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8   **UNITED STATES DISTRICT COURT**

9   **SOUTHERN DISTRICT OF CALIFORNIA**

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11   CHARLES MATTHEW ERHART,   Case No. 15-cv-02287-BAS-NLS
                                                consolidated with
                              Plaintiff,   15-cv-02353-BAS-NLS
12

13   v.   **PROPOSED JURY VERDICT
                                                FORM**
14   BOFI FEDERAL BANK,

15   Defendant.

16   ─────────────────────────────────
     BOFI FEDERAL BANK,
17
                              Plaintiff,
18
          v.
19
     CHARLES MATTHEW ERHART,
20
                              Defendant.
21

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23   Included below is a Proposed Final Jury Verdict Form.

24   **IT IS SO ORDERED.**

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26   **DATED: May 12, 2022**
                                                Hon. Cynthia Bashant
27   United States District Judge

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CHARLES MATTHEW ERHART,
 	
                              Plaintiff,
 	
     v.
 	
BOFI FEDERAL BANK,
 	
                              Defendant.
	Case No. 15-cv-02287-BAS-NLS
	consolidated with
	15-cv-02353-BAS-NLS
	
	DRAFT JURY VERDICT

BOFI FEDERAL BANK,
 	
                              Plaintiff,
 	
     v.
 	
CHARLES MATTHEW ERHART,
 	
                              Defendant.	

Mr. Erhart's Causes of Action Against BofI

Count One: Sarbanes-Oxley Act (SOX)

(1)   Did Mr. Erhart prove that BofI violated SOX? _____ (Yes/No)

If you found that Mr. Erhart proved BofI violated SOX, what conduct by BofI did Mr. Erhart reasonably believe was a violation of law? (You must check at least one; check all that you find apply.)

_____ BofI recorded telephone calls

_____ BofI had a high deposit concentration risk

_____ BofI provided risky loans to criminals and/or politically exposed individuals

(2)   If you answered "Yes" to question (1), did BofI prove by clear and convincing evidence that it would have taken the same personnel action in the absence of Mr. Erhart's protected activity? _____ (Yes/No)

Count Two: Labor Code § 1102.5

(3)   Did Mr. Erhart prove that BofI violated Labor Code § 1102.5? _____ (Yes/No)

If you found that Mr. Erhart proved BofI violated Labor Code § 1102.5, what conduct by BofI did Mr. Erhart reasonably believe was a violation of state, local or federal law or regulation? (You must check at least one; check all that you find apply.)

1   _____ BofI recorded telephone calls

2   _____ BofI provided risky loans to criminals and/or politically

3   exposed individuals

4   _____ BofI made untimely 401(k) payments

5   _____ BofI failed to disclose to the OCC accounts lacking

6   Taxpayer Identification Numbers (TINs)

7   _____ BofI failed to disclose subpoenas to the OCC in response

8   to a request from the OCC

9   _____ BofI failed to disclose to the OCC a high risk customer

10   report regarding Global Cash Card

11   _____ BofI failed to disclose the existence of an audit under the

12   Flood Disaster Protection Act

13   _____ CEO Garrabrants's depositing of third party checks into

14   his personal account

15

16   (4)   If you answered "Yes" to question (3) above, did BofI prove by clear

17   and convincing evidence that it would have taken the same personnel

18   action in the absence of a violation of Labor Code § 1102.5?

19   _____ (Yes/No)

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21   **Count Three: Wrongful termination**

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23   (5)   Did Mr. Erhart prove that BofI wrongfully terminated him in violation

24   of public policy? _____ (Yes/No)

25

26   (6)   If you answered "Yes" to question (5) above, did BofI prove by clear

27   and convincing evidence that it would have taken the same personnel

28

action even if there had been no wrongful termination? _____ (Yes/No)

Damages for Counts One Through Three

(7)   If you found that Mr. Erhart proved any of the above causes of action and you found that BofI failed to prove that it would have taken the same action whether or not the violation was committed, did Mr. Erhart prove that he suffered emotional distress or harm to his reputation as a result of the unfavorable personnel action? _____ (Yes/No)

(8)   If you answered "Yes" to question (7) above, what is the total amount of damages Mr. Erhart suffered? $ _____

Count Four: Defamation

(9)   Did Mr. Erhart prove that BofI made defamatory statements about him? _____ (Yes/No)

If you answered "Yes" to the question above, which of the following statements do you find were made and were defamatory. (You must check at least one; check all that apply.)

_____ Mr. Erhart was untruthful

_____ Mr. Erhart conspired with short sellers to drive down the price of BofI stock and harm BofI

_____ Mr. Erhart was incompetent at his job

_____ Mr. Erhart would be behind bars for his conduct toward BofI

(10) If you answered yes to question (9) above, did BofI prove that the defamatory statements about Mr. Erhart were substantially true? _____ (Yes/No)

If you answered "Yes" to the question above, which of the statements that you checked above do you find were substantially true?

_____ Mr. Erhart was untruthful

_____ Mr. Erhart conspired with short sellers to drive down the price of BofI stock and harm BofI

_____ Mr. Erhart was incompetent at his job

_____ Mr. Erhart would be behind bars for his conduct toward BofI

(11) If you answered yes to question (9) above, did BofI prove that the defamatory statements were subject to the litigation privilege as defined in the instructions? _____ (Yes/No)

Damages for Defamation

(12) If you answered "Yes" to question (9) and "No" to questions (10) and (11), what is the total amount of damages Mr. Erhart suffered as a result of this defamation? $ _____ (Must be at least $1.00)

(13) If you awarded damages above, did Mr. Erhart prove by clear and convincing evidence that BofI acted with malice, oppression or fraud? _____ (Yes/No)

BofI's Counter-Claims Against Mr. Erhart

Count One: Breach of Contract

(1) Did BofI prove Mr. Erhart breached a contract he had with the Bank? _____ (Yes/No)

Count Two: Conversion

(2) Did BofI prove Mr. Erhart converted non-public confidential customer or employee information belonging to BofI? _____ (Yes/No)

Count Three: Breach of the Duty of Undivided Loyalty

(3) Did BofI prove Mr. Erhart breached a duty of undivided loyalty he owed to BofI? _____ (Yes/No)

Count Four: Negligence

(4) Did BofI prove Mr. Erhart was negligent in his handling of nonpublic confidential customer or employee information? _____ (Yes/No)

Count Five: Penal Code § 502

      (5)   Did BofI prove that Mr. Erhart violated Penal Code § 502?
_____ (Yes/No)

Count Six: Computer Fraud and Abuse Act

      (6)   Did BofI prove Mr. Erhart violated the Computer Fraud and Abuse Act? _____ (Yes/No)

Damages for Counter-Claims One Through Six

      (7)   If you found that BofI proved any of the above six causes of action, what is the total amount of damages BofI suffered as a result of this conduct?
$ _____

SO SAY WE ALL.

DATED: _____

                                FOREPERSON OF THE JURY

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