

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BLESSED CAJUNS LLC, *et al.*,

Plaintiffs,

v.

ISABELLA CASILLAS GUZMAN, *et al.*,

Defendants.

Civil Action No. 4:21-cv-00677-O

DEFENDANTS' SUPPLEMENTAL NOTICE

Attached to this notice is the supplemental declaration of John A. Miller, Deputy Associate Administrator for Capital Access at the Small Business Administration. Defendants file this supplemental declaration in order to clarify several paragraphs, and correct part of one paragraph, in Mr. Miller's June 1, 2021 declarations filed in this case. *See* ECF No. 20-1 ("June 1 Miller Decl.").

Respectfully submitted,

BRIAN M. BOYNTON
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LESLEY FARBY
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/s/ Christopher D. Dodge
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CERTIFICATE OF SERVICE

On June 11, 2021, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Christopher D. Dodge
Christopher D. Dodge
Trial Attorney
United States Department of Justice

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SUPPLEMENTAL DECLARATION OF JOHN A. MILLER

I, JOHN A. MILLER, hereby declare as follows:

1. I have worked at the United States Small Business Administration (“SBA”) for over twenty years. I currently hold the position of Deputy Associate Administrator for Capital Access. 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 am the highest-ranking career official in the Office of Capital Access and am knowledgeable about the RRF program. I have previously submitted three declarations in this matter. *See* ECF Nos. 11 (“May 25 Miller Decl.”), 14 (“May 27 Miller Decl.”); 20-1 (“June 1 Miller Decl.”).

2. This fourth declaration is intended to clarify several paragraphs, and correct part of one paragraph, in my June 1, 2021 declaration based on information discovered showing that some priority applicants had their claims processed—but not paid—between May 26, 2021 and the morning of May 28, 2021, and that these applicants were issued auto-generated approval notification emails on May 28 and May 29, 2021.

3. I make this declaration based on my personal knowledge, and information provided to me in the course of performing my duties and responsibilities as the Deputy Associate Administrator for Capital Access.

4. On May 28, 2021 at approximately 3:47pm ET, 1,901 priority applicants were issued an auto-generated email notification indicating that their applications for RRF grants had been approved. *See* Ex. 1. The notifications indicated that SBA would “process the funding of this award directly to your Bank account within 3-7 business days from this notification.” *Id.*

5. On May 29, 2021 at approximately 1:32pm ET, approximately 1,064 priority applicants were issued identical auto-generated emails notifying them that their applications for RRF grants had also been approved. *See* Ex. 1. In sum, 2,965 priority applicants received these auto-generated messages on May 28 and May 29, 2021. Approximately 542 of these applicants had filed their applications on May 3, 2021, with the remainder distributed across the application period ending on May 24, 2021.

6. SBA inquired into the processing of these 2,965 priority applications to determine why they were issued auto-generated approval emails. In particular, SBA looked into when these applications were designated as “fully approved” in SBA’s application system. Once an application is “fully approved” in SBA’s application system, any further action taken with the application at that point is automated and is no longer part of SBA’s processing of the application.

7. SBA found that among these 2,965 priority applicants who were issued auto-generated email approval notifications: (1) 124 were “fully approved” prior to May 26, 2021; (2) 909 were “fully approved” on May 26, 2021; (3) 1,049 were “fully approved” on May 27, 2021; and (4) 858 were “fully approved” on May 28, 2021. The last approval occurred at 11:35am ET on May 28, 2021, shortly before the Court’s injunction was entered on the docket.

8. SBA has paused further action on these applications (other than actions necessary to unwind the automated approval notifications described above). SBA will not pay these claims at this time because the legal conclusions in the Court’s May 28, 2021 order in this case and the Court’s May 18, 2021 order in the *Greer* case would preclude payment. Absent some future court order that

would permit it, SBA will only pay these applications once it completes processing all previously filed non-priority applications, and only then if the RRF is not first exhausted. June 1 Miller Decl. ¶ 8. SBA has not disbursed funds for any priority applicants since May 28, 2021, consistent with my earlier declaration. *See* June 1 Miller Decl. ¶ 9.

9. In view of the foregoing, I wish to further clarify paragraphs 8, 9, 17, and 19 of my June 1, 2021 declaration, and to correct a statement in paragraph 9 of that declaration.

10. Paragraph 8 stated: “SBA is not currently processing any priority applications.” June 1 Miller Decl. ¶ 8. This statement remains accurate, as SBA was not processing priority applications as of the date of my third declaration, June 1, 2021. However, I wish to clarify this statement by noting, as explained above, SBA was processing some priority applications up until 11:35am ET on May 28, 2021.

11. Paragraph 9 stated:

The final priority applications funded by SBA were booked into SBA’s E-Tran system for disbursement of funds by Treasury on the afternoon of May 27, 2021 at approximately 3:27pm ET. This group of approximately 2,002 priority applicants had previously been approved prior to the time SBA stopped further processing of priority applications on May 26, 2021 but were returned due technical errors. The funds for these applicants were disbursed by Treasury on the morning of May 28, 2021, prior to this Court’s injunction. (June 1 Miller Decl. ¶ 9)

This paragraph remains accurate with respect to the 2,002 priority applications it addressed and the date on which SBA last paid priority applications. But I have since learned that the embedded point—that SBA stopped further processing of priority applications on May 26, 2021—was inaccurate. As outlined above, 1,049 priority applications were approved (but not paid) on May 27, 2021, and 858 were approved (but not paid) on May 28, 2021.

12. Paragraph 17 stated: “SBA also had already paused all further processing of priority applications and begun processing only non-priority applications based on the order in which they were received [at the time of the Court’s injunction].” June 1 Miller Decl. ¶ 17. This statement also remains accurate, as the final priority application approved as part of the 2,965 that were issued

auto-generated email approval notifications received full approval from SBA at 11:35am ET on May 28, 2021. The Court's injunction was issued at 12:10pm ET on May 28, 2021. *See* ECF No. 18.

13. Paragraph 19 stated: "SBA undertook efforts to pause all such further processing of *any* claim—non-priority or otherwise—filed after PSBH LLC's." June 1 Miller Decl. ¶ 19. This statement also remains accurate, as none of the 2,965 priority applications described above were processed after the Court issued its injunction; rather, they received auto-generated approval emails after full SBA approval.

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 11th day of June, 2021 in Washington, DC.

John A. Miller
Deputy Associate Administrator for Capital Access
U.S. Small Business Administration

[EXTERNAL]



Greetings from the Restaurant Revitalization Fund

We are pleased to inform you that because of the American Rescue Plan, signed into law by President Joe Biden, your SBA Restaurant Revitalization Fund application has been approved.

The SBA will now process the funding of this award directly to your Bank account within 3-7 business days from this notification. Please utilize the platform to check your status and monitor any messages from the SBA. The SBA will send your authorized representative an email if we have any issues funding this award.

If you have any questions, please contact our call-center support at 1-844-279-8898. Our team is available to assist you Monday-Friday, from 8 am – 8 pm ET.

The SBA team

sba.gov
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instagram.com/sbagov

Telephone Support: 844-279-8898