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

CHARLES MATTHEW ERHART,
Plaintiff,

v.

BOFI HOLDING, INC.,
Defendant.

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

**ORDER CONDITIONALLY
GRANTING BOFI HOLDING,
INC.’S UNOPPOSED EX PARTE
APPLICATION TO SEAL AND
CONTINUE (ECF No. 249)**

And Consolidated Case

19 After repeated delays in light of the COVID-19 pandemic, trial is set for
20 February 1, 2022. Previously, the Court denied a request to continue trial and
21 emphasized that this 2015 case needs to be resolved expeditiously. (ECF Nos. 243,
22 247.) Now before the Court is BofI Holding, Inc’s Unopposed Ex Parte Application
23 to Seal and Continue based on extenuating circumstances—a medical emergency.
24 (ECF No. 249.) The Application raises several issues.

25 Request to Seal. BofI seeks to seal the Application and its supporting
26 declaration because they reveal private medical information. The “good cause”
27 standard applies to this request because the information lodged under seal is not
28 related to the merits or parties of the case. *See Ctr. for Auto Safety v. Chrysler Grp.,*

1 LLC, 809 F.3d 1092, 1096 (9th Cir. 2016). The Court finds this standard is met and
2 seals the Application.

3 Request to Continue. The Court is reluctant to delay the trial. It is already in
4 the process of screening potential jurors and preparing for trial. However, Boff
5 supports its Application with extenuating circumstances that only came to light a few
6 days ago. Proceeding with trial as scheduled would likely prejudice the Bank. And
7 this prejudice was not self-inflicted. (*See* ECF No. 249.)

8 On balance, the Court finds there is good cause to continue the trial; provided,
9 however, that the parties are able to progress on outstanding trial items. Therefore,
10 the Court conditionally grants the request to continue. The continuance is
11 conditioned upon the parties jointly providing dates for interim status conferences to
12 discuss a proposed verdict form, jury instructions, and objections to deposition
13 designations. Further, at least one attorney per side with authority to argue on the
14 client's behalf must appear in person at these status conferences. And the Court
15 admonishes the parties that it will apply an even more exacting standard to any future
16 requests to continue.

17 Trial Time. The Application highlights that the Court's minute order set the
18 time limit for trial at 15 hours per side, for a total of 30 hours. Given the anticipated
19 length of trial—3 weeks—the Court intended to give each party 30 hours per side,
20 for a total of 60 hours. The Court amends its minute entry accordingly.

21 * * *

22 Accordingly, the Court **CONDITIONALLY GRANTS** Boff's Unopposed
23 Ex Parte Application to Seal and Continue. (ECF No. 249.) The Court grants Boff's
24 request to seal. The Clerk shall **file under seal** the unredacted versions of Boff's
25 Application and supporting declaration. No copies are necessary.

26 The Court conditionally continues trial from February 1, 2022, to **April 26,**
27 **2022.** The Court has a criminal trial set that may overlap with this date. Therefore,
28 the parties should be prepared to start trial on or a few days after April 26, 2022.

1 Further, the Court orders the parties to meet and confer about scheduling three status
2 conferences. First, the Court will hold a status conference to discuss the proposed
3 verdict form.¹ Second, the Court will hold a status conference to discuss jury
4 instructions. Third, the Court will hold a status conference to discuss objections to
5 deposition designations. The parties shall file a joint status report that suggests
6 possible dates and times for these conferences between now and trial, with one
7 conference per month in February, March, and April. Provided the parties file this
8 joint status report no later than **January 28, 2022**, trial will be continued from
9 February 1, 2022, to April 26, 2022.

10 Finally, the Court clarifies that the anticipated time limit for trial is 30 hours
11 per side, for a total of 60 hours.

12 **IT IS SO ORDERED.**

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14 **DATED: January 20, 2022**


Hon. Cynthia Bashant
United States District Judge

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¹ As previously ordered, the proposed verdict form is due by 8:30 a.m. on February 1, 2022.