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

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

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| ALICIA MARSHALL, *et al.*, individually and on behalf of all others similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>PRESTAMOS CDFI, LLC,<br><br>Defendant. | Civil Action No. 5:21-cv-04337-JMG |

REBUTTAL REPORT OF

PROFESSOR STEVEN P. FEINSTEIN, PH.D., CFA

August 9, 2024

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## I. SCOPE OF ANALYSIS AND REPORT

1. On July 12, 2024, I submitted an opening report addressing and describing a damages methodology for computing damages in this matter (the "Feinstein Report"). Based on my analysis, research, and case document review, I concluded that assuming Plaintiffs' factual allegations, damages that are consistent with Plaintiffs' theory of liability can be computed using a common methodology for all Class members.[1]

2. In the Feinstein Report, I explained that damages for each Class member can be measured as the difference between the SBA-approved PPP loan amount and the amount that the Class member received, plus prejudgment interest.[2] I determined that this is a feasible, and Class-wide common methodology, which provides a conservative measure of economic damages suffered by each Class member.[3]

3. I am now asked by Bailey & Glasser LLP, co-counsel for the Plaintiffs, to consider, evaluate, and respond to the arguments and conclusions in the proposed Expert Report of Kenneth Swain, dated July 12, 2024 (the "Swain Report"), which was submitted by the Defendant in this matter. This rebuttal report presents my response to certain issues raised in the Swain Report. I do not purport to address all of the issues set forth in the Swain Report.

4. I reviewed and relied upon all the data and documents listed in the Feinstein Report. My credentials and compensation are presented in the Feinstein Report, as is a list of testimony I provided during the four years preceding that report. Testimony I have provided since the Feinstein Report is identified in Exhibit-1 of this report.

5. My work in this matter is ongoing. I reserve the right to amend, refine, or supplement my analyses and opinions in the event that I become aware of additional information, evidence, arguments, or analyses that bear on my work in this matter, and if and as the Court may permit.

## II. SUMMARY OF THE SWAIN REPORT AND OPINIONS

6. Mr. Swain was asked to: "(a) provide an overview" and certain details about the "PPP lending program;" "(b) assess the reasons why the Putative Class Members did not receive PPP loan

[1] Feinstein Report, ¶22.

[2] Feinstein Report, ¶23.

[3] Feinstein Report, ¶23.

funds;" and (c) "assess the reasons why the Putative Class Members' PPP loans may not have been fully forgiven."[4]

7. Mr. Swain opines that establishing why Class members did not receive their PPP funds would purportedly require "individualized" inquiry for each Class member. He also contends that individual inquiry would be necessary to determine if and why a Class member might not have had their PPP loan forgiven in the hypothetical counterfactual scenario where they would have received their PPP funds. He repeatedly refers in his July 12, 2024, report to the term "individualized"; *see* Swain Report, ¶¶15-16, 27 (twice), 35, 38-39, 52-53, 78, 86, 88.

## III. ANALYSIS, CONCLUSIONS, AND OPINIONS

8. A fatal flaw in Mr. Swain's analysis and report, as it relates to the computation of damages, is that he does not assume Plaintiffs will be able to prove their factual allegations and liability. It is my understanding that a damages expert must assume that liability will be proven on the merits.[5] Mr. Swain does not do so, and consequently his opinion does not at all address the computation of damages consistent with Plaintiffs' theory of liability. In fact, Mr. Swain does not address damages at all in his opening report.

9. Mr. Swain argues that there could be several reasons why a Class member's PPP loan was not funded. He offers that one would therefore need to perform an "individualized" analysis to establish liability. Mr. Swain does not accept, even as a working assumption, Plaintiffs' allegations that Prestamos breached its contractual undertaking by failing to fund the SBA-approved PPP loans and thereby impeded Plaintiffs from accessing the funds of the PPP loan program.[6] With his argument, Mr. Swain is challenging the merits of the case, not the ability to compute damages commonly assuming liability is established.

10. As Mr. Swain does not address damages under the assumption that Plaintiffs are able to prove liability, and because I continue to believe my opinions and analysis in my opening report are sound, nothing in the Swain Report causes me to change my conclusions.

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[4] Swain Report, ¶10.

[5] Feinstein Report, ¶38; See, e.g., "Reference Guide on Estimation of Economic Damages," by Mark A. Allen et al., *Reference Manual on Scientific Evidence*, 3rd Edition, 2011, p. 432 ("In almost all cases, the damages expert proceeds on the hypothesis that the defendant committed the harmful act and that the act was unlawful.").

[6] Feinstein Report, ¶6; and Plaintiffs' Third Amended Complaint, ¶¶431, 435.

11. Mr. Swain further asserts that if Class members had received their PPP funds, the "final portion of the loan amount to be forgiven would have varied widely."[7] Loans would not be forgiven if the funds were misused. Mr. Swain argues that loan forgiveness therefore requires individualized inquiry. With this argument, Mr. Swain again inappropriately rejects Plaintiffs' factual allegations and theory of liability, in particular, the fact that Class members never received the PPP funds.

12. Consistent with Plaintiffs' factual allegations, Plaintiffs' theory of liability, and the rules and experience of the PPP, no individualized inquiry is necessary to assess the appropriate use of PPP funds and thus loan forgiveness in the computation of damages. This is because, by definition of the classes alleged in this case, Class members could not properly seek or obtain loan forgiveness under the PPP on loan proceeds they never received.

13. Mr. Swain's arguments are either about the legal liability merits of this case, or stem from his questioning of the merits. They do not address the computation of damages under the assumption that Plaintiffs will prove liability. Mr. Swain presents no valid challenge to the common damages methodology presented in the Feinstein Report.

## IV. LIMITING FACTORS AND OTHER ASSUMPTIONS

14. This rebuttal report is furnished solely for the purpose of court proceedings in the above-named matter and may not be used or referred to for any other purpose. The analysis and opinions contained in this rebuttal report are based on information available as of the date of this report. I reserve the right to supplement or amend this report, including in the event additional information becomes available, and if and as the Court may permit.

Steven P. Feinstein, Ph.D., CFA

[7] Swain Report, ¶¶86-88.

**Exhibit-1**
**Steven P. Feinstein, Ph.D., CFA**
**Testimony Subsequent to the Feinstein Report**

In re Vale S.A. Securities Litigation
Case No. 19-cv-526-RJD-SJB
United States District Court
Eastern District of New York
Deposition Testimony
March 2021
Deposition Testimony
October 2023
Testimony at Evidentiary Hearing
August 2024