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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MITZIE PEREZ, ANDRES ACOSTA, SERGIO BARAJAS, TERESA DIAZ VEDOY, VICTORIA RODAS, and SAMUEL TABARES VILLAFUERTE, individually and on behalf of all others similarly situated, and CALIFORNIA LEAGUE OF UNITED LATIN AMERICAN CITIZENS,

Plaintiffs,

v.

WELLS FARGO & CO. and WELLS FARGO BANK, N.A.,

Defendants.

Case No. 17 Civ. 454 (MMC)

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT WELLS FARGO BANK, N.A.'S MOTION TO DISMISS

Date:	June 16, 2017
Time:	9:00 a.m.
Courtroom:	7
Judge:	The Hon. Maxine Chesney

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INTRODUCTION

This case involves a straightforward application of 42 U.S.C. § 1981 ("Section 1981") and California's Unruh Civil Rights Act ("Unruh Act") and Unfair Competition Law ("UCL") to prohibit Wells Fargo from barring aliens lawfully present in the United States from obtaining loans and other financial products. Seeking to avoid liability for its across-the-board exclusionary policy, Wells Fargo Bank, N.A. ("Wells Fargo") erroneously argues that the anti-discrimination provisions of the Equal Credit Opportunity Act ("ECOA"), although silent as to a creditor's consideration of alienage or immigration status, somehow negate the strong protections against economic discrimination accorded aliens under Section 1981 and California law based solely on language found in ECOA's implementing regulations.

Wells Fargo invites the Court to twist ECOA and its implementing regulations to *permit* discrimination against aliens and narrow the reach of Section 1981, one of the nation's oldest civil rights laws, and the Unruh Act. The statutes, however, do not conflict and Wells Fargo's position is contrary to both established law and the established principle that anti-discrimination provisions in statutes such as ECOA, Section 1981, and the Unruh Act are complementary and designed to work together to grant those victimized by discrimination the broadest possible protections.

STANDARD OF REVIEW

Dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) is proper only where there is either a "lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).The standard applicable to a motion to dismiss is well known: courts accept as true all well-pled allegations and construe all inferences in favor of a plaintiff. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969); *see also NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986) (same). In the Ninth Circuit, dismissal motions under Rule 12(b)(6) are viewed with disfavor and are granted

only in exceptional cases.[1]

The notice pleading standard requires Plaintiffs to plead no more than a "short and plain statement of the claim showing that the pleader is entitled to relief in order to give the defendant fair notice of what the . . . claim is and the ground upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Plaintiffs need only allege facts that support a legal claim to relief that is "plausible on its face." *Id.* at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plaintiffs readily satisfy these standards.

ARGUMENT

Wells Fargo's intentional decision to deny an entire population of non-citizens the right to contract on the same terms as U.S. citizens constitutes a plausible basis for Plaintiffs' Section 1981 claim. *See Juarez v. Nw. Mut. Life Ins. Co., Inc.*, 69 F. Supp. 3d 364, 368–69 (S.D.N.Y. 2014) (denying motion to dismiss Section 1981 claim because plaintiff plausibly alleged that company's exclusionary policy against recipients constitutes Section 1981 discrimination). Plaintiffs' claims are supported by detailed allegations of Wells Fargo's conduct and its effect on Plaintiffs, readily satisfying the pleading standards in Rule 8 of the Federal Rules of Civil Procedure and the U.S. Supreme Court's minimal plausibility standard. *See Ashcroft*, 556 U.S. at 677–78. By imposing a company policy that denied credit to non- citizens such as Plaintiffs, Wells Fargo violated Section 1981, the Unruh Act, and the UCL.

Wells Fargo's argument is wholly unsupported by the statutes themselves or even its own cases, and is contrary to well-settled statutory principles. No other court—whether at the trial or appellate level—has ever held that federal regulations supersede another federal statute unless the

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[1] *See Hall v. City of Santa Barbara,* 833 F.2d 1270, 1274 (9th Cir. 1986) ("It is axiomatic that [t]he motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted.") (internal quotation marks omitted); *United States v. Redwood City*, 640 F.2d 963, 966 (9th Cir. 1981) ("[I]t is only the extraordinary case in which dismissal is proper").

regulation's enabling statute so provides. Wells Fargo fails to cite any cases finding that ECOA repealed Section 1981's protections, materially affected its scope, or granted creditors immunity from alienage discrimination claims under Section 1981. Wells Fargo also relies on an inapposite line of Unruh Act cases that concern whether a claim based upon a category *not* identified in the Unruh Act (unlike here) is properly brought under the Unruh Act. Finally, Plaintiffs have sufficiently alleged facts to establish standing to bring their UCL claims because they plead a loss of money from having to deplete their own savings or obtain credit on inferior terms, all due to Wells Fargo's discriminatory conduct.

I. Plaintiffs Plead a Viable Alienage Discrimination Claim Under Section 1981.

A. Section 1981 Was Designed to Ameliorate Major Wrongs.

Plaintiffs' factual allegations fall well within the scope of Section 1981, which derives from two post-Civil War federal civil rights statutes: Section 1 of the Civil Rights Act of 1866, ch. 31, § 1, 14 Stat. 27 (the "1866 Act"), and Section 16 of the Voting Rights Act of 1870, ch. 114, § 16, 16 Stat. 140, 144 (the "1870 Act").[2] *See Runyon v. McCrary*, 427 U.S. 160, 169 & n.8, 196–202 (1976) (describing the history of Section 1981); *see also Gen. Bldg. Contractors Ass'n v. Penn.*, 458 U.S. 375, 384–90 & 390 n.17 (1982) (same). The 1866 Act was passed pursuant to Section 2 of the Thirteenth Amendment to the United States Constitution as the first federal statute to define citizenship and affirm that all citizens are equally protected by the law. *See Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 439–44 (1968); *The Civil Rights Cases*, 109 U.S. 3, 20-22 (1883). Accordingly, it applied only to discrimination based on race. *See Espinoza v. Hillwood Square Mut. Ass'n*, 522 F. Supp. 559, 562 (E.D. Va. 1981) (citing *Runyon*, 427 U.S. at 168–72).

Section 16 of the 1870 Act, however, prohibited alienage discrimination. *Anderson v. Conboy*, 156 F.3d 167, 173 (2d Cir. 1998). The 1870 Act was passed pursuant to the Fourteenth Amendment, which was ratified in July 1868. *See Gen. Bldg.*, 458 U.S. at 385–86, 389. Section

[2] The Second Circuit, in its opinion holding that Section 1981 prohibits private alienage discrimination, extensively discussed the statute's history and structure, from which this background is excerpted. *See Anderson v. Conboy*, 156 F.3d 167, 172–75 (2d Cir. 1998).

16 of the 1870 Act, a portion of which mirrors what is now 42 U.S.C. § 1981(a), used language similar to that found in Section 1 of the 1866 Act, but with one particularly relevant difference: rather than protecting "citizens, of every race and color," Section 16 protected "all persons within the jurisdiction of the United States." *See Anderson*, 156 F.3d at 173 (discussing the legislative history of the 1870 Act). The use of "persons" rather than "citizens" was deliberate and reflected the extension of the United States' guarantee of the equal protection of the laws to "any person within its jurisdiction." *Id.* (citing U.S. Const. amend. XIV § 1).[3]

Like the purpose of Deferred Action for Childhood Arrivals ("DACA"), *see* First Amended Complaint ("FAC"), ECF No. 37, ¶¶ 27–30, which was motivated by a desire to alleviate the plight of undocumented aliens brought here as young children, the legislative history of the 1870 Act demonstrates that the change from "citizens" to "persons" reflected a desire to alleviate the plight of aliens within the United States,[4] and specifically Chinese non-citizen immigrants in California who were burdened by state laws restricting their ability to work and otherwise discouraged from living in California. *See generally* Charles J. McClain, Jr., *The Chinese Struggle for Civil Rights in Nineteenth Century America: The First Phase, 1850–1870*, 72 Cal. L. Rev. 529, 539–64 (1984).

B. Plaintiffs State a Claim Under Section 1981.

Plaintiffs' FAC alleges a plausible violation of Section 1981's prohibition against alienage discrimination in the making and enforcement of contracts. *See* 42 U.S.C. § 1981(a) ("All persons within the jurisdiction of the United States shall have the same right . . . to make and enforce contracts, . . . and to the full and equal benefit of all laws and proceedings . . . as is enjoyed by white citizens."). Section 1981's plain language bars private, as well as governmental, alienage discrimination. *Id.* § 1981(c) ("The rights protected by this section are protected against

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[3] *See also Gen. Bldg.*, 458 U.S. at 385-86; *Sagana v. Tenorio*, 384 F.3d 731, 737–38 (9th Cir. 2004), *as amended* (Oct. 18, 2004) ("Congress chose with care the word 'persons' to replace 'citizens' in the statute when, in reenacting the 1866 Civil Rights Act, it extended the safeguards of the civil rights statutes to aliens.") (citations omitted).

[4] *See* Cong. Globe, 41st Cong., 2d Sess. 1536 (1870) (Section 16 "extends to foreigners, not citizens, the protection of our laws").

impairment by *nongovernmental discrimination* and impairment under color of state law.") (emphasis added). The Second and Fourth Circuits, as well as the majority of district courts, have held that Section 1981 prohibits private alienage discrimination. *See generally*, Rachel Bloomekatz, *Rethinking Immigration Status Discrimination and Exploitation in the Low-Wage Workplace*, 54 UCLA L. Rev. 1963, 2010 (2007) (citing *Anderson*, 156 F.3d at 180; *Duane v. GEICO*, 37 F.3d 1036, 1040–43 (4th Cir. 1995); *Cheung v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 913 F. Supp. 248 (S.D.N.Y. 1996)); *see also Juarez*, 69 F. Supp. 3d at 367–69 (holding that Section 1981 prohibits private alienage discrimination).

While only a few district courts in the Ninth Circuit have addressed the issue, the majority of those courts (and all the courts to have addressed the issue in the past ten years) have recognized claims for private alienage discrimination under Section 1981.[5] Wells Fargo's contention that the Ninth Circuit was "reluctant" to extend Section 1981 protection to private alienage discrimination in *Sagana*, *see* Wells Fargo's Motion to Dismiss ("Def. MTD"), ECF No. 43, at 11 n.6, is false. Because *Sagana* involved only governmental alienage discrimination, the court merely noted the circuit split without weighing in on an issue not properly before it. 384 F.3d at 739 n.6 (no dicta or other language regarding the court's inclination or "reluctance" to permit or preclude private alienage discrimination claims under Section 1981).

To state a claim under Section 1981, a plaintiff must allege that (1) she is "a member of protected class"; (2) that she "attempted to contract for certain services"; and (3) she "was denied the right to contract for those services." *Lindsey v. SLT Los Angeles, LLC*, 447 F.3d 1138, 1145 (9th Cir. 2006). The plaintiff must also show that she "was deprived of services while similarly situated persons outside the protected class were not." *Id.* (citation omitted). The Ninth Circuit

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[5] *See Ungureanu v. A. Teichert & Son*, No. 11 Civ. 0316, 2011 WL 4862425, at *9 (E.D. Cal. Oct. 13, 2011) (Section 1981 "applies to private, non-governmental claims of discrimination in employment, or any contractual setting for that matter"); *Zhang v. Ma Labs, Inc.*, 2005 WL 889724, at *2 (N.D. Cal. Apr. 15, 2005) (Section 1981 encompasses private discrimination based on alienage); *Jimenez v. Servicios Agricolas Mex, Inc.*, 742 F. Supp. 2d 1078, 1085–87 (D. Ariz. 2010) (Section 1981 proscribes "private alienage discrimination").

has indicated that the last element may be relaxed in certain circumstances—*i.e.*, the plaintiff need only show that she "received services in a markedly hostile manner and in a manner which a reasonable person would find objectively discriminatory." *Id.* (stating that it need not decide whether the fourth element could be relaxed) (citation omitted).

Here, Plaintiffs pled specifically that (1) they are aliens; (2) they attempted to contract for credit with Wells Fargo; and (3) Wells Fargo rejected their applications based on their alienage because of a specific Wells Fargo policy and practice to deny credit to non-citizens who are either DACA recipients or other lawfully present non-citizens. FAC ¶¶ 38–71, 90–97. These factual allegations meet the pleading standard and form the elements of a viable claim under Section 1981. *See Jefferson v. City of Fremont*, No. 12 Civ. 0926, 2013 WL 1747917, at *4 (N.D. Cal. Apr. 23, 2013) (denying motion to dismiss Section 1981 race discrimination claim; "[Plaintiff] has essentially alleged that he is African-American, that he tried to contract for use of the [tennis center], and that he was denied the right to use the [tennis center] while similarly situated persons outside his protected class were not"); *Juarez*, 69 F. Supp. 3d at 368-69 (S.D.N.Y. 2014) (denying motion to dismiss Section 1981 alienage discrimination claim; concluding that allegations of company's exclusionary policy against DACA recipients stated a plausible claim).

C. Section 1981, Not ECOA, Controls Plaintiffs' Lending Discrimination Claims Against Wells Fargo.

Wells Fargo ignores the plausibility of Plaintiffs' Section 1981 claim and instead makes the extraordinary and unsupported contention that Section 1981—one of the nation's oldest civil rights statutes[6]—is *governed* not by another federal statute itself, but by a wholly distinct federal statute's *implementing regulations and agency interpretations.* Wells Fargo is wrong.

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[6] *Anderson*, 156 F.3d at 172–73.

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1. Section 1981 Supersedes ECOA's Implementing Regulations and Agency Interpretations of those Regulations.

Nothing in ECOA, as the enabling statute, demonstrates any intent to repeal or limit Section 1981's protections. In support of its argument that ECOA supersedes or precludes Section 1981 in this case, Wells Fargo points to ECOA's regulations (namely 12 C.F.R. §202.5(e) and 12 C.F.R. §202.6(b)(7)), stating that a creditor may consider information about an applicant's immigration status "that may be necessary to ascertain the creditor's rights and remedies regarding repayment." Def. MTD at 7. This argument fails because it is axiomatic that federal statutes, such as Section 1981, supersede federal regulations, and not vice-versa, regardless of the degree of specificity involved. *Pac. Gas & Elec. Co. v. United States*, 664 F.2d 1133, 1136 (9th Cir. 1981). "Where an administrative regulation [of one statute] conflicts with a [different] statute, the statute controls." *United States v. Doe*, 701 F.2d 819, 823 (9th Cir. 1983); *see also United States v. Maes*, 546 F.3d 1066, 1068 (9th Cir. 2008) ("[A] regulation does not trump an otherwise applicable statute unless the regulation's enabling statute so provides.").

Wells Fargo also invites improper deference to ECOA regulations promulgated by the Consumer Financial Protection Bureau ("CFPB") to narrow Section 1981, even though the CFPB lacked delegated authority to promulgate regulations under Section 1981. ECOA regulations—much less CFPB guidance on its website (through a Q&A) on "what is credit discrimination," Def. MTD at 8 n.5—are immaterial to interpreting Section 1981 absent a grant of congressional authority for the CFPB to promulgate regulations under Section 1981. *Gonzales v. Oregon*, 546 U.S. 243, 258 (2006) (a "rule must be promulgated pursuant to authority Congress has delegated"); *Adams Fruit Co., Inc. v. Barrett*, 494 U.S. 638, 649 (1990) ("A precondition to deference under Chevron is a congressional delegation of administrative authority.") (citations omitted). Even if a ECOA regulation superseded Section 1981, which it does not, such a regulation would simply not support dismissal under Rule 12(b) because facts and discovery would be needed to ascertain that Wells Fargo reasonably determines the lack of credit worthiness of DACA recipients and individuals with other forms of authorized presence under its blanket policy, without regard to

1 what the contacts these individuals have within the United States, including family members, what
2 jobs they hold, what educational institutions they are attending, whether they could supply citizen
3 co-signers, or whether they have sufficient collateral to secure their loans. Discovery would
4 further be required to determine whether, and if so, under what conditions, the bank has made
5 exceptions to its blanket rule. At the motion to dismiss stage, the assertion of such a defense is
6 premature, and must await consideration until the parties have engaged in full discovery.

7 Finally, Congress's decision not to grant creditors immunity under ECOA from Section
8 1981 claims further dooms Wells Fargo's argument. Wells Fargo contends that ECOA immunizes
9 creditors from liability for "any act done or omitted in good faith in conformity with any official
10 rule, regulation, or interpretation thereof by the Bureau," Def. MTD at 8, but misleadingly omits
11 the language that explicitly limits its application to liability under ECOA, which Plaintiffs do not
12 seek to impose: "*No provision of this subchapter imposing liability shall apply to* any act done or
13 omitted in good faith in conformity with any official rule, regulation, or interpretation thereof by
14 the Bureau …" 15 U.S.C. § 1691e(e) (emphasis added).

15 Had Congress intended to immunize creditors from Section 1981 liability—or liability with
16 respect to any other statute—it would have spoken in ECOA, as it did to limit ECOA liability, or
17 as it has readily done in other federal statutes. *See* Aviation and Transportation Security Act §
18 125, 49 U.S.C. § 44941(a) (airlines and pilots and other employees of airlines "shall not be civilly
19 liable to any person under any law or regulation of the United States, any constitution, law, or
20 regulation of any State or political subdivision of any State" for reporting potentially dangerous
21 passengers or situations to certain federal and state agencies, law enforcement officials, and airport
22 or airline security officers); Communications Decency Act of 1996 § 230, 47 U.S.C. § 230(c)(2)
23 (granting broad civil legal immunity for online services that publish third-party content).

24 **D. Section 1981 and ECOA Can be Read Harmoniously.**

25 The plain language of Section 1981 and ECOA can be read harmoniously. Wells Fargo
26 does not and could not argue that the language of the statutes conflicts in any way. As set forth in
27 the statutes and their respective legislative history, each effectuates different legislative purposes:
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combating discrimination to afford better economic opportunities to those historically disadvantaged (Section 1981), and prohibiting credit decisions based on irrational factors, such as marriage, gender, or race (ECOA). Section 1981's broad ban on discrimination in all stages of contract formation and in all types of contracts is not superseded, precluded, or limited by ECOA's narrow bar on discrimination in lending transactions. "It would show disregard for the congressional design to hold that Congress nonetheless intended one federal statute to preclude the operation of the other." *POM Wonderful, LLC v. Coca-Cola Co.*, 134 S. Ct. 2228, 2238 (2014). Accordingly, courts routinely read Section 1981 as co-existing with other later-enacted anti-discrimination federal statutes—including ECOA—especially at the motion to dismiss stage.[7]

Section 1981's purpose is viewed by courts as "broad" in "proscrib[ing] discrimination in the making or enforcement of contracts against, or in favor of, any race." *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 295 (1976). Under Section 1981, discrimination based on alienage is prohibited, *Sagana*, 384 F.3d at 737, as well as discrimination based on ancestry or ethnic characteristics, *Fonseca v. Sysco Food Svs. of Az., Inc.*, 374 F.3d 840, 850 (9th Cir. 2004). Section 1981 incorporates claims of discrimination in various types of contracts and in all stages of formation, including employment relationships and commercial contracts. Damages available under Section 1981 include temporary and permanent injunctive relief, compensatory damages, and punitive damages. *See Johnson v. Ry. Exp. Agency, Inc.*, 421 U.S. 454, 459-60 (1975).

ECOA, on the other hand, addresses a necessarily narrower purpose: barring specific lending "discrimination," the meaning of which "must be defined with reference to the purposes of

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[7] *See Nat'l Ass'n for Advancement of Colored People v. Ameriquest Mortg. Co.*, 635 F. Supp. 2d 1096, 1104 (C.D. Cal. 2009), *as amended* (Jan. 13, 2009) (denying motion to dismiss and finding that plaintiff properly alleged claims under the ECOA, Section 1982 of the Civil Rights Act and the FHA); *JAT, Inc. v. Nat'l City Bank of Midwest*, 460 F. Supp. 2d 812, 819-21 (E.D. Mich. 2006) (permitting Section 1981, ECOA, and FHA lending discrimination claims to proceed); *Lee v. U.S. Taekwondo Union*, 331 F. Supp. 2d 1252, 1260 (D. Haw. 2004) (holding that Section 1981 co-exists with Amateur Sports Act, 36 U.S.C. §§ 220501-220529); *Wide ex rel. Estate of Wilson*, No. 02 Civ. 0104, 2002 WL 31730920, at *5 (S.D. Ind. Nov. 19, 2002) (ECOA and Section 1981 and 1982 claims permitted to proceed).

the Act," *Miller v. Am. Exp. Co.*, 688 F.2d 1235, 1238 (9th Cir. 1982), and requiring the creditor to disclose the reasons for denials of credit, *Banks v. JPMorgan Chase Bank, N.A.*, No. 14 Civ. 06429, 2015 WL 2215220, at *5-6 (N.D. Cal. May 11, 2015) (citation omitted). Damages available under ECOA include declaratory and equitable relief and actual and punitive damages. 15 U.S.C. § 1691e. ECOA is explicit in enumerating three categories of prohibited discrimination in making credit determinations and eight categories of permissible bases for credit determinations.[8] The statute itself does not list alienage or immigration status as a *permissible* basis for credit determinations which Congress could have obviously done. *See id.* Finally, ECOA's reference to "other inquiries allowed by statute" reinforces Congress's determination that only a statute, not a regulation, can be used to create an exception to (or conflict with) federal anti-discrimination laws including the ECOA.

Wells Fargo's failure to carry its heavy burden and show that ECOA and Section 1981 are in conflict is fatal to its argument. It is a fundamental canon of statutory construction that two separate statutes must first be read as capable of co-existing. "The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Morton v. Mancari,* 417 U.S. 535, 551 (1974); *see also Regional Rail Reorganization Act Cases*, 419 U.S. 102, 134 (1974) ("A new statute will not be read as wholly or even partially amending a prior one unless there exists a positive repugnancy between the

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[8] ECOA explicitly prohibits discrimination based on (1) "race, color, religion, national origin, sex or marital status, or age"; (2) for being on public assistance; and (3) for exercising an ECOA right. 15 U.S.C. §1691(a)(1)–(3). ECOA also explicitly lists certain activities as not constituting discrimination: (1) inquiring on marital status if for purpose of ascertaining creditors' rights; (2) inquiring on age or public assistance if for purpose of determining pertinent credit-worthiness; (3) using credit systems; (4) inquiring of age of elderly applicant if relevant to credit in favor of applicant; (5) other inquiries allowed by statute. *Id.* §1691(b)(1)–(5). In addition, ECOA explicitly lists three permitted reasons for creditors to refuse credit: (1) pursuant to an authorized credit assistance program for economically disadvantaged people; (2) any credit assistance program administered by a nonprofit; and (3) any special purpose credit program to meet special social needs. *Id.* §1691(c)(1)–(3).

provisions of the new and those of the old that cannot be reconciled."). Even looking beyond the text, there is nothing in the statutory language or legislative history of ECOA that indicates a congressional intent to repeal by implication Section 1981, or limit its reach. *See Morton*, 417 U.S. at 550 ("In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable.").

2. Wells Fargo's "Specific Over General" Statutory Construction Argument is Inapplicable Here.

Wells Fargo confuses the statutory principle that "a specific statute governs a general one" and ignores the necessary condition of direct conflict. Statutory construction principles dictate that statutes must first be read with an understanding that Congress knew of prior enacted statutes and, absent a clear intention otherwise, intended that they co-exist. *See POM Wonderful,* 134 S. Ct. at 2238 ("[I]t would show disregard for the congressional design to hold that Congress nonetheless intended one federal statute to preclude the operation of the other").

The Supreme Court has instructed lower courts not to take liberties "to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Morton,* 417 U.S. at 551. Any "intention of the legislature to repeal must be clear and manifest." *United States v. Borden Co.*, 308 U.S. 188, 198 (1939) (quoting *Red Rock v. Henry*, 106 U.S. 596 (1883)) (internal quotation marks omitted). Therefore, courts "must read the statutes to give effect to each if [they] can do so while preserving [the statutes'] sense and purpose." *Watt v. Alaska*, 451 U.S. 259, 266–67 (1981) (citing *Mancari,* 417 U.S. at 551; *Haggar Co. v. Helvering*, 308 U.S. 389, 394 (1940)).

It is only where two statutes are in explicit conflict that the maxim regarding specific and general statutes may apply. *See, e.g., Nat'l Cable & Telcomms. Assn., Inc. v. Gulf Power Co.*, 534 U.S. 327, 335–336 (2002) ("It is true that specific statutory language should control more general language when there is a conflict between the two. Here, however, there is no conflict."). In that

situation, a specific statute may take precedence over a general one where a statute expressly permitting a specific activity is given full effect, notwithstanding the existence of a more general statute that might otherwise reach to prohibit such activity. *See United States v. 103 Elec. Gambling Devices,* 223 F.3d 1091, 1102 (9th Cir. 2000). Additionally, the Supreme Court noted that the "specific over general" rule applies "when the two [statutes] are interrelated and closely positioned, both in fact being parts of [the same statutory scheme]." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012) (internal quotation marks and citation omitted).

Here, the specific over general principle does not apply. As shown above, Section 1981 and ECOA are not in conflict because one statute's language does not conflict with the other, either directly or indirectly. ECOA is explicit in providing guidance to applicants and creditors in providing three specific categories of prohibited bases for credit determinations and eight specific permitted creditor activities. *See* 15 U.S.C. §1691(a)(1)–(3); (b)(1)–(5); (c)(1)–(3). For example, ECOA explicitly prohibits race and national origin discrimination and specifically allows creditors to make inquiries about marital status, age, and economic status under certain conditions. 15 U.S.C. §1691(a)(1)-(3). Yet ECOA's statutory language is silent as to alienage. There is no conflict with Section 1981. *Cf. California Trout, Inc. v. FERC*, 313 F.3d 1131, 1136–38 (9th Cir. 2002) (where direct statutory conflict exists and agency responsible for implementing one of the statutes at issue was a party, court gave deference to that agency's interpretation of that statute).

Moreover, Section 1981 (enacted as part of the Civil Rights Act in 1866 and Voting Rights Act of 1870) and ECOA (enacted in 1974 as of a provision of the Consumer Credit Protection Act of 1968) are not part of the same statutory scheme. The fact that Section 1981 prohibits discrimination in contracts more broadly than does ECOA in lending does not activate this maxim.

3. Wells Fargo Offers No Relevant Legal Support for Its Position.

Not one of the cases cited in Wells Fargo's brief supports its contentions. Wells Fargo points to a handful of U.S. Supreme Court and circuit court decisions as "instructive," Def. MTD at 12; however, none of these cases support the radical proposition that a federal regulation trumps

a separate federal statute absent explicit authorization by Congress in the enabling statute. Further, not one of the cases cited by Wells Fargo supports a finding that ECOA repealed Section 1981's protections, materially altered its scope, or granted creditors immunity from alienage discrimination claims under Section 1981.

Wells Fargo's primary reliance on *Brown v. Gen. Servs. Admin.*, 425 U.S. 820 (1976) is misplaced. *Brown* stands for the uncontroversial proposition that where Congress intended to enact a comprehensive and exclusive law (here, Section 717 of the Civil Rights Act) to address discrimination in certain employment contexts because those employees had no adequate judicial remedy, the statute is the "exclusive and pre-emptive" remedy for such discrimination. *Id.* at 827–29. The Supreme Court relied on Section 717's comprehensive administrative mechanisms and judicial enforcement requirements (including the filing deadline that plaintiff had missed), which ruled out the possibility that Congress intended the law to "supplement other putative judicial relief." *Id.* at 828–33. *Brown* is easily distinguished from this case because, here (1) there is no evidence that Congress enacted the ECOA as a substitute for existing anti-discrimination laws in the lending context; (2) at the time of the ECOA's enactment, Congress was well aware that consumers who were discriminated against in lending had other remedies (including Section 1981) through which they could vindicate their rights; (3) ECOA and its regulations did not create a "comprehensive" administrative and judicial scheme designed to occupy the field in lending discrimination actions; (4) ECOA does not mandate any specific procedures for filing lending discrimination complaints; and (5) Plaintiffs here are not artfully pleading a Section 1981 claim in order to avoid procedural hurdles or deadlines under the ECOA.

Wells Fargo's reliance on statutory interpretation cases is similarly misplaced. There is no evidence that ECOA was intended to be an exception to Section 1981 or repeal it. *Cf. Morton*, 417 U.S. at 547–48 (Native-American preference in one statute was intended to be an exception to other anti-discrimination laws). Congressional "silence" should not be presumed to constitute a repeal. *Id.* at 550; *Farmer v. Emp. Sec. Comm'n of N.C.*, 4 F.3d 1274, 1283 (4th Cir. 1993) (finding conflict in statutory language but that statutory language "reveals no intention to effect

explicit repeal [of later statute]").

Wells Fargo also cites a string of Supreme Court and circuit court decisions for the proposition that where a "general" statute is "incompatible," it must give way to a more "specific provision." Def. MTD at 12-13. However, these decisions are limited in scope to cases involving claims against the U.S. government, where two statutes were in direct conflict, or where one statute was a narrowly tailored government scheme intended to provide an exclusive and mandatory framework for seeking benefits and damages from the federal government, as in *Brown*.[9] Here, there is no statutory language in ECOA (nor has Wells Fargo put forth any other evidence) that suggests that Congress meant for ECOA to be the exclusive remedy for lending discrimination, nor does it address alienage discrimination.

Wells Fargo's reliance on *In re Barber*, 266 B.R. 309 (Bankr. E.D. Pa. 2001) for the rule that "ECOA precludes other, more general statutes in the lending context when they conflict" is misplaced. Def. MTD at 13. *Barber* concerned a *direct conflict* between the plain *statutory language* of ECOA and the Home Ownership and Equity Protection Act of 1994 ("HOEPA"). HOEPA, the general statute, under 15 U.S.C. § 1641(d)(1), subjected assignees of HOEPA loans to any claims (including those under ECOA) that could be asserted against the original creditor, which conflicted with ECOA's specific elimination of liability against "creditors," as defined in the statute, 15 U.S.C. § 1691a(e), from "an assignee's liability for ECOA violations unless the

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[9] *See Johansen v. United States*, 343 U.S. 427, 428 (1952) (public servant tort suit against the U.S. government for harms sustained while on duty); *Patterson v. United States*, 359 U.S. 495, 496 (1959) (same); *United States v. Demko*, 385 U.S. 149, 149–150 (1966) (federal prisoner suit against U.S. government for being harmed while on the job); *Puget Sound Energy, Inc. v. United States*, 310 F.3d 613, 616, 620 (9th Cir. 2002) (breach of contract claim against the U.S. Department of Energy); *Strawberry v. Albright*, 111 F.3d 943, 945 (D.C. Cir. 1997) (age claim against the State Department); *Strackbein v. Wynne*, 282 F. App'x 443, 444 (7th Cir. 2008) (age claim against the Air Force Reserve); *cf. Preiser v. Rodriguez*, 411 U.S. 475, 487, 489 (1973) (holding in state prisoners' claims that "fell squarely within th[e] traditional scope of habeas corpus," when Congress amended the habeas corpus laws in 1948, "Congress clearly required exhaustion of adequate state remedies").

1 assignee participated in the violation or knew or had reasonable notice of the act that constituted
2 the violation." *Barber*, 266 B.R. at 321. *Barber* does not help Wells Fargo, which argues an
3 alleged conflict between a *statute* (Section 1981) and ECOA's *implementing regulations*.

4 Finally, since Plaintiffs did not bring claims under ECOA, Wells Fargo's contention that
5 Plaintiffs have no viable claims under ECOA is irrelevant. Def. MTD at 10. Plaintiffs are masters
6 of their complaint. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 395 (1987). Had Plaintiffs brought
7 an ECOA claim, Wells Fargo could conceivably move for summary judgment, *after discovery*, and
8 rely on the ECOA regulations it cites that arguably permit a lender to consider permanent
9 residency and immigration status as factors in assessing risk of nonpayment from a borrower as a
10 potential defense. Def. MTD at 10. But Plaintiffs did not, so Wells Fargo will need to raise
11 defenses, after discovery, that are available under the claims Plaintiffs actually brought.

12 **II. Plaintiffs Plead Viable Unruh Act Claims.**

13 Wells Fargo's attempt to limit California's expansive Unruh Civil Rights Act should also
14 be rejected. The Act provides that "all *persons*" within California "are free and equal, and no
15 matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition,
16 genetic information, marital status, sexual orientation, citizenship, primary language, or
17 immigration status are entitled to the full and equal accommodations, advantages, facilities,
18 privileges, or services in all business establishments of every kind whatsoever." Cal. Civ. Code §
19 51(b). The Act is "liberally applied" to all types of business activities, *Jackson v. Superior* Court,
20 30 Cal. App. 4th 936, 941 (Cal. App. 1994), and serves the important purpose of compelling
21 "recognition of the equality of citizens in the right to the particular service offered [ ] by an
22 organization or entity covered by the act." *Sisemore v. Master Financial, Inc.*, 151 Cal. App. 4th
23 1386, 1409 (Cal. App. 2007). "Courts have repeatedly held that the Unruh Act is applicable where
24 unequal treatment is the result of a business practice." *Koire v. Metro Car Wash*, 40 Cal. 3d 24, 29
25 (1985).

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A. Plaintiffs Sufficiently Plead That Wells Fargo Discriminated Against Them Because of their Immigration Status.

To state a plausible under the Unruh Act, Plaintiffs need only plead "intentional discrimination in public accommodations in violation of the terms of the Act." *Hernandez v. Sutter West Capital*, No. 09 Civ. 03658, 2010 WL 3385046, at *4 (Aug. 26, 2010 N.D. Cal. 2010); *see also Munoz v. Int'l Home Capital Corp.*, No. 03 Civ. 1099, 2004 WL 3086907, at *8 (N.D. Cal. May 4, 2004) (the "California Unruh Act does not require that plaintiffs plead specific elements in order to bring a claim under the Act"). Blanket "exclusion of persons based on a generalization about the class to which they belong is not permissible." *O'Connor v. Village Green Owners Ass'n*, 33 Cal.3d 790, 794 (1983).

Here, Plaintiffs allege that "Wells Fargo *intentionally* discriminated against Plaintiffs and the Class on the basis of immigration status by denying them the opportunity to contract for a loan and other financial products," harming Plaintiffs in violation of the Unruh Act. FAC ¶¶ 98–107 (emphasis added). Courts have found similar factual allegations sufficient to defeat a motion to dismiss. *See, e.g.*, *Sisemore*, 60 Cal. Rptr. 3d at 737 (reversing trial court's dismissal of complaint where, on the face of the pleadings, defendant "rejected Sisemore as a borrower solely because of her occupation even though she otherwise met the lender's qualifications."). The Court need not go further to determine that Plaintiffs' claim is appropriately pled and should be allowed to move forward.

Applying this legal standard, the California Supreme Court rejected a policy that completely excluded families with minor children from living in defendant's apartment complex. *Marina Point, Ltd. v. Wolfson*, 640 P.2d 115,124, 129 (Cal. 1982). There, defendant's policy failed scrutiny under the Unruh Act despite the lower court's findings that children, as a class, were "noisier, rowdier, more mischievous and more boisterous," findings that were supported by expert testimony. *Id.* at 119, 124, 129. The California Supreme Court found that defendant could establish no "compelling societal interest" to support the policy because defendant's policy exacerbated, rather than alleviated, the state's need to address housing shortages for moderate and

low income households with children, and further explained that the rights afforded by the Unruh Act are meant to be enjoyed by all persons, *as individuals*, and the Act would be "drastically undermined" if "a business enterprise could exclude from its . . . services entire classes of the public." *Id*. at 126, 128. The Supreme Court later reaffirmed its reasoning that the blanket exclusion of a protected class is prohibited by the Unruh Act by holding that defendant had not carried its burden of sufficiently tailoring its policy where there were other potential policies that were not "any less effective" than defendant's blanket exclusion, and because defendant was not "so powerless" to address any supposed concerns it had without having to "maintain a discriminatory policy based on generalized traits." *O'Connor*, 662 P.2d at 428, 431 & 796–97 (rejecting defendant's argument that it was necessary maintain a policy of excluding people under the age of 18 from its housing complex).

At the motion to dismiss stage, before discovery, Wells Fargo's purported justifications of its blanket exclusion of DACA recipients and others lawfully present are premature. *Sisemore*, 60 Cal. Rptr. 3d at 737. In any case, Plaintiffs have sufficiently alleged that Wells Fargo has a policy of denying student loans to *all* DACA recipients and other lawfully present non-citizens based *solely* on their immigration status, and irrespective of each individual's ability to repay. FAC ¶¶ 38–71. Wells Fargo's policy is therefore a blanket denial of credit to DACA recipients and other lawfully present non-citizens, based on an assumption—or stereotype—that lawfully present non-citizens will not repay their loans.[10] For example, Plaintiff Mitzie Perez was denied a student loan when she indicated on her loan application that she was not a U.S. Citizen or legal permanent resident, before she was able to provide information that would reflect on her risk of nonpayment.

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[10] Moreover, Plaintiffs have alleged, for example, that "Mr. Acosta already had a Wells Fargo credit card which he maintained in good standing and a loan from Wells Fargo's dealership services, both of which he obtained in 2014. He also maintained both personal and business checking accounts with Wells Fargo." FAC ¶ 45. Consequently, Wells Fargo's inconsistent policies are particularly suspect. *See Marina Point, Ltd.*, 640 P.2d at 127 (in rejecting landlord's blanket exclusion of children from its apartment complex, noting that prior to its decision to exclude families with children, "the landlord freely rented its apartments to families with children and, even at the time of trial, several families with children continued to reside in the complex.").

FAC ¶¶ 39–40. If Plaintiffs' factual allegations are accepted as true, as the Court must do at this stage, Wells Fargo disregarded Ms. Perez's credit score, prior repayment history, ability to secure a citizen co-signer, and other factors that inform the risk of nonpayment, *see* Def. MTD at 2, meaning that Wells Fargo's policy facially excludes Ms. Perez from credit because of her alienage or immigration status.

Moreover, there is no conflict between any ECOA regulation and California's Unruh Act. Regulation B only allows a lender to "consider" or "inquire about" immigration status.[11] The Regulation does not allow blanket exclusions of DACA recipients and other lawfully present noncitizens while privileging permanent residents, because permitting consideration of immigration status does not sanction an exclusionary policy on its basis. ECOA's regulations are silent on barring DACA recipients from credit, and moreover, this regulation is itself suspect as it finds no support in the statute itself. *See infra* at I.C. (noting that ECOA is silent on any issue regarding DACA recipients and those lawfully present). The Unruh Act restriction on blanket exclusions of protected classes, including those with lawful presence, can be read harmoniously with ECOA regulations which only define criteria that may be "considered." *See infra* at I.C.2.

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[11] Importantly, ECOA makes no mention of immigration status. *See generally* 15 U.S.C. § 1691, *et seq*. Regulation B and publications interpreting the Regulation merely provide that a creditor may inquire about, take into account, or consider an individual applicant's immigration status, but nowhere permit a creditor to deny financial services solely on the basis of immigration status. *See* 12 C.F.R. §202.5(e) (a creditor may "inquire about" the immigration status of an applicant); *id.* at §1002.5(6)(b)(7)(1) (a creditor "may consider" an applicant's immigration status); *id.* at Part 1002 Supplement I, Section 1002.2(2)(z)(2) (a creditor "*may* take an applicant's immigration status *into account*") (emphasis added); *Ask CFPB/Student Loans: Can a student lender consider the fact that I am not a citizen of the United States?,* CONSUMER FINANCIAL PROTECTION BUREAU (March 18, 2016), https://www.consumerfinance.gov/askcfpb/699/can-student-lender-consider-fact-i-am-not-citizen-united-states.html (last visited May 3, 2017) ("a creditor *may* ask about your . . . immigration status . . . . [and] *consider* this information or any *additional* information that may affect its rights and remedies regarding repayment.") (emphasis added).

B. The Three-Part *Harris* Test Is Inapplicable Here Because Plaintiffs' Claims Are Based on a Protected Category Identified in the Unruh Act.

The three-part *Harris* test that Wells Fargo argues the Court should apply here is inapplicable because it is used only to determine whether a claim based upon a category *not* identified in the Unruh Act or by an appellate court is properly brought under the Unruh Act. *Harris v. Capital Growth Inv'rs XIV*, 805 P.2d 873, 874–76, 878, 882–89 (1991) (because economic discrimination was not a category covered under the Act, the court analyzed three factors to determine whether plaintiffs' claim was nonetheless covered).[12] Here, Plaintiffs allege discrimination based on immigration status, one of the enumerated categories in the Act. Unruh Act, § 51(b); FAC ¶¶ 39, 46, 55, 60, 67, 71, 104. The three-part *Harris* test is therefore inapplicable to Plaintiffs' claims.

C. The Court Need Not Determine Now Whether Wells Fargo's Policy Passes Muster.

Wells Fargo's contention that the Unruh Act only prohibits businesses from engaging in unreasonable, arbitrary, or invidious discrimination, Def. MTD at 15, is premature and academic at the motion to dismiss stage because a court may *not* make the factual determination as to whether a policy is legal except in circumstances where the policy is "valid on its face." *Howe v. Bank of Am. N.A.,* 102 Cal. Rptr. 3d 506, 513 (Cal. Ct. App. 2009). This is not the case here.

Wells Fargo's policy is facially invalid. As discussed, *supra*, in Section I and footnote 11, neither ECOA nor its implementing regulations permit Wells Fargo to maintain a policy that automatically rejects DACA recipients and other lawfully present non-citizens simply because they

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[12] *See also Koebke v. Bernardo Heights Country Club*, 115 P.3d 1212,1219 (Cal. 2005) (*Harris* established "a three-part analytic framework for determining whether a future claim of discrimination, involving a category not enumerated in the statute or added by prior judicial construction, should be cognizable under the Act."); *Sisemore*, 60 Cal. Rptr. 3d at 734 (*Harris* test inapplicable since occupational status discrimination was a category recognized by an appellate court as covered by the Unruh Act); *cf. Semler v. General Elec. Capital Corp.*, 127 Cal. Rptr. 3d 794, 796 (Cal. Ct. App. 2011) (*Harris* test applicable because discrimination based on felon status is not covered by the Act).

are aliens—much less require the bank to do so. Wells Fargo's authority is inapposite. *See Howe*, 102 Cal. Rptr. at 507, 508–09 (Bank of America required under regulations enacted pursuant to the USA PATRIOT Act to obtain Social Security numbers from U.S. citizens, but not foreign nationals, in processing checking or credit accounts);[13] *Lazar v. Hertz Corp.*, 82 Cal. Rptr. 2d 368, 371–72, 374 (Cal. Ct. App. 1999) (car rental company's minimum age requirements not age discrimination under the Unruh Act because separate state statute expressly permitted car rental companies to determine their own minimum age requirements).

Wells Fargo is not exempt from the Unruh Act, which "serves as a preventive measure, without which it is recognized that businesses," including financial institutions, "might fall into discriminatory practices." *Angelucci v. Century Supper Club*, 41 Cal.4th 160, 167 (Cal. 2007). Wells Fargo's potential defenses are premature at the motion to dismiss stage. Plaintiffs should be allowed to take discovery and explore and undermine these potential defenses as "the fact remains that the Complaint alleges that [Wells Fargo] refused to provide" student loans and other financial instruments to Plaintiffs and the Class, individuals who were "otherwise qualified for the loan[s] under [Wells Fargo's] criteria." *Sisemore*, 60 Cal. Rptr. 3d at 735. "Regardless of the label used to describe [Wells Fargo]'s alleged conduct, it can fairly be considered as a refusal to deal with [Plaintiffs and the Class] solely on the basis" of their immigration status. *Id.* Plaintiffs have properly pled that Wells Fargo engaged in intentional discrimination against them and the Class by imposing a blanket denial of student loans and other financial instruments to DACA recipients and other lawfully present non-citizens, based solely on their immigration status. Wells Fargo's policy is by no means "valid on its face," and this Court should deny Wells Fargo's motion to dismiss Plaintiffs' Unruh Act claims.

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[13] Similarly, Section 51(g) permits discrimination based upon verified immigration status *only* where *required* by federal law. Cal. Civ. Code § 51(g).

III. Plaintiffs Plead a Viable Claim Under the UCL, and Have Standing to Pursue a UCL Claim.

A. Plaintiffs' Factual Allegations Constitute Discrimination in Support of Their UCL Claim.

Plaintiffs' allegations that Wells Fargo's conduct constitutes unlawful discrimination under Section 1981 and the Unruh Act are sufficient to sustain a claim under the UCL because the UCL encompasses "anything that can properly be called a business practice and that at the same time is forbidden by law." *Bank of the W. v. Superior Court*, 833 P.2d 545, 553 (Cal. 1992); *see also Sisemore*, 60 Cal. Rptr. 3d at 751 (violations of the Unruh Act are proper basis for UCL claim); *Scaduto v. Esmailzadeh*, No. 07 Civ. 4069, 2007 WL 8435679, at *9 (C.D. Cal. Aug. 9, 2007) (allegation of discriminatory housing practices are "obviously sufficient to state an unfair business practices claim" (citing *Goldman v. Standard Ins. Co.*, 341 F.3d 1023, 1036 (9th Cir. 2003)).

B. Plaintiffs Have Standing Under the UCL.

The UCL permits "a person who has suffered injury in fact and has lost money or property as a result of the unfair competition" to bring suit for unfair competition. Cal. Bus. & Prof. Code § 17204. To state a claim, a plaintiff is required to show: (1) that she suffered "economic injury," and (2) that the injury was "caused by" the unlawful, unfair, or fraudulent business practice. *Kwikset Corp. v. Superior Court*, 246 P.3d 877, 885 (Cal. 2011). Allegations of (1) loss of income; (2) loss of financial resources; or (3) economic loss "irrespective of any such plaintiff's inability to seek restitution from the defendant named therein" will demonstrate sufficient economic injury from unfair competition. *Fulford v. Logitech, Inc.*, No. 08 Civ. 2041, 2009 WL 1299088, at *1 (N.D. Cal. May 8, 2009); *see also Obesity Research Institute, LLC v. Fiber Research Int'l, LLC*, 165 F. Supp. 3d 937, 947-48 (S.D. Cal. 2016) ("There are innumerable ways a plaintiff may demonstrate economic injury, including the following: [a] plaintiff may [ ] surrender in a transaction more, or acquire in a transaction less, than he or she otherwise would have, . . . or [ ] be required to enter into a transaction, costing more money or property, that would otherwise have been unnecessary." Here, Plaintiffs have standing under the UCL because they sufficiently pled an "injury in fact" and "lost money or property." Cal. Bus. & Prof. Code

§ 17204.

First, Plaintiffs have plausibly pled injuries in fact arising out of Wells Fargo's intentional and unlawful discrimination against them. *See, e.g.*, FAC ¶¶ 40, 46–47, 55, 60, 67, 71. Discrimination constitutes an injury in fact under the UCL. *Sisemore*, 60 Cal. Rptr. 3d at 751.

Second, Plaintiffs have plausibly pled "lost money or property" resulting from Wells Fargo's unlawful discrimination. Plaintiffs allege lost money, including the incursion of additional debt, *see, e.g.*, FAC ¶¶ 41, 61, and loss of discretionary income and savings. *See, e.g.*, ¶ 49. Plaintiffs also seek reimbursement for lost monies relating to increased interest rates and incursion of credit and other expenses. *See, e.g.*, ¶¶ 41, 61, 75. These properly pled damages establish a basis for "lost money or property" for purposes of the UCL because, in order to cover their education, Plaintiffs have been forced to "enter into [ ] transaction[s], costing money or property, that would otherwise have been unnecessary" had Wells Fargo not engaged in discrimination. *Kwikset Corp.*, 246 P.3d at 886; *see also Sarun v. Dignity Health*, 181 Cal. Rptr. 3d 545, 552 (Cal. Ct. App. 2014), *as modified* (Jan. 13, 2015) (incurring transaction costs to avoid the consequences of an unlawful practice "falls within the broad meaning of suffering any damage as a result of the use or employment of an unlawful practice, whether or not those transaction costs are cognizable as actual damages." (quoting *Meyer v. Spring Spectrum, L.P.*, 200 P.3d 295, 300 (Cal. 2009)) (internal quotation marks omitted)).

Finally, Plaintiff California LULAC has standing under the UCL because it pled an injury in fact resulting from the loss or diversion of financial resources. FAC ¶ 75; *see S. Cal. Hous. Rights Ctr. v. Los Feliz Towers Homeowners Ass'n*, 426 F. Supp. 2d 1061, 1069 (C.D. Cal. 2005) (equal rights housing organization had standing to bring UCL claim where it presented "evidence of actual injury based on loss of financial resources in investigating this claim and diversion of staff time from other cases to investigate the allegations here").

Plaintiffs' plausible allegations of lost money or property, including specific identification of the money or property they lost (e.g., incurring debt with higher interest rates or loss of discretionary income and savings used in order to pay tuition) as a result of Wells Fargo's denial of

student loans and other financial instruments establishes standing under the UCL. *See White v. Trans Union,* LLC, 462 F. Supp. 2d 1079, 1084 (C.D. Cal. 2006) (finding even threadbare allegation of "Plaintiffs and the Class have suffered ... loss of money or property" sufficient to satisfy the UCL's standing requirements).[14]

CONCLUSION

For these reasons, Wells Fargo's motion to dismiss Plaintiffs' Section 1981, Unruh Act, and UCL claims should be denied.

Dated: San Francisco, California
May 3, 2017

Respectfully submitted,

By: /s/ *Jahan C. Sagafi*

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[14] Alternatively, if the Court finds that Plaintiffs have not sufficiently pled their claims, Plaintiffs will seek leave to amend their First Amended Complaint.

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