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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA**

TONY CALHOUN and JANELL
CALHOUN, Individually, on behalf of
themselves, and all others similarly
situated,

Plaintiffs;

v.

RABOBANK, N.A.,
and DOES 1 through 100, inclusive,

Defendant.

CASE NO.:

CLASS ACTION COMPLAINT FOR:

1. VIOLATIONS OF *BUSINESS & PROFESSIONS CODE* §17200, *et seq.*,
2. VIOLATION OF *CIVIL CODE* §2954.8
3. BREACH OF FIDUCIARY DUTY

DEMAND FOR JURY TRIAL

FAXED

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JLB

1 Plaintiffs, TONY CALHOUN and JANELL CALHOUN, ("Plaintiffs") individually and
2 on behalf of all others similarly situated, brings this Class Action Complaint on behalf of
3 customers who failed to receive interest on wildfire insurance payments from RABOBANK.
4 ("Defendant"). This Class Action Complaint ("Complaint") is brought against RABOBANK by
5 homeowners who deposited insurance proceeds with RABOBANK on an escrow basis pending
6 replacement or reconstruction of their home. RABOBANK failed to pay interest on such
7 escrowed funds as required by statute.

8 **GENERAL ALLEGATIONS**

9
10 1. This Class Action seeks relief on behalf of Plaintiffs and the members of the Class
11 for injuries sustained by them as a result of Defendant's failure to pay interest on proceeds
12 deposited with this financial institution.

13 2. In December 2017, Plaintiffs lost their home due to a wildfire in Southern
14 California. They received a check from California Fair Plan Association in the amount of
15 \$520,000.00 for the dwelling portion of their policy and some of the appurtenant structure
16 compensation. Their home address is 15996 Maricopa Hwy., Ojai, CA. The check was made
17 payable to Tony and Janell Calhoun, and Rabobank N.A. as loss payee. Plaintiffs held a line of
18 credit with RABOBANK that was secured by a deed of trust on the destroyed residence. Plaintiffs
19 owed \$250,000.00 on the line of credit, and keep the line of credit current with no delinquencies.
20 RABOBANK held the insurance proceeds, and placed the insurance proceeds in a non-interest
21 bearing escrow account pending incremental disbursements to be made as reconstruction work
22 was completed. RABOBANK would use Granite Construction to monitor reconstruction progress.

23 3. Numerous RABOBANK consumers throughout Ventura County, Los Angeles
24 County, and the entire State of California have sustained casualty loss to their homes for which
25 insurance proceeds were paid and deposited with RABOBANK. RABOBANK's practice was
26 and is to place such proceeds in non-interest bearing accounts in contravention of California *Civil*
27 *Code* §2954.8. California *Civil Code* §2954.8 requires RABOBANK to pay an interest rate of no
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1 less than 2 percent (2%) per annum for monies received in advance, such as insurance proceeds
2 received and held in escrow pending disbursement for repair or replacement.

3 4. RABOBANK blatantly violated California *Civil Code* §2954.8 and deprived
4 Plaintiffs of interest which was rightfully owed. RABOBANK enjoyed the benefit of the
5 deposited funds yet ignored the commensurate burden of paying minimal interest. Plaintiffs have
6 sustained legally compensable damages in the form of unpaid interest withheld on principal
7 deposits made with RABOBANK.

8 **THE PARTIES**

9 5. Plaintiffs have been, at all times relevant to this action, permanent residents of Ojai,
10 California. Plaintiffs were, are at all times relevant to this action, RABOBANK customers for
11 purposes of obtaining their line of credit.

12 6. Defendant, RABOBANK, N.A., ("RABOBANK"), is a Netherlands Corporation,
13 headquartered in Roseville, California, and doing business in the State of California. The acts and
14 omissions complained of herein all occurred within the State of California.

15 **JURISDICTION AND VENUE**

16 7. This Court has subject matter jurisdiction over this Class Action pursuant to the
17 Unfair Competition Law ("UCL"), *Business & Professions Code* §17200, et seq. and other
18 applicable statutes and the common law of the State of California, including Article 6, §10 of the
19 California Constitution and California *Code of Civil Procedure* §410.10.

20 8. This Court has personal jurisdiction over the parties because Plaintiffs and the
21 Members of the Class they seek to represent submit to the jurisdiction of the Court, and Defendant
22 RABOBANK, is a Corporation, both registered to do business in California and/or systematically
23 and continually doing business in the County of Ventura.

24 9. Venue is proper in this Court pursuant to the California *Code of Civil Procedure*
25 §§395 and 395.5 because Defendant does business in this County, numerous members of the
26 proposed class reside in this judicial district, and the acts complained of occurred within the
27 central judicial district for the County of Ventura.

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1 **CLASS ACTION ALLEGATIONS**

2 10. Plaintiffs bring this action on behalf of themselves and as representatives of a class
3 (the "Class") initially defined as:

4 All persons or entities who received and deposited insurance proceeds
5 on account of partial or total destruction of a structure in which
6 RABOBANK held the mortgage and where such funds were held
in a non-interest bearing escrow type account pending disbursement by
RABOBANK.

7 11. Excluded from the Class are Defendants and/or any of their subsidiaries,
8 Predecessors and/or successors-in-interest. As set forth below, the Class - as defined above -
9 satisfies the requirements of California *Code of Civil Procedure* §382.

10 12. Members of the Class are sufficiently numerous and ascertainable, pursuant to
11 California *Code of Civil Procedure* §382. There are hundreds to thousands of RABOBANK
12 customers who sustained casualty losses for which insurance proceeds were paid and deposited
13 into a RABOBANK escrow type account pending disbursement. The Class members are readily
14 identifiable and ascertainable through RABOBANK records. The Class members are so numerous
15 and geographically dispersed so as to render joinder of all Class members impracticable. Class
16 members may be notified of the pendency of this action by first-class mail, supplemented, if
17 deemed necessary or appropriate by the Court, by published notice.

18 13. Common questions of fact and law exist and predominate pursuant to California
19 *Code of Civil Procedure* §382. Common questions of law and fact exist as to all members of the
20 Class. These questions predominate over the questions affecting only individual Class members.
21 These common legal and factual questions include:

- 22 a. Whether Defendant owed interest on insurance proceeds that were
23 deposited with Defendant on an escrow basis pending reconstruction or
24 replacement of Plaintiffs dwelling (California *Civil Code* §29.54.8); and
25 b. Whether Defendant's conduct and/or business practices violates the Unfair
26 Competition Law ("UCL"), *Business & Professions Code* §17200, et seq.
and should be enjoined and prohibited.

27 14. Plaintiffs' claims are typical of the claims of other Class members pursuant to
28 California *Code of Civil Procedure* §382. The Plaintiffs and all members of the Class have been

1 damaged by the same wrongful conduct of Defendant. Like the Class members, Plaintiffs are also
2 RABOBANK customers whose insurance proceeds were placed into a RABOBANK non-interest
3 bearing escrow account pending reconstruction or replacement of their home or property.

4 15. Plaintiffs are adequate representatives of the Class pursuant to California *Code of*
5 *Civil Procedure* §382. Plaintiffs' interests do not conflict with the interests of the members of the
6 Class they seek to represent. Plaintiffs have retained counsel competent and experienced in
7 complex class action litigation in the Courts of the State of California and elsewhere. Plaintiffs
8 intend to prosecute this action vigorously and protect the interests of the Class. The interests of
9 members of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

10 16. The Class Action is superior to other available means for the fair and efficient
11 adjudication of Plaintiffs' claims pursuant to California *Code of Civil Procedure* §382. The Class
12 members have no plain, speedy or adequate remedy other than by maintenance of a Class Action.
13 The damages sought by each Class member are relatively small in relation to the cost of
14 prosecution thereby making it economically impractical to pursue the remedies on an individual
15 basis. Additionally, individualized litigation presents a potential for inconsistent or contradictory
16 judgments. Individualized litigation increases the delay and expense to all parties and the court
17 system as a whole. By contrast, the Class Action device presents far fewer management
18 difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive
19 supervision by a single Court.

20 17. Having refused to act within the constraints of the law and having failed to take
21 into account Class members' interests and rights, Defendant should compensate the Class for its
22 damages and pay attorneys' fees and costs.

23
24 **FIRST CAUSE OF ACTION**

25 **VIOLATIONS OF *BUSINESS & PROFESSIONS CODE* §17200, *et seq.*,**

26 **(Against RABOBANK, N.A., and Does 1-100)**

27 18. Paragraphs 1 through 17 are incorporated herein by reference. Plaintiffs assert this
28 Cause of action on behalf of themselves, and all others similarly situated.

1 19. Defendant's acts, conduct and practices, as alleged in this Complaint, constitute
2 unlawful, unfair and/or fraudulent business acts and practices that are harmful and deceiving to
3 consumers, within the meaning of California *Business & Professions Code* §17200, et. seq.

4 20. The wrongful conduct alleged herein occurs and continues to occur in the course
5 of Defendant's business since Defendant continues to fail to pay interest to its customers who
6 have deposited insurance proceeds with Defendant on an escrow basis. Defendant's wrongful
7 conduct impacts all Class members.

8 21. Defendant has engaged in unlawful business acts and practices in violation of the
9 UCL by violating state laws including but not limited to: California *Civil Code* §2954.8.
10 California *Civil Code* §2954.8 provides that:

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

20 (b) No financial institution subject to the provisions of this section
21 shall impose any fee or charge in connection with the maintenance or
22 disbursement of money received in advance for the payment of taxes
23 and assessments on real property securing loans made by such financial
24 institution, or for the payment of insurance, or for other purposes
25 relating to such real property, that will result in an interest rate of less
26 than 2 percent per annum being paid on the moneys so received.

27 (c) For the purposes of this section, "financial institution" means a
28 bank, savings and loan association or credit union chartered under the

1 laws of this state or the United States, or any other person or
2 organization making loans upon the security of real property containing
3 only a one-to-four-family residence."

4 Plaintiffs reserve the right to identify additional violations of California law committed
5 by Defendant as further investigation and discovery warrants.

6 22. In violation of California *Civil Code* §2954.8, Defendant failed to pay interest on
7 insurance proceeds that were placed into an escrow account (a.k.a. "loss-draft account") after
8 Plaintiffs and the Class sustained casualty losses and deposited insurance/indemnity proceeds
9 with RABOBANK pending disbursement for repairs or replacement.

10 23. Defendant's acts, conduct and practices, as alleged herein, were unfair in that any
11 utility for Defendant's conduct is outweighed by the gravity of the consequences to Plaintiffs and
12 the Class members, and/or Defendant's conduct is immoral, unethical, oppressive, unscrupulous
13 or substantially injurious to Plaintiffs, Class members and the general public. There is no
14 justification for RABOBANK to enjoy the benefit and use of escrowed funds belonging to the
15 Plaintiffs and without paying, minimally, the statutorily prescribed interest benefit.

16 24. Defendant's unfair, fraudulent, and deceptive business acts and practices are
17 described herein and include, without limitation, the following: Defendant's failure to pay interest
18 on insurance proceeds that were placed into an escrow account after Plaintiffs and the Class
19 suffered casualty loss to their dwellings.

20 25. As a direct and proximate result of Defendant's unlawful, unfair and fraudulent
21 business practices as alleged herein, Defendant avoided the payment of at least two percent (2%)
22 interest on monies held in escrow accounts for its customers who lost their homes to natural
23 disasters and/or accidents. Plaintiffs and the Class members have suffered an injury in fact, and
24 they have a vested interest in the money they have lost as a result of Defendant's wrongful conduct.
25 Defendant received, and is in possession of, excessive and unjust revenues from the interest it
26 failed to pay Plaintiffs and the Class. Since Defendant continues to fail to pay Plaintiffs and the
27 Class interest as alleged above, Defendant's misconduct is not only likely to be repeated in the
28 future but continues to date in numerous pending accounts.

1 26. Plaintiffs, on behalf of themselves and all others similarly situated, seek an order
2 including, without limitation: (1) enjoining the withholding of interest payments as required by
3 California *Civil Code* §2954.8; (2) restitution of money in which Plaintiffs and Class members
4 have a vested interest; and (3) any other relief the Court deems acceptable, in accordance with
5 *Business & Professions Code* §17200, et seq. and for such other relief as set forth below.
6 Plaintiffs and Class members also seek costs of litigation, attorneys' fees and such other relief as
7 the Court deems proper.

8 **SECOND CAUSE OF ACTION**

9 **VIOLATION OF CIVIL CODE §2954.8**

10 **(Against RABOBANK, N.A., and Does 1-100)**

11 27. Paragraphs 1 through 26 are incorporated herein by reference. Plaintiffs assert this
12 cause of action on behalf of themselves and all others similarly situated.

13 28. California *Civil Code* §2954.8, as alleged supra, mandates payment of two percent
14 (2%) interest on escrowed insurance proceeds.

15 29. Plaintiffs, and members of the Class deposited insurance proceeds with
16 RABOBANK on an escrow basis.

17 30. RABOBANK failed to pay interest and continues to refuse to pay interest on
18 escrowed insurance proceeds of Plaintiffs and members of the Class.

19 31. Plaintiffs and others similarly situated have sustained legally compensable
20 damages in the form of unpaid interest.

21 **THIRD CAUSE OF ACTION**

22 **BREACH OF FIDUCIARY DUTY**

23 **(Against RABOBANK, N.A., and Does 1-100)**

24 32. Paragraphs 1 through 31 are incorporated herein by reference. Plaintiffs assert this
25 cause of action on behalf of themselves and all others similarly situated.

26 33. As a bank and financial institution accepting money on deposit from consumers,
27 Defendant RABOBANK owed a fiduciary duty to handle such deposits in the manner of a
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1 fiduciary, using the utmost care and respecting the rights and obligations of its customers in the
2 manner of a fiduciary.

3 34. Defendant breached its fiduciary duty in failing to honor its codified civil
4 obligation to pay interest on monies held on deposit consistent with the mandate of the statute
5 cited above.

6 35. As a direct and proximate result of Defendant's breach of fiduciary duty, Plaintiffs
7 and others similarly situated have sustained legally compensable damages in amounts to be
8 proven at time of trial.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs pray for judgment as follows:

- 11 1. For an Order certifying this case as a Class Action;
- 12 2. For Compensatory and Consequential Damages according to proof;
- 13 3. For an Order of Disgorgement and/or restitution in an amount according to proof;
- 14 4. For an Order finding and declaring Defendant's acts and practices as alleged herein
15 unlawful, unfair, deceptive and/or fraudulent;
- 16 5. For an Order preliminarily and permanently enjoining Defendant from engaging
17 in practices alleged herein;
- 18 6. For prejudgment interests to the extent permitted by law;
- 19 7. For an award of attorneys' fees, costs and expenses incurred in the investigation,
20 filing and prosecution of this action to the extent permitted by law; and
- 21 8. For such other and further relief as the Court may deem just and proper.

22
23 DATED: September 5, 2019

**BRADLEY/GROMBACHER, LLP
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FEINGOLD, LLP**

24
25
26 By: 

27 Marcus J. Bradley, Esq.
Kiley Grombacher, Esq.
28 Dennis Neil Jones, Esq.
Attorneys for Plaintiffs

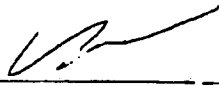
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JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable as a matter of right.

DATED: September 5, 2019

**BRADLEY/GROMBACHER, LLP
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