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February 14, 2022

Via CM/ECF

Judge John M. Gallagher
United States District Court for the
Eastern District of Pennsylvania
Edward N. Cahn Courthouse & Federal Bldg.
504 W. Hamilton Street, Suite 4701
Allentown, Pennsylvania 18101

Re: *Marshall, et al. v. Prestamos CDFI, LLC*, No. 5:21-cv-04337-JMG (E.D. Pa.)

Dear Judge Gallagher:

We write on behalf of Plaintiffs pursuant to section II.C.2 of Your Honor's Policies and Procedures to request a telephone conference to resolve a discovery dispute. Plaintiffs allege that defendant Prestamos CDFI, LLC ("Prestamos") failed to fund U.S. Small Business Association (the "SBA") approved Paycheck Protection Program ("PPP") loans for their own businesses and a proposed class of hundreds or thousands of other similarly-situated small business owners. On January 25, 2022, the parties met and conferred via telephone for over 80 minutes concerning Prestamos's responses to Plaintiffs' first requests for production of documents and interrogatories. Despite the Court's rule that "[p]ending motions will not excuse counsel from proceeding with discovery" (*id.* II.C.1), Prestamos's position is that discovery should be stayed pending the Court's resolution of Prestamos's forthcoming motion to dismiss, except for a narrow category of discovery that allegedly relates "strictly to" the named Plaintiffs only. Accordingly, Prestamos has not yet produced even a single document, or even committed to actually produce any discovery by any date certain.

Prestamos's position to bifurcate so-called Plaintiffs-only and class-wide discovery is contrary to the Court's Policies and Procedures; inconsistent with the parties' agreed-upon case management deadlines; unfairly prejudicial to the Plaintiffs and the absent class members they seek to represent who would be subject to Prestamos's own one-sided determinations regarding what allegedly constitutes "Plaintiffs-only" evidence; and highly inefficient, likely fostering more rather than less satellite litigation about discovery disputes. Hence, the Court should reject Prestamos's position and order it to comply with its discovery obligations.

Argument

Plaintiffs filed their initial complaint on October 1, 2021. Prestamos's counsel entered its appearance later that month, and Plaintiffs stipulated to an extension for Prestamos to respond to

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Plaintiffs' initial complaint, which the Court approved on October 27, 2021. *See* Dkt. 12. Plaintiffs served written discovery requests shortly thereafter, on November 16, 2021. The parties filed a Joint Rule 26(f) Report using the Court's Rule 26(f) form on December 27, 2021. Dkt. 17. In deference to the Court's admonition in that form that discovery should require no more than 120 days in a typical case, Plaintiffs agreed to a discovery deadline of February 10, 2023, providing for a discovery period that is still short of what is standard in cases of this complexity.

First, Prestamos's claim that discovery should be stayed is contrary to section II.A.1 of the Court's Policies and Procedures, which provides that "*the Court will grant a stay of discovery only in extraordinary circumstances.*" (emphasis in original). While Prestamos has failed in the parties' meet-and-confers to articulate any basis to stay discovery much less extraordinary circumstances that would justify deviation from the Court's rule, its implicit premise is that the Court should dismiss Plaintiffs' claims, and therefore that discovery should not even commence. The Court's policy justifiably rejects that very argument.

Second, Prestamos's claim for a stay is even less defensible in this case. On December 10, 2021, Prestamos filed its motion to dismiss Plaintiffs' initial complaint. Dkt. 15. By stipulation approved by the Court, that motion was withdrawn with the filing of Plaintiffs' Amended Complaint on January 14, 2022. Dkt. 16. Plaintiffs' Amended Complaint addresses arguments Prestamos already raised in its first-filed motion to dismiss, and is highly detailed in its allegations. For example, Prestamos contended that Plaintiffs failed to specify any breach of contract or even attach the loan agreement. *See, e.g.*, Dkt 15-1, at ECF p. 4 ("To state their contract claim, Plaintiffs must identify an express commitment to Plaintiffs that Prestamos breached. The Complaint, however, cites *no* contractual provision in any loan document (all conspicuously unattached to the pleadings) obligating Prestamos to fund Plaintiffs' loans.") (emphasis in original). Plaintiffs' Amended Complaint specifies in detail the particular provisions in the Loan Documents they claim Prestamos breached, and attaches the standard form Note and other accompanying Loan Documents between Prestamos and first-named plaintiff Marshall in full. *See, e.g.*, Dkt. 18 ¶¶ 76-78, 81, 219-223, 228-230; Dkt. 18-1. Similarly, Prestamos contended that Plaintiffs claim they "made 'multiple additional attempts to obtain the loan proceeds,' without describing those 'attempts' in the Complaint." Dkt. 15-1, at ECF pp. 3-4. Plaintiffs Amended Complaint also now details examples of these follow-up attempts. *See, e.g.*, Dkt. 18 ¶¶ 84-87, 127-131, 177-179. Further, this is not a fraud case subject to the heightened pleading requirements of Fed. R. Civ. P. 9(b) or otherwise in any event. Thus, premising a stay on a claim of alleged pleading insufficiency is not only contrary to the Court's policies but even weaker in the circumstances here.

Third, limiting discovery to what Prestamos unilaterally determines relates "strictly to" Plaintiffs-only is unworkable, unfair and highly prejudicial to Plaintiffs and the class members they seek to represent. For example, it would presumably provide for the production of no information regarding the extent of Prestamos's failure to fund the SBA-approved loans, Prestamos's PPP loan policies, the whereabouts of the unfunded PPP federal loan dollars, and the

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PPP loan fees Prestamos nevertheless obtained. And it would fail to address even fundamental, threshold issues such as whether the class here encompasses hundreds or thousands of SBA-approved, but unfunded, borrowers. Fair and proper exploration of these issues in discovery are not only directly relevant to the merits of the parties' claims and defenses, but also "necessary for the district court to conduct the 'rigorous analysis' it is tasked with at" the class certification stage. *Landsman & Funk PC v. Skinder-Strauss Assocs.*, 640 F.3d 72, 93 (3d Cir. 2011).

Finally, further obstruction or delay in discovery could also interfere with the Court's and the parties' scheduling deadlines. To date, Prestamos identified only a single Prestamos employee, Jose Martinez, as involved in the conduct alleged in the Amended Complaint. As it is substantially impossible that any one person was capable of conceiving and executing such an undertaking, Plaintiffs will also require discovery from non-parties and possibly seek to add new defendants. This will also strain the parties' ability to comply with existing deadlines, especially absent Prestamos's prompt compliance with its existing discovery obligations. And further delay would also be particularly unfair in the circumstances of this case which implicate not only the direct economic interests of Plaintiffs and numerous other similarly situated SBA-approved but unfunded borrowers, but also important public policy issues concerning the PPP and the status, whereabouts and disposition of the federal funds at issue.

Accordingly, Plaintiffs respectfully request that the Court schedule a telephone conference and resolve the foregoing discovery disputes.

Respectfully submitted,

/s/ Lawrence J. Lederer

Lawrence J. Lederer

LJL:ss
cc: All counsel of record (via CM/ECF)