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

12 Panda Accounting LLC, individually and
13 on behalf of all others similarly situated,

14 Plaintiff,

15 -v-

16 Academy Bank, N.A.; JP Morgan Chase
17 Bank, N.A. d/b/a Chase Bank; and,
18 MidFirst Bank,

19 Defendants.

Case No. _____

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

DEMAND FOR JURY TRIAL

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1 Plaintiff Panda Accounting LLC (“Plaintiff” or “Panda Accounting”) brings this
2 class action complaint on behalf of themselves and those similarly situated against
3 Defendants Academy Bank, N.A., JPMorgan Chase Bank, N.A., and MidFirst Bank
4 (hereinafter “Defendants”) to obtain fees owed to Plaintiff as a result of its work as an
5 agent to obtain loans on behalf of clients through the Paycheck Protection Program
6 (“PPP”), a federal program implemented to provide small businesses with loans for
7 assistance related to losses due to Covid-19 and state government shut down orders.
8 Federal regulations require Defendants to pay Plaintiff and the proposed Class for their
9 work as agents that facilitate loans between Defendants and small businesses.
10 Nevertheless, Defendants have refused to pay Plaintiff and Class members and instead
11 have kept the fees for themselves. Plaintiff alleges the following based upon its
12 knowledge and upon information and belief, including investigations conducted by its
13 attorneys.

14 I. PARTIES

15 1. **Plaintiff** Panda Accounting LLC is an Arizona limited liability company
16 organized and authorized to do business and doing business in the State of Arizona. Its
17 principle place of business is in Maricopa County, Arizona. Panda Accounting
18 specializes in accounting and related consulting services, including outsourced
19 bookkeeping, payroll processing, and tax preparation services for individuals and small
20 businesses. Plaintiff assisted its clients with securing PPP loans from Defendants, but
21 Defendants have refused to pay Plaintiff any fees for their work in securing the PPP loans.

22 2. **Defendant** Academy Bank, N.A. (“Academy Bank”) is a full-service
23 community bank with over \$1 billion in assets and a corporate headquarters located at
24 8551 N. Boardwalk Ave, Kansas City, MO 64154. Academy Bank conducts substantial
25 business in this district. Plaintiff secured PPP loans for two clients from Academy Bank
26 amounting to nearly \$50,000. Academy Bank informed Plaintiff that it would not be
27 paying any agent fees related to PPP loans.

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1 by the United States Department of Treasury (“Treasury”) and its Small Business
2 Administration (“SBA”), a United States government agency that provides support to
3 entrepreneurs and small businesses.

4 15. As part of the CARES Act, the Federal Government created a \$349 billion
5 loan program, referred to as the Paycheck Protection Program or PPP. The PPP provides
6 small businesses with loans to be originated from February 15, 2020, through June 30,
7 2020. The PPP was created to provide American small businesses with eight weeks of
8 cash-flow assistance and to allow a certain percentage of the loan to be forgivable if the
9 loan is utilized to retain employees and fund payrolls. The SBA backs the loans. The
10 loans are administered by Treasury and backed by the Federal Government but are funded
11 by private lenders (“Lenders”), including banks and financial services firms that review
12 and approve PPP loan applications.

13 16. The Treasury announced on April 3, 2020 that small businesses and sole
14 proprietors could apply and receive loans to cover their payroll and other expenses
15 through approved SBA Lenders. Beginning on April 10, 2020, independent contractors
16 and self-employed individuals could apply as well.¹

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

20 18. The Treasury’s Paycheck Protect Program (PPP) Information Sheet for
21 Lenders² (the “PPP ISL”), consistent with the SBA PPP Final Rule (collectively, the
22 “SBA Regulations”), describes a system to distribute the PPP loans that relies on SBA
23 Lenders – who review, approve, and finance loan applicants – and independent agents

24 ¹ *Paycheck Protection Program (PPP) Information Sheet: Borrowers*, Dep’t of
25 Treasury (last visited, May 15, 2020), [https://home.treasury.gov/system/files/136/PPP--
26 Fact-Sheet.pdf](https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf)

27 ² *Paycheck Protection Program (PPP) Information Sheet: Lenders*, Dep’t of Treasury
28 (last visited, May 15, 2020), [https://home.treasury.gov/system/files/136/PPP%20Lender%20Information%20Fact%20
0Sheet.pdf?](https://home.treasury.gov/system/files/136/PPP%20Lender%20Information%20Fact%20Sheet.pdf?)

1 (“PPP Agents”) – who provide small businesses with assistance applying for and
2 obtaining PPP Loans.

3 19. Under the SBA Regulations, a PPP Agent may be any of the following:

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

14 20. The SBA Regulations expressly contemplate and encourage PPP Agents
15 to assist small businesses with their PPP Loan applications. The SBA Regulations allow
16 for and set standards by which PPP Agents are to be paid for their work. Specifically,
17 the regulations require that PPP Agents be paid from a portion of the set fees provided to
18 SBA Lenders for processing the PPP Loan.

19 21. Under the SBA Regulations, Lenders are compensated for processing fees
20 (“Lender Fees”) based on the amount the financing at the time of final disbursement. The
21 SBA pays Lenders Fees to SBA Lenders who process PPP loans in the following
22 amounts:

- 23 • Five percent (5%) for loans of not more than \$350,000;
- 24 • Three percent (3%) for loans of more than \$350,000 and less than
- 25 \$2,000,000; and
- 26 • One percent (1%) for loans of at least \$2,000,000.⁴

27 ³ *Id.*

28 ⁴ *Id.*

1 22. Concerning PPP Agents’ fees, the SBA Regulations provide that “Agent
2 fees *will* be paid out of lender fees. The lender *will* pay the agent. *Agents may not collect*
3 *any fees from the applicant*. The total amount that an agent may collect from the lender
4 for assistance in preparing an application for a PPP”⁵ loan is as follows (the “Agent
5 Fees”):

- 6 • One percent (1%) for loans of not more than \$350,000;
- 7 • 0.50% for loans of more than \$350,000 and less than \$2 million;
- 8 and,
- 9 • 0.25% for loans of at least \$2 million.

10 23. The SBA Regulations and Treasury Guidance determined that the PPP
11 Agent Fees set forth above are reasonable given the PPP Agents efforts in providing small
12 businesses with PPP Loan applications and meeting all requirements to receive PPP
13 Loans, and given the fees that Lenders receive for processing PPP loans.

14 24. By assisting businesses in obtaining PPP funding, PPP Agents play a
15 significant role in promoting the interests of the CARES Act and ensuring its
16 implementation conforms to the United States Congress’s legislative intent. Indeed, the
17 Senate directed the Treasury to “issue guidance to lenders and agents to ensure that the
18 ... loans *prioritize small business concerns and entities in underserved and rural*
19 *markets, including veterans and members of the military community, small business*
20 *concerns owned and controlled by socially and economically disadvantaged*
21 *individuals..., women, and businesses in operation for less than 2 years.*”⁶ (Emphasis
22 added). PPP Agents help ensure small businesses take advantage of the available PPP
23 Loans.

24 25. Here, the Defendants are SBA Lenders. Plaintiff served as the PPP Agent
25 for small businesses applying for the PPP loans provided by the Defendants and backed
26 by the full faith and credit of the Federal Government.

27 _____
⁵ *Id.* (Emphasis added)

28 ⁶ CARES ACT, PL 116-136, March 27, 2020, 134 Stat 281

1 33. Based on the SBA Regulations, Plaintiff understood that it was not
2 allowed to charge its clients a fee relating to the application process but that it was only
3 permitted to receive compensation from the Agents' share of the \$20 billion in fees the
4 Federal Government paid the SBA Lenders for facilitating PPP loans.

5 34. Plaintiff spent between two (2) and ten (10) hours on each application,
6 depending on the complexity of the client and the amount of available data.

7 35. To fill out the Applications, Plaintiff assisted clients in gathering the
8 required information and filling out the applications, including the following documents,
9 where applicable or necessary:

- 10 a. Loan Calculator Spreadsheet;
- 11 b. SBA Form 2483 – Each Owner 20% or more or Officer;
- 12 c. Addendum A: Affiliates – Each Owner 20% or more must complete;
- 13 d. Information if the applicant received an SBA Economic Injury Disaster
14 Loan (“EIDL”);
- 15 e. Certificate of Beneficial Ownership Interest – Each Owner 20% or more
16 must complete;
- 17 f. Driver’s License for each 20% or more owner;
- 18 g. Articles of Incorporation or Articles of Organization;
- 19 h. 2019 IRS/State Payroll Forms: 940 or all four quarterly 941;
- 20 i. 2019 Payroll Summary Report by Employee;
- 21 j. 2019 Health Insurance Premium Paid – Each monthly statement or year-
22 end summary;
- 23 k. 2019 Retirement Matching Plan Paid – Each monthly statement or year-
24 end summary;
- 25 l. 2020 1st QTR 941 Form;
- 26 m. January 2020 Payroll Summary by Employee;
- 27 n. February 2020 Payroll Summary by Employee;
- 28 o. March 2020 Payroll Summary by Employee;

- p. Health Insurance Premium Paid – January, February, and March 2020;
- q. Retirement Matching Plan Paid – January, February, and March 2020;
- r. Wiring Instruction; and,
- s. Copy of most recent bank statement (collectively, (a) – (s) above are part of the “Application”).

36. Plaintiff believed in good faith that it would receive the Agent Fees from the Lenders upon funding of each of their clients’ loans under the PPP, as required by the SBA Regulations.

37. Defendants did not comply with the SBA Regulations because they did not pay Plaintiff any agent fees despite awarding PPP loans to Plaintiff’s clients for whom Plaintiff acted as a PPP Agent. Instead, Defendants retained all of the Lender Fees.

38. Defendants, as lenders under the PPP, lack any legal authority under the SBA Regulations to withhold payment of the Agent Fees to Plaintiff.

39. As a result of Defendants’ unlawful actions, Plaintiff and the Class have suffered financial harm by being deprived of the statutorily mandated compensation for the professional services that they provided in connection with assisting their clients in applying for and obtaining PPP loans. Defendants barred Plaintiff from receiving compensation for their role as Agents in the PPP process that resulted in significant benefits to both small businesses and the lenders, as is the intent of the PPP.

IV. CLASS ALLEGATIONS

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

All PPP Agents who assisted a business in obtaining a PPP loan pursuant to the CARES Act and its progeny.

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

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

5 43. *Numerosity*: The Class is composed of thousands of Agents (the “Class
6 Members”), whose joinder in this action would be impracticable. The disposition of their
7 claims through this class action will benefit all Class Members, the parties, and the courts.

8 44. *Commonality*: Common questions of law and fact affect the Class. These
9 questions of law and fact predominate over individual questions affecting individual
10 Class Members and, include, but are not limited to, the following:

- 11 a. Whether Defendant was obligated to pay Plaintiff and the Class Agent Fees
12 from the Lender Fees it received under the CARES Act;
- 13 b. Whether Defendants complied with their legal obligations under the terms
14 of the CARES Act as a lender of the PPP funds;
- 15 c. Whether Defendants have a policy and/or practice of failing to compensate
16 Agents who facilitated PPP loans to the detriment of the Class;
- 17 d. Whether Defendants prioritized their origination own fees over abiding by
18 the CARES Act and PPP specifications;
- 19 e. Whether Defendants possessed exclusive knowledge of material facts, with
20 respect to the Application process, i.e., that the Agents were not receiving
21 compensation when assisting applicants with PPP loan process;
- 22 f. Whether Defendants actively concealed a material fact or facts from the
23 Plaintiff, namely, that they had no intention of paying Agents their earned
24 fees pursuant to the CARES Act and its regulations;
- 25 g. Whether Defendants’ conduct, as alleged herein, was intentional and
26 knowing;
- 27 h. Whether Class Members are entitled to damages and/or restitution; and if
28 so, what is the amount of revenues and/or profits Defendants received
and/or was lost by Class Members as a result of the conduct alleged herein;
- i. Whether Defendants are likely to continue to mislead the public and Class
Members and continue to violate SBA Regulations regarding paying

Agents their earned fees under the CARES Act;

- j. Whether Plaintiff and Class Members are entitled to an award of reasonable attorney's fees, pre-judgment interest and costs of suit;
- k. Whether Defendant was unjustly enriched by its practice of refusing to pay Agent Fees; and,
- l. Whether Defendants established a quasi-contract with Plaintiff and the Class because Defendants engaged in PPP loans pursuant to the Cares Act and benefited from the services provided by Plaintiff and the Class, who had a reasonable expectation of payment.

45. *Superiority*: In engaging in the conduct described herein, Defendants have acted and failed to act on grounds generally applicable to Plaintiff and other Class members. A class action is superior to all other available means for the fair and efficient adjudication of Plaintiff's and the Class members' claims. Few, if any, Class members could afford to seek legal redress of the wrongs complained herein on an individual basis. Absent class action, Class members and the general public would not likely recover, or have the chance to recover, damages or restitution, and Defendants would be permitted to retain the proceeds of their misdeeds.

46. *Typicality*: Plaintiff's claims are typical of, and are not antagonistic to, the claims of all Class members. Plaintiff and the Class members have all been injured by Defendants' unfair and unlawful PPP loan application and funding practices, as alleged herein. The factual and legal basis of Defendants' liability to Plaintiff and each Class member as a result of Defendants' actions are described herein.

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

COUNT II

UNJUST ENRICHMENT

(On behalf of Plaintiff and the Class against all Defendants)

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

6 54. Plaintiff and members of the Class are PPP Agents who assisted small
7 business in obtaining PPP Loans from Defendants. Despite their efforts as PPP Agents,
8 Defendants have refused to pay Plaintiff and members of the Class any Agent Fees as
9 required by the SBA Regulations.

10 55. Instead, Defendants have retained the full amount of the Lender Fees –
11 from which the SBA Regulations require Agent Fees to be paid. Therefore, Defendants
12 have unfairly retained fees intended to benefit and compensate Plaintiff and the Class for
13 their efforts in promoting the interests of the CARES Act and ensuring small businesses
14 receive PPP Loans.

15 56. Defendants have been, and continue to be unjustly enriched, to the
16 detriment and at the expense of the Class members.

17 57. Defendants have unjustly benefitted through the unlawful and wrongful
18 collection of money from the Federal Government through the SBA funding PPP loan
19 applications and continue to benefit to the detriment and at the expense of Plaintiff and
20 Class members.

21 58. If Defendants practice of retaining the full amount of Lender Fees despite
22 the efforts of PPP Agents who, under the SBA Regulations, are entitled to a portion of
23 the Lender Fees, then the purpose and intent of the CARES Act would be upset because
24 PPP Agents would receive no due compensation for providing assistance to small
25 businesses seeking a PPP Loan. Plaintiff and the Class have no other means of obtaining
26 compensation from their clients because the SBA Regulations specifically prohibit PPP
27 Agents from receiving payment from any source other than the Lender Fees.

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1 applications. Due to Plaintiff's efforts, its clients were awarded PPP loans from
2 Defendants. As such, Plaintiff has a right to immediate possession of the Agent fees.

3 67. Although Plaintiff is entitled to Agent fees under the SBA Regulations,
4 Defendants have refused to provide any amount to Plaintiff, keeping the full amount of
5 the Lender Fees.

6 68. In Arizona, money may be the subject of a conversion claim if the money
7 can be described, identified or segregated, and an obligation to treat it in a specific manner
8 is established. That requirement is met because the Agent Fees are a segregated portion
9 of the Lender Fees awarded through the SBA Regulations for successful loan applicants.

10 69. By withholding the Agent fees, Defendants have maintained wrongful
11 control over Plaintiff's property inconsistent with Plaintiff's entitlements under the SBA
12 Regulations.

13 70. Defendants committed civil conversion by retaining monies owed to
14 Plaintiff and Class members.

15 71. Plaintiff and the Class have been injured as a direct and proximate cause
16 of Defendant's misconduct. Plaintiffs, as such, seek recovery from Defendants in the
17 amount of the owed Agent Fees, and all other relief afforded under the law.

18
19 **COUNT IV**

20 **BREACH OF AN IMPLIED CONTRACT**
21 **(On behalf of Plaintiff and the Class against all Defendants)**

22 72. Plaintiff and the Class, as PPP Agents, conferred a benefit upon
23 Defendants by gathering documents, performing work, and completing forms necessary
24 for small businesses to apply for PPP loans. Defendants received a portion of those loans
25 as Lender Fees.

26 73. In performing work to obtain PPP loans for small businesses, Plaintiff and
27 the Class had a reasonable expectation of compensation. That reasonable expectation
28 stemmed from the SBA Regulations, which explicitly state PPP Agents will receive

1 Agent fees from the lenders. Those Agent fees are payed out of a portion of the Lender
2 Fees.

3 74. Despite that reasonable expectation and the plain language of the SBA
4 Regulations, Defendants have refused to pay Plaintiff and the Class any Agent Fees.

5 75. Instead, Defendants have retained the full amount of the Lender Fees for
6 themselves and thereby, benefited from the work performed by Plaintiff and the Class.

7 76. It would be unjust to allow Defendants to retain the benefit of Plaintiff's
8 and the Class's work in light of their reasonable expectation of payment for services
9 rendered.

10 77. Defendants, regardless of any intent of the parties, have a quasi-
11 contractual obligation to pay for the services by which they benefited, and to compensate
12 Plaintiff and the Class for the reasonable value of their services.

13 78. Plaintiff and the Class have been injured as a direct and proximate cause
14 of Defendant's misconduct. Plaintiffs, as such, seek recovery from Defendants in the
15 amount of the owed Agent Fees, and all other relief afforded under the law.

16
17 **COUNT V**

18 **VIOLATION OF THE ARIZONA CONSUMER FRAUD ACT, A.R.S. § 44-1522,**
19 **et seq.**

20 **(On behalf of Plaintiff and the Class against all Defendants)**

21 79. Plaintiff hereby incorporates by reference the foregoing allegations as if
22 fully set forth herein.

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

28 81. Defendants have committed unfair acts and concealed and omitted
material facts that have harmed Plaintiff and the Class.

1 82. Specifically, Defendants, despite its obligations under the SBA
2 Regulations, have refused to pay Plaintiff and the Class any amount of Agent Fees owed.
3 Defendants' conduct constitutes an unfair act because Defendants received Lender Fees
4 as a result of Plaintiff and the Class's efforts to apply for PPP Loans secured through
5 Defendants, who are SBA Lenders. Although Defendant benefited from that work, it
6 refused to provide Plaintiff and the Class payment in the amount of the required Agent
7 Fees, and instead retained the full value of the Lender Fees for themselves.

8 83. Defendants also concealed and omitted material information, specifically,
9 that despite accepting a loan from a PPP Agent submitted on behalf of a small business
10 client, that Defendants would refuse to pay the required Agent Fees. Had Plaintiff and
11 the Class known that Defendants would refuse to pay Agent Fees, they would have taken
12 their loans to other SBA Lenders who were willing to compensate PPP Agents consistent
13 with the SBA Regulations.

14 84. Defendants' unfair acts, concealments, and omissions occurred in
15 connection with the sale or advertisement of services, namely, services related to the
16 processing and financing of PPP Loans under the CARES Act and SBA Regulations.

17 85. Defendant intended that Plaintiff and the Class rely on its concealments
18 and omissions because, had it stated it would not pay Agent Fees as required under the
19 SBA Regulations, Plaintiff and the Class would not have secured PPP Loans from
20 Defendants for their clients. By concealing and omitting their intention to not pay
21 required Agent Fees, Defendants improperly secured business from Plaintiff and the
22 Class for which Defendants were compensated through the Lender Fees.

23 86. Defendants' unfair acts, concealments, and omissions harmed Plaintiff
24 and the Class who were not properly compensated for their efforts in securing PPP Loans
25 for their clients. Plaintiff and the Class had no obligation to use Defendants as SBA
26 Lenders for the purpose of obtaining PPP Loans for their clients. Had Defendants stated
27 their intention not to comply with the SBA Regulations and pay PPP Agents the Agent
28 Fees, Plaintiff and the Class would have found SBA Lenders willing to pay Agent Fees.

DEMAND FOR JURY TRIAL

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

Dated: May 19, 2020

Respectfully submitted,

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28

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): Panda Accounting LLC	Academy Bank, N.A. ; JP Morgan Defendant(s): Chase Bank, N.A. d/b/a Chase Bank ; MidFirst Bank
County of Residence: Maricopa	County of Residence: Outside the State of Arizona
County Where Claim For Relief Arose: Maricopa	

Plaintiff's Atty(s): Hart L Robinovitch Zimmerman Reed LLP 14646 N Kierland Blvd, Suite 145 Scottsdale, Arizona 85254 4803486400	Defendant's Atty(s):
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II. Basis of Jurisdiction: **4. Diversity (complete item III)**

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- **1 Citizen of This State**
Defendant:- **2 Citizen of Another State**

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **190 Other Contract**

VI.Cause of Action: **Class Action Fairness Act, 28 U.S.C. § 1332(d)**

VII. Requested in Complaint

Class Action: **Yes**
Dollar Demand: **+ \$5,000,000**
Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: s/ Hart L. Robinovitch

Date: 05/19/2020

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Academy Bank, Chase Bank, MidFirst Bank Refused to Pay Agents for PPP Application Prep Services, Lawsuit Claims](#)
