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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.

Electronically  
**FILED**

by Superior Court of California, County of San Mateo

ON 7/22/2020

By /s/ Una Finau  
Deputy Clerk

Case No. 20-CIV-03045

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

**DEMAND FOR JURY TRIAL**

Judge:  
Dept:

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  
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 because of  
11 their immigration status.

#### 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.

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 Iliana 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    

18    ///

19    ///

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24    ///

25    ///

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

9 23. Defendant's online application required Plaintiff Guzman Magaña to identify as  
10 either a "U.S. citizen," a "Permanent Resident," or as an "International Student." Since he is not  
11 a U.S. citizen or permanent resident, Plaintiff Guzman Magaña marked the box for International  
12 Student. Since he applied as an International Student, the application informed Plaintiff Guzman  
13 Magaña that he would need to apply with a co-signer who was either a U.S. citizen or LPR.  
14 Additionally, the application indicated that Plaintiff Guzman Magaña may need to submit his  
15 own passport, an I-797 form from USCIS, his Employment Authorization card, and his DACA  
16 card.  
17

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.  
27

**CLASS ACTION ALLEGATIONS**

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  
8     Plaintiffs and all Class members sustained injuries and damages arising out of and caused by  
9     Defendant's common course of conduct in violation of California laws, regulations, and statutes  
10    as alleged here.

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

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

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

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

9

10                                   **DEMAND FOR JURY TRIAL**

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

12


13           Dated: July 22, 2020

14

15           Respectfully submitted,

16

MEXICAN AMERICAN LEGAL DEFENSE  
AND EDUCATIONAL FUND

17                                     
18                                   Deylin Thrift-Viveros

Thomas A. Saenz

Belinda Escobosa Helzer

19                                   MEXICAN AMERICAN LEGAL DEFENSE  
20                                   AND EDUCATIONAL FUND

21                                   *Attorneys for Plaintiffs Iliana Perez and Flavio*  
22                                   *Guzman Magaña*

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