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

ALICIA MARSHALL, DANIEL PRONSKY, PARIS TOWNSEND, NANCILEE HOLLAND, LEONA OWSLEY, KOLAWOLE AHMADOU, KIANA DERVIN, KRISTINA HENDERSON, DUSTIN INNIS, KELLY STALNAKER and JAMIE JONES, individually and on behalf of all others similarly situated, Plaintiffs, v. PRESTAMOS CDFI, LLC, Defendant.	Case No. 5:21-cv-04337-JMG

JOINT RULE 26(f) REPORT

In accordance with Fed. R. Civ. P. 26(f) and the Court's instruction dated February 21, 2024, counsel for the parties conferred on February 29, 2024, and submit the following report of their meeting for the Court's consideration:

VII. Anticipated Scope of Discovery

Plaintiffs

A. Summarize with specificity those issues on which the Parties will need to conduct discovery. Identify categories of information each Party needs in discovery and why.

Plaintiffs generally anticipate that the scope of discovery will be coincident with the existing scope of discovery, which has been the subject of substantial and ongoing discussions among the parties, the primary exceptions being discovery regarding the PPP loans of Plaintiffs in this action, and issues related to class members in the states in which Plaintiffs reside.

B. Anticipated number of interrogatories per Party: 20

C. Anticipated number of depositions per Party: 40

D. To the extent either Party proposes to exceed the presumptive limits in the Federal Rules of Civil Procedure for discovery, explain the basis for that proposal.

This case involves what Plaintiffs believe may be hundreds or thousands of proposed class members, and many millions of dollars or more in disputed and unfunded PPP loan proceeds as Prestamos committed to funding more PPP loans in 2021 than any other lender according to the SBA. Plaintiffs will therefore need to pursue substantial discovery commensurate with the scope of this case as is common under the Federal Rules of Civil Procedure for complex litigation including this case.

E. Do the Parties anticipate the need for any third-party discovery? If so, identify the likely third-parties and the discovery to be sought.

Yes. Plaintiffs anticipate seeking non-party discovery from Blueacorn and the SBA regarding their communications and dealings with Defendants concerning Plaintiffs' and class members' PPP loans, as well as other third-parties including any third-parties to whom Defendants may have transferred any applicable PPP loan proceeds or fees that Plaintiffs contend should be paid to Plaintiffs and the class.

F. Do the Parties anticipate the need for experts? If so, identify the subjects on which the expert(s) may opine.

Yes. Plaintiffs presently anticipate needing experts. For example, Plaintiffs anticipate needing one or more experts to opine as to the alleged damages incurred by the members of the class and any subclasses. Plaintiffs also anticipate needing one or more experts in forensic accounting and related areas depending on Defendants' disposition of PPP loan proceeds Plaintiffs contend should be paid to Plaintiffs and the class.

<u>Defendant</u>

A. Summarize with specificity those issues on which the Parties will need to conduct discovery. Identify categories of information each Party needs in discovery and why.

i. Information about each of Named Plaintiff's business, including history, financial and revenue information, tax returns, and the impact on their business caused by the Covid-19 pandemic to assess the Plaintiff's eligibility for a second-draw PPP loan.

ii. Information verifying the representations each Named Plaintiff made to SBA, Blueacorn, Prestamos, or others during the application process for a second-draw PPP loan to assess the veracity of information provided in the application process and the Plaintiff's eligibility for a second-draw PPP loan.

iii. All communications each Named Plaintiff had with SBA, Blueacorn, their bank, and others about their application for a second-draw PPP loan to assess the veracity of information provided in the application process, the

Plaintiff's eligibility for a second-draw PPP loan, and the Plaintiff's knowledge with respect to the status of their application for a second-draw PPP loan.

iv. Information regarding each Named Plaintiff's efforts to secure disbursement of loan proceeds from Prestamos or another entity, and efforts to apply for a second-draw PPP loan from any other lender to assess the veracity of the Plaintiff's allegation that they regularly inquired about the status of their loan and were unable to secure a second-draw PPP loan from another source.

v. Information about the bank accounts into which each Named Plaintiff sought to have their second-draw PPP loan deposited to assess the Plaintiff's eligibility for a second-draw PPP loan and to investigate reasons why the Plaintiff's loan disbursement may have been rejected or otherwise delayed.

vi. Information detailing and verifying any harm each Named Plaintiff allegedly suffered as a result of any delay in receiving a second-draw PPP loan.

B. Anticipated number of interrogatories per Party: 35

C. Anticipated number of depositions per Party:[1] 40

[1] Were the Court to consolidate this matter with *Drevnak v. Prestamos CDFI, LLC*, No. 2:23-cv-2777-JMG, as requested by the parties, *see infra* § XVI, Prestamos would need to depose the eleven Named Plaintiffs in *Marshall* and the seven Named Plaintiffs in *Drevnak.* Any consolidation, however, would not require any additional deposition of the single Defendant in this matter, Prestamos.

D. To the extent either Party proposes to exceed the presumptive limits in the Federal Rules of Civil Procedure for discovery, explain the basis for that proposal.

Defendant believes this case will be resolved with evidence from Named Plaintiffs, which will establish that they do not have claims for relief. In any event, Defendant also intends to oppose certification of the plaintiff class and, accordingly, does not believe class-wide discovery is appropriate at this juncture. There is also substantial third-party discovery. Prestamos recently served subpoenas upon Blueacorn, its lender service provider, as well as Evolve Bank & Trust which was involved in the attempts to fund plaintiffs' loan transactions.

E. Do the Parties anticipate the need for any third-party discovery? If so, identify the likely third-parties and the discovery to be sought.

Yes. Defendant anticipates seeking non-party discovery from Blueacorn, SBA, Evolve, and Plaintiffs' financial institutions regarding their communications and dealings with Plaintiffs.

F. Do the Parties anticipate the need for experts? If so, identify the subjects on which the expert(s) may opine.

Yes. At a minimum, and without waiving the right to retain additional experts, Defendant anticipates retaining of several experts relating to both Class Certification and Plaintiffs claims on the merits and to refute Plaintiffs' claimed damages.

VIII. Status of Discovery

The parties exchanged initial disclosures on January 14, 2022. Plaintiffs served interrogatories and requests for production on November 16, 2021. Defendant served its responses and objections on January 19, 2022. Plaintiffs served their first set of requests for admission on April 5, 2023, and Defendant responded on May 10, 2023. Plaintiffs served a second set of requests for production on November 27, 2023, and a second set of interrogatories on November 30, 2023. Defendant served its responses and objections on January 19, 2024.

Defendant served its first interrogatories and first requests for production on July 21, 2023. Plaintiffs responded to the requests for production on August 21, 2023, and to the interrogatories on August 28, 2023. Plaintiffs served a supplemental response to the interrogatories on February 2, 2024.

IX. Proposed Case Management Deadlines:

The parties have agreed to detailed proposed case management plan governing both actions to address the class certification discovery and class certification which is attached as Exhibit A. The dates requested by the Court are set forth below.

A. Deadline to serve initial disclosures under Rule 26(a)(1) (*must be exchanged at least one (1) business day before Rule 16 conference): .... exchanged January 14, 2022

B. Deadline to amend pleadings to add claims or Parties (*must be as early as practicable to avoid prejudice or unnecessary delays): .... See Exhibit A

C. Deadline for affirmative expert reports (if any) and disclosure of lay witness opinion testimony with related information and documents (if any): .... See Exhibit A

D. Deadline for rebuttal expert reports (if any): .... See Exhibit A

E. Deadline to complete discovery:.. See Exhibit A

F. If any Party seeks more than 120 days for fact discovery, explain why.

Defendant has produced hundreds of thousands of pages of documents and complex financial data. In addition, the large number of named Plaintiffs require more depositions than the average civil case. The parties agree that discovery is and will continue to be voluminous and will require more than 120 days to complete.

G. Deadline to file motion for summary judgment:............................... See Exhibit A

H. Estimated trial ready date: .... See Exhibit A

I. Estimated Number of Days for Trial: 15

X. Deposition Scheduling

The Court expects the Parties to meet and confer as soon as practicable to set aside dates to hold open for depositions before the close of discovery. If the Parties have not already done so, the Court will order the Parties to do so within two weeks of the Rule 16 conference.

Have the Parties set aside dates for deposition? ___ Yes _x_ No

If yes, what are those dates? ____

If no, when do the parties intend to confer, and how many dates do they intend to set aside?

This is a complex class action and the parties will confer with respect to depositions and complete depositions prior to the close of proposed fact discovery set forth in the Case Management Plan.

XI. Electronic Discovery

The parties entered into a stipulated order governing electronically stored information, which the Court entered on July 21, 2023. ECF 80.

XII. Protective Orders and Confidentiality Agreements

The parties filed a Joint Motion for Protective Order on January 14, 2022, ECF 19, which the Court granted on January 18, 2022, ECF 20.

XIII. Alternative Dispute Resolution

A. Have the Parties engaged in any settlement discussions? If so, set forth the status of those negotiations. If not, explain why not.

The parties have discussed the possibility of mediation.

B. Have the Parties explored or considered other forms of alternative dispute resolution? If so, summarize those efforts. If not, state the Parties' positions with respect to ADR, as required under Local Rule of Civil Procedure 53.3.

The parties are receptive to considering ADR at an appropriate stage of the proceedings.

C. Identify the individual who will attend the Rule 16 conference who will have authority to discuss settlement.

For Plaintiffs:	Lawrence J. Lederer Bart D. Cohen BAILEY & GLASSER LLP
For Defendant:	Marcel S. Pratt Timothy D. Katsiff BALLARD SPAHR LLP
	Daniel A. Arellano HERRERA ARELLANO LLP

XIV. Consent to Send Case to a Magistrate Judge

Both Parties consent to Magistrate Judge Carlos maintaining responsibility for resolving discovery disputes.

XV. Policies and Procedures

Judge Gallagher's Policies and Procedures are available for the Parties to review on the Court's website. By signing below, counsel for each Party and/or each *pro se* Party represents that he or she has reviewed the Judge's Policies and Procedures and acknowledges the requirements contained therein. The Parties and their counsel further acknowledge by signing below that Judge Gallagher will strike pleadings and other submissions that do not comply with his Policies and Procedures.

XVI. Other Matters

The factual and legal issues in this matter substantially overlap with those in *Drevnak v. Prestamos CDFI, LLC*, No. 2:23-cv-2777-JMG, which is also before this Court. Moreover, the respective parties in *Drevnak* and *Marshall* are represented by the same counsel. Prior to the November 16, 2023 Rule 16 Pretrial Scheduling Conference in *Drevnak* ("Rule 16 Conference"), the parties filed a Joint Rule 26(f) Report (the "Report"). The Report, including the Proposed Case Management Schedule (attached to the Report), is appended here as Exhibit B. The Report notes that the parties anticipate seeking consolidation of the two cases and that, if the Court agrees, the Plaintiffs in *Marshall* and *Drevnak* will seek to file a consolidated amended complaint. Further, at the Rule 16 Conference, the parties and the Court discussed consolidation of these matters and issuance of a single scheduling order.

The parties continue to support consolidating *Marshall* and *Drevnak* and moving forward with these matters as a single action. The parties therefore request that the Court enter the attached Proposed Case Management Schedule, appended here as Exhibit A, which updates the proposed schedule previously filed with the Report in *Drevnak*.

ACKNOWLEDGEMENT OF RULE 26(F) MEETING AND THE ABOVE SUBMISSION TO THE COURT:

Dated: March 1, 2024

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Counsel for Defendant

EXHIBIT A

EXHIBIT A

PROPOSED CASE MANAGEMENT SCHEDULE FOR CONSOLIDATED ACTION

Event	Proposed Deadline
Consolidated Amended Complaint	4/19/2024
Prestamos' response to SAC	5/20/2024
Substantial completion of Class Certification discovery	3/3/2025
Plaintiffs' identification of Class Certification Experts and Rule 26 disclosures and summary	3/3/2025
Plaintiffs' Class Certification Expert Reports	4/14/2025
Plaintiffs' production of materials relied upon by experts in their Class Certification Expert Reports	4/21/2025
Defendant's Class Certification Expert Reports	7/9/2025
Defendant's production of materials relied upon by experts in their Class Certification Expert Reports	7/16/2025
Plaintiffs' Rebuttal Class Certification Expert Reports	8/15/2025
Plaintiffs' Motion for Class Certification Combined for Both Cases (40 pages, not including exhibits)	8/15/2025
Plaintiffs' production of materials relied upon by experts in their Rebuttal Class Certification Expert Reports	8/22/2025

Event	Proposed Deadline
Deadline for expert discovery with respect to class certification issues	9/19/2025
Defendant’s Opposition to Plaintiffs’ Motion for Class Certification (not to exceed 40 pages, without exhibits)	10/17/2025
Plaintiffs’ and Defendant’s *Daubert* Motions on Class Certification Experts	10/24/25
Plaintiffs’ Reply in Support of Motion for Class Certification (not to exceed 20 pages, without exhibits)	11/24/2025
Plaintiffs’ and Defendant’s Oppositions to *Daubert* Motions on Class Certification	01/12/2026
Plaintiffs’ and Defendant’s Replies to *Daubert* Motions on Class Certification	1/26/2026
Class Certification Hearing	02/06/2026
Fact discovery deadline	6/13/2026
Plaintiffs’ and Defendant’s Merits Expert Reports	8/26/2026
Plaintiffs’ and Defendant’s production of materials relied upon by experts in their Merits Expert Reports	8/31/2026
Plaintiffs’ and Defendant’s Rebuttal Merits Expert Reports	11/12/2026
Plaintiffs and Defendant’s production of materials relied upon by experts in their Rebuttal Merits Expert Reports	11/16/2026

Event	Proposed Deadline
Deadline for expert discovery with respect to merits issues	12/10/2026
Plaintiffs' and Defendant's *Daubert* Motions	1/17/2027
Plaintiffs' and Defendant's Oppositions to *Daubert* Motions	2/15/2027
Plaintiffs' and Defendant's Replies in Support of *Daubert* Motions	3/1/2027
Plaintiffs' and Defendant's Motions for Summary Judgment	4/26/2027
Plaintiffs' and Defendant's Oppositions to Motions for Summary Judgment	5/24/2027
Plaintiffs' and Defendant's Replies in Support of Motions for Summary Judgment	6/14/2027
Estimated trial ready date	TBD
Estimated Number of Days for Trial	15

EXHIBIT B

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

GEORGINA DREVNAK, JOHN MARTIN, KATHERINE LOYD, EZRA BEATTIE, GREGORY LLOYD, ALYSHIA JOHNSON and LAMETRIA MARVEL, individually and on behalf of all others similarly situated, Plaintiffs, v. PRESTAMOS CDFI, LLC and CHICANOS POR LA CAUSA, INC., Defendants.	Civil Action No. 2:23-cv-2777-JMG

<u>JOINT RULE 26(f) REPORT</u>

In accordance with Fed. R. Civ. P. 26(f), counsel for the parties conferred on October 23, 2023, and submit the following report of their meeting for the Court's consideration:

I. Counsel

A. Lead counsel for Plaintiff(s):

Lawrence J. Lederer
Michael L. Murphy
Bart D. Cohen
BAILEY & GLASSER LLP

Lead counsel for Defendant(s):

Timothy D. Katsiff
Marcel S. Pratt
BALLARD SPAHR LLP

Daniel A. Arellano
HERRERA ARELLANO LLP

B. Counsel who participated in Rule 26(f) conference on behalf of Plaintiff(s):

Lawrence J. Lederer
Bart D. Cohen
Bailey & Glasser LLP

C. Counsel who participated in Rule 26(f) conference on behalf of Defendant(s):

Timothy Katsiff
Marcel S. Pratt
BALLARD SPAHR LLP

Daniel A. Arellano
HERRERA ARELLANO LLP

II. Description of Claims and Defenses

<u>Plaintiffs</u>

Plaintiffs' claims arise from the same course of conduct by Defendants as plaintiffs' claims in *Marshall v. Prestamos CDFI, LLC,* No. 5:21-cv-04337-JMG ("*Marshall*"), which is also pending before this Court. After the United States Small Business Administration ("SBA") raised the fees payable to lenders for processing Paycheck Protection Program ("PPP") loans, Defendant Prestamos CDFI, LLC ("Prestamos") processed nearly 500,000 loans over the course of only five months. As a result, Prestamos received nearly $1.2 billion in loan processing fees. Despite its contractual obligations under the same standard form promissory note and accompanying loan documents to which Prestamos and all class member borrowers were parties, however, Prestamos failed to fund the loans of borrowers whose loans had been approved by the SBA. Further, Prestamos failed to fund these SBA-approved loans despite the fact that the PPP loan proceeds had actually been paid to Prestamos and funded by the Paycheck Protection Program Liquidity Facility ("PPPLF") or otherwise. In fact, Prestamos continued to receive funds from the PPPLF through September 2021, even though the loan application period closed in May 2021. Prestamos has at all relevant times been wholly-owned by defendant Chicanos Por La Causa, Inc. ("CPLC"). Plaintiffs allege that CPLC controlled and directed Prestamos's PPP lending and was the alter ego of Prestamos. The Court's personal jurisdiction over CPLC is the subject of a pending motion in *Marshall*. *Id.*, ECF 84.

Plaintiffs are small business owners whose loans were approved by the SBA but were never funded by Prestamos. SBA records reflect that those loans were in fact disbursed. Internet sites including Reddit, the website of the Better Business Bureau and other websites are replete with complaints by other borrowers throughout the country alleging similar misconduct by Prestamos. Plaintiffs allege breach of contract claims on behalf of statewide classes for Prestamos's failure to fund the SBA-approved PPP loans in compliance with the parties' loan agreements. PPP lenders including Defendant were also subject to compliance with applicable rules regarding PPP loans including, among other things, a requirement to fund PPP loans within 10 days after their approval by the SBA.

In *Marshall*, the Court held that plaintiffs maintain standing to represent state-wide classes, denied Defendants' motion to dismiss plaintiffs' breach of contract claims, and ordered further proceedings as to the Court's personal jurisdiction over CPLC, in an Opinion and Order dated March 30, 2023. *Marshall*, ECF 56-57. Plaintiffs' Complaint in this action accounts for that Order and Opinion.

In light of the substantial overlap of both factual and legal issues in this action and *Marshall*, the parties anticipate seeking consolidation of the two cases. If the Court agrees to that, Plaintiffs will seek to file a consolidated amended complaint encompassing the claims of plaintiffs in both cases.

<u>Defendants</u>

Defendant Prestamos CDFI, LLC ("Prestamos"), is a certified Community Development Financial Institution who, like other lending institutions across the United States, participated in the Paycheck Protection Program, a program enacted by Congress and administered by the SBA to facilitate the distribution of financial aid—in the form of federally-backed, forgivable loans—

to small businesses affected by the Covid-19 pandemic. Defendant Chicanos Por La Causa, Inc. ("CPLC") is an Arizona non-profit corporation organized under Section 501(c)(3) of the Internal Revenue Code, and is the sole member of Prestamos. CPLC is not a lender, and it does not appear on any of Plaintiffs' loan documents. Defendants deny Plaintiffs' allegations of wrongdoing, and Plaintiffs' claims fail for the same reason as those in the *Marshall* action.

Specifically, none of the documents that purportedly governed Plaintiffs' applications for PPP loans incorporated any requirements under the CARES Act or related rules and guidelines, or obligated Prestamos to disburse money to Plaintiffs within a certain time period, or at all. Whatever agreements Prestamos *may* have had with SBA cannot be enforced by non-parties like Plaintiffs. And the Promissory Note each Plaintiff signed contains a broad release provision that bars Plaintiffs' lawsuit. Finally, Plaintiffs cannot prove any damage on any of their claims.

In light of the substantial overlap of both factual and legal issues in this action and *Marshall*, Defendants do not oppose the consolidation of the two cases for the purpose of discovery.

Stipulated Facts

1. Defendant Prestamos is a limited liability company organized under the laws of the state of Arizona, having its principal place of business at 1024 E. Buckeye Road, Suite 270, Phoenix, Arizona 85034, with additional offices in Tucson, Arizona, Las Vegas and Reno, Nevada, and Santa Fe, New Mexico.

2. Prestamos is a Community Development Financial Institution certified by the United States Treasury as a Loan Fund.

3. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a "pandemic."

4. On March 13, 2020, the United States declared a national emergency due to the COVID-19 pandemic.

5. Congress enacted the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") at least in part to provide assistance for individuals, families, and businesses affected by the pandemic.

6. Prestamos participated in the Paycheck Protection Program, implemented pursuant to the CARES Act, as a lender of federally-guaranteed, forgivable loans.

7. Prestamos entered into an agreement with Blueacorn PPP, LLC, a lender service provider, whereby Prestamos compensated Blueacorn for its assistance with, *inter alia*, facilitating the PPP loan application paperwork, collection, and approval process.

8. Prestamos, like other lenders participating in the PPP, received fees from SBA in connection with processing PPP loan applications.

III. Jurisdiction

Plaintiffs

This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act because at least one member of the proposed class is a citizen of a different state than defendant Prestamos; there are more than 100 members of the proposed class; and the aggregate amount in controversy exceeds $5,000,000.00 exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2)(A).

Defendants

Defendants contend that this Court lacks subject matter jurisdiction because Plaintiffs lack Article III standing to bring this suit. Specifically, Plaintiffs did not suffer a cognizable injury-in-fat from any delay in disbursement of loan funds because they cannot demonstrate that they were entitled to receive those funds; and Plaintiffs cannot demonstrate that any injury caused by an alleged delay in receiving loan funds is traceable to any action taken by Defendants.

Further, Defendants maintain that the Court lacks personal jurisdiction over CPLC, because CPLC has not directed any activities toward this jurisdiction, is not a party to any Plaintiff's loan documents, and is not the alter ego of Prestamos.

Insurance Coverage and Deductibles

Defendants do not, under the information presently available to them, intend to rely on any insurance coverage related to potential liability in this action. Nonetheless, and without waiving their right to argue that insurance coverage is unavailable as to any potential liability in this litigation, Defendants will identify relevant insurance agreements in its initial disclosures.

IV. Dispositive Motions

Defendant CPLC intends to file a motion to dismiss Plaintiffs' complaint under Fed. R. Civ. P. 12(b)(2) and 12(b)(6) pending this Court's ruling on Defendant CPLC's Motion to Dismiss in *Marshall*. Defendant Prestamos and, if its motion to dismiss is denied, Defendant CPLC, intend to file a motion for summary judgment under Fed. R. Civ. P. 56. In addition both CPLC and Prestamos intend to oppose class certification of this matter.

V. Anticipated Scope of Discovery

<u>Plaintiffs</u>

A. Summarize with specificity those issues on which the Parties will need to conduct discovery. Identify categories of information each Party needs in discovery and why.

> Plaintiffs generally anticipate that the scope of discovery will be coincident with the scope of discovery in *Marshall*, which has been the subject of substantial and

ongoing discussions among the parties, the primary exceptions being discovery regarding the PPP loans of Plaintiffs in this action, and issues related to class members in the states in which Plaintiffs reside. If the Court agrees to consolidate this case with the *Marshall* case, discovery in the *Marshall* case would comprise a portion of the record in this case.

B. Anticipated number of interrogatories per Party: 20

C. Anticipated number of depositions per Party: 40

D. To the extent either Party proposes to exceed the presumptive limits in the Federal Rules of Civil Procedure for discovery, explain the basis for that proposal.

This case involves what Plaintiffs believe may be hundreds or thousands of proposed class members, and many millions of dollars or more in disputed and unfunded PPP loan proceeds as Prestamos committed to funding more PPP loans in 2021 than any other lender according to the SBA. Plaintiffs will therefore need to pursue substantial discovery commensurate with the scope of this case as is common under the Federal Rules of Civil Procedure for complex litigation including this case.

E. Do the Parties anticipate the need for any third-party discovery? If so, identify the likely third-parties and the discovery to be sought.

Yes. Plaintiffs anticipate seeking non-party discovery from Blueacorn and the SBA regarding their communications and dealings with Defendants concerning Plaintiffs' and class members' PPP loans, as well as other third-parties including any third-parties to whom Defendants may have transferred any applicable PPP loan proceeds or fees that Plaintiffs contend should be paid to Plaintiffs and the class.

F. Do the Parties anticipate the need for experts? If so, identify the subjects on which the expert(s) may opine.

Yes. Plaintiffs presently anticipate needing experts. For example, Plaintiffs anticipate needing one or more experts to opine as to the alleged damages incurred by the members of the class and any subclasses. Plaintiffs also anticipate needing one or more experts in forensic accounting and related areas depending on Defendants' disposition of PPP loan proceeds Plaintiffs contend should be paid to Plaintiffs and the class.

<u>Defendant</u>

A. Summarize with specificity those issues on which the Parties will need to conduct discovery. Identify categories of information each Party needs in discovery and why.

i. Information about each of Named Plaintiff's business, including history, financial and revenue information, tax returns, and the impact on their business caused by the Covid-19 pandemic to assess the Plaintiff's eligibility for a second-draw PPP loan.

ii. Information verifying the representations each Named Plaintiff made to SBA, Blueacorn, Prestamos, or others during the application process for a second-draw PPP loan to assess the veracity of information provided in the application process and the Plaintiff's eligibility for a second-draw PPP loan.

iii. All communications each Named Plaintiff had with SBA, Blueacorn, their bank, and others about their application for a second-draw PPP loan to assess the veracity of information provided in the application process, the Plaintiff's eligibility for a second-draw PPP loan, and the Plaintiff's knowledge with respect to the status of their application for a second-draw PPP loan. Information regarding each Named Plaintiff's efforts to secure disbursement of loan proceeds from Prestamos or another entity, and efforts to apply for a second-draw PPP loan from any other lender to assess the veracity of the Plaintiff's allegation that they regularly inquired about the status of their loan and were unable to secure a second-draw PPP loan from another source.

iv. Information about the bank accounts into which each Named Plaintiff sought to have their second-draw PPP loan deposited to assess the Plaintiff's eligibility for a second-draw PPP loan and to investigate reasons why the Plaintiff's loan disbursement may have been rejected or otherwise delayed.

v. Information detailing and verifying any harm each Named Plaintiff allegedly suffered as a result of any delay in receiving a second-draw PPP loan.

B. Anticipated number of interrogatories per Party: ....<u>35</u>

C. Anticipated number of depositions per Party: ....<u>40</u>

D. To the extent either Party proposes to exceed the presumptive limits in the Federal Rules of Civil Procedure for discovery, explain the basis for that proposal.

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Defendants believe this case will be resolved with evidence from Named Plaintiffs, which will establish that they do not have claims for relief. In any event, Defendants also intend to oppose certification of the plaintiff class.

E. Do the Parties anticipate the need for any third-party discovery? If so, identify the likely third-parties and the discovery to be sought.

Yes. Defendants anticipate seeking non-party discovery from Blueacorn, SBA, and Plaintiffs' financial institutions, regarding their communications and dealings with Plaintiffs.

F. Do the Parties anticipate the need for experts? If so, identify the subjects on which the expert(s) may opine.

Yes. At a minimum, and without waiving the right to retain additional experts, Defendant anticipates retaining of several experts relating to both Class Certification and Plaintiffs claims on the merits and to refute Plaintiffs' claimed damages.

VI. Status of Discovery

Plaintiffs served requests for production on October 18, 2023 which are identical to the discovery served in *Marshall* case. The parties have also agreed to exchange initial disclosures no later than November 15, 2023. Defendants believe that discovery should be consolidated in both cases so as to avoid duplicating discovery efforts. The parties have not addressed informal disclosures, as formal discovery has progressed in the *Marshall* case.

VII. Proposed Case Management Deadlines:

The parties have agreed to detailed proposed case management plan governing both actions to address the class certification discovery and class certification which is attached as

Exhibit A. The dates requested by the Court are set forth below.

A. Deadline to serve initial disclosures under Rule 26(a)(1) (*must be exchanged at least one (1) business day before Rule 16 conference): .... November 15, 2023

B. Deadline to amend pleadings to add claims or Parties (*must be as early as practicable to avoid prejudice or unnecessary delays): .... December 1, 2023

C. Deadline for affirmative expert reports (if any) and disclosure of lay witness opinion testimony with related information and documents (if any): .... See Exhibit A

D. Deadline for rebuttal expert reports (if any): .... See Exhibit A

E. Deadline to complete discovery: .... See Exhibit A

F. If any Party seeks more than 120 days for fact discovery, explain why.

Defendants have produced hundreds of thousands of pages of documents and complex financial data. In addition, the large number of named Plaintiffs between this action and *Marshall* require more depositions than the average civil case. The parties agree that discovery is and will continue to be voluminous and will require more than 120 days to complete.

G. Deadline to file motion for summary judgment: .... See Exhibit A

H. Estimated trial ready date: .... See Exhibit A

I. Estimated Number of Days for Trial: 15

VIII. Deposition Scheduling

The Court expects the Parties to meet and confer as soon as practicable to set aside dates to hold open for depositions before the close of discovery. If the Parties have not already done so, the Court will order the Parties to do so within two weeks of the Rule 16 conference.

Have the Parties set aside dates for deposition? ___ Yes _x_ No

If yes, what are those dates? ____

If no, when do the parties intend to confer, and how many dates do they intend to set aside?

This is a complex class action and the parties will confer with respect to depositions and complete depositions prior to the close of proposed fact discovery set forth in the Case Management Plan.

IX. Electronic Discovery

The parties in *Marshall* entered into a stipulated order governing electronically stored information, which the Court entered on July 21, 2023. *Marshall*, ECF 80. The parties propose to use the same stipulated order in this action.

X. Protective Orders and Confidentiality Agreements

The parties in *Marshall* agreed to the terms of proposed protective order, which the Court entered on January 14, 2022. *Marshall*, ECF 19. The parties propose to use the same order in this action.

XI. Alternative Dispute Resolution

A. Have the Parties engaged in any settlement discussions? If so, set forth the status of those negotiations. If not, explain why not.

The parties have discussed the possibility of mediation.

B. Have the Parties explored or considered other forms of alternative dispute resolution? If so, summarize those efforts. If not, state the Parties' positions with respect to ADR, as required under Local Rule of Civil Procedure 53.3.

The parties are receptive to considering ADR at an appropriate stage of the proceedings.

C. Identify the individual who will attend the Rule 16 conference who will have authority to discuss settlement.

For Plaintiffs:	Lawrence J. Lederer Michael L. Murphy Bart D. Cohen BAILEY & GLASSER LLP
For Defendants:	Timothy D. Katsiff Marcel S. Pratt BALLARD SPAHR LLP Daniel A. Arellano HERRERA ARELLANO LLP

XII. Consent to Send Case to a Magistrate Judge

Both Parties consent to Magistrate Judge Carlos maintaining responsibility for resolving discovery disputes.

XIII. Policies and Procedures

Judge Gallagher's Policies and Procedures are available for the Parties to review on the Court's website. By signing below, counsel for each Party and/or each *pro se* Party represents that he or she has reviewed the Judge's Policies and Procedures and acknowledges the requirements contained therein. The Parties and their counsel further acknowledge by signing below that Judge Gallagher will strike pleadings and other submissions that do not comply with his Policies and Procedures.

II. Other Matters

As is set forth above, the Parties would like to discuss the possibility of combining this action and the *Marshall* action for the purposes of consideration of Plaintiffs' anticipated motion for class certification and discovery.

ACKNOWLEDGEMENT OF RULE 26(F) MEETING AND THE ABOVE SUBMISSION TO THE COURT:

Date: November 6, 2023

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EXHIBIT A

PROPOSED CASE MANAGEMENT SCHEDULES
FOR CONSOLIDATED ACTION

Event	**Plaintiffs' Proposed Deadline**	**Defendant's Proposed Deadline**
Consolidated Amended Complaint	November 22, 2023	
Prestamos' response to SAC	December 22, 2023	30 days after filing
Substantial completion of Class certification discovery	June 7, 2024	October 4, 2024
Plaintiffs' identification of Class Certification Experts and Rule 26 disclosures and summary	June 28, 2024	October 4, 2024
Plaintiffs' Class Certification Expert Reports	July 19, 2024	November 15, 2024
Plaintiffs' production of materials relied upon by experts in their Class Certification Expert Reports	July 26, 2024	November 22, 2024
Fact discovery deadline	September 13, 2024	January 13, 2025
Defendants' Class Certification Expert Reports	September 13, 2024	February 10, 2025
Defendants' production of materials relied upon by experts in their Class Certification Expert Reports	September 20, 2024	February 17, 2024
Plaintiffs' Rebuttal Class Certification Expert Reports	November 1, 2024	March 17, 2024
Plaintiffs' Motion for Class Certification Combined for Both Cases (40 pages, not including exhibits)	July 19, 2024	March 17, 2024
Plaintiffs' production of materials relied upon by experts in their Rebuttal Class Certification Expert Reports	November 8, 2024	March 24, 2024

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Event	Plaintiffs' Proposed Deadline	Defendant's Proposed Deadline
Deadline for expert discovery with respect to class certification issues	December 6, 2024	April 21, 2024
Defendants' Opposition to Plaintiffs' Motion for Class Certification (not to exceed 40 pages, without exhibits)	September 13, 2024	May 19, 2024
Plaintiffs' and Defendants' *Daubert* Motions on Class Certification Experts	January 10, 2025	May 26, 2024
Plaintiffs' Reply in Support of Motion for Class Certification (not to exceed 20 pages, without exhibits)	November 1, 2024	June 26, 2024
Plaintiffs' and Defendants' Oppositions to *Daubert* Motions on Class Certification	February 7, 2025	August 14, 2024
Plaintiffs' and Defendants' Replies to *Daubert* Motions on Class Certification	February 21, 2025	August 28, 2024
Class Certification Hearing	March 21, 2025	September 8. 2024
Plaintiffs' and Defendants' Merits Expert Reports	April 18, 2025	March 28, 2025
Plaintiffs' and Defendants' production of materials relied upon by experts in their Merits Expert Reports	April 25, 2025	April 1, 2025
Plaintiffs' and Defendants' Rebuttal Merits Expert Reports	June 7, 2025	June 13, 2025
Plaintiffs and Defendants' production of materials relied upon by experts in their Rebuttal Merits Expert Reports	June 14, 2025	June 17, 2025
Deadline for expert discovery with respect to merits issues	July 12, 2025	July 11, 2025

Event	Plaintiffs' Proposed Deadline	Defendant's Proposed Deadline
Plaintiffs' and Defendants' *Daubert* Motions	August 1, 2025	August 16, 2025
Plaintiffs' and Defendants' Oppositions to *Daubert* Motions	September 19, 2025	September 12, 2025
Plaintiffs' and Defendants' Replies in Support of *Daubert* Motions	October 17, 2025	September 26, 2025
Plaintiffs' and Defendants' Motions for Summary Judgment	August 1, 2025	November 21, 2025
Plaintiffs' and Defendants' Oppositions to Motions for Summary Judgment	September 19, 2025	December 19, 2025
Plaintiffs' and Defendants' Replies in Support of Motions for Summary Judgment	October 17, 2025	January 9, 2026
Estimated trial ready date	December 1, 2025	
Estimated Number of Days for Trial	15	