

CA District Court Upholds \$1.5 Million Jury Verdict and Awards \$2.4 Million for Attorneys' Fees in Long-Running SOX Whistleblower Lawsuit

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On September 28, 2023, the U.S. District Court for the Southern District of California issued two separate orders in a long-running SOX whistleblower lawsuit. Following a jury trial, the court [upheld](#) the jury's \$1.5 million damages award and [awarded](#) the plaintiff \$2.4 million in attorneys' fees. *Erhart v. Bofl*, No. 15-cv-2287.

Background

As we previously [reported](#), Charles Erhart, a former Bank of Internet Holding, Inc. (Bofl) internal auditor, sued his former employer in the United States District Court for the Southern District of California, alleging that Bofl retaliated against him for reporting wrongdoing to his supervisors and the government.

After years of litigation, which included the court's denial in [2017](#) of Bofl's motion to dismiss and the denial in [2019](#) of Bofl's motion for

judgment on the pleadings, a three-week jury trial was held in 2022. After a full day of deliberation, the jury found that Bofl violated SOX's anti-retaliation provision and awarded Erhart \$1.5 million in damages.

Rulings

Following the jury verdict, Bofl moved for judgment as a matter of law or a new trial. The court denied the motion in its entirety. In support of its request for judgment as a matter of law on Erhart's SOX whistleblower claim, Bofl argued that no reasonable jury could conclude that Erhart reasonably believed that Bofl violated any law covered by SOX's anti-retaliation provision. The court rejected this argument, holding that the jury had sufficient evidence to conclude that Erhart had shown that he had a reasonable belief that Bofl had violated SOX based on his relatively limited experience as a junior bank auditor. The court explained that "[i]f courts ... are going to subject employees like Erhart to the same standard as attorneys ... then Sarbanes-Oxley's anti-retaliation provision will be gutted."

The court also granted in part Erhart's motion for attorneys' fees and, after applying the lodestar method to calculate a reasonable fee, awarded him \$2.4 million in fees and \$170,000 in prejudgment interest.

Outlook

Bofl has not indicated whether it plans to appeal.

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