

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

ALICIA MARSHALL, DANIEL
PRONSKY, and PARIS TOWNSEND,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

PRESTAMOS CDFI, LLC,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Alicia Marshall, Daniel Pronsky, and Paris Townsend, individually and on behalf of all others similarly situated, file this Class Action Complaint and Jury Demand for damages and equitable relief arising from the failure of Prestamos CDFI, LLC (“Defendant” or “Prestamos”) to fund approved Paycheck Protection Program (“PPP” or the “Program”) loans. In support, Plaintiffs make the following allegations based upon information and belief except as to the allegations pertaining to the Plaintiffs which are based on personal knowledge.

Summary of the Claims

1. Following the worldwide outbreak of COVID-19, Congress passed the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) to, among many other things, provide some relief to America’s small businesses and sole proprietors through the creation of the PPP.

2. Administered by the United States Small Business Administration (“SBA”), the PPP was established to provide hundreds of billions of dollars of potentially forgivable loans to small businesses and sole proprietors in a quick and efficient manner.

3. To ensure that small businesses and sole proprietors received PPP loan proceeds quickly, the applicable provisions of the PPP required lenders to fund PPP loans within ten days of SBA approval.

4. Lenders that participated in the Program were entitled to fees payable by the SBA for each PPP loan the lenders processed.

5. Defendant Prestamos was one of the SBA's authorized PPP lenders.

6. In 2020, Prestamos processed 935 PPP loans (totaling less than \$27 million), thereby reportedly receiving \$1.3 million in fees.

7. After the SBA substantially increased the fees lenders would receive for PPP loans made in 2021, Prestamos exponentially expanded its PPP lending, reportedly processing 494,415 PPP loans (totaling over \$7.6 billion) through May 31, 2021 -- more PPP loans than any other lender in 2021 to date, and more than the total number of PPP loans made this year by Bank of America, PNC Bank, TD Bank and Wells Fargo *combined*. See [Paycheck Protection Program \(PPP\) Report: Approvals through 05/31/2021, at p.7, available at \[https://www.sba.gov/sites/default/files/2021-06/PPP_Report_Public_210531-508.pdf\]\(https://www.sba.gov/sites/default/files/2021-06/PPP_Report_Public_210531-508.pdf\)](#) (last accessed Sept. 21, 2021).

8. As a result, Prestamos has reportedly received nearly \$1.2 billion in fees in 2021. See <https://www.nytimes.com/2021/06/27/business/ppp-relief-loans-blueacorn-womply.html> (last accessed Sept. 21, 2021).

9. In flagrant disregard of its contractual obligations to the eligible class member borrowers, however, Prestamos failed to actually fund those borrowers' SBA-approved PPP loans.

10. Indeed, Plaintiffs and thousands of others each timely applied for PPP loans with Prestamos, had their loans approved by the SBA and assigned PPP loan numbers, and yet never received their PPP loan funds.

Parties

11. Plaintiff Alicia Marshall (“Marshall”), a natural person residing in Sacramento, California, is a sole proprietor of an in-home healthcare business.

12. Plaintiff Daniel Pronsky (“Pronsky”), a natural person residing in Reading, Pennsylvania, is a sole proprietor of a food catering business.

13. Plaintiff Paris Townsend (“Townsend”), a natural person residing in San Bernadino, California, is a sole proprietor in the business of making and selling hair care products.

14. Defendant Prestamos is a limited liability company organized under the laws of the state of Arizona, having its principal place of business at 1024 E. Buckeye Road, Suite 270, Phoenix, Arizona 85034, with additional offices in Tucson, Arizona, Las Vegas and Reno, Nevada, and Santa Fe, New Mexico.

Jurisdiction & Venue

15. This Court has jurisdiction under 28 U.S.C. § 1332(a)(1) because the aggregate amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and is between citizens of different states. This Court also has jurisdiction under the Class Action Fairness Act because at least one member of the proposed class is a citizen of a different state than defendant Prestamos; there are more than 100 members of the proposed class; and the aggregate amount in controversy exceeds \$5,000,000.00 exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2)(A).

16. Venue is proper in this judicial District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred in this District.

Additional Factual Allegations

Background Concerning the COVID-19 Pandemic and the PPP

17. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a “pandemic.” Two days later, on March 13, 2020, the United States declared a national emergency due to the COVID-19 pandemic.

18. In response, on March 27, 2020, the United States Congress passed the largest economic stimulus package in the nation’s history -- the CARES Act. The CARES Act amounted to over \$2 trillion in aid, equivalent to roughly \$6,000 per American, or 45% of all federal government spending for 2019.

19. The CARES Act was enacted to provide immediate assistance to individuals, families, and businesses affected by the COVID-19 emergency.

20. One facet of the CARES Act’s approach to economic relief was the PPP. Recognizing the huge strain that the COVID-19 pandemic would likely impose on American small businesses, the PPP initially allocated \$349 billion for loans to small businesses, sole proprietors, and nonprofit organizations, among others. These loans were intended to pay up to eight weeks of payroll costs (including benefits) and could also be used to pay interest on mortgages, rent, and utilities.

21. PPP loans are guaranteed by the SBA, and the PPP provides for loan forgiveness if the borrower demonstrates that the funds were used in compliance with PPP regulations.

22. The PPP has received several legislative renewals, modifications, and extensions. On April 24, 2020, the President signed the Paycheck Protection Program and Health Care

Enhancement Act, which provided additional funding and authority for the PPP. On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 was enacted, extending the deferral period for PPP loans, among other provisions. On July 4, 2020, the PPP was further amended to guarantee PPP loans to August 8, 2020. On December 27, 2020, the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (the “Economic Aid Act”) was enacted, which further extended the PPP and allowed for the SBA to authorize second-draw PPP loans through March 31, 2021, available to borrowers who already used their previous PPP loan proceeds for permitted expenditures. On March 11, 2021, the American Rescue Plan Act was signed into law, adding an additional \$7.25 billion for PPP loans, bringing total appropriations for the program to \$813.7 billion. Finally, on March 30, 2021, the PPP Extension Act was enacted, which extended the PPP application deadline to May 31, 2021, and gave the SBA until June 30, 2021 to process loan applications.

23. PPP loans are generally available to businesses in operation as of February 15, 2020 that had salaried employees, as well as self-employed individuals. Businesses receiving PPP loans cannot have more than 500 employees and cannot be in bankruptcy. Further, applicants are required to certify that the “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” Currently, at least 60% of the proceeds must be used for payroll costs. The entire amount of any PPP loan is subject to forgiveness so long as the proceeds are used for eligible expenses.

24. Under the Economic Aid Act, a PPP borrower is entitled to a second draw under narrower conditions than its first draw. For example, a second draw borrower must have 300 or fewer employees, must demonstrate that it sustained a certain percentage reduction in its gross receipts compared to 2019, and must have used its entire first draw proceeds prior to

disbursement of its second draw proceeds. Second draw loans -- like first draw loans -- are also subject to forgiveness.

25. Given the anticipated volume of PPP loan applications, Congress provided for PPP loan processing and funding through private lenders, with the SBA paying these lenders a fee for each processed PPP loan.

26. For their participation, the PPP originally provided that lenders would receive fees at a rate of five percent for loans \$350,000.00 or less, three percent for loans between \$350,000.00 and \$2,000,000.00, and one percent for loans over \$2,000,000.00. *See* SBA Procedural Notice, Control No. 5000-20091 (Feb. 8, 2021), available at <https://www.sba.gov/sites/default/files/2021-02/Procedural%20Notice%205000-20091%20-%202nd%20Updated%20PPP%20Processing%20Fee%20and%201502%20Reporting-508.pdf> (last accessed Sept. 17, 2021).

27. To address institutional lenders' neglecting of PPP loan applications from many small businesses -- especially minority, underserved, veteran, and women-owned businesses -- in favor of larger PPP loans, the Economic Aid Act added that lenders processing loans of \$50,000.00 or less would receive an increased fee of fifty percent per PPP loan, up to \$2,500.00, beginning December 27, 2020.

28. As the vast majority of PPP loans -- even those to the smallest businesses and sole proprietors -- exceeded \$5,000.00, PPP lenders received a flat fee of \$2,500 for virtually every PPP loan less than \$50,000.00.

29. On February 8, 2021, the SBA issued a new notice setting forth the procedure for how lenders would be paid PPP loan fees by the SBA. *Id.*

30. To apply for a PPP loan, a prospective borrower would have to submit a standardized Borrower Application Form issued by the SBA (SBA Form 2483 for first time borrowers and SBA Form 2483-SD for second draw borrowers), together with relevant payroll documentation, to a lender. Once the lender reviewed and approved the loan application, the lender would submit the application to the SBA for approval.

31. Following SBA approval of an application, the SBA would issue a ten-digit loan identification number (known as a “GP [General Program] number”) for the borrower’s loan.

32. Provided that the borrower had executed the loan documents, the lender was required to disburse the PPP funds within ten days of SBA approval and assignment of the loan number.

33. If the PPP borrower did not sign and submit all of the required documents to the lender, then the PPP lender was required to report the loan and corresponding loan number as cancelled no later than twenty days from the SBA approval and assignment of the loan number.

34. Lenders’ compliance with the above PPP funding requirement was of paramount importance to applicants and borrowers for reasons beyond their need to get the PPP loan proceeds in a timely manner.

35. Once the SBA approved a PPP loan and assigned it a loan number, the applicant could not apply for a PPP loan with any other lender because the applicant could not make all of the required certifications on another PPP loan application.

36. For both first draw and second draw PPP loans, a PPP loan applicant had to certify that they had not and would not receive another first draw or second draw loan, respectively.

37. Since the lender's obligation to fund a PPP loan ran from the date the SBA approved and assigned a loan number, an applicant could not certify to another lender that they would not receive the first loan even if the first lender had failed to timely fund the loan.

38. Once a PPP loan was funded, the lender had ten days to submit an SBA Form 1502 to report to the SBA that the loan proceeds had been disbursed. After the lender submitted a Form 1502, the SBA would initiate payment of the processing fee to the lender.

39. By submitting a Form 1502, the lender represented to the SBA that the PPP loan had been fully funded. Further, a lender was required to update the SBA with monthly Form 1502 reports detailing each PPP loan's status.

Background Concerning Defendant Prestamos

40. According to its website, Prestamos purports to be "your partner in economic development, small business growth and quality job creation." *See* Prestamos CDFI, available at <https://www.prestamosloans.org/> (last accessed Sept. 17, 2021). Also, according to its website, Prestamos provides loan products and consulting services that "are designed for the emerging business owner seeking funding." *Id.*

41. Prestamos is a Community Development Financial Institution ("CDFI"). CDFIs were established as part of the Riegle Community Development and Regulatory Improvement Act of 1994. *See* What Are CDFIs, available at https://www.cdfifund.gov/sites/cdfi/files/documents/cdfi_infographic_v08a.pdf (last accessed Sept. 17, 2021). There are reportedly 1,000 CDFIs operating nationwide. *Id.*

42. Prestamos is a subsidiary of Chicanos Por La Causa Inc. ("CPLC"). CPLC is a corporation organized under Arizona law with its headquarters at 1112 E. Buckeye Road, Phoenix, Arizona 85034.

43. Prestamos represents on its website that, as a CDFI, it is “dedicated to helping economic growth in underserved areas by providing financing solutions to businesses and economic development projects.” *See* Prestamos CDFI, available at <https://www.prestamosloans.org/> (last accessed Sept. 17, 2021).

44. Since many sole proprietors’ PPP loans were in amounts less than \$10,000.00, PPP lenders like Prestamos were generating processing fees of only several hundred dollars for making those loans in 2020.

45. Pursuant to the new 2021 increased fee schedule, however, lenders like Prestamos could count on collecting a \$2,500.00 flat fee for every PPP loan less than \$50,000.00.

46. Taking into consideration the incredible demand for PPP loans less than \$50,000.00 by sole proprietors, independent contractors, self-employed individuals and other underserved small businesses together with the more lucrative fee schedule, Prestamos saw an opportunity to generate enormous amounts of lender fees by booking a high volume of PPP loans under \$50,000.00.

47. Prestamos reportedly contracted with Blue Acorn PPP, LLC (and/or its affiliate FinCap, Inc. or their affiliates) (“Blueacorn”) in 2021 to help identify borrowers to whom Prestamos could make PPP loans and assist in the PPP paperwork process.

48. Blueacorn was created in 2020.

49. Blueacorn is neither a bank nor a lender and, therefore, cannot actually make PPP loans.

50. In general, only SBA section 7(a)-approved lenders were approved to make PPP loans, together with any additional lenders determined by the Administrator of the SBA and the Secretary of the U.S. Treasury to also be qualified to make such loans. *See* 86 Fed. Reg. 3692

(Jan. 14, 2021), available at <https://www.federalregister.gov/documents/2021/01/14/2021-00451/business-loan-program-temporary-changes-paycheck-protection-program-as-amended-by-economic-aid-act> (last accessed Sept. 17, 2021).

51. Accordingly, Plaintiffs and other similarly situated class member borrowers contracted with Prestamos as the lender obligated to make the PPP loans.

52. For its role in identifying potential borrowers and helping with the PPP paperwork, Blueacorn reportedly received a part of the lender's fees pursuant to a separate contractual relationship between the lender and Blueacorn. *See* THE NEW YORK TIMES, How Two Start-Ups Reaped Billions in Fees on Small Business Relief Loans (June 27, 2021), available at <https://www.nytimes.com/2021/06/27/business/ppp-relief-loans-blueacorn-womply.html> (last accessed Sept. 17, 2021).

53. As noted above, Prestamos exploited the increased fees to be paid by the SBA on smaller PPP loans in 2021 by reportedly agreeing to fund 494,415 PPP loans totaling over \$7.6 billion in loan proceeds -- more loans than any other lender and more loans than Bank of America, PNC Bank, TD Bank and Wells Fargo combined. *See* SBA, Paycheck Protection Program (PPP) Report, Approvals through 5/31/2021, p. 7, available at https://www.sba.gov/sites/default/files/2021-06/PPP_Report_Public_210531-508.pdf (last accessed Sept. 17, 2021).

54. As a result, Prestamos reportedly generated nearly \$1.2 billion in PPP loan fees in 2021. *See* THE NEW YORK TIMES, How Two Start-Ups Reaped Billions in Fees on Small Business Relief Loans (June 27, 2021), available at <https://www.nytimes.com/2021/06/27/business/ppp-relief-loans-blueacorn-womply.html> (last accessed Sept. 17, 2021) (“Last year, Prestamos made \$1.3 million for its lending. This year, it

will collect nearly \$1.2 billion, according to a New York Times calculation of lenders' fees based on government data.”).

**Prestamos's Participation in the
PPP Liquidity Facility**

55. To facilitate lending under the SBA's PPP, the Federal Reserve supplied liquidity to Prestamos and other participating financial institutions through term financing to be secured by the PPP loans. *See* Board of Governors of the Federal Reserve System, Paycheck Protection Program Liquidity Facility (PPPLF), available at <https://www.federalreserve.gov/monetarypolicy/ppplf.htm> (last accessed Sept. 17, 2021).

56. In particular, the Paycheck Protection Program Liquidity Facility (“PPPLF”) was authorized under § 13(3) of the Federal Reserve Act “to facilitate lending by eligible borrowers [*i.e.*, PPP lenders] to small businesses under the [PPP]. ... Under the Facility, the Federal Reserve Banks (‘Reserve Banks’) will lend to eligible borrowers [*i.e.*, PPP lenders] on a non-recourse basis, taking PPP Loans as collateral.” *See* Paycheck Protection Program Liquidity Facility Term Sheet, available at <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20210625a1.pdf> (last accessed Sept. 17, 2021).

57. Further, “[a]ll lenders that are eligible to originate PPP Loans are eligible to borrow under the Facility.” *Id.*

58. For Prestamos and other qualified CDFI PPP lenders, the lending Federal Reserve Bank was the Federal Reserve Bank of Cleveland. *Id.*

59. Only SBA-guaranteed PPP loans are eligible to serve as collateral for PPPLF advances, and the principal amount advanced under the PPPLF was to be equal to the principal amount of the PPP loan pledged to secure the extension of credit. *Id.*

60. Prestamos received billions of dollars of advances through the PPPLF as specified more fully below.

61. In fact, although the PPP application period ended on May 31, 2021 and the life cycle of a PPP loan application should only take a few business days, Prestamos continued to receive huge advances through the PPPLF between June 30, 2021 and July 30, 2021, after the deadline for processing loan applications.

62. For example, on June 30, 2021 alone, Prestamos received PPPLF cash advances of approximately \$118,743,226.

63. In particular, according to a report by the Federal Reserve to the U.S. Congress dated September 13, 2021 “PPPLF Transaction-specific Disclosures (XLSX),” Prestamos received the following specific cash advances from the PPPLF:

<u>Date of Advance</u>	<u>Amount</u>
2020-05-15	\$839,761.76
2020-05-19	\$6,047,880.04
2020-05-20	\$862,834.00
2020-05-22	\$1,156,497.62
2020-05-27	\$416,800.54
2020-05-29	\$696,356.87
2020-06-01	\$492,218.22
2020-06-03	\$244,555.74
2020-06-04	\$559,762.54
2020-06-08	\$11,242.95
2020-06-08	\$559,314.27
2020-06-08	\$63,848.04
2020-06-08	\$614,343.47
2020-06-26	\$177,591.04
2020-06-26	\$221,991.60

<u>Date of Advance</u>	<u>Amount</u>
2020-06-26	\$198,670.00
2020-06-26	\$285,888.69
2020-06-26	\$103,249.00
2020-06-26	\$348,119.55
2020-06-30	\$210,223.83
2020-07-01	\$303,478.31
2020-07-01	\$486,363.72
2020-07-01	\$829,175.81
2020-07-07	\$1,639,353.02
2020-07-09	\$1,070,316.28
2020-07-14	\$320,769.72
2020-07-14	\$320,335.47
2020-07-31	\$598,038.85
2020-07-31	\$1,585,572.39
2020-07-31	\$333,622.00
2020-08-11	\$1,027,167.09
2020-08-11	\$1,819,532.00
2020-08-11	\$256,166.50
2020-09-22	\$1,209,795.10
2020-09-23	\$47,152.00
2020-09-23	\$322,815.25
2020-09-23	\$112,162.00
2020 Total	\$26,392,965.28

<u>Date of Advance</u>	<u>Amount</u>
2021-01-29	\$186,091.00
2021-02-04	\$2,706,582.04
2021-02-08	\$2,633,372.65
2021-02-09	\$2,974,669.86
2021-02-18	\$3,270,876.03
2021-02-18	\$1,405,472.00

<u>Date of Advance</u>	<u>Amount</u>
2021-02-23	\$2,955,206.00
2021-02-26	\$2,975,445.15
2021-03-10	\$1,137,906.71
2021-03-10	\$574,411.00
2021-03-18	\$285,612.00
2021-03-18	\$1,920,037.00
2021-03-24	\$1,376,450.00
2021-03-24	\$1,394,589.00
2021-04-05	\$2,036,898.00
2021-04-14	\$1,857,735.83
2021-04-14	\$1,218,922.00
2021-04-14	\$2,080,722.00
2021-04-14	\$549,184.00
2021-04-19	\$2,781,743.00
2021-04-27	\$2,385,498.00
2021-05-05	\$542,247,559.00
2021-05-07	\$977,283,838.00
2021-05-11	\$219,875,856.00
2021-05-12	\$11,638,792.00
2021-05-12	\$15,011,946.00
2021-05-12	\$22,711,165.00
2021-05-14	\$261,721,437.00
2021-05-14	\$71,807,843.00
2021-05-14	\$9,724,231.00
2021-05-14	\$5,800,825.00
2021-05-14	\$1,394,114.00
2021-05-14	\$3,236,837.00
2021-05-17	\$2,820,014.00
2021-05-17	\$2,000,798.00
2021-05-18	\$3,013,786.00

<u>Date of Advance</u>	<u>Amount</u>
2021-05-18	\$3,094,488.00
2021-05-19	\$752,007,807.00
2021-05-20	\$24,508,694.00
2021-05-20	\$129,048,483.00
2021-05-21	\$383,962,452.00
2021-05-24	\$553,643,404.00
2021-05-26	\$287,698,867.00
2021-05-26	\$78,487,436.00
2021-05-26	\$21,918,317.00
2021-05-26	\$6,212,247.00
2021-05-26	\$8,109,147.00
2021-05-28	\$8,589,635.00
2021-05-28	\$11,371,049.00
2021-05-28	\$184,579,114.00
2021-06-02	\$25,025,683.00
2021-06-02	\$363,445,193.00
2021-06-03	\$487,925,246.00
2021-06-04	\$55,686,186.00
2021-06-08	\$278,866,006.00
2021-06-08	\$52,432,880.00
2021-06-09	\$674,168,631.00
2021-06-10	\$235,611,832.00
2021-06-15	\$24,013,181.00
2021-06-15	\$8,772,946.00
2021-06-15	\$10,593,069.00
2021-06-15	\$13,035,119.00
2021-06-15	\$8,866,293.00
2021-06-17	\$13,428,841.00
2021-06-17	\$5,676,633.00
2021-06-18	\$6,658,965.00

<u>Date of Advance</u>	<u>Amount</u>
2021-06-18	\$2,304,017.00
2021-06-18	\$2,397,599.00
2021-06-18	\$6,799,943.00
2021-06-18	\$4,549,067.00
2021-06-21	\$11,740,892.00
2021-06-22	\$5,148,262.00
2021-06-24	\$2,473,148.00
2021-06-24	\$2,672,552.00
2021-06-24	\$12,965,069.00
2021-06-24	\$41,186,983.00
2021-06-24	\$16,493,297.00
2021-06-30	\$7,453,648.00
2021-06-30	\$110,650,628.00
2021-06-30	\$638,950.00
2021-07-02	\$41,664.00
2021-07-02	\$435,987.00
2021-07-02	\$540,429.00
2021-07-07	\$329,417.00
2021-07-07	\$62,496.00
2021-07-12	\$149,699.00
2021-07-12	\$176,781.00
2021-07-14	\$7,871,678.00
2021-07-29	\$20,832.00
2021-07-30	\$598,787.00
2021 Total	\$7,144,136,133.27

See Board of Governors of the Federal Reserve System, Paycheck Protection Program Liquidity Facility (PPPLF), available at <https://www.federalreserve.gov/monetarypolicy/ppplf.htm> (last accessed Sept. 17, 2021)

64. As alleged below, while Prestamos received over \$7.1 billion from the PPPLF in 2021 alone, Prestamos failed to actually fund PPP loans approved by the SBA for Plaintiffs and thousands of other SBA-approved borrower members of the proposed class. Prestamos failed to fund class member approved loans, moreover, despite having actually received the unfunded PPP loan proceeds from the PPPLF.

Prestamos's Failure to Fund Plaintiff Marshall's PPP Loan

65. When the pandemic began, plaintiff Marshall was, and continues to be, in the business of providing in-home healthcare in the Sacramento, California area.

66. Due to the pandemic, Marshall was not able to provide in-home care with the same frequency and, as a result, lost significant income.

67. On or about April 21, 2021, Marshall applied for a PPP loan with Prestamos. Marshall submitted all requested documentation and information.

68. On or about April 22, 2021, the SBA approved Marshall's PPP loan application and assigned it a loan number (SBA Loan Number 8282208801).

69. Marshall was approved for a PPP loan in the amount of \$7,915.00.

70. On April 29, 2021, Marshall received the PPP promissory Note and accompanying documents for her to sign.

71. The Note identified the SBA loan number and amount, defendant Prestamos as the lender and plaintiff Marshall as the borrower; set forth payment terms, potential events of default, Prestamos's rights in the event of default, and other terms and conditions; and provided the terms for plaintiff Marshall to repay the loan to Prestamos if it was not forgiven.

72. The Note also included an Additional and Correction Documents Agreement (Errors and Omissions Agreement) between Prestamos and plaintiff Marshall; a Business

Purpose Statement; a Notice - No Oral Agreements bearing the signature of Prestamos's President Jose Martinez and plaintiff Marshall; a Written Consent of Governing Body form for Marshall to represent that she is authorized to receive the loan and on which Prestamos may rely; an IRS W-9 Request for Taxpayer Identification Number and Certification; and an Information and Bank Account Certification and Authorization form identifying the bank or other account to which Prestamos would send the funds (collectively, the "Loan Documents").

73. On April 29, 2021, Marshall signed and returned the Loan Documents in order to obtain the \$7,915.00 PPP loan.

74. Despite properly and timely completing, signing and submitting the Loan Documents and multiple additional attempts to obtain the loan proceeds, Marshall never received the proceeds of her SBA-approved PPP loan.

75. On August 2, 2021, Marshall contacted her local SBA office about Prestamos's failure to fund her PPP loan.

76. On August 3, 2021, the SBA office responded and provided Marshall with the following information about her PPP loan:

Alicia Marshall West Sacramento CA Amount \$7,915 Status Disbursed Current
Loan 82822088-01 App 29343623 Funded 04/22/2021

77. Although the SBA's records reported that plaintiff Marshall's PPP loan had actually been funded, Marshall never received any PPP loan proceeds.

78. The SBA's record of the alleged disbursement of Marshall's loan proceeds was presumably based on data Prestamos provided to the SBA.

79. In fact, on September 21, 2021, the SBA sent an email to plaintiff Marshall stating that she is eligible to apply “for PPP Direct Forgiveness because your lender has opted in and you have a PPP loan amount of \$150,000 or less.”

80. Despite the SBA’s September 21, 2021 email inviting plaintiff Marshall to apply for loan forgiveness, however, plaintiff Marshall never received any PPP loan proceeds.

81. Prestamos’s failure to fund Marshall’s SBA-approved PPP loan deprived Marshall of funds that would have directly assisted in the operation of her in-home healthcare business and resulted in lost opportunities and other consequential damages.

Prestamos’s Failure to Fund Plaintiff Pronsky’s PPP Loan

82. When the COVID-19 pandemic began, plaintiff Pronsky was, and continues to be, in the barbeque catering business in the Reading, Pennsylvania area.

83. Plaintiff Pronsky was, and is, in the business of operating a barbeque catering business in and around Reading, Pennsylvania.

84. Due to the pandemic, Pronsky’s catering business lost significant income.

85. Accordingly, in or about May 2021, Pronsky also applied for a PPP loan.

86. On May 27, 2021, the SBA approved Pronsky’s PPP loan application and assigned it a loan number (SBA Loan Number 4628549010).

87. Pronsky was approved for a PPP loan in the amount of \$8,332.00.

88. Also on May 27, 2021, Pronsky received the same form PPP loan promissory Note and accompanying additional Loan Documents that plaintiff Marshall had also received.

89. Additionally, on May 27, 2021, Pronsky signed and returned the Loan Documents in order to obtain the \$8,332.00 PPP loan.

90. Despite properly and timely completing, signing and submitting the Loan Documents and multiple additional attempts to obtain the loan proceeds, Pronsky never received the proceeds of his SBA-approved PPP loan.

91. Prestamos's failure to fund Pronsky's SBA-approved PPP loan deprived Pronsky of funds that would have directly assisted in the operation of his catering business and resulted in lost opportunities and other consequential damages.

Prestamos's Failure to Fund Plaintiff Townsend's PPP Loan

92. When the COVID-19 pandemic began, plaintiff Townsend was, and continues to be, in the business of making and selling hair care products in the San Bernadino, California area.

93. Due to the pandemic, Townsend's hair care business lost significant income.

94. Accordingly, on or about May 6, 2021, Townsend applied for a PPP loan.

95. Also in May 2021, the SBA approved Townsend's PPP loan application and assigned it a loan number (SBA Loan Number 4476579008).

96. Townsend was approved for a PPP loan in the amount of \$20,012.00.

97. On or about May 27, 2021, Townsend received the same form PPP loan promissory Note and accompanying additional Loan Documents that plaintiffs Marshall and Pronsky had also received.

98. Additionally, on May 27, 2021, Townsend signed and returned the Loan Documents in order to obtain the \$20,012.00 PPP loan.

99. Despite properly and timely completing, signing and submitting the Loan Documents and multiple additional attempts to obtain the proceeds, Townsend never received the proceeds of her SBA-approved PPP loan.

100. Prestamos's failure to fund Townsend's SBA-approved PPP loan deprived Townsend of funds that would have directly assisted in the operation of her hair care products business and resulted in lost opportunities and other consequential damages.

**Prestamos's Failure to Fund Other
SBA-Approved Class Member
Borrower PPP Loans**

101. Numerous other similarly situated borrowers have been damaged by Prestamos's failure to fund their SBA-approved PPP loans and have complained about their experiences to the BBB and via social media sites.

102. For example, the BBB's website identifies a number of complaints against Prestamos:¹

- a. "I was notified on June 2, 2021 that my loan would be funded by Prestamos CDFI, LLC within 3-6 business days. ... I have never been funded." (August 2, 2021 post);
- b. "I was approved a PPP loan in May and SBA has [it] that the loan was disbursed ... in May and I haven't received a dime, cannot reach anyone via phone and all emails take me around in circles." (July 12, 2021 post);
- c. "I was later texted approval for funding on 6/3/2021. Since then I have not received the funds. When I check online support it says DENIED. I am frustrated as to what is going on? I reached out to support online email and text but no change in status. When I checked public records online it says my name address and funding amount as if I have been funded already. Please help!" (July 12, 2021) (emphasis in original);
- d. "Its been over 25+ business days since date of signing loan docs. ... On the sba ppp website (capital access financial system) [it says] that my funds HAVE been dispersed [sic] by Prestamos CDFI, LLC which isn't true because I definitely don't have the funds. Since Prestamos CDFI, LLC is my lender I hold them responsible." (July 9, 2021) (emphasis in original);

¹ Emphasis is in the original in this Complaint unless otherwise noted or the context otherwise requires.

- e. Prestamos “works with Blueacorn and actually is the lender who signed off on the loan that was meant for me for PPP. ... They keep saying Blueacorn is the company that has your money despite my having entered into a contract with Prestamos. They are continuing to accrue interest for over a month now that I owe on money I never received.” (July 7, 2021);
- f. Prestamos “is extremely I mean extremely hard to get in contact with. ... I’ve called EVERY number on their site and have gotten in contact with no one.” (July 6, 2021) (emphasis in original); and
- g. “I applied for the *** PPP Loan online with BlueAcorn (lender servicing provider) in May 2021. *** approved by PPP Loan on May 26, 2021 and Prestamos CDFI, LLC is the lender and my loan should have been disbursed within 10 days of my *** approval date or 20 days the latest. It has been more than 1 month and I have not received my funds. I sent multiple emails to Prestamos and also left voicemail messages within the past 2 weeks, but Prestamos has not responded at all. My loan status is active but not fully disbursed according to the ProPublicas online information which claimed to come from ***. I will not be responsible to pay back a loan I never received. I have not canceled my loan either and need it desperately for my business and to support my 2 sons.” (July 2, 2021).

See BBB, Prestamos CDFI LLC, available at

<https://www.bbb.org/us/az/phoenix/profile/loans/prestamos-cdfi-llc-1126-1000084982/complaints> (last accessed Sept. 17, 2021)

103. Similarly, according to complaints posted publicly on Reddit and other social media sites:

- a. “WHERE IS OUR MONEY!??????? ALL THE OBSTACLES & HOOPS SOMEONE NEEDS TO BE ACCOUNTABLE SINCE APRIL WAITING ON WHAT NOW!!!?BLUEACORN & PRESTAMOS HAVE BROKEN THEIR PROMISES!!!! WE NEED A RESPONSE NOW.” (August 8, 2021) Available at https://www.reddit.com/r/BlueAcornPrestamos/comments/p1eyr2/where_is_our_money_all_the_obstacles_hoops/;
- b. “I’m pissed I signed 5/27 and still nothing no emails no nothing I call prestamos they say call blue acorn I call them they say the same shit somebody help me before I lose my entire business please!” (July 2, 2021) Available at

https://www.reddit.com/r/BlueAcornPrestamos/comments/occrqy/im_piss_ed_i_signed_527_and_still_nothing_no/;

- c. “I GOT EVERYTHING, SIGNED AND WAS WAITING FOR MY DISBURSEMENT. LAST NIGHT I RECEIVED AN EMAIL & TEXT SAYING THAT MY ID WAS BLURRY AND MY IDENTITY NEEDED TO BE VERIFIED. I DID ALL THAT (AFTER OVER A HOUR OF CRASHING) JUST TO HAVE MY BA STATUS START BACK AT STAGE 1 AND NOW I AM NOT IN FUNDING STATUS ANYMORE. I AM BEYOND PISSED. I HAVE BEEN WAITING OVER A MONTH.” (DATE) Available at https://www.reddit.com/r/Blueacorn/comments/n5dk8y/prestamos_signers_427430/;
- d. “I was approved 5/26, signed documents 6/2 my lender is Prestamos as well. Haven’t heard anything from them & I opted in for the dash card as well. Called them to see if my card was shipped I sat on hold for 2 hours & they disconnected my call smh.” (June 28, 2021) Available at https://www.reddit.com/r/EIDLPPP/comments/o19x77/has_anyone_who_signed_on_62_been_funded_through/;
- e. “Has anyone who signed on 6/2 been funded through blue acorn? My lender is Prestamos and I opted in for the dash card (which I still haven’t received). I was approved 5/29 and signed 6/2. I’m getting a bit discouraged, but trying to keep the faith. Time are HARD.” (June 16, 2021) Available at https://www.reddit.com/r/EIDLPPP/comments/o19x77/has_anyone_who_signed_on_62_been_funded_through/;
- f. “BLUEACORN/ JUNE SIGNERS/PRESTAMOS / REJECTED FUNDS/ UBI/ OPT FOR DASHCARD Can someone share how long was their experience when funds were rejected by your bank. Dave’s banking rejected/returned my funds on 06/14 how long before I’ll receive an email to opt for dash card. I have chatted, message them on Twitter and put in multiple tickets with support still no luck no email just automated responses from support and live chat representative just tell me to contact support which is a dead end. Will I still get funded or will this process be a long experience? Seems like it’s already been a long time I’m just over it at this point! Somebody please help.” (July 12, 2021) Available at https://www.reddit.com/r/EIDLPPP/comments/oitaff/blueacornjune_signersprestamosrejected/;
- g. “They keep telling us that our funds are guaranteed, to "REST ASSURED, YOU WILL BE FUNDED." But, Federal Law states that lenders have 10 calendar days to fund the loan after the PLP or SBA LOAN NUMBER is granted, and AFTER 20 DAYS, THE LOAN WILL BE CANCELED IF ALL NECESSARY PAPERWORK IS NOT TURNED IN. Blue Acorn

and Prestamos have made it impossible to get in touch with them ON PURPOSE, bc they do not plan on doing anymore work to fund anyone, and they WILL NOT BE REACHING OUT to anyone who is lacking any paperwork - paperwork THEY NEVER ASKED FOR IN THE FIRST PLACE!! At this point, I think it would be wise to send in everything you have (to the SBA? to prestamosinfo@cplc?) that proves you have a business that was in operation before 2020, ie. bank statements, w-2s, everything. Still, they will avoid funding your loan like the plague. They will find some reason for your loan to be denied, even after you have an SBA loan #, due to the 20 day cancelation clause in the Interim Rules. WE ARE NOT GOING TO BE FUNDED FOLKS, ITS OVER. SERIOUSLY, LAWYER UP, BECAUSE THIS IS A VIOLATION OF THE UNFAIR AND DECEPTIVE TRADE PRACTICES ACT, which pays 3X damages (triple damages). These companies are betting on us not being legitimate business owners, and not being able to prove that we are, and moreover, scared to get the authorities involved.” (June 15, 2021) Available at https://www.reddit.com/r/PPPLoans/comments/o0qcqv/blue_acorn_prestamos_waiting_until_20_days_passed/;

- h. So she created a ticket and said she couldnt tell me what the error was until they reached out to me. Not sure if I need to verify questions like everyone has been talking about and I got lucky to ask them now or else I would never come across it because they wont tell you or email you about it. Or there really is an error which I guess I will find out till they tell me.” (May 5, 2021) Available at https://www.reddit.com/r/PPPLoans/comments/n3x0zj/blueacorn_if_you_got_your_loan_from_prestamos/; and
- i. “Had the same error issue had to resend my ID as well as answer verification questions, originally signed on the evening of the 28th, my issue is the never reached out me about it I had to reach out and ask them, hopefully that all I need to do 🙏” (May 5, 2021) Available at https://www.reddit.com/r/PPPLoans/comments/n3x0zj/blueacorn_if_you_got_your_loan_from_prestamos/.

Class Action Allegations

104. Plaintiffs bring this action individually and on behalf of the following National Class and California Subclass (collectively, the “Classes”):

- a. **National Class:** All persons and entities in the United States who, in 2021, timely applied for PPP loans with defendant Prestamos as the lender, and who had their loans approved by the SBA but did not receive the PPP loan proceeds; and

- b. **California Subclass:** All persons and entities in California who, in 2021, timely applied for PPP loans with defendant Prestamos as the lender, and who had their loans approved by the SBA but did not receive the PPP loan proceeds.

105. Excluded from the Classes are Prestamos, any entities in which Prestamos has a controlling interest, Prestamos' parent company (CPLC), Prestamos's and CPLC's agents and employees, any Judge to whom this action is assigned, and any member of such Judge's staff and immediate family.

106. There is a well-defined community of interest among members of the Classes, and the disposition of their claims in a single action will benefit the parties and the Court.

107. The proposed Classes meet each applicable requirement of Fed. R. Civ. P. 23.

108. **Numerosity:** While the exact number of members of the Classes is unknown at this time and can be determined by appropriate discovery, the Classes include thousands of members such that joinder of all members is impracticable.

109. **Ascertainability:** Names and addresses of members of the Classes are available from defendant Prestamos's records and potentially other sources including publicly available databases. Notice can be provided to the members of the Classes through direct mailing, publication, or otherwise using techniques and a form of notice similar to those customarily used in class action litigation.

110. **Typicality:** Plaintiffs' claims are based on the same facts and legal theories as those of the other members of the Classes which Plaintiffs seek to represent. Plaintiffs and the members of the Classes all similarly applied for PPP loans, had their loans approved by the SBA, but did not receive their PPP loan proceeds from Prestamos.

111. **Adequacy:** Plaintiffs will fairly and adequately represent the interests of the members of the Classes. Plaintiffs are adequate representatives of the Classes as their interests

align with the interests of the members of the Classes, and Plaintiffs are represented by counsel skilled and experienced in class actions, including financial consumer and other class action litigation.

112. ***Superiority:*** A class action is superior to all other available methods of the fair and efficient adjudication of the claims asserted in this action because the expense and burden of individual litigation makes it economically unfeasible for members of the Classes to seek to redress their claims other than through a class action; if separate actions were brought by individual members of the Classes, the resulting duplicity of lawsuits could lead to differing and inconsistent adjudications; and, absent a class action, Prestamos is unlikely to be held accountable for its failure to actually fund all applicable SBA-approved PPP loans.

113. ***Predominance and Commonality:*** Common questions of law and fact exist and predominate over any questions which affect individual members of the Classes. Common questions of fact and law include, but are not limited to:

- a. whether defendant Prestamos failed to fund SBA-approved PPP loans to Plaintiffs and other members of the Classes in breach of its obligations to actually fund such loans;
- b. whether Prestamos obtained fees for PPP loans that it did not make;
- c. whether Prestamos's failure to fund SBA-approved PPP loans violated the Loan Documents it entered into with Plaintiffs and other members of the Classes;
- d. whether Prestamos's failure to fund PPP loans constituted unlawful and/or unfair acts or practices as to plaintiffs Marshall and Townsend and the members of the California Subclass; and
- e. whether defendant Prestamos's failure to fund SBA-approved PPP loans damaged members of the Classes.

114. Plaintiffs reserve the right to amend the definition of the Classes if discovery or further investigation reveals that the definition of the Classes should be amended.

COUNT ONE

Breach of Contract
(On Behalf of Plaintiffs and the National Class)

115. Plaintiffs incorporate the allegations from all previous paragraphs as if fully set forth herein.

116. Through its agreement to make PPP loans in compliance with the PPP and all applicable rules and regulations, its acceptance and approval of Plaintiffs' PPP loan applications, and as the counterparty to the Loan Documents, Prestamos entered into a binding agreement with each of the Plaintiffs and the members of the proposed National Class to fund their respective PPP loans.

117. Further, Prestamos had an implied duty to act in good faith and in accordance with fair dealing to take all steps necessary to fund the Plaintiffs' and the other National Class members' PPP loans.

118. Defendant breached its obligations to fund Plaintiffs' and other National Class members' PPP loans by failing to fund the loans within 10 days of the SBA's approval of the loans and assignment of loan numbers, or at any time thereafter.

119. Moreover, all PPP loan applications require applicants to certify that they have not, and will not, receive other PPP loans.

120. As a result, once Plaintiffs and the other members of the National Class applied for PPP loans and their loan applications were approved by the SBA and assigned PPP loan numbers, Plaintiffs and the National Class members were no longer able to apply for PPP loans with other PPP lenders as they would not be able to certify that they would not receive another PPP loan.

121. Plaintiffs and the National Class members were therefore effectively “stuck” with, and had to rely exclusively on, Prestamos to actually provide them with the PPP loan funds that they needed and that the SBA had already approved.

122. As a result, Prestamos harmed Plaintiffs and the members of the National Class in an amount to be determined at trial, but not less than the amount of the wrongfully withheld PPP loan proceeds plus all other applicable damages to the full extent permissible by law.

COUNT TWO

Violation of California’s Unfair Competition Law Cal. Bus. & Prof. Code § 17200, *et seq.* (On behalf of Plaintiffs Marshall and Townsend and the California Subclass)

123. Plaintiffs incorporate the allegations from all previous paragraphs as if fully set forth herein.

124. The California Unfair Competition Law (“UCL”) defines unfair business competition to include any “unlawful, unfair, or fraudulent” act or practice. Cal. Bus. & Prof. Code § 17200.

125. A business act or practice is “unlawful” under the UCL if it violates any other law or regulation.

126. Prestamos’s failure to fund SBA-approved PPP loans breached the Loan Documents and other legal duties it owed plaintiffs Marshall and Townsend and the other members of the California Subclass.

127. As a result of its failure to fund the SBA-approved PPP loans, Prestamos obtained fees and other compensation to which it was not entitled, including fees on loans it never funded and loan proceeds rightfully belonging to plaintiffs Marshall and Townsend and the California

Subclass, and wrongfully deprived plaintiffs Marshall and Townsend and the members of the California Subclass of PPP loan proceeds.

128. Prestamos's failures to fund PPP loans also thereby constitute a violation under the "unlawful" prong of the UCL.

129. Similarly, Prestamos's failure to fund SBA-approved loans also constitutes "unfair" acts and practices under the UCL because Prestamos's acts and practices as alleged offend public policy and are immoral, unethical, oppressive, unscrupulous and substantially injurious to plaintiffs Marshall and Townsend and the members of the California Subclass.

130. Further, once the loan applications of plaintiffs Marshall and Townsend and other similarly situated members of the California Subclass were approved by the SBA, these Subclass member borrowers were precluded from seeking PPP loans from other lenders, also as alleged above.

131. Prestamos's failure to fund PPP loans of plaintiffs Marshall and Townsend and the other members of the California Subclass constitute unlawful and unfair business acts or practices within the meaning of Cal. Bus. & Prof. Code § 17200.

132. As a result of Prestamos's violations of the UCL, plaintiffs Marshall and Townsend and the members of the California Subclass are entitled to restitution for the amount of the wrongfully withheld PPP loan proceeds.

Prayer for Relief

Plaintiffs, individually and on behalf of the proposed Classes, respectfully request the following relief:

A. an order certifying the Classes under Rule 23 of the Federal Rules of Civil Procedure; naming Plaintiffs as representatives of the proposed National Class; naming plaintiffs

Marshall and Townsend as representatives of the proposed California Subclass; and naming Plaintiffs' attorneys as counsel for the Classes;

B. judgment in favor of Plaintiffs and the Classes on all applicable counts asserted herein;

C. an award of compensatory, consequential and other damages to Plaintiffs and members of the Classes in amounts to be determined at trial to the maximum extent permissible by law, plus prejudgment interest;

D. an order of restitution and all other forms of equitable monetary relief to the maximum extent permissible by law, including payment to the Classes of all PPP loan proceeds owed and due to Plaintiffs and the members of the Classes, as well as disgorgement of all fees Prestamos obtained in connection therewith;

E. an award of punitive damages based on Prestamos' intentional, wanton and malicious conduct, or its reckless disregard of Plaintiffs' and the National Class members' rights, in amounts to be determined at trial to the maximum extent permissible by law;

F. an order awarding Plaintiffs and the Classes their reasonable attorneys' fees and expenses and costs of this lawsuit, including but not limited to expert fees and costs, to the maximum extent permissible by law; and

G. such other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any and all issues in this action so triable of right.

Dated: October 1, 2021

Respectfully submitted,

BAILEY & GLASSER LLP

By: /s/ Lawrence J. Lederer

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