IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALICIA MARSHALL, DANIEL PRONSKY, PARIS TOWNSEND, NANCILEE HOLLAND, LEONA OWSLEY, KOLAWOLE AHMADOU, KIANA DERVIN, KRISTINA HENDERSON, DUSTIN INNIS, KELLY STALNAKER and JAMIE JONES, individually and on behalf of all others similarly situated, Plaintiffs, v. PRESTAMOS CDFI, LLC and CHICANOS POR LA CAUSA, INC., Defendants.	Civil Action No. 5:21-cv-04337-JMG

MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY

Plaintiffs Alicia Marshall, Daniel Pronsky, Paris Townsend, Nancilee Holland, Leona Owsley, Kolawole Ahmadou, Kiana Dervin, Kristina Henderson, Dustin Innis, Kelly Stalnaker and Jamie Jones (collectively, "Plaintiffs"), individually and on behalf of all others similarly situated, respectfully request leave to submit the attached Supplemental Authority regarding Defendants' pending Motion to Dismiss. ECF No. 46. Plaintiffs have submitted opposition to Defendants' motions to dismiss (ECF No. 49) and Defendants have also submitted a reply (ECF No. 51). The Supplemental Authority consists of a recently issued Congressional Report and an associated Press Release, both of which are described in greater detail below.

On December 1, 2022, the U.S. House of Representatives' Select Subcommittee on the Coronavirus Crisis released a Staff Report entitled "'We Are Not The Fraud Police': How

Fintechs Facilitated Fraud in the Paycheck Protection Program" (the "Select Subcommittee Report"). *See* Select Subcommittee Report, available at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022.12.01%20How%20Fintechs%20Facilitated%20Fraud%20in%20the%20Paycheck%20Protection%20Program_0.pdf (last visited Dec. 9, 2022). The Select Subcommittee obtained information from defendant Prestamos CDFI, LLC ("Prestamos") in preparing the Select Subcommittee Report. *See* Select Subcommittee Report at 17. *See Vanderklok v. United States*, 868 F.3d 189, 205 n.16 (3d Cir. 2017) ("It is appropriate to take judicial notice of ... information ... made publicly available by government entities[.]") (quoting *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010)).

The Select Subcommittee Report's findings regarding defendant Prestamos include, but are not limited to, the following:

a. Prestamos approved the highest number of PPP loans of any PPP lender in 2021, approving nearly half a million loans. *See* Select Subcommittee Report at 20 at Figure 1, n. 119.

b. "In a briefing with Select Subcommittee staff, Prestamos' President acknowledged that [Prestamos] was 'not prepared for all the applications we received' during the PPP and said that the nonprofit knowingly took on a role larger than it had been prepared to handle because they saw a limited number of PPP funds going to underserved communities and believed that Blueacorn could help them serve those communities without compromising program requirements ....'" *Id.* at 44-45.

c. Prestamos paid Blueacorn $700 million in PPP loan processing fees. *Id.* at 2.

d. "In 2021, Blueacorn was involved in the processing of nearly all of the loans facilitated by the top two PPP lenders that year by loan volume – Capital Plus and Prestamos." *Id.* at 20.

e. "Blueacorn's ownership directed reviewers to prioritize **'monster loans [that] will get everyone paid'** and created an exclusive category of PPP loans, called 'VIPPP' loans. Blueacorn's ownership directed loan reviewers 'to prioritize and submit large ['VIPPP'] loans without following protocols that [loan reviewers] had been trained to complete.' While prioritizing 'VIPPP' loans, Blueacorn's owners were dismissive of other loans, writing **'delete them,' 'who fucking cares,' and '[w]e're not the first bank to decline [PPP] borrowers who deserve to be funded … they go elsehwere [sic].'"** *Id.* at 3 (emphasis in original).

On December 8, 2022, in response to the Select Subcommittee Report, the U.S. Small Business Administration (the "SBA") issued a press release announcing that "[t]he House Select Subcommittee report details serious problems of fraud and self-dealing by lenders" and that the SBA has "launched a full investigation" of Prestamos and other lenders "to ensure that federal financial regulators have a coordinated response to wrongdoing by lenders." *See* U.S. Small Business Administration Statement on the House Select Subcommittee on the Coronavirus Crisis Report Concerning Fraud in the Paycheck Protection Program, Release No. 22-98 (Dec. 8, 2022), available at https://www.sba.gov/article/2022/dec/08/us-small-business-administration-statement-house-select-subcommittee-coronavirus-crisis-report (last visited Dec. 9, 2022).

Attached as Exhibit 1 is the Select Subcommittee Report. Attached as Exhibit 2 is the SBA's December 8, 2022 Press Release.

<u>Conclusion</u>

For the foregoing reasons, the Court should grant Plaintiffs' Motion for Leave to File Supplemental Authority.

Dated: December 14, 2022

BAILEY & GLASSER LLP

By: /s/ *Lawrence J. Lederer*

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CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2022 I caused Plaintiffs' Motion for Leave to File Supplemental Authority to be filed on the Court's CM/ECF system and for service of same on all counsel of record.

/s/ Lawrence J. Lederer
Lawrence J. Lederer