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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 **ORDER GRANTING MOTION TO**  
14 **SEAL**

15 **[Doc. No. 303]**

16 The parties have recently filed two joint discovery motions related to defendants'  
17 assertion of the bank examination privilege on behalf of the Office of the Comptroller of  
18 the Currency. *See* Doc. Nos. 300, 301. The parties also jointly move to seal one exhibit  
19 referenced in those motions, and the portions of the motions that quote from or reveal the  
20 exhibit's content (the "Motion to Seal"). *See* Doc. No. 303. For the reasons set forth  
21 below, the Court **GRANTS** the Motion to Seal.

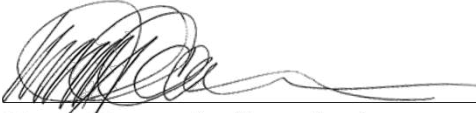
22 The right of the public "to inspect and copy ... judicial records and documents" is  
23 well established. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.  
24 2006) (citing *Nixon v. Warner Commc 'ns, Inc.*, 435 U.S. 589, 597 (1978)). The Court starts  
25 with "a 'strong presumption in favor of access,'" which the party seeking sealing "bears  
26 the burden of overcoming." *Id.* Where, as here, the documents to be sealed are attached to  
27 a non-dispositive discovery motion, the party requesting sealing must make a  
28 "particularized showing" of "good cause." *Id.* at 1180 (citation omitted). The Court has

1 previously cautioned the parties that, pursuant to Ninth Circuit authority, designation of  
2 documents or testimony under the operative Second Amended Protective Order [Doc. No.  
3 286] is not in itself sufficient to demonstrate good cause for sealing. Doc. No. 297 at 9-10.  
4 Rather, the party seeking sealing must provide the Court with sufficient information to  
5 make “an individualized determination” that a particular document or information should  
6 be sealed. *Id.* (citing *Kamakana*, 447 F.3d at 1183); *see also Anderson v. Marsh*, 312  
7 F.R.D. 584, 594 (E.D. Cal. 2015) (stating that the “party seeking protection” must “show  
8 that specific prejudice or harm will result” if sealing is not permitted).

9 The Motion to Seal now before the Court concerns an audit-related document that  
10 defendants assert is protected by the bank examination privilege that was purportedly  
11 produced inadvertently. Doc. No. 303 at 2-3. Without making any findings as to whether  
12 the document is, in fact, privileged, the Court agrees with the parties that due to the  
13 assertion of privilege, it would be prudent to seal this document at least “while the dispute  
14 [regarding defendants’ clawback request] is pending.” *Id.* The Court also finds that the  
15 parties have proposed narrowly tailored redactions to the two motions which quote from  
16 this document that obscure only the information necessary to protect against the disclosure  
17 of privileged information. Doc. No. 300 at 11; Doc. No. 301 at 8; *accord In re Roman*  
18 *Catholic Archbishop of Portland in Or.*, 661 F.3d 417, 425 (9th Cir. 2011) (in determining  
19 whether to seal documents, “a court must still consider whether redacting portions of the  
20 discovery material will nevertheless allow disclosure”). Accordingly, the Court **GRANTS**  
21 the Motion to Seal [Doc. No. 303].

22 **IT IS SO ORDERED.**

23 Dated: December 20, 2021

24   
25 Hon. Karen S. Crawford  
26 United States Magistrate Judge  
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