



1 public documents, conference calls and announcements made by Defendants, United  
2 States Securities and Exchange Commission (“SEC”) filings, wire and press releases  
3 published by and regarding BofI Holding, Inc. (“BofI” or the “Company”), analysts’  
4 reports and advisories about the Company, and information readily obtainable on the  
5 Internet. Plaintiff believes that substantial evidentiary support will exist for the  
6 allegations set forth herein after a reasonable opportunity for discovery.  
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### 9 NATURE OF THE ACTION

10 1. This is a federal securities class action on behalf of a class consisting of all  
11 persons other than Defendants who purchased or otherwise acquired BofI securities  
12 between April 28, 2016 and March 30, 2017, both dates inclusive (the “Class Period”).  
13 Plaintiff seeks to recover compensable damages caused by Defendants’ violations of the  
14 federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the  
15 Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated  
16 thereunder.  
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20 2. BofI Holding, Inc. operates as the holding company for Bank of Internet  
21 USA. The Bank provides consumer and business banking products in the United States.  
22

23 3. Founded in January 1999, the Company is headquartered in San Diego,  
24 California. The Company’s common stock trades on the NASDAQ under the ticker  
25 symbol “BFOI.”  
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1           4. Throughout the Class Period, Defendants made materially false and  
2 misleading statements regarding the Company’s business, operational and compliance  
3 policies. Specifically, Defendants made false and/or misleading statements and/or failed  
4 to disclose that: (i) BofI was engaged in unlawful conduct; (ii) the foregoing conduct,  
5 when it became known, would subject the Company to heightened regulatory scrutiny  
6 and potential criminal sanctions; and (iii) as a result, BofI’s public statements were  
7 materially false and misleading at all relevant times.  
8

9  
10           5. On March 31, 2017, pre-market, the *New York Post* published an article  
11 entitled “Feds probe Bank of Internet for possible money laundering,” disclosing that the  
12 Company was the subject of a probe led by the Justice Department and involving the  
13 Securities and Exchange Commission and the Treasury Department. The article stated in  
14 relevant part:  
15  
16

17                           **Feds probe Bank of Internet for possible money laundering**

18                           By Kevin Dugan March 31, 2017 | 1:27am | Updated

19                           Federal agents are conducting a probe into possible money laundering at  
20 online lender Bank of Internet, The Post has learned.

21                           The Justice Department, which is leading the investigation, has interviewed  
22 at least one former employee of the San Diego-based bank, sources said.

23                           Bank of Internet Chief Executive Gregory Garrabrants, head of the bank  
24 since 2007, is also a focus of the probe, sources said. Neither the 18-year-  
25 old bank nor Garrabrants has been accused of any criminal activity.

26                           Part of the probe is centered on regulatory filings made by Bank of Internet,  
27 also known as BofI, to the Office of the Comptroller of the Currency,  
28 according to four people familiar with the matter.

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1  
2 “Greg has answered these questions over and over again, and I don’t know  
3 why you’re all of a sudden coming up with all of this silliness, and in  
4 pursuit of what?” Eshel Bar-Adon, BofI’s chief legal officer, told The Post.

5 Bar-Adon refused to answer questions about any possible criminal probe,  
6 but said the company was “completely unaware” of any indictments in the  
7 works.

8 “Due to false allegations made in short seller hit pieces and pending  
9 litigation, agencies routinely ask questions to assure themselves that such  
10 allegations are without basis,” Bar-Adon added in a written statement.  
11 “However, there are no material investigations that would require public  
12 disclosure and BofI remains in good regulatory standing.”

13 Spokespersons for the Justice Department and OCC, which is also  
14 investigating, declined to comment. The Securities and Exchange  
15 Commission and the Treasury Department, also in the probe, didn’t answer  
16 an e-mail seeking comment.

17 It’s not clear whether any of the probes will result in indictments.

18 6. On this news, BofI’s share price fell \$1.45 or 5.26%, to close at \$26.13 on  
19 March 31, 2017.

20 7. As a result of Defendants’ wrongful acts and omissions, and the precipitous  
21 decline in the market value of the Company’s common shares, Plaintiff and other Class  
22 members have suffered significant losses and damages.

### 23 **JURISDICTION AND VENUE**

24 8. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of  
25 the Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated  
26 thereunder by the SEC (17 C.F.R. §240.10b-5).  
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1 Ethical Principle. The Code of Ethics, as amended, is attached hereto as  
2 Exhibit 14.1 and will also be made available via written request sent to BofI  
3 Holding, Inc., Attn: Corporate Secretary, 4350 La Jolla Village Drive, Suite  
4 100, San Diego, CA 92122.

5 20. In BofI's Code of Ethics, the Company stated, in part:

6 **BOFI Code of Ethics**

7 This "Code" shall be known as the Code of Ethics for BofI Holding, Inc.  
8 ("Company") and applies to Holding's Chief Executive Officer, Chief  
9 Financial Officer, and Chief Accounting Officer, Holding's directors,  
10 Holding's other non-employee officers, and any employees Holdings may  
11 have in the future (collectively, "Holding's Personnel"). This Code shall  
12 supplement and be in addition to the Master Policy on Ethics and  
13 Professional Integrity (the "Master Policy"). All capitalized terms not  
14 defined herein shall have the meaning ascribed to such terms in the Master  
15 Policy.

16 **A. General Policy Statement:** Holding's Personnel will conduct business  
17 in accordance with Company's ethical standards. Holding's Personnel are  
18 expected to uphold Company's reputation in the performance of their  
19 duties. Subject to and in furtherance of the Master Policy, this Code  
20 addresses the requirements for Conflict of Interest, proper disclosure of  
21 reports, compliance with Applicable Laws, maintaining internal procedures  
22 for prompt reporting of violations to this Code, and accountability for  
23 adherence to this Code. See Item 406 of Regulation S-K; Item 406 of  
24 Regulation S-B; and the Sarbanes-Oxley Act; NASDAQ Corporate  
25 Governance Listing Requirements Section 5610.

26 **B. Conflicts of Interest:** Holding's Personnel shall comply with the Master  
27 Policy.

28 **C. Disclosure:** Holding's Personnel are expected to provide to shareholders  
and financial markets proper disclosure in (i) reports and documents that  
Holding files with or submits to the Securities Exchange Commission and  
(ii) in other public communications, if applicable.

**D. Compliance with Applicable Laws and Regulations:** Holding's  
Personnel, in the performance of their duties, must comply with Applicable

1 Laws. Determination of any violations shall be in accordance with the  
2 processes provided by the Master Policy for violations thereof.

3 **E. Internal Reporting of Code Violations:** Company is committed to  
4 establishing procedures that will govern the receipt, review, and treatment  
5 of complaints received by Company regarding matters covered by this  
6 Code, including, without limitation, accounting, internal accounting  
7 controls or accounting matters. Each member of Holding's Personnel shall  
8 endeavor to promote compliance with this Code and compliance with the  
9 Master Policy. Holding's Personnel shall report violations of this Code to  
10 Holding's Chief Executive Officer, unless the report directly involves the  
11 Chief Executive Officer, in which case the report may be made to the Chair  
12 of the Audit Committee (currently Mr. Paul Grinberg who can be reached  
13 by telephone at (858) 309-6904 or by email at Paul.Grinberg@bofi.com).  
14 Company will not permit retaliation against any Team Member for reports  
15 of breaches of either this Code or the Master Policy, in each case, made in  
16 good faith.

17 **F. Administration of the Code of Ethics:** It is the responsibility of each  
18 officer and director of Holding to be familiar with this Code and the Master  
19 Policy. Company shall use its good faith efforts to ensure that Holding's  
20 Personnel comply with the provisions hereof. Holding's Personnel who  
21 violate provisions of this Code may be subject to discipline, up to and  
22 including, but not limited to, dismissal from employment or position, as  
23 applicable.

24 **G. Disclosures:** Company is required to make a copy of this Code publicly  
25 available in accordance with the Sarbanes Oxley Act, including rules and  
26 regulations promulgated pursuant thereto, as well as in accordance with  
27 NASDAQ Corporate Governance Listing Requirements Section 5610.  
28 Company complies with this obligation by publishing in its Annual Report,  
or a similar public filing, instructions with respect to requesting a copy of  
this Code.

**H. Waivers:** Waivers from this Code may be made only with the prior  
consent of the Chairperson of Company's Board of Directors or a board  
committee appointed by the Chairperson. Waivers must be promptly  
disclosed in accordance with Applicable Law and NASDAQ Corporate  
Governance Listing Requirements Section 5610.



1           21. The Q3 2016 10-Q contained signed certifications pursuant to the Sarbanes-  
2 Oxley Act of 2002 (“SOX”) by the Individual Defendants, stating that the financial  
3 information contained in the Q3 2016 10-Q was accurate and disclosed any material  
4 changes to the Company’s internal control over financial reporting.  
5

6           22. On August 25, 2016, BofI filed an annual report on Form 10-K with the  
7 SEC, announcing the Company’s financial and operating results for the quarter and fiscal  
8 year ended June 30, 2016 (the “2016 10-K”). For the quarter, BofI reported net income  
9 of \$29.73 million, or \$0.46 per diluted share, on revenue of \$86.17 million, compared to  
10 net income of \$24.40 million, or \$0.39 per diluted share, on revenue of \$65.57 million  
11 for the same period in the prior year. For fiscal year 2016, BofI reported net income of  
12 \$119.29 million, or \$1.85 per diluted share, on revenue of \$327.35 million, compared to  
13 net income of \$82.68 million, or \$1.34 per diluted share, on revenue of \$229.54 million  
14 for fiscal year 2015.  
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18           23. In the 2016 10-K, the Company stated, in relevant part:  
19

20           **Anti-Money Laundering and Customer Identification.** The U.S.  
21 government enacted the Uniting and Strengthening America by Providing  
22 Appropriate Tools Required to Intercept and Obstruct Terrorism Act of  
23 2001 (“USA PATRIOT Act”) on October 26, 2001 in response to the  
24 terrorist events of September 11, 2001. The USA PATRIOT Act gives the  
25 federal government broad powers to address terrorist threats through  
26 enhanced domestic security measures, expanded surveillance powers,  
27 increased information sharing, and broadened anti-money laundering  
28 requirements. In February 2010, Congress re-enacted certain expiring  
provisions of the USA PATRIOT Act.

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1 We operate in a highly regulated industry and are subject to oversight,  
2 regulation and examination by federal and/or state governmental authorities  
3 under various laws, regulations and policies, which impose requirements or  
4 restrictions on our operations, capitalization, payment of dividends, mergers  
5 and acquisitions, investments, loans and interest rates charged and interest  
6 rates paid on deposits. ***We must also comply with federal anti-money  
7 laundering, tax withholding and reporting, and consumer protection  
8 statutes and regulations.*** A considerable amount of management time and  
9 resources is devoted to oversight of, and development and implementation  
10 of controls and procedures relating to, compliance with these laws,  
11 regulations and policies.

12 (Emphasis added.)

13 24. The 2016 10-K contained signed certifications pursuant to SOX by the  
14 Individual Defendants, stating that the financial information contained in the 2016 10-K  
15 was accurate and disclosed any material changes to the Company's internal control over  
16 financial reporting.

17 25. On October 27, 2016, BofI filed a quarterly report on Form 10-Q with the  
18 SEC, announcing the Company's financial and operating results for the quarter ended  
19 September 30, 2016 (the "Q1 2017 10-Q"). For the quarter, BofI reported net income of  
20 \$28.90 million, or \$0.45 per diluted share, on revenue of \$84.51 million, compared to net  
21 income of \$25.50 million, or \$0.40 per diluted share, on revenue of \$68.92 million for  
22 the same period in the prior year.

23 26. The Q1 2017 10-Q contained signed certifications pursuant to SOX by the  
24 Individual Defendants, stating that the financial information contained in the Q1 2017  
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1 10-Q was accurate and disclosed any material changes to the Company's internal control  
2 over financial reporting.

3 27. On January 30, 2017, BofI filed a quarterly report on Form 10-Q with the  
4 SEC, announcing the Company's financial and operating results for the quarter ended  
5 December 31, 2016 (the "Q2 2017 10-Q"). For the quarter, BofI reported net income of  
6 \$32.30 million, or \$0.50 per diluted share, on revenue of \$93.06 million, compared to net  
7 income of \$28.15 million, or \$0.44 per diluted share, on revenue of \$79.39 million for  
8 the same period in the prior year.  
9  
10

11 28. The Q2 2017 10-Q contained signed certifications pursuant to SOX by the  
12 Individual Defendants, stating that the financial information contained in the Q2 2017  
13 10-Q was accurate and disclosed any material changes to the Company's internal control  
14 over financial reporting.  
15  
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17 29. The statements referenced in ¶¶ 18-28 above were materially false and/or  
18 misleading because they misrepresented and/or failed to disclose the following adverse  
19 facts pertaining to the Company's business, operational and financial results, which were  
20 known to Defendants or recklessly disregarded by them. Specifically, Defendants made  
21 false and/or misleading statements and/or failed to disclose that: (i) BofI was engaged in  
22 unlawful conduct; (ii) the foregoing conduct, when it became known, would subject the  
23 Company to heightened regulatory scrutiny and potential criminal sanctions; and (iii) as  
24  
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1 a result, BofI's public statements were materially false and misleading at all relevant  
2 times.

### 3 The Truth Emerges

4  
5 30. On March 31, 2017, pre-market, the *New York Post* published an article  
6 entitled "Feds probe Bank of Internet for possible money laundering," disclosing that the  
7 Company was the subject of a probe led by the Justice Department and involving the  
8 Securities and Exchange Commission and the Treasury Department. The article stated in  
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19 since 2007, is also a focus of the probe, sources said. Neither the 18-year-  
20 old bank nor Garrabrants has been accused of any criminal activity.

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22 also known as BofI, to the Office of the Comptroller of the Currency,  
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24 \*\*\*

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26 why you're all of a sudden coming up with all of this silliness, and in  
27 pursuit of what?" Eshel Bar-Adon, BofI's chief legal officer, told The Post.  
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1 Bar-Adon refused to answer questions about any possible criminal probe,  
2 but said the company was “completely unaware” of any indictments in the  
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3 “Due to false allegations made in short seller hit pieces and pending  
4 litigation, agencies routinely ask questions to assure themselves that such  
5 allegations are without basis,” Bar-Adon added in a written statement.  
6 “However, there are no material investigations that would require public  
disclosure and BofI remains in good regulatory standing.”

7 Spokespersons for the Justice Department and OCC, which is also  
8 investigating, declined to comment. The Securities and Exchange  
9 Commission and the Treasury Department, also in the probe, didn’t answer  
an e-mail seeking comment.

10 It’s not clear whether any of the probes will result in indictments.

11  
12 31. On this news, BofI’s share price fell \$1.45 or 5.26%, to close at \$26.13 on  
13 March 31, 2017.

14  
15 32. As a result of Defendants’ wrongful acts and omissions, and the precipitous  
16 decline in the market value of the Company’s common shares, Plaintiff and other Class  
17 members have suffered significant losses and damages.

### 18 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

19  
20 33. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil  
21 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or  
22 otherwise acquired BofI common shares traded on the NASDAQ during the Class Period  
23 (the “Class”); and were damaged upon the revelation of the alleged corrective  
24 disclosures. Excluded from the Class are Defendants herein, the officers and directors of  
25 the Company, at all relevant times, members of their immediate families and their legal  
26  
27  
28

1 representatives, heirs, successors or assigns and any entity in which Defendants have or  
2 had a controlling interest.

3           34. The members of the Class are so numerous that joinder of all members is  
4 impracticable. Throughout the Class Period, BofI common shares were actively traded  
5 on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at  
6 this time and can be ascertained only through appropriate discovery, Plaintiff believes  
7 that there are hundreds or thousands of members in the proposed Class. Record owners  
8 and other members of the Class may be identified from records maintained by BofI or its  
9 transfer agent and may be notified of the pendency of this action by mail, using the form  
10 of notice similar to that customarily used in securities class actions.  
11

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14           35. Plaintiff's claims are typical of the claims of the members of the Class as all  
15 members of the Class are similarly affected by Defendants' wrongful conduct in  
16 violation of federal law that is complained of herein.  
17

18  
19           36. Plaintiff will fairly and adequately protect the interests of the members of  
20 the Class and has retained counsel competent and experienced in class and securities  
21 litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.  
22

23           37. Common questions of law and fact exist as to all members of the Class and  
24 predominate over any questions solely affecting individual members of the Class.  
25 Among the questions of law and fact common to the Class are:  
26

- 27           • whether the federal securities laws were violated by Defendants' acts  
28 as alleged herein;

- 1 • whether statements made by Defendants to the investing public
- 2 during the Class Period misrepresented material facts about the
- 3 financial condition, business, operations, and management of BofI;
- 4 • whether Defendants caused BofI to issue false and misleading
- 5 financial statements during the Class Period;
- 6 • whether Defendants acted knowingly or recklessly in issuing false
- 7 and misleading financial statements;
- 8 • whether the prices of BofI securities during the Class Period were
- 9 artificially inflated because of Defendants' conduct complained of
- 10 herein; and
- 11 • whether the members of the Class have sustained damages and, if so,
- 12 what is the proper measure of damages.

13 38. A class action is superior to all other available methods for the fair and  
14 efficient adjudication of this controversy since joinder of all members is impracticable.  
15 Furthermore, as the damages suffered by individual Class members may be relatively  
16 small, the expense and burden of individual litigation make it impossible for members of  
17 the Class to individually redress the wrongs done to them. There will be no difficulty in  
18 the management of this action as a class action.

19 39. Plaintiff will rely, in part, upon the presumption of reliance established by  
20 the fraud-on-the-market doctrine in that:

- 21 • Defendants made public misrepresentations or failed to disclose
- 22 material facts during the Class Period;
- 23 • the omissions and misrepresentations were material;

- 1 • BofI common shares are traded in efficient markets;
- 2 • the Company's shares were liquid and traded with moderate to heavy
- 3 volume during the Class Period;
- 4 • the Company traded on the NASDAQ, and was covered by multiple
- 5 analysts;
- 6 • the misrepresentations and omissions alleged would tend to induce a
- 7 reasonable investor to misjudge the value of the Company's common
- 8 shares; and
- 9 • Plaintiff and members of the Class purchased and/or sold BofI
- 10 common shares between the time the Defendants failed to disclose or
- 11 misrepresented material facts and the time the true facts were
- 12 disclosed, without knowledge of the omitted or misrepresented facts.

13 40. Based upon the foregoing, Plaintiff and the members of the Class are  
14 entitled to a presumption of reliance upon the integrity of the market.

15 41. Alternatively, Plaintiff and the members of the Class are entitled to the  
16 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of*  
17 *the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants  
18 omitted material information in their Class Period statements in violation of a duty to  
19 disclose such information, as detailed above.  
20  
21

## 22 **COUNT I**

### 23 **Violation of Section 10(b) of The Exchange Act and Rule 10b-5** 24 **Against All Defendants**

25  
26 42. Plaintiff repeats and realleges each and every allegation contained above as  
27 if fully set forth herein.  
28



1           43. This Count is asserted against BofI and the Individual Defendants and is  
2 based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5  
3 promulgated thereunder by the SEC.  
4

5           44. During the Class Period, BofI and the Individual Defendants, individually  
6 and in concert, directly or indirectly, disseminated or approved the false statements  
7 specified above, which they knew or deliberately disregarded were misleading in that  
8 they contained misrepresentations and failed to disclose material facts necessary in order  
9 to make the statements made, in light of the circumstances under which they were made,  
10 not misleading.  
11

12           45. BofI and the Individual Defendants violated §10(b) of the 1934 Act and  
13 Rule 10b-5 in that they:  
14

- 15           • employed devices, schemes and artifices to defraud;
- 16           • made untrue statements of material facts or omitted to state material  
17 facts necessary in order to make the statements made, in light of the  
18 circumstances under which they were made, not misleading; or
- 19           • engaged in acts, practices and a course of business that operated as a  
20 fraud or deceit upon plaintiff and others similarly situated in  
21 connection with their purchases of BofI common shares during the  
22 Class Period.

23           46. BofI and the Individual Defendants acted with scienter in that they knew  
24 that the public documents and statements issued or disseminated in the name of BofI  
25 were materially false and misleading; knew that such statements or documents would be  
26 issued or disseminated to the investing public; and knowingly and substantially  
27 participated, or acquiesced in the issuance or dissemination of such statements or  
28

1 documents as primary violations of the securities laws. These Defendants by virtue of  
2 their receipt of information reflecting the true facts of BofI, their control over, and/or  
3 receipt and/or modification of BofI allegedly materially misleading statements, and/or  
4 their associations with the Company which made them privy to confidential proprietary  
5 information concerning BofI, participated in the fraudulent scheme alleged herein.  
6

7  
8 47. Individual Defendants, who are the senior officers and/or directors of the  
9 Company, had actual knowledge of the material omissions and/or the falsity of the  
10 material statements set forth above, and intended to deceive Plaintiff and the other  
11 members of the Class, or, in the alternative, acted with reckless disregard for the truth  
12 when they failed to ascertain and disclose the true facts in the statements made by them  
13 or other BofI personnel to members of the investing public, including Plaintiff and the  
14 Class.  
15  
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17 48. As a result of the foregoing, the market price of BofI common shares was  
18 artificially inflated during the Class Period. In ignorance of the falsity of BofI's and the  
19 Individual Defendants' statements, Plaintiff and the other members of the Class relied on  
20 the statements described above and/or the integrity of the market price of BofI common  
21 shares during the Class Period in purchasing BofI common shares at prices that were  
22 artificially inflated as a result of BofI's and the Individual Defendants' false and  
23 misleading statements.  
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