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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STEVEN GOLDEN, Individually and
on Behalf of Themselves and All Others
Similarly Situated,

Plaintiff,

vs.

Bofi HOLDING, INC., GREGORY
GARRABRANTS, and ANDREW J.
MICHELETTI,

Defendants.

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

**ORDER GRANTING JOINT
MOTIONS TO CONSOLIDATE
CASES, APPOINT LEAD
PLAINTIFF, AND APPROVE
SELECTION OF LEAD COUNSEL**

[ECF Nos. 9, 12, 17]

RALPH HAZAN, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

Bofi HOLDING, INC., GREGORY
GARRABRANTS, and ANDREW J.
MICHELETTI,

Defendants.

No. 3:15-cv-02486-GPC-KSC

**ORDER GRANTING JOINT
MOTION TO CONSOLIDATE
CASES**

[ECF No. 11]

Before the Court are parties' joint motions to consolidate the two cases above,
as well as parties' joint motions for appointment of lead plaintiff and approval of
selection of lead counsel. *Golden v. Bofi Holding, Inc.*, No. 3:15-cv-02324-GPC-

1 KSC, ECF Nos. 9, 12, 17; *Hazan v. BofI Holding, Inc.*, No. 15-cv-02486-GPC-KSC,
2 ECF No. 11.

3 **I. Consolidation**

4 Fed. R. Civ. P. Rule 42(a) states that “[i]f actions before the court involve a
5 common question of law or fact, the court may: (1) join for hearing or trial any or
6 all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other
7 orders to avoid unnecessary cost or delay. “To determine whether to consolidate, a
8 court weighs the interest of judicial convenience against the potential for delay,
9 confusion and prejudice caused by consolidation.” *In re Oreck Corp. Halo Vacuum*
10 *& Air Purifiers Mktg. & Sales Practices Litig.*, 282 F.R.D. 486, 490 (C.D. Cal. 2012)
11 (citing *Southwest Marine, Inc. v. Triple A Mach. Shop, Inc.*, 720 F. Supp. 805, 807
12 (N.D. Cal. 1989); *Huene v. United States*, 743 F.2d 703, 704, *on reh’g*, 753 F.2d
13 1081 (9th Cir. 1984)). A district court has “broad discretion” in determining whether
14 or not to consolidate actions. *See id.*; *see also Zhu v. UCBH Holdings, Inc.*, 682 F.
15 Supp. 2d 1049, 1052 (N.D. Cal. 2010) (citing *Southwest Marine*, 720 F. Supp. at
16 806–807).

17 Upon review of the moving papers, the record, and the applicable law, the
18 Court **GRANTS** parties’ joint motions to consolidate. Review of the two operative
19 complaints show that both cases are class actions brought by respective Plaintiffs
20 against the same Defendants, concerning the same alleged securities laws violations
21 committed by Defendants in relation to BofI Federal Bank’s banking activities
22 across the same time period, with largely similar factual allegations, the same causes
23 of action, and the same requested relief. *Compare Golden Compl.*, No. 3:15-cv-
24 02324-GPC-KSC, ECF No. 1, *with Hazan Compl.*, No. 15-cv-02486-GPC-KSC,
25 ECF No. 1.

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1 Class members and movants Houston Municipal Employees Pension System
2 (“HMEPS”), John Marco, and Steven Golden, assert that HMEPS has the largest
3 financial interest in the relief sought by the class: HMEPS claims losses of
4 approximately \$215,340.52, Marco claims losses of approximately \$105,381.51,
5 Golden claims losses of approximately \$6,529.00, and non-moving class member
6 Multicultural Business Solutions Inc. claims losses of approximately \$46,148.60.
7 *Golden v. BofI Holding, Inc.*, No. 3:15-cv-02324-GPC-KSC, ECF No. 17 at 2. This
8 claim being undisputed, the Court finds that HMEPS is the class member with the
9 largest financial interest in the relief sought by the class.

10 The Court also finds that the typicality and adequacy requirements are met.
11 First, the typicality requirement is satisfied when “the presumptive lead plaintiff’s
12 claim arise[s] from the same event or course of conduct giving rise to the claims of
13 other class members and [are] based on the same legal theory.” *Foster v. Maxwell*
14 *Techs., Inc.*, No. 13-CV-00580-BEN-RBB, 2013 WL 5780424, at *5 (S.D. Cal. Oct.
15 24, 2013) (citation omitted) (internal quotation marks omitted). The claims must be
16 “reasonably co-extensive with those of absent class members; they need not be
17 substantially identical.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir.
18 1998). Like all other class members, HMEPS alleges that it purchased BofI securities
19 during the Class Period at prices that were artificially inflated by Defendants’
20 wrongful conduct and suffered damages thereby. ECF No. 12-2 at 6. HMEPS’
21 claims thus arise from the same events and are based on the same legal theory as the
22 claims of the other class members.

23 Second, representation is “adequate” when the interests of the plaintiffs and
24 their counsel do not conflict with the interests of other class members, and the
25 plaintiffs and their counsel will prosecute the action vigorously on behalf of the
26 class. *Hanlon*, 150 F.3d at 1020. It appears that HMEPS’ interests are aligned with
27 those of the other class members, and that HMEPS is willing and able to serve as

1 Lead Plaintiff. As discussed in greater detail below, HMEPS’ retained counsel, the
2 Lieff Cabraser law firm, is experienced in the area of complex securities class
3 litigation and is clearly capable of representing the interests of the Class. Therefore,
4 Court finds that HMEPS is the presumptive Lead Plaintiff under PSLRA.

5 The presumption that HMEPS is the most adequate Lead Plaintiff may be
6 rebutted only upon proof by a member of the purported plaintiff class that HMEPS
7 will not fairly and adequately protect the interests of the class or is subject to unique
8 defenses that render them incapable of adequately representing the class. 15 U.S.C.
9 § 78u-4(a)(3)(B)(iii)(II). No movant has come forward with such proof.
10 Accordingly, the Court hereby **APPOINTS** Houston Municipal Employees Pension
11 System as Lead Plaintiff.

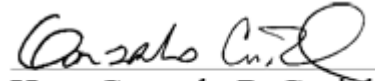
12 **III. Approval of Selection of Lead Counsel**

13 Under the PSLRA, once the court has designated a lead plaintiff, that plaintiff
14 “shall subject to the approval of the court, select and retain counsel to represent the
15 class.” 15 U.S.C. § 78u-4(a)(3)(B)(v). If the lead plaintiff has made a reasonable
16 choice of counsel, the district court should generally defer to that choice. *Cohen v.*
17 *U.S. Dist. Court*, 586 F.3d 703, 712 (9th Cir. 2009). HMEPS asks the Court to
18 approve their selection of Lieff, Cabraser, Heimann & Bernstein, LLP as lead
19 counsel. It appears that Lieff Cabraser has devoted a substantial portion of its
20 practice to class action securities fraud litigation and has obtained significant
21 recoveries for injured investors in many cases. *See* Kruse Decl., Ex. D, ECF No. 12-
22 3. In light of the firm’s substantial experience in securities class action litigation, the
23 Court **APPROVES** Houston Municipal Employees Pension System’s choice of
24 counsel and **APPOINTS** Lieff, Cabraser, Heimann & Bernstein, LLP as Lead
25 Counsel.

26 **CONCLUSION**

27 Accordingly, **IT IS HEREBY ORDERED** that:

Dated: January 29, 2016


Hon. Gonzalo P. Curiel
United States District Judge

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