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March 13, 2025

Via CM/ECF

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

Dear Judge Gallagher:

We write on behalf of Prestamos CDFI, LLC (“Prestamos”) in response to plaintiffs’ March 13, 2025 letter requesting the Court’s intervention via a telephone conference to compel the deposition of David Castillo.

Prestamos respectfully submits that, viewed in the context of plaintiffs’ discovery efforts in this case generally and with respect to Mr. Castillo specifically, the Court should deny the request to depose Mr. Castillo.

For over six months, plaintiffs did nothing in this case, wasting nearly all of the time that this Court allotted for Phase 2 discovery. Two business days before the March 4, 2025 status conference—in a transparent attempt to show the Court they remained interested in a case they seemed to have abandoned after Prestamos opposed class certification—plaintiffs served a sweeping Rule 30(b)(6) notice and sought four Rule 30(b)(1) depositions, along with a set of wide-ranging Requests for Admission.

Hours after the conference, apparently realizing their discovery was unnecessarily broad given the limited time remaining in Phase 2, plaintiffs offered to narrow their deposition requests to a single witness. Specifically, plaintiffs promised as follows:

Plaintiffs are willing to forgo three of the four Rule 30(b)(1) depositions plaintiffs noticed last week – specifically, Nunez, Adame *and* Castillo – if Prestamos agrees to timely produce Martinez for deposition on or prior to the April 9, 2025 discovery deadline. This assumes Martinez would also be

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Prestamos' Rule 30(b)(6) designee as to at least two of the five specific Rule 30(b)(6) topics plaintiffs noticed[.]

Ex. A (L. Lederer 3/4/25 Email) (emphasis added).

The very next day, plaintiffs imposed a unilateral deadline of March 12, 2025 for Prestamos to accept the proposal. But the day before that unilateral deadline, plaintiffs reneged on their proposal and demanded a deposition of Mr. Castillo. Ex. B (L. Lederer 3/11/25 Email).

Later that same day (March 11), Prestamos responded that Mr. Martinez could testify as to **all** of the Rule 30(b)(6) topics (which was beyond the "at least two" topics plaintiffs requested), subject to certain limited objections. However, Prestamos explained that it would not agree to produce Mr. Castillo because plaintiffs had no legitimate basis to request his deposition at the last minute and their conduct suggested they had negotiated in bad faith. Ex. C (M. Pratt 3/11/25 Email).

Plaintiffs now seek to justify their belated request for Mr. Castillo's deposition by claiming it is necessary to cross-examine him on a declaration that he signed during Phase 1 on **August 9, 2024**. Specifically, they argue they need his testimony regarding "how Prestamos obtained advances from the Federal Reserve to fund PPP loans" and whether and under what circumstances Prestamos returned those advances to the Federal Reserve. Ex. D (L. Lederer 3/13/25 Letter) at 2. Plaintiffs also argue they need the deposition to establish other PPP rules and practices such as Prestamos's filing of Form 1502 reports with the SBA. *Id.* These justifications are baseless.

As a threshold matter, Plaintiffs have had Mr. Castillo's declaration since last summer and they have now withdrawn their request to depose him on two separate occasions, including last summer when Prestamos offered to produce him for a deposition to cover Phase 1 *and* Phase 2 matters. Ex. E (B. Cohen 5/16/24 Email agreeing to single deposition of Mr. Castillo for Phase 1 and Phase 2 matters); Ex. F (L. Lederer 7/30/24 Email withdrawing deposition notice for Mr. Castillo). Moreover, Plaintiffs' counsel used Mr. Castillo's declaration extensively to depose Prestamos's expert witness regarding the very topics they are now citing as a justification for Mr. Castillo's deposition, yet they offer no reason for waiting until this week to seek that deposition.

Plaintiffs' purported justification fails on substantive grounds as well. Specifically, Prestamos has agreed to produce its President, Jose Martinez, as a Rule 30(b)(6) witness on a series of topics, including Prestamos's "preparation and submission of . . . PPP Pledge and Advance Request forms, and Prestamos's "receipt, use and ultimate[] disposition of [these] advances." Topic Nos. 3, 4. Plaintiffs have no need to depose Mr. Castillo on these topics in his personal capacity because they can and will depose Mr. Martinez on those topics, and

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that testimony, unlike Mr. Castillo's testimony, will be binding on Prestamos because Mr. Martinez is a corporate designee. *See, e.g., Univ. of Pittsburgh of the Commonwealth Sys. of Higher Educ. v. Varian Med. Sys.*, 2011 U.S. Dist. LEXIS 149685, *40-41 (W.D. Pa. Dec. 30, 2011) (deposition testimony of corporate designee under Rule 30(b)(6) "binds the company" and constitutes an "admission").

For these reasons, the Court should deny Plaintiffs' request to depose Mr. Castillo. Should the Court prefer to address the issue on a telephone conference, we will of course make ourselves available.

Respectfully Submitted,

/s/ Marcel Pratt

Marcel Pratt