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13 Attorneys for Defendant  
 14 BANK OF AMERICA, N.A.

15 **UNITED STATES DISTRICT COURT**  
 16 **NORTHERN DISTRICT OF CALIFORNIA**

17  
 18 ARI SCHWARTZ, individually, and on  
 behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 BANK OF AMERICA, NATIONAL  
 22 ASSOCIATION, and DOES 1-10  
 Inclusive,

23 Defendant.

Case No.

(Santa Cruz County Superior Court  
 Case No. 21CV01285)

**NOTICE OF REMOVAL OF  
 DEFENDANT BANK OF  
 AMERICA, N.A. PURSUANT TO 28  
 U.S.C. §§ 1332, 1441, 1446, AND 1453**

**[CAFA JURISDICTION]**

*[Filed concurrently with Civil Cover Sheet;  
 Certification of Interested Entities; and  
 Corporate Disclosure Statement]*

BRYAN CAVE LEIGHTON PAISNER LLP  
 120 BROADWAY, SUITE 300  
 SANTA MONICA, CALIFORNIA 90401-2386

1           **TO THE UNITED STATES DISTRICT COURT FOR THE**  
2           **NORTHERN DISTRICT OF CALIFORNIA AND TO PLAINTIFF ARI**  
3           **SCHWARTZ, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS**  
4           **SIMILARLY SITUATED AND THEIR ATTORNEYS OF RECORD:**

5           **PLEASE TAKE NOTICE** that Defendant Bank of America, National  
6 Association (“Defendant” or “BANA”) hereby removes this action from the  
7 Superior Court of the State of California for the County of Santa Cruz, Case No.  
8 21CV01285, to the United States District Court for the Northern District of  
9 California. This removal is made pursuant to 28 U.S.C. sections 1332, 1441, 1446,  
10 and 1453. The grounds for removal are as follows:

11                                 **STATEMENT OF JURISDICTION**

12           This is a civil action for which this Court has original jurisdiction under 28  
13 U.S.C. § 1332, *et seq.*, as amended by the Class Action Fairness Act of 2005, Pub.  
14 L. No. 109-2, 119 Stat. 4, and is one that may be removed to this Court, pursuant to  
15 28 U.S.C. § 1441 and for the below reasons.

16                                 **THE REMOVED ACTION**

17           1.       On May 18, 2021, Plaintiff commenced a putative class-action lawsuit  
18 against Defendant in the Superior Court of the State of California, County of Santa  
19 Cruz, entitled “*Ari Schwartz, individually, and on behalf of all others similarly*  
20 *situated vs. Bank of America, National Association, and DOES 1-10 Inclusive,*”  
21 Case No. 21CV01285.

22           2.       On May 25, 2021, Plaintiff personally served the following documents  
23 on Defendant’s agent for service of process, C T Corporation System: (a)  
24 Summons; (b) Class Action Complaint; and (c) Civil Case Cover Sheet. A true and  
25 correct copy of the Summons is attached hereto as “**Exhibit A**”. A true and correct  
26 copy of the Class Action Complaint is attached as “**Exhibit B**”. A true and correct  
27 copy of the Civil Case Cover Sheet is attached as “**Exhibit C**”.

28           3.       Exhibits A through C to this Notice of Removal constitute all

1 pleadings, process and orders served in this action at the time of removal.

2 4. Plaintiff alleges the following cause of action against Defendant on  
3 behalf of himself and on behalf of all others similarly situated: Violation of Unfair  
4 Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*).

5 5. Plaintiff defines the putative class as “All persons who, between the  
6 applicable statute of limitations and the present, requested forbearance and/or  
7 deferred payments on mortgage loans serviced by Defendant and had the balance of  
8 their mortgage loan increased as a result of doing so.” (Compl. ¶ 25.)

9 6. Defendant denies Plaintiff’s claim, denies that any class may be  
10 certified under the rigorous analysis required by FRCP Rule 23 and related  
11 applicable case law, and makes no admission by way of this removal.

12 **REMOVAL IS TIMELY**

13 7. 28 U.S.C. § 1446(b)(1) provides that, “[t]he notice of removal of a  
14 civil action or proceeding shall be filed within 30 days after the receipt by the  
15 defendant, through service or otherwise, of a copy of the initial pleading setting  
16 forth the claim for relief upon which such action or proceeding is based . . . .”

17 8. “[N]otice of removability under § 1446(b)(1) is determined through  
18 examination of the four corners of the applicable pleadings[.]” *Harris v. Bankers*  
19 *Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005).

20 9. Defendant removed this action within 30 days of being served with the  
21 initial pleading on May 25, 2021. There is no question that removal is timely.

22 **PLAINTIFF’S COMPLAINT IS SUBJECT TO REMOVAL UNDER CAFA**

23 10. The Court has original jurisdiction over this action pursuant to the  
24 Class Action Fairness Act (“CAFA”). As such, this action may be removed to this  
25 Court by Defendant pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446 and 1453.

26 11. Under CAFA, the federal district court has jurisdiction if:

- 27 a) There are at least 100 class members in all proposed plaintiff classes;  
28 and

1           b) The combined claims of all class members exceed \$5 million  
2           exclusive of interest and costs; and

3           c) Any class member (named or not) is a citizen of a different state than  
4           any defendant. 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B) and 1453(a).

5           12.   **The Parties are Minimally Diverse.** CAFA requires minimal  
6           diversity. That is, at least one putative class member must be a citizen of a state  
7           different from any one defendant. 28 U.S.C. §1332(d)(2)(A).

8           13.   The named Plaintiff, Ari Schwartz, is a citizen of California. A person  
9           is a “citizen” of the state in which he is domiciled. *Kantor v. Wellesley Galleries,*  
10          *Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). A person’s domicile is the place he  
11          resides with the intention to remain or to which he intends to return. *Kanter v.*  
12          *Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). Plaintiff alleges that he  
13          “is a citizen and resident of the state of California.” (Compl. ¶ 5.)

14          14.   Defendant is a national banking association organized under the laws  
15          of the United States with its designated main office in North Carolina. It is  
16          therefore a citizen of North Carolina for purposes of diversity jurisdiction. *See*  
17          *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 306-307 (2006) (holding that a  
18          national bank is a citizen of the State in which its main office is located).

19          15.   The citizenship of fictitiously-named “Doe” defendants is to be  
20          disregarded for the purposes of removal. 28 U.S.C. § 1441(a).

21          16.   The minimal diversity requirement of 28 U.S.C. § 1332(d) is met in  
22          this action because the citizenship of at least one putative class member is diverse  
23          from the citizenship of at least one defendant. 28 U.S.C. § 1332(d)(2)(A).  
24          Plaintiff, a putative class member, is a citizen of California. (Compl. ¶ 5.)  
25          Defendant is a citizen of North Carolina. (*See* Compl. ¶ 6.) The citizenship of  
26          “Doe” defendants is disregarded for purposes of removal. 28 U.S.C. § 1441(b)(1).  
27          Therefore, the requisite minimal diversity exists between the parties.

28          17.   **There Are At Least 100 Class Members in the Proposed Class.**

1 Plaintiff purports to bring this action on behalf of: “All persons who, between the  
2 applicable statute of limitations and the present, requested forbearance and/or  
3 deferred payments on mortgage loans serviced by Defendant and had the balance of  
4 their mortgage loan increased as a result of doing so.” (Compl. ¶ 25.)

5 18. The Complaint alleges that the purported class is “composed of  
6 thousands of persons” and that the “members of the class are so numerous that  
7 joinder of all members would be unfeasible and impractical.” (Compl. ¶ 29.)  
8 Accordingly, the Complaint alleges that the aggregate number of putative class  
9 members is greater than 100 persons, as required by 28 U.S.C. § 1332(d)(5)(B).

10 19. **The Amount in Controversy Exceeds \$5 Million.** Under CAFA, the  
11 claims of the individual class members are aggregated to determine if the amount in  
12 controversy exceeds the required “sum or value of \$5,000,000, exclusive of interest  
13 and costs.” 28 U.S.C. § 1332(d)(2), (d)(6). A defendant’s notice of removal “need  
14 include only a plausible allegation that the amount in controversy exceeds the  
15 jurisdictional threshold.” *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S.  
16 81, 89 (2014).

17 20. Though the Complaint is silent as to the amount of damages sought, it  
18 is apparent from the allegations that, given the size of the putative class and the  
19 nature of the damages sought, the amount in controversy here exceeds the  
20 jurisdictional threshold.

21 21. The Complaint seeks to certify a class of “[a]ll persons who, between  
22 the applicable statute of limitations and the present, requested a forbearance and/or  
23 deferred payments on mortgage loans serviced by Defendant and had the balance of  
24 their mortgage loan increased as a result of doing so.” (Compl. ¶ 25.)

25 22. Plaintiff and the putative class assert claims for actual damages they  
26 allegedly suffered because Defendant added additional months of mortgage  
27 payments to their total loan amounts, resulting in increased loan balances. (Compl.  
28 ¶¶ 10-23). The Complaint alleges Plaintiff requested forbearance of his mortgage

1 payments for two months, resulting in an overcharge of \$9,289.32 when he paid off  
 2 his loan. (*Id.*) Using Plaintiff's alleged overcharge as a baseline, and calculating  
 3 even a half of that amount as potential damages (\$4,644.66), the actual size of the  
 4 putative class would only need to be 1,077 members, not "thousands," to reach an  
 5 amount exceeding \$5,000,000. (Compl. ¶ 29). In the alternative, if one assumes  
 6 each putative class member suffered damages in an amount similar to the named  
 7 plaintiff's \$9,289.32 (as alleged "similarly situated" (Compl. ¶ 24)), a putative class  
 8 of only 539 members would exceed \$5,000,000 in claimed damages. In the event  
 9 there are "thousands" of putative class members allegedly suffering similar harm,  
 10 the amount in controversy as alleged could well exceed \$10,000,000 (*e.g.*  
 11 mathematical calculation:  $2,001 \times \$9,289.32 = \$18.587$  million).

12 23. Accordingly, the alleged damages and alleged putative class scope  
 13 place the amount in controversy at an amount greater than \$5,000,000, and removal  
 14 of this action under CAFA is proper under 28 U.S.C. §1332(d).

15 **THE PROCEDURAL REQUIREMENTS OF 28 U.S.C. § 1446**  
 16 **ARE SATISFIED**

17 24. In accordance with 28 U.S.C. §1446(a), this Notice of Removal is filed  
 18 in the district in which the action is pending. The Santa Cruz County Superior  
 19 Court is located within the Northern District of California. Therefore, venue is  
 20 proper in this Court because it is the "district and division embracing the place  
 21 where such action is pending." 28 U.S.C. § 1441(a).

22 25. In accordance with 28 U.S.C. §1446(a), copies of all process,  
 23 pleadings, and orders served upon Defendant are attached as Exhibits to this Notice.

24 26. In accordance with 28 U.S.C. §1446(d), a copy of this Notice is being  
 25 served upon counsel for Plaintiff, and a notice will be filed with the Clerk of the  
 26 Superior Court of California for the County of Santa Cruz. Notice of Compliance  
 27 shall be filed promptly afterwards with this Court.

28 27. As required by Federal Rule of Civil Procedure 7.1, Defendant

1 concurrently filed its Certificate of Interested Parties.

2 **CONCLUSION**

3 Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendant hereby  
4 removes this action from the Superior Court of the State of California, Santa Cruz  
5 County, to the United States District Court for the Northern District of California.

6  
7  
8 Dated: June 24, 2021 Douglas. A. Thompson  
Linda C. Hsu  
Traci G. Choi  
9 **BRYAN CAVE LEIGHTON PAISNER LLP**

10  
11 By: /s/ Linda C. Hsu  
12 Linda C. Hsu  
13 Attorneys for Defendant  
14 BANK OF AMERICA, N.A.

BRYAN CAVE LEIGHTON PAISNER LLP  
120 BROADWAY, SUITE 300  
SANTA MONICA, CALIFORNIA 90401-2386

**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is: 1920 Main Street, Ste. 1000, Irvine, CA 92614-7476. My email address is: [theresa.macaulay@bclplaw.com](mailto:theresa.macaulay@bclplaw.com).

On June 24, 2021, I served the foregoing document(s) described as:

**NOTICE OF REMOVAL OF DEFENDANT BANK OF AMERICA, N.A.  
PURSUANT TO 28 U.S.C. §§ 1332, 1441, 1446, AND 1453**

on all interested parties in this action, as follows:

Todd M. Friedman  
Adrian R. Bacon  
LAW OFFICES OF TODD M. FRIEDMAN  
21550 Oxnard St., Suite 780  
Woodland Hills, CA 91367

*Attorney for Plaintiff*  
ARI SCHWARTZ  
Tel: 323-306-4234  
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Email: [tfgriedman@toddflaw.com](mailto:tfgriedman@toddflaw.com)  
[abacon@toddflaw.com](mailto:abacon@toddflaw.com)

BY MAIL - As follows: I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

FEDERAL - I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 24, 2021, at Irvine, California.



\_\_\_\_\_  
Theresa Macaulay

BRYAN CAVE LEIGHTON PAISNER LLP  
1920 MAIN STREET, STE. 1000  
IRVINE, CA 92614

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# Exhibit B

1 Todd M. Friedman (SBN 216752)  
 2 Adrian R. Bacon (SBN 280332)  
 3 LAW OFFICES OF TODD M. FRIEDMAN, P.C.  
 4 21550 Oxnard St. Suite 780,  
 5 Woodland Hills, CA 91367  
 6 Phone: 323-306-4234  
 7 Fax: 866-633-0228  
 8 tfriedman@toddfllaw.com  
 9 abacon@toddfllaw.com  
 10 **Attorneys for Plaintiff**

ELECTRONICALLY FILED  
 Superior Court of California  
 County of Santa Cruz  
 5/18/2021 1:21 PM  
 Alex Calvo, Clerk  
~~By: Declan Salsedo, Deputy~~

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 FOR THE COUNTY OF SANTA CRUZ

10 ARI SCHWARTZ, individually, and  
 11 on behalf of all others similarly  
 12 situated,

12 Plaintiff,

13 vs.

14 BANK OF AMERICA, NATIONAL  
 15 ASSOCIATION, and DOES 1-10  
 16 Inclusive,

16 Defendant.

Case No. 21CV01285

**CLASS ACTION COMPLAINT**

(1) Violation of Unfair Competition  
 Law (Cal. Business & Professions  
 Code §§ 17200 *et seq.*).

**Jury Trial Demanded**

1 Plaintiff ARI SCHWARTZ (“Plaintiff”), individually and on behalf of all  
2 others similarly situated, alleges as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant BANK  
5 OF AMERICA, NATIONAL ASSOCIATION (hereinafter “Defendant”) to stop  
6 Defendant’s practice of charging consumers during mortgage forbearances and to  
7 obtain redress for a class of consumers (“Class Members”) who were harmed,  
8 within the applicable statute of limitations period, by Defendant’s unfair,  
9 unlawful, and/or fraudulent business practices.

10 **JURISDICTION AND VENUE**

11 2. This class action is brought pursuant to California Code of Civil  
12 Procedure § 382. All causes of action in the instant complaint arise under  
13 California Statutes.

14 3. This Court has personal jurisdiction over Defendant, BANK OF  
15 AMERICA, NATIONAL ASSOCIATION, because Defendant is a nationally  
16 chartered bank, and is registered to do business in this State.

17 4. This matter is properly venued in the Superior Court of the State of  
18 California for the County of Santa Cruz because Defendant does business within  
19 the state of California and the County of Santa Cruz, and a significant portion, if  
20 not all, of the conduct giving rise to Plaintiff’s claims happened here.

21 **THE PARTIES**

22 5. Plaintiff ARI SCHWARTZ is a citizen and resident of the State of  
23 California, County of Santa Cruz.

24 6. Defendant BANK OF AMERICA, NATIONAL ASSOCIATION is a  
25 nationally chartered bank that does business in California, including Santa Cruz  
26 County, and is headquartered in Charlotte, North Carolina.

27 7. Plaintiff is informed and believes, and thereon alleges, that each and  
28

1 all of the acts and omissions alleged herein were performed by, or is attributable  
2 to, Defendant and/or its employees, agents, and/or third parties acting on its behalf,  
3 each acting as the agent for the other, with legal authority to act on the other's  
4 behalf. The acts of any and all of Defendant's employees, agents, and/or third  
5 parties acting on its behalf, were in accordance with, and represent, the official  
6 policy of Defendant.

7 8. Plaintiff is informed and believes, and thereon alleges, that said  
8 Defendants are in some manner intentionally, negligently, or otherwise  
9 responsible for the acts, omissions, occurrences, and transactions of each and all  
10 their employees, agents, and/or third parties acting on their behalf, in proximately  
11 causing the damages herein alleged.

12 9. At all relevant times, Defendant ratified each and every act or  
13 omission complained of herein. At all relevant times, Defendant aided and abetted  
14 the acts and omissions as alleged herein.

15 **PLAINTIFF'S FACTS**

16 10. On or about May 6, 2020, Plaintiff called Defendant to inquire about  
17 deferred payment and/or forbearance regarding his mortgage loan.

18 11. Specifically, Plaintiff sought to find out whether a deferred payment  
19 program or forbearance would increase his overall loan amount or his monthly  
20 mortgage payment.

21 12. Defendant's representative informed Plaintiff that the program  
22 simply moved the deferred months to the end of the loan and does not impact the  
23 total amount of the loan, including both total interest and principal balance.

24 13. Defendant's representative further stated that the forbearance was just  
25 a change in the time period for the payments, or in other words, it would pause the  
26 mortgage payments for three months and then return to the normal payment  
27 schedule, with only the maturity date changing.

28

1           14. Acting on the information provided by Defendant’s representative,  
2 Plaintiff requested forbearance for his mortgage.

3           15. After two months, Plaintiff canceled the forbearance.

4           16. On or about November 9, 2020, Plaintiff paid off his loan, remitting  
5 payment to Defendant in the amount of \$710,718.66.

6           17. Upon making the payoff payment, Plaintiff discovered that the payoff  
7 amount did not accurately reflect the amount he actually owed on the loan, and  
8 that Defendant had charged him an additional amount during Plaintiff’s deferral  
9 period.

10          18. Based on the amortized schedule of the mortgage loan, Plaintiff  
11 should have made a payoff payment in the amount of \$701,429.34.

12          19. Accordingly, Defendant overcharged Plaintiff by \$9,289.32 when  
13 Plaintiff paid off the loan.

14          20. After discovering the discrepancy and sending a letter detailing the  
15 problem to Defendant, Plaintiff was contacted by Defendant’s representative  
16 Valerie Naranjo (“Naranjo”) on or about November 13, 2020.

17          21. Naranjo, contradicting what Plaintiff had been told by Defendant’s  
18 representative previously, stated that when Plaintiff deferred payments, it did not  
19 pause his loan, but rather added an additional two months of mortgage payments  
20 to his total loan amount.

21          22. Had Plaintiff known that Defendant would increase the amount due  
22 on his loan, Plaintiff would not have pursued forbearance or opted to defer  
23 monthly payments.

24          23. Moreover, Plaintiff was never expressly notified prior to requesting  
25 forbearance that the amount due on his mortgage loan would increase as a result.

**CLASS ACTION ALLEGATIONS**

1  
2 24. Plaintiff brings this action on behalf of himself and all others similarly  
3 situated, and thus, seeks class certification under California Code of Civil  
4 Procedure § 382.

5 25. The class Plaintiff seeks to represent (the “Class”) is defined as  
6 follows:

7 All persons who, between the applicable statute of  
8 limitations and the present, requested forbearance and/or  
9 deferred payments on mortgage loans serviced by  
Defendant and had the balance of their mortgage loan  
increased as a result of doing so.

10 26. As used herein, the term “Class Members” shall mean and refer to the  
11 members of the Class described above.

12 27. Excluded from the Class are Defendant, its affiliates, employees,  
13 agents, and attorneys, and the Court.

14 28. Plaintiff reserves the right to amend the Class, and to add additional  
15 subclasses, if discovery and further investigation reveals such action is warranted.

16 29. Upon information and belief, the proposed class is composed of  
17 thousands of persons. The members of the class are so numerous that joinder of  
18 all members would be unfeasible and impractical.

19 30. No violations alleged in this complaint are contingent on any  
20 individualized interaction of any kind between class members and Defendant.

21 31. Rather, all claims in this matter arise from the identical unfair,  
22 unlawful and/or fraudulent business practices of Defendant.

23 32. There are common questions of law and fact as to the Class Members  
24 that predominate over questions affecting only individual members, including but  
25 not limited to:

- 26 (a) Whether Defendant engaged in unlawful, unfair, or deceptive  
27 business practices in increasing the amount due on Plaintiff’s  
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and other Class Members' mortgage loans after they had requested forbearance;

(b) Whether Defendant violated California Bus. & Prof. Code § 17200, *et seq.*;

(c) Whether Plaintiff and Class Members are entitled to equitable and/or injunctive relief;

(d) Whether Defendant's unlawful, unfair, and/or deceptive practices harmed Plaintiff and Class Members; and

(e) The method of calculation and extent of damages for Plaintiff and Class Members.

33. Plaintiff is a member of the class he seeks to represent.

34. The claims of Plaintiff are not only typical of all class members, they are identical.

35. All claims of Plaintiff and the class are based on the exact same legal theories.

36. Plaintiff has no interest antagonistic to, or in conflict with, the class.

37. Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member, because Plaintiff was harmed by Defendant's unfair, unlawful and/or fraudulent business practices during the Class Period. Defendant's unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff's claims are typical of all Class Members as demonstrated herein.

38. Plaintiff will thoroughly and adequately protect the interests of the class, having retained qualified and competent legal counsel to represent himself and the class.

39. Common questions will predominate, and there will be no unusual

1 manageability issues.

2 **FIRST CAUSE OF ACTION**

3 **Violation of Unfair Competition Law**

4 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

5 40. Plaintiff incorporates by reference each allegation set forth above.

6 41. Actions for relief under the unfair competition law may be based on  
7 any business act or practice that is within the broad definition of the UCL. Such  
8 violations of the UCL occur as a result of unlawful, unfair or fraudulent business  
9 acts and practices. A plaintiff is required to provide evidence of a causal  
10 connection between a defendant's business practices and the alleged harm--that is,  
11 evidence that the defendant's conduct caused or was likely to cause substantial  
12 injury. It is insufficient for a plaintiff to show merely that the defendant's conduct  
13 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory  
14 definition of unfair competition covers any single act of misconduct, as well as  
15 ongoing misconduct.

16 **UNFAIR**

17 42. California Business & Professions Code § 17200 prohibits any  
18 "unfair ... business act or practice." Defendant's acts, omissions,  
19 misrepresentations, and practices as alleged herein also constitute "unfair"  
20 business acts and practices within the meaning of the UCL in that its conduct is  
21 substantially injurious to consumers, offends public policy, and is immoral,  
22 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs  
23 any alleged benefits attributable to such conduct. There were reasonably available  
24 alternatives to further Defendant's legitimate business interests, other than the  
25 conduct described herein. Plaintiff reserves the right to allege further conduct  
26 which constitutes other unfair business acts or practices. Such conduct is ongoing  
27 and continues to this date.

28



1           43. In order to satisfy the “unfair” prong of the UCL, a consumer must  
2 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing  
3 benefits to consumers or competition; and, (3) is not one that consumers  
4 themselves could reasonably have avoided.

5           44. Here, Defendant’s conduct has caused and continues to cause  
6 substantial injury to Plaintiff and members of the Class. Plaintiff and members of  
7 the Class have suffered injury in fact in the form of economic loss due to  
8 Defendant’s practices. Thus, Defendant’s conduct has caused substantial injury  
9 to Plaintiff and the members of the Class.

10          45. Moreover, Defendant’s conduct as alleged herein solely benefits  
11 Defendant while providing no benefit of any kind to any consumer. The business  
12 practices utilized by Defendant convinced Plaintiff and members of the Class that  
13 Defendant would defer payments on their mortgage loans, not increase the balance  
14 of their loans. In fact, when Plaintiff and other Class members requested  
15 forbearance, Defendant knew or should have known that it would increase the  
16 amount due on such loans, and thus unfairly profited. Thus, the injury suffered by  
17 Plaintiff and the members of the Class are not outweighed by any countervailing  
18 benefits to consumers.

19          46. Finally, the injury suffered by Plaintiff and members of the Class is  
20 not an injury that these consumers could reasonably have avoided. After  
21 Defendant falsely represented the nature of the forbearances, consumers changed  
22 their position by opting to defer payments, thus causing them to suffer injury in  
23 fact. Defendant failed to take reasonable steps to inform Plaintiff and Class  
24 members that deferring payments would increase the balances of their loans. As  
25 such, Defendant took advantage of Defendant’s position of perceived power in  
26 order to deceive Plaintiff and the Class. Therefore, the injury suffered by Plaintiff  
27 and members of the Class is not an injury which these consumers could reasonably  
28

1 have avoided.

2 47. Thus, Defendant's conduct has violated the "unfair" prong of  
3 California Business & Professions Code § 17200.

4 **FRAUDULENT**

5 48. California Business & Professions Code § 17200 prohibits any  
6 "fraudulent ... business act or practice." In order to prevail under the "fraudulent"  
7 prong of the UCL, a consumer must allege that the fraudulent business practice  
8 was likely to deceive members of the public.

9 49. The test for "fraud" as contemplated by California Business and  
10 Professions Code § 17200 is whether the public is likely to be deceived. Unlike  
11 common law fraud, a § 17200 violation can be established even if no one was  
12 actually deceived, relied upon the fraudulent practice, or sustained any damage.

13 50. Here, not only were Plaintiff and the Class members likely to be  
14 deceived, but these consumers were actually deceived by Defendant. Such  
15 deception is evidenced by the fact that Defendant's representative understood the  
16 program to be a "pause" of the mortgage loan. Plaintiff's reliance upon  
17 Defendant's statements regarding forbearances was reasonable due to the unequal  
18 bargaining powers of Defendant against Plaintiff. For the same reason, it is likely  
19 that Defendant's fraudulent business practice would deceive other members of the  
20 public.

21 51. As explained above, Defendant deceived Plaintiff and other Class  
22 Members by representing that deferred payments would not increase the amount  
23 due on their mortgage loans.

24 52. Thus, Defendant's conduct has violated the "fraudulent" prong of  
25 California Business & Professions Code § 17200.

26 **UNLAWFUL**

27 53. California Business and Professions Code Section 17200, et seq.  
28

1 prohibits “any unlawful...business act or practice.”

2 54. As explained above, Defendant deceived Plaintiff and other Class  
3 Members by falsely representing that the deferred payment program would not  
4 increase the amount due on their loans.

5 55. The Coronavirus Aid, Relief, and Economic Security Act, Pub. L.  
6 116-136, states that “During a period of forbearance described in this subsection,  
7 no fees, penalties, or interest beyond the amounts scheduled or calculated as if the  
8 borrower made all contractual payments on time and in full under the terms of the  
9 mortgage contract, shall accrues on the borrower’s account.” 15 U.S.C. §  
10 9056(b)(3). Defendant charged such fees, penalties, and/or interest to Plaintiff in  
11 contravention of the law, as demonstrated by the increase in the amount due on  
12 Plaintiff’s mortgage loan during the deferred months.

13 56. These representations and actions by Defendant are therefore  
14 “unlawful” business practices or acts under Business and Professions Code  
15 Section 17200 *et seq.*

16 57. Defendant has thus engaged in unlawful, unfair, and fraudulent  
17 business practices entitling Plaintiff and Class Members to judgment and equitable  
18 relief against Defendant, as set forth in the Prayer for Relief. Additionally,  
19 pursuant to Business and Professions Code § 17203, Plaintiff and Class Members  
20 seek an order requiring Defendant to immediately cease such acts of unlawful,  
21 unfair, and fraudulent business practices and requiring Defendant to correct its  
22 actions.

23 **PRAYER FOR RELIEF**

24 58. Plaintiff, on behalf of himself and the Class, requests the following  
25 relief:

- 26 (a) An order certifying the Class and appointing Plaintiff as  
27 Representative of the Class;

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- (b) An order certifying the undersigned counsel as Class Counsel;
- (c) An order requiring Defendant, at its own cost, to notify all Class Members of the unlawful and deceptive conduct herein;
- (d) Actual damages suffered by Plaintiff and Class Members as applicable;
- (e) Statutory damages as allowed by law;
- (f) Punitive damages, as allowable, in an amount determined by the Court or jury;
- (g) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
- (h) Pre- and post-judgment interest; and
- (i) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.


**REQUEST FOR JURY TRIAL**

59. Plaintiff requests a trial by jury as to all claims so triable.

Dated: May 17, 2021

Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN, PC

By:   
TODD M. FRIEDMAN, ESQ.  
Attorney for Plaintiff ARI SCHWARTZ

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Calif. Homeowner Claims He was Misled About Bank of America Mortgage Deferral, Forbearance](#)

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