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

CHARLES MATTHEW ERHART,  
Plaintiff,

v.

BOFI FEDERAL BANK,  
Defendant.

Case No. 15-cv-02287-BAS-NLS  
*consolidated with*  
15-cv-02353-BAS-NLS

**ORDER GRANTING IN PART  
AND DENYING IN PART THE  
PARTIES' MOTIONS  
REGARDING FILING  
DOCUMENTS UNDER SEAL**

And Consolidated Case

Presently before the Court are twelve motions concerning filing documents under seal.<sup>1</sup> The parties filed the motions in connection with their cross-motions for summary judgment and a motion to exclude expert testimony. For the following reasons, the Court grants in part and denies in part the motions.

<sup>1</sup> (ECF Nos. 125, 130, 132, 140, 141, 145, 150, 153, 156, 161, 165, 172.)

**BACKGROUND<sup>2</sup>**

Defendant BofI Federal Bank is a federally chartered savings and loan association. Defendant’s holding company, BofI Holding, Inc., is publicly traded under the Securities Exchange Act of 1934.<sup>3</sup> BofI hired Charles Matthew Erhart as a Staff Internal Auditor in its headquarters in San Diego, California.

These consolidated actions revolve around competing narratives of Erhart’s tenure as an internal auditor for BofI. In his pleading, Erhart recounts how he repeatedly battled against pressure from senior management as he discovered conduct he believed to be wrongful. For example, Erhart claims he unearthed evidence that BofI failed to turn over information that was responsive to a subpoena from the Securities and Exchange Commission. Erhart also allegedly discovered that BofI’s Chief Executive Officer was “depositing third-party checks for structured settlement annuity payments into a personal account, including nearly \$100,000 in checks made payable to third parties.” In addition, Erhart claims the Bank engaged in wrongdoing during an examination by BofI’s principal regulator, the Department of the Treasury’s Office of the Comptroller of the Currency (“OCC”).

When BofI learned Erhart was potentially reporting these allegations to the OCC, Erhart claims BofI engaged in a pattern of retaliatory conduct against him, including making false statements about his medical leave and ultimately terminating him. Based on these allegations, Erhart brings seven claims against BofI, including

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<sup>2</sup> The Court largely adopts this background from its order granting in part and denying in part the parties’ motions for judgment on the pleadings. (*See* ECF No. 123; *see also* ECF No. 40.)

<sup>3</sup> BofI Holding’s common stock originally traded on The NASDAQ Global Select Market under Section 12(b) of the Exchange Act. *See* Axos Financial, Inc., Registration of Securities (Form 8-A) (Sept. 13, 2018). Since this lawsuit was filed, BofI Holding and BofI Federal Bank have rebranded as Axos Financial, Inc. and Axos Bank. (Tolla Decl. ¶ 2, ECF No. 127-2.) The holding company’s shares now trade on The New York Stock Exchange. Axos Financial, Inc., Registration of Securities (Form 8-A) (Sept. 13, 2018).

To be consistent with the record, the Court refers to these entities by their prior names. And unless the distinction is relevant, the Court uses “BofI” and “the Bank” to refer to either BofI Holding, Inc. or BofI Federal Bank.

1 whistleblower retaliation in violation of the Sarbanes–Oxley Act and the Dodd–  
2 Frank Wall Street Reform and Consumer Protection Act.

3 In contrast, BofI’s countersuit portrays Erhart as an entry-level internal auditor  
4 who conducted improper “rogue investigations.” BofI claims Erhart “abused his  
5 power” as an auditor by “initiating and conducting his own unplanned and  
6 unapproved investigations into matters that were outside the scope of the” Bank’s  
7 internal audit plans. In doing so, Erhart allegedly “misrepresented to other BofI  
8 employees that he was conducting authorized investigations as part of his job.” The  
9 Bank also contends that Erhart accessed confidential information for personal gain,  
10 disseminated confidential information to “a website that allows comments on the  
11 stocks of publicly traded companies,” and abandoned his job. In light of these  
12 allegations, BofI brings its own catalog of eight claims against Erhart, including  
13 breach of contract, breach of the duty of loyalty, and violation of the Computer Fraud  
14 and Abuse Act.

15 BofI is moving for partial summary judgment on several of Erhart’s claims.  
16 (ECF No. 127.) Erhart is also moving for summary judgment on almost all of BofI’s  
17 claims. (ECF No. 137.) Erhart is further seeking to exclude the testimony of two  
18 expert witnesses at trial. (ECF No. 128.) In connection with these three motions, the  
19 parties have filed twelve motions related to sealing documents. Due to the volume  
20 of the parties’ requests, the Court will refer to each motion by its Electronic Case  
21 Filing Number (“ECF No.”).

### 22 23 **LEGAL STANDARD**

24 “[T]he courts of this country recognize a general right to inspect and copy  
25 public records and documents, including judicial records and documents.” *Nixon v.*  
26 *Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978). “Unless a particular court record  
27 is one ‘traditionally kept secret,’ a ‘strong presumption in favor of access’ is the  
28 starting point.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.

1 2006) (*citing Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir.  
2 2003)). “The presumption of access is ‘based on the need for federal courts, although  
3 independent—indeed, particularly because they are independent—to have a measure  
4 of accountability and for the public to have confidence in the administration of  
5 justice.” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir.  
6 2016) (quoting *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995)).

7 A party seeking to seal a judicial record bears the burden of overcoming the  
8 strong presumption of access. *Foltz*, 331 F.3d at 1135. The showing required to  
9 meet this burden depends upon whether the documents to be sealed relate to a motion  
10 that is “more than tangentially related to the merits of the case.” *Ctr. for Auto Safety*,  
11 809 F.3d at 1102. When the underlying motion is more than tangentially related to  
12 the merits, the “compelling reasons” standard applies. *Id.* at 1096–98. When the  
13 underlying motion does not surpass the tangential relevance threshold, the “good  
14 cause” standard applies. *Id.*

15 “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest  
16 in disclosure and justify sealing court records exists when such ‘court files might  
17 have become a vehicle for improper purposes,’ such as the use of records to gratify  
18 private spite, promote public scandal, circulate libelous statements, or release trade  
19 secrets.” *Kamakana*, 447 F.3d at 1179 (quoting *Nixon*, 435 U.S. at 598). However,  
20 “[t]he mere fact that the production of records may lead to a litigant’s embarrassment,  
21 incrimination, or exposure to further litigation will not, without more, compel the  
22 court to seal its records.” *Id.* (citing *Foltz*, 331 F.3d at 1136). The decision to seal  
23 documents is “one best left to the sound discretion of the trial court” upon  
24 consideration of “the relevant facts and circumstances of the particular case.” *Nixon*,  
25 435 U.S. at 599.

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## STANDING ORDER FOR CIVIL CASES

Consistent with the presumptive right of public access to court records, this Court’s Standing Order for Civil Cases provides:

The Court may seal documents to protect sensitive information, however, the documents to be filed under seal will be limited by the Court to only those documents, or portions thereof, necessary to protect such sensitive information.

Parties seeking a sealing order must provide the Court with: (1) a specific description of particular documents or categories of documents they need to protect; and (2) declarations showing a compelling reason or good cause to protect those documents from disclosure. The standard for filing documents under seal will be strictly applied.

(Standing Order ¶ 5.)

## ANALYSIS

The parties’ summary judgment motions and Erhart’s request to exclude experts at trial are all more than tangentially related to the merits of this consolidated dispute. Hence, these motions and the documents attached to them are subject to the compelling reasons standard. Before turning to the parties’ specific sealing requests, the Court addresses a frequent basis asserted in the parties’ motions for sealing information: the bank examination privilege.

“Stated broadly, the bank examination privilege is a qualified privilege that protects communications between banks and their examiners in order to preserve absolute candor essential to the effective supervision of banks.” *Wultz v. Bank of China Ltd.*, 61 F. Supp. 3d 272, 281 (S.D.N.Y. 2013) (quoting *Linde v. Arab Bank, PLC*, No. 04 Civ. 2799, 2009 WL 3055282, at \*1 (E.D.N.Y. Sept. 21, 2009)). The Ninth Circuit has “not addressed” this privilege, which is also known as “the bank examiner’s privilege.” *Campidoglio LLC v. Wells Fargo & Co.*, 870 F.3d 963, 977 n.5 (9th Cir. 2017). But in recognizing the privilege, other courts have explained that it “arises out of the practical need for openness and honesty between bank examiners and the banks they regulate, and is intended to protect the integrity of the regulatory

1 process by privileging such communications.” *Wultz*, 61 F. Supp. 3d at 281–82  
2 (quoting *Merchants Bank v. Vescio*, 205 B.R. 37, 42 (D. Vt. 1997)); *see also In re*  
3 *Subpoena Served upon Comptroller of Currency*, 967 F.2d 630, 633–34 (D.C. Cir.  
4 1992). Indeed, for successful bank supervision, the bank’s “management must be  
5 open and forthcoming in response to the inquiries of bank examiners, and the  
6 examiners must in turn be frank in expressing their concerns about the bank.” *In re*  
7 *Subpoena*, 967 F.2d at 634. “These conditions simply could not be met as well if  
8 communications between the bank and its regulators were not privileged.” *Id.* The  
9 bank examination privilege belongs solely to banking regulatory entities. *See, e.g.,*  
10 *In re Bankers Tr. Co.*, 61 F.3d 465, 472 (6th Cir. 1995).

11 The magistrate judge previously recognized that there are documents relevant  
12 to this litigation containing information covered by the bank examination privilege.  
13 (ECF No. 100.) Hence, the magistrate judge directed the parties to seek permission  
14 from the OCC—the holder of the bank examination privilege—to use documents that  
15 disclose “agency opinions and recommendations and banks’ responses.” (*Id.*) The  
16 OCC subsequently asserted the bank examination privilege over certain records, but  
17 “determined that the particular circumstances of the [case] warrant making the  
18 Records available to the parties in this action, provided that appropriate protection of  
19 their confidentiality can be secured.” (*See* ECF No. 114.) Thus, the magistrate judge  
20 entered a protective order that required, among other things, that the parties file under  
21 seal those records for which the OCC provided permission to be used in this case.  
22 (*Id.*)

23 In light of the foregoing, the Court finds it appropriate to seal information  
24 subject to the bank examination privilege; namely, the OCC’s examination requests  
25 to BofI and the Bank’s responses to these requests. The Court also finds it  
26 appropriate to seal briefing, deposition testimony, and other information that reveals  
27 the content of the OCC’s requests and the Bank’s responses. However, the Court  
28

1 will require that the parties’ redactions be narrowly tailored to this content, making  
2 the filings otherwise publicly available.

3 Beyond material involving bank examination, the parties also seek to redact  
4 bank and loan account information and certain non-public information of third  
5 parties, including bank customers and employees. The Court generally concludes it  
6 is appropriate to grant narrowly tailored requests to seal this information—  
7 particularly where the content of this information is unnecessary to understand the  
8 Court’s orders and the parties’ dispute. However, where this is not the case—or  
9 where it is unclear why the information is confidential or sensitive—the Court finds  
10 the parties have not satisfied the compelling reasons standard. The Court will thus  
11 consider each sealing motion in turn.

12  
13 **I. ECF No. 125**

14 The Bank moves to seal portions of its motion for summary judgment and  
15 approximately ten attachments. (ECF No. 125.) Erhart does not oppose. The Court  
16 rules on the proposed redactions in Table 125 attached to this order. Accordingly,  
17 the Court grants in part and denies in part ECF No. 125. The Clerk shall accept and  
18 file under seal the following documents:

- 19 • BofI’s Mot. (ECF No. 126-1);
- 20 • Tolla Decl. (ECF No. 126-2);
- 21 • Ex. C: Erhart Dep. (ECF No. 126-5);
- 22 • Ex. E: Erhart Dep. (ECF No. 126-7);
- 23 • Ex. F: Ball Dep. (ECF No. 126-8);
- 24 • Ex. G: Ball Dep. (ECF No. 126-9);
- 25 • Ex. I: Grenet Dep. (ECF No. 126-10);
- 26 • Ex. J: Garrabrants Dep. (ECF No. 126-11);
- 27 • Ex. M: Tolla Rule 30(b)(6) Dep. (ECF No. 126-13);
- 28 • Ex. T: SEC Letter to BofI & Subpoena (ECF No. 126-16);

- 1 • Ex. U: Boff Letter to SEC (ECF No. 126-17);
- 2 • Ex. X: Erhart E-mail to Ball RE: Subpoena (ECF No. 126-18);
- 3 • Ex. AA: Internal Audit Memo RE: Employee Account Review (ECF No.
- 4 126-19);
- 5 • Ex. UU: Boff's Responses to OCC's Requests (ECF No. 126-20);
- 6 • Ex. VV: Erhart E-mails to Shkabara RE: SEC Subpoena (ECF No. 126-21);
- 7 and
- 8 • Ex. XX: Tolla E-mail RE: OCC's Requests (ECF No. 126-22).

9 The Clerk shall further:

- 10 • Reject the lodged, unredacted McWilliams Decl. (ECF No. 126-3) and
- 11 replace the redacted version on the docket (ECF No. 127-5) with the
- 12 unredacted copy (ECF No. 126-3);
- 13 • Reject the lodged, unredacted Towill Decl. (ECF No. 126-4) and replace
- 14 the redacted version on the docket (ECF No. 127-6) with the unredacted
- 15 copy (ECF No. 126-4);
- 16 • Reject the lodged, unredacted Ex. D: Erhart Dep. (ECF No. 126-6) and
- 17 replace the redacted version on the docket (ECF No. 127-10) with the
- 18 unredacted copy (ECF No. 126-6);
- 19 • Reject the lodged, unredacted Ex. K: Garrabrants Dep. Errata Sheet (ECF
- 20 No. 126-12) and replace the redacted version on the docket (ECF No. 127-
- 21 17) with the unredacted copy (ECF No. 126-12);
- 22 • Reject the lodged, unredacted Ex. Q: Transfer and Assignment Agreement
- 23 (ECF No. 126-14) and replace the redacted version on the docket (ECF No.
- 24 127-23) with the unredacted copy (ECF No. 126-14); and
- 25 • Reject the lodged, unredacted Ex. R: Transfer and Assignment Agreement
- 26 (ECF No. 126-15) and replace the redacted version on the docket (ECF No.
- 27 127-24) with the unredacted copy (ECF No. 126-15).

28 Finally, for those documents that the Court has accepted under seal but denied some

1 of the Bank’s proposed redactions, the Court **ORDERS** the Bank to publicly file  
2 revised versions of these documents with only those redactions that the Court has  
3 approved. The Bank shall file these items on CM/ECF as a “Notice Regarding  
4 Exhibit Attachment” and link the items to the Bank’s motion for summary judgment.

5  
6 **II. ECF No. 130**

7 Erhart moves to seal certain documents filed in connection with his motion to  
8 exclude expert testimony. (ECF No. 130.) Erhart explains that some of the  
9 documents lodged under seal were designated confidential, but Erhart does not  
10 believe all of the lodged material should be sealed. (*Id.*) Boffl responds to the motion  
11 and submits proposed redacted versions of several documents. (ECF No. 144.) The  
12 Court rules on the parties’ proposed redactions in Table 130 attached to this order.  
13 Accordingly, the Court grants in part and denies in part ECF No. 130. The Clerk  
14 shall accept and file under seal the following documents:

- 15 • Ex. 3: van Drunen Rule 26 Report (ECF No. 131-3);  
16 • Ex. 6: Micheletti Dep. (ECF No. 131-4); and  
17 • Ex. 297: Customer Deposit History and Related E-mails (ECF No. 131-5).

18 The Clerk shall further:

- 19 • Reject the lodged, unredacted Ex. 1: van Drunen Am. Rule 26 Report (ECF  
20 No. 131-1) and replace the redacted version on the docket (ECF No. 128-  
21 4) with the unredacted copy (ECF No. 131-1); and  
22 • Reject the lodged, unredacted Ex. 2: Policy Statement (ECF No. 131-2) and  
23 file it as an additional attachment to Erhart’s motion to exclude testimony  
24 (ECF No. 128).

25 Finally, for Ex. 3: van Drunen Rule 26 Report (ECF No. 131-3), Erhart shall publicly  
26 file a revised version of this document with only those redactions that the Court has  
27 approved. Erhart shall file this item as a “Notice Regarding Exhibit Attachment” and  
28 link the item to his motion to exclude testimony.

1 **III. ECF No. 132**

2 Erhart moves to seal part of the Deposition of Andrew J. Micheletti, which  
3 Erhart references in his motion for summary judgment. (ECF No. 132.) Erhart relies  
4 on the same deposition transcript in his motion to exclude expert testimony. BofI  
5 responds to the motion to support the request. (ECF No. 143.) Upon review, the  
6 proposed redactions for this deposition are the same ones considered by the Court in  
7 connection with ECF No. 130. Thus, the Court grants ECF No. 132. The Clerk shall  
8 accept and file under seal the unredacted copy of the Micheletti Deposition (ECF No.  
9 133-1). The redacted version that was publicly filed by BofI (ECF No. 143-2) will  
10 serve as the public exhibit for Erhart’s motion to exclude.

11  
12 **IV. ECF Nos. 140, 141, 145**

13 BofI moves to amend its prior motion to seal, which was considered above  
14 (ECF No. 130), explaining that it inadvertently filed an unredacted version of Ex. T  
15 in support of BofI’s motion for summary judgment—instead of lodging it with the  
16 Court. (ECF No. 140.) Hence, BofI moves to seal Ex. T in its entirety. (*Id.*)

17 Relatedly, BofI files a supplemental motion to seal Ex. T, “which is a relevant  
18 excerpt of a confidential letter from the SEC to BofI containing a confidential SEC  
19 subpoena” that “contains highly sensitive customer names.” (ECF No. 141.)  
20 However, in making this request, BofI again inadvertently attached an unredacted  
21 copy of Ex. T to its motion to seal. Accordingly, BofI also moves to strike the  
22 unredacted version of Ex. T that it filed for the second time in its supplemental motion  
23 to seal Ex. T. (ECF No. 145.)

24 There are not compelling reasons to seal the customer name at issue. The name  
25 is already disclosed in various other filings, including other documents at issue in this  
26 order, and it is public information that the SEC investigated and sought enforcement  
27 action against this customer. Hence, the Court denies BofI’s motion to amend its  
28 prior motion to seal (ECF No. 140). The Court denies as moot BofI’s supplemental

1 motion to seal Ex. T (ECF No. 141). Finally, the Court similarly denies as moot  
2 BofI’s motion to strike (ECF No. 145). Accordingly, the Clerk shall reject the  
3 document lodged under seal in ECF No. 142. No further action is needed for these  
4 motions.

5  
6 **V. ECF No. 150**

7 BofI moves to seal documents used to support the Bank’s opposition to  
8 Erhart’s motion to exclude expert testimony. (ECF No. 150.) First, the Bank seeks  
9 to seal limited excerpts of Ex. G (ECF No. 15-8), which is a summary of personnel  
10 costs incurred by the Bank. The proposed redactions mask salary, benefits, and bonus  
11 information of specific Bank employees and the name of a third-party bank customer.  
12 The Court finds sealing this information is appropriate. The Court will seal the non-  
13 public information about a bank customer for the same reasons expressed for prior  
14 motions to seal. And the Court finds knowledge of the specific salary and bonus  
15 rates of select employees is unnecessary to understand the Court’s orders and the  
16 parties’ dispute.

17 Second, the Bank seeks to seal excerpts of Guido van Drunen’s Amended Rule  
18 26 Report. The Court has already considered these proposed redactions and  
19 incorporates its analysis from other motions to seal. Thus, the Court denies the  
20 request to seal this document. Accordingly, the Court grants in part and denies in  
21 part ECF No. 150. The Clerk shall accept and file under seal Ex. G: Summary of  
22 Personnel Costs (ECF No. 151-2), but publicly file Ex. H: van Drunen Am. Rule 26  
23 Report (ECF No. 151-2) in place of the redacted version attached to BofI’s opposition  
24 (ECF No. 152-9).

25  
26 **VI. ECF No. 153**

27 BofI moves to seal parts of eight documents used to support its opposition to  
28 Erhart’s motion for summary judgment. (ECF No. 153.) Erhart does not oppose.

1 The Court rules on the proposed redactions in Table 153 attached to this order.  
2 Hence, the Court grants in part and denies in part ECF No. 153. The Clerk shall  
3 accept and file under seal the following documents:

- 4 • Ex. K: Micheletti Dep. (ECF No. 154-3);
- 5 • Ex. R: Lopez E-mail RE: FMLA Leave (ECF No. 154-4);
- 6 • Ex. V: Lopez E-mail RE: FMLA Leave (ECF No. 154-5);
- 7 • Ex. Z: Summary of Personnel Costs (ECF No. 154-6);
- 8 • Ex. AA: Gillam E-mail RE: SEC Subpoena (ECF No. 154-7); and
- 9 • Ex. BB: Gillam E-mail RE: NYT Article (ECF No. 154-8).

10 The Clerk shall further:

- 11 • Reject the lodged, unredacted Ex. B: Erhart Dep. (ECF No. 154-1) and
- 12 replace the redacted version on the docket (ECF No. 155-3) with the
- 13 unredacted copy (ECF No. 154-1); and
- 14 • Reject the lodged, unredacted Ex. E: Ball Dep. (ECF No. 154-2) and
- 15 replace the redacted version on the docket (ECF No. 155-6) with the
- 16 unredacted copy (ECF No. 154-2).

17 Finally, for those documents that the Court has accepted under seal but denied  
18 some of the Bank’s proposed redactions, the Court **ORDERS** the Bank to publicly  
19 file revised versions of these documents with only those redactions that the Court has  
20 approved. The Bank shall file these items on CM/ECF as a “Notice Regarding  
21 Exhibit Attachment” and link the items to the Bank’s opposition to Erhart’s motion  
22 for summary judgment.

23  
24 **VII. ECF Nos. 156, 172**

25 Erhart moves to file portions of his opposition to Boff’s summary judgment  
26 motion and approximately twenty attachments under seal. (ECF No. 156.) Boff  
27 produced many of these documents and marked them as confidential; therefore,  
28 Erhart invites the Bank to respond to justify keeping the documents under seal. The

1 Bank does so for some of the documents. (ECF No. 174.) The Court rules on the  
2 proposed redactions in Table 156 attached to this order.

3 Beyond those determinations, the Court denies the request to seal any  
4 documents that were protectively lodged under seal but that BofI did not also seek to  
5 seal. The Clerk is directed to reject these items, which are:

- 6 • Ex. 83: Internal Audit Memo (ECF No. 157-10);
- 7 • Ex. 90: Memo RE: Employee Account Review (ECF No. 157-11);
- 8 • Ex. 93: Lopez E-mail RE: Strategic Plan Approval (ECF No. 157-12);
- 9 • Ex. 98: Williams E-mail RE: Deposit Concentration Risk (ECF No. 157-  
10 13);
- 11 • Ex. 160: Due Diligence Policy Excerpt (ECF No. 157-14);
- 12 • Ex. 228: Lopez E-mail RE: Board Meeting Minutes (ECF No. 157-15);
- 13 • Ex. 262: Draft Lottery Audit (ECF No. 157-17);
- 14 • Ex. 268: Draft Business Plan Audit (ECF No. 157-18);
- 15 • Ex. 280: BSA Policy (ECF No. 157-19);
- 16 • Ex. 282: Due Diligence Policy Excerpt (ECF No. 157-20);
- 17 • Ex. 295: Erhart E-mail RE: Strategic Plan (ECF No. 157-21); and
- 18 • Ex. 296: “Work Paper 6” RE: Business Plan (ECF No. 157-22).

19 The Court **ORDERS** Erhart to publicly file all of these documents on CM/ECF as a  
20 “Notice Regarding Exhibit Attachment” and link the items to his opposition to BofI’s  
21 motion for summary judgment.

22 The Clerk shall accept and file under seal the following documents:

- 23 • Erhart’s Opp’n (ECF No. 157-1);
- 24 • Ex. E: Erhart Dep. (ECF No. 157-3);
- 25 • Ex. F: Ball Dep. (ECF No. 157-4);
- 26 • Ex. M: Brickey Dep. (ECF No. 157-5);
- 27 • Ex. N: Sisk Dep. (ECF No. 157-6);
- 28 • Ex. O: List of Electronic Format Documents (ECF No. 157-7);

- Ex. 47: Whistleblower Discussion Notes (ECF No. 157-9); and
- Ex. 229: Erhart E-mail RE: Strategic Plan (ECF No. 157-15).

The Clerk shall further:

- Reject the lodged, unredacted Ex. C: Erhart Dep. (ECF No. 157-2) and replace the redacted version on the docket (ECF No. 158-6) with the unredacted copy (ECF No. 157-2).

Finally, for the documents that the Court approved only some of the parties' proposed redactions, the Court **ORDERS** Erhart to publicly file revised versions of these documents with those redactions that the Court has approved. Erhart shall file these items on CM/ECF as a "Notice Regarding Exhibit Attachment" and link the items to his opposition to the Bank's motion for summary judgment.

The Bank also seeks to seal part of its response to Erhart's motion to seal. (ECF No. 172.) This part of the Bank's response argues that the identity of two witnesses and their testimony may be subject to sealing because a protective order guarded this information in a related securities case. Having reviewed the material at issue, including the protective order, the Court denies the request to seal. Although there may be—or have been—good cause to protect the identities of these former employees in the related case, the Court discerns no compelling reasons to seal their identities or factual testimony in this case. Hence, beyond denying BofI's request to seal this information in Table 156, the Court also denies BofI's motion to seal its argument on this issue (ECF No. 172). The Clerk shall reject the lodged version of BofI's response to Erhart's motion (ECF No. 173) and file this unredacted copy (ECF No. 173) in place of the Bank's redacted version (ECF No. 174).

### **VIII. ECF Nos. 161 & 165**

The Bank moves to seal portions of its reply in support of its motion for summary judgment and several attached exhibits. (ECF No. 161.) Relatedly, the Bank also moves to seal portions of the Joint Statement of Undisputed Facts filed the

1 same day. (ECF No. 164.) The Court rules on the proposed redactions in Table 161  
2 & 165 attached to this order. Accordingly, the Court grants in part and denies in part  
3 these two motions to seal.

4 The Clerk shall accept and file under seal the following documents:

- 5 • Reply (ECF No. 163-1);
- 6 • Ex. A: Erhart Dep. (ECF No. 162-1);
- 7 • Ex. C: Erhart Dep. (ECF No. 162-2); and
- 8 • JSUF (ECF No. 166-1).

9 The Clerk shall further:

- 10 • Reject the lodged, unredacted Ex. D: Garrabrants Dep. (ECF No. 162-3)
- 11 and replace the redacted version on the docket (ECF No. 164-5) with the
- 12 unredacted copy (ECF No. 162-3).

13 Finally, for those documents that the Court has accepted under seal but denied some  
14 of the Bank’s proposed redactions, the Court **ORDERS** the Bank to publicly file  
15 revised versions of these documents with only those redactions that the Court has  
16 approved. The Bank shall file these items on CM/ECF as a “Notice Regarding  
17 Exhibit Attachment” and link the items to the Bank’s reply in support of its motion  
18 for summary judgment.

19  
20 **CONCLUSION**

21 In light of the foregoing, the Court:

- 22 1. **GRANTS IN PART** and **DENIES IN PART** the Bank’s motion to seal  
23 (ECF No. 125);
- 24 2. **GRANTS IN PART** and **DENIES IN PART** Erhart’s motion to seal  
25 (ECF No. 130);
- 26 3. **GRANTS** Erhart’s motion to seal (ECF No. 132);
- 27 4. **DENIES** Boff’s motion to amend its prior motion to seal (ECF No.  
28 140); **DENIES AS MOOT** Boff’s supplemental motion to seal (ECF No. 141); and

1 **DENIES AS MOOT** Boff’s motion to strike (ECF No. 145);

2 5. **GRANTS IN PART** and **DENIES IN PART** the Bank’s motion to seal  
3 (ECF No. 150);

4 5. **GRANTS IN PART** and **DENIES IN PART** Boff’s motion to seal  
5 (ECF No. 153);

6 6. **GRANTS IN PART** and **DENIES IN PART** Erhart’s motion to seal  
7 (ECF No. 156);

8 7. **DENIES** Boff’s motion to seal (ECF No. 172);

9 7. **GRANTS IN PART** and **DENIES IN PART** Boff’s remaining two  
10 motions to seal (ECF Nos. 161 & 165); and

11 8. **Directs the Clerk of the Court to complete the various sealing**  
12 **requests that are underlined throughout this order above.**

13 **IT IS SO ORDERED.**

14  
15 **DATED: September 19, 2019**

  
**Hon. Cynthia Bashant**  
**United States District Judge**

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**TABLE 125**

<b>Item</b>	<b>ECF No.</b>	<b>Description</b>	<b>Determination</b>	<b>Basis/Explanation</b>
Motion <ul style="list-style-type: none"> <li>• 12:20–21, 24</li> <li>• 13:2</li> </ul>	127-1	Bank/loan account information	Granted	Sensitive financial information
Motion <ul style="list-style-type: none"> <li>• 15:6–18, 20</li> <li>• 15:23–16:13, 15–16</li> </ul>	127-1	Argument involving bank examination	Granted in part	The Court seals most of this information in light of the bank examination privilege, but denies the request to seal the fact that Erhart was not responsible for preparing BofI’s response to the OCC’s relevant inquiry (Mot. 15:23).
Motion <ul style="list-style-type: none"> <li>• 17:11–18:4</li> <li>• 18:6–8</li> <li>• 18:11–13</li> </ul>	127-1	Argument involving bank examination	Granted in part	The Court seals most of this information in light of the bank examination privilege, but denies the request to seal the fact that Erhart was not responsible for preparing BofI’s response to the OCC’s relevant inquiry (Mot. 18:3).
Motion <ul style="list-style-type: none"> <li>• 19:17–22</li> <li>• 20:9–12 &amp; n.12</li> </ul>	127-1	Argument involving bank examination	Granted	Bank examination privilege
Motion <ul style="list-style-type: none"> <li>• 20:14–22 &amp; n.13</li> </ul>	127-1	Argument involving bank examination	Granted in part	The Court seals most of this information in light of the bank examination privilege, but denies the request to seal the sentence concerning Erhart’s belief that BofI was defrauding its regulator (Mot. 20:17–21).
Motion <ul style="list-style-type: none"> <li>• 23:5–12</li> </ul>	127-1	Argument involving bank examination	Granted	Bank examination privilege

Table 125

Item	ECF No.	Description	Determination	Basis/Explanation
Motion <ul style="list-style-type: none"> <li>• 27:20</li> <li>• 28:2, 4–5, 7–8</li> <li>• 31:21–22</li> <li>• 32:16–17</li> </ul>	127-1	Identities of third parties and trust involved in structured settlement transactions	Denied	The identities of the two third parties who sold their structured settlement payments to Seneca One is public information. ( <i>See</i> BofI’s Request for Judicial Notice, Exs. 1–2, ECF Nos. 127-63 to 64.)  Further, there are not compelling reasons to seal the fact that Seneca One then sold these payments streams to the Bank’s CEO. BofI also has not demonstrated compelling reasons to seal the name of the family trust involved in the transactions. Indeed, the CEO testified that he and the trust are one and the same.
Motion <ul style="list-style-type: none"> <li>• 43:16–17</li> </ul>	127-1	Argument involving bank examination	Granted	Bank examination privilege
Tolla Decl. <ul style="list-style-type: none"> <li>• ¶¶ 4–11</li> </ul>	127-2	Statements regarding bank examination	Granted	Bank examination privilege
McWilliams Decl. <ul style="list-style-type: none"> <li>• ¶¶ 4, 8–9</li> </ul>	127-5	Identities of third parties and trust involved in structured settlement transactions	Denied	The Court incorporates its explanation from above.
Towill Decl. <ul style="list-style-type: none"> <li>• ¶¶ 19–20, p. 13</li> </ul>	127-6	Identities of third parties and trust involved in structured settlement transactions	Denied	The Court incorporates its explanation from above.

Table 125

<b>Item</b>	<b>ECF No.</b>	<b>Description</b>	<b>Determination</b>	<b>Basis/Explanation</b>
Ex. C: Erhart Dep. <ul style="list-style-type: none"> <li>• 614:4, 13, 15, 23</li> <li>• 619:14</li> <li>• 627:5, 7, 9, 19</li> <li>• 632:6</li> <li>• 635:16–17, 20, 22</li> <li>• 647:23–24</li> </ul>	127-9	Identities of third parties and trust involved in structured settlement transactions	Denied	The Court incorporates its explanation from above.
Ex. C: Erhart Dep. <ul style="list-style-type: none"> <li>• 723:16</li> <li>• 729:17</li> </ul>	127-9	Bank/loan account information	Granted	Sensitive financial information
Ex. D: Erhart Dep. <ul style="list-style-type: none"> <li>• 766:20–21</li> </ul>	127-10	Testimony regarding coworker's concern	Denied	This information is not adequately covered by the bank examination privilege.
Ex. E: Erhart Dep. <ul style="list-style-type: none"> <li>• 1144:9–14, 17–18</li> <li>• 1145:8–12, 23–24</li> <li>• 1146:4–5, 14, 21–22</li> <li>• 1149:22–1150:7, 10–11, 25</li> <li>• 1151:1–3, 21–25</li> <li>• 1158:8–9, 16–19, 22–23</li> </ul>	127-11	Testimony regarding bank examination	Granted	The Court seals this information in light of the bank examination privilege. However, the Court also highlights that the Bank's proposed redactions for certain pages are inconsistent with those later proposed for the same document. ( <i>Compare</i> ECF No. 127-11, <i>with</i> ECF No. 164-4.)
Ex. E: Erhart Dep. <ul style="list-style-type: none"> <li>• 1246:14–1247:6</li> <li>• 1247:12–14</li> <li>• 1250:4–7, 14–16, 22–25</li> </ul>	127-11	Testimony regarding bank examination	Granted in part	The Court seals most of this information in light of the bank examination privilege, but denies the request to seal Erhart's testimony that he believed the bank would be misrepresenting itself to shareholders

Table 125

<b>Item</b>	<b>ECF No.</b>	<b>Description</b>	<b>Determination</b>	<b>Basis/Explanation</b>
<ul style="list-style-type: none"> <li>• 1251:1–2</li> </ul>				(Erhart Dep. 1247:1–4 (starting at “the bank”)).
Ex. F: Ball Dep. <ul style="list-style-type: none"> <li>• 75:10–15</li> <li>• 86:4–7</li> <li>• 146:12–14</li> </ul>	127-12	Testimony regarding bank examination	Granted	Bank Examination Privilege
Ex. F: Ball Dep. <ul style="list-style-type: none"> <li>• 146:24–25</li> </ul>	127-12	Testimony explaining why BofI’s CEO raised his voice	Denied	This information is not adequately covered by the bank examination privilege.
Ex. G: Ball Dep. <ul style="list-style-type: none"> <li>• 299:15–18</li> </ul>	127-13	Testimony regarding bank examination	Granted	Bank Examination Privilege
Ex. I: Grenet Dep. <ul style="list-style-type: none"> <li>• 63:21–22</li> </ul>	127-15	Identity of third-party bank customer	Granted	The redactions are narrowly tailored to information about a third-party bank customer, and this information is unnecessary to understand the Court’s rulings and the parties’ dispute.
Ex. J: Garrabrants Dep. <ul style="list-style-type: none"> <li>• 264:2–3, 8, 13</li> <li>• 268:6–9</li> </ul>	127-16	Testimony concerning trust involved in structured settlement transactions	Denied	The Court incorporates its explanation from above.
Ex. J: Garrabrants Dep. <ul style="list-style-type: none"> <li>• 146:6–7, 11–12, 14–25</li> </ul>	127-16	Testimony regarding bank examination	Granted	Bank examination privilege
Ex. J: Garrabrants Dep. <ul style="list-style-type: none"> <li>• 169:9</li> </ul>	127-16	Name of trust	Denied	The Court incorporates its explanation from above.

Table 125

<b>Item</b>	<b>ECF No.</b>	<b>Description</b>	<b>Determination</b>	<b>Basis/Explanation</b>
Ex. K: Garrabrants Dep. Errata Sheet	127-17	Name of trust	Denied	The Court incorporates its explanation from above.
Ex. M: Tolla Rule 30(b)(6) Dep. <ul style="list-style-type: none"> <li>• 24:21–25:5</li> <li>• 119:16–24</li> <li>• 120:2–121:25</li> </ul>	127-19	Testimony involving bank examination	Granted	Bank examination privilege
Ex. Q: Transfer and Assignment Agreement	127-23	Identity of third party involved in structured settlement transaction	Denied	The Court incorporates its explanation from above.
Ex. R: Transfer and Assignment Agreement	127-24	Identity of third party involved in structured settlement transaction	Denied	The Court incorporates its explanation from above.
Ex. T: SEC Letter to BofI & Subpoena	127-26	Bank/loan account information	Granted	Sensitive financial information
Ex. U: BofI Letter to SEC	127-27	Bank/loan account information	Granted	Sensitive financial information
Ex. X: Erhart E-mail to Ball RE: Subpoena	127-30	Bank/loan account information	Granted	Sensitive financial information
Ex. AA: Internal Audit Memo RE: Employee Account Review	127-33	Bank/loan account information and identities of third parties and trust involved in structured settlement transactions	Granted in part	The Court seals the bank account number and related information. The Court, however, denies the request to seal the other information about the third parties involved in structured settlement transactions based on the Court's explanation from above.

Table 125

<b>Item</b>	<b>ECF No.</b>	<b>Description</b>	<b>Determination</b>	<b>Basis/Explanation</b>
Ex. UU: BofI's Responses to the OCC's Requests	127-53	BofI's responses to the OCC's requests	Granted	Bank examination privilege
Ex. VV: Erhart E-mails to Shkabara RE: SEC Subpoena	127-54	Bank/loan account information	Granted	Sensitive financial information
Ex. XX: Tolla E-mail RE: the OCC's Requests	127-56	OCC's requests to BofI	Granted	Bank Examination Privilege

Table 125

**TABLE 130**

<b>Item</b>	<b>ECF No.</b>	<b>Description</b>	<b>Determination</b>	<b>Basis/Explanation</b>
Ex. 1: van Drunen Am. Rule 26 Report <ul style="list-style-type: none"> <li>• 11</li> <li>• 20 &amp; n.119</li> </ul>	128-4	Discussion of Erhart's allegations concerning other bank employees	Denied	Although Erhart's allegations concerning coworkers may be embarrassing, the Court finds this reason is not a compelling justification for sealing the information. <i>Cf. Kamakana v. City &amp; Cty. of Honolulu</i> , 447 F.3d 1172, 1179 (9th Cir. 2006).
Ex. 1: van Drunen Am. Rule 26 Report <ul style="list-style-type: none"> <li>• 12 n.54</li> <li>• 15 nn.74-75</li> </ul>	128-4	Name of customer targeted by SEC subpoena	Denied	The name of this customer is already publicly disclosed in several other documents, including multiple documents submitted with the parties' motions. Further, that the SEC investigated this customer is public knowledge.
Ex. 3: van Drunen Rule 26 Report <ul style="list-style-type: none"> <li>• 10</li> <li>• 11</li> <li>• 19</li> <li>• 20 &amp; n.116</li> </ul>	128-5, 144-2	Discussion of Erhart's allegations concerning other bank employees	Denied	The Court incorporates its explanation from above.
Ex. 3: van Drunen Rule 26 Report <ul style="list-style-type: none"> <li>• 12 n.52</li> <li>• 15 nn.71-72</li> </ul>	128-5, 144-2	Name of customer targeted by SEC subpoena	Denied	The Court incorporates its explanation from above.
Ex. 3: van Drunen Rule 26 Report <ul style="list-style-type: none"> <li>• 15 n.73</li> </ul>	128-5, 144-2	Bank/loan account information	Granted	Sensitive financial information

Table 130

Item	ECF No.	Description	Determination	Basis/Explanation
Ex. 6: Micheletti Dep <ul style="list-style-type: none"> <li>• 73:18, 24</li> <li>• 74:23–24</li> <li>• 75:7</li> <li>• 77:2–3, 23, 25</li> <li>• 79:6, 12, 24–25</li> <li>• 80:5</li> <li>• 81:11, 14, 21</li> </ul>	144-4	Identities of third-party bank customers and associated representatives	Granted	The redactions are narrowly tailored to information about third-party bank customers, and this information is unnecessary to understand the Court’s rulings and the parties’ dispute.
Ex. 297: Customer Deposit History and Related E-mails	144-5	Bank/loan account information and identity of third-party bank customer	Granted	The redactions are narrowly tailored to information about a third-party bank customer, and this information is unnecessary to understand the Court’s rulings and the parties’ dispute.

Table 130

**TABLE 153**

<b>Item</b>	<b>ECF No.</b>	<b>Description</b>	<b>Determination</b>	<b>Basis/Explanation</b>
Ex. B: Erhart Dep. • 639:4–5	155-3	Identities of third parties involved in structured settlement transactions	Denied	The Court incorporates its explanation from above.
Ex. E: Ball Dep. • 329:9, 16	155-6	Identity of employee who Erhart investigated	Denied	There are not compelling reasons to seal this information.
Ex. K: Micheletti Dep. • 73:18, 24 • 74:23–24	155-12	Identities of third-party bank customers and associated representatives	Granted	The Court previously approved these redactions above.
Ex. R: Lopez E-mail RE: FMLA Leave	155-19	Home address of employee	Granted	The redaction is narrowly tailored to personal information, and this information is unnecessary to understand the Court’s rulings and the parties’ dispute.
Ex. V: Lopez E-mail RE: FMLA Leave	155-23	Same as Ex. R	Granted	Same as Ex. R
Ex. Z: Summary of Personnel Costs	155-27	Same as Ex. G considered in ECF No. 150	Granted	Same as Ex. G considered in ECF No. 150
Ex. AA: Gillam E-mail RE: SEC Subpoena	155-28	Identity of bank client being investigated by the SEC and contact information of third party.	Granted in part	The Court incorporates its explanation from above for the name of the client being investigated. As to the other information, the redaction is narrowly tailored to personal information of a third party, and this information is unnecessary to understand the Court’s rulings and the parties’ dispute.

Table 153

<b>Item</b>	<b>ECF No.</b>	<b>Description</b>	<b>Determination</b>	<b>Basis/Explanation</b>
Ex. BB: Gillam E-mail RE: NYT Article	155-29	Same contact information of third party as Ex. AA	Granted	Same as part of Ex. AA.

Table 153

**TABLE 156**

<b>Item</b>	<b>ECF No.</b>	<b>Description</b>	<b>Determination</b>	<b>Basis/Explanation</b>
Opp'n <ul style="list-style-type: none"> <li>• 10:21–24</li> <li>• 11:3–7</li> <li>• 13:15–16, 25–26</li> </ul>	158, 174-2	Argument involving bank examination	Granted	Bank examination privilege
Opp'n <ul style="list-style-type: none"> <li>• 15:26–28</li> <li>• 16:3–5, 11</li> </ul>	158, 174-2	Information regarding CEO's brother's bank account	Denied	Unlike other potentially non-public bank information, the Court finds this information is necessary to understand the nature of Erhart's allegations concerning CEO Garrabrants's brother's account and BofI's defense to these claims. Hence, there are not compelling reasons to seal this information in these circumstances.
Opp'n <ul style="list-style-type: none"> <li>• 19:14–15, 17–18, 19–20</li> </ul>	158, 174-2	Argument involving bank examination	Granted in part	The Court seals part of this information in light of the bank examination privilege (Opp'n 19:14–15), but denies the request to seal Erhart's claim that the Bank was defrauding its regulator (Opp'n 17:18).
Opp'n <ul style="list-style-type: none"> <li>• 22:7</li> </ul>	158, 174-2	Argument involving former employee	Denied	There are not compelling reasons to seal this information.
Opp'n <ul style="list-style-type: none"> <li>• 22:9–14, 19–23, 25</li> </ul>	158, 174-2	Argument involving bank examination	Granted	Bank examination privilege
Opp'n <ul style="list-style-type: none"> <li>• 21:3–22:3 (varying redactions)</li> <li>• 22:5–23:3 (varying redactions)</li> </ul>	158, 174-2	Argument involving former bank employees' observations	Denied	Neither party demonstrates compelling reasons for sealing this information.

Table 156

Item	ECF No.	Description	Determination	Basis/Explanation
Opp'n • 35:14–17	158, 174-2	Argument involving bank examination	Granted	Bank examination privilege
Ex. C: Erhart Dep. • 608:19–21, 23 • 613:15, 18–19 • 614:4, 13, 15, 23 • 619:14 • 625:19 • 626:15	158-6, 174-3	Identities of third parties involved in structured settlement transactions	Denied	The Court incorporates its explanation from above.
Ex. C: Erhart Dep. • 625:2 • 626:21	158-6, 174-3	Name of trust	Denied	The Court incorporates its explanation from above.
Ex. C: Erhart Dep. • 654:22	158-6, 174-3	Information regarding CEO's brother's bank account	Denied	The Court incorporates its explanation from above.
Ex. C: Erhart Dep. Errata Sheet • 276:10–12 • 627:13 • 627:18–20	158-6, 174-3	Information regarding third parties involved in structured settlement transactions	Denied	The Court incorporates its prior explanations for the same material.
Ex. E: Erhart Dep. • 1144:9–18 • 1145:6–12, 22–24 • 1150:1–12 • 1151:1–7, 17–25 • 1246:14–1247:14	158-6, 174-3	Testimony regarding bank examination	Granted in part	BoFI relies on the same deposition pages in its motion for summary judgment. However, BoFI proposes different redactions for this copy of the deposition than those redactions proposed above. ( <i>Compare</i> ECF No. 174-3, <i>with</i> ECF No. 158-6.) Thus, the Court seals the same material as the Court did above, but denies

Table 156

Item	ECF No.	Description	Determination	Basis/Explanation
				the request to seal additional material on these pages.
Ex. F: Ball Dep. <ul style="list-style-type: none"> <li>• 146:12–15, 24–25</li> </ul>	158-6, 174-3	Same as above	Granted in part	The Court has already ruled on these redactions. The Court incorporates its explanation from above. The Court denies Erhart’s request to seal more of page 146 than the Court previously considered. ( <i>Compare</i> ECF No. 158-9 at 146, <i>with</i> ECF No. 127-12 at 146.)
Ex. M: Brickey Dep. <ul style="list-style-type: none"> <li>• 6:14–15</li> <li>• 127:1–128:25</li> <li>• 133:1–25</li> </ul>	174-6	Testimony regarding former employee’s observations	Denied	Neither party demonstrates compelling reasons for sealing this information.
Ex. M: Brickey Dep. <ul style="list-style-type: none"> <li>• 23:9–24:8</li> <li>• 24:23–25</li> <li>• 48:1–25</li> <li>• 57:1–60:20</li> <li>• 92:8–10</li> <li>• 92:17–19</li> <li>• 93:7–20</li> </ul>	147-6	Testimony regarding bank examination	Granted	Bank examination privilege
Ex. M: Brickey Dep. <ul style="list-style-type: none"> <li>• 24:9–22</li> </ul>	147-6	Testimony regarding third party’s medical treatment	Granted in part	The Court denies the request to seal the fact that the employee went out on stress leave and later resigned, but grants the request to seal information concerning medical treatment, which is sensitive information of

Table 156

<b>Item</b>	<b>ECF No.</b>	<b>Description</b>	<b>Determination</b>	<b>Basis/Explanation</b>
				a third party that is also irrelevant to the parties' dispute.
Ex. N: Sisk Dep. • 24:10–14	174-7	Testimony concerning bank reserves	Granted in part	The Court grants the request to seal the sentence on page 24, lines 10 to 12, in light of the bank examination privilege.
Ex. N: Sisk Dep. • 41:3–42:25 • 49:1–25 • 55:1–16 • 59:1–5 • 76:3–25	174-7	Testimony regarding former employee's observations	Denied	Neither party demonstrates compelling reasons for sealing this information.
Ex. O: List of Electronic Format Documents • 2	174-8	Bank/loan account information	Granted	Sensitive financial information
Ex. O: List of Electronic Format Documents • 2–3	174-8	Information regarding bank examination	Granted	Bank examination privilege
Ex. O: List of Electronic Format Documents • 5–8	174-8	Bank/loan account information and information regarding third-party bank customers	Granted	The redactions are narrowly tailored to sensitive financial information and the identities of third-party bank customers, the disclosure of which is unnecessary to understand the Court's rulings and the parties' dispute.
Ex. O: List of Electronic Format Documents • 11–18 • 20	174-8	Bank/loan account information and identities of third	Granted in part	The Court denies the request to seal the identities of the third parties involved in structured settlement transactions for the reasons explained above. The Court

Table 156

<b>Item</b>	<b>ECF No.</b>	<b>Description</b>	<b>Determination</b>	<b>Basis/Explanation</b>
		parties and related information		otherwise grants the request because the redactions are narrowly tailored to sensitive financial information and the identities of third-party bank customers, the disclosure of which is unnecessary to understand the Court's rulings and the parties' dispute.
Ex. O: List of Electronic Format Documents <ul style="list-style-type: none"> <li>• 18</li> </ul>	174-8	Bank examination information	Granted	Bank examination privilege
Ex. 47: Whistleblower Discussion Notes <ul style="list-style-type: none"> <li>• BofI 5900</li> </ul>	174-10	Bank examination information	Granted	Bank examination privilege
Ex. 47: Whistleblower Discussion Notes <ul style="list-style-type: none"> <li>• BofI 5902-05</li> <li>• BofI 5912</li> </ul>	174-10	Bank/loan account and customer information	Granted	The redactions are narrowly tailored to sensitive financial information and the identities of third-party bank customers, the disclosure of which is unnecessary to understand the Court's rulings and the parties' dispute.
Ex. 47: Whistleblower Discussion Notes <ul style="list-style-type: none"> <li>• BofI 5905-06</li> </ul>	174-10	Information concerning CEO's and brother's bank accounts	Denied	The Court incorporates its explanation from above.
Ex. 47: Whistleblower Discussion Notes <ul style="list-style-type: none"> <li>• BofI 5911</li> </ul>	174-10	Erhart's allegations concerning other bank employees	Denied	The Court incorporates its explanation from above.
Ex. 229: Erhart E-mail to Ball RE: Strategic Plan	174-11	Fiscal Strategic Plan	Granted	The Court seals the Fiscal Strategic Plan because it contains sensitive business information, and the disclosure of this

Table 156

<b>Item</b>	<b>ECF No.</b>	<b>Description</b>	<b>Determination</b>	<b>Basis/Explanation</b>
				information is unnecessary to understand the parties' dispute and the Court's rulings.

Table 156

**TABLE 161 & 165**

<b>Item</b>	<b>ECF No.</b>	<b>Description</b>	<b>Determination</b>	<b>Basis/Explanation</b>
Reply <ul style="list-style-type: none"> <li>• 5:18–6:1, 14</li> <li>• 7:14–15, 17–18</li> <li>• 8:16–18, 20–22</li> <li>• 9:17</li> </ul>	164	Argument involving bank examination	Granted	Bank examination privilege
Reply <ul style="list-style-type: none"> <li>• 14 n.10</li> </ul>	164	Argument involving CEO’s bank account	Denied	The Court incorporates its explanation from above.
Reply <ul style="list-style-type: none"> <li>• 18:8–17</li> </ul>	164	Argument involving observations of former employees	Denied	The Court incorporates its explanation from above.
Ex. A: Erhart Dep. <ul style="list-style-type: none"> <li>• 570:13</li> <li>• 574:11</li> <li>• 579:1–2, 6, 9, 21, 23</li> </ul>	164-2	Testimony involving third-party bank customer	Granted	The redactions are narrowly tailored to information regarding a third-party bank customer, the disclosure of which is unnecessary to understand the Court’s rulings and the parties’ dispute.
Ex. A: Erhart Dep. <ul style="list-style-type: none"> <li>• 621:4–6</li> <li>• 624:7–8, 25</li> <li>• 625:2, 19</li> <li>• 632:6</li> </ul>	164-2	Identity of third party involved in structured settlement transaction and name of trust	Denied	The Court incorporates its explanation from above.
Ex. C: Erhart Dep. <ul style="list-style-type: none"> <li>• 1144:9–11</li> <li>• 1145:8–10, 23–25</li> <li>• 1146:3–4, 6–7, 10–11</li> <li>• 1151:5–6, 11–12</li> </ul>	164-4	Testimony involving bank examination	Granted	The Court has already determined this information may be sealed above. However, the Court notes that the proposed redactions do not match up with those previously suggested by the Bank.

Table 161 & 165

Item	ECF No.	Description	Determination	Basis/Explanation
				<i>(Compare ECF No. 164-4, with ECF No. 127-11.)</i>
Ex. D: Garrabrants Dep. <ul style="list-style-type: none"> <li>• 177:19, 21, 25</li> <li>• 178:15–16, 22, 24</li> </ul>	164-5	Name of trust	Denied	The Court incorporates its explanation from above.
Joint Statement of Undisputed Facts (“JSUF”) <ul style="list-style-type: none"> <li>• ¶ 23</li> <li>• ¶¶ 25–26</li> </ul>	167	Bank/loan account information	Granted	Sensitive financial information
JSUF <ul style="list-style-type: none"> <li>• ¶ 29</li> <li>• ¶ 31</li> </ul>	167	Bank examination information	Granted	Bank examination privilege
JSUF <ul style="list-style-type: none"> <li>• ¶ 42</li> <li>• ¶ 43</li> </ul>	167	Information concerning structured settlement transactions	Denied	The Court incorporates its explanation from above.

Table 161 & 165