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11 *Attorneys for Plaintiffs*

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

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

Plaintiffs,

18 vs.

19 DISCOVER BANK, a Delaware
20 corporation,

21 Defendant.

Case No. 3:20-cv-06896-SI

**SECOND AMENDED COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF AND
DAMAGES**

CLASS ACTION

DEMAND FOR JURY TRIAL

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

4 **INTRODUCTION**

5 1. Defendant Discover Bank follows a policy of denying full access to student loans,
6 loans consolidating and refinancing pre-existing student loans, and other loan and credit
7 products, including mortgage refinancing and home equity credit lines, to applicants who are not
8 United States citizens or Legal Permanent Residents (“LPRs”).

9 2. Plaintiffs and members of the Class they seek to represent were and are unable to
10 access Defendant’s financial services without unequal conditions imposed upon them due to their
11 immigration status. Plaintiffs bring this case against Discover Bank for unlawful discrimination
12 on the basis of alienage in violation of the Civil Rights Act of 1866, as codified by 42 U.S.C. §
13 1981 (“Section 1981”) and the Unruh Civil Rights Act, as codified by California Civil Code §§
14 51 *et seq.*

15 **JURISDICTION AND VENUE**

16 3. This Court has subject matter jurisdiction over Plaintiffs’ Section 1981 claims
17 pursuant to 28 U.S.C. § 1331. This Court has supplemental jurisdiction over Plaintiffs’ state law
18 claims pursuant to 28 U.S.C. § 1367.

19 4. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C.
20 §§ 2201 and 2202.

21 5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a
22 substantial part of the events giving rise to the claims occurred in this district.

23 6. Intradistrict Assignment: Pursuant to N.D. Cal. Local Rules 3-2(c) and (d),
24 intradistrict assignment to the San Francisco Division is proper because a substantial part of the
25 events which give rise to the claims asserted herein occurred in San Mateo County.

26 //

27 //

PARTIES

Plaintiffs

7. Plaintiff Iliana Perez (“Plaintiff Perez”) is a resident of San Francisco County. Plaintiff Perez resided in San Mateo County on the date she applied for a loan from Defendant and was unlawfully denied.

8. Plaintiff Flavio Guzman Magaña (“Plaintiff Guzman Magaña”) is a resident of Los Angeles County and has resided in Los Angeles County continuously since he applied for and received loan funds with unequal and unlawful conditions imposed by Defendant.

9. Plaintiff Josue Jimenez Magaña (“Plaintiff Jimenez”) is a resident of Stanislaus County and has resided in Stanislaus County since he applied for a loan from Defendant and was unlawfully denied.

10. Plaintiffs and the members of the Class they seek to represent were subjected to the violations described in this Complaint.

Defendant

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

FACTUAL BACKGROUND

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

Plaintiff Iliana Perez

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

1 14. In or around December 2010, Citibank sold The Student Loan Corporation, the
2 holder of Plaintiff Perez's student loan, to Defendant.

3 15. In or around October 2012, Plaintiff Perez applied for Deferred Action for
4 Childhood Arrivals (commonly known as "DACA"). As part of the DACA initiative, Plaintiff
5 Perez requested and received authorization to work in the United States and a Social Security
6 Number ("SSN"). When Plaintiff Perez received her work authorization documents and SSN,
7 she informed Defendant of this information.

8 16. Over the lifetime of Plaintiff Perez's loan, the interest rate has varied on a
9 monthly basis, reaching over ten percent several times.

10 17. Plaintiff Perez has been diligent in making loan payments on time and paying
11 more than the minimum payment required by Defendant.

12 18. On or around July 2018, Plaintiff Perez accessed a loan application through
13 Defendant's website, www.discover.com, to apply for what Defendant calls a "Private
14 Consolidation Loan." Plaintiff Perez desired to refinance her loan to pay a lower interest rate.
15 Plaintiff Perez applied for a \$19,900 loan.

16 19. On Defendant's website, there is a section specifically for "Student Loans." This
17 section includes webpages for each type of student loan serviced by Defendant, including
18 Undergraduate, Law, Bar Exam, Residency, and Graduate. Each webpage contains a "Common
19 Questions" section. On the "Student Loan Consolidation" webpage, one of the "Common
20 Questions" is: "Am I eligible for a private consolidation loan?" The answer: "To qualify, you
21 must: Be a US citizen or permanent resident with a US-based address." Additionally, Question
22 10 of the on-line application requests the "Citizenship" of the Borrower. The three options are
23 "U.S. Citizen," "Permanent Resident," and "International Student." Question 11 requests
24 "Country of Citizenship." Plaintiff Perez did not answer Question 11 on her application.

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

27 21. On or around August 3, 2018, Plaintiff Perez received a letter from Defendant
28

1 confirming receipt of Plaintiff's online application. The letter included a copy of Plaintiff
2 Perez's application and examples of the interest rates available for fixed and variable loans
3 offered by Defendant. Defendant's loan criteria, included with this letter, required that the
4 borrower and any cosigner be either a U.S. citizen or LPR.

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

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

21 **Plaintiff Flavio Guzman Magaña**

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

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

1 26. Defendant's online application required Plaintiff Guzman Magaña to identify as
2 either a "U.S. citizen," a "Permanent Resident," or as an "International Student." Since he is not
3 a U.S. citizen or permanent resident, Plaintiff Guzman Magaña marked the box for International
4 Student. Since he applied as an International Student, the application informed Plaintiff Guzman
5 Magaña that he would need to apply with a co-signer who was either a U.S. citizen or LPR.
6 Additionally, the application indicated that Plaintiff Guzman Magaña may need to submit his
7 own passport, an I-797 form from USCIS, his Employment Authorization card, and his DACA
8 card.

9 27. Plaintiff Guzman Magaña listed his wife, a U.S. citizen, as co-signer to the loan.
10 He uploaded the requested documents on August 18 and August 22, 2016. His loan application
11 was approved, and Defendant disbursed Plaintiff Guzman Magaña's funds shortly thereafter.

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

14 29. To this date, Plaintiff Guzman Magaña has been making timely payments on his
15 graduate student loan and continues to be required by Defendant to have a U.S. citizen or
16 permanent-resident co-signer for his loan.

17 **Plaintiff Josue Jimenez-Magaña**

18 30. Plaintiff Jimenez was brought to the United States as an infant in or
19 around 1994, and has lived in the Modesto, California area ever since. In the roughly 27 years
20 since being brought to California, Plaintiff Jimenez has never left the United States. He obtained
21 DACA in or around 2013, at which time he also obtained an EAD and an SSN.

22 32. Plaintiff Jimenez studied nursing at Modesto Junior College and currently works
23 as a cardiac nurse. He is also contemporaneously studying for his master's degree in nursing
24 online from Regis College. As a cardiac nurse, Plaintiff Jimenez is responsible for sensitive
25 patient care responsibilities for vulnerable patients, including those who have suffered heart
26 attacks and strokes.

1 33. Earlier during the pandemic, Plaintiff Jimenez dramatically shifted roles to care
2 for patients who were very ill from COVID-19, and was one of the estimated hundreds of
3 thousands of DACA recipients fighting the disease on the front lines.

4 34. Plaintiff Jimenez has an excellent credit score, maintains a sizable annual income
5 from his work as a nurse, and he owns his own home. In 2021, Plaintiff Jimenez sought to
6 further his financial goals by investing in his own small business franchise providing home
7 healthcare services to needy individuals in the Central Valley and potentially elsewhere.

8 35. Accordingly, in March 2021 Plaintiff Jimenez called Defendant's customer
9 service line with the intention to secure one or more financial products, including a home equity
10 line of credit ("HELOC") to help fund his small business venture. According to Defendant,¹ a
11 HELOC "lets you borrow a fixed amount, secured by the equity in your home, and receive your
12 money in one lump sum. Typically, home equity loans have a fixed interest rate, fixed term and
13 fixed monthly payment. Interest on a home equity loan may be tax deductible under certain
14 circumstances."²

15 36. During his phone call with Defendant, Plaintiff Jimenez shared details about his
16 finances and the loan officer told Plaintiff Jimenez that he would be approved for a HELOC in
17 an amount over \$70,000. The loan officer proceeded to ask Plaintiff Jimenez about his
18 citizenship status and upon learning of Plaintiff Jimenez's status as a DACA recipient told him
19 that Defendant does not loan or extend credit to non-LPRs.

20
21 ¹ See <https://www.discover.com/home-equity-loans/>.

22 ² Under the Truth in Lending Act and its implementing regulations, no "residential
23 mortgage loan and no extension of credit under an open end consumer credit plan secured by the
24 principal dwelling of the consumer may include terms which require arbitration or any other
25 nonjudicial procedure as the method for resolving any controversy or settling any claims arising
26 out of the transaction." 15 U.S.C. § 1639c(e)(1); 12 CFR § 1026.36(h)(1) ("A contract or other
27 agreement for a consumer credit transaction secured by a dwelling (including a home equity line
28 of credit secured by the consumer's principal dwelling) may not include terms that require
arbitration or any other non-judicial procedure to resolve any controversy or settle any claims
arising out of the transaction.").

37. Defendant's online application platform confirms that Discover only offers HELOCs to citizens and LPRs. The section of Defendant's online application requesting immigration status lists three options: US Citizen, Permanent Resident, or "Neither." Upon selecting "Neither," Defendant's website automatically generates a message stating, "Unfortunately we only offer loans to U.S. Citizens and Permanent Residents at this time."

38. Plaintiff Jimenez was therefore denied the opportunity to secure a HELOC or other loan product from Defendant on the basis of his status as a DACA recipient.

CLASS ACTION ALLEGATIONS

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

40. Plaintiffs bring this action on behalf of themselves and all others similarly situated under Rule 23 of the Federal Rules of Civil Procedure on behalf of a nationwide class.

41. Plaintiffs seek to represent the following nationwide Class ("National Class"), composed of and defined as follows:

All persons who resided in the United States at the relevant time they 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 alienage.

42. Plaintiffs additionally bring class allegations on behalf of a California Subclass defined as follows:

All persons who resided in California at the relevant time they 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.

43. 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 Rule 23 of the Federal Rules of Civil Procedure because all the prerequisites for class treatment are met.

Rule 23(a)(1) - Numerosity

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

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

Rule 23(a)(2) – Common Questions of Law and Fact

46. 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. For Plaintiffs and members of the National Class, whether Defendant violated 24 U.S.C. § 1981 by denying full and equal access to its services on the basis of alienage;

b. For Plaintiffs and members of the California subclass, 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;

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

d. Whether Plaintiffs and the Class Members are entitled to damages and any other relief.

Rule 23(a)(3) - Typicality

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

Rule 23(a)(4) - Adequacy of Representation

48. Plaintiffs will fairly and adequately represent and protect the interests of the Class members.

49. Plaintiffs' counsel is competent and experienced in litigating class actions.

Superiority of Class Action

50. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class members is not practicable, and

1 questions of law and fact common to the Class predominate over any questions affecting only
2 individual Class members. Each member of the proposed Class has been damaged and is entitled
3 to recovery by reason of Defendant's unlawful policies and practices of discriminating on the
4 basis of immigration status and denying full and equal access to Defendant's services.

5 51. No other litigation concerning this controversy has been commenced by or against
6 Class members.

7 52. Class action treatment will allow those similarly situated persons to litigate their
8 claims in the manner that is most efficient and economical for the parties and the judicial system.
9 It is unlikely that individual Class members have any interest in individually controlling separate
10 actions in this case.

11 53. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
12 management of this action that would preclude its maintenance as a class action. The benefits of
13 maintaining this action on a class basis far outweigh any administrative burden in managing the
14 class action. Conducting the case as a class action would be far less burdensome than
15 prosecuting numerous individual actions.

16
17 **FIRST CLAIM FOR RELIEF**
18 **Alienage Discrimination**
(42 U.S.C. § 1981)

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

20 55. Plaintiffs Perez, Guzman Magaña, and Jimenez bring this claim on their own
21 behalf and on behalf of the National Class.

22 56. Plaintiffs are persons within the jurisdiction of the United States.

23 57. Plaintiffs are aliens.

24 58. Plaintiffs have the right to make and enforce contracts in the United States and are
25 entitled to the full and equal benefits of the law.

26 59. Defendant conducts business in the United States and, as such, is obligated to
27 comply with the provisions of 42 U.S.C. § 1981.

60. Defendant intentionally discriminated against Plaintiffs and members of the Class on the basis of alienage by denying them the opportunity to contract for a loan free of additional conditions.

61. Defendant intentionally discriminated against Plaintiffs and members of the Class by interfering with their right to make and enforce contracts for financial products on the basis of alienage.

62. Plaintiffs request that the Court issue a permanent injunction ordering Defendant to alter its lending policies and practices to prevent further violations on the basis of alienage. Plaintiffs and the Class they seek to represent are now suffering, and will continue to suffer, irreparable injury from Discover Bank's discriminatory acts and omissions.

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

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

64. Plaintiffs bring this claim on their own behalf and on behalf of the California Subclass.

65. Plaintiffs are persons within the jurisdiction of the State of California and resided in California at the time of Defendant's discriminatory acts.

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

67. Plaintiffs are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever no matter their immigration status and no business establishment of any kind whatsoever may refuse to contract with Plaintiffs because of or due in part their immigration status.

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vii. 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 23, 2021

Respectfully submitted,

MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND

/s/ Deylin Thrift-Viveros

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Thomas A. Saenz

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