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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 In re Bofl HOLDING, INC. SECURITIES  
12 LITIGATION

Case No.: 15-cv-2324-GPC-KSC

13 **ORDER REGARDING DISCOVERY**  
14 **DISPUTES**  
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17 The parties have raised several disputes concerning the appropriate search terms and  
18 ESI custodians to capture documents and information responsive to plaintiffs' First Set of  
19 Requests for Production ("RFPs"), and regarding the scope of privilege and the contents of  
20 any privilege log for documents related to internal investigations. The parties conferenced  
21 with the Court's staff regarding these disputes on April 22, 2021, and lodged their  
22 respective search term and custodian proposals with chambers. The Court heard argument  
23 from the parties on these issues on April 30, 2021.<sup>1</sup> Having reviewed the materials  
24 submitted and considered the arguments of counsel, and for the reasons stated during the  
25 April 30, 2021 hearing, the Court **HEREBY ORDERS** as follows:  
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<sup>1</sup> The telephonic hearing was recorded.

1           **ESI Custodians.** The parties have agreed on 20 document custodians, and plaintiffs  
2 seek documents from an additional 19 custodians, including BofI's General Counsel, Eshel  
3 Bar-Adon. Defendants represent that they are investigating whether custodial documents  
4 exist for all 19 custodians in dispute. For the reasons discussed at the hearing, the Court  
5 **GRANTS IN PART AND DENIES IN PART** plaintiffs' request for additional  
6 custodians. Plaintiffs shall select an additional 10 custodians and shall inform defendants  
7 of their selection by the close of business on **May 3, 2021**. Plaintiffs' list shall not include  
8 Mr. Bar-Adon. Defendants shall identify for plaintiffs as soon as possible any custodians  
9 for whom custodial documents no longer exist. If defendant lacks custodial documents for  
10 any of plaintiffs' selected 10 additional custodians, plaintiff can select another custodian.

11           **Search Terms.** The parties presented competing search term proposals for  
12 documents responsive to plaintiffs' RFPs Nos. 5, 6, 9, 10, 12, 13-15, 18-21, 24, 35 and 38.<sup>2</sup>  
13 The Court provided guidance to the parties during the hearing about the appropriate scope  
14 of any search for ESI responsive to these RFPs. With this guidance in mind, the parties  
15 are ordered to further meet and confer in a good faith effort to come to agreement on search  
16 terms. If the parties cannot come to an agreement despite their best efforts, they shall file  
17 a joint motion for resolution of their dispute pursuant to the undersigned's Chambers' Rules  
18 setting forth their respective final proposed search terms **no later than May 7, 2021**. The  
19 joint submission shall not exceed 7 total pages. If necessary, the parties' respective  
20 proposals for each category of search terms (as described in the materials previously  
21 submitted to the Court) may be attached as exhibits. The Court will select the proposal(s),  
22 or combination of proposals, it considers the most reasonable and appropriate.

23           **Privilege Issues.** The parties also raised a dispute regarding whether defendants  
24 should search for documents related to internal investigations of wrongdoing at BofI (RFP  
25 No. 3), and if so, whether those documents must be logged on a privilege log. The Court  
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28 <sup>2</sup> The parties represented during the hearing that their dispute as to search terms for RFPs No. 16, 17, 22  
and 23 has been resolved.

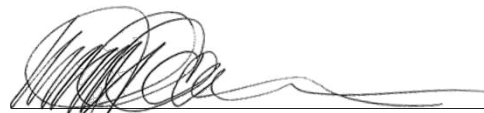
1 finds that additional briefing is necessary for resolution of this dispute. On or before May  
2 7, 2021, plaintiffs and defendants shall each file a brief of no more than 10 pages addressing  
3 these issues: (1) whether all documents and communications regarding any internal  
4 investigations are privileged and/or subject to work product protection, including  
5 communications with in-house counsel, communications with outside counsel, and those  
6 communications not involving counsel; (2) whether all responsive documents and  
7 communications must be logged on a privilege log; and (3) any concerns regarding burden  
8 or proportionality, and any proposals for mitigating such concerns.

9 **Other Matters.** The parties represented that they have reached an agreement as to  
10 a previously-raised dispute regarding documents subject to the Bank Examination  
11 Privilege. The parties shall file their stipulation regarding these documents for the Court's  
12 approval no later than the close of business on May 3, 2021.

13 The Court will hold a telephonic Discovery Conference on May 11, 2021 at 10:00  
14 a.m. The parties shall advise the Court in advance of the Discovery Conference and in  
15 accordance with the undersigned's Chambers' Rules of any discovery issues to be  
16 addressed.

17 **IT IS SO ORDERED.**

18 Dated: April 30, 2021



Hon. Karen S. Crawford  
United States Magistrate Judge