Ex. 17 – Rebuttal Report of Jorge Baez, dated August 9, 2024

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, JAMIE JONES, GEORGINA DREVNAK, JOHN MARTIN, EZRA BEATTIE, GREGORY LLOYD, ALYSHIA JOHNSON, LAMETRIA MARVEL, GUY GRICHAR, JAHBRAEL HORNE, ENOBONG ETUKNWA, and SHARON BRADLEY SMITH, 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

EXPERT REPORT

OF

JORGE BAEZ

August 9, 2024

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I. Scope of Assignment

1. I have been asked by counsel for Prestamos CDFI, LLC ("Prestamos") and Chicanos Por La Causa, Inc. ("CPLC") to analyze Plaintiffs' claim of a common methodology to calculate damages for the proposed Class in this matter. As part of this analysis, I have been asked to review and comment on the Expert Report of Steven Feinstein, filed on July 12, 2024, which specifies Plaintiffs' proposed common damages methodology.

II. Qualifications and Remuneration

A. Qualifications

2. I am a Managing Director of NERA Economic Consulting ("NERA") and a member of NERA's Securities and Finance Practice. NERA provides practical economic advice related to highly complex business and legal issues arising from competition, regulation, public policy, strategy, finance, and litigation. NERA was established in 1961 and now employs approximately 500 people in more than 20 offices worldwide. NERA's Securities and Finance Practice, which performs research in securities and financial markets, dates from the early 1970s and employs a research staff of more than 100 professionals holding degrees in economics, finance, and mathematics. The practice group counts among its clients major securities exchanges, risk managers, principals needing valuation services, and parties in litigation.

3. I received a Bachelor's degree in Physics and Economics from Vassar College, and a Master's degree in Business Administration with a concentration in Finance and Statistics from Yale University. In my almost 20 years at NERA, I have been frequently engaged as an economic consultant or expert witness in numerous projects involving finance and economics, including class actions, commercial disputes, and product liability cases. I have testified as an expert at trials and hearings in U.S. federal and state courts, Spanish and Swiss courts, and in

arbitrations, and have presented before government regulators in the United States and Mexico. I have frequently analyzed issues including commonality, class conflicts, and other issues regarding class certification, as well as opined on damages. My resume with recent publications and testifying experience is included as Appendix A.

B. Remuneration

4. NERA is being compensated for time spent by me and my team at standard billing rates and for out-of-pocket expenses at cost. NERA currently bills for my time at $895 per hour. NERA's fees are not in any way contingent upon the outcome of this matter.

III. MATERIALS CONSIDERED

5. In preparing this report, I considered the materials listed in Appendix B.

IV. BACKGROUND

6. In response to the COVID-19 pandemic, the U.S. Congress passed the Coronavirus Aid, Relief, and Economic Security ("CARES") Act on March 27, 2020.[1] As part of the CARES Act, the U.S. Small Business Administration ("SBA") introduced the Paycheck Protection Program ("PPP").[2] The PPP loan program allowed approved lenders to issue SBA-backed loans to small businesses to cover the costs of payroll and other expenses.[3]

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1 "H.R.748 – CARES Act," *Library of Congress*, March 27, 2020, accessed at https://www.congress.gov/bill/116th-congress/house-bill/748.

2 "H.R.748 – CARES Act," *Library of Congress*, March 27, 2020, accessed at https://www.congress.gov/bill/116th-congress/house-bill/748.

3 "Paycheck Protection Program," *U.S. Department of the Treasury,* accessed at https://home.treasury.gov/policy-issues/coronavirus/assistance-for-small-businesses/paycheck-protection-program.

7. The PPP loans were standardized across borrowers: the maximum principal amount was two and a half times the borrower's average monthly payroll cost in 2019 or 2020,[4] the loans had a maturity of five years,[5] and the interest rate was 1%.[6] After borrowers used their PPP loan funds, some were eligible to apply for a second PPP loan.[7] In general, the PPP loans were forgivable if the borrower could demonstrate that they used the funds on eligible expenses.[8]

8. Prestamos was an SBA-approved lender. According to Plaintiffs, Prestamos made 935 PPP loans in 2020 and 494,415 in 2021.[9] Plaintiffs allege that Prestamos failed to fund SBA-approved PPP loans for the proposed class members.[10] Plaintiffs claim that Prestamos "falsely reported to the SBA that it had disbursed those loans proceeds […] in order to collect the loan processing fee from the SBA."[11]

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4 "23 Frequently Asked PPP Loan Questions, Answered," *U.S. Chamber of Commerce,* March 1, 2021, accessed at https://www.uschamber.com/co/run/business-financing/commonly-asked-questions-coronavirus-small-business-loans.

5 Loans issued before June 5, 2020 had a maturity of two years. *See*, "First Draw PPP loan," *U.S. Small Business Administration*, accessed at https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/first-draw-ppp-loan.

6 "First Draw PPP loan," *U.S. Small Business Administration*, accessed at https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/first-draw-ppp-loan.

7 "Second Draw PPP loan," *U.S. Small Business Administration,* accessed at https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/second-draw-ppp-loan.

8 "23 Frequently Asked PPP Loan Questions, Answered," *U.S. Chamber of Commerce,* March 1, 2021, accessed at https://www.uschamber.com/co/run/business-financing/commonly-asked-questions-coronavirus-small-business-loans.

9 Third Amended Complaint, ¶¶6, 9.

10 Third Amended Complaint, ¶13.

11 Third Amended Complaint, ¶14.

V. ANALYSIS OF PLAINTIFF'S PROPOSED COMMON DAMAGES METHODOLOGY

A. Dr. Feinstein's proposed common damages methodology is based on the incorrect assumption that the PPP was a "grant program"

9. Dr. Feinstein claims that the PPP loan program "was in fact a grant program" that did not require repayment.[12] Based on this claim, Dr. Feinstein's proposed common damages methodology consists simply of awarding each proposed class member the "amount of their SBA-approved PPP loan that Prestamos failed to fund."[13]

10. However, Dr. Feinstein's characterization of the PPP loan program as a grant program cannot be reconciled with the public PPP loan data, which shows that many of Prestamos' PPP loans that were funded were not forgiven, and that the rate of forgiveness varies depending on the borrowers' characteristics. The PPP loans were business loans, under which the borrower agrees to pay back the lender the loan principal plus interest. Forgiveness was not a guarantee. In fact, only 81% of Prestamos' funded PPP loans were fully or partially forgiven.[14] Thus, Dr. Feinstein's damages methodology incorrectly assumes that each class member's loan would have been fully forgiven by the SBA without regard to the possibility that some class members' loans would not have been forgiven at all or only partially forgiven. By assuming that every class member would have been fully forgiven, Dr. Feinstein's damages methodology would overstate damages for proposed class members whose loans would not have been forgiven at all or only partially forgiven.

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[12] Feinstein Report, ¶31.

[13] Feinstein Report, ¶37.

[14] Excludes the PPP loans of the proposed class members, i.e., loans that were approved but not funded. Loan data is published online by the Office of Capital Access of the SBA and provides data fields comprising PPP loan details and status, borrower identification and characteristics, borrower business information, and lender identification. *See*, "PPP FOIA," *U.S. Small Business Administration*, accessed at https://data.sba.gov/dataset/ppp-foia.

11. The PPP loan program was part of a federally funded program by the SBA that had the goal of keeping small businesses afloat during the financial hardship caused by the COVID-19 pandemic.[15] Dr. Feinstein acknowledges this goal by stating that "[the] funds were intended to sustain businesses during the Coronavirus period, preventing business disruptions and losses."[16] As Named Plaintiff Gregory Lloyd testified, the PPP loan program "provided independent contractors, small businesses and businesses a loan to help get your business going back up from, you know, loss of income."[17]

12. The PPP loans were set up as business loans where the borrowing business promises to pay back the lender the loan amount plus interest.[18] Like most traditional business loans, the PPP loans had an interest rate and a maturity date.[19] The PPP loans specified that if the borrowing business "does not make a payment when due," the borrower would be in default.[20] In addition, if the borrowing business or the operating company associated with the borrower failed to meet the thirteen different conditions listed below, the borrower would be in default:

A. "Fails to do anything required by this Note and other Loan Documents;

B. Defaults on any other loan with Lender;

C. Does not preserve, or account to Lender's satisfaction for, any of the Collateral or its proceeds;

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15 "Private-Equity Firms Borrow From PPP, Despite Later Rule Barring Them," *The Wall Street Journal*, July 7, 2020.

16 Feinstein Report, ¶32.

17 Deposition of Gregory Lloyd, dated July 24, 2024, at 145:19-24.

18 Third Amended Complaint, Exhibit A, ¶1.

19 Third Amended Complaint, Exhibit A, ¶¶1, 3.

20 Third Amended Complaint, Exhibit A, ¶4.

D. Does not disclose, or anyone acting on their behalf does not disclose, any material fact to Lender or SBA;

E. Makes, or anyone acting on their behalf makes, a materially false or misleading representation to Lender or SBA;

F. Defaults on any loan or agreement with another creditor, if Lender believes the default may materially affect Borrower's ability to pay this Note;

G. Fails to pay any taxes when due;

H. Becomes the subject of a proceeding under any bankruptcy or insolvency law;

I. Has a receiver or liquidator appointed for any part of their business or property;

J. Makes an assignment for the benefit of creditors;

K. Has any adverse change in financial condition or business operation that Lender believes may materially affect Borrower's ability to pay this Note;

L. Reorganizes, merges, consolidates, or otherwise changes ownership or business structure without Lender's prior written consent; or

M. Becomes the subject of a civil or criminal action that Lender believes may materially affect Borrower's ability to pay this Note."[21]

13. Under certain circumstances, PPP loan borrowers could qualify for a full or partial forgiveness of the loan.[22] If borrowers did not apply for forgiveness within ten months

[21] Third Amended Complaint, Exhibit A, ¶4.

[22] Third Amended Complaint, Exhibit A, ¶3.

after the last day of the "covered period," then repayment of the PPP loan was no longer deferred, and borrowers had to begin making loan payments to their PPP lender.[23] As the PPP forgiveness application shows, the forgiveness analysis was borrower-specific, and forgiveness was neither automatic nor guaranteed. The forgiveness application form states: "The Borrower's eligibility for loan forgiveness will be evaluated in accordance with the Paycheck Protection Program Rules. SBA may direct a lender to disapprove the Borrower's loan forgiveness application if SBA determines that the Borrower was ineligible for the PPP loan."[24]

14. In contrast to the PPP loan program, there were several other government programs that provided economic relief to households and businesses that were more comparable to what Dr. Feinstein refers to as "grant programs" that did not require repayment. For example, Economic Impact Payments ("EIP"), commonly known as "stimulus checks," were also authorized under the CARES Act in March 2020.[25] The EIPs consisted of direct payments from the federal government to individuals and families, and were intended to spur economic activity by bolstering household incomes and supporting consumer spending.[26] The program provided American households with "stimulus payments of up to $1,200 per eligible adult for individuals

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[23] "PPP loan forgiveness," *U.S. Small Business Administration*, May 13, 2024, accessed at https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/ppp-loan-forgiveness.

The "covered period" is "either: (1) the 24-week (168-day) period beginning on the PPP Loan Disbursement Date, or (2) if the Borrower received its PPP loan before June 5, 2020, the Borrower may elect to use an eight-week (56-day) Covered Period" *See*, "PPP Loan Forgiveness Application Form 3508EZ Instructions For Borrowers," *U.S. Small Business Administration*, accessed at https://home.treasury.gov/system/files/136/PPP-Loan-Forgiveness-Application-Form-EZ-Instructions.pdf.

[24] "PPP Loan Forgiveness Application Form 3508S Revised July 30, 2021," *U.S. Small Business Administration*, accessed at https://www.sba.gov/sites/default/files/2021-07/PPP%20--%20Forgiveness%20Application%20and%20Instructions%20--%203508S%20%287.30.2021%29-508.pdf.

[25] "Economic Impact Payments," *U.S. Department of the Treasury*, accessed at https://home.treasury.gov/policy-issues/coronavirus/assistance-for-american-families-and-workers/economic-impact-payments.

[26] "Most Stimulus Payments Were Saved or Applied to Debt," *National Bureau of Economic Research*, October 1, 2020, accessed at https://www.nber.org/digest/oct20/most-stimulus-payments-were-saved-or-applied-debt.

whose income was less than $99,000 (or $198,000 for joint filers) and $500 per child for children under 17 years old or up to $3,400 for a family of four."[27] In contrast to the PPP loan program, EIPs did not have an application process, with the vast majority of Americans receiving them automatically.[28] EIPs were direct federal aid, rather than loans, and thus did not require repayment or applying for forgiveness.[29] In fact, EIPs were commonly described as being essentially "free money."[30] The EIPs covered a much larger fraction of the population than the PPP loans.[31]

B. The forgiveness rate for PPP loans differed substantially among businesses

15. Dr. Feinstein claims that "approximately 92.0% of all [PPP] loans issued were granted in full or partially forgiven" and therefore the PPP "was in fact a grant program" that did not require repayment.[32] However, Dr. Feinstein fails to state that his own cited source for the 92% forgiveness rate, an NPR article, also mentions that for single employee businesses, which

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27 "Receipt and use of stimulus payments in the time of the Covid-19 pandemic," *U.S. Bureau of Labor Statistics*, August 2020, accessed at https://www.bls.gov/opub/btn/volume-9/pdf/receipt-and-use-of-stimulus-payments-in-the-time-of-the-covid-19-pandemic.pdf.

Payments were reduced for individuals with adjusted gross income greater than $75,000 (or $150,000 for married couples filing a joint return). *See*, "Economic Impact Payments," *U.S. Department of the Treasury*, accessed at https://home.treasury.gov/policy-issues/coronavirus/assistance-for-american-families-and-workers/economic-impact-payments.

28 "Economic impact payments: What you need to know," *Internal Revenue Service*, March 30, 2020, accessed at https://www.irs.gov/newsroom/economic-impact-payments-what-you-need-to-know.

29 "No, you don't have to pay back your stimulus check money," *Fortune*, April 14, 2020, accessed at https://fortune.com/2020/04/14/stimulus-check-do-i-have-to-pay-back-repay-irs-checks-coronavirus-payment-direct-deposit/.

30 "One Weird Trick to Get Americans to Claim the Money the Government Owes Them," *Stanford Graduate School of Business*, October 5, 2021, accessed at https://www.gsb.stanford.edu/insights/one-weird-trick-get-americans-claim-money-government-owes-them.

31 PPP loans were available only to small businesses ("Paycheck Protection Program (PPP) Information Sheet: Borrowers," *U.S. Department of the Treasury*, accessed at https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf) whereas EIPs were available to all individuals and households ("Economic impact payments: What you need to know," *Internal Revenue Service*, March 30, 2020, accessed at https://www.irs.gov/newsroom/economic-impact-payments-what-you-need-to-know).

32 Feinstein Report, ¶31.

includes the vast majority of the proposed class, only 87% of PPP loans were fully or partially forgiven.[33] The NPR article states that these "smallest businesses – sole proprietors like barbers, janitors and hairdressers – hold the highest rate of unforgiven loans."[34]

16. Dr. Feinstein also ignores the actual forgiveness rate of the PPP loans funded by Prestamos, which shows a much lower rate of forgiveness than the 92% rate claimed by Dr. Feinstein. In particular, the public PPP loan data shows that 81% of the PPP loans funded by Prestamos were fully or partially forgiven.[35] Thus, contrary to Dr. Feinstein's claim that 92% of PPP loans were forgiven and therefore the PPP "was in fact a grant program" that did not require repayment, the public PPP loan data shows that only 81% of Prestamos' PPP loans were fully or partially forgiven.

17. Moreover, the public PPP loan data shows that the rate of full or partial forgiveness for Prestamos' PPP loans varies substantially depending on borrowers' characteristics. The rate of forgiveness varies substantially depending on the type of business in which the borrower was engaged. For example, sales financing establishments, which accounted for 1,863 of Prestamos' PPP loans, had a forgiveness rate of 22%; barber shop establishments, which accounted for 12,044 of Prestamos' PPP loans, had a forgiveness rate of 68%; and real estate agencies and brokerages, which accounted for 6,824 of Prestamos' PPP loans, had a forgiveness rate of 90%.[36]

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[33] "How the Paycheck Protection Program went from good intentions to a huge free-for-all," *NPR*, January 9, 2023, accessed at https://www.npr.org/2023/01/09/1145040599/ppp-loan-forgiveness.

[34] "How the Paycheck Protection Program went from good intentions to a huge free-for-all," *NPR*, January 9, 2023, accessed at https://www.npr.org/2023/01/09/1145040599/ppp-loan-forgiveness.

[35] Partially and fully forgiven loans are counted as forgiven for the purposes of this calculation. Excludes the PPP loans of the proposed class members (PRESTAMOS-00452370). Loan data is published online by the Office of Capital Access of the SBA and provides data fields comprising PPP loan details and status, borrower identification and characteristics, borrower business information, and lender identification. *See*, "PPP FOIA," *U.S. Small Business Administration*, October 3, 2023, accessed at https://data.sba.gov/dataset/ppp-foia.

[36] Sales financing establishments correspond to the NAICS code 522220 and comprises those establishments "primarily engaged in lending money for the purpose of providing collateralized goods through a contractual

18. Even though each forgiveness application received by SBA was "evaluated in accordance with the Paycheck Protection Program Rules," Dr. Feinstein proposes no methodology for determining which proposed class members—after a borrower-specific SBA evaluation—would have a) received full forgiveness for their PPP loans, b) not received any forgiveness at all, or c) received partial forgiveness (and if so, the amount of their partial forgiveness). Dr. Feinstein ignores that PPP loan forgiveness occurs on a case-by-case basis and incorrectly assumes that every class member's loan would have been forgiven – accordingly, Dr. Feinstein's methodology would overstate alleged damages for many proposed class members.

C. Dr. Feinstein's proposed common damages methodology is not an appropriate or accurate measure of alleged damages and ignores the widespread differences across proposed class members that require an individualized analysis

19. Dr. Feinstein's proposed common damages methodology consists simply of awarding each proposed class member the "amount of their SBA-approved PPP loan that Prestamos failed to fund."[37] However, that is not an appropriate or accurate measure of alleged damages because it does not consider how the economic impact of the alleged wrongdoing would affect the proposed class members and ignores the widespread differences across proposed class members that make calculating alleged damages, if any, require an individualized analysis. Moreover, Dr. Feinstein's methodology fails to account for the fact that for many

installment sales agreement, either directly from or through arrangements with dealers." Barber shop establishments correspond to the NAICS code 812111 and comprises those establishments "primarily engaged in cutting, trimming, and styling men's and boys' hair; and/or shaving and trimming men's beards." Real estate agencies and brokerages correspond to the NAICS code 531210 and comprises those establishments "primarily engaged in acting as agents and/or brokers in one or more of the following: (1) selling real estate for others; (2) buying real estate for others; and (3) renting real estate for others." *See*, "North American Industry Classification System," *Executive Office of the President, Office of Management and Budget*, 2022, pp. 424, 443, 573, accessed at https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf.

[37] Feinstein Report, ¶37.

proposed class members, obtaining the funds from the PPP loan could have prevented business disruptions and losses.

20. Dr. Feinstein claims, citing the Litigation Services Handbook, "that economic damages are the amount of compensation that would place Plaintiffs in the same economic condition that they would have been in currently if Prestamos had not engaged in the alleged wrongdoing."[38] However, Dr. Feinstein's proposed methodology would *not* place Plaintiffs in the "same economic condition" but-for the alleged wrongdoing and thus does not appropriately or accurately measure the alleged damages. The Litigation Services Handbook cited by Dr. Feinstein states: "If damages awards purport to restore the plaintiff to the position it would have been in but for the defendant's actions, the damages claim must encompass every phase of the plaintiff's business affected by the defendant's actions."[39] Dr. Feinstein's damages methodology fails to do this.

21. Dr. Feinstein's damages methodology is not an appropriate or accurate measure of alleged damages because it completely ignores the economic effect that Prestamos' alleged failure to fund the PPP loans had on the businesses of many of the proposed class members and the fact that the funds were needed at a critical time during the hardship of the COVID-19 pandemic. According to the SBA, loans for small businesses are generally used to fund working capital and obtain fixed assets such as furniture, real estate, machinery, equipment, construction, or remodeling.[40] These loans can help small businesses stay afloat while supporting ongoing

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[38] Feinstein Report, ¶34.

[39] Evans, Elizabeth A., Phil J. Innes, and Daniel G. Lentz, "Damages Theories and Causation Issues," *Litigation Services Handbook: The Role of the Financial Expert* (John Wiley & Sons, Inc.: New York, NY, 6th ed., 2017), p. 14.

[40] "Loans," *U.S. Small Business Administration*, accessed at https://www.sba.gov/funding-programs/loans.

operations.[41] In fact, the PPP "was designed to help small businesses remain afloat during the pandemic."[42] Dr. Feinstein's damages methodology is completely disconnected from the economic effect that the alleged wrongdoing, *i.e.*, the failure to obtain the PPP loan funds, had on the businesses of the proposed class members.

22. Dr. Feinstein fails to consider that any alleged economic impact would differ substantially given the wide variety of businesses of the proposed class members. These businesses differed in multiple respects, including industry, geography, age, and financial performance. They also had different alternative financing options and intended uses for the PPP loan funds and were affected differently by the COVID-19 pandemic. These circumstances, which vary substantially across the proposed class members, could impact the economic effect that the failure to obtain the PPP loan funds could have on the businesses of the proposed class members, therefore affecting the alleged damages, if any. Dr. Feinstein's damages methodology does not account for any of these differences, which would require an individualized approach to damages.

23. Dr. Feinstein's damages methodology does not consider how businesses in different industries, service types, and locations were impacted by the COVID-19 pandemic, and how the alleged wrongdoing caused business disruptions and losses. The SBA's Issue Brief noted that "the COVID-19 pandemic affected every business, but the effects varied by sector, firm size, and geography."[43] The COVID-19 pandemic affected how consumers chose to spend

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[41] "Paycheck Protection Program (PPP) Information Sheet: Borrowers," *U.S. Department of the Treasury*, accessed at https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf.

[42] "Private-Equity Firms Borrow From PPP, Despite Later Rule Barring Them," *The Wall Street Journal*, July 7, 2020.

[43] "Business Dynamics During the COVID-19 Pandemic," *U.S. Small Business Administration Office of Advocacy*, January 2023, accessed at https://advocacy.sba.gov/wp-content/uploads/2023/01/Business-Dynamics-During-The-COVID-19-Pandemic-508c.pdf.

their time and money, which directly affected many businesses. For example, many people pursued new activities or hobbies while social distancing (e.g., cooking and gardening), and thus, businesses that provided supplies and services related to such activities were expected to do well during the pandemic.[44]

24. Data from Affinity Solutions shows that consumer spending during the pandemic changed substantially across different industries.[45] In particular, consumer spending during the pandemic declined substantially for industries such as "Arts, Entertainment, and Recreation" and "Transport and Warehousing," but increased for industries such as "Grocery and Food" and "Home Improvement." The type of service provided and location of the business also influenced the effect that the COVID-19 pandemic had on businesses. For example, businesses that could operate remotely generally performed better during the pandemic than those that depended on in-person services, and businesses in rural areas generally did better than businesses in urban areas.[46]

25. Businesses in industries that did well during the pandemic may have had less need for PPP loan funds than businesses in industries that were negatively affected by the pandemic.

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[44] "Hobbies and Healthy Habits Surged During the Pandemic," *Rutgers Health*, July 20, 2023, accessed at https://rutgershealth.org/news/hobbies-and-healthy-habits-surged-during-pandemic.

[45] "Opportunity Insights Economic Tracker Data," *Opportunity Insights Economic Tracker*, accessed at: https://github.com/OpportunityInsights/EconomicTracker/tree/main/data.

The pre-COVID spending level is measured by the spending level from January 6, 2020 to February 2, 2020. *See,* "Opportunity Insights Economic Tracker Data Dictionary," *Opportunity Insights Economic Tracker,* accessed at: https://github.com/OpportunityInsights/EconomicTracker/blob/main/docs/oi_tracker_data_dictionary.pdf. *See also*, Chetty, Raj, John N. Friedman, and Michael Stepner, "The Economic Impacts of COVID-19: Evidence from a New Public Database Built Using Private Sector Data," *The Quarterly Journal of Economics*, 139(2): 2024, pp. 829-889.

[46] "Strengthening Economic Resilience Following the COVID-19 Crisis," *OECD*, accessed at: https://www.oecd.org/en/publications/strengthening-economic-resilience-following-the-covid-19-crisis_2a7081d8-en.html, Monnat, Shannon M, "Rural-Urban Variation in COVID-19 Experiences and Impacts Among U.S. Working-Age Adults," *The Annals of the American Academy of Political and Social Science,* 698(1): 2021, pp. 111-136, and Brooks, Matthew M., J. Tom Mueller, and Brian C. Thiede, "Rural-Urban Differences in the Labor Force Impacts of COVID-19 in the United States," *Socius*, 2021, p. 7.

[redacted] The alleged wrongdoing, *i.e.*, the failure of Defendants to disperse PPP loan funding to Plaintiffs, could have had a very different economic impact on these types of business. [redacted] Appendix C shows the industry for each of the businesses of the Named Plaintiffs. Dr. Feinstein's damages methodology does not account for any of these differences, which would require an individualized approach to damages.

26. Not only were businesses in different industries and geographies affected differently by the COVID-19 pandemic, but the economic impact of not obtaining the PPP loan funds could differ even among otherwise-similar businesses for other reasons – requiring a case-specific analysis to measure the impact of the alleged wrongdoing. For example, some businesses might have gone bankrupt, but it is unclear whether those businesses would have still gone bankrupt even if they received the PPP loans – a case-specific analysis would be required to make that determination. Moreover, even businesses that were negatively affected by the

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[redacted] [redacted]

[redacted] [redacted]

pandemic could have benefited by the alleged wrongdoing by being forced to pivot to other industries or offer additional services and thereby take advantage of opportunities that the pandemic brought in terms of changes in consumer demand – a case-specific analysis would be required to make that determination. For example, businesses that required in-person service and saw a substantial reduction in demand could have pivoted to provide online services with higher profit margins.

27. Business characteristics, such as the profitability and age of the business, can influence performance and therefore impact how the alleged wrongdoing could have affected that business, including potentially causing business disruptions and losses. However, Dr. Feinstein's damages methodology fails to account for these business characteristics. Several academic studies have found that lower contemporaneous profitability of a business implies a higher probability that a business will fail.[49] For example, a study by Professor Douglas Miller and economist Hsiao-Shan Yang found that "poor performance leads to a higher probability of exit in the next period" for a business.[50] According to the tax returns produced in this case, several of the businesses of the Named Plaintiffs had very low profitability in the years prior to their PPP loan applications. [redacted] Appendix C shows the net profits in 2019 for each of the businesses

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[49] *See*, for example, Decker-Lange, Carolin, and Thomas Mellewigt, "Thirty years After Michael E. Porter: What Do We Know About Business Exit?" *Academy of Management Perspectives*, 21(2): 2007, pp. 41-55, and Miller, Douglas J., and Hsiao-Shan Yang, "The dynamics of diversification: Market entry and exit by public and private firms," *Strategic Management Journal*, 37(11): 2016, pp. 2323-2345.

[50] Miller, Douglas J., and Hsiao-Shan Yang, "The dynamics of diversification: Market entry and exit by public and private firms," *Strategic Management Journal*, 37(11): 2016, p. 2336.

[redacted]

of the Named Plaintiffs. According to the findings of academic studies, these businesses had a higher probability of failure than other businesses, independent of receiving the PPP loan funds. If these businesses had discontinued operations, potentially even before making use of all the PPP loan funds during the period stipulated in the loan agreement, the impact of the alleged wrongdoing and any alleged damages could have been mitigated. In other words, if the businesses failed and still would have failed even had they received PPP funds, then they are in the same financial situation either way and are already "in the same economic condition that they would have been in currently if Prestamos had not engaged in the alleged wrongdoing."[52]

28. Academic studies have also found that younger firms are more likely to fail.[53] The ages of the Named Plaintiffs' businesses span a wide range, with businesses established as early as January 2016 and as late January 2020.[54] Appendix C shows the year of establishment for each of the businesses of the Named Plaintiffs. Thus, based on the age of the business, there is substantial variability in the probability that businesses could fail, independent of whether these

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52 Feinstein Report, ¶34.

53 *See*, for example, Dunne, Timothy, Mark J. Roberts, and Larry Samuelson, "The Growth and Failure of U.S. Manufacturing Plants," *The Quarterly Journal of Economics*, 104(4): 1989, pp. 675, 686, Haltiwanger, John, Ron S. Jarmin, and Javier Miranda, "Who Creates Jobs? Small vs. Large vs. Young," *Review of Economics and Statistics*, 95(2): 2013, pp. 348, 359, Decker, Ryan A., John Haltiwanger, Ron S. Jarmin, and Javier Miranda, "The Role of Entrepreneurship in US Job Creation and Economic Dynamism," *Journal of Economic Perspectives*, 28(3): 2014, p. 8, Crane, Leland D., Ryan A. Decker, Aaron Flaaen, Adrian Hamins-Puertolas, and Christopher Kurz, "Business exit during the COVID-19 pandemic: Non-traditional measures in historical context," *Journal of Macroeconomics*, 72: 2022, p. 3, and "Issues in Labor Statistics: The role of younger and older business establishments in the U.S. labor market," *U.S. Bureau of Labor Statistics*, August 2010, pp. 3-4, accessed at https://www.bls.gov/opub/btn/archive/the-role-of-younger-and-older-business-establishments-in-the-us-labor-market.pdf.

[redacted]

businesses received the PPP loan funds. For example, data from the Bureau of Labor Statistics on the survival rate of private sector establishments by age shows that businesses that opened in 2016 and were still operational in 2020 had an 86.2% of being operational in 2022, while business that opened in 2020 only had a 72.3% of being operational in 2022.[55] These statistics are in line with estimates in a 2022 academic study by Crane et al., which found that newly established firms had failure rates above 20% annually, substantially higher than the failure rates for older firms.[56] Dr. Feinstein's damages methodology does not account for any of these aspects, which would require an individualized approach to calculating damages.

29. Some businesses could have obtained alternative funding if they did not receive their PPP loan funds, while others did not have any alternatives and were entirely dependent on the PPP loan funds. The economic impact of the alleged wrongdoing on a business could be very different depending on its ability to obtain alternative funding. Businesses that were able to obtain alternative funding might be able to mitigate some or all of the losses from the alleged wrongdoing, while businesses that were not able to obtain alternative funding might have been negatively affected by the alleged wrongdoing beyond the PPP loan fund amounts. The Complaint and Dr. Feinstein's report provide an example of a proposed class member who was able to obtain an alternative business loan to cover business expenses after their PPP loan was not funded:

> "Ive previously been approved for a ppp loan with Prestamos CDFI LLC as my lender. This loan appears online on several sites as being disbursed from Prestamos CDFI LLC

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[55] "Table 7. Survival of private sector establishments by opening year," *U.S. Bureau of Labor Statistics*, accessed at https://www.bls.gov/bdm/us_age_naics_00_table7.txt. The survival rate for businesses as of 2022 that opened in 2020 is obtained directly from the table (72.3%), while the survival rate in 2022 for businesses that opened in 2016 and were operational in 2020 is calculated by dividing the survival rate since birth in 2022 by the survival rate since birth in 2020: 47.4% / 55.0% = 86.2%.

[56] Crane, Leland D., Ryan A. Decker, Aaron Flaaen, Adrian Hamins-Puertolas, and Christopher Kurz, "Business exit during the COVID-19 pandemic: Non-traditional measures in historical context," *Journal of Macroeconomics*, 72: 2022, p. 3.

> to myself … back in May 2021 but the issue is that Ive never received these funds. ... **Ive recently taken out a separate business loan in the amount of what my ppp loan was to cover business things** [sic]."[57]

Dr. Feinstein's damages methodology fails to account for whether businesses could have been able to obtain alternative funding, which would require an individualized approach to damages.

30. Businesses could use the PPP loan funds to cover several eligible cost categories, including payroll, mortgage or rent, and certain operations expenditures.[58] The PPP loan application required that businesses state the intended purpose of the PPP loan funds.[59] How the PPP loan funds were used can be a key determinant of the economic effect of the alleged wrongdoing. For example, economic damages could be substantially different for businesses that went bankrupt or were forced to close due to the lack of funding that the PPP loan would have provided absent the alleged wrongdoing, relative to businesses that used the funds for less critical expenses.

31. The Named Plaintiffs stated a variety of different intended uses for the PPP loan funds, with several stating that the funds were critical for their business operations. For example, one Named Plaintiff indicated that they needed the PPP loan funds to cover car payments, which were critical to their ability to operate their business.[60] Several other Named Plaintiffs stated in their loan applications that they needed the funds to cover rent or mortgage payments, which

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[57] Third Amended Complaint, ¶373, and Feinstein Report, ¶41, emphasis added.

[58] "First Draw PPP loan," *U.S. Small Business Administration*, accessed at https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/first-draw-ppp-loan.

[59] "Paycheck Protection Program Borrower Application Form Revised March 18, 2021," *U.S. Small Business Administration*, accessed at https://www.sba.gov/sites/default/files/2021-03/BorrowerApplication2483ARPrevisions%20%28final%203-18-21%29-508.pdf.

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could potentially be vital to keeping their business afloat.[61] [redacted] Appendix C shows the stated purpose of the PPP loan for each of the businesses of the Named Plaintiffs. Thus, the economic effect of not obtaining the PPP loan funds could vary substantially depending on the purpose of the loan funds, potentially leading some businesses to fail, while not having much of an effect on others. Dr. Feinstein's damages methodology does not account for any of these aspects, which would require an individualized approach to damages.

32. According to the PPP loan agreement, borrowers needed to meet certain conditions in order for the loan not to default and be eligible for forgiveness.[64] These conditions included not making "materially false or misleading representation to Lender or SBA," paying "any taxes when due," and not becoming "the subject of a proceeding under any bankruptcy or insolvency law."[65] There is evidence that some of the proposed class members could have failed to meet these conditions. For example, in investigating PPP loans, the Office of Inspector General and other law enforcement agencies have identified "systemic patterns of potential

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[64] Third Amended Complaint, Exhibit A, ¶4.

[65] Third Amended Complaint, Exhibit A, ¶4.

fraud, including false attestations on loan documents, inflation of payroll, falsified tax documentation, identity theft, and misuse of proceeds."[66]

33. Among the Named Plaintiffs, there are several potential issues that could have potentially led them to fail to meet the loan conditions.[67] [redacted]

[66] "SBA's Handling of Potentially Fraudulent Paycheck Protection Program Loans," *U.S. Small Business Administration Office of Inspector General*, May 26, 2022, accessed at https://www.oversight.gov/sites/default/files/oig-reports/SBA/SBA-OIG-Report-22-13.pdf.

An analysis by the SBA and the Office of Inspector General indicates that approximately 8% of disbursed PPP funds did not meet some of these conditions and were potentially fraudulent. "COVID-19 Pandemic EIDL and PPP Loan Fraud Landscape," *U.S. Small Business Administration Office of Inspector General*, June 27, 2023, accessed at https://www.sba.gov/sites/sbagov/files/2023-06/SBA%20OIG%20Report%2023-09.pdf.

[redacted]

[redacted]

34. Proposed class members that did not meet the stipulated loan conditions would have been in default on their loan and thus are not in the same position as proposed class members that met these conditions. For example, if some of these conditions were not met after the borrower business received the PPP loan funds, then the borrower would be in default on the loan and ineligible for forgiveness.[73] The borrower would then be liable to pay back the loan amount plus interest.[74] Dr. Feinstein's damages methodology does not take into account whether the proposed class members met the stipulated loan conditions and thus would overstate damages for proposed class members who would have been in default on the loan and therefore ineligible for forgiveness. Accounting for these differences would require an individualized approach to damages.

35. In sum, Dr. Feinstein's proposed common damages methodology is based on the incorrect assumption that the PPP loan program was a "grant program" that did not require repayment. The public PPP loan data shows that many of Prestamos' PPP loans that were funded were not forgiven, and that the rate of forgiveness varies depending on the borrowers'

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[redacted]

73 Third Amended Complaint, Exhibit A, "PPP loan forgiveness," *U.S. Small Business Administration*, May 13, 2024, accessed at https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/ppp-loan-forgiveness.

74 Third Amended Complaint, Exhibit A, "Paycheck Protection Program Frequently Asked Questions (FAQs) on PPP Loan Forgiveness," *U.S. Small Business Administration*, October 13, 2020, accessed at https://www.sba.gov/sites/default/files/2020-10/PPP%20--%20Loan%20Forgiveness%20FAQs%20%28October%2013%2C%202020%29.pdf.

characteristics. Dr. Feinstein's damages methodology is not an appropriate or accurate measure of alleged damages because it does not consider how the economic impact of the alleged wrongdoing would affect the proposed class members. Moreover, it ignores the widespread differences across proposed class members that make calculating alleged damages, if any, require an individualized analysis.

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Appendix A

Jorge Baez
Managing Director

Education

Yale University
MBA, Specialization in Statistics and Finance, 2009

London School of Economics
Advanced coursework in Statistics, 2003

Vassar College
BA in Economics and Physics, 2004

Professional Experience

2009-Present **NERA Economic Consulting**
Managing Director. Responsible for economic analysis in the areas of securities, finance, statistics and tort economics.
Director.
Associate Director.
Senior Consultant.
Consultant.

2008 **BearingPoint, Inc.**
Consultant. Formulated marketing, organization, and overall business strategies for the Strategy and Transformation Group.

2004-2007 **NERA Economic Consulting**
Analyst.
Associate Analyst.
Research Associate.

Testimony and Expert Reports

Testimony before FINRA Dispute Resolution in *Ryan Wesley Nelson v. Credit Suisse Securities (USA) LLC*, 2023.

Testimony before the Circuit Court of the State of Oregon for the County of Harney, in *Joseph Arnold et al. v. Kate Brown et al.*, 2023.

Deposition Testimony and Expert Report before the Court of Chancery of the State of Delaware, in *Politan Capital Management LP v. Masimo Corporation et al.*, 2023.

Testimony, Supplemental Declaration and Declaration before the United States District Court of the Southern District of Florida, in *United States of America v. Cindy Vandivier*, 2022 and 2023.

Expert Report before the Circuit Court of the Ninth Judicial Circuit In and For Orange County, Florida, in *Mulch Manufacturing, Inc. and Sustainable Green Team, Ltd. v. Ralph Spencer*, 2022.

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Expert Report before the Mexican Economic Competition Commission (COFECE) in response to the COFECE's Preliminary Opinion in File IO-006-2016, 2020.

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Expert Report before the Mexican Economic Competition Commission (COFECE) in response to the COFECE's Preliminary Opinion in File No. DC-003-2018, 2019.

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Expert Report before the Court of First Instance, Madrid, Spain, in *Inversión Corporativa I.C., S.A. v. Banco Santander, S.A. and HSBC Bank plc*, 2019.

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Publications and Presentations

"Expert Reports and Depositions," presented at the PLI Pretrial Practice 2024, hosted by the Practising Law Institute, New York, New York, 2024.

"Private Securities Litigation – Developments and Trends," presented at the 40th Annual Federal Securities Institute, Tampa, Florida, 2024.

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Appendix B
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1. Second Amended Class Action Complaint, filed May 20, 2022
2. Defendant Prestamos CDFI LLC's Answer to the Second Amended Complaint, filed April 27, 2023
3. Defendant Prestamos CDFI LLC's Answer to the Complaint, filed September 25, 2023
4. Order Granting Defendant Chicanos Por La Causa's ("CPLC") Motion to Dismiss, filed December 5, 2023
5. Third Amended Class Action Complaint, filed May 2, 2024
6. Expert Report of Steven P. Feinstein, PH.D., CFA, dated July 12, 2024
7. Expert Report of Kenneth Swain, dated July 12, 2024
8. Deposition of Alicia Marshall Volume I, dated July 9, 2024
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47. PRES-SUBP-MARSHALL_00002933.pdf (BLUEACORN-02853931)
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Appendix C
Characteristics of the Named Plaintiffs' Businesses

Plaintiff Name	Year Business Established	Business Location	Industry	Loan Purpose	2019 Net Profit[1, 2]
(1)	(2)	(3)	(4)	(5)	(6)
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

[redacted]