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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 AUTHORIZING
DISTRIBUTION OF THE NET
SETTLEMENT FUND AND
CLARIFYING THE PLAN OF
ALLOCATION**

[ECF No. 392]

On October 14, 2022, this Court granted final approval of the class action settlement (“Settlement”) and entered judgment in the above-captioned case. ECF Nos. 390, 391. The Court approved the proposed Plan of Allocation, pursuant to which the Settlement Fund, after deduction of Court-approved attorneys’ fees and expenses, will be allocated on a *pro rata* basis to Authorized Claimants. ECF No. 390 at 24. The deadline for Class Members to submit Claims in connection with the Settlement was November 7, 2022. ECF No. 390 at 17.

Before the Court is Plaintiff’s Motion for Distribution of the Net Settlement Fund. ECF No. 392. Defendant filed a non-Opposition. ECF No. 393. Court-appointed Lead Plaintiff and Class Representative Houston Municipal Employees Pension System (“Plaintiff”) informs the Court that the Court-appointed Claims Administrator, JND Legal Administration (“JND”), has processed and audited all Claims submitted in connection with this Settlement. Plaintiff further informs the

1 Court that JND is ready to distribute monetary payments to all Authorized
2 Claimants in accordance with the Plan of Allocation.

3 **Funds Available for Distribution.** In total, Plaintiff recovered \$14,100,000
4 for the Class. That amount was deposited in into the escrow account established by
5 Class Counsel on June 29, 2022. In total, approximately \$55,935.50 in interest
6 income has been earned on the Settlement Amount through March 31, 2023. In
7 addition, after the deduction or set-aside of costs relating to notice and claims
8 administration, attorneys' fees and expense reimbursements, and a Class
9 Representative service award, as of March 31, 2023, the Net Settlement Fund was
10 approximately \$9,001,062.76.

11 **Valid Claims.** After a comprehensive audit process, JND has determined
12 there are 1,281 valid Claims, including 1,271 Timely Eligible Claims, and 10 Late
13 But Otherwise Eligible Claims. In addition, JND has identified 6,295 Claims for
14 rejection, including 4,403 Claims that did not result in a Recognized Claim, 717
15 Claims from outside the Class, 1,117 deficient and uncured Claims, 11 duplicate
16 Claims, and 47 withdrawn Claims. The Court approves JND's administrative
17 determinations in accepting and rejecting Claims for this Settlement.

18 **Claim DFVDSCL5NB.** Claimant with Claim ID "DFVDSCL5NB"
19 ("Claimant") has requested the Court review JND's rejection of their claim. *See*
20 ECF No. 392-5 at 103-107. Claimant purchased 200 shares during the Class Period,
21 on May 19, 2015, at \$95.009 per share. ECF No. 392-5 at 3, Exh. C. Claimant held
22 these shares at the closing of the 90-day lookback period, and the average closing
23 price over this period was \$86.17. *Id.* at 3-4. *See* ECF No. 379-1 at 17-18, 21 (Table
24 A). However, pursuant to paragraph 64 of the Amended Notice, JND determined
25 whether Claimant had an overall market gain with respect to their transactions
26 during the Class Period. ECF No. 379-1 at 19-20 ¶ 64. Because Claimant purchased
27 their shares at \$95.009, and the "Holding Value" of BofI common stock still held as
28 of closing on October 13, 2015 was \$99.13 per share, the Claims Administrator

1 found that Claimant experienced a Market Gain and was ineligible to recover under
2 the Amended Notice. *See id.* at 20 n.12.

3 Although the Notice in this case could have been clearer, the plan of
4 allocation provides for this outcome with respect to the rejection of the claim.
5 Specifically, paragraphs 56-57 discuss how a recognized loss is calculated for class
6 members with public traded common stock. ECF No. 379-1 at 17. As applicable to
7 Claimant's claim, paragraph 57 states that for shares purchased during the class
8 period and held as of the close of trading on January 11, 2016, the recognized loss
9 amount is the purchase price minus \$86.17, or the average closing price of BofI
10 common stock during the 90-day lookback period. *Id.* At 17-18. However, the
11 determination does not end here. Further down in the Notice, under "Additional
12 Provisions," paragraph 64 states that "[t]he Claims Administrator will determine if
13 the Claimant had a 'Market Gain' or a 'Market Loss' with respect to [her] overall
14 transactions in BofI common stock . . . during the Class Period." *See id.* at 19. The
15 notice states that to determine if there was a Market Gain, the Claims Administrator
16 will determine the difference between the claimant's total purchase amount (in
17 Claimant's case, \$95.009), and the claimant's holding value. *See id.* at 19-20.
18 Footnote 12 states that the "Holding Value" is \$99.13. *See id.* at 20 n. 12. The
19 Holding Value is the value of the stock at the end of the Class Period. Thus,
20 although it is a circuitous path, the Court finds that the notice provides that
21 claimants who experience a Market Gain are ineligible for any recovery.

22 In approving a settlement, the Court's objective is to determine whether a
23 plan of allocation fairly and equitably distributes the settlement fund. The Court
24 finds that the law supports the plan of allocation in this case. Courts routinely find
25 that it is fair to deny a potential claimant's recovery when the claimant experienced
26 a net market gain. *See e.g., In re Bear Stearns Cos., Inc. Sec., Derivative, and*
27 *ERISA Litig.*, 2014 2L 3401045, at *10 (S.D.N.Y. July 10, 2014) ("[T]he
28 Claimant's losses are completely offset by the net market gain received as a result

1 of his common stock transactions.”).

2 Pursuant to the Plan of Allocation, the Court has the authority to modify the
3 Plan of Allocation “without additional notice to the Class.” *See* ECF No. 379-1 at
4 16. Although the Court is not modifying the substance of the allocation plan, the
5 Court is providing clarification, and as such, directs the Claims Administrator to
6 give notice of this on the settlement website.

7 **Procedures for Distribution.** In accordance with the Court-approved Plan
8 of Allocation, JND will calculate each Authorized Claimant’s *pro rata* share of the
9 Net Settlement Fund based on the Authorized Claimant’s Recognized Claim in
10 comparison to the total Recognized Claims of all Authorized Claimants. The Net
11 Settlement Fund will then be allocated to Authorized Claimants as follows: (a)
12 Class Members with 10(b) Claims in connection with their purchase acquisition of
13 common shares of BofI common stock shall be collectively allocated approximately
14 (95%) of the Net Settlement Fund; and (b) Class Members with 10(b) Claims in
15 connection with their purchase or acquisition of BofI exchange-traded options shall
16 be allocated approximately (5%) of the Net Settlement Fund. Pursuant to the Plan
17 of Allocation, JND will eliminate from the initial distribution any Authorized
18 Claimant whose *pro rata* share of the Net Settlement Fund is less than \$10.00.
19 After eliminating Claimants who would receive less than \$10.00, JND will
20 recalculate the *pro rata* distribution payments for all other Authorized Claimants.
21 JND will then conduct the initial distribution of the Net Settlement Fund.

22 If any funds remain in the Net Settlement Fund by reason of uncashed
23 distribution checks or otherwise, then, after JND has made reasonable and diligent
24 efforts to have Authorized Claimants cash their initial distribution checks, any
25 balance remaining in the Net Settlement Fund at least nine months after the initial
26 distribution will be used in the following fashion: first, to pay any amounts
27 mistakenly omitted from the initial distribution; second, if Class Counsel in
28 consultation with JND determines that further distribution of the Net Settlement

1 Fund to Authorized Claimants is cost-effective, to make a second distribution (or
2 subsequent distributions) to Authorized Claimants who cashed their first
3 distribution check and who would receive at least \$10.00 from such distribution
4 based on the *pro rata* share of the remaining funds; and finally, if Class Counsel in
5 consultation with JND determines that further distribution of the Net Settlement
6 Fund to Authorized Claimants is not cost-effective, to process and pay amounts for
7 Claims received after April 14, 2023, or to contribute any residual amounts to a
8 charitable organization approved by the Court.

9 **Claims Administration Costs.** From October 1, 2022 through March 31,
10 2023, JND has incurred \$164,732.49 in additional claims administration costs. The
11 Court approves payment of this amount to JND.

12 In addition, JND estimates that it will incur costs of approximately
13 \$25,773.33 to complete the initial distribution of the Net Settlement Fund to
14 Authorized Claimants. JND has submitted an itemized estimate of its anticipated
15 expenses. The Court finds JND's estimate reasonable and therefore authorizes
16 Plaintiff to approve additional disbursements to JND, up to a maximum of
17 \$25,773.33, for reasonable future expenses JND incurs through the initial
18 distribution of the Net Settlement Fund to Authorized Claimants.

19 **Retention of Claim Forms and Other Documents.** Finally, JND proposes
20 to destroy paper copies of the Claims and all supporting documentation two years
21 after the initial distribution, and to destroy electronic copies of the Claims and all
22 supporting documentation one year after all funds have been distributed from the
23 Settlement Fund.

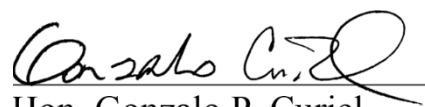
24 Based on the above and the record before it, the Court **HEREBY**:

- 25 1. Approves JND's administrative determinations in accepting and
26 rejecting Claims for this Settlement, including
 - 27 a. authorizing distribution as to all Timely Eligible Claims,
 - 28 b. authorizing distribution as to all Late But Otherwise Eligible

- 1 Claims (and rejecting Claims received, cured, or adjusted after
2 April 14, 2023 as untimely), and
3 c. rejecting all Rejected Claims, including Claim ID:
4 DFVDSCL5NB;
- 5 2. Authorizes distribution (and subsequent distributions as appropriate) of
6 the Net Settlement Fund to Authorized Claimants whose Claims have
7 been accepted in whole or in part;
- 8 3. Authorizes payment of \$164,732.49 from the Net Settlement Fund to
9 JND as compensation for its claims processing and settlement
10 administration costs incurred between October 1, 2022 and March 31,
11 2023;
- 12 4. Authorizes additional disbursements to JND, up to a maximum of
13 \$25,773.33, for reasonable future expenses JND incurs through the
14 initial distribution of the Net Settlement Fund to Authorized
15 Claimants; and
- 16 5. Authorizes JND to destroy paper copies of the Claims and all
17 supporting documentation two years after the initial distribution, and
18 to destroy electronic copies of the Claims and all supporting
19 documentation one year after all funds have been distributed from the
20 Settlement Fund.
- 21 6. Directs the Claims Administrator to give notice of the clarification
22 regarding the Plan of Allocation on the class website.

23
24 **IT IS SO ORDERED.**

25 Dated: August 16, 2023

26 
27 Hon. Gonzalo P. Curiel
28 United States District Judge