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

M&M CONSULTING GROUP LLC, a  
California limited liability company,  
individually and on behalf of all others  
similarly situated,

Plaintiff,

vs.

JPMORGAN CHASE BANK, N.A.; and  
FIRST REPUBLIC BANK,

Defendants.

Case No. \_\_\_\_\_

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

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

13 //

14 **I. PARTIES**

15 1. Plaintiff M&M Consulting Group LLC is a limited liability company organized  
16 and authorized to do business, and doing business, in the State of California since November  
17 2018. Becca Moody is partner, member, and CFO of M&M, which is located in Huntington  
18 Beach, California. Ms. Moody resides within the Central District of California. Although  
19 Plaintiff assisted its clients with preparing their application(s) for a PPP loan from the  
20 Defendants, Defendants have failed to pay Plaintiff the agent fees Defendants owe Plaintiff for  
21 Plaintiff’s work in securing the PPP loans.

22 2. Defendant JPMorgan Chase Bank, N.A. is a national bank. Its principal place  
23 of business is in New York, New York. JPMorgan Chase Bank, N.A. conducts substantial  
24 business in this District. Plaintiff acted in the statutorily defined role of an agent in securing PPP  
25 loans for one Applicant of JPMorgan Chase Bank, N.A. in an amount of approximately  
26 \$700,000. Although Applicant’s PPP loan was funded by JPMorgan Chase Bank, N.A., based  
27 on information and belief, JPMorgan Chase Bank, N.A. has taken custody of the money owed  
28 to Plaintiff from the Federal Government, yet failed to pay Plaintiff the statutorily required agent

1 fees that Plaintiff is owed.

2 3. Defendant First Republic Bank is a California chartered bank. Its principal place  
3 of business is in San Francisco, California. First Republic Bank conducts substantial business in  
4 this District. Plaintiff acted in the statutorily defined role of an agent in securing PPP loans for  
5 one Applicant of First Republic Bank in an amount of approximately \$35,000. Although  
6 Applicant's PPP loan was funded by First Republic Bank, based on information and belief, First  
7 Republic Bank has taken custody of the money owed to Plaintiff from the Federal Government,  
8 yet failed to pay Plaintiff the statutorily required agent fees that Plaintiff is owed.

9 //

10 **II. JURISDICTION AND VENUE**

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

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

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

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

28 //

1 **III. FACTUAL ALLEGATIONS**

2 ***Background***

3 8. On January 21, 2020, the Center for Disease Control and Prevention (“CDC”)  
4 confirmed the first U.S. case of a new coronavirus, known as COVID-19.

5 9. On January 30, 2020, the World Health Organization (“WHO”) declared the  
6 COVID-19 outbreak to be a “public health emergency of international concern.”

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

9 11. On March 11, 2020, the WHO declared that the spread of COVID-19 had  
10 become a pandemic.

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

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

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

28 15. As part of the CARES Act, the Federal Government created a \$349 billion loan

1 program, referred to as the Paycheck Protection Program or PPP, temporarily adding a new  
2 product to the SBA's 7(a) Loan Program ("SBA 7(a) Program").

3 16. The PPP provided small businesses with loans to be originated from February  
4 15, 2020, through June 30, 2020. The PPP was created to provide American small businesses  
5 with eight-weeks<sup>1</sup> of cash-flow assistance and to allow a certain percentage of the loan to be  
6 forgiven if the loan is utilized to retain employees and fund payrolls. Although the loans are  
7 administered by the Treasury and backed by the Federal Government, the loans are funded by  
8 private lenders ("Lenders"), including banks and financial services firms, that review and  
9 approve PPP loan applications.

10 17. The Treasury announced on April 3, 2020, that small businesses and sole  
11 proprietors could fill out an application (the "Application") to apply and receive loans to cover  
12 their payroll and other expenses through approved SBA Lenders. Beginning on April 10, 2020,  
13 independent contractors and self-employed individuals could apply as well.<sup>2</sup>

14 18. On April 24, 2020, President Trump signed the Paycheck Protection Program  
15 and Health Care Enhancement Act ("PPPEA"). The PPPEA added \$310 billion in PPP funding,  
16 bringing the total PPP funds available to lend to \$659 billion.

17 19. On June 5, 2020, President Trump signed the Paycheck Protection Program  
18 Flexibility Act of 2020 ("Flexibility Act") (Pub. L. 116-142), which changes key provisions of  
19 the Paycheck Protection Program, including provisions relating to the maturity of PPP loans, the  
20 deferral of PPP loan payments, and the forgiveness of PPP loans. **The Flexibility Act did not**  
21 **change Defendants' statutory duty to pay Plaintiff the Agent Fees Plaintiff is owed.**

22 20. The Treasury's Paycheck Protect Program (PPP) Information Sheet for  
23 Lenders<sup>3</sup> (the "PPP ISL"), consistent with the SBA PPP Final Rule (collectively, the "SBA  
24 Regulations"), describes a system to distribute the PPP loans that relies on established SBA  
25

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

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

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

1 Lenders – who approve and fund loan applicants – and the **addition** of independent agents (“PPP  
2 Agents”) – who provide small businesses with the necessary assistance enabling them to apply  
3 for a PPP loan.

4 21. Under the SBA Regulations, a PPP Agent “can be:

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

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

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

- 25 • Five percent (5%) for loans of not more than \$350,000;
- 26 • Three percent (3%) for loans of more than \$350,000 and less than  
27 \$2,000,000; and

28 <sup>4</sup> *Id.*

- One percent (1%) for loans of at least \$2,000,000.<sup>5</sup>

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

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

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

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

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

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<sup>5</sup> 85 FR 20816 (3)(d).

<sup>6</sup> 85 FR 20816 (4)(c).

<sup>7</sup> *Id.* (Emphasis Added).

1 *businesses in operation for less than 2 years.*<sup>8</sup>

2 28. If not for the PPP Agents, tens of thousands of small businesses would have had  
3 difficulty or been unable to apply for PPP loans.

4 29. **Nowhere in the CARES Act or the SBA Regulations does the Federal**  
5 **Government state, or even suggest, that Lender’s approval is required in order for an**  
6 **Applicant to use an Agent.**

7 30. Here, the Defendants are SBA approved Lenders. Plaintiff served as the PPP  
8 Agent for small businesses applying for the PPP loans provided by the Defendants and backed  
9 by the full faith and credit of the Federal Government.

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

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

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

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

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



1 **borrowers** and the Bank’s policies related to payment or non-payment of agent fees.”<sup>9</sup>

2 //

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

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

11 36. Complying with the SBA Regulations, Plaintiff assisted Applicants in the PPP  
12 Application process. As contemplated by the Federal Government, such assistance contributed  
13 to the successful funding of the Applicants’ PPP loans with a Defendant.

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

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

22 39. To participate in the PPP, “Lenders **must** comply with the applicable lender  
23 obligations set forth in this [SBA PPP Final Rule]...”<sup>10</sup>.

24 40. Therefore, Plaintiff believed in good faith that Defendants would comply with  
25 the SBA Regulations and pay Plaintiff the statutorily required Agent Fees.

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

<sup>10</sup> 85 FR 20812 (1). (*Emphasis Added*).



1  
2 All Agents who assisted a business in California in preparing an Application for  
3 a PPP loan pursuant to the CARES Act (the “Statewide Class”).  
4

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

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

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

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

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

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

- 22 a. Whether Plaintiff is an “agent” as that term is defined by the Cares Act and  
23 relevant regulations;
- 24 b. Whether Defendants were obligated to pay Plaintiff and the Class Agent Fees  
25 from the Lender Fees it received under the CARES Act;
- 26 c. Whether Defendants failed to pay Agent Fees they were required to pay;
- 27 d. Whether Class Members are entitled to damages; and if so, in what amount;
- 28 e. Whether Defendants are likely to continue to mislead the public and Class

1 Members and continue to violate SBA Regulations regarding paying Agents their  
2 earned fees under the CARES Act;

3 f. Whether Plaintiff and Class Members are entitled to an award of reasonable  
4 attorney's fees, pre-judgment interest and costs of suit; and

5 g. Whether Defendants were unjustly enriched by their practice of refusing to pay  
6 Agent Fees.

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

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

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



1 Regulations that a portion of the Lender Fees paid to Defendants must be paid to Plaintiff and  
2 the Class.

3 //

4 **COUNT II**  
5 **UNJUST ENRICHMENT**  
6 **AGAINST ALL DEFENDANTS**

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

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

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

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

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

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

26 67. Defendants have unjustly benefitted through the illegal retention of the Agent  
27 Fee portion of the Lender Fees paid by the Federal Government to the Defendants for the benefit

28 <sup>11</sup> 85 FR 20812 (1). (Emphasis Added).

1 of the Plaintiff and the Class.

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

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

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

14 71. Defendants should not be allowed to retain the proceeds from the benefits  
15 conferred upon it by Plaintiff and the U.S. Government.

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

21 //

22 **COUNT III**

23 **CONVERSION**

24 **AGAINST ALL DEFENDANTS**

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

27 74. Under the SBA Regulations, Plaintiff and the Class, as PPP Agents, have a right  
28 to, title in, and the legal right of possession of, Agent Fees that must be paid from the amount of

1 Lender Fees provided to Defendants for lending money pursuant to approved Applications.

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

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

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

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

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

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

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

26 82. Defendants’ conduct manifests a knowing and reckless indifference toward, and  
27 a disregard of, the rights of Plaintiff and the Class Members.

28 83. By withholding the Agent fees, Defendants have maintained wrongful control



1 over Plaintiff's property inconsistent with Plaintiff's entitlements under the SBA Regulations.

2 84. Defendants committed civil conversion by retaining monies owed to Plaintiff  
3 and the Class.

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

7 //

8 **COUNT IV**

9 **BREACH OF AN IMPLIED CONTRACT**

10 **AGAINST ALL DEFENDANTS**

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

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

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

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

27 90. It would be unjust to allow Defendants to retain the benefit of Plaintiff's and the  
28 Class's Agent Fees in light of their reasonable expectation of payment for the services they

1 rendered.

2 91. Defendants, regardless of any intent of the parties, have a quasi-contractual  
3 obligation to pay for the services by which they benefited and to compensate Plaintiff and the  
4 Class for the reasonable value of their services.

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

8 //

9 **COUNT V**

10 **VIOLATION OF THE "UNFAIR" PRONG OF THE UCL**

11 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200, ET SEQ.**

12 **AGAINST ALL DEFENDANTS**

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

15 94. The California Unfair Competition Law (hereinafter "UCL") defines unfair  
16 business competition to include any "unlawful, unfair or fraudulent" act or practice. A business  
17 act or practice is "unfair" under the UCL if the reasons, justifications, and motives of the alleged  
18 wrongdoer are outweighed by the gravity of the harm to the alleged victims.

19 95. Defendants have committed unfair acts and concealed and omitted material facts  
20 that have harmed Plaintiff and the Class.

21 96. Specifically, Defendants, despite their obligations under the SBA Regulations,  
22 Defendants have failed to pay the required Agent Fees, which the Federal Government paid to  
23 the Defendants as part of the Lender Fees. Defendants' conduct constitutes an unfair act because  
24 Defendants received Lender Fees as a result of Plaintiff and the Class's efforts to assist  
25 Applicants in the Application process to secure PPP loans through Defendants, who are SBA  
26 approved lenders.

27 97. By Defendants holding themselves out as PPP Lenders, Defendants necessarily  
28 held themselves out as promising to follow the mandatory PPP guidelines and regulations.



1 pandemic and includes the PPP, which assists small businesses seeking to maintain payroll and  
2 other authorized expenses.

3 105. There is an implied cause of action arising under the CARES Act.

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

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

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

14 109. Nevertheless, Defendants refused to pay Plaintiffs and the Class Members the  
15 authorized Agent Fees.

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

19 //

20 **COUNT VII**

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

22 **AGAINST ALL DEFENDANTS**

23 111. Plaintiff hereby incorporates by reference the foregoing allegations as if fully  
24 set forth herein.

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

27 113. There is an implied cause of action arising under the SBA's 7(a) loan program,  
28

1 as applied through the CARES Act.

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

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

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

10 //

11 **PRAYER FOR RELIEF**

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

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

**DEMAND FOR JURY TRIAL**

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

Dated: July 22, 2020

Respectfully submitted,

/s/Michael E. Adler  
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