

**UNITED STATES SMALL BUSINESS ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS**

PAYCHECK PROTECTION PROGRAM)	
APPEAL OF:)	
)	
OTO ANALYTICS, INC.)	Docket No. PPP- 5187557106
)	
Appellant)	
)	
Appealed from)	
SBA PPP Loan No. 5187557106)	

MOTION TO DISMISS THE PAYCHECK PROTECTION PROGRAM APPEAL

Pursuant to 13 C.F.R. § 134.211(e)¹, the United States Small Business Administration (SBA), through its undersigned attorney, submits this Motion to Dismiss the Paycheck Protection Program (PPP) Appeal of OTO ANALYTICS, INC., which was filed with the Office of Hearings and Appeals (OHA) on October 3, 2022 (hereinafter referred to as “Appeal”). SBA moves for dismissal of the Appeal because the agency has withdrawn its Final SBA Loan Review Decision issued on September 1, 2022, to Borrower, OTO ANALYTICS, INC., SBA Loan No. 5187557106 (hereinafter referred to as “the Loan”).

OHA has jurisdiction to conduct proceedings in the types of cases identified in 13 C.F.R. § 134.102. Paragraph (w) of 13 C.F.R. § 134.102 states that “OHA has authority to conduct proceedings in the following cases: Appeals of *certain SBA loan review decisions* as defined in 13 C.F.R. § 134.1201.” (emphasis added). Title 13 C.F.R. § 134.1201, *et seq.* governs OHA appeals under the PPP. Paragraph (a) of 13 C.F.R. § 134.1201 specifically provides that “[t]he rules of practice in this subpart apply to appeals to OHA from *certain final SBA loan review decisions under the [PPP] as described in paragraph (b) of this section*, and to any other PPP matter referred to OHA by the Administrator of SBA.” (emphasis added). Paragraph (b) of section

¹ Title 13 C.F.R. § 134.1201, *et seq.* governs appeals under the Paycheck Protection Program. Title 13 C.F.R § 134.1201(h) incorporates additional specific regulations including, but not limited to, 13 C.F.R § 134.211.

134.1201 provides the types of final SBA loan review decisions appealable to OHA. No regulation other than 13 C.F.R. § 134.102(w) and 13 C.F.R. § 134.1201 provide OHA with jurisdiction to adjudicate a PPP matter. Therefore, OHA only has jurisdiction to adjudicate PPP appeals when a certain final SBA loan review decision under the PPP has been issued or when a matter is referred by the SBA Administrator.

On or about December 16, 2022, SBA withdrew the final SBA loan review decision issued on the Loan. *See* Declaration of Jason C. Frulla, attached as Exhibit A, ¶4. SBA withdrew that decision because Appellant provided SBA with all documents requested to determine eligibility. *See id.*

Since there is no longer a Final SBA Loan Review Decision concerning the Loan at this time and the Administrator has not referred this matter to OHA, there is no jurisdiction for OHA to adjudicate this matter and the appeal should be dismissed in accordance with OHA regulations. Title 13 C.F.R. § 134.1205(a)(1) provides that the “Judge must dismiss the appeal if: The appeal is beyond OHA’s jurisdiction as set forth under § 134.1201.” (emphasis added).

Therefore, SBA respectfully moves OHA to dismiss the appeal.

Date: January 18, 2023

Respectfully submitted,

/s/ Anthony Davis
Anthony Davis
Attorney for SBA

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CERTIFICATE OF SERVICE

I certify that on January 18, 2023, I filed a copy of the above Motion to Dismiss the Paycheck Protection Program Appeal in the OHA Case Portal.

Respectfully submitted,

/s/ Anthony Davis
Anthony Davis
Agency Counsel
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Baltimore District Office
U.S. Small Business Administration
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EXHIBIT A

DECLARATION OF JASON C. FRULLA

I, Jason C. Frulla, for my declaration pursuant to 28 U.S.C. § 1746, depose and say as follows:

1. I work at the United States Small Business Administration (“SBA”) as a Loan Specialist, Office of Financial Program Operations, in the Office of 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 Paycheck Protection Program (“PPP”) authorized under the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116–136); the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116–139); the Paycheck Protection Program Flexibility Act of 2020 (Pub. L. 116–142); the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Pub. L. 116–260); the American Rescue Plan Act of 2021 (Pub. L. 117-2); and the PPP Extension Act of 2021 (Pub. L. 117–6). I am knowledgeable about the PPP programs and have access to relevant PPP files and records.
2. I submit this declaration in support of the SBA’s MOTION TO DISMISS THE PAYCHECK PROTECTION PROGRAM APPEAL filed in the above-captioned matter. The statements contained in this declaration are based on my personal knowledge and information made available to me while carrying out my duties and responsibilities as a Loan Specialist, Office of Financial Program Operations.
3. I have reviewed relevant SBA records with respect to the above-captioned PPP Loan, OTO ANALYTICS, INC., SBA Loan No. 5187557106 (the Loan).
4. On or about December 16, 2022, SBA withdrew the Agency’s final SBA loan review decision on the Loan. SBA withdrew that decision because Appellant provided SBA with all documents requested to determine eligibility.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge and belief.

Executed on the date set forth in the electronic signature block below.

Jason C. Frulla
Loan Specialist
Office of Financial Program Operations

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I certify that on January 18, 2023, I filed a copy of the above Declaration in Support of the Motion to Dismiss the Paycheck Protection Program Appeal in the OHA Case Portal.

Respectfully submitted,

/s/ Anthony Davis
Anthony Davis
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