

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

ALICIA MARSHALL, *et al.*, individually  
and on behalf of all others similarly situated,

Plaintiffs,

v.

PRESTAMOS CDFI, LLC and CHICANOS  
POR LA CAUSA, INC.,

Defendants.

Civil Action No. 5:21-cv-04337-JMG

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR  
LEAVE TO FILE A THIRD AMENDED CLASS ACTION COMPLAINT**

**Introduction**

Plaintiffs respectfully submit this memorandum of law in support of their accompanying motion pursuant to the Court's April 17, 2024 Scheduling Order (ECF No. 102 at ¶ 1) and Fed. R. Civ. P. 15(a)(2) for leave to file their Third Amended Class Action Complaint (the "TAC").

**Background**

Plaintiffs' Second Amended Complaint (the "SAC") was filed on May 20, 2022. ECF No. 42. Plaintiffs' SAC alleges that defendant Prestamos CDFI, LLC ("Prestamos") failed to fund Paycheck Protection Program ("PPP") loans for their businesses, despite the U.S. Small Business Administration's ("SBA") approval of those loans. Prestamos is a wholly-owned subsidiary of Chicanos Por La Causa, Inc. ("CPLC"). *Id.* at ¶ 62. Plaintiffs filed the SAC individually, and on behalf of a proposed nationwide class of similarly situated borrowers whose PPP loans were also approved by the SBA but not funded by Prestamos (*id.* at ¶ 230(a)), and three proposed subclasses alleging claims under consumer protection laws of California, Illinois and Ohio (*id.* at ¶¶ 230(b-d)).

On March 30, 2023, the Court granted in part and denied in part defendants' motion to dismiss. ECF Nos. 56-57. In particular, the Court denied defendants' motion to dismiss plaintiffs' breach of contract claim, but also dismissed those claims to the extent that it held 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." *Marshall v. Prestamos CDFI, LLC*, Civil No. 5:21-cv-04337-JMG, 2023 WL 2727541, at \*7 (E.D. Pa. March 30, 2023). The Court also dismissed plaintiffs' claims under California, Illinois and Ohio consumer protection law, and denied without prejudice CPLC's motion to dismiss pending jurisdictional discovery. *Id.* at \*17-18.

On July 20, 2023, additional plaintiffs from additional states not included in the first-filed *Marshall* action brought a related class action in this Court against defendants captioned *Drevnak v. Prestamos CDFI, LLC*, Case No. 5:23-cv-02777 (E.D. Pa.). Plaintiffs in *Drevnak* similarly allege that they were approved by the SBA for their PPP loans but not funded by Prestamos, but on behalf of a substantially narrowed class of similarly situated SBA-approved borrowers only in the respective states in which they reside or were injured in accord with the Court's ruling concerning standing in *Marshall*. ECF 1 at ¶¶ 15-21, 214. The plaintiffs in *Drevnak* also did not allege any consumer protection claims under state law but instead confined their claim to breach of contract also given the Court's ruling in *Marshall*, and unjust enrichment against defendant CPLC only in the alternative to plaintiffs' breach of contract claim. *Id.* at ¶ 245.

By Order on December 5, 2023, the Court granted CPLC's motion to dismiss on grounds of personal jurisdiction in *Marshall*. ECF No. 93. The parties stipulated that the Court's ruling regarding jurisdiction over defendant CPLC in *Marshall* would also apply to the *Drevnak* action.

Discovery has been ongoing in the two actions.

Following a discovery conference with the Court on March 12, 2024, the Court on March 22, 2024 directed the parties in *Drevnak* and *Marshall* to meet and discuss potentially agreeing to permit plaintiffs to amend the complaint in *Marshall* to include the allegations in *Drevnak*, and to the dismissal of the *Drevnak* action, in lieu of consolidating the two actions. The parties thereafter met and conferred and, on March 27, 2024, reported to the Court that they agree that plaintiffs will file an amended complaint in the *Marshall* action that incorporates the allegations in *Drevnak*, and to the dismissal of *Drevnak*.

On April 17, 2024, the Court issued its Scheduling Order in *Marshall*. ECF No. 102. That Order directs that “[a]ll motions to amend the Complaint and to join or add additional parties shall be filed on or before **May 1, 2024.**” *Id.* at ¶ 1 (emphasis in original).

Plaintiffs’ proposed TAC is attached to Plaintiffs’ accompanying motion as Exhibit A.

Plaintiffs’ TAC adds four new plaintiffs (Grichar, Horne, Etuknwa and Smith); drops one of the seven original plaintiffs from the *Drevnak* action (Loyd); and adds no new claims and, to the contrary, alleges a single cause of action against defendants for breach of contract. See Exhibit A at ¶¶ 418-436. Plaintiffs’ TAC also updates certain factual allegations such as regarding the resignation of CPLC’s President and CEO, *id.* at ¶ 38, and class certification.

Plaintiffs’ TAC also expressly acknowledges that, by Order on December 5, 2023 (ECF No. 93), the Court granted CPLC’s motion to dismiss on grounds of jurisdiction, and alleges that plaintiffs accordingly include CPLC as a defendant to the extent relevant to plaintiffs’ claims against defendant Prestamos, and to preserve plaintiffs’ rights in the event of an appeal.

On April 26, 2024, Prestamos requested (ECF No. 103) that the Court modify and extend the deadlines concerning discovery for class certification and other deadlines set forth in the Court’s April 17, 2024 Scheduling Order. In that request, Prestamos pretextually seeks to blame

plaintiffs for its own delay in pursuing discovery despite the fact that *Marshall* was filed over two years ago, *Drevnak* was filed on July 20, 2023, the Court adjudicated Prestamos' motion to dismiss over a year ago on March 20, 2023, and discovery has been ongoing since these cases were filed. Prestamos argues that "[d]ue to Plaintiffs' failure to remedy discovery deficiencies, Prestamos is concerned about the ability to complete necessary discovery and expert reports pursuant to" the Court's Scheduling Order, and that "Prestamos is currently pursuing important third-party discovery for class certification which will take some time to complete[.]" ECF No. 103 at 1. Prestamos' filing does not even mention let alone attempt to justify why it would take the additional months of discovery it seeks particularly to get records from its own bank and lender service provider concerning less than two dozen plaintiffs. Plaintiffs have separately replied to Prestamos' request (ECF No. 104), and by Order today (May 1, 2024), set a hearing for May 23, 2024 regarding Prestamos' request. ECF No. 105. Plaintiffs intend to abide by the discovery and other deadlines set forth in the Court's Scheduling Order and any other deadlines the Court may set.

Even if the Court grants additional time for discovery concerning class certification as Prestamos seeks, there can be no reasonable claim that permitting the filing of plaintiffs' TAC would unduly prejudice defendants.

### Argument

The amendment of pleadings before trial is governed by Federal Rule of Civil Procedure 15(a).<sup>1</sup> As this Court stated in *Richardson v. Barbour*, No. 2:18-CV-01758-JMG, 2020 WL

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<sup>1</sup> Rule 16 and its progeny require parties to demonstrate good cause for filing amended pleadings once a pretrial scheduling order's deadline for such filings has passed. *See, e.g., Gerhart v. Progressive Preferred Ins. Co.*, No. 5:20-CV-01401-JMG, 2021 WL 3709522, at \*2 (E.D. Pa. Aug. 20, 2021). Here, however, plaintiffs' motion to amend is filed pursuant to the deadline set forth in the Court's Scheduling Order and good cause exists anyway.

4815829 (E.D. Pa. Aug. 19, 2020): “It is axiomatic that a court should freely give leave to amend unless the court finds undue delay, that the amendment would be inequitable and prejudice the non-moving party, or that it would be futile.” *Id.* at \*7 (citing Rule 15(a)). The burden is on the non-moving party to show prejudice, bad faith, undue delay, or futility. *Gerhart v. Progressive Preferred Ins. Co.*, No. 5:20-CV-01401-JMG, 2021 WL 3709522, at \*3 (E.D. Pa. Aug. 20, 2021).

Prestamos cannot credibly claim it would be unduly prejudiced by permitting the filing of the TAC. As noted, the TAC adds no new claims; actually drops all claims but breach of contract; narrows and confines the class action allegations to only “in-state” classes in conformity with the Court’s ruling on the motion to dismiss; and adds three new plaintiffs and drops one plaintiff. Accordingly, Prestamos cannot credibly maintain that it needs any additional or new categories of discovery based on any of the allegations in the TAC, and the Court’s Scheduling Order already provides sufficient time for discovery also as to the three new plaintiffs.

Even if additional discovery was needed, the Court’s Scheduling Order likewise permits time for it and a need for additional discovery would not result in undue prejudice in any event. *See also Gerhart*, 2021 WL 3709522, at \*3 (“[T]he need for additional discovery due to amendment does not, without more, prejudice the non-moving party.”) (citations omitted).

Nor is there any evidence of bad faith on Plaintiff’s part. The Third Circuit has held that bad faith includes “some indication of an intentional advancement of a baseless contention that is made for an ulterior purpose, e.g., harassment or delay.” *Ford v. Temple Hosp.*, 790 F.2d 342, 347 (3d Cir. 1986) (citing *Baker Indus., Inc. v. Cerberus, Ltd.*, 764 F.2d 204, 223 (3d Cir. 1985)). Plaintiffs plainly have no interest in delay; to the contrary, Prestamos seeks to extend the

deadlines in the Court's Scheduling Order (ECF No. 103) as Prestamos has sought previously. *See, e.g., Drevnak*, ECF No. 15 at Exhibit A (pp's 15-17).

Moreover, the Court's Scheduling Order also provides deadlines for summary judgment among other things. ECF No. 102 at ¶ 8. Prestamos will therefore be able to contest the claims also at that pretrial stage. In any event, "the length of delay is rarely dispositive." *Gerhart*, 2021 WL 3709522, at \*3. *See also Richardson*, 2020 WL 4815829, at \*7 ("Although the delay between the original Complaint and SAC was substantial, it was not so long as to impute a dilatory motive or require denial of leave to amend.") (citing Third Circuit precedent). Plaintiffs have acted diligently at all times, and therefore this factor supports granting Plaintiffs' motion to file the TAC.

Nor do Plaintiffs stand to gain by harassing defendants. Plaintiffs do, however, maintain compelling interests in prosecuting their claims and pursuing class certification fairly.

Finally, Plaintiffs' allegations do not change the claims at all; to the contrary, the TAC alleges the sole breach of contract claim the pleading sufficiency of which the Court has already adjudicated in its ruling on Prestamos's prior motion to dismiss. Hence, Plaintiffs' TAC is not futile. "Given the liberal standard for amendment, ... courts place a heavy burden on opponents who wish to declare a proposed amendment futile." *Ogelsby v. Ferguson*, No. 19-cv-5598, 2021 WL 2935987, at \*7 (E.D. Pa. July 13, 2021).

### **CONCLUSION**

For the foregoing reasons, the Court should grant Plaintiffs' motion for leave to file their proposed Third Amended Complaint.

Dated: May 1, 2024

Respectfully submitted,

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