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March 4, 2024

By Electronic Filing

The Hon. John M. Gallagher
United States District Court for the Eastern District of Pennsylvania
Edward N. Cahn Courthouse & Federal Building
504 W. Hamilton Street
Allentown, PA 18101

Re: Marshall v. Prestamos CDFI, LLC, No. 5:21-cv-04337-JMG (E.D. Pa.)

Judge Gallagher:

We write on behalf of Defendant Prestamos CDFI, LLC (“Prestamos”) pursuant to Section II.C.2. of this Court’s Policies and Procedures to request a conference regarding a discovery dispute. Plaintiffs in this matter allege, on behalf of themselves and a proposed class of thousands, that Prestamos breached contracts to fund Paycheck Protection Program (“PPP”) loans for businesses that they allege they owned, and that they suffered hundreds of millions of dollars of damages as a result. Prestamos served discovery requests seeking the production of documents Plaintiffs would need to support their breach of contract claim and that could potentially support Prestamos’s defenses. Despite a lengthy back and forth with Plaintiffs regarding their deficient responses to Prestamos’s discovery requests, Plaintiffs’ responses remain deficient.

BACKGROUND

Prestamos served its First Requests for Production of Documents (“Prestamos’s RFPs”) and First Interrogatories (“Prestamos’s Interrogatories”) on Plaintiffs on July 21, 2023. Plaintiffs served responses and objections to Prestamos’s RFPs on August 21, 2023 (“Plaintiffs’ RFP Responses”), and served responses and objections to Prestamos’s Interrogatories on August 28, 2023 (“Plaintiffs’ Interrogatory Responses”).

On October 27, 2023, Prestamos sent Plaintiffs a letter identifying the deficiencies in Plaintiffs’ RFP Responses and Plaintiffs’ Interrogatory Responses (the “October 27 Letter”). Plaintiffs produced documents in response to Prestamos’s RFPs on October 31, 2023. Regrettably, Plaintiffs produced only 133 total documents.

On November 8, 2023, Prestamos sent Plaintiffs a second letter regarding deficiencies in Plaintiffs’ discovery responses (the “November 8 Letter”). The November 8

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Letter noted that Plaintiffs did not produce any documents responsive to thirty RFPs and provided an incomplete production of documents (*i.e.*, did not provide documents for all named plaintiffs) in response to at least nine RFPs. In addition, Prestamos noted that the documents that were produced did not conform to the ESI Protocol agreed to by all parties and approved by this Court. *See* ECF 80. On November 9, 2023, Plaintiffs and Prestamos held their first telephonic meet and confer regarding Plaintiffs' responses to Prestamos's discovery requests.

On November 17, 2023, Plaintiffs responded to the October 27 Letter and November 8 Letter (the "November 17 Letter"). The November 17 Letter provided limited information regarding Plaintiffs' intent to supplement their responses to Prestamos's Interrogatories and provide additional documents responsive to Prestamos's RFPs.

Prestamos wrote Plaintiffs on November 28, 2023 (the "November 28 Letter"), noting that the November 17 Letter failed to respond to numerous issues identified in Prestamos's previous correspondence, and requesting that Plaintiffs "confirm, by specific RFP, whether Plaintiffs will be searching for responsive documents."

On December 5, 2023, Plaintiffs responded to the November 28 Letter (the "December 5 Letter"). The December 5 Letter largely ignored the substance of the November 28 Letter and did not identify the RFPs for which Plaintiffs intended to produce documents. In the December 5 Letter, Plaintiffs informed Prestamos that they would produce additional information responsive to the discovery requests on January 5, 2024.

The next day, December 6, 2023, Prestamos replied to the December 5 Letter (the "December 6 Letter"), and, in a good faith effort to resolve the discovery issues (despite Plaintiffs' continued failure to adequately respond to Prestamos's RFPs and Prestamos's Interrogatories) requested a second meet and confer.

On December 15, 2023, the parties held a second telephonic meet and confer, and on December 18, 2023, Prestamos sent Plaintiffs a letter confirming the parties' discussion (the "December 18 Letter"). This included Plaintiffs' agreement to supplement specific interrogatory responses, and an agreement to perform additional searches and produce documents responsive to specific RFPs. Moreover, Plaintiffs agreed to clearly indicate whether they would produce documents in response to each RFP.

On January 3, 2024, Plaintiffs requested until January 19, 2024, to supplement their responses to Prestamos's discovery requests, and Prestamos agreed. On January 19, 2024, Plaintiffs unilaterally extended that deadline to February 2, 2024. And on February 2, 2024, Plaintiffs served only 99 additional documents that relate to only five of the eleven named plaintiffs in this matter, and also served a supplemental response to Prestamos's Interrogatories ("Plaintiffs' Supplemental Interrogatory Responses"). Plaintiffs did not provide any supplemental response to Prestamos's RFPs with any clear indication of their intent to respond (or not), despite having promised to do so at the December meet and confer. And even after supplementing their responses, Plaintiffs have failed to provide a sufficient response to any single interrogatory.

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PLAINTIFFS' DEFICIENT DISCOVERY RESPONSES

Despite Prestamos's good faith efforts to resolve the discovery disputes in this matter, Plaintiffs' continued failure to comply with the federal rules and provide sufficient responses to Prestamos's RFPs and Prestamos's Interrogatories has forced Prestamos to seek assistance from this Court.¹ Prestamos's written discovery seeks information highly relevant to its defenses to Plaintiffs' claims. The issues covered by Prestamos's RFPs and Prestamos's Interrogatories include, but are not limited to: whether the Plaintiffs were lawfully entitled to PPP loans in the first instance; whether Plaintiffs provided the requisite information and filled out the relevant applications properly; whether Plaintiffs responded to information requests from Prestamos; Blueacorn's role in the PPP loan process and any related issues; Plaintiffs' contractual release of Prestamos related to Plaintiffs' claims; issues with and/or rejection of funds by Plaintiffs' financial institutions; and Plaintiffs' alleged damages.

The continued deficiencies in Plaintiffs' responses to Prestamos's written discovery include, but are not limited to:

- Neither Plaintiffs' Interrogatory Responses nor Plaintiffs' Supplemental Interrogatory Responses are verified, and thus do not comply with Rule 33(b)(5) of the Federal Rules of Civil Procedure. The Court should order Plaintiffs to verify their interrogatory responses.
- Plaintiffs have declined to answer 16 interrogatories, promising instead to produce business records with a cursory reference to Rule 33(d) of the Federal Rules of Civil Procedure and then failing even to produce the records as required by the Rule. Specifically, Plaintiffs state in response to Interrogatory Nos. 1–7 and 10–18 that they will “respond pursuant to Fed. R. Civ. P. 33(d) via the production of business records[.]” But Plaintiffs have not asserted that the “burden of deriving or ascertaining the answer [to these interrogatories] will be substantially the same for either party,” nor have Plaintiffs “specif[ied] the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the

¹ The same attorneys are counsel of record for *Drevnak v. Prestamos CDFI, LLC*, No. 2:23-cv-02777-JMG (E.D. Pa.), which is also before this Court. Prestamos has served what are substantially the same Requests for Production of Documents and Interrogatories on the *Drevnak* plaintiffs. In spite of Prestamos's five letters identifying the deficiencies of Plaintiffs' discovery responses and two meet and confers in *Marshall*, the *Drevnak* plaintiffs have responded to Prestamos's discovery with many of the same responses and objections that gave rise to the instant letter.

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responding party could.” *See* Fed. R. Civ. P. 33(d)(1); *see also Parks LLC v. Tyson Foods, Inc.*, 2015 U.S. Dist. LEXIS 112861, at *12 (E.D. Pa. Aug. 25, 2015) (a party relying on Rule 33(d) must specify the responsive records in sufficient detail within thirty days after being served with the interrogatory).

Perhaps most egregiously, Plaintiffs have failed to answer Interrogatory No. 3, which seeks information going to the heart of the case:

For each year from 2019 through 2022, state the amount of the following attributable solely to Your Business: (a) payroll costs; (b) rent or mortgage interest; (c) covered operations expenditures; (d) covered property damage; (e) covered supplier costs; (f) covered worker protection expenditures; and (g) other expenditures that served as the basis for Your application for a PPP loan.

This request is relevant to both Plaintiffs’ entitlement to PPP loans, as well as their alleged damages. Plaintiffs agreed, at the December 15, 2023 meet and confer, to make a good faith effort to respond to this Interrogatory. Yet, in Plaintiffs’ Supplemental Interrogatory Responses, they did not provide any additional information or documents in response to Interrogatory No. 3, and simply cited to Rule 33(d).

The Court should order Plaintiffs to properly respond to Prestamos’s Interrogatories instead of improperly relying on Rule 33.

- Each interrogatory requests information about “You” or “Your,” which is defined as “each named Plaintiff, as well as and of Your principals, agents, employees, staff, attorneys, representatives, and any other Persons or entities, acting or purporting to act on behalf of You, whether past or present, and without regard to whether their relationship currently exists or has been terminated.” Despite that, Plaintiffs omit at least one named plaintiff from every interrogatory response. As such, Plaintiffs have not provided a complete response to any single interrogatory.

The Court should order Plaintiffs to respond to Prestamos’s Interrogatories. *See* Fed. R. Civ. P. 33(b)(3) (“Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.”).

- Similarly, Plaintiffs have not produced responsive documents for all named plaintiffs in response to any of Prestamos’s RFPs. For example, in response

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to RFP No. 3—which seeks federal and state tax returns from 2018 to present, including Schedule C—Plaintiffs provided the 2019 and 2022 federal and state tax returns (without Schedule C) for one named plaintiff (Ahmadou). These documents will show whether the named plaintiffs’ operated their respective businesses before and after applying for PPP loans, and are therefore crucial to Prestamos’s defenses in this matter. Yet Plaintiffs have not provided complete tax information for even a single named plaintiff.

Further, in the November 7 Letter, Plaintiffs promised to clarify the existence, or non-existence, of responsive Documents with regard to each individual plaintiff, including specifying the Documents by Bates number. Plaintiffs have not done so.

The Court should order Plaintiffs to produce documents responsive to Prestamos’s RFPs or, if no such documents exist, identify the RFPs for which Plaintiffs do not have responsive documents for certain named plaintiffs.

- To date, Plaintiffs have not produced any documents responsive to RFP Nos. 1, 2, 4, 10, 12, 16–31, and 33–39. These requests relate to Plaintiffs’ eligibility for PPP loans, applications for PPP loans (and whether sufficient information was provided), contractual waiver of the claims set forth in the Second Amended Complaint, and alleged damages. Similar to Plaintiffs’ promises relating to specific interrogatories, at the December 15, 2023 meet and confer, Plaintiffs explicitly agreed to respond to RFP Nos. 19 (requesting documents showing eligibility for a PPP loan) and 21 (requesting documents relating to the financial operations of Plaintiffs’ businesses). Despite that, Prestamos has not received any documents responsive to these RFPs.

Many of these document requests are central to determining the legitimacy of the named plaintiffs’ businesses, including the lawful operation of those businesses. For example, Plaintiffs have failed to produce any documents in response to RFP 2 (requesting documents relating to required licenses and/or permits for the named plaintiffs’ businesses) and RFP 25 (requesting bank statements showing transaction-level income and expenditures for the named plaintiffs’ businesses).

The Court should order Plaintiffs to produce documents responsive to Prestamos’s RFPs.

- Neither Plaintiffs’ first production of documents on October 31, 2023, nor its second production on February 2, 2024, comply with the ESI Protocol agreed

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to by the parties and signed by this Court. Plaintiffs' productions do not include the vast majority of the metadata fields required under the ESI Protocol. Further, many of the documents in both productions appear to be pictures of documents (via screenshots made using a cellphone) rather than the documents themselves. As such, they do not contain the metadata required by the ESI protocol; they are not produced in the format required by the ESI protocol; and some of the pictures of the documents are cut off—*i.e.*, they are not even an accurate record of the document they purport to represent.

The Court should order Plaintiffs to produce documents in the manner set forth in the ESI Protocol.

For the foregoing reasons, Prestamos requests that the Court schedule a telephone conference to address these issues.

Sincerely,

/s/ Timothy D. Katsiff

Timothy D. Katsiff

TDK

CERTIFICATE OF SERVICE

I, Timothy D. Katsiff, hereby certify that on the 4th day of March 2024, I caused a true and correct copy of the foregoing letter to be served on counsel of record for all Plaintiffs via the Court's ECF System. The letter is available for viewing and downloading from the ECF System.

/s/ Timothy D. Katsiff
Timothy D. Katsiff