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10 UNITED STATES DISTRICT COURT
 11 SOUTHERN DISTRICT OF CALIFORNIA

10	JOSEPH PLISZKA, individually and on)	Case No. <u>'24CV0445 LL DDL</u>
11	behalf of all others similarly situated,)	
12)	
13	Plaintiff,)	COMPLAINT
14	vs.)	CLASS ACTION
15	AXOS BANK d/b/a/ UFB DIRECT,)	DEMAND FOR JURY TRIAL
16)	
17	Defendant.)	
18)	

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1 Plaintiff Joseph Pliszka (“Plaintiff”), individually and on behalf of all others
2 similarly situated, by and through his counsel, brings this Class Action Complaint
3 (“Complaint”) against Defendant Axos Bank d/b/a UFB Direct (“UFB”), and based
4 upon personal knowledge with respect to himself, and on information and belief and
5 the investigation of counsel as to all other matters, in support thereof alleges as
6 follows:

7 NATURE OF THE ACTION

8 1. Plaintiff brings this action on behalf of himself and a class of all other
9 persons who have had money market accounts with UFB since approximately March
10 1, 2022, with the exact class period to be established through discovery.

11 2. This action concerns UFB’s deceptive and unfair tactic of
12 surreptitiously reclassifying its customers’ purportedly high-yield money market
13 accounts into lower yielding “legacy” accounts, and instead creating a series of new,
14 but functionally identical accounts with competitive rates, with no notice to
15 customers and while concealing its conduct by removing so-called “legacy”
16 accounts from its website.

17 3. UFB was established in 1999 as a division of Axos Bank (“Axos” or
18 the “Bank”) and offers online banking services, including high-yield money market
19 accounts. Axos is a wholly-owned subsidiary of Axos Financial Inc. (“Axos
20 Financial”), a publicly traded bank holding company.

21 4. UFB has offered a money market account for depositors since at least
22 May 2004. A money market account is an FDIC-insured deposit account. Since its
23 inception, UFB has consistently advertised that its money market account pays a
24 “high yield,” or “exceptional” or “leading” interest rate, on account balances.¹ From
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26 ¹ For example, by navigating to the site for the “Secure Money Market” Account
27 currently advertised by UFB, users are redirected to a page titled “High-Yield
28 Money Market Account.” See [https://www.ufbdirect.com/savings/high-yield-
money-market-account](https://www.ufbdirect.com/savings/high-yield-money-market-account) (last accessed March 1, 2024)

1 at least November 2020 until the time of filing this complaint, UFB has consistently
2 emphasized its “Exceptional Interest Rates” and “Innovative Financial Solutions”
3 on its website.²

4 5. UFB knows that customers use interest bearing accounts, such as
5 money market accounts, for extended periods to grow their balances over time. UFB
6 encourages this behavior on its website by telling customers to “Put Your Savings
7 on Autopilot.”³

8 6. However, as market interest rates rose dramatically beginning in early
9 2022, UFB began taking advantage of customers by furtively creating new, similarly
10 named money market accounts with higher rates, while leaving existing customers
11 in so-called “legacy” accounts with lower rates.

12 7. Over the course of the class period, UFB executed this shell game tactic
13 *at least ten times*. UFB deliberately selected ordinary, nondescriptive adjectives for
14 each account rebrand, aiming to minimize the likelihood of detection by even the
15 most vigilant account holders.

16 8. The shell game began in April 2022 when the “Premium Money
17 Market” was replaced with “UFB Money Market.” The shell game continued with
18 the substitution of “UFB Rewards Money Market” (August 2022), “UFB Elite
19 Money Market” (September 2022), “UFB High Rate Money Market” (November
20 2022), “UFB Best Money Market” (December 2022), “UFB Preferred Money
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23 ² Compare UFB’s website on November 28, 2020, advertising “Exceptional
24 Interest Rates, Innovative Financial Solutions”
25 (<https://web.archive.org/web/20201128023355/https://www.ufbdirect.com/Savings>
26 last accessed March 1, 2024) with UFB’s current website advertising “Exceptional
27 Interest Rates, Innovative Financial Solutions” (<https://www.ufbdirect.com/savings>
28 last accessed March 1, 2024).

³ <https://www.ufbdirect.com/insights/put-your-savings-on-autopilot> (dated April
11, 2019; last accessed February 26, 2024).

1 Market” (March 2023), “UFB Premier Money Market” (April 2023), “UFB Priority
2 Money Market” (August 2023), “UFB High Yield Money Market” (also August
3 2023), and finally “UFB Secure Money Market” (November 2023). All of these
4 accounts were functionally identical, but each new iteration had a stepped-up interest
5 rate. UFB provided no notice to legacy depositors that it was introducing new
6 accounts with identical features that were paying higher interest rates.

7 9. Each time UFB introduced a new, similarly named money market
8 account offering, it synchronized the new advertised annual percentage yield
9 (“APY”) with the escalating federal funds rate. For instance, as the federal funds
10 target rate rose from 0.00% in March 2022 to a range of 5.25% to 5.50% in
11 November 2023, the APY linked to UFB’s money market account products surged
12 from 0.20% to 5.25%. However, UFB did not continue to raise the APY for the
13 preceding “legacy” accounts in response to market conditions, and indeed would
14 *lower* the APY as market rates continued to rise.

15 10. When substituting a new money market account, without providing any
16 notice to its existing money market account holders, UFB would concurrently revise
17 its account disclosures to reclassify its previous money market accounts as “legacy”
18 accounts. Although UFB ceased offering the “legacy” accounts to new depositors, it
19 continued to maintain those accounts for preexisting money market account holders.
20 However, UFB neglected to inform its account holders about the availability of a
21 new money market account, nor did UFB inform account holders that its advertised
22 money market account was not simply another name for their existing money market
23 account, but instead was a distinct account offering a higher rate of interest.
24 Consequently, existing money market customers were left in lower yield accounts.

25 11. Based on UFB’s conduct and representations, consumers held a
26 reasonable expectation that the interest rates on their money market accounts would
27 vary in accordance with prevailing market conditions, including the federal funds
28 rate. In reliance on these representations, consumers who opened UFB money

1 market accounts reasonably held the expectation that they would receive and
2 continue to receive the highest interest rate and APY provided by UFB—whatever
3 that rate may be.

4 12. The applicable UFB Personal Deposit Account Agreement and
5 Schedule of Fees (“Account Agreement”) states that “[t]he interest rate and
6 corresponding APY for savings and money market accounts are variable and are set
7 at [UFB’s] discretion.”⁴ A covenant of good faith and fair dealing is implied in this
8 agreement, and provides that UFB must exercise its discretion honestly and in good
9 faith. UFB breached the covenant of good faith and fair dealing by failing to raise
10 interest rates for its money market account holders, to whom UFB had promised a
11 variable high-yield rate. Instead, UFB capped the interest rate for its money market
12 accounts and created new, similar sounding money market account products with a
13 higher yield, without informing its current customers. UFB has not increased the
14 interest rate for legacy money market accountholders in response to market
15 conditions, depriving these accountholders of interest payments on their purportedly
16 high-yield account that they reasonably expected pursuant to the covenant of good
17 faith and fair dealing implied in their contract with UFB.

18 13. All of UFB’s money market accounts are functionally identical. No
19 rational person would choose to remain in a “legacy” account with a materially lower
20 interest rate absent UFB’s deceptive conduct.

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22 ⁴ See, e.g., “Personal Deposit Account Agreement and Schedule of Fees” at p.12.
23 [https://web.archive.org/web/20230401022519/https://www.ufbdirect.com/-](https://web.archive.org/web/20230401022519/https://www.ufbdirect.com/-/media/UFB-Direct/Documents/Disclosures/Personal-Deposit-Account-Agreement-and-Schedule-of-Fees--UFB)
24 [/media/UFB-Direct/Documents/Disclosures/Personal-Deposit-Account-](https://web.archive.org/web/20230401022519/https://www.ufbdirect.com/-/media/UFB-Direct/Documents/Disclosures/Personal-Deposit-Account-Agreement-and-Schedule-of-Fees--UFB)
25 [Agreement-and-Schedule-of-Fees--UFB](https://web.archive.org/web/20230401022519/https://www.ufbdirect.com/-/media/UFB-Direct/Documents/Disclosures/Personal-Deposit-Account-Agreement-and-Schedule-of-Fees--UFB) (dated March 16, 2023; last accessed
26 March 5, 2024); “Personal Deposit Account Agreement and Schedule of Fees” at
27 p.13. [https://web.archive.org/web/20230831143042/https://www.ufbdirect.com/-](https://web.archive.org/web/20230831143042/https://www.ufbdirect.com/-/media/UFB-Direct/Documents/Disclosures/Personal-Deposit-Account-Agreement-and-Schedule-of-Fees--UFB)
28 [/media/UFB-Direct/Documents/Disclosures/Personal-Deposit-Account-](https://web.archive.org/web/20230831143042/https://www.ufbdirect.com/-/media/UFB-Direct/Documents/Disclosures/Personal-Deposit-Account-Agreement-and-Schedule-of-Fees--UFB)
[Agreement-and-Schedule-of-Fees--UFB](https://web.archive.org/web/20230831143042/https://www.ufbdirect.com/-/media/UFB-Direct/Documents/Disclosures/Personal-Deposit-Account-Agreement-and-Schedule-of-Fees--UFB) (dated August 11, 2023; last accessed
March 5, 2024).

1 14. Plaintiff is one of the depositors adversely affected by UFB’s unfair and
2 deceptive conduct. In April 2023, Pliszka opened a UFB Preferred Money Market
3 account jointly with his wife when the advertised APY was 5.02%.

4 15. Based upon UFB’s advertisements and its representations that the
5 interest rate was “variable,” Pliszka invested funds into the UFB Preferred Money
6 Market account, anticipating that his account would yield interest in alignment with
7 the federal funds rate, as originally indicated. Instead, over the course of 2023, UFB
8 capped the APY on Plaintiff’s UFB Preferred Money Market account at 5.02% and
9 then decreased it to 4.67% in September 2023. Simultaneously, UFB was actively
10 advertising, and continues to do so, money market accounts with an APY of 5.25%.

11 16. UFB had a financial incentive to violate the covenant of good faith and
12 fair dealing and to disseminate materially false and misleading statements and/or
13 omissions regarding its high-yield money market accounts. UFB was able to report
14 higher profits by underpaying money market account holders for the use of their cash
15 in its lending business.

16 **PARTIES**

17 17. Plaintiff Joseph Pliszka is a natural person who is a citizen of the United
18 States and who is domiciled in the State of New York.

19 18. Defendant Axos Bank d/b/a UFB Direct is headquartered in San Diego,
20 California. Defendant is a wholly-owned subsidiary of Axos Financial.

21 19. Defendant’s website provides a mailing address of Axos Bank, 4350 La
22 Jolla Village Drive, Suite 140, San Diego, CA 92122.⁵

23 20. In its Form 10-K for its fiscal year ended June 30, 2023 (the “2023 10-
24 K”), at page 32, Axos Financial stated that Axos Bank “is based in San Diego,
25 California, and approximately 41.3% of our real estate loan portfolio was secured
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27 ⁵ <https://www.axosbank.com/customer-support/business-support/contact-us> (last
28 accessed February 27, 2024).

1 by real estate located in California at June 30, 2023. In addition, some of our
2 computer systems that operate our internet websites and their back-up systems are
3 located in San Diego, California.”⁶

4 21. Additionally, in its Form 10-K for its fiscal year ended June 30, 2022
5 (the “2022 10-K”), at page F-9, Axos Financial reported that “[t]he Bank’s business
6 is primarily concentrated in the State of California and is subject to the general
7 economic conditions of that state.”⁷

8 22. On a web page dated June 15, 2020, entitled “Start Enjoying the
9 Benefits of Banking Locally and Digitally,” Axos touts its connection to San Diego,
10 California: “As an online bank based in San Diego, Axos Bank offers you the best
11 of both worlds – a local financial institution that’s also available anytime, anywhere.
12 Born digital on July 4, 2000, Axos is more than just another online bank. We’re a
13 local resource that’s committed to the people within the San Diego community. . . .
14 There’s no denying it – San Diego is one of the country’s most expensive (albeit
15 amazing) cities to live in. So why waste your hard-earned money on excessive bank
16 fees? As a digital bank, we aren’t weighed down by overhead costs. Instead, we pass
17 those savings on to our customers. This means perks such as: Low to no fee
18 checking, savings, and business accounts; Low to no minimum balance
19 requirements; Industry-leading rates Use the money you save banking with Axos to
20 explore San Diego’s many attractions.”⁸

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23 ⁶ Axos Financial Form 10-K for the fiscal year ended June 30, 2023.
24 [https://d18rn0p25nwr6d.cloudfront.net/CIK-0001299709/25858605-facd-490d-
bf74-218a094a71cd.pdf](https://d18rn0p25nwr6d.cloudfront.net/CIK-0001299709/25858605-facd-490d-bf74-218a094a71cd.pdf) (last accessed February 27, 2024).

25 ⁷ Axos Financial Form 10-K for the fiscal year ended June 30, 2022.
26 ([https://s25.q4cdn.com/450655030/files/doc_financials/2022/ar/Axos-Financial-
Inc.-2022-Annual-Report.pdf](https://s25.q4cdn.com/450655030/files/doc_financials/2022/ar/Axos-Financial-Inc.-2022-Annual-Report.pdf)) (last accessed February 27, 2024).

27 ⁸ [https://www.axosbank.com/blog/Start-Enjoying-the-Benefits-of-Banking-
Locally-and-Digitally](https://www.axosbank.com/blog/Start-Enjoying-the-Benefits-of-Banking-Locally-and-Digitally) (dated June 15, 2020; last accessed February 26, 2024).

1 **FACTUAL ALLEGATIONS**

2 **I. UFB’s High-Yield Money Market Accounts**

3 29. The UFB money market account is a distinct UFB deposit account
4 product, advertised as offering “the security of a savings account with check-writing
5 privileges.” Opening this account currently requires no minimum balance. UFB’s
6 money market account imposes a \$10.00 monthly maintenance fee, applicable only
7 when the average daily balance falls below \$5,000. UFB also offers savings accounts
8 that do not offer check writing and do not impose a minimum balance fee.

9 30. In the context of bank deposits, including money market accounts,
10 interest is the amount of money that the bank pays the depositor for use of the
11 depositor’s funds, typically represented as a percentage of the total deposit amount.
12 The annual percentage yield, or APY, is the percentage reflecting the total amount
13 of interest paid on an account based on the interest rate and frequency of
14 compounding a 365-day period.

15 31. A “variable” rate money market account has an interest rate that is
16 subject to change. UFB states on its website that its money market account is “a
17 tiered variable rate account.”¹⁰

18 32. A tiered-rate account pays interest rates based on the amount of funds
19 in the account. Beginning in at least December 2021 (excluding a brief period
20 between April 2022 and August 2022 when UFB temporarily introduced a two-tier
21 structure), UFB has advertised five separate tiers for money market accounts: \$0 -
22 \$9,999.99, \$10,000 - \$24,999.99, \$25,000 - \$49,999.99, \$50,000 - \$99,999.99, and
23 \$100,000 or greater. Despite this, beginning in at least April 2022, UFB has
24 consistently offered the same interest rate to all money market account holders,
25 irrespective of their account tier.

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¹⁰ <https://www.ufbdirect.com/> (last accessed February 26, 2024).

1 33. Consumers use interest bearing accounts, including money market
2 accounts, in order to save money and allow it to grow over time. Since April 11,
3 2019, UFB’s website has told customers to “Put Your Savings on Autopilot.”¹¹
4 According to UFB, “The simplest way to grow your savings is to set up an automatic
5 transfer from your checking account to your savings account. This will ensure that a
6 portion of your earnings will go toward your savings *without your having to think*
7 *about it.*” (Emphasis added). The page states that “[s]witching to a savings account
8 with a high annual percentage yield (APY) can make your money work harder for
9 you,” which statement includes a hyperlink to the page advertising UFB’s money
10 market account.¹²

11 34. In March 2022, UFB advertised that its money market account paid an
12 APY of 0.20%. As of the date of this filing, UFB is advertising its money market
13 account as offering an APY of 5.25%. UFB’s advertised rates for its money market
14 accounts over this period have consistently aligned with the federal funds rate.

15 35. However, UFB fails to inform its customers, either on its website or
16 through any other means, that its high-yield money market accounts are subject to
17 being converted, without any prior notice, into non-high-yield “legacy” accounts
18 with APYs that will only vary downward.

19 **II. In 2022, UFB Begins Creating Duplicate Accounts with No Notice to** 20 **Customers**

21 36. As described herein, instead of adjusting rates for existing
22 accountholders, UFB shelved their accounts, reclassifying them as “legacy”
23 accounts, and instead introduced new accounts with similar names repeatedly over
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27 ¹¹ <https://www.ufbdirect.com/insights/put-your-savings-on-autopilot> (dated April
28 11, 2019; last accessed February 26, 2024).

¹² <https://www.ufbdirect.com/savings> (last accessed February 26, 2024).

1 the last two years, in an effort to deprive its customers of good faith variable interest
2 rates, commensurate with the high yield rates it had advertised.

3 37. From at least January 1, 2021, until approximately April 1, 2022, when
4 market interest rates were extremely low, UFB offered an online money market
5 account called “Premium Money Market.” UFB advertised this account as offering
6 “the security of a savings account with industry-leading rates.” The rate paid on this
7 account was 0.20% on all balances of \$25,000 or greater and 0.10% on balances
8 below \$25,000. Additionally, UFB advertised that the interest rate and the
9 corresponding APY were variable. Throughout the majority of this period, the
10 federal funds target rate remained low, at 0.00%-0.25%, from January 1, 2021
11 through March 16, 2022.

12 38. The federal funds rate began rising in early 2022, first increasing to a
13 range of 0.25%-0.50% on March 17, 2022. By December 15, 2022, the federal funds
14 target rate had risen to a range of 4.25%-4.50% and this upward trend persisted. As
15 of February 26, 2024, the target rate stands at 5.25%-5.50% and the published
16 effective federal funds rate stands at 5.33%.¹³

17 39. In tandem with the surge in interest rates, beginning in or about April
18 2022, UFB aggressively promoted its high-yield money market account as a means
19 for customers to “maximize their savings potential.” But UFB did not offer higher
20 rates by increasing rates for legacy customers. Instead, UFB created new accounts
21 with similar sounding names, left existing customers in lower yield accounts, and
22 took the lower yield accounts off its website in the hopes that customers wouldn’t
23 notice.

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26 ¹³ See the Effective Federal Funds Rate published by the Federal Reserve Bank of
27 New York at <https://www.newyorkfed.org/markets/reference-rates/effr> (last
28 accessed March 1, 2024).

1 40. For instance, in April 2022, UFB removed its Premium Money Market
2 product from its website and substituted it with “UFB Money Market,” paying
3 0.81% APY regardless of account balance, a notable increase from the 0.10% paid
4 on the legacy Premium Money Market account on account balances under \$25,000
5 and 0.20% paid on account balances over \$25,000. Over the subsequent three
6 months, UFB progressively raised the advertised APY for UFB Money Market,
7 reaching up to 1.81%. Existing “Premium” account holders were left unaware and
8 uninformed that they were not receiving the benefit of the advertised rate increase.

9 41. UFB continued imposing interest rate caps and new product churn over
10 the next two years, each time introducing a product with a deceptively similar name
11 and a higher interest rate. For example, the original Premium Money Market was
12 shelved for the higher rate “UFB Money Market” product in April 2022, which was
13 then shelved for the “UFB Rewards Money Market” introduced in August, 2022.
14 The introduction of the new money market account, with a slightly altered name and
15 featuring a higher interest rate and APY, occurred without informing existing
16 account holders who were unaware that their accounts would no longer benefit from
17 the highest available interest rates at UFB.

18 42. UFB neither informed account holders about the reclassification of
19 their accounts as “legacy” accounts nor included any mention of these accounts on
20 its website. “Legacy” account holders were not explicitly notified that they are not
21 receiving the rate advertised online. Moreover, all the accounts appear nearly
22 identical, with only one modification throughout the class period: in August 2023,
23 the then-advertised money market account required no minimum balance to open
24 the account. Previously, a minimum account balance of \$5,000 was mandatory for
25 opening a money market account. However, this subtle alteration was immaterial to
26 account holders, as they were consistently obliged to maintain a minimum balance
27 of \$5,000 to avoid monthly maintenance fees.

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1 43. While the Account Agreement lists the Legacy Accounts, it fails to
2 mention the APY paid on those accounts, compounding the misleading impression
3 that UFB’s current advertised APY is the only APY paid on any of the accounts.
4 This lack of transparency leaves consumers unaware of UFB’s fraudulent intent to
5 modify account terms, and thereby change the fundamental nature of its money
6 market account product, without any prior notice or disclosure.

7 44. As outlined below, UFB capped and would even subsequently decrease
8 the APY on its money market accounts each time it substituted a new account with
9 a similar name, while advertising higher rates to new account holders and obscuring
10 the difference between current offerings and “legacy” accounts.

11 **a. Premium Money Market Account**

12 45. From on or about December 19, 2021 through at least April 1, 2022,
13 UFB offered a money market account it called “Premium Money Market.”¹⁴

14 46. The promotion claim highlighted that “Premium Money Market
15 Accounts earn 0.20% APY on all balances of \$25,000 or greater.”

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27 ¹⁴ Accessed on February 27, 2024, via Wayback Machine at
28 [https://web.archive.org/web/20210127055805/https://www.ufbdirect.com/savings/
premium-money-market.](https://web.archive.org/web/20210127055805/https://www.ufbdirect.com/savings/premium-money-market)

UFB Premium Money Market

Earn 0.20% APY* on all balances of \$25,000 or greater. The UFB Premium Money Market offers the security of a savings account with industry-leading rates and check-writing privileges.

[Open an Account](#) [Compare Accounts](#)

Premium Money Market

Premium Money Market

BALANCE TIERS	APY*	Rate
\$0-\$9,999.99	0.10%	0.10%
\$10,000-\$24,999.99	0.10%	0.10%
\$25,000-\$49,999.99	0.20%	0.20%
\$50,000-\$99,999.99	0.20%	0.20%
>\$100,000	0.20%	0.20%

47. Additionally, a lower rate of 0.10% APY was advertised on balances below \$25,000.

48. UFB's site clarified that the advertised rate for Premium Money Market was variable: "The interest rate and corresponding APY for savings is variable and is set at our discretion. This is a tiered variable rate account." *Id.*

b. UFB Money Market

49. From on or about April 27, 2022 through at least August 9, 2022, UFB offered a money market account it called "UFB Money Market."¹⁵

50. Initially, the advertised APY was 0.81%. Over the next three months, UFB increased the advertised APY to 1.81%.¹⁶

¹⁵ Accessed on February 27, 2024, via Wayback Machine at <https://web.archive.org/web/20220427195305/https://www.ufbdirect.com/Savings/Money-Market>.

¹⁶ Accessed on February 27, 2024 via Wayback Machine at <https://web.archive.org/web/20220721002953/https://www.ufbdirect.com/Savings/Money-Market>.

1 51. UFB advertised the Money Market Account product as follows: “The
 2 UFB Money Market offers the security of a savings account with check-writing
 3 privileges.”

4 52. UFB’s site clarified in a footnote that the rate was variable: “The
 5 interest rate and corresponding APY for savings is variable and is set at our
 6 discretion. This is a tiered variable rate account.”



14 UFB Money Market

Balance Tiers	UFB Money Market APY*	Rate
\$0-\$24,999.99	1.81%	1.79%
\$25,000 or greater	1.81%	1.79%

20 **c. UFB Rewards Money Market**

21 53. From on or about August 12, 2022 through at least September 25, 2022,
 22 UFB offered a money market account it called “UFB Rewards Money Market.”¹⁷

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 28 ¹⁷ Accessed on February 27, 2024, via Wayback Machine at <https://web.archive.org/web/20220824143545/https://www.ufbdirect.com/>.

1 54. The advertised APY was initially 2.21%. On or about September 16,
 2 2022, UFB increased the advertised APY to 2.61%.¹⁸

3 55. UFB’s site clarified in a footnote that the rate was variable: “The
 4 interest rate and corresponding APY for savings is variable and is set at our
 5 discretion. This is a tiered variable rate account.”



13 **UFB Rewards Money Market**

Balance Tiers	APY*	Rate
\$0 - \$9,999.99	2.61%	2.58%
\$10,000 - \$24,999.99	2.61%	2.58%
\$25,000 - \$49,999.99	2.61%	2.58%
\$50,000 - \$99,999.99	2.61%	2.58%
\$100,000 or greater	2.61%	2.58%

21 **d. UFB Elite Money Market**

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 27 ¹⁸ Accessed on February 27, 2024, via Wayback Machine at
 28 [https://web.archive.org/web/20220924134139/https://www.ufbdirect.com/Savings/
 UFB-Rewards-Money-Market.](https://web.archive.org/web/20220924134139/https://www.ufbdirect.com/Savings/UFB-Rewards-Money-Market)

1 56. From on or about September 28, 2022 through at least October 31,
 2 2022, UFB offered a money market account it called “UFB Elite Money Market.”¹⁹

3 57. The advertised APY was 2.85%. On or about October 13, 2022, UFB
 4 increased the advertised APY to 3.11%.²⁰

5 58. UFB’s site clarified in a footnote that the rate was variable: “The
 6 interest rate and corresponding APY for savings is variable and is set at our
 7 discretion. This is a tiered variable rate account.”



14 **UFB Elite Money Market**

Balance Tiers	APY*	Rate
\$0 - \$9,999.99	3.11%	3.06%
\$10,000 - \$24,999.99	3.11%	3.06%
\$25,000 - \$49,999.99	3.11%	3.06%
\$50,000 - \$99,999.99	3.11%	3.06%
\$100,000 or greater	3.11%	3.06%

22 **e. UFB High Rate Money Market**

24 ¹⁹ Accessed on February 27, 2024, via Wayback Machine at
 25 <https://web.archive.org/web/20220927201030/https://www.ufbdirect.com/Savings/ufb-elite-money-market/>.
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27 ²⁰ Accessed on February 27, 2024, via Wayback Machine at
 28 <https://web.archive.org/web/20221013034141/https://www.ufbdirect.com/Savings/ufb-elite-money-market/>.

1 59. From on or about November 16, 2022 through at least December 7,
2 2022, UFB offered a money market account it called “UFB High Rate Money
3 Market.”²¹

4 60. The advertised APY was 3.83%. On or about December 2, 2022, UFB
5 increased the advertised APY to 3.91%.²²

6 61. UFB’s site clarified in a footnote that the rate was variable: “The
7 interest rate and corresponding APY for savings is variable and is set at our
8 discretion. This is a tiered variable rate account.”

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25 ²¹ Accessed on February 27, 2024, via Wayback Machine at
26 [https://web.archive.org/web/20221116204222/https://www.ufbdirect.com/Savings/
ufb-high-rate-money-market](https://web.archive.org/web/20221116204222/https://www.ufbdirect.com/Savings/ufb-high-rate-money-market).

27 ²² Accessed on February 27, 2024, via Wayback Machine at
28 [https://web.archive.org/web/20221202165738/https://www.ufbdirect.com/Savings/
ufb-high-rate-money-market](https://web.archive.org/web/20221202165738/https://www.ufbdirect.com/Savings/ufb-high-rate-money-market).

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UFB High Rate Money Market

Earn up to
3.91% APY*

The UFB High Rate Money Market offers the security of a savings account with check-writing privileges.

[Open an Account](#) [Compare Accounts](#) >

UFB High Rate Money Market

Balance Tiers	UFB High Rate Money Market APY*	Rate
\$0 - \$9,999.99	3.91%	3.83%
\$10,000 - \$24,999.99	3.91%	3.83%
\$25,000 - \$49,999.99	3.91%	3.83%
\$50,000 - \$99,999.99	3.91%	3.83%
\$100,000 or greater	3.91%	3.83%

f. UFB Best Money Market

62. From on or about December 16, 2022 through at least February 2, 2023, UFB offered a money market account it called “UFB Best Money Market.”²³

63. The advertised APY was 4.11%. On or about January 31, 2023, UFB increased the advertised APY to 4.21%.²⁴

²³ Accessed on February 27, 2024, via Wayback Machine at <https://web.archive.org/web/20221216183806/https://www.ufbdirect.com/>.

²⁴ Accessed on February 27, 2024, via Wayback Machine at <https://web.archive.org/web/20230131223730/https://www.ufbdirect.com/Savings/ufb-best-money-market>.

64. UFB’s site clarified in a footnote that the rate was variable: “The interest rate and corresponding APY for savings is variable and is set at our discretion. This is a tiered variable rate account.”

The screenshot shows a promotional banner for the UFB Best Money Market. At the top, it says "UFB Best Money Market" in a small red font. Below that, the text reads "Earn up to 4.21% APY*" in large, bold black font. Underneath, a smaller line of text states: "The UFB Best Money Market offers the security of a savings account with check-writing privileges." At the bottom of the banner, there is an orange button labeled "Open an Account" and a link that says "Compare Accounts" with a right-pointing chevron.

UFB Best Money Market

Balance Tiers	UFB Best Money Market APY*	Rate
\$0 - \$9,999.99	4.21%	4.12%
\$10,000 - \$24,999.99	4.21%	4.12%
\$25,000 - \$49,999.99	4.21%	4.12%
\$50,000 - \$99,999.99	4.21%	4.12%
\$100,000 or greater	4.21%	4.12%

g. UFB Preferred Money Market

65. From on or about March 7, 2023 through at least April 13, 2023, UFB offered a money market account it called “UFB Preferred Money Market.”²⁵

²⁵ Accessed on February 27, 2024, via Wayback Machine at <https://web.archive.org/web/20230307120024/https://www.ufbdirect.com/>.

1 66. The advertised APY was 4.55%. On or about March 15, 2023, UFB
 2 increased the advertised APY to 5.02%.²⁶

3 67. UFB’s site clarified in a footnote that the rate was variable: “The
 4 interest rate and corresponding APY for savings is variable and is set at our
 5 discretion. This is a tiered variable rate account.”



14 **UFB Preferred Money Market**

15 Balance Tiers	16 APY*	17 Rate
18 \$0 - \$9,999.99	19 5.02%	20 4.90%
21 \$10,000 - \$24,999.99	22 5.02%	23 4.90%
24 \$25,000 - \$49,999.99	25 5.02%	26 4.90%
27 \$50,000 - \$99,999.99	28 5.02%	4.90%
\$100,000 or greater	5.02%	4.90%

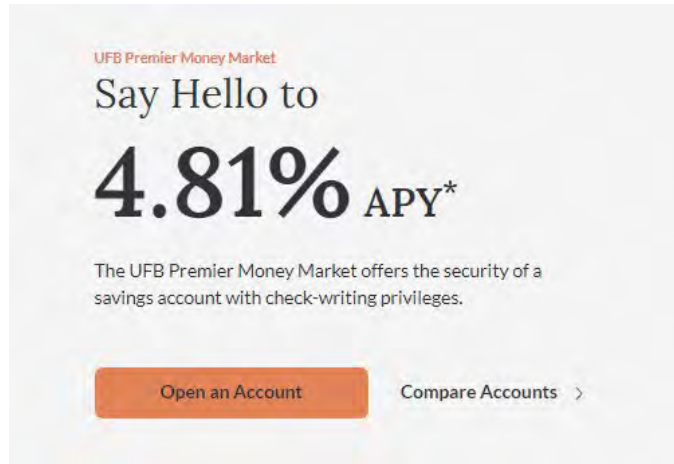
26 ²⁶ Accessed on February 27, 2024, via Wayback Machine at
 27 <https://web.archive.org/web/20230315005352/https://www.ufbdirect.com/Savings/ufb-preferred-money-market>.
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h. UFB Premier Money Market

68. From on or about April 17, 2023 through at least July 1, 2023, UFB offered a money market account it called “UFB Premier Money Market” with an advertised APY of 4.81%.²⁷

69. UFB’s site clarified in a footnote that the rate was variable: “The interest rate and corresponding APY for savings is variable and is set at our discretion. This is a tiered variable rate account.”



UFB Premier Money Market

Balance Tiers	APY*	Rate
\$0 - \$9,999.99	4.81%	4.70%
\$10,000 - \$24,999.99	4.81%	4.70%
\$25,000 - \$49,999.99	4.81%	4.70%
\$50,000 - \$99,999.99	4.81%	4.70%
\$100,000 or greater	4.81%	4.70%

²⁷ Accessed on February 27, 2024, via Wayback Machine at <https://web.archive.org/web/20230509112747/https://www.ufbdirect.com/Savings/ufb-premier-money-market>.

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i. UFB Priority Money Market

70. From on or about August 4, 2023 through at least August 11, 2023, UFB offered a money market account it called “UFB Priority Money Market” with an advertised APY of 5.06%.²⁸

71. Based upon available information, UFB maintained consistent disclosures and an identical variable rate provision to the previously advertised “UFB Premier Money Market.”

j. UFB High Yield Money Market

72. From on or about August 12, 2023 through at least November 16, 2023, UFB offered a money market account it called “UFB High Yield Money Market” with an advertised APY of 5.25%.²⁹

73. Based upon available information, UFB maintained consistent disclosures and an identical variable rate provision to the previously advertised “UFB Priority Money Market.”



²⁸ Accessed on February 27, 2024, via Wayback Machine at <https://web.archive.org/web/20230804003248/https://www.ufbdirect.com/>.

²⁹ Accessed on February 27, 2024, via Wayback Machine at <https://web.archive.org/web/20230906161126/https://www.ufbdirect.com/Savings/ufb-high-yield-money-market>.

UFB High Yield Money Market

Balance Tiers	APY*	Rate
\$0 - \$9,999.99	5.25%	5.12%
\$10,000 - \$24,999.99	5.25%	5.12%
\$25,000 - \$49,999.99	5.25%	5.12%
\$50,000 - \$99,999.99	5.25%	5.12%
\$100,000 or greater	5.25%	5.12%

k. UFB Secure Money Market

74. From on or about November 21, 2023 through to the filing of this complaint, UFB has offered a money market account called “UFB Secure Money Market” with an advertised APY of 5.25%.³⁰

75. UFB promotes the account, stating: “With the security of a savings account and the convenience of check-writing privileges, our Secure Money Market account offers a leading interest rate without limiting your spending flexibility.”³¹

76. UFB’s site also clarifies that the rate is variable: “The interest rate and corresponding APY for savings is variable and is set at our discretion. This is a tiered variable rate account.”

³⁰ Accessed on February 27, 2024, via Wayback Machine at <https://web.archive.org/web/20231121133711/https://www.ufbdirect.com/>.

³¹ Accessed on February 27, 2024, at <https://www.ufbdirect.com/savings/high-yield-money-market-account/>.

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UFB Secure Money Market

Reach New Heights With 5.25% APY*

With the security of a savings account and the convenience of check-writing privileges, our Secure Money Market account offers a leading interest rate without limiting your spending flexibility.

[Open an Account](#) [Compare Accounts >](#)

UFB Secure Money Market

Balance Tiers	APY*	Rate
\$0 to \$9,999.99	5.25%	5.12%
\$10,000 to \$24,999.99	5.25%	5.12%
\$25,000 to \$49,999.99	5.25%	5.12%
\$25,000 to \$49,999.99	5.25%	5.12%
\$50,000 to \$99,999.99	5.25%	5.12%
\$100,000 or greater	5.25%	5.12%

III. UFB’s Deceptive Conduct Lured Customers to Open and Maintain Accounts

77. The impact of UFB’s shell game was noticeable. While Axos saw an increase of approximately 8,000 interest-bearing checking and savings accounts between June 30, 2021, and June 30, 2022, this figure surged tenfold in the subsequent year, adding nearly 83,000 new interest-bearing accounts by June 30, 2023. Axos Financial openly acknowledged the substantial surge in interest-bearing checking and savings accounts, attributing this remarkable growth to “increased marketing efforts” aimed at attracting increased consumer deposit accounts.³²

³² See Axos Financial Inc. Annual Report for the fiscal year ended June 30, 2023 (“Axos Form 10-K”) (Aug. 29, 2023) at p. 11,

1 78. Furthermore, the Axos Form 10-K revealed a notable increase in
2 reported deposits. The reported deposits across interest-bearing accounts, which
3 stood at approximately \$1 billion between June 30, 2021, and June 30, 2022,
4 experienced substantial growth, reaching over \$5 billion by June 30, 2023.³³ This
5 evidence suggests that UFB not only successfully attracted new investors but also
6 retained existing ones who believed they would continue to benefit from the
7 advertised rate.

8 79. Plaintiff was one such customer who was attracted by UFB’s advertised
9 rates. He opened a Preferred Money Market Account at UFB in April 2023,
10 expecting, as advertised at the time, to earn the highest yield offered by UFB on a
11 UFB money market account.

12 80. At the time Pliszka opened his account, the advertised APY was 5.02%.
13 The UFB website did not state that there were other “legacy” money market account
14 products paying lower rates.

15 81. Based on the advertised APY and on UFB’s representation that it only
16 had one high-yield money market account, Pliszka deposited \$80,000 into his
17 Preferred Money Market account on April 11, 2023.

18 82. Pliszka continued to earn 5.02% APY on his Preferred Money Market
19 account until August 1, 2023 or thereabouts, when the APY on his account
20 *decreased* to 4.67%.

21 83. Pliszka later scrutinized UFB’s promotional materials and noted that
22 UFB prominently advertised a “High Yield Money Market” account on its website
23 boasting 5.25% APY, while Pliszka was earning less than that on his account.
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27 <https://www.sec.gov/ixviewer/ix.html?doc=/Archives/edgar/data/0001299709/000129970923000198/ax-20230630.htm> (last viewed February 22, 2024).

28 ³³ *Id.*

1 84. Pliszka contacted UFB on or about September 26, 2023 via online chat,
2 saying, “I also see you are offering 5.25% why am I only getting 4.5%[?]” Pliszka
3 further expressed his dissatisfaction with UFB during the chat, stating, “Why
4 wouldn’t you tell me in a[n] email you lowered my rate, or tell me there is another
5 product making a better rate. I have lost some confidence in your bank now.”

6 85. In response, the UFB agent informed Pliszka that he needed to
7 “upgrade” his account to receive UFB’s advertised rates, even though the UFB agent
8 acknowledged that Pliszka only “recently ha[d] joined the UFB Direct family.”

9 86. The UFB agent further stated: “I understand your frustration regarding
10 the new product release and interest rate changes. However, we are not notifying
11 customers regarding new product releases or when rates increase or decrease. As
12 such, we do not notify our customers. We leave the responsibility of managing the
13 account(s) up to the customers, and their reviewing of rate fluctuations.” This
14 statement was nonresponsive to Plaintiff’s concerns, because reviewing UFB’s
15 website leaves customers with the impression that there is only one money market
16 account product, does not disclose that there are “legacy” accounts, and therefore
17 does not allow customers to compare rates across UFB’s actual product line.
18 Moreover, the issue is not only that UFB failed to inform about a “new product
19 release,” but that it concealed that all existing customers were being relegated to
20 “legacy” status at lower rates.

21 87. To deter the Plaintiff from promptly withdrawing his funds and closing
22 his account, UFB “upgraded” his account to its then-current offering. Consequently,
23 the Plaintiff’s account was upgraded to the “High Yield Money Market” account,
24 thereby initiating earnings at the rate of 5.25% APY.

25 88. In connection with upgrading the account, the UFB agent informed
26 Pliszka that once upgraded, “[y]our account remains the same other than your
27 account name and the interest rate.”

28

1 89. Pliszka was not provided any prior notification by UFB regarding the
2 reclassification of his account or otherwise told that it was no longer considered the
3 highest-yielding money market account at UFB. Additionally, UFB had failed to
4 make him aware that the APY on his money market account had been capped.

5 90. The applicable Account Agreements in effect when Plaintiff opened his
6 Preferred Money Market Account and when he upgraded to his High Yield Money
7 Market Account both state that “The interest rate and corresponding APY for savings
8 and money market accounts are variable and are set at our discretion.”

9 91. Notably, subsequent to the Plaintiff’s discussion with UFB, the “High
10 Yield Money Market” account has also undergone conversion into a “legacy”
11 account. However, it continued to pay 5.25% APY in November 2023 and December
12 2023, and 5.24% APY in January 2024 and February 2024.

13 92. Due to UFB’s deceptive practices as alleged herein, Pliszka opted to
14 close his money market account and requested the transfer of all funds out of the
15 account on March 6, 2024.

16 93. Plaintiff and the Class members were harmed and damaged in an
17 amount equal to the difference between the interest they were paid on their “legacy”
18 accounts and the interest they would have received had they been paid UFB’s
19 advertised rates for its current money market account offerings.

20 94. To the extent reliance is a required element of any of Plaintiff’s claims,
21 such reliance is presumed for Plaintiff and all Class members because all of UFB’s
22 money market accounts are functionally identical except for the interest rate. No
23 rational person would choose to remain in a “legacy” account with a materially lower
24 interest rate absent UFB’s deceptive conduct.

25 95. UFB account holders who have discovered the Bank’s account re-
26 naming scheme have left scathing reviews of the bank on sites such as
27 depositaccounts.com. Of the 218 reviews of UFB on depositaccounts.com, 145 give
28 the bank only 1 star.

1 96. For example, an October 2, 2023 customer review of UFB titled “UFB
 2 Slimy [*sic*] Bank,” reads: “Do not use UFB Direct, unless you like a dis-honest
 3 slime-ball banking experience. Several months ago I opened a money market and a
 4 savings account each with the FDIC max insured amounts because they had a very
 5 good rate. Then 2 months later, after the Fed raised rates again, they lowered both
 6 rates by more than half a percent WITHOUT notice. I know that every bank has
 7 boilerplate disclosure about being able to change rates at any time without notice,
 8 but none of them do! I have accounts at 4 other banks and none of them lowered
 9 rates after the Fed raised rates.....and they all give me notice when a rate changes
 10 (up or down). So I withdrew my money. Then I get a call from them asking why I
 11 withdrew my money, I told them and they offered to pay me a new higher rate if I
 12 would stay. NO WAY.....they would likely just lower it again without notice in
 13 another month or two. To top it off...my money was with them for 3/4 of last month
 14 and because I withdrew it they did not pay me any interest at all for last month. I
 15 would not deal with these guys at all.....there are other banks or brokerages that are
 16 not deceptive and treat their customers much better.”

UFB Slimey Bank

★ ★ ★ ★ ★ Posted by: FredPeck | Oct 2, 2023

Do not use UFB Direct, unless you like a dis-honest slime-ball banking experience. Several months ago I opened a money market and a savings account each with the FDIC max insured amounts because they had a very good rate. Then 2 months later, after the Fed raised rates again, they lowered both rates by more than half a percent WITHOUT notice. I know that every bank has boilerplate disclosure about being able to change rates at any time without notice, but none of them do! I have accounts at 4 other banks and none of them lowered rates after the Fed raised rates.....and they all give me notice when a rate changes (up or down). So I withdrew my money. Then I get a call from them asking why I withdrew my money, I told them and they offered to pay me a new higher rate if I would stay. NO WAY.....they would likely just lower it again without notice in another month or two. To top it off...my money was with them for 3/4 of last month and because I withdrew it they did not pay me any interest at all for last month. I would not deal with these guys at all.....there are other banks or brokerages that are not deceptive and treat their customers much better.

CLASS ACTION ALLEGATIONS

26 97. This action is brought by Plaintiff, individually and on behalf of all
 27 others similarly situated, as a class action pursuant to Fed. R. Civ. P. 23(a), (b)(2),
 28 and (b)(3). Plaintiff seeks to represent a class of all persons who have been UFB

1 high-yield money market accountholders since UFB began converting its money
2 market accounts to “legacy” accounts (the “Class”). Plaintiff also seeks to represent
3 a subclass of all persons in New York who have been UFB money market
4 accountholders since UFB began converting its money market accounts to “legacy”
5 accounts (the “New York Subclass”).³⁴

6 98. Upon completion of discovery with respect to the scope of the Class,
7 Plaintiff reserves the right to amend the Class definition.

8 99. Excluded from the Class are UFB and any person, firm, trust,
9 corporation, or other entity related to or affiliated with any of UFB’s partners,
10 subsidiaries, affiliates or joint ventures.

11 100. The members of the Class are so numerous and dispersed that it would
12 be impracticable to join them individually. At all relevant times, there were
13 thousands of high-yield money market accountholders. The precise number of Class
14 members and their identities are unknown to Plaintiff at this time but can be
15 determined through discovery.

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

19 i. Whether UFB adjusted (or did not adjust) the interest rate
20 associated with its high-yield money market accounts dishonestly, unfairly,
21 and/or in bad faith;

22 ii. Whether UFB breached the implied covenant of good faith and
23 fair dealing in its contracts with money market account holders;

24 iii. Whether UFB’s conduct violates the California Business and
25 Professions Code § 17200 and § 17500;

26
27 ³⁴ All further references herein to the “Class” shall encompass and equally apply to
28 the New York Subclass.

- 1 iv. Whether UFB’s conduct violates Cal. Civ. Code § 1750;
- 2 v. As to the New York Subclass, whether UFB’s conduct violates
- 3 New York General Business Law Section 349;
- 4 vi. Whether UFB’s wrongful conduct caused Plaintiff and the Class
- 5 members damages;
- 6 vii. The measure, and consequently, the amount of damages suffered
- 7 by Plaintiff and Class members;
- 8 viii. The amount of restitution to which Plaintiff and Class members
- 9 are entitled;
- 10 ix. Whether Plaintiff and the Class members are entitled to punitive
- 11 damages;
- 12 x. Whether Plaintiff and Class members are entitled to a reasonable
- 13 award of attorney fees, interest, and costs of suit.

14 102. Plaintiff’s claims are typical of the claims of the members of the Class
15 he seeks to represent because they were all UFB money market account holders.

16 103. Plaintiff will fairly and adequately protect the interests of members of
17 the Class and have retained counsel competent and experienced in class actions and
18 consumer litigation. Plaintiff has no interests antagonistic to or in conflict with those
19 of the Class.

20 104. A class action is superior to other available methods for the fair and
21 efficient adjudication of the controversy since joinder of all members of the Class is
22 impracticable. Furthermore, because the damages suffered by individual Class
23 members may be relatively small, the expense and burden of individual litigation
24 make it impossible for the Class members individually to redress the wrongs done
25 to them. There will be no difficulty in the management of this action as a class action.

26 105. UFB has acted on grounds that apply generally to the Class, such that
27 final injunctive relief or corresponding declaratory relief is appropriate respecting
28 the Class as a whole.

1 exclusively to new customers, leaving its newly designated “legacy” account holders
2 without the promised benefits. Indeed, Defendant only exercised its discretion to
3 lower interest rates for legacy account holders. UFB failed to provide any, let alone
4 formal or effective, notification to its current account holders, even those who had
5 initiated accounts just days before, regarding the impending designation of their
6 accounts as “legacy” accounts. Additionally, UFB failed to communicate to these
7 designated “legacy” account holders that, following the furtive replacement of their
8 accounts, they would no longer enjoy the previously granted highest available
9 interest rates promised by the bank.

10 113. Thus, UFB deprived Plaintiff and the Class of the high-yield accounts
11 it promised them, contrary to their legitimate expectations.

12 114. Plaintiff and his fellow Class members have performed all, or
13 substantially all, of the obligations imposed on them under the Account Agreement.

14 115. As described above, UFB is required to fulfill its obligations under the
15 terms of the Agreement but has failed to do so.

16 116. UFB has unfairly interfered with the right of Plaintiff and members of
17 the Class to receive the benefits of the Agreement.

18 117. Plaintiff and members of the Class have suffered substantial damages
19 as a result of UFB’s breaches of the implied covenant of good faith and fair dealing
20 inherent in the Account Agreement.

21 **SECOND CAUSE OF ACTION**

22 For Violations of Cal. Bus. & Prof. Code § 17200

23 On Behalf of the Class

24 118. Plaintiff re-alleges and incorporates all other factual allegations set
25 forth in this Complaint.

26 119. Plaintiff asserts this cause of action against Defendant for unlawful,
27 unfair and fraudulent business practices; and unfair, deceptive, untrue and
28

1 misleading advertising, as defined by California’s Unfair Competition Law, Cal.
2 Bus. & Prof. Code §§ 17200, et seq. (the “UCL”).

3 120. UFB’s conduct described herein violates the UCL, as the acts and
4 practices of Defendant constitute a common and continuing course of conduct by
5 means of “unlawful,” “unfair,” and “fraudulent” business acts or practices within the
6 meaning of the UCL.

7 121. As described above, while engaging in trade or commerce within the
8 State of California during the time period relevant hereto, Defendant:

- 9 a. Unfairly and deceptively created new accounts with similar names, which
10 featured a higher APY than the “legacy” money market account, while
11 failing to pay existing “legacy” account holders the same APY as paid on
12 the replacement money market accounts;
- 13 b. Failed to inform “legacy” account holders that their advertised money
14 market account was not UFB’s only online money market account, and
15 that the “legacy” account continued to exist with a much lower interest
16 rate, which is material to customers;
- 17 c. Failed to disclose to its “legacy” money market accountholders that a new,
18 materially identical online money market account product was available;
- 19 d. Failed to disclose that Defendant’s “discretion” in setting interest rates
20 really meant that Defendant would only exercise that discretion to lower
21 interest rates;
- 22 e. Failed to correct representations that “legacy” account holders were
23 enrolled in UFB’s “high interest” savings account, even though it paid a
24 rate of interest that is not “high interest” relative to other online money
25 market account products or UFB’s own advertised money market
26 account; and
- 27
28

1 f. Failed to correct representations that the APY on their money market
2 accounts would vary in accordance with prevailing market conditions,
3 including the federal funds rate and other relevant benchmark rates.

4 122. UFB's conduct described herein violates the UCL, as the acts and
5 practices of Defendant constitute a common and continuing course of conduct by
6 means of "unlawful" "unfair" and "fraudulent" business acts or practices within the
7 meaning of the UCL.

8 123. Defendant's conduct is fraudulent. As alleged above, after advertising
9 the money market account as UFB's high-interest money market account offering,
10 UFB created new, but materially identical accounts, with similar names, without
11 informing current customers, thus attempting to conceal from current customers that
12 UFB had changed the nature of its "legacy" money market accounts in order to
13 enrich itself at its customers' expense.

14 124. Defendant's conduct is unlawful in that it violates, among other things,
15 California Civil Code §§ 1572, 1709 and 1710, as well as California Business &
16 Professions Code § 17500. As alleged herein, after advertising the money market
17 account as UFB's high-interest online account offering, UFB created new, but
18 materially identical accounts, with similar names, without informing current
19 customers, thus attempting to conceal from current customers that UFB had changed
20 the nature of its "legacy" money market accounts in order to enrich itself at its
21 customers' expense.

22 125. Defendant's conduct is unfair, because its utility, if any, is greatly
23 outweighed by the harm it causes to Plaintiff and members of the Class; and because
24 it is immoral, unethical, oppressive, unscrupulous and substantially injurious to
25 consumers; and because it violates established public policy as alleged herein. For
26 example, after advertising the money market account as UFB's high-interest online
27 account offering, UFB created new, but materially identical accounts, with similar
28 names, without informing current customers, thus attempting to conceal from current

1 customers that UFB had changed the nature of its “legacy” money market accounts
2 in order to enrich itself at its customers’ expense.

3 126. As a direct and proximate cause of Defendant’s violations of the UCL,
4 Plaintiff and members of the Class suffered an injury in fact and have suffered
5 monetary harm. Defendant, on the other hand, has been unjustly enriched. The Court
6 should impose a constructive trust and should require Defendant to make restitution
7 to Plaintiff and the Class and/or disgorge its ill-gotten profits pursuant to Business
8 & Professions Code § 17203.

9 127. Defendant’s unlawful, unfair, and fraudulent business practices, as
10 described herein, present a continuing threat to Plaintiff and the general public in
11 that Defendant’s deceptive conduct is ongoing. Plaintiff further seeks an order
12 enjoining Defendant from engaging in any unlawful or inequitable acts and practices
13 as alleged herein.

14 128. Plaintiff and the Class seek equitable relief because they have no other
15 adequate remedy at law.

16 **THIRD CAUSE OF ACTION**

17 For Violations of Cal. Bus. & Prof. Code § 17500

18 On Behalf of the Class

19 129. Plaintiff re-alleges and incorporates all other factual allegations set
20 forth in this Complaint.

21 130. UFB’s conduct described herein violates California’s False Advertising
22 Law (the “FAL”), codified at California Business and Professions Code section
23 17200, *et seq.*

24 131. The FAL provides in pertinent part, that “[i]t is unlawful for any person,
25 firm, corporation or association, or any employee thereof . . . to perform services,
26 professional or otherwise, or anything of any nature whatsoever or to induce the
27 public to enter into any obligation relating thereto, to make or disseminate or cause
28 to be made or disseminated before the public in this state, or to make or disseminate

1 or cause to be made or disseminated from this state before the public in any state, in
2 any newspaper or other publication, or any advertising device, or by public outcry
3 or proclamation, or in any other manner or means whatever, including over the
4 Internet, any statement, concerning . . . those services, professional or otherwise, or
5 concerning any circumstance or matter of fact connected with the proposed
6 performance or disposition thereof, which is untrue or misleading, and which is
7 known, or which by the exercise of reasonable care should be known, to be untrue
8 or misleading, or for any person, firm, or corporation to so make or disseminate or
9 cause to be so made or disseminated any such statement as part of a plan or scheme
10 with the intent not to sell . . . those services, professional or otherwise, so advertised
11 at the price stated therein, or as so advertised. . . .”

12 132. UFB engaged in untrue and/or misleading advertising practices in
13 violation of the FAL in the following respects, among others: UFB’s representations
14 implied that the APY on the accounts opened by Plaintiff and the Class member
15 would be the highest APY offered by UFB on any money market account, which
16 was false; and UFB’s representations further implied that the APY would vary in a
17 nonarbitrary manner, both up and down, and that the APY would vary in accord with
18 the federal funds rate, which was false.

19 133. The harm to Plaintiff and Class members arising from UFB’s untrue
20 and/or misleading advertising practices relating to the interest rates and APYs
21 available in connection with its money market accounts outweighs the utility, if any,
22 of those practices.

23 134. Plaintiff and Class members relied on UFB’s misrepresentations and
24 omissions as alleged herein. All of UFB’s money market accounts are functionally
25 identical except for the interest rate. No rational person would choose to remain in a
26 “legacy” account with a materially lower interest rate absent UFB’s deceptive
27 conduct.

28

1 144. As described above, while engaging in trade or commerce within the
2 State of California during the time period relevant hereto, Defendant:

- 3 a. Unfairly and deceptively created new accounts with similar names,
4 which featured a higher APY than the “legacy” money market account,
5 while failing to pay existing “legacy” account holders the same APY as
6 paid on the replacement money market accounts;
- 7 b. Failed to inform “legacy” account holders that their advertised money
8 market account was not UFB’s only online money market account, and
9 that the “legacy” account continued to exist with a much lower interest
10 rate, which is material to customers;
- 11 c. Failed to disclose to its “legacy” money market account holders that a
12 new, materially identical online money market account product was
13 available;
- 14 d. Failed to disclose that Defendant’s “discretion” in setting interest rates
15 actually meant that Defendant would only exercise that discretion to
16 lower interest rates;
- 17 e. Failed to correct representations that “legacy” account holders were
18 enrolled in UFB’s “high interest” savings account, even though it paid
19 a rate of interest that is not “high interest” relative to other online money
20 market account products or UFB’s own advertised money market
21 account; and
- 22 f. Failed to correct representations that the APY on their money market
23 accounts would vary in accordance with prevailing market conditions,
24 including the federal funds rate and other relevant benchmark rates.

25 145. Defendant’s conduct constitutes unfair methods of competition and
26 unfair or deceptive acts or practices in violation of the CLRA, as follows:

- 1 a. Cal. Civ. Code § 1770(a)(5) (“Representing that goods or services have
2 sponsorship, approval, characteristics, ingredients, uses, benefits, or
3 quantities that they do not have”);
- 4 b. Cal. Civ. Code § 1770(a)(7) (“Representing that goods or services are of a
5 particular standard, quality, or grade, or that goods are of a particular style
6 or model, if they are of another.”);
- 7 c. Cal. Civ. Code § 1770(a)(9) (“Advertising goods or services with intent
8 not to sell them as advertised.”);
- 9 d. Cal. Civ. Code § 1770(a)(14) (“Representing that a transaction confers or
10 involves rights, remedies, or obligations that it does not have or involve,
11 or that are prohibited by law.”);
- 12 e. Cal. Civ. Code § 1770(a)(16) (“Representing that the subject of a
13 transaction has been supplied in accordance with a previous representation
14 when it has not.”).

15 146. The misrepresentations and omissions set forth above are of material
16 facts that a reasonable person would have considered important in deciding whether
17 or not to engage Defendant’s services. Plaintiff and Class members justifiably and
18 uniformly acted or relied upon Defendant’s misrepresentations and omissions to
19 their detriment. All of UFB’s money market accounts are functionally identical
20 except for the interest rate. No rational person would choose to remain in a “legacy”
21 account with a materially lower interest rate absent UFB’s deceptive conduct.

22 147. Plaintiff and the other members of the Class have been, and/or continue
23 to be, injured as a direct and proximate result of Defendant’s violations of the CLRA.

24 148. Plaintiff is entitled to pursue a claim against Defendant on behalf of
25 himself and the Class to enjoin Defendant from continuing its unfair or deceptive
26 acts or practices under Cal. Civ. Code § 1780(a) and § 1781, as well as to pursue
27 costs and attorneys’ fees under § 1780(e).

28

1 d. Failed to disclose that Defendant’s “discretion” in setting interest rates
2 actually meant that Defendant would only exercise that discretion to
3 lower interest rates;

4 e. Failed to correct representations that “legacy” account holders were
5 enrolled in UFB’s “high interest” savings account, even though it paid
6 a rate of interest that is not “high interest” relative to other online money
7 market account products or UFB’s own advertised money market
8 account; and

9 f. Failed to correct representations that the APY on their money market
10 accounts would vary in accordance with prevailing market conditions,
11 including the federal funds rate and other relevant benchmark rates.

12 153. The foregoing deceptive acts and practices were directed at consumers.

13 154. As a result of Defendant’s false, misleading, and deceptive
14 misrepresentations and omissions, Plaintiff and the members of the New York
15 Subclass have suffered and continue to suffer economic injury.

16 155. Plaintiff and members of the New York Subclass suffered an
17 ascertainable loss caused by UFB’s misrepresentations.

18 156. On behalf of himself and other members of the New York Subclass,
19 Plaintiff seeks to enjoin the unlawful acts and practices described herein, to recover
20 actual damages or fifty dollars, whichever is greater, three-times actual damages,
21 and reasonable attorneys’ fees.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, on his own behalf and on behalf of the Class,
24 requests that the Court award the following relief:

25 A. Certify this action as a class action, appoint Plaintiff as the Class
26 representative, and designate the undersigned as Class counsel;

27 B. Declare Defendant’s conduct unlawful;

28

1 C. Enjoin Defendant from the unlawful conduct alleged herein,
2 including by ordering UFB to immediately provide variable, high-yield
3 interest rates to all UFB “legacy” money market account holders
4 commensurate with the rates applied to UFB’s concurrently advertised money
5 market account product;

6 D. Award Plaintiff and the Class (and New York Subclass) damages
7 under common law and/or by statute, including treble and/or punitive
8 damages;

9 E. Award Plaintiff and the Class (and New York Subclass)
10 restitution and/or disgorgement;

11 F. Award Plaintiff attorneys’ fees, costs, and pre-judgment and
12 post-judgment interest; and

13 G. Grant such other and further relief as this Court may deem just
14 and proper.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands a jury trial as to all issues so triable.

17
18 DATED: March 6, 2024

19 Respectfully submitted,

20 By: /s/ Philip M. Black
Philip M. Black

21
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23 Philip M. Black (SBN 308619)
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24 Chet B. Waldman (*pro hac vice*
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28 *Counsel for Plaintiff and the Proposed Class*

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CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

JOSEPH PLISZKA, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Wolf Popper LLP, 845 Third Ave., New York, NY 10022, 212-451-4600

DEFENDANTS

AXOS BANK d/b/a/ UFB DIRECT

County of Residence of First Listed Defendant San Diego (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

'24CV0445 LL DDL

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship options: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like PERSONAL INJURY, PERSONAL PROPERTY, HABEAS CORPUS, etc.

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

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

VI. CAUSE OF ACTION

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

Brief description of cause: Breach of the Implied Covenant of Good Faith and Fair Dealing and violations of consumer related statutes.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000 CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE March 6, 2024 SIGNATURE OF ATTORNEY OF RECORD /s/ Philip M. Black

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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

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