

Update on Bofl SOX Whistleblower Litigation

Proskauer Whistleblower Defense on **May 20, 2019**

This is an update on our [previous blog posts](#) regarding the Erhart v. Bofl Holding, Inc. case.

We previously reported in October 2017 and March 2017 on a whistleblower litigation brought by Charles Erhart, a former Bank of Internet Holding, Inc. (Bofl) internal auditor.

In late 2018, the parties filed cross-motions for judgement on the pleadings, including but not limited to Erhart's SOX retaliation claim. Bofl specifically alleged that Erhart failed to exhaust his administrative remedies under SOX with regard to his OSHA complaint. On April 30, 2019, the court denied without prejudice Bofl's motion to resolve on the pleadings Erhart's SOX claim. [Erhart v. Bofl Holding, Inc.](#), No. 15-cv-02287 (S.D. Cal. Apr. 30, 2019).

Prior Ruling

Bofl previously filed a motion to dismiss or in the alternative to strike the portions of Erhart's complaint that alleged a violation of SOX because he failed to exhaust his administrative remedies. On September 11, 2017, in addition to finding that Erhart sufficiently alleged his whistleblower claims, the court denied Bofl's motion to strike Erhart's SOX claim.

SOX Exhaustion Sufficiently Alleged

On April 30, 2019, relying in large part on its September 2017 ruling, the court refused to make a determination on the pleadings as to Erhart's SOX exhaustion claim. The court reasoned that it was not appropriate to resolve Erhart's SOX claim on the pleadings without further factual development because Erhart alleged that he exhausted his SOX administrative remedies and the court already determined that Erhart plausibly alleged a whistleblower retaliation claim under SOX.

Outlook

Bofl indicated that it plans to seek summary judgment on Erhart's SOX claim. We will continue to monitor this case.

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