

**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' MOTION FOR LEAVE TO FILE A
THIRD AMENDED CLASS ACTION COMPLAINT**

Plaintiffs hereby move pursuant to the Court's Scheduling Order (ECF No. 102 at ¶ 1) and Federal Rule of Civil Procedure 15(a)(2) to file their proposed Third Amended Class Action Complaint (the "TAC"), and in support thereof state as follows:

1. 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)).

2. 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 in part defendants' motion to

dismiss plaintiffs' breach of contract claim, but also dismissed those claims in part 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.

3. On July 20, 2023, additional plaintiffs from additional states not included in the first-filed *Marshall* action brought a related class action 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 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*. See *id.*, 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 given the Court's ruling in *Marshall*, and alleged unjust enrichment against defendant CPLC only in the alternative to plaintiffs' breach of contract claim. *Id.* at ¶ 245.

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

5. Discovery has been ongoing in the two actions.

6. Following a discovery conference with the Court on March 12, 2024, the Court on March 22, 2024 directed the parties in the *Drevnak* and *Marshall* actions 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*.

7. 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).

8. Plaintiffs’ proposed TAC is attached hereto as Exhibit A.

9. Plaintiffs’ TAC adds four new plaintiffs (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 only 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, see *id.* at ¶ 38, and regarding class certification.

10. 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 personal 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.

11. On April 26, 2024 (ECF No. 103), defendant Prestamos requested 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 on October 1, 2021, *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 the 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 mention let alone attempt to justify its own delay in pursuing discovery, or why it would take the additional months of discovery especially given a big part of the discovery it seeks are records from its own bank and lender service provider. Plaintiffs have separately replied to Prestamos' request (ECF No. 104), and the Court by Order today (May 1, 2024) set a hearing on May 23, 2024 concerning Prestamos' request. ECF No. 105. Plaintiffs intend to abide by the discovery and other deadlines set forth in the Court's April 17, 2024 Scheduling Order and any other deadlines the Court may set.

12. Even if the Court grants additional time for discovery concerning class certification as Prestamos seeks, there can be no reasonable argument that permitting the filing of plaintiffs' TAC would unduly prejudice defendants. The TAC does not add any claims and instead actually drops all state law claims other than the breach of contract claim the pleading sufficiency of which the Court has already adjudicated.

13. For the foregoing and other reasons set forth in the accompanying memorandum of law, plaintiffs' request to file the TAC complies with the prevailing standards governing the amendment of pleadings.

14. Accordingly, plaintiffs respectfully request that the Court grant this motion and direct the Clerk to accept the TAC for filing.

Dated: May 1, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on May 1, 2024, I caused Plaintiffs' Motion for Leave to Amend the Complaint, and Memorandum of Law in Support thereof to be filed on the Court's CM/ECF system and for service of same on all counsel of record.

/s/ Lawrence J. Lederer

Lawrence J. Lederer