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March 15, 2022

Via CM/ECF

The Hon. John M. Gallagher
United States District Court for
the Eastern District of Pennsylvania
Edward N. Cahn Courthouse & Federal
Building
504 W. Hamilton Street
Allentown, PA 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 Prestamos CDFI LLC ("Prestamos") in response to Plaintiffs' March 14, 2022 letter ("Plaintiffs' Second Letter," Doc. 30). While Prestamos filed a comprehensive letter (Doc. 27) on February 25 in response to Plaintiffs' February 14 letter ("Plaintiffs' First Letter," Doc. 22), Plaintiffs' Second Letter now attempts to inject third-party discovery into this party dispute and lodges an inflammatory allegation that Prestamos cannot allow to go unchecked.

As an initial matter, Prestamos reiterates its position from its February 25 letter: Discovery in a putative nationwide class action involving requests for, according to Plaintiffs' own words, "perhaps millions of pages of documents" should be stayed pending resolution of Prestamos's Motion to Dismiss the Amended Complaint (Doc. 24). Requiring Prestamos to submit to such sprawling discovery would be grossly unfair, particularly when this lawsuit could be dismissed for lack of subject matter jurisdiction or dismissed in whole or in part for failure to state a claim. Notably, Plaintiffs' First and Second Letters *fail to cite a single case* that supports proceeding with discovery under these circumstances or that counters the case law cited by Prestamos.

Plaintiffs' Second Letter asserts that non-party Chicanos Por La Causa, Inc. ("CPLC"), the parent of Prestamos, is engaging in "stonewalling." In reality, Plaintiffs served expansive and intrusive document and deposition subpoenas on CPLC two days after filing Plaintiffs' First Letter regarding Prestamos's discovery objections. The information requested in the subpoenas to CPLC duplicated many of the requests that Plaintiffs had already served on Prestamos, and were obviously an attempted end-run around party discovery. In any event, Plaintiffs' ploy is improper: Plaintiffs should conduct party discovery and resolve objections through that process before engaging in non-party discovery.

Lastly, Plaintiffs' Second Letter feigns urgency in their requests for a telephone conference by falsely alleging that this case involves "potential *theft*" (emphasis in original) of so-called "unfunded PPP proceeds." Either Plaintiffs lack a fundamental understanding of how PPP works or they have elected to use misleading language in order to provoke the Court. It is indisputable that Prestamos never received individual borrowers' "PPP proceeds" from the U.S. Small Business Administration ("SBA"). In order to issue a PPP loan, Prestamos lent *its own money* that it borrowed, with interest, from the Federal Reserve Bank through the PPP Liquidity Facility ("PPPLF"). *See* Def's. Mem. Supp. Mot. Dismiss, at 8, 13, Doc. No. 24-1. SBA guaranteed the issued PPP loans, but only remitted payment to Prestamos upon a successful application from a borrower that was entitled to forgiveness of an already funded loan. *See* Interim Final Rule, 86. Fed. Reg. 8283, 8288 (Feb. 5, 2021) (describing process). In other words, any "funded" loan without an approved forgiveness application and any "unfunded loan" is ineligible for a SBA payment to Prestamos. Thus, holding onto undisbursed PPPLF funds, which are the credit extended to Prestamos, does not benefit Prestamos because it would be obligated to pay interest for holding onto those credited funds on top of repaying the principal to the Federal Reserve. Plaintiffs' accusation of "potential theft" contradicts not only how PPP works, but also commonsense and basic economics. Prestamos prays that this explanation puts to rest this baseless and inflammatory allegation.[1]

Accordingly, the Court should stay discovery as to the potentially thousands of putative class members at least until determining which, if any, claims may proceed past the pleadings stage.

Respectfully submitted,

/s/ Marcel Pratt

Marcel Pratt

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1 Plaintiffs' misconceived attempt to step into the shoes of the SBA and monitor Prestamos's use of its credit is further evidence that this case is merely a guise to enforce the CARES Act, which affords no private right of action.