrongs complained of herein. Because of their positions of control and  
13 authority, the Individual Defendants were able to and did, directly or indirectly,  
14 control the content of the statements of BofI. As officers and/or directors of a  
15 publicly-held company, the Individual Defendants had a duty to disseminate timely,  
16 accurate, and truthful information with respect to BofI's business, operations, future  
17 financial condition and future prospects. As a result of the dissemination of the  
18 aforementioned false and misleading reports, releases and public statements, the  
19 market price of BofI securities was artificially inflated throughout the Class Period.  
20 In ignorance of the adverse facts concerning BofI's operations and quality control  
21 processes which were concealed by defendants, Plaintiff and the other members of  
22 the Class purchased or otherwise acquired BofI securities at artificially inflated  
23 prices and relied upon the price of the securities, the integrity of the market for the

1 securities and/or upon statements disseminated by defendants, and were damaged  
2 thereby.

3 74. During the Class Period, BofI securities were traded on an active and  
4 efficient market. Plaintiff and the other members of the Class, relying on the  
5 materially false and misleading statements described herein, which the defendants  
6 made, issued or caused to be disseminated, or relying upon the integrity of the  
7 market, purchased or otherwise acquired shares of BofI securities at prices  
8 artificially inflated by defendants' wrongful conduct. Had Plaintiff and the other  
9 members of the Class known the truth, they would not have purchased or otherwise  
10 acquired said securities, or would not have purchased or otherwise acquired them  
11 at the inflated prices that were paid. At the time of the purchases and/or acquisitions  
12 by Plaintiff and the Class, the true value of BofI securities was substantially lower  
13 than the prices paid by Plaintiff and the other members of the Class. The market  
14 price of BofI securities declined sharply upon public disclosure of the facts alleged  
15 herein to the injury of Plaintiff and Class members.

16 75. By reason of the conduct alleged herein, defendants knowingly or  
17 recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act  
18 and Rule 10b-5 promulgated thereunder.

19 76. As a direct and proximate result of defendants' wrongful conduct,  
20 Plaintiff and the other members of the Class suffered damages in connection with  
21 their respective purchases, acquisitions and sales of the Company's securities  
22 during the Class Period, upon the disclosure that the Company had been  
23 disseminating misrepresented financial statements to the investing public.

**COUNT II**

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

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

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

79. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to BofI's internal controls and to correct promptly any public statements issued by BofI which had become materially false or misleading.

80. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which BofI disseminated in the marketplace during the Class Period concerning BofI's results of operations and internal controls. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause BofI to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of BofI within the meaning of Section 20(a) of the Exchange Act. In this capacity, they

1 participated in the unlawful conduct alleged which artificially inflated the market  
2 price of BofI securities.

3 81. Each of the Individual Defendants, therefore, acted as a controlling  
4 person of BofI. By reason of their senior management positions and/or being  
5 directors of BofI, each of the Individual Defendants had the power to direct the  
6 actions of, and exercised the same to cause, BofI to engage in the unlawful acts and  
7 conduct complained of herein. Each of the Individual Defendants exercised control  
8 over the general operations of BofI and possessed the power to control the specific  
9 activities which comprise the primary violations about which Plaintiff and the other  
10 members of the Class complain.

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

13 **PRAYER FOR RELIEF**

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

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

18 B. Requiring Defendants to pay damages sustained by Plaintiff and the  
19 Class by reason of the acts and transactions alleged herein;

20 C. Awarding Plaintiff and the other members of the Class prejudgment  
21 and post-judgment interest, as well as their reasonable attorneys' fees, expert fees  
22 and other costs; and  
23

1 D. Awarding such other and further relief as this Court may deem just and  
2 proper.

3 **DEMAND FOR TRIAL BY JURY**

4 Plaintiff hereby demands a trial by jury.

5 Dated: October 15, 2015

6 Respectfully submitted,

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