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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE:  
BofI HOLDING, INC. SECURITIES  
LITIGATION.

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

**ORDER:**

**(1) GRANTING PLAINTIFFS’  
MOTION FOR ISSUANCE OF  
CLASS NOTICE; and**

**(2) VACATING MOTION HEARING**

**[ECF No. 289]**

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## BACKGROUND

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2 Before the Court is Plaintiffs' Motion for Issuance of Class Notice. ECF No.  
3 289-1. Attached to Plaintiffs' Motion were three exhibits: the proposed Short-Form  
4 Notice, Long-Term Notice and Summary Notice. ECF Nos. 289-3, 289-4, 289-5.  
5 Defendants filed a "limited opposition" in which they proposed edits to the Short-  
6 Form Notice, Long-Form Notice, and Summary Notice submitted by Plaintiffs.  
7 ECF No. 307. Plaintiff filed a reply, "respectfully request[ing] that the Court grant  
8 the Class Notice Motion, with alterations to the language of the notice documents  
9 as set forth in the attachments to Defendants' response." ECF No. 314 at 2. As set  
10 forth in this Order, the Court **GRANTS** Plaintiffs' Motion for Issuance of Class  
11 Notice, with the alterations in the language to be included in the Notices as  
12 proposed by Defendants and accepted by Plaintiff. Further, the Court finds this  
13 matter suitable for disposition without a hearing pursuant to Civil Local Rule  
14 7.1(d)(1) and hereby **VACATES** the hearing.

## DISCUSSION

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16 In class actions certified under Federal Rule of Civil Procedure 23(b)(3), "the  
17 court must direct to class members the best notice that is practicable under the  
18 circumstances, including individual notice to all members who can be identified  
19 through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *see Eisen v. Carlisle &*  
20 *Jacquelin*, 417 U.S. 156, 173 (1974). "The notice must clearly and concisely state  
21 in plain, easily understood language: (i) the nature of the action; (ii) the definition  
22 of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class  
23 member may enter an appearance through an attorney if the member so desires; (v)  
24 that the court will exclude from the class any member who requests exclusion; (vi)  
25 the time and manner for requesting exclusion; and (vii) the binding effect of a class  
26 judgment under Rule 23(c)(3)." Fed R. Civ. P. 23(c)(2)(B).  
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1 On August 24, 2021, the Court entered an order granting Plaintiffs’ Motion  
2 for Class Certification. ECF No. 247. Pursuant to Federal Rule of Civil Procedure  
3 23(b)(3), this Court certified the following class in this action (the “Class”):

4 All persons and entities that, between September 4, 2013  
5 and October 13, 2015, inclusive, purchased or otherwise  
6 acquired shares of the publicly traded common stock of  
7 BofI, as well as purchasers of BofI call options and sellers  
of BofI put options, and were damaged thereby.

8 Excluded from the Class are Defendants herein, the officers and directors of the  
9 Company, at all relevant times, members of their immediate families and their legal  
10 representatives, heirs, successors or assigns, and any entity in which Defendants  
11 have or had a controlling interest.

12 Having reviewed Plaintiffs’ proposed Notices (ECF Nos. 289-3, 289-4, 289-  
13 5), Defendants’ proposed “minor suggested edits” as outlined in their “limited  
14 opposition” (ECF Nos. 307-2, 307-3, 307-4) and the Declaration of Luiggy Segura  
15 outlining the details of the notice administration process filed with Plaintiffs’  
16 motion (ECF No. 289-6), the Court finds that the proposed Short-Form, Long-  
17 Form, and Summary Notices fulfill the requirements of Rule 23 and **GRANTS**  
18 Plaintiffs’ motion, to include the Notices as amended by Defendants.

19 The Court hereby establishes the following program and schedule for notice  
20 to the Class of this pending class action:

- 21 1. The Court approves the Short-Form Notice of Pendency of Class  
22 Action submitted by Plaintiffs, as amended by Defendants (ECF No. 307-2, Defs.’  
23 Opp., Ex. A);
- 24 2. The Court approves the Long-Form Notice of Pendency of Class  
25 Action submitted by Plaintiffs, as amended by Defendants (ECF No. 307-3, Defs.’  
26 Opp., Ex. B);
- 27 3. The Court approves the Summary Notice submitted by  
28 Plaintiffs, as amended by Defendants (ECF No. 307-4, Defs.’ Opp., Ex. C);

1           4.     Lieff Cabraser Heimann & Bernstein, LLP (“Class Counsel”)  
2 may employ JND Legal Administrator as notice administrator (the “Notice  
3 Administrator”) to assist in the providing of class notice;

4           5.     Within ten (10) calendar days after entry of this Order, BofI  
5 shall instruct its securities transfer agent to produce to the Notice Administrator an  
6 electronic list, preferably in a Microsoft Excel data table, of all persons who  
7 purchased, acquired, and/or sold BofI Holding, Inc. common stock, call options,  
8 and/or put options during the Class Period (the “Transfer Agent List”), with  
9 Plaintiff to bear reasonable costs;

10          6.     Class Counsel shall cause to be mailed, by first class mail, the  
11 Short Form Notice of Pendency of Class Action, substantially in the form annexed  
12 hereto as Exhibit A, to each class member identified on the transfer agent records  
13 and all class members who can be identified through reasonable effort within  
14 twenty-one (21) calendar days of its receipt of the Transfer Agent List (the “Notice  
15 Date”);

16          7.     Class Counsel shall cause copies of the Long Form Notice of  
17 Pendency of Class Action, substantially in the form annexed hereto as Exhibit B, to  
18 be posted on a website, [www.BofISecuritiesLitigation.com](http://www.BofISecuritiesLitigation.com), no later than the Notice  
19 Date;

20          8.     Class Counsel shall cause the Summary Notice, substantially in  
21 the form annexed hereto as Exhibit C, to be disseminated via *Investor’s Business*  
22 *Weekly* and *PR Newswire* within ten (10) calendar day after the Notice Date;

23          9.     Class Counsel shall populate the Short Form Notice of Pendency  
24 of Class Action, Long Form Notice of Pendency of Class Action, and Summary  
25 Order with the appropriate dates based on the Court’s entry of this Order.

26          10.    No later than 21 calendar days after the Notice Administrator  
27 receives the Transfer Agent List, the Notice Administrator shall solicit information  
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1 from brokers and other nominees who purchased or otherwise acquired shares of  
2 the publicly traded common stock of BofI, purchased BofI call options, or sold of  
3 BofI put options during the Class Period as nominee for a beneficial owner. Such  
4 nominees, within 10 calendar days of receiving the Short Form Notice, must either:  
5 (i) request from the Notice Administrator sufficient copies of the Short Form Notice  
6 to forward to all such beneficial owners an mail those Short Form Notices within  
7 ten (10) calendar days after receiving them, and also provide the Administrator with  
8 email addresses for all such beneficial owners; (ii) within ten (10) calendar days of  
9 receipt of the Short Form Notice, send the Short Form Notice to beneficial owners  
10 via electronic communication; or (iii) within ten (10) calendar days of receipt of the  
11 Short Form Notice, provide a list of the names, addresses, and email addresses of  
12 all such beneficial owners to the Notice Administrator at  
13 BofISecurities@JNDLA.com. If such nominees choose the first or second option,  
14 they must send a statement to the Notice Administrator confirming that the mailings  
15 and/or electronic communications were made and they must retain your mailing  
16 and/or electronic communication records for use in connection with any further  
17 notice that may be provided in the Action. If such nominees choose the third option,  
18 the Notice Administrator will send a copy of the Postcard Notice to the beneficial  
19 owners. If email addresses are not available, such nominees must notify the Notice  
20 Administrator of that fact. Upon full compliance with these directions, such  
21 nominees may seek reimbursement of reasonable expenses actually incurred (but  
22 not to exceed \$0.50 per mailing, excluding postage) by providing the Notice  
23 Administrator with proper documentation supporting the expenses for which  
24 reimbursement is sought.

25           11. Should any members of the Class wish to exclude themselves,  
26 they must postmark such requests for exclusions no later than sixty (60) calendar  
27 days after the Notice Date;

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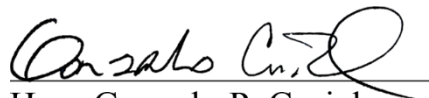
1           12. The requests for exclusion must include the Class member’s  
2 name, address, telephone number, and signature, as well as the total number of BofI  
3 shares and/or options purchased, acquired, and/or sold, and the date the BofI shares  
4 and/or options were purchased, acquired, and/or sold;

5           13. Class Counsel will direct the Notice Administrator to notify  
6 Defendants’ counsel of record, in writing, of the requests for exclusion it receives,  
7 including the name and address of the person or entity, and the number of shares  
8 and/or options purchased and/or sold. The Notice Administrator will transmit this  
9 information to Defendants’ counsel no later than thirty (30) calendar days after the  
10 deadline for exclusion; and

11           14. The costs of the notice process shall be borne by Plaintiffs  
12 and/or Class Counsel, and not by Defendants.

13           **IT IS SO ORDERED.**

14 Dated: December 20, 2021

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16 Hon. Gonzalo P. Curiel  
17 United States District Judge

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