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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

Case No.: 20-3591

10 **CLASS ACTION COMPLAINT**

11
12 LAW OFFICE OF SABRINA DAMAST,
INC.; EYE LAND OPTOMETRY; BNG
13 RESTAURANT GROUP, INC.; and
14 UMEZU ENTERPRISES LLC,
individually and on behalf of a class of
15 similarly situated individuals,

16 Plaintiffs,

17 v.

18 BANK OF AMERICA CORPORATION,
BANK OF AMERICA, N.A.; and DOES 1-
19 10, inclusive,

20 Defendants.

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- (1) **UNFAIR BUSINESS PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200, et seq.**
 - (2) **FRAUDULENT BUSINESS PRACTICES IN VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et seq.**
 - (3) **UNLAWFUL BUSINESS PRACTICES IN VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et seq.**
 - (4) **FALSE ADVERTISING IN VIOLATION OF BUSINESS & PROFESSIONS CODE § 17500, et seq.**
 - (5) **FRAUDULENT CONCEALMENT**

DEMAND FOR JURY TRIAL

1 Plaintiffs Law Office of Sabrina Damast, Inc., Eye Land Optometry, BNG
2 Restaurant Group, Inc., and Umezu Enterprises, LLC bring this class action
3 complaint on behalf of themselves and those similarly situated (hereinafter
4 “PLAINTIFF SMALL BUSINESS OWNERS”) against Defendants BANK OF
5 AMERICA CORPORATION, BANK OF AMERICA, N.A., and DOES 1-10,
6 inclusive, (hereinafter “BofA”) to stop Defendants’ unlawful conduct and to obtain
7 redress for all persons and businesses injured by Defendants’ conduct. For their
8 class action complaint, Plaintiffs allege as follows based upon their personal
9 knowledge and upon information and belief, including investigation conducted by
10 their attorneys.

11 INTRODUCTION

12 1. BofA has, once again, prioritized corporate greed at the expense of its
13 small business customers.

14 2. Rather than processing Paycheck Protection Program (“PPP”)
15 applications on a first-come, first-served basis as required by the rules governing
16 that program, BofA prioritized loan applications seeking higher loan amounts
17 because processing those applications first generated larger loan origination fees for
18 the banks.

19 3. Making matters worse, BofA concealed from the public that it was
20 reshuffling the PPP applications it received and prioritizing the applications that
21 would make the bank the most money. As a result, thousands of small businesses—
22 including the plaintiffs in this action—trusted that BofA would process the
23 applications on a first come, first served basis.

24 4. Had BofA been honest, small businesses could have (and would have)
25 submitted their PPP applications to other financial institutions that were processing
26 applications on a first-come, first-served basis.

27 5. As a result of BofA’s dishonest and deplorable behavior, however,
28 thousands of small businesses that were entitled to loans under the PPP were left

1 with nothing because BofA chose to maximize its loan origination fees rather than
2 comply with the rules of the program and serve the needs of its small business
3 customers.

4 **BACKGROUND**

5 6. Small businesses are the backbone of the American economy. Indeed,
6 about half of the people that work in America work for a small business. These
7 businesses and their employees have been hit hard due to the global COVID-19
8 pandemic.

9 7. On March 11, 2020, the COVID-19 outbreak was characterized as a
10 pandemic by the World Health Organization (WHO). On March 19, 2020, Governor
11 Gavin Newsom issued an executive Stay at Home Order in the State of California
12 in order to slow the spread of COVID-19.

13 8. On March 25, 2020, in response to the economic fallout of the COVID-
14 19 crisis, The United States Senate passed the Coronavirus Aid, Relief, and
15 Economic Security Act, also known as the CARES Act. The CARES Act passed
16 the House the next day and was signed into law by President Trump on March 27,
17 2020. The legislation included \$377 billion in federally guaranteed loans to small
18 businesses and established a \$500 billion government lending program for
19 distressed companies. Unprecedented in size and scope, the legislation was the
20 largest-ever economic stimulus package in U.S. history, amounting to 10% of the
21 total U.S. gross domestic product.

22 9. As part of the CARES Act, the Federal Government Created a \$349
23 billion loan program, called the “Paycheck Protection Program” (PPP), for small
24 businesses with funds available for loans originated from February 15 through June
25 30, 2020. The PPP intended to provide American small businesses with eight weeks
26 of cash-flow assistance through 100 percent federally guaranteed loans. The loans
27 are backed by the United States Small Business Administration (SBA). The SBA is
28 a United States government agency that provides support to entrepreneurs and small

1 businesses. The loans were backed by the Federal Government and SBA but
2 administered by private banks. One of the most important aspects of the PPP loans
3 is that the terms provide criteria for loan forgiveness through a process that
4 incentivizes companies to retain, and not “lay off”, employees during this crisis.

5 10. It was the express intent of the US Senate and Congress in passing the
6 CARES Act that the funds be used to support small businesses, particularly rural
7 businesses, veteran owned businesses, woman owned businesses, and businesses
8 owned by socially and economically disadvantaged persons.¹ The text of the Bill
9 itself provides “It is the sense of the Senate that the Administrator should issue
10 guidance to lenders and agents to ensure that the processing and disbursement of
11 covered loans prioritizes small business concerns and entities in underserved and
12 rural markets, including veterans and members of the military community, small
13 business concerns owned and controlled by socially and economically
14 disadvantaged individuals (as defined in section 8(d)(3)(C)), women, and
15 businesses in operation for less than 2 years.”

16 11. At President Trump’s signing of the CARES Act, ranking member of
17 the House Small Business Committee Representative Steve Chabot (R-Ohio)
18 praised the legislation as giving small businesses a great chance to reopen.² Senator
19 Marco Rubio (R-Fl), Chairman of the Senate Small Business and Entrepreneurship
20 stated that the “bipartisan small business package...will provide emergency relief
21 so that millions of American workers can keep their jobs and millions of small
22 businesses can stay open.”³ Senate Majority Whip, Senator John Thune (R-SD)
23 stated that the funds provided by the CARES Act “will deliver relief to small
24 businesses to help them and their workers weather this storm.”⁴

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26 ¹ H.R.748(P)(iv) - CARES Act

27 ² REMARKS BY PRESIDENT TRUMP AT SIGNING OF H.R.748, THE CARES ACT, 2020 WL 1485787, at *67

28 ³ (Sen. Rubio, Press Release, 3/25/2020 https://www.rubio.senate.gov/public/index.cfm/press-releases?ContentRecord_id=D08E8A75-546A-4C56-A890-B948048E9B5C)

⁴ (Sen. Thune, Press Release, 3/25/2020 <https://www.thune.senate.gov/public/index.cfm/press-releases?ID=CA914CF0-5C3D-4A02-B6F2-84925B5467BD>)

1 12. BofA communicated to the public that it intended to follow the law and
2 direct the PPP funds to the small businesses that Congress and the Senate intended
3 to help. BofA, on its website, represented to its customers that it will “process your
4 loan application with the Small Business Administration as quickly as possible.”⁵

5 13. The United States Department of the Treasury announced that starting
6 April 3, 2020, small businesses and sole proprietorships could apply for and receive
7 loans to cover their payroll and other certain expenses through existing SBA
8 lenders.⁶ Starting April 10, 2020, independent contractors and self-employed
9 individuals could apply.⁷

10 14. Within this context, BofA served as an intermediary between small
11 businesses and federal funds. Not only did BofA encourage PLAINTIFF SMALL
12 BUSINESS OWNERS to apply, BofA encouraged PLAINTIFF SMALL
13 BUSINESS OWNERS to act fast.

14 15. Evidently, time was of the essence. In fact, the Small Business
15 Administration Regulations that govern the PPP funds mandated that the funds be
16 distributed “first come, first served.”⁸ There was a line, a “queue”. If you applied
17 sooner rather than later, according to the SBA regulations your place in line *should*
18 have been considered, and your loans issued accordingly, “first-come, first-served”.
19 However, in contravention with its implied and explicit representations, and their
20 own representations to the public, this was not how BofA operated.

21 16. The terms of the PPP loans only allow for each small-business
22 borrower to obtain a single SBA backed loan through the PPP. The SBA
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24 ⁵ [https://about.bankofamerica.com/promo/assistance/faqs/small-business-paycheck-protection-](https://about.bankofamerica.com/promo/assistance/faqs/small-business-paycheck-protection-program)
25 [program](https://about.bankofamerica.com/promo/assistance/faqs/small-business-paycheck-protection-program)

26 ⁶ <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>

27 ⁷ *Id.*

28 ⁸ SMALL BUSINESS ADMINISTRATION Interim Final Rule § *m*. [Docket No. SBA-2020-0015] 13 CFR Part 120 Business Loan Program Temporary Changes; Paycheck Protection Program RIN 3245-AH34.

1 Regulations provide: “The Administrator, in consultation with the Secretary,
2 determined that no eligible borrower may receive more than one PPP loan. This
3 means that if you apply for a PPP loan you should consider applying for the
4 maximum amount.”⁹ Upon information and belief, when a borrower applied for
5 multiple PPP loans through different lenders, it triggered a law enforcement fraud
6 alert. Therefore, the majority of PPP borrowers made a single application through a
7 single financial institution, putting “all their eggs in one basket.”

8 17. Upon information and belief, BofA received thousands of applications
9 and chose to prioritize higher loans for bigger companies, despite the SBA requiring
10 a first-come, first-serve distribution of funds. As a result of its covert lending
11 prioritization practices, preferencing larger “small businesses” over true small
12 businesses, BofA—along with other banks—received nearly \$6 billion in fees while
13 hundreds of thousands of loan applicants got nothing.

14 18. Data provided by the U.S. Small Business Administration reveals that,
15 rather than processing PPP loan applications on a “first come, first served” basis as
16 required, BofA prioritized and front-loaded applications with higher loan amounts.
17 This is shown by comparing data from loans processed between April 3, 2020 (when
18 the PPP started) and April 13th versus data between April 13th and April 16th (when
19 the program ran out of money).

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28 ⁹ *Id.* at § k.

19. Here is a breakdown of the loans processed through April 13, 2020¹⁰:

Loan Size	Approved Loans	Approved Dollars	% of Count	% of Amount
\$150K and Under	725,058	\$37,178,984,187	70.05%	15.02%
>\$150K - \$350K	156,590	\$35,735,615,983	15.13%	14.44%
>\$350K - \$1M	102,473	\$59,291,602,643	9.90%	23.95%
>\$1M - \$2M	31,176	\$43,278,883,532	3.01%	17.48%
>\$2M - \$5M	16,516	\$49,288,997,593	1.60%	19.91%
>\$5M	3,273	\$22,769,309,582	0.32%	9.20%

20. Here is the same information, updated through April 16, 2020¹¹:

Loan Size	Approved Loans	Approved Dollars	% of Count	% of Amount
\$150K and Under	1,229,893	\$58,321,791,761	74.03%	17.04%
>\$150K - \$350K	224,061	\$50,926,354,675	13.49%	14.88%
>\$350K - \$1M	140,197	\$80,628,410,796	8.44%	23.56%
>\$1M - \$2M	41,238	\$57,187,983,464	2.48%	16.71%
>\$2M - \$5M	21,566	\$64,315,474,825	1.30%	18.79%
>\$5M	4,412	\$30,897,983,582	0.27%	9.03%

21. Comparing the April 13 data to the April 16 data shows that—in the last three days of the PPP—banks processed loan applications for \$150,000 and under at twice the rate of larger loans:

Loan Size	4/13/2020	4/16/2020	% Change
	Approved Loans	Approved Loans	
\$150K and Under	725,058	1,229,893	70%
>\$150K - \$350K	156,590	224,061	43%
>\$350K - \$1M	102,473	140,197	37%
>\$1M - \$2M	31,176	41,238	32%
>\$2M - \$5M	16,516	21,566	31%
>\$5M	3,273	4,412	35%

22. This data demonstrates that banks front-loaded applications for the largest loans because, if applications were being processed on a first-come, first-

¹⁰ <https://www.sba.gov/sites/default/files/2020-04/PPP%20Report%20SBA%204.14.20%20-%20-%20-%20Read-Only.pdf>

¹¹ <https://www.sba.gov/sites/default/files/2020-04/PPP%20Deck%20copy.pdf>

1 served basis as required, the percentage change of applications submitted in the last
2 three days of the program would be consistent among all application types.

3 23. BofA chose to prioritize the applications with higher loan amounts
4 because processing those applications first resulted in larger origination fees for the
5 BofA.

6 24. Specifically, BofA was entitled under the PPP to receive origination
7 fees of 5% on loans up to \$350,000; 3% on loans between \$350,000 and \$2 million;
8 and 1% on loans between \$2 million and \$10 million.¹² That means that BofA could
9 make up to \$17,500 for processing loans up to \$350,000; up to \$60,000 for
10 processing loans between \$350,000 and \$2 million; and up to \$100,000 for
11 processing loans between \$2 million and \$10 million.

12 25. Upon information and belief, BofA prioritized those PPP loans that
13 earned them the highest origination fees rather than processing PPP loan
14 applications on a “first come, first served” basis as required. In doing so, BofA
15 enriched itself at the expense of American taxpayers, undercut the intent of
16 Congress and the Senate, undercut the dollar-per-dollar effectiveness of the CARES
17 Act itself, and caused irreparable harm to countless small businesses and workers
18 who actually needed the temporary funding of the PPP loans to make payroll, retain
19 their employees, and stay afloat.

20 26. BofA knew that it received more PPP applications than it would be
21 able to process but concealed from PLAINTIFF SMALL BUSINESS OWNERS
22 and the general public that they were reshuffling the applications they received to
23 maximize profits for the banks.

24 27. Had BofA informed PLAINTIFF SMALL BUSINESS OWNERS and
25 the general public of the truth, then PLAINTIFF SMALL BUSINESS OWNERS
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28 ¹² [https://home.treasury.gov/system/files/136/PPP%20Lender%20Information%
20Fact%20Sheet.pdf](https://home.treasury.gov/system/files/136/PPP%20Lender%20Information%20Fact%20Sheet.pdf)

1 would have submitted their PPP applications to other lending institutions that were
2 processing applications on a first come, first served basis.

3 28. Plaintiffs, on behalf of themselves and the proposed class (as defined
4 below), seek an injunction requiring Defendants to cease the unlawful activities
5 alleged herein and an award of damages to themselves and all members of the class,
6 together with the costs of suit and reasonable attorneys' fees.

7 **JURISDICTION AND VENUE**

8 29. The Court has original jurisdiction over this Action under the Class
9 Action Fairness Act, 28 U.S.C. § 1332(d), because this is a class action in which:
10 (1) at least some members of the proposed Class have different citizenship from
11 Defendant(s); (2) the proposed class consists of more than 100 persons or entities;
12 and (3) the claims of the proposed Class Members exceed \$5,000,000 in the
13 aggregate.

14 30. This Court has personal jurisdiction over Defendants because
15 Defendants do business in this District and a substantial number of the events giving
16 rise to the claims alleged herein took place in California.

17 31. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2)
18 because a substantial part of the events or omissions giving rise to the alleged claims
19 occurred in this District given that Plaintiffs applied for the subject PPP loans while
20 in this District and Defendants marketed, promoted, and took applications for the
21 PPP loans in this District. Plaintiffs are filing concurrently herewith Declarations
22 stating facts showing that this action has been commenced in a proper county
23 pursuant to California Civil Code section 1780(c).

24 **PARTIES**

25 32. Plaintiff Law Office of Sabrina Damast is a small business with a
26 principal place of business in Los Angeles, California. Plaintiff meets the criteria
27 for funding under the PPP, who in reliance of Defendants' false and deceptive
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1 advertising, marketing, and loan application processing schemes, made its single
2 permitted application for loan assistance through the PPP with BofA.

3 33. Plaintiff Eye Land Optometry is a small business with a principal place
4 of business in Long Beach, California. Plaintiff meets the criteria for funding under
5 the PPP, who in reliance of Defendants' false and deceptive advertising, marketing,
6 and loan application processing schemes, made its single permitted application for
7 loan assistance through the PPP with BofA.

8 34. Plaintiff BNG Restaurant Group, Inc. is a small business with a
9 principal place of business in Torrance, California. Plaintiff meets the criteria for
10 funding under the PPP, who in reliance of Defendants' false and deceptive
11 advertising, marketing, and loan application processing schemes, made its single
12 permitted application for loan assistance through the PPP with BofA.

13 35. Plaintiff Umezu Enterprises, LLC is a small business with a principal
14 place of business in Torrance, California. Plaintiff meets the criteria for funding
15 under the PPP, who in reliance of Defendants' false and deceptive advertising,
16 marketing, and loan application processing schemes, made its single permitted
17 application for loan assistance through the PPP with BofA.

18 36. Defendant BANK OF AMERICA CORPORATION. is the parent of
19 all BofA entities. BOFA & CO. is a diversified financial services company
20 providing banking, insurance, investments, mortgage banking and consumer
21 finance to individuals, businesses and institutions in all 50 states and internationally.
22 BOFA & CO. is headquartered in Charlotte, North Carolina. Through its
23 subsidiaries, BOFA & CO. conducts substantial business in this district.

24 37. Defendant BANK OF AMERICA N.A., is the main banking arm of
25 BofA and is also headquartered in Charlotte, North Carolina. BofA conducts
26 substantial business in all Counties within the State of California.

27 38. When in this Complaint reference is made to any act of any Defendant,
28 such shall be deemed to mean that officers, directors, agents, employees, or

1 representatives of the Defendant named in this lawsuit committed or authorized
2 such acts, or failed and omitted to adequately supervise or properly control or direct
3 their employees while engaged in the management, direction, operation or control
4 of the affairs of the Defendant and did so while acting within the scope of their
5 employment or agency.

6 39. Plaintiffs are unaware of the names, identities, or capacities of the
7 defendants sued as Does 1-10, but are informed and believe and thereon allege that
8 each such fictitiously-named defendant is responsible in some manner for the
9 damages and abridgement of rights described in this Complaint. Plaintiffs will
10 amend this Complaint to state the true names, identities or capacities of such
11 fictitiously-named defendants when ascertained.

12 **FACTUAL ALLEGATIONS**

13 40. In or around March of 2020, Plaintiffs became aware that the CARES
14 Act had been signed into law. Plaintiffs, knowing that their business would be
15 seriously impacted by the COVID-19 crisis and the shelter-in-place orders, sought
16 to obtain a PPP loan through a financial institution.

17 41. On or about April 3, 2020, Plaintiffs submitted a complete, thorough,
18 and timely application to BofA to obtain a PPP loan. In doing so, Plaintiffs relied
19 on the representations of BofA, which represented that it would process applications
20 “as soon as possible.” Knowing it could only receive one PPP loan, Plaintiffs
21 believed that BofA would be their best choice for obtaining funding under the PPP.

22 42. After submitting the PPP loan application, Plaintiffs waited to get
23 funded. While Plaintiffs waited to get funded, they made strategic business
24 decisions, and took other steps in reliance on BofA’s representations that it would
25 process their applications “as quickly as possible”.

26 43. On information and belief, BofA did not process applications as
27 quickly as possible; instead, BofA moved high dollar applications from large and
28 mid-sized companies to the “front of the line” in order to maximize their origination

1 fees on these Federally backed loans at taxpayer expense. BofA enriched itself at
2 the expense of Plaintiffs and the putative class of PLAINTIFF SMALL BUSINESS
3 OWNERS.

4 44. Despite the fact that BofA did not process the applications in a “first-
5 come, first-served” manner, BofA made numerous affirmative representations to its
6 customers, potential applicants, and the public that they were in fact prioritizing
7 loans to small businesses and processing applications on a first-come, first served
8 basis. They made these affirmative representations to advance their own financial
9 benefit to the detriment of their applicants and the consuming public. BofA tried to
10 cultivate public good will and to communicate they were following the law, when
11 in fact the process was rigged so that the banks could maximize origination fees.

12 45. PLAINTIFF SMALL BUSINESS OWNERS reasonably relied on
13 BofA’s affirmative representations, communications, and advertising in making the
14 choice to apply for their one PPP loan through BofA, not knowing that, contrary to
15 those representations, BofA would prioritize large borrowers, making it less likely
16 that PLAINTIFF SMALL BUSINESS OWNERS would be able to obtain a loan
17 through the PPP. As a result of their reliance on BofA’s representations,
18 PLAINTIFF SMALL BUSINESS OWNERS suffered economic harm. Had
19 PLAINTIFF SMALL BUSINESS OWNERS known that BofA was prioritizing
20 large loans, Plaintiffs could have avoided the harm by applying for a loan at a
21 different bank, such as a local community bank.

22 46. As a result of the conduct of BofA, Plaintiffs’ businesses suffered
23 financial harm, wrongfully lost the opportunity to obtain funding that was likely to
24 be forgiven by the Federal Government, lost the time value of those available PPP
25 funds, lost access to capital in a difficult economic time, could not make payroll,
26 and was forced to lay off talented and hardworking employees that the company
27 had invested valuable training resources in, and generally lost economic
28 opportunities to conduct business due to lack of operating capital.

1 **CLASS ACTION ALLEGATIONS**

2 47. As noted above, Plaintiffs brings this action on behalf of themselves
3 and a state-wide class, defined as indicated below.

4 48. **The Class Definition:** All businesses in the State of California that met
5 the criteria for receiving a loan under the PPP, i.e. met the criteria for eligibility and
6 were not otherwise ineligible, between February 15 and June 30, 2020, who timely
7 applied for a PPP loan through BofA, whose applications were not processed and/or
8 who were not issued loans in accordance with SBA Regulations (i.e. “first-come,
9 first-served) and in accordance with the stated intent of the CARES Act (i.e.
10 prioritizing “small business concerns and entities in underserved and rural markets,
11 including veterans and members of the military community, small business
12 concerns owned and controlled by socially and economically disadvantaged
13 individuals”).)

14 49. Excluded from the Class are Defendants, as well as their officers,
15 employees, agents, board members and legal counsel, and any judge who presides
16 over this action (or spouse or family member of presiding judge), as well as all past
17 and present employees, officers and directors of BofA.

18 50. Plaintiffs reserve the right to expand, limit, modify, or amend this class
19 definition, including the addition of one or more subclasses, in connection with
20 Plaintiffs' motion for class certification, or at any other time, based upon, inter alia,
21 changing circumstances and/or new facts obtained during discovery.

22 51. *Numerosity:* The Class is composed of thousands of businesses, whose
23 joinder in this action would be impracticable. The disposition of their claims
24 through this class action will benefit all Class Members, the parties and the courts.

25 52. *Existence and Predominance of Common Questions of Fact and Law:*
26 There is a well-defined community of interest in questions of law and fact affecting
27 the Class. These questions of law and fact predominate over individual questions
28 affecting individual Class Members, including, but not limited to, the following:

- 1 a. Did Defendants comply with all applicable SBA Regulations in
2 processing applications for PPP funds and in distributing PPP funds in
3 California?
- 4 b. Did Defendants comply with their legal obligations under the terms of
5 the CARES Act as third party intermediary administrators of the PPP
6 funds?
- 7 c. Did Defendants have a policy and/or practice of prioritizing large PPP
8 loans to larger businesses to the detriment of the putative class?
- 9 d. Did Defendants process PPP loan applications on a “first-come, first-
10 serve” basis?”
- 11 e. Did Defendants process applications in the order received, or did large
12 PPP loans get moved “to the front of the line?”
- 13 f. Did Defendants prioritize maximizing origination fees over achieving
14 the goals of the CARES Act and the PPP?
- 15 g. Did Defendants’ conduct constitute an “unfair business practice” under
16 California Business & Professions Code § 17200, *et seq.*?
- 17 h. Did Defendants’ conduct constitute an “unlawful business practice”
18 under California Business & Professions Code § 17200, *et seq.*?
- 19 i. Did Defendants’ conduct constitute a “fraudulent business practice”
20 under California Business & Professions Code § 17200, *et seq.*?
- 21 j. Did Defendants’ conduct constitute false advertising under California
22 Business & Professions Code § 17500, *et seq.*?
- 23 k. Did the transactional nature of the PPP application process create a
24 duty on the part of the Defendants to disclose material information to
25 the PPP loan applicants?
- 26 l. Did Defendants disclose to the PPP applicants that the loan
27 applications were not being processed on a first-come, first-served
28 basis?

- 1 m. Did Defendants possess exclusive knowledge of material facts, with
2 respect to the PPP loan application process, that could not have been
3 known to the Plaintiffs or the public (i.e. that the loan applications were
4 not being processed “first-come, first-served” or that the banks were
5 prioritizing large borrowers)?
- 6 n. Did Defendants actively conceal a material fact or facts from the
7 Plaintiffs (i.e. that the loan applications were not being processed
8 “first-come, first-served” or that the banks were prioritizing large
9 borrowers)?
- 10 o. Did Defendants make a partial representation but also suppress some
11 material fact or facts from the Plaintiffs (i.e. that the loan applications
12 were not being processed “first-come, first-served” or that the banks
13 were prioritizing large borrowers)?
- 14 p. Whether Defendants conduct, as alleged herein, was intentional and
15 knowing?
- 16 q. Whether Class Members are entitled to damages and/or restitution;
17 and, if so, what is the amount of revenues and/or profits Defendants
18 received and/or was lost by Class Members as a result of the conduct
19 alleged herein;
- 20 r. Whether Defendants are likely to continue to mislead PPP loan
21 applicants and continue to violate SBA Regulations regarding
22 processing and funding applications for PPP loans; and
- 23 s. Whether Plaintiffs and Class Members are entitled to an award of
24 reasonable attorney's fees, pre-judgment interest and costs of suit.

25 53. *Superiority*. In engaging in the conduct described herein, Defendants
26 have acted and failed to act on grounds generally applicable to Plaintiffs and other
27 Class Members. Such conduct requires the Court’s imposition of uniform relief to
28 ensure compatible standards of conduct toward class members and to make

1 injunctive or corresponding declaratory relief appropriate for all class members. A
2 class action is superior to all other available means for the fair and efficient
3 adjudication of Plaintiffs' and the Class Members' claims. Few, if any, class
4 members could afford to seek legal redress of the wrongs complained herein on an
5 individual basis. Absent class action, Class Members and the general public would
6 not likely recover, or have the chance to recover, damages or restitution, and
7 Defendants would be permitted to retain the proceeds of their misdeeds.

8 54. *Typicality*: Plaintiffs' claims are typical of, and are not antagonistic to,
9 the claims of all Class Members. Plaintiffs and the Class Plaintiffs have all been
10 deceived by Defendants' unfair, unlawful, and fraudulent PPP loan application and
11 funding practices, as alleged herein. The factual and legal bases of Defendants'
12 liability to Plaintiffs and each class member are substantially similar, resulting in
13 injury to Plaintiffs and each Class Member as a result of Defendants' actions as
14 described herein.

15 55. *Adequacy*: Plaintiffs are adequate representatives of the Class because
16 they are members of the Class and Plaintiffs' interests do not conflict with the
17 interests of the Class Members Plaintiffs seeks to represent. Plaintiffs will fairly and
18 adequately represent and protect the interests of other class members. Plaintiffs
19 have retained counsel with substantial experience in litigating complex cases,
20 including consumer fraud and class actions. Both Plaintiffs and their counsel will
21 vigorously prosecute this action on behalf of the class and have the financial ability
22 to do so. Neither Plaintiffs nor counsel has any interest adverse to other class
23 members.

24 56. *Ascertainability*: Plaintiffs and the Class Plaintiffs are informed and
25 believe that Defendants keep extensive computerized records of its loan
26 applications through, inter alia, computerized loan application systems and
27 Federally mandated record keeping. Defendant has one or more databases through
28 which a significant majority of Class Members, if not 100% of Class Members, may

1 be identified and ascertained, and it maintains contact information, including email
2 and home mailing addresses, through which notice of this action could be
3 disseminated in accordance with due process requirements.

4 **FIRST CAUSE OF ACTION**

5 **On Behalf of the Class**

6 **Against All Defendants**

7 **(Violation of the “Unfair” Prong of the UCL, California Business &**
8 **Professions Code § 17200, et seq.)**

9 57. Plaintiffs hereby incorporate by reference the foregoing allegations as
10 if fully set forth herein.

11 58. Plaintiffs asserts this cause of action on behalf of themselves and
12 members of the class.

13 59. The California Unfair Competition Law (hereinafter “UCL”) defines
14 unfair business competition to include any “unlawful, unfair or fraudulent” act or
15 practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal.
16 Bus. & Prof. Code § 17200.

17 60. A business act or practice is “unfair” under the UCL if the reasons,
18 justifications and motives of the alleged wrongdoer are outweighed by the gravity
19 of the harm to the alleged victims.

20 61. BofA has violated the “unfair” prong of the UCL by subverting both
21 the process and the intent of PPP loans through prioritizing large borrowers to the
22 detriment of the “small business” applicants the funds were intended to support.
23 Further, they have unfairly made representations to their PPP applicants and the
24 public about the process which unfairly induced applicants to apply with
25 Defendants. Inducing a greater volume of PPP applicants was to the financial
26 benefit of Defendants at the expense of the applicants.

27 62. These acts and practices were unfair because they generated undue
28 public good will for Defendants, and caused Plaintiffs, and the other members of

1 the putative Class, to falsely believe that Defendants were focused on serving small
2 businesses when they were not, and that the PPP loan applications were processed
3 fairly and “first-come, first-served” based on the program criteria when they were
4 not. They caused small business owners, some of whom the banks did profit from,
5 to submit applications when in reality those PPP loan applications were “at the back
6 of the line.” In this way, Defendants got to have it both ways – lots of small business
7 applications to choose from and large borrower applications that could be
8 prioritized.

9 63. The gravity of the harm to members of the Class resulting from these
10 unfair acts and practices outweighed any conceivable reasons, justifications, and/or
11 motives of Defendants had, in this case the desire to profit from PPP loans, for
12 engaging in such deceptive acts and practices. By committing the acts and practices
13 alleged above, Defendants engaged in unfair business practices within the meaning
14 of California Business & Professions Code §§ 17200, *et seq.*

15 64. Through its unfair acts and practices, Defendants have improperly
16 obtained money from the Federal Government at the expense of Plaintiffs and the
17 Class. As such, Plaintiffs request that this Court cause Defendants to disgorge this
18 money to Plaintiffs and all Class Members, and to enjoin Defendants from
19 continuing to violate the UCL as discussed herein and/or from violating the UCL in
20 the future, most notably if this program is funded again. Otherwise, Plaintiffs, the
21 Class and members of the general public may be irreparably harmed and/or denied
22 an effective and complete remedy if such an order is not granted.

23
24 **SECOND CAUSE OF ACTION**

25 **On Behalf of the Class**

26 **Against All Defendants**

27 **(Violation of the “Fraudulent” Prong of the UCL, California Business &**
28 **Professions Code § 17200, et seq.)**

1 65. Plaintiffs hereby incorporate by reference the foregoing allegations as
2 if fully set forth herein.

3 66. The UCL defines unfair business competition to include any
4 “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive,
5 untrue or misleading” advertising. Cal. Bus. & Prof. Code § 17200.

6 67. A business act or practice is “fraudulent” under the UCL if it is likely
7 to deceive members of the consuming public.

8 68. As set forth above, the Defendants’ conduct included affirmative
9 representations about the loan approval process and the “focus” and “priorities” of
10 the bank in processing and funding PPP loans which were not true. Those
11 representations were made with the intent to generate public good will and to induce
12 consumers to reasonably rely on those representations and choose Defendants when
13 making their decision about who to make their PPP loan application through.

14 69. Defendants’ acts and practices as described herein have deceived
15 Plaintiffs and the Class and were highly likely to deceive members of the consuming
16 public. Specifically, in deciding with which bank should they apply for a PPP loan,
17 Plaintiffs relied upon Defendants’ misleading and deceptive representations
18 regarding its loan application and approval process. Each of these factors played a
19 substantial role in Plaintiffs’ decision to apply with Defendants, and Plaintiffs
20 would not have applied for PPP loans with Defendants in the absence of
21 Defendants’ misrepresentations. Had they applied at a different bank, Plaintiffs and
22 the Class could have obtained PPP funding. Accordingly, Plaintiffs have suffered
23 monetary and economic loss as a direct result of Defendants’ practices described
24 above.

25 70. As a result of the conduct described above, Defendants have been
26 unjustly enriched at the expense of Plaintiffs and members of the Class.
27 Specifically, Defendants have been unjustly enriched by obtaining revenues and
28

1 profits that they would not otherwise have obtained absent their false, misleading
2 and deceptive conduct.

3 71. Through its unfair acts and practices, Defendants have improperly
4 obtained money from the Federal Government at the expense of Plaintiffs and the
5 Class. As such, Plaintiffs requests that this Court cause Defendants to disgorge this
6 money to Plaintiffs and all Class Members, and to enjoin Defendants from
7 continuing to violate the UCL as discussed herein and/or from violating the UCL in
8 the future. Otherwise, Plaintiffs, the Class and members of the general public may
9 be irreparably harmed and/or denied an effective and complete remedy if such an
10 order is not granted.

11 **THIRD CAUSE OF ACTION**

12 **On Behalf of the Class**

13 **Against All Defendants**

14 **(Violation of the “Unlawful” Prong of the UCL, California Business &**
15 **Professions Code § 17200, et seq.)**

16 72. Plaintiffs hereby incorporate by reference the foregoing allegations as
17 if fully set forth herein.

18 73. The UCL defines unfair business competition to include any
19 “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive,
20 untrue or misleading” advertising. Cal. Bus. & Prof. Code § 17200.

21 74. A business act or practice is “unlawful” under the UCL if it violates
22 any other law or regulation.

23 75. The FTCA prohibits “unfair or deceptive acts or practices in or
24 affecting commerce” (15 U.S.C. § 45(a)(1)) and specifically prohibits false
25 advertisements. 15 U.S.C. § 52(a).

26 76. Small Business Administration Regulations that govern the PPP funds,
27 specifically SBA Interim Final Rule § *m*. [Docket No. SBA-2020-0015] 13 CFR
28 Part 120, Business Loan Program Temporary Changes; Paycheck Protection

1 Program, RIN 3245-AH34, mandated that they funds be distributed “first come, first
2 served.”

3 77. Defendants have engaged in “unfair” and “deceptive” representations
4 to the public and their loan applicants as set forth above, including by making false
5 statements of material fact with respect to the PPP application process.

6 78. Defendants have further intentionally disregarded their legal
7 requirement to distribute PPP funds on a “first-come, first-served” basis and in fact
8 prioritized large businesses and allowed them to “jump the line” to the detriment of
9 small business applicants and the members of the Class.

10 79. Through its unfair acts and practices, Defendants have improperly
11 obtained money from the Federal Government at the expense of Plaintiffs and the
12 Class. As such, Plaintiffs request that this Court cause Defendants to disgorge this
13 money to Plaintiffs and all Class Members, and to enjoin Defendants from
14 continuing to violate the UCL, and/or from violating the UCL in the future.
15 Otherwise, Plaintiffs, the Class and members of the general public may be
16 irreparably harmed and/or denied an effective and complete remedy if such an order
17 is not granted.

18 **FOURTH CAUSE OF ACTION**

19 **On Behalf of the Class**

20 **Against All Defendants**

21 **(Violation of the California False Advertising Law, California Business &**
22 **Professions Code Sections 17500, et seq.)**

23 80. Plaintiffs hereby incorporate by reference the foregoing allegations as
24 if fully set forth herein.

25 81. The California False Advertising Law prohibits unfair, deceptive,
26 untrue, or misleading communications and statements, including, but not limited to,
27 false statements as to the nature of services to be provided.
28

1 82. Defendants made or caused one another to make false and misleading
2 representations to Plaintiffs and Class Members concerning the nature of the
3 services they would be providing as PPP loan administrators. Defendants knew, or
4 should have known, that the PPP applications would not be processed on a “first-
5 come, first-served basis” and yet they represented to the contrary to their customers
6 and to the public. Further, Defendants knew or should have known that the “focus”
7 of the bank was not on facilitating loans to small businesses with, for example, less
8 than 50 employees, yet they represented to the contrary to the public and their
9 customers.

10 83. Through its false representations and unfair acts and practices,
11 Defendants have improperly obtained money from the Federal Government at the
12 expense of Plaintiffs and the Class. As such, Plaintiffs requests that this Court cause
13 Defendants to disgorge this money to Plaintiffs and all Class Members, and to
14 enjoin Defendants from continuing to violate the UCL as discussed herein and/or
15 from violating the UCL in the future. Otherwise, Plaintiffs, the Class and members
16 of the general public may be irreparably harmed and/or denied an effective and
17 complete remedy if such an order is not granted.

18
19 **FIFTH CAUSE OF ACTION**

20 **On Behalf of the Class**

21 **Against All Defendants**

22 **FRAUDULENT CONCEALMENT**

23 84. Plaintiffs hereby incorporate by reference the foregoing allegations as
24 if fully set forth herein.

25 85. Due to the nature of the transaction and contemplated contract between
26 them, Defendants owed a duty to Plaintiffs and the Class to reasonably disclose
27 facts material to that transaction and to not hide or obscure facts material to that
28 transaction.

1 86. At all relevant times, Defendants possessed and had exclusive
2 knowledge of material facts not known to the Plaintiffs and Class Members, i.e. the
3 knowledge of how the PPP applications were going to be processed, prioritizing
4 large businesses borrowing large amounts of money and not first-come, first-served.

5 87. At all relevant times, Defendants actively concealed those material
6 facts from the public and their PPP loan applicants, by intentionally omitting to
7 disclose such facts and by intentionally misleading the Plaintiffs and Class with
8 affirmative statements that were not true.

9 88. Even if Defendants made some partial representations, Defendants still
10 made efforts to suppress material facts and did not fully disclose and contextualize
11 the material facts known only to them.

12 89. Plaintiffs and the Class reasonably relied on Defendants'
13 representations in choosing to apply for a PPP loan with Defendant Banks.

14 90. As a direct result of Defendants' fraudulent concealment of facts
15 material to the PPP loan application transaction, Plaintiffs and the Class were
16 induced to apply with Defendants and as a proximate result suffered economic and
17 financial harm to be proven at trial but in excess of \$5 million.

18
19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs, individually and on behalf of the Class, pray for
21 the following relief:

- 22 1. For an order certifying the class as defined above, appointing Plaintiffs
23 as class representatives for the class, and appointing Plaintiffs' counsel
24 as class counsel for the class;
- 25 2. For an order declaring Defendants' actions to be unlawful;
- 26 3. For equitable relief to Plaintiffs and Class Members;
- 27 4. For injunctive relief prohibiting Defendants from engaging in the
28 misconduct described herein;

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- 5. For an award of all recoverable compensatory, statutory, and other damages sustained by Plaintiffs and class members, including disgorgement, unjust enrichment, and all other available relief under applicable law;
- 6. For an award of treble damages pursuant to 18 U.S.C. § 1964(c) and any other applicable law;
- 7. For an award of punitive damages pursuant to applicable law;
- 8. For reasonable attorney’s fees and expenses as permitted by applicable statutes and law, including, but not limited to, Code of Civil Procedure section 1021.5;
- 9. For taxable costs;
- 10. For pre and post-judgment interest as allowed by law; and
- 11. For any other relief the Court deems just.

Dated: April 19, 2020

STALWART LAW GROUP

By: /s/ Dylan Ruga
Dylan Ruga, Esq.
Ji-In Lee Houck, Esq.
David M. Angeloff, Esq.

Attorneys for Plaintiffs and the Proposed Class

JURY DEMAND

Plaintiffs request trial by jury of all claims that are so triable.

Dated: April 19, 2020

STALWART LAW GROUP

By: /s/ Dylan Ruga

Dylan Ruga, Esq.
Ji-In Lee Houck, Esq.
David M. Angeloff, Esq.

*Attorneys for Plaintiffs and the
Proposed Class*

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