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

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

13 **STIPULATED DEPOSITION**  
14 **PROTOCOL**

15 In accordance with Civil Local Rule 7.2, Plaintiff Houston Municipal Employees  
16 Pension System (“Plaintiff”) and Defendants BofI Holding, Inc., Gregory Garrabrants,  
17 Andrew J. Micheletti, Paul J. Grinberg, Nicholas A. Mosich, and James S. Argalas  
18 (“Defendants,” and together with Plaintiff, the “Parties”) respectfully submit and request  
19 Court approval of the following stipulated protocol for conducting depositions in the  
20 above-captioned matter:

21 **ALL DEPOSITIONS**

- 22 1. The Parties will consult in advance with opposing counsel and unrepresented  
23 proposed deponents to schedule depositions at mutually convenient times and places.
- 24 2. Depositions of fact witnesses are limited to no more than one (7-hour) day  
25 unless the parties agree otherwise.
- 26 3. Reasonable breaks shall be excluded from calculation of deposition time  
27 under FRCP 30(d)(1). Breaks shall not be taken while a question is pending unless required  
28 to determine whether a privilege should be asserted.



1           10. Remote depositions shall be recorded by stenographic means consistent with  
2 the requirements of Rule 30(b)(3), but given the COVID-19 pandemic, the court reporter  
3 will not be physically present with the witness whose deposition is being taken. The Parties  
4 agree not to challenge the validity of any oath administered by the court reporter, even if  
5 the court reporter is not a notary public in the state where the deponent resides.

6           11. The court reporter will stenographically record the testimony, and the court  
7 reporter's transcript shall constitute the official record. The court reporter service will  
8 simultaneously videotape the deposition and preserve the video recording. The court  
9 reporter may be given a copy of the video recording and may review the video recording  
10 to improve the accuracy of any written transcript.

11           12. The Parties agree that the court reporter is an "Officer" as defined by Federal  
12 Rule of Civil Procedure 28(a)(2) and shall be permitted to administer the oath to the witness  
13 via the videoconference.

14           13. The Party that noticed the deposition shall be responsible for procuring a  
15 written transcript and video record of the remote deposition. The Parties shall bear their  
16 own costs in obtaining a transcript and/or video record of the deposition.

17           14. A copy of this Stipulation and Order shall be provided to the court reporter  
18 service at least twenty-four hours in advance of the deposition.

19           15. At the beginning of each deposition, consistent with Rule 30(b)(5)(A) of the  
20 Federal Rules of Civil Procedure, the videographer responsible for video-recording the  
21 deposition shall "begin the deposition with an on-the-record statement that includes: (i)  
22 the officer's name and company affiliation; (ii) the date, time, and place of the deposition;  
23 (iii) the deponent's name; (iv) the officer's administration of the oath or affirmation to the  
24 deponent; and (v) the identity of all persons present."

25           16. The Parties agree to work collaboratively and in good faith with the court  
26 reporter service to assess each deponent's technological abilities and to troubleshoot any  
27 issues at least 48 hours in advance of the deposition so any adjustments can be made. The  
28 Parties also agree to work collaboratively to address any troubleshoot technological issues

1 that arise during a deposition and make such provisions as are reasonable under the  
2 circumstances to address such issues. This provision shall not be interpreted to compel any  
3 Party to proceed with a deposition where the deponent cannot hear or understand the other  
4 participants or where the participants cannot hear or understand the deponent.

5 17. Every deponent shall endeavor to have technology sufficient to appear for a  
6 videotaped deposition (*e.g.*, a webcam and computer or telephone audio), and bandwidth  
7 sufficient to sustain the remote deposition. Counsel for each deponent shall consult with  
8 the deponent prior to the deposition to ensure the deponent has the required technology. If  
9 not, counsel for the deponent shall endeavor to supply the required technology to the  
10 deponent prior to the deposition. In the case of third-party witnesses, counsel noticing the  
11 deposition shall supply any necessary technology that the deponent does not have.

12 18. The Parties agree that this Stipulation and Order applies to remote depositions  
13 of non-parties under Rule 45 and shall work in a collaborative manner in attempting to  
14 schedule remote depositions of non-parties. The Party noticing any third-party deposition  
15 shall provide this Stipulation and Order to counsel for any non-party under Rule 45 within  
16 a reasonable time before the date of the deposition.

17 19. The Parties agree that Counsel may introduce exhibits electronically during  
18 the deposition by:

- 19 a. using the court reporter service's document-sharing technology (*e.g.*,  
20 Veritext's Exhibit Share application);
- 21 b. by using the screen-sharing technology within the videoconferencing  
22 platform;
- 23 c. by providing a download link (*e.g.*, via Dropbox or ShareFile) for the exhibit  
24 in the videoconferencing platform's chat function contemporaneously with  
25 the exhibit's introduction during the examination; or
- 26 d. by combining any of methods (a) through (c) above as necessary to allow  
27 counsel and the witness to adequately review the exhibit during examination.

28 20. Counsel noticing the deposition shall provide any counsel for third-party

1 witnesses with a copy of the Parties' Stipulated Protective Order. Counsel for third-party  
2 witnesses may keep any document used during the deposition in accordance with the  
3 Stipulated Protective Order, and shall delete any documents not used during the deposition  
4 within two business days following the completion of the deposition, and shall not retain  
5 them in any manner.

6 Pursuant to Stipulation, **IT IS SO ORDERED.**

7 Dated: November 19, 2021



Hon. Karen S. Crawford  
United States Magistrate Judge

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