

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Zamora-Orduna Realty Group, LLC

(b) County of Residence of First Listed Plaintiff Bexar County, TX
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Alfonso Kennard Jr, Kennard Law P.C. 2603 Augusta Drive, Suite 1450
Houston Texas 77057

DEFENDANTS

BBVA USA

County of Residence of First Listed Defendant State of Alabama
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Sarah P. Santos Davis & Santos, P.C.
719 S. Flores St., San Antonio, Texas 78204

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
		LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(a); 28 U.S.C. 1332(d)

Brief description of cause:
Class action alleging financial damages in connection with the Paycheck Protection Program

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 10,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

5/11/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Sarah Santos

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**ZAMORA-ORDUNA REALTY
GROUP, LLC, on behalf of itself and all
others similarly situated,**

Plaintiffs,

V.

BBVA USA,

Defendant.



Civil Action No. 5:20-CV-579

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332(d), 1332(a), 1441, 1446, and 1453, Defendant BBVA USA (“BBVA”) hereby removes the above-entitled action from the 37th District Court of Bexar County, Texas to the United States District Court for the Western District of Texas, San Antonio Division. BBVA expressly reserves all of its affirmative defenses, rights, and remedies.

In support of this notice, BBVA states as follows:

I. INTRODUCTION

1. This is a civil case over which this Court has original jurisdiction under 28 U.S.C. § 1332(d)(2). It is a putative class action in which there are at least 100 proposed class members, there is diversity between at least one plaintiff and the defendant, and the amount in controversy exceeds \$5 million, exclusive of interest and costs. *See id.* This action is removable by the Class Action Fairness Act of 2005 (“CAFA”), codified in 28 U.S.C. §§ 1332(d), 1441(a), 1446, and 1453(b), because U.S. District Courts have original jurisdiction over class actions meeting the above-listed requirements.

2. Assignment to this Court is proper because the civil action is being removed from the 37th District Court of Bexar County, Texas, which lies in the Western District of Texas. *See* 28 U.S.C. §§ 1441(a) and 1446(a).

II. PROCEDURAL HISTORY

3. On April 21, 2020, Plaintiff Zamora-Orduna Realty Group, LLC (“Plaintiff”) filed a complaint for a putative class action in the 37th District Court of Bexar County, Texas, Case No. 2020-CI-07450, (the “Original Petition”), alleging BBVA allegedly failed to process Plaintiff’s and putative class members’ loans under the federal Paycheck Protection Program (“PPP”), which was created as part of the federal Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act. Plaintiff asserted causes of action for (1) Fraud and Fraudulent Inducement; (2) Breach of Fiduciary Duty; (3) Breach of Contract; (4) Negligence; and (5) Violation of the Deceptive Trade Practices Act against one defendant, BBVA.

4. On May 4, 2020, the Summons and Original Petition were served on the duly authorized agent for service of process for BBVA. A true and correct copy of the Summons and Original Petition are attached to this Notice as Exhibit A. No further proceedings have been had in this action.

III. ORIGINAL JURISDICTION

5. Pursuant to 28 U.S.C. §§ 1332(d) and 1453(b), a district court has original jurisdiction over putative class actions in which: (i) the putative class consists of at least 100 proposed class members; (ii) there is diversity between at least one plaintiff and the defendant; and (iii) the amount in controversy exceeds \$5 million, exclusive of interests and costs.

6. Jurisdiction under CAFA is determined at the time of removal. *Braud v. Transp. Serv. Co. of Illinois*, 445 F.3d 801, 808 (5th Cir. 2006); *Brinston v. Koppers Indus., Inc.*, 538 F. Supp. 2d 969, 975 (W.D. Tex. 2008).

7. As set forth below, all such requirements are met in this case.

A. The Putative Class Consists of at Least 100 Proposed Class Members.

8. To establish jurisdiction under CAFA, the first requirement is that the putative class must consist of at least 100 proposed members. *See* 28 § U.S.C. 1332(d).

9. As alleged in the Original Petition, Plaintiff seeks to represent a putative class of “[a]ll BBVA small business customers who utilized BBVA for assistance with and processing of their PPP loans administered by the SBA.” Orig. Pet., ¶18.

10. Plaintiff alleges “[o]n information and belief, the proposed Class consists of hundreds of entities, the joinder of which in one action is impracticable. The precise number and identities of the Class Members are currently unknown to Plaintiffs but can easily be derived from Defendant’s records.” *Id.* at ¶ 19.

11. Because the putative class consists of at least 100 proposed class members as alleged in the Original Petition, the requirement of 28 § U.S.C. 1332(d)(5) is satisfied. *See, e.g., Butler v. Denka Performance Elastomer, LLC*, No. CV 18-6685, 2019 WL 92659, at *3 (E.D. La. Jan. 3, 2019) (relying on plaintiff’s allegation that there were “tens of thousands” of putative class members to provide a basis for jurisdiction under CAFA).

B. Diversity Exists Between at Least One Plaintiff and the Defendant.

12. The second requirement to establish jurisdiction under CAFA is that diversity must exist between at least one Plaintiff and the Defendant (the so-called “minimum diversity” requirement). *See* 28 § U.S.C. 1332(d).

13. As alleged in the Original Petition, Plaintiff Zamora-Orduna Realty Group is a limited liability company organized under the laws of the State of Texas with its principal place of business in San Antonio, Bexar County, Texas. For purposes of diversity jurisdiction, a limited liability company is a citizen of each state where its members are citizens. *Harvey v. Grey Wolf*

Drilling Co., 542 F.3d 1077, 1080 (5th Cir. 2008). Based on information submitted to BBVA and publicly available documents accessible through the Texas Secretary of State, the members of Zamora-Orduna Realty Group are individuals and are residents and citizens of Texas. Therefore, Plaintiff is a citizen of Texas for diversity purposes.¹

14. BBVA was at the time of filing of this action, and still is, headquartered in Alabama and chartered in Alabama and a citizen of Alabama for diversity purposes.

15. To establish “minimal diversity” pursuant to CAFA, “*any* member of a class of plaintiffs” must be the citizen of a different state from any defendant. 28 U.S.C. 1332(d)(2)(A) (emphasis added).

16. Plaintiff is a citizen of Texas. *See* Orig. Pet., ¶ 3. Based on the allegations in the Original Petition, the putative class consists of “hundreds of entities.” *Id.* at ¶ 18. This class definition encompasses persons and entities with citizenship of states other than Texas or Alabama. Specifically, BBVA has operations in at least seven states where putative class members submitted PPP loans applications, including Arizona, California, Colorado, Florida and New Mexico, and some of those applicants were citizens of each of those states.²

17. Therefore, minimal diversity under CAFA is satisfied because at least one member of Plaintiff’s proposed class is a citizen of a state different from BBVA. *See* 28 § U.S.C. 1332(d)(2).

¹ A removing defendant is only required to plead a “short and plain statement” showing the bases for removal and is not required to present evidence at this stage. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 83 (2014).

² *See* BBVA, About, <https://www.bbvausa.com/our-story/our-company.html> (last visited May 7, 2020).

C. The Amount in Controversy Exceeds \$5 million.

18. Finally, the third requirement to establish jurisdiction under CAFA is that the amount in controversy must exceed \$5 million, exclusive of interests and costs. *See* 28 § U.S.C. 1332(d).

19. The Original Petition alleges that Plaintiff and class members seek to recover no less than \$10 million in actual and consequential damages, exemplary damages, and treble damages. *See* Orig. Pet., ¶ 2; *see also Owens*, 574 U.S. at 84 (2014) (“If the plaintiff’s complaint, filed in state court, demands monetary relief of a stated sum, that sum, if asserted in good faith, is ‘deemed to be the amount in controversy.’”) (citing 28 § U.S.C. 1446(c)(2)).

20. Although BBVA disputes Plaintiff’s or the putative class members’ entitlement to any remedy or damages in any amount, Plaintiff’s allegations demonstrate that the amount in controversy for jurisdictional purposes exceeds the \$5 million requirement.

IV. TRADITIONAL DIVERSITY JURISDICTION ALSO EXISTS

21. In addition to jurisdiction under CAFA, this Court has subject matter jurisdiction under traditional diversity because the parties are completely diverse and the amount in controversy exceeds \$75,000, exclusive of interests and costs. 28 U.S.C. §1332(a). Removal is therefore also proper under 28 U.S.C. § 1441 based upon traditional diversity jurisdiction.

a) As alleged above, there is complete diversity between the named Plaintiff and the Defendant.

b) Although the named Plaintiff makes no express allegation of the amount demanded for itself, it alleges recovery of compensatory damages, exemplary damages, treble damages and attorney fees (among other things). Plaintiff is demanding damages because it did not receive the PPP loan, which, under the PPP program is forgivable. 15 U.S.C. § 9005. The amount of Plaintiff’s loan application, trebled (pursuant to the alleged claim under the Texas Deceptive Trade Practices Act) would exceed \$75,000.³ In

³ BBVA stands ready to file supporting evidence under seal, if necessary and requested, to support this statement.

addition, the alleged attorney fees would add even more to the amount in controversy. *Hartford Ins. Group v. Lou-Con, Inc.*, 293 F.3d 908, 910 (5th Cir. 2002) (including “attorney fees, penalties, statutory damages and punitive damages” in the amount in controversy calculation). Therefore, the amount in controversy for the named plaintiff easily exceeds the sum of \$75,000, exclusive of interest and costs. *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546 (2005).

V. COMPLIANCE WITH 28 U.S.C. § 1446

22. In accordance with 28 U.S.C. § 1446(a), true and correct copies of the docket sheet and pleadings, process, orders and other filings filed in the state court action are being filed with this Notice of Removal, as Exhibit B.

23. In accordance with 28 U.S.C. § 1446(b), this Notice of Removal is filed within 30 days of service on BBVA of the pleadings setting forth the claim for relief upon which the state court action is based.

24. In accordance with 28 U.S.C. § 1446(d), BBVA will promptly provide written notice of the removal of the state court action to Plaintiff and will file a notice of filing of removal with the 37th District Court of Bexar County, Texas.

VI. JURY DEMAND

24. Plaintiff requested a trial by jury in the state court action on April 22, 2020.

VII. PRAYER

WHEREFORE, BBVA USA respectfully requests that this Court take notice that the action referred to above is removed from the 37th District Court of Bexar County, Texas to this Court, and for all other relief to which it is entitled.

DATED: May 11, 2020

Respectfully submitted,

DAVIS & SANTOS, P.C.

By: /s/ Sarah Santos

Sarah Santos
Attorney-in-Charge for Defendant
State Bar No. 24040955
E-mail: ssantos@dslawpc.com
Jason Davis
State Bar No. 00793592
E-mail: jdavis@dslawpc.com
719 S. Flores Street
San Antonio, Texas 78204
Telephone: (210) 853-5882
Facsimile: (210) 200-8395

Attorneys for BBVA USA

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served upon the interested parties listed below in accordance with the Texas Rules of Civil Procedure via the method indicated below on May 11, 2020.

Alfonso Kennard, Jr	_____	U.S. Mail
Kevin T. Kennedy	<u> X </u>	CMRRR
KENNARD LAW P.C.	_____	Facsimile
2603 Augusta Drive, Suite 1450	<u> X </u>	E-mail
Houston, Texas 77057	_____	E-file

/s/ Sarah Santos
Sarah Santos

Exhibit A



**Service of Process
Transmittal**

05/04/2020

CT Log Number 537623506

TO: MICHAEL CLEMMER, ESQ
Compass Bank
15 South 20th Street, Suite 1801
Birmingham, AL 35233

RE: Process Served in Texas

FOR: BBVA USA (Domestic State: AL)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: ZAMORA-ORDUNA REALTY GROUP, LLC, On behalf of itself and all others similarly situated, Pltf. vs. BBVA USA, Dft.

DOCUMENT(S) SERVED: -

COURT/AGENCY: None Specified
Case # 2020CI07450

ON WHOM PROCESS WAS SERVED: C T Corporation System, Dallas, TX

DATE AND HOUR OF SERVICE: By Certified Mail on 05/04/2020 postmarked on 04/30/2020

JURISDICTION SERVED : Texas

APPEARANCE OR ANSWER DUE: None Specified

ATTORNEY(S) / SENDER(S): None Specified

ACTION ITEMS: CT has retained the current log, Retain Date: 05/04/2020, Expected Purge Date: 05/09/2020

Image SOP

Email Notification, MICHAEL CLEMMER, ESQ legaldept.us@bbva.com

SIGNED: C T Corporation System
ADDRESS: 1999 Bryan Street
Suite 900
Dallas, TX 75201

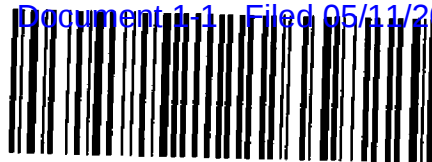
For Questions: 866-665-5799
SouthTeam2@wolterskluwer.com



Mary Angie Garcia
Bexar County District Clerk
101 W. Nueva, Suite 217
San Antonio, Texas 78205

RETURN SERVICE REQUESTED

CERTIFIED MAIL



7019 1120 0001 3176 4939



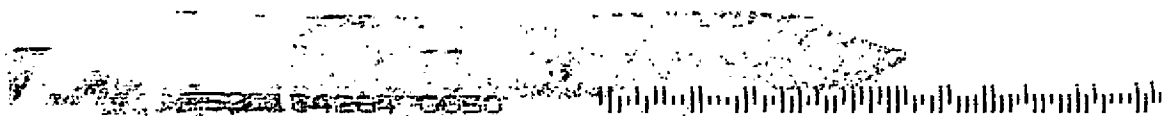
U.S. POSTAGE >> PITNEY BOWES



ZIP 78204 \$ 007.80⁰
02 4W
0000350931 APR 30 2020

BBVA USA
C70 CT CORPORATION SYSTEM
1999 BRYAN STREET 900
DALLAS, TX 75201-3140

2020CT02450 472972020 CITCM LAMR 4891110





Case Number: 2020-CI-07450

2020CI07450 S00001

ZAMORA-ORDUNA REALTY GROUP LLC

vs.

BBVA USA

(Note: Attached document may contain additional litigants).

IN THE DISTRICT COURT
37th JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS**CITATION****"THE STATE OF TEXAS"**

DIRECTED TO: BBVA USA

BY SERVING ITS REGISTERED AGENT, CT CORPORATION SYSTEM
1999 BRYAN STREET 900
DALLAS TX 75201-3140

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this CITATION and ORIGINAL PETITION, a default judgment may be taken against you." Said CITATION with ORIGINAL PETITION was filed on the 21st day of April, 2020.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 29TH DAY OF April A.D., 2020.

ALFONSO KENNARD JR
ATTORNEY FOR PLAINTIFF
2603 AUGUSTA DR 1450
HOUSTON, TX 77057-6145Mary Angie Garcia
Bexar County District Clerk
101 W. Nueva, Suite 217
San Antonio, Texas 78205By: *Laura Castillo*, DeputyZAMORA-ORDUNA REALTY GROUP LLC
vs
BBVA USA

Officer's Return

Case Number: 2020-CI-07450
Court: 37th Judicial District Court

Came to hand on the 29th day of April 2020, A.D., at 9:17 o'clock A.M. and EXECUTED (NOT EXECUTED) by CERTIFIED MAIL, on the _____ day of _____ 20____, by delivering to: _____ at 1999 BRYAN STREET 900 DALLAS TX 75201-3140 a true copy of this Citation, upon which I endorsed that date of delivery, together with the accompanying copy of the CITATION with ORIGINAL PETITION.

Cause of failure to execute this Citation is _____.

Mary Angie Garcia
Clerk of the District Courts
of Bexar County, TXBy: *Laura Castillo*, Deputy

FILED
-4/21/2020 12:15 AM
Mary Angie Garcia
Bexar County District Clerk
Accepted By: Martha Medellin

**ZAMORA-ORDUNA
REALTY GROUP, LLC**
On behalf of itself and
all others similarly situated

Plaintiff,

VS.

BBVA USA

Defendant.

PLAINTIFFS' ORIGINAL PETITION

Plaintiff Zamora-Orduna Realty Group, LLC (“Zamora-Orduna”) on behalf of itself and all others similarly situated, files this Original Petition, complaining of Defendant BBVA USA (“BBVA”). In support, Zamora-Orduna states the following:

I. NATURE OF THE CASE

1. This is a class action against Defendant BBVA for deceiving and defrauding small business owners in connection with the Paycheck Protection Program (“PPP”) administered by the Small Business Administration (“SBA”). Defendant made misrepresentations to many small business owners that they would assist them with their PPP loan applications and submit them for approval. Unbeknownst to Class Members, Defendant chose to prioritize select customers and “bigger businesses” for approval to the detriment of Class Members. Defendant knowingly and negligently chose to accept federal money to process PPP loans while knowing it would not do so or did not have sufficient infrastructure in place to handle the applications submitted, to the detriment of Plaintiff and Class Members.

2. Plaintiff, on behalf of itself and Class Members, assert causes of action for fraud, fraud in the inducement, breach of fiduciary duty, breach of contract, negligence, and violations of the Deceptive Trade Practices Act, and seek to recover actual and consequential damages of no less than \$10,000,000, exemplary damages, treble damages, attorneys' fees and costs.

II. PARTIES AND PROCESS

3. Plaintiff Zamora-Orduna is a limited liability company organized under the laws of the State of Texas with its principal place of business in San Antonio, Bexar County, Texas.

4. Defendant BBVA is a corporation organized under the laws of the State of Alabama and conducts business in San Antonio, Bexar County, Texas. BBVA may be served with process by serving its registered agent CT Corporation System, at 1999 Bryan St., Suite 900, Dallas, Texas 75201-3136.

III. JURISDICTION AND VENUE

5. The Court has jurisdiction over the parties and subject matter in this suit. The amount in controversy is within the jurisdictional limits of the Court.

6. Venue is proper in Harris County, Texas, pursuant to the Texas Civil Practice and Remedies Code Section 15.002(a)(1) because it is the county in which a substantial part of the events or omissions giving rise to the claims herein occurred.

IV. DISCOVERY CONTROL PLAN

7. Pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, Plaintiff intends to conduct discovery under Level 3.

**V.
FACTS**

8. Plaintiff is a small business incorporated as a limited liability company Corporation in the State of Texas.

9. Plaintiff, on or about March 30 through April 3, 2020, inquired about the PPP program administered by the SBA.

10. Plaintiff was told the business was eligible to apply through Defendant BBVA, because an existing relationship existed.

11. Plaintiff applied for funding for the PPP through BBVA on April 3, 2020—the very first day that applications were being “accepted.” The loans were supposed to be given on a first-come-first-serve basis.

12. All documents were submitted by Plaintiff via Defendant’s website.

13. During the weeks following April 3, 2020, Plaintiff attempted to secure more information regarding the process and status of application. Plaintiff was informed that Defendant could not even locate its application, much less provide any information about the status.

14. Plaintiff later found out that funds were depleted. BBVA never provided any information regarding the status of the loan processing.

15. Plaintiff did not apply for the loan with any other bank based on BBVA’s representation that the loan would be properly processed and submitted to the SBA.

16. Defendant never processed or properly submitted Plaintiff’s loan application, despite being submitted on or about April 3, 2020.

17. BBVA never processed or properly submitted to the SBA the loan applications of many other small businesses that were provided to BBVA on or about April 3, 2020. Instead, BBVA

selected among its bigger “small businesses” to prioritize and process their loans to the detriment of its other small business customers.

**VI.
CLASS ACTION ALLEGATIONS**

18. Pursuant to TEX. R. CIV. P. 42, Plaintiff brings this action as a class action on behalf of itself and all members of the following Class of similarly situated persons and entities:

All BBVA small business customers who utilized BBVA for assistance with and processing of their PPP loans administered by the SBA.

Excluded from the Class are (i) BBVA senior executives and their immediate family members, and (ii) the Court, Court personnel, and their immediate family members.

19. On information and belief, the proposed Class consists of hundreds of entities, the joinder of which in one action is impracticable. The precise number and identities of the Class Members are currently unknown to Plaintiff but can easily be derived from Defendant’s records.

20. Defendant violated the rights and interests of each Class Member in the same manner by their above-described uniform wrongful actions—to wit, wrongfully and knowingly misrepresenting to Plaintiff and Class Members that they could and would process their PPP loans in a timely, fair and impartial fashion and/or misrepresenting their ability to provide PPP loan services to Class Members.

21. Common questions of law and fact predominate over any questions affecting individual Class Members including, *inter alia*:

- (i) whether Defendant’s above-described wrongful actions constitute fraud;
- (ii) whether Defendant’s above-described wrongful actions constitute fraudulent inducement;
- (iii) whether Defendant’s above-described wrongful actions constitute

breach of fiduciary duty;

- (iv) whether Defendant's above-described wrongful actions constitute breach of contract;
- (v) whether Defendant's above-described wrongful actions constitute breach of an implied contract;
- (vi) whether Defendant's above-described wrongful actions constitute negligence;
- (vii) whether Defendant's above-described wrongful actions constitute breach of the Texas Deceptive Trade Practices-Consumer Protection Act;
- (viii) whether Defendant's above-described wrongful actions directly or proximately caused Plaintiffs and Class Members to suffer damages; and
- (ix) whether Plaintiffs and Class Members are entitled to recover actual damages, consequential damages, punitive damages, treble damages, pre- and post-judgment interest, attorneys' fees, litigation expenses, and court costs and, if so, the amount of the recovery.

22. Plaintiff's claims are typical of Class Members' claims because Plaintiff and Class Members are all victims of Defendant's above-described wrongful actions.

23. Plaintiff and its counsel will fairly and adequately represent the interests of Class Members. Plaintiff has no interests antagonistic to, or in conflict with, those of any of the Class Members. Plaintiff's counsel is experienced in leading and prosecuting class actions and complex commercial litigation.

24. A class action is superior to all other available methods for fairly and efficiently adjudicating Plaintiff's and Class Members' claims. Plaintiff and Class Members have been harmed as a direct and proximate result of Defendant's above-described wrongful actions. Litigating this case as a class action is appropriate because (i) it will avoid a multiplicity of suits and the corresponding burden on the courts and Parties, (ii) it would be virtually impossible for all

Class Members to intervene as parties in this action, (iii) it will allow numerous persons with claims too small to adjudicate on an individual basis because of prohibitive litigation costs to obtain redress for their injuries, and (iv) it will provide court oversight of the claims process once Defendant's liability is adjudicated.

25. Certification, therefore, is appropriate under TEX. R. CIV. P. 42(b)(3) because the above-described common questions of law or fact predominate over any questions affecting individual Class Members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

26. Absent a class action, Defendant will retain the benefits of its wrongdoing despite violating the law and inflicting substantial damages on Plaintiff and Class Members.

VII. CAUSES OF ACTION

Count One – Fraud and Fraudulent Inducement

27. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiff reasserts and incorporates all allegations set forth herein.

28. Defendant led Plaintiff and Class Members to believe they had the capability to help them, when they could not. Defendant knowingly made false representations to Plaintiff and Class Members as to material facts. Defendant knew at the onset that they could not handle or process the PPP loans on Plaintiff's and Class Members' behalf.

29. Defendant failed to represent the interests of Plaintiff and Class Members. Defendant led Plaintiff and Class Members to believe it had the capability to help them, when it could not. Plaintiff and Class Members could have explored their options elsewhere, but for representations

from Defendant. Plaintiff and Class Members did not—only to find out later that they would not receive funding and their loans were never actually processed.

30. Defendant also engaged in fraud by selectively excluding Plaintiff and Class Members from the application process. Defendant chose select customers among “bigger businesses” and processed those applications over those of Plaintiff and Class Members. BBVA and its agents had no intention or ability it seems to help smaller businesses—despite representing they would and could. This clearly proved to be a false assertion—a false assertion Defendant knew from the onset.

31. As a result of relying on Defendant’s representations, Plaintiff and Class Members have been damaged in an amount within the jurisdictional limits of the Court.

Count Two – Breach of Fiduciary Duty

32. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiff reasserts and incorporates all allegations set forth herein.

33. Defendant had a fiduciary relationship with Plaintiff and Class Members as its banking customers—owing Plaintiff and Class Members advice and proper representations. Defendant failed to do so.

34. Defendant breached its fiduciary duty by making false representations of fact and by intentionally failing to process Plaintiff’s and Class Members’ applications. Defendant chose favorites and “bigger businesses” to receive funding and *actually* process their applications—to the detriment of Plaintiff and Class Members.

35. Defendant failed to adequately and properly submit Plaintiff's and Class Members' applications, without notifying Plaintiff and Class Members of its intention not to do so and/or failed to inform Plaintiff and Class Members of their inability to process their applications.

36. As a result of Defendant's breaches of its fiduciary duties, Plaintiff and Class Members have been damaged in an amount within the jurisdictional limits of the Court.

Count Three – Breach of Contract

37. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiff reasserts and incorporates all allegations set forth herein.

38. Plaintiff and Class Members entered into valid, enforceable agreements with BBVA for Plaintiff and Class Members to submit their applications to BBVA and for BBVA to process and submit Plaintiff's and Class Members' applications. Plaintiff and Class Members are in privity with BBVA as parties to valid, enforceable contracts or implied contracts. Plaintiff and Class Members have standing to sue BBVA for breach of those agreements.

39. Despite Plaintiff and Class Members fulfilling their obligations under the agreements, BBVA breached the agreements when it failed to process and submit Plaintiff's and Class Members applications after agreeing to do so. Indeed, Plaintiff was told by McMahan that BBVA would process its loan application before the loan process even began. Defendant did not.

40. As a result of BBVA's breach, Plaintiff and Class Members have been injured. Plaintiff's and Class Members damages are within the jurisdictional limits of the Court.

Count Four – Negligence

41. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiff reasserts and incorporates all allegations set forth herein.

42. In the alternative, BBVA was negligent in affirmatively stating that it could properly handle the loan process—that the federal government is paying them to do with taxpayer dollars—and just couldn't do it for Plaintiff and Class Members.

43. Defendant owed a duty of care to Plaintiff and Class Members but breached that duty and made negligent misrepresentations.

44. Defendant's breaches of their duties owed to Plaintiff and Class Members proximately caused their damages, which are within the jurisdictional limits of the Court.

Count Five – Violation of the Deceptive Trade Practices Act

45. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiff reasserts and incorporates all allegations set forth herein.

46. Plaintiff and Class Members were consumers as defined in the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA"), embodied in the Texas Business & Commerce Code §17.46 *et seq.* Defendant are persons who can be sued for DTPA violations.

47. Defendant knowingly and/or intentionally committed false, misleading, and deceptive acts and, in doing so, violated provisions of the DTPA. In promising to (1) assist Plaintiff and Class Members in the PPP loan application process, and (2) timely process and submit Plaintiff's and Class Members' loan applications, but failing to do so as promised, Defendant knowingly and/or intentionally violated the DTPA in the following, but not so limited, ways:

- Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has sponsorship, approval, status, affiliation, or connection which he does not;
- Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; and

- Failing to disclose information about goods or services that was known at the time of the transaction with the intent to induce the consumer into a transaction that that the consumer would not have entered into the information been disclosed. TEX. BUS. & COM. CODE §17.46.

48. Defendant did not provide the services as promised and engaged in an unconscionable course of action to defraud Plaintiff and Class Members.

49. Because Defendant acted knowingly and/ or intentionally, Plaintiff and Class Members are entitled to and seek to recover treble damages under the Texas Deceptive Trade Practices Act. TEX. BUS. & COM. CODE §17.50 (b)(1).

VIII. CONDITIONS PRECEDENT

50. All conditions precedent to Plaintiff's and Class Members' recovery and the claims made the subject of this suit have been performed or have occurred.

IX. EXEMPLARY DAMAGES

51. Plaintiff and Class Members seek exemplary damages against Defendant pursuant to Chapter 41 of the Texas Civil Practice and Remedies Code. Exemplary damages are justified by Defendant's malice and ill will demonstrated by their knowledge and assistance in the fraud committed against Plaintiff and Class Members.

X. ATTORNEYS FEES

52. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiff reasserts and incorporates all allegations set forth herein.

53. Pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code, Plaintiff and Class Members are entitled to recover reasonable attorney's fees and costs in the prosecution of this action.

**XI.
PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff and Class Members respectfully pray that Defendant be cited to answer herein and that upon final trial of this case, the following relief be awarded:

1. Plaintiff and Class Members be granted judgment against Defendant in the amount of actual and other damages of no less than \$10,000,000;
2. Plaintiff and Class Members be granted judgment against Defendant for exemplary damages in a sum determined by the trier of fact;
3. Plaintiff and Class Members be granted judgment against Defendant for treble damages as authorized by TEX. BUS. & COM. CODE §17.50 (b)(1) for knowing and/or intentional conduct;
4. Plaintiff and Class Members be granted judgment against Defendant in the amount of reasonable, necessary, and customary legal fees and expenses incurred in this lawsuit;
5. Plaintiff and Class Members be granted judgment against Defendant for pre-judgment interest as provided by §302.002 of the Texas Finance Code, and post-judgment interest on the total amount of the judgment until paid at the maximum rate allowed by law, which is the interest rate published by the Consumer Credit Commissioner;
6. Plaintiff and Class Members be granted judgment against Defendant for all costs of court; and Plaintiff be granted such other and further relief, special or general, legal or equitable, to which Plaintiff may show itself to be justly entitled to receive.

Respectfully submitted,

 **kennard law P.C.**



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