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March 13, 2025

Via CM/ECF

Judge John M. Gallagher
United States District Court for the
Eastern District of Pennsylvania
Edward N. Cahn Courthouse & Federal Bldg.
504 W. Hamilton Street, Suite 4701
Allentown, Pennsylvania 18101

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

Dear Judge Gallagher:

I write on behalf of Plaintiffs pursuant to section II.C.2 of Your Honor's Policies and Procedures to respectfully request a telephone conference with the Court to resolve a simple discovery dispute. The parties' discovery dispute is Defendant's refusal to produce its employee, David Castillo, for a Rule 30(b)(1) deposition. Plaintiffs have agreed to take Mr. Castillo's deposition virtually, *and* to limit Mr. Castillo's deposition to no more than three hours. As explained more fully below, Defendant's refusal to produce Mr. Castillo is both unjustified and would prejudice Plaintiffs including potentially at the upcoming summary judgment phase of this case where motions are due May 7, 2025 (ECF No. 102 ¶ 8), and at trial and any post-trial proceedings.

Following the March 4, 2025 status conference with the Court (ECF No. 147), Plaintiffs emailed Defendant that same day. Plaintiffs proposed to reduce their four pending Rule 30(b)(1) depositions to one depending on who Defendant designates as its Rule 30(b)(6) witness(es), and Defendant answering Plaintiffs' Requests for Admission. On March 11, 2025 before Defendant had designated any Rule 30(b)(6) witness, Plaintiffs advised Defendant that Plaintiffs also seek a limited deposition of Mr. Castillo under Rule 30(b)(1) despite initially proposing to forgo Mr. Castillo's deposition, as Plaintiffs believed he would be one of Defendant's Rule 30(b)(6) designees (and who also submitted a declaration on behalf of Defendant as discussed below). Subsequently that same day, Defendant advised Plaintiffs that it would produce Jose Martinez as its *sole* Rule 30(b)(6) witness, and that it "is not agreeing to produce David Castillo as a witness, in any capacity." On March 12, 2025, Plaintiffs requested that Defendant reconsider its refusal to produce Mr. Castillo for a limited deposition. Defendant has failed to timely advise Plaintiffs whether it will reconsider its position. A copy of the parties' emails is attached as Exhibit A.

Defendant's refusal to produce Mr. Castillo is unjustified. Mr. Castillo indisputably has relevant information and, as noted, Defendant submitted a declaration from him with its opposition to class certification. *See* ECF No.142-4. That declaration contains a number of

Judge John M. Gallagher
 March 13, 2025
 Page 2

statements concerning Defendant's Paycheck Protection Program ("PPP") practices the merits of which are at issue in this litigation.

For example, Mr. Castillo's declaration addresses how Prestamos obtained advances from the Federal Reserve to fund PPP loans (*id.* ¶ 28); the timing of when Defendant filed SBA Form 1502 reports (*id.* ¶ 30); "the rules governing PPP loans" (*id.* ¶ 38); and even what Defendant allegedly did with the credit advances it obtained on PPP loans "that were ultimately not funded" (*id.* ¶ 51), which Mr. Castillo vaguely alleges Defendant "returned" to the Federal Reserve in September 2021 (*id.*) -- without identifying the amount, which PPP loans, what Defendant did with any income it may have earned on those advances, whether it retained any credit advances on any ultimately unfunded PPP loans, or, most fundamentally, whether the credit advances it returned to the Federal Reserve include the *specific* \$122,489,761.00 credit advance principal Defendant obtained on the 7,417 unfunded PPP loans of Plaintiffs and the members of the class in just the already reduced eight total class member states. ECF No. 39 at 3; ECF No. 139-28.

To avoid potential prejudice such as the argument that Mr. Castillo's declaration purportedly alone establishes that Defendant returned those credit advances to the Federal Reserve, Plaintiffs should be permitted to cross-examine Mr. Castillo on these issues. The fact that evidence Plaintiffs submitted with their motion for class certification also shows that Defendant has sought repayment on unfunded Plaintiff class member PPP loans renders these questions even more probative. ECF No. 139-20 at 3 (testimony on Defendant's cross-examination of plaintiff Lloyd that he is maintaining this lawsuit "[t]o make sure that it is settled to the way that it should be so that I am not reported as defaulted with the SBA, to stop Prestamos coming after me to collect money on funds that I never received. Which is what you guys are doing."); ECF No. 139-20 at 6 (accord; testimony of plaintiff Johnson that "I want to say I believe they did send something stating that they wanted to be repaid for the loan with interest."); ECF No. 139-20 at 7 (accord; testimony of plaintiff Townsend that "Oh, because basically [Prestamos] sent me an E-mail asking me to repay money that I've never gotten back."). Accord ECF No. 108 ¶¶ 296 – 298 (quoting directly from Defendant's correspondence to plaintiff Lloyd seeking repayment of \$20,832.00 in principal plus 1% interest).

Second, and also contrary to Defendant's position, the time for fact discovery remains open with a deadline of April 9, 2025. ECF No. 102 ¶ 6. Defendant also cannot fairly claim that a limited deposition of Mr. Castillo is a surprise or that Defendant it is prejudiced at all by providing it even though Plaintiffs initially proposed to forgo his deposition subject to him also being a potential Rule 30(b)(6) witness. To the contrary, Plaintiffs indicated previously that they would pursue this very discovery. ECF No. 139 at 4-5. Plaintiffs have also agreed to forgo two of their four other timely noticed Rule 30(b)(1) depositions in full (specifically, Mr. Adame who was CEO of Defendant's parent until Oct. 6, 2023, and Ms. Nunez who succeeded Mr. Adame as CEO; see attached Exhibit A), and again to limit the duration of their deposition of Mr. Castillo to three hours maximum.

Even if Plaintiffs could have issued their now substantially narrowed pending discovery

Judge John M. Gallagher
March 13, 2025
Page 3

earlier in Phase II, there indisputably is still sufficient time to complete it, including Mr. Castillo's limited deposition. Indeed, the Court's Scheduling Order also directed that Phase II expert reports were due yesterday, March 12, 2025, and that expert depositions also take place by April 9, 2025. ECF No. 102 ¶ 6. Hence, deposition discovery was clearly contemplated and permitted to continue *through* April 9, 2025. Notably, moreover, the Court should also be aware that neither Defendant nor Plaintiffs even served any such Phase II expert reports by yesterday's deadline (because, in the case of Plaintiffs and we assume Defendant as well, the expert reports we submitted as part of Phase I discovery already address both merits and class certification issues). At a very minimum, therefore, the lack of any new expert depositions also further frees up time for the parties' schedule through April 9, 2025. In fact, although omitted during the March 4, 2025 status conference with the Court, it should also be noted that Defendant has served *no* discovery at all as part of Phase II despite successfully petitioning the Court previously in this case to extend the discovery deadlines for months (ECF No. 103), which Plaintiffs opposed. ECF No. 104. At bottom for current purposes, this also means that the **only** discovery remaining in this case at least at present is Plaintiffs' combined Rule 30(b)(1) and (6) deposition of Mr. Martinez to which the parties have agreed in principle; Defendant's answers to Plaintiffs' Requests for Admission, as to which Defendant still has not advised Plaintiffs; and Plaintiffs' proposed limited deposition of Mr. Castillo. Plaintiffs do not intend to pursue any other Phase II discovery.

Accordingly, Plaintiffs respectfully request that the Court schedule a telephone conference to resolve the foregoing discovery dispute.

Respectfully submitted,

/s/ Lawrence J. Lederer

Lawrence J. Lederer

cc: All counsel of record (via CM/ECF)