

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: 2:20-cv-08963-SB-RAO

Date: July 26, 2021

Title: *Prestige Transportation Inc., et al. v. United States Small Business Administration, et al.*

Present: The Honorable **STANLEY BLUMENFELD, JR., U.S. District Judge**

Victor Cruz
Deputy Clerk

N/A
Court Reporter

Attorney(s) Present for Plaintiff(s):

None Appearing

Attorney(s) Present for Defendant(s):

None Appearing

Proceedings: ORDER ON MOTION TO DISMISS (Dkt. No. 23)

Plaintiffs—three corporations and an LLC—brought suit against the U.S. Small Business Administration (SBA), the SBA Administrator, and the Secretary of the U.S. Department of the Treasury¹ (collectively, Defendants). Dkt. No. [1](#) (Compl.). Arguing that Plaintiffs lacked standing and had not made allegations sufficient to sustain some of their claims, Defendants moved to dismiss the Complaint. Dkt. No. [23](#) (Motion). Before the Motion was fully briefed, Plaintiffs appealed this Court’s denial of their request for a temporary restraining order or preliminary injunction. Dkt. No. [24](#). Following the Ninth Circuit’s affirmance in June 2021, Dkt. No. [35](#), this Court ordered supplemental briefing to “address[] additional legal arguments and any key factual developments that have taken place

¹ The SBA Administrator and the Treasury Secretary were sued in their official capacities. At the time the Complaint was filed, these positions were held by Jovita Carranza and Steven Mnuchin, respectively. Isabella Casillas Guzman is the current SBA Administrator, and Janet Yellen is the Treasury Secretary.

in the intervening time.” Dkt. No. [40](#).² Both parties filed supplemental briefs. For the reasons discussed below, the Motion is granted in part and denied in part. The Court denies Defendants’ Motion under Rule 12(b)(6), finding that these issues would be better resolved through an administrative record review on summary judgment.

BACKGROUND

In a 53-page, nine-count pleading, Plaintiffs detail how they applied for loans available to small businesses under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) through the Economic Injury Disaster Loans (EIDL) program. [Compl.](#) ¶¶ 70-133. The three corporate Plaintiffs—Prestige Transportation Inc. (PTI), Superior Overnight Services Inc. (SOS), and Amerilogistics Group, Inc. (AGI) (collectively, Corporate Plaintiffs)—never received EIDL loans.³ The fourth Plaintiff, STAM Properties LLC (STAM), had only one of its four members receive an EIDL loan. [Id.](#) ¶ 132.⁴

According to Plaintiffs, the SBA has two policies that prevented Plaintiffs and those similarly situated to them from receiving EIDL loans: an “immigration status” policy barring non-citizens who own small businesses from receiving EIDL loans; and a “no amendments” policy preventing applicants from revising or updating their applications. [Id.](#) ¶¶ 140-41. Defendants assert that the SBA merely applied preexisting eligibility requirements for federal aid when it denied EIDL

² The supplemental briefing authorized the parties to apprise the Court of any factual or legal developments concerning arguments made in the original Motion. The Court did not grant Defendants leave to argue—for the first time—that Plaintiffs’ constitutional claims should be dismissed under Rule 12(b)(6). Dkt. No. [41](#) at 4-6. The Court does not consider these arguments as Plaintiffs have not had an opportunity to respond to them. See [Stroud v. Richmond](#), 2017 WL 3782700, at *2 (N.D. Cal. Aug. 31, 2017) (noting the impropriety of considering an argument in such circumstances).

³ PTI’s application was submitted by its sole owner, Lubomir Anguelov, an “employment authorized non-citizen with a pending application for a green card.” [Compl.](#) ¶¶ 15, 71, 75. SOS’s and AGI’s applications were submitted by Nickolay Dinkov, a non-citizen “with a pending application for EB5 employment creation under 8 U.S.C. § 1153(a)(5).” [Id.](#) ¶¶ 83, 87, 97.

⁴ STAM’s EIDL applications were submitted by its managing member, Steven Mazer. [Compl.](#) ¶¶ 108, 112. All members of STAM are U.S. citizens. [Id.](#) ¶ 27.

loans to Corporate Plaintiffs. Defendants further contend—and Plaintiffs effectively admit—that STAM did not receive an EIDL loan due to STAM’s failure to take the appropriate steps to either amend its application or claim the loan it was originally offered. *See id.* ¶¶ 114-30 (noting that the SBA purported to deny the loan because STAM “failed to proceed” by not taking the required “additional steps” to complete the application).

DISCUSSION

Defendants moved to dismiss the Complaint because Plaintiffs purportedly lack standing to bring a claim before this Court under Rule 12(b)(1) and because some of Plaintiffs’ causes of action fail to state a claim under Rule 12(b)(6). *Mot.* at 1. The Court considers only the standing argument at this time.

A. Legal Standard

“A motion to dismiss an action pursuant to Federal Rule of Civil Procedure 12(b)(1) raises the question of the federal court’s subject matter jurisdiction over the action.” *Samii v. Scharfen*, 2009 WL 464536, at *1 (C.D. Cal. Feb. 23, 2009). Even if the allegations in a pleading are legally sufficient, a plaintiff may still lack standing to bring suit in federal court.

“[T]he irreducible constitutional minimum of standing contains three elements.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). First, a plaintiff must have suffered an “injury in fact” that is both “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Id.* (citations and internal quotations omitted). Second, there must be a causal connection between the injury and the complained-of conduct; it cannot be the “result [of] the independent action of some third party not before the court.” *Id.* (citations and internal quotations omitted). And finally, it must be likely that the injury sustained by the plaintiff will be redressable by a favorable decision from the court. *Id.* “A suit brought by a plaintiff without Article III standing is not a ‘case or controversy,’ and an Article III federal court therefore lacks subject matter jurisdiction over the suit.” *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004).

B. Analysis

1. Standing

To determine if Plaintiffs have standing to bring their claims, the Court considers whether Defendants caused an injury to any Plaintiff that would be redressable by a favorable decision from this Court.⁵ Because Plaintiffs do not all allege the same cause of their purported injury, the Court separately analyzes the question of standing for Corporate Plaintiffs and for STAM.

a. STAM's Standing

STAM's alleged injury is not causally connected to any alleged misconduct by Defendants. STAM received an initial \$1,000 EIDL advance grant and, after the SBA's review, was deemed eligible for a further loan of up to \$4,000 on June 8, 2020. Compl. ¶ 114. But STAM's managing member, Steven Mazer, had already submitted multiple applications, and the SBA informed STAM that the second of the two applications "had been withdrawn from active consideration." Id. ¶¶ 108, 112-13. Later, SBA representatives assisting Mazer over the phone "inputted [his] requested changes" to the first application and "confirmed that both the rental loss amount and the number of employees/members had been updated in Defendants' system on the first application." Id. ¶¶ 116, 121. Mazer received multiple emails from the SBA informing him that STAM "had not taken the next step to complete the EIDL application" and directing him to "log into the system and complete the next step." Id. ¶¶ 117, 119, 122. He was also given instructions about how to "request the increased loan amount." Id. ¶ 126. But there is no allegation in the Complaint that Mazer or anyone affiliated with STAM actually took those steps. STAM's application was ultimately denied due to STAM's failure to proceed with the application. Id. ¶¶ 127, 130. Though an SBA representative allegedly later told Mazer that "no option to reopen or reactivate exists," the denial letter STAM received clearly stated that STAM "ha[d] the right to request reacceptance of [the] withdrawn application." Id.

⁵ Contrary to Plaintiffs' assertion, when the Court denied Plaintiffs' ex parte request for a temporary restraining order, it did not "implicitly reject[]" Defendants' standing arguments. Dkt. No. 26, Opp. at 10. The Court instead found that Plaintiffs failed to satisfy the most basic requirement necessary to obtain provisional relief and did not reach the merits of any claims.

In addition, defense counsel has repeatedly communicated to STAM’s counsel that the SBA is willing to reconsider STAM’s second EIDL application. Defense counsel described the steps STAM would need to take to apply for reconsideration. Yet STAM apparently declined to follow those steps and elected instead to proceed with this suit. Dkt. No. [41-1](#), Biché Declaration ¶¶ 3-6. There is no allegation in the Complaint supporting the conclusion that a general “no amendment” policy caused STAM’s harm. On the contrary, the Complaint details myriad instances in which EIDL applications could be—and frequently were—amended, including updates made to STAM’s own application. See [Compl.](#) ¶¶ 76-80, 88-92, 104, 116, 121, 126 (detailing SBA requests for additional information to supplement or amend existing EIDL applications). At most, STAM has alleged that its application was not correctly processed due to bureaucratic confusion or error, not as the result of a policy precluding amendments.

In short, the allegations in the Complaint contradict the claim that the SBA has a “no amendments” policy. Moreover, the SBA already has agreed to do what a court order would require it to do—i.e., reconsider a properly amended EIDL application from STAM. STAM cannot create a federal case or controversy by refusing to amend when offered the opportunity to do so and then suing on the theory that it was denied a loan because of a “no amendments” policy.

Accordingly, STAM lacks standing to pursue any of its claims against Defendants. To the extent that STAM’s claims depend on the alleged “no amendments” policy, they are dismissed with prejudice.

b. Corporate Plaintiffs’ Standing

The three remaining Plaintiffs—PTI, SOS, and AGI—have standing to sue to challenge the alleged “immigration status” policy. Corporate Plaintiffs contend that this policy was unilaterally imposed by the SBA and is the sole reason their EIDL applications were denied. Defendants note that it is not the SBA’s policy, but rather the Immigration and Naturalization Act (INA), that precludes Corporate Plaintiffs from receiving government aid. See [8 U.S.C. § 1611](#) (“an alien who is not a qualified alien (as defined in [section 1641](#) of this title) is not eligible for any Federal public benefit”). This rule, according to Defendants, is included in the SBA’s Standard Operating Procedure (SOP) and predates the enactment of the CARES Act.⁶ For decades, the INA has provided that only U.S. citizens and

⁶ Defendants request the Court take judicial notice of the SOP. Dkt. No. [23-1](#). The request is granted; the Court can take judicial notice of indisputable facts contained

qualified aliens are eligible to receive federal public benefits. [8 U.S.C. § 1611](#). EIDL loans are federal public benefits. Neither Anguelov nor Dinkov claims to be a “qualified alien.” See [8 U.S.C. § 1641\(b\)](#) (identifying categories of qualified aliens). Defendants argue that, even if the Court were to direct the SBA to reconsider the applications made by Corporate Plaintiffs, they would still be ineligible to receive any loan under the express terms of the INA.

Corporate Plaintiffs respond by noting that because their alleged injury concerns the procedural treatment of their EIDL applications, there is a “more relaxed redressability requirement.” [Opp.](#) at 13; [Narragansett Indian Tribal Historic Pres. Off. v. Fed. Energy Regul. Comm’n](#), 949 F.3d 8, 13 (D.C. Cir. 2020). “[T]he relaxed redressability requirement is met when correcting the alleged procedural violation could still change the substantive outcome in the petitioner’s favor.” [Id.](#) Here, PTI, SOS, and AGI could possibly have their alleged injury remedied by a favorable decision. Other courts have concluded that the CARES Act “is a specific statutory enactment in which Congress unambiguously directed certain aid to a plainly defined group of people . . . [and] to the extent that the CARES Act directs a federal public benefit, it constitutes a statutory exception to Section 1611’s general denial of federal public benefits.” See [Noerand v. Devos](#), 474 F. Supp. 3d 394, 403 (D. Mass. 2020) (holding that the CARES Act was designed to direct the distribution of funds to students of any immigration status irrespective of the INA’s limitations). If Corporate Plaintiffs were to prevail in claiming that the CARES Act established a Congressional intent to distribute funds to small businesses irrespective of their owners’ immigration status—an issue on the merits not reached here—Corporate Plaintiffs’ alleged injuries would be redressable. PTI, SOS, and AGI therefore have standing to pursue their claims. The Motion is denied on this ground.

2. Legal Sufficiency of Corporate Plaintiffs’ Claims

Defendants also moved to dismiss Plaintiffs’ claim for *ultra vires* agency action (Claim 1) [Compl.](#) ¶¶ 134-48; the claims brought under the Administrative Procedure Act (APA) for invalid agency action (Claim 2), arbitrary and capricious action (Claim 3), failure to carry out a ministerial duty (Claim 4), and failure to

in public records. [Reyn’s Pasta Bella, LLC v. Visa USA, Inc.](#), 442 F.3d 741, 746 n.6 (9th Cir. 2006); Fed. R. Evid. [201\(b\)](#).

observe procedure required by law (Claim 5), *id.* ¶¶ 149-96; and the alternative claim for mandamus, *id.* ¶¶ 219-27 (collectively, the APA Claims).⁷

However, Defendants did not file an administrative record—certified or otherwise—in support of the Motion. Plaintiffs noted this in their Opposition and protested that they “have no access to the administrative record and no notice of rulemaking pertaining to IEDL [*sic*] loans under the CARES Act . . .” *Opp.* at 9. They contend that the Court “cannot entertain a case under the Administrative Procedure Act if the administrative records being challenged are not before it.” *Id.* (citing *Air Espana v. Una Brien*, 1997 WL 469992, at *9 (E.D.N.Y. June 18, 1997)). Plaintiffs further raise the issue in their supplemental brief. Dkt. No. [42](#) at 2, 10-12. Defendants do not address the propriety of proceeding without an administrative record in either their Reply or supplemental brief.

It is true that “the function of the district court is to determine whether or not as a matter of law the evidence in the administrative record permitted the agency to make the decision it did.” *Occidental Eng’g Co. v. I.N.S.*, 753 F.2d 766, 769 (9th Cir. 1985). In that sense, a district court sits as a kind of appellate tribunal in assessing agency action or inaction. And courts do sometimes rely on the administrative record provided by the moving defendant in deciding motions to dismiss. See *Regents of Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*, 2017 WL 4642324, at *3 n.4 (N.D. Cal. Oct. 17, 2017) (requiring the defendant agency to produce a proper administrative record before the court addressed a motion to dismiss); see also *Jiahao Kuang v. U.S. Dep’t of Def.*, 340 F. Supp. 3d 873, 890 (N.D. Cal. 2018), *order clarified sub nom. Kuang v. U.S. Dep’t of Def.*, 2019 WL 718632 (N.D. Cal. Feb. 20, 2019), *and vacated and remanded*, 778 F. App’x 418 (9th Cir. 2019) (same). But in other cases, courts have held that a plaintiff’s complaint under the APA “can be resolved with nothing more than the statute and its legislative history.” *Am. Bankers Ass’n v. Nat’l Credit Union Admin.*, 271 F.3d 262, 266 (D.C. Cir. 2001). Such cases typically involve allegations of a facial conflict between an agency’s action and a statute. *Sierra Club v. U.S. Fish & Wildlife Serv.*, 245 F.3d 434, 440, n.37 (5th Cir. 2001).

Here, Plaintiffs are challenging the SBA’s rule-making process surrounding the implementation of the CARES Act. Defendants sought to defend against those

⁷ STAM alone of all Plaintiffs brought Claim 6 against Defendants for “Delayed Agency Action” under the APA. As STAM has no standing, this claim is dismissed with prejudice.

claims by filing the SOP, Dkt. No. [23-1](#), but they have not submitted any other portion of the administrative record(s) for the claims at issue. Given the nature of Corporate Plaintiffs’ challenge to the SBA’s actions—and in the absence of a response from the government on the issue of the administrative record—the viability of the APA Claims may be better raised on a summary judgment motion with the benefit of an administrative record. See [Ctr. for Biological Diversity v. Jackson](#), 2012 WL 3835097, at *4 (N.D. Cal. Sept. 4, 2012) (granting motion to dismiss one of the claims but ordering summary judgment briefing on the remaining claims following the filing of an administrative record). For that reason, the Court denies Defendants’ challenge under Rule 12(b)(6), finding these issues may be more appropriate for resolution at summary judgment.

CONCLUSION

Defendants’ Motion is granted in part. STAM is dismissed from this case, along with its claims, for lack of standing under Rule 12(b)(1). As for Corporate Plaintiffs, the Rule 12(b)(1) Motion is denied because they have standing to challenge the “immigration status” policy. The Court denies the Motion under Rule 12(b)(6).