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

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT CHICANOS POR LA CAUSA'S MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

BALLARD SPAHR LLP

Marcel S. Pratt (Pa. ID 307483)
Timothy D. Katsiff (Pa. ID 75490)
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
KatsiffT@ballardspahr.com
LevyA@ballardspahr.com

HERRERA ARELLANO LLP

Roy Herrera (*admitted pro hac vice*)
Daniel A. Arellano (*admitted pro hac vice*)
Jillian Andrews (*admitted pro hac vice*)
Austin T. Marshall (*admitted pro hac vice*)
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

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PRELIMINARY STATEMENT

Plaintiffs do not dispute that Chicanos Por La Causa, Inc. ("CPLC") is an Arizona non-profit corporation that does not provide services in this jurisdiction. Nor do they dispute that CPLC was not a party to Plaintiffs' loan documents. Plaintiffs' sole basis for asserting personal jurisdiction over CPLC is their bald allegation that its subsidiary—Prestamos CDFI LLC ("Prestamos"), a decades-old, well-capitalized, and federally certified lending company that has long provided financial products and services to underserved communities—is merely the alter ego of CPLC.

Plaintiffs bear the burden of proving that this Court should take the extraordinary step of exercising personal jurisdiction over CPLC based on their alter ego theory. But even with the benefit of discovery, Plaintiffs cannot demonstrate that Prestamos was under the "complete domination and control" or the other necessary factors to sustain their allegations that Prestamos is the alter ago of CPLC for personal jurisdiction purposes. To the contrary, jurisdictional discovery has shown that CPLC and Prestamos function as separate entities, contradicting all of Plaintiffs' alter ego allegations.

The Second Amended Complaint ("SAC") principally points to common practices in parent-subsidiary relationships: CPLC's reference to subsidiary activities in consolidated financials; CPLC executives serving as directors or officers of Prestamos; and Prestamos's strategic choice to align branding with CPLC. While Plaintiffs may attempt to misconstrue these relationships, none of them establishes that Prestamos is an alter ego for purposes of this Court's personal jurisdiction. Nothing in the SAC or discovery shows that CPLC exercised day-to-day control or atypical influence over Prestamos, especially regarding the administration of the PPP program. And, as set forth below, none of the other factors pointed to by the Plaintiffs establish that the Prestamos is an alter ego of CPLC.

Even if this Court exercises personal jurisdiction over CPLC, it should dismiss Plaintiffs' unjust enrichment claim against CPLC under rule 12(b)(6). Plaintiffs' failure to invoke the laws of a specific jurisdiction for their catch-all unjust enrichment claim is fatal. Even if the Court evaluates the substance of the claim, it must fail. Plaintiffs have not plausibly alleged that *plaintiffs* conferred a benefit on Prestamos, let alone CPLC. Plaintiffs' allegation that the *federal government* paid loan processing fees to Prestamos is insufficient to state a claim for unjust enrichment against CPLC.

PROCEDURAL HISTORY

On March 30, 2023, this Court denied CPLC's Motion to Dismiss the SAC for lack of personal jurisdiction without prejudice, pending limited jurisdictional discovery into the relationship between CPLC and Prestamos. *See* ECF No. 57. Since then, Defendants have responded to Plaintiffs' written discovery requests, produced over 1,600 documents, and have each produced a corporate representative for Rule 30(b)(6) depositions. *See* Exs. 1, 2, 6, 13. Pursuant to the Court's order CPLC now renews its motion to dismiss for lack of personal jurisdiction *See* ECF Nos. 60, 75.

FACTUAL SUMMARY

A. The Defendants

CPLC. CPLC is an Arizona nonprofit corporation formed in 1969 to fight discrimination against the Mexican-American community. *See* Ex. 3, at PRESTAMOS-002981173-75 (Chicanos Por La Causa Resolution 2023-1); CPLC, *Who We Are*, https://cplc.org/about/about.php (last visited Oct. 4, 2023). Inspired by Dolores Huerta and Cesar Chavez, CPLC was devoted initially to advocating for equity in education, politics, and labor conditions. *Id.* Today, CPLC provides services to people of all backgrounds while honoring its Mexican-American roots. *Id.* Plaintiffs do not allege that there is general jurisdiction over CPLC.

Prestamos. Prestamos was formed in 2000 as a limited liability company under Arizona law and has its principal place of business in Phoenix, Arizona. Ex. 4, at 5 (Prestamos's Articles of Organization). Prestamos's sole member is CPLC. *Id*. at 5; Ex. 5*,* at Section 2.3.Prestamos's mission is to provide "financial products and development services to underserved residents of the community." *See* Ex. 5, Prestamos's Fourth Amended and Restated Operating Agreement (the "Prestamos Operating Agreement"), at 1.3. It is a Community Development Financial Institution ("CDFI") certified by the U.S. Department of the Treasury as a Loan Fund. *See* Ex. 4, at 21. The Small Business Administration ("SBA") strongly encouraged CDFIs, like Prestamos, and other minority-, women-, veteran-, and military-owned lenders to apply to become PPP lenders in order to reach diverse, small businesses. 86 Fed. Reg. 3692, 3707.

B. ***Prestamos Is Separate from CPLC***

Prestamos is a separate company, wholly distinct from CPLC and other CPLC subsidiaries. Ex. 4, (Prestamos's Articles of Organization). Prestamos is an Arizona LLC that is governed by the Prestamos Operating Agreement and the laws of Arizona. The Prestamos Operating Agreement provides for a Board of Directors, which is given the power to "manage the Company." Ex. 5, at Section 3.1. Prestamos's Board of Directors consisted of David Adame, Alicia Nunez, and Max Gonzalez. *See* Ex. 6, CPLC's Response to Interrogatory No. 3. Prestamos's Board meets and makes policy decisions for Prestamos. *See* Ex. 5, at Section 3.6. Prestamos also has a Community Advisory Board which "assist[s] the Company with maintaining accountability to Low Income Persons. . . ." Ex. 5, at Section 4.1. Jose Martinez has served as Prestamos's President for more than ten years. Martinez Tr., at. 45. Both Mr. Martinez and Alicia Nunez, CPLC's 30(b)(6) witness, testified that Mr. Martinez is responsible for Prestamos's day-to-day management and operations and that CPLC employees had no managerial role over the PPP program. Ex. 1, Deposition of Alicia Nunez at Tr. ("Nunez Tr.") 38 ([redacted]); Martinez Tr., at. 46 (CPLC does not have any oversight role over Prestamos beyond what is stated in the Operating Agreement).

Prestamos also is adequately capitalized and fully solvent. *See e.g.*, Ex. 7, at PRESTAMOS-00296762 (Prestamos's Consolidated Financial Statements for the fiscal years ended June 30, 2021 and 2020). Indeed, Prestamos's audited financials during the putative class period show that it reported total assets in excess of its total liabilities. *Id.* at PRESTAMOS-00296766-67. Prestamos has its own bank accounts and federal EIN number. *See* Nunez Tr., at 66; Ex. 8, at PRESTAMOS-00307654-734 (CPLC's 2020 Form 990 indicating EIN numbers for CPLC and Prestamos). Prestamos has its own general ledger accounts where its financial transactions are recorded separately from CPLC's transactions. Chen Decl. ¶ 5; Chen Decl. Exs. 1, 2 (intercompany transfers for July 2019 to June 2022); Nunez Tr., at 26 (intercompany service fees are recorded in consolidated financials under heading entitled "Administrative Costs").

All PPP revenues at issue in this case were received by Prestamos, deposited in Prestamos bank accounts, and recorded on Prestamos's books. Nunez Tr. 66 ([redacted]).

C. *Services Provided by CPLC to Prestamos.*

CPLC provides various services to Prestamos (and to other CPLC subsidiaries and affiliates) pursuant to written Intercompany Services Agreements ("ISAs"). Prestamos and CPLC had three such agreements place during the putative class period. *See* Exs. 9–11. The ISAs state that CPLC and Prestamos are legally independent parties and intend to preserve and protect that independence. *See* Exs. 9–11. Martinez testified that CPLC provides a wide array of services to

Prestamos including support related to accounting, information technology, human resources, legal, compliance, and marketing. Martinez Tr., at. 23, 25.

Under the ISAs, Prestamos must pay CPLC an annual service fee. Exs. 9–10, at Section 3.1; Martinez Tr., at 58. The annual service fee during the putative class period was 16.1% of Prestamos's expenses, a rate reflective of CPLC's federally approved indirect cost rate. Exs. 9–10, at Section 3.1. Nunez Tr., at 29; Ex. 4, at 7 This rate standardizes and simplifies the allocation of overhead expenses in federal grants and contracts, ensuring fair reimbursement, and consistent accounting. *See id.* at 9–10 (CPLC's Nonprofit Rate Agreement provides that Prestamos only includes allowable costs, avoids double-claiming those costs, and maintains consistent accounting for similar costs). The ISAs also require Prestamos to reimburse CPLC for any direct expenses directly attributable to Prestamos, such as Prestamos-specific salaries and benefits, audit fees, and legal expenses. *E.g.*, Exs. 9–10 at Section 3.2; Martinez Tr., at 60. Payments under the ISAs are recorded in both CPLC and Prestamos' general ledger accounts. Chen Decl. Exs. 1, 2 (intercompany transfers for July 2019 to June 2022).

One of the services CPLC delivers to Prestamos under the ISA is the outsourcing of employees. Martinez Tr., at 23–24. Under this arrangement, CPLC serves as the legal employer of personnel who are assigned to work for Prestamos. *Id.* This allows CPLC, Prestamos, and other CPLC subsidiaries to reduce overall costs by taking advantage of economies of scale. Exs. 9–10*,* at Recital C. The ISAs obligate Prestamos to reimburse CPLC for actual costs related to these employees, including salaries, benefits, and other direct costs. Exs. 9–10*,* at Section 3.2.

CPLC did not direct Prestamos's PPP lending program; it was managed by Prestamos. *Id.* ¶ 9; Nunez Tr., at 37 ([redacted]); *id.* Tr. 39 [redacted]

[redacted]. To the extent that CPLC employees worked on the PPP program, these employees were provided pursuant to the ISAs and were directed by, reported to, and worked for Prestamos managers. *See* Ex. 6, CPLC's Response to Interrogatory Nos. 2–4 ("CPLC acknowledges that it and/or certain CPLC employees performed tasks and/or services for and/or on behalf of Prestamos pursuant to the Intercompany Services Agreements between CPLC and Prestamos"); Nunez Tr., at 76–77 (CPLC's involvement in assisting Prestamos with staffing for PPP-related tasks was facilitated through the shared services team, as governed by the ISA). CPLC did not direct the PPP lending activity of any employees.[1]

ARGUMENT

The Court should dismiss all claims against CPLC under Rule 12(b)(2) for lack of personal jurisdiction. In the alternative, the Court should dismiss the unjust enrichment claim against CPLC under Rule 12(b)(6) for failure to state a claim.

A. The Court Should Not Exercise Personal Jurisdiction Over CPLC

Plaintiffs do not (and cannot) allege that CPLC has sufficient specific or general contacts in Pennsylvania to subject it to the Court's jurisdiction. Instead, Plaintiffs allege that CPLC's subsidiary, Prestamos—a 20-plus-year-old CDFI certified by the U.S. Department of Treasury and regulated by the federal government—is merely the alter ego of CPLC. The SAC attempts to recast aspects of the CPLC-Prestamos relationship that are characteristic of parents and subsidiaries to haul the Arizona-based nonprofit into a Pennsylvania federal court. Plaintiffs have not alleged that Prestamos is a sham entity; and jurisdictional discovery has further proven that

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[1] Prestamos also directly hires contractors from the community as needed to supplement its human capital. Martinez Tr., at 57 (Martinez testifying that Prestamos actively recruited and employed contractors, independently of the ISA with CPLC).

CPLC and Prestamos distinctly observe corporate formalities and that Prestamos exercised operational autonomy, particularly regarding PPP.

1. Legal Standard for the "Alter Ego" Theory of Personal Jurisdiction

"The mere fact that a subsidiary company does business within a state does not confer jurisdiction over its nonresident parent, even if the parent is sole owner of the subsidiary." *Kehm Oil v. Texaco, Inc*., 537 F.3d 290, 301 (3d Cir. 2008) (internal quotation omitted). When a defendant raises the defense of personal jurisdiction, "the burden falls upon the plaintiff to come forward with sufficient facts to establish that jurisdiction is proper." *In re Asbestos Prod. Liab. Litig. (No. VI)*, 384 F. Supp. 3d. 532, 535 (E.D. Pa. June 6, 2019) (citation omitted).

Thus, ***Plaintiffs have the burden*** to show that CPLC's level of "control" over Prestamos is more than "mere majority or complete stock control," but instead is "complete domination, not only of finances but of policy and business practice[s]," such that the subsidiary had "no separate mind, will or existence of its own." *Craig v. Lake Asbestos of Quebec, Ltd.*, 843 F.2d 145, 150 (3d Cir. 1988).

Courts in this District consider the following factors when deciding whether one entity is the alter ego of another for purposes of personal jurisdiction:

> (1) ownership of all or most of the stock of the subsidiary, (2) common officers and directors, (3) a common marketing image, (4) common use of a trademark or logo, (5) common use of employees, (6) an integrated sales system, (7) interchange of managerial and supervisory personnel, (8) subsidiary performing business functions which the principal corporation would normally conduct through its own agents or departments, (9) subsidiary acting as marketing arm of the principal corporation, or as an exclusive distributor, and (10) receipt by officers of the related corporation of instruction from the principal corporation.

Britax Child Safety, Inc. v. Nuna Int'l B.V., 321 F. Supp. 3d 546, 555 (E.D. Pa. 2018) (quotation omitted). "No single factor is dispositive, and the court may consider all relevant evidence to determine whether the parent exercises actual control over a subsidiary beyond that which is characteristic of a usual parent-subsidiary relationship." *In re Chocolate Confectionary Antitrust Litig.*, 602 F. Supp. 2d 538, 570 (M.D. Pa. 2009). Ultimately, "the alter-ego test looks to whether the degree of control exercised by the parent is greater than normally associated with common ownership and directorship and whether the parent controls the day-to-day operations of the subsidiary such that the subsidiary can be said to be a mere department of the parent." *In re Enter. Rent-A-Car Wage & Hour Empl. Practices Litig.*, 735 F. Supp. 2d 277, 319 (W.D. Pa. 2010) (internal quotation marks omitted; citation omitted).

The Third Circuit's test for alter ego *liability*, which contains a similar basket of factors, is also informative; those factors include:

> 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.

Pearson v. Component Tech. Corp., 247 F.3d 471, 484–85 (3d Cir. 2001). Weighing these factors, Plaintiffs alter ego arguments fail as a matter of law.

2. Plaintiffs' Allegations in the SAC Fail to Establish Personal Jurisdiction.

The SAC does not assert allegations relevant to all of the above factors. The SAC points to: (i) references to CPLC and Prestamos collectively or interchangeably in consolidated financial statements and other company documents; (ii) instances where CPLC's and Prestamos's websites and marketing materials refer to Prestamos as "CPLC Prestamos"; (iii) the overlap of executives and directors between CPLC and Prestamos; (iv) proximity of their offices. These allegations do not support personal jurisdiction, and, the evidence does not support the remaining alter ego factors.

i. Consolidated Financial Statements Describing Parent and Subsidiary Activities Are Typical And Do Not Establish Personal Jurisdiction.

Plaintiffs twist CPLC's consolidated financial statements to allege that CPLC participated directly in PPP lending and received PPP lending fees directly from the SBA, even though CPLC is not a lender. SAC ¶¶ 12, 68, 82; Ex. 12 (CPLC Consolidated Financial Statements and Supplementary Information for the fiscal year ended June 30, 2021). To get there, Plaintiffs offer an argument in semantics. They reason that, when the CPLC Financial Statement refers to "the *Organization*" and its participation in PPP program, CPLC has revealed its disregard for Prestamos and references itself. *See, e.g.,* SAC ¶ 68 (emphasis in original). But the Financial Statement states explicitly that the term "the Organization" refers ***collectively*** to the activities of CPLC ***and its subsidiaries***. Financial Statement at 15 (noting that "CPLC and its subsidiaries and affiliates," among them Prestamos, are "collectively referred to as CPLC or Organization"). As a result, when the Financial Statement says that "the Organization" participated in PPP lending and received loan fees, it is not referring uniquely to CPLC.

The fact that CPLC's financial statements are consolidated and reference the two entities (and others) collectively does not support an alter ego theory of personal jurisdiction. Indeed, courts have consistently rejected the use of consolidated financial statements between a parent and a subsidiary as a factor supporting alter ego jurisdiction. *See Deardorff v. Cellular Sales of Knoxville, Inc.*, No. 19-cv-2642, 2022 U.S. Dist. LEXIS 18444, at *24 (E.D. Pa. Feb. 1, 2022) (consolidated financial statements did not establish that parent "exercised daily control over" subsidiary necessary to establish personal jurisdiction on alter ego theory); *Reynolds v. Turning Point Holding Co., LLC*, No. 19-cv-01935, 2020 U.S. Dist. LEXIS 33163, at *8 (E.D. Pa. Feb. 26, 2020) (same, with respect to consolidated tax returns among parent and subsidiaries); *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 [IRS and SEC], and it is recommended by generally accepted accounting principles."). "[T]he 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 v. Cath. Fam. & Cmty. Servs.*, 196 Ariz. 285, 298, 995 P.2d 721, 734 (Ariz. App. 1999); *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."). Moreover, Prestamos has its own general ledger accounts where its financial transactions are recorded separately from CPLC's transactions. *See, e.g.*, *Mod. Font Applications LLC v. Peak Rest. Partners, LLC*, No. 19-cv-221, 2020 U.S. Dist. LEXIS 1791, at *15 (D. Utah Apr. 7, 2020) (granting motion to dismiss and finding that parent and subsidiary maintained financial separateness where parent and subsidiaries maintained their own general ledgers)

Accordingly, CPLC's references to Prestamos (and other subsidiaries) in its consolidated financial statements do not support a finding of personal jurisdiction.

ii. The Use of the Term or Logo "CPLC Prestamos" Is A Legitimate Branding Strategy That Does Not Support Personal Jurisdiction.

Plaintiffs point to CPLC's occasional use of the term "CPLC Prestamos" and Prestamos's related logo as somehow dissolving the corporate line between CPLC and Prestamos. *See* SAC ¶¶ 7, 35, 67, 83.[2] But, the discovery record shows that the decision to incorporate elements of CPLC's logo was a strategic branding choice made by the president of Prestamos, Mr. Martinez.

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[2] These are available at: https://cplc.org/assets/files/publications/CPLC%20FY19-20%20Annual-Report.pdf and https://www.prestamosloans.org/about-prestamos/ (each last accessed June 3, 2022).

Mr. Martinez's independent rationale was that aligning with CPLC, a recognized and respected brand, would benefit the Prestamos brand. Tr. 14-17; *id.* at 16 ([redacted]).

Coordinated branding between parents and subsidiaries, even if they suggest affiliation or association, does not imply that CPLC and Prestamos are the same entity. *See In re Chocolate*, 602 F. Supp. 2d at 570–71 (in ruling on motion to dismiss for lack of personal jurisdiction, declining to rely on allegations 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"); *Reynolds*, 2020 U.S. Dist. LEXIS 33163, at *10 (granting motion to dismiss and finding that "the fact that a company is portrayed as a single brand to the public does not demonstrate the necessary control by defendant parent over the subsidiaries."); *Vacaflor v. Pa. State Univ.*, No. 4:13-CV-00601, 2014 U.S. Dist. LEXIS 98541, at *14 (M.D. Pa. July 21, 2014) ("The mere appearance of a parent corporation's logo with the subsidiary corporation's in a common marketing image does not demonstrate the level of control sufficient to render the subsidiary the alter ego of the parent corporation.").

Besides, Prestamos's website, which the SAC quotes and incorporates (SAC ¶ 67), makes clear that CPLC and Prestamos are distinct entities: it states that CPLC is Prestamos's "parent corporation," and that CPLC "created Prestamos" in 2000. *See* Prestamos CDFI, https://www.prestamosloans.org/about-prestamos (last visited Oct. 11, 2023). Likewise, the quote Plaintiffs attribute (SAC ¶ 85) to CPLC's former CEO, David Adame, 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 noting that CPLC is "the parent organization of Prestamos."[3] *See also* Ex. 7 at Prestamos-00296773 (same).

Accordingly, Prestamos's deliberate decision to coordinate branding with its parent does not impose alter ego personal jurisdiction upon CPLC.

iii. Parent Executives Can Sit on Subsidiary Boards or Serve as Executives Without Creating Alter Ego Jurisdiction.

CPLC and Prestamos have no overlapping board members. Ex. 6, at 8 (CPLC's Response to Interrogatory No. 3). Plaintiffs allege that three CPLC executives comprise Prestamos's board and a CPLC executive serves as Prestamos's president. SAC ¶¶ 65–66. But this lone factor does not substantiate Plaintiffs' theory. *See Riad v. Porsche Cars N. Am., Inc.*, No. 18-5175, 2023 U.S. Dist. LEXIS 31221, at *13–14 (E.D. Pa. Feb. 24, 2023) (holding that subsidiary was not an alter ego of parent company based upon overlapping board members); *Deardorff*, 2022 U.S. Dist. LEXIS 18444, at *7–8 (holding that some shared common officers between parent and subsidiary is "to be expected in a subsidiary parent relationship" and is not sufficient to establish an alter ego relationship, particularly where there are no overlapping board members). *See also Deutsche Credit Corp. v. Case Power & Equip. Co.*, 876 P.2d 1190, 1195 (Ariz. App. 1994) ("The mere fact that [parent and subsidiary] corporations have the same officers does not make one liable for the acts of the other."); *see also 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.").

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[3] Stacy Cowley & Ella Koeze, *How Two Start-Ups Reaped Billions in Fees on Small Business Relief Loans*, N.Y. Times (last updated Oct. 11, 2021), https://www.nytimes.com/2021/06/27/business/ppp-relief-loans-blueacorn-womply.html (last accessed June 3, 2022).

Indeed, it is a "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) (citation omitted). "[C]ourts generally presume 'that directors are wearing their "subsidiary hats" and not their "parent hats" when acting for the subsidiary.'" *Id.* (citation omitted). To overcome this presumption, a plaintiff must plausibly allege that the dual officers and directors were acting "for the wrong company" when making decisions and supervising activities. *Lieberman v. Corporacion Experienca Unica, S.A.*, 226 F. Supp. 3d 451, 470 (E.D. Pa. 2016). Here, Plaintiffs merely allege typical connections between parent executives and a subsidiary; they allege no facts that Prestamos's directors or its executive were acting for "the wrong company," *id.*, when overseeing Prestamos's affairs.

The record establishes that CPLC does not exert control over Prestamos's daily operations, let alone its PPP-related affairs. Nunez Tr., at 38 (testifying that CPLC had no oversight or day-to-day involvement in the running of PPP); Ex. 13 at 7–9 (denying that CPLC communicated with individual PPP borrowers, Blueacorn, the SBA, the Federal Reserve Bank of Cleveland, or other Federal Reserve offices regarding Prestamos PPP loans). Neither does Prestamos's utilization of resources from CPLC through the ISA inherently demonstrate that CPLC exerted any (let alone the requisite) control over Prestamos, or that CPLC and Prestamos disregarded their corporate structures. That CPLC employees contractually performed services for Prestamos— for which Prestamos paid CPLC, as evidenced by meticulously documented transactions—does not show that "[CPLC] controlled [Prestamos] so as to disregard its independent corporate existence." *Francis v. Bridgestone Corp.*, No. 2010-30, 2011 U.S. Dist. LEXIS 72804, at *38–39 (D.V.I. July 6, 2011).

iv. The Distribution of Profits to a Parent Does Not Show

Plaintiffs allege that Prestamos "upstreamed" PPP loan fees to CPLC, SAC ¶ 82. Prestamos did distribute profits to CPLC, but there is nothing untoward or atypical about a subsidiary distributing profits or paying dividends to its parent.[4] *See Wady v. Provident Life & Accident Ins. Co. of Am.*, 216 F. Supp. 2d 1060, 1069 (C.D. Cal. 2002) ("[R]eceiv[ing] money from subsidiaries in the form of dividends and interest on loans . . . are precisely the kinds of transactions which would occur among entities which respect the corporate separateness among entities." (quoting *Tomaselli v. Transamerica Ins. Co.*, 25 Cal. App. 4th 1269, 1284 n.12 (1994)). Indeed, it is the ***non***payment of dividends or distribution of profits that usually supports disregarding the corporate form. *See Trs. of Nat'l. Elevator Indus. Pension, Health Benefit & Educ. Funds v. Lutyk*, 140 F. Supp. 2d 447, 459 (E.D. Pa. 2001); *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 distributing profits to CPLC in the ordinary course thus supports *respecting* the corporate form, not disregarding it. *See Action Mfg. Co., Inc. v. Simon Wrecking Co.,* 375 F. Supp. 2d 411, 425 (E.D. Pa. 2005) ("the fact that [subsidiary] pays dividends to [parent] is another indication that [parent] and [subsidiary] are observing corporate formalities").

Here, the jurisdictional discovery record shows that Prestamos, consistent with a standard parent-subsidiary relationship, paid dividends to CPLC. *See* Nunez Tr., at 61 (describing dividends

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[4] Nor, for that matter, is there anything untoward about 501(c) organization maintaining for-profit subsidiaries that fund the parent organization's mission. *See, e.g., Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S., Inc.*, 646 F.3d 983, 987–88 (7th Cir. 2011).

paid to CPLC). Both Prestamos and CPLC properly accounted for those transactions in their separate financials. *See* Exs. 7, 12.

v. That CPLC and Prestamos Have Nearby Offices Is Irrelevant

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. To the contrary, authority in this District holds that sharing offices in the same building complex is not even sufficient to establish alter ego personal jurisdiction. *See, e.g.*, *Sheet Metal Workers' Int'l Ass'n Local Union No. 19 v. Main Line Mech., Inc.*, No. 11-1025, 2013 U.S. Dist. LEXIS 32008, at *16, 19 (E.D. Pa. Mar. 7, 2013) (holding that two companies that maintained offices in same building complex but never shared an office were not alter egos).

3. Jurisdictional Discovery Showed That Other Factors Do Not Weigh in Favor of Exercising Personal Jurisdiction Over CPLC.

The SAC does not speak to several other factors of the jurisdictional analysis. Even if it did, jurisdictional discovery has shown that evaluation of the additional factors do not weigh in favor of alter ego jurisdiction.

- ***Ownership of stock***. CPLC is the sole member of Prestamos, an LLC. Ex. 4 at 5; Ex. 5*,* at Section 2.3. As Prestamos's Operating Agreement shows, CPLC established Prestamos as a "financing entity, providing products and development services to underserved residents of the community." *Id.* at 1.3. Prestamos performs functions (i.e., community lending) that CPLC cannot. Nothing about the relationship evidences that Prestamos is an alter ego; rather, the operating agreement and other facts elicited in discovery (e.g., separately audited financials, separate accounts, documented intercompany transactions, arms-length ISAs, *see supra*) show the close observance of corporate formalities.

- ***"Integrated Sales System."*** Plaintiffs have no evidence that CPLC and Prestamos have an "integrated sales system."

- ***Subsidiary Performance of Parent Business Functions***. The SAC contains no allegations that Prestamos performs the work of CPLC. Prestamos is a CDFI certified by the U.S. Department of Treasury and an SBA-approved lender. CPLC is neither, and does not issue loans.

- ***Marketing Arm or Exclusive Distributor*.** Plaintiffs do not and cannot allege that Prestamos is marketing arm or exclusive distributor of CPLC.

The factors for alter ego *liability*, which can also inform jurisdiction, also show that Prestamos is not the alter ego of CPLC.

- ***Gross undercapitalization; insolvency*.** Plaintiffs have not alleged that Prestamos is undercapitalized or insolvent; nor has discovery shown otherwise. For example, Prestamos's audited financials during the putative class period show that it reported total assets in excess of its total liabilities. *Id.* at PRESTAMOS-00296766-67. It is indisputable that Prestamos is fully solvent. Notably absent from the SAC is any allegation that Prestamos is a sham entity.

- ***Failure to observe corporate formalities; absence of corporate records.*** Plaintiffs have not (and cannot) allege that Prestamos and CPLC have failed to observe corporate formalities. Both organizations have properly observed corporate formalities by having separate boards, separate management and separate accounts. Ex. 5, at Section 3.1; Chen Decl. Exs. 1, 2 (intercompany transfers for July 2019 to June 2022); Nunez Tr., at 26 (ISA service fees are recorded in consolidated financials under heading entitled Administrative Costs).

- ***Nonfunctioning of corporate officers/directors.*** Plaintiffs do not allege that Prestamos has officers and directors who perform no functions for Prestamos.

- ***Non-payment of dividends; siphoning of funds from the debtor.*** The failure to pay dividends and siphoning funds through other means typically weighs in favor of personal jurisdiction. Plaintiffs have not alleged that CPLC "siphons funds" from Prestamos. All transactions between the entities are properly documented, and printouts of the intercompany transfers from have been produced to Plaintiffs for the relevant time period. Nunez Exs. 1, 2. Here, Prestamos reimburses CPLC for services and pays dividends, which is another indication that they are observing corporate formalities. Nunez Tr., at 67-68 ([redacted]).

* * *

Plaintiffs' theory fails to establish alter ego jurisdiction "because it fails to demonstrate the corporate parents' actual control over the daily affairs of the daily affairs of their subsidiaries." *In re Chocolate*, 602 F. Supp. 2d at 571; *see also In re Enter. Rent-A-Car*, 735 F. Supp. 2d at 324 (no alter ego jurisdiction despite parent owning all of subsidiary's stock, having overlapping directors, and using common marketing imaging, logos, and an integrated sales system, because none of these showed that the parent exercised "any control over the internal workings or day-to-day operations of its subsidiaries" (citation omitted)); *Reynolds*, 2020 U.S. Dist. LEXIS 33163, at *11 (finding that entities "operate as a single brand with common corporate control," but that such evidence "is not enough to overcome the presumption that wholly-owned subsidiaries are separate and distinct from their parent companies"). The SAC allegations do not justify hauling CPLC into a foreign court and do not plausibly show how CPLC could be liable for any of Prestamos's conduct. CPLC should be dismissed from the case.

B. If the Court Exercises Personal Jurisdiction Over CPLC, the Court Should Dismiss the Unjust Enrichment Claim Against CPLC

Plaintiffs bring a catch-all claim for unjust enrichment against only CPLC "in the alternative, to the extent Plaintiffs' breach of contract and California state law claims fail to adequately compensate Plaintiffs and the members of the National Class and California Subclass . . . ." SAC ¶ 305. The claim should be dismissed for several reasons.

As an initial matter, this Court previously "dismisse[d] Plaintiffs' claims to the extent they arise in states where no Named Plaintiff resides/resided or was injured." ECF 56 at 14. Thus, Plaintiffs are precluded from bringing not only nationwide breach-of-contract claims against CPLC, but also nationwide unjust enrichment claims.

To the extent Plaintiffs attempt to state a narrower, multijurisdictional claim for unjust enrichment, it must be dismissed insofar as they "fail to link their claim to the law of any particular state," as "[u]njust enrichment is not a catch-all claim existing within the narrow scope of federal common law . . . . [n]or [would an] assertion that the elements of unjust enrichment claims are substantially identical across all fifty states save the plaintiffs' claim." *In re Wellbutrin XL*

Antitrust Litig., 260 F.R.D. 143, 167 (E.D. Pa. 2009) (dismissing catch-all unjust enrichment claim).

If Plaintiffs' vague reference to "California state law" in paragraph 305 was meant to allege unjust enrichment under California law, they fail to state a claim because "California does not recognize a cause of action for unjust enrichment." *Hooked Media Group, Inc. v. Apple Inc.*, 55 Cal. App. 5th 323, 336 (2020). Courts that indulge California unjust enrichment claims as a theory of recovery look to viability of the underlying claim. *Sheet Metal Workers Local 441 Health & Welfare Plan v. GlaxoSmithKline, PLC,* 737 F. Supp. 2d 380, 431 (E.D. Pa. 2010). Here, the underlying California-specific claim as against CPLC—violation of California's Unfair Competition Law—was already dismissed by the Court. ECF No. 56 at 29. Further, the form of restitution Plaintiffs seeks—disgorgement into a common fund or constructive trust for the benefit of Plaintiffs and putative class members, SAC ¶ 313—is one the California UCL expressly prohibits. *See Sheet Metal Workers*, 737 F. Supp. 2d at 431.

Even if Plaintiffs' multijurisdictional "catch-all" claim were cognizable, it fails to satisfy any conventional elements of unjust enrichment, *i.e.*, that *Plaintiffs* conferred a benefit directly or indirectly upon CPLC,[5] or that CPLC received a benefit that belonged or should have been

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[5] *Fid. Nat'l Title Ins. Co. v. Assurance Abstract Corp.*, No. 18-1332, 2019 U.S. Dist. LEXIS 63792, at *7 (E.D. Pa. Apr. 12, 2019) (dismissing unjust enrichment claim for failure to allege benefits conferred on defendant by claiming; rejecting argument that "benefit" was a fee paid by third party); *see also Jackson Cty. v. Merscorp, Inc.*, 915 F. Supp. 2d 1064, 1069–71 (W.D. Mo. 2013) (dismissing unjust enrichment claim for failure to allege that plaintiff conferred a benefit on the defendant); *Hoffer v. Cooper Wiring Devices, Inc.*, 06CV763, 2007 U.S. Dist. LEXIS 42871, at *10 (N.D. Ohio June 13, 2007) (same); *Baker v. Trans Union LLC*, No. 07-8032, 2008 U.S. Dist. LEXIS 44339, at *6 (D. Ariz. June 4, 2008) (same); *Gremp v. Ramsey*, No. 08-558, 2009 U.S. Dist. LEXIS 2351, at *25–26 (W.D. Wash. Jan. 14, 2009) (same); *Herrera v. Toyota Motor Sales, U.S.A.*, No. 10-924, 2010 U.S. Dist. LEXIS 95399, at *5–6 (D. Nev. Aug. 23, 2010) (same); *see also May v. Coffey*, 2007 Conn. Super. LEXIS 877, at *25 (Super. Ct. Mar. 30, 2007)) (dismissing unjust

transferred to Plaintiffs.[6] Plaintiffs allege that CPLC unjustly benefited because Prestamos received PPP "loan processing fees" from the SBA, *see* SAC ¶ 308. But such fees would have neither come from nor belonged to Plaintiffs. Nor have Plaintiffs adequately alleged that Prestamos improperly received or retained loan processing fees; the SAC makes accusations without any regard for the terms upon which SBA pays processing fees to lenders. *See, e.g.,* SBA Procedural Notice No. 5000-20091, at 7, n.5 ("If the Lender has received a processing fee on a loan that was cancelled . . . SBA will not require the Lender to repay the processing fee unless the Lender is found guilty of an act of fraud in connection with the PPP loan."). To the extent Plaintiffs attempt to recast the SAC as alleging fraudulent conduct, they would fail. This Court previously found, with respect to state law claims that were dismissed against Prestamos, that the SAC failed to allege "unfair" or "deceptive acts." *See* ECF 56 at 31 (regarding fraud claim, "the SAC makes no substantive factual averments that Prestamos did anything beyond fail to perform in a contract.").

Moreover, Plaintiffs have not alleged any benefit that Plaintiffs conferred on CPLC. *See generally*, SAC. Even if Plaintiffs plausibly alleged that they conferred a benefit on Prestamos, which they have not, Plaintiffs still cannot plausibly allege that they conferred a benefit on CPLC. Plaintiffs attempt to demonstrate that they conferred a benefit on CPLC by asserting that Prestamos "upstreamed" PPP loan processing fees to CPLC. *See, e.g.*, SAC ¶ 35. CPLC's receipt of dividends from Prestamos does not support an unjust enrichment claim directed at CPLC. *See*

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enrichment claim because "if defendants were unjustly enriched, it was at the expense of the corporation," not individual plaintiff).

6 *See, e.g., Nat'l Am. Ins. Co. v. Ind. Lumbermens Mut. Ins. Co.*, No. 99-2637, 2000 U.S. App. LEXIS 16235, at *7-8 (7th Cir. July 11, 2000) (Illinois law) when third-party is source of benefit, requiring the plaintiffs to show that "the benefit should have been given to the plaintiffs").

e.g., *Canfield v. Statoil USA Onshore Props.*, No. 3:16-0085, 2017 U.S. Dist. LEXIS 40870, at *82 (M.D. Pa. Mar. 22, 2017) ("A person who has conferred a benefit upon another as the performance of a contract with a third person is not entitled to restitution from the other merely because of the failure of performance by the third person" (quoting Restatement (First) of Restitution § 1 cmt. b.)). Prestamos's transfer of dividends to CPLC does not enable Plaintiffs' their purported losses from Prestamos to CPLC. *See id.* at *83 (dismissing unjust enrichment claim with prejudice and holding that plaintiff cannot shift the loss suffered due to a subsidiary's breach onto another related entity).

Lastly, Plaintiffs also do not allege unjust enrichment in the alternative to an enforceable contract: they simply seek recovery in unjust enrichment in the event their underlying claims yield an insufficient judgment. SAC ¶ 305 (alleging unjust enrichment to the extent underlying claims "fail to adequately compensate Plaintiffs" and putative class members). This too, is fatal to the claim. *See Klein v. Chevron USA, Inc.*, 202 Cal. App. 4th 1342, 1389 (2012) (holding that recovery in unjust enrichment is precluded where "plaintiffs' breach of contract claim pleaded the existence of an enforceable agreement and their unjust enrichment claim did not deny the existence or enforceability of that agreement").

CONCLUSION

For the foregoing reasons, Defendant CPLC respectfully requests that the Court dismiss CPLC from this action.

Dated: October 13, 2023

By: /s/ *Marcel S. Pratt*

Marcel S. Pratt (Pa. ID 307483)
Timothy D. Katsiff (Pa. ID 75490)
Thomas J. Gallagher IV (Pa. ID 316269)
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 (*admitted pro hac vice*)
Daniel A. Arellano (*admitted pro hac vice*)
Jillian Andrews (*admitted pro hac vice*)
Austin T. Marshall (*admitted pro hac vice*)
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

Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Marcel S. Pratt, hereby certify that on this 13th day of October 2023, I caused a copy of the foregoing Defendant Chicanos Por La Causa's Motion to Dismiss Plaintiffs' Second Amended Complaint and accompanying papers to be served on all counsel of record via the Court's ECF system.

s/ *Marcel S. Pratt*
Marcel S. Pratt