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

PROFITWISE ACCOUNTING INC, a
California corporation, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

BANK OF AMERICA, N.A.; FIRST HOME
BANK; FROST BANK; JPMORGAN CHASE
BANK, N.A.; PACIFIC ENTERPRISE
BANK; READYCAP LENDING, LLC; U.S.

Case No. **'20CV1395 MMAWVG**

**CLASS ACTION COMPLAINT FOR
DECLARATORY RELIEF AND
DAMAGES**

1 BANK NATIONAL ASSOCIATION; and
2 WELLS FARGO BANK, N.A.,

3 Defendants.

4
5 Plaintiff Profitwise Accounting Inc (“Profitwise” or “Plaintiff”) brings this class action
6 complaint on behalf of itself and those similarly situated against defendants Bank of America,
7 N.A.; First Home Bank; Frost Bank; JPMorgan Chase Bank, N.A.; Pacific Enterprise Bank;
8 Readycap Lending, LLC; U.S. Bank National Association; and Wells Fargo Bank, N.A.
9 (hereinafter “Defendants”), to obtain fees owed to Plaintiff as a result of its work as an agent to
10 assist small business borrowers (the “Applicants”) in getting federally guaranteed loans
11 through the Paycheck Protection Program (“PPP”), a federal program implemented to provide
12 small businesses with loans to combat the economic impact of COVID-19. Federal regulations
13 require Defendants to pay Plaintiff and the proposed Class for their work as agents who
14 facilitated loans between Defendants and small businesses. Despite precise regulatory
15 requirements stating that agent fees are owed to Plaintiff, Defendants have failed to pay Plaintiff
16 and the Class Members. Instead, Defendants have kept the agent fees for themselves. Plaintiff
17 alleges the following based upon its knowledge and upon information and belief, including
18 investigations conducted by its attorneys.

19 //

20 **I. PARTIES**

21 1. Plaintiff Profitwise Accounting Inc (“Profitwise”) is a corporation organized
22 and authorized to do business, and doing business, in the State of California since December
23 2004. David Heistein, CPA is the owner of Profitwise and is a licensed CPA in good standing
24 since 2007. Profitwise is located in San Diego, California, and provides personalized tax and
25 accounting guidance to local businesses. Although Plaintiff assisted its clients with preparing
26 their application(s) for a PPP loan from the Defendants, Defendants have failed to pay Plaintiff
27 the agent fees Defendants owe Plaintiff for Plaintiff’s work in securing the PPP loans.

28 2. Defendant Bank of America, N.A. is a national bank. Its principal place of

1 business is in Charlotte, North Carolina. Bank of America, N.A. conducts substantial business
2 in this District. Plaintiff acted in the statutorily defined role of an agent in securing PPP loans
3 for three Applicants of Bank of America, N.A. in an amount of approximately \$50,000. Although
4 Applicants' PPP loans were funded by Bank of America, N.A., based on information and belief,
5 Bank of America, N.A. has taken custody of the money owed to Plaintiff from the Federal
6 Government, yet failed to pay Plaintiff the statutorily required agent fees that Plaintiff is owed.

7 3. Defendant First Home Bank is a Florida chartered bank. Its principal place of
8 business is in St. Petersburg, Florida. First Home Bank conducts substantial business in this
9 District. Plaintiff acted in the statutorily defined role of an agent in securing PPP loans for one
10 Applicant of First Home Bank in an amount of approximately \$15,000. Although Applicant's
11 PPP loan was funded by First Home Bank, based on information and belief, First Home Bank
12 has taken custody of the money owed to Plaintiff from the Federal Government, yet failed to pay
13 Plaintiff the statutorily required agent fees that Plaintiff is owed.

14 4. Defendant Frost Bank is a Texas chartered bank. Its principal place of business
15 is in San Antonio, Texas. Frost Bank conducts substantial business in this District. Plaintiff acted
16 in the statutorily defined role of an agent in securing PPP loans for one Applicant of Frost Bank
17 in an amount of approximately \$25,000. Although Applicant's PPP loan was funded by Frost
18 Bank, based on information and belief, Frost Bank has taken custody of the money owed to
19 Plaintiff from the Federal Government, yet failed to pay Plaintiff the statutorily required agent
20 fees that Plaintiff is owed.

21 5. Defendant JPMorgan Chase Bank, N.A. is a national bank. Its principal place
22 of business is in New York, New York. JPMorgan Chase Bank, N.A. conducts substantial
23 business in this District. Plaintiff acted in the statutorily defined role of an agent in securing PPP
24 loans for nine Applicants of JPMorgan Chase Bank, N.A. in an amount of approximately
25 \$220,000. Although Applicants' PPP loans were funded by JPMorgan Chase Bank, N.A., based
26 on information and belief, JPMorgan Chase Bank, N.A. has taken custody of the money owed
27 to Plaintiff from the Federal Government, yet failed to pay Plaintiff the statutorily required agent
28 fees that Plaintiff is owed.

1 6. Defendant Pacific Enterprise Bank is a California chartered bank. Its principal
2 place of business is in Irvine, California. Pacific Enterprise Bank conducts substantial business
3 in this District. Plaintiff acted in the statutorily defined role of an agent in securing PPP loans
4 for one Applicant of Pacific Enterprise Bank in an amount of approximately \$120,000. Although
5 Applicant's PPP loan was funded by Pacific Enterprise Bank, based on information and belief,
6 Pacific Enterprise Bank has taken custody of the money owed to Plaintiff from the Federal
7 Government, yet failed to pay Plaintiff the statutorily required agent fees that Plaintiff is owed.

8 7. Defendant Readycap Lending, LLC is an approved non-bank, U.S. Small
9 Business Administration Preferred Lender. Its principal place of business is in New York, New
10 York. Readycap Lending, LLC conducts substantial business in this District. Plaintiff acted in
11 the statutorily defined role of an agent in securing PPP loans for one Applicant of Readycap
12 Lending, LLC in an amount of approximately \$10,000. Although Applicant's PPP loan was
13 funded by Readycap Lending, LLC, based on information and belief, Readycap Lending, LLC
14 has taken custody of the money owed to Plaintiff from the Federal Government, yet failed to pay
15 Plaintiff the statutorily required agent fees that Plaintiff is owed.

16 8. Defendant U.S. Bank National Association is a national bank. Its principal place
17 of business is in Cincinnati, Ohio. U.S. Bank National Association conducts substantial business
18 in this District. Plaintiff acted in the statutorily defined role of an agent in securing PPP loans
19 for one Applicant of U.S. Bank National Association in an amount of approximately \$10,000.
20 Although Applicant's PPP loans were funded by U.S. Bank National Association, based on
21 information and belief, U.S. Bank National Association has taken custody of the money owed to
22 Plaintiff from the Federal Government, yet failed to pay Plaintiff the statutorily required agent
23 fees that Plaintiff is owed.

24 9. Defendant Wells Fargo Bank, N.A. is a national bank. Its principal place of
25 business is in Sioux Falls, South Dakota. Wells Fargo Bank, N.A. conducts substantial business
26 in this District. Plaintiff acted in the statutorily defined role of an agent in securing PPP loans
27 for two Applicants of Wells Fargo Bank, N.A. in an amount of approximately \$30,000. Although
28 Applicants' PPP loans were funded by Wells Fargo Bank, N.A., based on information and belief,

1 Wells Fargo Bank, N.A. has taken custody of the money owed to Plaintiff from the Federal
2 Government, yet failed to pay Plaintiff the statutorily required agent fees that Plaintiff is owed.

3 //

4 **II. JURISDICTION AND VENUE**

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

10 11. This Court also has original jurisdiction over this action under 28 U.S.C. §1331
11 because the action arises under the laws of the United States, including the Coronavirus Aid,
12 Relief, and Economic Security Act, the CARES Act (P.L. 116-136), and the SBA Regulations
13 (as defined below).

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

17 13. The venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because
18 Plaintiff's principal place of business is located in this District, and a substantial part of the
19 events or omissions giving rise to the alleged claims occurred in this District. Plaintiff, on behalf
20 of its clients, applied for the PPP loans while in this District and Defendants, marketed,
21 promoted, and took applications for the PPP loans in this District.

22 //

23 **III. FACTUAL ALLEGATIONS**

24 ***Background***

25 14. On January 21, 2020, the Center for Disease Control and Prevention ("CDC")
26 confirmed the first U.S. case of a new coronavirus, known as COVID-19.

27 15. On January 30, 2020, the World Health Organization ("WHO") declared the
28 COVID-19 outbreak to be a "public health emergency of international concern."

1 16. On March 4, 2020, California Governor Gavin Newsom proclaimed a State of
2 Emergency to exist in California as a result of the threat of COVID-19.

3 17. On March 11, 2020, the WHO declared that the spread of COVID-19 had
4 become a pandemic.

5 18. On March 13, 2020, President Trump issued the Coronavirus Disease 2019
6 (COVID-19) Emergency Declaration applicable to the United States, which declared that the
7 pandemic was of “sufficient severity and magnitude to warrant an emergency declaration for all
8 states, territories and the District of Columbia.”

9 19. The Trump Administration expressly recognized that with the COVID-19
10 emergency, “many small businesses nationwide are experiencing economic hardship as a direct
11 result of the Federal, State, and local public health measures that are being taken to minimize the
12 public’s exposure to the virus.” *See Business Loan Program Temporary Changes; Paycheck*
13 *Protection Program*, 13 CFR Part 120, Interim Final Rule (the “SBA PPP Final Rule”).

14 20. On March 25, 2020, in response to the economic damage caused by the COVID-
15 19 crisis, the United States Senate passed the Coronavirus Aid, Relief, and Economic Security
16 Act, the CARES Act (P.L. 116-136). The CARES Act was passed by the House of
17 Representatives the following day and signed into law by President Trump on March 27, 2020.
18 This legislation included \$377 billion in federally-funded loans to small businesses and a \$500
19 billion governmental lending program, administered by the United States Department of
20 Treasury (“Treasury”) and the Small Business Administration (“SBA”), a United States
21 government agency that provides support to entrepreneurs and small businesses.

22 21. As part of the CARES Act, the Federal Government created a \$349 billion loan
23 program, referred to as the Paycheck Protection Program or PPP, temporarily adding a new
24 product to the SBA’s 7(a) Loan Program (“SBA 7(a) Program”).

25 22. The PPP provided small businesses with loans to be originated from February
26 15, 2020, through June 30, 2020. The PPP was created to provide American small businesses
27
28

1 with eight-weeks¹ of cash-flow assistance and to allow a certain percentage of the loan to be
2 forgiven if the loan is utilized to retain employees and fund payrolls. Although the loans are
3 administered by the Treasury and backed by the Federal Government, the loans are funded by
4 private lenders (“Lenders”), including banks and financial services firms, that review and
5 approve PPP loan applications.

6 23. The Treasury announced on April 3, 2020, that small businesses and sole
7 proprietors could fill out an application (the “Application”) to apply and receive loans to cover
8 their payroll and other expenses through approved SBA Lenders. Beginning on April 10, 2020,
9 independent contractors and self-employed individuals could apply as well.²

10 24. On April 24, 2020, President Trump signed the Paycheck Protection Program
11 and Health Care Enhancement Act (“PPPEA”). The PPPEA added \$310 billion in PPP funding,
12 bringing the total PPP funds available to lend to \$659 billion.

13 25. On June 5, 2020, President Trump signed the Paycheck Protection Program
14 Flexibility Act of 2020 (“Flexibility Act”) (Pub. L. 116-142), which changes key provisions of
15 the Paycheck Protection Program, including provisions relating to the maturity of PPP loans, the
16 deferral of PPP loan payments, and the forgiveness of PPP loans. **The Flexibility Act did not**
17 **change Defendants’ statutory duty to pay Plaintiff the Agent Fees Plaintiff is owed.**

18 26. The Treasury’s Paycheck Protect Program (PPP) Information Sheet for
19 Lenders³ (the “PPP ISL”), consistent with the SBA PPP Final Rule (collectively, the “SBA
20 Regulations”), describes a system to distribute the PPP loans that relies on established SBA
21 Lenders – who approve and fund loan applicants – and the **addition** of independent agents (“PPP
22 Agents”) – who provide small businesses with the necessary assistance enabling them to apply
23 for a PPP loan.

24 27. Under the SBA Regulations, a PPP Agent “can be:

25
26 ¹ On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 (Pub. L. 116-142), extended the
eight-week period to twenty-four weeks.

27 ² *Paycheck Protection Program (PPP) Information Sheet: Borrowers*, Dep’t of Treasury (last visited, June 18,
2020), <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>

28 ³ *Paycheck Protection Program (PPP) Information Sheet: Lenders*, Dep’t of Treasury (last visited, June 18,
2020), <https://home.treasury.gov/system/files/136/PPP%20Lender%20Information%20Fact%20Sheet.pdf?>

- 1 • An attorney;
- 2 • An accountant;
- 3 • A consultant;
- 4 • Someone who prepares an applicant’s application for financial
- 5 assistance and is employed and compensated by the applicant;
- 6 • Someone who assists a lender with originating, disbursing, servicing,
- 7 liquidating, or litigating SBA loans;
- 8 • A loan broker; or,
- 9 • Any other individual or entity representing an applicant by conducting
- 10 business with the SBA.”⁴

11 28. Unlike the existing SBA 7(a) Program, the SBA Regulations expressly
12 contemplate and encourage PPP Agents to assist small businesses with their Applications. The
13 SBA Regulations allow for and set standards by which PPP Agents are to be paid for their work.
14 **Specifically, the regulations require that PPP Agents be paid from a portion of the set fees**
15 **provided to SBA Lenders for processing the PPP Loan.**

16 29. Before the passage of the CARES Act, **lenders were not compensated** by the
17 SBA for originating SBA 7(a) Loans. Under the newly enacted SBA Regulations for PPP loans,
18 Lenders are **generously compensated** for processing PPP loans (“Lender Fees”) based on the
19 amount of the funded PPP loan. The SBA pays Lender Fees to Lenders who process PPP loans
20 in the following amounts:

- 21 • Five percent (5%) for loans of not more than \$350,000;
- 22 • Three percent (3%) for loans of more than \$350,000 and less than
- 23 \$2,000,000; and
- 24 • One percent (1%) for loans of at least \$2,000,000.⁵

25 30. The CARES Act states, “**Agent fees will be paid by the lender out of the fees**
26 **the lender receives from SBA.** Agents may not collect fees from the **borrower or be paid out**

27
28 ⁴ *Id.*

⁵ 85 FR 20816 (3)(d).

1 **of the PPP loan proceeds.** The total amount that an agent may collect from the lender for
 2 assistance in preparing an application for a PPP loan ... may not exceed:

- 3 • One (1) percent for loans of not more than \$350,000;
- 4 • 0.50 percent for loans of more than \$350,000 and less than \$2 million; and
- 5 • 0.25 percent for loans of at least \$2 million.”⁶ (the “Agent Fees”).

6 31. Before the passage of the CARES Act, lenders and agents were **not**
 7 compensated by the SBA for originating SBA 7(a) Loans. That is why the CARES Act
 8 authorized the Treasury to establish limits on Agent Fees. The Treasury, “in consultation with
 9 the Secretary, **determined that the agent fee limits set forth above are reasonable based upon**
 10 **the application requirements and the fees that lenders receive for making PPP loans.**”⁷

11 32. In other words, when implementing the CARES Act, the Treasury determined
 12 that the best and quickest way to get the PPP loans to the small businesses was to establish **new**
 13 regulations where Lenders and PPP Agents work together to quickly and efficiently process
 14 Applications. To incentivize this relationship, the Lender and Agent were to split the Federal
 15 Government fees approximately 80% to be retained by the Lender and 20% to be forwarded to
 16 the Agent.

17 33. By assisting businesses in preparing their Applications for PPP funding, PPP
 18 Agents play a critical role in fulfilling the goals of the CARES Act and ensuring adherence to
 19 the United States Congress’s legislative intent. Indeed, the Senate directed the Treasury to “**issue**
 20 **guidance to lenders and agents to ensure that the processing and disbursement of covered**
 21 **loans prioritizes small business concerns and entities in underserved and rural markets,**
 22 **including veterans and members of the military community, small business concerns owned**
 23 **and controlled by socially and economically disadvantaged individuals..., women, and**
 24 **businesses in operation for less than 2 years.**”⁸

25 34. If not for the PPP Agents, tens of thousands of small businesses would have had
 26 difficulty or been unable to apply for PPP loans.

27 ⁶ 85 FR 20816 (4)(c).

28 ⁷ *Id.* (Emphasis Added).

⁸ CARES ACT, PL 116-136, March 27, 2020, 134 Stat 281. (Emphasis Added.)

1 35. **Nowhere in the CARES Act or the SBA Regulations does the Federal**
2 **Government state, or even suggest, that Lender’s approval is required in order for an**
3 **Applicant to use an Agent.**

4 36. Here, the Defendants are SBA approved Lenders. Plaintiff served as the PPP
5 Agent for small businesses applying for the PPP loans provided by the Defendants and backed
6 by the full faith and credit of the Federal Government.

7 37. Despite Plaintiff’s important (and successful) work in assisting the Applicants
8 with their Applications, Defendants have not paid Plaintiff the regulatorily required Agent Fees,
9 but have instead retained the Agent Fee portion of the Lender Fees for itself.

10 38. Plaintiff has no other means of obtaining payment for the PPP Agent services it
11 provided to its clients in securing their PPP loans. The SBA Regulations specifically prohibit
12 PPP Agents from obtaining payment of any fees from the Applicants (i.e., Plaintiff’s clients).
13 The SBA Regulations require Plaintiff to be paid *only* by the Lender (i.e., Defendants) through
14 the payment of a portion of the Lender Fees.

15 39. Upon information and belief, apart from Plaintiff’s clients, Defendants funded
16 PPP loans for other businesses and failed to pay the statutorily required Agent Fees to members
17 of the proposed Class that served as PPP Agents for other Applicants whose PPP loans were also
18 funded by the Defendant.

19 40. Adding validity to the need to file this action, on May 27, 2020, United
20 Community Banks, Inc. (“UCB”), received a civil investigative demand (“CID”) from the U.S.
21 Department of Justice (the “DOJ”) pursuant to the False Claims Act. The CID directed UCB and
22 its affiliated entities “to produce certain documents and respond to written interrogatories
23 relating to the PPP loans approved by the Bank, the **Bank’s non-payment of fees to agents of**
24 **borrowers** and the Bank’s policies related to payment or non-payment of agent fees.”⁹

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⁹ *United Community Banks, Inc., Form 8-K* (last visited June 18, 2020), <https://ir.ucbi.com/static-files/c7f8eaa8-d6bf-48e8-8ebc-a60c0bf3adea>. UCB is a named defendant in another lawsuit based on the same allegations in the Northern District of Georgia, 1:20-cv-02026-LMM.

*Plaintiff Assisted its Clients with Applying
for PPP Loans Under the CARES Act*

1
2
3 41. To assist its clients with preparing Applications for a PPP loan through
4 Defendants, Plaintiff spent considerable time familiarizing itself with the CARES Act and the
5 related SBA Regulations. In particular, relevant provisions include Section 1102, which permits
6 the SBA to guarantee 100% of Section 7(a) loans under the PPP, and Section 1106 of the Act,
7 which provides forgiveness of up to the full principal amount of qualifying loans guaranteed
8 under the PPP.

9 42. Complying with the SBA Regulations, Plaintiff assisted Applicants in the PPP
10 Application process. As contemplated by the Federal Government, such assistance contributed
11 to the successful funding of the Applicants' PPP loans with a Defendant.

12 43. Based on the SBA Regulations, Plaintiff understood that it was not allowed to
13 charge its clients any fee relating to the Application process and that it was only permitted to
14 receive compensation from the PPP Agents' share of the Lender Fees the Federal Government
15 entrusted to the Lenders for the PPP Agents benefit.

16 44. Plaintiff further understood that it was not entitled to the Agent Fees until the
17 Lender received its Lender Fees. Based on information and belief, Defendants have received the
18 Lender Fees for the Applicants Plaintiff assisted, thereby making the Agent Fees immediately
19 due to Plaintiff.

20 45. To participate in the PPP, "Lenders **must** comply with the applicable lender
21 obligations set forth in this [SBA PPP Final Rule]..."¹⁰.

22 46. Therefore, Plaintiff believed in good faith that Defendants would comply with
23 the SBA Regulations and pay Plaintiff the statutorily required Agent Fees.

24 47. However, Defendants violated the SBA Final Rule because they did not pay
25 Plaintiff the Agent Fees the Federal Government entrusted to the Defendants for the benefit of
26 the Plaintiff. Instead, Defendants have illegally retained the Agent Fee portion of the Lender
27 Fees.

28 ¹⁰ 85 FR 20812 (1). (Emphasis Added).

1 Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of
2 the following Statewide Class:

3
4 All Agents who assisted a business in California in preparing an Application for
5 a PPP loan pursuant to the CARES Act (the “Statewide Class”).

6
7 The Statewide and Nationwide Class may hereafter be referred to as the “Class”.

8 54. For purposes of the Class definition, the term “Agent” has the same meaning as
9 an “agent” under the SBA Regulations.

10 55. Plaintiff reserves the right to expand, limit, modify, or amend this Class
11 definition, including the addition of one or more subclasses, in connection with Plaintiff’s motion
12 for class certification, or any other time, based upon, *inter alia*, changing circumstances and/or
13 new facts obtained during discovery.

14 56. The following are excluded from the Class and/or Subclass: (a) any Judge or
15 Magistrate presiding over this action and members of their families; (b) the officers, directors,
16 or employees of Defendants; and (c) all persons who properly execute and file a timely request
17 for exclusion from the Class.

18 57. *Numerosity*: The Class is composed of hundreds or thousands of Agents (the
19 “Class Members”), whose joinder in this action would be impracticable. The disposition of their
20 claims through this class action will benefit all Class Members, the parties, and the courts.

21 58. *Commonality and Predominance*: Common questions of law and fact affect the
22 Class. These questions of law and fact predominate over individual questions affecting
23 individual Class Members and, include, but are not limited to, the following:

- 24 a. Whether Plaintiff is an “agent” as that term is defined by the Cares Act and
25 relevant regulations;
- 26 b. Whether Defendants were obligated to pay Plaintiff and the Class Agent Fees
27 from the Lender Fees it received under the CARES Act;
- 28 c. Whether Defendants failed to pay Agent Fees they were required to pay;

- 1 d. Whether Class Members are entitled to damages; and if so, in what amount;
- 2 e. Whether Defendants are likely to continue to mislead the public and Class
- 3 Members and continue to violate SBA Regulations regarding paying Agents their
- 4 earned fees under the CARES Act;
- 5 f. Whether Plaintiff and Class Members are entitled to an award of reasonable
- 6 attorney's fees, pre-judgment interest and costs of suit; and
- 7 g. Whether Defendants were unjustly enriched by their practice of refusing to pay
- 8 Agent Fees.

9 59. *Superiority*: In engaging in the conduct described herein, Defendants have acted
10 and/or failed to act on grounds generally applicable to Plaintiff and other Class Members. Such
11 behavior requires the Court's imposition of uniform relief to ensure compatible standards of
12 conduct toward Class Members. A class action is superior to all other available means for the
13 fair and efficient adjudication of Plaintiff's and the Class Members' claims. Few, if any, Class
14 Members could afford or would deem it economically reasonable to seek legal redress of the
15 wrongs complained of herein on an individual basis. Absent a class action, Class Members would
16 not likely recover, or have the chance to recover, and Defendants would be permitted to retain
17 the fruits of their misdeeds. Any difficulties that might occur in the management of this proposed
18 class action are insubstantial. See Fed. R. Civ. P. 23(b)(1)(A).

19 60. *Typicality*: Plaintiff's claims are typical of, and are not antagonistic to, the
20 claims of the other Class Members. Plaintiff and the Class Members have been injured by
21 Defendants' uniform, unfair and unlawful practice of denying PPP Agent Fees, as alleged herein.
22 The factual and legal basis of Defendants' liability to Plaintiff and each Class Member as a result
23 of Defendants' actions are described herein.

24 61. *Adequacy*: Plaintiff is an adequate representative of the Class because it is a
25 member of the Class, and Plaintiff's interests do not conflict with the interests of the other Class
26 Members that Plaintiff seeks to represent. Plaintiff will fairly and adequately represent and
27 protect the interests of the other Class Members. Plaintiff has retained counsel with substantial
28 experience in litigating complex cases, including class actions. Both Plaintiff and its counsel will

1 vigorously prosecute this action on behalf of the Class and have the financial ability to do so.
2 Neither Plaintiff nor counsel has any interest adverse to other Class Members.

3 62. Plaintiff is informed and believes that Defendants keep extensive computerized
4 records of their loan applications through, *inter alia*, computerized loan application systems, and
5 Federally-mandated record-keeping practices. Defendants have one or more databases through
6 which all of the Applicants may be identified and ascertained, and it maintains contact
7 information, including email and mailing addresses. From this information, the existence of the
8 Class Members (i.e., the PPP Agent for the Applicant) can be determined, and thereafter, a notice
9 of this action can be disseminated in accordance with due process requirements.

10 //

11 **V. CAUSES OF ACTION**

12 **COUNT I**

13 **DECLARATORY RELIEF**

14 **AGAINST ALL DEFENDANTS**

15 63. Plaintiff hereby incorporates by reference the foregoing allegations as if fully
16 set forth herein.

17 64. Plaintiff assisted its clients with the PPP Loan application process, allowed
18 Defendants to secure customers for PPP lending, and satisfied all prerequisites for obtaining PPP
19 Agent Fees. Defendants failed to pay Agent Fees owed to Plaintiff as required by the SBA
20 Regulations. Instead, Defendants kept the Agent Fees for themselves, in direct violation of the
21 SBA Regulations.

22 65. An actual controversy has arisen between Plaintiff and Defendants as to the
23 Agent Fees owed to Plaintiff by Defendants. Through their conduct of refusing to pay Agent
24 Fees and otherwise, Defendants have denied that they owe the statutorily required Agent Fees to
25 Plaintiff and the Class.

26 66. Plaintiff and the Class seek a declaration, in accordance with SBA Regulations
27 and pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, that Defendants are obligated
28 to set aside money to pay, and to pay the Agent Fees the PPP Agents have earned for the work

1 performed on behalf of their clients that received a PPP loan from the Defendants.

2 67. Plaintiff and the Class seek a declaration in accordance with the SBA
3 Regulations that a portion of the Lender Fees paid to Defendants must be paid to Plaintiff and
4 the Class.

5 //

6 **COUNT II**
7 **UNJUST ENRICHMENT**
8 **AGAINST ALL DEFENDANTS**

9 68. Plaintiff hereby incorporates by reference the foregoing allegations as if fully
10 set forth herein.

11 69. Plaintiff and the Class Members are PPP Agents who assisted small businesses
12 in preparing their Application for a PPP loan from Defendants who, in turn, received a federal
13 guarantee of repayment of the funds as well as a generous Lender Fee for each PPP loan from
14 the U.S. Government.

15 70. To participate in the PPP, “Lenders **must** comply with the applicable lender
16 obligations set forth in this [SBA PPP Final Rule]...”¹¹. Despite their efforts as PPP Agents,
17 Defendants have failed to pay Plaintiff and the Class Members the Agent Fees in violation of the
18 SBA PPP Final Rule.

19 71. Instead, Defendants have retained the full amount of the Lender Fees from
20 which the SBA Regulations require Agent Fees to be paid. Therefore, Defendants have unfairly
21 retained fees intended to benefit and compensate Plaintiff and the Class for their efforts in
22 promoting the interests of the CARES Act and ensuring small businesses receive PPP loans.

23 72. By holding themselves out as PPP lenders, Defendants’ conduct requested
24 Plaintiffs, and the Class Members, to assist Applicants with their PPP Applications and have the
25 Applications submitted to Defendants for approval.

26 73. Defendants have been, and continue to be unjustly enriched, to the detriment
27 and at the expense of the Class Members.

28 ¹¹ 85 FR 20812 (1). (Emphasis Added).

1 74. Defendants have unjustly benefitted through the illegal retention of the Agent
2 Fee portion of the Lender Fees paid by the Federal Government to the Defendants for the benefit
3 of the Plaintiff and the Class.

4 75. If Defendants’ practice of retaining the full amount of Lender Fees despite the
5 efforts of PPP Agents who, under the SBA Regulations, are entitled to a portion of the Lender
6 Fees as Agent Fees, then the purpose and intent of the CARES Act would be upset because PPP
7 Agents would receive no due compensation for assisting small businesses seeking a PPP Loan.

8 76. Plaintiff and the Class have no other means of obtaining compensation because
9 **the SBA Regulations prohibit PPP Agents from receiving payment from any source other**
10 **than the Lender Fees and expressly prohibit collecting any fees from the Applicants.**

11 77. Defendants’ conduct willfully and intentionally negates the terms of the SBA
12 Regulations by unilaterally refusing to forward to the PPP Agents the regulatorily required Agent
13 Fees that the Federal Government entrusted to the Lenders. Defendants’ actions render those
14 terms superfluous and undermine the intent of Congress to promote small business loans under
15 the PPP and CARES Act.

16 78. Defendants should not be allowed to retain the proceeds from the benefits
17 conferred upon it by Plaintiff and the U.S. Government.

18 79. Plaintiff and the Class were injured as a direct and proximate cause of
19 Defendants’ misconduct. Therefore, Plaintiff seeks disgorgement of Defendants’ unjustly
20 acquired profits and other monetary benefits resulting from Defendants’ unlawful conduct, an
21 injunction preventing Defendants from continuing their unlawful conduct, and all other relief
22 afforded under the law that this Court deems just and proper.

23 //

24 **COUNT III**

25 **CONVERSION**

26 **AGAINST ALL DEFENDANTS**

27 80. Plaintiff hereby incorporates by reference the foregoing allegations as if fully
28 set forth herein.

1 81. Under the SBA Regulations, Plaintiff and the Class, as PPP Agents, have a right
2 to, title in, and the legal right of possession of, Agent Fees that must be paid from the amount of
3 Lender Fees provided to Defendants for lending money pursuant to approved Applications.

4 82. The SBA Regulations state that “Agent fees *will* be paid out of lender fees” and
5 provide guidelines on the amount of Agent Fees that should be paid to the PPP Agent, depending
6 on the size of the PPP loan secured.

7 83. Additionally, the SBA Regulations require that Lenders, not Borrowers, pay the
8 Agent Fees. The SBA Regulations unequivocally state that “Agents may not collect fees from
9 the applicant.”

10 84. Plaintiff and the Class fulfilled the role of PPP Agent by assisting small
11 businesses with their Applications. Due to Plaintiff’s efforts, Defendants made federally backed
12 PPP loans, entitling Defendants to Lender Fees from the U.S. Government. As such, Plaintiff
13 has a right to receive, and title to, the regulatorily-mandated Agent Fees.

14 85. Although Plaintiff is entitled to Agent fees under the SBA Regulations,
15 Defendants have failed to pay the required Agent Fees, which the Federal Government paid to
16 the Defendants as part of the Lender Fees. Defendants have no legal claim, authorization, or
17 approval for this wrongful withholding of the Agent Fees. Therefore, Defendants have
18 appropriated, assumed, and exercised dominion over the Plaintiff’s and Class’ Agent Fees.

19 86. In California, money may be the subject of a conversion claim if the money can
20 be described, identified, or segregated, and an obligation to treat it in a specific manner is
21 established. That requirement is met because the Agent Fees are a segregated portion of the
22 Lender Fees awarded through the SBA Regulations for a successfully funded PPP loan.

23 87. At the time they unlawfully retained the Agent Fees, Defendants knew or should
24 have known that the Agent Fees were owed to Plaintiff and the other Class Members.

25 88. Defendants’ improper acts or practices of refusing to pay Plaintiff and the other
26 Class Members the mandated Agent Fees are the proximate cause of the damages sustained by
27 the Plaintiff and the Class Members.

28 89. Defendants’ conduct manifests a knowing and reckless indifference toward, and

1 a disregard of, the rights of Plaintiff and the Class Members.

2 90. By withholding the Agent fees, Defendants have maintained wrongful control
3 over Plaintiff's property inconsistent with Plaintiff's entitlements under the SBA Regulations.

4 91. Defendants committed civil conversion by retaining monies owed to Plaintiff
5 and the Class.

6 92. Plaintiff and the Class have been injured as a direct and proximate cause of
7 Defendants' misconduct. Plaintiff, as such, seeks recovery from Defendants in the amount of the
8 owed Agent Fees, and for all other relief afforded under the law.

9 //

10 **COUNT IV**

11 **BREACH OF AN IMPLIED CONTRACT**

12 **AGAINST ALL DEFENDANTS**

13 93. Plaintiff and the Class, as PPP Agents, conferred a benefit upon Defendants by
14 assisting Applicants with their PPP Applications that were submitted to Defendants. Based in
15 part on Plaintiff's work, Defendants received the Lender Fee from the Federal Government,
16 approximately 20% of which was to be forwarded to the PPP Agents (i.e., Plaintiffs and the
17 Class) as payment for the Agent Fee.

18 94. In performing work to assist Applicants in preparing Applications for a PPP
19 loan for their small business, Plaintiff and the Class had a reasonable expectation of
20 compensation. That reasonable expectation stemmed from the SBA Regulations, which
21 explicitly stated PPP Agents would receive Agent Fees from the lenders. Those Agent Fees were
22 to be paid out of a portion of the Lender Fees.

23 95. Despite that reasonable expectation and the plain language of the SBA
24 Regulations, Defendants have failed to pay Plaintiff and the Class the statutorily required Agent
25 Fees.

26 96. Instead, Defendants have retained, or stated their entitlement to retain, the Agent
27 Fee portion of the Lender Fees for themselves and thereby, benefited from the work performed
28 by Plaintiff and the Class.

1 104. By Defendants holding themselves out as PPP Lenders, Defendants necessarily
2 held themselves out as promising to follow the mandatory PPP guidelines and regulations.

3 105. Nevertheless, Defendants have failed to provide Plaintiff and the Class payment
4 in the amount of the mandatory Agent Fees, and instead retained the Agent Fee portion of the
5 Lender Fees for themselves.

6 106. Defendants also concealed and omitted material information, specifically, that
7 despite holding themselves out as PPP lenders under the PPP program, that Defendants would
8 refuse, and continue to refuse despite clear regulatory guidance, to pay regulatorily-mandated
9 Agent Fees. Had Plaintiff and the Class known that Defendants would refuse to pay Agent Fees,
10 they would have taken their loans to other SBA Lenders who complied with the SBA
11 Regulations.

12 107. Defendants’ unfair acts and omissions occurred in connection with the sale or
13 advertisement of services, namely, services related to the processing and financing of PPP loans
14 under the CARES Act and SBA Regulations.

15 108. Defendants intended that Plaintiff and the Class rely on their omissions because,
16 had they stated they would not pay Agent Fees as required under the SBA Regulations, Plaintiff
17 and the Class would not have helped secure PPP loans from Defendants for their clients. By
18 concealing and omitting their intention not to pay required Agent Fees, Defendants improperly
19 obtained business from Plaintiff and the Class for which Defendants were compensated through
20 the Lender Fees.

21 109. Plaintiff and the Class have been injured as a direct and proximate cause of
22 Defendants’ misconduct. Plaintiffs, as such, seek recovery from Defendants in the amount of the
23 owed Agent Fees, and for all other relief afforded under the law.

24 //

25 **COUNT VI**
26 **VIOLATIONS OF THE CARES ACT**
27 **AGAINST ALL DEFENDANTS**

28 110. Plaintiff hereby incorporates by reference the foregoing allegations as if fully

1 set forth herein.

2 111. The CARES Act provides a stimulus package in response to the COVID-19
3 pandemic and includes the PPP, which assists small businesses seeking to maintain payroll and
4 other authorized expenses.

5 112. There is an implied cause of action arising under the CARES Act.

6 113. The CARES Act, along with the SBA’s Regulations, provides for the payment
7 of Agent Fees to authorized representatives who assisted PPP loan applicants with their PPP
8 Applications (i.e., PPP Agents consisting of the Plaintiff and the Class Members).

9 114. In flagrant disregard for the law, Defendants have failed and/or refused to pay
10 the Agent Fees to the Applicants’ authorized representatives (i.e., PPP Agents consisting of the
11 Plaintiff and the Class Members), and instead, kept the fees to enrich themselves.

12 115. Plaintiffs and Class Members are PP Agents under the CARES Act and the
13 SBA Regulations and, therefore, are entitled to the Agent Fees they have earned. The Agent
14 Fees have been paid to the Lenders by the Federal Government and are to be paid by the Lenders
15 to the Plaintiffs and Class Members as set forth in the CARES Act and the SBA Regulations.

16 116. Nevertheless, Defendants refused to pay Plaintiffs and the Class Members the
17 authorized Agent Fees.

18 117. As a direct and proximate result of Defendants’ failure and/or refusal to comply
19 with the CARES Act and the Rule, Plaintiffs and the Class Members have suffered damages in
20 excess of \$5 million.

21 //

22 **COUNT VII**

23 **VIOLATIONS OF THE SBA’s 7(a) LOAN PROGRAM, 15 U.S.C. § 636(a)**

24 **AGAINST ALL DEFENDANTS**

25 118. Plaintiff hereby incorporates by reference the foregoing allegations as if fully
26 set forth herein.

27 119. The PPP was added to the SBA’s 7(a) loan program, which is designed to assist
28

1 small businesses in obtaining financing.

2 120. There is an implied cause of action arising under the SBA’s 7(a) loan program,
3 as applied through the CARES Act.

4 121. The SBA Regulations provide for the payment of Agent Fees to authorized
5 representatives that assisted PPP Applicants with their PPP Applications (i.e., PPP Agents
6 consisting of the Plaintiff and the Class Members).

7 122. In flagrant disregard for the law, Defendants have failed and/or refused to pay
8 Agent Fees to Plaintiffs and the Class Members, and instead, have kept the fees to enrich
9 themselves.

10 123. As a direct and proximate result of Defendants’ wrongful actions, Plaintiffs
11 and the Class Members have suffered damages in excess of \$5 million

12 //

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the following
15 relief:

- 16 a. For an Order certifying the Class as defined above, appointing Plaintiff as Class
17 representative, and appointing Plaintiff’s counsel as Class counsel;
- 18 b. For an Order declaring Defendants’ actions to be unlawful;
- 19 c. For a declaration that all regulatorily-mandated and calculated Agent Fees are owed
20 to Plaintiff and the Class and should be deposited into a mutually agreeable fund or
21 funds within 60 days, to be distributed to the PPP Agents who are entitled to the
22 funds;
- 23 d. For all injunctive and other equitable relief available to Plaintiff and Class Members;
- 24 e. For an award of all recoverable compensatory, statutory, and other damages
25 sustained by Plaintiff and Class Members;
- 26 f. For reasonable attorneys’ fees and expenses as permitted by applicable statutes and
27 law;
- 28 g. For costs related to bringing this action;

- 1 h. For pre- and post-judgment interest as allowed by law; and,
- 2 i. Such further relief at law or in equity that this Court deems just and proper.

3 //

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff, individually and on behalf of the Class, demand a trial by jury on all issues so
6 triable.

7
8 Dated: July 22, 2020

Respectfully submitted,

9 */s/ Nitoj P. Singh*
 10 _____
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