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

PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

Table of Contents

Table of Authorities

Page(s)

Cases

Statutes

Table of Abbreviations

ACH: Automated Clearing House

CARES Act: Coronavirus Aid, Relief and Economic Security Act

Classes: the Damages Class and Declaratory Judgment Class as defined in Plaintiffs' Motion for Class Certification (ECF No. 138)

CPLC: Prestamos' parent corporation Chicanos Por La Causa, Inc.

Class Member States: California, Michigan, Arizona, Utah, Texas, Indiana, Mississippi and New York

Defendant or Prestamos: Prestamos CDFI, LLC

Ex: Exhibits accompanying Plas Appx filed herewith

LSP: Lender Service Provider, which in Prestamos' case was Blueacorn PPP, LLC and/or its affiliates ("Blueacorn")

Loan Documents: the Note, Additional and Correction Documents Agreement (Errors and Omissions Agreement), Business Purpose Statement, Notice - No Oral Agreements, Written Consent of Governing Body, IRS W-9 Request for Taxpayer Identification Number and Certification, and Information and Bank Account Certification and Authorization form (*see, e.g.*, ECF No. 108 at Exhibit A; ECF Nos. 139-2 – 139-11)

PARs: Pledge and Advance Request forms for PPPLF advances

Plaintiffs: Alicia Marshall, Paris Townsend, Kristina Henderson, Jamie Jones, John Martin, Gregory Lloyd, Alyshia Johnson, Lametria Marvel, Jahbrael Horne and Sharon Bradley Smith

Plas Appx: Plaintiffs' Joint Appendix in Opposition to Defendant's Motion for Summary Judgment

PPP: Paycheck Protection Program

PPPLF: Paycheck Protection Program Liquidity Facility

SBA: U.S. Small Business Administration

TAC: Plaintiffs' Third Amended Class Action Complaint (ECF No. 108)

Plaintiffs[1] respectfully submit this in opposition to Prestamos' motion for summary judgment.

I. Introduction

It's true that this is a now one-count case. ECF No. 157-1 at 1. But it follows the Court's prior dismissal of additional, alternatively pleaded claims (ECF No. 56), and renders denying summary judgment on Plaintiffs' sole remaining breach of contract claim even more important.

Prestamos' motion provides no basis for summary dismissal. To the contrary, it's premised on a misleadingly incomplete part of the record. Crucially, in 20 pages of briefing, five pages of alleged undisputed facts, and over 400 pages of exhibits spread out into two volumes, Prestamos omits entirely the indisputable evidence in the record that it:

- falsely reported in its SBA Form 1502s that it funded each Plaintiff's loan;
- obtained loan fees for each Plaintiff's loan;
- obtained PPPLF advances for each Plaintiff's loan, although whether it repaid those advances back to the Federal Reserve is highly ambiguous as Mr. Castillo acknowledged (Ex. 21), and thus for purposes of this motion the inference is it did not;
- sought repayment from plaintiffs Lloyd, Johnson, Townsend and other unfunded PPP borrowers which is also part of Plaintiffs' declaratory judgment claim that Prestamos' motion also ignores; and
- locked Plaintiffs into relying exclusively on Prestamos per the Loan Documents and PPP rules, and deprived them of both the loans and any opportunity to even seek loan forgiveness contrary to the PPP's intent and over 90% of all funded PPP loans obtained.

---

[1] Unless otherwise noted, all capitalized terms have the meaning set forth in the Table of Abbreviations; all emphasis is added; all references to Ex. __ are to Plas Appx; and all internal quotations and citations are omitted.

These additional facts demonstrate genuine dispute concerning whether Prestamos' overall conduct at issue breached the parties' Loan Documents and PPP regulations. And that precludes summary judgment ***even if the Court credits in full all of Prestamos' alleged undisputed facts***.

Prestamos' defenses are also wrong on the merits. To take just one, it argues that the 1502s weren't contracts between the parties and that they're thus "irrelevant[.]" ECF No. 157-1 at 2. That asks the Court to ignore the realities of the PPP and Prestamos' participation in it as a matter of law. The 1502s reported the status of each Plaintiff's loan, triggered payment of the fee and, per Prestamos, was even necessary to secure the credit advance from the Federal Reserve. Ex. 18 ¶ 29. And Prestamos *admits* it lied in its 1502s by "us[ing] 'Funded' in order to initiate the credit advance from the Federal Reserve." *Id*. ¶ 31; Ex. 11.

The argument that Prestamos is absolved from liability because it tried to ACH the loans is also incorrect. It was commercially reasonable and the evidence shows that Prestamos agreed, in fact, to send prepaid debit cards to others who couldn't receive their loans by ACH, and told plaintiffs Johnson and Townsend that they would be funded that way. The argument that Prestamos wasn't "contractually obligated [to; sic] figure out how to get the loan funds to Plaintiffs through some other means" contradicts its position it shouldn't have funded their loans at all. ECF No. 157-1 at 1; 15-18. And the argument that it "caused no cognizable economic harm to the Plaintiffs" (*id*. at 2) is meritless because causation and damages are quintessentially jury questions, and especially so here given PPP loan forgiveness and Prestamos' attempt to obtain repayment from plaintiffs Lloyd, Johnson and Townsend. Prestamos' false 1502s, acceptance of the fees and PPPLF advances and contradictory positions concerning Plaintiffs' specific loans -- is its position it should have funded Plaintiffs' loans or not? -- should also estop it from evading liability at all, much less summary dismissal.

Normally, the nonmovant opposes summary judgment so that a jury can fairly adjudicate its claim based on the evidence. That principle applies in concept no less here. But absent certification of the Classes, we're acutely aware of the economic impracticality of a trial given what the Third Circuit calls "negative value claims" that are at issue here. ECF No. 139 at 7-8, 18. Plaintiffs' collective PPP loan principal is $132,094.00. Plaintiffs have moved for partial reconsideration and may seek a revised or narrowed class, and the Court has discretion to revisit that critical issue. ECF No. 154-155 at 4. Prestamos has opposed that motion, but its main argument that the declaratory judgment Plaintiffs seek barring it from obtaining repayment was "never pled" and "Plaintiffs have invented a new claim" (ECF No. 161 at 2) ignores that claim is and always has been explicitly alleged in Plaintiffs' TAC. *See* ECF No. 108 ¶¶ 296-98, 416(d), Prayer for Relief D.

On the flip side, Prestamos ***netted*** (*i.e.*, after paying Blueacorn) and upstreamed to its parent CPLC a "windfall" profit of over $300 million off the backs of PPP borrowers including Plaintiffs. The Court may also want to know that we've approached Prestamos to settle on a class or even a non-class action basis. In sum, the record compels denial of summary judgment. But Prestamos can still "put an end to this litigation" (ECF No. 157-1 at 2) quite quickly, modestly and without further imposition on the Court particularly given the economics at stake.

II. <u>Counter-Statement of Material Facts</u>

Following the outbreak of COVID-19, Congress passed the CARES Act in March 2020 to assist businesses an integral part of which was the PPP. Administered by the SBA, the PPP authorized $813.7 billion in PPP loans through May 31, 2021. PPP loans are guaranteed by the SBA and designed to be forgiven, as the vast bulk in fact were. Ex. 33. To ensure that businesses received their PPP loans promptly, the SBA delegated lending to authorized private PPP lenders and required approved PPP loans to be funded for the lender to get a fee.

Prestamos was an authorized PPP lender. In 2020, it processed only 935 PPP loans for less than $27 million and $1.3 million in fees. After PPP loan fees were increased in December 2020 to encourage more loans to underserved small businesses, it contracted with Blueacorn and committed to fund 494,415 PPP loans in 2021 for over $7.6 billion, and received over $7.1 billion from the PPPLF to fund them. ECF No. 119 ¶¶ 9, 114.

Plaintiffs are or were sole proprietors approved by the SBA for their loans. Although the parties dispute whether Plaintiffs' Loan Documents were complete and accurate (ECF No. 157-2 ¶ 19), there is no dispute that Prestamos failed to ultimately fund their loans.

The Loan Documents include the same SBA Form 147 note and accompanying standardized language; identify the SBA-approved PPP loan number, amount and the parties; state that, "[i]n return for the Loan, Borrower promises" to pay the principal plus "interest on the unpaid principal balance, and all other amounts required by this Note" back if not forgiven; and contain other terms. In addition, PPP rules are incorporated in and govern the Loan Documents, and bound PPP lenders to report accurately on SBA Form 1502s and PARs and obtain fees only on loans they ultimately funded. Exs. 11; 34.

After receiving Plaintiffs' signed Loan Documents, Prestamos engaged in a course of conduct further evidencing the fact that it understood it was subject to an enforceable contract to fund Plaintiffs' loans. It pledged Plaintiffs' loans as collateral by submitting PARs to the PPPLF to obtain advances to fund the loans (Ex. 34); completed and submitted Form 1502s falsely indicating that it "Funded" the loans (Exs. 18¶ 31); obtained payment of the loan processing fee for each such loan (Ex. 11); and even sought repayment from plaintiffs Lloyd, Johnson and

Townsend. Ex. 11; and ECF No. 155-1 Exhibit A attached thereto (containing Prestamos' invoices and correspondence to plaintiff Lloyd).

Prestamos contends that it unsuccessfully attempted to ACH loan proceeds to each Plaintiff. But even if so, the evidence shows that Prestamos still failed to fund their loans even after plaintiffs Marshall, Henderson, Martin, Johnson and Marvel provided additional bank account or other information requested by Prestamos in order to re-deposit the proceeds. Ex. 25 Marshall Depo. 14:24, 141:1-2; Ex. 25 Henderson Depo. 83:6-15; Ex. 25 Martin Depo. 197:1-7, 199:16-25, 200:1-5, 201:13-25; Ex. 25 Johnson Depo. 89:12-24, 90:12-21, Ex. 25 Marvel Depo. 75:12-23, 85:2-17. Accord Ex. 26 ¶ 5.

In addition, per its own internal documents and witness Mr. Castillo (who it objected to even producing based on the pretextual excuse it was late in the discovery period; ECF Nos. 149-150), Prestamos agreed to send prepaid debit cards to other SBA approved PPP borrowers who failed to receive their loans via ACH, and was supposed to fund certain Plaintiffs by debit cards but failed to do so. Ex. 25 Marshall Depo. 19:20-23, 51:2-9, 52:12-18, 83:12-14; Ex. 25 Martin Depo. 202:16-22, 222:3-7; Ex. 25 Townsend Depo. 232:20-25, 233:10; Ex. 25 Smith Depo. 86:1-8, 87:9-14, 88:3-8, 89:5-12; Ex. 25 Johnson Depo. 88:19-24, 91:4-7, 15-20. Accord Ex. 26 ¶ 6.

Prestamos also argues it caused no damage because Plaintiffs' failure to receive the loans "resulted from the actions of the Plaintiffs' own banks[.]" ECF No. 157-1 at 18. But according to its own evidence (ECF No. 157-2 ¶ 11), the loans for plaintiffs Smith, Henderson and Horne had an ACH Return Code of R03 "No Account/Unable to Locate Account"; plaintiff Johnson's loan had ACH Return Code R16 "Account Frozen"; plaintiffs Jones, Marshall, Marvel and Townsend had an ACH Return Code R23 "Credit Entry Refused by Receiver"; and plaintiff Martin had an

ACH Return Code R17 "File Record Edit Criteria" -- making each of them suitable for funding via prepaid cards. Prestamos does not address why it couldn't send prepaid cards to any of these Plaintiffs. Further, Plaintiffs were locked into and reliant exclusively on Prestamos for loan funding after they signed and returned the Loan Documents; denied any ability to obtain loan forgiveness (Ex. 28); and Prestamos improperly sought repayment from plaintiffs Lloyd, Johnson, Townsend and others. Ex. 11; ECF No. 142-25.

III. Legal Standards

"Essentially, the Court must analyze 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" *Phillips Feed Service, Inc. v. Freshpet, Inc.*, 2025 WL 834749, at *3 (E.D. Pa. Mar. 17, 2025) (Gallagher, J.). "Summary judgment is properly granted when there is 'no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Azer Scientific Inc. v. Quidel Corp.*, 2022 WL 17419347, at *5 (E.D. Pa. Dec. 5, 2022) (Gallagher, J.). "Facts are material if they 'might affect the outcome of the suit under the governing law.'" *Id.* "A dispute as to those facts is genuine if the 'evidence is such that a reasonable jury could return a verdict for the nonmoving party. … We view all the facts in the light most favorable to the nonmoving party and draw all inferences in that party's favor." *Id.* "It is not the role of the Court to weigh this evidence provided by the parties and make a determination as to which facts are true; rather, the Court is instructed 'to determine if there is a genuine issue for trial.'" *Phillips*, 2025 WL 834749, at *3.

IV. Argument

A. The Loan Documents and PPP Rules Support Plaintiffs' Claims

The evidence here is not so one-sided as to entitle Prestamos to prevail as a matter of law. Prestamos' failure to fund the loans, acceptance of the fees and PPPLF advances, denial of forgiveness and claims for loan repayment alone preclude summary adjudication.

The defense that Plaintiffs fail to cite "any specific provision in the Loan Documents[] that Prestamos breached" is also wrong. ECF No. 157-1 at 9. The Note in the Loan Documents commits Prestamos to fund the loans and Plaintiffs to repay them back if not forgiven as noted above; states that "[a]ll individuals and entities signing this Note are jointly and severally liable"; and state that, "[b]y signing below, each individual or entity becomes obligated under this Note as Borrower." *See, e.g.,* Ex. 1 ¶¶ 1, 9, 11.

The Additional Agreement states that, "[i]n consideration of Prestamos … *making the above loan*, each of the undersigned, jointly and severally, do hereby agree …"; that Prestamos "is relying on this agreement *in making the above loan* …"; that, "[i]n consideration of Prestamos … *making the above loan*, each of the undersigned, jointly and severally, do hereby agree …"; and that Prestamos "is relying on this agreement *in making the above loan* …." *Id.* ¶¶ 1, 2, 5.

The "Notice - No Oral Agreements" governs the "**Loan by Lender, Prestamos CDFI, LLC to Borrower**"; states that "<u>**THE WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES …**</u>"**;** defines "Loan Agreement"; and is executed by both parties. *Id*. p. Pla Appx 011 (original emphasis).

Even the Information and Bank Account form that Prestamos contends certain Plaintiffs breached by providing wrong bank account numbers does not support its position. To the contrary, Prestamos omits that this form required the *lender* to also have an affirmative role in the parties' bank account verification process -- specifically, that "the *lender* has to its best ability confirmed the ownership and active status of the depository account at the Financial Institution listed as required in the documents submitted to the SBA for PPP loan approval." Ex.

1. Whether Prestamos used its best ability to confirm the ownership and status of the accounts Plaintiffs designated or even ensure the ACH went to a business and not a personal account is also in dispute; indeed, Prestamos hasn't identified ***any*** evidence it discharged that obligation, and its brief and statement of facts are also silent on this issue. *See, e.g.*, Ex. 26 ¶¶ 3-4 (plaintiff Martin advised that Prestamos could alternatively ACH the loan to a business account after the initial ACH attempt was returned from his personal account).

PPP regulations also support Plaintiffs' claims. Mr. Castillo admitted that "[t]he 'loan status' section of SBA Form 1502 needed to be filled out as 'Funded,' 'Undisbursed,' or 'Cancelled.' Prestamos used 'Funded' in order to initiate the credit advance from the Federal Reserve." Ex. 18 ¶ 31. The 1502 Form itself provides that it "is to be completed monthly by Lenders" (Ex. 18). Thus, even assuming Prestamos is correct that it had to both submit the initial form 1502 and lie in it that the loan was then funded just to get the credit advance, it should have corrected that to "Undisbursed" or "Cancelled" as the case may be in subsequent monthly 1502s particularly given that the loans were not funded and indeed never funded according to its own evidence as to all Plaintiffs except plaintiff Lloyd. ECF No. 157-2 ¶¶ 11-12. Ex. 11 (1502s). Prestamos cannot fairly or logically have it both ways -- funded to get the fee and the credit advance, but absolved via summary judgment as a matter of law because it tried once to ACH the loans.

In addition, the PAR form required Prestamos to pledge each of Plaintiff's loans as collateral to secure the advance per the PPPLF Letter of Agreement which required Prestamos to represent that each such loan "[c]complies with all requirements of the PPP" among other things. ECF No. 108 ¶¶ 387-388 (quoting the PAR form and PPPLF Letter of Agreement); Ex. 34 (the PARs).

Prestamos indisputably filed false SBA Form 1502 reports and received PPP loan fees and PPPLF advances for each of Plaintiff's loans. These facts raise material disputes regarding Prestamos' conduct that preclude judgment as a matter of law. The evidence also shows that Prestamos has sought repayment from plaintiffs Lloyd, Johnson, Townsend and others which is part of the declaratory judgment Plaintiffs seek; locked Plaintiffs into Prestamos because they were precluded from applying for other PPP loans; and deprived Plaintiffs any opportunity for forgiveness. Based on the record and the specific provisions and purpose of the Loan Documents and the PPP rules as a whole, these issues cannot be decided summarily as a matter of law.

Further, since Prestamos is both taking contradictory positions regarding loan funding in its motion and accepted the benefits as if Plaintiffs' loans were funded, quasi-estoppel precludes it from even relying on any attempted funding defense, whether the Court applies the forum state law or the laws of Plaintiffs' states. *See, e.g., Hammersmith v. TIG Ins. Co*., 480 F.3d 220, 230 (3d Cir. 2007) ("If two jurisdictions' laws are the same, then there is no conflict at all, and choice of law analysis is unnecessary."); *Spear v. Fenkell*, 2016 WL 5661720, at *49 (E.D. Pa. Sept. 30, 2016) (forum state Pennsylvania; quasi-estoppel "applies where it would be unconscionable to allow a person to maintain a position inconsistent with one in which he has acquiesced, or of which he accepted a benefit"; "The theory [of quasi-estoppel] requires a fact-specific inquiry into the intent of various agents of a corporate entity. …Summary judgment is inappropriate."); *Matter of Davidson*, 947 F.2d 1294, 1297 (5th Cir. 1991) (Texas law, plaintiffs Lloyd and Smith; quasi-estoppel "forbids a party from accepting the benefits of a transaction or statute and then subsequently taking an inconsistent position to avoid corresponding obligations or effects"); *Est. of Anderson*, 60 Cal. App. 4th 436, 442, 70 Cal. Rptr. 2d 266, 270 (1997) (California law, plaintiffs Marshall and Townsend; quasi estoppel "is based upon the principle that one cannot blow both hot and cold, or that one 'with full knowledge of the facts shall not be permitted to act in a manner inconsistent with his former position or conduct to the injury of another'"); *Metro. Life Ins. Co. v. Lynch*, 2021 WL 1102213, at *3 (D. Ariz. Mar. 23, 2021) (Arizona law, plaintiff Jones; quasi-estoppel precluded defendant from taking position inconsistent with his past conduct); *In re R.B.F.S.*, 278 P.3d 143, 152 (Utah App. 2012) (Utah law, plaintiff Martin; "The doctrine of quasi-estoppel … applies when it would be unconscionable to allow a person to maintain a position inconsistent with one … from which he accepted a benefit."); *Bailey v. Est. of Kemp*, 955 So. 2d 777, 782 (Miss. 2007) (Mississippi law, plaintiff Marvel; accord); *HSBC Bank USA, Nat. Ass'n v. Adelphia Commc'ns Corp.*, 2009 WL 385474, at *18 (W.D.N.Y. Feb. 12, 2009), *aff'd sub nom. In re Adelphia Recovery Tr.*, 634 F.3d 678 (2d Cir. 2011) (New York law, plaintiff Horne; accord).

None of the cases Prestamos relies on support summary judgment. *See M.P. v. Penn-Delco Sch. Dist.*, 2015 WL 7430010, at *1 (E.D. Pa. Nov. 20, 2015) (granting summary judgment because the court "decline[d] to read an assignment into a contract where the parties did not include this significant change of term in their broad release language"); *Vinculum, Inc. v. Goli Techs., LLC*, 310 A.3d 231, 247-48 (Pa. 2024) (reversing denial of attorney fees to prevailing party on a contract claim); *Steuart v. McChesney*, 498 A.2d 45 (Pa. 1982) (extrinsic evidence not admissible to interpret a right of refusal clause that was unambiguous).

Prestamos also argues that *Asherson v. JP Morgan Chase Bank, N.A.*, 2024 WL 5369781 (C.D. Cal. Oct. 23, 2024), is "an analogous case[.]" ECF No. 157-1 at 10. That argument is false. There, the PPP borrowers' loans were actually funded and the claim was that the lender "improperly calculated the loan amount to which plaintiffs were entitled and failed to process timely their loan-forgiveness application." *Id.* at *1. Here, Prestamos failed to fund the loans and thus denied Plaintiffs any opportunity for forgiveness. *Asherson* also did not even involve summary judgment. And the court there actually undermines Prestamos' position here that Prestamos didn't have to do anything more after its initial ACH attempt was returned, as the court there held that "'a promissory note is a promise given in exchange for performance,' and the lender completes performance of its obligation 'by providing the loaned funds to the borrower in exchange for the borrower's promise to repay the funds.'" *Id.* *11 n.5.

The existence of factual disputes in contract cases concerning the parties' breach or performance ordinarily preclude summary judgment. *Ideal Dairy Farms, Inc. v. John Labatt, Ltd.*, 90 F.3d 737, 744 (3d Cir. 1996) (reversing summary judgment where there were "three possible constructions of the facts" and the "court's finding of factual ambiguity should have ensured that the contract claim proceed to trial"); *Azer Sci. Inc. v. Quidel Corp.*, 2022 WL 17419347, at *9 (E.D. Pa. Dec. 5, 2022) (Gallagher, J.) (denying summary judgment on both contract and declaratory judgment claims; "The factual disputes concerning both Parties' failures to perform under the contract prevent summary judgment on these claims."); *Stony Battery RD Prop. Owner LLC v. QVC, Inc.*, 2024 WL 1943303, at *2 (E.D. Pa. May 1, 2024) (Gallagher, J.) (the court "disagree[d] with both parties that the contract is clear"; holding that "[e]xtrinsic evidence is admissible to interpret an ambiguous contract, but this is most commonly an exercise for the factfinder at trial"); *Phillips*, 2025 WL 834749, at *8 (recognizing that disputed issues concerning damages "should be resolved at trial"); *Abdulhay v. Bethlehem Med. Arts, L.P.*, 425 F. Supp. 2d 646, 658 (E.D. Pa. 2006) ("A review of the record in this matter, in the light most favorable to plaintiffs as the non-moving party, reveals that there are genuine disputes concerning … the lease."); *Hentz v. Allstate Prop. & Cas. Ins. Co.*, 2020 WL 509162, at *2 (E.D. Pa. Jan. 31, 2020) ("Viewing the facts in the light most favorable to Hentz, a jury could find that Allstate breached the contract by not reimbursing Hentz for the collapsed wall.").

Similarly, a dispute relating to the intent of a provision of a contract precludes summary judgment. *See, e.g.*, *Sovereign Bank v. BJ's Wholesale Club, Inc.*, 533 F.3d 162, 172 (3d Cir. 2008) (reversing summary judgment given conflicting evidence relating to the intent of a contract); *State Farm Mut. Auto. Ins. Co. v. Philly Fam. Prac., Inc.*, 525 F. Supp. 2d 718, 726 (E.D. Pa. 2007) ("[A]lthough the intent of the parties to a contract is normally a question for the court, it becomes a jury question if [the contract] is ambiguous and its resolution depends on the credibility of extrinsic evidence or on a choice among reasonable inferences to be drawn from extrinsic evidence."); *Glass v. City of Philadelphia*, 455 F. Supp. 2d 302, 339 (E.D. Pa. 2006) ("any doubt or ambiguity in the contract … must be construed against the defendant who is the party who wrote it"); *Greathouse v. Capital Plus Financial LLC*, 690 F.Supp.3d 610, 639-40 (N.D. Tex. 2023) (holding that the same release in a PPP note was void as against public policy where, as here, the plaintiffs had "substantially less bargaining power in the relationship").

B. Plaintiffs' Interpretation of the Loan Documents is Consistent with the PPP

Prestamos also argues that it cannot "control the ultimate destination of PPP loan proceeds" and that contracts cannot "impose impossible conditions on any party involved." ECF No. 157-1 at 12. This argument is also false.

The evidence shows that even assuming ACH issues, it wasn't impossible to fund borrowers via prepaid debit cards. To the contrary, Prestamos did that very thing for other borrowers who didn't receive their loan funding via ACH (Ex. 22); plaintiff Martin requested to funded by prepaid card (Ex. 26 ¶ 6); and plaintiffs Johnson and Townsend were told they'd be funded in that manner. Ex. 25. Thus, whether it was commercially reasonable in the circumstances for Prestamos to send prepaid cards to Plaintiffs is also genuinely disputed.

Prestamos' argument regarding what performance is or is not "commercially reasonable" under a governing contract itself isn't amenable to summary adjudication as the cases discussed above demonstrate. ECF No. 157-1 at 12. *See, e.g.*, *Ideal Diary*, 90 F.3d at 744; *Azer*, 2022 WL 17419347, at *9.

And even if Prestamos was unable to fund any Plaintiff via debit card -- and there is not one shred of evidence of that in the record or which Prestamos points to -- it still was required to file accurate SBA Form 1502s. In fact, Mr. Castillo's declaration states as follows: "Once the SBA approved a borrower's PPP loan application and the borrower signed and returned the promissory note and loan documents, Prestamos would either send an A[CH] … payment electronically to the account the borrower designated on the loan documents *or cancel the loans*." Ex. 18 ¶ 20. But in cross-examination, Mr. Castillo admitted that this statement was "[n]ot 100% correct" because Prestamos also funded certain PPP borrowers via prepaid cards. Ex. 21 at 59:22; 59:25.

The evidence also shows and Prestamos does not dispute that it obtained the PPPLF credit advances to fund each Plaintiff's loans. But whether Prestamos returned those advances back to the Federal Reserve is entirely (and, we suspect, intentionally) unclear on this record, meaning the inference is it did not. *See* Ex. 18 at ¶ 51 (stating that "[i]n September 2021, Prestamos returned the credit advances from the Federal Reserve for loans that were ultimately not funded."); Ex. 21 at 81:24 (asked whether those allegedly returned credit advances included the advances on Plaintiffs' loans, Mr. Castillo testified "[p]robably, but I don't recall").

In sum, the facts are that Prestamos failed to fund Plaintiffs' loans, falsely reporting to the SBA they were funded, obtained the credit advance for the loans with the inference being it didn't even return those advances back to the Federal Reserve, denied forgiveness and sought repayment from three Plaintiffs. These facts could result in a verdict that Prestamos breached the

Loan Documents and PPP rules.

Prestamos' cases are all distinguishable. *See Shipp v. Marsh*, 2024 WL 1130520, at *4 (W.D. Pa. Mar. 15, 2024) ("the plain language" in parties' agreement "supports that, at the time Ms. Shipp filed her Complaint, she had a membership interest in the Firm"); *Leica Geosystems, Inc. v. L.W.S. Leasing, Inc.*, 872 F. Supp. 2d 1191, 1203 (D. Colo. 2012) (granting summary judgment where counterclaimant "does not present any evidence that [plaintiff's] LiDAR system was defective"); *Wembelton Dev. Co. v. Travelers Ins. Co.*, 206 N.W.2d 222, 225 (Mich. Ct. App. 1973) (interpreting a vague "best efforts" clause).

Prestamos' reliance on *In re Welded Constr., L.P.*, 605 B.R. 35, 41 (Bankr. D. Del. 2019), undercuts its position. "[T]he Court will not interpret a contract in a formally literalistic way that ignores the practical interpretation of the parties' reasonable expectations." *Id*. Prestamos' reliance on cases interpreting ACH transfer rules are irrelevant as Plaintiffs do not dispute those rules. *See* ECF No. 157-1 at 13 (citing cases).

C. Plaintiffs Complied with the Loan Documents and the PPP

Plaintiffs were approved for their PPP loans by the SBA, signed and returned to Prestamos all required Loan Documents, and dispute Prestamos' interpretation of their loan application materials and entitlement to the loans. Prestamos' arguments to the contrary are wrong most fundamentally as a matter of law because Prestamos seeks to usurp the role of the SBA which was the body that determined whether to approve a PPP loan or not.

First, Prestamos cites the Information and Bank Account form and then merely claims that, since it tried to ACH the loans to all Plaintiffs, all Plaintiffs' gave incorrect bank account information. ECF No. 157-1 at 16-17. But that argument is refuted by Prestamos' own evidence, which shows it was unable to locate the accounts of only plaintiffs Smith, Henderson and Horne. Moreover, Henderson testified that she provided Prestamos (through its LSP Blueacorn) with a new account number for the deposit. Ex. 25 Henderson Depo. 83:6-15. Plaintiff Martin also sought to have his loan deposited to a business account after the ACH was returned from his personal account. Ex. 26 ¶¶ 4-5. There is no evidence that an allegedly incorrect account number applies across the board to all Plaintiffs, and Prestamos doesn't contend otherwise.

And even as to plaintiffs Smith, Henderson, Horne and Martin, Prestamos ignores its own obligation "that the lender has to its best ability confirmed the ownership and active status of the depository account at the Financial Institution listed as required in the [Loan] [D]ocuments submitted to the SBA for PPP loan approval." Ex. 1. Whether Prestamos even undertook any due diligence to confirm the status of these plaintiffs' accounts is also a jury question.

Second, Prestamos also improperly globs all Plaintiffs together for its other argument that "no Plaintiff provided a complete and accurate set of documents, as required by the SBA regulations." It alleges that plaintiffs Smith, Horne, Jones, Lloyd and Townsend had tax discrepancies in their applications. But it neither does nor could dispute it had its own obligation to underwrite and review each loan application at the outset (ECF No. 108 ¶ 45; quoting PPP rule), or that the SBA approved their respective loan applications. It also contradictorily and unconscionably ignores it received loan fees on the very loans it now claims it tried to fund but should not have. And it also ignores the loan applications of plaintiffs Henderson, Johnson, Marshall, Martin and Marvel entirely.

Equally unavailing, Prestamos' evidence also includes documents that have nothing to do with Plaintiffs or Plaintiffs' PPP loans. For example, Prestamos dumps 91 pages into its Appendix of a self-termed "Compilation of Examples RDFI Seeking Return of Suspect Funds" that do not even mention any Plaintiff. *See* Def_Appx_0085-176. Similarly, it also includes an equally irrelevant "Dismissed Class Representative Chart & Compilation" (*id*. 0371-85).

Worse yet, Prestamos merely asserts that Plaintiffs as a group submitted incomplete documentation to qualify for their PPP loans. For example, it argues as part of its chart of alleged "Deficient Loan Documents Chart and Compilation" (*id*. 0181-326) that plaintiff Martin's loan application was incomplete because it included a 2019 tax return "stamped 'PREVIEW COPY DO NOT FILE.'" Def_App_0279-290. But the evidence shows that plaintiff Martin submitted his full tax documents including a complete Schedule C (Ex. 26 ¶ 8), and Prestamos' own evidence demonstrates plaintiff Martin also produced his full tax returns for 2018, 2019 and 2020 and his tax transcript for 2021 to Prestamos also as part of discovery and bank account statements. *See* Def_Appx_0387.

Prestamos' cases do not support its position and are distinguishable. *See Shovel Transfer & Storage, Inc. v. Pa. Liquor Control Bd*., 739 A.2d 133, 140 (Pa. 1999) (plaintiff "never produced any evidence that these conditions were fulfilled nor did it contend that these conditions were excused"); *Burton v. Nationstar Mortg. LLC*, 2013 WL 2355524, at *7 (E.D. Cal. May 29, 2013) (motion to dismiss not summary judgment and granting plaintiff leave to amend to clarify whether he resided on the property at issue); *Cave v. Saxon Mortg. Srvs*., 2016 WL 5930846, at * (E.D. Pa. Oct. 11, 2016) (class certification not summary judgment).

D. Prestamos Caused Plaintiffs Damage Which also are Fact Issues

Prestamos is both procedurally and substantively incorrect in its argument that it caused Plaintiffs no damage. First, causation and damage issues are fact intensive and should not be resolved on summary judgment. *See, e.g*., *Phillips*, 2025 WL 834749, at *8. Exs. 13 and 16. Second, Prestamos locked all Plaintiffs in via the Loan Documents, deprived them of loans and likely forgiveness as most PPP loans were, and subjected them to repayment. Exs. 12, 14, 15, and 17. A jury may reasonably find on these facts that Prestamos caused Plaintiffs damage.

Prestamos' cases are distinguishable. *See Trans Penn Wax Corp. v. McCandless*, 50 F.3d 217, 231 (3d Cir. 1995) (involved whether federal labor law preempted plaintiffs' employment contracts; causation not disputed); *Logan v. Mirror Printing Co*., 600 A.2d 225, 226-27 (Pa. Super. 1991) (political candidate's damages for loss of salary and other benefits too speculative); *DiCicco v. Citizens Fin. Grp., Inc*., 2015 WL 5302767, at *8, 10 (E.D. Pa. Sept. 10, 2015) (motion to dismiss; rejecting argument plaintiffs didn't allege damages; "Where, as here, the Complaint alleges that Plaintiffs are being asked to repay loans at an accelerated rate, we can draw the inference that Plaintiffs who paid their bills have suffered monetary damages ...."; also denying dismissal of plaintiffs' claims for injunctive relief which "could be an appropriate remedy for Citizens' alleged miscalculation of Minimum Payments"); *Zylbert v. Beddingfield*, 2021 WL 12319309, at *3 (Cal. Sup. Ct. Aug. 13, 2021) (theft of human remains broke causal chain).

E. Prestamos' 1502s are Part of the Claimed Breach of Loan Documents and PPP Rules

Prestamos' argument that Plaintiffs are trying to "circumvent" the Loan Document provisions by including its own false 1502s as part of their breach of contract claim is also meritless. Prestamos' own false 1502s and PARs are integrally related to Plaintiffs' claim that Prestamos' overall conduct breached the Loan Documents and PPP rules that are incorporated in, and indisputably also govern, those contracts. The argument that the 1502s aren't contracts to which Plaintiffs are parties is true but irrelevant. But for Plaintiffs' SBA-approved loans, Prestamos could not even complete or submit any 1502 or PAR. Prestamos' sole case bears no resemblance to the facts here. *See Pierce Assocs., Inc. v. Nemours Found*., 865 F.2d 530, 536 (3d Cir. 1988) (construction dispute, and the issue was who the subcontractor and its surety may be liable to).

V. **Conclusion**

For the foregoing reasons, Prestamos' motion for summary judgment should be denied.

Dated: May 21, 2025.

Respectfully submitted,

Bailey & Glasser LLP

By: /s/ *Lawrence J. Lederer*

Lawrence J. Lederer (Pa. ID 50445)
Bart D. Cohen (Pa. ID 57606)
1622 Locust Street
Philadelphia, PA 19103
T.: 202.463-2101
F.: 202.463-2103
lederer@baileyglasser.com
bcohen@baileyglasser.com

Bailey & Glasser LLP
Michael L. Murphy (*pro hac vice*)
1055 Thomas Jefferson Street NW, Suite 540
Washington, DC 20007
T.: 202.463-2101
F.: 202.463-2103
mmurphy@baileyglasser.com

Whiteman Osterman & Hanna LLP
Justin A. Heller (pro hac vice)
80 State Street, 11th Floor
Albany, NY 12207
T: (518) 487-7600
F: (518) 432-3123
jheller@woh.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 21st 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
Lawrence J. Lederer