EX. 15 -- THE REBUTTAL REPORT OF MANGER DATED AUG. 9, 2024

Rebuttal Response to the Report by Kenneth Swain

1. I have reviewed the report dated July 12, 2024, of Kenneth Swain in regard to the case of Alicia Marshall et al. as Plaintiffs v. Prestamos as Defendant. While Mr. Swain has been a banker familiar with Small Business Administration (SBA) lending from the lender side, Mr. Swain has never worked at the SBA nor had authority to write Federal Regulations, Procedural Notices or Agency Standard Operating Procedures as I have. In total, I worked for almost eight years at the SBA as my opening report dated July 12, 2024 summarizes (at paras. 1-3). Specifically, in my role as Chief of Staff and Associate Administrator for Capital Access at the SBA from 2020 to 2021, I was responsible with the US Treasury Department (Treasury) for promulgating the Interim Final Rules (IFRs) that governed the Paycheck Protection Program (PPP). I worked closely with officials at Treasury to promulgate and implement the IFRs and Frequently Asked Questions (FAQs) that governed the PPP.

2. Mr. Swain spends a great deal of time in his July 12, 2024 report trying to explain why PPP loans were not disbursed. It is correct that the Plaintiff Classes allege they failed to receive their approved PPP loans, but the Plaintiffs' Third Amended Complaint also alleges that Prestamos reported to the SBA that the loans were disbursed. (Third Amended Complaint paras. 376-377). According to the SBA Procedural Notice entitled "Updated Paycheck Protection Program Lender Processing Fee Payment and 1502" that has an effective date of July 13, 2020, "A lender will not receive a processing fee: Prior to full disbursement of the PPP loan...." Under 15 U.S.C. 636(a)(36)(P), "the fee is based on the balance of the PPP loan outstanding at the time of full disbursement of the loan." 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 electronic transmission (e-tran) system and no payment of the loan processing fee being made by the SBA to the lender.

3. Mr. Swain surprisingly never mentions the important fact that Prestamos filed Form 1502s with the SBA that were used to inform the Agency when loans were allegedly fully disbursed. Assuming as Plaintiffs also allege in this case, they submitted to Prestamos all loan documentation (Third Amended Complaint paras. 376-377), full disbursement was mandated by the SBA within ten days of receiving an SBA loan number. "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."

4. The Form 1502s also were important because they were the critical mechanism by which lenders informed the SBA of full disbursement and triggered payment of the processing fee to the lender. In my opinion, it was improper for Prestamos to file Form 1502s if the PPP loans were not fully disbursed. Prestamos should not have collected a fee. Any processing fees that were received by Prestamos for PPP loans that were not disbursed should have been returned. The previously mentioned SBA Procedural Notice with an effective date of July 13, 2020, provides the answer to the binary question, "How do Lenders report to SBA on loans that are fully disbursed or cancelled? Lenders must report any PPP loans that have been fully disbursed or cancelled…." The choice is one or the other. If the PPP loan was not fully disbursed as the rules required, the loan should have been cancelled and any loan processing fee returned. This is consistent with another question posed and answered in the above referenced Procedural Notice: "Are Lender processing fees subject to clawback if a Lender has not fulfilled its obligations under PPP regulations? Yes."

5. Finally, Prestamos also should not have utilized Treasury's capital advance program, PPPLF, to access capital that was based upon the value of disbursed loans if the PPP loans had not been disbursed. This is clearly not in accordance with the rules of the PPPLF program. Thus, as with PPP loan processing fees paid on unfunded loans, Prestamos the lender also should have returned to the PPPLF all advances it received on any PPP loan it failed to fund.

6. The issue of forgiveness, a unique aspect of PPP loans, was another issue raised by Mr. Swain in his July 12, 2024, report. He discusses at length the necessary requirements needed to obtain forgiveness from the SBA. Again, he maintains that there are a "variety of reasons" why the Putative Class Members' PPP loans may not have been forgiven. (p. 6, para.16). In my view, the PPP loans could not have been forgiven if the loans were not funded in the first place. This is because to qualify or even properly apply for forgiveness as the PPP was widely designed to do, the applicant had to certify in the PPP loan forgiveness application that he, she or it used the PPP loan proceeds for payroll, mortgage payments, rent or other purposes permitted under the PPP. *See* https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/ppp-loan-forgiveness#id-how-to-apply-for-forgiveness. The two Plaintiff Classes by definition allege they never received their PPP loan funds. Third Amended Complaint paras. 376-377. Thus, assuming as alleged the Plaintiff Class members did not receive their funds – and they would not qualify to be class members if they did receive their loans – they all share in common their inability to obtain forgiveness based on the threshold certification requirement to obtain forgiveness.

-Dated this 9th day of August 2024

By: William M. Manger, Jr.

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