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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

_____, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

v.

UPSTART HOLDINGS, INC., DAVE
GIROUARD, and SANJAY DATTA,

Defendant.

Case No.

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

1 Plaintiff _____ (“Plaintiff”) individually and on behalf of all others similarly
2 situated, by and through his attorneys, alleges the following upon information and belief, except as
3 to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s
4 information and belief is based upon, among other things, his counsel’s investigation, which
5 includes without limitation: (a) review and analysis of regulatory filings made by Upstart, Inc.
6 (“Upstart” or the “Company”) with the United States (“U.S.”) Securities and Exchange Commission
7 (“SEC”); (b) review and analysis of press releases and media reports issued by and disseminated by
8 Upstart; and (c) review of other publicly available information concerning Upstart.

9 **NATURE OF THE ACTION AND OVERVIEW**

10 1. This is a class action on behalf of persons and entities that purchased or otherwise
11 acquired Upstart securities between November 9, 2021 and May 9, 2022, inclusive (the “Class
12 Period”). Plaintiff pursues claims against the Defendants under the Securities Exchange Act of 1934
13 (the “Exchange Act”).

14 2. Upstart is a cloud-based artificial intelligence lending platform. The Company claims
15 that “AI lending enables a superior loan product with improved economics that can be shared
16 between consumers and lenders.” Moreover, Upstart “leverage[s] the power of AI to more
17 accurately quantify the true risk of a loan.” The Company recognizes revenue primarily from fees
18 paid by banks.

19 3. On May 9, 2022, after the market closed, Upstart announced its first quarter 2022
20 financial results in a press release. Therein, the Company reduced its fiscal 2022 guidance, expecting
21 revenue of approximately \$1.25 billion and contribution margin of 48%. During the related
22 conference call, Upstart’s Chief Financial Officer cited “rising interest rates and rising consumer
23 delinquencies [as] putting downward pressure on conversion.”

24 4. On this news, the Company’s stock price fell \$43.52, or 56%, to close at \$33.61 per
25 share on May 10, 2022.

26 5. Throughout the Class Period, Defendants made materially false and/or misleading
27 statements, as well as failed to disclose material adverse facts about the Company’s business,
28 operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that Upstart’s

1 AI model could not adequately account for macroeconomic factors such as interest rates that impact
2 the market-clearing price for loans; (2) that, as a result, Upstart was experiencing negative impact
3 on its conversion rate; (3) that, as a result, the Company was reasonably likely to use its balance
4 sheet to fund loans; and (4) that, as a result of the foregoing, Defendants' positive statements about
5 the Company's business, operations, and prospects were materially false and/or misleading and/or
6 lacked a reasonable basis.

7 6. As a result of Defendants' wrongful acts and omissions, and the precipitous decline
8 in the market value of the Company's securities, Plaintiff and other Class members have suffered
9 significant losses and damages.

10 **JURISDICTION AND VENUE**

11 7. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act
12 (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. §
13 240.10b-5).

14 8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
15 § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

16 9. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and Section
17 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in furtherance of the alleged fraud
18 or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein,
19 including the dissemination of materially false and/or misleading information, occurred in
20 substantial part in this Judicial District. In addition, the Company's principal executive offices are
21 located in this District.

22 10. In connection with the acts, transactions, and conduct alleged herein, Defendants
23 directly and indirectly used the means and instrumentalities of interstate commerce, including the
24 United States mail, interstate telephone communications, and the facilities of a national securities
25 exchange.

26 **PARTIES**

27 11. Plaintiff _____, as set forth in the accompanying certification, incorporated
28 by reference herein, purchased Upstart securities during the Class Period, and suffered damages as

1 a result of the federal securities law violations and false and/or misleading statements and/or
2 material omissions alleged herein.

3 12. Defendant Upstart is incorporated under the laws of Delaware with its principal
4 executive offices located in San Mateo, California. Upstart's common stock trades on the NASDAQ
5 exchange under the symbol "UPST."

6 13. Defendant Dave Girouard ("Girouard") was the Chief Executive Officer ("CEO") of
7 the Company at all relevant times.

8 14. Defendant Sanjay Datta ("Datta") was the Company's Chief Financial Officer
9 ("CFO") at all relevant times.

10 15. Defendants Girouard and Datta (collectively the "Individual Defendants"), because
11 of their positions with the Company, possessed the power and authority to control the contents of
12 the Company's reports to the SEC, press releases and presentations to securities analysts, money
13 and portfolio managers and institutional investors, i.e., the market. The Individual Defendants were
14 provided with copies of the Company's reports and press releases alleged herein to be misleading
15 prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance
16 or cause them to be corrected. Because of their positions and access to material non-public
17 information available to them, the Individual Defendants knew that the adverse facts specified
18 herein had not been disclosed to, and were being concealed from, the public, and that the positive
19 representations which were being made were then materially false and/or misleading. The
20 Individual Defendants are liable for the false statements pleaded herein.

21 **SUBSTANTIVE ALLEGATIONS**

22 **Background**

23 16. Upstart is a cloud-based artificial intelligence lending platform. The Company claims
24 that "AI lending enables a superior loan product with improved economics that can be shared
25 between consumers and lenders." Moreover, Upstart "leverage[s] the power of AI to more
26 accurately quantify the true risk of a loan." The Company recognizes revenue primarily from fees
27 paid by banks.

1 **Materially False and Misleading**

2 **Statements Issued During the Class Period**

3 17. The Class Period begins on November 9, 2021.¹ On that day, Upstart announced its
4 third quarter 2021 financial results in a press release that stated, in relevant part:

5 **Third Quarter 2021 Financial Highlights**

- 6 • **Revenue.** Total revenue was \$228 million, an increase of 250% from the third
7 quarter of 2020. Total fee revenue was \$210 million, an increase of 235%
8 year-over-year.
- 9 • **Transaction Volume and Conversion Rate.** Bank Partners originated
10 362,780 loans, totaling \$3.13 billion, across our platform in the third quarter,
11 up 244% from the same quarter of the prior year. Conversion on rate requests
12 was 23% in the third quarter of 2021, up from 15% in the same quarter of the
13 prior year. Beginning in the third quarter of 2021, in order to better reflect
14 actual conversions, we removed rate inquiries identified by our platform as
15 likely fraudulent from our Conversion Rate calculation. Please see the section
16 titled “Key Operating Metrics” below for further detail on the calculation and
17 related information about prior periods.
- 18 • **Income from Operations.** Income from operations was \$28.6 million, up
19 from \$12.2 million the prior year.
- 20 • **Net Income and EPS.** GAAP net income was \$29.1 million, up from \$9.7
21 million in the third quarter of 2020. Adjusted net income was \$57.4 million,
22 up from \$12.3 million in the same quarter of the prior year. Accordingly,
23 GAAP diluted earnings per share was \$0.30, and diluted adjusted earnings
24 per share was \$0.60 based on the weighted-average common shares
25 outstanding during the period.
- 26 • **Contribution Profit.** Contribution profit was \$95.9 million, up 184% from
27 in the third quarter of 2020, with a contribution margin of 46% compared to
28 a 54% contribution margin in the same quarter of the prior year.
- 29 • **Adjusted EBITDA.** Adjusted EBITDA was \$59.1 million, up from \$15.5
30 million in the same quarter of the prior year. The third quarter 2021 adjusted
31 EBITDA margin was 26% of total revenue, up from 24% in the third quarter
32 of 2020.

33 **Financial Outlook**

34 For the fourth quarter of 2021, Upstart expects:

- 35 • **Revenue** of \$255 to \$265 million
- 36 • **Contribution Margin** of approximately 47%

37
38 ¹ Unless otherwise stated, all emphasis in bold and italics hereinafter is added.

- 1 • **Net Income** of \$16 to \$20 million
- 2 • **Adjusted Net Income** of \$48 to \$50 million
- 3 • **Adjusted EBITDA** of \$51 to \$53 million
- 4 • **Basic Weighted-Average Share Count** of approximately 81.9 million
5 shares
- 6 • **Diluted Weighted-Average Share Count** of approximately 96.7 million
7 shares

8 18. On November 12, 2021, Upstart filed its quarterly report on Form 10-Q for the period
9 ended September 30, 2021, affirming the previously reported financial results. Therein, the
10 Company stated that “Upstart-powered loans are originated in reliance on the fact that our bank
11 partners are the ‘true lenders’ for such loans.” As to the AI-model powering the Company’s
12 platform, Upstart stated:

13 ***If we are unable to continue to improve our AI models or if our AI models contain
14 errors or are otherwise ineffective, our growth prospects, business, financial
15 condition and results of operations would be adversely affected.***

16 Our ability to attract potential borrowers to our platform and increase the number of
17 Upstart-powered loans will depend in large part on our ability to effectively evaluate
18 a borrower’s creditworthiness and likelihood of default and, based on that evaluation,
19 offer competitively priced loans and higher approval rates. Further, our overall
20 operating efficiency and margins will depend in large part on our ability to maintain
21 a high degree of automation in our loan application process and achieve incremental
22 improvements in the degree of automation. If our AI models fail to adequately predict
23 the creditworthiness of borrowers due to the design of our models or programming
24 or other errors, and our AI models do not detect and account for such errors, or any
25 of the other components of our credit decision process fails, we may experience
26 higher than forecasted loan losses. Any of the foregoing could result in sub-optimally
27 priced loans, incorrect approvals or denials of loans, or higher than expected loan
28 losses, which in turn could adversely affect our ability to attract new borrowers and
bank partners to our platform, increase the number of Upstart-powered loans or
maintain or increase the average size of loans facilitated on our platform.

Our AI models also target and optimize other aspects of the lending process, such as
borrower acquisition, fraud detection, default timing, loan stacking, prepayment
timing and fee optimization, and our continued improvements to such models have
allowed us to facilitate loans inexpensively and virtually instantly, with a high degree
of consumer satisfaction and with an insignificant impact on loan performance.
However, such applications of our AI models may prove to be less predictive than
we expect, or than they have been in the past, for a variety of reasons, including
inaccurate assumptions or other errors made in constructing such models, incorrect
interpretations of the results of such models and failure to timely update model
assumptions and parameters. ***Additionally, such models may not be able to
effectively account for matters that are inherently difficult to predict and beyond
our control, such as macroeconomic conditions, credit market volatility and
interest rate fluctuations, which often involve complex interactions between a***

1 *number of dependent and independent variables and factors. Material errors or*
2 *inaccuracies in such AI models could lead us to make inaccurate or sub-optimal*
3 *operational or strategic decisions, which could adversely affect our business,*
4 *financial condition and results of operations.*

5 Additionally, errors or inaccuracies in our AI models could result in any person
6 exposed to the credit risk of Upstart-powered loans, whether it be us, our bank
7 partners or investors in our loan funding programs, experiencing higher than
8 expected losses or lower than desired returns, which could impair our ability to retain
9 existing or attract new bank partners and investors to participate in our loan funding
10 programs, reduce the number, or limit the types, of loans bank partners and investors
11 are willing to fund, and limit our ability to increase commitments under our
12 warehouse and other debt facilities. Any of these circumstances could reduce the
13 number of Upstart-powered loans and harm our ability to maintain a diverse and
14 robust loan funding program and could adversely affect our business, financial
15 condition and results of operations.

16 (First emphasis in original.)

17 19. On February 15, 2022, after the market closed, Upstart announced its fourth quarter
18 and full year 2021 financial results in a press release that stated, in relevant part:

19 **Full Year 2021 Financial Highlights**

- 20 • **Revenue.** Total revenue was \$849 million, an increase of 264% from 2020.
21 Total fee revenue was \$801 million, an increase of 251% year-over-year.
- 22 • **Transaction Volume and Conversion Rate.** Bank partners originated 1.3
23 million loans, totaling \$11.8 billion, across our platform in 2021, up 338%
24 from the prior year. Conversion on rate requests was 24% 2021, up from 15%
25 in the prior year.
- 26 • **Income from Operations.** Income from operations was \$141 million, up
27 from \$11.8 million the prior year.
- 28 • **Net Income and EPS.** GAAP net income was \$135 million, up from \$6.0
million in 2020. Adjusted net income was \$224 million, up from \$17.5
million in the prior year. Accordingly, GAAP diluted earnings per share was
\$1.43, and diluted adjusted earnings per share was \$2.37 based on the
weighted-average common shares outstanding during the period.
- **Contribution Profit.** Contribution profit was \$398 million, up 279% from
2020, with a contribution margin of 50% compared to a 46% contribution
margin in the prior year.
- **Adjusted EBITDA.** Adjusted EBITDA was \$232 million, up from \$31.5
million in the prior year. Full year 2021 adjusted EBITDA margin was 27%
of total revenue, up from 13% in 2020.

29 **Financial Outlook**

30 For the first quarter of 2022, Upstart expects:

- 31 • **Revenue** of \$295 to \$305 million

- 1 • **Contribution Margin** of approximately 46%
- 2 • **Net Income** of \$18 to \$22 million
- 3 • **Adjusted Net Income** of \$50 to \$52 million
- 4 • **Adjusted EBITDA** of \$56 to \$58 million
- 5 • **Basic Weighted-Average Share Count** of approximately 84.3 million shares
- 6 • **Diluted Weighted-Average Share Count** of approximately 95.9 million shares

8 For the full year 2022, Upstart expects:

- 9 • **Revenue** of approximately \$1.4 billion
- 10 • **Contribution Margin** of approximately 45%
- 11 • **Adjusted EBITDA** of approximately 17%

12 20. On February 18, 2022, Upstart filed its annual report on Form 10-K for the period
13 ended December 31, 2021 (the “2021 10-K”), affirming the previously reported financial results.
14 Therein, the Company stated that “[l]oans issued through [its] platform can be retained by
15 [Upstart’s] originating bank partners, distributed to our broad base of institutional investors and
16 buyers that invest in Upstart-powered loans or funded by Upstart’s balance sheet.” It further stated
17 that for fiscal 2021, “16% of the loans funded through our platform were retained by the originating
18 bank and 80% of loans were purchased by institutional investors through our loan funding
19 programs.” The 2021 10-K also touted the Company’s AI-lending platform as “central to [Upstart’s]
20 value proposition and unique position in the industry” because it “incorporate[s] more than 1,500
21 variables [and] ha[s] been trained by more than 21.6 million repayment events.” It also contained
22 “Risk Factors” substantially similar to that identified in ¶ 18.

23 21. The above statements identified in ¶¶ 17-20 were materially false and/or misleading,
24 and failed to disclose material adverse facts about the Company’s business, operations, and
25 prospects. Specifically, Defendants failed to disclose to investors: (1) that Upstart’s AI model could
26 not adequately account for macroeconomic factors such as interest rates that impact the market-
27 clearing price for loans; (2) that, as a result, Upstart was experiencing negative impact on its
28 conversion rate; (3) that, as a result, the Company was reasonably likely to use its balance sheet to

1 fund loans; and (4) that, as a result of the foregoing, Defendants’ positive statements about the
2 Company’s business, operations, and prospects were materially false and/or misleading and/or
3 lacked a reasonable basis.

4 **Disclosures at the End of the Class Period**

5 22. On May 9, 2022, after the market closed, Upstart announced its first quarter 2022
6 financial results in a press release. Therein, the Company reduced its fiscal 2022 guidance, expecting
7 revenue of approximately \$1.25 billion and contribution margin of 48%.

8 23. The same day, the Company held a conference call during which Defendant Datta
9 stated that the “balance of loans, notes, and residuals at the end of the quarter was . . . up to \$604
10 million from \$261 million in Q4.” He cited factors in the macro environment, including “rising
11 interest rates and rising consumer delinquencies [as] putting downward pressure on conversion.” He
12 further stated that Upstart has “started to selectively use [its] capital as a funding buffer for core
13 personal loans in periods of interest rate fluctuation where the market clearing price is in flux.”

14 24. Though Defendant Datta acknowledged that “historically, [Upstart’s] balance sheet
15 has been almost exclusively for the purpose of R&D,” in the last quarter the Company used it “to
16 do . . . sort of a market-clearing mechanism.” He stated:

17 And by that, what I mean is when interest rates in the economy change quite quickly,
18 I think it would be fair to say that our platform, *its ability to react to the new market-*
clearing price, it’s probably not as nimble as we would like.

19 *It’s somewhat manual. It requires a bunch of conversations and phone calls.* And
20 so when interest rates smooth and investors are -- so each deciding what their new
21 return hurdles are, there can be a gap or a delay in responding to funding. And that’s
22 a situation where we’ve chosen to sort of step in with our balance sheet and almost
23 sort of bridge to the new market-clearing price.

22 And if that is happening often and abruptly, we’ve been sort of playing that role with
23 our balance sheet. I don’t view that to be a long-term or necessarily sizable activity
24 for us. I think that developing the mechanisms to respond more nimbly to new price
25 discovery as rates change is something that’s on our road map, and something that
26 we want to start to invest in so that it can happen in a much more automated way. At
27 the end of the day, we view our platform as being a platform that responds to risk
28 and rates in the environment.

26 25. On this news, the Company’s stock price fell \$43.52, or 56%, to close at \$33.61 per
27 share on May 10, 2022.

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CLASS ACTION ALLEGATIONS

26. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that purchased or otherwise acquired Upstart securities between November 9, 2021 and May 9, 2022, inclusive, and who were damaged thereby (the “Class”). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

27. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Upstart’s shares actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are at least hundreds or thousands of members in the proposed Class. Millions of Upstart shares were traded publicly during the Class Period on the NASDAQ. Record owners and other members of the Class may be identified from records maintained by Upstart or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

28. Plaintiff’s claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants’ wrongful conduct in violation of federal law that is complained of herein.

29. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

30. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) whether the federal securities laws were violated by Defendants’ acts as alleged herein;

1 (b) whether statements made by Defendants to the investing public during the
2 Class Period omitted and/or misrepresented material facts about the business, operations, and
3 prospects of Upstart; and

4 (c) to what extent the members of the Class have sustained damages and the
5 proper measure of damages.

6 31. A class action is superior to all other available methods for the fair and efficient
7 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
8 damages suffered by individual Class members may be relatively small, the expense and burden of
9 individual litigation makes it impossible for members of the Class to individually redress the wrongs
10 done to them. There will be no difficulty in the management of this action as a class action.

11 **UNDISCLOSED ADVERSE FACTS**

12 32. The market for Upstart's securities was open, well-developed and efficient at all
13 relevant times. As a result of these materially false and/or misleading statements, and/or failures to
14 disclose, Upstart's securities traded at artificially inflated prices during the Class Period. Plaintiff
15 and other members of the Class purchased or otherwise acquired Upstart's securities relying upon
16 the integrity of the market price of the Company's securities and market information relating to
17 Upstart, and have been damaged thereby.

18 33. During the Class Period, Defendants materially misled the investing public, thereby
19 inflating the price of Upstart's securities, by publicly issuing false and/or misleading statements
20 and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth
21 herein, not false and/or misleading. The statements and omissions were materially false and/or
22 misleading because they failed to disclose material adverse information and/or misrepresented the
23 truth about Upstart's business, operations, and prospects as alleged herein.

24 34. At all relevant times, the material misrepresentations and omissions particularized in
25 this Complaint directly or proximately caused or were a substantial contributing cause of the
26 damages sustained by Plaintiff and other members of the Class. As described herein, during the
27 Class Period, Defendants made or caused to be made a series of materially false and/or misleading
28 statements about Upstart's financial well-being and prospects. These material misstatements and/or

1 omissions had the cause and effect of creating in the market an unrealistically positive assessment
2 of the Company and its financial well-being and prospects, thus causing the Company's securities
3 to be overvalued and artificially inflated at all relevant times. Defendants' materially false and/or
4 misleading statements during the Class Period resulted in Plaintiff and other members of the Class
5 purchasing the Company's securities at artificially inflated prices, thus causing the damages
6 complained of herein when the truth was revealed.

7 **LOSS CAUSATION**

8 35. Defendants' wrongful conduct, as alleged herein, directly and proximately caused
9 the economic loss suffered by Plaintiff and the Class.

10 36. During the Class Period, Plaintiff and the Class purchased Upstart's securities at
11 artificially inflated prices and were damaged thereby. The price of the Company's securities
12 significantly declined when the misrepresentations made to the market, and/or the information
13 alleged herein to have been concealed from the market, and/or the effects thereof, were revealed,
14 causing investors' losses.

15 **SCIENTER ALLEGATIONS**

16 37. As alleged herein, Defendants acted with scienter since Defendants knew that the
17 public documents and statements issued or disseminated in the name of the Company were
18 materially false and/or misleading; knew that such statements or documents would be issued or
19 disseminated to the investing public; and knowingly and substantially participated or acquiesced in
20 the issuance or dissemination of such statements or documents as primary violations of the federal
21 securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by virtue of their
22 receipt of information reflecting the true facts regarding Upstart, their control over, and/or receipt
23 and/or modification of Upstart's allegedly materially misleading misstatements and/or their
24 associations with the Company which made them privy to confidential proprietary information
25 concerning Upstart, participated in the fraudulent scheme alleged herein.

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1 national circuits of major newswire services and through other wide-ranging public disclosures,
2 such as communications with the financial press and other similar reporting services; and/or

3 (d) Upstart was followed by securities analysts employed by brokerage firms
4 who wrote reports about the Company, and these reports were distributed to the sales force and
5 certain customers of their respective brokerage firms. Each of these reports was publicly available
6 and entered the public marketplace.

7 41. As a result of the foregoing, the market for Upstart's securities promptly digested
8 current information regarding Upstart from all publicly available sources and reflected such
9 information in Upstart's share price. Under these circumstances, all purchasers of Upstart's
10 securities during the Class Period suffered similar injury through their purchase of Upstart's
11 securities at artificially inflated prices and a presumption of reliance applies.

12 42. A Class-wide presumption of reliance is also appropriate in this action under the
13 Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972),
14 because the Class's claims are, in large part, grounded on Defendants' material misstatements and/or
15 omissions. Because this action involves Defendants' failure to disclose material adverse
16 information regarding the Company's business operations and financial prospects—information that
17 Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to recovery.
18 All that is necessary is that the facts withheld be material in the sense that a reasonable investor
19 might have considered them important in making investment decisions. Given the importance of
20 the Class Period material misstatements and omissions set forth above, that requirement is satisfied
21 here.

22 **NO SAFE HARBOR**

23 43. The statutory safe harbor provided for forward-looking statements under certain
24 circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The
25 statements alleged to be false and misleading herein all relate to then-existing facts and conditions.
26 In addition, to the extent certain of the statements alleged to be false may be characterized as forward
27 looking, they were not identified as "forward-looking statements" when made and there were no
28 meaningful cautionary statements identifying important factors that could cause actual results to

1 differ materially from those in the purportedly forward-looking statements. In the alternative, to the
2 extent that the statutory safe harbor is determined to apply to any forward-looking statements
3 pleaded herein, Defendants are liable for those false forward-looking statements because at the time
4 each of those forward-looking statements was made, the speaker had actual knowledge that the
5 forward-looking statement was materially false or misleading, and/or the forward-looking statement
6 was authorized or approved by an executive officer of Upstart who knew that the statement was
7 false when made.

8 **FIRST CLAIM**

9 **Violation of Section 10(b) of The Exchange Act and**

10 **Rule 10b-5 Promulgated Thereunder**

11 **Against All Defendants**

12 44. Plaintiff repeats and re-alleges each and every allegation contained above as if fully
13 set forth herein.

14 45. During the Class Period, Defendants carried out a plan, scheme and course of conduct
15 which was intended to and, throughout the Class Period, did: (i) deceive the investing public,
16 including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other
17 members of the Class to purchase Upstart's securities at artificially inflated prices. In furtherance
18 of this unlawful scheme, plan and course of conduct, Defendants, and each defendant, took the
19 actions set forth herein.

20 46. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue
21 statements of material fact and/or omitted to state material facts necessary to make the statements
22 not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a
23 fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially
24 high market prices for Upstart's securities in violation of Section 10(b) of the Exchange Act and
25 Rule 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal
26 conduct charged herein or as controlling persons as alleged below.

27 47. Defendants, individually and in concert, directly and indirectly, by the use, means or
28 instrumentalities of interstate commerce and/or of the mails, engaged and participated in a

1 continuous course of conduct to conceal adverse material information about Upstart's financial well-
2 being and prospects, as specified herein.

3 48. Defendants employed devices, schemes and artifices to defraud, while in possession
4 of material adverse non-public information and engaged in acts, practices, and a course of conduct
5 as alleged herein in an effort to assure investors of Upstart's value and performance and continued
6 substantial growth, which included the making of, or the participation in the making of, untrue
7 statements of material facts and/or omitting to state material facts necessary in order to make the
8 statements made about Upstart and its business operations and future prospects in light of the
9 circumstances under which they were made, not misleading, as set forth more particularly herein,
10 and engaged in transactions, practices and a course of business which operated as a fraud and deceit
11 upon the purchasers of the Company's securities during the Class Period.

12 49. Each of the Individual Defendants' primary liability and controlling person liability
13 arises from the following facts: (i) the Individual Defendants were high-level executives and/or
14 directors at the Company during the Class Period and members of the Company's management team
15 or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and activities
16 as a senior officer and/or director of the Company, was privy to and participated in the creation,
17 development and reporting of the Company's internal budgets, plans, projections and/or reports;
18 (iii) each of these defendants enjoyed significant personal contact and familiarity with the other
19 defendants and was advised of, and had access to, other members of the Company's management
20 team, internal reports and other data and information about the Company's finances, operations, and
21 sales at all relevant times; and (iv) each of these defendants was aware of the Company's
22 dissemination of information to the investing public which they knew and/or recklessly disregarded
23 was materially false and misleading.

24 50. Defendants had actual knowledge of the misrepresentations and/or omissions of
25 material facts set forth herein, or acted with reckless disregard for the truth in that they failed to
26 ascertain and to disclose such facts, even though such facts were available to them. Such defendants'
27 material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose
28 and effect of concealing Upstart's financial well-being and prospects from the investing public and

1 supporting the artificially inflated price of its securities. As demonstrated by Defendants'
2 overstatements and/or misstatements of the Company's business, operations, financial well-being,
3 and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the
4 misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by
5 deliberately refraining from taking those steps necessary to discover whether those statements were
6 false or misleading.

7 51. As a result of the dissemination of the materially false and/or misleading information
8 and/or failure to disclose material facts, as set forth above, the market price of Upstart's securities
9 was artificially inflated during the Class Period. In ignorance of the fact that market prices of the
10 Company's securities were artificially inflated, and relying directly or indirectly on the false and
11 misleading statements made by Defendants, or upon the integrity of the market in which the
12 securities trades, and/or in the absence of material adverse information that was known to or
13 recklessly disregarded by Defendants, but not disclosed in public statements by Defendants during
14 the Class Period, Plaintiff and the other members of the Class acquired Upstart's securities during
15 the Class Period at artificially high prices and were damaged thereby.

16 52. At the time of said misrepresentations and/or omissions, Plaintiff and other members
17 of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other
18 members of the Class and the marketplace known the truth regarding the problems that Upstart was
19 experiencing, which were not disclosed by Defendants, Plaintiff and other members of the Class
20 would not have purchased or otherwise acquired their Upstart securities, or, if they had acquired
21 such securities during the Class Period, they would not have done so at the artificially inflated prices
22 which they paid.

23 53. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act
24 and Rule 10b-5 promulgated thereunder.

25 54. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the
26 other members of the Class suffered damages in connection with their respective purchases and
27 sales of the Company's securities during the Class Period.

28

1 **SECOND CLAIM**

2 **Violation of Section 20(a) of The Exchange Act**

3 **Against the Individual Defendants**

4 55. Plaintiff repeats and re-alleges each and every allegation contained above as if fully
5 set forth herein.

6 56. Individual Defendants acted as controlling persons of Upstart within the meaning of
7 Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions and their
8 ownership and contractual rights, participation in, and/or awareness of the Company's operations
9 and intimate knowledge of the false financial statements filed by the Company with the SEC and
10 disseminated to the investing public, Individual Defendants had the power to influence and control
11 and did influence and control, directly or indirectly, the decision-making of the Company, including
12 the content and dissemination of the various statements which Plaintiff contends are false and
13 misleading. Individual Defendants were provided with or had unlimited access to copies of the
14 Company's reports, press releases, public filings, and other statements alleged by Plaintiff to be
15 misleading prior to and/or shortly after these statements were issued and had the ability to prevent
16 the issuance of the statements or cause the statements to be corrected.

17 57. In particular, Individual Defendants had direct and supervisory involvement in the
18 day-to-day operations of the Company and, therefore, had the power to control or influence the
19 particular transactions giving rise to the securities violations as alleged herein, and exercised the
20 same.

21 58. As set forth above, Upstart and Individual Defendants each violated Section 10(b)
22 and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their position
23 as controlling persons, Individual Defendants are liable pursuant to Section 20(a) of the Exchange
24 Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members
25 of the Class suffered damages in connection with their purchases of the Company's securities during
26 the Class Period.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

1 (a) Determining that this action is a proper class action under Rule 23 of the Federal
2 Rules of Civil Procedure;

3 (b) Awarding compensatory damages in favor of Plaintiff and the other Class members
4 against all defendants, jointly and severally, for all damages sustained as a result of Defendants'
5 wrongdoing, in an amount to be proven at trial, including interest thereon;

6 (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this
7 action, including counsel fees and expert fees; and

8 (d) Such other and further relief as the Court may deem just and proper.

9 **JURY TRIAL DEMANDED**

10 Plaintiff hereby demands a trial by jury.

11 DATED: May ____, 2022

LAW OFFICES OF HOWARD G. SMITH

By: _____

Howard G. Smith
3070 Bristol Pike, Suite 112
Bensalem PA 19020
Telephone: (215) 638-4847
Facsimile: (215) 638-4867

Attorney for Plaintiff

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