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

ALICIA MARSHALL, *et al*., Plaintiffs, v. PRESTAMOS CDFI, LLC, Defendant.	Civil Action No. 5:21-cv-04337-JMG

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL RECONSIDERATION OF THE COURT'S APRIL 30, 2025 RULING

Plaintiffs'[1] respectfully submit this memorandum in support of their motion for partial reconsideration of the Court's ruling filed April 30, 2025 that denied Plaintiffs' motion for class certification, and granted in part and denied in part defendant Prestamos' motion to exclude Plaintiffs' expert reports and testimony (the "Ruling").

Plaintiffs seek reconsideration of the Court's Ruling limited to only Plaintiffs' request that the Court certify their Declaratory Judgment Class under Fed. R. Civ. P. 23(b)(2). Plaintiffs do so because a) the Court's Ruling did not address Plaintiffs' requests for Rule 23(b)(2) class certification or declaratory judgment relief; b) the Court's reasoning in its Ruling denying class certification under Rules 23(a) and (b)(3) supports certification under Rule 23(b)(2) of Plaintiffs' claim for a classwide declaration that defendant Prestamos be barred from seeking repayment of the PPP loans at issue; and c) the undisputed evidence already in the record in this case reflects that Prestamos has attempted to seek repayment plus interest of certain Plaintiffs' loans.

<u>Summary of Factual and Procedural History</u>

Plaintiffs filed their operative Third Amended Class Action Complaint on May 2, 2024. ECF No. 108. Plaintiffs' TAC alleges both a Damages Class under Fed. R. Civ. P. 23(a) and (b)(3), and a Declaratory Judgment Class under Fed. R. Civ. P. 23(a) and (b)(2). *Id.* ¶¶ 376 – 377.

Plaintiffs' TAC alleges also specifically alleges that the Court should certify the Declaratory Judgment Class under Rules 23(a) and (b)(2) "because Prestamos has acted and refused to act on grounds that apply classwide such that injunctive or corresponding declaratory judgment relief is appropriate respecting the Declaratory Judgment Class as a whole[.]" *Id.* ¶ 416. Plaintiffs allege "that the Court should declare specifically …

d. that Prestamos is also precluded as a matter of law from seeking or

[1] Capitalized terms used but not otherwise defined herein have the same meaning set forth in Plaintiffs' Brief in Support of Plaintiffs' Motion for Class Certification. ECF No. 139.

> obtaining any money or other relief, whether payment or repayment of principal, interest or attorneys' fees or other costs, from Plaintiffs and class members in connection with their PPP loans with Prestamos, including any action that negatively impacts their credit rating."

Id. ¶ 416(d). Accord *Id*. Prayer for Relief D (requesting "a judgment under 28 U.S.C. § 2201 and Fed. R. Civ. P. 57 determining the parties' respective rights and obligations as alleged").

Both before and following the filing of the TAC, the parties engaged in fact and expert discovery bifurcated between class certification (Phase I) and merits (Phase II) discovery pursuant to the Order of the Court. ECF No. 102.

On September 6, 2024, Plaintiffs filed their motion for class certification and accompanying brief and appendix of exhibits in support. ECF Nos. 138-139. Plaintiffs' motion for class certification also sought to separately certify the Declaratory Judgment Class pursuant to Fed. R. Civ. P. 23(a) and (b)(2). ECF No. 138 at 1-2; ECF No. 139 at 11-12. Plaintiffs specifically argued in their brief that "Plaintiffs' claims for a judgment that they need not repay arises from the same conduct and applies to all class members, or none of them. The [Declaratory Judgment] class is also cohesive, clearly defined and ascertained; and the claim seeks exclusively non-damage relief." *Id*. at 11.

The appendix accompanying Plaintiffs' motion for class certification contains ***undisputed*** evidence indicating that Prestamos has already attempted to seek repayment of PPP loans from at least three of the Plaintiffs. *See* ECF No. 139-20 at 3 (testimony on Prestamos' cross-examination of plaintiff Lloyd that Lloyd filed and 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."). *See also* ECF No. 108 ¶¶ 296-298 (quoting directly from Prestamos' invoices to plaintiff Lloyd seeking repayment of $20,832.00 in principal plus 1% interest); Exhibit A filed herewith (containing Prestamos' invoices and correspondence to plaintiff Lloyd).

On October 4, 2024, Prestamos filed its brief and accompanying appendix in opposition to Plaintiffs' motion for class certification. ECF No. 142. Also on October 4, 2024, Prestamos filed a motion to strike the expert reports that Plaintiffs filed with their motion for class certification and to exclude Plaintiffs' expert testimony. ECF Nos. 143-144. On October 18, 2024, Plaintiffs filed their opposition to Prestamos' motion to strike Plaintiffs' expert reports and testimony. ECF No. 146. Prestamos' brief in opposition to class certification specifically addressed and opposed Plaintiffs' separate request for Rule 23(b)(2) class certification. *See* ECF No. 143 at 13.

In addition to seeking repayment of PPP loans from plaintiffs Lloyd, Johnson and Townsend as noted above, additional evidence Prestamos itself filed with its opposition to class certification also reflects that Prestamos via its PPP loan service provider Blueacorn sought repayment on other unfunded class member PPP loans. *See* ECF No. 142-25.

<u>Standards for Motions for Reconsideration</u>

Plaintiffs are mindful of the Court's Policy and Procedure § II. B. 7., which states that motions for reconsideration "should be filed sparingly." Plaintiffs respectfully submit that the Court should grant partial reconsideration of the Court's Ruling in the circumstances here as the Court has done in other cases to prevent manifest injustice -- which in this case would result if the Court denies class certification without considering Plaintiffs' separate claim for a declaratory judgment barring Prestamos from seeking repayment and class certification under Fed. R. Civ. P. 23(a) and (b)(2). *See, e.g.*, *Harrison v. City of Lancaster*, 2021 WL 2454500, at *2 (E.D. Pa. June 16, 2021) (Gallagher, J.) (granting motion for reconsideration; "A district court may reconsider and amend a judgment based on … '(3) the need to correct clear error of law or prevent manifest injustice.'") (citation omitted); *Martz v. Norfolk Southern Railway Co.*, 2023 WL 2632213, at *3 (E.D. Pa. Mar. 24, 2023) (Gallagher, J.) (accord; granting motion for reconsideration of order imposing sanctions; holding that whether to grant a motion for reconsideration "is discretionary").

The case for reconsideration is even stronger here because Rule 23 expressly allows district courts to "alter[] or amend[]" an "order that grants or denies class certification" at any time "before final judgment." Fed. R. Civ. P. 23(c)(1)(C). Indeed, courts including the Third Circuit have held that this rule permits plaintiffs "multiple bites" at the class certification "apple." *Hargrove v. Sleepy's LLC*, 974 F.3d 467, 476 (3d Cir. 2020). Accord *Mallory v. Eyrich*, 922 F.2d 1273, 1282 (6th Cir. 1991); *Cody v. City of St. Louis ex rel. Medium Sec. Inst.*, 103 F.4th 523, 529 (8th Cir. 2024). *See also Connelly v. Amazon.com Services, LLC*, 2025 WL 693258, at *7 (E.D. Pa. March 4, 2025) (Gallagher, J.) (granting class certification where "the Court can modify the proposed classes so that the individualized liability issues created by the app are eliminated" and holding that "[t]he Court will use this more limited definition to reconstruct both of Plaintiff's primary classes").

Argument

The Court should grant partial reconsideration of its Ruling for several reasons. First, the Court's only reference in the Ruling to Plaintiffs' Declaratory Judgment Class was to repeat the definition of that Class. ECF No. 152 at 6. The Court did not otherwise address Plaintiffs' request for certification of that Class under Rule 23(b)(2), or Plaintiffs' corresponding request for a declaration barring Prestamos from seeking repayment of Plaintiffs' and class members' PPP loans. The Court should grant partial reconsideration for this reason alone.[2]

Second, Plaintiffs are aware both that, by its express terms, a Rule 23(b)(2) class also has to also satisfy the requirements of Rule 23(a), and that the Court's Rule 23(a) analysis in its Ruling "focus[ed] on the two that doom Plaintiffs' class certification efforts—commonality and typicality." ECF No. 152 at 13. But the Court's analysis of those two Rule 23(a) requirements supports granting class certification to the Declaratory Judgment Class.

In particular, in holding that Plaintiffs fail to meet typicality under Rule 23(a)(3), the Court explicitly acknowledged that "Plaintiffs raise the same claims and allegedly suffered the same injuries …." ECF No. 152 at 16. The Court held that Plaintiffs failed to satisfy typicality not because Plaintiffs' *claims* were materially different, but instead because "they are subject to unique *defenses*. As explained before, Plaintiffs' banks returned their PPP loans for many different reasons" which "'thus implicate different defenses.'" *Id*. (emphasis added; citation omitted).

Plaintiffs' request for a declaratory judgment barring Prestamos from seeking repayment of the PPP loans also indisputably raises the same claims. But critically, moreover, that claim is not subject to any individualized defenses that Prestamos has even argued -- much less supported by any evidence in the record -- regarding why any of Plaintiffs' banks returned the loans, or any other reasons why Plaintiffs' and Declaratory Judgment Class members' PPP loans were

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2 Respectfully, the Ruling also mistakenly states in the sentence preceding the definitions of the Damages Class and Declaratory Judgment Class that "Plaintiffs seek certification of **two** classes under Federal Rule of Civil Procedure 23(a) **and (b)(3)**[.]" ECF No. 152 at 5 (emphasis added). As noted above, Plaintiffs seek certification of the Declaratory Judgment Class only under Rules 23(a) and (b)(2).

ultimately not funded. Instead, the claim necessarily is predicated on the indisputable fact that the loans were not ultimately funded. The claim thus turns exclusively on the corresponding question whether Prestamos should be barred from seeking any repayment on those loans.

Furthermore, that question is indisputably typical to all Plaintiffs and Declaratory Judgment Class members -- none of whom want to face repaying loans they didn't obtain. The claim is thus cohesive fully classwide. In sum, ***why*** the loans weren't funded is legally and factually irrelevant to this claim. At a very minimum, the Court should reconsider its Ruling to factor into the Rule 23 analysis Plaintiffs' separate claim for declaratory judgment relief.

The Court's commonality analysis similarly turned "on the many possible reasons why each Plaintiff's loans were returned." *Id*. at 14-15. The Court stated that "[t]he central question, according to Plaintiffs, is whether their PPP loans should ever have been canceled." *Id*. at 14. The Court also made the merits determination as a matter of law that, because "Plaintiffs do not identify any other regulation that creates a duty to cancel unfunded loans … *Prestamos had no duty under any regulatory or contractual provision to cancel Plaintiffs' unfunded loans*. Without such a duty, the central question cannot be answered in 'one fell swoop.'" *Id*. at 16 (citation omitted; emphasis added).

Once again, that same reasoning also supports granting partial reconsideration of the Court's Ruling. Whether Plaintiffs are entitled to a classwide declaration on their separate claim that Prestamos be barred as a matter of law from seeking repayment on these unfunded loans is indisputably answerable "in one fell swoop."

Since the loans at issue weren't ultimately funded as the Ruling acknowledges and the parties agree, no Plaintiff or class member should have to repay the loans or have their credit adversely affected. All Plaintiffs and class members share this claim. In the language of Rule

23(b)(2), the claim thus raises the simple question of whether "corresponding declaratory judgment relief is appropriate respecting the class as a whole" -- in the form of a declaration barring Prestamos from seeking repayment or harming any Plaintiffs' or class members' credit concerning loans they didn't obtain. As the Ruling also already also holds (apparently as a matter of law) that "Prestamos had no duty … to cancel Plaintiffs' unfunded loans" as noted above (*id*.), the equities favor the Court also adjudicating the merits of Plaintiffs' claim that Prestamos be barred classwide from seeking repayment. Once again at a bare minimum, the Court should grant limited reconsideration of the Ruling to include Plaintiffs' Rule 23(b)(2) declaratory judgment claim in the class certification analysis.

Finally, the need for a uniform, classwide determination of whether Plaintiffs and the other members of the Declaratory Judgment Class are entitled a declaration barring Prestamos from seeking repayment or interfering with their credit is not theoretical but real world with direct consequences. The evidence in the record shows that Prestamos has already sought repayment from plaintiffs Lloyd, Johnson and Townsend as also noted above. This evidence is also undisputed. And as also noted above, Prestamos' own opposition to class certification contains additional evidence of Prestamos or its lender service provider Blueacorn seeking repayment (on Prestamos' behalf) from other class members, although Prestamos also included purported Blueacorn "Correction Emails" regarding some alleged repayments. *See* ECF Nos. 142-25, 142-26.

Again at a bare minimum, any uncertainties regarding whether Prestamos is or is not entitled to repayment, including based on Prestamos' own evidence, renders classwide adjudication of that issue even more important. It simply cannot reasonably or fairly be that some unfunded Plaintiffs and class members get hit with repayment and/or impairment to their credit rating, while others do not. At issue now, however, isn't Plaintiffs' alleged entitlement to that declaratory judgment relief. Rather, it is whether the Court should grant partial, limited reconsideration of its Ruling to include and address that issue in its class certification analysis, and grant limited class certification because the claim is shared classwide and otherwise meets all requirements of Rules 23(a) and (b)(2).

Conclusion

For the foregoing reasons, Plaintiffs respectfully request that the Court grant partial reconsideration of its ruling denying class certification, and grant class certification to Plaintiffs' declaratory judgment claim pursuant to Fed. R. Civ. P. 23(a) and (b)(2).

Dated: May 7, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of May, 2025, the foregoing was electronically filed and served through the Court's CM/ECF system to counsel of record.

/s/ Lawrence J. Lederer
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