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' RESPONSE TO DEFENDANT'S
STATEMENT OF UNDISPUTED MATERIAL FACTS

Plaintiffs[1] by and through their attorneys, Bailey & Glasser, LLP and Whiteman Osterman & Hanna LLP, respectfully submit this in response to Defendant Prestamos' Statement of Undisputed Material Facts (ECF No. 157-2).

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).

Plaintiffs' Response: Undisputed.

2. Borrowers were required to certify in their applications "that the information

[1] Unless otherwise noted, all capitalized terms have the meaning set forth in the Table of Abbreviations in Plaintiffs' accompanying brief in opposition to Defendant's motion for summary judgment; all emphasis is added; all references to Ex. __ are to Plas Appx; and all internal quotations and citations are omitted.

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.

Plaintiffs' Response: Undisputed.

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.

Plaintiffs' Response: Undisputed

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.

Plaintiffs' Response: Undisputed.

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

Plaintiffs' Response: Undisputed.

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.

Plaintiffs' Response: Admitted in part, disputed in part. It is admitted that the regulations did not require the lender to be a guarantor that the borrower received and was able to draw on the PPP loan funds. But those regulations and Prestamos' own obligations under the parties' Loan Documents required Prestamos to take commercially reasonable steps to send the loan funds to the borrower. In addition, according to the Information and Bank Account Certification and Authorization form included as part of the parties' Loan Documents here (*see, e.g.*, ECF No. 108 at 117), Prestamos was also required to "confirm[]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."

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").

Plaintiffs' Response: Immaterial. Also disputed in part and to the extent that this paragraph contains legal arguments and conclusions relating to Nacha Rules and does not constitute a fact.

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").

Plaintiffs' Response: Admitted in part, disputed in part. It is admitted that Plaintiffs' experts in part so testified. But PPP regulations and Prestamos' own obligations under the parties' Loan Documents required Prestamos to take commercially reasonable steps to send the loan funds to the borrower. In addition, according to the Information and Bank Account

Certification and Authorization form included as part of the parties' Loan Documents here (*see, e.g.*, ECF No. 108 at 117), Prestamos was also required to "confirm[]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."

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.

Plaintiffs' Response: Undisputed.

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).

Plaintiffs' Response: Admitted in part, disputed in part. In the Information and Bank Account Certification and Authorization form included as part of the parties' Loan Documents here (*see, e.g.*, ECF No. 108 at 117), Prestamos was also required to "confirm[] 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."

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	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.

Plaintiffs' Response: Admitted in part, disputed in part. It is admitted that Prestamos made a single attempt to disburse via ACH the PPP loans to plaintiffs Jones, Marshall, Marvel and Townsend. It is disputed that Prestamos disbursed via ACH or otherwise the PPP loans to plaintiffs Smith, Henderson and Horne because according to Prestamos' own cited evidence the accounts were unable to be located; to plaintiff Johnson because her account was frozen; to plaintiffs Jones, Marshall, Marvel and Townsend because the credit entry was refused; and to plaintiff Martin because the funds also were returned (in plaintiff Martin's case, because this was a personal account as discussed more fully in ¶ 40 below).

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*.

Plaintiffs' Response: Admitted in part, disputed in part. Admitted only that plaintiff Lloyd's designated financial institution, Capital One, accepted the PPP loan ACH from Prestamos. The rest of this paragraph is disputed. Plaintiff Lloyd was told by Capital One that it "froze" many other PPP loans designated to a personal bank account. Pla Appx 3405 ("The words from the Capital One agent at the time were anybody that had a PPP loan that had a personal bank account that wasn't from Capital One were frozen.").

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.

Plaintiffs' Response: Immaterial and disputed. Disputed that Prestamos' Exhibit 7 establishes that the U.S. Secret Service "authoriz[ed]" RDFIs to return to the lender any PPP disbursements. The guidance only suggests that an RDFI "select the Return Reason Code that most closely approximates the reason for the return." Ex. 7, Def_Appx_0042–43. The guidance contained within Exhibit 7 does not authorize an RDFI to return to the lender any PPP disbursements due to fraud or otherwise or otherwise address the PPP. *Id*.

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

Plaintiffs' Response: Immaterial and disputed. Disputed that the guidance in Prestamos' Exhibit 7 "directed" the use of certain ACH codes since the guidance only states that an RDFI "***should*** select the Return Reason Code that most closely approximates the reason for the return" and contains some examples that "may be acceptable options". Def_Appx_0042 (emphasis supplied). The guidance further does not state that an RDFI can only use those codes if fraud is suspected. *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.

Plaintiffs' Response: Undisputed.

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.").

Plaintiffs' Response: Immaterial and disputed. Disputed that the email communication from the SBA Def_Appx_0048 applies to any "instances" beyond the loans specifically referenced in that email as that email makes clear it refers only to "these loans" in particular.

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.

Plaintiffs' Response: Immaterial and disputed. Disputed that this communication applies to any loans beyond the particular loan at issue in the email. Ex. 11, Def_Appx_0179. Further, this communication has no application to Plaintiffs' loans, which were falsely reported by Prestamos as disbursed in contrast to the status of the subject loan in Prestamos' Ex. 11, which was reported as "Active-un-disbursed". *Id*. The subject loan is also distinguishable from Plaintiffs' loans as it was also reported to the SBA as a potentially fraudulent loan, and not merely "flagged" by Prestamos or its LSP Blueacorn. *Id*.

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.

Plaintiffs' Response: Immaterial and disputed. Prestamos' Exhibit 16 confirms that Blueacorn's enhanced due diligence process referred to above was not even in place until June

11, 2021. Ex. 16, Def_Appx_0429. Moreover, neither Prestamos' Exhibit 5 nor Exhibit 16 support the statement that "Prestamos worked with its loan service provider to conduct enhanced due diligence." Ex. 16, Def_Appx_0429; Ex. 5, Def_Appx_0033–34, ¶¶ 39–45. In fact, the Castillo Declaration (Ex. 5) states that Blueacorn performed the due diligence process referred to above. Ex. 5, Def_Appx_0033–34, ¶ 40 ("Blueacorn committed to perform this enhanced due diligence, which included the close examination of the borrower's file . . ."); ¶ 42 ("Blueacorn committed to manually review the entire loan file and looked for any evidence of fraud or other suspicious activity. During the manual review, Blueacorn could potentially identify a separate reason, aside from that identified by the ACH return code, that the loan should not be funded. Blueacorn could follow up with the borrower about these later-identified issues."). Prestamos provides no evidence regarding how it allegedly worked with Blueacorn to conduct any such alleged enhanced due diligence or even knew what or how Blueacorn actually performed any such alleged due diligence. Ex. 5, Def_Appx_0033–34, ¶¶ 39–45. Additionally, the Castillo Declaration concedes that the due diligence process was, contrary to Exhibit 16 and Prestamos' assertions, not uniform. Ex. 5, Def_Appx_0033–34, ¶ 40 ("Prestamos understands that the precise steps taken during the enhanced due diligence process were not uniform, but varied depending on the ACH return code or any other specific issue identified as causing the failed deposit.").

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.

Plaintiffs' Response: Immaterial and disputed. Disputed that any portion of Exhibit 12 supports the conclusion that Plaintiffs were ineligible for their PPP loans. Ex. 12, Def_Appx_0181–85. All Plaintiffs were approved for their PPP loans by the SBA and received SBA loan numbers. Prestamos' own position is that it funded or attempted to fund each Plaintiff's PPP loan. In addition, pursuant to 85 F.R. 20813, qualified "payroll costs" for sole proprietors and independent contractors included "wages, commissions, income, or net earnings from self-employment, or similar compensation." In other words, PPP loans for sole proprietors and independent contractors, unlike other traditional businesses, were designed to replace those individuals' own income. *See id*. Here, Prestamos "targeted sole proprietors and independent contractors who qualify for PPP loans and that for the most part do not have separate bank account." 28 at Pla Appx 3430 (PRESTAMOS-00304371). Further, Prestamos was well aware of the practical difference between sole proprietors and independent contractors and other more traditional PPP loan borrowers. *Id*. ("Oftentimes these individuals get paid by one business like an employee but are independent contractors that receive a 1099 at year end. Additionally, many independent contractors have a full time job and freelance on the side, a part time uber driver for example."). Notwithstanding their unique nature, Prestamos understood that sole proprietor and independent contractors were eligible for PPP loans. Exs. 31 and 20 at Pla Appx 3389 Martinez Depo. 37:6-8. Also, Prestamos is incorrect that Plaintiffs failed to provide complete and accurate information. For example, Prestamos contends that plaintiff Martin's documents were incomplete because "Borrower submitted federal tax return for 2019 'PREVIEW COPY DO NOT FILE.' Borrower also submitted a state tax return for 2020." Def__Appx__ 0182. The evidence is that plaintiff Martin submitted his full tax documents, including a complete Schedule C and tax return, with his PPP loan application. Pla Appx 3409 at¶ 8. Prestamos' own evidence also shows that plaintiff Martin also produced to Prestamos his full tax returns for 2018, 2019 and 2020 and his tax transcript for 2021. Def__Appx__ 0387.

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

Plaintiffs' Response: Disputed. Prestamos does not submit any evidence beyond the Castillo Declaration which does not say that it cancelled all Plaintiffs' loans. Further, Plaintiffs dispute it cancelled Plaintiffs' loans because Prestamos has attempted to collect loan balances from plaintiffs Lloyd, Johnson and Townsend. *See* ECF No. 139-20 at 3 (testimony on Prestamos' cross-examination of plaintiff Lloyd that he filed and is maintaining this lawsuit "[t]o make sure that it is settled to the way that it should be so that I am not reported as defaulted with the SBA, to stop Prestamos coming after me to collect money on funds that I never received. Which is what you guys are doing."); ECF No. 139-20 at 6 (accord; testimony of plaintiff Johnson that "I want to say I believe they did send something stating that they wanted to be repaid for the loan with interest."); ECF No. 139-20 at 7 (accord; testimony of plaintiff Townsend that "Oh, because basically [Prestamos] sent me an E-mail asking me to repay money that I've never gotten back."); *see also* ECF No. 108 ¶¶ 296-298 (quoting directly from Prestamos' invoices to plaintiff Lloyd seeking repayment of $20,832.00 in principal plus 1% interest); ECF No. 155-1 Exhibit A attached thereto (containing Prestamos' invoices and correspondence to plaintiff Lloyd).

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.

Plaintiffs' Response: Disputed. Paragraph 51 of Mr. Castillo's declaration on which Prestamos exclusively relies and which is the only evidence it cites for this alleged fact does not say anything about the status of any of the credit advances Prestamos obtained to fund Plaintiffs' loans. Ex. 5, Def_Appx_0034, ¶ 51. Instead, it ambiguously states in full only as follows: "In

September 2021, Prestamos returned the credit advances from the Federal Reserve for loans that were ultimately not funded." When asked in deposition whether those credit advances that were returned to the Federal Reserve in September 2021 included the credit advances for Plaintiffs' loans, Mr. Castillo testified at 81:24 "Probably, but I don't recall." Ex. 21 at Pla Appx 3393.

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COUNTERSTATEMENT OF MATERIAL FACTS

1. All Plaintiffs signed and returned their respective Loan Documents to Prestamos. Pla Appx Exs. 1 - 10.

2. All of the Plaintiffs' Loan Documents consist of the same form documents, including 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. *Id*.

3. The Notes identify each respective Plaintiff as the "Borrower" and Prestamos as the "Lender". *Id*. See, e.g., Ex. 1 at Pla Appx 0002.

4. The Notes specify the SBA-approved PPP loan number for, and amount of, each PPP loan. *Id*.

5. The Notes provide 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 to Prestamos if not forgiven. *Id*.

6. The Additional Agreements state that, "[i]n consideration of Prestamos CDFI, LLC … 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*. at Pl Appx 0008.

7. The "Notice - No Oral Agreements" governs the "Loan by Lender, Prestamos CDFI, LLC to Borrower"; states that "THE WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES …"; defines "Loan Agreement" to include the Notes and other Loan Documents; and was executed by both parties. *Id.* At Pla Appx 0011 (original emphasis).

8. The Information and Bank Account Certification and Authorization form identifies where Prestamos should "deposit the loan proceeds[.]" *Id.* at Pla Appx 0014.

9. The Information and Bank Account Certification and Authorization form also required Prestamos to "confirm[]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." *Id*. At Pla Appx 0014.

10. Prestamos did not take commercially reasonable steps to fund Plaintiffs' PPP loans, as the only evidence it provides is that it made an initial attempt to ACH the loans to Plaintiffs.

11. Evidence shows that Prestamos was to fund other SBA approved PPP loans via prepaid cards who also could not get their loans funded by ACH. *See* Pla Appx 3395.

12. Prestamos provides no evidence regarding what steps it took, if any, to confirm the ownership and active account status of the accounts for plaintiffs Smith, Henderson and Horne who Prestamos claims had ACH return code of No Account/Unable to Locate Account; plaintiff Johnson who Prestamos claims had ACH return code Account Frozen; plaintiffs Jones, Marshall, Marvel and Townsend who Prestamos claims had ACH return code Credit Entry Refused by Receiver; and plaintiff Martin who Prestamos had ACH return code File Record Edit Criteria.

13. Once Plaintiffs returned their signed Loan Documents, Prestamos was required to fund Plaintiffs' Loans within ten days of the assignment of an SBA loan number. 85 Fed. Reg. 26321 (May 4, 2020).

14. Prestamos understood that the "loan closing date" for a PPP loan was "the date on which the borrower and lender sign the documents." Pla Appx 3386 (PRESTAMOS-00306968-

PRESTAMOS-00306969); Pla Appx 3389 (Martinez Deposition 23:9-14) ("I will affirm that when we had a signed promissory note, we did move forward with sending information to The Fed.").

15. Plaintiffs reasonably believed that the bank account numbers they provided on their respective Information and Bank Account Certification and Authorization forms were accurate. Pla Appx 3403 (Marshall Deposition 128:10-20); Pla Appx 3403- Pla Appx 3404 (Townsend Deposition 76:1-18); Pla Appx 3404 (Henderson Deposition 80:11-12); Pla Appx 3404 (Jones Deposition 51:4-12); Pla Appx 3404-3405 (Martin Deposition 84:15-21); Pla Appx 3405-3406 (Lloyd Deposition 180:14-20); Pla Appx 3406 (Johnson Deposition 82:16-25, 83:1-4); Pla Appx 3406-3407 (Marvel Deposition 58:8-21); Pla Appx 3407 (Horne Deposition 82:17-23); Pla Appx 3407 (Smith Deposition 80:20-24, 81:1-11).

16. Prestamos was required to file SBA Form 1502 reports that accurately represented the status of its PPP loans. Ex. 11 at Pla Appx 0134-3291 (SBA Form 1502s); Pla Appx 3392 (Castillo Deposition at 38:23-25).

17. The SBA instructions for filling out the SBA Form 1502 reports stated, "This form is to be completed monthly by lenders participating in the SBA's 7(a) loan program in order to collect payment and loan information." Ex. 11 at Pla Appx 0135 at 1.

18. The information in the SBA Form 1502 had to be updated monthly throughout the life of a loan. *Id*. *See also* Ex. 20 Pla Appx 3389 (Martinez Deposition 43:10-12); Ex. 21 Pla Appx 3392(Castillo Deposition 38:19-22).

19. Prestamos falsely reported the status of Plaintiffs' loans by filing SBA Form 1502 reports that misrepresented that Plaintiffs' Loans had been funded, even though they had not been funded. *See* Pla Appx 0134-3291 (Prestamos' Form 1502s on Plaintiffs' loans); Pla Appx

3375 (Castillo Decl.) at ¶ 31 ("The '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.").

20. Based on these false certifications in its SBA Form 1502s, Prestamos collected loan processing fees for each of Plaintiffs' loans despite the fact that the loans had not been funded. Pla Appx 0134-3291 (Prestamos' Form 1502s on Plaintiffs' loans); Pla Appx 3393 (Castillo Deposition at 92:22-93:3).

21. Prestamos was not entitled to keep loan processing fees for loans which it ultimately did not fund. Pla Appx 0134-3291 (Prestamos' Form 1502s on Plaintiffs' loans); Pla Appx 3393 (Castillo Deposition at 99:6-10). Accord Pla Appx 3298-3300 (Manger Decl) at ¶ 20; Pla Appx 3345 (Briggs Decl) at ¶ 48; Pla Appx 3348-3349 (Manger Rebuttal) at ¶ 3-4; Pla Appx 3363-3364 (Briggs Rebuttal) at ¶ 14.

22. Prestamos collected over $300 million net in PPP loan processing fees. Pla Appx 3393 (Ex. 21).

23. Prestamos referred in an internal document to the over $300 million in net fees it obtained from PPP loans as a "windfall".

24. Prestamos has not returned the PPP loan processing fees that it received on account of Plaintiffs' Loans. Pla Appx 3393 (Castillo Deposition at 95:6-7); Pla Appx 3390 (Martinez Deposition) at 94:18-22.

25. Prestamos was required to file updated SBA Form 1502 reports to accurately update the status of each loan including but not limited to update it as Undisbursed or Cancelled. See supra ¶ 19; Ex. 21 at Pla Appx 3392 Castillo Deposition at 37:1-17, 71:22-72:2; Ex. 14 at Pla Appx 3345 Briggs Opening at ¶ 48; Ex. 17 at Pla Appx 3363-3364 Briggs Rebuttal at ¶ 14-

15; Ex. 12 at Pla Appx 3297-3298 Manger Opening at ¶ 19; Ex. 15 at Pla Appx 3348-3349 Manger Rebuttal at ¶ 3-4.

26. Prestamos did not file accurate or complete updated SBA Form 1502 reports to reflect loans that it reported as disbursed but that it later had cancelled. Pla Appx 0134-3291 (Prestamos' Form 1502s on Plaintiffs' loans); Pla Appx 3389 (Martinez Deposition at 71:5-13).

27. According to Prestamos, a loan balance due on a "cancelled" loan would be $0.00. Pla Appx 3393 (Castillo Deposition 105:12-13).

28. Prestamos submitted PARs to the Federal Reserve Bank of Cleveland for the Plaintiffs' Loans in order to obtain credit advances to fund Plaintiffs' Loans. Pla Appx Pla Appx 3449-6299 (Prestamos' PARs on Plaintiffs' loans); Pla Appx 3392 (Castillo Deposition at 34:8-11).

29. By submitting a PAR, Prestamos pledged those PPP loans, including Plaintiffs' Loans, as collateral to secure the loans advances received from the Federal Reserve. Pla Appx Pla Appx 3449-6299(Prestamos' PARs on Plaintiffs' loans); Pla Appx 3389 (Martinez Deposition at 23:24-24:6).

30. The PARs contain origination and maturity dates for Plaintiffs' Loans that are based on the dates the Plaintiffs executed their respective Loan Documents. Pla Appx Pla Appx 3449-6299 (Prestamos' PARs on Plaintiffs' loans); Pla Appx 3389 (Martinez Deposition) 20:7-11, 80:1-5.

31. The inference from the facts based on the evidence in the record is that Prestamos has not returned the advances it received from the Federal Reserve Bank to fund Plaintiffs' loans, even though it never funded Plaintiffs' loans. Pla Appx 3379 (Castillo Decl) at ¶ 51 ("In September 2021, Prestamos returned the credit advances from the Federal Reserve for loans that

were ultimately not funded.”); Pla Appx 3393 (Castillo deposition) 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”).

32. Prestamos acknowledges that the origination date of a PPP loan is the date on which a borrower signs the Loan Documents and that a maturity date “is the day that the loan will come due at the end of the term.” Pla Appx 3389 (Martinez Deposition) at 20:7-11, 21:5-8, 80:1-5.

33. Contrary to its assertions that Plaintiffs did not enter into enforceable contracts for PPP loans, Prestamos has tried to collect repayment of certain Plaintiffs’ loans plus interest even though those loans were never funded. *See* ECF No. 139-20 at 3; ECF No. 139-20 at 6; ECF No. 139-20 at 7; ECF 155-1 Exhibit A (attaching Prestamos’ invoices to plaintiff Lloyd). *See also* ECF No. 108 ¶¶ 296-298 (quoting directly from Prestamos’ invoices to plaintiff Lloyd seeking repayment of $20,832.00 in principal plus 1% interest).

34. PPP loans were subject to forgiveness provided the borrower demonstrates that the funds were used in compliance with PPP regulations. *See* 85 F.R. 20811-20812.

35. Plaintiffs were precluded from applying for forgiveness because they could not certify they used funds in compliance with PPP regulations since they failed to receive those funds. *See* Pla Appx 3437-3444 SBA PPP Loan Forgiveness Application Form 3508-S.

36. Over 90% of PPP loans have been forgiven. *See* Pla Appx 3445-3448 Class Cert. Ex. 30 (SBA Forgiveness Platform Lender Submission Metrics).

37. It was common for banks to reject Prestamos’s disbursements of PPP loan proceeds to sole proprietors. Pla Appx 3427-3429 (Ex. 29) PRESTAMOS-00304345-PRESTAMOS-00304346 (“Banks don’t like these PPP loans to Independent Contractors and

Sole Proprietors because it is not the traditional business customer and they are concerned about fraud."); Pla Appx 3433-3436 (Ex. 31) PRESTAMOS-00302492-PRESTAMOS-00302494.

38. After certain Plaintiffs' banks rejected Prestamos' initial attempt to send them an ACH deposit of their PPP loan, those Plaintiffs provided Prestamos and/or its LSP Blueacorn with additional account or other required information to enable Prestamos to re-deposit their loan proceeds. *See* Pla Appx 3403 ((Marshall Deposition) at 14:24, 141:1-2; Pla Appx 3404 (Henderson Deposition) at 83:6-15; Pla Appx 3404 (Martin Deposition) at 197:1-7, 199:16-25, 200:1-5, 201:13-25; Pla Appx3406 (Johnson Deposition) at 89:12-24, 90:12-21; Pla Appx 3406-3407 (Marvel Deposition) at 75:12-23, 85:2-1.

39. Prestamos knew that Blueacorn's alleged enhanced due diligence or reverification process was not accurate as to certain loans. Pla Appx 3433-3436 (Ex. 31) PRESTAMOS-00302492-PRESTAMOS-00302494 ("I have overrided BA's decline, but need them to set up your prepaid card."); PRESTAMOS-00304735 ("We recognize that Blue Acorn made an error and we are working with them to correct this issue and move forward on funding your loan.").

40. Prestamos failed in its obligation under the Information and Bank Account Certification and Authorization form in the parties' Loan Documents to take reasonable steps to confirm the ownership and active account status of the bank accounts Plaintiffs designated, including regarding any personal accounts which could not be used for PPP loan deposits, versus business accounts into which PPP loans could be deposited.

41. Plaintiff Martin initially designated a personal account for his PPP loan which rejected the ACH deposit from Prestamos, and thereafter also offered an alternative business account to Prestamos and its LSP Blueacorn to deposit his SBA-approved $10,865.00 PPP loan, which Prestamos still refused to fund. Pla Appx 3409 (Ex. 26) ¶¶ 3-5.

42. For certain PPP borrowers other than Plaintiffs, where their banks rejected a deposit of loan proceeds by ACH funds transfer, Prestamos remitted their loan proceeds by sending them a prepaid debit card. *See* Pla Appx Pla Appx 3376 (Ex. 18) (Castillo Decl.) at ¶ 37; Pla Appx 3392 (Ex. 21) (Castillo Deposition) at 12:2-5, 14:1-5; 49:10-18; 95:4-6; Pla Appx 3393 (Ex. 21) ("all funding will be done via prepaid card."); Pla Appx 3389 (Ex. 20)(Martinez Deposition) at 57:14-18 ("During the period of time of the PPPs, there were certain ones that were funded to a prepaid card, issued to a prepaid card."); Pla Appx 3389 (Martinez Deposition) at 59:7-13 ("The prepaid bank card was an exception process. So we would only -- we would only ACH funds to a prepaid bank cards only after the bank had rejected the funds and we learned of it."); Pla Appx 3427-3429 (Ex. 29) PRESTAMOS-00304345-PRESTAMOS-00304346 ("We are working with Blue Acorn and a prepaid debit card company to send out Mastercards in the mail.").

43. Prestamos told certain Plaintiffs they would receive their loan proceeds by prepaid card. Pla Appx 3403 (Marshall Deposition) at 19:20-23 ("I had an e-mail that said everything looked fine, that I was going to be receiving my funds soon. I opted in to a Dash card. They said I would be receiving it soon."); Pla App 3404 at 51:2-9, 52:12-18, 83:12-14 ("Finally got an e-mail that I could update my banking or I could opt in to a Dash card."); Pla Appx 3404 (Martin Deposition) at 202:16-22, 222:3-7; Pla Appx 3403 (Townsend Deposition) at 232:20-25, 233:10; Pla Appx 3407 (Smith Deposition) at 86:1-8, 87:9-14, 88:3-8, 89:5-12; Pla Appx 3406 (Johnson Deposition) at 88:19-24, 91:4-7, 15-20. *Accord* Pla Appx 3409 at ¶ 6 (plaintiff Martin's decl.) ("I also asked them to use their prepaid Visa card option, which I understood was being used for other borrowers. This would have resolved the issue. But the request was refused.").

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Respectfully submitted,

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