EX. 12 -- THE REPORT OF WILLIAM M. MANGER, JR. ("MANGER") DATED JULY 12, 2024

REPORT OF WILLIAM M. MANGER, JR

I. Qualifications

1. I served in the United States Small Business Administration (the "SBA") for a total of almost eight years, from 2005 to 2009 and again from 2017 to January 2021. Most recently, I was Chief of Staff of the SBA from March 2020 to January 2021, during which I oversaw and led the SBA's implementation of the Paycheck Protection Program (the "PPP"). In that role, I was responsible for promulgating PPP-specific rules and guidance, implementing PPP-specific processes at the SBA, and communicating with lenders, trade associations, government agencies, and members of Congress. I left the SBA in January 2021 and am now an independent consultant.

2. Prior to and concurrent with my role as Chief of Staff, I was the Associate Administrator, Office of Capital Access at the SBA from March 2017 to January 2021. In that role, I was responsible for delivering approximately $30 billion annually to small businesses through the SBA's main lending programs, including the 7(a) Loan Program, 504 Loan Program, and the Microloan Program. I was responsible for drafting rules and regulations including the Standard Operating Procedures ("SOPs") that governed the loan programs. The SBA's SOPs detail the rules, policies, and procedures that govern eligibility for and participation in the SBA's loan programs.

3. I was also involved in the creation of the SBA's PPP-specific IFRs and FAQs that modified the existing 7(a) regulations. Specifically, I was involved in the drafting, revising, and finalizing the April 2020 Final Rule and the January 2021 Final Rule (both defined below).

4. Prior to serving in the SBA from 2017 to 2021, I was a Managing Director at Brock Capital Group, LLC, a boutique investment bank and consulting firm, from 2009 to March 2017.

5. From 2007 to 2009, I served in the SBA as Associate Administrator, Office of Field Operations. In that role, I was responsible for the operational management of the SBA's field

infrastructure and oversaw nearly 1,000 employees at the SBA's ten regional and 68 district offices throughout the United States and its territories. I provided policy guidance and assisted the Administrator in setting goals. In addition, for several months in 2008, I also served as Associate Administrator, Office of Entrepreneurial Development, during which I oversaw the SBA's resource partners: Small Business Development Centers, Women's Business Centers and SCORE.

6. From 2005 to 2007, I was the Regional Administrator of the SBA for Region II, which covered all of New York, New Jersey, Puerto Rico and the US Virgin Islands. I was responsible for the delivery of the SBA's financial assistance, management counseling, business development, and minority development activities throughout the Region. I also was a member of the Management Board responsible for implementing policy.

7. A copy of my resume is attached hereto as **Exhibit A**.

II. Background

8. I was retained by Bailey & Glasser LLP as counsel to Alicia Marshal, Georgina Drevnak and other Plaintiffs ("Plaintiffs") in this case. The defendants are Prestamos CDFI, LLC ("Prestamos") and its parent company Chicanos Por La Causa, Inc. ("CPLC") ("Defendants"), although I understand that the Court previously dismissed CPLC on grounds of jurisdiction. Based on information I received from counsel to the Plaintiffs and other information, including the Third Amended Class Action Complaint (the "Complaint"), additional documents filed and evidence produced in the case as well as SBA Rules and SOPs and other information, I understand that Prestamos is a Community Development Financial Institution (CDFI) that was authorized to make PPP loans under the CARES Act. I also understand that plaintiffs contend that PPP loans made to them by Prestamos were approved by the SBA to be funded, but not disbursed to plaintiffs and the class by Prestamos and that Prestamos still

obtained a loan processing fee from the SBA for those unfunded loans by falsely reporting to the SBA via SBA Form 1502 reports that the loans were funded.

9. I am being compensated for my expert services in connection with this case at a rate of $650 per hour except testimony at deposition and trial, in which case my rate is $750 per hour. My compensation is not contingent on the nature and substance of my opinions or on the outcome of the case.

III. The SBA's Section 7(a) Loan Program and PPP

10. The SBA was formed during the Eisenhower Administration in 1953. The SBA's mission is to "aid, counsel, assist and protect the interests of small business concerns, to preserve free competitive enterprise and to maintain and strengthen the overall economy of our nation." (SBA, Organization, available at http://www.sba.gov/about-sba.organization).

11. One way the SBA accomplishes its mission is by providing small businesses with access to credit through various lending programs, the most common of which is the 7(a) Loan Program. (The 7(a) Program is named after Section 7(a) of the Small Business Act. 15 U.S.C. § 636(a)). Under the 7(a) Program, the SBA facilitates lending to qualifying small businesses, which may not otherwise qualify for loans, by guaranteeing up to 85% of the value of loans made to them.

12. In late March 2020, in response to the Covid-19 pandemic, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which created the PPP. (Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020). The PPP was designed to aid small businesses and non-profits that were affected by the COVID-19 pandemic by providing emergency funding to make payroll and pay utilities, rent, and mortgage payments. If used for those purposes, PPP loans were also designed and intended to be forgivable. To obtain forgiveness, however, the PPP loan recipient had to actually receive the loan proceeds because the loan recipient had to

certify that he or she used those funds for the specific purposes permitted by the PPP. Here as alleged, the plaintiffs and class members' PPP loans were not funded and so they could not make that certification or obtain loan forgiveness.

13. The 7(a) Program served as the framework for the PPP, and like the 7(a) Program, the PPP encouraged lending to small businesses and non-profits by way of SBA-guaranteed private loans. However, in light of the pandemic's effects on small businesses, the PPP went further than the 7(a) Program. Under the PPP, for example, the SBA guaranteed 100% of qualifying loans, forgave the loans in their entirety if used for specified purposes as noted above, and waived its guaranty fees. Lenders collected loan-processing fees, in addition to 1% interest, but, due to the SBA's guarantee and forgiveness obligations, faced no financial risk from borrowers not repaying the loans.

14. In my role as Chief of Staff, I was informed that the PPP had to be up and running one week after the CARES Act was signed into law. The SBA team and I worked around the clock to issue PPP-specific Interim Final Rules (IFRs), where needed, and to update technology systems to allow lenders to submit PPP loan applications. Within one week of the CARES Act being signed into law, lenders were able to submit applications and make loans under the PPP. In the first fourteen days of the PPP, the SBA processed nearly fourteen years' worth of loans. Ultimately, more than three quarters of a trillion dollars were made available to small businesses and not-for-profits through the program.

15. The lenders that participated in the early days of the PPP were generally the same that participated in the 7(a) Program. The total number of initial lenders was approximately 1,700. The SBA worked to get thousands of additional lenders into the program and, when it was fully ramped up, more than 5,000 lenders were participating.

IV. SBA Rules Governing the 7(a) Program and the PPP

16. In general, because of the two programs' similarities, the 7(a) Program's then-existing regulations and SOPs formed the framework for the implementation of the PPP. Except as provided for in PPP-specific IFRs and FAQs, the existing 7(a) regulations and SOPs governed the PPP.

17. Following the passing of the CARES Act, the SBA issued the first PPP-specific IFR on April 15, 2020, which was titled "Business Loan Program Temporary Changes; Paycheck Protection Program" (the "April 2020 Final Rule"). (85 Fed. Reg. 20811 (Apr. 15, 2020)). Among other things, the April 2020 Final Rule provided incentives to lenders to make PPP loans by providing that, for funding PPP loans of $350,000 or less, the SBA would pay to lenders a processing fee of 5% of the loan amount.

18. Lenders could use their own form of a Promissory Note or utilize a standardized SBA Promissory Note as the legal instrument governing the terms between the lender and the borrower. It is my understanding that Prestamos utilized the SBA standardized Promissory Note for its lending transactions under PPP. Plaintiffs filed a copy of that Note in full with the Court along with their Complaint which I have also reviewed in preparing this report. It is reasonable to assume that a PPP lender requesting a signed SBA Promissory Note from a borrower entered into an agreement to make a PPP loan with its accompanying specific terms of repayment and the possibility of forgiveness.

19. The SBA wanted to ensure the prompt distribution of funds from participating lenders to PPP borrowers because of the consequences of the pandemic which notably included government-imposed lockdowns. Once a lender received SBA approval for a PPP loan by receiving a loan number through SBA's Etran system, the timing clock commenced. "The lender

must make a one-time, full disbursement of the PPP loan within ten calendar days of loan approval; for the purposes of this rule, a loan is considered approved when the loan is assigned a loan number by SBA." (85 Fed. Reg. 26321 (May 4, 2020)). The rule goes on to state that a lender must report disbursement of a PPP loan by filing an SBA Form 1502 which triggers the payment by SBA of the processing fee to the lender. The pertinent section reads, "In addition to providing the ACH credit information to direct payment of the requested processing fee, lenders will be required to confirm that all PPP loans for which the lender is requesting a processing fee have been fully disbursed on the disbursement dates and in the loan amount reported. A lender must report through either Etran Servicing or the SBA Form 1502 report any PPP loans that have been cancelled before disbursement or that have been cancelled or voluntarily terminated and repaid after disbursement." The section concludes by stating the intention of the Administrator of the SBA and the Secretary of the Treasury, "The Administrator, in consultation with the Secretary, determined that requiring lenders to report on disbursement within 20 calendar days of loan approval ensures that the disbursement of funds to eligible borrowers will occur rapidly."

20. Based on the above rules, if the borrower submitted the loan documents and Prestamos received an SBA loan number signifying that a PPP loan was approved, Prestamos was required to make a full disbursement of the loan amount and record it with the SBA by filing a Form 1502 within 20 days. The lender would also be responsible for submitting a Form 1502 on a monthly basis to report any updates concerning the status of the loan. To quote the Complaint, the definition of the class in this case includes only those from Plaintiffs' respective states "who, in 2021, applied for PPP loans with defendant Prestamos as the lender for whom the SBA provided a SBA loan number, and who executed and submitted their Loan Documents and provided to Prestamos all required loan documentation, but as to whom Prestamos both failed to

disburse the PPP loan proceeds and reported to the SBA that the loan proceeds were disbursed." *See* Complaint paras. 376 – 377. The evidence also shows that Prestamos obtained advances on unfunded loans from the Federal Reserve's PPP Liquidity Facility (the "PPPLF") via the PPP Pledge and Advance Request ("PAR") forms. I have not seen any evidence indicating that Prestamos returned to the PPPLF or otherwise to the U.S. Federal Reserve any of those PPPLF advances it obtained but failed to disburse to SBA-approved borrowers. Further under the PPP, PPPLF advances were actually secured by each such loan. Here, Plaintiffs allege that Prestamos did not pay the loan proceeds to any of these Plaintiffs or class members, regardless of whether Prestamos tried to do so. *See* Complaint, paras. 397-400, 404-405, 414. If the loans were not fully disbursed to the Plaintiff or class member, Prestamos should not have filed an SBA Form 1502. Further, Prestamos also should have returned the advances to the PPPLF that it did not disburse to the SBA-approved borrower. In addition, Prestamos should not have received the SBA lender's fee for those undisbursed loans. In fact, the SBA Form 1502 was to be filed only after, and subject to, the PPP loan actually being funded. A mere attempt to fund a loan, or an attempt to do so that, for instance, the borrower's bank rejected, should have resulted in the loan being cancelled in SBA's e-tran system and no payment of the loan processing fee being made by the SBA to the lender. In fact, as noted above lenders were also required to update and file the 1502 reports on a monthly basis, and to accurately report the information contained in those reports concerning the status of the loan. I understand that Prestamos objected earlier in this case to producing to Plaintiffs any of the Form 1502 reports and PARs on grounds of alleged relevance, and that Plaintiffs had to seek to compel production of them (*see* Plaintiffs' letter to the Court dated July 14, 2023 and Prestamos' response dated July 18, 2023, which are available at the *Marshall, et al. v. Prestamos CDFI, LLC and Chicanos Por La Causa, Inc.*, 5:21-cv-

04337-JMG (E.D. Pa.) docket in this case, at nos. 76 and 78). *See also* Letter, docket no. 78 at p. 1, from Prestamos' counsel to Judge Gallagher ("The [Form 1502 reports and PARs] are irrelevant to Plaintiffs' breach of contract claim."). In my view, the Form 1502 reports and PARs are highly relevant in this case. Among other things, advances from the PPPLF via the PARs were secured by the loans and pledged by the lender under the PPP for that purpose, and the filing of the Form 1502s not only signify when a loan was reported as fully disbursed to the borrower, but also triggered payment of the loan fee from the SBA to the lender. In fact, the Form 1502s were how the lenders were to report on the alleged funding and status of PPP loans.

21. Under the CARES Act and the first round of PPP lending, many small businesses had difficulty obtaining small-sized PPP loans. That was because some lenders were not able to, or not willing to, devote the resources necessary to fund a small-sized PPP loan to collect a processing fee of 5% of the loan amount.

22. In December 2020, Congress attempted to solve this problem by passing theEconomic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act ("Economic Aid Act"), increasing the available lender processing fees for PPP loans of $50,000 or less from 5% of the loan to the lesser of 50% or $2,500. (Title III of the Consolidated Appropriations Act of 2021. Pub. L. No. 116-260, 134 Stat. 1182 (Dec. 27, 2020)).

23. While the change in the processing fee schedule was made to encourage lenders to make smaller loans to the smallest of small businesses, the processing fees were only to be paid by the SBA for loans that were disbursed. Lenders were required to report and record accurately full disbursement of PPP loans by filing an SBA Form 1502 with the Agency. If the loan was not successfully funded and the lender nevertheless filed a Form 1502, the lender necessarily misrepresented the status of the loan as being funded. Loans could be canceled with the SBA prior

to disbursement for which no processing fee would be paid. Loans could also be cancelled before disbursement and cancelled or voluntarily terminated and repaid after disbursement. In both instances the lender would be ineligible for the SBA's lender fee. (Second Updated Paycheck Protection Program Lender Processing Fee Payment and 1502 Reporting Process, SBA Procedural Notice (Feb. 8, 2021)). If a lender was given a loan number by the SBA for a PPP loan and then submitted a Form 1502 but did not fully disburse the loan, this would be both inconsistent with the program and in violation of the rules. Plaintiffs also claim that they are potentially bound under their note and accompanying standard form loan document agreements to pay back to Prestamos loan proceeds they failed to receive plus interest. Plaintiffs also allege that two plaintiffs (Drevnak and Lloyd) who never received loan proceeds were requested by Prestamos to repay PPP loan amounts plus interest, and quote in their Complaint Prestamos' correspondence sent to those Plaintiffs. (Third Amended Class Action Complaint, (para. 253, 258, 296-297)). This attempt to collect repayment plus interest clearly is in my view unfair and does not make sense.

24. I submitted a report concerning class certification in another PPP-related case, *Greathouse v. Capital Plus Financial, LLC*, 2023 WL 5746927 (N.D. Tex. Sept. 6, 2023). The defendants there moved to strike my report which the Court denied (at footnote 2), and the Court also denied class certification. I have also reviewed the Court's ruling on class certification and that Court's separate ruling issued that same day largely denying the motions to dismiss in that case, which is reported at 2023 WL 5759250, among other information. The proposed classes in this case are narrower than alleged in the *Capital Plus* case. First, the classes alleged here are not national classes as in *Capital Plus* but instead are confined to specific states where Plaintiffs reside or were injured by being deprived of loan funding consistent with the ruling of the Court in this case that Plaintiffs have only "in-state" standing to maintain the breach of contract claims alleged.

Complaint paras. 376 – 377. The Court's March 30, 2023 ruling in this case concerning Prestamos' motion to dismiss is reported at docket nos. 56-57, and 2023 WL 2727541. Second and also unlike *Capital Plus*, the issue of *why* a loan was not funded is not material in this case because, by definition, all of Plaintiffs' and class members' loans were not funded but Prestamos falsely reported via the Form 1502s that the loans were funded. As Plaintiffs allege, whether Plaintiffs and class members were or were not funded is a simple "binary question" answerable classwide – yes or no, and here as alleged the answer is no. Complaint para. 393.

25. The language at the end of the Promissory Note in section 10 "Release of Lender" specifically addresses "extensions of credit" made "on or prior to the date hereof." (Third Amended Class Action Complaint, Exhibit A at section 10.) PPP loans were not lines of credit. In this situation in the context of the PPP, "extension of credit" would mean funding of a loan. For the language to be applicable, the PPP loan would have to have been funded "on or prior to the date" the Note was signed, which did not happen. Under the PPP as noted above, the Note had to be first executed by the lender and borrower, the borrower had to submit all requisite loan documentation, and then the lender thereafter had to fund the PPP loan within the time period under PPP rules. The language is also broad and in theory would also pertain to the funding of loans, if any, previously made by Prestamos to the Plaintiffs and class members separate and apart from PPP. The Court in the *Capital Plus* case found that this release was also void as "against public policy." Judge Mark T. Pittman states in his decision in *Capital Plus*, "For PPP loan agreements, there is no customization or negotiation of the core terms of the agreement because it is prescribed by statute. Plaintiffs could not take to the marketplace to hunt down a better rate or deal." *See Capital Plus*, 2023 WL 5759250 at *15. Finally, a central purpose of the PPP was to make money available to small businesses and not-for-profits as loans that would then be forgiven,

essentially creating and distributing grants. By not funding loans to approved PPP applicants with SBA loan numbers and who had submitted the loan documents, Prestamos not only deprived Plaintiffs of critical guaranteed federal money, but also precluded them from applying to other lenders, obtaining forgiveness and potentially subjecting them to repayment of loans they did not receive plus interest.

Dated this 12th, day of July 2024

By: William M. Manger Jr.
William M. Manger, Jr.

<u>Exhibit A</u>

(Resume of William M. Manger, Jr.)

WILLIAM M. MANGER, JR.

631-255-2288 ▪ wmmanger@gmail.com
New York, NY ▪ Linkedin.com/in/bill-manger-7815565/

SENIOR OPERATIONS LEADER

25+ years of executing significant strategic, operational and organizational agendas

Senior operations leader and chief of staff with an unparalleled track record of delivering operational excellence to achieve strategic goals within the government, banking and finance sectors. Served at the highest levels of government, most recently as the architect of the immediate transformation of the US Small Business Administration to respond to the Cares Act by implementing the Paycheck Protection Program. Currently seeking to leverage vast operational leadership experience within the private sector.

- ✓ **Trusted advisor to senior leadership:** consistently appointed to co-lead and advise on large-scale and complex transformations and operational agendas. Known for simplifying complexity, anticipating and resolving problems, mitigating risks and adding strategic value.
- ✓ **Strategic integrator:** exceptional ability to serve at the nexus of an enterprise to align and operationalize across functions.
- ✓ **Highly adept communicator with commanding executive and leadership presence:** successfully communicates at all levels with organizational and political intelligence, confidence, situational sensitivity and directness.
- ✓ **Analytical and pragmatic decision-maker:** results-obsessed focus on streamlining to create greater efficiencies. Consistently recognized for sound judgment and thorough analysis of problems while moving quickly to implement the most effective solutions.
- ✓ **Inspiring and motivating leadership style:** demonstrates infectious energy that motivates teams and key stakeholders to unite and achieve a common vision.

HIGHLIGHTS OF EXPERTISE

- Executive Leadership & Facilitation
- Strategic Planning
- Operations
- Cross-Functional Teaming
- Critical Thinking/Analysis
- Efficiency Identification
- Project Management/Execution
- Executive Communications
- Transformations
- Policy and Procedure Review
- Sales & Business Development
- Change Management

PROFESSIONAL EXPERIENCE

VILLAGE OF SOUTHAMPTON, NY — **2022-PRESENT**
MAYOR — ***2023-PRESENT***
TRUSTEE — ***2022-2023***

U.S. SMALL BUSINESS ADMINISTRATION — **2017 – 2021**
CHIEF OF STAFF — ***2020 - 2021***
As deputy to the Administrator, oversaw and managed the agency and its ~11,000 employees and contractors to deliver products and services for America's small businesses coordinating all functions including legal, finance, human capital, technology and field operations to provide financial assistance, government contracting, entrepreneurial development and disaster assistance.

Key contributions:
- Led transformation the agency to implement Paycheck Protection Program (PPP) in one week of it becoming law in the Cares Act. Provided over 5.2 million small businesses and non-profits with almost $550B in forgivable loans within ten-month timeframe during pandemic. Effort required immediate implementation of enhanced IT systems and $90M SaaS solution.
- Effectively communicated frequently with key stakeholders including lenders, trade associations, government agencies and members of the US House and US Senate.
- Increased lender participation from approximately 1,500 to almost 5,500, which included nationwide banks, regional banks, community banks, credit unions, fintechs, community development financial institutions, certified development companies, minority depository institutions and others.

ASSOCIATE ADMINISTRATOR, HEAD OF OFFICE OF CAPITAL ACCESS — ***2017 - 2021***
The Office of Capital Access guarantees loans made by banks and other lending partners to small businesses that cannot otherwise obtain financing on reasonable terms. As the head of this office, managed $130B portfolio of direct and guaranteed loans, nine operation centers and staff of ~560 employees, including loan processors. Established policy, ran operations and oversaw risk management.

Key contributions:
- Delivered approximately $30 billion in loans annually to small businesses; improved loan processing time by 50% while also improving customer service. Also promoted lending in rural areas and identified Opportunity Zones.

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- Successfully testified before Congress 7 times; spoke to many foreign delegations and international conferences. Represented the Administrator on US Treasury's CDFI Board and served on the executive board that approved approximately 80 SBIC licenses.

BROCK CAPITAL GROUP, LLC **2009 – 2017**
MANAGING DIRECTOR **2021-PRESENT**
As a key member of the boutique investment bank and consulting firm, supervised the firm's day-to-day operations and coordinated and managed all advising, consulting and banking assignments with CalPERS.

Key contributions:
- Negotiated terms, structured, marketed and raised capital for real estate private placement deal that invested in single family homes in suburban NY and CT.
- Chaired the Professional Operations Committee which managed deal flow.

U.S. SMALL BUSINESS ADMINISTRATION **2005 – 2009**
ASSOCIATE ADMINISTRATOR, HEAD OF OFFICE OF FIELD OPERATIONS ***2007 – 2009***
Responsible for operational management of the agency's operations nationwide, managing ~1000 employees in 68 offices across 10 regions. Provided policy guidance and set annual metrics. Fully integrated the field with program offices in headquarters. Drove customer service focus and expansion in underserved markets.

ASSOCIATE ADMINISTRATOR, HEAD OF OFFICE OF ENTREPRENEURIAL DEVELOPMENT (A) ***2008***
Administered $115M in grants to provide counseling and training to small business entrepreneurs. Oversaw Small Business Development Centers and Women's Business Centers that provide technical and special assistance to small business.

REGIONAL ADMINISTRATOR ***2005 – 2007***
Responsible for the delivery of the agency's financial assistance, management counseling, business development and minority enterprise development activities in New York, New Jersey, Puerto Rico and the US Virgin Islands. Managed a staff of 100 employees in five district offices throughout the region. Member of the Agency's Management Board responsible for establishing policy.

BILL MANGER FOR CONGRESS **2003 – 2004**
CANDIDATE
Ran for U.S. Congress in New York-1 district (Eastern Suffolk County LI). Responsible for raising over $1 million dollars for campaign.

U.S. DEPARTMENT OF TRANSPORTATION **2001 – 2003**
SENIOR POLICY ADVISOR TO THE MARITIME ADMINISTRATOR
Responsible for coordinating and initiating policy proposals. Directly involved with the maritime response to 9/11. Reviewed and commented on all substantive documents including policy, legislation, budget and briefings for the Secretary and White House.

VILLAGE OF SOUTHAMPTON **1997 – 2001**
TRUSTEE
Twice elected member of five-person executive board, involved with all aspects of managing the municipality including legislation, labor negotiations, emergency services, budgeting, taxation and grants.

THE ZANETT SECURITIES CORPORATION/ZANETT CAPITAL, INC. **1996 – 1999**
ASSOCIATE - VICE PRESIDENT
Sourced potential companies to directly invest in; met with CEOs and CFOs to negotiate private placement terms.

EDUCATION AND ADDITIONAL INFORMATION

EDUCATION:
Master of Business Administrative in Finance, **Columbia Business School**
Bachelor of Arts in Political Science, **Trinity College**

ADDITIONAL INFORMATION:
- Have served for over twenty-five years on the board of the Riot Relief Fund which was created after the Civil War riots to provide compensation to spouses and children of policemen and firemen killed in the line of duty
- Have travelled to 48 states and six continents