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

JOHN P. WARD, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

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

Defendant.

Case No.

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

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

10 **NATURE OF THE ACTION AND OVERVIEW**

11 1. This is a class action on behalf of persons and entities that purchased or otherwise
12 acquired Upstart securities between November 9, 2021 and May 9, 2022, inclusive (the “Class
13 Period”). Plaintiff pursues claims against the Defendants under the Securities Exchange Act of
14 1934 (the “Exchange Act”).

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

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

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

27 5. Throughout the Class Period, Defendants made materially false and/or misleading
28 statements, as well as failed to disclose material adverse facts about the Company’s business,

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

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

11 **JURISDICTION AND VENUE**

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

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

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

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

1 **PARTIES**

2 11. Plaintiff John P. Ward, as set forth in the accompanying certification, incorporated
3 by reference herein, purchased Upstart securities during the Class Period, and suffered damages as
4 a result of the federal securities law violations and false and/or misleading statements and/or
5 material omissions alleged herein.

6 12. Defendant Upstart is incorporated under the laws of Delaware with its principal
7 executive offices located in San Mateo, California. Upstart’s common stock trades on the
8 NASDAQ exchange under the symbol “UPST.”

9 13. Defendant Dave Girouard (“Girouard”) was the Chief Executive Officer (“CEO”)
10 of the Company at all relevant times.

11 14. Defendant Sanjay Datta (“Datta”) was the Company’s Chief Financial Officer
12 (“CFO”) at all relevant times.

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

24 **SUBSTANTIVE ALLEGATIONS**

25 **Background**

26 16. Upstart is a cloud-based artificial intelligence (“AI”) lending platform. The
27 Company claims that “AI lending enables a superior loan product with improved economics that
28 can be shared between consumers and lenders.” Moreover, Upstart “leverage[s] the power of AI to

1 more accurately quantify the true risk of a loan.” The Company recognizes revenue primarily from
2 fees paid by banks.

3 **Materially False and Misleading**

4 **Statements Issued During the Class Period**

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

7 **Third Quarter 2021 Financial Highlights**

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

25 **Financial Outlook**

26 For the fourth quarter of 2021, Upstart expects:

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

- 1 • **Revenue** of \$255 to \$265 million
- 2 • **Contribution Margin** of approximately 47%
- 3 • **Net Income** of \$16 to \$20 million
- 4 • **Adjusted Net Income** of \$48 to \$50 million
- 5 • **Adjusted EBITDA** of \$51 to \$53 million
- 6 • **Basic Weighted-Average Share Count** of approximately 81.9 million
7 shares
- 8 • **Diluted Weighted-Average Share Count** of approximately 96.7 million
9 shares

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

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

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

Our AI models also target and optimize other aspects of the lending process, such
as borrower acquisition, fraud detection, default timing, loan stacking, prepayment
timing and fee optimization, and our continued improvements to such models have
allowed us to facilitate loans inexpensively and virtually instantly, with a high
degree of consumer satisfaction and with an insignificant impact on loan
performance. However, such applications of our AI models may prove to be less
predictive than we expect, or than they have been in the past, for a variety of
reasons, including inaccurate assumptions or other errors made in constructing such

1 models, incorrect interpretations of the results of such models and failure to timely
 2 update model assumptions and parameters. *Additionally, such models may not be*
 3 *able to effectively account for matters that are inherently difficult to predict and*
 4 *beyond our control, such as macroeconomic conditions, credit market volatility*
 5 *and interest rate fluctuations, which often involve complex interactions between*
 6 *a number of dependent and independent variables and factors. Material errors or*
 7 *inaccuracies in such AI models could lead us to make inaccurate or sub-optimal*
 8 *operational or strategic decisions, which could adversely affect our business,*
 9 *financial condition and results of operations.*

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

12 (First emphasis in original.)

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

15 **Full Year 2021 Financial Highlights**

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

1 **Financial Outlook**

2 For the first quarter of 2022, Upstart expects:

- 3 • **Revenue** of \$295 to \$305 million
- 4 • **Contribution Margin** of approximately 46%
- 5 • **Net Income** of \$18 to \$22 million
- 6 • **Adjusted Net Income** of \$50 to \$52 million
- 7 • **Adjusted EBITDA** of \$56 to \$58 million
- 8 • **Basic Weighted-Average Share Count** of approximately 84.3 million
9 shares
- 10 • **Diluted Weighted-Average Share Count** of approximately 95.9 million
11 shares

11 For the full year 2022, Upstart expects:

- 12 • **Revenue** of approximately \$1.4 billion
- 13 • **Contribution Margin** of approximately 45%
- 14 • **Adjusted EBITDA** of approximately 17%

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

26 21. The above statements identified in ¶¶ 17-20 were materially false and/or
27 misleading, and failed to disclose material adverse facts about the Company’s business,
28 operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that

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

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

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

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

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

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

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

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

1 automated way. At the end of the day, we view our platform as being a platform
2 that responds to risk and rates in the environment.

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

5 **CLASS ACTION ALLEGATIONS**

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

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

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

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

1 virtue of their receipt of information reflecting the true facts regarding Upstart, their control over,
2 and/or receipt and/or modification of Upstart's allegedly materially misleading misstatements
3 and/or their associations with the Company which made them privy to confidential proprietary
4 information concerning Upstart, participated in the fraudulent scheme alleged herein.

5 **APPLICABILITY OF PRESUMPTION OF RELIANCE**

6 **(FRAUD-ON-THE-MARKET DOCTRINE)**

7 38. The market for Upstart's securities was open, well-developed and efficient at all
8 relevant times. As a result of the materially false and/or misleading statements and/or failures to
9 disclose, Upstart's securities traded at artificially inflated prices during the Class Period. On
10 November 9, 2021, the Company's share price closed at a Class Period high of \$313.71 per share.
11 Plaintiff and other members of the Class purchased or otherwise acquired the Company's
12 securities relying upon the integrity of the market price of Upstart's securities and market
13 information relating to Upstart, and have been damaged thereby.

14 39. During the Class Period, the artificial inflation of Upstart's shares was caused by
15 the material misrepresentations and/or omissions particularized in this Complaint causing the
16 damages sustained by Plaintiff and other members of the Class. As described herein, during the
17 Class Period, Defendants made or caused to be made a series of materially false and/or misleading
18 statements about Upstart's business, prospects, and operations. These material misstatements
19 and/or omissions created an unrealistically positive assessment of Upstart and its business,
20 operations, and prospects, thus causing the price of the Company's securities to be artificially
21 inflated at all relevant times, and when disclosed, negatively affected the value of the Company
22 shares. Defendants' materially false and/or misleading statements during the Class Period resulted
23 in Plaintiff and other members of the Class purchasing the Company's securities at such
24 artificially inflated prices, and each of them has been damaged as a result.

25 40. At all relevant times, the market for Upstart's securities was an efficient market for
26 the following reasons, among others:

27 (a) Upstart shares met the requirements for listing, and was listed and actively
28 traded on the NASDAQ, a highly efficient and automated market;

1 (b) As a regulated issuer, Upstart filed periodic public reports with the SEC
2 and/or the NASDAQ;

3 (c) Upstart regularly communicated with public investors via established
4 market communication mechanisms, including through regular dissemination of press releases on
5 the national circuits of major newswire services and through other wide-ranging public
6 disclosures, such as communications with the financial press and other similar reporting services;
7 and/or

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

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

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

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1 **NO SAFE HARBOR**

2 43. The statutory safe harbor provided for forward-looking statements under certain
3 circumstances does not apply to any of the allegedly false statements pleaded in this Complaint.
4 The statements alleged to be false and misleading herein all relate to then-existing facts and
5 conditions. In addition, to the extent certain of the statements alleged to be false may be
6 characterized as forward looking, they were not identified as “forward-looking statements” when
7 made and there were no meaningful cautionary statements identifying important factors that could
8 cause actual results to differ materially from those in the purportedly forward-looking statements.
9 In the alternative, to the extent that the statutory safe harbor is determined to apply to any forward-
10 looking statements pleaded herein, Defendants are liable for those false forward-looking
11 statements because at the time each of those forward-looking statements was made, the speaker
12 had actual knowledge that the forward-looking statement was materially false or misleading,
13 and/or the forward-looking statement was authorized or approved by an executive officer of
14 Upstart who knew that the statement was false when made.

15 **FIRST CLAIM**

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

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

18 **Against All Defendants**

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

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

27 46. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made
28 untrue statements of material fact and/or omitted to state material facts necessary to make the

1 statements not misleading; and (iii) engaged in acts, practices, and a course of business which
2 operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to
3 maintain artificially high market prices for Upstart's securities in violation of Section 10(b) of the
4 Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the
5 wrongful and illegal conduct charged herein or as controlling persons as alleged below.

6 47. Defendants, individually and in concert, directly and indirectly, by the use, means
7 or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
8 continuous course of conduct to conceal adverse material information about Upstart's financial
9 well-being and prospects, as specified herein.

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

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

1 Company's dissemination of information to the investing public which they knew and/or
2 recklessly disregarded was materially false and misleading.

3 50. Defendants had actual knowledge of the misrepresentations and/or omissions of
4 material facts set forth herein, or acted with reckless disregard for the truth in that they failed to
5 ascertain and to disclose such facts, even though such facts were available to them. Such
6 defendants' material misrepresentations and/or omissions were done knowingly or recklessly and
7 for the purpose and effect of concealing Upstart's financial well-being and prospects from the
8 investing public and supporting the artificially inflated price of its securities. As demonstrated by
9 Defendants' overstatements and/or misstatements of the Company's business, operations, financial
10 well-being, and prospects throughout the Class Period, Defendants, if they did not have actual
11 knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to obtain
12 such knowledge by deliberately refraining from taking those steps necessary to discover whether
13 those statements were false or misleading.

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

23 52. At the time of said misrepresentations and/or omissions, Plaintiff and other
24 members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff
25 and the other members of the Class and the marketplace known the truth regarding the problems
26 that Upstart was experiencing, which were not disclosed by Defendants, Plaintiff and other
27 members of the Class would not have purchased or otherwise acquired their Upstart securities, or,
28

1 if they had acquired such securities during the Class Period, they would not have done so at the
2 artificially inflated prices which they paid.

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

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

8 **SECOND CLAIM**

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

10 **Against the Individual Defendants**

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

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

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

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