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14 **UNITED STATES DISTRICT COURT FOR THE**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**

17 ILIANA PEREZ, JOSUE JIMENEZ
18 MAGAÑA, and EMILIANO GALICIA
19 FELIX, individuals, on behalf of
20 themselves and all others similarly situated,

20 Plaintiffs,

21 v.

22 DISCOVER BANK, a Delaware
23 corporation,

24 Defendant.

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

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

CLASS ACTION

DEMAND FOR JURY TRIAL

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

5 **INTRODUCTION**

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

10 2. Plaintiffs and members of the Class they seek to represent were and are unable to
11 access Defendant’s financial services without unequal conditions imposed upon them due to their
12 immigration status. Plaintiffs bring this case against Discover Bank for unlawful discrimination
13 on the basis of alienage in violation of the Civil Rights Act of 1866, as codified by 42 U.S.C. §
14 1981 (“Section 1981”) and the Unruh Civil Rights Act, as codified by California Civil Code §§
15 51 *et seq.*

16 **JURISDICTION AND VENUE**

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

20 4. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C.
21 §§ 2201 and 2202.

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

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

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1 **PARTIES**

2 **Plaintiffs**

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

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

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

12 10. Plaintiff Emiliano Galicia Félix (“Plaintiff Galicia”) is a resident of Ventura,
13 California and has resided in Ventura County since he applied for loans from Defendant and was
14 unlawfully denied.

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

17 **Defendant**

18 12. Defendant Discover Bank is a Delaware corporation registered with the California
19 Secretary of State as a foreign corporation qualified to conduct business in the State of
20 California. Defendant maintains a business address at 12 Read’s Way, New Castle, Delaware,
21 19720, and a mailing address at 2500 Lake Cook Road, Riverwoods, Illinois, 60015.

22 **FACTUAL BACKGROUND**

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

25 **Plaintiff Iliana Perez**

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

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

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

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

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

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

19 20. On Defendant's website, there is a section specifically for "Student Loans." This
20 section includes webpages for each type of student loan serviced by Defendant, including
21 Undergraduate, Law, Bar Exam, Residency, and Graduate. Each webpage contains a "Common
22 Questions" section. On the "Student Loan Consolidation" webpage, one of the "Common
23 Questions" is: "Am I eligible for a private consolidation loan?" The answer: "To qualify, you
24 must: Be a US citizen or permanent resident with a US-based address." Additionally, Question
25 10 of the on-line application requests the "Citizenship" of the Borrower. The three options are
26 "U.S. Citizen," "Permanent Resident," and "International Student." Question 11 requests
27 "Country of Citizenship." Plaintiff Perez did not answer Question 11 on her application.
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1 21. Plaintiff Perez submitted a signed online application with Defendant and included
2 proof of income, a copy of her social security card, and a copy of her DACA card.

3 22. On or around August 3, 2018, Plaintiff Perez received a letter from Defendant
4 confirming receipt of Plaintiff's online application. The letter included a copy of Plaintiff
5 Perez's application and examples of the interest rates available for fixed and variable loans
6 offered by Defendant. Defendant's loan criteria, included with this letter, required that the
7 borrower and any cosigner be either a U.S. citizen or LPR.

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

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

24 **Plaintiff Flavio Guzman Magaña**

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

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

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

13 28. Plaintiff Guzman Magaña listed his wife, a U.S. citizen, as co-signer to the loan.
14 He uploaded the requested documents on August 18 and August 22, 2016. His loan application
15 was approved, and Defendant disbursed Plaintiff Guzman Magaña’s funds shortly thereafter.

16 29. Defendant’s website indicates that only student loan applicants classified as
17 “international students” are required to apply with a U.S. citizen or permanent-resident co-signer.

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

21 **Plaintiff Josue Jimenez-Magaña**

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

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

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

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

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

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

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

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

5 **Plaintiff Emiliano Galicia Félix**

6 39. Plaintiff Galicia has lived in the United States since he was an 11-year-old child,
7 having been brought to the United States in 1994. Mr. Galicia grew up in Southern California,
8 and he currently resides in Moorpark, California.

9 40. Plaintiff Galicia graduated from California State University, Northridge with a
10 Bachelor’s Degree in Computer Engineering in 2005. Plaintiff Galicia earned a Master’s of
11 Science in Engineering Management in 2006.

12 41. From approximately 2007 to 2013, Plaintiff Galicia built a successful consulting
13 company and also acquired his own real estate properties.

14 42. Plaintiff Galicia has had DACA, federal work authorization, and a valid SSN
15 since approximately 2012. After he received DACA, Plaintiff Galicia secured full-time
16 employment as a computer engineer, and he has also continued his real estate business.

17 43. In or around November 2021, Plaintiff Galicia applied for a personal loan from
18 Defendant. On November 17, 2021, Defendant sent Plaintiff Galicia a denial notice “because”
19 he was a “Temporary Resident.”

20 44. Plaintiff Galicia does not recall encountering an arbitration provision within his
21 application for a personal loan. However, on December 10, 2021, Plaintiff Galicia mailed a
22 letter to Discover Bank opting out of any arbitration provision imposed by Defendant in its
23 application processes.

24 45. Defendant denied Plaintiff Galicia the opportunity to secure a personal loan and
25 other loan products from Defendant on the basis of his status as a DACA recipient.

26 **CLASS ACTION ALLEGATIONS**

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

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

3 48. Plaintiffs seek to represent the following nationwide Class (“National Class”),
4 composed of and defined as follows:

5 All individuals who: (1) according to Discover’s records, applied for credit from
6 Discover’s student, personal or home loan lines of business between July 22, 2018, and
7 the date of preliminary approval and were either declined credit or received credit after
8 meeting Discover’s requirement to have a United States citizen or lawful permanent
9 United States resident co-signer; and (2) were recipients of valid and unexpired DACA,
resided in the United States and were not citizens of the United States or lawful
permanent United States residents at the time of the Discover loan application.

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

12 All persons who resided in California and (1) applied for credit from Discover’s student,
13 personal or home loan lines of business between July 22, 2018, and the date of
14 preliminary approval and were either declined credit or received credit after meeting
15 Discover’s requirement to have a United States citizen or lawful permanent United States
16 resident co-signer; and (2) were recipients of valid and unexpired DACA, resided in the
17 United States and were not citizens of the United States or lawful permanent United
States residents at the time of the Discover loan application. applied for or attempted to
apply for a financial product from Discover Bank

18 50. Plaintiffs may amend the above class definition as permitted or required by this
19 Court. This action has been brought and may properly be maintained as a class action under the
20 provisions of Rule 23 of the Federal Rules of Civil Procedure because all the prerequisites for
21 class treatment are met.

22 **Rule 23(a)(1) - Numerosity**

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

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

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

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

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

7 b. For Plaintiffs and members of the California subclass, whether Defendant violated
8 the California Unruh Civil Rights Act by denying full and equal access to its services on the
9 basis of an applicant’s immigration status;

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

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

14 **Rule 23(a)(3) - Typicality**

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

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

20 55. Plaintiffs will fairly and adequately represent and protect the interests of the Class
21 members.

22 56. Plaintiffs’ counsel is competent and experienced in litigating class actions.

23 **Superiority of Class Action**

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

3 58. No other litigation concerning this controversy has been commenced by or against
4 Class members.

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

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

14
15 **FIRST CLAIM FOR RELIEF**
16 **Alienage Discrimination**
(42 U.S.C. § 1981)

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

18 62. Plaintiffs bring this claim on their own behalf and on behalf of the National Class.

19 63. Plaintiffs are persons within the jurisdiction of the United States.

20 64. Plaintiffs are aliens.

21 65. Plaintiffs have the right to make and enforce contracts in the United States and are
22 entitled to the full and equal benefits of the law.

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

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

1 three times the amount of actual damages suffered per violation, but no less than \$4,000, and
2 attorneys' fees.

3 77. Pursuant to Section 52(c), Plaintiffs request that this Court issue a permanent
4 injunction ordering Defendant to alter its lending policies and practices to prevent future
5 discrimination on the basis of an applicant's immigration status to prevent further violations of
6 the Unruh Act.

7 **RELIEF**

8 WHEREFORE, PLAINTIFFS request the following relief:

- 9 i. That this Court certify the proposed class;
- 10 ii. That this Court certify Plaintiffs as class representatives on behalf of their
11 respective class and subclass;
- 12 iii. That this Court issue a declaratory judgment that Defendant's policies have been
13 discriminatory and violate 42 U.S.C. § 1981 and the California Unruh Civil
14 Rights Act;
- 15 iv. A preliminary and permanent injunction against Defendants and its officers,
16 agents, successors, employees, representatives, and any and all persons acting in
17 concert with them, from engaging in each of the unlawful policies and practices
18 set forth herein;
- 19 v. That this court award statutory and compensatory damages to Plaintiffs and the
20 Class members in an amount to be determined at trial;
- 21 vi. That this court award to Plaintiffs and Class members reasonable attorneys' fees
22 and costs to the extent allowable by law;
- 23 vii. For such other and further relief as the Court deems just and proper.

24 **DEMAND FOR JURY TRIAL**

25 Plaintiffs hereby demand trial of these claims by jury to the extent authorized by law.
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Dated: January 17, 2024

Respectfully submitted,

/s/ Ossai Miazad

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