**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

PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANT CHICANOS POR LA CAUSA, INC.'S RENEWED MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

(FILED IN RESPONSE TO ECF NO. 84)

PUBLIC VERSION

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INTRODUCTION

For purposes of the Paycheck Protection Program ("PPP"), which lies at the heart of this breach of contract matter, the record demonstrates that Chicanos Por La Causa, Inc. ("CPLC") and Prestamos CDFI, LLC ("Prestamos") are sufficiently conjoined to warrant the exercise of personal jurisdiction over CPLC. The issue, at this early procedural juncture, is only whether the corporate parent is subject to personal jurisdiction, not whether it is ultimately liable on the merits for the acts of its subsidiary. *See, e.g., Witt v. Scully*, 539 F.2d 950, 951 (3d Cir. 1976) (distinguishing "substantive legal precepts [from] jurisdictional ones"). Buttressing the allegations in the Second Amended Class Action Complaint (ECF No. 42), the illustrative evidence summarized below, which is to be taken as true at this stage, sufficiently demonstrates that CPLC is the alter ego of Prestamos as least for purposes of the PPP.

In *Greathouse v. Capital Plus Financial LLC*, 2023 WL 5759250 (N.D. Tex. Sept. 6, 2023), considering similar facts against another leading PPP lender, the court found that plaintiffs had established a sufficient basis to exercise jurisdiction over the lender's parent company under a more restrictive jurisdictional regime *that required fraud*. The *Capital Plus Financial* court stated: "Like the pleadings in *Weston Group*, which alleged (1) unfulfilled payments, (2) upstreamed money, and (3) improperly used government benefits, here, Plaintiffs allege the same but on a grander scale." *Id*. at *13. The same core facts are equally true here. Defendant CPLC's motion to dismiss for lack of personal jurisdiction should be denied and it should be required to engage in merits discovery.

LEGAL STANDARD

A. The evidence presented must be construed in Plaintiffs' favor and all disputed facts and reasonable inferences determined in Plaintiffs' favor.

When evaluating a motion to dismiss, if a defendant challenges the exercise of jurisdiction, plaintiff bears the burden of establishing that this court may exercise personal jurisdiction over the defendant. *Carteret Savings Bank, FA v. Shushan*, 954 F.2d 141, 146 (3d Cir.), *cert. denied*, 506 U.S. 817 (1992). Plaintiff need only establish personal jurisdiction by a preponderance of the evidence. *Id*. The Third Circuit has long recognized that plaintiffs need only to establish "with reasonable particularity sufficient contacts between the defendant and the forum state to support jurisdiction." *Provident Nat. Bank v. California Fed. Sav. & Loan Ass'n*, 819 F.2d 434, 437 (3d Cir. 1987).

If the court orders limited pretrial jurisdictional discovery, as it did here, plaintiff is required to demonstrate a *prima facie* case in support of an exercise of jurisdiction through affidavits or competent evidence. *Dayhoff Inc. v. H.J. Heinz Co.*, 86 F.3d 1287, 1302 (3d Cir.), *cert. denied*, 519 U.S. 1028 (1996). In weighing the evidence presented, however, the court must accept as true plaintiff's evidence and must construe all disputed facts and reasonable inferences in favor of the nonmoving party. *Carteret Savings*, 954 F.2d at 142 n.1.

Moreover, because we are at the motion to dismiss stage, any finding of personal jurisdiction will in no way impact CPLC's ability to ultimately demonstrate that it is not Prestamos's alter ego for purposes of PPP lending and thus not liable for the acts of Prestamos. Once merits discovery has been completed, CPLC's ability to dispute the merits and even seek summary judgment remains intact if this Court exercises personal jurisdiction at this juncture.

B. Pennsylvania's long-arm statute

Rule 4(e) of the Federal Rules of Civil Procedure permits a district court to assert personal jurisdiction over non-residents to the extent allowed under the law of the state where the court sits. FED. R. CIV. P. 4(e). Pennsylvania's long-arm statute authorizes this Court to entertain jurisdiction over non-resident defendants "to the fullest extent allowed under the Constitution of the United States," based "on the most minimum contact with this Commonwealth allowed under the Constitution of the United States." 42 P. S. § 5322(b). Thus, the reach of this Court's personal jurisdiction under the Pennsylvania statute is coextensive with the due process clause of the Fourteenth Amendment to the United States Constitution. *Time Share Vacation Club v. Atl. Resorts, Ltd.*, 735 F.2d 61, 63 (3d Cir. 1984). Due process requires that the defendant "have certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted).

C. Under the alter-ego theory, Prestamos's in-forum contacts may be imputed to CPLC.

"The alter ego theory permits a court to impute the in-forum contacts of one corporate entity to another, related corporate entity where the plaintiff can 'demonstrate that the out-of-forum corporation either controls or is controlled by an in-forum affiliate to such a degree that the two corporations operate as a single, amalgamated entity.'" *Katz v. DNC Servs. Corp.*, No. 16-cv-5800, 2017 WL 5885672, at *4 (E.D. Pa. Nov. 29, 2017) (quoting *In re Chocolate Confectionary Antitrust Litig.*, 674 F. Supp. 2d 580, 596 (M.D. Pa. 2009)). "[T]he alter ego theory . . . instructs that, if a subsidiary is merely the agent of a parent corporation, or if the parent corporation otherwise controls the subsidiary, then personal jurisdiction exists over the parent whenever personal jurisdiction (whether general or specific) exists over the subsidiary."

Shuker v. Smith & Nephew, PLC, 885 F.3d 760, 781 (3d Cir. 2018) (internal citations and quotation marks omitted).

"[T]he Third Circuit has set forth some factors which should be considered in determining whether a court has jurisdiction, such as whether the subsidiary corporation played a part in the transactions at issue, whether the subsidiary was merely the alter ego or agent of the parent, and whether the independence of the separate corporate entities was disregarded." *Action Mfg. Co. v. Simon Wrecking Co.*, 375 F. Supp. 2d 411, 420-21 (E.D. Pa. 2005) (citations omitted).

To determine the applicability of alter-ego jurisdiction, district courts typically consider the following factors: (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) performance of business functions by the subsidiary which the principal corporation would normally conduct through its own agents or departments; (9) marketing by the subsidiary on behalf of the principal corporation, or as the principal's exclusive distributor; and (10) receipt by the officers of the subsidiary corporation of instruction from the principal corporation. *Radian Guar. Inc. v. Bolen*, 18 F. Supp. 3d 635, 648 (E.D. Pa. 2014). Courts in this district have similarly found that "contacts should be imputed when the subsidiary was either established for, or is engaged in, activities that, but for the existence of the subsidiary, the parent would have to undertake itself." *Arch v. Am. Tobacco Co., Inc.*, 984 F. Supp. 930, 936-37 (E.D. Pa. 1997). "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).

To the extent that Arizona law determines whether CPLC is liable as Prestamos's alter ego because both defendants are incorporated there as defendants themselves previously contended (*see* ECF No. 46-1 at 22), but fail to argue here, the governing factors the Court should look to are similar. *See, e.g.*, *Gatecliff v. Great Republic Life Ins. Co*., 821 P.2d 725, 728 (Ariz. 1991) (control for purposes of alter ego may be shown by "stock ownership by the parent; common officers or directors; financing of subsidiary by the parent; payment of salaries and other expenses of subsidiary by parent; failure of subsidiary to maintain formalities of separate corporate existence; similarity of logo[.]").

RELEVANT PROCEDURAL BACKGROUND

On March 30, 2023, the Court granted in part and denied in part defendant Prestamos's motion to dismiss and denied CPLC's motion to dismiss for lack of personal jurisdiction without prejudice pending limited jurisdictional discovery. ECF Nos. 56-57.[1] The parties engaged in limited jurisdictional discovery pursuant to their Joint Proposed Jurisdictional Discovery Plan which the Court approved by Order on June 2, 2023. ECF No. 74-75. On September 22, 2023, Plaintiffs took the 30(b)(6) depositions of Alicia Nuñez and Jose Martinez, who were the corporate representatives for CPLC and Prestamos, respectively. On October 13, 2023, Defendant CPLC renewed its motion to dismiss for lack of personal jurisdiction. ECF No. 84. This brief is filed in opposition to CPLC's renewed motion.

[1] *Marshall v. Prestamos CDFI, LLC*, No. 5:21-cv-4337-JMG, 2023 WL 2727541 (E.D. Pa. Mar. 30, 2023).

ARGUMENT

A. The allegations in the SAC and the evidentiary record developed through the limited jurisdictional discovery permitted by the Court demonstrates that CPLC is subject to *in personam* jurisdiction in this Court.

While CPLC treats Prestamos's Operating Agreement and the Intercompany Services Agreement (the "ISA") as silver bullets, the record demonstrates that CPLC employees played an integral role in every facet of the PPP program. In fact, the ISAs *alone*, which were produced as part of the limited jurisdictional discovery the Court permitted to date, not only *confirm* the heavy presence and day-to-day control by CPLC officials over Prestamos's PPP lending, but also provide irrefutable evidence regarding *how*, and the formal *terms* pursuant to which, CPLC officials were shared with Prestamos for that very purpose.

Further, the question of alter ego is to "'be examined in terms of the legal interrelationship of the entities, the authority to control and the *actual exercise of control*, the administrative *chains of command* and organizational structure, the *performance of functions*, and the *public's perception*.'" *Simeone ex rel. Estate of Albert Francis Simeone, Jr. v. Bombardier-Rotax GmbH*, 360 F. Supp. 2d 665, 675 (E.D. Pa. 2005) (emphasis added) (quoting *In re Latex Gloves Prod. Liab. Litig.*, No. MDL 1148, 2001 WL 964105, at *3 (E.D. Pa. Aug. 22, 2001)). Here, each of these factors favors exercising personal jurisdiction over CPLC at this early juncture where the Court is tasked with adjudicating a motion to dismiss under Rule 12(b)(2).

Even CPLC's internal communications evidence CPLC's control. For example, in the minutes of CPLC's June 23, 2021 Board of Directors meeting,[2] David Adame, CPLC's then

[2] Ms. Nuñez, CPLC's corporate representative, testified extensively about the reliability of CPLC's Board minutes and the fact that they are circulated for comment prior to the next meeting and that Board members are afforded an opportunity to amend the minutes prior to approving them. ECF No. 84-2, Ex. 1, Nuñez Tr. at 18:21-21:19.

Chief Executive Officer, "[redacted]." P-00296807, 08, Ex. 1 (emphasis added). The minutes where Mr. Adame pridefully discussed the performance of "[redacted]" were approved by CPLC's Board without revision on August 21, 2021. P-00297235, Ex. 2. Mr. Martinez, who *concurrently* filled the roles of CPLC's Executive Vice President of Economic Development *and* Prestamos's President at all times relevant *and* counter-signed Plaintiffs' PPP loan documents for Prestamos (ECF 42 at 86), had a major role in the day-to-day operations of PPP-related activities. ECF No. 84-2, Ex. 2, Martinez Tr. at 4:15-20. In simultaneously wearing both hats, Mr. Martinez's dual senior executive roles and other evidence obtained from CPLC's limited jurisdictional production clearly demonstrates that, for purposes of the PPP, the lines between CPLC and Prestamos are quite blurred, as the ISA further demonstrates by formally defining the employee sharing across the entirety of the organization.

CPLC is and was at all times relevant to this matter the sole member of Prestamos, ECF No. 84-2, Ex. 1, Nuñez Tr. at 88:8-10, and it provided staff from the highest levels of its organization to help Prestamos achieve its status as the "No. 3 lender for the PPP program by dollar value of loans, with about $7.7 billion issued in 2021."[3] Additionally, as discussed in greater detail below, CPLC's human resources department also spearheaded the hiring process related to PPP and its general counsel, Maria Spelleri, and her legal department provided services related to compliance and interfaced with the regulators on Prestamos's behalf. And CPLC's

[3] *See* azcentral.com, *Chicanos Por La Causa lending program faces investigation as part of COVID-19 loan fraud scandal* (Dec. 8, 2022) (citing to Select Subcommittee on the Coronavirus Crisis, Preparing for and Preventing the Next Public Health Emergency: Lessons Learned from the Coronavirus Crisis, Final Report, Dec. 2022), *available at* https://www.azcentral.com/story/news/politics/arizona/2022/12/09/cplc-prestamos-program-faces-ppp-loan-investigation-sba-covid-19/69712456007/ (last visited Oct. 24, 2023).

Executive Committee maintained a watchful eye over Prestamos and exercised its authority to approve Prestamos's adoption of internal policies, including its anti-money laundering policy. The record also demonstrates Mr. Martinez went to former CPLC Board Chair Adame to seek approval so PPP-related bonuses could be paid to staff.

Thus, it comes as no surprise that CPLC's then CEO Adame beamed with "pride" when discussing "[redacted]" which "[redacted]." P-00296807, 08, Ex. 1 (emphasis added). Ms. Nuñez, then CPLC's CFO and presently its Interim CEO and Board Chair, referred to Prestamos's increase in processing 935 PPP loans in 2020 to reportedly 494,415 PPP loans in 2021 as "[redacted]." *Id*. P-00296807, 08, Ex. 1. In sum, the shared personnel between CPLC and Prestamos relating directly to PPP lending as evidenced by the ISA itself which governs *how*, and the precise *terms* under and *degree* to which, those personnel were shared, CPLC's status as Prestamos's sole member, and CPLC's active involvement in the PPP tilt heavily in favor of exercising personal jurisdiction over CPLC at this stage. Whether this and other evidence that may be developed supports a finding of ultimate liability should be a decision after merits discovery has been completed.

<u>Common Ownership</u>. The record demonstrates that CPLC is and was at all times material the sole member of Prestamos. ECF No. 84-2, Ex. 1, Nuñez Tr. at 88:8-10. As discovery further evidenced, CPLC was also an engaged and active owner. For example, when asked why CPLC's Board of Directors conducted a vote to approve Prestamos anti-money laundering program, Mr. Martinez stated that did not know the "[redacted]" but added "[redacted]." ECF No. 84-2, Ex. 2, Martinez Tr. at 46:4-11. When pressed if "there is a list of [sic] somewhere of decisions that CPLC as the sole member has retained for itself for over Prestamos," Mr. Martinez responded only, "[redacted]." *Id*. at 46:12-17 (referring to Operating Agreement, ECF No. 84-2, Ex. 5). CPLC's status as Prestamos's sole member parent corporation thus supports alter ego jurisdiction for purposes of the PPP in this matter.

Common Officers and Directors. Jurisdictional discovery has confirmed there are a significant number of common officers and directors between and among the two companies. As demonstrated above, Mr. Martinez simultaneously held senior executive positions in CPLC and Prestamos and was intimately involved in the PPP – which also weighs in favor of jurisdiction. But the connections run far deeper. As CPLC's motion confirms, Prestamos's Board of Directors throughout PPP lending 2021 "*consisted* of David Adame, Alicia Nuñez, and Max Gonzalez." ECF No. 84-1, at 3 (citing CPLC's interrogatory responses) (emphasis added).[4] As disclosed in CPLC's Form 990, Adame was CPLC's President and CEO, Nuñez was its CFO and Treasurer, and Max Gonzalez was its Secretary and EVP. ECF No. 84-2, Ex. 8, at P-00307660. Thus, and

[4] CPLC's careful choice of verb tense here, and passing reference to "former CEO," is noteworthy. On or about October 6, 2023, a week before CPLC moved to dismiss, Adame "resigned from his position of President and Chief Executive Officer" of CPLC. *See* Message from Delma Herrera (Oct. 6, 2023), *available at* https://www.cplc.org/blog/viewpost.php?id=1162 (last visited Oct. 24, 2023), Ex 3. *See also* ABC 15 Arizona, *Chicanos Por La Causa CEO David Adame resigns from organization* (Oct. 6, 2023) (noting Mr. Adame resigned to "pursue other opportunities."), *available at* https://www.abc15.com/news/business/chicanos-por-la-causa-ceo-david-adame-resigns-from-organization (last visited Oct. 24, 2023); Arizona Independent, *Allegations of Fraud Haunt Chicanos Por La Causa As Adame Exits* (Oct. 5, 2023) ("While the organization released a statement claiming that Adame left to "pursue other opportunities," sources say allegations of financial malfeasance preceded his exit."), *available at* https://arizonadailyindependent.com/2023/10/05/allegations-of-fraud-haunt-chicanos-por-la-causa-as-adame-exits/ (last visited Oct. 24, 2023). Based on the attached printout from the Internet Archive (*aka* "Wayback Machine), Mr. Adame also previously served on Prestamos's Board of Directors and Community Advisory Board. *See* Internet Archive, Prestamos CDFI, *About Us*, *available at* https://web.archive.org/web/20230703104644/https://prestamoscdfi.org/about-prestamos/ (capture from July 3, 2023) (last visited Oct. 24, 2023), Ex 4. The Third Circuit considers the Wayback Machine to be a competent source of evidence. *United States v. Bansal*, 663 F.3d 634, 667 (3d Cir. 2011).

pertinent to the alter ego analysis, *each member of Prestamos's Board during all times relevant to the PPP was a senior officer of CPLC*. *See* CPLC, Leadership, Ex. 5. The current version of Prestamos's Board is similarly constituted except it has grown to six members – *all of whom* are senior CPLC executives. *See* Prestamos CDFI, *About Us*, available at https://prestamoscdfi.org/about-prestamos/ (last visited Oct. 24, 2023).[5]

Common Marketing Image & Use of Trademarks and Logos. As evidenced below, CPLC's service marks bear a strong resemblance to one another:

The common elements and color schemes are not coincidental as the branding exercise was reportedly directed by CPLC's "[redacted]," Max Gonzales. ECF No. 84-2, Ex. 1, Nunes Tr. at 60:4-9. Mr. Martinez, who was involved in the branding exercise,[6] testified that it was important to have "[redacted]" because "[redacted]" ECF No. 84-2, Ex. 2, Martinez Tr. at 14:10-19. While service mark similarity alone is not sufficient to establish alter ego, *see, e.g.*, *In re Chocolate*, 602 F. Supp. 2d at 570-71, it certainly supports establishing jurisdiction given how inextricably linked the two companies

[5] Prestamos Board of Directors is currently comprised of "Alicia Nuñez–Interim President/CEO of Chicanos Por La Causa, Inc. (CPLC); Andres Contreras–Executive Vice President Integrated Health, Social Services & Education, Chicanos Por La Causa (CPLC); Jose Martinez–Executive Vice President Economic Development, Chicanos Por La Causa (CPLC) and President of Prestamos CDFI; Maria Spelleri–Executive Vice President General Counsel, Chicanos Por La Causa (CPLC); Max Gonzales–Executive Vice President Strategy & Relationship Management, Chicanos Por La Causa (CPLC); Patricia Duarte–Executive Vice President Homeownership Initiatives, Chicanos Por La Causa (CPLC)."

[6] Mr. Martinez testified he [redacted]. ECF No. 84-2, Ex. 2, Martinez Tr. at 11:19-12:5.

were and are, especially with respect to PPP-related activities. For example, despite being incorporated as Prestamos CDFI, LLC,[7] both entities systematically blur the lines between the two entities using "CPLC Prestamos" in a variety of contexts of internal and public-facing contexts:

- In a July 20, 2021 proposal sent to the SBA grant,[8] Defendants seemingly make little effort to maintain any line between their organizations in this public-facing document. This proposal contains a template letter to the SBA from then CPLC CFO Ms. Nuñez that is presented on Prestamos CDFI letterhead. P-00304036, at 42, Ex. 6. Ms. Nuñez didn't question [redacted] ECF No. 84-2, Ex. 2, Martinez Tr. at 50-10-51:10. The grant proposal also identifies key staff to be involved without always demarcating their employer. P-00304036, at 212, Ex. 6 ([redacted].

- The grant proposal also contains several recommendations from municipalities and organizations that were submitted to support "Chicanos Por La Causa – Prestamos CDFI." *See*, *e.g.*, P-00304036, 175-77, 86, Ex. 6. While the letters are substantially similar, two of them are identical creating a reasonable inference that Defendants likely prepared the form template. *Id.* at P-00304175-76, Ex. 6. Evidence of the constant blurring of the two companies' names manifests itself among its employees as well. For example, two of the team members' resumes identify "CPLC Prestamos" or some slight variation thereof as their employer. P-00304036, at 146, 150, 155, Ex. 6.

- CPLC presently maintains a page on its website that focuses on "Small Business Lending." *See* CPLC, Small Business Lending, *available at* https://cplc.org/econ/lending.php (last visited Oct. 24, 2023), Ex. 7. Among the multiple references to "CPLC Prestamos," is one where CPLC notes that "[i]n 2021, *CPLC Prestamos CDFI* was named the #1 U.S. Small Business Administration PPP lender by number of loans and the #3 lender by dollar volume with $7.6 billion in approved loans with an average loan amount of $15,526 serving 78% minority owned businesses." *Id.*

- a June 7, 2021 press release touting Prestamos's prodigious participation in the PPP, repeatedly identifies "CPLC Prestamos" (*e.g.*, "CPLC Prestamos has provided equitable access to capital and business education to small businesses for more than 40 years"; "CPLC Prestamos partnered with fintech company Blueacorn"), and

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[7] *See* Ariz. Corp. Comm'n, Entity Info., Prestamos CDFI, LLC, *available at* https://ecorp.azcc.gov/BusinessSearch/BusinessInfo?entityNumber=L09702175 (last visited Oct. 24, 2023).

[8] The cover email was sent by [redacted], a [redacted] for CPLC. *See* LinkedIn, Slyvia Rebozo, *available at* [redacted] (last visited Oct. 24, 2023); P-00304036, Ex. 6.

appears on CPLC letterhead. Press inquiries were to come through CPLC at a CPLC phone number and email address.[9] The press release also quoted Mr. Adame, CPLC's former CEO, as follows: "Our PPP loans serve as a great example of *CPLC's* heart-meets-business philosophy." P-00297374, Ex. 8 (emphasis added).

- In a Prestamos public marketing piece offering "up to 15 hours of free personalized consulting services," it notes that "Maricopa County and CPLC Prestamos CDFI [have] come together to provide support to small businesses." P-00296916, Ex. 9; P-00296915 (Spanish version), Ex. 10.

- A template identified as "CPLC Prestamos Letterhead.docx" specifically references "CPLS Prestamos CDFI." P-00296942, Ex. 11.

- CPLC's FY19-20 Annual Report notes "[d]uring the pandemic, CPLC Prestamos is administering Paycheck Protection (PPP) loans to help small businesses keep their doors open." *See* CPLC FY19-20 Annual Report, A Chance to Change the World, at 7, available at https://cplc.org/assets/files/publications/CPLC%20FY19-20%20Annual-Report.pdf (last visited Oct. 24, 2023).

Prestamos also did not even have its own email system but instead used the suffix "CPLC" including addresses such as "pppservicing@cplc.org" and "PPP@cplc.org" among other CPLC addresses including in even seeking repayment of PPP loan proceeds from unfunded borrowers. Thus, the record demonstrates that Defendants' use of common marketing image & use of trademarks and logos – and the related confusion and perception – also supports an exercise of personal jurisdiction.

Common Use of Employees and Interchange of Managerial and Supervisory Personnel. On July 1, 2019, CPLC and Prestamos entered into a one-year ISA where the parties acknowledged "[redacted]." P-00297006, Ex. 12. The agreement makes CPLC the "primary consultative resource" provider to Prestamos for virtually

[9] *See* LinkedIn, Maria Jesus Cervantes, then CPLC's Director of Public Affairs and International Relations and currently VP of Public Relations and International Affairs, *available at* https://www.linkedin.com/in/mar%C3%ADa-jes%C3%BAs-cervantes/ (last visited Oct. 24, 2023).

all aspects of Prestamos's work through the following departments: (a) [redacted]; (b) [redacted] (c) [redacted]; (d) [redacted]; (e) [redacted]; (f) [redacted]; (g) [redacted]; (h) [redacted]; (i) [redacted]; (j) [redacted]; and (k) [redacted]. *Id*. at 297007, Ex. 12. Under the terms of the ISA, CPLC receives a fixed annual "service fee" "regardless of the number of employees employed by [Prestamos]," *id*. at P-297008, Ex. 21, and is reimbursed "at actual cost, for any and all expenses reasonably incurred by [CPLC]." *Id*.

In entering the ISA, both parties waived conflicts of interest. *Id*. at P-297012, Ex. 21. This is notable, as Prestamos does not have its own general counsel and "[redacted]." ECF No. 84-2, Ex. 2, Martinez Tr. at 34:5-10. In February 2020, prior to the expiration of the ISA's initial term, Prestamos adopted a resolution noting it "[redacted][.]" P-00297013, ECF No. 84-1, Ex. 11. This version of the ISA, which was in effect for the duration of the PPP, is materially identical to the original one. *Compare* P-00297006, Ex. 12 *with* P-00296999, ECF No. 84-1, Ex. 10.

In performing work on behalf of Prestamos, Nuñez, CPLC's then CFO, testified that we have "[redacted]." ECF No. 84-2, Ex. 1, Nuñez Tr. at 33:3-6. Ms. Nuñez testified that more than [redacted], but fewer than [redacted], employees of CPLC are designated as "shared staff." *Id*. at 33:23-34:3. This represents roughly between [redacted]% and [redacted]% of CPLC's total workforce. *Id*. at 34:4-6.

The evidence also shows that CPLC filled crucial PPP-related roles on behalf of Prestamos:

- As noted, Prestamos does not have a "General Counsel" and "[redacted]" ECF No. 84-2, Ex. 2, Martinez Tr. at 34:5-10.

- Prestamos also relied on CPLC's human resources department for PPP-related staffing. *Id*. at 34:18-35:2. The PPP-related job descriptions were developed using CPLC's professional human resources staff. *Id*. at 35:3-9. Here, again, these PPP-related job descriptions appear under the CPLC banner. *See*, *e.g.*, Forgiveness Coordinator, P-00296799-800, Ex. 13. In fact, although the PPP loan Forgiveness Coordinator's primary function was to "[redacted]," the specific job offer was extended by "[redacted]" expressly *on behalf of* [redacted]. P-00296799, 801, Ex. 13 (noting "Chicanos Por La Causa (CPLC) is pleased to offer you the position of Forgiveness Coordinator with Prestamos[.]").

- Mr. Martinez sought Adame's approval for the payment of PPP-related bonuses related to the 10,797 PPP loans that were generated independently of Prestamos's service provider Blueacorn. P-00297363-35, Ex. 14.

- In materials distributed to CPLC's Executive Committee, there is an agenda item noting that CPLC's Executive Committee was to consider approving "[redacted]." P-00298339, at 40, Ex. 15. The Executive Committee materials also included a letter that Martinez sent externally *to the SBA* about "[redacted]" that was presented on CPLC letterhead despite being executed in his capacity as President of Prestamos. *Id*. at 372-75 (June 7, 2023), Ex. 15. The June 7 letter, in a footnote, states to the SBA that [redacted]" *Id*. at 373, Ex. 15. In a similarly styled letter, Mr. Martinez touted "Prestamos CDFI's adherence to Codes of Conduct and compliance programs implemented by Prestamos CDFI's parent nonprofit community development institution (CDI), Chicanos Por La Causa ('CPLC')." *Id*. at 377 (May 12, 2023), Ex. 15. The May 12 letter also shows that greater than half of the team responsible for "[redacted]" would be from CPLC through the ISA, including key positions such as the Director of Corporate Compliance, VP of Compliance & Risk, SVP of Compliance, Risk & Human Resources, and General Counsel. *Id*. at 379, Ex. 15.

- In a Lender Service Provider Agreement between Prestamos and Blueacorn, Prestamos designated "[redacted]" as a person designated to receive written notice on behalf of the parties. P-00296818, at 28, Ex. 16. [redacted] is employed by CPLC and has no formal job title with Prestamos except [redacted] through the ISA as "[redacted]" because Prestamos had no separate general counsel. ECF No. 84-2, Ex. 1, Nuñez Tr. at 58:4-21. Under the agreement, email notice was to be addressed to contracts@cplc.org. P-00296818, at 28, Ex. 16; ECF No. 84-2, Ex. 13 (admitting that CPLC and Prestamos employees used the 'cplc.org' email domain during the relevant period).

- Prestamos's Credit Policy mandates its Board [redacted]." P-00302917, 21, Ex. 17.

- CPLC's [redacted] appears to have been the point of contract for fielding SBA OIG requests that came through Blueacorn. *See, e.g.*, P-00299232, Ex. 18.

- As noted above, Ms. Nuñez chose to submit a letter attesting to Prestamos's "[redacted]" on Prestamos letterhead rather than on CPLC letters. P-00304036, at 42, Ex. 6. While the body of the letter identified [redacted]," she could not provide an explanation as to why a letter intended for the SBA would appear on Prestamos letterhead rather than on CPLC letterhead. ECF No. 84-2, Ex. 1, Nuñez Tr. at 50:21-51:10. The grant proposal contains CPLC's "[redacted] Policy," [redacted] policy, and [redacted] policy. P00304036, at 122-35, Ex. 6.

Additionally, during the period from YE 2020-22, which cover the PPP lending period, Prestamos's consolidated financial statements reported growth of "Salaries & Wages" from $1,361,434 (YE 2020), to $1,728,269 (YE 2021), to $2,950,687 (YE 2022). P-00296762, 68-69, ECF No. 84-1, Ex. 7; P-00296728, 34-35, Ex. 19. While this surely reflects an increase in personnel attributable to PPP-related activities during this time, the categories related to "[redacted]" grew disproportionately larger. Ms. Nuñez indicated that these "[redacted]" costs are captured in "Administrative Costs" that appear on Prestamos's liabilities and CPLC's revenues. ECF No. 84-2, Ex. 2, Martinez Tr. at 20-21. During this time, "Administrative Costs" increased from $360,784 (YE 2020) to $477,308 (YE 2021) to $1,279,932 (YE 2022). P-00299609, 19, Ex. 20; P-003077578, 90, ECF No. 84-2, Ex. 12; CPLC Consolidated Fin. Statements YE 2022 (publicly available), at 11, Ex. 21.[10] The Chen Declaration, which shows massive growth of payments through the ISA, also supports the increases in the companies' shared staff. ECF 84-3, Ex. 1 (filed under seal).

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[10] Throughout its consolidated financials, CPLC refers to "CPLC and its subsidiaries and affiliates" as the "Organization." *See*, *e.g.*, ECF No. 84-02, Ex. 12, at 15.

Thus, from the record developed through limited jurisdictional discovery, two additional facts are also clear. *First*, CPLC frequently blurs the lines between itself and Prestamos and vice versa regarding PPP lending. *Second*, Prestamos lacked the requisite staff and wherewithal on its own to become the "third largest PPP lender" without the backbone and intimate participation of CPLC and its C-suite executives and shared staff. Plaintiffs should be permitted to further explore the full scope of CPLC's role in Prestamos's PPP lending through merits discovery.

Common Systems. Mr. Martinez testified that Prestamos has chosen to assign "[redacted]" email to its employees, but has not taken any measures to initiate a "[redacted]" address despite owning the domain. ECF No. 84-2, Ex. 2, Martinez Tr. at 6:21-7:11. He explained that "CPLC provides IT services" to Prestamos and it has been a "[redacted]." ECF No. 84-2, Ex. 2, Martinez Tr. at 7:8-10.

B. Defendant CPLC has registered with the Commonwealth of Pennsylvania to conduct business as a charitable organization.

Finally, it bears noting that CPLC is a registered charity in the Commonwealth of Pennsylvania.[11] The Solicitation of Funds for Charitable Purposes Act, 10 P.S. § 162.1 *et seq.*, *inter alia*, requires a registrant to submit to investigations by the "Attorney General, the secretary or the district attorney" and subjects them to "administrative enforcement and penalties." 10 P.S. § 162.16-.17. While the Commonwealth's charitable registration statute does not stand on all fours with the registration statute that was the subject of the U.S. Supreme Court's recent ruling concerning jurisdiction, *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023) (15 P.S.

[11] *See* Commonwealth of Pennsylvania, Dept. of State, Charities Search, Chicanos Por La Causa, *available at* https://www.charities.pa.gov/#/page/searchCharities (last visited Oct. 24, 2023), Ex. 22; Chicanos Por La Causa, Financial Disclosures, *available at* https://cplc.org/about/legal-privacy.php (last visited Oct. 24, 2023) (identifying Pennsylvania one of eleven states where it is registered to conduct business), Ex. 23.

§ 411(a)), CPLC's status as a registered charity in Pennsylvania is further indicia that an exercise of personal jurisdiction in this matter would be fair and appropriate.

C. The Court should not dismiss Plaintiffs' Unjust Enrichment Claim, which has been brought in the alternative.

CPLC has also moved to dismiss Plaintiffs' unjust enrichment claim under Rule 12(b)(6). ECF No. 84-1, at 17-20. As CPLC rightly points out, Plaintiffs bring their unjust enrichment claim only in the alternative. *Id*. at 17 (citing ECF No. 42, ¶ 305). Given the Court's finding that the "Named Plaintiffs do not have standing to bring their claims under the laws of states in which they do not reside in or were never injured in[,]" *Marshall*, 2023 WL 2727541, at *7, Plaintiffs do not oppose dismissal of their unjust enrichment as to the states in which they were not injured which accords with the Court's Order.

The Court should not, however, dismiss the unjust enrichment claims for the states where Plaintiffs were injured. CPLC's arguments otherwise are meritless.

First, unlike the case CPLC relies on, *In re Wellbutrin XL Antitrust Litigation*, 260 F.R.D. 143, 167 (E.D. Pa. 2009), Plaintiffs here do not allege unjust enrichment as "a catch all claim" but instead only narrowly and in the alternative. The Court's ruling that Plaintiffs have standing only in-state further narrows the scope of the unjust enrichment claim which is also sufficiently and plausibly pleaded. *See* ECF No. 42, ¶¶ 305-13. Plaintiffs should therefore be entitled to also pursue discovery on the merits to develop evidence for this claim.

Second, CPLC's argument that Plaintiffs conferred no benefit on CPLC because the SBA paid the PPP loan processing fees directly to Prestamos is inapt. But for the undisbursed PPP loans of Plaintiffs and other similarly situated in-state SBA-approved but unfunded PPP borrowers, those fees would not have been paid to Prestamos and upstreamed by Prestamos to CPLC. The fact that the SBA initially and directly paid the fee should be viewed in the PPP context in which those fees were paid. CPLC's argument that SBA rules permit it (and Prestamos) to retain fees "on a loan that was *cancelled* unless the Lender is found guilty of an act of fraud" (ECF No. 84-1 at 19) (emphasis added), adds nothing, because there is not one shred of evidence in the record indicating that any of Plaintiffs' loans were in fact cancelled. In fact, publicly available PPP data contradicts this. *See*, *e.g.*, ProPublica, Leona Owsley, Tracking PPP, *available at* https://projects.propublica.org/coronavirus/bailouts/loans/leona-owsley-4680379004 (last visited Oct. 25, 2023) (stating that the "Loan Status" of Plaintiff Owsley's $6,250.00 PPP loan is "*Fully Disbursed*" based on false SBA Form 1502 reports Prestamos submitted to the SBA) (last visited Oct. 24, 2023), Ex. 24 (emphasis added).

And even if the loan processing fees are viewed in isolation, Plaintiffs also allege that "CPLC profited from Plaintiffs' and the Class members' PPP loan transactions and used the funds resulting therefrom for business purposes and for the personal gain of CPLC and CPLC's insiders" as CPLC's financial statements demonstrate. ECF No. 42, ¶ 308. For example, Prestamos and hence CPLC also benefitted from interest they received directly on PPPLF loan advances for Plaintiffs' and other loans they failed to fund as to which Plaintiffs likewise should be afforded discovery on the merits.

Third, and also contrary to CPLC, California recognizes unjust enrichment claims. *See Bruton v. Gerber Prod. Co.*, 703 F. App'x 468, 470 (9th Cir. 2017) ("[T]he California Supreme Court has clarified California law, allowing an independent claim for unjust enrichment to proceed."); *In re Generic Pharm. Pricing Antitrust Litig.*, 2022 WL 1470272, at *10 & nn. 92-93 (E.D. Pa. May 10, 2022) (denying motion to dismiss and citing *Bruton*).

CPLC points to *Hooked Media Group, Inc. v. Apple Inc.*, 55 Cal. App. 5th 323, 336 (2020), to argue to the contrary, but the court there cited *Melchior v. New Line Productions, Inc.*, 106 Cal.App.4th 779, 793, 131 Cal.Rptr.2d 347 (2003), to note that "the phrase 'unjust enrichment' does not describe a theory of recovery; it is a general principle underlying various legal doctrines and remedies].)[.]" *Id*. Where, as here, the unjust enrichment claim is coupled with independently cognizable alleged violations, such as the breach of contract and PPP regulations at issue here, Plaintiffs' unjust enrichment claim should not be dismissed on the pleadings. Defendants' own case supports such a course. *See Sheet Metal Workers Loc. 441 Health & Welfare Plan v. GlaxoSmithKline, PLC*, 737 F. Supp. 2d. 380, 431 (E.D. Pa. 2010) (dismissing unjust enrichment not because California law fails to recognize the claim, but because "Plaintiffs are already entitled to restitution as a remedy for GSK's alleged violation of the CUCL . . . so allowing their separate claim for unjust enrichment and disgorgement of profits would be duplicative of the plaintiffs' CUCL claim insofar as it seeks restitution, and would circumvent the limitations of the CUCL insofar as it seeks disgorgement of profits.").

Thus, Plaintiffs' unjust enrichment claim should be permitted to proceed against CPLC. The time will come when Plaintiffs have to choose between their breach of contract and unjust enrichment claims, but that time has not yet come.

CONCLUSION

Based on the foregoing, Plaintiffs have met their burden of establishing through competent evidence a *prima facie* case in support of an exercise of jurisdiction over CPLC. Accepting this evidence as true and construing all disputed facts and reasonable inferences in Plaintiffs' favor, Plaintiffs respectfully submit that Defendant CPLC's renewed motion to dismiss for lack of personal jurisdiction under Rule 12(b)(2) should be denied. Likewise, Defendant CPLC's motion to dismiss Plaintiffs' unjust enrichment claim under Rule 12(b)(6) should also be denied. After completion of merits discovery, Defendant CPLC will be able to file a dispositive motion.

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Respectfully submitted,

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