

SIDKOFF, PINCUS & GREEN, P.C.

**By: Gary Green, Esquire
Larry M. Keller, Esquire
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Philadelphia, PA 19107
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Attorneys for Plaintiff

**SIDKOFF, PINCUS & GREEN, P.C.
1101 Market Street, Suite 2700
Philadelphia, PA 19107**

Plaintiffs,

v.

**SANTANDER BANK, N.A.
1101 Market Street, Ground Floor
Philadelphia, PA 19107**

Defendants.

**COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION**

APRIL TERM, 2020

NO. 001293

JURY TRIAL DEMANDED

COMPLAINT—CIVIL ACTION

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Reference Service
Philadelphia Bar Association
1101 Market Street, 11th FL
Philadelphia PA 19107-2911
(215) 238-6333

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademias, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted

LLEVE ESTA DEMANDA A UN ABOGADO IMMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICIANO CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

SERVICIO DO REFERENCIA LEGAL
Philadelphia Bar Association
1101 Market Street, 11th FL
Philadelphia PA 19107-2911
(215) 238-6333

PARTIES

1. At all relevant times, Plaintiff, Sidkoff, Pincus & Green P.C. (“Plaintiff”), is a professional corporation authorized to do business and doing business in the Commonwealth of Pennsylvania, County of Philadelphia. Sidkoff, Pincus & Green PC, is and has been the owner, operator, manager, and/or controller of the law firm with a primary location at 1101 Market Street, Suite 2700, Philadelphia, Pennsylvania 19107.

2. At all relevant times, Defendant, Santander Bank, N.A. (“Defendant”), is a national bank and financial services provider, with headquarters in Boston, Massachusetts, but with branches located throughout the northeast United States, including, 1101 Market Street, Ground Floor, Philadelphia, Pennsylvania 19107. Defendant regularly conducts business in Philadelphia County and transacts business here.

3. At all relevant times, Defendant acted by itself and by its duly authorized agents, servants and employees, acting within the scope of their employment and in the course of Defendant’s mission, business and affairs. Accordingly, under the doctrine of respondeat superior Defendant is liable for the acts and omissions of its said agents, servants, and employees, as described below.

JURISDICTION AND VENUE

4. The Commonwealth of Pennsylvania has jurisdiction over Defendant because it has extensive contacts within Pennsylvania by conducting a continuous and systematic part of its business within the Commonwealth.

5. Additionally, the Commonwealth has jurisdiction over Defendant because Plaintiff’s causes of action arise out of Defendant’s actions in Pennsylvania, and because Defendants have caused harm or tortious injury to Plaintiff in Pennsylvania.

6. Venue for this action is proper in the Court of Common Pleas of Philadelphia County pursuant to Pennsylvania Rule of Civil Procedure 1006(a) because the cause of action arose here and a transaction or occurrence took place out of which the cause of action arose here.

FACTUAL ALLEGATIONS

7. Defendant is a retail and commercial bank, part of the Santander Group, the global financial group led by Banco Santander, S.A., a geographically diversified retail and commercial bank based in Spain. Defendant has at least 500 branches with over \$81 billion in assets and offers business and personal banking.

8. Plaintiff has been a customer of Defendant since 2013, and its predecessor, Sovereign Bank, which Defendant purchased in 2013. Until recently, all Plaintiff's banking has been conducted through Defendant and Plaintiff relied on Defendant for all of its banking needs.

The Coronavirus Aid, Relief, and Economic Security Act

9. The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), signed into law on March 27, 2020, allocated \$349 billion in taxpayer funds to the SBA to make low interest "forgivable" loans through the Payroll Protection Program ("PPP") to qualifying small businesses, non-profits and independent contractors. Congress enacted the legislation to help keep workers employed and paid amid the Coronavirus pandemic and economic downturn. PPP loans are 100% federally guaranteed; meaning, the banks that originate PPP loans bear no risk unlike loans made using their own funds.

10. As originally enacted, the PPP program provided small businesses with funds to pay up to 8 weeks of payroll costs including benefits. Funds can also be used to pay interest on mortgages, rent, and utilities. At the time the CARES Act was enacted, PPP loans did not have to

be repaid and were entirely forgivable to the extent the borrowed money is used to cover the first eight weeks of the business' payroll costs, rent, utilities, and mortgage interest.

The Paycheck Protection Program (“PPP”)

11. The U.S. Small Business Administration (“SBA”) Paycheck Protection Program (“PPP”) was intended to help “overcome the challenges” of the Coronavirus crisis and “provide a direct incentive to small businesses to keep their workers on the payroll” by providing SBA-guaranteed loans of up to \$10 million to qualified applicants. Anticipating the massive demand for relief and to ensure non-preferential distribution of funds, the PPP’s governing rules required that banks process applications on a “first-come, first-served” basis. The CARES Act had originally only allocated \$350 billion to the PPP Program, which based on the anticipated high demands for these loans, would be insufficient and the loan funds would quickly run out.

12. On June 5, 2020, critical changes to the original PPP loan program were made when the Paycheck Protection Program Flexibility Act of 2020 (“PPP Flexibility Act”) was signed into law. The changes to the PPP program included, but not limited to:

- a. amending the PPP program to give borrowers more time to spend loan funds and still obtain forgiveness, increasing the time from 8 to 24 weeks or until December 31, 2020;
- b. reducing mandatory payroll spending from 75% to 60%; and
- c. borrowers can now use the new 24-week period to restore their workforce to pre-COVID-19 levels in order to obtain full forgiveness.

13. Thus, the PPP Flexibility Act was intended to increase an employer’s opportunity to have the entire PPP loan forgiven, and not have to be repaid, essentially converting an employer’s PPP loan into a government grant if they met the newly enacted standards to forgive a PPP loan.

14. Defendant was a participant in the PPP program and an SBA approved lender. As an approved SBA lender, Defendants are required to “service and liquidate all covered loans made under the Paycheck Protection Program in accordance with PPP Loan Program Requirements,” including any SBA rules or guidance, pursuant to the SBA Lender Agreement they signed.

15. Starting April 3, 2020, small businesses and sole proprietorships became eligible to apply for a PPP loan with banks or other SBA approved lenders.

Defendant’s failure to have a timely PPP Loan Application available for submission

16. Immediately after passage of the CARES Act, Plaintiff¹ contacted Defendant through its branch located at 1101 Market Street, Philadelphia, PA 19107 where Plaintiff regularly conducted all its banking with Defendant and advised Defendant that it wanted to apply for a PPP loan as soon as possible.

17. On April 2, 2020, Plaintiff received an email from Whitney Bayliss, Vice President, Small Business Relationship Manager in the Greater Philadelphia/Southern NJ Region, stating that:

a. Santander is developing an online application portal that will allow you to apply directly through our online banking website. It is critical that if you plan to apply through Santander, you have access to Business Online Banking or Santander Treasury Link.

b. You should begin to compile the following, to account for your payroll expenses:

Form 941 Quarterly Income Tax Returns Accounting for the Past 12 Months
1099 Payroll for the Past 12 Months
Sole Proprietors – 2018 or 2019 1040

In addition, Defendant attached to this email the PPP Loan Application developed by the SBA.

¹ Plaintiff’s contacts with Defendant were made primarily by Larry M. Keller, Esquire, a partner at Plaintiff.

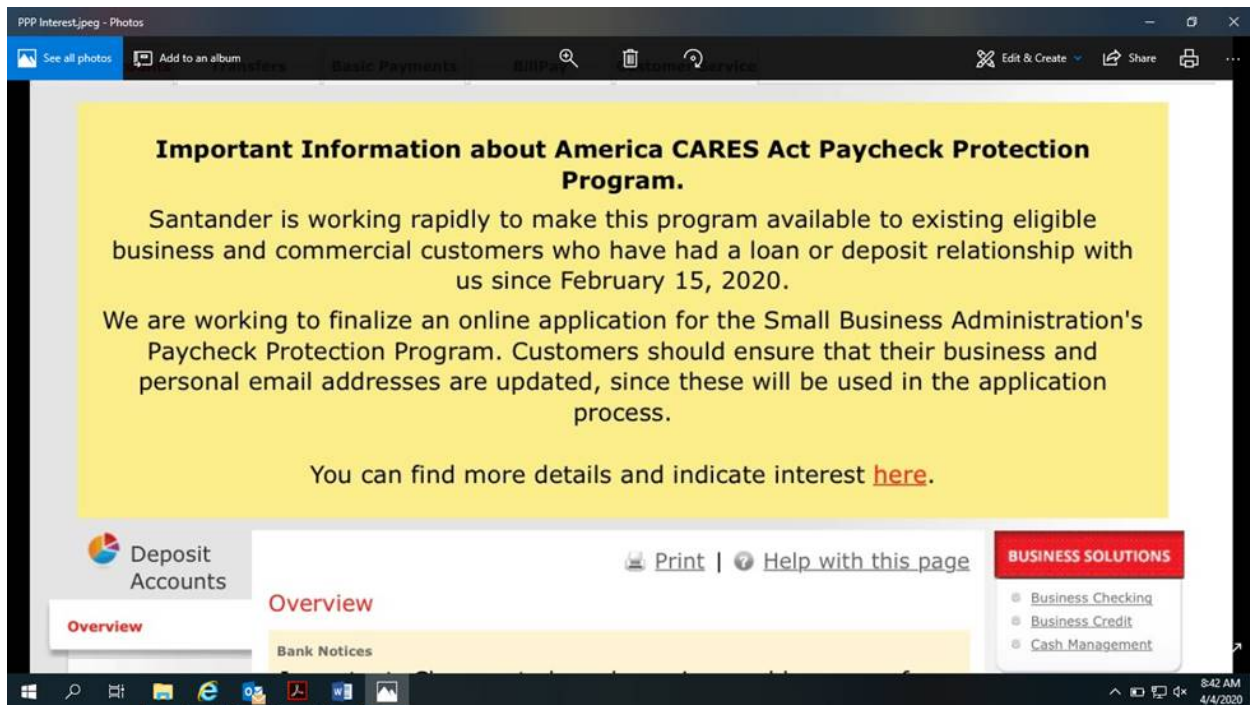
18. Based on the above April 2, 2020 email and in anticipation of filing its PPP loan application, Plaintiff gathered all the above required information. Since Plaintiff utilized Defendant's online banking system, it was ready and prepared to submit its PPP Application at first opportunity.

19. Although banks and other SBA lenders were allowed to begin accepting PPP loan applications on April 3, 2020, on April 4, 2020, Kahla Miscavage ("Miscavage"), Small Business Relationship Manager employed by Defendant and who was now to be Plaintiff's main contact and source of information relating to Plaintiff's PPP loan application with Defendant, sent an email Plaintiff stating that:

From: Miscavage, Kahla E <kahla.miscavage@santander.us>
Sent: Saturday, April 04, 2020 11:35 AM
Subject: Registration of Interest in P3 Loan

Good morning—

Please sign in to your business online banking portal and indicate your interest in the program.



In the same April 4th email, Miscavage instructed Plaintiff that in order to receive access to Defendant's PPP application, it had to register its interest in applying for such a loan by submitting a form online.

20. Thus, Defendant with all its resources and personnel, instead of having a PPP application ready for its customers to prepare and submit on April 3, 2020, Defendant only had an "Expression of Interest" form, which was an internal form to be used by Defendant and did nothing to assist Plaintiff to submit its PPP loan application. Defendant had known since March 27, 2020 that it would need to have its PPP loan application ready and available for its customers on April 3rd since it was critical that customers' PPP loan applications be submitted as soon as possible since PPP loans were on a "first-come, first-serve" basis as there was a limited amount of money that the government had allocated for these loans.

21. In fact, other banks in the United States, in anticipation of the April 3, 2020 date, had ready and available to its customers PPP applications and began accepting PPP loan applications on April 3, 2020.

22. Defendant and many other banks were only accepting PPP loan applications from customers who had existing relationships with them. As such, Plaintiff's best chance to receive a PPP loan was through Defendant.

23. Based on Defendant's instructions, on April 4, 2020, Plaintiff submitted an "Expression of Interest" form with Defendant for a PPP application through its online banking system.

24. On April 6, 2020, Defendant sent an email to Plaintiff confirming that Plaintiff's "Expression of Interest" had been received by Defendant and that **"We expect to have the [PPP] application available the week of April 6th."** The email specifically stated:

From: Santander Bank <email@update.santanderbank.com>
Sent: Monday, April 06, 2020 4:01 PM
To: Larry Keller <lmk@SidkoffPincusGreen.com>
Subject: We received your 'Expression of Interest' in the Paycheck Protection Program.

Thank you for completing an 'Expression of Interest' Form.

To view in web browser, [click here](#).



The CARES Act | Paycheck Protection Program: We Received Your 'Expression of Interest' Form

Thank you for completing an 'Expression of Interest' form indicating your interest in submitting a loan application for the Paycheck Protection Program. We have received your form and will send you an email to let you know when Santander is ready to accept your application. **We expect to have the application available the week of April 6th.**

How to prepare for the application:

- **Please ensure that your business and personal email addresses are up to date** as these will be used in the application process. Review your business and personal email addresses in 'Manage Contact Details' and ensure they are up to date to avoid any delays once our application is live.
- **Start to compile the following**, as applicable to your entity type, to account for your payroll expenses:
 - Payroll Processor Records Accounting for the past 12 Months
 - Payroll Tax Filings (Form 941 Quarterly Income Tax Returns) Accounting for the Past 12 Months
 - Independent contractors - 1099 Payroll for the Past 12 Months
 - Sole Proprietors – 2019 1040
 - LLCs - 1065 K1
- Review the [SBA Application](#) document to understand what information will be required as part of your on-line application.
- Visit the [SBA website](#) to learn more about the Paycheck Protection Program, your eligibility, loan details and information on forgiveness.

PLEASE NOTE: Do not send any documentation via email to Santander or deliver in person through our branches. All documentation for the Paycheck Protection Program will only be accepted through our online application once available.

We are committed to assisting you with this loan application process. These are challenging times and Santander stands ready to support you and your business.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Amir Madjlessi".

Amir Madjlessi

Executive Vice President, Managing Director of Business Banking

25. In anticipation of Defendant having its PPP application ready and available for submission, Plaintiff instructed its outside accountants to prepare a “pro forma” application and calculate the amount that Plaintiff’s PPP loan would be based on available information supplied by Defendant. Accordingly, Plaintiff’s accountant calculated that Plaintiff would be entitled to a PPP loan in the amount of \$284,537, with most, if not all of the loan qualified as “forgivable” under the CARES Act.

26. Throughout the week of April 6, 2020, Plaintiff was constantly checking in with Defendant when Defendant’s PPP application would be available. However, despite the fact that many other banks and SBA lenders had the PPP applications available on April 3, 2020 and were already accepting the applications, Defendant had no application yet available, was dragging its feet and consistently advised Plaintiff that the bank was “working on it.”

27. Although there was a critical urgency to submitting the PPP application as soon as possible since the program had a limited amount of money available for lending and it was anticipated that applications would far exceed the amount available for lending in the PPP Program, Defendant had no application available during the week of April 6, 2020. At this time, other banks had already been accepting applications since April 3rd, and in fact, due to the overwhelming demand for the PPP loans, some banks had even stopped accepting applications altogether.

28. Throughout the week of April 6, 2020, there were news reports that the PPP loan funds were quickly running out and all loan applications would not be able to be honored. Moreover, the process not only required the bank or other SBA approved lender to review and approve the PPP loan application, the loan also had to be forwarded to the SBA for review and approval, a time-consuming process.

29. During the week of April 6, 2020, Defendant advised Plaintiff that due to the Parties' longstanding relationship, Plaintiff's PPP loan application would be rapidly approved and sent to the SBA for final loan approval. Thus, Plaintiff had fully expected and relied upon Defendant's representations that it should have no issue having its loan application approved by Defendant and then by the SBA.

30. Plaintiff relied on Defendant's representations and did not apply to any other bank for a PPP loan until, as described below, it became readily apparent the Defendant would not have its application available in time for Plaintiff to obtain a loan before funding for the program ran out.

31. At all relevant times herein, Plaintiff had all its documents ready to be submitted along with its PPP application that was in the amount of \$284,537; however, Defendant negligently and carelessly failed to have its application available to submit.

32. On April 10, 2020, Defendant sent Plaintiff an email stating that:

From: Santander Bank <email@update.santanderbank.com>
Sent: Friday, April 10, 2020 9:30 AM
To: Larry Keller
Subject: Paycheck Protection Program Updates.

We're ready to Accept your PPP Loan Application.

To view in web browser, [click here](#).



The Paycheck Protection Program loan application is available and can be accessed through **Business Online Banking** or **Santander Link**, our online banking portal. Your 'Expression of Interest' submission was among the first to be received and you can now begin your application process.

What you need to know to submit an application:

- The application will be accessible on **Business Online Banking** or **Santander Link**. Business Online Banking customers should log in as normal and follow the link in the yellow box to Santander Link. There you will see a link for 'PPP Loan Application,' which will take you directly to the online application. For our Business Online Banking users who may experience login issues on Santander Link, please try entering your User and Organization ID in ALL CAPS, keeping your password the same.
- A Santander Business deposit account in the name of the applying business entity is needed for your application and funding purposes.
- You must submit your application and all required documents through our online application. Applications will not be accepted at any of our branch locations.
- The applying entity must have a lending or business deposit relationship with Santander Bank as of February 15, 2020.
- Complete applications will be processed in the order in which they are received. Incomplete or missing information will delay the processing of your application.
- Funds available through the Paycheck Protection Program are limited and subject to availability from the SBA.

What you can do if you need assistance submitting your application:

- Email our Application Support team at askppploans@santander.us
- For Business Online Banking support, call Customer Service at **877-768-1145**, *Monday to Saturday from 8:00 am to 10:00 pm ET, and Sunday 9:00 am to 5:30 pm ET*
- For Santander Link support, call Client Service at **844-726-0095**, *Monday to Friday 8:00 am to 6:00 pm ET*

We are committed to assisting you with this loan application process. These are challenging times and Santander stands ready to support you and your business.

Respectfully yours,



Amir Madjlessi
Executive Vice President, Managing Director of Business Banking

33. Immediately upon receiving the email described in ¶ 32 above, Plaintiff logged into its online banking account maintained by Defendant; however, despite Defendant's representations in its email, there was no PPP application accessible or available.

34. Plaintiff contacted David Wroblewski ("Wroblewski"), Assistant Vice President, Branch Manager, who Plaintiff had consistently maintained contact with about Plaintiff's PPP loan

and advised him that despite the email as described in ¶ 32 above, no PPP application was available on Defendant's online banking website. In addition, Plaintiff even sent a screen shot of what appeared when Plaintiff logged into Defendant's online banking system that showed no PPP loan application was posted and available.

35. Wrobleski directed Plaintiff to Defendant's customer service department, which Plaintiff called and was on the phone in excess of two hours with; however, they were of no assistance and had no explanation as to why the PPP application had not been posted and available to Defendant's online banking system. Moreover, Defendant's customer service advised Plaintiff that it would not be available all weekend (April 11-12), despite Plaintiff advising customer service of the extreme urgency of having the issue resolved. At the end of the call with Defendant's customer service department, Plaintiff was abruptly told there was nothing more that it could do and to "call back Monday".

36. During the day on April 10th, Wroblewski told Plaintiff to try various ways to login to the online banking website to see if that would work, trying multiple search engines (Google Chrome, Firefox, Internet Explorer and Edge) and other suggested methods for logging into Defendant's online banking system, but none were successful in gaining access to the PPP application that Defendant had represented was available.

37. After Plaintiff advised Wroblewski that customer service had been of no assistance, he advised Plaintiff to contact Miscavage of the issue. After advising Miscavage that the online application was still not available, she stated that she submitted the problem to the "escalations" team. However, the application still remained unavailable while the PPP loan funding was fast drying up.

38. On April 11, 2020, Plaintiff repeatedly emailed Miscavage for updates and she directed Plaintiff to login to another banking gateway maintained by Defendant, but the PPP application was still unavailable.

39. On April 13, 2020, the PPP loan application was still not available on its online banking website as promised to Plaintiff. Miscavage told Plaintiff that she was now sending a website link for Plaintiff to submit its PPP loan application, but no “such link” was ever provided by Defendant.

40. During the day on April 13, 2020, realizing that the PPP loan application would probably never be available on the online banking website for submission or that a link would ever be provided to Plaintiff, Miscavage emailed Plaintiff a PPP application to prepare offline, executed by E-signature, and emailed to her. This could have been done on April 3, 2020, the date when PPP applications were allowed to be submitted and Defendant for no reason, wasted 10 critical days for Plaintiff to submit its application.

41. Plaintiff immediately prepared the application and emailed the application and all requested supporting documents to Defendant for a PPP loan in the amount of \$284,537. Thus, on April 13, 2020, some 10 days **after** banks could accept PPP loan applications and in fact were accepting such loan applications, Defendant finally allowed Plaintiff to submit a PPP loan application.

42. On April 15, 2020, Miscavage emailed Plaintiff and advised and represented to Plaintiff that:

From: Miscavage, Kahla E <kahla.miscavage@santander.us>
Sent: Wednesday, April 15, 2020 9:41 AM
To: Larry Keller <lmk@SidkoffPincusGreen.com>
Subject: RE: PPP Digitally Signed App

Hi Larry,

Your documents have been reviewed **and moved forward to SBA**. Right now I'm hopeful 7-10 business days but I have not received confirmation on a timeline as of yet.

Sent From My Mobile

In addition, Miscavage in a separate email confirmed that Plaintiff's PPP loan application was submitted to the SBA for the amount Plaintiff requested, \$284,537.

43. However, despite Miscavage's representation that Plaintiff's PPP loan had been sent to the SBA for approval, Plaintiff subsequently was advised by Defendant that its PPP loan application had **not** been forwarded to the SBA and in fact, was still in Defendant's system.

44. As feared by Plaintiff and had been reported, on April 16, 2020, the SBA announced that:

The SBA is currently unable to accept new applications for the Paycheck Protection Program based on available appropriations funding," SBA spokesperson Jennifer Kelly said in a statement. "Similarly, we are unable to enroll new PPP lenders at this time.

<https://www.cnn.com/2020/04/16/small-business-rescue-loan-program-hits-349-billion-limit-and-is-now-out-of-money.html>

45. Thus, based on Defendant's negligence in failing to have a PPP loan application available for a timely submission for loan in the amount of \$284,537, Plaintiff was at that time shut out from a PPP loan in the first tranche of the PPP loan funds.² Miscavage confirmed this to Plaintiff in an email dated April 20, 2020:

From: Miscavage, Kahla E <kahla.miscavage@santander.us>
Sent: Monday, April 20, 2020 1:15 PM
To: Larry Keller
Subject: RE: Sidkoff Payroll protection Loan

² It is irrelevant that other legislation was passed and signed into law on April 24, 2020 that added funding to the PPP Program. By that time, Plaintiff had already been approved for its PPP loan from Citizens and its loan was funded. Under the requirements of the PPP Loan Program, Plaintiff could not then apply for an additional PPP loan.

Larry,

From my understanding your loan was reviewed by Santander and is waiting in the cue. Unfortunately we did not make the cut off before the funds ran out. We are hopeful that this will be refunded again, if that is the case you are ready in the cue to be submitted at that time.

46. On April 24, 2020, Defendant, recognizing that Plaintiff's original PPP loan application would not be funded or even submitted to the SBA for approval, sent an email to Plaintiff requesting that Plaintiff submit a **second** PPP loan application process. Thus, it had already been three weeks since banks had been allowed to accept PPP loan applications and in fact were accepting such application, but Plaintiff was back to "square one" with its Santander PPP application and had to start the process all over again. However, by this time, Plaintiff could not risk going through the entire process from start since it needed its PPP Loan to maintain its payroll, and pay its rent and utilities. In addition, by this date, Plaintiff's PPP Loan at Citizens Bank as described below, although at an amount of \$40,000 less than Defendant had approved, had been funded.

47. In fact, Plaintiff was not the only customer of Defendant that experienced delays and problems in submitting a PPP Loan Application to Defendant. In an article that appeared in the Boston Business Journal on April 21, 2020, "**Business clients are angry with Santander over PPP rollout,**" the problems that other customers of Defendant were having submitting their PPP Loan Application to Defendant were described.

Plaintiff's PPP Loan Application to Citizens Bank

48. By April 13, 2020, based on Plaintiff's fears that the PPP funds would be running out and Plaintiff would be shut out from receiving its loan and Defendant's inability to even make a loan application available, Plaintiff had no alternative but to try and locate another bank that was accepting PPP loan applications.

49. Plaintiff contacted Citizens Bank (“Citizens”) regarding its PPP loan application program and was advised if Plaintiff opened a banking account with Citizens, it could apply for a PPP loan through Citizens.

50. Plaintiff, at that point, having no alternative and having waited for Defendant to get its PPP loan application become available (with no availability date in sight), was forced to open new accounts with Citizens and proceeded to submit a PPP loan application with Citizens, which already had its PPP loan application available online for some time.

51. Based on Citizen’s PPP loan calculation, Plaintiff was only eligible to submit a PPP loan with that bank in the amount of \$245,200.00, which was some \$40,000 less than Plaintiff’s PPP loan application that Defendant had accepted and approved, but never sent to the SBA.

52. On April 24, 2020, Plaintiff’s PPP Loan application submitted through Citizens in the amount of \$245,200 was approved and funded by the SBA. However, had Defendant not been negligent and careless in making the PPP loan application available to Plaintiff, Plaintiff’s PPP Loan would have been about \$40,000 more. Moreover, because PPP loans are forgivable if certain requirements are met (which Plaintiff could and will meet) it was expected that had Plaintiff received its PPP Loan that it applied for with Defendant, the entire amount on the loan application in the amount of \$284,537 would have qualified to be forgiven(similar to Plaintiff’s Citizens PPP Loan), thus transforming Plaintiff’s PPP Loan into a “grant” that did not require that it be paid back.

53. In addition, on June 8, 2020, the Paycheck Protection Flexibility Act was enacted that modified the PPP Loan Program, especially relating to the rules of forgiveness of PPP Loans, making it far easier for such loans to be forgiven and not repaid. Thus, under this new legislation,

Plaintiff's PPP loan in the amount of \$284,537 as submitted to Defendant, surely would have qualified for full forgiveness.

54. Thus, based on Defendants' negligence, reckless and carelessness, Plaintiff has suffered damages in the amount of at least \$40,000.

COUNT I - NEGLIGENCE

55. The allegations set forth above are incorporated herein as if fully restated at length.

56. Due to the nature of the transaction and the long-standing relationship between the Parties, Defendant owed a duty to Plaintiff to at all times act appropriately and ensure that it would have available on a timely basis a PPP Loan Application that Plaintiff could submit to Defendant and then be forwarded to the SBA for approval. Defendant's actions (and inactions) were negligent and consisted of the following:

- a. Failing to have a PPP loan application ready and available for Plaintiff to submit (when other banks did) before funding for the PPP Loan Program was depleted and unavailable;
- b. Misrepresenting to Plaintiff that it had approved its PPP loan application and was forwarded it to the SBA for final approval;
- c. Requiring Plaintiff to apply to a different bank for its PPP Loan which resulted in a loss to Plaintiff of \$40,000;
- d. Failing to make sure that its PPP Loan Application was available on its online banking website on a timely basis as it represented it would be available; and
- e. Failing to devote adequate resources to making sure that its customers (including Plaintiff) were able to submit PPP Loan Applications to Defendant prior to the first tranche of the PPP loan monies being depleted.

57. As a direct and proximate result of Defendant's negligence, Plaintiff was forced to file a PPP loan application with a different bank, which resulted in Plaintiff receiving a PPP Loan \$40,000 less than the loan Plaintiff had submitted to Defendant, when in fact this additional \$40,000 would have been forgivable under the CARES Act and the PPP Flexibility Act .

58. As a proximate result of Defendant's negligence, Plaintiff has suffered damages of at least \$40,000.

WHEREFORE, Plaintiff respectfully requests judgment in its favor and against Defendant, in an amount in excess of \$50,000, along with interest, costs of suit, and any other relief this Court deems just.

COUNT II – FRAUDULENT MISREPRESENTATION

59. The allegations set forth above are incorporated herein as if fully restated at length.

60. As described more fully above, Defendant made material representations to Plaintiff that their PPL loan application would be available during the week of April 6, 2020 and would be available to be submitted through Defendant's online banking system on April 10, 2020.

61. As described more fully above, Defendant also represented to Plaintiff that Plaintiff's PPP loan application in the amount of \$284,537 had been approved by Defendant and forwarded to SBA for final approval. However, despite this representation by Defendant, Defendant admitted that Plaintiff's application never had even been forwarded to the SBA.

62. These representations, described more fully above, were material to Plaintiff's decision to continue waiting for Defendant's to have its online PPP application available and not seek out an alternative bank to submit a PPL loan application until it became apparent that Defendant's representations were false and untruthful.

63. Defendant's representations, described more fully above, were made knowing they were false and made recklessly as Defendant never made a PPP loan application available for submission online and later admitted that Plaintiff's PPP loan application remained in their system and had, in fact, never been forwarded to the SBA for approval.

64. Defendant's representations, described more fully above, were made intentionally because Defendant wanted to receive the originating fees it would stand to receive by processing Plaintiff's PPP loan application.

65. Plaintiff justifiably relied on Defendant's representations because Plaintiff was concerned it would not receive the PPP loan if it had to file a new application since funds were running out rapidly.

66. As a direct and proximate result of Defendant's representations, described more fully above, Plaintiff suffered damages in an amount at least of \$40,000.

67. Defendant's wrongful conduct, as alleged above, was willful, wanton, outrageous, reckless, and undertaken with reckless disregard for Plaintiff's rights, thus entitling Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff respectfully requests judgment in its favor and against Defendant, in an amount in excess of \$50,000, along with punitive damages, interest, costs of suit, and any other relief this Court deems just.

Dated: June 12, 2020

/s/ Gary Green _____
Gary Green, Esquire
Larry Keller, Esquire
Sidkoff, Pincus & Green, P.C.
1101 Market Street
Suite 2700
Philadelphia, PA 19107
215-574-0600
215-574-0310 (fax)
ggreen@greatlawyers.com
lmk@sidkoffpincusgreen.com
Attorney for Plaintiff

VERIFICATION

The facts set forth in the foregoing are true and correct to the best of the undersigned's knowledge, information and belief and are verified subject to the penalties for unsworn falsification to authorities under Pennsylvania Crimes Code 18 Pa.C.S. § 4904.



Larry M. Keller

Dated: 6/12/2020

CERTIFICATE OF SERVICE

I, Larry M. Keller, Esquire, hereby certify that on this date, I caused a true and correct copy of the *Complaint-Civil Action* to be served upon the following via the e-filing system:

Steven J. Adams, Esquire
111 North Sixth Street
P.O. Box 679
Reading, PA 19603-0679

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