

ENTERED

April 29, 2020

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EDWARD L. SCHERER *and*
DONALD KOWALL,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

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Civil Action No. H-20-1295

ORDER

Pending before the Court is Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction (Document No. 9). Having considered the motion, submissions, and applicable law, the Court determines the motion for a temporary restraining order should be denied.

This lawsuit involves the Paycheck Protection Program (the “PPP”). On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), § 1102, Pub. L. No. 116-136, 134 Stat. 281, 286–94 (2020), amended the Small Business Act (the “SBA”), 15 U.S.C. § 636(a), to include the PPP. Under the PPP, Congress allotted \$349,000,000,000 to the Small Business Administration (the “Administration”) to provide loan-based relief to small businesses through approved lenders for the purpose of covering payroll costs and

other business expenses. Plaintiff Edward L. Scherer (“Scherer”) runs a small business and Plaintiff Donald Kowall (“Kowall”) (Scherer and Kowall, collectively, “Plaintiffs”) is an independent contractor. Defendant Wells Fargo Bank, N.A. (“Wells Fargo”) is a national banking association and an authorized lender. Plaintiffs allege Wells Fargo denied Plaintiffs the ability to apply for a loan under the PPP by unlawfully requiring a Wells Fargo business checking account as of February 15, 2020. Wells Fargo denies Plaintiffs’ allegations. On April 11, 2020, Plaintiffs filed this lawsuit against Wells Fargo. Plaintiffs contend Wells Fargo violated: (1) the CARES Act, §§ 1102 and 1006; and (2) the SBA, 15 U.S.C. § 636(a). On April 22, 2020, Plaintiffs moved for a temporary restraining order (“TRO”) and preliminary injunction.

Plaintiffs move to restrain Wells Fargo from requiring small businesses attempting to apply for loans under the PPP to have a business checking account with Wells Fargo as of February 15, 2020. Plaintiffs contend, *inter alia*, Plaintiffs will suffer a substantial threat of irreparable injury because Plaintiffs will not have access to loans under the PPP if Wells Fargo’s actions are not restrained. Whether to grant or deny a TRO is within the Court’s discretion. *Moore v. Brown*, 868 F.3d 398, 402 (5th Cir. 2017). A TRO may issue if an applicant shows, *inter alia*, a substantial threat of irreparable injury. *Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 442 (5th Cir. 2000).

The CARES Act authorizes any lender approved by the Small Business Administration (the “Administration”) to give loans under the PPP. Bus. Loan Prog. Temporary Changes; Paycheck Protection Prog., 85 Fed. Reg. 20,811, 20,815 (Apr. 15, 2020). As of April 16, 2020, the Administration has identified 4,975 lenders.¹ Plaintiffs fail to show how Plaintiffs would suffer irreparable injury if not given access to a loan specifically from Wells Fargo. Plaintiffs also fail to explain why Plaintiffs could not obtain loans under the PPP through another lender. Thus, the Court finds Plaintiffs fail to show a substantial threat of irreparable injury at this time. Accordingly, the Court hereby

ORDERS the Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction (Document No. 9) is **DENIED IN PART**. The motion is denied as to the temporary restraining order. The Court defers ruling on the motion as to the request for a preliminary injunction until after a hearing for the preliminary injunction is conducted.

SIGNED at Houston, Texas, on this 29 day of April, 2020.



DAVID HITTNER
United States District Judge

¹ *Wells Fargo Bank, N.A.’s Opposition to Plaintiffs’ Motion for A Temporary Restraining Order and Preliminary Injunction*, Document No. 19, Exhibit B-1 (*Paycheck Protection Program (PPP) Report*).