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 8 BANK

9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

11 BofI FEDERAL BANK, a federal
 12 savings bank,

13 Plaintiff,

14 v.

15 CHARLES MATTHEW ERHART, an
 16 individual; and DOES 1-25, inclusive,

Defendants.

Case No. 3:15-cv-2353-BAS-NLS

The Hon. Cynthia Bashant
 Courtroom 4B (Schwartz Courthouse)

**BofI FEDERAL BANK’S FIRST
 AMENDED COMPLAINT
 AGAINST CHARLES MATTHEW
 ERHART FOR:**

1. BREACH OF CONTRACT;
2. CONVERSION;
3. BREACH OF THE DUTY OF LOYALTY;
4. NEGLIGENCE;
5. FRAUD;
6. VIOLATION OF CALIFORNIA PENAL CODE SECTION 502;
7. VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT [18 U.S.C. § 1030(a)(5)]; and
8. UNFAIR BUSINESS PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17220, ET SEQ

DEMAND FOR JURY TRIAL

1 Plaintiff BofI Federal Bank (“Bofi”) brings this action against
2 defendant Charles Matthew Erhart (“Erhart”) and Does 1-25 inclusive, and alleges
3 as follows:

4
5 **JURISDICTION AND VENUE**

6
7 1. The Seventh Claim for Relief arises under the Computer Fraud
8 and Abuse Act, 18 U.S.C. Section 1030. This Court has original subject matter
9 jurisdiction over this claim pursuant to 28 U.S.C. Section 1331 et seq.

10
11 2. The First, Second, Third, Fourth, Fifth, Sixth, and Eighth Claims
12 for Relief arise under California statutory and common law. This Court has
13 concurrent subject matter jurisdiction over these Claims for Relief on the basis of
14 supplemental jurisdiction under 28 U.S.C. Section 1367(a), because: (a) the federal
15 and state law claims asserted herein are based, in part, upon the same operative
16 facts; (b) the Court's exercise of jurisdiction over the pendent state law claims will
17 promote judicial economy, convenience, and fairness to the parties; and (c) such
18 claims are so related to the Seventh Claim for Relief that they form part of the same
19 case or controversy under Article III of the United States Constitution.

20
21 3. Venue is proper in the Southern District of California pursuant to
22 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving
23 rise to the claims asserted herein occurred or had effects in this District.

24
25 **PARTIES**

26
27 4. At all times mentioned herein, plaintiff BofI was, and is, a
28 federal savings bank.

1 5. BoFI is informed and believes, and on that basis alleges, that at
2 all times mentioned herein, defendant Erhart was, and is, an individual residing in
3 San Diego County, California.

4
5 6. Defendants sued herein as Does 1 through 25, inclusive, are sued
6 in their fictitious names and capacities as their identities have not yet been
7 determined. BofI is informed and believes, and on that basis alleges, that each of
8 such Defendants is responsible in some way for the acts alleged herein. BofI will
9 seek leave to amend its Complaint to allege such Defendants' true names and
10 capacities when they have been ascertained.

11
12 **GENERAL ALLEGATIONS**
13

14 7. Erhart commenced his employment as a Staff Internal Auditor
15 reporting to BofI's Vice President-Internal Audits on September 23, 2013 at BofI's
16 corporate headquarters in San Diego, California. Erhart's position was "entry
17 level." BofI's Audit Department consists of approximately 6 staff auditors, in
18 addition to supervisors and support staff. Audits are a necessary function for any
19 financial institution to ensure that operations are conducted in accordance with the
20 institution's procedures and applicable laws and regulations.

21
22 8. Erhart graduated from college with a Bachelor of Science degree
23 in Finance and Minors in Entrepreneurship and Psychology in May 2009. At the
24 time of his hire, Erhart was 27 years old and had no prior experience or
25 certifications concerning internal auditing. Given his academic background BofI
26 believed that with appropriate diligence on his part he could be trained to be an
27 effective internal auditor over time.
28

1 9. Prior to joining BofI's staff, Erhart never worked at a
2 commercial bank, savings bank, credit union, or similar financial institution.
3 Although Erhart appeared qualified to assume the entry level position he occupied
4 between September 2013 and March 2015, he was not qualified to determine audit
5 priorities for the Bank and work independently on audit tasks without the
6 supervision and guidance of his supervisors and the Audit Committee.

7
8 **ERHART'S ACCESS TO CONFIDENTIAL INFORMATION**

9
10 10. As a Staff Internal Auditor, Erhart's primary job duty was to
11 prepare audits of various aspects of BofI's operations as specifically assigned to him
12 by, and under the supervision of, the Vice President-Internal Audits, within the
13 parameters of the Internal Audit Plan approved by the independent Audit Committee
14 of the Board of Directors of BofI Holding, Inc., BofI's publicly traded parent
15 company.

16
17 11. In the course and scope of his duties as an Internal Auditor,
18 Erhart was provided with, and had access to, (i) information containing BofI's
19 intellectual property, including, without limitation, that which it licenses from third
20 parties; (ii) confidential and proprietary information belonging to BofI, its
21 employees, its business counterparties, and/or its clients; and (iii) information
22 containing the non-public personal information of BofI employees, business
23 counterparties, and clients (collectively, with all other confidential information
24 belonging or held by BofI, "Confidential Information").

25
26 12. All employees of BofI, including Erhart, are required to undergo
27 training (the "Bank Employee Training") upon commencement of employment by
28 BofI and annually thereafter. Among other subjects, the Bank Employee Training

1 emphasizes the confidential and sensitive nature of the Confidential Information, the
2 requirements of applicable law, and BofI's confidentiality and data security policies
3 and procedures. Erhart also was informed and advised that Confidential Information
4 was the property of BofI and/or third parties by whom it was provided, and that he
5 was not to use, hold or disclose the Confidential Information except as expressly
6 authorized by BofI and/or such other third parties.

7
8 13. Even with respect to the Confidential Information made available
9 to Erhart for performance of his duties, Erhart never requested, and BofI never gave
10 Erhart, any consent, permission, approval or authorization, to retain or use such
11 Confidential Information for any purpose other than the limited purpose for which it
12 was made available to him.

13
14 14. BofI policy, as set forth in the BofI Employee Handbook and
15 repeatedly emphasized to Erhart during the Bank Employee Training, prohibited
16 him from taking and obtaining personal possession of any Confidential Information
17 outside BofI's physical locations, except on BofI issued and owned computer
18 devices, systems, servers, or networks, and then only in accordance with his specific
19 job requirements. Erhart neither requested nor received any waiver of or exceptions
20 to this policy.

21
22 **ERHART'S LEGAL OBLIGATION TO SAFEGUARD CONFIDENTIAL**
23 **INFORMATION**

24
25 15. The banking and financial services industry is a highly regulated
26 industry that, in addition to a multitude of other statutes, regulations, guidances and
27 orders, is subject, without limitation, to the provisions of Title V, Subtitle A of the
28 Gramm-Leach-Bliley Act ("GLBA"), which govern the treatment of nonpublic

1 personal information by financial institutions. GLBA authorized the federal
2 financial institution regulatory agencies to adopt regulations to implement those
3 provisions and the pre-existing provisions of the Fair Credit Reporting Act. Under
4 GLBA, a financial institution is prohibited from disclosing nonpublic personal
5 information to nonaffiliated third parties, unless the institution satisfies various
6 notice and opt-out requirements.

7
8 **ERHART’S CONTRACTUAL CONFIDENTIALITY OBLIGATIONS**

9
10 16. In light of the confidential and valuable nature of the information
11 BofI would be entrusting to Erhart, Erhart was required, as a condition of his
12 employment with BofI, to comply with BofI’s Code of Conduct for Directors,
13 Officers and Employees (“Code of Conduct”). On September 23, 2013, Erhart
14 signed an Employee Acknowledgment of Receipt of Code of Conduct, in which he
15 agreed to comply with the Code of Conduct. The Code of Conduct provides, in
16 pertinent part, that:

17
18 A. Customer Information. Safeguarding the confidential financial
19 information concerning [BofI’s] customers is essential in
20 maintaining the public trust. It is the policy of [BofI] that such
21 confidential information acquired by an employee through his or
22 her employment must be held in the strictest confidence. Such
23 information is to be held for [BofI] purposes and not as a basis for
personal gain by any employee. Aside from routine credit
inquiries, information regarding a customer may generally only be
released to private persons, organizations or governmental bodies
that request it with the consent of the customer involved or upon
receipt of legal process, such as a subpoena or court order. . . .

24 B. Information Regarding [BofI]. Financial or other information
25 regarding [BofI] is not to be released to any outside person or
26 organization unless it has been published in reports to
shareholders, or otherwise made available to the public through
27 authorized news releases. . . . [BofI] expects every employee to
28 treat information concerning [BofI] and its personnel with the
same confidentiality as information concerning customers of
[BofI] and to observe, with respect to [BofI], the same guidelines
set forth in Paragraph A above.

1 17. In addition to the Code of Conduct, Erhart was required, as a
2 condition of his employment with BofI, to execute a GLBA Confidentiality
3 Attestation, which he executed on September 24, 2013. The GLBA Confidentiality
4 Attestation states, in pertinent part:

5
6 The purpose of this agreement is to ensure that all Banking
7 employees . . . understand, acknowledge and affirm their
responsibility to protect and secure [BofI] information.

8 Consumer data is generally classified as protected information.
9 Banking employees are provided access to [BofI] information
only as necessary to perform their assigned duties. [BofI]
10 employees must not discuss consumer account information with
any other person unless such person has a business need to know,
11 and only if such person is also obligated to keep [BofI] data
confidential. . . .

12 Only [BofI] authorized users or devices are allowed to access
13 [BofI] protected data.

14 18. Erhart received, and acknowledged receiving, GLBA security
15 training.
16

17 19. As a condition of employment with BofI, Erhart was also
18 required to sign several acknowledgments and attestations confirming that he would
19 abide by BofI's policies, including but not limited to an acknowledgment of receipt
20 of BofI's IT Security Employee Acceptable Use Policy, which bars employees from
21 "[p]roviding information about, or lists of, [BofI] employees or customers to parties
22 outside [BofI] without management approval." It also requires information to be
23 encrypted in compliance with BofI's GLBA policy.
24

25 20. As a condition of employment with BofI, Erhart was also
26 required to sign an Employee Confidentiality, Non-Disclosure, and Non-
27
28

1 Recruitment Agreement (hereinafter referred to as the “Confidentiality
2 Agreement”), which he executed on September 23, 2013.

3
4 21. The Confidentiality Agreement prohibits the unauthorized
5 disclosure and use of BofI’s proprietary information. The Confidentiality
6 Agreement requires that Erhart not use, publish, or disclose any Confidential
7 Information during or after termination of his employment except as required in the
8 conduct of BofI’s business or as authorized in writing by BofI. After termination of
9 employment, the Confidentiality Agreement requires Erhart to inform BofI, and to
10 deliver to BofI, all Confidential Information which he prepared, used, or came in
11 contact with while employed at BofI.

12
13 **STEPS TAKEN BY BofI TO ENSURE THAT EMPLOYEES SAFEGUARD**
14 **CONFIDENTIAL INFORMATION**

15
16 22. BofI has implemented numerous safeguards to cause its
17 employees to preserve and maintain the confidentiality and privacy of Confidential
18 Information, including proprietary information of BofI and confidential information
19 of BofI employees, business counterparties and clients, and to ensure that these
20 records and information are not disclosed outside of BofI. These Safeguards
21 include, among others:

22
23 (a) training employees with respect to BofI’s need to keep this
24 information secret and the importance thereof;

25
26 (b) notifying employees through the Employee Handbook, the Code
27 of Conduct and by other means that, as an express condition of their employment,
28

1 they are not to use or disclose this information, except as authorized by BofI and
2 required in the performance of their duties for BofI;

3
4 (c) requiring employees to enter into Confidentiality Agreements,
5 which instruct BofI employees not to disclose, reproduce or use this information
6 without BofI's consent;

7
8 (d) requiring employees to execute GLBA Confidentiality
9 Attestations which instruct BofI employees to protect the confidentiality of
10 nonpublic personal information of BofI's clients;

11
12 (e) limiting access and/or by restricting access to this information by
13 employees on a need-to-know basis;

14
15 (f) requiring coded passwords to access client account information
16 on BofI's computer systems; and

17
18 (g) implementing a number of physical and electronic security
19 measures, including restricting access to databases and network space, utilizing,
20 where appropriate, secure web-based portals to transfer externally to third parties
21 files containing Confidential Information rather than emailing or receiving such files
22 as attachments to emails, assigning passwords and user-level permissions to access
23 information on BofI's computer system, servers, and networks, and requiring that
24 personal information of BofI clients be kept in secure locations when not in use.

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1 **ERHART EXCEEDED HIS AUTHORITY BY CONDUCTING ROGUE**
2 **INVESTIGATIONS**

3
4 23. During his employment, Erhart was tasked with completing
5 assigned audit functions within the parameters of the 2014 and 2015 Internal Audit
6 Plans. These plans defined the scope of the internal audits to be completed by the
7 Internal Audit Department during 2014 and 2015. The 2014 and 2015 Internal
8 Audit Plans were not expanded or revised. No proposal for expanding the scope of
9 the 2014 or 2015 Audit Plans was ever presented to the Audit Committee by Erhart
10 or any other member of the Internal Audit department.

11
12 24. Erhart abused his power as an entry level Staff Internal Auditor
13 by not completing his assigned audits, and instead initiating and conducting his own
14 unplanned and unapproved investigations into matters that were outside the scope of
15 the 2014 and 2015 Internal Audit Plans.

16
17 25. Erhart had no right or authority to use his position as Internal
18 Auditor to define his own audit or investigation assignments without the knowledge
19 or approval of the Audit Committee, or to unilaterally expand the scope of the
20 internal audits and investigate matters that BofI's Audit Committee had not had an
21 opportunity to consider. Had Erhart followed standard audit protocols the Audit
22 Committee would have had an opportunity to consider expanding the scope of Audit
23 Plan or otherwise determine an appropriate course of action to ensure that any
24 legitimate concerns were addressed. Instead, the Audit Committee learned about
25 Erhart's "audits" after he ceased his employment at BofI.

26
27 26. Erhart misrepresented to other BofI employees that he was
28 conducting authorized investigations as part of his job as Staff Internal Auditor.

1 BofI employees had no reason to question whether Erhart was authorized to conduct
2 these investigations because Erhart used his position and level of access to obtain
3 this information. BofI policy requires employees to fully cooperate with internal
4 auditors and provide all requested information.

5
6 27. Erhart disregarded his job function, which was to perform
7 assigned audit tasks assigned to him by his supervisors and the Audit Committee
8 pursuant to the Audit Plan. His pursuit of his own rogue investigations resulted in a
9 failure to complete the authorized audit tasks to which he was assigned and
10 generally wasted time and resources. His unauthorized investigations included, but
11 are not limited to, the following:

12
13 (a) **Unapproved Payroll Investigation**: In December 2014, Erhart
14 initiated a payroll audit to investigate why contributions to his own 401K account
15 were delayed by two weeks in May 2014. Erhart had been apprised of the approved
16 scope of the 2014 Audit Plan, and was well aware that the timing of 401K
17 contribution deposits was not part of the 2014 Audit Plan. Erhart did not follow
18 professional standards or BofI protocol, as he did not raise the timing of 401(k)
19 account contributions to the Audit Committee and he did not request an expansion
20 of the scope of the 2014 Internal Audit Plan. Erhart's payroll audit violated BofI
21 policy, and ethical standards for internal auditing that prohibit internal auditors from
22 investigating matters that may affect their own personal finances. An internal
23 investigation conducted at the behest of the Audit Committee later reviewed
24 Erhart's work and concluded his suspicions were unfounded or immaterial.

25
26 (b) **Unapproved Investigation of Employee Restricted Stock**
27 **Grants**: In December 2014, Erhart initiated an investigation into employee
28 restricted stock grants. Erhart had been apprised of the approved scope of the 2014

1 Audit Plan, and was well aware that this was outside the scope of that plan. Again,
2 contrary to BofI's policies and internal audit practices, Erhart did not obtain or
3 request approval from the Audit Committee for this audit. Erhart obtained sensitive
4 personally identifying information of BofI employees, which BofI considers strictly
5 confidential and is to be shared only with individuals who have a legitimate business
6 reason to access the information. There was no legitimate reason for Erhart to
7 obtain this information. Erhart violated his ethical obligations by requesting and
8 obtaining confidential personnel information, and he did so for his own personal
9 gain. BofI is informed and believes, and on that basis alleges, that Erhart
10 specifically referenced this information to request a raise. Erhart then shared this
11 information with two other staff auditors who also did not have a legitimate reason
12 to possess or view this information. An internal investigation conducted at the
13 behest of the Audit Committee later reviewed Erhart's work and concluded his
14 suspicions were unfounded or immaterial.

15

16 (c) **Unapproved Investigation of Suspicious Activity Reports:**

17 Erhart obtained highly confidential meeting minutes of BofI's Compliance
18 Committee containing details of Suspicious Activity Reports ("SARs") filed by
19 BofI. Under the Bank Secrecy Act, even the fact that a bank filed a SAR is strictly
20 confidential and is not disseminated to bank employees who have no legitimate
21 reason to view the information. Erhart had no legitimate business reason to view
22 this information. He was not tasked by the Audit Committee or his supervisor with
23 auditing any meeting minutes or to reviewing the filing of any SAR. An internal
24 investigation conducted at the behest of the Audit Committee later reviewed
25 Erhart's work and concluded his suspicions were unfounded or immaterial.

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27

28

1 28. BofI’s executive management did not begin to learn about
2 Erhart’s abuse of power and unapproved “rogue” investigations until on or about
3 March 5, 2015. BofI is still discovering the full extent of Erhart’s unauthorized acts.
4

5 **ERHART FAILED TO PERFORM HIS REQUIRED AUDITS**
6

7 29. On or about March 5, 2015, BofI management learned that
8 Erhart failed to complete at least nine internal audits assigned to him that were to be
9 delivered for an on-site examination by the Office of the Comptroller of the
10 Currency (“OCC”) that commenced on February 17, 2015.
11

12 **ERHART’S TAKING, DISCLOSURE, AND DISTRIBUTION OF**
13 **CONFIDENTIAL INFORMATION**
14

15 30. Erhart took Confidential Information, including account
16 information of BofI’s employees, business counterparties, and/or customers, and
17 disclosed and distributed to unauthorized recipients outside the physical walls and
18 electronic firewalls of BofI.
19

20 31. Erhart emailed Confidential Information to his personal non-
21 encrypted web-based email account, his mother’s similarly non-secure personal
22 web-based email account, and to other third parties who are not authorized to
23 receive or possess the Confidential Information, on numerous occasions, including,
24 but not limited to, the following:
25

26 (a) January 13, 2015: Erhart sent an email from his BofI email
27 account to his personal email account, attaching a file named “Copier screenshot”
28

1 that BofI is informed and believes, and on that basis alleges, contains Confidential
2 Information of BofI, BofI's business counterparties and/or BofI's clients.

3
4 (b) January 13, 2015: Erhart sent an email from his BofI email
5 account to his personal email account, attaching a file named "Copier screenshot 2"
6 that BofI is informed and believes, and on that basis alleges, contains Confidential
7 Information of BofI, BofI's business counterparties and/or BofI's clients.

8
9 (c) January 13, 2015: Erhart sent an email from his BofI email
10 account to his personal email account, attaching a file named "Copier screenshot 3"
11 that BofI is informed and believes, and on that basis alleges, contains Confidential
12 Information of BofI, BofI's business counterparties and/or BofI's clients.

13
14 (d) March 6, 2015: Erhart sent an email from his BofI email account
15 to an email account that belongs to Erhart's mother, Pamela Erhart, attaching a file
16 named "SFalcon15030510111.pdf." This file contains Confidential Information of
17 BofI, BofI's business counterparties and/or BofI's clients.

18
19 (e) March 11, 2015: Erhart sent an email from his BofI email
20 account to his personal email account, attaching a file named "CErhart Impact
21 Statement-Process Maps.pdf" that BofI is informed and believes, and on that basis
22 alleges, contains Confidential Information of BofI, BofI's business counterparties
23 and/or BofI's clients.

24
25 (f) March 11, 2015: Erhart sent an email from his BofI email
26 account to Erhart's personal email account, with a subject line of "Incoming phone
27 calls email 2" and attaching a file that BofI is informed and believes, and on that
28

1 basis alleges, contains Confidential Information of BofI, BofI's business
2 counterparties and/or BofI's clients.

3
4 (g) March 11, 2015: Erhart sent an email from his BofI email
5 account to Erhart's personal email account, with a subject line of "Outgoing Phone
6 calls email 2" and attaching a file that BofI is informed and believes, and on that
7 basis alleges, contains Confidential Information of BofI, BofI's business
8 counterparties and/or BofI's clients.

9
10 (h) BofI is informed and believes, and on that basis alleges, that
11 Erhart disseminated the Confidential Information to additional outside sources,
12 including to contributors to a website that allows comments on the stocks of
13 publicly traded companies.

14
15 32. BofI is informed and believes, and on that basis alleges, that on
16 March 10, 2015, Erhart inserted a disc into his laptop that was named "Bank of
17 Internet." Erhart has not returned this disc to BofI.

18
19 33. BofI is informed and believes, and on that basis alleges, that on
20 March 6, 2015, Erhart copied or attempted to copy 1200 files from his BofI issued
21 laptop to a USB device titled "CBM USB 2.0 USB Device," serial number F9B55937
22 and other removable storage devices. Much of the Confidential Information he
23 sought to copy was not only beyond the scope of any authorized audits that Erhart
24 was conducting, but also beyond the scope of the unauthorized investigations Erhart
25 undertook, as described above. Given the breadth of the Confidential Information
26 he sought to copy on that date, it appears that Erhart was wantonly converting BofI
27 property for his own illegitimate purposes. It is not yet clear which files Erhart
28 successfully copied. Erhart has not returned this USB device to BofI.

1 34. By taking personal possession of Confidential Information,
2 Erhart violated BofI's policies, his contractual obligations, and his duty of loyalty to
3 BofI and BofI's business counterparties and clients, and applicable state and federal
4 laws.

5
6 35. Erhart had no authority to misappropriate and wrongfully
7 distribute BofI's Confidential Information to any unauthorized recipients and/or to
8 remove such Confidential Information through unsecured methods.

9
10 36. Erhart had no legitimate business purpose to obtain personal
11 possession of BofI's Confidential Information or to send BofI's Confidential
12 Information outside BofI's secure network to any third party.

13
14 37. Upon learning of Erhart's conduct alleged above, BofI promptly
15 demanded that Erhart immediately return any and all Confidential Information in his
16 possession, custody or control. BofI again demanded that Erhart return any and all
17 BofI property, and cease and desist disseminating all Confidential Information, in
18 letters to Erhart's counsel on May 12, 2015 and October 17, 2015. Despite BofI's
19 repeated demands, Erhart has not returned the Confidential Information and has not
20 informed BofI what he has done or plans to do with this information.

21
22 38. Erhart's misappropriation of Confidential Information may
23 include information that threatens the privacy interests of BofI's employees, clients,
24 and business counterparties.

25
26 39. Erhart's conduct is directly contrary to his statutory, common
27 law and contractual obligations to BofI. The extent of Erhart's misappropriation
28 and dissemination of Confidential Information is not yet clear.

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ERHART ABANDONED HIS JOB

40. Erhart last showed up to work at BofI on March 5, 2015. On March 6, 2015, Erhart requested, and was granted by BofI, an unpaid leave of absence pursuant to the Family Medical Leave Act (“FMLA”) and the California Family Rights Act (“CFRA”). Erhart’s leave of absence was exhausted on May 15, 2015, but Erhart did not return to work.

41. On June 9, 2015, BofI sent Erhart a letter informing him that because he had abandoned his job, his employment with BofI was terminated effective June 9, 2015.

42. BofI executive management did not learn about Erhart’s abuse of power, unapproved investigations and audits, and failure to perform his job duties, until on or about March 5, 2015, when BofI became aware of some of the wrongdoing alleged above.

ERHART INTENTIONALLY DESTROYED BofI PROPERTY BY DELETING DATA FROM HIS BofI-ISSUED LAPTOP

43. When Erhart took a leave of absence on March 6, 2015, he initially refused to return to BofI his BofI-owned laptop. BofI is informed and believes, and on that basis alleges, that Erhart refused to return his laptop in order to conceal his wrongful acts. BofI informed Erhart that it had not, and would not, authorize him to keep physical possession of his BofI issued laptop during his leave of absence. Likewise, Erhart’s access to BofI’s Confidential Information was discontinued during his leave of absence, as Erhart had no legitimate business reason to access Confidential Information during that time.

1 44. After BofI's repeated requests for the return of Erhart's BofI
2 issued laptop for safekeeping while he was on a leave of absence, Erhart finally
3 returned the laptop to BofI. Prior to returning his BofI issued laptop, however,
4 Erhart deleted large amounts of data, including a mass deletion of over 200 folders
5 the same day that he returned his laptop to BofI.

6
7 45. Erhart had no legal right or authority to erase and delete files
8 from his company issued laptop. The extent of Erhart's destruction of BofI property
9 is not yet clear.

10
11 **ERHART PROVIDED THE NEW YORK TIMES WITH CONFIDENTIAL**
12 **INFORMATION AND CAUSED THE SHARE PRICE OF BofI'S STOCK TO**
13 **PLUMMET**

14
15 46. On or about October 13, 2015, BofI learned that Erhart publicly
16 disclosed out of context portions of the Confidential Information through, among
17 other actions, dissemination to the New York Times and filing his complaint against
18 BofI. BofI is informed and believes, and on that basis alleges that as a result of
19 Erhart's unauthorized disclosures of the Confidential Information, BofI's stock price
20 plummeted 30.2 % in one single day. On October 17, 2015, BofI again demanded
21 that Erhart cease his unlawful conduct. BofI continues to investigate Erhart's
22 actions.

23
24 **FIRST CLAIM FOR RELIEF**
25 **(Breach of Contract – Confidentiality Agreement)**

26
27 47. BofI refers to, and incorporates herein by reference, the
28 allegations contained in paragraphs 1 through 46, inclusive, above.

1 55. At all times herein mentioned, BofI was the rightful owner and
2 entitled to possession of the Confidential Information, including, but not limited to,
3 documents containing Confidential Information that Erhart had access to by virtue
4 of his role as a Staff Internal Auditor at BofI.

5
6 56. Erhart knowingly and intentionally interfered with BofI's
7 dominion, possession, use, and ownership of its Confidential Information by
8 misappropriating such information and converting such information to his own
9 possession and use.

10
11 57. Erhart has not returned BofI's property that he took personal
12 possession of and converted to his own use without BofI's authorization or consent.

13
14 58. Erhart knew or had reason to know that BofI was lawfully
15 entitled to the property, but intentionally withheld it and/or attempted to destroy it to
16 damage BofI and/or with a conscious disregard for BofI's lawful right to ownership
17 and possession, and the privacy rights of BofI's business counterparties and clients.

18
19 59. As a proximate result of Erhart's misappropriation of the
20 Confidential Information, BofI has sustained, and will continue to sustain, damages
21 according to proof.

22
23 60. Erhart acted maliciously with the intention of causing injury to
24 BofI, or despicably with a willful and conscious disregard of the rights of BofI,
25 sufficient to justify an award of exemplary and punitive damages.

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THIRD CLAIM FOR RELIEF
(Breach of the Duty of Loyalty)

61. BofI refers to, and incorporates herein by reference, the allegations contained in paragraphs 1 through 60, inclusive, above.

62. Erhart was a BofI employee and was bound by a duty to act with the utmost good faith and solely for the benefit of BofI in all matters connected with his employment. Erhart voluntarily accepted and assumed this duty.

63. Erhart was further bound by express written agreements not to take or disclose Confidential Information.

64. Erhart, a Staff Internal Auditor, was entrusted with Confidential Information that he knew or should have known was confidential and/or privileged.

65. Erhart breached his duty of loyalty to BofI by, among other things:

(a) Exceeding his authority and using his position as a Staff Internal Auditor to conduct additional investigations and audits that were outside the scope of the 2014 and 2015 Internal Audit Plans and not sanctioned by the Audit Committee.

(b) Taking advantage of his level of access as a Staff Internal Auditor to pressure other employees into providing him with Confidential Information that he had no legitimate purpose in accessing.

1 (c) Failing to fulfill his job duties including, among other things,
2 failing to complete audits assigned to him and required for regulatory examinations.

3
4 (d) Requesting and obtaining confidential personnel information,
5 and then attempting to use this information to obtain a raise.

6
7 (e) Misappropriating and wrongfully distributing BofI's
8 Confidential Information to unauthorized recipients, and utilizing non-secure
9 channels to distribute such Confidential Information.

10
11 66. BofI is informed and believes, and on that basis alleges, that
12 Erhart intentionally and knowingly breached his duty of loyalty owed to BofI.

13
14 67. As a proximate result of Erhart's acts, BofI has sustained, and
15 will continue to sustain, damages according to proof.

16
17 **FOURTH CLAIM FOR RELIEF**
18 **(Negligence)**

19
20 68. BofI refers to, and incorporates herein by reference, the
21 allegations contained in paragraphs 1 through 67, inclusive, above.

22
23 69. Erhart owed BofI a duty to exercise due care in the performance
24 of his duties as a Staff Internal Auditor of BofI.

25
26 70. As alleged hereinabove, Erhart failed to act reasonably and to
27 exercise due care in the performance of his job duties when he conducted rogue
28

1 investigations instead of performing his required audits, and when he
2 misappropriated, destroyed, disclosed, and/or took BofI's Confidential Information.

3
4 71. As a proximate result of Erhart's taking, disclosing and/or
5 misappropriating BofI's Confidential Information, BofI has sustained, and will
6 continue to sustain, damages according to proof.

7
8 **FIFTH CLAIM FOR RELIEF**

9 **(Fraud)**

10
11 72. BofI refers to, and incorporates herein by reference, the
12 allegations contained in paragraphs 1 through 71, inclusive, above.

13
14 73. Erhart knowingly made false statements to BofI employees that
15 he was conducting authorized official investigations and audits as part of his job as a
16 Staff Internal Auditor.

17
18 74. As examples, on December 11, 15, 19, and 22, 2014, Erhart sent
19 emails to BofI employees, including but not limited to Daniel Crescitelli, Jeffrey
20 Smith, Alissa Haygood, and Derrick Walsh, to request information for his
21 unapproved payroll audit.

22
23 75. BofI's employees believed the aforementioned representations to
24 be true and reasonably relied on them in providing Confidential Information to
25 Erhart.

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1 76. Erhart made these representations to BofI employees with the
2 intent to deceive BofI and BofI employees in order to obtain Confidential
3 Information that he had no legitimate business reason to access.

4
5 77. In fact, these representations were false.

6
7 78. As a result of the fraud and deceit of Erhart, BofI has sustained,
8 and will continue to sustain, damages according to proof.

9
10 79. Erhart acted maliciously with the intention of causing injury to
11 BofI, or despicably with a willful and conscious disregard of the rights of BofI,
12 sufficient to justify the award of exemplary and punitive damages.

13
14 **SIXTH CLAIM FOR RELIEF**

15 **(Violation of California Penal Code Section 502)**

16
17 80. BofI refers to, and incorporates herein by reference, the
18 allegations contained in paragraphs 1 through 79, inclusive, above.

19
20 81. BofI is entitled to maintain a private right of action pursuant to
21 California Penal Code Section 502(e)(1).

22
23 82. BofI is informed and believes, and on that basis alleges, that
24 Erhart violated California Penal Code Section 502(c) by, among other things,
25 knowingly accessing and without permission:

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1 (a) Altering, damaging, deleting, destroying and/or using Bofl's
2 data, his Bofl issued laptop, Bofl's computer system and/or Bofl's
3 computer network to wrongfully control or obtain data.

4
5 (b) Taking, copying and/or otherwise making use of data from his
6 Bofl issued laptop, Bofl's computer system and/or Bofl's computer
7 network.

8
9 (c) Taking or copying documentation whether existing or residing
10 internal or external to his Bofl issued laptop, Bofl's computer system
11 and/or Bofl's computer network.

12
13 (d) Using Bofl's computer services, as defined in California Penal
14 Code Section 502(b)(4).

15
16 (e) Altering, damaging, deleting and/or destroying Bofl's data,
17 Bofl's computer software and/or Bofl's computer programs which
18 reside or exist internal or external to a Bofl computer, or Bofl's
19 computer system or computer network.

20
21 83. Erhart's actions that constitute violations of California Penal
22 Code Section 502(c) were not committed within the scope of his lawful employment
23 at Bofl and were not reasonably necessary to the performance of his work
24 assignments at Bofl.

25
26 84. The value of Bofl's supplies and computer services that Erhart
27 used exceed \$250.

28

1 85. As a proximate result of Erhart’s violations of California Penal
2 Code Section 502(c), BofI has sustained, and will continue to sustain, loss and
3 damages according to proof.

4
5 86. By reason of Erhart’s acts, BofI is entitled to attorney’s fees in
6 accordance with the provisions of California Penal Code Section 502(e)(2).

7
8 87. Erhart acted maliciously with the intention of causing injury to
9 BofI, or despicably with a willful and conscious disregard of the rights of BofI,
10 sufficient to justify the award of exemplary and punitive damages in accordance
11 with the provisions of California Penal Code Section 502(e)(4).

12
13 88. Until and unless enjoined by this Court, Erhart’s wrongful
14 conduct will cause irreparable injury to BofI and its clients because BofI has legal
15 obligations to safeguard the Confidential Information of its business counterparties
16 and its clients, it could lose clients if Erhart continues to misappropriate such
17 business counterparties’ and clients’ sensitive and confidential information, BofI
18 derives economic value from its data remaining confidential, and BofI is being
19 damaged by Erhart’s deletions and destruction of BofI data. BofI has no adequate
20 remedy at law for the injuries that it is currently suffering or that it could suffer in
21 the future if Erhart continues to violate California Penal Code Section 502(c).

22
23 **SEVENTH CLAIM FOR RELIEF**

24 **(Violation of Computer Fraud and Abuse Act [18 U.S.C. § 1030 et seq.]**

25
26 89. BofI refers to, and incorporates herein by reference, the
27 allegations contained in paragraphs 1 through 88, inclusive, above.

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1 90. BofI is entitled to maintain a private right of action under the
2 Computer Fraud and Abuse Act pursuant to 18 U.S.C. § 1030(g).

3
4 91. BofI is informed and believes, and on that basis alleges, that
5 Erhart violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(5) when he
6 knowingly caused the transmission of a program, information, code or command,
7 and as a result of such conduct, intentionally caused damage without authorization
8 to a protected computer.

9
10 92. Erhart knowingly deleted large amounts of data from his BofI
11 issued laptop, and intentionally caused damage, without authorization, to his laptop.

12
13 93. Erhart's BofI issued laptop was a protected computer under the
14 Computer Fraud and Abuse Act. Erhart's BofI issued laptop was provided to Erhart
15 exclusively for his use as a Staff Internal Auditor at BofI, a financial institution with
16 deposits insured by the Federal Deposit Insurance Corporation, and it was used in,
17 or affected, interstate and foreign commerce.

18
19 94. Erhart caused an impairment to the integrity or availability of
20 data, a program, a system, or information by deleting massive amounts of data from
21 his laptop. BofI has attempted to restore the data, program, system, or information
22 to its condition prior to Erhart's deletions of data.

23
24 95. As a proximate result of Erhart's violations of the Computer
25 Fraud and Abuse Act, BofI has sustained, and will continue to sustain, loss and
26 damages according to proof, but in excess of \$5,000.

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EIGHTH CLAIM FOR RELIEF

(Unfair Business Practices in Violation of California Business & Professions Code Section 17200, et seq.)

96. BofI refers to, and incorporates herein by reference, the allegations contained in paragraphs 1 through 95, inclusive, above.

97. Erhart’s unlawful, unfair and/or fraudulent acts alleged in each and every one of the causes of action contained herein constitute unfair competition under California Business & Professions Code Sections 17200 *et seq.*

98. By virtue of the wrongful conduct alleged above, including Erhart’s wrongful emailing, taking, removing, refusing to return, deleting, and disclosing BofI’s Confidential Information, and conducting rogue investigations Erhart has engaged in unfair competition and/or unlawful or fraudulent business acts or practices in violation of California Business & Professions Code Sections 17200 *et seq.*, that has injured BofI and resulted in out of pocket losses, thereby entitling BofI to injunctive and restitutionary relief as provided by California Business & Professions Code Section 17203.

WHEREFORE, BofI prays for judgment set forth as follows.

PRAYER

WHEREFORE, BofI prays for the following:

- 1. For direct and consequential damages proven at trial;

1 2. For a preliminary injunction and a permanent injunction,
2 requiring Erhart and/or his agents, servants, employees, and all persons acting
3 under, in concert with, or for him to:

4
5 (a) Refrain from disclosing, reviewing, sharing, transmitting,
6 and using any of the BofI Confidential Information and property that he (Erhart)
7 removed from BOFI.

8
9 (b) Provide a list of all materials he (Erhart) removed from
10 BofI, including the date the item was taken (referred to as the “Inventory”).

11
12 (c) Provide a list of all individuals to whom Erhart or his
13 counsel has disclosed each item on the Inventory.

14
15 (d) Deliver to BofI each item on the Inventory, including any
16 copies and/or summaries, extracts and/or other documents that reference any
17 materials in the Inventory.

18
19 (e) Provide a signed declaration from Erhart that the
20 Inventory and list of individuals provided in subsection (c) is accurate, that all items
21 on the Inventory, including copies and summaries of its content, have been returned
22 and that neither he nor his agents, including attorneys, have retained any copies
23 and/or summaries, extracts and/or other documents that reference any materials in
24 the Inventory. Erhart’s declaration shall also identify each and every transmission
25 of items on the Inventory, including the person to whom he disseminated the item,
26 and the date, time, and method of each transmission, including any oral
27 transmission.

28

1 (f) Delete all references to BofI’s Confidential Information in
2 his possession, custody or control.

3
4 (g) Desist from deleting and destroying BofI’s data without
5 the express authorization of BofI.

6
7 3. For exemplary and punitive damages;

8
9 4. For costs, including attorney’s fees; and

10
11 5. For such other and further relief as the Court deems just and
12 proper.

13
14 Dated: November 6, 2015

15 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

16
17 By _____ *s/Polly Towill*
18 POLLY TOWILL

19 Attorneys for Plaintiff
20 BofI FEDERAL BANK
21 Email: ptowill@sheppardmullin.com

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