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

ALICIA MARSHALL, DANIEL PRONSKY, PARIS TOWNSEND, NANCILEE HOLLAND, LEONA OWSLEY, KOLAWOLE AHMADOU, KIANA DERVIN, KRISTINA HENDERSON, DUSTIN INNIS, KELLY STALNAKER and JAMIE JONES, individually and on behalf of all others similarly situated, Plaintiffs, v. PRESTAMOS CDFI, LLC and CHICANOS POR LA CAUSA, INC., Defendants.	Case No. 5:21-cv-04337-JMG

REPLY IN SUPPORT OF CHICANOS POR LA CAUSA, INC.'S RENEWED MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

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For the reasons set forth in Defendant Chicanos Por La Causa, Inc.'s (CPLC) opening brief and below, the Court should dismiss CPLC from this action.

ARGUMENT

I. The Court Should Not Exercise Personal Jurisdiction Over CPLC

Plaintiffs' Opposition Brief (the "Opposition") is more notable for what it does *not* say than what it says. Plaintiffs decline to address a number of factors from the alter ego test, implicitly conceding that they weigh against personal jurisdiction over CPLC. Plaintiffs fail to show that CPLC exercised atypical or domineering influence over Prestamos, especially regarding the administration of Prestamos's PPP program. Plaintiffs do not identify *any* legal authority indicating that the facts they set forth in their Opposition Brief are sufficient to *establish* personal jurisdiction. And, in multiple instances where Plaintiffs purport to describe facts obtained during jurisdictional discovery, Plaintiffs simply get the facts wrong.

Plaintiffs aim to analogize this case to *Greathouse v. Capital Plus Financial LLC*, No. 4:22-0686, 2023 WL 5759250 (N.D. Tex. Sept. 6, 2023), *see* Opp. Br. at 1, but their analogy is inapposite and falls apart when confronted with the actual facts. Plaintiffs identify allegedly analogous facts—"unfulfilled payments" and "improperly used government benefits"—that speak to the merits rather than the personal jurisdiction analysis. And the facts simply do not show that the "upstreamed money" that Plaintiffs point to here involved anything beyond the normal actions of a subsidiary distributing profits or paying dividends to a parent that is commonplace in corporate America. *See In re Chocolate Confectionary Antitrust Litig.* (*In re Chocolate II*), 674 F. Supp. 2d 580, 599–600 (M.D. Pa. 2009) (subsidiary distribution of profits to parent is normal and expected). If the actual jurisdictional facts of *Greathouse* were truly analogous to this case, Plaintiffs would have pointed them out with specific citations to *Greathouse* in the body of their Opposition. But Plaintiffs did not, because they are not.

In short, Plaintiffs say that some alter ego test factors support personal jurisdiction, but they do not show that these factors are sufficient to *establish* personal jurisdiction.

A. Plaintiffs Concede That Certain Factors From the Alter Ego Test Weigh Against Personal Jurisdiction

Plaintiffs implicitly concede that multiple factors from the alter ego test weigh against personal jurisdiction by declining to address them. Notably, Plaintiffs' Opposition does not address (1) capitalization and solvency; (2) observation of corporate formalities; (3) maintenance of separate adequate records; or (4) improper siphoning of funds. *See* Opp. Br. at 6–16. Plaintiffs thereby concede that (1) Prestamos is well capitalized and solvent; (2) CPLC and Prestamos observed corporate formalities; (3) Defendants separately maintained adequate records; and (4) the payment of dividends was proof of a corporate formality and there is no evidence of siphoning funds. These four factors all weigh against personal jurisdiction over CPLC.

B. Plaintiffs Cannot Establish that CPLC Exercised Day-to-Day Control Over Prestamos

The uncontroverted facts Plaintiffs elicited in jurisdictional discovery show that CPLC did not exercise atypical influence over Prestamos, especially regarding Prestamos's administration of the PPP program. "[T]he alter-ego test looks to whether the degree of control exercised by the parent is greater than normally associated with common ownership and directorship and whether the parent *controls the day-to-day operations* of the subsidiary such that the subsidiary can be said to be a mere department of the parent." *In re Enter. Rent-A-Car Wage & Hour Empl. Practices Litig.*, 735 F. Supp. 2d 277, 319 (W.D. Pa. 2010) (emphasis added, cleaned up). Specifically, as the sole member of Prestamos, CPLC is "entitled to ordain [Prestamos]'s officers and directors, influence executive compensation, approve budgets, gather information about corporate performance, and receive distributions of subsidiary profits." *In re Chocolate II*, 674 F. Supp. 2d at 599–600. "These activities typify standard parent-subsidiary interactions and do not reflect daily, operational control that is the *sine qua non* of an alter ego relationship." *Id.* at 600.

Rather than focus on what the alter ego test actually requires—atypical, parent control over subsidiary day-to-day operations—Plaintiffs overemphasize the services and employees CPLC provides to Prestamos pursuant to Intercompany Services Agreements ("ISAs"). *See* Opp. Br. at 12–15. But intercompany agreements between parents are subsidiaries are commonplace, and do not, without more, support an alter ego relationship. *Riad v. Porsche Cars N. Am., Inc.*, No. 18-5175, 2023 U.S. Dist LEXIS 31221, at *16-17 (E.D. Pa. Feb. 24, 2023) (intercompany agreement between Porsche AG and Porsche NA did not support an alter ego relationship). Similarly, the usage of common employees does not, without more, establish an alter ego relationship. *Spring Pharms., LLC v. Retrophin, Inc.*, No. 18-4553, 2019 U.S. Dist. LEXIS 213901, at *19 (E.D. Pa. Dec. 11, 2019) (common employees did not establish alter ego relationship).

Tellingly, Plaintiffs identify *no* legal authority indicating that a parent's provision of services and employees to a subsidiary pursuant to an intercompany service agreement can suffice to establish personal jurisdiction. *See* Opp. Br. at 12–15. Nor do Plaintiffs identify any legal authority indicating that any particular portions or aspects of CPLC's ISAs with Prestamos can establish personal jurisdiction. *See id.* Rather, all Plaintiffs point to are a sampling of facts evidencing that CPLC and Prestamos in fact adhered to the ISAs.

None of the examples Plaintiffs identify demonstrates or otherwise contradicts the testimony of CPLC's 30(b)(6) witnesses Jose Martinez and Alicia Nunez, that *Prestamos* was responsible for its own day-to-day management and operations, not CPLC. CPLC Br., Ex. 1 (Deposition of A. Nunez) at 38:17–20 ([redacted]), 38:21–25 ([redacted]

[redacted]); CPCL Br., Ex. 2 (Deposition of J. Martinez) at 46:12–22 ([redacted]); *see also* CPLC Br., Ex. 13 (CPLC Objs. and Resps. to Plfs' First RFAs) ¶¶ 6–9 (denying that CPLC communicated with PPP borrowers, the government, or Blueacorn about PPP loans). Ad hoc examples of CPLC and Prestamos complying with the ISAs do not suffice for what is necessary to establish alter ego jurisdiction—"*actual control* over the daily affairs" of Prestamos by CPLC. *In re Chocolate Confectionary Antitrust Litig.* (*In re Chocolate I*), 602 F. Supp. 2d 538, 571 (M.D. Pa. 2009) (emphasis added).

Plaintiffs also claim that CPLC exercised control over Prestamos because Martinez "sought Adame's approval for the payment of PPP-related bonuses related to the 10,797 PPP loans that were generated independently of Prestamos's service provider Blueacorn." Opp. Br. at 14. But Plaintiffs ignore Martinez's testimony that [redacted]. *See* CPLC Br., Ex. 2 (Deposition of J. Martinez) at 52:25–53:1–3 ([redacted]); *see also Reynolds v. Turning Point Holdings Co., LLC*, No. 2:19-cv-01935, 2020 U.S. Dist. LEXIS 33163, at *10 (E.D. Pa. Feb. 26, 2020) (parent maintaining payroll for subsidiary is immaterial for establishing alter ego relationship). Prestamos made the decision; CPLC simply had to implement it. Plaintiffs fail to explain why Adame's alleged approval of PPP related bonuses shows an atypical level of control that supports personal jurisdiction. As the sole member of Prestamos, CPLC is entitled to influence compensation and approve budgets. Plaintiffs point to no more than a common practice in corporate America.

Plaintiffs' discussion of CPLC's Board Meeting Minutes, *see* Opp. Br. at 6, does them no better. Like a normal parent company, CPLC's Board Meeting Minutes reflect CPLC gathering and summarizing information about Prestamos's, one of its subsidiaries, PPP lending performance. *See In re Chocolate II*, 674 F. Supp. 2d at 599–600 (parent entitled to "gather information about corporate performance" of its subsidiary). Plaintiffs identify *no* legal authority indicating that monitoring or commenting on a subsidiary's performance, including how it may affect the parent company, is atypical or domineering. *See* Opp. Br. at 6–8.[1]

Nevertheless, Plaintiffs cite to and rely on an excerpt of CPLC's June 23, 2021 Board of Directors Meeting Minutes (the "Board Meeting Minutes") where Mr. Adame referred to "*CPLC's* PPP lending" in isolation while failing to disclose the full quote to the Court. Opp. Br. at 7–8. The relevant portion of the Board Meeting Minutes reads as follows:

[redacted]

Opp. Br., Ex. 1 at P-00296808 (emphasis added). There is no confusion in either the Board Meeting Minutes or the factual record in this case about the entity that did the PPP lending—Prestamos was the lender. *Id.* ("Prestamos did the largest amount of loans.").[2]

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1 Nor would a consolidated reference to CPLC and Prestamos in CPLC's Board Meeting Minutes suggest an alter ego relationship. *See Deardorff v. Cellular Sales of Knoxville, Inc.*, No. 19-cv-2642, 2022 U.S. Dist. LEXIS 18444, at *24 (E.D. Pa. Feb. 1, 2022) (consolidated financial statements did not establish that parent "exercised daily control over" subsidiary necessary to establish alter ego jurisdiction).

2 Plaintiffs misquote the Board Meeting Minutes by stating, [redacted] Opp. Br. at 8 (citing Ex. 1 at P-00296808 (emphasis in original)).

Accordingly, Plaintiffs cannot establish that CPLC exercised day-to-day control over Prestamos. Faced with this reality, Plaintiffs instead point to a jumble of ad hoc examples that they contend "support" certain factors of the alter ego jurisdiction test. *See* Opp. Br. at 14–15. But Plaintiffs' disjointed allegations cannot overcome the flaw in their position— they do not (and cannot) point to facts showing that CPLC had any coordinated "control over the internal workings or day-to-day operations of [Prestamos]." *In re Enter. Rent-A-Car*, 735 F. Supp. 2d at 324 (cleaned up).

C. The Other Facts Plaintiffs Identify Do Not Show CPLC Dominating or Controlling Prestamos

1. <u>Common Leadership Does Not Create Alter Ego Jurisdiction</u>

Some shared common officers between a parent and subsidiary is "to be expected in a subsidiary-parent relationship" and is not sufficient to establish an alter ego relationship, particularly when there are no overlapping board members. *Deardorff*, 2022 U.S. Dist. LEXIS 18444, at *7; *see also Riad*, 2023 U.S. Dist. LEXIS 31221, at *13–14; *United States v. Bestfoods*, 524 U.S. 51, 69 (1998) ("[I]t is entirely appropriate for directors of a parent corporation to serve as directors of its subsidiary[.]"); *Am. Protein Corp. v. AB Volvo*, 844 F.2d 56, 60 (2d Cir. 1988) (noting, of interlocking directorates: "This commonplace circumstance of modern business does not furnish such proof of control as will permit a court to pierce the corporate veil.").

Plaintiffs identify that the president of Prestamos serves as a CPLC executive and other CPLC executives serve on Prestamos's board, as well as certain decisions that they made or participated in; however, Plaintiffs identify no facts indicating that these persons were acting "for the wrong company" when making decisions and supervising activities. Plaintiffs claim that Jose Martinez was "simultaneously wearing both [parent and subsidiary] hats," but identify absolutely no legal authority explaining why this is purportedly the case. *See* Opp. Br. at 7. To the contrary, it is a "well established principle of corporate law that directors and officers holding positions with a parent and its subsidiary can and do 'change hats' to represent the two corporations separately, despite their common ownership." *Bestfoods*, 524 U.S. at 69.

Accordingly, Plaintiffs cannot establish personal jurisdiction based upon any common leadership among CPLC and Prestamos.

2. <u>CPLC's Status As Prestamos's Sole Member Parent Corporation Does Not Support Alter Ego Jurisdiction</u>

Plaintiffs identify no authority indicating that CPLC's status as Prestamos's sole member is sufficient to establish personal jurisdiction. *See* Opp. Br. at 8. Nor do Plaintiffs identify any authority suggesting that a parent being an "engaged and active owner" of one of its subsidiaries is a sufficient basis for personal jurisdiction. *See id.* Rather, as discussed in Section 1.B., *supra*, the parent's domination and control of the subsidiary, rather than its simple ownership of it, is the touchstone of an alter ego relationship.

3. <u>CPLC's Marketing Image & Use of Trademarks and Logos Does Not Support Alter Ego Jurisdiction</u>

Plaintiffs allege that CPLC's use of a shared marketing image as well as certain trademarks and logos support an exercise of personal jurisdiction. As Plaintiffs themselves acknowledge, "service mark similarity alone is not sufficient to establish alter ego." *See* Opp. Br. at 10 (citing *In re Chocolate I*, 602 F. Supp. 3d at 570–71). In spite of this, Plaintiffs do not identify *any* standards or case law indicating exactly what constitutes a "common marketing image" or "use of trademarks and logos" sufficient to support establishing personal jurisdiction. *See* Opp. Br. at 10–12.

Plaintiffs do not cite additional case law because existing case law is contrary to their position, including their arguments about shared employees using the @cplc.org email domain. *See Horowitz v. AT&T Inc.*, No. 3:17-cv-4827, 2018 U.S. Dist. LEXIS 69191, *24–25 (D.N.J.

Apr. 25, 2018) ("[C]ourts have found that common marketing image and joint use of trademark logs fail to render entities as alter egos."(cleaned up)); *Prescott v. LivaNova PLC*, Nos. 4:16-cv-00472 & 3:16-cv-00103, 2017 U.S. Dist. LEXIS 95830, at *25–26 (S.D. Iowa June 12, 2017) (granting a motion to dismiss where "[t]he companies share a common branding scheme, including a common email domain, but maintain completely separate day-to-day operations, employees, officers, and corporate structures"); *Wiseman v. Groep, N.V.*, No. 16-cv-07587, 2017 U.S. Dist. LEXIS 161465, at *39–40 (S.D.N.Y. Sept. 28, 2017) ("the fact that ReliaStar personnel used voya.com email addresses . . . is no more than a different form of the argument that the two identified under the same brand, which courts have found insufficient as a matter of law to establish alter egos"); *Patterson v. Home Depot, USA, Inc.*, 684 F. Supp. 2d 1170, 1179 (D. Ariz. 2010) ("[t]he fact the two companies used the same logo and intellectual property pursuant to the licensing agreement . . . does not demonstrate that Krause-Werk was the alter ego of the other"); *Von Grabe v. Sprint PCS*, 312 F. Supp. 2d 1285, 1301 (S.D. Cal. 2003) (common trade name and logo, without more, is not a sufficient basis for establishing personal jurisdiction). Moreover, a company being "portrayed as a single brand to the public . . . does not demonstrate the necessary control by defendant parent over the subsidiaries." *In re Enter. Rent-A-Car*, 735 F. Supp. 2d at 323.

Further, Plaintiffs' blanket allegation that Prestamos and CPLC "systematically blur the lines between the two entities" is not supported by the limited examples provided in their brief. *See* Opp. Br. at 11–15. For example, Plaintiffs devote significant effort to describing a single July 20, 2021 grant proposal sent to the SBA that includes references to "Chicanos Por La Causa – Prestamos CDFI." *See id.* at 11. Portraying CPLC and Prestamos as a single brand to the public in this manner does not demonstrate that CPLC maintained day-to-day control over Prestamos's operations, and Plaintiffs identify no authority saying so. Moreover, Plaintiffs do not allege— and cannot show— that CPLC's marketing image caused any confusion among those who viewed it. Accordingly, CPLC's marketing image and trademarks do not support personal jurisdiction.

D. Registration as Charitable Entity Does Not Support Personal Jurisdiction

CPLC's registration with the Commonwealth of Pennsylvania as a charitable entity, included as a throwaway towards the end of Plaintiffs' Opposition, also does not move the needle. Under Pennsylvania law, foreign corporation registration explicitly allows Pennsylvania courts to exercise personal jurisdiction over a registered foreign corporation. 15 Pa. C.S. § 4145.

Pennsylvania's charitable registration rules do not have similar provisions and Plaintiffs identify no legal authority holding that charitable registration creates personal jurisdiction Pennsylvania. *See* Opp. Br. at 16-17. Nor could they, as existing case law is to the contrary. *See Maras v. Cohen*, No. 1:21-CV-00317, 2022 U.S. Dist. LEXIS 84265, at *11-12 (E.D. Tenn. May 10, 2022) (charitable registration and receipt of donations in a state is not sufficient to establish personal jurisdiction).

E. Plaintiffs' Unjust Enrichment Claim Must be Dismissed

Plaintiffs agree that "dismissal of their unjust enrichment as to the states in which they were not injured" is proper but continue to assert that the court should keep "the unjust enrichment claims for the states where Plaintiffs were injured." Opp. Br. at 17. But Plaintiffs *still* do not say *which* state's unjust enrichment laws should govern their claim, even if limited among those states in which Plaintiffs reside. That is, they do not clarify whether each Plaintiff is invoking the unjust enrichment standards of his or her respective state or whether one state's standard is to govern them all. Merely arguing they bring their claim "narrowly and in the alternative," *id.*, does not invoke any particular jurisdiction's laws. This is fatal to their unjust enrichment claim. *See In re Wellbutrin XL Antitrust Litig.*, 260 F.R.D. 143, 167 (E.D. Pa. 2009).

Insofar as they pick California law, Plaintiffs are wrong that an unjust enrichment claim is independently viable. *See ValveTech, Inc. v. Aerojet Rocketdyne, Inc.*, 17-cv-6788-FPG, 2018 WL 4681799, at *5 (W.D.N.Y. Sept. 28, 2018) (declining to follow *Bruton v. Gerber Prod. Co.*, 703 F. App'x 468 (9th Cir. 2017)), because the California case on which *Bruton* relied was limited to the insurance context and subsequent California cases have rejected unjust enrichment as a standalone claim); *see also Khasin v. R.C. Bigelow, Inc.*, 12-cv-02204-WHO, 2015 WL 5569161, at *1 (N.D. Cal. Sept. 21, 2015) (same). Regardless, Plaintiffs have failed to plead in the alternative that there was no governing contract, *see Klein v. Chevron USA, Inc.*, 137 Cal. Rptr. 3d 293, 332–33 (Cal. Ct. App. 2012), and concede that their unjust enrichment claim is "coupled" with and *depends* on other claims rather than being an alternative to them. Opp. Br. at 19.

Finally, Plaintiffs fail to dispute that *they* failed to confer any benefit on Defendants: even if Defendants received loan fees or interest on principal pertaining to Plaintiffs' loans, those funds would not have come from Plaintiffs themselves (in fact, it would *cost* Prestamos money to hold on to Plaintiffs' loan principal). Plaintiffs cite no authority for their "but for" theory of the benefit conferral element for unjust enrichment. Opp. Br. at 17.

CONCLUSION

For the foregoing reasons, Defendant CPLC respectfully requests that the Court dismiss CPLC from this action.

Dated: November 3, 2023

By: /s/ *Marcel S. Pratt*

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CERTIFICATE OF SERVICE

I, Marcel S. Pratt, hereby certify that on this 3rd day of November 2023, I caused a copy of the foregoing Reply in Support of Defendant Chicanos Por La Causa's Motion to Dismiss Plaintiffs' Second Amended Complaint and accompanying papers to be served on all counsel of record via the Court's ECF system.

s/ *Marcel S. Pratt*
Marcel S. Pratt