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

ALICIA MARSHALL, *et al.*,

Plaintiffs,

v.

PRESTAMOS CDFI, LLC,

Defendant.

Case No. 5:21-cv-04337-JMG

BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

This is a one-count breach of contract case involving loans under the Paycheck Protection Program (the "PPP"). Following the Court's denial of class certification, Plaintiffs now consist of ten individuals, and the case is ripe for summary judgment to be decided in favor of Defendant Prestamos CDFI, LLC ("Prestamos" or "Defendant"). It is undisputed that Prestamos disbursed the loans to the bank accounts each Plaintiff selected. It is also undisputed that those banks returned the disbursements for reasons outside of Prestamos's control, such as Plaintiffs' own errors or the banks' anti-fraud measures. Thus, this entire case hinges on a legally unsupportable and wholly illogical theory: that when Plaintiffs' banks rejected PPP loans disbursed by Prestamos, Prestamos was nonetheless contractually obligated figure out how to get the loan funds to Plaintiffs through some other means.

Plaintiffs point to no contract language obligating Prestamos to guarantee they would receive PPP loan funds rejected by their banks—because none exists. And it would be commercially unreasonable to interpret the loan agreement to impose such an obligation because, as Plaintiffs' experts conceded, Prestamos could not, consistent with applicable banking rules and practices or with PPP regulations, force the Plaintiffs' banks to *accept* loan funds Prestamos disbursed. Nor should the Court countenance an argument that, following the borrower banks' rejections of Prestamos's transfer of loan funds, Prestamos was required to get Plaintiffs those funds by using prepaid debit cards. No contract language establishes such an obligation, and it would defy fairness and common sense to reward a borrower for his or her own bank's rejection of a loan by requiring the lender to undertake efforts that were not contractually or legally required.

In addition, Plaintiffs failed to meet two prerequisites imposed by the PPP regulations—identification of an appropriate bank account into which PPP loan funds could be deposited and submission of sufficient documentation to establish eligibility for a PPP loan. In contractual terms, these prerequisites were conditions precedent to Prestamos's obligation to lend the Plaintiffs money, and Plaintiffs' failure to satisfy them excused Prestamos from performance of its obligation, however broadly defined.

And even assuming Prestamos breached an obligation, Prestamos caused no cognizable economic harm to the Plaintiffs. To the contrary, any supposed damages sustained by any Plaintiff's failure to receive loan proceeds resulted from the rejections of those loans by the Plaintiffs' own banks, over which Prestamos had no control.

Finally, the Court should reject any argument by Plaintiffs to bolster their claim with reference to Prestamos's submission of Form 1502s to the Small Business Administration (the "SBA"). The Form 1502 was not a contract between Prestamos and any borrower and is therefore irrelevant to Plaintiffs' breach of contract claim.

In sum, the Court should grant summary judgment to Prestamos and put an end to this litigation.

II. STATEMENT OF UNDISPUTED FACTS

A. The PPP Regulations

Self-employed persons were eligible for a PPP loan under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") if, among other things, they were operating businesses on February 15, 2020, had self-employment income, filed an IRS Form 1040 Schedule C ("Schedule C"), and submitted documentation demonstrating the same. Def.'s Statement of Undisputed Material Facts ("SMF") ¶ 1; 86 FR 3692, 3695–96 (Jan. 14, 2021). Borrowers were also required to certify in their applications "that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects." SMF ¶ 2; 86 FR at 3706; *see also* Ex. 1, Def_Appx_003.[1]

After a lender and the SBA approved a borrower's application, the SBA would issue an SBA Loan Number. The regulations then required a lender to "disburse" the PPP loan funds to the borrower within a prescribed timeframe but provided that "lenders are not responsible for delays in disbursement attributable to a borrower's failure to timely provide required Loan Documentation[.]" SMF ¶ 3; 86 FR at 3710. The Federal Reserve maintained a credit facility from which PPP lenders could borrow funds to issue PPP loans. SMF ¶ 4; Ex. 5, Def_Appx_0030, ¶ 21. Prestamos utilized credit advances from this facility. SMF ¶ 5; Ex. 5, Def_Appx_0031, ¶ 28.

The regulations did not require a lender to ensure that a borrower received and could draw upon the PPP loan funds. SMF ¶ 6; 86 FR 3692. And other rules that govern fund transfers prevent a lender from accomplishing this result even if it wanted to. Specifically, under the National Automated Clearinghouse Association Operating Rules (the "Nacha Rules"), once the lender (known as the Originating Depository Financial Institution or "ODFI") initiates an Automated Clearinghouse ("ACH") transfer, the borrower's bank (known as the Receiving Depository Financial Institution or "RDFI") takes total control of the ultimate disposition of the transfer.[2] SMF ¶ 7; Ex. 2, Def_Appx_007, ¶¶ 4–6 (identifying familiarity with and purpose of

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[1] All references to "Ex." are to the exhibits annexed to the Appendix, and include citations to Bates numbers (with prefix "Def_Appx") pursuant to the Court's Policies and Procedures. Exhibits 1–9 are in Volume 1 of the Appendix. Exhibits 10–17 are in Volume 2.

[2] Prestamos is subject to the Nacha Rules as an Originator, which has a relationship with its bank, an ODFI. As part of this relationship, Prestamos must agree to be bound by the Nacha Rules. *See* Nacha R. § 2.2.2.1(b).

Nacha Rules); *id.*, Def_Appx_0010 ("An RDFI may return Entries for any reason, except as otherwise provided in Article Three"). It is therefore not surprising that Plaintiffs' own SBA "experts," both of whom held top-level SBA positions that included management of the PPP, conceded that it was impossible for a lender to force a borrower's bank to accept a disbursement of funds. SMF ¶ 8; Ex. 3, Def_Appx_0017, 90:20–23 ("You, as Prestamos . . . cannot force a bank to take money."); Ex. 4, Def_Appx_0022–23, 86:6–87:9, Def_Appx_0025–26, 96:24–97:10 (agreeing that lender could not force bank to accept disbursed funds, and could only "try and rectify the situation").

B. The PPP Loans at Issue

Each Plaintiff executed a promissory note (the "Note") and provided the Note and related documents to Prestamos (collectively, the "Loan Documents"), including an account number at the borrower's bank so Prestamos would know where to disburse the funds. SMF ¶ 9; Pls.' App'x in Supp. of Pls.' Mot. for Class Cert. ("Pls.' App'x"), Exs. 1–10, ECF Nos. 139-2–139-11. In the account certification portion of the Loan Documents, the borrower "certif[ied] that the account information provided below is true and accurate in all material respects." SMF ¶ 10; ECF 108 at 117 (Third Amended Complaint, Ex. A). Consistent with the Loan Documents, Prestamos disbursed the approved amount of PPP funds to each Plaintiff at his or her designated bank account, but as shown below each Plaintiff's bank returned the funds.

Plaintiff	Date Returned	ACH Return Code	ACH Return Code Official Title
Bradley Smith, Sharon	6/11/2021	R03	No Account/Unable to Locate Account
Henderson, Kristina	5/13/2021	R03	No Account/Unable to Locate Account
Horne, Jahbrael	6/7/2021	R03	No Account/Unable to Locate Account
Johnson, Alyshia	6/2/2021	R16	Account Frozen
Jones, Jamie	6/20/2021	R23	Credit Entry Refused by Receiver

Marshall, Alicia	5/13/2021	R23	Credit Entry Refused by Receiver
Martin, John	5/26/2021	R17	File Record Edit Criteria
Marvel, Lametria	5/28/2021	R23	Credit Entry Refused by Receiver
Townsend, Paris	6/16/2021	R23	Credit Entry Refused by Receiver

SMF ¶ 11; Ex. 6, Def_Appx_0041.[3] None of the Loan Documents imposes an obligation on Prestamos to undertake alternative methods to fund a loan if a Plaintiff's self-designated bank rejects the disbursement from Prestamos.

The SBA and the U.S. Secret Service issued guidance authorizing a borrower's bank (the RDFI to return to the lender any PPP disbursements that the RDFI believed "w[ere] initiated due to fraud." SMF ¶ 13; Ex. 7, Def_Appx_0042–43. The guidance directed RDFIs to use certain ACH return codes for suspicious PPP activity. SMF ¶ 14; Ex. 7, Def_Appx_0042–43. Similarly, RDFIs that accepted disbursements of PPP funds for borrowers they suspected were ineligible sometimes contacted Prestamos and the SBA seeking to return these funds. SMF ¶ 15; Ex. 8, Def_Appx_0049–50; *see also, e.g.*, Ex. 9, Def_Appx_0085–176.

In such instances, the SBA required that Prestamos take prompt action to "investigat[e] the potential fraud on these loans," and "take action immediately to recover on these loans." SMF ¶ 16; Ex. 7, Def_Appx_0048; *see also* Ex. 10, Def_Appx_0177 (email from SBA to Prestamos identifying fraudulent PPP loan disbursed from Prestamos to a Citizens' Bank account and directing Prestamos to "work with Citizens to have those funds returned."). If fraud was

[3] Gregory Lloyd's designated financial institution initially accepted the disbursement of funds (via ACH transfer), but did not let Mr. Lloyd access the funds for over a year based on suspected fraud. SMF ¶ 12; Ex. 13, Def_Appx_0327. After a year, the financial institution, Capital One, moved the funds into an escrow account and, ultimately, returned the funds to Prestamos. *Id.*

flagged, SBA directed Prestamos as follows: "[p]lease DO NOT disburse these funds until the investigation has been completed." SMF ¶ 17; Ex. 11, Def_Appx_0179.

When a borrower's bank returned a disbursement of PPP funds, Prestamos worked with its loan service provider to conduct enhanced due diligence on the borrower's loan file by requesting additional document(s) from the borrower to confirm eligibility, including a full federal tax return from 2019 or 2020. SMF ¶ 18; Ex. 16, Def_Appx_0429; Ex. 5, Def_Appx_0033–34, ¶¶ 39–45. Notably, nothing in the Loan Documents obligated Prestamos to conduct this enhanced due diligence review.

Each of the ten Plaintiffs submitted documents that were either incomplete, inaccurate, or confirmed Plaintiff's ineligibility for a PPP loan. SMF ¶ 19; Ex. 12, Def_Appx_0181–85. Prestamos subsequently canceled Plaintiffs' loans. SMF ¶ 20; Ex. 5, Def_Appx_0034, ¶ 47. In September 2021—before Plaintiffs filed this case—Prestamos returned the credit advances from the Federal Reserve for Plaintiffs' loans to the federal government. SMF ¶ 21; Ex. 5, Def_Appx_0035, ¶ 51.

III. PROCEDURAL HISTORY

A. Initial Pleadings and Motion Practice

Plaintiffs filed their initial class action complaint on October 1, 2021. *See* ECF No. 1. Plaintiffs subsequently filed two amended complaints, and this Court docketed the Second Amended Complaint ("SAC") on May 20, 2022. *See* ECF No. 42. Plaintiffs' SAC alleged four causes of action against Prestamos: Breach of Contract (Count I); and Violation of California, Illinois, and Ohio Consumer Protection Laws (Counts II – IV). SAC ¶¶ 241–313.

Prestamos moved to dismiss Plaintiffs' SAC on June 3, 2022. *See* ECF No. 46. On March 30, 2023, the Court issued an order granting Plaintiffs' motion to dismiss Counts II–V, but permitted Plaintiffs to continue pursuing their breach of contract claim (Count I) on the ground that key parts of the purported contracts between Prestamos and the putative class members were "ambiguous." *See* ECF No. 56 at 21, 35–36. On May 2, 2024, Plaintiffs filed a Third Amended Complaint ("TAC") alleging a single cause of action for breach of contract against Prestamos. *See* ECF No. 108, ¶¶ 418–36.

B. Class and Merits Discovery

The Court bifurcated discovery into a class phase and a merits phase. ECF 102. During the class phase (Phase I), Plaintiffs' counsel voluntarily dismissed twelve of the original twenty-two class representatives based on deficiencies and inconsistencies in their loan files and/or their lack of cooperation with discovery. Although Plaintiffs intimate that these dismissals were a product of Prestamos's allegedly "onerous discovery demands," Pls.' Br. in Supp. of Mot. for Class Cert. at 11, ECF No. 139, the facts tell a different story. One dismissed class representative was not SBA-approved and did not sign the Loan Documents. Ex. 14, Def_Appx_0371. Another applied for multiple PPP loans. *Id.* Two received their PPP funds and spent them. *Id.* And one received his PPP funds and withdrew some before his bank froze his account, only to return the withdrawn funds to his bank and request that his bank return the funds to Prestamos. *Id.*

Also during discovery, Defendants requested that Plaintiffs produce copies of their federal income tax returns and bank statements (among other documents relating to the existence and historical financial results of Plaintiffs' purported sole proprietorships), to determine whether Plaintiffs provided accurate information to Prestamos and the SBA regarding their eligibility for PPP loans. Noting the paucity of the documents Plaintiffs produced, the Court ordered them to produce these documents for the years 2019–2021 or, in the alternative, to "provide written certifications that, following a diligent search on behalf of Plaintiffs and counsel, Plaintiffs possess no responsive documents in their care, custody, or control." ECF 125. Each of the ten

Plaintiffs remaining in the case submitted a certification indicating that he or she was unable to produce responsive documents that could demonstrate their eligibility for PPP loans. Ex. 15, Def_Appx_0386–97.

On September 6, 2024, Plaintiffs moved for class certification. ECF Nos. 138, 139. On October 4, 2024, Prestamos timely filed an opposition to Plaintiffs' motion for class certification (the "Opposition"), as well as a motion to exclude Plaintiffs' class certification experts. ECF Nos. 142, 143.

On February 28, 2025, just a few weeks before the merits discovery deadline, Plaintiffs served Requests for Admission ("RFAs") and noticed depositions. Prestamos timely responded to Plaintiffs' RFAs on March 31, 2025. Plaintiffs deposed David Castillo, Prestamos's Senior Credit Officer, on April 4, 2025, and Jose Martinez, Prestamos's President, on April 9, 2025.

C. Class Certification Decision

On April 30, 2025, the Court denied Plaintiffs' motion for class certification, holding that Plaintiffs could not establish commonality and typicality required by Fed. R. Civ. P. 23(a) or predominance required by Fed. R. Civ. P. 23(b) principally because the Plaintiffs' banks returned Prestamos's disbursements for reasons specific to each Plaintiff. *See* ECF 152 at 14–15 ("Given these varying circumstances, the central question will have different answers on the many possible reasons why each Plaintiff's loans were returned. This defeats commonality.").

Following the Court's denial of class certification, the Plaintiffs consist of ten individual borrowers, and Prestamos seeks summary judgment against all of them.

IV. <u>ARGUMENT</u>

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, a "court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). As such, "[t]he party moving for summary judgment must 'identify those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.'" *Atkins v. City of Reading*, 2024 U.S. Dist. LEXIS 133065, at *7–8 (E.D. Pa. July 29, 2024) (alteration incorporated) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). In response, the non-moving party must "designate specific facts showing that there is a genuine issue for trial." *Celotex Corp.*, 477 U.S. at 324 (internal quotation marks omitted). "The mere existence of a scintilla of evidence in support of the nonmovant's position will be insufficient, there must be evidence on which the jury could reasonably find for the nonmovant." *Atkins*, 2024 U.S. Dist. LEXIS 133065, at *8 (alterations incorporated) (quoting *Daniels v. Sch. Dist. of Phila.*, 776 F.3d 181, 192 (3d Cir. 2015)). As explained below, these established standards support entry of summary judgment for Prestamos.

A. The Plain Language of the Loan Documents Precludes Plaintiffs' Claim

The single-count TAC alleges that, by way of the Loan Documents, "defendant Prestamos entered into a binding agreement with each of the Plaintiffs and the members of the proposed Classes to fund their respective PPP loans." TAC ¶ 425. Plaintiffs further contend, without citing to any specific provision in the Loan Documents, that "Prestamos breached its obligations to fund Plaintiffs' and Class members' PPP loans under the Loan Documents by failing to fund the loans within 10 days of the SBA's approval of the loans and assignment of loan numbers." *Id.* ¶ 429.

But the plain language of the Loan Documents, which undeniably governs here, requires no such thing. *See, e.g.*, *M.P. v. Penn-Delco Sch. Dist.*, 2015 U.S. Dist. LEXIS 157000, at *8 (E.D. Pa. Nov. 20, 2015) ("Where the language of the contract is clear and unambiguous, a court is required to give effect to the plain language."); *Vinculum, Inc. v. Goli Techs., LLC*, 310 A.3d

231, 247 (Pa. 2024) ("this Court is not permitted to deviate from the plain language of an unambiguous contract"); *Steuart v. McChesney*, 444 A.2d 659, 661 (Pa. 1982) ("It is well established that the intent of the parties to a written contract is to be regarded as being embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement." (citations omitted)); *see also* Restatement 2d of Contracts, § 202(a) (1981) ("where language has a generally prevailing meaning, it is interpreted in accordance with that meaning").

The Loan Documents that Prestamos used were standard SBA forms. *See* TAC, Ex. A (SBA Form 147); Ex. 3, Def_Appx_0016, 66:8–18 ("Prestamos used the standard form note"). Specifically, the Note, which sets forth the "payment terms" for the loan, includes language obligating the "Borrower . . . to pay to the order of Lender . . . interest on the unpaid principal balance," explains how a borrower may default on the loan, and spells out the lender's rights if there is a default. TAC, Ex. A. The Note also requires the borrower to identify the bank that will receive the loan proceeds, and the borrower's account number at that bank. Each of the Plaintiffs identified a bank and an account, but as discussed above, those banks did not accept the loan proceeds. *See* Pls.' App'x, Exs. 1–10. Strikingly absent from the Loan Documents is any language requiring Prestamos to ensure that loan funds reach Plaintiffs in a final, irrevocable manner, let alone when Plaintiffs' own banks rejected the transactions due to fraud concerns or Plaintiff's errors.

In an analogous case against a lender alleging failure to fund a PPP loan, the court in *Asherson v. JP Morgan Chase Bank, N.A.*, 2024 U.S. Dist. LEXIS 238909, at *1–2 (C.D. Cal. Oct. 23, 2024), dismissed the borrower's breach of contract claim with prejudice. In that case, a law firm and its partners sued a lender for allegedly miscalculating the firm's PPP loan amount and failing to process its loan forgiveness application. Rejecting the plaintiffs' contention that the defendant bank was responsible for calculating the PPP loan amount, the court reasoned that the "[p]laintiffs point to no provisions in the promissory note obligating [the defendant bank] to calculate a loan amount, much less 'properly' to calculate an amount that would be fully forgiven." *Id.* at *14 (citations omitted). It further explained that "the promissory note reflects that it is a unilateral contract governing only [the defendant bank's] loan to [the] [p]laintiffs in exchange for repayment on the agreement's terms—not a calculation of the loan amount." *Id.* at *16. Moreover, this was by design: "**The promissory note goes out of its way to ensure that [the defendant bank] will not be held liable for its role in this rapidly deployed program that sought to get money to businesses in need as quickly as possible.**" *Id.* (emphasis added).

Similar to *Asherson*, the Loan Documents do not impose the obligations upon which Plaintiffs purport to rely. As shown above, the banks designated by each Plaintiff in his or her Loan Documents rejected Prestamos's ACH transfer of the PPP loan funds. It is undisputed that Prestamos disbursed these loan funds, and nothing in the Loan Documents required Prestamos to do more. Stated another way, Prestamos had no contractual duty to ensure that Plaintiffs' banks accepted the disbursement of PPP loan funds.

Nor did Prestamos have a duty to use other methods for sending loan funds, such as prepaid debit cards, after Plaintiffs' banks rejected the ACH transfers. Indeed, requiring Prestamos to issue money to a debit card in order to bypass the borrower's bank rejection based on ineligibility or fraud would make no sense. To the contrary, faced with ACH return entries from Plaintiffs' own banks that signaled borrower ineligibility and/or fraud, Prestamos subjected these Plaintiffs' applications to an enhanced due diligence process referred to as "reverification," even though the Loan Documents did not require Prestamos to give borrowers a do-over. *See*

Ex. 12, Def_Appx_0181–326; Ex. 17, Def_Appx_0433–434, 60:10–61:3 (describing Prestamos's process when it received ACH return entries). Only if a borrower satisfied that process would Prestamos issue a prepaid debit card as a courtesy to a borrower. Ex. 2, Def_Appx_0007, ¶ 7.

In sum, because Plaintiffs "have not demonstrated that the contract with [Prestamos] included the promises that they allege were breached," and "cannot show that [Prestamos] failed to do something that the contract required it to do," *Asherson*, 2024 U.S. Dist. LEXIS 238909, at *18 (citation omitted), Prestamos is entitled to judgment as a matter of law.

B. Plaintiffs' Interpretation of the Loan Documents is Commercially Unreasonable

Even if Plaintiffs could point to some language in the Loan Documents that might raise a question regarding Prestamos's contractual obligations to control the ultimate destination of PPP loan proceeds, which they have not done, the Court should still grant summary judgment to Prestamos. It is well-established that contracts should not be interpreted to produce results that are absurd, commercially unreasonable, or contrary to the reasonable expectations of the parties to the contract. *See Shipp v. Marsh*, 2024 U.S. Dist. LEXIS 45843, at *12 (W.D. Pa. Mar. 15, 2024); *Leica Geosystems, Inc. v. L.W.S. Leasing, Inc.*, 872 F. Supp. 2d 1191, 1206 (D. Colo. 2012); *see also In re Welded Constr., L.P.*, 605 B.R. 35, 40 (Bankr. D. Del. 2019). Further, courts consistently refuse to interpret contracts to impose impossible conditions on any party involved. *See* 11 Williston on Contracts § 32:11 (4th ed. 2024) ("[I]nterpretations which render the contract valid or its performance possible are preferred to those which render it invalid or its performance impossible."); *cf. Wembelton Dev. Co. v. Travelers Ins. Co.*, 206 N.W.2d 222, 225 (Mich. Ct. App. 1973) ("Courts will not interpret a contract in a manner which would impose an absurd or impossible condition on one of the parties.");

This principle of interpretation is especially relevant here given the need to facilitate the quick and seamless disbursement of the huge volume of loan funds being made under the "rapidly deployed" PPP program. *See* 86 FR 3692–01, 3710 (noting disbursement must occur within ten calendar days of loan approval). In order to meet these program goals, Prestamos and other PPP lenders used ACH transfers to distribute loan proceeds, which in turn required these lenders to follow the rules governing such transfers.

"The ACH is a national network of banks and financial institutions which transfers funds electronically to and from bank customers' accounts." *Clinton Plumbing & Heating of Trenton, Inc. v. Ciaccio*, 2010 U.S. Dist. LEXIS 113215, at *28 (E.D. Pa. Oct. 22, 2021). It "is the backbone of the U.S. financial system" through which 90.6% of American workers received their pay and 99% of Social Security Payments are made. Nacha, *ACH Payments Fact Sheet*, *available at* https://www.nacha.org/content/ach-payments-fact-sheet (last visited May 7, 2025). In fact, "[t]he ACH Network reaches all U.S. bank and credit union accounts," and, in 2024, the network processed 33.6 billion payments. *Id.*

Banks that make or receive ACH transfers must follow the Nacha Rules, which "establish the contractual obligations between the parties to ACH transactions." *Ciaccio*, 2010 U.S. Dist. LEXIS 113215, at *28; *see also Andrichyn v. TD Bank, N.A.*, 93 F. Supp. 3d 375, 381 (E.D. Pa. 2015) (explaining that "[t]he ACH Network is operated by the Electronic Payments Association, known as 'NACHA' . . . [that] promulgates a set of operating rules which provide the legal foundation for the ACH Network"); Ex. 2, Def_Appx_0008 ("A Participating [Depository Financial Institution ("DFI")] must comply with these Rules and warrants that it is legally able to comply with all applicable requirements of these Rules.").

Under the Nacha Rules, once Prestamos initiated the fund transfer via the ACH, it had no control over the final destination of that transfer, which was entirely up to the financial institution receiving the transfer. *See* Ex. 2, Def_Appx_0010 ("An RDFI [such as the banks identified by Plaintiffs in their Loan Documents] may return Entries for any reason, except as otherwise provided in Article Three"); *id.*, Def_Appx_0008 (Restrictions on RDFI's Right to Transmit Return Entries).

Critically for purposes of this case, the Nacha Rules do not authorize Prestamos to require the RDFI to accept the ACH transfer by overriding the return entry or otherwise. *Id.*, Def_Appx_0008. As a result, there is no "commercially reasonable" reading of the Loan Documents that would require the obligation that undergirds Plaintiffs' breach of contract claim without imposing an "impossible condition" on Prestamos. *See Alt. Aviation Servs., Inc. v. Meggitt (UK) Ltd.*, 207 F. App'x 506, 512 (6th Cir. 2006) (it is unreasonable to interpret a contract to as obligating a party to do something it "could not possibly promise"); *Leica Geosystems, Inc.*, 872 F. Supp. 2d at 1206 (same).

It bears emphasis that Plaintiffs have failed to identify any provision that even arguably supports such an obligation. To the contrary, it is undisputed that Prestamos complied with the PPP regulations and Nacha Rules by disbursing the funds to the bank accounts designated by each Plaintiff for receiving PPP loan funds. 86 FR 3692–01, 3710; Ex. 6, Def_Appx_0041; Ex.13, Def_Appx_0327–370. And despite Prestamos's efforts, the recipient banks—chosen by each Plaintiff—rejected (or otherwise refused to release) the PPP loans for reasons outside of Prestamos's control. The banks' rejection of PPP loans was consistent with the Nacha Rules and regulatory guidance, including a document jointly issued by the SBA and the U.S. Secret Service regarding return entries in the PPP based on suspicions of borrower fraud. *See* Ex. 7, Def_Appx_0042–43 (SBA and Secret Service guidance informing PPP lenders and borrowers' banks to return to the lender any PPP disbursements that the bank believed "w[ere] initiated due to fraud").

In sum, Plaintiffs seek to impose upon Prestamos an obligation that appears nowhere in the Loan Documents and that expressly conflicts with the rules governing Prestamos's transfer of any loan proceeds. It is no surprise that even Plaintiffs' own experts conceded that Prestamos could not do this. *See* Ex. 3, Def_Appx_0017, 90:20–23 ("You, as Prestamos . . . cannot force a bank to take money."); Ex. 4, Def_Appx_0022–23, 86:6–87:9, Def_Appx_0025–26, 96:24–97:10 (agreeing that lender could not force bank to accept disbursed funds, and could only "try and rectify the situation").

C. Plaintiffs Failed to Meet Conditions Precedent to the Loan Documents

Even if Plaintiffs could identify language somewhere in the Loan Documents arguably supporting their breach of contract claim, summary judgment would still be appropriate because the borrowers failed to satisfy two conditions precedent to receive loan proceeds and these failures excused Prestamos from an obligation to fund the loan. *See Shovel Transfer & Storage, Inc. v. Pa. Liquor Control Bd.*, 739 A.2d 133, 139 (Pa. 1999) ("Where a condition has not been fulfilled, the duty to perform the contract lays dormant and no damages are due for non-performance."); *Burton v. Nationstar Mortg. LLC*, 2013 U.S. Dist. LEXIS 75467, at *16 (E.D. Cal. May 28, 2013) ("A contract is unenforceable if a condition precedent is not met." (citations omitted)); Restatement 2d of Contracts, § 224 ("A condition is an event, not certain to occur, which must occur, unless its non-occurrence is excused, before performance under a contract becomes due.").

Cave v. Saxon Mortgage Services, 2016 U.S. Dist. LEXIS 141033 (E.D. Pa. Oct. 11, 2016), illustrates this principle in a factual context similar to this case. In *Cave*, the plaintiffs brought a putative class action under a federal program that provided relief to borrowers due to a national economic downturn, similar to the PPP. The district court denied class certification because some of the named plaintiffs failed to meet conditions precedent. *See, e.g.*, *id.* at *64 (named plaintiff "failed to satisfy the second condition precedent of being granted a permanent modification" and that "makes him atypical of the . . . [c]lass since he was never actually eligible"); *id.* at *71–72 ("Whether a borrower submitted accurate financial information to [the defendant] is a condition precedent to receiving a permanent modification under the terms of the" federal loan program, and because questions about that issue did not predominate, class certification was improper)*; see also Smith v. Saxon Mortg. Servs.*, 2013 U.S. Dist. LEXIS 66101, at *15 (E.D. Pa. May 9, 2013) (identifying conditions precedent to loan program eligibility).

Like the federal loan program in *Cave*, the PPP imposed two conditions precedent on the borrower. First, the PPP required the borrower to designate an appropriate bank account to receive the PPP funds by providing an executed Information and Bank Account Certification and Authorization ("Bank Account Form"). Pls.' App'x, Exs. 1–10. That form required each borrower to "certify in good faith to the below information to be the rightful and correct owner of the account and" and also provided that each borrower was "responsible for the accuracy and information provided below and authorize[d] the lender or its affiliates or partners to deposit the loan proceeds on the company's behalf." *See e.g.*, ECF 139-2 at 14. Moreover, on the Bank Account Form, each Plaintiff "further certif[ied] that the account information provided below is true and accurate in all material respects." *Id.* As the owners of sole proprietorships, Plaintiffs were uniquely situated to provide information about their own bank accounts into which Prestamos could transfer the PPP loan funds.

For each Plaintiff, Prestamos attempted to transfer the loan funds via ACH, and in each case the Plaintiff's bank rejected the funds, and ultimately issued return entries, preventing the PPP loan funds from being deposited into the designated accounts. As noted above, under the Nacha Rules, Ex. 2, Def_Appx_0008, and as conceded by Plaintiffs' experts, Ex. 3, Def_Appx_0017, 90:20–23; Ex. 4, Def_Appx_0022–23, 86:6–87:9, Def_Appx_0025–26, 96:24–97:10, Prestamos could not force Plaintiffs' designated financial institutions to accept PPP loan funds.

A second condition precedent required the borrower to comply with the documentation requirements created by the SBA to establish eligibility for a PPP loan. 86 FR 13149, 13151 (Mar. 8, 2021) (setting forth use of Schedule C in PPP loans); 86 FR 3692, 3704 (listing requirements, including lender's application form and payroll documentation); Ex. 4, Def_Appx_0021, 50:3–6 (a borrower applying for a PPP loan had to submit required documents); Ex. 3, Def_Appx_0015, 52:3–6 (same). The PPP program guidelines required a borrower to provide specific documents, including a Schedule C to substantiate the PPP loan amount, a bank statement or record proving self-employment, and a full federal tax return. 86 FR 13149, 13151.

Plaintiffs have acknowledged that providing all required Loan Documents was a condition precedent to Prestamos's disbursement obligation, Pls.' Mot. for Class Cert. at 1–2, ECF No. 138, but no Plaintiff provided a complete and accurate set of documents, as required by the SBA regulations. As detailed in Exhibit 12, each Plaintiff's Loan Documents were inaccurate, incomplete, or contradicted by the Plaintiff's other submissions. For example: Plaintiff Sharon Bradley Smith's gross income on her 2020 Schedule C, submitted with her PPP loan application, does not match the gross income on the 2020 federal tax return she produced during discovery in this matter; Jahbrael Horne submitted a 2020 Schedule C with his PPP loan application, but only the first two pages of his full 2020 federal tax return during reverification; Jamie Jones did not provide any Schedule C or any information about gross income from operating a business; Gregory Lloyd submitted two different versions of his 2019 federal tax return; and Paris Townsend submitted a 2019 Schedule C with a gross income amount different than what was listed in the 2019 federal tax return she submitted during reverification. Ex. 12, Def_Appx_0181–85. The failure of each Plaintiff to submit necessary documentation—either with their applications or during the reverification process Prestamos voluntarily engaged in to give Plaintiffs a second opportunity to receive their PPP loans—forecloses Plaintiffs' breach of contract claim.

In sum, Plaintiffs' failure to meet one or both conditions precedent—designation of an appropriate bank account and submission of required documentation—excused Prestamos from any obligation to disburse funds, however defined.

D. Prestamos Did Not Cause Any Damages to Plaintiffs

For the myriad reasons explained above, Plaintiffs cannot, as a matter of law, establish that Prestamos breached any contract. But even assuming *arguendo* that they could do so, they still could not show that this breach caused them any damages. It is well established that, to recover damages on a breach of contract claim, "the plaintiff must show a causal connection between the breach and the loss." *Trans Penn Wax Corp. v. McCandless*, 50 F.3d 217, 231 (3d Cir. 1995) (quoting *Logan v. Mirror Printing Co.*, 600 A.2d 225, 226 (Pa. Super. 1991)).

The claimed damages here result from Plaintiffs' failure to obtain the loan proceeds. But it is undisputed that this resulted from the actions of the Plaintiffs' own banks, not Prestamos. There is no causal connection between Prestamos's alleged actions and Plaintiffs' alleged damages. *See DiCicco v. Citizens Fin. Grp., Inc.*, 2015 U.S. Dist. LEXIS 120798, at *26–27

(E.D. Pa. Sept. 10, 2015) ("breach of contract damages must be damages that actually resulted from the defendant's breach"); *Zylbert v. Beddingfield*, 2021 Cal. Super. LEXIS 158456, at *15 (Cal. Sup. Ct. Aug. 12, 2021) (noting that the defendant "establish[ed] the existence of a superseding cause preventing [the d]efendant from being liable for any breach of contract").

E. The Court Should Reject Plaintiffs' Effort to Sidestep the Contract by Reference to Unrelated Documents

In an effort to circumvent their inability to identify relevant contractual language supporting their claim, Prestamos anticipates that Plaintiffs will continue to make baseless and irrelevant allegations about statements Prestamos made on the Form 1502s it filed with the SBA concerning the funding of Plaintiffs' loans.

The Court should reject such an argument out of hand because a party's relationship with a third party entirely separate from the relevant contract has no bearing on the objective terms of the contract or any potential breach thereof. *Pierce Assocs., Inc. v. Nemours Found.*, 865 F.2d 530, 536 (3d Cir. 1988). The Form 1502 is just such a document. It governs the relationship between Prestamos and the SBA, not the relationship between either entity and the Plaintiffs. Any claim invoking Form 1502 is therefore inapposite.

V. CONCLUSION

For the foregoing reasons, the Court should grant Prestamos's motion and enter summary judgment in its favor.

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Respectfully submitted,

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