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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

-against-

MARYMOUNT MANHATTAN COLLEGE,

Defendant.

24 Civ. 423 (JPO)

**COMPLAINT-IN-
INTERVENTION OF THE
UNITED STATES OF
AMERICA**

JURY TRIAL DEMANDED

Plaintiff the United States of America (the “United States” or the “Government”), by its attorney, Jay Clayton, the United States Attorney for the Southern District of New York, files this Complaint-in-Intervention against Marymount Manhattan College (“MMC”), and alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil fraud action brought by the United States against MMC to recover damages and civil penalties under the False Claims Act (“FCA”), 31 U.S.C. §§ 3729 *et seq.*, in connection with MMC’s application for and receipt of a Paycheck Protection Program (“PPP”) loan for which it was ineligible. The United States also seeks to recover damages under the common law for payment by mistake of fact and unjust enrichment.

2. The PPP was a federal loan program overseen by the Small Business Administration (“SBA”) to assist small businesses nationwide adversely impacted by the COVID-19 pandemic. Under the PPP, eligible 501(c)(3) non-profit organizations, like eligible for-profit businesses, could obtain SBA-guaranteed loans to spend on payroll costs and other specified business expenses.

3. In May 2020, MMC applied for and received a PPP loan of more than \$6.5 million, most of which was forgiven in June 2021.

4. At the time MMC applied for a PPP loan, 501(c)(3) nonprofit organizations, like for-profit businesses, were generally required to have 500 or fewer employees to be eligible. The American Rescue Plan Act, enacted on March 11, 2021, modified the size eligibility standard for 501(c)(3) nonprofit organizations to require that 501(c)(3) nonprofit organizations have no more than 500 employees per physical location.

5. MMC violated the FCA by knowingly presenting and making, or causing to be presented and made, false claims and statements in connection with its submission of its PPP loan application and forgiveness application. Specifically, MMC falsely certified its eligibility for the PPP loan because MMC employed more than 500 employees (in total and at a single location) and was thus ineligible for the loan it received.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over the Government’s FCA claims pursuant to 31 U.S.C. § 3730(a) and 28 U.S.C. §§ 1331, 1345, and over the common law claims pursuant to 28 U.S.C. § 1345.

7. This Court may exercise personal jurisdiction over MMC pursuant to 31 U.S.C. § 3732(a), which provides for nationwide service of process.

8. Venue is proper in this District under 31 U.S.C. § 3732(a) and 28 U.S.C. § 1391(b) because MMC is located in and transacts business in this District.

THE PARTIES

9. Plaintiff is the United States of America and is suing on its own behalf and on behalf of the SBA, which, among other things, administered the PPP.

10. MMC is a college and 501(c)(3) nonprofit organization located in New York City.

BACKGROUND

I. The Paycheck Protection Program

11. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) (Pub. L. 116-136) became law and provided emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. SBA received funding and authority through the CARES Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID-19 emergency.

12. The CARES Act authorized loans to eligible small businesses struggling to pay employees and other business expenses as a result of the devastating effect of the COVID-19 pandemic.

13. Section 1102 of the CARES Act temporarily permitted the SBA to guarantee 100 percent of 7(a) loans under a new program titled the “Paycheck Protection Program.”¹

14. On April 24, 2020, the Paycheck Protection Program and Health Care Enhancement

¹ The 7(a) Loan Program is SBA’s primary business loan program for providing financial assistance to small businesses. *See* SBA, *7(a) loans*, <https://www.sba.gov/funding-programs/loans/7a-loans> (last accessed Dec. 9, 2025). The program “provides loan guaranties to lenders that allow them to provide financial help for small businesses with special requirements.” *Id.*

Act (Pub. L. 116-139) became law and provided additional funding and authority for the PPP. On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 (Pub. L. 116-142) became law and modified certain provisions of the PPP, including provisions relating to the maturity of PPP loans, the deferral of PPP loan payments, and the forgiveness of PPP loans.

15. Under the PPP, businesses were required to spend loan proceeds on payroll costs, rent or mortgage expenses, or other specified business expenses.

16. The SBA delegated authority to third-party lenders to underwrite and approve the PPP loans. *See* 15 U.S.C. 636(a)(36)(F)(ii). To obtain a PPP loan, a qualifying applicant (through its authorized representative) was required to sign and submit a PPP loan application online through the lender's application platform.

17. In addition to other criteria, to be eligible for a first-draw PPP loan, a 501(c)(3) nonprofit organization was required to have 500 or fewer employees or to meet SBA employee-based size standards for the industry in which they operate. The American Rescue Plan Act, enacted on March 11, 2021, expanded the size eligibility standard for 501(c)(3) nonprofit organizations so that organizations with no more than 500 employees per physical location were deemed eligible, even if they had a total of more than 500 employees.

18. SBA regulations enacted before the CARES Act stated that when determining an entity's "number of employees, SBA counts all individuals employed on a full-time, part-time, or other basis" and that "[p]art-time and temporary employees are counted the same as full-time employees." 13 CFR § 121.106(a)–(b).

19. The CARES Act itself stated that for "[f]or purposes of determining whether a . . . nonprofit organization . . . employs not more than 500 employees . . . , the term 'employee' includes individuals employed on a full-time, part-time, or other basis." 15 U.S.C.

§ 636(a)(36)(D)(v).

20. SBA’s website contained information about the PPP Rules and included Frequently Asked Questions (“FAQs”) about the PPP program. As of April 26, 2020, one such FAQ stated, in part:

Question: To determine borrower eligibility under the 500-employee or other applicable threshold established by the CARES Act, must a borrower count all employees or only full-time equivalent employees?

Answer: For purposes of loan eligibility, the CARES Act defines the term employee to include “individuals employed on a full-time, part-time, or other basis.” A borrower must therefore calculate the total number of employees, including part-time employees, when determining their employee headcount for purposes of the eligibility threshold. For example, if a borrower has 200 full-time employees and 50 part-time employees each working 10 hours per week, the borrower has a total of 250 employees.²

21. The PPP loan application required the applicant (through its authorized representative) to acknowledge the rules applicable to the PPP program and make certain affirmative certifications to be eligible to obtain the PPP loan.

22. For example, applicants for PPP loans were required to certify in their PPP applications, among other things, that:

- a. “The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program”;
- b. “[T]he information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects.”

² See https://www.sba.gov/sites/default/files/2023-03/Paycheck-Protection-Program-Frequently-Asked-Questions_04%2026%2020.pdf (last visited Dec. 9, 2025).

23. Once an entity submitted its PPP loan application to a lender, the participating lender processed the PPP loan application. If a PPP loan application was approved by the participating lender, it thereafter funded the PPP loan using its own monies, which were 100% guaranteed by the SBA.

24. After the lender processed and approved a borrower's PPP loan application, the lender submitted to the SBA the "Lender's Application - Paycheck Protection Program Loan Guaranty," applying for a guarantee on the loan. In that application, the lender certified that the borrower had made the required certifications regarding its eligibility. Therefore, if a borrower made misrepresentations on its PPP loan application, the borrower's false certifications caused the lender to submit a loan guarantee application to the SBA that contained the borrower's false statement.

25. Congress provided for forgiveness of PPP loans. *See* 15 U.S.C. § 636m. To receive forgiveness, borrowers were required to submit signed loan forgiveness applications and documents containing the information and certifications in SBA Form 3508, 3508EZ, or a third-party lender equivalent. For example, applicants for PPP loan forgiveness were required to certify in their PPP loan forgiveness applications, among other things, that the "information provided in this application and the information provided in all supporting documents and forms is true and correct in all material respects."

II. The False Claims Act

26. The FCA establishes treble damages liability to the United States for an individual who, or entity that, "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval," 31 U.S.C. § 3729(a)(1)(A); or "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim," *id.* § 3729(a)(1)(B).

27. “Knowingly” is defined to include actual knowledge, reckless disregard, and deliberate ignorance. *Id.* § 3729(b)(1). No proof of specific intent to defraud is required. *Id.*

28. In addition to treble damages, the FCA also provides for assessment of a civil penalty for each violation or each false claim.

FACTUAL ALLEGATIONS

29. MMC falsely certified that it was eligible for a PPP loan even though it had more than 500 employees, and improperly sought forgiveness for the PPP loan despite having been ineligible to receive the loan in the first instance. Had the SBA known that MMC had more than 500 employees, including more than 500 employees per physical location, the SBA would not have forgiven MMC’s PPP loan.

30. On or about May 7, 2020, MMC submitted, through its authorized representative, an application for a PPP loan to JPMorgan Chase. MMC was approved for and received a PPP loan for \$6,555,592.00.

31. MMC, through its authorized representative, applied for forgiveness of most of the PPP loan in June 2021, and \$6,197,696.64 of the PPP loan amount was ultimately forgiven.

32. MMC indicated on its PPP loan application that it had an average of 482 full-time equivalent employees each month. MMC also certified, among other things, that it was eligible to receive the loan and that the information provided in its application and supporting documents was true and accurate in all material respects. MMC submitted an appendix with its loan application that included audited financial statements (balance sheets, statements of activities, statements of cash flows, and notes to financial statements), tax returns and related schedules, and payroll records. Within this lengthy appendix, there was a table reflecting that MMC’s full-time and part-time employees exceeded 500 for each month during 2019. The appendix did not list the location at which the employees worked.

33. MMC actually employed well over 500 full-time and part-time employees at the time it submitted its loan application. Further, it had more than 800 full-time and part-time employees for each month in 2019, including those months within the period relevant for determining PPP eligibility. The 482-employee total listed on the PPP loan application improperly counted MMC's part-time employees as one-third of an employee.

34. Before and after MMC submitted its PPP loan application, MMC, through its staff, was informed that full- and part-time employees were counted equally for purposes of determining PPP eligibility.

35. When it applied for PPP loan forgiveness in June 2021, MMC misrepresented in its application that it had only 447 employees at the time of its PPP loan application, and again certified, among other things, that the information provided in its application was true and correct in all material respects.

36. As result of the MMC's misrepresentations concerning its employee count and PPP loan eligibility, MMC improperly secured over \$6 million in PPP funds that it was not entitled to receive. Furthermore, these misrepresentations caused the SBA to unnecessarily pay a processing fee of \$65,555.92 to JPMorgan Chase to facilitate a PPP loan for an ineligible entity.

FIRST CLAIM
Violations of the False Claims Act: Presenting False or
Fraudulent Claims (31 U.S.C. § 3729(a)(1)(A))

37. The Government incorporates by reference each of the preceding paragraphs as if fully set forth herein.

38. Through the acts set forth above, MMC knowingly presented, or caused to be presented, false or fraudulent claims for payment or approval, in violation of the FCA, 31 U.S.C. § 3729(a)(1)(A). Specifically, MMC requested, received, and obtained forgiveness for a PPP loan by making material misrepresentations in PPP loan and forgiveness applications.

39. MMC presented or caused to be presented these claims with deliberate ignorance or reckless disregard of whether or not they were false.

40. By reason of these false or fraudulent claims, the Government has been damaged in a substantial amount to be determined at trial and is entitled to recover treble damages plus a civil monetary penalty for each false claim.

SECOND CLAIM
**Violations of the False Claims Act: Use of False
Statements (31 U.S.C. § 3729(a)(1)(B))**

41. The Government incorporates by reference each of the preceding paragraphs as if fully set forth herein.

42. Through the acts set forth above, MMC made and used, or caused to be made and used, false records and statements material to the payment of false or fraudulent claims by the SBA in violation of 31 U.S.C. § 3729(a)(1)(B). These false records and statements included the misrepresentations by MMC in the PPP loan applications and loan forgiveness applications and the false certifications in these applications.

43. MMC made, used, or caused to be made and used, these false records and statements with deliberate ignorance or reckless disregard of whether or not they were false.

44. By reason of the false records or statements, the Government has been damaged in a substantial amount to be determined at trial, and is entitled to recover treble damages plus a civil monetary penalty for each violation.

THIRD CLAIM
Payment by Mistake of Fact

45. The Government incorporates by reference each of the preceding paragraphs as if fully set forth herein.

46. The Government seeks relief against MMC to recover monies paid under mistake

of fact.

47. The lender acting on behalf of the SBA and the United States made payments based on the mistaken and erroneous belief that the PPP loan application included accurate information and that MMC was eligible for the PPP loan. The PPP loan also was forgiven based on the mistaken and erroneous belief that the PPP loan forgiveness application included accurate information.

48. By reason of the foregoing, the Government has sustained damages in a substantial amount to be determined at trial.

FOURTH CLAIM
Unjust Enrichment

49. The Government incorporates by reference each of the preceding paragraphs as if fully set forth herein.

50. Through the acts set forth above, MMC received PPP funds to which it was not entitled and therefore was unjustly enriched. The circumstances are such that, in equity and good conscience, MMC should not retain those payments, the amount of which is to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, the Government respectfully requests that judgment be entered in its favor against MMC as follows:

- (a) On the First and Second Claims (FCA violations), for a sum equal to treble damages and civil penalties to the maximum amount allowed by law;
- (b) On the Third and Fourth Claims (Payment by Mistake of Fact and Unjust Enrichment), a sum equal to the damages to the extent allowed by law; and
- (c) Granting the Government costs and such further relief as the Court may deem proper.

Dated: New York, New York
December 18, 2025

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