

**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 OPPOSITION TO PLAINTIFFS' MOTION FOR
PARTIAL RECONSIDERATION OF THE COURT'S APRIL 30, 2025 RULING**

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PRELIMINARY STATEMENT

In their Motion for Reconsideration, Plaintiffs ask the Court to reverse the portion of its April 30 Order denying certification of the Declaratory Judgment Class (the “Original DJ Class”) under Fed. R. Civ. P. 23(b)(2). As described below, the Motion comes nowhere near meeting the “clear error of law” or “manifest injustice” required for the “extraordinary remedy” of reconsideration. *Harrison v. City of Lancaster*, No. 5:20-cv-01879-JMG, 2021 U.S. Dist. LEXIS 112543, at *5 (E.D. Pa. June 16, 2021) (Gallagher, J.).

ARGUMENT

I. Plaintiffs Improperly Use Reconsideration as a Device to Invent a New Claim and a New Declaratory Judgment Class.

“Granting a motion for reconsideration is ‘an extraordinary remedy’ and should only be done ‘sparingly.’” *Id.* (citing *D’Angio v. Borough of Nescopeck*, 56 F.Supp.2d 502, 504 (M.D. Pa. 1999)); *accord* Gallagher J., Policies and Procedures § II.B.7. A district court may reconsider and amend a judgment based on “the need to correct a clear error of law or prevent manifest injustice.” *In re Processed Egg Prods. Antitrust Litig.*, 962 F.3d 719, 729 (3d. Cir. 2020). Reconsideration motions “may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.” *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (citations omitted). In contrast to a renewed motion for class certification pursuant to Rule 23(c)(1)(C)—which must be based on either “new evidence [or] a more narrow and clearer definition of a class,” and which Plaintiffs have not filed—a motion for reconsideration imposes more stringent standards and is not intended to provide parties “multiple bites at the apple throughout the litigation.” *Hargrove v. Sleepy’s LLC*, 974 F.3d 467, 476-77 (3d Cir. 2020).

Plaintiffs' Motion defies each of these standards. For starters, Plaintiffs never pled a cause of action that Prestamos wrongfully demanded repayment of unfunded loans. While Plaintiffs have lodged unsubstantiated allegations that Prestamos pursued repayment of unfunded loans (among other false claims), the operative Complaint consists of a single count for breach of contract asserting that "Prestamos failed to complete its end of the bargain by failing to make the PPP loans to Plaintiffs and the members of the Classes" *See* ECF No. 108 ¶ 427 (Third Am. Compl.). Consistent with this theory, Plaintiffs sought to certify two classes: a "Damages Class" and a "Declaratory Judgment Class," and they defined both classes as consisting of individuals "who executed and submitted their Loan Documents and provided to Prestamos all required loan documentation, but as to whom Prestamos . . . failed to disburse the PPP loan proceeds." ECF No. 138 at 1-2 (Mot. for Class Certification); ECF No. 152 at 5-6 (Op. Denying Class Certification).

In their Motion for Reconsideration, Plaintiffs have invented a new claim on behalf of a new "Declaratory Judgment Class," consisting of individuals who did not receive PPP loans but from whom Prestamos nonetheless demanded repayment (hereinafter the "New DJ Class"). It is difficult to conceive of a more inappropriate basis for reconsideration.¹

II. The Court Properly Denied Certification of the Original DJ Class and Should Not Certify the New DJ Class Created in the Reconsideration Motion.

Quite apart from their abuse of the reconsideration standards, Plaintiffs cannot establish that their New DJ Class has the "commonality" or "cohesiveness" required for certification under Rule 23(b)(2). Notwithstanding extensive class and merits discovery, Plaintiffs identify

¹ Moreover, the New DJ Class is based on a faulty factual premise. While Plaintiffs have claimed that *some* Plaintiffs received demand for repayment in error, there is no evidence that Prestamos in fact pursued repayment of unfunded loans or that any plaintiff or borrower repaid money that they never received.

only three (out of the current ten) Named Plaintiffs and no specific putative class members from whom Prestamos allegedly sought repayment of unfunded PPP loans. And although these Named Plaintiffs claimed in their depositions that they received emails demanding repayment, they never produced the alleged emails.² *See* ECF No. 155 at 2-3 (Pls’ Mem. in Supp. of Mot. for Recons.). Nor have Plaintiffs produced any evidence that Prestamos in fact pursued repayment of loans that Plaintiffs’ banks rejected (because Prestamos did not). Plainly, any proof of class membership is inherently individualized because it would require a detailed review of each borrower’s files to assess whether Prestamos ever made a repayment demand and, if so, the circumstances and timeframe in which Prestamos pursued or withdrew any such demands. Plaintiffs have identified no classwide mechanism to make these essential determinations. These myriad individualized issues prevent Plaintiffs from meeting the commonality requirement of Rule 23(a)(2) or the cohesiveness requirement of Rule 23(b)(2).

A. Neither the New DJ Class nor the Original DJ Class Can Satisfy “Commonality” or “Typicality” as Required by Rule 23(a).

As noted above, this case consists of a single count alleging that Prestamos breached a contract to fund PPP loans. Plaintiffs correspondingly moved to certify a damages class and a declaratory judgment class, both consisting of borrowers whose PPP loans were unfunded.

It is well settled that all putative classes, including a declaratory judgment class under Rule 23(b)(2), must “meet[] the requirements of Rule 23(a).” *Cave v. Saxon Mortg. Servs.*, Nos. 11-4586, 12-5366, 2016 U.S. Dist. LEXIS 141033, at *31 (E.D. Pa. Oct. 11, 2016) (denying

² Plaintiffs never produced the alleged emails sent to Johnson or Townsend, despite these emails being within the scope of Prestamos’s discovery requests. *See* ECF No. 142-24 at RFP Nos. 5, 7 (Opp’n to Class Certification Ex. 19). At the Court’s direction, each Named Plaintiff submitted signed certifications indicating that he or she was unable to locate and produce certain responsive documents regarding their PPP loans. *See* ECF No. 157-4 at Def_Appx_0386-97 (Def.’s Mot. for Summ. J. App. Vol. 2).

certification of (b)(2) class). Properly applying this standard, the Court denied certification of the damages class and the Original DJ Class for failure to meet the commonality requirement of Rule 23(a)(2) or the typicality requirement of Rule 23(a)(3). Thus, the Court held that “the central question is not common because each Plaintiffs’ loans were canceled for . . . different reasons,” ECF No. 152 at 14, and that Plaintiffs “cannot meet typicality because they are subject to unique defenses,” *id.* at 16.

In short, the individualized circumstances regarding the return of each Plaintiff’s loan funds precluded class certification. Even as improperly redefined, the New DJ Class would involve similarly individualized review of loan files. Moreover, Plaintiffs developed no factual record to support this New DJ Class, which is not surprising given that this new class is an afterthought designed to manufacture a colorable basis to seek reconsideration of this Court’s denial of their Motion for class certification.

For this reason alone, neither the Original DJ Class nor the New DJ Class meets the requirements of Rule 23(a), and there is no basis to seek reconsideration of the Court’s decision denying class certification.

B. Neither the Original DJ Class Nor the New DJ Class Is Cohesive as Required by Rule 23(b)(2).

In addition to satisfying the requirements of Rule 23(a), a declaratory judgment class also has to be “sufficiently cohesive under Rule 23(b)(2).” *Cave*, 2016 U.S. Dist. LEXIS 141033, at *31. *Cave* denied certification of a (b)(2) class for lack of cohesiveness in circumstances strikingly similar to those in this case. The plaintiffs in *Cave* sued a lender for breach of contract on behalf of a putative class of distressed mortgage borrowers who were denied permanent Home Affordable Modification Program contracts but failed to receive timely notification of the denials. The court declined to certify a class under Rule 23(b)(2) based on the lack of

cohesiveness, explaining that adjudication would require “reviewing the contents of each borrower’s loan file and thus raises myriad individual issues.” *Id.* at *37.

Similarly, here, the purported evidence Plaintiffs identify in support of Prestamos’s alleged repayment demands is inherently individualized. For two of these individuals (Johnson and Townsend), the sole evidence is deposition testimony proffered in this case. For the third individual (Lloyd), Plaintiffs also identified personalized troubleshooting correspondence between Lloyd and Prestamos.³ In each case, individualized reviews of the borrowers’ files—as well as fact-intensive depositions of each borrower—were necessary to assess whether and why requests for repayment were made and, if so, whether and why they were rescinded. And even after this individualized analysis, potentially important information remained unavailable for certain borrowers. *See supra* note 2 (Plaintiffs failed to produce documents borrowers claimed to have received evidencing repayment requests). In short, because determining whether a person is included within the putative class definition “requires reviewing the contents of each borrower’s loan file and thus raises myriad individualized issues,” the New DJ Class, like the Original DJ Class, lacks the necessary cohesion required under Rule 23(b)(2).

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs’ Motion for Reconsideration.

³ Lloyd’s circumstances also present the unique issue of whether his PPP loan was “unfunded.” Unlike the rest of the Named Plaintiffs, Lloyd’s bank accepted Prestamos’s disbursement of PPP funds to Lloyd, allowed the funds to remain in Lloyd’s account for nearly a year-and-a-half, but froze Lloyd’s account and his ability to access the funds. ECF No. 142 at 18.

Dated: May 16, 2025

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CERTIFICATE OF SERVICE

I, Thomas J. Gallagher IV, hereby certify that on this 16th day of May 2025, I caused a copy of the foregoing Defendant Prestamos's Memorandum of Law in Opposition to Plaintiffs' Motion for Partial Reconsideration, to be served on all counsel of record via email.

/s/ Thomas J. Gallagher IV

Thomas J. Gallagher IV