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12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 Case No.: 20-3591

15 **CLASS ACTION COMPLAINT**

16 LAW OFFICE OF SABRINA DAMAST,  
17 INC.; EYE LAND OPTOMETRY; BNG  
18 RESTAURANT GROUP, INC.; and  
19 UMEZU ENTERPRISES LLC,  
20 individually and on behalf of a class of  
21 similarly situated individuals,

22 Plaintiffs,

23 v.

24 BANK OF AMERICA CORPORATION,  
25 BANK OF AMERICA, N.A.; and DOES 1-  
26 10, inclusive,

27 Defendants.

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

**DEMAND FOR JURY TRIAL**

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

### 11 INTRODUCTION

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

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

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

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

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

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

#### 4 **BACKGROUND**

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

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

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

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

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

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

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

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26 <sup>1</sup> H.R.748(P)(iv) - CARES Act

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

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

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

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

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

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

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

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

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

27 <sup>7</sup> *Id.*

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

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

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

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

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28 <sup>9</sup> *Id.* at § k.

19. Here is a breakdown of the loans processed through April 13, 2020<sup>10</sup>:

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

20. Here is the same information, updated through April 16, 2020<sup>11</sup>:

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

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

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

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

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

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



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

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

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

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

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

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



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

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

7 **JURISDICTION AND VENUE**

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

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

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

24 **PARTIES**

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

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

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

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

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

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

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

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

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

#### 12 **FACTUAL ALLEGATIONS**

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

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

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

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

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

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

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

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

1 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

4 **FIRST CAUSE OF ACTION**

5 **On Behalf of the Class**

6 **Against All Defendants**

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

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

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

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

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

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

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

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

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

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

23  
24 **SECOND CAUSE OF ACTION**

25 **On Behalf of the Class**

26 **Against All Defendants**

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

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

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

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

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

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

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

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

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

11 **THIRD CAUSE OF ACTION**

12 **On Behalf of the Class**

13 **Against All Defendants**

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

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

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

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

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

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

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

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

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

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

18 **FOURTH CAUSE OF ACTION**

19 **On Behalf of the Class**

20 **Against All Defendants**

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

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

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

28

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

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

18  
19 **FIFTH CAUSE OF ACTION**

20 **On Behalf of the Class**

21 **Against All Defendants**

22 **FRAUDULENT CONCEALMENT**

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

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



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

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

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

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

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

18  
19 **PRAYER FOR RELIEF**

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

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

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

14  
15 Dated: April 19, 2020

**STALWART LAW GROUP**

16  
17 By: /s/ Dylan Ruga  
18 Dylan Ruga, Esq.  
19 Ji-In Lee Houck, Esq.  
20 David M. Angeloff, Esq.

*Attorneys for Plaintiffs and the  
Proposed Class*

**JURY DEMAND**

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

Dated: April 19, 2020

**STALWART LAW GROUP**

By: /s/ Dylan Ruga

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

*Attorneys for Plaintiffs and the  
Proposed Class*

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