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9 Attorneys for Plaintiff and Proposed Classes

10 UNITED STATES DISTRICT COURT
 11
 12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

13 KAREN’S CUSTOM GROOMING
 14 LLC, a California Limited Liability
 15 Company, On Behalf of Itself and On
 16 Behalf of Similarly Situated Businesses
 and Individuals,

17 Plaintiff,

18 v.

19
 20 WELLS FARGO & COMPANY, a
 Delaware Corporation;
 21 WELLS FARGO BANK, NATIONAL
 22 ASSOCIATION; and
 23 DOES 1-10, Inclusive,

24 Defendants.

Case No.: **'20CV0956 LAB BGS**

CLASS ACTION COMPLAINT FOR
DAMAGES AND EQUITABLE
RELIEF

DEMAND FOR JURY TRIAL

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1 Plaintiff Karen’s Custom Grooming LLC (“KCG” or “Plaintiff”) brings this
2 action on behalf of itself, and all similarly situated businesses and individuals, against
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4 Defendants Wells Fargo & Company, Wells Fargo Bank, National Association and
5 DOES 1-10, Inclusive (collectively “Wells Fargo” or “Defendants”) to enjoin
6 Defendants’ unlawful and wrongful conduct, and to obtain redress for all businesses
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8 and individuals injured by Defendants’ conduct, as detailed herein. Plaintiff alleges
9 events concerning Plaintiff’s business operations, as well as Plaintiff’s interaction
10 with Defendants, based upon personal knowledge. All other allegations are based
11 upon information and belief, based upon the investigation conducted by Plaintiff’s
12 attorneys. Plaintiff believes that additional evidentiary support exists for its
13 allegations, given an opportunity for discovery.
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15
16 **NATURE OF THE ACTION**

17 1. Plaintiff, like many small businesses in America, applied to Wells Fargo
18 to obtain loans to be made pursuant to the Paycheck Protection Program (the “PPP”)
19 that is part of Title I (at § 1102) of the Coronavirus Aid, Relief, and Economic Security
20 Act (the “CARES Act”) (Public Law 116-136).¹
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25 _____
26 ¹ <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>. Many of
27 the provisions cited herein from the CARES Act amend the Small Business Act,
28 which is set forth at 15 U.S.C. §636. For ease of reference, Plaintiff will refer to the
CARES Act, but also provide, where applicable, the cite to the relevant provision in
15 U.S.C. §636.

1 2. The CARES Act is a major, first-of-its-kind piece of legislation designed
2 to help stem the economic carnage wrought on America’s small businesses due to the
3 closures and lockdowns necessitated by the coronavirus. Many consider the CARES
4 Act, and its PPP program, as an emergency step to prevent what may ultimately
5 become the second Great Depression. The PPP was a lifeline being thrown to
6 America’s small businesses – in effect – America’s “Main Street” businesses. In turn,
7 the lifeline thrown to small businesses was also a safety net to protect vulnerable
8 American workers.
9

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11 3. Through the PPP in the CARES Act, \$349 billion in loans (“PPP Loans”)
12 were to be made available to “eligible recipient[s]”, defined as “an individual or entity
13 that is eligible to receive a covered loan” pursuant to the PPP. *See* CARES Act
14 §1102(a)(2)(A)(iv). *See also* 15 U.S.C. §636(a)(36)(A)(iv).
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17 4. The CARES Act includes, as “eligible” entities, certain small businesses,
18 nonprofit organizations, Veterans organizations, and Tribal businesses (collectively
19 herein “Eligible Businesses”). The CARES Act includes, as “eligible” individuals,
20 self-employed persons and independent contractors (collectively herein “Eligible
21 Individuals”). As used herein, the term “Eligible Recipients” includes both Eligible
22 Businesses and Eligible Individuals.²
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27 ² Additional requirements are set forth in the CARES Act and are detailed in
28 SBA Form 2483. *See e.g.* <https://www.sba.gov/sites/default/files/2020-04/PPP->

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1 5. The CARES Act provides authority to the United States Small Business
2 Administration (the “SBA”) to receive the funding and the authority to guarantee
3 100% of the loans made pursuant to the PPP. The PPP was intended to help Eligible
4 Recipients weather the storm of the coronavirus pandemic by providing a “direct
5 incentive for small businesses to keep their workers on the payroll” by providing
6 SBA-guaranteed PPP Loans of up to \$10 million to Eligible Recipients.³
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9 6. Applications for the PPP Loans (the “PPP Applications”) are to be
10 processed on a first-come, first-served basis as required by the rules governing the
11 program (the “SBA Regulations”).⁴ The importance and fairness of such a rule is
12 self-evident in view of the monumental demand for relief needed to keep America’s
13 small businesses afloat.
14

15 7. PPP Loans of the SBA-guaranteed funds were, and are, to be made and
16 approved by various banking or financial entities (referred to as “lenders”), such as
17 the Defendants, based upon authority delegated in the CARES Act by the SBA. *See*
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25 Borrower-Application-Form-Fillable.pdf (last visited May 21, 2020). The CARES
26 Act sets the “covered period” for PPP Loans as February 15, 2020 through June 30,
27 2020. *See* CARES Act §1102(a)(2)(A)(iii); 15 U.S.C. §636(a)(36)(A)(iii).

28 ³ <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program> (last visited May 6, 2020).

⁴ <https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf> (last visited May 6, 2020).

1 CARES Act §1102(a)(2)(F)(ii)(I); 15 U.S.C. §636(a)(36)(F)(ii)(I). Defendants
2 affirmatively undertook to act as “lenders” pursuant to the PPP.⁵

3
4 8. As a result of their affirmative act to serve as a lender for PPP Loans,
5 Defendants knew, or were on notice of, the terms of the CARES Act and the SBA
6 Regulations. Indeed, Defendants knew, or were on notice, that if they delayed
7 processing PPP Applications, PPP loan applicants (*i.e.* Plaintiff and members of the
8 “Classes”, as defined herein) were in peril of losing their place in line to obtain these
9 critical loans. Losing one’s place in line could very well make the difference between
10 a business being able to remain open and being able to continue to pay vital expenses
11 such as payroll and rent, or having to close its operations.

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14 9. On April 3, 2020, applications for PPP Loans could be made, and Loan
15 Applications were being processed.⁶

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19 ⁵ SBA Form 2484 details certain of the affirmations and steps lenders were
20 required to make when processing the PPP Applications.
21 [https://www.sba.gov/sites/default/files/2020-](https://www.sba.gov/sites/default/files/2020-04/PPP%20Lender%20Application%20Form_0.pdf)
22 [04/PPP%20Lender%20Application%20Form_0.pdf](https://www.sba.gov/sites/default/files/2020-05/3245-0407%20SBA%20Form%203508%20PPP%20Forgiveness%20Application.pdf) (last visited May 21, 2020). SBA
23 Form 3508 provides instructions for loan forgiveness applications. *See*
24 [https://www.sba.gov/sites/default/files/2020-05/3245-](https://www.sba.gov/sites/default/files/2020-05/3245-0407%20SBA%20Form%203508%20PPP%20Forgiveness%20Application.pdf)
25 [0407%20SBA%20Form%203508%20PPP%20Forgiveness%20Application.pdf](https://www.sba.gov/sites/default/files/2020-05/3245-0407%20SBA%20Form%203508%20PPP%20Forgiveness%20Application.pdf) (last
26 visited May 21, 2020).

27 ⁶ A landslide of PPP Applications were being made at banks able to successfully
28 launch online applications. *See* [https://www.nbcdfw.com/news/business/bank-of-](https://www.nbcdfw.com/news/business/bank-of-america-small-business-loan-portal-is-up-making-it-the-first-major-bank-to-begin-relief-program/2344898/)
america-small-business-loan-portal-is-up-making-it-the-first-major-bank-to-begin-
relief-program/2344898/ (last visited May 19, 2020) (the “April 3 NBCDFW
Article”). Embedded within the April 3 NBCDFW Article is a link to a Wells Fargo
statement representing that it had already received “hundreds of thousands of

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1 10. Instead of acting consistently with the terms of the CARES Act and the
2 SBA Regulations by processing PPP Loans to ensure adherence to the “first-come,
3 first-served” mandate of the SBA Regulations, Wells Fargo placed several roadblocks
4 that prevented and/or prejudicially delayed Plaintiff and members of the Classes in
5 seeking to apply for PPP Loans.
6

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8 11. First, Wells Fargo required that any applicant for a PPP Loan have a
9 Wells Fargo business checking account as of February 15, 2020. This is not a
10 requirement of the CARES Act.⁷
11

12 12. Second, Wells Fargo announced, on or about April 5, 2020, that it would
13 reportedly “focus” on helping businesses with under fifty employees or nonprofit
14 organizations to obtain PPP Loans. While such entities are intended recipients of the
15 PPP Loans – they are not the only intended recipients in the pool of potentially
16 Eligible Recipients – and therefore the limitation Wells Fargo was engrafting on the
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23 applications” for PPP Loans. See
24 <https://update.wf.com/coronavirus/paycheckprotectionprogram/> (last visited May 19,
25 2020). In stark contrast to these “hundreds of thousands” of applications Wells Fargo
26 is reported to have received on or about April 3, 2020, Plaintiff and others seeking to
27 apply at Wells Fargo were reportedly unable to obtain an application for well over a
28 week.

⁷ Similarly, Wells Fargo required persons seeking PPP Loans to enroll in Wells
Fargo Business Online.

1 ability to apply to obtain PPP Loans was not consistent with the terms of the CARES
2 Act or the SBA Regulations.⁸
3

4 13. Third, upon information and belief, Wells Fargo was not processing the
5 PPP Applications based on what it directly represented to Plaintiff and members of
6 the Classes, which was that it would place all applicants in a “queue based upon when”
7 they submitted their “initial interest” in applying for PPP Loans through Wells Fargo,
8 and that it would “work[] through the queue in the order in which customers submitted
9 their initial interest.”⁹ Upon information and belief, Wells Fargo was not following
10 the “queue” consistent with its representations, but was instead often prioritizing PPP
11 Applications from customers seeking higher loan amounts or from otherwise
12 preferred customers, and thereby left those who desperately needed the loans –
13 America’s small businesses – out in the cold.
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21 ⁸ As alleged herein, Plaintiff submits, on information and belief, that Wells Fargo
22 did not even comply with its representation that it would “focus” its assistance in
23 providing PPP Loans to these groups.

24 ⁹ As detailed herein, Wells Fargo reportedly maintained a list of persons, in some
25 order based upon when they contacted Wells Fargo, who expressed an interest in
26 applying for a PPP Loan. This list purportedly formed the “queue”. For ease of
27 reference herein, Plaintiff will refer to the list not as an “interest list”, but rather as the
28 queue of those seeking to submit PPP Applications. Therefore, in the definition of
the Classes herein, the reference to those “who applied” for a PPP Loan with
Defendants includes persons who contacted Wells Fargo to request an application,
reportedly resulting in their placement on the interest list in a queue.

1 14. Further, while Wells Fargo has publicly represented that it is giving to
2 charity any fees it was otherwise entitled to for originating PPP Loans,¹⁰ the reality of
3 its gatekeeper role on the PPP program was that it gave lenders such as Wells Fargo
4 a chance to curry favor with larger or preferred business banking customers. Upon
5 information and belief, prioritizing certain customers may also have assisted Wells
6 Fargo in avoiding significant unsecured loan losses.
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9 15. Wells Fargo also had (and continues to have) a dire need for positive
10 public relations. There are few better public relations undertakings than donating to
11 charity. Wells Fargo is still attempting to recover its reputation after a series of
12 incidents and allegations over years questioning its treatment of its customers. A
13 recent article drew a pointed link between Wells Fargo's misconduct here in the PPP
14 program, and its history of bad behavior, noting that "[i]n February [2020], the bank
15 was ordered to pay \$3 billion to settle a fake account scandal"¹¹ In short, Wells
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21 ¹⁰ Wells Fargo's reported undertaking to provide its PPP generated fees to charity
22 appears to be the result of limitations put into place due to its "fake" loan scandal,
23 discussed herein. See <https://www.cnbc.com/2020/04/08/the-fed-is-lifting-wells-fargos-asset-cap-so-it-can-help-lend-to-small-business.html> (last visited May 9,
24 2020).

25 ¹¹ <https://www.pymnts.com/news/security-and-risk/2020/federal-state-investigators-question-wells-fargo-over-ppp-loans/> (last visited May 12, 2020).
26 Notably, Wells Fargo's history of misconduct resulted it an initial limitation on the
27 amount it could provide in PPP Loans. <https://www.cnbc.com/2020/04/08/the-fed-is-lifting-wells-fargos-asset-cap-so-it-can-help-lend-to-small-business.html> (last
28 visited May 9, 2020).

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1 Fargo historically has faced many allegations of mistreating its customers. The PPP
2 program provided Wells Fargo with another means by which to engage in misconduct.

3
4 16. In addition to Wells Fargo’s misconduct alleged herein, Wells Fargo –
5 whether by design or negligence – was purportedly not able to, or declined to, timely
6 host an active webpage with a link to a PPP Application in order to permit all those
7 seeking PPP Loans to simply apply. As detailed herein, Plaintiff was told by Wells
8 Fargo’s agents that it had to make an online expression of interest or request for a PPP
9 Application, but then experienced delays by Wells Fargo in even being able to host
10 an active website “landing page” on which to submit that expression of interest.¹²
11
12 Ultimately, once the website was even active to permit Plaintiff to submit an
13 expression of interest, it would take nearly another week for Wells Fargo to provide
14 Plaintiff with a PPP Application. By that time, the initial CARES Act funding of PPP
15 had been depleted.
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18 17. Wells Fargo’s intentional and/or negligent misconduct prevented and/or
19 delayed Plaintiff and other members of the Classes from submitting their PPP
20 Applications to other lenders, and from being able to make reliable plans on how to
21 conduct their business operations while waiting for the PPP Loans.
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25 ¹² As alleged herein, the professed “delays” in Wells Fargo’s ability to host an
26 active website landing page in order to permit Plaintiff to apply are, upon information
27 and belief, false statements given that various news media sources have indicated that
28 Wells Fargo was already processing PPP Applications for others, while telling
Plaintiff that it had to wait to be able to access the website.

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18. As a result of Wells Fargo’s misconduct, Plaintiff and other members of the proposed Classes (as defined herein), were unable to have their PPP Application timely submitted to obtain PPP Loans when they were first made available nationwide on April 3, 2020, and many were unable to ever submit a PPP Application (much less obtain a PPP Loan) by the time the \$349 billion in initial loan funding through the PPP was reportedly depleted on April 16, 2020.

19. It appears that Wells Fargo’s misconduct is not going unnoticed by governmental authorities either. On May 5, 2020, Wells Fargo revealed that it was under investigation related to the PPP program.¹³

20. Plaintiff brings this action on behalf of a Nationwide Class and a California Sub-Class (as defined below, and collectively the “Classes”), consisting of businesses and persons (referred to herein as “Eligible Recipients”) who contacted Defendants to apply for PPP Loans, and whose PPP Applications were delayed and/or were not processed by Defendants in the order in which they were received in accordance with SBA Regulations for the PPP program.

¹³ See <https://www.reuters.com/article/us-wells-fargo-loans/wells-fargo-gets-federal-inquiries-over-handling-of-ppp-loans-idUSKBN22H2V9> (last visited May 12, 2020). In addition, the rampant provision of PPP Loans to businesses that did not meet the applicable CARES Act standards has resulted in concerns over possible criminal prosecution for those businesses that do not return the loaned funds within a set time period. <https://news.yahoo.com/small-business-loan-deadline-poses-121836781.html> (last visited May 14, 2020).

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1 27. Defendant Wells Fargo & Company (“WFC”), a Delaware Corporation,
2 is the parent of all Wells Fargo entities. WFC is a diversified financial services
3 company providing banking, insurance, investments, mortgage banking, and
4 consumer finance to individuals, businesses, and institutions in all 50 states and
5 internationally. WFC’s principal executive offices are located at 420 Montgomery
6 Street, San Francisco, California 94104. Through its subsidiaries, WFC conducts
7 substantial business in the State of California, including within this District.
8

9
10 28. Defendant Wells Fargo Bank, National Association (“WFB”), is the
11 main banking arm of WFC, and it also has executive offices at 420 Montgomery
12 Street, San Francisco, California 94104. According to information currently available
13 online with the California Secretary of State, WFB’s main business address is at 101
14 North Phillips Avenue, Sioux Falls, South Dakota 57104. WFB conducts substantial
15 business in the State of California, including within this District.
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18 29. When in this Complaint reference is made to any act of any Defendant,
19 such shall be deemed to mean that officers, directors, agents, employees, or
20 representatives of the Defendant named in this lawsuit committed or authorized such
21 acts, or failed and omitted to adequately supervise or properly control or direct their
22 employees while engaged in the management, direction, operation, or control of the
23 affairs of the Defendant, and did so while acting within the scope of their employment
24 or agency.
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1 33. PPP Loans for Eligible Recipients are made and approved by specified
2 banking and financial institutions (referred to as “lenders”), as detailed in the CARES
3 Act. *See* CARES Act §1102(a)(2)(F)(ii)(I); 15 U.S.C. §636(a)(36)(F)(ii)(I).
4
5 Defendants affirmatively undertook to act as “lenders” pursuant to the PPP.

6 34. On Monday, March 30, 2020, at the start of the business day, Plaintiff’s
7 agent and sole owner, Ms. Angela Schoonover (“Schoonover”) contacted Wells Fargo
8 (via its agent/employee, Zachary Sharp) to inquire about a PPP Loan for Plaintiff.
9 Plaintiff had a pre-existing, long standing business account with Wells Fargo.
10

11 35. On April 1, 2020, Plaintiff (via Ms. Schoonover) continued to contact
12 Mr. Sharp at Wells Fargo, again emphasizing that Plaintiff wanted one of the PPP
13 Loans that were to become available on April 3, 2020.
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15 36. On April 2, 2020, Plaintiff again contacted Wells Fargo, via its agent,
16 Tyler J. Turk (“Turk”), to again ask if it was possible to apply for a PPP Loan for
17 Plaintiff. Mr. Turk, on behalf of Wells Fargo, emailed Plaintiff back that Wells Fargo
18 had just launched the “landing page for the PPP”, and when it was live, Plaintiff could
19 apply from that site.
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22 37. On April 3, 2020, Plaintiff again contacted Mr. Turk at Wells Fargo, in
23 writing, to ask when the Wells Fargo webpage would launch, noting that Plaintiff was
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1 concerned because the PPP Loans were “first come first serve.”¹⁶ Plaintiff also noted
2 that the SBA had opened up the loan application process, that “other banks” were
3 processing loans as of that date (April 3, 2020), but that the other banks “only accept
4 current clients.” As Plaintiff stated to Mr. Turk, “[i]f wells Fargo is behind on this it
5 puts all of their account holders at a disadvantage.” Plaintiff asked “[w]hy aren’t they
6 on top of this? Is there anything we can do?”
7
8

9 38. In response to Plaintiff’s April 3, 2020 written concerns, Wells Fargo’s
10 Turk wrote to Plaintiff that the concerns were “under[stood]” and that “we are
11 diligently working on getting the application process live and we ask that you check
12 the website I sent you frequently for updates on the program and the application
13 process.”
14
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16 39. Plaintiff continued to monitor the Wells Fargo website page
17 meticulously over the next several days.¹⁷
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20 ¹⁶ See SMALL BUSINESS ADMINISTRATION Interim Final Rule §m. [Docket
21 No. SBA-2020-0015] 13 CFR Part 120 Business Loan Program Temporary Changes;
22 Paycheck Protection Program RIN 3245-AH34.

23 ¹⁷ While Plaintiff was told the website was not available, and was constantly
24 checking for its launch, a report by one apparent customer or applicant has surfaced
25 stating that they learned Wells Fargo was providing other persons with PPP
26 Applications by at least April 4, 2020. See <https://crooksandliars.com/2020/04/ppp-loans-are-nightmare> (last visited May 14, 2020). See also
27 <https://www.newsweek.com/customers-fume-wells-fargo-bank-america-struggle-stimulus-loan-rollout-1496097> (last visited May 19, 2020);
28 <https://www.laweekly.com/some-small-businesses-hit-snags-accessing-ppp-loans/>
(last visited May 19, 2020) (April 9, 2020 article reporting that “most of [Wells

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1 40. On April 5, 2020, during the time that Plaintiff was monitoring the Wells
2 Fargo website, Wells Fargo issued a press release (“April 5 Release”) quoting CEO,
3 Charlie Scharf, stating in pertinent part that: “While all businesses have been impacted
4 by this crisis, small businesses with fewer than 50 employees and nonprofits often
5 have fewer resources. Therefore, we are focusing our efforts under the Paycheck
6 Protection Program on these groups.”¹⁸
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9 41. Although the “focus” stated by Wells Fargo in the April 5 Release is,
10 outwardly honorable, neither the CARES Act nor the SBA Regulations permit Wells
11 Fargo to pick and choose how to prioritize PPP Loan applicants. Worse yet, it is
12 evident that Wells Fargo did not prioritize such small businesses in processing the
13 PPP Loans. Plaintiff, an operation employing fewer than 20 persons, and who reached
14 out to Wells Fargo early on the morning of Monday, March 30, 2020 (PDT), was still
15 left without a PPP Loan when the \$349 billion CARES Act PPP initial funding ran
16 out. Thus, regardless of Wells Fargo’s “focus”, it does not negate the harm caused by
17 its failure to process the PPP Applications on a “first-come, first-served” basis or in a
18 “queue.”
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25 Fargo’s] customers did not know” the bank was accepting PPP loan applications on
26 Sunday, April 5, 2020). Indeed, as set forth in fn. 6, it appears that Wells Fargo may
27 have received applications by April 3, 2020.

28 ¹⁸See <https://apnews.com/Business%20Wire/84b21d67ad9a4dd69bf953480c0295d2>.
(last visited May 12, 2020).

1 42. The April 5 Release also represented that “Wells Fargo will review all
2 expressions of interest submitted by customers via our online form through April 5
3 and provide them with updates in the coming days.”¹⁹ Wells Fargo also stated to
4 potential applicants that “we encourage you to apply as quickly as possible.”²⁰
5

6 43. On April 6, 2020, Plaintiff (care of its agent, Ms. Schoonover) received
7 an email update from Wells Fargo (from “Wells Fargo Online
8 alerts@notify.wellsfargo.com”). The April 6, 2020 email notice from Wells Fargo
9 stated that it was “not able to begin your application at this time, but you remain in
10 our queue based upon when you submitted your initial interest.”
11

12 44. Plaintiff received similar updates on April 8, 2020 from Wells Fargo
13 (from the same email address), again promising that Plaintiff remained “in the queue
14 based upon when you submitted your initial interest, and we continue to work through
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18 ¹⁹ The April 5 Release also noted that Wells Fargo would be “target[ing] to
19 distribute a total of \$10 billion” to its small business customers pursuant to the PPP.

20 ²⁰ It was reported that, on Sunday, April 5, 2020, Wells Fargo had also stated that
21 it would stop accepting applicants for PPP Loans because it had already received
22 enough interest in applications to reach the threshold of \$10 billion in loans it agreed
23 to undertake. <https://www.cbsnews.com/news/paycheck-protection-program-wells-fargo-small-business/> (last visited May 19, 2020). By April 8, 2020, however, the
24 asset cap on Wells Fargo’s ability to make more loans was lifted by the Federal
25 Reserve, and Wells Fargo reportedly was able to continue to process PPP
26 Applications. <https://www.barrons.com/articles/wells-fargo-reprieve-fed-loans-small-business-stimulus-cares-act-51586364932> (last visited May 19, 2020). *See also*
27 https://www.federalreserve.gov/newsevents/pressreleases/files/enf20200408a1.pdf?mod=article_inline (last visited May 19, 2020); <https://newsroom.wf.com/press-release/community-banking-and-small-business/wells-fargo-expand-participation-paycheck> (last visited May 19, 2020).
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1 the queue in order.”²¹ The April 8, 2020 update further stated that “[i]f you can apply
2 through Wells Fargo, we will email you a link to start the application process.”

3
4 45. On April 10, 2020, Plaintiff again received an “update” from Wells
5 Fargo, stating that Plaintiff remained in the queue, but that Wells Fargo was not able
6 to begin Plaintiff’s application “at this time.” The “update” again stated that “[i]f you
7 can apply through Wells Fargo, we will email you a link to start the application
8 process.”

9
10 46. On April 14, 2020, while Plaintiff was patiently waiting for Wells
11 Fargo’s online portal to release a PPP Application to permit it to apply for a PPP Loan,
12 Wells Fargo’s top executives were bragging to securities analysts about how Wells
13 Fargo was helping small businesses obtain PPP Loans.

14
15 47. On an April 14, 2020 analyst conference call to report results for the first
16 fiscal quarter of 2020, Wells Fargo President and CEO Scharf stated that “[w]e’ve
17 extended our participation in the PPP program and hope to provide significant relief
18 to our small business customers. We are quickly ramping up our processing capacity
19 to respond to the significant demand we’ve seen.”
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25 ²¹ The April 8, 2020 email also stated that “[y]our place in line is not impacted by
26 the recent announcement that Wells Fargo can expand its participation in the
27 Paycheck Protection Program, in response to the actions by the Federal Reserve. You
28 remain in the queue based upon when you submitted your initial interest, and we
continue to work through that queue in order.”

1 48. Later on the same April 14, 2020 analyst conference call, Jefferies LLC
2 analyst, Ken Usdin, asked if Wells Fargo was “truly able to provide all the help that
3 your customers are asking for [in the PPP program] and how are you balancing that
4 demand” Wells Fargo’s Senior Executive Vice President and CFO, John R.
5 Shrewsberry, responded to Usdin that, “on the PPP front . . . I would describe this as
6 unconstrained and in a position to help everybody who approaches us subject to the
7 program, of course, having sufficient funding from a legislative perspective, but no
8 constraints at Wells Fargo.”
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11 49. Despite the glowing affirmations on April 14, 2020 to securities analysts
12 that Wells Fargo was “quickly ramping” its ability to process PPP Applications, and
13 that it was in a position to “help everybody”, Wells Fargo had not even yet provided
14 Plaintiff the ability to access an online application despite its constant effort to obtain
15 one since March 30, 2020. The claims that Defendants would “help everybody” who
16 applied pursuant to the PPP were also false. Wells Fargo had imposed a requirement
17 that only those with a business checking account since February 15, 2020 could apply.
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21 50. Ultimately, it was not until April 15, 2020, at approximately 2:42 p.m.
22 PDT, that Plaintiff received an email from Wells Fargo with a notice captioned “You
23 can now apply for the Paycheck Protection Program.” The email notice further stated,
24 “As a reminder, to apply you must have an eligible Wells Fargo Business Checking
25 account as of February 15, 2020.”
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1 51. The April 15, 2020 email notice from Wells Fargo to Plaintiff (via
2 Schoonover) contained the same list of supporting documents that Wells Fargo had
3 indicated in prior email notices that it would request, such as: Payroll tax filings;
4 Payroll Tax form 941; Form 1099-Misc.; and Income and expenses from a sole
5 proprietorship. Plaintiff started the Wells Fargo PPP Application,²² but was then told
6 that Plaintiff's agent, Ms. Schoonover, would need to provide information on her
7 household income, which caused further, unnecessary delay.
8
9

10 52. On or about April 16, 2020, Plaintiff submitted a complete PPP
11 Application to Wells Fargo to obtain a PPP Loan. At approximately the same time,
12 Plaintiff learned that the \$349 billion in PPP Loan funds had been depleted.
13

14 53. In short, Plaintiff is a longstanding Wells Fargo business checking
15 account customer, is a business employing fewer than fifty (50) persons, and
16 contacted Defendants by at least March 30, 2020 to inquire about submitting a PPP
17 Application. Even pursuant to the improper limits made by Defendants as to whom
18 they would prioritize for PPP Loans, Plaintiff fit all requirements, yet was unable to
19 obtain the necessary documentation from Wells Fargo to complete a PPP Application
20 until April 15, 2020.
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26
27 ²² Plaintiff recalls answering all questions and making all certifications required
28 on the PPP Application, and in a manner that would permit Plaintiff to be eligible for
a PPP Loan.

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1 54. While Plaintiff and other members of the Classes were prejudiced by
 2 Wells Fargo’s misconduct and delays, PPP Loans were being made across the
 3 country. The SBA has issued documentation providing the following breakdowns on
 4 PPP Loans issued between the start of the program on April 3, 2020 up to April 13,
 5 2020, and then from April 3, 2020 to April 16, 2020.
 6

7 55. The SBA chart for approvals of PPP Loans through April 13, 2020:²³

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%

18 56. The SBA’s chart for approvals of PPP Loans through April 16, 2020:²⁴

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%

26
 27 ²³ <https://www.sba.gov/sites/default/files/2020-04/PPP%20Report%20SBA%204.14.20%20%20-%20%20Read-Only.pdf>.

28 ²⁴ <https://www.sba.gov/sites/default/files/2020-04/PPP%20Deck%20copy.pdf>.

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LOAN SIZE	APPROVED LOANS	APPROVED DOLLARS	% OF COUNT	% OF AMOUNT
>\$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%

57. The SBA charts demonstrate that the majority of the PPP Loans were concentrated at ranges above \$150,000. The charts also reflect an increase in processing of smaller loans of \$150,000 at the end of the time period in which funding was available, indicating that smaller loans were not prioritized at the outset of the processing of PPP Loans.

	APRIL 13, 2020	APRIL 16, 2020	
LOAN SIZE	APPROVED LOANS	APPROVED DOLLARS	% OF CHANGE
\$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%

58. LendingTree conducted a survey of 1,260 small business owners, after the first round of PPP funding was exhausted, and reported that although 60% of the small business respondents applied for PPP Loans, only 5% received funding.²⁵ In

²⁵ <https://www.lendingtree.com/business/just-5-percent-small-businesses-received-ppp-money/> (last visited May 12, 2020).

1 sharp contrast, so many large businesses have received PPP Loans, that many are now
 2 facing threats of criminal prosecution if they do not return the funds.²⁶
 3

4 59. On April 24, 2020, the Paycheck Protection Program and Health Care
 5 Enhancement Act (the “PPP Act”) was signed into law (Public Law 116-139)²⁷,
 6 which, among other things, added an additional \$310 billion in funding and permitted
 7 lenders to begin processing PPP Applications again on April 27, 2020.²⁸
 8

9 60. Despite the additional \$310 billion in funding by the PPP Act, and
 10 regardless of whether Plaintiff or any members of the Classes received funding after
 11 April 27, 2020, the harm to Plaintiff and members of the Classes is not remedied in
 12 that they lost the ability to use PPP funding during the period from April 3, 2020 to at
 13 least April 27, 2020.
 14

15 61. The CARES Act entitled lenders to receive origination fees of 5% on
 16 loans of not more than \$350,000 (*i.e.* up to a \$17,500 fee); 3% on loans of more than
 17 \$350,000 and less than \$2 million (*i.e.* up to a \$60,000 fee); and 1% on loans of not
 18 less than \$2 million (*i.e.* up to a \$100,000 fee). While Wells Fargo represented it will
 19 be giving its fees generated under the program to charity, Wells Fargo receives
 20 substantial marketing and other benefits from being able to advertise that it is helping
 21
 22
 23

24 _____
 25 ²⁶ <https://news.yahoo.com/small-business-loan-deadline-poses-121836781.html>
 26 (last visited May 14, 2020).

27 ²⁷ <https://www.congress.gov/bill/116th-congress/house-bill/266/text>.

28 ²⁸ <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources#section-header-0>.

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1 its small businesses during the COVID-19 pandemic. As also noted herein, selecting
2 which customers to provide PPP Loans may have helped Defendants avoid loan
3 losses.
4

5 62. Upon information and belief, Wells Fargo prioritized those PPP Loans
6 that curried favor with larger business customers, or customers that may have risked
7 placing the Defendants with huge loan losses to record, and/or prioritized PPP Loans
8 that would earn the highest origination fees, rather than processing PPP Applications
9 on a “first-come, first-served” basis as required by SBA Regulations. Such conduct
10 is contrary to the representations made by Defendants to Plaintiff and members of the
11 Classes, namely that their PPP Applications would be processed in the order in which
12 they were received in the “queue”.
13
14

15 63. Defendants’ conduct resulted in their unjust enrichment at the expense
16 of small businesses and workers who would otherwise have been able to use the
17 temporary funding of the PPP Loans to cover payroll costs, continue group health care
18 benefits, pay employee salaries, pay interest on mortgage obligations, pay rent, pay
19 utilities, or pay interest on debt obligations incurred before the covered period
20 (February 15, 2020 and June 30, 2020) (collectively the “Expenses”).
21
22
23

24 64. Plaintiff and members of the putative Classes reasonably relied on Wells
25 Fargo’s affirmative representations, communications, and advertising in making the
26 choice to apply for a PPP Loan through Defendants, not knowing that, contrary to
27 those representations, Defendants would (upon information and belief) prioritize large
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or preferred borrowers, making it less likely that Plaintiff and members of the Classes would be able to obtain a PPP Loan through Wells Fargo.

65. As a result of the conduct of Wells Fargo, Plaintiff and members of the putative Classes suffered financial harm, wrongfully lost the opportunity to obtain funding that was likely to be forgiven pursuant to the PPP program, lost the time value of those available PPP funds, lost access to capital in an economic crisis that many are calling the second Great Depression, and generally lost economic opportunities to conduct business due to lack of operating capital.

66. Plaintiff, on behalf of itself and the proposed Classes (as defined below), seeks, among other things, an injunction requiring Defendants to cease the unlawful activities alleged herein, an award of damages to Plaintiff and all members of the Classes, declaratory relief, as well as costs of suit and reasonable attorneys’ fees.

CLASS ACTION ALLEGATIONS

67. Pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3), Plaintiff brings its claims on behalf of itself and on behalf of all other persons similarly situated, and seeks to represent the following “Nationwide Class” and “California Sub-Class” (collectively the “Classes”):

a. The Nationwide Class is defined as:

All Eligible Recipients, nationwide, who applied for a PPP Loan with Defendants and whose applications were not processed by Defendants in the order in which they were received by Defendants.

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b. The California Sub-Class is defined as:

All Eligible Recipients in the State of California who applied for a PPP Loan with Defendants and whose applications were not processed by Defendants in the order in which they were received by Defendants.

68. Excluded from each of the Classes are the Defendants, their employees, officers, directors, legal representatives, heirs, successors, and wholly or partly owned subsidiaries or affiliated companies; Class Counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this Action.

69. Plaintiff reserves the right to modify, expand, or amend the definitions of the proposed Classes after discovery and before the Court determines whether class certification is appropriate.

70. Class certification of Plaintiff’s claims is appropriate because Plaintiff can prove the elements of its claims on a class-wide basis using the same evidence as would prove those elements in individual actions alleging the same claims.

Numerosity: Rule 23(a)(1)

71. This action satisfies the requirements of Federal Rules of Civil Procedure 23(a)(1). The Classes number at least in the hundreds, if not thousands, and consist of geographically dispersed business entities and persons who contacted Defendants to submit PPP Applications for PPP Loans through Defendants. Defendants advertised to, and processed many PPP Loans from, applicants nationwide and in the State of California and, therefore, joinder of the members of the Classes is impracticable.

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Commonality and Predominance: Rule 23(a)(2)

1
2 75. This action satisfies the requirements of Federal Rules of Civil Procedure
3
4 23(a)(2) because there are questions of law and fact that are common to each of the
5
6 Classes. These common questions predominate over any questions affecting only
7
8 individual members of the Classes. The questions of law and fact common to the
9
10 Classes include, but are not limited to:

11 a. Whether Defendants violated applicable law in administering,
12
13 processing, and handling PPP Applications and/or PPP Loans;

14 b. Whether Defendants made false, misleading, and/or deceptive
15
16 misrepresentations and omissions regarding their administration, processing, and
17
18 handling of the PPP Applications and/or PPP Loans;

19 c. Whether Defendants processed PPP Applications on a “first-
20
21 come, first served” basis;

22 d. Whether Defendants processed PPP Applications in the order
23
24 received by Defendants, *i.e.* the “queue”;

25 e. Whether Defendants prioritized certain of its customers seeking
26
27 PPP Loans, or sought to maximize origination fees or avoid losses, as opposed to
28
29 processing PPP Applications in the order in which Defendants received requests (the
30
31 “queue”) for PPP Applications from Plaintiff and members of the Classes;

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1 f. Whether Defendants’ conduct alleged herein constitutes an
2 “unfair” business practice under California Business and Professions Code §17200,
3
4 *et seq.*;

5 g. Whether Defendants’ conduct alleged herein constitutes an
6 “unlawful” business practice under California Business and Professions Code
7
8 §17200, *et seq.*;

9 h. Whether Defendants’ conduct alleged herein constitute a
10 “fraudulent” business practice under California Business and Professions Code
11
12 §17200, *et seq.*;

13 i. Whether Defendants’ conduct alleged herein constitutes false
14 advertising under California Business and Professions Code §17500, *et seq.*;

15 j. Whether Defendants’ affirmative act of serving as lender for the
16 CARES Act PPP program created a duty on the part of Defendants to Plaintiff and
17 members of the Classes;
18

19 k. Whether the transactional nature of the PPP Applications process
20 created a duty on the part of the Defendants to disclose material information to the
21 PPP loan applicants (*i.e.* Plaintiff and members of the Classes);
22

23 l. Whether Defendants disclosed to the PPP applicants (*i.e.* Plaintiff
24 and members of the Classes) that the PPP Applications were not being processed on
25 a “first-come, first-served” basis or in the order of the “queue”;
26
27
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1 m. Whether Defendants possessed exclusive knowledge of material
2 facts, with respect to the process for the PPP Applications for PPP Loans that could
3 not have been known to the Plaintiff and members of the Classes (*i.e.* that the loan
4 applications were not being processed “first-come, first-served”, in a “queue”, or that
5 Defendants were prioritizing certain applicants over others);
6

7 n. Whether Defendants actively concealed a material fact or facts
8 from the Plaintiff and members of the Classes (*i.e.* that the PPP Applications were not
9 being processed “first-come, first-served”, in a “queue”, or that Defendants were
10 prioritizing certain applicants over others);
11

12 o. Whether Defendants’ conduct, as alleged herein, was intentional
13 and knowing;
14

15 p. Whether Defendants made a false promise to process PPP
16 Applications in a “queue” or on a “first-come, first-served” basis;
17

18 q. Whether Defendants’ conduct, as alleged herein, constituted
19 negligence or negligence per se;
20

21 r. Whether promissory estoppel prevents Defendants from failing to
22 comply with the promises they made to Plaintiff and members of the Classes;
23

24 s. Whether Plaintiff and members of the Classes are entitled to
25 damages and/or restitution; and, if so, what is the amount of revenues and/or profits
26 Defendants received and/or was lost by Plaintiff and members of the Classes as a
27 result of the conduct alleged herein;
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t. Whether Defendants are likely to continue to mislead PPP loan applicants (*i.e.* Plaintiff and members of the Classes) and members of the public by continuing to violate SBA Regulations regarding processing PPP Applications and PPP Loans;

u. Whether Plaintiff and members of the Classes are entitled to an award of reasonable attorney’s fees, pre-judgment interest, and costs of suit;

v. Whether Plaintiff and members of the Classes are entitled to statutory and punitive damages; and

w. Whether Plaintiff and members of the Classes are entitled to declaratory and injunctive relief.

Superiority of Class Action: Rule 23(b)(3)

76. This action satisfies the requirements of Federal Rules of Civil Procedure 23(b)(3). A class action is superior to other available methods for the fair and efficient adjudication of the rights of the members of the Classes. The joinder of individual members of the Classes is impracticable because of the large number of Class members who applied for PPP Loans through Defendants. The burden imposed on the judicial system by individual litigation, and to Defendants, by even a small fraction of the members of the Classes, would be enormous. In comparison to piecemeal litigation, class action litigation presents far fewer management difficulties, conserves the resources of both the judiciary and the parties, and protects the rights of each member of the Classes more effectively. The benefits to the parties,

1 the Court, and the public from class action litigation substantially outweigh the
2 expenses, burdens, inconsistencies, economic infeasibility, and inefficiencies of
3 individual litigation. Class adjudication is superior to other alternatives under Federal
4 Rules of Civil Procedure 23(b)(3)(D). Class treatment will also avoid the substantial
5 risk of inconsistent factual and legal determinations on the many issues in this action.
6

7
8 77. Federal Rules of Civil Procedure Rule 23 provides the Court with the
9 authority and flexibility to maximize the efficiencies and benefits of the class
10 mechanism and reduce management challenges. The Court may, on motion of
11 Plaintiff or on its own determination: certify nationwide and statewide classes for
12 claims sharing common legal questions; use the provisions of Federal Rules of Civil
13 Procedure 23(c)(4) to certify particular claims, issues, or common questions of law or
14 of fact for class-wide adjudication; certify and adjudicate certain class claims; and use
15 Federal Rules of Civil Procedure 23(c)(5) to divide any class into Subclasses.
16
17

18 78. There are no individualized factual or legal issues for the Court to resolve
19 that would prevent this case from proceeding as a class action. Class action treatment
20 will allow those who are similarly situated to litigate their claims in the manner that
21 is most efficient and economical for the parties and the Court. Plaintiff is unaware of
22 any difficulties that are likely to be encountered in the management of this action that
23 would preclude its maintenance as a class action.
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Certification: Rule 23(b)(2)

79. This Action satisfies the requirements of Federal Rules of Civil Procedure 23(b)(2). The prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudication with respect to individual members of the Classes that would establish incompatible standards of conduct for the Defendants.

80. In addition, the prosecution of separate actions by individual members of the Classes would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other members of the Classes who are not parties to the adjudications, or substantially impair or impede their ability to protect their interests.

81. Defendants have also acted, or refused to act, on grounds generally applicable to the members of the Classes as a whole, thereby making appropriate final declaratory and/or injunctive relief with respect to the members of the Classes as a whole.

COUNT I

**On Behalf of Plaintiff and Members of the Classes Against All Defendants
Violations of California’s Unfair Competition Law (“UCL”)
California Business and Professions Code §17200, et seq.**

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

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UNFAIR

1
2 87. A business practice is “unfair” pursuant to the UCL if it is immoral,
3
4 unethical, oppressive, unscrupulous, or substantially injurious to consumers.

5 88. Defendants have engaged in “unfair” conduct toward Plaintiff, members
6
7 of the Classes, and persons applying for PPP Loans, as set forth above, including by
8
9 making false statements of material fact with respect to the process for PPP
Applications.

10 89. Based upon the allegations set forth herein, Defendants have further
11
12 intentionally disregarded the SBA Regulation that that PPP Loans be made and
13
14 processed on a “first-come, first-served” basis, and prioritized large businesses and
15
16 allowed preferred customers or applicants to “cut” the line to the detriment of small
17
18 business applicants, including Plaintiff and members of the Classes. Defendants also
19
20 engrafted additional, unauthorized requirements on persons seeking to apply for PPP
21
22 Loans, such as that they have had a business checking account as of February 15,
23
24 2020. This conduct violates the CARES Act and the SBA Regulations. This conduct
25
26 is also unethical, oppressive, unscrupulous, and/or substantially injurious to
27
28 consumers (such as Plaintiff and members of the Classes), and there is no utility to be
served by Defendants’ conduct that in any way outweighs the gravity of the harm
caused to consumers, Plaintiff, and members of the Classes.

90. In addition, Defendants’ conduct was, and remains, substantially
injurious to consumers; is not outweighed by any countervailing benefits to

1 consumers (or to Wells Fargo’s competitors); and Plaintiff and members of the
2 Classes could not reasonably avoid the injury caused by Wells Fargo’s
3 misrepresentations on how it was processing the PPP Applications of Plaintiff and
4 members of the Classes.
5

6 **FRAUDULENT**

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

10 92. As set forth above, the Defendants’ conduct included affirmative
11 representations about the processing PPP Applications and PPP Loans which were
12 not true. Those representations were made with the intent to generate public good will
13 and to induce consumers (including Plaintiff and members of the Classes) to
14 reasonably rely on those representations.
15
16

17 93. Defendants’ unlawful, unfair, and fraudulent acts and practices, as
18 described herein, have deceived Plaintiff and members of the Classes, and were highly
19 likely to deceive members of the public. Plaintiff relied upon Defendants’ misleading
20 and deceptive representations regarding the application and approval process for PPP
21 Loans. Each of these factors played a substantial role in Plaintiff’s decision to attempt
22 to apply, or sign up to apply, for PPP Loans with Defendants, and Plaintiff would not
23 have made such attempts or applied for a PPP Loan with Defendants in the absence
24 of Defendants’ misrepresentations. If Plaintiff and members of the Classes had not
25 waited on Defendants to be able to process PPP Applications (*i.e.* including
26
27
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1 Defendants’ claimed inability to host an active website “landing page” to a PPP
2 Application), or been caused to rely upon Defendants’ promises that the PPP
3 Applications would be processed in a “queue” in the order received by Defendants,
4 Plaintiff and members of the Classes would not have been harmed. The funds to be
5 provided to Plaintiff and members of the Classes pursuant to the PPP were to be used
6 to help keep these businesses afloat by permitting them to pay the approved Expenses
7 detailed herein. Accordingly, and pursuant to California Business and Professions
8 Code §17204, Plaintiff and members of the Classes have suffered monetary and
9 economic loss, and other harm, as a direct result of Defendants’ practices as described
10 above. This harm includes being denied PPP Loans, or being prevented and/or
11 delayed in timely applying for PPP Loans, to which they were entitled to apply and/or
12 receive.

13
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16
17 94. As a result of the unfair, unlawful, and fraudulent conduct described
18 above, Defendants have been unjustly enriched at the expense of Plaintiff and
19 members of the Classes. Specifically, Defendants have been unjustly enriched by
20 obtaining revenues and profits that they would not otherwise have obtained (or were
21 permitted to avoid losses) absent their false, misleading, and deceptive conduct.
22

23
24 95. Plaintiff and members of the Classes seek all monetary and non-
25 monetary relief allowed by law, including restitution of all profits stemming from
26 Defendants’ unfair, unlawful, and fraudulent business practices, including declaratory
27 relief, injunctive relief, and other appropriate equitable relief. Pursuant to California
28

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1 Business and Professions Code §17203, Plaintiff seeks an order from the Court
 2 requiring Defendants to disgorge the amounts by which they have been unjustly
 3 enriched to Plaintiff and all members of the Classes, and to enjoin Defendants from
 4 continuing to violate the UCL as discussed herein and/or from violating the UCL in
 5 the future. Otherwise, Plaintiff, the members of the Classes, and the public may be
 6 irreparably harmed and/or denied an effective and complete remedy, if such an order
 7 is not granted.
 8
 9

10 96. Pursuant to California Code of Civil Procedure §1021.5, Plaintiff and
 11 members of the Classes are entitled to recover its reasonable costs and attorneys’ fees.
 12

13 **COUNT II**

14 **On Behalf of Plaintiff and Members of the Classes Against All Defendants**
 15 **Violation of California’s False Advertising Law (“FAL”)**
 16 **California Business and Professions Code §17500, et seq.**

17 97. Plaintiff hereby incorporates by reference the foregoing allegations as if
 18 fully set forth herein.
 19

20 98. The California False Advertising Law (the “FAL”) prohibits unfair,
 21 deceptive, untrue, or misleading communications and statements, including, but not
 22 limited to, false statements as to the nature of services to be provided.
 23

24 99. As alleged herein, Defendants made, or caused one another to make,
 25 false and misleading representations to Plaintiff and members of the Classes
 26 concerning the nature of the services they would be providing as administrators of the
 27 PPP Applications and/or PPP Loans.
 28

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1 100. Defendants knew, or should have known, in the exercise of reasonable
2 care, that they would not process the PPP Applications on a “first-come, first-served”
3 basis or in a “queue” and yet they represented the contrary to Plaintiff, members of
4 the Classes, their customers, and to the public. Further, Defendants knew, or should
5 have known, that the “focus” of the bank was not on facilitating loans to small
6 businesses with less than 50 employees and nonprofit organizations, yet they
7 represented the contrary to Plaintiff, members of the Classes, their customers, and the
8 public. Reasonable consumers, such as Plaintiff and members of the Classes, are (and
9 were) likely to be deceived by such representations.
10
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12

13 101. Through Defendants’ false representations and unfair acts and practices,
14 Defendants have improperly obtained money or other benefits at the expense of
15 Plaintiff and members of the Classes. Defendants, upon information and belief, have
16 obtained financial benefits through the retention of preferred customers receiving PPP
17 Loans through Wells Fargo and/or may have avoided loan losses in its portfolio. As
18 such, Plaintiff requests that this Court cause Defendants to disgorge this money to
19 Plaintiff and all members of the Classes, and to enjoin Defendants from continuing to
20 violate the FAL as discussed herein, and/or from violating the FAL in the future.
21 Otherwise, Plaintiff, the members of the Classes, and members of the general public
22 may be irreparably harmed and/or denied an effective and complete remedy if such
23 an order is not granted.
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106. As a direct and proximate result of Defendants’ breach of the duty formed by the undertaking on behalf of Plaintiff and members of the Classes, Plaintiff and members of the Classes suffered financial harm in excess of \$5 million.

107. Plaintiff and members of the Classes seek declaratory relief, attorneys’ fees and costs, and any other just and proper relief available under the law.

COUNT IV

On Behalf of Plaintiff and Members of the Classes Against All Defendants For Fraud or Deceit (Intentional Misrepresentation)

108. Plaintiff hereby incorporates by reference the foregoing allegations as if fully set forth herein. Plaintiff asserts this claim pursuant to California Civil Code §1710(1) and common law.

109. Defendants, directly and through their agents and employees, made materially false representations and omissions to Plaintiff and members of the Classes concerning, among other things, Defendants’ processing of PPP Applications, Defendants’ compliance with the terms of the CARES Act and the SBA Regulations in processing PPP Applications and/or making PPP Loans, and the use of a “queue” or any form of “first-come, first-served” processing the PPP Applications. These misrepresentations and omissions were made in Defendants’ press releases, alleged herein, on Defendants’ online website/portal, in email communications, and in additional oral representations made to Plaintiff and members of the Classes. These

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1 misrepresentations included the suggestion, as a fact, of that which is not true, by one
2 who does not believe it to be true. *See* California Civil Code §1710(1).
3

4 110. Defendants knew or recklessly disregarded the false and misleading
5 nature of their material misrepresentations and omissions.

6 111. Defendants had exclusive knowledge of the foregoing facts, as alleged
7 herein, concerning how Defendants were processing PPP Applications from Plaintiff
8 and members of the Classes.
9

10 112. Defendants made the materially false and misleading statements and
11 omissions for the purpose of inducing Plaintiff and members of the Classes to rely on
12 the representation and submit PPP Applications through Defendants.
13

14 113. Plaintiff and members of the Classes reasonably relied on Defendants’
15 representations and omissions in choosing to submit a PPP Application with
16 Defendants, and they were harmed as a result. The reliance by Plaintiff and members
17 of the Classes upon Defendants’ false representations and omissions was a substantial
18 factor in causing their harm.
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21 114. As a direct and proximate result of Defendants’ materially false and
22 misleading misrepresentations and omissions, Plaintiff and members of the Classes
23 suffered financial harm in excess of \$5 million.
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25 115. Plaintiff and members of the Classes seek declaratory relief, attorneys’
26 fees and costs, and any other just and proper relief available under the law.
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COUNT V

**On Behalf of Plaintiff and Members of the Classes Against All Defendants
For Fraud or Deceit (Fraudulent Concealment)**

116. Plaintiff hereby incorporates by reference the foregoing allegations as if fully set forth herein. Plaintiff asserts this claim pursuant to California Civil Code §1710(3) and common law.

117. As alleged herein, Defendants owed a duty to Plaintiff and members of the Classes to reasonably disclose facts material to the PPP Application process, and to not hide or obscure facts material to the PPP Application process.

118. At all relevant times, Defendants possessed and had exclusive knowledge of material facts not known to Plaintiff and members of the Classes, *i.e.* the knowledge of how the PPP Applications were going to be processed, prioritizing large businesses borrowing large amounts of money, or preferred customers, and not on a “first-come, first-served” basis.

119. At all relevant times, Defendants actively concealed those material facts from Plaintiff and members of the Classes concerning the process for, and steps Defendants would be taking to, process PPP Applications, and intentionally omitted to disclose such facts by intentionally misleading Plaintiff and members of the Classes with affirmative statements that were not true. *See* California Civil Code §1710(3).

120. Plaintiff and members of the Classes were unaware that their PPP Applications (or even their ability to make a PPP Application) would not be

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1 undertaken by Defendants based on the “queue” or any “first-come, first-served
2 basis”, and had they known of the concealed or suppressed facts concerning how
3
4 Defendants were actually processing PPP Applications, they would have acted
5 differently, including by ceasing the process for applying with Wells Fargo for PPP
6 Loans.

7
8 121. As a direct result of Defendants’ fraudulent concealment of facts
9 material to the PPP Applications process, Plaintiff and members of the Classes were
10 induced to continue to seek to submit PPP Applications with Defendants, or to make
11 such PPP Applications, and as a proximate result suffered economic and financial
12 harm to in excess of \$5 million.

13
14 122. Plaintiff and members of the Classes seek declaratory relief, attorneys’
15 fees and costs, and any other just and proper relief available under the law.

16
17 **COUNT VI**

18 **On Behalf of Plaintiff and Members of the Classes Against All Defendants**
19 **For Fraud or Deceit (Negligent Misrepresentation)**

20 123. Plaintiff hereby incorporates by reference the foregoing allegations as if
21 fully set forth herein. Plaintiff asserts this claim pursuant to California Civil Code
22 §1710(2) and common law.

23
24 124. Defendants, directly and through their agents and employees, negligently
25 and/or recklessly made misrepresentations of past or existing material facts to Plaintiff
26 and members of the Classes, as alleged above. These misrepresentations were made
27

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1 in Defendants’ press releases, as alleged herein, online website, email
2 communications, and in additional oral representations made to Plaintiff and members
3 of the Classes.
4

5 125. Defendants knew, or should have known, of the false and misleading
6 nature of their material misrepresentations and omissions, as detailed herein.
7 Defendants made the misrepresentations without reasonable grounds for believing
8 them to be true. Indeed, Defendants had exclusive knowledge of the foregoing facts
9 alleged herein concerning how Defendants were processing PPP Applications from
10 Plaintiff and members of the Classes. *See* California Civil Code §1710(2).
11
12

13 126. Defendants made the material misrepresentations for the purpose of
14 inducing Plaintiff and members of the Classes to apply for PPP Loans through
15 Defendants.
16

17 127. Plaintiff and members of the Classes justifiably and reasonably relied on
18 Defendants’ misrepresentations in seeking to complete PPP Applications with
19 Defendants.
20

21 128. As a direct and proximate result of Defendants’ misrepresentations,
22 Plaintiff and members of the Classes suffered financial harm in excess of \$5 million.
23

24 129. Plaintiff and members of the Classes seek declaratory relief, attorneys’
25 fees and costs, and any other just and proper relief available under the law.
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COUNT VII

**On Behalf of Plaintiff and Members of the Classes Against All Defendants
For Fraud or Deceit (False Promise)**

130. Plaintiff hereby incorporates by reference the foregoing allegations as if fully set forth herein. Plaintiff asserts this claim pursuant to California Civil Code §1710(4) and common law.

131. Defendants made a promise to Plaintiff and members of the Classes that Defendants would process PPP Applications based on a “queue” in the order received (*i.e.* “first-come, first-served” basis).

132. Defendants did not intend to perform this promise when they made the promise. *See* California Civil Code §1710(4).

133. Defendants intended that Plaintiff and members of the Classes rely on the promise.

134. Plaintiff and members of the Classes reasonably relied on Defendants’ promise.

135. Defendants did not perform the promised act, *i.e.* they did not process the PPP Applications in a “queue” in the order received.

136. Plaintiff and members of the Classes were harmed by Defendants’ failure to perform the promised act.

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1 137. The reliance by Plaintiff and members of the Classes on Defendants’
2 promise was a substantial factor in causing harm to Plaintiff and members of the
3 Classes.
4

5 138. Plaintiff and members of the Classes have sustained damages in excess
6 of \$5 million, as alleged herein. As a result of the misconduct alleged herein,
7 Defendants are liable to Plaintiff and members of the Classes.
8

9 139. Plaintiff and members of the Classes seek declaratory relief, attorneys’
10 fees and costs, and any other just and proper relief available under the law.
11

12 **COUNT VIII**

13 **On Behalf of Plaintiff and Members of the Classes Against All Defendants**
14 **For Breach of Fiduciary Duty**

15 140. Plaintiff hereby incorporates by reference the foregoing allegations as if
16 fully set forth herein.
17

18 141. Defendants owed a fiduciary duty to Plaintiff and members of the
19 Classes. Defendants’ relationship with Plaintiff and members of the Classes, pursuant
20 to the PPP, went beyond the traditional role of a lender of money. By reason of their
21 fiduciary relationships, the Defendants owed, and owe, Plaintiff and members of the
22 Classes the highest obligations of good faith, fair dealing, loyalty, and due care.
23

24 142. Defendants violated and breached their fiduciary duties to Plaintiff and
25 members of the Classes.
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1 143. Defendants made false, misleading, and deceptive misrepresentations
2 and omissions regarding their administration, processing, and handling of the PPP
3 Applications for Plaintiff and members of the Classes.
4

5 144. The Defendants did not engage in arms-length transactions with
6 Plaintiff, and members of the Classes, because Defendants misrepresented their
7 compliance with the SBA Regulations; misrepresented Defendants' own policy for
8 placing PPP Applications (or expressions of interest) in a "queue" for processing, and
9 omitted to disclose material information as to Defendants' practice and/or policy of
10 favoring certain customers who applied for the PPP Loans and/or for larger PPP
11 Loans.
12

13
14 145. Defendants unjustly profited from the administration, processing, and
15 handling of the PPP Applications and/or PPP Loans, as detailed herein.
16

17 146. As alleged herein, Defendants did not process the PPP Applications in
18 the manner represented, to the detriment of Plaintiff and members of the Classes.
19

20 147. As a direct and proximate result of the Defendants' breaches of their
21 fiduciary obligations, Plaintiff and members of the Classes have sustained damages
22 in excess of \$5 million, as alleged herein. As a result of the misconduct alleged herein,
23 Defendants are liable to Plaintiff and members of the Classes.
24

25 148. Plaintiff and members of the Classes seek declaratory relief, attorneys'
26 fees and costs, and any other just and proper relief available under the law.
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COUNT IX

**On Behalf of Plaintiff and Members of the Classes Against All Defendants
For Promissory Estoppel**

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4 149. Plaintiff hereby incorporates by reference the foregoing allegations as if
5 fully set forth herein.
6

7 150. Defendants made written promises to Plaintiff and members of the
8 Classes to process their PPP Applications based upon a “queue”, as consistent with
9 the SBA Regulations for the CARES Act. Defendants made this promise in written
10 communications, including corporate issued email. Defendants’ promise was clear
11 and unambiguous in its terms.
12

13 151. Plaintiff and members of the Classes relied on Defendants’
14 representations that their PPP Applications would be processed in a “queue”.
15

16 152. The reliance by Plaintiff and members of the Classes on Defendants’ was
17 reasonable because the promise to process the PPP Applications was consistent with
18 the SBA Regulations. Reliance is also reasonable because Plaintiff and members of
19 the Classes were required by Defendants to submit their “interest” or PPP Application
20 online, thus providing Defendants with a means to electronically track the timing of
21 the submission of each expression of interest or request for a PPP Application that
22 was received. The reliance of Plaintiffs and members of the Classes was also
23 foreseeable in that Defendants’ promised to process the PPP Applications in a
24 “queue” was consistent with the SBA Regulations, and Defendants knew (or were on
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1 notice) that the CARES Act discouraged multiple PPP Applications by the same
2 Eligible Recipient.

3
4 153. The reliance by Plaintiff and members of the Classes on Defendants’
5 promise caused a detriment to them, namely the inability to obtain a PPP Loan, or to
6 obtain a PPP Loan in a timely manner. The injustice caused by Defendants’ failure
7 to keep their promise may only be avoided by enforcement of the promise.
8

9 154. Plaintiff and members of the Classes seek declaratory relief, attorneys’
10 fees and costs, and any other just and proper relief available under the law.
11

12 **COUNT X**

13 **On Behalf of Plaintiff and Members of the Classes Against All Defendants**
14 **For Negligence**

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

17
18 156. Defendants owed a duty to Plaintiff and members of the Classes to
19 comply with the provisions of the PPP and the SBA Regulations when processing
20 PPP Loans. Defendants also had a duty to exercise reasonable and ordinary care in
21 the use and implementation of its online program to permit Plaintiff and members of
22 the Classes a manner to timely access and submit PPP Applications. In undertaking
23 to permit Plaintiff and members of the Classes to apply for a PPP Loan through
24 Defendants, Defendants had a duty to ensure that all such persons were given timely
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1 and equal access to the online platform through which to submit a PPP Application to
2 apply for the PPP Loan through Wells Fargo.

3
4 157. As detailed herein, Defendants breached their duty of care in connection
5 with the PPP Application process, including by failing to provide Plaintiff and
6 members of the Classes with timely access to PPP Applications and/or by failing to
7 process the PPP Applications in the order received.
8

9 158. Defendants’ violations of law and/or negligence were the direct and
10 proximate cause of the injuries, harm, and economic loss which Plaintiff and members
11 of the Classes have suffered.
12

13 159. Defendants’ conduct also constitutes negligence per se. Defendants
14 violated their statutory duties under the FAL and UCL. In addition, Defendants must
15 comply with SBA Regulations that state that the PPP is to be “first-come, first-
16 served”. Plaintiff and members of the Classes are within the class of persons that the
17 PPP program and these regulations were designed to protect.
18

19
20 160. Defendants’ violations of such statutes and regulations is negligence per
21 se and was a substantial factor in the harm suffered by Plaintiff and members of the
22 Classes, including their submission of applications for loans through the PPP with
23 Defendants who knew the SBA Regulations required processing loans on a “first-
24 come, first-served” basis, yet Defendants failed to process applications they received
25 on this basis, or even on the basis of any form of a “queue” as it had represented to
26 Plaintiff and members of the Classes.
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161. As set forth above, such laws were intended to ensure that lenders such as the Defendants processed PPP Loans in accordance with the CARES Act and SBA Regulations, rather than prioritizing among applicants the loans that Defendants determined to process first.

162. As a result of Defendants’ negligence (and negligence per se), Plaintiff and members of the Classes have been damaged in an amount to be proven at trial or alternatively, seek rescission and disgorgement.

163. Plaintiff and members of the Classes seek declaratory relief, attorneys’ fees and costs, and any other just and proper relief available under the law.

COUNT XI

On Behalf of Plaintiff and Members of the Classes Against All Defendants For Unjust Enrichment

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

165. Defendants have been, and continue to be, unjustly enriched, to the detriment and at the expense of Plaintiff and members of the Classes as a result of Defendants’ prioritization of PPP Applications on behalf of its larger or preferred customers, as opposed to Plaintiff and members of the Classes.

166. Defendants have unjustly benefitted through the unlawful and wrongful collection of fees for generating the PPP Loans (regardless of whether Defendants subsequently donated the amounts to charity), from ingratiating themselves to

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1 preferred customers, and from potentially avoiding loan losses on pre-existing loans
2 made to certain customers. As a result, Defendants continue to benefit to the
3 detriment, and at the expense, of Plaintiff and members of the Classes.
4

5 167. Defendants should not be allowed to retain the proceeds from the
6 benefits conferred upon it by Plaintiff and members of the Classes. Plaintiff seeks
7 disgorgement of the amounts by which Defendants have been unjustly enriched, and
8 restitution to the Plaintiff and members of the Classes.
9

10 168. Plaintiff and members of the Classes seek declaratory relief, attorneys'
11 fees and costs, and any other just and proper relief available under the law.
12

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, individually and on behalf of members of the Classes,
15 prays for the following relief:
16

17 A. An order certifying the Classes as defined above, appointing
18 Plaintiff as class representatives for the Classes, appointing Plaintiff's counsel as
19 Class Counsel for the Classes, and requiring Defendants to bear the costs of class
20 notice;
21

22 B. An order enjoining Defendants from administering, processing, or
23 handling PPP Applications or PPP Loans in violation of the CARES Act, SBA
24 Regulations and requirements, or in violation of applicable law, and such further
25 injunctive relief as the Court may order;
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C. An order awarding declaratory relief, and any further retrospective or prospective injunctive relief permitted by law or equity, including enjoining Defendants from continuing the unlawful practices as alleged herein, and injunctive relief to remedy Defendants’ past misconduct;

D. An order requiring Defendants to disgorge or return all monies, revenues, and profits obtained by means of any wrongful or unlawful act or practice alleged herein;

E. An award granting Plaintiff and members of the Classes all recoverable compensatory, statutory, and other damages sustained by Plaintiff and members of the Classes, and all other available relief under applicable law;

F. Awarding punitive damages pursuant to applicable law;

G. Awarding Plaintiff and members of the Classes pre-judgment and post-judgment interest as well as reasonable attorneys’ fees and expenses incurred in this action (including those pursuant to California Code of Civil Procedure §1021.5);

H. Awarding any other relief the Court deems just.

DEMAND FOR JURY TRIAL

Plaintiff demands Trial by jury.

Dated: May 22, 2020

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By: /s/ Kathleen A. Herkenhoff
KATHLEEN A. HERKENHOFF