

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CHEF TIME 1520 LLC et al.,

Plaintiffs,

v.

SMALL BUSINESS
ADMINISTRATION et al.,

Defendants.

Civil Action No. 22-3587

DECLARATION OF VANESSA K. PICCIONI

I, Vanessa K. Piccioni, hereby declare as follows:

1. I have worked at the United States Small Business Administration (SBA) for 30 years. I currently hold the position of Director of SBA's National Guaranty Purchase Center located in Herndon, VA. The National Guaranty Purchase Center is part of the Office of Capital Access, Financial Programs Operations Division. The Office of Capital Access is responsible for the operation of and development of policy for the SBA's business loan programs authorized under the Small Business Act and the Restaurant Revitalization Fund (RRF) program authorized under the American Rescue Plan Act (ARPA), among others. I assisted in reviewing certain RRF applications and am knowledgeable about the RRF program.

2. I make this declaration based on my personal knowledge and on information provided to me in the course of performing my duties and responsibilities as the Director of the National Guaranty Purchase Center.

The Restaurant Revitalization Fund

3. The RRF was enacted as part of the American Rescue Plan Act (ARPA), which Congress passed into law on March 11, 2021. *See* American Rescue Plan Act, Pub. L. No. 117-2 (2021). The RRF is codified at 15 U.S.C. § 9009c.

4. Congress allocated \$28.6 billion for RRF. *See* 15 U.S.C. § 9009c(b)(2)(B).

5. On May 3, 2021, SBA began accepting RRF applications through an online portal.

6. Within the first two days that the portal was open, SBA received approximately 186,000 applications for RRF awards. *See* Small Bus. Admin., *Administrator Isabella Casillas Guzman Announces Initial Results of Restaurant Revitalization Fund* (May 5, 2021), <https://www.sba.gov/article/2021/may/05/administrator-isabella-casillas-guzman-announces-initial-results-restaurant-revitalization-fund>.

7. By May 18, 2021, SBA had received 303,000 applications requesting over \$69 billion in funds. *See* Small Bus. Admin., *Last Call: Administrator Guzman Announces Final Push for Restaurant Revitalization Fund Applications*, <https://www.sba.gov/article/2021/may/18/last-call-administrator-guzman-announces-final-push-restaurant-revitalization-fund-applications>.

8. Subject to the priority period (explained below), SBA initiated processing of applications based on the date the application was electronically signed and submitted. Not all applications were processed at the same pace, as some applications were more complicated than others and took longer to review or had omissions or errors. Thus, a complicated, earlier-filed application may not have been fully approved and paid out until after a later-filed, simpler application. But the actual order in which processing claims begins is determined by the order in which they were received, subject only to the priority period rules.

9. The goal of processing was to confirm the applicant's eligibility and to ensure that the amount requested was correct and not fraudulent. The first step was to transmit an applicant's tax information to the Internal Revenue Service (IRS) for verification. Once the IRS verified an applicant's tax information, SBA internally reviewed the calculated award amount. If a discrepancy existed between the IRS verification and the application, or if there was an error in the application's award calculation, SBA worked with the applicant to resolve the discrepancy or to correct the error. If an error in the award amount was de minimis, SBA was able to correct it without requiring the applicant to resubmit the application. However, if the error exceeded 5% of

the award or \$25,000 (whichever was less), the applicant was required to re-sign their application, moving them to the back of the queue. Once SBA confirmed an application's eligibility and requested amount, its processing status changed to "Fully Approved," which triggered an automated notification to the applicant. Notwithstanding that automated notification, the application remained in processing for a final step involving SBA's payment system before the money was disbursed.

The Priority Period

10. To address the failure of earlier COVID-19 relief programs to equitably distribute funds to all small businesses, ARPA created a priority period for awarding grants. *See* 15 U.S.C. § 9009c(c)(3).

11. The priority period provision required that "[d]uring the initial 21-day period in which [SBA] awards grants under this sub-section, the [SBA] shall prioritize awarding grants to eligible entities that are small business concerns owned and controlled by women . . . veterans . . . or socially and economically disadvantaged" individuals. 15 U.S.C. § 9009c(c)(3)(A). ARPA incorporates the Small Business Act to define these terms. *See generally* 15 U.S.C. §§ 632, 637. As a result of this provision, SBA only processed applications from businesses who self-certified as meeting one of those characteristics for the first 21 days of fund operation.

12. SBA began processing and awarding grants on May 3, 2021, and accordingly the 21-day priority period began that day and ended on May 24, 2021.

13. On May 25, 2021, the day after the statutory priority period expired, SBA began processing applications from non-priority applicants.

14. On May 27, 2021, SBA paused processing priority applications—including those undergoing final processing in SBA's payment system—and continued processing non-priority applications in sequential order. SBA planned to resume processing priority applications once it completed processing the previously filed non-priority applications. But before SBA completed processing the previously filed non-priority applications, the fund was extinguished and all processing ceased.

The Closure of the Fund & the Distribution of Returned Funds

15. By June 30, 2021, SBA had distributed all of the \$28.6 billion allocated to the RRF and closed the program. *See also* Small Bus. Admin., *SBA Administrator Announces Closure of Restaurant Revitalization Fund Program* (July 2, 2021), <https://www.sba.gov/article/2021/jul/02/sba-administrator-announces-closure-restaurant-revitalization-fund-program>.

16. After June 30, 2021, a portion of the obligated money was returned to the Fund.

17. Following the return of these funds, SBA worked to determine the amount of funds available for new RRF awards and to develop a plan for distributing such funds. SBA ultimately determined that it had approximately \$83 million in returned funds available to redistribute to RRF applicants. Because the statutory priority period had expired, SBA did not take priority status into account when issuing these new RRF awards. Rather, the funds were allocated to “Fully Approved” applicants in the order in which their applications were submitted. To determine the order in which applications were submitted, SBA followed the time-stamp reflecting when applicants signed their applications using DocuSign. SBA then attempted to verify that the applicants potentially in line to receive awards remained eligible for funding, which in many cases required contacting the applicant to receive additional information.

18. The additional \$83 million was projected to be extinguished by the next 169 eligible applicants, fully funding the first 168 eligible applicants and partially funding the 169th eligible applicant. All of these applicants had filed within the first hours after the portal was opened to the public: for context, the 167th eligible recipient filed at 1:19:40 PM ET on May 3, 2021; the 168th eligible recipient filed at 1:19:41 PM ET on May 3, 2021; the 169th eligible recipient filed at 1:19:45 PM ET on May 3, 2021.

19. On November 23, 2022, SBA began distributing the \$83 million. *See* Small Bus. Admin., *Statement from the U.S. Small Business Administration on the Restaurant Revitalization Fund* (Nov. 23, 2022), <https://www.sba.gov/article/2022/nov/23/statement-us-small-business->

administration-restaurant-revitalization-fund. SBA intended to disburse all 169 payments expeditiously.

20. As of November 29, 2022, SBA had paid 167 of the 169 allocations. The final two allocations to be processed for payment were the 135th and 151st positions in the queue, respectively.

21. **Eligible Applicant 135.** SBA has not communicated with the 135th applicant, because no additional information was necessary to confirm whether it was still in business. SBA intended to fund the 135th applicant with an award amount of roughly \$1.8 million. SBA can furnish contact information for a representative of the 135th applicant at the Court's request. To date, Applicant 135 has not received an RRF award.

22. **Eligible Applicant 151.** In October 2022, SBA reached out in writing to the 151st applicant to "confirm" that it was "still open for business and there had not been a change of ownership" and to obtain "a copy of [its] current business license" and "a copy of [its] IRS tax return for the year of 2020." The communication went on to say "that if [SBA] do[es] not receive all the requested information within 7 business days from the time and date the message was sent, we will close the case and consider another applicant for funding." SBA's records also indicate that one phone call was made to the applicant to explain what SBA needed and that SBA was considering funding the award. SBA intended to fully fund the 151st applicant's application with an award amount of roughly \$225,000. SBA can furnish contact information for a representative of the 151st applicant at the Court's request. To date, Applicant 151 has not received an RRF award.

23. Pursuant to this Court's instruction, SBA has notified its staff not to fund the two remaining awards until further notice.

24. On December 2, 2022, SBA became aware that nine attempted disbursements had failed. The failures apparently stem from problems with the bank information provided by the applicant: in some cases it appears that the corresponding account was closed; in other cases it

appears that there was an issue with the account number. These nine attempted distributions total roughly \$5.4 million.

25. In the event of failed distributions, SBA had planned to contact the respective applicant to ascertain if the problem could be resolved. However, out of deference to the Court's administrative stay, SBA has taken no further action with respect to the nine failed disbursements.

The Plaintiffs' RRF Applications

26. As a result of his participation in SBA's Paycheck Protection Program, Mr. Luke was randomly invited to participate in a pilot program designed to test the RRF application portal before it opened to the general public. Mr. Luke filed two applications during the pilot period on April 27, 2021.

27. The first application, confirmation number 882a00074896, was associated with Chef Time 1520 LLC, which does business as The Woolworth and sought an RRF award of \$1,344,299.17. For reasons unknown to SBA, Mr. Luke withdrew this application on May 10, 2021 at 2:43 PM ET. When applicants withdraw applications from SBA's online RRF platform, the application information is reduced to basic technical data (such as award amount requested and key activity timestamps) and archived separately from the platform's application pool.

28. The second application, confirmation number 2c0900074905, was associated with 2927 Hattenluke Hospitality Group LLC, which does business as Smithy. On April 28, 2021, SBA sent Smithy's tax forms to the IRS for verification. The IRS returned the forms to SBA on May 6, 2021, so Smithy's application moved into SBA's internal review. Discrepancies between the tax forms and Smithy's application quickly arose. Because these discrepancies resulted in an erroneous award amount exceeding the de minimis threshold, Smithy was required to resubmit its application, moving it to the back of the queue. Mr. Luke re-signed Smithy's application on May 14, 2021.

29. After Mr. Luke re-signed Smithy's application on May 14, 2021 it proceeded through the review process anew and reached "Fully Approved" status on May 26, 2021,

triggering an automated approval notification that was sent on May 28, 2021. On May 26, 2021, Smithy's application—along with 2964 other priority applications—was sent to SBA's payment system for final processing. But as a result of the May 27 priority processing pause, none of those applications advanced to dispersal. On June 12, 2021, once it became clear that pre-May 14 nonpriority applications would extinguish the remaining funds, SBA followed up with an email informing Mr. Luke and the 2964 other applicants that they would ultimately not receive funding.

30. Mr. Luke also submitted another application on May 14, 2021, confirmation number 36e600394091, which was associated with The Woolworth. That application had made it through tax verification but had not made it out of the early stages of review when SBA paused processing veteran-owned applications on May 27, 2021.

Pursuant to the provisions of 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of December 2022 in Herndon, VA.

VANESSA Digitally signed by
VANESSA PICCIONI
PICCIONI Date: 2022.12.09
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Vanessa K. Piccioni
Director, National Guaranty Purchase Center
Office of Capital Access, Financial Programs Operations Division
U.S. Small Business Administration