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7 DISCOVER BANK

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11 ILIANA PEREZ, an individual, and FLAVIO )  
12 GUZMAN MAGAÑA, an individual, on behalf )  
of themselves and all others similarly situated, )  
13 Plaintiffs, )  
14 v. )  
15 DISCOVER BANK, a Delaware corporation, )  
16 Defendant. )

Case No.  
**NOTICE OF REMOVAL BY DEFENDANT  
DISCOVER BANK**

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**TO COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE THAT**, pursuant to 28 U.S.C. §§ 1332, 1446 and 1453 and the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. 109-2, § 1(a), 119 Stat. 4 (Feb. 18, 2005) (codified as amended in scattered sections of 28 U.S.C.), defendant Discover Bank (“Discover”) hereby removes the action entitled Iliana Perez, et al. v. Discover Bank, San Mateo County Superior Court Case No. 20-CIV-03045 (the “Action”), to the United States District Court for the Northern District of California, San Francisco Division. In support of this Notice, Discover states as follows:

1. Removal is timely. On July 22, 2020, plaintiffs Iliana Perez and Flavio Guzman Magaña (“Plaintiffs”) filed their Class Action Complaint for Injunctive and Declaratory Relief and Damages (the “Complaint”) in the Superior Court of California, County of San Mateo. The Complaint was served on Discover on September 3, 2020 and was the first pleading served setting forth the claims for relief upon which the Action is based. This Notice of Removal has been timely filed within thirty days after service of the Complaint pursuant to 28 U.S.C. § 1446(b)(1). Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings and orders served upon Discover in the Action are attached hereto as **Exhibit A**.

2. This Court has jurisdiction under CAFA. This Court has jurisdiction over this Action under 28 U.S.C. § 1332(d), and the Action is properly removable pursuant to 28 U.S.C. § 1453(b), because this Action is (a) a proposed class action within the meaning of CAFA, in which (b) “any member of a class of plaintiffs is a citizen of a State different from any defendant . . . or a citizen or subject of a foreign state,” (c) the “number of members of all proposed plaintiff classes in the aggregate is [not] less than 100” and (d) “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs.” 28 U.S.C. § 1332(d)(2), (d)(5)(B).

a. This Action is a “class action.” A “class action,” as defined by CAFA, is “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar state statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. §§ 1332(d)(1)(B), 1453(a). Plaintiffs purport to assert their

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1 claims as a class action pursuant to California Code of Civil Procedure section 382 (Compl. ¶ 28),  
2 which authorizes an action to be brought by one or more representative persons as a class action.

3           b.       Diversity of citizenship exists. Under CAFA, diversity is satisfied when  
4 “any member of a class of plaintiffs is a citizen of a State different from any defendant . . . [or] any  
5 member of a class of plaintiffs is a . . . citizen or subject of a foreign state and any defendant is a  
6 citizen of a State.” 28 U.S.C. § 1332(d)(2)(A)-(B). Discover is a Delaware state-chartered bank  
7 with its principal place of business in the State of Delaware. Accordingly, Discover is a citizen of  
8 Delaware. See 12 U.S.C. § 1332(c)(1). Plaintiffs allege that they are residents of California who  
9 received grants of deferred action under the Department of Homeland Security’s Deferred Action  
10 for Childhood Arrivals policy (“DACA”) and are not lawfully admitted for permanent residence in  
11 the United States. (Compl. ¶¶ 5-6, 20-23.) Plaintiffs purport to assert claims for violation of the  
12 Unruh Civil Rights Act, Cal. Civ. Code § 51 (the “UCRA”), on behalf of themselves and other  
13 members of a putative class of similarly situated persons who applied or attempted to apply for  
14 loans from Discover when they were not United States citizens or legal permanent residents and  
15 were denied loans or were required to have their loans co-signed by a United States citizen or legal  
16 permanent resident (the “Putative Class”). (Id. ¶¶ 9-28.) Accordingly, the Putative Class includes  
17 Plaintiffs and other members who are either citizens of a state other than Delaware or citizens or  
18 subjects of a foreign state, and diversity of citizenship exists under 28 U.S.C. § 1332(d)(2)(A)-(B).  
19 During the 3-year period preceding the filing of this Action, no other class action has been filed  
20 asserting the same or similar factual allegations against Discover on behalf of the same or other  
21 persons. See 28 U.S.C. § 1332(d)(4)(A)(ii).

22           c.       Numerosity is satisfied. Numerosity under CAFA is satisfied if “the number  
23 of members of all proposed plaintiff classes in the aggregate is [not] less than 100.” 28 U.S.C. §  
24 1332(d)(5)(B). Although Plaintiffs do not specify a class period, the statute of limitations for their  
25 claims under the UCRA is two years. See Nevarez v. Forty Niners Football Co., LLC, 326 F.R.D.  
26 562, 574 (N.D. Cal. 2018). Discover disagrees that this Action is, or may be, suitable for treatment  
27 as a class action, and Discover hereby reserves all rights and arguments it may have when opposing  
28

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1 any future motion for class certification. For purposes of this Notice of Removal, and based solely  
2 on the definition of the Putative Class within the Complaint (which, as noted above, Discover  
3 believes is improper) and subject to further investigation and discovery, Discover states that  
4 between July 2018 and July 2020, Discover denied an average of approximately 1,709 applications  
5 for student loans or for personal loans per month from individuals who were not United States  
6 citizens or legal permanent residents. Although an individual analysis would be necessary to  
7 determine whether any particular applicant may have met Discover’s underwriting criteria or  
8 whether any particular applicant may have subsequently been approved for a loan, the Putative  
9 Class consists of more than 100 members.

10 d. The amount in controversy is satisfied.<sup>1</sup> The amount in controversy under  
11 CAFA is satisfied “if the matter in controversy exceeds the sum or value of \$5,000,000, exclusive  
12 of interest and costs.” 28 U.S.C. § 1332(d)(2). For purposes of determining the amount in  
13 controversy in class actions, CAFA expressly requires that “the claims of the individual members  
14 shall be aggregated . . .” 28 U.S.C. § 1332(d)(6). The amount in controversy in this Action is  
15 satisfied as follows:

16 i. Plaintiffs seek monetary damages, including both compensatory  
17 damages and an award of “statutory . . . damages to Plaintiffs and the [c]lass members . . . .”  
18 (Compl. 9.)<sup>2</sup> Statutory damages for a violation of the UCRA may be awarded in “any amount that  
19 may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the  
20 amount of actual damage but in no case less than four thousand dollars (\$4,000).” Cal. Civ. Code §  
21 52(a). Given the size of the Putative Class, as discussed above, and by seeking an award of  
22

23 <sup>1</sup> As instructed by the United States Supreme Court, “a defendant’s notice of removal need include  
24 only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.  
25 Evidence establishing the amount is required by § 1446(c)(2)(B) only when the plaintiff contests,  
or the court questions, the defendant’s allegation.” Dart Cherokee Basin Operating Co., LLC v. Owens, 574 U.S. 81, 89 (2014).

26 <sup>2</sup> Although Plaintiffs request compensatory damages in their prayer for relief (see Compl. 9), the  
27 Complaint does not identify even the general nature of any such damages, and thus no amount of  
28 compensatory damages is presently in controversy. Discover reserves its right to seek removal in  
the event Plaintiffs identify the nature and amount of compensatory damages sought by Plaintiffs  
and the members of the Putative Class.

1 statutory damages per class member rather than per action, Plaintiffs seek in excess of \$5,000,000  
2 in statutory damages alone.<sup>3</sup>

3 ii. In addition to monetary relief, Plaintiffs seek injunctive relief. Such  
4 relief may properly be considered in determining the amount in controversy. See Cohn v. Petsmart,  
5 Inc., 281 F.3d 837, 840 (9th Cir. 2002) (“In actions seeking declaratory or injunctive relief, it is  
6 well established that the amount in controversy is measured by the value of the object of the  
7 litigation.”) (quoting Hunt v. Wash. State Apple Adver. Comm’n, 432 U.S. 333, 347 (1977).) The  
8 value of injunctive relief may be measured by either the benefit to the plaintiff class or the cost to  
9 the defendant. See In re Ford Motor Co./Citibank (S. Dakota), N.A., 264 F.3d 952, 958 (9th Cir.  
10 2001) (“[T]he test for determining the amount in controversy is the pecuniary result to either party  
11 which the judgment would directly produce.”); Pagel v. Dairy Farmers of Am., Inc., 986 F. Supp.  
12 2d 1151, 1161 (C.D. Cal. 2013) (“CAFA’s rejection of the anti-aggregation rule makes the ‘either  
13 viewpoint’ rule a valid method for assessing the value of the matter in controversy [in class actions]  
14 to determine whether jurisdiction lies.”); Steenhuysen v. UBS Fin. Servs., Inc., 317 F. Supp. 3d  
15 1062, 1069 n.2 (N.D. Cal. 2018) (recognizing that anti-aggregation rule does not apply to CAFA  
16 class actions); Stafford v. Brinks, Inc., No. CV141352MWFPLAX, 2014 WL 10320456, at \*5  
17 (C.D. Cal. May 28, 2014) (“A plaintiff may properly seek prospective injunctive relief, the benefit  
18 of which will inure in the plaintiff, similarly situated third parties, and the public at large. The cost  
19 of compliance with a proposed injunction for the defendant may thus greatly exceed the value of  
20 the injunction to the plaintiff. It is the cost to the defendant that is “in controversy” under these  
21 circumstances even though the benefit extends beyond the plaintiff.”).

22  
23  
24 <sup>3</sup> Discover disputes that statutory damages are available per class member, since Civil Code section  
25 52 expressly provides for statutory damages per “case.” Id. Discover reserves its right to challenge  
26 Plaintiffs’ entitlement to statutory damages on a per-class-member basis in later proceedings. See  
27 Ibarra v. Manheim Investments, Inc., 775 F.3d 1193, 1198 (9th Cir. 2015) (“Even when defendants  
28 have persuaded a court upon a CAFA removal that the amount in controversy exceeds \$5 million,  
they are still free to challenge the actual amount of damages in subsequent proceedings and at trial.  
This is so because they are not stipulating to damages suffered, but only estimating the damages  
that are in controversy.”).

1                   iii.       Plaintiffs seek an injunction that would, among other things, require  
2 Discover to “alter its lending policies and practices” by extending loans to individuals who are  
3 neither United States citizens nor legal permanent residents but who otherwise meet Discover’s  
4 underwriting criteria. (Compl. ¶ 43.) Based on the number of loan applications typically received  
5 by Discover from non-citizens and non-permanent residents, requiring Discover to alter its lending  
6 policies and practices in this manner would result in additional loans to non-citizens and non-  
7 permanent residents totaling approximately \$2,000,000 to \$2,500,000 each month. Accordingly,  
8 the value of the injunctive relief sought by Plaintiffs, calculated either as the benefit to Plaintiffs  
9 and the Putative Class or the cost to Discover if Discover were required to alter its policies and  
10 practices and extend loans to non-citizens and non-legal permanent residents, exceeds \$5,000,000.

11                   iv.       Plaintiffs also seek recovery of attorneys’ fees under Civil Code  
12 section 52 and Code of Civil Procedure section 1021.5. (Compl. 9.) “[A] court must include future  
13 attorneys’ fees recoverable by statute or contract when assessing whether the amount-in-  
14 controversy requirement is met.” Fritsch v. Swift Transportation Co. of Arizona, LLC, 899 F.3d  
15 785, 794 (9th Cir. 2018). Given the amount of statutory damages sought by Plaintiffs on behalf of  
16 themselves and the Putative Class and the value of the injunctive relief sought, the amount of  
17 attorneys’ fees in controversy in this Action alone exceeds \$5,000,000. See id. (explaining that in  
18 determining the amount of attorneys’ fees in controversy, a court may consider, among other  
19 things, that attorneys’ fees in class actions are commonly 25 percent of all recoveries).

20           3.       Removal to the Northern District of California, San Francisco Division is proper.  
21 Removal to this Court is proper because it is the district court for the district and division within  
22 which the state action is pending. See 28 U.S.C. §§ 1441(a), 1446(a).

23           4.       Notice will be effected. A removal notice together with a copy of this Notice of  
24 Removal will be filed with the Clerk of the San Mateo County Superior Court and served on all  
25 counsel of record.

26           5.       Consent is not necessary because no other defendants have been served. Discover is  
27 the only named defendant in the Action and is not aware of any other defendants that have been  
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1 named in, or served with, the Complaint. Accordingly, consent to removal is not necessary and  
2 removal is proper pursuant to 28 U.S.C. § 1446(a) & (b).

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Dated: October 2, 2020

Respectfully submitted,  
STROOCK & STROOCK & LAVAN LLP  
JULIA B. STRICKLAND  
ARJUN P. RAO  
DAVID W. MOON

By:                                 /s/ Arjun P. Rao  
Arjun P. Rao

Attorneys for Defendant  
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**CERTIFICATE OF SERVICE**

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I hereby certify that on October 2, 2020, a copy of **NOTICE OF REMOVAL BY DEFENDANT DISCOVER BANK** was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court’s electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court’s EM/ECF System.

/s/ Arjun P. Rao  
Arjun P. Rao

**Via U.S. Mail**

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# **EXHIBIT A**

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13 *Attorneys for Plaintiffs*

14 IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

15 ILIANA PEREZ, an individual, and  
16 FLAVIO GUZMAN MAGAÑA, an  
17 individual, on behalf of themselves and all  
18 others similarly situated,

19 Plaintiff,

20 vs.

21 DISCOVER BANK, a Delaware  
22 corporation,

23 Defendant.

Case No. 20-CIV-03045

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

**DEMAND FOR JURY TRIAL**

Judge:

Dept:

Electronically

**FILED**

by Superior Court of California, County of San Mateo

ON 7/22/2020

By /s/ Una Finau  
Deputy Clerk

1 Plaintiffs Iliana Perez and Flavio Guzman Magaña (together, “Plaintiffs”) brings this  
2 action against Defendant Discover Bank (“Defendant”), on behalf of themselves and all others  
3 similarly situated, and alleges upon information and belief, as follows:

4 **INTRODUCTION**

5 1. Defendant Discover Bank follows a policy of denying full access to student loans  
6 and loans consolidating and refinancing pre-existing student loans to applicants who are not  
7 United States citizens or Legal Permanent Residents (“LPRs” or “green card holders”).

8 2. Plaintiffs and members of the Class they seek to represent were and are unable to  
9 access Defendant’s financial services without unequal conditions imposed upon them because of  
10 their immigration status.  
11

12 **JURISDICTION AND VENUE**

13 3. This Court has subject matter jurisdiction as the total amount of damages sought  
14 exceeds \$25,000 and the relief requested is within the jurisdiction of this Court.  
15

16 4. Venue is proper in the County of San Mateo under Code of Civil Procedure  
17 section 395.5. Defendant’s liability arose when Plaintiff Perez applied for a loan while located  
18 in San Mateo County, and when Plaintiff Guzman Magaña applied for a loan while located in  
19 Los Angeles County.

20 **PARTIES**

21 **Plaintiffs**

22 5. Plaintiff Iliana Perez is a resident of San Francisco County. Plaintiff resided in  
23 San Mateo County on the date she applied for a loan from Defendant and was unlawfully denied.  
24

25 6. Plaintiff Flavio Guzman Magaña is a resident of Los Angeles County. Plaintiff  
26 Guzman Magaña has resided in Los Angeles County continuously since he applied for and  
27 received loan funds with unequal and unlawful conditions imposed by Defendant.  
28

1           7.       Plaintiffs and the Class they seek to represent were subjected to the violations  
2 described in this Complaint.

3 **Defendant**

4           8.       Defendant Discover Bank is a Delaware corporation registered with the California  
5 Secretary of State as a foreign corporation qualified to conduct business in the State of  
6 California. Defendant maintains a business address at 12 Read’s Way, New Castle, Delaware,  
7 19720, and a mailing address at 2500 Lake Cook Road, Riverwoods, Illinois, 60015.  
8

9 **FACTUAL BACKGROUND**

10           9.       This action is brought on behalf of Plaintiffs and members of the proposed  
11 Plaintiff Class. This action seeks damages and injunctive relief.

12 **Plaintiff Hiana Perez**

13           10.      On or around December 2009, Plaintiff Perez applied for a \$15,000 private  
14 student loan with Citibank through its subsidiary, The Student Loan Corporation, to pay for  
15 graduate school at the New School in New York. Citibank asked Plaintiff Perez to provide a co-  
16 signer for the loan. Plaintiff Perez’s uncle, a U.S. citizen, co-signed for her loan. Plaintiff Perez  
17 received the funds in early 2010 and used the funds for education expenses.  
18

19           11.      In or around December 2010, Citibank sold The Student Loan Corporation, the  
20 holder of Plaintiff Perez’s student loan, to Defendant.

21           12.      In or around October 2012, Plaintiff Perez applied for Deferred Action for  
22 Childhood Arrivals (commonly known as “DACA”). As part of the DACA initiative, Plaintiff  
23 Perez requested and received authorization to work in the United States and a Social Security  
24 Number (“SSN”). When Plaintiff Perez received her work authorization documents and SSN,  
25 she informed Defendant of this information.  
26  
27

1           13.     Over the lifetime of Plaintiff Perez’s loan, the interest rate has varied on a  
2 monthly basis, reaching over ten percent several times.

3           14.     Plaintiff Perez has been diligent in making loan payments on time and paying  
4 more than the minimum payment required by Defendant.

5           15.     On or around July 2018, Plaintiff Perez accessed a loan application through  
6 Defendant’s website, [www.discover.com](http://www.discover.com), to apply for what Defendant calls a “Private  
7 Consolidation Loan.” Plaintiff desired to refinance her loan to pay a lower interest rate.  
8 Plaintiff Perez applied for a \$19,900 loan.  
9

10          16.     On Defendant’s website, there is a section specifically for “Student Loans.” This  
11 section includes webpages for each type of student loan serviced by Defendant, including  
12 Undergraduate, Law, Bar Exam, Residency, and Graduate. Each webpage contains a “Common  
13 Questions” section. On the “Student Loan Consolidation” webpage, one of the “Common  
14 Questions” is: “Am I eligible for a private consolidation loan?” The answer: “To qualify, you  
15 must: Be a US citizen or permanent resident with a US-based address.” Additionally, Question  
16 10 of the on-line application requests the “Citizenship” of the Borrower. The three options are  
17 “U.S. Citizen,” “Permanent Resident,” and “International Student.” Question 11 requests  
18 “Country of Citizenship.” Plaintiff Perez did not answer Question 11 on her application.  
19

20          17.     Plaintiff Perez submitted a signed online application with Defendant and included  
21 proof of income, a copy of her social security card, and a copy of her DACA card.  
22

23          18.     On or around August 3, 2018, Plaintiff Perez received a letter from Defendant  
24 confirming receipt of Plaintiff’s online application. The letter included a copy of Plaintiff  
25 Perez’s application and examples of the interest rates available for fixed and variable loans  
26 offered by Defendant. Defendant’s loan criteria, included with this letter, required that the  
27 borrower and any cosigner be either a U.S. citizen or LPR.  
28

1           19.     Plaintiff Perez received another letter from Defendant, dated October 9, 2018.  
2     The letter requested that Plaintiff call Defendant immediately at 1-800-STUDENT and provide  
3     further information to continue processing the loan application. Defendant specifically requested  
4     income verification, proof of identity, and a “copy of your passport and valid US Citizenship and  
5     Immigration Services (USCIS) documentation.”

6           20.     After receipt of this letter, Plaintiff Perez called the number provided by  
7     Defendant. Defendant’s representative confirmed that Plaintiff Perez’s uncle was a current  
8     cosigner on her loan. The representative also asked Plaintiff Perez for her citizenship status.  
9     Plaintiff Perez replied that she was undocumented and had received a SSN through the DACA  
10    program. In response, the representative told Plaintiff Perez that the representative would need  
11    to speak with her supervisor. When the representative returned to the call with Plaintiff Perez,  
12    she told Plaintiff Perez that Defendant would be unable to refinance the loan. The representative  
13    also told Plaintiff Perez that Plaintiff Perez should not have been granted the loan in the first  
14    place because she was not a U.S. citizen or LPR. The Defendant’s representative did not ask  
15    Plaintiff Perez about a co-signer for the Private Consolidation Loan or whether she would be  
16    seeking to add a co-signer for the loan going forward in the refinancing process.  
17    seeking to add a co-signer for the loan going forward in the refinancing process.

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1 **Plaintiff Flavio Guzman Magaña**

2 21. Plaintiff Guzman Magaña is a recipient of DACA and has been since 2013. Since  
3 that time, he has continuously possessed a work authorization card and a SSN.

4 22. On or around August 18, 2016, Plaintiff Guzman Magaña submitted an online  
5 application with Defendant, accessed through Defendant's website, for a Graduate Student Loan  
6 to attend the University of Southern California Sol Price School of Public Policy. He applied for  
7 a \$35,500 loan.

8 23. Defendant's online application required Plaintiff Guzman Magaña to identify as  
9 either a "U.S. citizen," a "Permanent Resident," or as an "International Student." Since he is not  
10 a U.S. citizen or permanent resident, Plaintiff Guzman Magaña marked the box for International  
11 Student. Since he applied as an International Student, the application informed Plaintiff Guzman  
12 Magaña that he would need to apply with a co-signer who was either a U.S. citizen or LPR.  
13 Additionally, the application indicated that Plaintiff Guzman Magaña may need to submit his  
14 own passport, an I-797 form from USCIS, his Employment Authorization card, and his DACA  
15 card.  
16  
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18 24. Plaintiff Guzman Magaña listed his wife, a U.S. citizen, as co-signer to the loan.  
19 He uploaded the requested documents on August 18 and August 22, 2016. His loan application  
20 was approved, and Defendant disbursed Plaintiff Guzman Magaña's funds shortly thereafter.

21 25. Defendant's website indicates that only student loan applicants classified as  
22 "international students" are required to apply with a U.S. citizen or permanent-resident co-signer.  
23

24 26. To this date, Plaintiff Guzman Magaña has been making timely payments on his  
25 graduate student loan and continues to be required by Defendant to have a U.S. citizen or  
26 permanent-resident co-signer for his loan.  
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**CLASS ACTION ALLEGATIONS**

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27. Plaintiffs incorporate all preceding paragraphs as though fully set forth here.

28. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action under California Code of Civil Procedure section 382. Plaintiffs seek to represent the following Class, composed of and defined as follows:

All persons who applied for or attempted to apply for a financial product from Discover Bank but were denied full and equal consideration by Discover Bank on the basis of their immigration status.

29. Plaintiffs may amend the above class definition as permitted or required by this Court. This action has been brought and may properly be maintained as a class action under the provisions of California Code of Civil Procedure section 382 because all the prerequisites for class treatment are met.

**Ascertainability and Numerosity**

30. The potential members of the above class as defined are so numerous that joinder is impracticable.

31. On information and belief, Defendant's records will provide information as to the number and location of Class members that will allow the class to be ascertained.

**Commonality**

32. There are questions of law and fact common to the Class predominating over any questions affecting only Plaintiffs or any other individual Class Members. These common questions of law and fact include, without limitation:

- a. Whether Defendant violated the California Unruh Civil Rights Act by denying full and equal access to its services on the basis of an applicant's immigration status;



1 b. Whether Plaintiffs and the Class Members are entitled to declaratory, injunctive  
2 and other equitable relief;

3 c. Whether Plaintiffs and the Class Members are entitled to damages and any other  
4 relief.

5 **Typicality**

6 33. The claims of the named Plaintiffs are typical of the claims of the Class.  
7 Plaintiffs and all Class members sustained injuries and damages arising out of and caused by  
8 Defendant's common course of conduct in violation of California laws, regulations, and statutes  
9 as alleged here.  
10

11 **Adequacy of Representation**

12 34. Plaintiffs will fairly and adequately represent and protect the interests of the Class  
13 members.

14 35. Plaintiffs' counsel is competent and experienced in litigating class actions.  
15

16 **Superiority of Class Action**

17 36. A class action is superior to other available means for the fair and efficient  
18 adjudication of this controversy. Individual joinder of all Class members is not practicable, and  
19 questions of law and fact common to the Class predominate over any questions affecting only  
20 individual Class members. Each member of the proposed Class has been damaged and is entitled  
21 to recovery by reason of Defendant's unlawful policies and practices of discriminating on the  
22 basis of immigration status and denying full and equal access to Defendant's services.  
23

24 37. No other litigation concerning this controversy has been commenced by or against  
25 Class members.

26 38. Class action treatment will allow those similarly situated persons to litigate their  
27 claims in the manner that is most efficient and economical for the parties and the judicial system.  
28

1 It is unlikely that individual Class members have any interest in individually controlling separate  
2 actions in this case.

3 39. Plaintiffs are unaware of any difficulties that are likely to be encountered in the  
4 management of this action that would preclude its maintenance as a class action. The benefits of  
5 maintaining this action on a class basis far outweigh any administrative burden in managing the  
6 class action. Conducting the case as a class action would be far less burdensome than  
7 prosecuting numerous individual actions.  
8

9 **CLAIM FOR RELIEF**  
10 **Violation of Unruh Civil Rights Act**  
**(California Civil Code §§ 51, *et seq.*)**

11 40. Plaintiffs incorporate all preceding paragraphs as though fully set forth here.  
12

13 41. Defendant conducts business within the jurisdiction of the State of California and,  
14 as such, is obligated to comply with the provisions of the Unruh Act, California Civil Code  
15 section 51, *et seq.*

16 42. Defendant violated the Unruh Act by denying Plaintiffs and Class members equal  
17 services on the basis of their immigration status.

18 43. Plaintiffs further request that the Court issue a permanent injunction ordering  
19 Defendant to alter its lending policies and practices to prevent future discrimination on the basis  
20 of an applicant's immigration status.  
21

22 **RELIEF**

23 WHEREFORE, PLAINTIFFS request the following relief:  
24

- 25 i. That this Court certify the proposed class;  
26 ii. That this Court certify Plaintiffs as class representatives on behalf of the class;  
27

- iii. That this Court issue a declaratory judgment that Defendant’s policies have been discriminatory and violate the Unruh Civil Rights Act;
- iv. That this court award statutory and compensatory damages to Plaintiffs and the Class members in an amount to be determined at trial;
- v. That this court award to Plaintiffs and the Class members reasonable attorneys’ fees, costs, and interest thereon under Code of Civil Procedure section 1021.5, Civil Code section 52, and any other applicable law; and
- vi. For such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand trial of these claims by jury to the extent authorized by law.

Dated: July 22, 2020

Respectfully submitted,

MEXICAN AMERICAN LEGAL DEFENSE  
AND EDUCATIONAL FUND



\_\_\_\_\_  
Deylin Thrift-Viveros  
Thomas A. Saenz  
Belinda Escobosa Helzer  
MEXICAN AMERICAN LEGAL DEFENSE  
AND EDUCATIONAL FUND

*Attorneys for Plaintiffs Iliana Perez and Flavio  
Guzman Magaña*

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Deylin Thrift-Viveros #306873</b> Mexican American Legal Defense and Educational Fund 634 S. Spring Street, 11th Floor, Los Angeles, CA 90014		<b>FOR COURT USE ONLY</b>  <div style="text-align: center; font-weight: bold; font-size: 1.2em;">Electronically FILED</div> by Superior Court of California, County of San Mateo ON <span style="font-size: 1.2em;">7/22/2020</span> By <u>          /s/ Una Finau          </u> Deputy Clerk	
TELEPHONE NO.: (213) 629-2512                      FAX NO. (Optional): ATTORNEY FOR (Name): Plaintiffs Iliana Perez and Flavio Guzman Magaña		CASE NUMBER: <div style="text-align: center; font-size: 1.2em; font-weight: bold;">20-CIV-03045</div>	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo</b> STREET ADDRESS: 400 County Center MAILING ADDRESS: 400 County Center CITY AND ZIP CODE: Redwood City, CA 94063 BRANCH NAME: Southern Branch & Hall of Justice			
CASE NAME: Perez, et al. v. Discover Bank		JUDGE: DEPT.:	
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> <input type="checkbox"/> <b>Limited</b> (Amount                              (Amount demanded                            demanded is exceeds \$25,000)                  \$25,000)		<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input checked="" type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive

4. Number of causes of action (specify): One

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 22, 2020  
 Deylin Thrift-Viveros #306873  
 \_\_\_\_\_  
 (TYPE OR PRINT NAME) 
  
 \_\_\_\_\_  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**

CM-010

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES****Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

**Non-PI/PD/WD (Other) Tort**

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

**Employment**

Wrongful Termination (36)  
Other Employment (15)

**Contract**

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

**Real Property**

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

**Unlawful Detainer**

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

**Judicial Review**

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

**Enforcement of Judgment**

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint RICO (27)**

Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

**Miscellaneous Civil Petition**

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

SUM-100

**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

Electronically  
**FILED**

by Superior Court of California, County of San Mateo

ON **7/22/2020**

By **/s/ Una Finau**  
Deputy Clerk

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

DISCOVER BANK, a Delaware corporation,

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ILIANA PEREZ, an individual, and FLAVIO GUZMAN MAGAÑA, an individual, on behalf of themselves and all others similarly situated.

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

**Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.**

**Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.**

The name and address of the court is:  
(El nombre y dirección de la corte es):  
Superior Court of California, County of San Mateo, Southern Branch & Hall of Justice  
400 County Center, Redwood City, CA 94063

CASE NUMBER: (Número del Caso):  
**20-CIV-03045**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Deylin Thrift-Viveros, MALDEF, 634 S. Spring St, 11th Fl, Los Angeles, CA 90014, (213) 629-2512


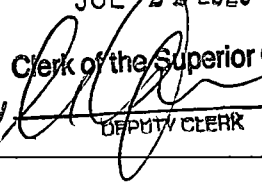
DATE: July 22, 2020 Neal I. Taniguchi Clerk, by /s/ Unaloto Finau Deputy  
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



**NOTICE TO THE PERSON SERVED: You are served**

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify): Discover Bank  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date)

 <p style="text-align: center;"><b>SUPERIOR COURT OF SAN MATEO COUNTY</b> 400 County Center, Redwood City, CA 94063 www.sanmateocourt.org</p>	<p>FOR COURT USE ONLY</p> <p><b>FILED</b></p> <p><b>SAN MATEO COUNTY</b></p> <p>JUL 22 2020</p> <p>Clerk of the Superior Court</p> <p>By  DEPUTY CLERK</p> <p>CASE NUMBER: 20-CIV-03045</p>
<p>PLAINTIFF: ILIANA PEREZ; FLAVIO GUZMAN MAGANA</p>	
<p>DEFENDANT: DISCOVER BANK, A DELAWARE CORPORATION</p>	
<p><b>NOTICE OF ASSIGNMENT FOR ALL PURPOSES, DESIGNATION AS COMPLEX CASE, SETTING OF CASE MANAGEMENT CONFERENCE AND COMPLEX FEES DUE</b></p>	

This case has been filed by Plaintiff(s) as a putative class action. By Standing Order 18-148 of the Presiding Judge, pursuant to California Rules of Court 3.400 and 3.403, this action is automatically deemed a "complex case" and assigned for all purposes to the Court's Complex Civil Litigation Judge, **the Honorable Marie S. Weiner, Department 2**, located at 400 County Center, Courtroom 2E, Redwood City, California 94063, (650) 261-5102.

The parties or their attorneys of record must appear for a Case Management Conference in Department 2 on **10/26/2020 at 9:00 a.m.**

Pursuant to Government Code Section 70616(a), the complex case fee and the first appearance fee must be paid at the time of filing of the first paper in this complex case (Govt.C. 70616(b) and (d)).

Plaintiff(s) pay a single complex case fee of \$1,000 on behalf of all plaintiffs, whether filing separately or jointly.

Defendant(s) pay a complex case fee of \$1,000 each on behalf of each defendant, intervenor, respondent, or adverse party, whether filing separately or jointly, at the time that party files its first paper in this case, not to exceed \$18,000 total.

PLAINTIFF(S) IS/ARE REQUIRED TO SERVE A COPY OF THIS NOTICE ON ALL OTHER PARTIES TO THIS ACTION OR PROCEEDING, and promptly file proof of service.

Date: 7/22/2020

Neal I Taniguchi, Court Executive Officer/Clerk

**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that I am the clerk of this Court, not a party to this cause; that I served a copy of this notice on the below date, by personally delivering a copy of this Notice to the Plaintiff or designee at 400 County Center, Redwood City, California.

Date: 7/22/2020

By:   
Unajoto Finatu, Courtroom Clerk

**Mailing List:**

DEYLIN O THRIFT-VIVEROS  
MEXICAN AMERICAN LEGAL  
DEFENSE AND EDUCATIONAL FUND  
634 SOUTH SPRING STREET 11TH FLOOR  
LOS ANGELES CA 90014



Attorney or Party without Attorney (Name/Address)	<p style="text-align: center;">FOR COURT USE ONLY</p> <p style="text-align: center;"><b>Electronically FILED</b></p> <p style="text-align: center;">by Superior Court of California, County of San Mateo</p> <p style="text-align: center;">ON <b>7/22/2020</b></p> <p style="text-align: center;">By <u>/s/ Una Finau</u> Deputy Clerk</p>
Telephone: State Bar No.: Attorney for:	
SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN MATEO 400 COUNTY CENTER REDWOOD CITY, CA 94063	
Plaintiff	
Defendant	
<b>Certificate Re Complex Case Designation</b>	Case Number <b>20-CIV-03045</b>

**This certificate must be completed and filed with your Civil Case Cover Sheet if you have checked a Complex Case designation or Counter-Designation**

1. In the attached Civil Case Cover Sheet, this case is being designated or counter-designated as a complex case [or as not a complex case] because at least one or more of the following boxes has been checked:
  - Box 1 – Case type that is best described as being [or not being] provisionally complex civil litigation (i.e., antitrust or trade regulation claims, construction defect claims involving many parties or structures, securities claims or investment losses involving many parties, environmental or toxic tort claims involving many parties, claims involving mass torts, or insurance coverage claims arising out of any of the foregoing claims).
  - Box 2 – Complex [or not complex] due to factors requiring exceptional judicial management
  - Box 5 – Is [or is not] a class action suit.
  
2. This case is being so designated based upon the following supporting information [including, without limitation, a brief description of the following factors as they pertain to this particular case: (1) management of a large number of separately represented parties; (2) complexity of anticipated factual and/or legal issues; (3) numerous pretrial motions that will be time-consuming to resolve; (4) management of a large number of witnesses or a substantial amount of documentary evidence; (5) coordination with related actions

pending in one or more courts in other counties, states or countries or in a federal court; (6) whether or not certification of a putative class action will in fact be pursued; and (7) substantial post-judgment judicial supervision]:

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*(attach additional pages if necessary)*

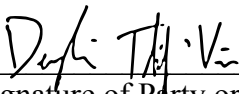
3. Based on the above-stated supporting information, there is a reasonable basis for the complex case designation or counter-designation [or noncomplex case counter-designation] being made in the attached Civil Case Cover Sheet.

\*\*\*\*\*

I, the undersigned counsel or self-represented party, hereby certify that the above is true and correct and that I make this certification subject to the applicable provisions of California Code of Civil Procedure, Section 128.7 and/or California Rules of Professional Conduct, Rule 5-200 (B) and San Mateo County Superior Court Local Rules, Local Rule 2.30.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Type or Print Name]

  
\_\_\_\_\_  
[Signature of Party or Attorney For Party]

**FILED**  
**SAN MATEO COUNTY**

JUL 29 2020

Clerk of the Superior Court

By

  
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

COMPLEX CIVIL LITIGATION

ILIANA PEREZ, and individual, and  
FLAVIO GUZMAN MAGANA, an  
individual, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

vs.

DISCOVER BANK, a Delaware  
corporation,

Defendant.

---

Case No. 20CIV03045  
CLASS ACTION

Assigned for All Purposes to  
Hon. Marie S. Weiner, Dept. 2

**CASE MANAGEMENT ORDER #1**

Pursuant to the Notice of Assignment for All Purposes, Designation as Complex Case, Setting of Case Management Conference, and Complex Fees due filed July 22, 2020, designating this putative class action case as a complex action, and single assigning to the Honorable Marie S. Weiner in Department 2 of this Court,

IT IS HEREBY ORDERED as follows:

1. **Electronic Service.** Pursuant to Code of Civil Procedure Section 1010.6(c), and California Rules of Court, Rule 2.253(c) and Rule 2.251(c), all parties and

their counsel shall serve all documents electronically, and accept service of documents electronically from all other parties, in conformity with Code of Civil Procedure Section 1010.6 and the California Rules of Court, except when personal service is required by statute. Counsel for the parties shall meet and confer, agree upon, and keep updated, an e-service list for this complex civil action. The parties are reminded that electronic service of documents may extend time periods for response by two (2) court days, pursuant to Code of Civil Procedure Section 1010.6(a)(4)(B).

2. **Mandatory E-Filing.** Pursuant to Code of Civil Procedure Section 1010.6(c), all parties shall file all documents electronically in this complex civil action, except those documents identified in Local Rule 2.1.8. Presently, the following documents must still be filed/lodged in hardcopy paper:

Ex Parte Motions and Oppositions thereto

Stipulation and Proposed Order

Proposed Judgments

Abstract of Judgment

Appeal Documents, including Notice of Appeal

Administrative Records

The document (other than exhibits) must be text searchable. Please visit [www.sanmateocourt.org](http://www.sanmateocourt.org) for further information on e-filing. Please note that exhibits to any electronically filed briefs, declarations or other documents must be electronically “bookmarked” as required by CRC Rule 3.1110(f)(4).

3. **Courtesy Copies for Department 2.** A courtesy copy of all pleadings, motions, applications, briefs, and any and all other papers **filed** in this case **shall** be (1) electronically served upon Department 2 at email address

[complexcivil@sanmateocourt.org](mailto:complexcivil@sanmateocourt.org) or (2) stamped “Judge’s Copy” and *delivered by overnight or first class mail directly to Department 2* located at Courtroom 2E, 400 County Center, Redwood City, California 94063. DO NOT LEAVE THE JUDGE’S COPY WITH THE CLERK’S OFFICE. PLEASE ADD DEPARTMENT 2 TO YOUR E-SERVICE SERVICE LIST IN THE CASE AS TO ANY AND ALL PAPERS FILED WITH THE COURT. All motions and briefs shall conform with the California Rules of Court, especially Rule 3.1113, and indicate on the caption page that this matter is assigned for all purposes to Department 2. Do not fax copies or correspondence to Department 2, as there is no dedicated fax line for the Complex Civil Department.

4. **Obtain Hearing Date Pre-filing.** As to any and all motions or other matters requiring a hearing, the hearing date shall be obtained *directly* from and approved by Department 2 at **(650) 261-5102** (and *not* with the Civil Clerk’s Office nor the Law & Motion Department) *prior* to filing of the moving papers or other initial filings.

5. **Proposed Orders.** Proposed Orders should be e-filed with the motion or stipulation to which it relates in conformity with CRC Rule 3.1312(c). You must also email an editable version of the Proposed Order in Word format (not PDF) to [complexcivil@sanmateocourt.org](mailto:complexcivil@sanmateocourt.org) so that the judge can modify it prior to signing, if needed.

6. **Electronic Correspondence to Department 2.** Correspondence to Department 2, such as discovery letter briefs, requests to take matters off calendar, and requests for rescheduling, regarding actions assigned to the Complex Civil Department shall be submitted electronically, rather than paper, by e-mail addressed to [complexcivil@sanmateocourt.org](mailto:complexcivil@sanmateocourt.org) All e-correspondence **must be sent in at least 12 point type**. This email address is for the Complex Civil Litigation Department to *receive*

correspondence, and is not a venue for back-and-forth communications with the judge. Communications to this email address are *not* part of the official court files – just like a paper letter, they are not “filed” documents – and will be retained for at least 30 days and then be subject to deletion (destruction) thereafter.

7. **Mandatory Email Header.** All communications to the [complexcivil@sanmateocourt.org](mailto:complexcivil@sanmateocourt.org) email address MUST include in the header “subject line” the **Case Number and Name of Case** (e.g., CIV 654321 *Smith v. Jones*).

8. **Ex Parte Motions.** Presently, due to the Covid 19 Pandemic, no in-person ex parte appearances are permitted – until further order of the court – and any ex parte appearances must be pre-schedule with Department 2 and pre-organized by the moving party for remote appearance by all involved parties and the Court. *Ex parte* applications in this matter shall heard by Department 2, **on Tuesdays and Thursday at 2:00 p.m.**, and the parties must meet the requirements of CRC Rule 3.120 *et seq.*. With the consent of counsel for *all* parties, telephone conferences on *simple* interim case management matters may be scheduled with the Court for a mutually convenient time and date – with the scheduling and logistics of such telephone conferences to be the responsibility of the requesting party/parties.

9. **E-Service of Discovery.** All discovery methods (C.C.P. § 2019.010), including but not limited to notice of deposition, special interrogatories, form interrogatories, requests for production of documents, and requests for admissions, shall be served electronically upon counsel for the parties. All discovery responses by a party in response to a discovery method by another party shall be served electronically upon counsel for the parties. Production of documents shall be provided in electronic form, unless the parties agree otherwise in writing. If not previously established, counsel for

the parties shall meet and confer regarding possible establishment of a joint electronic document depository for the uploading and downloading of electronic document productions.

10. **Informal Discovery Conferences.**

a. Pursuant to Code of Civil Procedure Section 2016.080, and the authority of a complex civil judge under CRC Rule 3.750, no party may move to compel discovery, or file any other discovery motion, until the parties have had an Informal Discovery Conference. Counsel must have exhausted all meet and confer obligations before the Informal Discovery Conference. To request an Informal Discovery Conference, counsel should contact the Court by email at [ComplexCivil@sanmateocourt.org](mailto:ComplexCivil@sanmateocourt.org), which email must be contemporaneously copied to counsel for all parties to the action and any self-represented parties. Pursuant to Code of Civil Procedure Section 2016.080(c)(2), the time for bringing any motion to compel is tolled starting on the date a party makes the email request for an Informal Discovery Conference to the Court. All requests for Informal Discovery Conference must be made well prior to the expiration of the statutory time to bring a motion to compel or other discovery motion.

b. Within five (5) calendar days of the initial email request to the Court for an Informal Discovery Request, the disputing parties shall, jointly or separately, email correspondence to the Court at [ComplexCivil@sanmateocourt.org](mailto:ComplexCivil@sanmateocourt.org), and contemporaneously to all parties, an electronic letter of no more than five (5) pages, without attachments, summarizing the discovery dispute(s).

c. The parties involved in the discovery dispute **shall not** file any “meet and confer” declarations pursuant to Code of Civil Procedure Sections 2016.040 or

2016.080(b) prior to the Informal Discovery Conference. The dispute will be addressed by the e-correspondence method/procedure set forth above.

d. The procedures outlined above apply to parties. With regard to discovery disputes with non-parties, the non-parties may elect to participate in this procedure, but are not required to do so.

11. **No Discovery Motion Separate Statement.** As to any discovery motions, the parties are relieved of the statutory obligation under CRC Rule 3.1345, and thus need *not* (should not) file a separate statement – instead the subject discovery requests (or deposition questions) and written responses (or deposition answers or objections) must be attached to the supporting declaration on the discovery motion.

12. **Limit to 35.** Given the nature of this complex civil action, the Court views document production and depositions as the most effective means of discovery for adjudication. Accordingly, no party may propound more than 35 special interrogatories *total* and no party may propound more than 35 requests for admissions (other than as to the authenticity of documents) *total*, without prior court order after demonstration of need and a showing that other means of discovery would be less efficient.

13. **No Appendix of Non-California Authorities.** Pursuant to CRC Rule 3.1113(i), the Complex Civil Department, Dept. 2, does not require any appendix of non-California authorities, unless specifically stated by the Court as to a particular motion.

14. **Case Management Conference.** The initial Case Management Conference set for October 26, 2020 is VACATED. The initial Case Management Conference is set for **Tuesday, September 22, 2020 at 3:00 p.m.** in Department 2 of this Court, located at Courtroom 2E, 400 County Center, Redwood City, California. Counsel



for all parties shall meet and confer on all matters set forth in California Rules of Court Rule 3.750 and Rule 3.724(8). **All appearances shall be remote only, using CourtCall.**

15. In anticipation of the Case Management Conference, counsel for the parties should be prepared to discuss at the hearing *and* file written case management conference statements (**in prose and details, *not* using the standardized Judicial Council form**) with a courtesy copy delivered *directly* to Department 2 on or before **September 15, 2020**, as to the following:

- a. Status of Pleadings and Service of Process;
  - b. Status of Discovery, including the initial production of documents by all parties;
  - c. Status of Settlement or Mediation;
  - d. Conclusions reached after meet and confer on all matters set forth in CRC Rule 3.750 and Rule 3.724(8);
  - e. Any anticipated motions and proposed briefing schedule;
  - f. Setting of next CMC date; and
  - g. Any other matters for which the parties seek Court ruling or scheduling.
16. Discovery is not stayed.

17. **PLAINTIFF SHALL PROMPTLY SERVE THIS CMC ORDER #1 UPON ALL DEFENDANTS OR UPON KNOWN COUNSEL FOR DEFENDANTS, and promptly file proof of service.**

DATED: July 28, 2020



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HON. MARIE S. WEINER  
JUDGE OF THE SUPERIOR COURT

SERVICE LIST

*Perez v. Discover Bank*, Class Action 20CIV03045  
As of July 2020

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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Discover Bank Imposed Restrictions on Student Loan Services Based on Immigration Status](#)

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