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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF ARIZONA**

12 Compu-Tax & Accounting, LLC,
13 individually and on behalf of all others
14 similarly situated,

15 Plaintiff,

16 -v-

17 Bank of America, N.A.; Desert Financial
18 Credit Union; JPMorgan Chase Bank,
19 N.A. d/b/a Chase Bank; Notre Dame
20 Federal Credit Union; & U.S. Bank, N.A.

21 Defendants.

Case No.

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

DEMAND FOR JURY TRIAL

1 Plaintiff Compu-Tax & Accounting, LLC (“Plaintiff”) brings this class action
2 complaint on behalf of itself and those similarly situated against defendants Bank of
3 America, N.A.; Desert Financial Credit Union, JPMorgan Chase Bank, N.A. d/b/a Chase
4 Bank; Notre Dame Federal Credit Union; and US Bank N.A. (hereinafter “Defendants”),
5 to obtain fees owed to Plaintiff as a result of its work as an agent to assist small business
6 borrowers (the “Applicants”) in getting federally guaranteed loans through the Paycheck
7 Protection Program (“PPP”), a federal program implemented to provide small businesses
8 with loans to combat the economic impact of COVID-19. Federal regulations require
9 Defendants to pay Plaintiff and the proposed Class for their work as agents who
10 facilitated loans between Defendants and small businesses. Despite precise regulatory
11 requirements stating that agent fees are owed to Plaintiff, Defendants have failed to pay
12 Plaintiff and the Class Members. Instead, Defendants have kept the agent fees for
13 themselves. Plaintiff alleges the following based upon its knowledge and upon
14 information and belief, including investigations conducted by its attorneys.

15 I. PARTIES

16 1. **Plaintiff** Compu-Tax & Accounting, LLC (“Compu-Tax” or “Plaintiff”) is
17 an Arizona limited liability corporation with its principal place of business is in Phoenix,
18 Arizona. Its principle place of business is in Maricopa County, Arizona. It has one
19 member who is a resident of Arizona. Compu-Tax specializes in tax preparation and
20 accounting services. Plaintiff assisted its clients with preparing their application(s) for a
21 PPP loan from the Defendants and the Defendants later funded PPP loans to Plaintiff’s
22 clients. Defendants, however, have failed to pay Plaintiff the agent fees Defendants owe
23 Plaintiff for Plaintiff’s work in securing the PPP loans from Defendants.

24 2. **Defendant** Bank of America, N.A. (“Bank of America”) is a federally
25 chartered bank with its principal place of business in Charlotte, North Carolina. Bank of
26 America conducts substantial business in this District. Plaintiff assisted its clients in
27 securing PPP loans from Bank of America. Bank of America has publicly stated that it
28 will not pay agent fees on PPP loans.

1 3. **Defendant** Desert Financial Credit Union (“Desert Financial”) is an
2 Arizona state-chartered credit union with its principal place of business in Phoenix,
3 Arizona. Shortly after assisting its clients with their PPP loan applications provided to
4 Desert Financial, Plaintiff requested that Desert Financial pay the requisite agent fees.
5 Desert Financial ignored Plaintiff’s request and declined to pay any fees.

6 4. **Defendant** JPMorgan Chase Bank, N.A. d/b/a Chase Bank (“Chase”) is a
7 Federally-chartered bank with its headquarters located in Ohio and has conducted
8 substantial business in Arizona, maintaining several branches in this District. Plaintiff
9 assisted its clients in securing PPP loans from Chase. Chase has taken the position that
10 it is not obligated to pay agent fees pursuant to PPP loans it extended to borrowers and
11 has not paid Plaintiff any PPP agent fees.

12 5. **Defendant** Notre Dame Federal Credit Union (“Notre Dame”) is a
13 federally-chartered credit union with its principal place of business in Notre Dame,
14 Indiana. Notre Dame conducts substantial business in Arizona, maintaining an office
15 Phoenix. Shortly after assisting its clients in securing PPP loans from Notre Dame,
16 Plaintiff requested that Notre Dame pay the requisite agent fees. Notre Dame ignored
17 Plaintiff’s request and declined to pay any fees.

18 6. **Defendant** U.S. Bank, N.A. (“U.S. Bank”) is a federally chartered bank
19 with its principal place of business in Cincinnati, Ohio. U.S. Bank conducts substantial
20 business in this District. Plaintiff assisted its clients in securing a PPP loan from U.S.
21 Bank. U.S. Bank has taken the position that it is under no obligation to pay agent fees
22 pursuant to PPP loans and that it has no intention of doing so. U.S. Bank has not paid
23 Plaintiff any PPP agent fees.

24 **II. JURISDICTION AND VENUE**

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

1 proposed members of the Class exceed \$5,000,000 in the aggregate.

2 8. This Court also has original jurisdiction over this action under 28 U.S.C.
3 §1331 because the action arises under the laws of the United States, including the
4 Coronavirus Aid, Relief, and Economic Security Act, the CARES Act (P.L. 116-136),
5 and the SBA Regulations.

6 9. This Court has personal jurisdiction over Defendants because Defendants
7 do business in this District, and a substantial number of the events giving rise to the claims
8 alleged herein took place in this District.

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

14 **III. FACTUAL ALLEGATIONS**

15 ***Background***

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

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

20 13. On March 11, 2020, the WHO declared that the spread of COVID-19 had
21 become a pandemic.

22 14. In March 2020, Arizona Governor Douglas A. Ducey issued an executive
23 Stay Home, Stay Healthy, Stay Connected initiative that went into effect on March 31,
24 2020 and required Arizona residents to limit their time away from their place of residence
25 expect for limited essential activities and for employment in essential businesses. On
26 June 29, 2020, Governor Ducey issued a separate Executive Order closing or reducing
27 the maximum capacity for certain businesses. Governor Ducey extended that Order on
28 July 27, 2020.

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

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

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

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

23 19. The PPP provided small businesses with loans to be originated from
24 February 15, 2020, through June 30, 2020. The PPP was created to provide American
25 small businesses with eight-weeks¹ of cash-flow assistance and to allow a certain
26 percentage of the loan to be forgiven if the loan is utilized to retain employees and fund

27 _____
28 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.

1 payrolls. Although the loans are administered by the Treasury and backed by the Federal
2 Government, the loans are funded by private lenders (“Lenders”), including banks and
3 financial services firms, that review and approve PPP loan applications.

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

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

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

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

23
24 ² *Paycheck Protection Program (PPP) Information Sheet: Borrowers*, Dep’t of
25 Treasury (last visited, June 18, 2020), [https://home.treasury.gov/system/files/136/PPP--
Fact-Sheet.pdf](https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf)

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

1 assistance enabling them to apply for a PPP loan.

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

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

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

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

- 23 • Five percent (5%) for loans of not more than \$350,000;
- 24 • Three percent (3%) for loans of more than \$350,000 and less than
- 25 \$2,000,000; and
- 26

27 _____
28 ⁴ *Id.*

- One percent (1%) for loans of at least \$2,000,000.⁵

27. The CARES Act states, “**Agent fees will be paid by the lender out of the fees the lender receives from SBA.** Agents may not collect fees from the **borrower or be paid out of the PPP loan proceeds.** The total amount that an agent may collect from the lender for assistance in preparing an application for a PPP loan ... may not exceed:

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

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

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

30. By assisting businesses in preparing their Applications for PPP funding, PPP Agents play a critical role in fulfilling the goals of the CARES Act and ensuring adherence to the United States Congress’s legislative intent. Indeed, the Senate directed the Treasury to “**issue guidance to lenders and agents to ensure that the processing**

⁵ 85 FR 20816 (3)(d).

⁶ 85 FR 20816 (4)(c).

⁷ *Id.* (Emphasis Added).

1 **and disbursement of covered loans prioritizes small business concerns and entities in**
2 **underserved and rural markets, including veterans and members of the military**
3 **community, small business concerns owned and controlled by socially and**
4 **economically disadvantaged individuals..., women, and businesses in operation for**
5 **less than 2 years.”⁸**

6 31. If not for the PPP Agents, tens of thousands of small businesses would have
7 had difficulty or been unable to apply for PPP loans.

8 32. **Nowhere in the CARES Act or the SBA Regulations does the Federal**
9 **Government state, or even suggest, that Lender’s approval is required in order for**
10 **an Applicant to use an Agent.**

11 33. Here, the Defendants are SBA approved Lenders. Plaintiff served as the
12 PPP Agent for small businesses applying for the PPP loans provided by the Defendants
13 and backed by the full faith and credit of the Federal Government.

14 34. Despite Plaintiff’s important (and successful) work in assisting the
15 Applicants with their Applications submitted to Defendants, Defendants have not paid
16 Plaintiff the regulatorily required Agent Fees, but have instead retained the Agent Fee
17 portion of the Lender Fees for itself.

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

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

27 37. Adding validity to the need to file this action, on May 27, 2020, United

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

1 Community Banks, Inc. (“UCB”), received a civil investigative demand (“CID”) from
2 the U.S. Department of Justice (the “DOJ”) pursuant to the False Claims Act. The CID
3 directed UCB and its affiliated entities “to produce certain documents and respond to
4 written interrogatories relating to the PPP loans approved by the Bank, the **Bank’s non-**
5 **payment of fees to agents of borrowers** and the Bank’s policies related to payment or
6 non-payment of agent fees.”⁹

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

9 38. To assist its clients with preparing Applications for a PPP loan through
10 Defendants, Plaintiff spent considerable time familiarizing itself with the CARES Act
11 and the related SBA Regulations. In particular, relevant provisions include Section 1102,
12 which permits the SBA to guarantee 100% of Section 7(a) loans under the PPP, and
13 Section 1106 of the Act, which provides forgiveness of up to the full principal amount of
14 qualifying loans guaranteed under the PPP.

15 39. Complying with the SBA Regulations, Plaintiff assisted Applicants in the
16 PPP Application process. As contemplated by the Federal Government, such assistance
17 contributed to the successful funding of the Applicants’ PPP loans with a Defendant.

18 40. Although each of the Applicants’ PPP loan was funded by the Defendants,
19 based on information and belief, Defendants have each taken custody of the Agent Fee
20 money they owe to Plaintiff from the Federal Government, yet each has failed to pay
21 Plaintiff the statutorily required Agent Fee that Plaintiff is owed.

22 41. Based on the SBA Regulations, Plaintiff understood that it was not allowed
23 to charge its clients any fee relating to the Application process and that it was only
24 permitted to receive compensation from the PPP Agents’ share of the Lender Fees the
25 Federal Government entrusted to the Lenders for the PPP Agents benefit.

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

1 42. Plaintiff further understood that it was not entitled to the Agent Fees until
2 the Lender received its Lender Fees. Based on information and belief, Defendants have
3 received the Lender Fees for the Applicants Plaintiff assisted, thereby making the Agent
4 Fees immediately due to Plaintiff.

5 43. To participate in the PPP, “Lenders must comply with the applicable lender
6 obligations set forth in this [SBA PPP Final Rule]...”¹⁰.

7 44. Therefore, Plaintiff believed in good faith that Defendants would comply
8 with the SBA Regulations and pay Plaintiff the statutorily required Agent Fees.

9 45. However, Defendants violated the SBA Final Rule because they did not
10 pay Plaintiff the Agent Fees the Federal Government entrusted to the Defendants for the
11 benefit of the Plaintiff. Instead, Defendants have illegally retained the Agent Fee portion
12 of the Lender Fees.

13 46. Defendants, as Lenders under the PPP, lack any legal authority under the
14 SBA Regulations to withhold payment of the Agent Fees to Plaintiff.

15 47. As a result of Defendants’ unlawful actions, Plaintiff and the Class have
16 suffered financial harm by being deprived of the statutorily mandated compensation for
17 the professional services they provided in their critical role as a PPP Agent, assisting
18 Applicants in the preparation of their PPP application. Defendants barred Plaintiff from
19 receiving compensation for their role as PPP Agents in the PPP process, which role
20 resulted in significant benefits to both small businesses and the Lenders.

21 **IV. CLASS ALLEGATIONS**

22 48. Plaintiff brings this action on behalf of itself, and all other similarly
23 situated Class members pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of
24 Civil Procedure and seeks certification of the following Nationwide Class:

25 All Agents who assisted a business in preparing an Application for
26 a PPP loan pursuant to the CARES Act (the “Nationwide Class”).

27 49. To the extent that a Nationwide Class is not certified, in the alternative,

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

1 Plaintiff brings this action on behalf of itself, and all other similarly situated Class
2 members pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil
3 Procedure and seeks certification of the following Statewide Class:

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

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

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

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

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

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

21 54. *Commonality and Predominance*: Common questions of law and fact affect
22 the Class. These questions of law and fact predominate over individual questions
23 affecting 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 from the Lender Fees it received under the CARES Act;
- 27 c. Whether Defendants failed to pay Agent Fees they were required to pay;
- 28 d. Whether Class Members are entitled to damages; and if so, in what amount;

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

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

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

22 57. *Adequacy*: Plaintiff is an adequate representative of the Class because it is
23 a member of the Class, and Plaintiff's interests do not conflict with the interests of the
24 other Class Members that Plaintiff seeks to represent. Plaintiff will fairly and adequately
25 represent and protect the interests of the other Class Members. Plaintiff has retained
26 counsel with substantial experience in litigating complex cases, including class actions.
27 Both Plaintiff and its counsel will vigorously prosecute this action on behalf of the Class
28 and have the financial ability to do so. Neither Plaintiff nor counsel has any interest

1 adverse to other Class Members.

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

10 **V. CAUSES OF ACTION**

11 **COUNT I**
12 **DECLARATORY RELIEF**
13 **AGAINST ALL DEFENDANTS**

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

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

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

25 62. Plaintiff and the Class seek a declaration, in accordance with SBA
26 Regulations and pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, that
27 Defendants are obligated to set aside money to pay, and to pay the Agent Fees the PPP
28 Agents have earned for the work performed on behalf of their clients that received a PPP
loan from the Defendants.

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

4 **COUNT II**

5 **UNJUST ENRICHMENT**
6 **AGAINST ALL DEFENDANTS**

7 64. Plaintiff hereby incorporates by reference the foregoing allegations as if
8 fully set forth herein.

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

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

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

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

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

27 70. Defendants have unjustly benefitted through the illegal retention of the
28

¹¹ 85 FR 20812 (1).

1 Agent Fee portion of the Lender Fees paid by the Federal Government to the Defendants
2 for the benefit of the Plaintiff and the Class.

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

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

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

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

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

24 **COUNT III**

25 **CONVERSION**
26 **AGAINST ALL DEFENDANTS**

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

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

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

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

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

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

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

26 83. At the time they unlawfully retained Plaintiff’s Agent Fees, Defendants
27 knew or should have known that the Agent Fees were owed to Plaintiff and the other
28 Class Members.

1 84. Defendants' improper acts or practices of refusing to pay Plaintiff and the
2 other Class Members the mandated Agent Fees are the proximate cause of the damages
3 sustained by the Plaintiff and the Class Members.

4 85. Defendants' conduct manifests a knowing and reckless indifference
5 toward, and a disregard of, the rights of Plaintiff and the Class Members.

6 86. By withholding the Agent fees, Defendants have maintained wrongful
7 control over Plaintiff's property inconsistent with Plaintiff's entitlements under the SBA
8 Regulations.

9 87. Defendants committed civil conversion by retaining monies owed to
10 Plaintiff and the Class.

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

14 **COUNT IV**

15 **VIOLATION OF THE ARIZONA CONSUMER FRAUD ACT, A.R.S. § 44-1522,**
16 **et seq.**
AGAINST ALL DEFENDANTS

17 89. Plaintiff hereby incorporates by reference the foregoing allegations as if
18 fully set forth herein.

19 90. The Arizona Consumer Fraud Act prohibits the "act, use or employment
20 by any person of any deception, deceptive or unfair act or practice, fraud, false pretense,
21 false promise, misrepresentation, or concealment, suppression, or omission, in
22 connection with the sale or advertisement of any merchandise whether or not any person
23 has in fact been misled, deceived or damaged thereby" A.R.S. § 44-1522(A).

24 91. Defendants have committed unfair acts and concealed and omitted material
25 facts that have harmed Plaintiff and the Class.

26 92. Specifically, Defendants, despite their obligations under the SBA
27 Regulations, failed to pay the required Agent Fees, which the Federal Government paid
28 to the Defendants as part of the Lender Fees. Defendants' conduct constitutes an unfair

1 act because Defendants received Lender Fees as a result of Plaintiff and the Class's
2 efforts to assist Applicants in the Application process to secure PPP loans through
3 Defendants, who are SBA approved lenders.

4 93. By Defendants holding themselves out as PPP Lenders, Defendants
5 necessarily held themselves out as promising to follow the mandatory PPP guidelines and
6 regulations.

7 94. Nevertheless, Defendants have failed to provide Plaintiff and the Class
8 payment in the amount of the mandatory Agent Fees, and instead retained the Agent Fee
9 portion of the Lender Fees for themselves.

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

16 96. Defendants' unfair acts and omissions occurred in connection with the sale
17 or advertisement of services, namely, services related to the processing and financing of
18 PPP loans under the CARES Act and SBA Regulations.

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

25 98. Plaintiff and the Class have been injured as a direct and proximate cause of
26 Defendants' misconduct. Plaintiffs, as such, seek recovery from Defendants in the
27 amount of the owed Agent Fees, and for all other relief afforded under the law.

28 //

COUNT V

**VIOLATIONS OF THE CARES ACT
AGAINST ALL DEFENDANTS**

1
2
3
4 99. Plaintiff hereby incorporates by reference the foregoing allegations as if
5 fully set forth herein.

6 100. The CARES Act provides a stimulus package in response to the
7 COVID-19 pandemic and includes the PPP, which assists small businesses seeking to
8 maintain payroll and other authorized expenses.

9 101. There is an implied cause of action arising under the CARES Act.

10 102. The CARES Act, along with the SBA's Regulations, provides for the
11 payment of Agent Fees to authorized representatives who assisted PPP loan applicants
12 with their PPP Applications (i.e., PPP Agents consisting of the Plaintiff and the Class
13 Members).

14 103. In flagrant disregard for the law, Defendants have failed and/or
15 refused to pay the Agent Fees to the Applicants' authorized representatives (i.e., PPP
16 Agents consisting of the Plaintiff and the Class Members), and instead, kept the fees to
17 enrich themselves.

18 104. Plaintiff and Class Members are PPP Agents under the CARES Act
19 and the SBA Regulations and, therefore, are entitled to the Agent Fees they have earned.
20 The Agent Fees have been paid to the Lenders by the Federal Government and are to be
21 paid by the Lenders to the Plaintiffs and Class Members as set forth in the CARES Act
22 and the SBA Regulations.

23 105. Nevertheless, Defendants refused to pay Plaintiff and the Class
24 Members the authorized Agent Fees.

25 106. As a direct and proximate result of Defendants' failure and/or refusal to
26 comply with the CARES Act and the Rule, Plaintiff and the Class Members have suffered
27 damages in excess of \$5 million.
28

COUNT VI

**VIOLATIONS OF THE SBA's 7(a) LOAN PROGRAM, 15 U.S.C. § 636(a)
AGAINST ALL DEFENDANTS**

107. Plaintiff hereby incorporates by reference the foregoing allegations as if fully set forth herein.

108. The PPP was added to the SBA's 7(a) loan program, which is designed to assist small businesses in obtaining financing.

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

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

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

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

PRAYER FOR RELIEF

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

- a. For an Order certifying the Class as defined above, appointing Plaintiff as Class representative, and appointing Plaintiff's counsel as Class counsel;
- b. For an Order declaring Defendants' actions to be unlawful;
- c. For a declaration that all regulatorily-mandated and calculated Agent Fees are owed to Plaintiff and the Class and should be deposited into a mutually agreeable fund or funds within 60 days, to be distributed to the PPP Agents who are entitled to the funds;

- 1 d. For all injunctive and other equitable relief available to Plaintiff and Class
2 Members;
- 3 e. For an award of all recoverable compensatory, statutory, and other damages
4 sustained by Plaintiff and Class Members;
- 5 f. For reasonable attorneys' fees and expenses as permitted by applicable
6 statutes and law;
- 7 g. For costs related to bringing this action;
- 8 h. For pre- and post-judgment interest as allowed by law; and,
- 9 i. Such further relief at law or in equity that this Court deems just and proper.

10 **DEMAND FOR JURY TRIAL**

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

13 Dated: August 5, 2020

Respectfully submitted,

14 **ZIMMERMAN REED LLP**

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