IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALICIA MARSHALL, DANIEL PRONSKY, PARIS TOWNSEND, NANCILEE HOLLAND, LEONA OWSLEY, KOLAWOLE AHMADOU, KIANA DERVIN, KRISTINA HENDERSON, DUSTIN INNIS, KELLY STALNAKER and JAMIE JONES, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

PRESTAMOS CDFI, LLC,

Defendant.

Case No. 5:21-cv-04337-JMG

PRESTAMOS CDFI, LLC'S OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED CLASS ACTION COMPLAINT

BALLARD SPAHR LLP

Marcel S. Pratt (Pa. ID 307483)
Michael R. McDonald (Pa. ID 326873)
Alexa L. Levy (Pa. ID 327973)
1735 Market Street, 51st Floor
Philadelphia, PA 19103
T: 215-665-8500
F: 215-864-8999
PrattM@ballardspahr.com
McDonaldM@ballardspahr.com
LevyA@ballardspahr.com

HERRERA ARELLANO LLP

Roy Herrera*
Daniel A. Arellano*
Jillian Andrews*
530 East McDowell Road, Suite 107-150
Phoenix, AZ 85004
T: 602-567-4820
Roy@ha-firm.com
Daniel@ha-firm.com
Jillian@ha-firm.com

**pro hac vice admission to be sought*

Attorneys for Defendant

TABLE OF CONTENTS

PRELIMINARY STATEMENT

Plaintiffs' Motion for Leave File a Second Amended Class Action Complaint should be denied because it is futile. First, the Motion for Leave to Amend would be rendered moot by the granting of Prestamos CDFI, LLC's motion to dismiss the operative Amended Class Action Complaint, ECF Nos. 18, 24, as the Proposed Second Amended Class Action Complaint ("SAC") contains no new substantive allegations that would provide separate grounds for recovery against any defendant. Second, the SAC is bereft of well-pled factual allegations that plausibly could state a claim for alter ego liability against Defendant's owner, Chicanos Por La Causa, Inc. ("CPLC"). Indeed, CPLC is not a lender, did not contract with any Plaintiff, and does not control the everyday affairs of Prestamos. Because the SAC would fail to state a claim as a matter of law, it is futile and leave to amend must be denied.

FACTUAL BACKGROUND

Plaintiffs' Motion for Leave to Amend reflects their latest attempt, amid a recent series of unrelenting efforts, to saddle Prestamos and CPLC with costly discovery and to burden this Court with redundant motion practice. (Indeed, despite Prestamos having not yet answered because of its pending 12(b) motion, this case has already generated nearly 40 docket entries before this Court alone.) In brief, disputes over Plaintiffs' various requests for irrelevant, unduly burdensome discovery of Prestamos are pending before the Court. ECF Nos. 22, 27, 30, 31, 34, 35. Preferring not to wait for this Court's resolution of those disputes, Plaintiffs opted instead to issue document and deposition subpoenas requesting ***the same information*** to Prestamos's corporate parent, CPLC. The parties filed competing motions to quash and to compel those subpoenas in the District of Arizona, where compliance was to take place, disputing whether Plaintiffs must first pursue discovery against Prestamos—and await adjudication of Prestamos's good-faith discovery objections and request for a stay before this Court—before burdening a non-party with requests for the same information. *Marshall v. Prestamos CDFI*, *LLC*, No. 2:22-mc-00007-DJH (D. Ariz.), ECF Nos. 1, 7. The U.S. District Court for the District of Arizona has since transferred those motions to this Court for resolution. *Id.* ECF No. 14.

Before the transfer, Plaintiffs filed a motion for "accounting," again seeking to compel production of the same information—and again opting for superfluous filings over waiting for court resolution of pending issues. ECF No. 36. Plaintiffs are now back again, this time by asking for leave to amend their complaint to add CPLC as a defendant, ECF No. 38, presumably to obviate any subpoena objections CPLC might have by virtue of being a nonparty.

Critically, though, Plaintiffs' central theory of liability remains the same: that Prestamos did not fund loans to which Plaintiffs allege they were entitled, and that this constituted either a breach of contract by Prestamos or a violation (again, by Prestamos) of certain states' consumer protection statutes. In other words, Plaintiffs do not allege any new conduct that would give rise to liability (either as to Prestamos or CPLC) separate from what is already alleged in the operative complaint. Instead, they merely seek to hold CPLC vicariously liable for *Prestamos's* alleged violations through an alter ego theory of liability.

ARGUMENT

I. Amendment is futile because the SAC does not cure the deficiencies of the Operative Complaint.

Rule 15(a)(2)'s "policy favoring liberal amendments is not unbounded." *Synthes, Inc. v. Marotta*, 281 F.R.D. 217, 224 (E.D. Pa. 2012).[1] Rather, "[u]nder Rule 15(a), futility of amendment

[1] Unless expressly included, all citations and internal quotation and alteration marks have been omitted.

is a sufficient basis to deny leave to amend." *Great W. Mining & Min. Co. v. Fox Rothschild LLP*, 615 F.3d 159, 175 (3d Cir. 2010). "'Futility' means that the complaint, as amended, would fail to state a claim upon which relief could be granted." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997). "In assessing 'futility,' the District Court applies the same standard of legal sufficiency as applies under Rule 12(b)(6)." *Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir. 2000).

The currently operative Amended Class Action Complaint is the subject of a fully briefed, case-dispositive motion to dismiss. ECF Nos. 18, 24, 29, 32. That motion maintains that Plaintiffs lack Article III standing and that their allegations fail to state a claim as a matter of law, as Plaintiffs were not entitled receive to a PPP loan, cannot circumvent Congress's enforcement scheme, were never promised the distribution of loan proceeds, released Prestamos of all liability, and are ineligible to recover under the consumer protection statutes they cite. The SAC, which proposes to add CPLC as a defendant on an alter ego theory of liability, does not allege any new conduct that could give rise to liability separate from that alleged in the Amended Class Action Complaint. Plaintiffs expressly acknowledge as much, stating that their "allegations against Prestamos have not changed." ECF No. 37-1 at 6. As Plaintiffs further acknowledge, "[t]he briefing addressed to Prestamos's Motion to Dismiss Plaintiffs' pending first amended complaint (ECF 24) ***can just as readily apply to the proposed SAC***." *Id.* (emphasis added). If the Court were to grant the motion to dismiss Plaintiffs' Amended Class Action Complaint, it follows that the SAC would likewise fail to provide a basis for subject mater jurisdiction or to state a claim as a matter of law. Because the SAC fails to cure the deficiencies identified in the pending motion to dismiss, it necessarily will be rendered futile by the grant of that motion. *See Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir. 2000) ("[I]f a claim is vulnerable to dismissal under Rule 12(b)(6), but the plaintiff moves to amend, leave to amend generally must be granted unless the amendment would not cure the deficiency.”).

II. Amendment is futile because the SAC does not plausibly allege alter ego liability.

A. The legal standard.

Both CPLC and Prestamos are incorporated in Arizona. SAC ¶¶ 26–27. As a result, the Court must apply Arizona law in determining whether CPLC may be held vicariously liable for Prestamos's conduct. *See McElroy v. FirstEnergy Corp.*, No. 18-cv-1612, 2019 WL 5965329, at *3 (W.D. Pa. Nov. 13, 2019) (“[I]t is well established that, under Pennsylvania law, the veil-piercing analysis is governed by the law of the state of incorporation.”). “Although the tests employed to determine when circumstances justifying ‘veil-piercing’ exist are variously referred to as the ‘alter ego,’ ‘instrumentality,’ or ‘identity’ doctrines, the formulations are generally similar, and courts rarely distinguish them.” *Pearson v. Component Tech. Corp.*, 247 F.3d 471, 485 (3d Cir. 2001).

“Arizona law is clear that the corporate status will not be lightly disregarded.” *JTF Aviation Holdings Inc v. CliftonLarsonAllen LLP*, 472 P.3d 526, 530 (Ariz. 2020). In Arizona, as in most jurisdictions, a plaintiff seeking to hold a corporate parent liable for the acts of its subsidiary on an alter ego theory “must prove both (1) unity of control and (2) that observance of the corporate form would sanction a fraud or promote injustice.” *Gatecliff v. Great Republic Life Ins. Co.*, 821 P.2d 725, 728 (Ariz. 1991). “Unity of control is shown where the parent corporation exercised substantially total control over the management and activities of the subsidiary.” *Taeger v. Cath. Fam. & Cmty. Servs.*, 995 P.2d 721, 733 (Ariz. App. 1999). According to the Arizona Supreme Court:

> Substantially total control may be proved by showing, among other things: stock ownership by the parent; common officers or directors; financing of subsidiary by the parent; payment of salaries and other expenses of subsidiary by the parent;

> failure of subsidiary to maintain formalities of separate corporate existence; similarity of logo; and plaintiff's lack of knowledge of subsidiary's separate corporate existence.

Gatecliff, 821 P.2d at 728.

Also, while not controlling here, "[t]he Third Circuit alter ego test is fairly typical of the genre," *Pearson*, 247 F.3d at 484, and is therefore helpful. The Third Circuit test

> requires that the court look to the following factors: gross undercapitalization, failure to observe corporate formalities, nonpayment of dividends, insolvency of debtor corporation, siphoning of funds from the debtor corporation by the dominant stockholder, nonfunctioning of officers and directors, absence of corporate records, and whether the corporation is merely a facade for the operations of the dominant stockholder.

Id. at 484–85.

A parent entity's control of a subsidiary's policy decisions does "not necessitate [the] control over day-to-day operations" that is necessary to impose vicarious liability under Arizona law. *Taeger*, 995 P.2d at 734; *see also Bellomo v. Pa. Life Co.*, 488 F. Supp. 744, 745 (S.D.N.Y. 1980) ("Only day to day control by the parent so complete that the subsidiary is, in fact, merely a department of the parent will constitute the requisite control."). Moreover, "[t]o be held responsible for actions of its subsidiary, the parent must ***actually*** exercise this control so that the subsidiary becomes a mere instrumentality." *Taeger*, 995 P.2d at 734–35; *see also Oldenburger v. Del E. Webb Dev. Co.*, 765 P.2d 531, 536 (Ariz. App. 1988) (refusing to disregard corporate form where evidence showed that parent corporation had authority to overrule subsidiary's decisions but took no such action).

B. The SAC does not allege facts that would plausibly state a claim for alter ego liability.

It is not enough for Plaintiffs to allege, in conclusory fashion, that CPLC "controlled and dominated" Prestamos and should therefore be held vicariously liable for its conduct. SAC ¶ 7. Rather, they must include well-pled factual allegations that plausibly could support recovery on a theory of alter ego liability. *See Accurso v. Infra-Red Servs.*, Inc., 23 F. Supp. 3d 494, 510 (E.D. Pa. 2014) ("Averments reciting elements of the veil-piercing test, without any supporting facts, constitute legal conclusions. Even under a notice pleading standard, as interpreted in *Twombly*, such averments cannot support a veil-piercing claim."). Here, Plaintiffs rely on allegations that (1) a consolidated financial statement sometimes refers to CPLC and Prestamos collectively, (2) CPLC's and Prestamos's websites and marketing materials sometimes refer to Prestamos as "CPLC Prestamos," (3) CPLC and Prestamos employ overlapping executives and directors, (4) Prestamos "upstreamed" PPP loan fees it received to CPLC, (5) CPLC and Prestamos have offices in close proximity to each other, and (6) CPLC and Prestamos are represented by the same counsel in this litigation. Even taken as true, none of these allegations, whether individually or collectively, plausibly could sustain an alter ego theory of liability.

1. The Consolidated Financial Statement.

To begin, Plaintiffs fundamentally misrepresent the records on which they rely for their allegations that CPLC controlled Prestamos and its lending activities. Those documents govern over Plaintiffs' characterizations of them. *Chong v. 7-Eleven, Inc.*, No. 18-cv-1542, 2019 WL 1003135, at *4 (E.D. Pa. Feb. 28, 2019) ("When allegations contained in a complaint are contradicted by the document it cites, the document controls.").

Plaintiffs rely most heavily on CPLC's consolidated financial statement for the year ending June 30, 2021 (the "Financial Statement") for the allegation that CPLC participated directly in PPP lending and received PPP lending fees directly from the SBA.[2] SAC ¶¶ 12, 68, 82. To get there, Plaintiffs reason that, when the Financial Statement refers to the conduct of "the Organization," it

[2] The Financial Statement is available publicly at: https://projects.propublica.org/nonprofits/display_audit/11175820211.

is referring to CPLC as distinct from Prestamos. *E.g.,* SAC ¶ 68. So, Plaintiffs surmise, when the Financial Statement says that "the Organization" began participating in the PPP program in May 2020 (Financial Statement at 18), and that "the Organization" received PPP loan fees from the SBA (*id.* at 20), it must mean that CPLC itself actively participated in lending decisions and received loan fees directly. Critically, however, the Financial Statement explicitly states at the outset that the term "the Organization" refers ***collectively*** to the activities of CPLC ***and its subsidiaries and affiliates***. Financial Statement at 15 (noting that "CPLC and its subsidiaries and affiliates" are "collectively referred to as CPLC or Organization" and that the financial statements include the financial statements of CPLC and its subsidiaries, among them Prestamos). As a result, when the Financial Statement says that "the Organization" participated in PPP lending and received loan fees, it is ***not*** referencing CPLC to the exclusion of Prestamos.

The fact that CPLC's and Prestamos's finances are accounted for in a consolidated financial statement that references the two entities collectively does not support an inference of control necessary for alter ego liability. As Arizona courts have expressly recognized, "the control standard for filing a combined financial statement [is] not the equivalent of the control standard for determining whether one corporation is an alter-ego of another." *Taeger*, 995 P.2d at 734; *see also Cheatham v. ADT Corp.*, 161 F. Supp. 3d 815, 824 (D. Ariz. 2016) ("Courts have recognized that companies may omit distinctions between related corporate entities in their [public] filings, and still insist on these distinctions when haled into court."). Other courts likewise reject the use of consolidated financial statements between a parent and a subsidiary as a factor supporting alter ego liability. *See Calvert v. Huckins,* 875 F. Supp. 674, 678–79 (E.D. Cal. 1995) ("[C]onsolidating the activities of a subsidiary into the parent's annual reports is a common business practice. It is allowed by both the Internal Revenue Service and the Securities and Exchange Commission, and it is recommended by generally accepted accounting principles."); *Bellomo*, 488 F. Supp. at 745 (rejecting alter ego theory where parent's "annual reports describe the business of the parent, subsidiaries and sub-subsidiaries as if they were all part of a common enterprise, and that the annual report consolidates the earnings statements of all the affiliates").

2. "CPLC Prestamos."

Next, Plaintiffs point to CPLC's annual report and website and their use of the term "CPLC Prestamos" as somehow blurring the line between CPLC and Prestamos. *See* SAC ¶¶ 7, 35, 67, 83.[3] But simply noting the affiliation between the two entities does not imply that CPLC and Prestamos are the same entity. *See Action Mfg. Co. v. Simon Wrecking Co.*, 375 F. Supp. 2d 411, 423 (E.D. Pa. 2005) ("[R]eferences in the parent's annual report to subsidiaries or chains of subsidiaries as divisions of the parent company do not establish the existence of an alter ego relationship."); *In re Chocolate Confectionary Antitrust Litig.*, 602 F. Supp. 2d 538, 570 (M.D. Pa. 2009) (declining to rely on evidence that a corporate family had "cultivated a unified global image" across websites, annual reports, and corporate policy statements because such evidence "fails to demonstrate the corporate parents' actual control over the daily affairs of their subsidiaries"); *Gruca v. Alpha Therpaeutic Corp.*, 19 F. Supp. 2d 862, 867–68 (N.D. Ill. 1998) (use of "we" and "our" in annual report were "consistent with [subsidiary's] existence as a separate entity").

Besides, Prestamos's website, which the SAC quotes and incorporates (SAC ¶ 67), makes clear that CPLC and Prestamos are distinct entities: it states explicitly that Prestamos is "a division of Chicanos Por La Causa," that CPLC is Prestamos's "parent corporation," and that CPLC "created Prestamos" in 2000. *See* https://www.prestamosloans.org/about-prestamos/. Likewise,

---

[3] These are available at: https://cplc.org/assets/files/publications/CPLC%20FY19-20%20Annual-Report.pdf and https://www.prestamosloans.org/about-prestamos/.

the quote attributed to CPLC's CEO, David Aadame, in *The New York Times* ("What we did together is absolutely incredible") does not conflate CPLC and Prestamos; to the contrary, the quote is followed immediately by the notation that CPLC is "the parent organization of Prestamos."[4]

The SAC conspicuously does ***not*** allege that any Plaintiff was confused as to which entity they were dealing with. Additionally, the loan documents attached to the SAC make clear that the counterparty was Prestamos, making no reference whatsoever to CPLC. SAC Exh. A. Nor did Plaintiffs allege any confusion with respect to CPLC in their initial or first amended complaints—let alone assert any claim against CPLC—despite, for much of that period, having access to the same information they now rely on in bringing their new allegations. The fact that Plaintiffs were not—and, indeed, could not have been—confused about which entity they were dealing with defeats their alter ego liability theory. *See Taeger*, 995 P.2d at 735 (finding no fraud or injustice to satisfy second element of alter ego test where plaintiffs "admittedly were not confused about the relationship between" the two entities and that "[t]hey understood that they were working with" the subsidiary).

3. Overlapping Directors and Executives.

Prestamos's three board members are CPLC executives, as is Prestamos's President. SAC ¶¶ 65–66. But satisfying even this factor is insufficient to disregard the corporate form, as "[t]he mere fact that corporations have the same officers does not make one liable for the acts of the other." *Deutsche Credit Corp. v. Case Power & Equip. Co.*, 876 P.2d 1190, 1195 (Ariz. App. 1994); *see also Jabczenski v. S. Pac. Mem'l Hosps.*, 579 P.2d 53, 59 (Ariz. App. 1978) ("Mere interlocking

[4] https://www.nytimes.com/2021/06/27/business/ppp-relief-loans-blueacorn-womply.html.

directorates or like evidence of close association will not justify disregarding corporate identities."); *Am. Protein Corp. v. AB Volvo*, 844 F.2d 56, 60 (2d Cir. 1988) (noting, of interlocking directorates: "This commonplace circumstance of modern business does not furnish such proof of control as will permit a court to pierce the corporate veil.").

This factor being insufficient to treat two entities as alter egos is grounded in the "well established principle of corporate law that directors and officers holding positions with a parent and its subsidiary can and do 'change hats' to represent the two corporations separately, despite their common ownership." *United States v. Bestfoods*, 524 U.S. 51, 69 (1998). "[C]ourts generally presume that directors are wearing their 'subsidiary hats' and not their 'parent hats' when acting for the subsidiary." *Id.* Thus,

> even where dual officers and directors make policy decisions and supervise activities at the other company, liability does not exist unless a party can present facts showing that, despite the general presumption to the contrary, the officers and directors were acting in their capacities as officers and directors for the wrong company when they committed those acts.

Lieberman v. Corporacion Experienca Unica, S.A., 226 F. Supp. 3d 451, 470 (E.D. Pa. 2016). Plaintiffs allege no facts that Prestamos's directors or its executive were acting for "the wrong company," *id.*, when overseeing Prestamos's affairs.

4. "Upstreaming" of Fees to CPLC.

Plaintiffs also allege that Prestamos "upstreamed" PPP loan fees to CPLC. SAC ¶ 82. Plaintiffs' sinister intimations notwithstanding, there is nothing untoward about a subsidiary "upstreaming" fees to its parent: this is simply the payment of dividends.[5] *See Wady*, 216 F. Supp.

---

[5] Relatedly, and despite Plaintiffs' insinuations that CPLC is only "purportedly" a nonprofit, SAC ¶¶ 27, 62, it is entirely appropriate for 501(c) organizations to maintain for-profit subsidiaries that fund the organization's mission. *See Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S., Inc.*, 646 F.3d 983, 987–88 (7th Cir. 2011) ("[T]he principal difference between [nonprofit and

2d at 1069 (noting that parent entities "receiv[ing] money from subsidiaries in the form of dividends and interest on loans, and reinvest[ing] some portion of those funds in the subsidiaries . . . are precisely the kinds of transactions which would occur among entities which respect the corporate separateness among entities"). Indeed, it is the ***non***payment of dividends that is often a factor in support of disregarding the corporate form. *See Trustees of Nat. Elevator Indus. Pension v. Lutyk*, 140 F. Supp. 2d 447, 459 (E.D. Pa. 2001) ("[T]he non-payment of dividends is usually a factor favoring piercing of the corporate veil."); *In re Opus E., LLC*, 528 B.R. 30, 63–64 (Bankr. D. Del. 2015) ("[T]he payment of dividends annually is not sufficient evidence to pierce the corporate veil. In fact, it is usually the failure to pay dividends (while instead siphoning funds from the subsidiary though other means) that evidences a subsidiary is a mere facade of the parent."). Prestamos paying dividends to CPLC in the ordinary course thus supports *respecting* the corporate form, not disregarding it.

5. Nearby Offices and Shared Counsel.

Bizarrely, Plaintiffs allege that CPLC and Prestamos occupy nearby ***but separate*** offices as a factor in support of their alter ego theory. SAC ¶ 7. Prestamos is not aware of any authority treating two entities as alter egos simply because their ***unshared*** offices are near one another. And while Plaintiffs point to Prestamos and CPLC being represented by the same counsel in this litigation, courts have likewise rejected consideration of this factor in assessing alter ego claims. *Calvert*, 875 F. Supp. at 679.

---

for-profit firms] is not that nonprofits eschew typical commercial activities such as the sale of services—they do not—but that a nonprofit enterprise is forbidden to distribute any surplus of revenues over expenses as dividends or other income to owners of the enterprise, but must apply the surplus to the enterprise's mission.").

Simply put, Plaintiffs have plausibly alleged at most that CPLC owns Prestamos and that the two entities have common officers and directors. But Plaintiffs fail to allege facts that would show any of the myriad other factors courts also require be present to disregard the corporate form: failure to maintain corporate formalities; siphoning of funds; undercapitalization or insolvency of the putative judgment debtor; financing of the subsidiary by the parent; payment of the subsidiary's salaries by the parent; identical logo; or plaintiff's lack of knowledge of the entities' separate existence. *Gatecliff*, 821 P.2d at 728; *Pearson*, 247 F.3d at 484.

C. The SAC fails to state a claim for unjust enrichment.

The SAC fails to state a claim of unjust enrichment against CPLC.[6] "The elements necessary to prove unjust enrichment are: (1) benefits conferred on defendant by plaintiff; (2) appreciation of such benefits by defendant; and (3) acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value." *Hollenshead v. New Penn Fin., LLC*, 447 F. Supp. 3d 283, 292 (E.D. Pa. 2020). Plaintiffs' claim fails to satisfy even the first element, as Plaintiffs have not conferred any benefit on either Prestamos or CPLC: any loan fees received, even if improperly, were conferred by the SBA, not by Plaintiffs. And even if Plaintiffs had conferred a benefit that CPLC received, it would not be inequitable for CPLC to retain the benefit, because Plaintiffs are entitled neither to loan proceeds nor the SBA's loan fees.

Further, even if ***Prestamos*** breached a legal obligation in not funding Plaintiffs' loans, there is nothing wrong or unconscionable in ***CPLC*** receiving dividends from its subsidiary in the

[6] In addition to failing to state a claim for relief, the Court also would lack personal jurisdiction over CPLC, as it is a non-lender without ties to Pennsylvania, and Prestamos's contacts in the state may not be imputed to it. Prestamos expects that CPLC would contest personal jurisdiction if it is formally brought into the litigation.

ordinary course. *See Halstead v. Motorcycle Safety Found., Inc.*, 71 F. Supp. 2d 455, 459 (E.D. Pa. 1999) (explaining that to recover on an unjust enrichment theory, "a claimant must show that the party against whom recovery is sought either wrongfully secured or passively received a benefit that would be unconscionable for the party to retain without compensating the provider"). Plaintiffs are not entitled to recoup dividends CPLC properly received from Prestamos simply because they take issue with conduct by ***Prestamos***. To do so would be to allow Plaintiffs to circumvent the rigorous standards for veil piercing simply by restyling what is really an alter ego claim as one for unjust enrichment. *See Commonwealth by Shapiro v. Golden Gate Nat'l Senior Care LLC*, 194 A.3d 1010, 1035 (Pa. 2018) (rejecting unjust enrichment claim that was premised on allegation that ill-gotten proceeds had bad been transferred from subsidiaries to parent entities, but where misconduct was alleged only as to the subsidiaries); *Simons v. Park City RV Resort, LLC*, 354 P.3d 215, 222 (Utah App. 2015) (rejecting unjust enrichment claim that "appears to be more accurately viewed as a restatement of [plaintiff's] alter ego claim").

Finally, even if Plaintiffs plausibly alleged that they will not be able to recover a judgment against Prestamos (they have not), simply seeking to secure a putative judgment is not grounds to pierce the corporate veil. *See Sea-Land Servs., Inc. v. Pepper Source*, 941 F.2d 519, 524 (7th Cir. 1991) (veil-piercing test requires that "some 'wrong' beyond a creditor's inability to collect would result").

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' Motion for Leave to Amend.

Dated: May 16, 2022

BALLARD SPAHR LLP

By: /s/ *Marcel S. Pratt*
Marcel S. Pratt (Pa. ID 307483)
Michael R. McDonald (Pa. ID 326873)
Alexa L. Levy (Pa. ID 327973)
PrattM@ballardspahr.com
McDonaldM@ballardspahr.com
LevyA@ballardspahr.com

HERRERA ARELLANO LLP

Roy Herrera*
Daniel A. Arellano*
Jillian Andrews*
Roy@ha-firm.com
Daniel@ha-firm.com
Jillian@ha-firm.com
**pro hac vice admission to be sought*

Attorneys for Defendant