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

IN RE:
BofI HOLDING, INC. SECURITIES
LITIGATION.

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

ORDER:

**(1) GRANTING PLAINTIFFS’
MOTION FOR ISSUANCE OF
CLASS NOTICE; and**

(2) VACATING MOTION HEARING

[ECF No. 289]

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BACKGROUND

Before the Court is Plaintiffs’ Motion for Issuance of Class Notice. ECF No. 289-1. Attached to Plaintiffs’ Motion were three exhibits: the proposed Short-Form Notice, Long-Term Notice and Summary Notice. ECF Nos. 289-3, 289-4, 289-5. Defendants filed a “limited opposition” in which they proposed edits to the Short-Form Notice, Long-Form Notice, and Summary Notice submitted by Plaintiffs. ECF No. 307. Plaintiff filed a reply, “respectfully request[ing] that the Court grant the Class Notice Motion, with alterations to the language of the notice documents as set forth in the attachments to Defendants’ response.” ECF No. 314 at 2. As set forth in this Order, the Court **GRANTS** Plaintiffs’ Motion for Issuance of Class Notice, with the alterations in the language to be included in the Notices as proposed by Defendants and accepted by Plaintiff. Further, the Court finds this matter suitable for disposition without a hearing pursuant to Civil Local Rule 7.1(d)(1) and hereby **VACATES** the hearing.

DISCUSSION

In class actions certified under Federal Rule of Civil Procedure 23(b)(3), “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *see Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). “The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment under Rule 23(c)(3).” Fed R. Civ. P. 23(c)(2)(B).

1 On August 24, 2021, the Court entered an order granting Plaintiffs' Motion
2 for Class Certification. ECF No. 247. Pursuant to Federal Rule of Civil Procedure
3 23(b)(3), this Court certified the following class in this action (the "Class"):

4 All persons and entities that, between September 4, 2013
5 and October 13, 2015, inclusive, purchased or otherwise
6 acquired shares of the publicly traded common stock of
7 BofI, as well as purchasers of BofI call options and sellers
of BofI put options, and were damaged thereby.

8 Excluded from the Class are Defendants herein, the officers and directors of the
9 Company, at all relevant times, members of their immediate families and their legal
10 representatives, heirs, successors or assigns, and any entity in which Defendants
11 have or had a controlling interest.

12 Having reviewed Plaintiffs' proposed Notices (ECF Nos. 289-3, 289-4, 289-
13 5), Defendants' proposed "minor suggested edits" as outlined in their "limited
14 opposition" (ECF Nos. 307-2, 307-3, 307-4) and the Declaration of Luiggy Segura
15 outlining the details of the notice administration process filed with Plaintiffs'
16 motion (ECF No. 289-6), the Court finds that the proposed Short-Form, Long-
17 Form, and Summary Notices fulfill the requirements of Rule 23 and **GRANTS**
18 Plaintiffs' motion, to include the Notices as amended by Defendants.

19 The Court hereby establishes the following program and schedule for notice
20 to the Class of this pending class action:

21 1. The Court approves the Short-Form Notice of Pendency of Class
22 Action submitted by Plaintiffs, as amended by Defendants (ECF No. 307-2, Defs.'
23 Opp., Ex. A);

24 2. The Court approves the Long-Form Notice of Pendency of Class
25 Action submitted by Plaintiffs, as amended by Defendants (ECF No. 307-3, Defs.'
26 Opp., Ex. B);

27 3. The Court approves the Summary Notice submitted by
28 Plaintiffs, as amended by Defendants (ECF No. 307-4, Defs.' Opp., Ex. C);

1 4. Lieff Cabraser Heimann & Bernstein, LLP (“Class Counsel”)
2 may employ JND Legal Administrator as notice administrator (the “Notice
3 Administrator”) to assist in the providing of class notice;

4 5. Within ten (10) calendar days after entry of this Order, BofI
5 shall instruct its securities transfer agent to produce to the Notice Administrator an
6 electronic list, preferably in a Microsoft Excel data table, of all persons who
7 purchased, acquired, and/or sold BofI Holding, Inc. common stock, call options,
8 and/or put options during the Class Period (the “Transfer Agent List”), with
9 Plaintiff to bear reasonable costs;

10 6. Class Counsel shall cause to be mailed, by first class mail, the
11 Short Form Notice of Pendency of Class Action, substantially in the form annexed
12 hereto as Exhibit A, to each class member identified on the transfer agent records
13 and all class members who can be identified through reasonable effort within
14 twenty-one (21) calendar days of its receipt of the Transfer Agent List (the “Notice
15 Date”);

16 7. Class Counsel shall cause copies of the Long Form Notice of
17 Pendency of Class Action, substantially in the form annexed hereto as Exhibit B, to
18 be posted on a website, www.BofISecuritiesLitigation.com, no later than the Notice
19 Date;

20 8. Class Counsel shall cause the Summary Notice, substantially in
21 the form annexed hereto as Exhibit C, to be disseminated via *Investor’s Business*
22 *Weekly* and *PR Newswire* within ten (10) calendar day after the Notice Date;

23 9. Class Counsel shall populate the Short Form Notice of Pendency
24 of Class Action, Long Form Notice of Pendency of Class Action, and Summary
25 Order with the appropriate dates based on the Court’s entry of this Order.

26 10. No later than 21 calendar days after the Notice Administrator
27 receives the Transfer Agent List, the Notice Administrator shall solicit information
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1 from brokers and other nominees who purchased or otherwise acquired shares of
2 the publicly traded common stock of BofI, purchased BofI call options, or sold of
3 BofI put options during the Class Period as nominee for a beneficial owner. Such
4 nominees, within 10 calendar days of receiving the Short Form Notice, must either:
5 (i) request from the Notice Administrator sufficient copies of the Short Form Notice
6 to forward to all such beneficial owners an mail those Short Form Notices within
7 ten (10) calendar days after receiving them, and also provide the Administrator with
8 email addresses for all such beneficial owners; (ii) within ten (10) calendar days of
9 receipt of the Short Form Notice, send the Short Form Notice to beneficial owners
10 via electronic communication; or (iii) within ten (10) calendar days of receipt of the
11 Short Form Notice, provide a list of the names, addresses, and email addresses of
12 all such beneficial owners to the Notice Administrator at
13 BofISecurities@JNDLA.com. If such nominees choose the first or second option,
14 they must send a statement to the Notice Administrator confirming that the mailings
15 and/or electronic communications were made and they must retain your mailing
16 and/or electronic communication records for use in connection with any further
17 notice that may be provided in the Action. If such nominees choose the third option,
18 the Notice Administrator will send a copy of the Postcard Notice to the beneficial
19 owners. If email addresses are not available, such nominees must notify the Notice
20 Administrator of that fact. Upon full compliance with these directions, such
21 nominees may seek reimbursement of reasonable expenses actually incurred (but
22 not to exceed \$0.50 per mailing, excluding postage) by providing the Notice
23 Administrator with proper documentation supporting the expenses for which
24 reimbursement is sought.

25 11. Should any members of the Class wish to exclude themselves,
26 they must postmark such requests for exclusions no later than sixty (60) calendar
27 days after the Notice Date;

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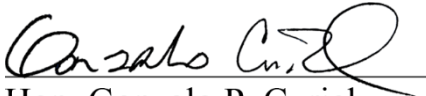
1 12. The requests for exclusion must include the Class member's
2 name, address, telephone number, and signature, as well as the total number of BofI
3 shares and/or options purchased, acquired, and/or sold, and the date the BofI shares
4 and/or options were purchased, acquired, and/or sold;

5 13. Class Counsel will direct the Notice Administrator to notify
6 Defendants' counsel of record, in writing, of the requests for exclusion it receives,
7 including the name and address of the person or entity, and the number of shares
8 and/or options purchased and/or sold. The Notice Administrator will transmit this
9 information to Defendants' counsel no later than thirty (30) calendar days after the
10 deadline for exclusion; and

11 14. The costs of the notice process shall be borne by Plaintiffs
12 and/or Class Counsel, and not by Defendants.

13 **IT IS SO ORDERED.**

14 Dated: December 20, 2021

15 
16 Hon. Gonzalo P. Curiel
17 United States District Judge