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**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

CHARLES MATTHEW ERHART, an individual,

Plaintiff,

vs.

BOFI HOLDING INC., an entity, d/b/a BOFI FEDERAL BANK and BANK OF THE INTERNET,

Defendant.

Case No.: '15CV2287 BAS NLS

**COMPLAINT FOR DAMAGES AND OTHER RELIEF**

1. Whistleblower Retaliation in Violation of Sarbanes-Oxley Act
2. Whistleblower Retaliation in Violation of Dodd-Frank Act
3. Retaliation in Violation of Labor Code § 1102.5
4. Violation of California Medical Information Act
5. Wrongful Termination in Violation of Public Policy
6. Unfair Business Practices (Bus. & Prof. Code §§ 17200 et seq.)
7. Breach of Implied Covenant of Good Faith and Fair Dealing
8. Intentional Infliction of Emotional Distress
9. Defamation
10. Declaratory Relief

**JURY TRIAL DEMANDED**

Plaintiff CHARLES MATTHEW (“MATT”) ERHART, demanding a jury trial, alleges, on information and belief, the following in support of his complaint:

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1 **JURISDICTION AND VENUE**

2 1. This action arises under the whistleblower protection provisions of the  
3 Sarbanes-Oxley Act, 18 U.S.C. § 1514A *et seq.* and the whistleblower protection  
4 provisions of the Dodd-Frank Act, 15 U.S.C. § 17u-6 *et seq.* Jurisdiction is  
5 invoked pursuant to 28 U.S.C. § 1331, as well as under 28 U.S.C. § 1343(a)(4),  
6 and 28 U.S.C. §§ 2201 and 2202. This suit is authorized and instituted pursuant to  
7 the above federal statutes. The jurisdiction of this Court is invoked to secure  
8 protection of and to redress deprivation of rights secured by the Sarbanes-Oxley  
9 Act and the Dodd-Frank Act. This court has ancillary jurisdiction of the state law  
10 claims because they are sufficiently related to the federal claims.

11 2. Venue is proper under 28 U.S.C. § 1391 because Defendant’s  
12 principal place of business is in this district. Venue is also proper because a  
13 substantial part of the events or omissions giving rise to the claim occurred in this  
14 judicial district.

15 **PARTIES**

16 3. Plaintiff CHARLES MATTHEW (“MATT”) ERHART (hereinafter  
17 “Mr. Erhart” or “Plaintiff”) resides in San Diego County, California. He was  
18 hired by Defendant to perform work as an internal auditor in San Diego,  
19 California, performing audits of a variety of aspects of BOFI’s operations. For  
20 many reasons it is critical that Internal Audit be independent of management.  
21 Plaintiff performed his job competently at all relevant times. As the facts below  
22 will demonstrate, Plaintiff reasonably believed he uncovered numerous violations  
23 of federal and state law by BOFI, appropriately went up the chain of command to  
24 notify the Bank, and in all respects tried to get the Bank into compliance. Instead  
25 of being thanked by Bank management for his efforts, Plaintiff was repeatedly  
26 threatened, harassed and ultimately fired for trying to do the right thing.

27 4. At all material times to this action, Defendant BOFI HOLDING  
28 INC., an entity, d/b/a BOFI FEDERAL BANK and BANK OF THE INTERNET

1 was a publicly traded company (NASDAQ symbol: BOFI) headquartered at 4350  
2 La Jolla Village Drive, Suite 140, San Diego County, California 92122  
3 (hereinafter “BOFI”, Defendant, or “the Bank”). BOFI is the holding company  
4 for BOFI Federal Bank.

5 5. BOFI boasts on its website ([www.bofiholding.com](http://www.bofiholding.com)) that its  
6 performance has it ranked #1 in the country among the largest public thrifts. Its  
7 assets exceed \$5.8 billion. BOFI stock recently reached an all-time high of  
8 \$143.92 per share. On information and belief, BOFI’s valuation is based, at least  
9 in part, upon inaccurate information being supplied by the Bank to the public and  
10 the regulators.

11 6. BOFI is regulated by, among others, the Board of Governors of the  
12 Federal Reserve System (the “Federal Reserve”), the Office of the Comptroller of  
13 the Currency (“OCC”), the Federal Deposit Insurance Corporation (“FDIC”), the  
14 Securities and Exchange Commission (“SEC), the Financial Industry Regulatory  
15 Authority (“FINRA”) and the Consumer Financial Protection Bureau (“CFPB”).

16 7. BOFI is subject to a variety of statutory schemes including, without  
17 limitation, the Bank Secrecy Act of 1970 (“BSA”), the USA PATRIOT Act  
18 including the Know Your Customer Rule (“KYC”), the Dodd-Frank Act,  
19 Sarbanes-Oxley Act of 2002 (“SOX”), the Securities Act of 1933 and the  
20 Securities Exchange Act of 1934.

### 21 **EXHAUSTION OF REMEDIES**

22 8. Plaintiff timely filed complaints with federal agencies including the  
23 United States Department of Labor, Occupational Safety and Health  
24 Administration, and the SEC. More than 180 days have elapsed since filing those  
25 complaints. Plaintiff has therefore exhausted his administrative remedies.

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1 **FACTUAL ALLEGATIONS RELEVANT TO ALL CAUSES OF ACTION**

2  
3 **The Structured Settlements and Lottery Audit**

4 9. On or about September 23, 2013, Mr. Erhart started his employment  
5 at BOFI as an internal auditor, following a stint at FINRA. He reported to  
6 Jonathan Ball, Vice President, Internal Audit.

7 10. Higher than Mr. Ball in the Bank's management was John Tolla,  
8 Senior Vice President Audit and Compliance, to whom the Audit Department was  
9 to report for administrative purposes only. This is critically important because of  
10 the need for Internal Audit to have independence to do its function without undue  
11 pressure from senior management.

12 11. On or about December 19, 2013, Plaintiff sent an Exit Meeting  
13 request for an audit he was completing, the Structured Settlements and Lottery  
14 internal audit. This is a standard procedure at the conclusion of an audit.

15 12. One of BOFI's unusual sources of revenue derives from purchasing  
16 structured settlements from plaintiffs in litigation, and lottery payments from  
17 winners of lotteries. BOFI, through its subsidiary Anfed Bank, has a team of  
18 callers who cold-call prospects with the goal of purchasing the income streams  
19 from these individuals, offering them a lump sum in lieu of the periodic payments  
20 they are receiving. BOFI also solicits this target group through a website,  
<https://www.anfedbank.com/lottery-payments>.

21 13. One of Plaintiff's major findings in the audit was that BOFI's callers  
22 were not notifying people they called that the calls were being recorded, in  
23 violation of California Penal Code § 632.

24 14. Approximately 15 minutes after Plaintiff sent the request for the Exit  
25 Meeting, the Chief Executive Officer of BOFI, called Plaintiff on his work phone.  
26 This is highly unusual and grossly inappropriate.

27 15. Approximately 30 minutes after Plaintiff sent the request, Senior  
28 Vice President John Tolla called Plaintiff into his office and instructed him to

1 never state in an audit report that the Bank violated a federal or state law.

2 16. Approximately one hour after Plaintiff was called into Tolla's office  
3 and given that instruction, Plaintiff was summoned to a second meeting with  
4 Eshel Bar-Adon, the Bank's Chief Legal Officer, together with Plaintiff's  
5 manager Jonathan Ball. Mr. Bar-Adon instructed Plaintiff and Mr. Ball to remove  
6 evidence of the violation of California Penal Code § 632 from the Structured  
7 Settlements and Lottery Audit. Again, this was grossly inappropriate conduct on  
8 the part of a senior officer of the Bank. Mr. Ball informed the Chief Legal Officer  
9 that Internal Audit could not do that. Then Mr. Bar-Adon instructed Plaintiff to  
10 mark the entire report "Attorney Client Privileged," explaining that he was  
11 concerned the finding could be discoverable in class action litigation against the  
12 Bank, which would be expensive to defend. Plaintiff acceded to this order, but  
13 held fast in his refusal to remove the finding from the audit. Marking the report as  
14 "Attorney Client Privileged" could mean that the Bank would refuse to turn it  
15 over in litigation, hiding important evidence from litigants, counsel and courts. In  
16 addition, Mr. Bar-Adon instructed Plaintiff not to speak to an employee in the  
17 Structured Settlements and Lottery Department with whom he was friendly.

18 **Potentially Altered Financials**

19 17. In or about January 2014, Thomas Constantine, the Bank's  
20 Chief Credit Officer, told Plaintiff, Jonathan Ball and others at a meeting that he  
21 is not responsible for any of the Bank's numbers after they are turned over to the  
22 Chief Financial Officer, Andrew Micheletti. He reiterated that he could and  
23 would not vouch for the accuracy of the numbers once the CFO had them.

24 Plaintiff reasonably understood this to mean that senior Bank management,  
25 at the CFO level and above, may be falsifying the Company's financials. If so,  
26 that is a serious criminal offense.

27 **Untimely Contributions of Employee 401k Elective Deferrals**

28 18. In or about the middle of 2014 Plaintiff and a fellow employee in

1 Internal Audit did a Payroll Audit. They found that the Bank had not been making  
2 timely deposits to employees' 401k accounts for employee elective deferrals,  
3 contrary to law. Plaintiff found untimely deposits made (from 1-16 days late) for  
4 a total of 10 pay periods. When Plaintiff asked SVP Tolla about this, Tolla said it  
5 had to do with the H&R Block deal and moving around of assets. That deal had  
6 not even been approved yet and would not be for months. The answer made no  
7 sense. On information and belief an employee asked CFO Micheletti if the Bank  
8 would elect to self-report the problem to the Internal Revenue Service and  
9 Department of Labor to take corrective action. On information and belief no  
10 corrective action occurred.

11 **Fiscal 2015 Strategic Plan Not Properly Approved**

12 19. Plaintiff conducted the Fiscal 2014/2015 Business Plan Audit.  
13 During the October 30, 2014 Exit Meeting, CFO Micheletti and Chief  
14 Performance Officer Jan Durrans were present. Plaintiff had learned that the  
15 Strategic Plan had not been approved at any of the following Board of Directors  
16 meetings: May 1, 2014; July 2014; September 2014. Angela Lopez, Vice  
17 President of Corporate Governance and Corporate Secretary, wrote that the Board  
18 was dark in November and December, and that the revised budget might be  
19 submitted in January 2015.

20 20. As of January 28, 2015, Derrick Walsh, Chief Accounting Officer,  
21 wrote that the strategic plan and budget for Fiscal 2015 were still not approved,  
22 due to an earnings call and other items "taking precedent, sorry."

23 21. Then, magically, amazingly, on or about February 10, 2015 CPO  
24 Durrans presented Internal Audit's head Jonathan Ball with a document titled  
25 "Action by Unanimous Written Consent of the Board of Directors in Lieu of a  
26 Meeting" dated July 7, 2014, purporting to have approved the Fiscal 2015  
27 strategic plan and budget seven months earlier. Each signature was copied and  
28 pasted, further proof that the Board did not actually approve the Fiscal 2015

1 Strategic Plan on July 7, 2014 or at any later date.

2 **Deposit Concentration Risk Findings**

3 22. On or about November 21, 2014, Plaintiff sent an email to the  
4 Bank's Chief Risk Officer, Thomas Williams, in preparation for the upcoming  
5 Enterprise Risk Management ("ERM") audit. Plaintiff asked whether Mr.  
6 Williams thought the Bank had a deposit concentration risk. This is a serious  
7 concern for a bank. Where a large percentage of its deposits are derived from a  
8 few depositors, sudden withdrawals can pose a serious challenge to a Bank's  
9 ability to keep its doors open as well as maintain its compliance with regulators.

10 23. Plaintiff was concerned and reported that a mere four customers  
11 accounted for approximately 25% of total deposits, and nine customers accounted  
12 for approximately 40% of total deposits. Plaintiff was aware that other banks had  
13 gotten into trouble with regulators for deposit concentration levels lower than  
14 this. Mr. Williams responded, but copied SVP John Tolla on the response.

15 24. SVP Tolla then summoned Plaintiff to his office (again) and,  
16 commenting on Plaintiff's email to Mr. Williams, instructed Plaintiff not to put  
17 his concerns in writing: "Don't send that in an email, go have the conversation."  
18 Once again BOFI was instructing audit staff not to create written evidence of its  
19 non-compliance and illegal conduct. This inevitably compromises Internal  
20 Audit's independence and represents a gross conflict of interest.

21 **Plaintiff's Downgraded Performance Evaluation and Bonus**

22 25. In or about December 2014, Plaintiff received his performance  
23 review from Jonathan Ball. His rating was downgraded by SVP John Tolla,  
24 specifically referencing Plaintiff's putting findings in writing. Furthermore, Mr.  
25 Tolla had complete discretion to determine bonuses, and Plaintiff's bonus was  
26 adversely affected by Tolla's rating and bonus decision. This is a direct conflict  
27 of interest to have someone in Tolla's position able to reward and punish Internal  
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1 Audit employees depending on how well they comply with upper management's  
2 desires to hide illegalities and non-compliance.

3 **SEC Subpoena**

4 26. On or about December 12, 2014, the SEC served a subpoena on  
5 BOFI, requesting account identifying information for a certain investment  
6 advisory firm with initials ETIA LLC ("ETIA"). On or about December 18, 2014  
7 the Bank responded to the SEC that it did not have any information regarding  
8 ETIA.

9 27. In or about early January 2015, Plaintiff became aware of the SEC  
10 subpoena, and knew that the Bank did indeed have a loan file containing  
11 information regarding ETIA. Plaintiff further learned that a file had been created  
12 in response to the SEC subpoena, containing the information located regarding  
13 ETIA. In the course of investigating why the file was not turned over to the SEC  
14 in response to its subpoena, Plaintiff learned from a Bank employee (name with  
15 initials CT) that she had informed the Bank's legal department of the existence of  
16 the file on or about December 17, 2014, *before* the Bank sent its response to the  
17 SEC denying the existence of any such files.

18 28. Approximately three hours after interviewing Bank employee CT,  
19 Plaintiff was informed by Mr. Ball, his boss, that the Bank's Chief Lending  
20 Officer, Brian Swanson, was upset about the interview and said that Plaintiff  
21 should cease performing his duties to the extent they involved interviewing "his"  
22 employees.

23 29. Shortly thereafter, Plaintiff placed a call to the SEC to be sure it was  
24 aware of the situation regarding the ETIA subpoena.

25 30. A few days later, Plaintiff was called in (yet again) to SVP Tolla's  
26 office, and told that he had handled the ETIA investigation wrong, that he should  
27 not have interviewed employee CT, but should have gone instead to Mr.  
28 Swanson. SVP Tolla told Plaintiff that there was nothing "nefarious" going on  
with respect to the subpoena. Plaintiff was upset at this inappropriate interference



1 from upper management again, and asked his manager Mr. Ball whether he  
2 Plaintiff, in fact had done anything wrong. Mr. Ball reassured Plaintiff he had  
3 acted appropriately and that it was Mr. Tolla who was wrong.

4 31. In or about February 2015, Plaintiff submitted two whistleblower  
5 tips to the SEC, one regarding the ETIA subpoena issue, and another regarding a  
6 suspicious loan customer, whom Plaintiff suspected of operating as an  
7 unregistered broker/investment advisor. He submitted them through his work  
8 computer, and BOFI had knowledge of his whistleblowing.

9 **Failure to Disclose Accounts with No Tax Identification Numbers**

10 32. On or about January 15, 2015, the Bank's principal regulator, the  
11 OCC (Office of the Comptroller of the Currency) requested information on Bank  
12 accounts with no Tax Identification Numbers ("TIN's"). The Bank responded to  
13 the OCC that there were no accounts without TIN's. This was knowingly false, as  
14 Plaintiff saw a spreadsheet in the BSA ("Bank Secrecy Act") folder disclosing  
15 approximately 150-200 accounts where the borrower does not have a TIN.

16 **Failure to Disclose Grand Jury and Other Subpoenas**

17 33. In or about February 2015, the OCC requested that the Bank disclose  
18 all correspondence with federal and state banking agencies and law enforcement,  
19 to include any and all subpoenas, criminal or otherwise. The Bank responded that  
20 it had not received any such documents for the review period in question. This  
21 was false, as Plaintiff saw a BSA spreadsheet that identified many subpoenas,  
22 including from law enforcement agencies, grand juries, and even from the U.S.  
23 Department of the Treasury, of which OCC is a part. Furthermore, Plaintiff sat  
24 next to the Bank employee who received and logged in subpoenas, and heard  
25 comments about how many there were and how frequently the Bank was served  
26 with subpoenas.

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1                   **Failure to Disclose Loans to Criminals, Politically Exposed Persons**

2           34.    In or about January 2015, Plaintiff conducted a Loan Origination  
3    Audit. He discovered that the Bank was making substantial loans to foreign  
4    nationals including Politically Exposed Persons (“PEP’s”) in potential violation  
5    of BSA/Know Your Customer rules. Plaintiff was able to readily uncover  
6    information that many of the borrowers were criminals, even notorious criminals,  
7    and other suspicious persons who put the bank at high risk for violating the Bank  
8    Secrecy Act’s Anti-Money Laundering Rules (“AML Rules”) as well as exposing  
9    the Bank to reputational risk. The purpose of the AML Rules is to help detect and  
10   report suspicious activity including the predicate acts to money laundering and  
11   terrorist financing. The PEP’s included very high level foreign officials from  
12   major oil-producing countries and war zones.

13                   **SVP Tolla Materially Altered Bank Secrecy Act QC Findings**

14           35.    In or about early 2015 Plaintiff discovered that SVP Tolla had  
15   repeatedly changed the findings on numerous reports required under the Bank  
16   Secrecy Act’s Quality Control (“QC”) requirements.

17                   **BOFI Improperly Accounts for Allowances for Loan and Lease Losses**

18           36.    In or about early 2015 Plaintiff discovered that the Bank recently  
19   calculated Allowances for Loan and Lease Losses (“ALLL”) to exclude unfunded  
20   commitments for lines of credit. The size of the unfunded commitments excluded  
21   from ALLL meant the ALLL may have been materially miscalculated, which  
22   could materially impact the Bank’s earnings.

23                   **Material Omissions in Floor Disaster Protection Act Audit (“FDPA”)**

24           37.    Plaintiff was reassigned the FDPA Audit after another employee  
25   resigned. A previous Compliance employee had found issues with 49 of the 51  
26   samples she pulled. That employee told Plaintiff she was so disgusted with the  
27   Bank’s nonexistent culture of compliance that she quit her job. Yet another  
28

1 employee previously produced a Compliance Review identifying many issues,  
2 and then resigned. Plaintiff discovered that the Bank had buried and never issued  
3 the reviews.

4 38. Plaintiff investigated and verified the negative findings made by his  
5 predecessors. He presented them to management, who caused most of the  
6 negative findings to be excluded from the Audit Report, leaving in only a small  
7 fraction of the findings.

8 39. The FDPA Audit was a matter of considerable interest to OCC  
9 examiners, from whom material information was purposely withheld.

#### 10 **Global Cash Card Reviews for High Risk Customers**

11 40. During the week of January 26, 2015, Plaintiff and a coworker met  
12 with the Bank's Deputy BSA Officer Third Parties to talk about Global Cash  
13 Card ("GCC") Customer Identification Program ("CIP") reviews for high-risk  
14 customers. On information and believe GCC is a vendor that provides cash cards  
15 that companies can issue to employees in lieu of traditional paychecks, or for  
16 other purposes.

17 41. On or about February 12, 2015, Plaintiff and a coworker prepared an  
18 Internal Audit Memorandum with their findings from the GCC review. The OCC,  
19 then conducting its onsite examination at BOFI, asked that third party vendors  
20 like GCC rate their customers. When the GCC high-risk customer list was  
21 initially presented to SVP John Tolla, approximately 30% of the customers on the  
22 list were "bad" – i.e., the verification process produced alerts. The list included at  
23 least one social security number ("SSN") belonging to a deceased person, 30  
24 SSN's that could not be found in public records, scores of SSN's that did not  
25 match the customer's name or were issued before the customer's date of birth was  
26 born, many had suspiciously high cash balances, even exceeding \$70,000.

27 42. SVP Tolla demanded that a new list be produced, and one was  
28 dutifully done that did not feature any "bad" Customer Identification Program

1 (“CIP”) data. The original list with the “bad” data was not turned over to the  
2 OCC; the new, sanitized list was. BOFI then terminated its relationship with  
3 GCC, and SVP Tolla repeatedly instructed staff not to inform the OCC about why  
4 the relationship was terminated. On information and belief CEO Gregory  
5 Garrabrants was party to the discussion when the “bad” CIP data was first  
6 discovered and GCC provided the initial high-risk customer list to the Bank.

7 43. Plaintiff and a coworker located the original high-risk customer list  
8 the Bank received from GCC, including the “bad” data. They attached it as an  
9 exhibit to the February 12 Memorandum, which was intended to be presented to  
10 the Audit Committee until the events described below prevented that from  
11 occurring.

#### 12 **Plaintiff Finds Improprieties in the CEO’s Personal Accounts**

13 44. In early 2015 Plaintiff and others conducted a review of personal  
14 deposit accounts of senior management. In doing so Plaintiff discovered that CEO  
15 Gregory Garrabrants was depositing third-party checks for structured settlement  
16 annuity payments into a personal account, including nearly \$100,000 in checks  
17 made payable to third parties. Plaintiff documented this in an internal audit memo  
18 to Jonathan Ball dated January 20, 2015. Plaintiff also learned that the issue of  
19 Mr. Garrabrants’ depositing of third-party checks had previously been raised to  
20 the Audit Committee before he started working at the Bank, and that restrictions  
21 were imposed on him. Plaintiff was concerned as to whether or not the CEO was  
22 reporting the income to the IRS.

23 45. In the course of reviewing employee deposit accounts at the Bank,  
24 Plaintiff also discovered that the largest consumer account at the Bank has the  
25 Tax Identification Number (“TIN”) of the CEO’s brother, Steven Garrabrants.  
26 The account had a balance of approximately \$4 million, and the CEO was the  
27 signer on the account. As Steven Garrabrants was a minor league baseball player  
28 earning poverty wages, Plaintiff could find no evidence of how he had come  
legally into possession of the \$4 million wired into the account. From the

1 foregoing, Plaintiff was concerned about whether CEO Garrabrants could be  
2 involved in tax evasion and/or money laundering. He saved the folder regarding  
3 this work in an Audit Department file on his work computer.

4 **Other Instances of Wrongdoing Uncovered by Plaintiff**

5 46. The foregoing instances described in Paragraphs 9-45 form an  
6 incomplete list of the instances of wrongdoing Plaintiff uncovered at the Bank.  
7 He documented these matters in files on BOFI's computers and in locked file  
8 cabinets in his work space. In fact, the Bank's Deputy BSA Officer stated, in  
9 front of others, that one problem with Plaintiff was that he was too good at his  
10 job. Plaintiff reported each of these matters to appropriate government agencies  
11 as a whistleblower in April 2015.

12 **SVP John Tolla's Threat to Plaintiff**

13 47. On or about January 27, 2015, SVP John Tolla walked by Plaintiff  
14 working at his computer. He stated, in the presence of others, "If Matt [Plaintiff]  
15 continues to turn over rocks, eventually he is going to find a snake and he's going  
16 to get bit." Plaintiff reasonably viewed this as a direct and serious threat, and  
17 became concerned for his personal safety as well as for his job.

18 48. On or about February 4, 2015, Plaintiff informed his manager, Mr.  
19 Ball, about the threat he had received from SVP Tolla. Mr. Ball asked Plaintiff if  
20 he wanted to bring the matter to the Bank's Audit Committee. Plaintiff declined,  
21 because he was in the midst of conducting several investigations and audits, and  
22 feared that his work would come to an abrupt halt, without the Audit Committee  
23 or federal regulators being made aware of the Bank's wrongdoing.

24 **BOFI Refuses To Let Employees Communicate Via Outlook (Email)**

25 49. On or about February 12, 2015, Plaintiff emailed an OCC Examiner  
26 who was onsite working on the BOFI examination. He informed the examiner  
27 that SVP Tolla told all members of the Internal Audit Department that week that  
28

1 they would no longer be permitted to use Microsoft Outlook to communicate. On  
2 information and belief SVP Tolla gave this directive did not want a paper trail  
3 regarding Bank improprieties.

#### 4 **John Ball Abruptly Resigns After Refusing to Break the Law**

5 50. In or about late February 2015, during or after the OCC onsite  
6 examination, Plaintiff's manager Mr. Ball informed the Internal Audit department  
7 that a meeting would be held to discuss major findings that needed to be  
8 presented to the Bank's Audit Committee. This was a huge step. Mr. Ball felt that  
9 the level of wrongdoing at the Bank had become so egregious that the staff had no  
10 choice but to bring it up to the Audit Committee. The meeting was so sensitive  
11 that Mr. Ball turned up a radio so that the discussion could not be overheard  
12 outside his office. Mr. Ball said he planned to present memos from the Internal  
13 Audit staff, including Plaintiff, to the Audit Committee, documenting the  
14 wrongdoing.

15 51. On or about March 5, 2015, Mr. Ball resigned abruptly after refusing  
16 an order from CEO Garrabrants to engage in what Mr. Ball reasonably viewed to  
17 be unlawful conduct to cover up the Bank's wrongdoing. Mr. Ball had spent five  
18 years at the Bank.

19 52. Shortly thereafter SVP Tolla came into the Bank's offices and told  
20 the members of the Bank's Audit and Compliance Department *not* to inform the  
21 OCC that Mr. Ball had resigned. Plaintiff and a coworker had already told the  
22 OCC examiners, however. CEO Garrabrants also grilled Internal Audit  
23 employees about why Ball had resigned, but the employees refused to state why.

#### 24 **Plaintiff Becomes Ill and Calls Off Work**

25 53. Plaintiff became even more concerned for his well being after Mr.  
26 Ball's sudden resignation. He felt very unwell and the following day, March 6,  
27 2015, he called off sick. He informed a coworker in Internal Audit of his illness,  
28 and asked her to pass the word to SVP Tolla, since no one had yet taken Mr.

1 Ball's place as Plaintiff's manager.

2 54. On or about Friday, March 6, 2015, at approximately 7:30 am,  
3 Plaintiff's coworker called Plaintiff and told him that SVP Tolla said Plaintiff was  
4 to attend a "non-optional" call with the OCC. The coworker confirmed she told  
5 Mr. Tolla he was off sick. She further informed him that SVP Tolla was going  
6 through Mr. Ball's email and found the Internal Audit Memo Plaintiff and the  
7 worker wrote regarding the Global Cash Card High Risk Customer Review,  
8 described in Paragraphs 40-43 above.

9 **Tolla Breaks Into Plaintiff's Locked Cabinets and Computer**

10 55. Plaintiff became extremely concerned that the Bank would try to  
11 destroy the records of wrongdoing that Plaintiff had placed on the Bank's  
12 computers. That same morning, March 6, 2015, he called the Denver Regional  
13 Office of the OCC and said he was seeking whistleblower protection. An  
14 appointment with the OCC was confirmed for Monday, March 9, 2015.

15 56. Meantime, around 9:38 am that same Friday SVP Tolla was calling  
16 Plaintiff on his cell phone, instructing Plaintiff to call him. Later that same  
17 morning, Plaintiff heard from a coworker that "they opened up your computer"  
18 and a text stating: "Tolla is going crazy over here bro. Going through balls  
19 computer too. Fyi."

20 **Plaintiff Engages in Whistleblowing to the OCC**

21 57. At approximately 11:27 am that same day Plaintiff emailed the OCC  
22 a copy of the Internal Audit Memo regarding the Global Cash Card High Risk  
23 Customer Review, which SVP Tolla had discovered that morning. Plaintiff  
24 wanted to be sure the OCC did not think it was Mr. Ball who was hiding  
25 information from them. He further disclosed that both the CEO and SVP Tolla  
26 had discovered the memo, and that he feared upper management had accessed his  
27 work laptop remotely. He informed the OCC that he would not return to work  
28

1 until he spoke with them at the appointed time the following Monday.

2 58. Minutes later Plaintiff received a phone call from a coworker that  
3 SVP Tolla had a Bank employee open up the locked file cabinets at Plaintiff's  
4 desk and was going through all the documents. The coworker further informed  
5 him that Tolla had found the expanded scope Internal Audit review of personal  
6 accounts of the CEO, which Plaintiff believed showed potential tax evasion,  
7 described in Paragraphs 44-45 above.

8 59. SVP Tolla continued to call Plaintiff's mobile phone repeatedly  
9 throughout that Friday, but did not leave any voicemails after the first one that  
10 morning.

11 60. The following day, Saturday, March 7, 2015, Plaintiff received a text  
12 from a coworker telling Plaintiff that the CEO grilled her for nearly an hour about  
13 why Internal Audit was looking at his accounts. That coworker further stated,  
14 "We had an all hands yesterday where John [Tolla] and Greg [Garrabrants] spoke  
15 about you and Jon [Ball]. It was terrible."

16 **BOFI Prepares to Terminate Plaintiff**

17 61. Meanwhile, as Plaintiff learned later, the Bank had a termination  
18 letter prepared that Friday, March 6, firing Plaintiff, that it attempted to deliver to  
19 Plaintiff. The letter ended up not being delivered to Plaintiff. On information and  
20 belief, the Bank also intended to and may have informed local police authorities  
21 that day that it wanted Plaintiff's apartment searched and his computer seized and  
22 for him to be arrested. Plaintiff was extremely fearful. As it happened, the police  
23 did not arrive, at least not while Plaintiff was home, to his knowledge.

24 62. However, on information and belief the Bank sent someone to  
25 Plaintiff's residence that day to attempt to deliver the termination letter and  
26 recover Plaintiff's work laptop.

27 63. By early Monday morning, March 9, 2015, Plaintiff had learned that  
28 SVP Tolla was falsely claiming to Plaintiff's coworkers that the Bank had not



1 heard from him for 48 hours and that this was grounds for termination. Plaintiff  
2 sent an email at 6:25 am to SVP Tolla and several others reminding Tolla that he  
3 had called off sick Friday and said would do so today, and was seeking an  
4 appointment with his physician to discuss a medical leave of absence. He stated,  
5 “I am in no mental state to discuss anything on the phone.”

6 **Plaintiff Turns Over Records to the OCC**

7 64. That same morning Plaintiff also heard from an OCC Attorney  
8 confirming that his communications with the OCC would be covered under the  
9 applicable whistleblower protection statute.

10 65. That afternoon, March 9, Plaintiff had a lengthy phone call with the  
11 OCC, lasting nearly two hours. He was directed to bring any documents he had to  
12 their Carlsbad office the following morning.

13 66. Meanwhile Plaintiff received text messages from a Bank employee  
14 trying to arrange to deliver an envelope to Plaintiff as well as retrieve his work  
15 laptop. On information and belief, the envelope contained his termination letter.

16 67. On information and belief, it was highly unusual for the Bank to  
17 demand return of the work laptop of an employee who was out sick, even when  
18 the employee is on an extended medical leave under the Family Medical Leave  
19 Act (“FMLA) or the California Family Rights Act (“CFRA”), Rather, the Bank  
20 had decided to terminate Plaintiff and feared his disclosures to regulators, and  
21 wanted to seize the evidence before it could be turned over to regulators.

22 68. The following morning, Tuesday, March 10, Plaintiff went to the  
23 OCC office in Carlsbad, turned over evidence, and then that day and the  
24 following he continued to fax documents that the OCC was unable to download  
25 and encrypt during the Carlsbad meeting.

26 69. On Wednesday, March 11, an OCC attorney confirmed to Plaintiff  
27 that he had received the documentation. He also told Plaintiff that the Bank had  
28 informed the OCC that it was going to call the San Diego police to go to  
Plaintiff’s residence and seize his computer. The Bank was obviously well aware

1 of Plaintiff's whistleblowing activities.

2 70. On Thursday, March 12, Plaintiff went to BOFI to return the laptop.  
3 Mr. Bar-Adon, Chief Legal Officer, ordered him to come to a conference room to  
4 speak. Plaintiff reiterated he was in no mental state to speak to management. MR.  
5 Bar-Adon then claimed he was acting as General Counsel to the Audit  
6 Committee. Plaintiff continued to refuse to speak to him, but told him he would  
7 speak to the Audit Committee at a later time. That same day, a BOFI employee  
8 called Plaintiff and told him that an employee in Compliance had processed  
9 Plaintiff's termination paperwork the previous week (believed to have occurred  
10 the previous Friday, March 6, 2015).

11 **Tolla and Garrabrants Make False Accusations About Plaintiff**

12 71. On or about Saturday, March 14, 2015, a BOFI employee told  
13 Plaintiff that SVP Tolla was telling employees that Plaintiff was responsible for a  
14 negative article about BOFI on the Seeking Alpha website published December 2,  
15 2014. SVP Tolla had actually called Plaintiff "Seeking Alpha" to his face the  
16 previous month. Plaintiff was not responsible for the article.

17 72. Plaintiff submitted paperwork to BOFI for a medical leave of  
18 absence. He remained out until he was officially fired June 9, 2015. On  
19 information and belief during Plaintiff's medical leave CEO Garrabrants grilled a  
20 coworker of Plaintiff's about the extent of Plaintiff's knowledge as compared  
21 with Ball's on matters that could hurt the Bank.

22 73. On or about April 10, 2015, two coworkers informed Plaintiff that  
23 SVP Tolla stated, at an "All Hands Meeting" of members of Audit and  
24 Compliance that any information Plaintiff provided to the OCC could not be  
25 considered credible because of Plaintiff's "psychiatric medical leave." This was  
26 false.

27 74. SVP Tolla and CEO Gregory Garrabrants told this same group of  
28 employees that Plaintiff's whistleblowing activities were "malicious." This was  
false. CEO Garrabrants also told Bank employees that he was going to "bury the

1 BOFI whistleblower.” Plaintiff only hopes this is false.

2 75. As a result of Defendant’s actions, Plaintiff suffered substantial  
3 losses in earnings, medical and other employment benefits, severe physical and  
4 emotional distress, attorneys’ fees and other items of damage.

5 **FIRST CAUSE OF ACTION**

6 **(Retaliation In Violation of the Sarbanes-Oxley Act - 18 USC § 1514A)**

7 76. As a separate and distinct cause of action, Plaintiff complains and  
8 realleges all of the allegations contained in this complaint, and incorporates them  
9 by reference into this cause of action as though fully set forth herein, excepting  
10 those allegations which are inconsistent with this cause of action.

11 77. At all material times Section 806 of the Sarbanes Oxley Act of 2002  
12 was in effect and binding on Defendant. It prohibits employers such as Defendant  
13 from discharging, constructively discharging, demoting, threatening, harassing or  
14 in any manner discriminating or retaliating against any employee because he or  
15 she provided information, caused information to be provided, or assisted in an  
16 investigation by a federal regulatory or law enforcement agency, or an internal  
17 investigation by the company relating to alleged mail fraud, wire fraud, bank  
18 fraud, securities fraud, violations of SEC rules and regulations or violations of  
19 federal law relating to fraud against shareholders. In addition, an employer may  
20 not discharge or in any manner retaliate against employee because he or she filed,  
21 caused to be filed, participated in, or assisted in a proceeding relating to alleged  
22 mail fraud, wire fraud, bank fraud, securities fraud, violations of SEC rules and  
23 regulations or violations of federal law relating to fraud against shareholders. If  
24 an employer takes retaliatory action against an employee because he or she  
25 engaged in any of these protected activities, the employee can file a complaint  
26 with the Secretary, United States Department of Labor, Occupational Safety and  
27 Health Administration (“OSHA”).

28 78. Plaintiff timely filed a whistleblower complaint with OSHA, and 180  
days have elapsed since filing that complaint. No decision has been issued by

1 OSHA, and Plaintiff has not been the cause of any delay in the issuance of a  
2 decision. Accordingly Plaintiff is entitled to seek relief in district court by jury  
3 trial. Moreover, no predispute arbitration agreement shall be valid or enforceable,  
4 if the agreement requires arbitration of a dispute arising under this section of  
5 SOX.

6 79. Defendant harassed, threatened, discharged and retaliated against  
7 Plaintiff, and disclosed his entity as a whistleblower, after Plaintiff made oral and  
8 written complaints regarding what he reasonably believed to be illegal or  
9 unlawful conduct in violation of state and federal statutes, rules and regulations.  
10 Plaintiff made these complaints to his employer, by and through its agents and  
11 employees, as well as to the SEC, the OCC and OSHA.

12 80. Plaintiff is informed and believes, and thereon alleges that because  
13 of his making complaints regarding Defendant's illegal conduct and/or conduct  
14 Plaintiff reasonably believed to be illegal, Plaintiff was discharged from his  
15 employment and/or otherwise discriminated and retaliated against by Defendant  
16 after he had made the aforesaid complaints about illegal conduct.

17 81. As a direct and proximate result of Defendant's actions, Plaintiff has  
18 suffered and will continue to suffer pain and mental anguish and emotional  
19 distress.

20 82. Plaintiff has further suffered and will continue to suffer a loss or  
21 earnings and other employment benefits, whereby Plaintiff is entitled to general  
22 compensatory damages in amounts to be proven at trial.

23 83. Defendant's actions constituted a willful violation of the above-  
24 mentioned federal laws and regulations. As a direct result, Plaintiff has suffered  
25 and continues to suffer substantial losses related to the loss of wages and is  
26 entitled to recover costs and expenses and attorney's fees in seeking to compel  
27 Defendant to fully perform its obligations under state and federal law, in amounts  
28 according to proof at time of trial.

84. The conduct of Defendant described hereinabove was outrageous

1 and was executed with malice, fraud and oppression, and with conscious  
2 disregard for Plaintiff's rights, and further, with the intent, design and purpose of  
3 injuring Plaintiff.

4 85. Defendant committed the acts alleged hereinabove by acting  
5 knowingly and willfully, with the wrongful and illegal deliberate intention of  
6 injuring Plaintiff, from improper motives amounting to malice, and in conscious  
7 disregard of Plaintiff's rights. Plaintiff is thus entitled to recover nominal, actual,  
8 compensatory, punitive and exemplary damages in amounts according to proof at  
9 the time of trial, to the full extent allowable by law, in addition to any other  
10 remedies and damages allowable by law.

11 86. As a proximate result of the actions and conduct described  
12 hereinabove, which constitute violations of Section 806 of the Sarbanes-Oxley  
13 Act of 2002 ("SOX"), Plaintiff has been damaged in an amount according to  
14 proof at the time of trial, and seeks make-whole relief, civil penalties and  
15 attorneys fees against Defendant pursuant to SOX.

16 87. Wherefore Plaintiff prays for relief as stated in pertinent part  
17 hereinafter.

## 18 **SECOND CAUSE OF ACTION**

### 19 **(Retaliation In Violation of the Dodd-Frank Wall Street Reform and** 20 **Consumer Protection Act of 2010- 15 USC § 78u-6(h))**

21 88. As a separate and distinct cause of action, Plaintiff complains and  
22 realleges all of the allegations contained in this complaint, and incorporates them  
23 by reference into this cause of action as though fully set forth herein, excepting  
24 those allegations which are inconsistent with this cause of action.

25 89. At all times material hereto, Section 78u-6 of the Dodd-Frank Wall  
26 Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank") was in  
27 effect and binding on Defendant. It permits individuals who allege discharge or  
28 other discrimination to bring an action in United States District Court for relief.

1           90. Dodd-Frank prohibits employers from discharging, demoting,  
2 suspending, threatening, harassing, directly or indirectly, or in any other manner  
3 discriminating against whistleblowers in the terms and conditions of employment  
4 because of any lawful act done by the whistleblower in providing information to  
5 the SEC, in initiating, testifying in, or assisting in any investigation or judicial or  
6 administrative act of the SEC based upon or related to such information, or in  
7 making disclosures that are required or protected under SOX, Dodd-Frank, and  
8 any other law, rule or regulation subject to the jurisdiction of the SEC.

9           91. Plaintiff is a whistleblower within the meaning of Dodd-Frank, as  
10 evidenced by his conduct described in Paragraphs 9-45 above.

11           92. Defendant harassed, threatened, discharged and retaliated against  
12 Plaintiff, and took other adverse actions against Plaintiff, including disclosing his  
13 entity as a whistleblower, after Plaintiff made oral and written complaints  
14 regarding what he reasonably believed to be illegal or unlawful conduct in  
15 violation of state and federal statutes, rules and regulations. Plaintiff made these  
16 complaints to his employer, by and through its agents and employees, as well as  
17 to the SEC, the OCC and OSHA.

18           93. Plaintiff is informed and believes, and thereon alleges that because  
19 of his making complaints regarding Defendant's illegal conduct and/or conduct  
20 Plaintiff reasonably believed to be illegal, Plaintiff was discharged from his  
21 employment and/or otherwise discriminated and retaliated against by Defendant  
22 after he had made the aforesaid disclosures and complaints about illegal conduct.

23           94. As a direct and proximate result of Defendant's actions, Plaintiff has  
24 suffered and will continue to suffer pain and mental anguish and emotional  
25 distress.

26           95. Plaintiff has further suffered and will continue to suffer a loss or  
27 earnings and other employment benefits, whereby Plaintiff is entitled to general  
28 compensatory damages in amounts to be proven at trial.

          96. Defendant's actions constituted a willful violation of the above-

1 mentioned federal laws and regulations. As a direct result, Plaintiff has suffered  
2 and continues to suffer substantial losses related to the loss of wages and is  
3 entitled to recover costs and expenses and attorney's fees in seeking to compel  
4 Defendant to fully perform its obligations under state and federal law, in amounts  
5 according to proof at time of trial.

6 97. The conduct of Defendant described hereinabove was outrageous  
7 and was executed with malice, fraud and oppression, and with conscious  
8 disregard for Plaintiff's rights, and further, with the intent, design and purpose of  
9 injuring Plaintiff.

10 98. As a proximate result of the actions and conduct described  
11 hereinabove, which constitute violations of Dodd-Frank, Plaintiff has been  
12 damaged in an amount according to proof at the time of trial, and seeks all relief  
13 allowable by law including without limitation double back pay, injunctive and  
14 declaratory relief, make-whole relief, civil penalties, litigation costs, expert  
15 witness fees and attorneys fees against Defendant pursuant to Dodd-Frank.

16 99. Wherefore Plaintiff prays for relief as stated in pertinent part  
17 hereinafter.

### 18 **THIRD CAUSE OF ACTION**

#### 19 **(Retaliation in Violation of Labor Code § 1102.5)**

20 100. As a separate and distinct cause of action, Plaintiff complains and  
21 realleges all of the allegations contained in this complaint, and incorporates them  
22 by reference into this cause of action as though fully set forth herein, excepting  
23 those allegations which are inconsistent with this cause of action.

24 101. At all times material to this Complaint, California Labor Code §  
25 1102.5 was in effect and binding on Defendant. This section requires Defendant  
26 to refrain from retaliating against an employee for refusing to participate in an  
27 activity that he reasonably believes would result in a violation of state or federal  
28 statute, or a violation or noncompliance with a state or federal rule or regulation.

1           102. Plaintiff had a reasonable belief that Defendant was violating state  
2 and federal laws, and reported those violations to Defendant's management as  
3 well as to law enforcement agencies and regulators, as Defendant well knew, and  
4 as alleged hereinabove.

5           103. Defendant retaliated against Plaintiff for his whistleblowing, by  
6 harassing, threatening, and terminating him, among other things, all in violation  
7 of Labor Code § 1102.5.

8           104. As a direct and proximate result of such retaliation, Plaintiff has been  
9 damaged in a sum according to proof.

10           105. Plaintiff requests all available relief under Labor Code §  
11 1102.5 including damages and the imposition of a civil penalty of \$10,000.00  
12 for each violation.

#### 13                                   **FOURTH CAUSE OF ACTION**

##### 14           **(Violation of California Medical Information Act - Civil Code § 56 *et seq.*)**

15           106. As a separate and distinct cause of action, Plaintiff complains and  
16 realleges all of the allegations contained in this complaint, and incorporates them  
17 by reference into this cause of action as though fully set forth herein, excepting  
18 those allegations which are inconsistent with this cause of action.

19           107. At all times material hereto, the California Medical Information Act,  
20 California Civil Code § 56 *et seq.* ("CMIA") was in effect and binding on  
21 Defendant. The CMIA places obligations and restrictions on California employers  
22 with respect to requests for medical information from employees.

23           108. By the conduct alleged hereinabove, Defendant violated the CMIA.

24           109. As a proximate result of Defendant's actions, Plaintiff has suffered  
25 and continues to suffer substantial losses of earnings and other employment  
26 benefits and has suffered and continues to suffer severe emotional distress,  
27 humiliation and mental anguish, all to his damage in an amount according to  
28 proof.

          110. Defendant's actions were willful, malicious, fraudulent and



1 oppressive, and committed with the wrongful intent to injury Plaintiff and in  
2 conscious disregard of Plaintiff's rights.

3 111. Wherefore Plaintiff seeks relief as set forth below including  
4 attorneys' fees and costs pursuant to Civil Code § 56.35 and California Code of  
5 Civil Procedure § 1021.5.

6  
7 **FIFTH CAUSE OF ACTION**

8 **(Wrongful Termination In Violation of Public Policy)**

9 112. As a separate and distinct cause of action, Plaintiff complains and  
10 realleges all of the allegations contained in this complaint, and incorporates them  
11 by reference into this cause of action as though fully set forth herein, excepting  
12 those allegations which are inconsistent with this cause of action.

13 113. At all times material hereto, Section 806 of the Sarbanes Oxley Act  
14 of 2002 was in effect and binding on Defendant. This law prohibits employers  
15 such as Defendant from discharging, constructively discharging, demoting,  
16 threatening, harassing or in any manner discriminating or retaliating against any  
17 employee because he or she provided information, caused information to be  
18 provided, or assisted in an investigation by a federal regulatory or law  
19 enforcement agency, or an internal investigation by the company relating to  
20 alleged mail fraud, wire fraud, bank fraud, securities fraud, violations of SEC  
21 rules and regulations or violations of federal law relating to fraud against  
22 shareholders. In addition, an employer may not discharge or in any manner  
23 retaliate against employee because he or she filed, caused to be filed, participated  
24 in, or assisted in a proceeding relating to alleged mail fraud, wire fraud, bank  
25 fraud, securities fraud, violations of SEC rules and regulations or violations of  
26 federal law relating to fraud against shareholders.

27 114. At all times material hereto, Section 78u-6 of the Dodd-Frank Wall  
28 Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank") was in

1 effect and binding on Defendant. Dodd-Frank prohibits employers from  
2 discharging, demoting, suspending, threatening, harassing, directly or indirectly,  
3 or in any other manner discriminating against whistleblowers in the terms and  
4 conditions of employment because of any lawful act done by the whistleblower in  
5 providing information to the SEC, in initiating, testifying in, or assisting in any  
6 investigation or judicial or administrative act of the SEC based upon or related to  
7 such information, or in making disclosures that are required or protected under  
8 SOX, Dodd-Frank, and any other law, rule or regulation subject to the jurisdiction  
9 of the SEC.

10 115. At all times mentioned in this complaint, California Labor Code  
11 Section 1102.5 was in full force and effect and was binding on Defendant. This  
12 law requires Defendant to refrain, among other things, from retaliating against  
13 employees who refuse to participate in or condone conduct they reasonably  
14 believe to violate state or federal law.

15 116. At all times material hereto, the California Medical Information Act,  
16 California Civil Code § 56 *et seq.* (“CMIA”) was in effect and binding on  
17 Defendant. The CMIA places obligations and restrictions on California employers  
18 with respect to requests for medical information from employees.

19 117. Title 18 USC § 1343 defines the crime of wire fraud under federal  
20 law, and provides in pertinent part: “Whoever, having devised or intending to  
21 devise any scheme or artifice to defraud, or for obtaining money.... by means of  
22 false or fraudulent pretenses, representations, or promises, transmits or causes to  
23 be transmitted by means of wire, radio, or television communication in interstate  
24 or foreign commerce, any writings, signs, signals, pictures, or sounds for the  
25 purpose of executing such scheme or artifice, shall be fined under this title or  
26 imprisoned not more than 20 years, or both.”

27 118. Title 18 USC § 1341 defines the crime of mail fraud under federal  
28 law, and provides in pertinent part: “Whoever, having devised or intending to  
devise any scheme or artifice to defraud, or for obtaining money.... for the

1 purpose of executing such scheme or artifice or attempting to do so, places in any  
2 post office or authorized depository for mail matter, any matter or thing whatever  
3 to be sent or delivered by the Postal Service, or deposits or causes to be deposited  
4 any matter or thing whatever to be sent or delivered by any private or commercial  
5 interstate carrier, or takes or receives therefrom, any such matter or thing, shall be  
6 fined under this title or imprisoned not more than 20 years, or both.”

7 119. Article 1, Section 1 of the California Constitution provides that all  
8 people have a right to privacy, among other inalienable rights. The disclosure of a  
9 person’s private medical information without that person’s consent constitutes a  
10 violation of this constitutional right to privacy.

11 120. California Business & Professions Code § 17200 provides that unfair  
12 competition shall mean any unlawful, unfair or fraudulent business act or practice  
13 and unfair, deceptive, untrue, or misleading advertising and any act prohibited by  
14 Section 17500, *et seq.*, of the Business & Professions Code. Section 17203 of the  
15 Business & Professions Code provides that a court of competent jurisdiction may  
16 enjoin any conduct constituting unfair competition under § 17200.

17 121. Each of the aforesaid laws is a fundamental policy of the State of  
18 California.

19 122. Plaintiff believes and thereon allege that his whistleblowing, refusing  
20 to condone illegal activity, and engaging in protected activity, was or were a  
21 motivating factor in Defendant’s conduct as alleged hereinabove, including  
22 terminating Plaintiff.

23 123. As a direct and proximate result of Defendant’s unlawful conduct,  
24 Plaintiff has sustained and continues to sustain physical injuries, pain and  
25 suffering, and extreme and severe mental anguish and emotional distress; and  
26 Plaintiff has suffered and continued to suffer a loss of earnings and other  
27 employment benefits. Plaintiff is thereby entitled to general and compensatory  
28 damages in amounts to be proven at trial.

124. Defendant’s conduct as described above was willful, despicable,

1 knowing, and intentional; accordingly, Plaintiff seeks an award of punitive and  
2 exemplary damages in an amount according to proof.

3  
4 **SIXTH CAUSE OF ACTION**

5 **(Unfair Business Practices - Bus. & Prof. Code § 17200 *et seq.*)**

6 125. As a separate and distinct cause of action, Plaintiff complains and  
7 realleges all of the allegations contained in this complaint, and incorporates them  
8 by reference into this cause of action as though fully set forth herein, excepting  
9 those allegations which are inconsistent with this cause of action.

10 126. Defendant's conduct as alleged above violates multiple state and  
11 federal laws and constitutes unlawful business practices within the meaning of  
12 California Business & Professions Code § 17200, *et seq.*

13 127. Plaintiff is informed and believes and thereon alleges that Defendant  
14 continues to engage in some or all of the aforementioned unfair and unlawful  
15 business practices.

16 128. Plaintiff seeks an injunction prohibiting Defendant from engaging in  
17 the unfair and unlawful conduct described herein. Plaintiff also seeks attorneys'  
18 fees pursuant to the private attorney general doctrine, as codified in California  
19 Civil Code § 1021.5.

20 **SEVENTH CAUSE OF ACTION**

21 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

22 129. As a separate and distinct cause of action, Plaintiff complains and  
23 realleges all of the allegations contained in this complaint, and incorporates them  
24 by reference into this cause of action as though fully set forth herein, excepting  
25 those allegations which are inconsistent with this cause of action.

26 130. Plaintiff and Defendant had an agreement that Plaintiff would be  
27 able to perform the duties of an internal auditor in accordance with federal and  
28 state regulations and commonly understood business practices, without fear of

1 losing his job, being threatened physically and otherwise, and without having his  
2 performance evaluation downgraded and bonus reduced because he spoke up  
3 about unlawful and improper practices at the Bank. The agreement between  
4 Plaintiff and Defendant contained an implied covenant of good faith and fair  
5 dealing, which obligated Defendant to perform the terms and conditions of the  
6 agreement fairly and in good faith and to refrain from doing any act that would  
7 deprive Plaintiff of the benefits of the agreement.

8 131. Plaintiff has performed all conditions, covenants and promises  
9 required on his part to be performed in accordance with the terms and conditions  
10 of the agreement.

11 132. Plaintiff is informed and believes, and thereon alleges, that  
12 Defendant knew Plaintiff had fulfilled, and was ready, willing and able to  
13 continue to fulfill all of his duties and conditions under the agreement.

14 133. Defendant breached the implied covenant of good faith and fair  
15 dealing under the agreement by terminating Plaintiff without good cause.

16 134. As a direct, foreseeable and proximate result of Defendant's breach  
17 of the implied covenant, Plaintiff has suffered and sustained damages in an  
18 amount according to proof.

### 19 **EIGHTH CAUSE OF ACTION**

#### 20 **(Intentional Infliction of Emotional Distress)**

21 135. As a separate and distinct cause of action, Plaintiff complains and  
22 realleges all of the allegations contained in this complaint, and incorporates them  
23 by reference into this cause of action as though fully set forth herein, excepting  
24 those allegations which are inconsistent with this cause of action.

25 136. Defendant engaged in outrageous conduct towards Plaintiff with the  
26 intention to cause, or with reckless disregard for the probability of causing,  
27 Plaintiff to suffer severe emotional distress, and with wanton and reckless  
28 disregard for the injurious result to Plaintiff, as set forth hereinabove. The

1 conduct set forth hereinabove was extreme and outrageous and an abuse of the  
2 authority and position of Defendant. The above-described conduct was intended  
3 to cause severe emotional distress, or was done in conscious disregard of the  
4 probability of causing such distress. This conduct exceeded the inherent risks of  
5 employment and was not the sort of conduct normally expected from an  
6 employer.

7 137. As a direct and proximate result of Defendant's unlawful conduct,  
8 Plaintiff has sustained and continues to sustain pain and suffering, extreme and  
9 severe mental anguish and emotional distress; Plaintiff has incurred and will  
10 continue to incur medical expenses for treatment, and for incidental medical  
11 expenses; and Plaintiff has suffered and continues to suffer a loss of earnings and  
12 other employment benefits. Plaintiff is thereby entitled to general and  
13 compensatory damages in amounts to be proven at trial.

14 138. Plaintiff is informed and believes and thereon alleges that Defendant  
15 and its managing agents, managers, officers, and/or directors committed the acts  
16 alleged herein maliciously, fraudulently, and oppressively, with the wrongful  
17 intention of injuring Plaintiff, and acted with an improper and evil motive  
18 amounting to malice or oppression, and in conscious disregard of Plaintiff's  
19 rights.

## 20 **NINTH CAUSE OF ACTION**

### 21 **(Defamation Per Se and Compelled Self-Defamation)**

22 139. As a separate and distinct cause of action, Plaintiff complains and  
23 realleges all of the allegations contained in this complaint, and incorporates them  
24 by reference into this cause of action as though fully set forth herein, excepting  
25 those allegations which are inconsistent with this cause of action.

26 140. On information and belief, Defendant through its agents needlessly  
27 made defamatory statements about Plaintiff to numerous persons including  
28 coworkers, supervisors and prospective employers of Plaintiff. Information as to

1 the specific identity of the persons publishing the relevant statements, and the  
2 recipients of the statements is in the hands of Defendant and other third parties,  
3 and will be subject to discovery.

4 141. On information and belief, Plaintiff believes defamatory statements  
5 by Defendant and their agents were made orally. While defamatory statements  
6 may also have been made in writing, Plaintiff does not presently have information  
7 concerning written statements, which is in the hands of Defendant and of which  
8 Defendant have superior knowledge, as will be subject to discovery.

9 142. Plaintiff does not presently have knowledge of the exact wording of  
10 the defamatory statements at issue, other than as alleged hereinabove, such  
11 information being in the hands of Defendant and third parties. On information and  
12 belief, the general substance of these defamatory statements includes false  
13 express and implied assertions also including insinuation and innuendo that  
14 Plaintiff's performance was deficient, that he failed to perform his duties in a  
15 professional manner, that he was incompetent, that he suffered from a psychiatric  
16 illness, that he was trying maliciously to harm Defendant, that he was a criminal,  
17 and that Plaintiff was lying to federal regulators.

18 143. Such assertions were intended as statements of fact and not opinion.

19 144. Plaintiff is informed and believes that Defendant, by the herein-  
20 described acts, conspired to, and in fact, did negligently, recklessly, and  
21 intentionally caused excessive and unsolicited internal and external publications  
22 of defamation, of and concerning Plaintiff, to third persons and the community,  
23 and/or with a failure to investigate adequately or verify purported facts underlying  
24 the defamatory statements.

25 145. The precise dates of these publications are not presently known to  
26 Plaintiff, as the information is in the hands of Defendant. However, Plaintiff is  
27 informed and believes the publications were published and foreseeably  
28 republished in or around November 2014, and after that date, to first cause, and  
then justify, Plaintiff's wrongful and illegal termination, and to cause Plaintiff to

1 be unable to secure new employment for a considerable period of time despite  
2 reasonable efforts to do so.

3 146. These publications were outrageous, negligent, reckless, intentional,  
4 and maliciously published and republished by Defendant, and each of them.  
5 Plaintiff is informed and believes that the negligent, reckless, and intentional  
6 publications by Defendant, and each of them, were and continue to be,  
7 foreseeably published and republished by Defendant, their agents and employees,  
8 recipients, and in the community. Plaintiffs hereby seek damages for these  
9 publications and all foreseeable republications discovered up to the time of trial.

10 147. During the above-described time-frame, Defendant, including  
11 through its agents as set forth above, conspired to, and in fact, did negligently,  
12 recklessly, and intentionally cause excessive and unsolicited publication of  
13 defamation, of and concerning Plaintiff, to third persons, who had no need or  
14 desire to know. Those third person(s) to whom these Defendant published this  
15 defamation are believed to include, but are not limited to, other agents and  
16 employees of Defendant, and each of them, federal regulators, the San Diego  
17 Police, and the community, all of whom are known to Defendant, and each of  
18 them, but unknown at this time to Plaintiff.

19 148. Further, Defendant had knowledge and/or reason to believe that  
20 Plaintiff would be under a strong compulsion and pressure to disclose the  
21 contents of these defamatory false statements to third persons, namely potential  
22 employers, colleagues, friends, family and other individuals, as he in fact did.

23 149. The defamatory publications set forth above consisted of knowingly  
24 false and unprivileged communications, tending directly to injure Plaintiff and  
25 Plaintiff's personal, business, and professional reputation.

26 150. Plaintiff is informed, believes and fears that these false and  
27 defamatory per se statements, including statements regarding Plaintiff's  
28 occupational, business, professional, and personal reputation, will continue to be  
published by Defendant, and each of them, and will be foreseeably republished by



1 its recipients, all to the ongoing harm and injury to Plaintiff's occupational,  
2 business, professional, and personal reputation. Plaintiff also seeks redress in this  
3 action for all foreseeable re-publications, including his own compelled self-  
4 publication of these defamatory statements.

5 151. The defamatory meaning of all of the above-described false and  
6 defamatory statements and their reference to Plaintiff, were understood by these  
7 above-referenced third person recipients and other members of the community  
8 who are known to Defendant, and each of them, but unknown to Plaintiff at this  
9 time.

10 152. None of Defendant's defamatory publications and statements against  
11 Plaintiff referenced above is true. The above defamatory statements were  
12 understood as assertions of fact, and not as opinion. Plaintiff is informed and  
13 believes this defamation will continue to be negligently, recklessly, and  
14 intentionally published and foreseeably republished by Defendant, and each of  
15 them, and foreseeably republished by recipients of Defendant's publications,  
16 thereby causing additional injury and damages for which Plaintiff seeks redress  
17 by this action.

18 153. Each of these false defamatory per se publications (as set forth  
19 above) were negligently, recklessly, and intentionally published in a manner  
20 equaling malice and abuse of any alleged conditional privilege (which Plaintiff  
21 denies existed), since the publications, and each of them, were made with hatred,  
22 ill will, and an intent to vex, harass, annoy, and injure Plaintiff in order to justify  
23 the illegal and cruel actions of Defendant, to cause further damage to Plaintiff's  
24 professional and personal reputation, to cause him to be fired, to justify his firing  
25 and to destroy his credibility in the federal and local law enforcement community.

26 154. Each of these publications by Defendant, and each of them, was  
27 made with knowledge that no investigation supported the unsubstantiated and  
28 obviously false statements. Defendant published these statements knowing them  
to be false, unsubstantiated by any reasonable investigation and were the product

1 of hostile witnesses. These acts of publication were known by Defendant, to be  
2 negligent to such a degree as to be reckless. In fact, not only did Defendant have  
3 no reasonable basis to believe these statements, but it also had no belief in the  
4 truth of these statements, and in fact knew the statements to be false. Defendant  
5 excessively, negligently, and recklessly published these statements to individuals  
6 with no need to know, and who made no inquiry, and who had a mere general or  
7 idle curiosity of this information.

8 155. The above complained-of publications by Defendant were made with  
9 hatred and ill will towards Plaintiff and the design and intent to injure Plaintiff,  
10 Plaintiff's good name, his reputation, employment and employability. Defendant  
11 published these statements, not with an intent to protect any interest intended to  
12 be protected by any privilege, but with negligence, recklessness and/or an intent  
13 to injure Plaintiff and destroy his reputation. Therefore, no privilege existed to  
14 protect Defendant from liability for any of these aforementioned publications or  
15 republications.

16 156. As a proximate result of the publication and republication of these  
17 defamatory statements, and each of them, Plaintiff has suffered injury to his  
18 personal, business and professional reputation including suffering embarrassment,  
19 humiliation, severe emotional distress, shunning, anguish, fear, loss of  
20 employment, and employability, and significant economic loss in the form of lost  
21 wages and future earnings, all to Plaintiff's economic, emotional, and general  
22 damage in an amount according to proof.

23 157. Defendant committed the acts alleged herein recklessly, maliciously,  
24 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff,  
25 for an improper and evil motive amounting to malice (as described above), and  
26 which abused and/or prevented the existence of any conditional privilege, which  
27 in fact did not exist, and with a reckless and conscious disregard of Plaintiff's  
28 rights. All actions of Defendant, its agents and employees, herein alleged were  
known, ratified and approved by Defendant. Plaintiff thus is entitled to recover

1 punitive and exemplary damages from Defendant, for these wanton, obnoxious,  
2 and despicable acts in an amount according to proof at time of trial.

3  
4 **TENTH CAUSE OF ACTION**

5 **(Declaratory Relief)**

6 158. As a separate and distinct cause of action, Plaintiff complains and  
7 realleges all of the allegations contained in this complaint, and incorporates them  
8 by reference into this cause of action as though fully set forth herein, excepting  
9 those allegations which are inconsistent with this cause of action.

10 159. A dispute and an actual controversy has arisen between the parties  
11 regarding the enforceability of a document purporting to compel Plaintiff to  
12 arbitrate certain claims against Defendant.

13 160. Plaintiff asserts that under *Armendariz v. Foundation HealthCare*  
14 (2000) 24 Cal.4th 83 and its progeny, as well as under SOX and Dodd-Frank, and  
15 the public policies of California and the United States, that the document is  
16 unenforceable for a number of reasons as set forth in statutes and the case law. On  
17 information and belief Defendant asserts that the document is enforceable and  
18 that Plaintiff must bring his claims in arbitration.

19 161. Plaintiff desires a judicial determination of the parties' rights and  
20 obligations of the parties with respect to the document, and a declaration that the  
21 arbitration document is invalid because it lacks mutuality, is procedurally and  
22 substantively unconscionable, and violates public policy.

23 162. A judicial declaration is necessary and appropriate at this time under  
24 the circumstances in order that Plaintiff may ascertain his rights and duties under  
25 the alleged arbitration agreement, and not be forced to forgo his constitutional  
26 right to a trial by jury.

27 163. Plaintiff does not seek to avoid the alleged agreement to arbitrate  
28 unless the alleged arbitration agreement is declared invalid and/or unenforceable.



