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 and CHICANOS POR LA CAUSA, INC., Defendants.	Case No. 5:21-cv-04337-JMG

DEFENDANTS' RESPONSE
<u>TO PLAINTIFFS' PROPOSED JURISDICTIONAL DISCOVERY PLAN</u>

Pursuant to the Court's Order filed March 30, 2023 (ECF No. 57), Defendants Prestamos CDFI, LLC ("Prestamos") and Chicanos Por La Causa, Inc. ("CPLC") (together, "Defendants"), respectfully submit their response to Plaintiffs' proposed plan for limited jurisdictional discovery concerning CPLC's relationship with Prestamos.

The Court allowed Plaintiffs to seek ***limited*** jurisdictional discovery specific to the relationship between Defendants Prestamos and CPLC as it relates to the alter ego factors for personal jurisdiction and vicarious liability. (ECF No. 56 at 18–19, ECF No. 2–3). Plaintiffs' Proposed Jurisdictional Discovery Plan (ECF No. 61), however, is anything but "limited." Instead, Plaintiffs seek to propound ***30*** document requests, ***10*** interrogatories, and ***25*** requests for admission. They also ask to take ***8*** depositions that, not including proposed 30(b)(6) depositions of ***each*** Defendant, would total nearly ***25 hours***. They seek all of this ***in addition*** to their presumptive discovery limits on the merits and class certification. Because the amount and scope of Plaintiffs' proposed jurisdictional discovery are neither relevant to personal jurisdiction nor proportional to the needs of the case, the Court should limit Plaintiffs' jurisdictional discovery accordingly. *See* Fed. R. Civ. P. 26(b)(1).

Specifically, and consistent with what courts in the Third Circuit have allowed, Defendants propose that Plaintiffs' jurisdictional discovery be limited to ten document requests, ten interrogatories, no requests for admission or depositions, and that the substantive scope of discovery be restricted to what is relevant to determine whether this Court has personal jurisdiction over CPLC—the alter ego factors for personal jurisdiction and vicarious liability.

Argument

I. Jurisdictional Discovery Must Be Conducted Narrowly and Efficiently.

The Third Circuit has instructed that "jurisdictional discovery is not a license for the parties to engage in a 'fishing expedition' and that 'the District Court should take care to circumscribe the scope of discovery to only the factual questions necessary to determine its jurisdiction.'" *Shuker v. Smith & Nephew, PLC*, 885 F.3d 760, 782 n.20 (3d Cir. 2018) (quoting *Schuchardt v. President of the U.S.*, 839 F.3d 336, 353–54 (3d Cir. 2016) (alteration omitted)). "This principle is all the more true after the 2015 amendments to the Federal Rules of Civil Procedure, which added a discussion of proportionality to Rule 26(b)(1)." *Id.* Applying that Rule here, discovery is available only as to nonprivileged matter that is relevant to personal jurisdiction and proportional to the needs of the case at this juncture. *See id.*; Fed. R. Civ. P. 26(b)(1); *Greer v. Carlson*, No. 1:20-cv-05484, 2020 WL 6064167, at *6 (S.D.N.Y. Oct. 14, 2020) ("In determining the scope of the limited jurisdictional discovery to permit, the Court is mindful of the need for proportionality; that is, the discovery permitted must be proportional to the current needs of the case.").

Jurisdictional discovery is meant to be narrow and efficient—certainly much more so than merits discovery. *See Lincoln Benefit Life Co. v. AEI Life, LLC*, 800 F.3d 99, 109 (3d Cir. 2015) ("Jurisdictional discovery will usually be less burdensome than merits discovery, given the more limited scope of jurisdictional inquiries."); *Fishel v. BASF Grp.*, 175 F.R.D. 525, 529 (S.D. Iowa 1997) ("The ascertainment of facts bearing on personal jurisdiction normally involves the least intrusive type of inquiries."). Accordingly, "[j]urisdictional discovery should be narrowly tailored, and 'a few responses to interrogatories will often suffice.'" *Mithril GP Emp. Feeder LLC v. McKellar*, No. 19-cv-2144-RGA, 2020 WL 3206555, at *2 (D. Del. June 15, 2020) (quoting *Lincoln Benefit Life Co.*, 800 F.3d at 109); *see also Rose v. Cont'l Aktiengesellschaft (AG)*, No. CIV.A. 99-3794, 2001 WL 236738, at *4 (E.D. Pa. Mar. 2, 2001) ("Jurisdictional discovery is easily targeted at information pertinent to the well established factors involved in a jurisdictional inquiry. A plaintiff is not entitled to conduct a 'fishing expedition.'" (citation omitted)). Thus, even when a plaintiff has met the threshold for jurisdictional discovery on these alleged facts, "the Court shall permit such discovery 'only to verify the allegations of specific facts crucial' to establishing Plaintiff's personal jurisdiction and alter ego theory." *Blockchain Mining Supply & Servs. Ltd. v. Super Crypto Mining, Inc.*, No. 18-CV-11099, 2020 WL 7128968, at *2 (S.D.N.Y. Dec. 4, 2020) (quoting *First City, Texas-Houston, N.A. v. Rafidain Bank*, 150 F.3d 172, 176 (2d Cir. 1998)).

It is unsurprising, then, that courts usually only allow much narrower jurisdictional discovery than what Plaintiffs propose here. In another case in this District alleging an alter ego theory of personal jurisdiction against a parent corporation, the Court limited jurisdictional discovery to written discovery consisting of ten document requests and ten interrogatories, including subparts. *See Riad v. Porsche Cars N.A., Inc.*, No. 18-cv-5175, 2020 WL 3455640, at *1 (E.D. Pa. Feb. 26, 2020). The Court expressly noted that "[l]imiting jurisdictional discovery to ten interrogatories and ten document requests relating to the claims of jurisdiction sufficiently balances the right to jurisdictional discovery and any burden on Defendants." *Id.* at n.5. A federal court in Colorado likewise allowed ten requests for production and ten interrogatories in jurisdictional discovery to explore the relationship between a subsidiary and its parent. *See Water Pik, Inc. v. H2OFloss*, No. 17-cv-02082, 2018 WL 1706276, at *4 (D. Colo. Apr. 9, 2018). The court in *Blockchain*, another alter ego personal jurisdiction case, allowed three interrogatories and five requests for production, roughly half of what the plaintiff had proposed. 2020 WL 7128968, at *2.

These ranges are consistent with what courts allow in jurisdictional discovery generally, which orders regularly reject requests for depositions altogether,[1] are routinely silent as to requests for admission, and sometimes even count jurisdictional discovery requests against the number of requests allowed on the merits. *See, e.g.*, *M-I Drilling Fluids UK Ltd. v. Dynamic Air Ltda.*, No. 13-cv-02385 (ADM/HB), 2015 WL 12803577, at *3 (D. Minn. Nov. 9, 2015) (allowing five interrogatories and five requests for production and denying request for depositions); *In re Zantac (Ranitidine) Prods. Liab. Litig.*, No. 20-MD-2924, 2020 WL 6907056, at *7 (S.D. Fla. Nov. 24,

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[1] The alter ego cases cited above notably limited jurisdictional discovery to ***written*** discovery and did not provide for depositions. In another case involving an alter ego theory of personal jurisdiction, the court expressly encouraged the parties to address the jurisdictional issues "predominantly through written discovery," and said that "[a]bsent compelling circumstances, the court suggests a limit of two depositions per defendant." *In re Chocolate Confectionary Antitrust Litig.*, 602 F. Supp. 2d 538, 573 (M.D. Pa. 2009).

Should the Court be inclined to grant any depositions in jurisdictional discovery here, Plaintiffs should be limited to taking no more than one 3.5-hour Rule 30(b)(6) deposition of each Defendant.

2020) (fully sustaining objections to all but four interrogatories and five requests for production, and denying request for depositions); *Ubel v. Progressive Direct Ins. Co.*, No. 1:20-CV-00204-RM-NYW, 2020 WL 5803323, at *5–6 (D. Colo. June 9, 2020) (allowing five requests for production, five interrogatories, no depositions, and counting written discovery requests against total number allowed on the merits); *Mod. Gaming, Inc. v. Sockeye Software, LLC*, No. 22-cv-00357-BAJ-SDJ, 2023 WL 157796, at *3 (M.D. La. Jan. 11, 2023) (allowing six each of requests for admission, interrogatories, and requests for production, and counting interrogatories against the limit of 25 allowed by Rule 33); *Avalon Med. Grp. II, LLC v. LPP Mortg., Ltd.*, No. 12-CV-0833 MCA/KBM, 2013 WL 12147619, at *2 (D.N.M. Aug. 21, 2013) (allowing ten interrogatories, requests for production, and requests for admission); *Greer*, 2020 WL 6064167, at *6 (allowing fifteen each of document requests and interrogatories for each of two defendants); *Benson v. Enter. Leasing Co. of Orlando, LLC*, No. 6:20-cv-891-Orl-37LRH, 2021 WL 6125549, at *5 (M.D. Fla. Feb. 3, 2021) (allowing three each of requests for production and interrogatories). Here, Plaintiffs offer no explanations for why they need such sweeping depositions in addition to extensive written discovery on such a narrow issue.

Even jurisdictional discovery orders that allow for depositions typically provide for one or at most a few depositions. *See, e.g.*, *Berkeley Rsch. Grp., LLC v. United Potato Growers of Am., Inc.*, No. C 16-07205 WHA, 2017 WL 952680, at *2 (N.D. Cal. Mar. 13, 2017) (allowing "ten reasonably narrow interrogatories," "ten reasonably narrow document requests," and "one half-day deposition"); *Dickenson v. Brenntag N. Am., Inc.*, No. 22-2068-JAR-ADM, 2022 WL 2191761, at *3 (D. Kan. June 17, 2022) (allowing ten interrogatories, ten requests for production, and one two-hour 30(b)(6) deposition); *Marlin Firearms Co. v. Wild W. Guns, LLC*, No. 3:09-CV-00921 (PCD), 2010 WL 11566501, at *9 (D. Conn. May 7, 2010) (allowing ten interrogatories, ten document requests, and one deposition); *Kelly v. Hoegh Autoliners Shipping PTE, Ltd.*, No. 2:18-cv-8599, 2020 WL 3129644, at *8 (D.N.J. June 12, 2020) (allowing two depositions, five interrogatories, and ten document requests); *Marnavi SpA v. Keehan*, No. 08-cv-00389, 2010 WL 1499583, at *8 (D. Del. Apr. 14, 2010) (allowing ten interrogatories, ten document requests, twenty requests for admission, and three depositions).

Accordingly, the Court should limit Plaintiffs' proposed jurisdictional discovery consistent with what courts allow in this Circuit and nationally, allowing at most ten requests for production, ten interrogatories, and no requests for admission or depositions.

II. Jurisdictional Discovery Topics Must Be Relevant to the Alter Ego Factors.

Plaintiffs list 22 topics that they contend should comprise the subject matter of their requested "limited" jurisdictional discovery. (ECF No. 61 at 2–5). But Plaintiffs' proposed topics are limited neither in number nor scope. The Court must allow jurisdictional discovery "only to verify the allegations of specific facts crucial to establishing Plaintiffs' personal jurisdiction and alter ego theory." *Blockchain*, 2020 WL 7128968, at *2 (cleaned up). Plaintiffs' proposed topics sweep far broader, including within their ambit numerous subjects completely unrelated to the only relevant inquiry—determining whether Prestamos and CPLC are alter egos of one another for the purpose of establishing personal jurisdiction over CPLC.

As to personal jurisdiction based on a subsidiary being the alter ego of its parent, courts consider the following factors:

> (1) the parent owns all or a significant majority of the subsidiary's stock,
>
> (2) commonality of officers or directors exists between the two corporations,
>
> (3) the corporate family possesses a unified marketing image, including common branding of products,
>
> (4) corporate insignias, trademarks, and logos are uniform across corporate boundaries,

> (5) corporate family members share employees,
>
> (6) the parent has integrated its sales and distribution systems with those of its subsidiaries,
>
> (7) the corporations exchange or share managerial or supervisory personnel,
>
> (8) the subsidiary performs business functions that would ordinarily be handled by a parent corporation,
>
> (9) the parent uses the subsidiary as a marketing division or as an exclusive distributor, and
>
> (10) the parent exercises control or provides instruction to the subsidiary's officers and directors.

In re Chocolate Confectionary Antitrust Litig., 602 F. Supp. 2d at 569–70. These factors largely track those Arizona courts consider in assessing alter ego vicarious liability. *See Gatecliff v. Great Republic Life Ins. Co.*, 821 P.2d 725, 728 (Ariz. 1991) (considering "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"). Under either rubric, a plaintiff must show that the parent exercises substantial control over the day-to-day affairs of the subsidiary. *Britax Child Safety, Inc. v. Nuna Int'l B.V.*, 321 F. Supp. 3d 546, 555 (E.D. Pa. 2018); *Taeger v. Cath. Fam. & Cmty. Servs.*, 995 P.2d 721, 733 (Ariz. App. 1999).

The first handful of Plaintiffs' proposed discovery topics seek information that is, at least *in part*, pertinent to these factors. (*See* ECF 61 at ¶ 1(a)-(l)). But the latter half of Plaintiffs' proposed discovery topics seek information that is far beyond what any of these factors concern and is entirely irrelevant to the determination of personal jurisdiction under the alter ego theory:

m. how as a domestic nonprofit organization organized under Arizona law CPLC's status as exempt from income tax was impacted by Prestamos's revenue from PPP lending.

CPLC's tax-exempt status has no bearing whatsoever on the alter ego analysis under the recognized factors. *See Gatecliff*, 821 P.2d at 728. Even if CPLC's tax-exempt status were somehow affected by its receipt of distributions from Prestamos (and it is not), that would not change the analysis for personal jurisdiction or vicarious liability for Prestamos's alleged breach of a loan contract. To address Plaintiffs' insinuation directly: there is nothing untoward about a non-profit organization owning a for-profit subsidiary from which it receives dividends to support its exempt purposes.

n. whether any Prestamos employees or directors had an office in or otherwise worked from or at CPLC's corporate headquarters, and whether any CPLC employees or directors had an office in or otherwise worked from or at Prestamos's corporate headquarters.

Shared physical office space is likewise irrelevant to the analysis.

q. activities of each of Defendant's board of directors.

The activities of each entity's directors that have nothing to do with the other entity are irrelevant to whether the entities are interrelated enough to treat the two as alter egos. The scope of this topic reaches matters that bear no conceivable relationship to this breach of contract action. Indeed, according to the detailed Consolidated Financial Statements that Plaintiffs already have (*see* SAC ¶ 82), CPLC is the parent corporation to *over 40* subsidiaries; the "activities" of its board of directors will encompass a vast array of information that is wholly irrelevant to any issue in this litigation. To the extent there is any inquiry as to the activities of either entity's directors, such inquiry should be limited to activities related to the other entity.

r. details regarding the day-to-day business activities of Martinez, Adame, Nunez, Gonzales, Habre and Hernandez.

Similar to subpart (q), above, these executives' activities that are unrelated to the relationship between CPLC and Prestamos are irrelevant to the alter ego analysis and should not be the subject of unnecessary discovery. Other than calling out their titles, Plaintiffs cite no justification for seeking discovery relating to these executives.

s. Defendants' payment of dividends, interest or other revenue or income from or attributable to PPP lending.

This topic is redundant with topic (b), which already asks about transfers between Prestamos and CPLC "of any PPP loan processing fees and other revenue or income including without limitation interest income that Prestamos received from PPP lending."

u. Defendants' activities concerning PPP lending in Pennsylvania.

Defendants do not dispute that *Prestamos* is subject to personal jurisdiction in Pennsylvania, thus obviating the need to inquire about its activities in the state. This is a topic more appropriate for discovery on the merits and/or class certification—not on the issue of whether CPLC was Prestamos's alter ego. Any jurisdictional discovery as to PPP lending in Pennsylvania should be limited to CPLC, which did not engage in PPP lending in Pennsylvania or anywhere.

III. Plaintiffs Do Not Deserve a *Fourth* Shot at Filing a Complaint.

Plaintiffs filed this case in October 2021. They have amended their Complaint twice to cure legal deficiencies, effectively receiving *three* bites at the apple. Now, without any explanation or justification, they ask this Court for a *fourth* bite at the apple to add unspecified allegations to the Complaint—without imposing any checks on what they may add. (ECF No. 61 at 6 ("Plaintiffs shall file a Third Amended Complaint within thirty (30) days after the last of the above-referenced depositions.")). Given how Plaintiffs' proposal is written, Plaintiffs could inappropriately use a process for limited jurisdictional discovery to blindside Prestamos with brand new parties, new non-jurisdictional facts, and new causes of action.

Moreover, this Court's Order (ECF No. 57) requiring proposals regarding limited jurisdictional discovery does not contemplate that Plaintiffs would be filing a fourth complaint. Indeed, the Stipulation and Order (ECF No. 60)—signed by the Court and the parties after the Court's decision on Defendants' motion to dismiss—clearly envisions that CPLC would be "renew[ing]" its motion to dismiss the SAC, not that Prestamos and CPLC would be responding to an entirely new complaint.

Moreover, because Defendants have answered (ECF No. 63), Plaintiffs may amend only with Defendants' consent or the Court's leave. Fed. R. Civ. P. 15(a)(2). Rather than grant advance leave to amend to include additional facts, the better practice is to allow a renewed motion to dismiss following the completion of jurisdictional discovery. *See Lutz v. Rakuten, Inc.*, 376 F. Supp. 3d 455, 462 (E.D. Pa. 2019) ("After the completion of jurisdictional discovery, the Defendants were allowed to renew their Motion to Dismiss."); *Ciolli v. Iravani*, 625 F. Supp. 2d 276, 297 (E.D. Pa. 2009) (allowing defendants to file renewed motion to dismiss after the completion of jurisdictional discovery); *Oeschle v. Pro-Tech Power, Inc.*, No. CIV.A. 03-CV-6875, 2006 WL 680908, at *6 (E.D. Pa. Mar. 15, 2006) (same). Insofar as Plaintiffs feel it necessary to amend their pleadings, they should seek leave to do so pursuant to Rule 15(a)(2). In any event, an amended pleading would be of little use in resolving a dispute over personal jurisdiction. *See Ciolli*, 625 F. Supp. 2d at 283 ("A motion to dismiss for lack of personal jurisdiction 'is inherently a matter which requires resolution of factual issues outside the pleadings.'" (quoting *Time Share Vacation Club v. Atl. Resorts, Ltd.*, 735 F.2d 61, 66 n.9 (3d Cir. 1984)); *Deardorff v. Cellular Sales of Knoxville, Inc.*, No. 19-cv-2642, 2020 WL 5017522, at *2

(E.D. Pa. Aug. 25, 2020) ("[T]o establish that personal jurisdiction exists and survive a Rule 12(b)(2) motion to dismiss, a plaintiff may *not* merely rely on the allegations in its complaint.").

This Court can resolve the personal jurisdiction issue regarding CPLC without giving Plaintiffs another opportunity to press reset on this litigation. If Plaintiffs wish to take the extraordinary step of filing a fourth complaint, they should file the proper motion pursuant to the Federal Rules of Civil Procedure, rather than tacking on this unusual request at the end of a limited jurisdictional discovery plan.

IV. Plaintiffs' Proposed Discovery Response Periods Presuppose that Presently Unserved Discovery Requests Will Not Be Unreasonable or Voluminous

Plaintiffs' proposed discovery plan effectively seeks a preemptive order compelling Defendants to produce documents and written responses to Plaintiffs' written discovery "in accordance with the provisions of Rule 34" (in other words, within thirty days of service), and compelling Defendants to produce privilege logs no later than fourteen days after making their document productions. *Id.* Plaintiffs' preemptive request for an order compelling production is premature. Until Plaintiffs serve their written discovery on Defendants, neither Defendants nor the Court have any way of determining whether Plaintiffs' discovery requests are unreasonable or, even if all of Plaintiffs' discovery requests are reasonable, whether fully responding to them will require voluminous responses that cannot be completed within the thirty-day window that Plaintiffs seek to preemptively impose on Defendants via court order. The same is true for Defendants' production of privilege logs; neither Defendants nor the Court have any way of determining the volume of privileged documents that will be covered by Plaintiffs' discovery requests (let alone the complexity of privilege determinations that Defendants may need to make) until Plaintiffs serve their written discovery and Defendants begin collecting, reviewing, and producing responsive documents. Defendants' responses to Plaintiffs' written discovery and production of privilege logs should proceed in the ordinary course as contemplated by the Federal Rules of Civil Procedure.

Conclusion

For the foregoing reasons, the Court should limit Plaintiffs' jurisdictional discovery to ten requests for production and ten interrogatories, which requests must be limited to those factors relevant to the alter ego analysis. Consistent with these parameters, the Court should adopt Defendants' Proposed Scheduling Order Concerning Jurisdictional Discovery, attached hereto as Exhibit A.

Dated: May 4, 2023

Respectfully submitted,

By: */s/ Marcel S. Pratt*

Marcel S. Pratt (Pa. ID 307483)
Timothy D. Katsiff (Pa. ID 75490)
Thomas J. Gallagher IV (Pa. ID316269)
Alexa L. Levy (Pa. ID 327973)
BALLARD SPAHR LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
T: 215-665-8500
F: 215-864-8999
PrattM@ballardspahr.com
KatsiffT@ballardspahr.com
GallagherT@ballardspahr.com
LevyA@BallardSpahr.com

HERRERA ARELLANO LLP
Roy Herrera*
Daniel A. Arellano*
Jillian L. Andrews*
Austin T. Marshall*
1001 North Central Avenue, Suite 404
Phoenix, AZ 85004
T: 602-567-4820
Roy@ha-firm.com
Daniel@ha-firm.com
Jillian@ha-firm.com
Austin@ha-firm.com

**pro hac vice admission forthcoming*
Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Thomas J. Gallagher IV, hereby certify that on this 27th day of April, 2023, I caused a copy of the foregoing Defendants' Response to Plaintiffs' Proposed Jurisdictional Discovery Plan to be served on all counsel of record via the Court's ECF system.

/s/ Thomas J. Gallagher IV
Thomas J. Gallagher IV