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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]

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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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## II. Appointment of Lead Plaintiff

Under the Private Securities Litigation Reform Act (“PSLRA”), no later than 20 days after filing a class action securities complaint, a private plaintiff or plaintiffs must publish a notice advising members of the purported plaintiff class of the pendency of the action, the claims asserted, and that any member of the purported class may move the court to serve as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(A)(i). Not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class. *Id.*

Within 90 days after publication of the notice, the Court shall consider any motion made by a class member to serve as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(i). If more than one action on behalf of a class asserting substantially the same claims has been filed and any party has sought to consolidate those actions, the court shall not make the lead plaintiff determination until after the decision on the motion to consolidate has been rendered. 15 U.S.C. § 78u-4(a)(3)(B)(ii). The Court shall appoint as lead plaintiff “the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members.” 15 U.S.C. § 78u-4(a)(3)(B)(i). The presumptively most adequate plaintiff is the one who “has the largest financial interest in the relief sought by the class” and “otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). “In other words, the district court must compare the financial stakes of the various plaintiffs and determine which one has the most to gain from the lawsuit. It must then focus its attention on that plaintiff and determine, based on the information he has provided in his pleadings and declarations, whether he satisfies the requirements of Rule 23(a), in particular those of ‘typicality’ and ‘adequacy.’” *In re Cavanaugh*, 306 F.3d 726, 730 (9th Cir. 2002).

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:

1           1.       Pursuant to Federal Rule of Civil Procedure 42(a)(2), the Court hereby  
2 consolidates the above-captioned actions for all purposes under the “low numbered  
3 case,” Case No. 3:15-CV-02324-GPC-KSC, and orders that the caption of the action  
4 be amended as follows:

5           IN RE:

6           Bofi HOLDING, INC. SECURITIES  
7 LITIGATION,

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

Hon. Gonzalo P. Curiel

[Complaint Filed: October 15, 2015]

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10           2.       The Court **GRANTS** Houston Municipal Employees Pension System’s  
11 motion to be appointed lead plaintiff. The Court **APPOINTS** Houston Municipal  
12 Employees Pension System as Lead Plaintiff in the consolidated class actions.

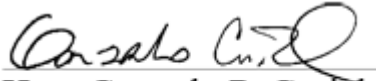
13           3.       The Court **GRANTS** Houston Municipal Employees Pension System’s  
14 motion for approval of selection of lead counsel. The Court **APPOINTS** Lieff,  
15 Cabraser, Heimann & Bernstein, LLP as Lead Counsel in the consolidated class  
16 actions.

17           4.       No defendant shall be required to answer, move against or otherwise  
18 respond to the original Complaint filed either of the above-captioned actions, except  
19 as set forth below.

20           5.       Within fourteen (14) days after the entry of this Order, counsel for the  
21 lead plaintiff and counsel for the defendants shall meet and confer regarding  
22 proposals for (a) the time for lead plaintiff to file a consolidated amended complaint  
23 or provide notice of lead plaintiff’s intent to rely upon the original Complaint in Case  
24 No. 3:15-CV-02324-GPC-KSC [Document No. 1] (the “operative complaint”); (b)  
25 the time for defendants to respond to the operative complaint; and (c) a schedule for  
26 briefing any motion to dismiss that may be filed by a defendant.

27           **IT IS SO ORDERED.**

Dated: January 29, 2016

  
Hon. Gonzalo P. Curiel  
United States District Judge

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