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 FOUNTAINHEAD SBF LLC and
 13 FOUNTAINHEAD COMMERCIAL
 CAPITAL, LLC

14
 15 UNITED STATES DISTRICT COURT
 16 CENTRAL DISTRICT OF CALIFORNIA
 17

18 ELIZABETH M. BYRNES, INC., a
 corporation, on behalf of itself and all
 19 other similarly situated,

20 Plaintiff,

21 vs.

22 FOUNTAINHEAD COMMERCIAL
 CAPITAL, LLC; and DOES 1 through
 23 10, inclusive,

24 Defendant.

Case No. 2:20-cv-04149-DDP (RAOx)

**DECLARATION OF MICHAEL R.
 FARRELL IN SUPPORT OF
 DEFENDANTS FOUNTAINHEAD
 SBF LLC'S AND FOUNTAINHEAD
 COMMERCIAL CAPITAL, LLC'S
 NOTICE OF MOTION AND
 MOTION TO DISMISS FIRST
 AMENDED CLASS ACTION
 COMPLAINT**

[Notice of Motion and Motion;
 Memorandum of Points and Authorities;
 and [Proposed] Order filed concurrently
 herewith]

Date: September 14, 2020
 Time: 10:00 a.m.
 Hon. Dean D. Pregerson
 Ctrm: 9C

DECLARATION OF MICHAEL R. FARRELL

I, Michael R. Farrell, declare:

1. I am an attorney at the law firm of Allen Matkins Leck Gamble Mallory & Natsis LLP, counsel of record for Defendants Fountainhead SBF LLC and Fountainhead Commercial Capital, LLC ("Defendants").

2. This Declaration is made in support of Defendants' Motion to Dismiss First Amended Class Action Complaint ("Motion"). Certain communications were excerpted by Plaintiff in the Complaint and full copies of such communications are hereby provided to the Court for its consideration. *See, e.g., Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006); *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010).

3. A true and correct copy of Defendants' confirmation email to Plaintiff Elizabeth M. Byrnes, Inc. ("Plaintiff") dated March 28, 2020, excerpted in paragraph 16 of the Complaint, is attached hereto as **Exhibit 1**.

4. A true and correct copy of Defendants' email to Plaintiff dated March 29, 2020, excerpted in paragraph 16 of the Complaint, is attached hereto as **Exhibit 2**.

5. A true and correct copy of Defendants' email to Plaintiff dated April 13, 2020, excerpted in paragraph 18 of the Complaint, is attached hereto as **Exhibit 3**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 14th day of August, 2020, at Los Angeles, California.

Michael R. Farrell

Michael R. Farrell

EXHIBIT 1

[View this email in your browser](#)



FOUNTAINHEAD

Help is on the way <<First Name>>!

We've received your loan request and you are in queue. You'll receive another email shortly with next steps.



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Want to change how you receive these emails?
You can [update your preferences](#) or [unsubscribe from this list](#).

EXHIBIT 2

From info@fountainheadcc.com
To Elizabeth Byrnes<ebyrnes@irs-eater.com>
Subject Your Business Loan Inquiry
Date Mar 29, 2020 09:53 AM
Attachments Fountainhead SBA 7_a_ PPP Loan Application.pdf

Hi Elizabeth,

Thank you for your SBA 7(a) Paycheck Protection Program Loan submission with Fountainhead!

We are the nation's leading nonbank Small Business Lender and we're committed to helping as many small to mid-sized businesses as possible to recover from the effects the coronavirus has had on their operations and financial condition.

Our company, Fountainhead, is one of only fourteen (14) nonbank lenders licensed by the US government to make SBA 7(a) loans, We are deeply honored to be a participating SBA lender during this unprecedented time and look forward to being on the frontlines in this massive effort to save America's small to mid-sized businesses.

To learn more about the aspects of the Paycheck Protection Plan, as we have interpreted per the CRES Act please [click here](#). These are subject to change upon guidance from the SBA and U.S government.

Here is a shortlist of the items we believe we'll need to process the SBA 7(a) relief loan.

- ☐ **Completed Application SEE ATTACHED. Please download the pdf before completing. Nothing will be saved in "View" mode.**
- ☐ **Articles of Incorporation/Organization of each borrowing entity**
- ☐ **By Laws/Operating Agreement of each borrowing entity**
- ☐ **All owners Driver's Licenses**
- ☐ **Payroll Expense verification documents to include:**
 - **IRS Form 940 and 941**
 - **Payroll Summary Report with corresponding bank statement**
 - **If a Payroll Summary Report is not available, Employee Pay Stubs as of February 15, 2020 (or**
 - corresponding period) with corresponding bank statement, and,**
 - **Breakdown of payroll benefits (vacation, allowance for dismissal, group healthcare benefits,**
 - retirement benefits, etc.)**

• 1099s (if Independent Contractor)

- ☐ Certification that all employees live within the United States. If any do not, provide a detailed list with corresponding salaries of all employees outside the United States
- ☐ Trailing twelve-month profit and loss statement (as of the date of application) for all applicants
- ☐ Most recent Mortgage Statement or Rent Statement (Lease)
- ☐ Most recent Utility Bills (Electric, Gas, Telephone, Internet, Water)

You can expect an invitation to a secure portal for document upload within the next **48 business hours**. However, by gathering the required documents now, you will be a step ahead and have a chance of shortening the approval process.

We pride ourselves on speed of response and fanatical follow up ***due to the expected demand, we would like to ask for your patience, in advance, as we process as many of these loans as fast as we possibly can.***

Our team looks forward to helping you navigate the current difficulties and rise stronger than ever!

All the best,



1-800-770-1504

www.fountainheadcc.com



EXHIBIT 3



FOUNTAINHEAD



CHRIS HURN
Founder & CEO

Since SBA's PPP loans were launched just six business days ago, the lending community has received a demand surge that is unlike anything we have ever seen. Like many, we have been somewhat overwhelmed, yet honored by your requests. While we have been at the leading-edge regarding educating others about this program, we continue to be concerned about receiving proper, final guidelines to both close and disburse these loans. The Wall Street Journal noted over the weekend that many loans have been "reserved" and approved with loan numbers, but very few have actually closed and been funded.

We ask for your patience with us (and all members of the lending community) as we process your requests as quickly and responsibly as we can. Should you feel the need to remove yourself from our loan queue and join another lender's list, kindly let us know by emailing us at fountainheadcares@fountainheadcc.com, so we may continue to prioritize our list. Although we certainly don't want to do this in such a time of need, we may eventually be forced to pause our acceptance of new submissions. Stay tuned for that determination and other developments in the days ahead.

For more up to date information on the Paycheck Protection Program, please visit: <https://www.fountainheadcc.com/ppp/> Help is coming soon...

Stay safe and healthy,

Chris

Chris Hurn,
Founder/Chief Executive Officer,
Fountainhead
800-770-1504



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Lake Mary, FL 32746-3491

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