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 By Alicia Espinoza, Deputy
 CASE NUMBER:
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

SALAM RAZUKI, individually and on behalf
 of others similarly situated,

 Plaintiffs,

 v.
 PACIFIC UNION FINANCIAL, LLC, a
 California limited liability company, and DOES
 1 through 100 inclusive,

 Defendant.

CASE NO.
CLASS ACTION COMPLAINT FOR:
 1. **VIOLATION OF THE CALIFORNIA
 UNFAIR BUSINESS PRACTICES
 ACT (CAL. BUS. & PROF. CODE §
 17200, ET. SEQ.); AND**
 2. **BREACH OF CONTRACT**
DEMAND FOR JURY TRIAL

Plaintiff, SALAM RAZUKI, an individual (“Plaintiff” or “Razuki”), brings this action against Defendant, PACIFIC UNION FINANCIAL, LLC, a limited liability company registered with the California Secretary of State (“Defendant” or “Pacific Union”), and DOES 1 through 100, inclusive, on behalf of himself and all others similarly situated, and alleges on information and belief as follow:

I. INTRODUCTION AND GENERAL ALLEGATIONS

1. PACIFIC UNION FINANCIAL, LLC’s (“Defendant”) direct, *per se* violation of California and other states’ laws requiring a mortgage lender making loans secured by property to pay the borrower interest for money received in advance from the borrower for tax and insurance. Defendant, like many mortgage lenders, require a large percentage of their borrowers to maintain

1 an impound escrow account in connection with their mortgage. Defendant collects money from
2 their borrowers in advance and places it in the escrow account to pay the property tax and
3 insurance on the property. When the property tax and insurance becomes due, Defendant pays it
4 directly from the borrower's escrow account.

5 2. These additional and significant deposits made by the mortgagor to maintain the
6 escrow account are the borrowers' funds in which mortgage lenders have use of for investment,
7 and therefore, California law requires that the mortgage lenders, including Defendant, pay at least
8 2% interest on the monies to the borrowers.

9 3. California Civil Code section 2954.8(a) mandates:

10 (a) **Every financial institution that makes loans upon the**
11 **security of real property** containing only a one- to four-family
12 residence and located in this state or purchases obligations secured
13 by such property and that receives money in advance for payment
14 of taxes and assessments on the property, for insurance, or for
15 other purposes relating to the property, **shall pay interest on the**
16 **amount so held to the borrower. The interest on such**
amounts shall be at the rate of at least 2 percent simple interest
per annum. Such interest shall be credited to the borrower's
account annually or upon termination of such account, whichever
is earlier.

17 (Emphasis added.) State escrow interest laws, such as the one set forth in California Civil Code,
18 section 2954.8, do not prevent or significantly interfere with the exercise of national bank powers,
19 and Section 2954.8 is not preempted by the National Bank Act ("NBA"). (*Lusnak v. Bank of*
20 *America, N.A.* (9th Cir. 2018) 883 F.3d 1185, 1188.)

21 4. However, Defendant systematically and uniformly adopted a policy to violate
22 California law by refusing to pay the mandated interest to borrowers, thereby enriching itself on
23 the free use of borrowers' escrow funds that Defendant earns interest on.

24 5. Plaintiff Salam Razuki entered into mortgage contracts with Defendant, wherein,
25 based on the express terms of the contracts, and the reading into the contract the requirement of
26 Civil Code, section 2954.8(a), he was required to deposit funds into an escrow account, and
27 Defendant would be required to pay interest on the escrow if applicable laws so required. The
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1 boilerplate, adhesive, and non-negotiable terms of the mortgage agreements drafted by Defendant
2 require the escrow account to comply with applicable law.

3 6. Throughout the term of the mortgage contract, Plaintiff has been required to make
4 approximately \$1,045.52 in monthly payments to Defendant, in addition to the regular monthly
5 mortgage payment, for the pre-payment of property tax and insurance on the property. Based on
6 information and belief, Defendant has use of those funds at all times, between the time when such
7 funds were received from Plaintiff to the time when Defendant made tax and insurance payments
8 on Plaintiff's property. However, Plaintiff has never received interest from Defendant on the
9 monies he prepaid, and which monies were held by Defendant for the payment of the property
10 taxes and insurance.

11 7. Plaintiff has continuously deposited funds into his escrow account, which are due
12 every month for approximately \$1,045.52. However, Plaintiff has never received from Defendant
13 interest on the monies he prepaid, and which monies were held by Defendant for the payment of
14 the property taxes and insurance. While the agreements drafted by Defendant in the mortgage
15 required the creation of an escrow account and that Plaintiff deposit funds into the escrow account,
16 there was no contractual agreement that Defendant would be permitted to withhold the interest
17 accrued on these accounts, and instead required that the interest would be handled pursuant to
18 applicable state and federal laws. Civil Code, section 2954.8(a) is an applicable state law.
19 Therefore, Defendant is obligated to comply with this state law, as discussed above, in performing
20 its obligations under the agreements and therefore, pursuant to its own contract as well as specific
21 California law, must pay interest on Plaintiff's impound escrow account.

22 8. Therefore, Plaintiff, for himself and all others similarly situated (*i.e.*, the members
23 of the Plaintiff Class described and defined within this Complaint), brings this action for restitution
24 and reimbursement, equitable injunctive relief and declaratory relief, pursuant to the California
25 Unfair Competition Laws ("UCL"), California Business and Professions Code section 17200, *et*
26 *seq.*; and breach of contract.

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1 other Co-Defendants and acted within the course, purpose, and scope of their agency, service, or
2 employment. All conduct was ratified by Defendants, and each of them.

3 **IV. CLASS ACTION ALLEGATIONS**

4 15. Pursuant to Code of Civil Procedure, section 382, Plaintiff brings this lawsuit as a
5 class action on behalf of himself and all other similarly situated members of the Class, defined
6 below. This action satisfies the ascertainability, numerosity, commonality, typicality, adequacy,
7 predominance, and superiority requirements of class actions.

8 16. **Class Period:** The Class Period shall be four years prior to the initiation of this
9 action through the date to be determined by the Court. To the extent equitable or other forms of
10 tolling apply, Plaintiff reserves the right to amend this period.

11 17. **Class Definition:** The Class is defined as follows:

12 *All mortgage loan customers of Defendant (or its subsidiaries),*
13 *whose mortgage loan is for a one-to-four family residence located*
14 *in California, Connecticut, Iowa, Maine, Maryland,*
15 *Massachusetts, Minnesota, New Hampshire, New York, Oregon,*
16 *Rhode Island, Utah, Vermont, and/or Wisconsin and who paid*
Defendant money in advance for payment of taxes and assessments
on the property, for insurance, or for other purposes relating to the
property, and did not receive interest on the amount held by
Defendant (The "Class").

17 18. Plaintiff also seeks to represent a subclass defined as:

18 *All mortgage loan customers of Defendant (or its subsidiaries),*
19 *whose mortgage loan is for a one-to-four family residence located*
20 *in California and who paid Defendant money in advance for*
21 *payment of taxes and assessments on the property, for insurance,*
or for other purposes relating to the property, and did not receive
interest on the amount held by Defendant (The "California Sub-
Class").

22 19. Members of the class will be collectively referred to as the "Class." Excluded from
23 the Class are: (1) Defendant, entities in which Defendant has a controlling interest, and their legal
24 representatives, officers, directors, assigns, and successors; and (2) the judge to whom this case is
25 assigned and any member of the judge's immediate family.

26 20. Plaintiff reserves the right to amend or modify the above Class definition and to add
27 additional classes and subclasses as appropriate based on investigation, discovery, and the specific
28 theories of liability.

1 21. **Numerosity:** The potential members of the Class are so numerous that joinder of
2 all members is impracticable. While the precise number of Class members has not been
3 determined, Plaintiff is informed and believes that Defendant has access to data sufficient to
4 identify all class members and all relevant payments.

5 22. **Ascertainability:** Plaintiff is informed and believes that Class members may be
6 identified through business records regularly maintained by Defendant and its employees and
7 agents, and through the media, the number, identities and locale of all Class members can be
8 ascertained. Members of the Class can be notified of the pending action by e-mail, mail, and
9 supplemented by published notice, if necessary.

10 23. **Adequacy of Representation:** The representative Plaintiff is fully prepared to take
11 all necessary steps to fairly and adequately represent and protect the interests of the class defined
12 above. Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the class
13 and individual Plaintiff. Plaintiff's attorneys are highly experienced in consumer class action
14 litigation. Plaintiff intends to prosecute this action vigorously.

15 24. **Common Questions of Law and Fact:** There are predominant common questions
16 of law and fact and a community of interest amongst Plaintiff's and the claims of the Class
17 concerning:

- 18 a. Whether Defendant violated California Civil Code, section 2954.8(a) by
19 failing to pay interest on borrowers' money it held for pre-payment of
20 property taxes, insurance, and other purposes;
- 21 b. Whether Defendant has systematically engaged in a conduct that is a per se
22 violation of state and federal laws with respect to the disbursement of the
23 interest accrued on escrow accounts back to the customers;
- 24 c. Whether Defendant's conduct breached the mortgage agreements with its
25 customers;
- 26 d. Whether Defendant must provide damages, restitution, and/or
27 reimbursement to borrowers in the amount of unpaid interest on funds held
28 in impound escrow accounts based on the causes of action asserted here; and

1 e. Whether injunctive relief is appropriate to prohibit Defendant from
2 engaging in this type of conduct in the future.

3 25. **Typicality:** The claims of the Plaintiff are typical of the claims of all members of
4 the Class. Plaintiff, like all other members of the Class, has sustained damages arising from
5 Defendant's violations of the laws as alleged herein. The representative Plaintiffs and the
6 members of the Class were and are similarly or identically harmed by the same unlawful,
7 deceptive, unfair, systematic, and pervasive pattern of misconduct engaged in by Defendant.

8 26. **Community of Interest:** There is a well-defined community of interest among
9 Class Members, and the disposition of the claims of the Class Members in a single action will
10 provide substantial benefits to all parties and to the Court. Defendant acted on grounds that apply
11 generally to the class, so that final injunctive relief or corresponding declaratory relief is
12 appropriate respecting the class as a whole.

13 27. **Superiority of Class Action:** A class action is superior to other available means
14 for the fair and efficient adjudication of this controversy. Individual joinder of all class members is
15 not practicable, and questions of law and fact common to the Classes predominate over questions
16 affecting only individual Class members. Each Class member has been damaged and is entitled to
17 recovery due to Defendant's conduct described in this Complaint. A class action will allow those
18 similarly situated to litigate their claims in the most efficient and economical manner for the
19 parties and the judiciary. Plaintiff is unaware of any difficulties likely to be encountered in this
20 action that would preclude its maintenance as a class action.

21 **V. FIRST CAUSE OF ACTION**

22 **VIOLATION OF CALIFORNIA UNFAIR BUSINESS PRACTICES ACT**
23 **(CAL. BUS. & PROF. CODE, § 17200, ET SEQ.)**

24 28. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

25 29. Plaintiff brings this cause of action on behalf of himself and the Class and the
26 California Sub-Class.

1 30. The Unfair Business Practices Act defines unfair business competition to include
2 any “unfair,” “unlawful,” or “fraudulent” business act or practice. The Act also provides for
3 injunctive relief, restitution, and disgorgement of profits for violations.

4 31. Defendant’s unlawful, unfair, and fraudulent business acts and practices are
5 described throughout this Complaint and include, but are not limited to the following. Defendant
6 has and continues to engage in a practice of failing to pay interest to its borrowers on impound
7 escrow account, as required by the laws of California, thereby illegally profiting from the use of
8 interest free funds in thousands of mortgage accounts. This is a *per se* violation California Civil
9 Code, section 2954.8, and United States Code, title 15, section 1639d(g).

10 32. Plaintiff and the Class have suffered injury in fact as a direct result of Defendants’
11 failures, as described in the preceding paragraphs and as will be detailed through discovery. As
12 such, Plaintiff and the Class request damages in an amount to be proven at trial and also seek
13 injunctive relief as prayed for below.

14 33. Pursuant to Business & Professions Code, section 17203, Plaintiff seeks an order
15 requiring Defendants to immediately cease such acts of unlawful, unfair and fraudulent business
16 practices. If Defendant is not enjoined from engaging in the unlawful business practices described
17 above, Plaintiff, the Class, and the general public will be irreparably injured. The exact extent,
18 nature, and amount of such injury is difficult to ascertain at this time.

19 34. Plaintiff and the Class have no plain, speedy, and adequate remedy at law.

20 35. Plaintiff and the Class reserve the right to allege other violations of law which
21 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this
22 date. Defendant, if not enjoined by this Court, will continue to engage in the unlawful business
23 practices described above in violation of the UCL, in derogation of the rights of Plaintiff, the
24 Class, and of the general public.

25 36. Finally, the success of Plaintiff in this action will result in the enforcement of
26 important rights affecting the public interest by conferring a significant benefit upon the general
27 public. Private enforcement of these rights is necessary as no public agency has pursued
28 enforcement. There is a financial burden incurred in pursuing this action, and it would be against

1 the interests of justice to require the payment of attorneys' fees from any recovery in this action.
2 Plaintiffs are therefore entitled to an award of attorney's fees and costs of suit pursuant to Code of
3 Civil Procedure, section 1021.5.

4 **VI. SECOND CAUSE OF ACTION**

5 **BREACH OF CONTRACT**

6 37. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

7 38. Plaintiff brings this cause of action on behalf of himself and the Class and the
8 California Sub-Class.

9 39. Defendant was bound by the mortgage agreements with Plaintiff and the Class, and
10 was a signatory thereto.

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12 40. Plaintiff, and all others similarly situated, did all, or substantially all, of the
13 significant things that the agreements required them to do.

14 41. Meanwhile, Defendant failed to perform the express terms of the agreements which
15 stated Defendant would comply with applicable state and federal law, which included the state and
16 federal law that mandated Defendant pay interest to borrowers for funds collected on an impound
17 escrow account. As such, and as set forth above, Defendant breached an express term of the
18 agreements.

19 42. As a result, Plaintiff, the Class, and the California Sub-Class members have been
20 harmed by Defendant's breach of contract.

21 **VII. PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, on behalf of himself and the members of the Class, demands
23 judgment against, and general and specific relief from, Defendant as follows:

24 1. An order certifying the Class as described herein, and appointing Plaintiff and his
25 counsel of record to represent the defined Class and California Sub-Class;

26 2. An order enjoining Defendant under California Business and Professions Code,
27 section 17203:
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- a. To cease such acts and practices declared by this Court to be an unlawful, fraudulent, or an unfair business act or practice, a violation of laws, statutes, or regulations, or constituting unfair competition; and
- b. To disgorge all profits and compensation improperly obtained by Defendant as a result of such acts and practices declared by this Court to be an unlawful, fraudulent, or unfair business act or practice, a violation of laws, statutes, or regulations, or constituting unfair competition;
- 3. For damages under the cause of action for breach of contract;
- 4. For reasonable attorney’s fees and costs, pursuant to California Code of Civil Procedure, section 1021.5, and other statutes as may be applicable, as well as provided by the contract;
- 5. For prejudgment and post-judgment interest where allowed by law;
- 6. For costs of suit incurred herein;
- 7. For restitution; and
- 8. For such other and further relief as this Court may deem just and proper.

VII. JURY DEMAND

Plaintiff requests a jury on all triable issues.

Respectfully submitted:

Dated: November 30, 2018

NICHOLAS & TOMASEVIC, LLP

By: 

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