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

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

Plaintiff,

vs.

UPSTART HOLDINGS, INC., DAVID J.
GIROUARD, and SANJAY DATTA,

Defendants.

Case No.:

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

DEMAND FOR JURY TRIAL

1 Plaintiff _____ (“Plaintiff”), by and through its attorneys, alleges the following
2 upon information and belief, except as to allegations concerning Plaintiff, which are alleged upon
3 personal knowledge. Plaintiff’s information and belief are based upon, among other things, its
4 counsel’s investigation, which includes, without limitation: (a) review and analysis of
5 public filings made by Upstart Holdings, Inc. (“Upstart” or the “Company”) with the U.S.
6 Securities and Exchange Commission (the “SEC”); (b) review and analysis of press releases
7 and other publications disseminated by Defendants (defined below) and other parties; (c) review
8 of news articles, shareholder communications, conference calls, and postings on Upstart’s
9 website concerning the Company’s public statements; and (d) review of other publicly available
10 information concerning the Company and the Individual Defendants.

11 **NATURE OF THE ACTION**

12 1. This is a federal securities class action on behalf of all persons or entities who
13 purchased Upstart securities between March 18, 2021 and May 9, 2022, inclusive (the “Class
14 Period”) against Upstart and certain of its officers (collectively “Defendants”) seeking to pursue
15 remedies under the Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq.* (the “Exchange Act”).

16 2. Upstart is a financial technology firm that uses artificial intelligence (“AI”) and
17 data science to underwrite consumer credit. The Company partners with banks to offer credit to
18 consumers, either through the Upstart website or through banking partner websites embedded with
19 Upstart technology. Upstart claims that its underwriting process allows banking partners to
20 originate credit with higher approval rates, lower loss rates, and a high degree of automation.

21 3. Throughout the Class Period, Defendants claimed that the lack of loans the
22 Company retained on its balance sheet ensured it only was exposed to limited credit risk. In reality,
23 as investors learned after markets closed on May 9, 2022, the Company’s highly touted, AI
24 underwriting model was unable to adequately assess credit risk in changing macroeconomic
25 conditions. As a result, Upstart had been increasingly underwriting progressively less
26 creditworthy loans throughout the Class Period.

1 institutional investors are willing to fund the loans, Upstart will fund the loans from its own balance
2 sheet.

3 21. During the Class Period, Upstart asserted in its filings with the SEC that the
4 Company had little exposure to credit risk from “Upstart-powered loans” because the “percentage
5 of loans funded through our balance sheet has generally decreased, while the percentage of loans
6 purchased by institutional investors has generally increased.”

7
8 **Defendants’ Materially False and Misleading Statements**
Issued During the Class Period

9 22. The Class Period begins on March 18, 2021. After markets closed the prior day,
10 March 17, 2021, Upstart announced its financial results for the fourth quarter and full year of 2020.
11 During the conference call on March 17, 2021, accompanying the release of the financial results,
12 CEO Girouard stated, “Upstart is a fee-based business. We don’t make loans, and *we aren’t*
13 *exposed to material balance sheet risk.*” CFO Datta stated that “in terms of loan assets, we carried
14 an aggregate balance of loans, notes and residuals of \$98 million at the end of 2020, down from
15 \$266 million at the end of 2019, reflecting the continued reduction of platform loans funded
16 through our own balance sheet.” CFO Datta touted how the amount of loans the Company retained
17 as assets on its balance sheet “represents the totality of direct exposure to credit risk.”

18 23. During a conference call with analysts on May 11, 2021, which accompanied the
19 Company’s release of its financial results for the first quarter of 2021, CEO Girouard explained
20 the Company’s rapid growth was “primarily technology and model-driven, which manifests as
21 increasing conversion rates in our borrower funnel.” The Company’s “conversion rate” metric is
22 “the number of loans transacted in a period divided by the number of rate inquiries received that
23 [Upstart] estimate[s] to be legitimate.” On the call, CFO Datta noted the Company’s “conversion
24 rate of 22% on rate requests, up from 14% over the prior year.” CFO Datta then highlighted that
25 the Company:

26 carried an aggregate balance of loans, notes, and residuals of
27 \$73.2 million, down from \$227.5 million at the end of the same
28 quarter in the prior year. *This reflects the continuing reduction in
the percentage of platform loans funded through our own balance*

1 *sheet*. It's highlighted during our last earnings call these loan assets
2 represent the totality of the direct exposure to credit risk.

3 24. During a June 9, 2021, Bank of America Global Technology Conference, CEO
4 Girouard made the positive comparison of Upstart to a "subprime lender lending off your balance
5 sheet," noting "they are balance sheet lenders which have their own limits." Girouard then touted
6 that Upstart's revenues are not "anything related to quality of credit performance." In response to
7 Bank of America analyst Nat Schindler asking how Upstart would "respond to a change in the
8 credit cycle?," Girouard contended "we will handle that recession far better than a traditional
9 system would" and that the Company had "a great proof point that a model like ours actually can
10 handle disruptions in the economy and dislocations better than a standard model."

11 25. On August 10, 2021, Upstart issued a press release announcing its financial results
12 for the second quarter of 2021. During the corresponding call with analysts, CFO Datta reported
13 on the state of the Company's balance sheet, stating, "[i]n terms of loans assets, we carried an
14 aggregate balance of loans, notes, and residuals of \$95.3 million, up from \$73.2 million in Q1 and
15 down from \$148 million at the end of the same quarter in the prior year." Defendant Datta again
16 explained, "these loan assets represent the totality of the direct exposure we have to credit risk."

17 26. On November 9, 2021, Upstart issued a press release announcing its financial
18 results for the third quarter of 2021. In the corresponding call with analysts, CFO Datta noted an
19 uptick of the "aggregate balance loans, notes and residuals of \$140 million," which was "up from
20 \$95.3 million in Q3 and down from \$145 million at the end of the same quarter in the prior year."
21 CFO Datta denied that the increase had anything to do with the deteriorating quality of Upstart's
22 loans, and instead claimed that the reason the "dollar volume of loans we carry is edging upwards"
23 was *the Company's "use of our balance sheet to the scaling of our growing auto product, as
24 well as our expansion into lower-credit score segments of personal lending."*

25 27. On February 15, 2022, Upstart issued a press release announcing financial results
26 for the fourth quarter and full year of 2021, which ended December 31, 2021. During the
27 corresponding conference call with analysts that day, CFO Datta assured investors the Company
28 was "cognizant of the fluidity in the macro environment," but that the Company was "not expecting

1 any meaningful adverse impact from rising defaults on our volumes or economics.” Explaining
2 that the Company had “\$170 million [that] was reinvested back into our balance sheet in the form
3 of loans made in support of new R&D programs,” CFO Datta reported that the “balance of loans,
4 notes and residuals at the end of the year was \$261 million, up from \$140 million in Q3 and
5 reflecting the accelerated pace of R&D.”

6 28. The above statements identified in ¶¶ 22 – 27 were materially false and/or
7 misleading and failed to disclose material adverse facts about the Company’s business, operations,
8 and prospects, which were known to Defendants or recklessly disregarded by them. Specifically,
9 Defendants mislead investors and/or failed to disclose that: (1) Upstart’s AI underwriting model
10 could not and did not adequately account for macroeconomic factors such as interest rate increases
11 and the end of the U.S. government stimulus; (2) that, as a result, Upstart was experiencing
12 negative impacts on its conversion rate; (3) that, as a result, the Company was reasonably likely to
13 use its balance sheet to fund loans, rendering its balance sheet highly exposed to credit risk; and
14 (4) as a result of the foregoing, Defendants’ positive statements about the Company’s business,
15 operations, and prospects were materially false and/or misleading and/or lacked a reasonable basis.

16 **The Truth Comes to Light**

17 29. After the markets closed on May 9, 2022, the Company issued a press release
18 announcing its financial results for the first quarter of 2022, which ended March 31, 2022, and
19 guidance for the second quarter and full-year 2022. The press release included the Company’s
20 unaudited Consolidated Balance Sheet for the quarter, which showed the *loans on the Company’s*
21 *balance sheet had more than doubled in just one quarter*: from \$252,477,000 for the period
22 ending to December 31, 2021, to \$597,981,000 for the period ended March 31, 2022.

23 30. During the conference call accompanying the release of the financial results, CEO
24 Girouard was forced to concede the Company “observed more volatility” for loans funded by
25 institutions and capital markets, which Girouard attributed to “the abrupt termination of
26 [government] stimulus programs [which] caused some of the more recent vintages to
27 underperform.”

1 representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a
2 controlling interest.

3 36. The members of the Class are so numerous that joinder of all members is
4 impracticable. While the exact number of Class members is unknown to Plaintiff at this time and
5 can only be ascertained through appropriate discovery, Plaintiff believes that there are at least
6 hundreds or thousands of members in the proposed Class. Throughout the Class Period, Upstart
7 common stock actively traded on NASDAQ (an open and efficient market) under the symbol
8 "UPST." Millions of Upstart shares were traded publicly during the Class Period on the NASDAQ.
9 As of April 29, 2022, the Company had more than 84 million shares outstanding. Record owners
10 and other members of the Class may be identified from records maintained by Upstart or its transfer
11 agent and may be notified of the pendency of this action by mail, using a form of notice similar to
12 that customarily used in securities class actions

13 37. Plaintiff's claims are typical of the claims of the other members of the Class as all
14 members of the Class were similarly affected by Defendants' wrongful conduct in violation of
15 federal law that is complained of herein.

16 38. Plaintiff will fairly and adequately protect the interests of the members of the Class
17 and has retained counsel competent and experienced in class and securities litigation. Plaintiff has
18 no interests that conflict with those of the Class.

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

22 a. whether Defendants violated the Exchange Act by the acts and omissions
23 as alleged herein;

24 b. whether Defendants knew or recklessly disregarded that their statements
25 and/or omissions were false and misleading;

1 c. whether documents, press releases, and other statements disseminated to the
2 investing public and the Company's shareholders during the Class Period misrepresented material
3 facts about the business, operations, and prospects of Upstart;

4 d. whether statements made by Defendants to the investing public during the
5 Class Period misrepresented and/or omitted to disclose material facts about the business,
6 operations, and prospects of Upstart;

7 e. whether the market price of Upstart securities during the Class Period was
8 artificially inflated due to the material misrepresentations and failures to correct the material
9 misrepresentations complained of herein; and

10 f. the extent to which the members of the Class have sustained damages and
11 the proper measure of damages.

12 40. A class action is superior to all other available methods for the fair and efficient
13 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
14 damages suffered by individual Class members may be relatively small, the expense and burden
15 of individual litigation make it impossible for members of the Class to individually redress the
16 wrongs done to them. There will be no difficulty in the management of this suit as a class action.

17 **UNDISCLOSED ADVERSE INFORMATION**

18 41. The market for Upstart's securities was an open, well-developed, and efficient
19 market at all relevant times. As a result of the materially false and/or misleading statements and/or
20 omissions particularized in this Complaint, Upstart's securities traded at artificially inflated prices
21 during the Class Period. Plaintiff and the other members of the Class purchased Upstart's
22 securities relying upon the integrity of the market price of the Company's securities and market
23 information relating to Upstart and have been damaged thereby.

24 42. During the Class Period, Defendants materially misled the investing public, thereby
25 inflating the price of Upstart's securities, by publicly issuing false and/or misleading statements
26 and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth
27 herein, not false and/or misleading. The statements and omissions were materially false and/or
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1 misleading because they failed to disclose material adverse information and/or misrepresented the
2 truth about Upstart’s business, operations, and prospects as alleged herein. These material
3 misstatements and/or omissions had the cause and effect of creating in the market an unrealistically
4 positive assessment of the Company and its business, thus causing the Company’s securities to be
5 overvalued and artificially inflated or maintained at all relevant times. Defendants’ materially
6 false and/or misleading statements during the Class Period directly or proximately caused or were
7 a substantial contributing cause of the damages sustained by Plaintiff and other members of the
8 Class who purchase the Company’s securities at artificially inflated prices and were harmed when
9 the truth was revealed.

10 **SCIENTER ALLEGATIONS**

11 43. As alleged herein, Defendants acted with scienter in that Defendants knew or were
12 reckless as to whether the public documents and statements issued or disseminated in the name of
13 the Company during the Class Period were materially false and misleading; knew or were reckless
14 as to whether such statements or documents would be issued or disseminated to the investing
15 public, and knowingly and substantially participated or acquiesced in the issuance or dissemination
16 of such statements or documents as primary violations of the federal securities laws.

17 44. As set forth herein, the Individual Defendants, by virtue of their receipt of
18 information reflecting the true facts regarding Upstart, their control over, receipt and/or
19 modification of Upstart’s allegedly materially misleading statements and omissions, and/or their
20 positions with the Company which made them privy to confidential information concerning
21 Upstart, participated in the fraudulent scheme alleged herein.

22 **INAPPLICABILITY OF STATUTORY SAFE HARBOR**

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

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

9 **LOSS CAUSATION**

10 47. Defendants' wrongful conduct, as alleged herein, directly and proximately caused
11 the economic loss, *i.e.*, damages, suffered by Plaintiff and the Class.

12 48. During the Class Period, as detailed herein, Defendants made materially false and
13 misleading statements and omissions and engaged in a scheme to deceive the market. This
14 artificially inflated the prices of Upstart's securities and operated as a fraud or deceit on the Class.
15 When Defendants' prior misrepresentations, information alleged to have been concealed,
16 fraudulent conduct, and/or the effect thereof were disclosed to the market, the price of Upstart's
17 stock fell precipitously, as the prior artificial inflation came out of the price.

18 **APPLICABILITY OF PRESUMPTION OF RELIANCE**

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

20 49. The market for Upstart stock was open, well-developed, and efficient at all relevant
21 times. As a result of the materially false and/or misleading statements and/or failures to disclose
22 particularized in this Complaint, Upstart securities traded at artificially inflated and/or maintained
23 prices during the Class Period. Plaintiff and other members of the Class purchased the Company's
24 securities relying upon the integrity of the market price of Upstart securities and market
25 information relating to Upstart and have been damaged thereby.

26 50. At all times relevant, the market for Upstart securities was an efficient market for
27 the following reasons, among others:

1 a. Upstart was listed and actively traded on NASDAQ, a highly efficient and
2 automated market;

3 b. As a regulated issuer, Upstart filed periodic public reports with the SEC
4 and/or the NASDAQ;

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

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

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

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

1 **COUNTS AGAINST DEFENDANTS**

2 **COUNT I**

3 **For Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated**
4 **Thereunder Against All Defendants**

5 53. Plaintiff repeats and realleges each and every allegation contained above as if fully
6 set forth herein.

7 54. During the Class Period, Defendants carried out a plan, scheme, and course of
8 conduct that was intended to and, throughout the Class Period, did: (i) deceive the investing public,
9 including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain
10 the market price of Upstart securities; and (iii) cause Plaintiff and other members of the Class to
11 purchase Upstart stock at artificially inflated prices. In furtherance of this unlawful scheme, plan,
12 and course of conduct, Defendants, and each of them, took the actions set forth herein.

13 55. Defendants: (i) employed devices, schemes, and artifices to defraud; (ii) made
14 untrue statements of material fact and/or omitted to state material facts necessary to make the
15 statements not misleading; and (iii) engaged in acts, practices, and a course of conduct that
16 operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to
17 maintain artificially high market prices for Upstart securities in violation of Section 10(b) of the
18 Exchange Act and Rule 10b-5 promulgated thereunder. All Defendants are sued either as primary
19 participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged
20 below.

21 56. Defendants, individually and in concert, directly and indirectly, by the use, means,
22 or instrumentalities of interstate commerce and/or the mails, engaged and participated in a
23 continuous course of conduct to conceal adverse material information about Upstart's business,
24 operations, and prospects, as specified herein. Defendants employed devices, schemes, and
25 artifices to defraud, while in possession of material adverse non-public information and engaged
26 in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of
27 Upstart's business, operations, and prospects, which included the making of, or the participation
28 in the making of, untrue statements of material facts and/or omitting to state material facts

1 necessary in order to make the statements made about Upstart and its business, operations, and
2 future prospects in light of the circumstances under which they were made, not misleading, as set
3 forth more particularly herein, and engaged in transactions, practices, and a course of conduct of
4 business that operated as a fraud and deceit upon the purchasers of the Company's securities during
5 the Class Period.

6 57. Each of the Individual Defendants' primary liability and controlling person liability,
7 arises from the following facts: (i) each of the Individual Defendants was a high-level executive
8 and/or director at the Company during the Class Period and a member of the Company's
9 management team or had control thereof; (ii) each of the Individual Defendants, by virtue of his
10 responsibilities and activities as a senior officer and/or director of the Company, was privy to and
11 participated in the creation, development, and reporting of the Company's business, operations,
12 and prospects; (iii) each of the Individual Defendants enjoyed significant personal contact and
13 familiarity with the other Defendants and was advised of and had access to, other members of the
14 Company's management team, internal reports, and other data and information about the
15 Company's financial condition and performance at all relevant times; and (iv) each of the
16 Individual Defendants was aware of the Company's dissemination of information to the investing
17 public, which they knew and/or recklessly disregarded was materially false and misleading.

18 58. Defendants had actual knowledge of the misrepresentations and/or omissions of
19 material facts set forth herein or acted with reckless disregard for the truth in that they failed to
20 ascertain and to disclose such facts, even though such facts were available to them. Such
21 Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and
22 for the purpose and effect of concealing Upstart's operating condition, business practices, and
23 prospects from the investing public and supporting the artificially inflated and/or maintained price
24 of its securities. As demonstrated by Defendants' overstatements and misstatements of the
25 Company's business, operations, and prospects throughout the Class Period, Defendants, if they
26 did not have actual knowledge of the misrepresentations and/or omissions alleged, were reckless
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1 in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to
2 discover whether those statements were false or misleading.

3 59. As a result of the dissemination of the materially false and/or misleading
4 information and/or failure to disclose material facts, as set forth above, the market price of Upstart
5 securities was artificially inflated, and relying directly or indirectly on the false and misleading
6 statements made by Defendants or upon the integrity of the market in which the stock trades, and/or
7 in the absence of material adverse information that was known or recklessly disregarded by
8 Defendants, but not disclosed in public statements by Defendants during the Class Period, Plaintiff
9 and the other members of the Class purchased Upstart securities during the Class Period at
10 artificially inflated prices and were damaged thereby.

11 60. At the time of said misrepresentations and omissions, Plaintiff and other members
12 of the Class were ignorant of their falsity and believed them to be true. Had Plaintiff and the other
13 members of the Class and the marketplace known of the truth regarding the problems that Upstart
14 was experiencing, which were not disclosed by Defendants, Plaintiff and other members of the
15 Class would not have purchased their Upstart securities, or, if they had purchased such securities
16 during the Class Period, they would not have done so at the artificially inflated prices that they
17 paid.

18 61. By virtue of the foregoing, Upstart and the Individual Defendants each violated
19 § 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

20 62. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the
21 other members of the Class suffered damages in connection with their purchases of the Company's
22 securities during the Class Period.

23 **COUNT II**
24 **For Violations of Section 20(a) of the Exchange Act**
25 **Against the Individual Defendants**

26 63. Plaintiff repeats and re-alleges each and every allegation contained above as if fully
27 set forth herein.

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- a) Declaring this action to be a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Class defined herein;
- b) Awarding Plaintiff and the other members of the Class damages in an amount that may be proven at trial, together with interest thereon;
- c) Awarding Plaintiff and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs; and
- d) Awarding such other relief as this Court deems appropriate.

JURY DEMAND

67. Plaintiff demands a trial by jury.