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

Case No.: 20-3588

CLASS ACTION COMPLAINT

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11
12 BSJA, INC., a California corporation and
ALEXHD, LLC, a California limited
13 liability company, individually and on
behalf of a class of similarly situated
14 businesses and individuals,

15 Plaintiffs,

16 v.

17 WELLS FARGO & CO., WELLS
18 FARGO BANK, N.A.; and DOES 1-10,
inclusive,

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

DEMAND FOR JURY TRIAL

1 Plaintiffs BSJA, Inc. and Alexhd, LLC bring this class action complaint on
2 behalf of themselves and those similarly situated (hereinafter “PLAINTIFF
3 SMALL BUSINESS OWNERS”) against Defendants WELLS FARGO & CO.,
4 WELLS FARGO BANK, N.A., and DOES 1-10, inclusive, (hereinafter “Wells
5 Fargo”) to stop Defendants’ unlawful conduct and to obtain redress for all persons
6 and businesses injured by Defendants’ conduct. For its class action complaint,
7 Plaintiffs allege as follows based upon their personal knowledge and upon
8 information and belief, including investigation conducted by their attorneys.

9 **INTRODUCTION**

10 1. Wells Fargo has, once again, prioritized corporate greed at the expense
11 of its small business customers.

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

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

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

25 5. As a result of Wells Fargo’s dishonest and deplorable behavior,
26 however, thousands of small businesses that were entitled to loans under the PPP
27 were left with nothing because Wells Fargo chose to maximize its loan origination
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1 fees rather than comply with the rules of the program and serve the needs of its
2 small business customers.

3 **BACKGROUND**

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

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

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

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

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

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

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

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26 ¹ H.R.748(P)(iv) - CARES Act

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

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

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

1 12. Wells Fargo communicated to the public that they intended to follow
2 the law and direct the PPP funds to the small businesses that Congress and the
3 Senate intended to help. Wells Fargo CEO Charlie Scharf said in an interview “We
4 are committed to helping our customers during these unprecedented and challenging
5 times, but are restricted in our ability to serve as many customers as we would like
6 under the PPP. While all businesses have been impacted by this crisis, small
7 businesses with fewer than 50 employees and nonprofits often have fewer resources.
8 Therefore, we are focusing our efforts under the Paycheck Protection Program on
9 these groups.”⁵

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

15 14. Within this context, Wells Fargo served as an intermediary between
16 small businesses and federal funds. Not only did Wells Fargo encourage
17 PLAINTIFF SMALL BUSINESS OWNERS to apply, Wells Fargo encouraged
18 PLAINTIFF SMALL BUSINESS OWNERS to act fast. Wells Fargo told potential
19 applicants “[w]e encourage you to apply as soon as possible.”

20 15. Evidently, time was of the essence. In fact, the Small Business
21 Administration Regulations that govern the PPP funds mandated that the funds be
22 distributed “first come, first served.”⁸ There was a line, a “queue”. If you applied
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24 ⁵ [https://www.businesswire.com/news/home/20200405005041/en/Wells-Fargo-Receives-Strong-Interest-Paycheck-
26 Protection](https://www.businesswire.com/news/home/20200405005041/en/Wells-Fargo-Receives-Strong-Interest-Paycheck-
25 Protection)

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

28 ⁷ *Id.*

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

1 sooner rather than later, according to the SBA regulations your place in line *should*
2 have been considered, and your loans issued accordingly, “first-come, first-served”.
3 However, in contravention with its implied and explicit representations, and their
4 own representations to the public, this was not how Wells Fargo operated.

5 16. The terms of the PPP loans only allow for each small-business
6 borrower to obtain a single SBA backed loan through the PPP. The SBA
7 Regulations provide: “The Administrator, in consultation with the Secretary,
8 determined that no eligible borrower may receive more than one PPP loan. This
9 means that if you apply for a PPP loan you should consider applying for the
10 maximum amount.”⁹ Upon information and belief, when a borrower applied for
11 multiple PPP loans through different lenders, it triggered a law enforcement fraud
12 alert. Therefore, the majority of PPP borrowers made a single application through a
13 single financial institution, putting “all their eggs in one basket.”

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

20 18. Data provided by the U.S. Small Business Administration reveals that,
21 rather than processing PPP loan applications on a “first come, first served” basis as
22 required, Wells Fargo prioritized and front-loaded applications with higher loan
23 amounts. This is shown by comparing data from loans processed between April 3,
24 2020 (when the PPP started) and April 13th versus data between April 13th and
25 April 16th (when the program ran out of money).

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⁹ *Id.* at § k.

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

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

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

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

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

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

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

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

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

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

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

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

12 25. Upon information and belief, Wells Fargo prioritized those PPP loans
13 that 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, Wells
15 Fargo 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. Wells Fargo knew that it received more PPP applications than it would
21 be 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 Wells Fargo informed PLAINTIFF SMALL BUSINESS
25 OWNERS and the general public of the truth, then PLAINTIFF SMALL
26 BUSINESS OWNERS would have submitted their PPP applications to other

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28 ¹² [https://home.treasury.gov/system/files/136/PPP%20Lender%20Information%
20Fact%20Sheet.pdf](https://home.treasury.gov/system/files/136/PPP%20Lender%20Information%20Fact%20Sheet.pdf)

1 lending institutions that were processing applications on a first come, first served
2 basis.

3 28. Plaintiff, on behalf of itself and the proposed class (as defined below),
4 seeks an injunction requiring Defendants to cease the unlawful activities alleged
5 herein and an award of damages to himself and all members of the class, together
6 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 BSJA, Inc. is a California corporation with its principal place
26 of business in Glendale, California. BSJA, Inc. is a small business that provides
27 automotive repair to the local community. BSJA, Inc. meets the criteria for funding
28 under the PPP, who in reliance of Defendants' false and deceptive advertising,

1 marketing, and loan application processing schemes, made its single permitted
2 application for loan assistance through the PPP with Wells Fargo.

3 33. Plaintiff Alexhd, LLC is a California limited liability company with its
4 principal place of business in Montrose, California. Alexhd, LLC is a small
5 business that operates a frozen yogurt shop in the local community. Alexhd, LLC
6 meets the criteria for funding under the PPP, who in reliance of Defendants' false
7 and deceptive advertising, marketing, and loan application processing schemes,
8 made its single permitted application for loan assistance through the PPP with Wells
9 Fargo.

10 34. Defendant WELLS FARGO & CO. is the parent of all Wells Fargo
11 entities. WELLS FARGO & CO. is a diversified financial services company
12 providing banking, insurance, investments, mortgage banking and consumer
13 finance to individuals, businesses and institutions in all 50 states and internationally.
14 WELLS FARGO & CO. is headquartered in San Francisco, at 420 Montgomery
15 Street. Through its subsidiaries, WELLS FARGO & CO. conducts substantial
16 business in this district.

17 35. Defendant WELLS FARGO BANKING N.A., is the main banking
18 arm of WELLS FARGO & CO. and is also headquartered in San Francisco, at 420
19 Montgomery Street. Wells Fargo conducts substantial business in all Counties
20 within the State of California.

21 36. When in this Complaint reference is made to any act of any Defendant,
22 such shall be deemed to mean that officers, directors, agents, employees, or
23 representatives of the Defendant named in this lawsuit committed or authorized
24 such acts, or failed and omitted to adequately supervise or properly control or direct
25 their employees while engaged in the management, direction, operation or control
26 of the affairs of the Defendant and did so while acting within the scope of their
27 employment or agency.

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1 37. Plaintiff is unaware of the names, identities, or capacities of the
2 defendants sued as Does 1-10, but is informed and believes and thereon alleges that
3 each such fictitiously-named defendant is responsible in some manner for the
4 damages and abridgement of rights described in this Complaint. Plaintiff will amend
5 his Complaint to state the true names, identities or capacities of such fictitiously-
6 named defendants when ascertained.

7 **FACTUAL ALLEGATIONS**

8 38. In or around March of 2020, Plaintiffs became aware that the CARES
9 Act had been signed into law. Plaintiffs, knowing that his business would be
10 seriously impacted by the COVID-19 crisis and the shelter-in-place orders, sought
11 to obtain a PPP loan through a financial institution.

12 39. On or about April 10, 2020, Plaintiffs submitted a complete, thorough,
13 and timely application to Wells Fargo to obtain a PPP loan. In doing so, Plaintiffs
14 relied on the representations of the CEO of Wells Fargo, who said “While all
15 businesses have been impacted by this crisis, small businesses with fewer than 50
16 employees and nonprofits often have fewer resources. Therefore, we are focusing
17 our efforts under the Paycheck Protection Program on these groups.” Knowing he
18 could only receive one PPP loan, Plaintiffs believed that Wells Fargo would be their
19 best choice for obtaining funding under the PPP.

20 40. After submitting the PPP loan application, Plaintiffs waited to get
21 funded. While Plaintiffs waited to get funded, they made strategic business
22 decisions, made personnel decisions, and took other steps in reliance on Wells
23 Fargo’s representations that their lending would be “focused” on businesses with
24 under 50 employees and would be “first-come, first served.”

25 41. On information and belief, Wells Fargo did not “focus” their lending
26 efforts on businesses with under 50 employees and did not process the applications
27 in a “first-come, first-served” manner. Wells Fargo did not follow the SBA
28 Regulations or the intent of The Senate and Congress in distributing the PPP funds.

1 Instead, Wells Fargo moved high dollar applications from large and mid-sized
2 companies to the “front of the line” in order to maximize their origination fees on
3 these Federally backed loans at taxpayer expense. DEFENDANT banks enriched
4 themselves at the expense of PLAINTIFF and the putative class of PLAINTIFF
5 SMALL BUSINESS OWNERS.

6 42. Despite the fact that Wells Fargo did not “focus” their lending efforts
7 on businesses with under 50 employees and did not process the applications in a
8 “first-come, first-served” manner, Wells Fargo made numerous affirmative
9 representations to its customers, potential applicants, and the public that they were
10 in fact prioritizing loans to small businesses and processing applications on a first-
11 come, first served basis. They made these affirmative representations to advance
12 their own financial benefit to the detriment of their applicants and the consuming
13 public. Wells Fargo tried to cultivate public good will and to communicate they
14 were following the law, when in fact the process was rigged so that the banks could
15 maximize origination fees.

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

26 44. As a result of the conduct of Wells Fargo, Plaintiffs’ businesses
27 suffered financial harm, wrongfully lost the opportunity to obtain funding that was
28 likely to be forgiven by the Federal Government, lost the time value of those

1 available PPP funds, lost access to capital in a difficult economic time, could not
2 make payroll, and was forced to lay off talented and hardworking employees that
3 his company had invested valuable training resources in, and generally lost
4 economic opportunities to conduct business due to lack of operating capital.

5 **CLASS ACTION ALLEGATIONS**

6 45. As noted above, Plaintiffs brings this action on behalf of themselves
7 and a state-wide class, defined as indicated below.

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

18 47. Excluded from the Class are Defendants, as well as their officers,
19 employees, agents, board members and legal counsel, and any judge who presides
20 over this action (or spouse or family member of presiding judge), as well as all past
21 and present employees, officers and directors of Wells Fargo.

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

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

1 50. *Existence and Predominance of Common Questions of Fact and Law:*

2 There is a well-defined community of interest in questions of law and fact affecting
3 the Class. These questions of law and fact predominate over individual questions
4 affecting individual Class Members, including, but not limited to, the following:

- 5 a. Did Defendants comply with all applicable SBA Regulations in
6 processing applications for PPP funds and in distributing PPP funds in
7 California?
- 8 b. Did Defendants comply with their legal obligations under the terms of
9 the CARES Act as third party intermediary administrators of the PPP
10 funds?
- 11 c. Did Defendants have a policy and/or practice of prioritizing large PPP
12 loans to larger businesses to the detriment of the putative class?
- 13 d. Did Defendants process PPP loan applications on a “first-come, first-
14 serve” basis?”
- 15 e. Did Defendants process applications in the order received, or did large
16 PPP loans get moved “to the front of the line?”
- 17 f. Did Defendants prioritize maximizing origination fees over achieving
18 the goals of the CARES Act and the PPP?
- 19 g. Did Defendants’ conduct constitute an “unfair business practice” under
20 California Business & Professions Code § 17200, *et seq.*?
- 21 h. Did Defendants’ conduct constitute an “unlawful business practice”
22 under California Business & Professions Code § 17200, *et seq.*?
- 23 i. Did Defendants’ conduct constitute a “fraudulent business practice”
24 under California Business & Professions Code § 17200, *et seq.*?
- 25 j. Did Defendants’ conduct constitute false advertising under California
26 Business & Professions Code § 17500, *et seq.*?

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

1 s. Whether Plaintiffs and Class Members are entitled to an award of
2 reasonable attorney's fees, pre-judgment interest and costs of suit.

3 51. *Superiority*. In engaging in the conduct described herein, Defendants
4 have acted and failed to act on grounds generally applicable to Plaintiff and other
5 Class Members. Such conduct requires the Court's imposition of uniform relief to
6 ensure compatible standards of conduct toward class members and to make
7 injunctive or corresponding declaratory relief appropriate for all class members. A
8 class action is superior to all other available means for the fair and efficient
9 adjudication of Plaintiff's and the Class Members' claims. Few, if any, class
10 members could afford to seek legal redress of the wrongs complained herein on an
11 individual basis. Absent class action, Class Members and the general public would
12 not likely recover, or have the chance to recover, damages or restitution, and
13 Defendants would be permitted to retain the proceeds of their misdeeds.

14 52. *Typicality*: Plaintiffs' claims are typical of, and are not antagonistic to,
15 the claims of all Class Members. Plaintiffs and the Class Plaintiffs have all been
16 deceived by Defendants' unfair, unlawful, and fraudulent PPP loan application and
17 funding practices, as alleged herein. The factual and legal bases of Defendants'
18 liability to Plaintiff and each class member are substantially similar, resulting in
19 injury to Plaintiff and each Class Member as a result of Defendants' actions as
20 described herein.

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

3 54. *Ascertainability*: Plaintiffs and the Class Plaintiffs are informed and
4 believe that Defendants keep extensive computerized records of its loan
5 applications through, inter alia, computerized loan application systems and
6 Federally mandated record keeping. Defendant has one or more databases through
7 which a significant majority of Class Members, if not 100% of Class Members, may
8 be identified and ascertained, and it maintains contact information, including email
9 and home mailing addresses, through which notice of this action could be
10 disseminated in accordance with due process requirements.

11 **FIRST CAUSE OF ACTION**

12 **On Behalf of the Class**

13 **Against All Defendants**

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

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

18 56. Plaintiffs asserts this cause of action on behalf of themselves and
19 members of the class.

20 57. The California Unfair Competition Law (hereinafter “UCL”) defines
21 unfair business competition to include any “unlawful, unfair or fraudulent” act or
22 practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal.
23 Bus. & Prof. Code § 17200.

24 58. A business act or practice is “unfair” under the UCL if the reasons,
25 justifications and motives of the alleged wrongdoer are outweighed by the gravity
26 of the harm to the alleged victims.

27 59. Wells Fargo has violated the “unfair” prong of the UCL by subverting
28 both the process and the intent of PPP loans through prioritizing large borrowers to

1 the detriment of the “small business” applicants the funds were intended to support.
2 Further, they have unfairly made representations to their PPP applicants and the
3 public about the process which unfairly induced applicants to apply with
4 Defendants. Inducing a greater volume of PPP applicants was to the financial
5 benefit of Defendants at the expense of the applicants.

6 60. These acts and practices were unfair because they generated undue
7 public good will for Defendants, and caused Plaintiff, and the other members of the
8 putative Class, to falsely believe that Defendants were focused on serving small
9 businesses when they were not, and that the PPP loan applications were processed
10 fairly and “first-come, first-served” based on the program criteria when they were
11 not. They caused small business owners, some of whom the banks did profit from,
12 to submit applications when in reality those PPP loan applications were “at the back
13 of the line.” In this way, Defendants got to have it both ways – lots of small business
14 applications to choose from and large borrower applications that could be
15 prioritized.

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

22 62. Through its unfair acts and practices, Defendants have improperly
23 obtained money from the Federal Government at the expense of Plaintiffs and the
24 Class. As such, Plaintiffs request that this Court cause Defendants to disgorge this
25 money to Plaintiffs and all Class Members, and to enjoin Defendants from
26 continuing to violate the UCL as discussed herein and/or from violating the UCL in
27 the future, most notably if this program is funded again. Otherwise, Plaintiffs, the
28

1 Class and members of the general public may be irreparably harmed and/or denied
2 an effective and complete remedy if such an order is not granted.

3 **SECOND CAUSE OF ACTION**

4 **On Behalf of the Class**

5 **Against All Defendants**

6 **(Violation of the “Fraudulent” Prong of the UCL, California Business &**

7 **Professions Code § 17200, et seq.)**

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

10 64. The UCL defines unfair business competition to include any
11 “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive,
12 untrue or misleading” advertising. Cal. Bus. & Prof. Code § 17200.

13 65. A business act or practice is “fraudulent” under the UCL if it is likely
14 to deceive members of the consuming public.

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

21 67. Defendants’ acts and practices as described herein have deceived
22 Plaintiffs and the Class and were highly likely to deceive members of the consuming
23 public. Specifically, in deciding with which bank should they apply for a PPP loan,
24 Plaintiffs relied upon Defendants’ misleading and deceptive representations
25 regarding its loan application and approval process. Each of these factors played a
26 substantial role in Plaintiffs’ decision to apply with Defendants, and Plaintiffs
27 would not have applied for PPP loans with Defendants in the absence of
28 Defendants’ misrepresentations. Had they applied at a different bank, Plaintiffs and

1 the Class could have obtained PPP funding. Accordingly, Plaintiffs have suffered
2 monetary and economic loss as a direct result of Defendants’ practices described
3 above.

4 68. As a result of the conduct described above, Defendants have been
5 unjustly enriched at the expense of Plaintiffs and members of the Class.
6 Specifically, Defendants have been unjustly enriched by obtaining revenues and
7 profits that they would not otherwise have obtained absent their false, misleading
8 and deceptive conduct.

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

17 **THIRD CAUSE OF ACTION**

18 **On Behalf of the Class**

19 **Against All Defendants**

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

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

24 71. The UCL defines unfair business competition to include any
25 “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive,
26 untrue or misleading” advertising. Cal. Bus. & Prof. Code § 17200.

27 72. A business act or practice is “unlawful” under the UCL if it violates
28 any other law or regulation.

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

4 74. Small Business Administration Regulations that govern the PPP funds,
5 specifically SBA Interim Final Rule § *m*. [Docket No. SBA-2020-0015] 13 CFR
6 Part 120, Business Loan Program Temporary Changes; Paycheck Protection
7 Program, RIN 3245-AH34, mandated that they funds be distributed “first come, first
8 served.”

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

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

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

24 **FOURTH CAUSE OF ACTION**

25 **On Behalf of the Class**

26 **Against All Defendants**

27 **(Violation of the California False Advertising Law, California Business &**

28 **Professions Code Sections 17500, et seq.)**

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

3 79. The California False Advertising Law prohibits unfair, deceptive,
4 untrue, or misleading communications and statements, including, but not limited to,
5 false statements as to the nature of services to be provided.

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

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

23 **FIFTH CAUSE OF ACTION**

24 **On Behalf of the Class**

25 **Against All Defendants**

26 **FRAUDULENT CONCEALMENT**

27 82. Plaintiffs hereby incorporate by reference the foregoing allegations as
28 if fully set forth herein.

1 83. Due to the nature of the transaction and contemplated contract between
2 them, Defendants owed a duty to Plaintiffs and the Class to reasonably disclose
3 facts material to that transaction and to not hide or obscure facts material to that
4 transaction.

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

9 85. At all relevant times, Defendants actively concealed those material
10 facts from the public and their PPP loan applicants, by intentionally omitting to
11 disclose such facts and by intentionally misleading the Plaintiffs and Class with
12 affirmative statements that were not true.

13 86. Even if Defendants made some partial representations, Defendants still
14 made efforts to suppress material facts and did not fully disclose and contextualize
15 the material facts known only to them.

16 87. Plaintiffs and the Class reasonably relied on Defendants'
17 representations in choosing to apply for a PPP loan with Defendant Banks.

18 88. As a direct result of Defendants' fraudulent concealment of facts
19 material to the PPP loan application transaction, Plaintiff and the Class were
20 induced to apply with Defendants and as a proximate result suffered economic and
21 financial harm to be proven at trial but in excess of \$5 million.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs, individually and on behalf of the Class, pray for
24 the following relief:

- 25 1. For an order certifying the class as defined above, appointing Plaintiffs
26 as class representatives for the class, and appointing Plaintiffs' counsel
27 as class counsel for the class;
- 28 2. For an order declaring Defendants' actions to be unlawful;

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

Dated: April 19, 2020

STALWART LAW GROUP

By: /s/ Dylan Ruga

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

Attorneys for Plaintiffs and the Proposed Class

JURY DEMAND

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

Dated: April 19, 2020

STALWART LAW GROUP

By: /s/ Dylan Ruga

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

*Attorneys for Plaintiffs and the
Proposed Class*

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