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

DEFENDANT'S STATEMENT OF UNDISPUTED MATERIAL FACTS

Defendant Prestamos CDFI, LLC ("Defendant" or "Prestamos"), by and through its attorneys, Ballard Spahr LLP, provides the following Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment:

A. The PPP Regulations

1. 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. 86 FR 3692, 3695–96 (Jan. 14, 2021).

2. Borrowers were 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." *Id.* at 3706; *see also* Ex. 1, Def_Appx_003.[1]

[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.

3. 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[.]" 86 FR at 3710.

4. The Federal Reserve maintained a credit facility from which PPP lenders could borrow funds to issue PPP loans. Ex. 5, Def_Appx_0030, ¶ 21.

5. Prestamos utilized credit advances from this facility. *Id.*, Def_Appx_0031, ¶ 28.

6. The regulations did not require a lender to ensure that a borrower received and was able to draw upon the PPP loan funds. *See* 86 FR 3692.

7. Rules that govern fund transfers, namely the National Automated Clearinghouse Association Operating Rules (the "Nacha Rules"), prevent a lender from accomplishing this result even if it wanted to because 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. *See* Ex. 2, Def_Appx_007, ¶¶ 4–6 (identifying familiarity with and purpose of Nacha Rules); *id.*, Def_Appx_0010 ("An RDFI may return Entries for any reason, except as otherwise provided in Article Three").

8. 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. 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

9. 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. Pls.' App. in Supp. of Pls.' Mot. for Class Cert. ("Pls.' App'x"), Exs. 1–10, ECF Nos. 139-2–139-11.

10. 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." ECF 108 at 117 (Third Amended Complaint, Ex. A).

11. 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

Ex. 6, Def_Appx_0041.

12. Gregory Lloyd's designated financial institution 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. 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.*

13. The SBA and the U.S. Secret Service issued guidance authorizing borrowers' banks (*i.e.*, the Receiving Depository Financial Institutions ("RDFIs")) to return to the lender any PPP disbursements that the RDFI believed "w[ere] initiated due to fraud." Ex. 7, Def_Appx_0042–43.

14. The guidance directed RDFIs to use certain ACH return codes for suspicious PPP activity. *Id.*

15. RDFIs that accepted disbursements of PPP funds for borrowers they suspected were ineligible sometimes contacted Prestamos and the SBA seeking to return these funds. Ex. 8, Def_Appx_0049–50; *see also, e.g.*, Ex. 9, Def_Appx_0085–176.

16. 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." 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.").

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

18. 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. Ex. 16, Def_Appx_0429; Ex. 5, Def_Appx_0033–34, ¶¶ 39–45.

19. Each of the 10 named Plaintiffs submitted incomplete and/or inaccurate documents, or documents that confirmed Plaintiff's ineligibility for a PPP loan. Ex. 12, Def_Appx_0181–85.

20. Prestamos subsequently canceled Plaintiffs' loans. Ex. 5, Def_Appx_0034, ¶ 47.

21. In September 2021—before Plaintiffs filed this case—Prestamos returned the credit advances from the Federal Reserve for Plaintiffs' loans to the federal government. *Id.*, Def_Appx_0035, ¶ 51.

Dated: May 7, 2025

Respectfully submitted,

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