EX. 19 -- EXCERPTS FROM PHASE I DEPOSITION TESTIMONY

EXCERPTS FROM PHASE I DEPOSITION TESTIMONY

Excerpts from Plaintiff Alicia Marshall's 7/9/24 Deposition

"Q. I want to ask you a few questions about this lawsuit. Could you give me your understanding of what this lawsuit is about?
A. Yes. This lawsuit is because Prestamos – THE PPP loan, that's the whole thing. They – we never got it resolved. I tried over and over to resolve it with them, and I couldn't get it resolved. And then when I went and started reading reviews on social media websites, I saw that this was a really big problem and it was ongoing and there was a lot of people that the same exact thing had happened to." **At 19-20**

"Q. Do you know whether or not you will receive money for acting as a class representative?
A. No, I don't.
Q. Okay. Has anyone told you that you will be compensated for serving as a class representative?
A. No.
Q. Do you think that you have the time to serve as a class representative?
A. Yes. I've been very invested in this case from the start to now. I'm very -- I keep up with it. I read all the papers, all the e-mails, everything. This is -- I started it so of course I'm going to be invested into it.
Q. And are you able to testify in court if this case proceeds the trial?
A. Yes.
Q. And do you know where this case was filed?
A. Yes, it was filed in the District of Pennsylvania -- or Philadelphia. I'm sorry. Philadelphia.
Q. Are you comfortable traveling to Pennsylvania?
A. If I -- if I have to do that, yeah. I would do that. I would be okay with that.
Q. And who is your counsel?
A. I have Bailey & Glasser. I have Bailey & Glasser, and then I have another firm. Oh, my gosh. I know who they are. I'm telling you. I'm just having a hard time right now. It's Bailey & Glasser, and then -- what's the other one? -- Nolan. Nolan. Nolan. Yeah, I know what it is. I just can't
Q. Okay. How did you get connected with Bailey & Glasser?
A. What I did was when I saw that there was a lot of people this was happening to, I just started searching the Internet for attorneys, and I happened to come across Matt Zapala. And I just gave him a call, and I just explained to him what was going on. That's it.
Q. And when was that?
A. I -- it was late, late 2021." **At 24-25**

MR. LEDERER: I have a few follow-up questions, please. I promise I'll be brief. Thank you for all of your testimony so far, all of your time. We hear you loud and clear that it's also a hundred degrees where you are.
Q. Did something happen to you last night at your home?
A. Yes.
Q. What happened?
A. I came home. Somebody had broke into my house and stole my son's PlayStation out of his room.
Q. Did that upset you?

A. Yeah. I'm still upset about it.
Q. Why – did[n't] you come to us and ask us to – to continue this deposition date until some later date?
A. Because this deposition was really important to me, I didn't want to postpone it. I wanted to do it now because I feel very strongly about it, and I feel like I -- I'm not just representing myself. I'm representing my class members also. This is not just me who this has happened to. This is something that has happened to a lot of people. And I truly believe that what was done was wrong. I understand you don't qualify for every loan that you --you know, that you submit. I understand that. But this one, I did. And this one, a lot of my class members did. And we didn't receive the funds that we were entitled to, yet they -- or Prestamos -- how are they entitled to the funds of our loans that they never disbursed? Like, this is how strongly I feel. I'm very dedicated and into this case. I do apologize for any kind of -- I didn't mean to come off, you know, rude or anything. I've just been through a lot, and I'm trying to cope with everything else aside with what's going on right here. But I wanted to be here today because I feel strongly about this." **At 167-168**

<u>Excerpts from Plaintiff John C. Martin's 7/16/24 Deposition</u>

"Q. Why did you choose to bring this lawsuit?
A. Well, the biggest reason is is I was not funded, the loan that was clearly approved by the SBA. And I actually got suspicious, very suspicious when they responded with the reason. You know, they sent me an e-mail saying -- with a list of things that -- we couldn't verify your identity, just things that didn't make any sense at all. And then I started realizing, wait a minute, not only are they taking $10,865 from me, they're probably doing this to many, many other customers. So -- so they're making 2,500 in fees, plus the balance of the loan, so I -- my instinct at the time, I had red flags going up. I thought there was some major fraud going on. So I actually ended up contacting the Office of Inspector General, and I told them there's a possible serious fraud going on. And so, unfortunately, when I did all my efforts to contact the SBA and report this possible criminal act, unfortunately, SBA nor the Office of Inspector General, they failed to respond. The only response they gave me is to contact the lender. Obviously, that's not going to help me when the lender is the one that's committing a potential criminal act. So -- so that's basically the answer to the question as to why I started, is my loan wasn't funded. The reason they declined it was extremely suspicious, if you look at their e-mail. It's just -- you know, it's just a red flag, an obvious red flag, to answer your –[…]" **At 44-45**

<u>Excerpts from Plaintiff Sharon Bradley Smith's 7/19/24 Deposition</u>

"So would you tell me in your words what you understand this lawsuit to be about?
A Be about a case that I was approved for a loan and Prestamos didn't give it to me. They didn't give me the loan and I was approved through SBA and this is why we're here today." **At 16**

"Q Do you know that this case is filed as a class action?"
A Yes.
Q Do you know why?
A Because there's people like me didn't get their loan through Prestamos." **At 17-18**

"Q Do you have a sense of whether it would be more or less than if you were to be suing individually rather than as a class representative?
A Pretty much for everybody. Pretty much for everybody. We should all be equally, if anything, more or less. If any or nothing, pretty much. Just to understand why the loan wasn't funded.
Q I'm curious about that. Why would you expect everyone to get the same thing in terms of being equal?
A There's -- there's a few of us out there in this same situation. I don't think -- you know, myself -- I think of myself as being an equal. There's a lot of us out there in this same situation, so -- which is representing Texas, let's just say that. Because there's a few of us that didn't get funded." **At 23**

"Are you expecting to get any money for acting as a class representative?
A No.
Q Are you expecting to get any part of an attorneys' fee award, should one be issued?
A No.
Q Have you received any compensation already for your role as a plaintiff?
A No.
Q Ms. Smith, do you believe you have time to act as a class representative?
A Yes.
Q You understand that you can't cancel court appearances?
A Correct.
Q And are you able to testify in court if this case were to proceed to trial?
A Yes.
Q And that includes traveling to Pennsylvania?
A Correct.
[…] A I'm representing people that didn't get their funded loan" **At 24-25**

"Who are you seeking to represent in this class action in your capacity as a class representative?
A I'm representing people that didn't get their funded loan. I am the representative, class action representative, that will stand up not just for Texas but for just about everybody that was treated the way we were treated." **At 25**

<u>Excerpts from Plaintiff Gregory Lloyd's 7/24/24 Deposition</u>

"Q Okay. And your PPP loan was something that an important event; correct?
A At the time of applying for it, yes.
Q Okay. And it is still important enough to file and maintain a lawsuit about; correct?
A Not to get my money. To make sure that it is settled to the way that it should be so that I am not reported as defaulted with the SBA, to stop Prestamos coming after me to collect money on funds that I never received. Which is what you guys are doing.
Q Is it fair to say that you are not seeking to recover the balance of your PPP loan in this litigation?
A I'm seeking damages for the stress that this has caused me. I'm taking time out of my day here, you know. The amount of time that I have spent dealing with you guys -- sorry, not you because I know you are not Prestamos, so my apologies. The amount of time and effort that I

have spent dealing with Prestamos, dealing with my attorney, here today, it is wrong what happened, and it shouldn't have happened, and it shouldn't happen to anybody else." **At 50-51**

"Q And can you tell me a little bit about why you decided to be a part of a lawsuit against Prestamos?
A Because I think what they did was wrong and criminal.
Q And can you explain a little bit more about exactly why?
A I think the facts, in my eyes and my perspective, speak for themselves that if I were Prestamos and I sent money to one of my lenders, you know, one of my approved SBA lenders, and there's a problem with it, they should have done more to help that person out. At what point did they try to help me personally? I feel zero. We were just a number that Prestamos obviously every time Prestamos funded a loan, they get paid on that loan. I'd like to know where are my funds today. Where are they? Did Prestamos invest in them into the stock market? Do they have them somewhere else? Am I going to get that investment money because it's my funds? I would love to ask these questions to them directly because I don't have an answer. Do you?" **At 55-56**

"Q You say that you know you're just a number for Prestamos. What's your basis for that statement?
A Have they ever contacted me? No. Have they ever assisted in helping me? No. I've got a few emails from Elexis saying we're working on it, we're working on it. For over a year you're still working on it? No. To me, I'm pushed aside. That's how I feel. That's how the truth looks like" **At 59-60**

"Q Is there any extra benefit you get from being a class representative in this case?
A I don't understand the question. Am I getting paid to be here or am I getting paid to be a class rep? Is that what you're asking?
Q My question is if you understand that there is any additional benefit you get for being a class representative in this case?
A There's no additional benefit is my understanding." **At 64**

<u>Excerpts from Plaintiff Jamie Jones's 8/7/24 Deposition</u>

"Q Ms. Jones, you were represented by counsel at this deposition today, correct?
A Yes.
Q How did you find your counsel?
A I seen a news thing about somebody else in Arizona when I was still living there, and he was on the news saying that he went through the same company as me and also did not get funded and also received an email saying he needed to file for forgiveness, so I did some research and ended up finding a document where I was able to get to the bottom of to see the lawyers that were involved in the case and contacted them directly." **At 21**

"Q What is the basis for your statement that Prestamos falsely reported to the SBA that it had funded her loan?
A Because I got emails from the SBA stating that I was eligible to now file for forgiveness on the loan that I never received.
At 27-28

“Q Did you receive the PPP loan funds that you believed you were owed?
A No.
Q Did any portion of any loan funds ever reach your bank account?
A No.” **At 88**

“Q Okay. Did you ever apply for that forgiveness, Ms. Jones?
A No. I never received the loan.” **At 92**

“Q Okay. Ms. Jones, how do you think not receiving your PPP loan affected your delivery services business?
A It prevented me from doing maintenance on my vehicle, so eventually my vehicle got rundown, which prevented me from making income or even being able to go anywhere to get another job, and not having a job and not having income I ended up having to change addresses and phone numbers and places of living multiple times.” **At 92**

<u>Excerpts from Plaintiff Jahbrael Horne’s 8/8/24 Deposition</u>

“Q. Okay. I want to talk about a couple of preliminary issues here. You are represented today by Mr. Cohen, correct?
A. Correct.
Q. How did you find Mr. Cohen to represent you?
A. I was looking for a solution to my problem and.
Q. To what problem?
A. The problem that's going on today. And I found him online.
Q. Okay. What problem is going on today, Mr. Horne?
A. Prestamos.
Q. What do you mean by that?
A. Why we're here today. Prestamos.
Q. What problem -- you said to me I needed a solution to my problem. I'm asking you what your problem is?
A. I have money that was never given to me.” **At 28**

“Okay. Why don't we start by having you tell me what is this case about, in your own words?
A. In my own words?
Q. Yes.
A. In my own words, I was scammed.
Q. How were you scammed?
A. What's the way I could put it -- I feel like my contract was breached.
Q. What contract?
A. They were supposed to give me money and the money never came.
Q. Who is they?
A. Prestamos.” **At 32**

Excerpts from Plaintiff Alyshia Johnson's 8/12/24 Deposition

"Q. Ms. Johnson, can you tell me about your involvement in this case?
A. Can you explain to me what you mean?
Q. Sure. Why are you suing Prestamos?
A. Because I app[lied] my for a PPP loan and I was approved signed documents and contracts and was never funded." **At 15**

"A. I believe they gave me an e-mail or somewhere to upload the documents to.
Q. Was that Blue Acorn or Prestamos?
A. Blue Acorn.
Q. Then what happened?
A. I was told by several representatives [of Blue Acorn] that rest assured, you will get your funding. We're trying to find a way now to get your funding to you. As I stated, one of them told me that they were sending a debit card. All in all, I went over -- I had over a hundred and something tickets with them, speaking to different people. I never received the funding.
Q. Anything else happen after that?
A. Just the communication back and forth and then I finally got Prestamos' number as I stated, and I spoke with the guy there, and I spoke with a lady there, and it was the same thing. They were trying to find a way to get the funding because a lot of people had the same issue and they were sending out cards with the funding on it. Rest assured you were approved. You signed your loan documents, we're going to send you your funding. And nothing." **At 90-91**

"Q. Did Prestamos ever seek repayment of the loan?
A. Did they send me something stating that they wanted that repaid and interest? I want to say I believe they did send something stating that they wanted to be repaid for the loan with interest.
Q. What did you receive?
A. I believe I want to say a -- give me a moment. I received a e-mail stating that, I want to say that the loan had to be repaid. I believe it -- I believe it did say that they wanted repayment for the loan. **At 107-108**

Excerpts from Plaintiff Paris Townsend's 8/13/24 Deposition

"Q. To the best of your abilities, can you tell me what you think this lawsuit is all about?
A. This lawsuit to me it's all about just being treated fairly and equally and given an opportunity for, you know, justice to be served for I am -- for my class action.
Q. And why did you personally decide to sue Prestamos?
A. Because I felt like I was wronged -- you know, done and not treated fairly.
Q. Why do you feel like you were not treated fairly?
A. Because my -- different things were [taken] away from me that shouldn't have been [taken] away as far as me being able to apply with other people. You know, it kind of forfeited unwillingly -- I could have applied with someone else if they felt anything that they didn't want to fund me or I wasn't approved. But instead, they kept me in that state of where I couldn't even go anywhere else. And I think that was unfair.

Q. Was there anything else that you think was unfair that was done to you or that happened to you?
A. I -- yes. I think that me getting told over and over and over again, you know, that I was gonna be funded, that also was not right, and just their relationship with just everything that I was depending on and I think that I should have had a same opportunity that everybody else had to be able to get relief at that time because I really needed it. And I --
Q. Do you think you were -- sorry, go ahead.
A. And I was looking forward, you know, to recovering, you know, what -- with my business and I didn't get to do that." **At 36-38**

"Q. Okay. Are you receiving any extra benefit by being a class representative in this case?
A. No, I'm not." **At 44**

"Q. And Ms. Townsend, I'm going to read this paragraph and it says, starting about halfway through, "Townsend never received the proceeds of her SBA-approved PPP loan although Prestamos falsely reported to the SBA that it had funded her loan." Do you see that statement?
A. Yes.
Q. Is that statement accurate?
A. Yes.
Q. What is the basis for your statement that Prestamos falsely reported to the SBA that it had funded your loan?
A. Excuse me?
Q. What is the basis for your statement that Prestamos falsely reported to the SBA that it had funded your loan?
A. Oh, because basically, they sent me an E-mail asking me to repay money that I've never gotten back.
Q. Who sent you that E-mail?
A. Prestamos." **At 51-52**

"Q. Okay. After receiving this E-mail, did you continue to work with Blueacorn to try to obtain PPP funds?
A. Yes, I did.
Q. Can you tell me what you did?
A. I called them. They offered me a different way to receive it, which -- which -- which they had to end up doing for -- they had a heavy load of people who had the same problem, so they said just give us some time but we're still gonna take care of you, and they had me a wait of series of times for that Mastercard called Dash.
Q. Did Blueacorn or Prestamos ask you to provide new or updated bank account information?
A. Yes, they did.
Q. Did you provide that information?
A. I don't remember if I did or not, but the ending result was that they were gonna deposit it on Dash card. So I don't think so."
Q. Why did you direct Blueacorn to fund your PPP loan via Dash card?
A. 'Cause they offered it.
Q. Okay. But why did you choose that option?

A. Why did I choose that option? Because I didn't want any more inter – like anything to affect that.
Q. What do you mean by "anything more to affect that"?
A. I'm saying --
Q. Were you worried --
A. -- I didn't want any -- because at first, we're -- we're both clear, and I don't know if you were listening to me, that I said at one point in time I didn't even know what happened and how it happened, who did it and who was responsible. I ended up getting to find out that eventually. So you're asking me is -- this is three years ago and you're asking me a proceed of time of me looking into what's happening, of course, you know, so that's why when I said that about the -- the Dash, I took that offer up. I was just being patient and following what they were telling me.
Q. Did Blueacorn or Prestamos ask you to provide any additional documents in order for you to get funded on your Dash card?
A. No, they did not." **At 232-234**

Excerpts from Plaintiff Lametria Marvel's 8/16/24 Deposition

"Q Can you tell me about this lawsuit? Why did you decide to sue Prestamos?
A Because I was never funded." **At 16**

"Q Will you get any money for acting as a class representative?
A I'm not sure." **At 23**

"Q Okay. Do you have time to serve as a class representative?
A As far as?
Q Will you have time to testify in court if this case proceeds to trial?
A Oh. Yes, ma'am. Yes.
Q And do you know where the case was filed?
A No, ma'am.
Q So it was filed in Pennsylvania. Are you able to travel to Pennsylvania?
A Oh, yes. Yes. I heard Pennsylvania. Yes, ma'am, I am.
Q Are you comfortable with traveling to Pennsylvania?
A Yes, ma'am, I am.
Q Do you know who you're seeking to represent in this class action?
A Maybe myself and the rest of the Mississippians who wasn't funded through, you know, Prestamos.
Q Okay. And do you know if any other Mississippians exist who weren't funded?
A Not sure."
Q Now, you claim that Prestamos didn't fund your loan when it should have. Have you done anything to determine if other people had the same problem?
A Well, when I type in Google, right, so -- and I was looking for Prestamos' number because on my Docusign it said Prestamos is the one who funded it and that's who I had to contact, and I just saw all kinds of crap. When I dug into it, you know, I was educated that the money did not go back to SBA. That's why I looked at Google, and it's just so many people look like going through this issue with Prestamos." **At 23-24**

Excerpts from Plaintiff Kristina Henderson's 8/23/24 Deposition

"Q Could you tell me your understanding of this lawsuit?
A Yes. So, more so we're just -- we're trying to get -- trying to get the money back that was not given or was given and taken away, and also we're trying to -- not trying, but we are looking to not have to pay the loan proceedings back as well." **At 23**

"Q Could you tell me a little bit about your role in this class action?
A Yeah. So I am a Michigan resident, and I am one of the class members that speaks for Michigan residents." **At 24**

"Q Do you have time to serve as a class representative in this matter?
A Yes.
Q You understand that the Complaint is currently pending in the Eastern District of Pennsylvania?
A Yes.
Q And you're able to travel to Pennsylvania to testify if required?
A Yes." **At 26**

Excerpts from Plaintiffs' Proposed Expert William Briggs's 8/22/24 Deposition

"Q And so you worked with Mr. Manger throughout your tenure at SBA?
A Yes.
Q He was your boss?
A Yes.
Q And would you -- what did you do as -- well, let's just start with that. What did you do as the -- in The Office of Capital Access?
A The Office of Capital Access at the Small Business Administration administers a variety of loan programs, including --
Q And you assisted in that effort?" **At 17**

"Q So your appointment in 2017 was by the Trump Administration?
A Yes." **At 21**

"BY MR. ROGERS:
Q And, so, given that the practice that Mr. Castillo describes of the way Prestamos filled out the 1502 and the timing it submitted the 1502, you don't believe that was a violation -- I'm not talking about the -- you don't believe that was a violation of the program rules; correct?
MR. LEDERER: Objection to form.
BY MR. ROGERS:
Q You can answer.
A My report says that lenders were required to report on the 1502 form that the loan was fully disbursed. It states that repeatedly in the instructions on the 1502 and repeatedly in the interim rule of January 6, 2023, that the loan must be fully disbursed." **At 95**

"Q Okay. Is it your -- do you have an opinion on whether or not that aspect of Prestamos's procedure was consistent with the program?
A I generally believe that providing accurate 1502 reports within the time frame was appropriate and required by Prestamos. In this situation, if a loan was not funded, it should be reverted to 'Cancelled.'" **At 98**

"BY MR. ROGERS:
Q Okay. I want you to assume that the code used was no account. That I went back to Tricia and I said, "Bank, Mr. Briggs doesn't have an account. Mr. Briggs has no record of you having an account there." And she says, "Well, I have an account there." And I say, "Well, send me some statements or some evidence." She doesn't do that. She can't do that. She doesn't have it. Okay? What am I supposed to do -- I, Prestamos -- consistent with the PPP as you, Mr. Briggs, understand it.
A I generally think you are supposed to work with the borrower to resolve the issue.
Q I've told you I can't resolve the issue because you won't take the money. I tried. Okay?
A In that instance, the one thing I would not do is report the loan as fully disbursed.
Q Would you, at that point, report the loan as cancelled?
A Yes. If after a 20-day period there was no resolution as required by PPP regulations." **At 102-103**

"Q Oh. What other concerns do you have relating to the fees that I haven't touched on?
A More so with the 1502 that triggers the fee, that there was a misrepresentation that the loan was fully disbursed when it was not." **At 116**

Excerpts from Plaintiffs' Proposed Expert William Manger's 8/26/24 Deposition

"Q I want to go back now to the *Greathouse* decision. And I want to go to page five of eight. I want to go to the bottom of the left-hand column of the page that we are on.
A Okay.
Q Bottom of the left hand -- okay. I want to start by orienting you here – I am going to read into the record the court's description of the claims. They say, the court -- Judge Pittman says, "the breach of contract and state law claims hinge on this question, and the court is referring to whether Capital Plus failed to fund plaintiffs' loans or timely cancel them." Are we together on that, Mr. Manger?
A I see where you are.
Q And on the top, now, of the right-hand column, the first full sentence, which is referring to the plaintiffs, says that they -- they being the plaintiffs -- claim that if their loans had problems Capital Plus should not have issued an SBA number to begin with or should have reported cancellation within 20 calendar days in line with the federal regulations, and the court, Judge Pittman, goes on to say that to back this up plaintiffs bring Affidavits from multiple experts on PPP loan funding. And the word expert appears in quotes. Do you recall reading this section of the opinion?
A You know, maybe vaguely.
Q Okay.
A Again, I skimmed over this when this came out. Yeah.

Q The court goes on to say "these experts claim that any failure to cancel a loan for whatever reason within 20 days of issuance of an SBA number would be inconsistent with the program and in violation of the rules" **At 36-37**

"And my question to you is: Is that a fair description of the opinion you offered in that case?
A Well, I mean, there are a couple of things wrong here. Actually, the SBA would be granting the loan number, not Capital Plus. That was up a little higher in this section.
Q Okay.
A So that is -- where it says Capital Plus should not have issued an SBA number, that's correct.
Q Okay.
A Capital Plus would never be giving out an SBA loan number. Only SBA can give out an SBA loan number signifying approval of a loan. So that's incorrect at the start. But, again, it was the intent of the agency that money was to be provided to small businesses in a very expeditious manner. And this was something that the administrator consulted with the Treasury Secretary on and they determined that 20 days was the reasonable amount of time with which a loan should be funded. As you will recall, it was initially ten days, and then they said, well, that might be too restrictive on some, so they actually put out a 20-day notice. And, again, it was so that the loans would be expeditiously provided to the small businesses because, I mean, you will recall back in the dark days of COVID it was a real crisis that businesses were compelled to be closed and that they would not be able to have revenue stream and would not be able to pay their employees or, as I said earlier, make payments on mortgages, make rent payments, pay the electrical bill. So the whole point of this program, the whole intent of this was to get, honestly, [money] out the door as quickly as possible to businesses that were in severe distress." **At 37-39**

"A Okay. So, again, if I'm reading this section, again, I have issues with it. It says they claim that if the loan had a problem Capital Plus should not have issued an SBA number to begin with or should report a cancellation within 20 calendar days in line with federal regulations. So, again, I would say that, again, if the lender had noticed a problem with the loan and would not have been able to go forward with that loan they should not have been filing 1502s basically saying and signifying to the Agency that the loan had been funded. If there was a problem that should not have happened. That should not have happened. And, again, because the rules had said that the loans were supposed to be disbursed In full, which is -- another interesting point in that it wasn't to be dribbled out in pieces. It was supposed to be disbursed in full within 20 days. Now, you know, I don't understand if there was a problem with the loan why they would have been filing 1502s signifying to the agency that the loan was fully, fully disbursed." **At 39-40**

"A I think it's an accurate description because these loans should not have remained open on the SBA's books if they were not fully disbursed. It was certainly the intent of the agency that if a loan did not go through that then that applicant should have been able to go to another lender in hopes of getting a loan. We had many people early on in the program that actually went to multiple lenders and whichever lender could get them the loan first that was the loan they went with. So, again, that's what I'm saying. These loans should not have been left open on the books of the SBA." **At 41-42**

"Q Okay. Is it your position that Prestamos was not entitled to keep the processing fees on loans that were ultimately not received by the borrower?

A Yeah. Well, again, the fact of the matter is if the loans weren't made I still firmly believe that the loans should have been cancelled so that that borrower would have another opportunity to get a PPP loan through a different borrower, and if the -- if Prestamos did not cancel those loans, you understand, that precluded the borrower were being able to get a loan from any other lender in The United States." **At 105–106**

"Q It says "If the lender has received a processing fee on a loan that was cancelled or voluntarily terminated an repaid after disbursement SBA will not require the lender to repay the processing fee unless the lender is found guilty of an act of fraud in connection with a PPP loan."
Did I read that correctly?
A I'm looking at it with you, yes.
Q And is that procedural notice consistent with your understanding of the applicable rule regarding retention of processing fees in 2021?
MR. LEDERER: Objection to form.
A This would have been, again, in place as of the date that this came out. But, again, I would refer to my earlier statement. Again, I'm not an attorney. I'm not talking about, you know malfeasance of the program, but, again, I will state unequivocally that Prestamos should not have continued to file 1502s on loans that were not disbursed to the intended recipient." **At 107-108**

"Q In other words, the CARES Act refers to the PPP as a loan program, but if, as a matter of substance, it's really akin to a grant program, then it's properly considered a grant program, correct?
MR. LEDERER: Objection to form.
A Yeah. But I need to explain this a little bit, Ed, because this is not something that you're going to read or see in black and white. What I can attest to is that when I was at the SBA in 2020 at the beginning of the Paycheck Protection Program it was -- it was the intent of the government to have a program that would be one hundred percent forgiven if the loan was used for the specific purposes that I've outlined before, payroll, mortgage payments, rent payments, utilities, basically the things to keep a business alive. It was definitely, and unequivocally, the intent of the government that these loans would be one hundred percent forgiven for those purposes, which, in essence, makes it a grant. I agree it was a loan. That was the way it was structured. As I said earlier, it used the foundation of the SBA 7(a) program, which is a lending program, to create PPP. But, again, I can't say this strongly enough. I was on those calls with the secretary of the Treasury. I was on the calls with members of Congress. It was the intent that this program, although it was a loan, would be used basically as a grant because of the forgiveness capacity of the loan, that if you used it for the purposes that the government outlined all of that money would be forgiven. Therefore, it really became a grant. And many people I've spoken to subsequent to them receiving PPP loans said, "That was really a grant program because I got to keep all of the money that was lent to me." So, again, I understand it was a loan program. I understand what the court is trying to say here. But I can tell you the intent of the government was to have it act as a grant. I was in the room. I was -- I was the man in the room while this was being formulated, and that is the way we spoke about it." **At 118–120**

"Q But when you refer to the intent you're talking about the legislative intent?
A That's correct. The reason why -- again, I want to just say this very carefully. Because, as I said, as in the show Hamilton, I was the man in the room. The intent of this program was it

should be used for very specific purposes -- the loans should be used for very specific portions -- and that was to keep a good portion of the US economy functioning during global shutdown. The intent was that if you used the loan proceeds for those specific purposes, the loan would be forgiven, and that's why I'm saying, in essence, it became a grant. If you used the loan for other purposes that were not [sanctioned] by the federal government, that was not, to be a grant. That's the reason the program was structured the way it was. If you went out and you bought a Lamborghini with the money from a PPP loan, that was not going to be forgiven. That was not a sanctioned practice or purpose of the funds. So you had to be using the money for very specific purpose, and if you did so then the loan would be forgiven, and, in essence, it became a grant. That is what we discussed. That was the intent. That was the purpose of the program. But, again, if you used it for something else, you went out and, you know, bought your wife a diamond bracelet, that's not the purpose of the program, and that's not going to be forgiven.
Q Well, is it fair to say, based on at least the *Springfield Hospital* opinion, that that the second circuit was not persuaded of your viewpoint.
MR. LEDERER: Objection.
BY MR. ROGERS:
Q Is it accurate that at least the second circuit was not persuaded by the argument you are making here? And I know you were not in the second circuit. I'm not suggesting –
A That's what I was going to say. Ed, I mean, again, I'm not really familiar with the details of this case. I would have to spend a lot of time on it. At the same time, I'm not an attorney. I have not gone to court to prosecute cases on behalf of one person or another. All I can speak to -- all I can speak to is my first hand knowledge of being on phone with Senator Rubio, Secretary Mnuchin, Administrator Carranza when we were developing this program, and I'm telling you that the intent was that if you used fund for the appropriate purposes, the loan would be forgiven, and, in essence, it was a grant. That's all I can tell you. I can tell you from what happened in March and April of 2020. And that's what I think I'm here to be an expert witness on that. So I'm telling you." **At 121-124**

<u>Excerpts from Plaintiffs' Proposed Expert Steven Feinstein's 8/28/24 Deposition</u>

"Q. In plaintiffs' Complaint, isn't it true that they also seek compensation for lost opportunities?
A. I don't recall the word for word, but that's consistent with what I've been saying.
Q. And what you're saying is that you interpret lost opportunities to purely be what's compensated by prejudgment interest?
A. No. I said that addressing those factors, those consequential damages factors with prejudgment interest is a feasible common damage methodology that could be applied to all class members, and it would be conservative.
Q. But the consequential damages suffered by each class member are going to vary among class members, correct?
A. That's true.
Q. And your solution for dealing with that is to just award everyone prejudgment interest using the same formula, correct?
A. Well, that same formula addresses this factor commonly. It's a conservative estimation that would be conservative -- that would be a conservative estimate for every member of the class."
At approx. 51-52

"Q. Let's take out -- let's take out the conservative methodology. Let's just assume for a second that the Court says we're not going to use a conservative methodology. Do you have a methodology for ascertaining consequential damages across the entire class that does not involve using prejudgment interest?
A. Well, I -- -- well, for one -- the money wasn't [n]ever granted. The money was never delivered, so it's always going to be an approximation. I mean, we're talking about a hypothetical world, a hypothetical world where we don't know -- it's impossible to know exactly the -- you know, what – you know, what rate of return would have been earned on that money. So the nature of this particular problem that we're trying to address here requires an approximation always, no matter what your assumptions are, because that world doesn't exist, that alternative world doesn't exist. Yeah, I -- okay. I know what you're going for. I will say that there are alternative methods that are not common, but my opinion is that there is a method that is common. But yes, you can devise methods that are not common and not feasible. You can devise a method that would require we have a crystal ball that tells you exactly what would have happened if COVID never hit. You can devise a method that would tell you – we have a crystal ball that would tell you exactly what these business owners would have earned had they received the money. But the truth of the matter is we don't and so there has to be an estimation. There are a lot of methodologies that are impossible. There are a lot of methodologies that are not feasible. I presented in this paper one that is feasible and common.
Q. Okay. So just to ask that question again. In your report and in your testimony today, you don't have a methodology for proving damages -- strike that. Strike that. In your report and sitting here in your deposition today, you don't have a common methodology for showing consequential damages across the entire class besides this prejudgment interest methodology. Is that an accurate statement?
A. I don't like the way you phrased it. Basically you're saying that I don't -- you're asking do you have a method for calculating consequential damages aside from the method that you have for calculating consequential damages. There is no perfect method. There cannot be a perfect method because the money was never funded. So we'll never know for sure what would have happened in the world where the money was funded. Every method is going to require some forecasting and estimation. My method requires estimation, but if it errs it's errs on the conservative side. The benefit of that method is that it's common and feasible." **At approx. 53-56**

"Q. Is there a reason why you didn't cite those statistics in your report?
A. I didn't think it was necessary. The tone of this article and even those other statistics that Mr. Baez wants to highlight indicate that it was -- as the first and second page of the article say, very easy to get forgiveness. In fact, the SBA website today says that of the people who asked for forgiveness, the percentage that received forgiveness was upwards of 99.9 -- upwards of 99.5 percent. So only, like, a half of percent of people that asked for forgiveness didn't get it. 99.5 percent or more did get forgiveness if they asked for it." **At approx. 63-64**

<u>Excerpts from Defendant's Proposed Expert Jorge Baez's 8/29/24 Deposition</u>

"Q. What about the fact that at least some Prestamos borrowers were not funded? Would that be a difference?

A. With regard to the rate of forgiveness? Is that what you're asking?
Q. Correct.
A. I think if you didn't get the loan, you wouldn't apply for forgiveness. I think that's sort of generally how I understand that it would work. So I think that doesn't make any sense.
Q. Do you know whether someone who didn't apply for forgiveness -- I'm sorry. Pardon me. Do you know whether someone who's loan was not funded is still obligated to repay those funds?
A. I don't know for sure. I hope not. It wouldn't make sense to me that they would." **At approx. 56**

"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. Do you see that sentence?
A. No. You're not sharing anything.
Q. How about now? "To obtain forgiveness," this [sentence] right here.
A. I see it.
Q. Do you agree or disagree with it?
A. I think that makes sense.
Q. Okay. Going to the Briggs report for a minute. Okay. Here we have, Plaintiffs were precluded from applying for loan forgiveness because they failed to receive the loan proceeds and thus could not certify that they used those proceeds for purposes permissible under the PPP, such as for payroll. Would you agree with that statement?
A. Yeah. It sounds very much like the other statement you had me read, but I generally agree with that." **At approx. 57-58**

"Q. Mr. Baez, correct me if I'm wrong, but did you testify earlier that if a proposed borrower never received funds, they should not have to pay back any funds?
A. I mean, that's just my personal opinion. I think that that makes sense to me that if you don't get the funds, you shouldn't pay them back. I don't know what the legal rules or whatever. But just as a personal opinion which is all I have, it seems fair that you shouldn't need to pay it back.
Q. So that's a personal opinion and not an expert opinion?
A. Yeah." **At approx. 86-87**

Excerpts from Defendant's Proposed Expert Kenneth Swain's 8/30/24 Deposition

"Q. Sure. Was forgiveness an essential element of the PPP?
A. Yes.
Q. Why?
A. Well, that's the way the program was designed. That's my answer.
Q. Do you know why the program was designed that way?
A. In order to relieve the borrowers of the obligation to repay the loan." **At approx. 33-34**

"Q. Assume the borrower never received the funds and it's canceled in the SBA system. Does the borrower have to pay it back?
A. I can't answer that question. I'm sorry.
Q. Why not?

A. Because it doesn't make any sense.
Q. Why doesn't it make any sense?
A. It can only be true if the borrower has received the money.
Q. So my question is this: If the borrower never received the money and that borrower was reported in the SBA system as funded, my question is, if that status of the loan was changed and the lender reported the loan was canceled and, therefore, the SBA data reflected the loan was canceled, would the borrower have to pay it back?
A. Unfortunately, that confused me even more. Would you ask me the question again in a different way?
Q. Sure. So let's take an SBA loan that was never funded. Let's take -- assume for purposes of this question a false -- a false 1502 saying it was funded. Let's then take, three months later, an accurate 1502 that says, oops, cancel the loan, loan was not funded. Would the borrower have to thereafter pay it back?
A. No." **At approx. 108-109**