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

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

BRIEF IN SUPPORT OF DEFENDANT'S OMNIBUS MOTION TO STRIKE PLAINTIFFS' CLASS CERTIFICATION EXPERT REPORTS AND TO EXCLUDE EXPERT TESTIMONY

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INTRODUCTION

To support their Motion for Class Certification (the "Motion"), Plaintiffs submitted reports from three expert witnesses, William Briggs, William Manger, and Steven Feinstein. Messrs. Briggs and Manger, whose reports are essentially identical, worked on the Paycheck Protection Program (the "PPP") at the United States Small Business Administration ("SBA"). Professor Feinstein is an economist who purports to offer a classwide methodology for measuring damages. All three experts submitted similar reports in *Greathouse v. Capital Plus Financial, LLC*, No. 4:22-cv-00686-P (N.D. Tex. filed Aug. 9, 2022), in which the court denied class certification without relying on any of the opinions expressed by these experts, 2023 U.S. Dist. Lexis 157204 (N.D. Tex. Sept. 6, 2023).

None of the expert reports comes close to passing muster under the controlling standards set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), which require the Court to consider (1) the qualifications of the experts; (2) the reliability of their opinions; and (3) the "fit" between their opinions and the relevant issues. The Briggs and Manger reports fall short in all respects. They consist largely of legal opinions—interpretations of the PPP regulations and arguments attempting to distinguish the *Greathouse* case—that are not a proper subject for expert testimony because they invade the province of this Court. But even if legal opinions were a proper subject of expert testimony, Briggs and Manger are not qualified to offer such an opinion because neither is a lawyer, let alone an expert in class action litigation. And insofar as they offer any background information on the PPP, that information is largely inaccurate as a factual matter and in any event has no relevance to class certification.

The Feinstein report is equally problematic. He, too, offers an opinion on the *Greathouse* case without the benefit of legal training. And although Feinstein is an economics professor who has testified "[a]t least a hundred" times, Def.'s App. Ex. 23, ECF No. 142-28, Feinstein Dep.

6:23-7:4, he offers no damages methodology at all. Rather than even attempting to develop or draw upon an accepted methodology, he simply asserts that the appropriate measure of damages is to award class members the principal amount of their loans plus prejudgment interest. No expertise is required to offer that mechanical approach, which in any case does not account for the different effects that failing to receive a loan had on individual class members. The Court should strike each report and prohibit the experts from testifying.

BACKGROUND ON THE EXPERTS AND THEIR REPORTS[1]

I. William Briggs and William Manger

Messrs. Briggs and Manger were political appointees at the SBA from 2017 to January 2021, which included the early portion of the PPP, although they left the agency before any of the class representatives applied for a PPP loan. Briggs was the Acting Associate Administrator of the Office of Capital Access. He states that he oversaw "all SBA loan programs including the Paycheck Protection Program," and was responsible for "operations, communications, public engagement and daily management" of the PPP. Pls.' App., Ex. 13, ECF No. 139-14, Briggs Report ¶¶ 6, 9. Manger served in several positions, including as Chief of Staff from March 2020 to January 2021. Like Briggs, who reported to him, Manger states that he "oversaw and led the SBA's implementation of the Paycheck Protection Program" and "was responsible for promulgating PPP-specific rules and guidance, implementing PPP-specific processes at the SBA, and communicating with lenders, trade associations, government agencies, and members of Congress." *Id.* Ex. 11, ECF No. 139-12, Manger Report ¶ 1.

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[1] The three expert reports are available in Plaintiffs' Appendix at App. in Supp. of Pls.' Mot. for Class Certification, Exs. 11-16, Sept. 6, 2024, ECF No. 139.

Both witnesses provide background information on the PPP program, and essentially offer the same opinions, as follows:

1. If a borrower received an SBA loan number and submitted the loan documents, Prestamos was required to make a full disbursement of the loan amount. *Id.* Ex. 11, ECF No. 139-12, Manger Report ¶ 20; *id.* Ex. 13, ECF No. 139-14, Briggs Report ¶ 20.

2. Although Prestamos was required to submit Form 1502 to the SBA on a monthly basis to report any updates on the loan status, Prestamos should not have noted on the form that the loans were "funded" because the loans were not "fully disbursed." *Id.* Ex. 11, ECF No. 139-12, Manger Report ¶ 20; *id.* Ex. 13, ECF No. 139-14, Briggs Report ¶ 20.

3. Prestamos should not have received PPP loan processing fees from the SBA if the loans were not fully disbursed. *Id.* Ex. 11, ECF No. 139-12, Manger Report ¶ 20; *id.* Ex. 13, ECF No. 139-14, Briggs Report ¶ 20.

4. The classes defined in the Third Amended Complaint are narrower than the class defined in *Greathouse*, and the two cases are also distinguishable on other grounds. *Id.* Ex. 11, ECF No. 139-12, Manger Report ¶ 24; *id.* Ex. 13, ECF No. 139-14, Briggs Report ¶¶ 28, 30-38.

II. Steven Feinstein

Professor Feinstein teaches economics at Babson College, and he has his own economic consulting firm that regularly takes litigation expert engagements. He opines as follows:

1. A "feasible common class-wide methodology that provides a conservative measure of the economic damages sustained by each Class member" is "the difference between the SBA-approved PPP loan amount and the amount the Class member received, which Plaintiffs alleged is zero, plus prejudgment interest." *Id.* Ex. 12, ECF No. 139-13, Feinstein Report ¶ 23.

2. The unfunded loan amount does not account for consequential business losses or foregone business profits. *Id.* ¶ 40.

3. Prejudgment interest compensates class members for consequential damages. *Id.* ¶ 42.

4. The proposed class is "materially different" than the proposed class in *Greathouse*. *Id.* ¶ 48.

<u>THE GOVERNING LEGAL STANDARDS</u>

In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, the Supreme Court explained that Federal Rule of Evidence 702 gives district courts a "gatekeeping role" in deciding the admissibility of expert testimony. 509 U.S. 579, 597 (1993). The gatekeeping function requires district courts to "address 'a trilogy of restrictions' before permitting the admission of expert testimony: qualification, reliability, and fit." *Mahmood v. Narciso*, 549 F. App'x 99, 102 (3d Cir. 2013) (quoting *Schneider v. Fried*, 320 F.3d 396, 404 (3d Cir. 2003)); *see also Elcock v. Kmart Corp.*, 233 F.3d 734, 741 (3d Cir. 2000).

To be "qualified," the witness must "'possess specialized expertise.'" *Calhoun v. Yamaha Motor Corp., U.S.A.*, 350 F.3d 316, 321 (3d Cir. 2003) (quoting *Schneider*, 320 F.3d at 405). To be "reliable," the expert's opinion must "be based on the 'methods and procedures of science' rather than on a 'subjective belief or unsupported speculation.'" *Kuhar v. Petzl Co.*, No. 19-3900, 2022 U.S. App. LEXIS 9914, at *16 (3d Cir. Apr. 13, 2022) (quoting *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 742 (3d Cir. 1994)). "The standard prohibits too great a gap between the data and the opinion proffered." *Id.* (citation and internal quotation marks omitted). And to "fit" the case, the expert's opinions must "'help the trier of fact to understand the evidence or to determine a fact in issue,'" *i.e.*, must be relevant to the issue at hand. *Id.* at *21 (some citations omitted) (quoting Fed. R. Evid. 702(a), and *Daubert*, 509 U.S. at 591).

The party seeking to rely upon expert testimony must "meet[] the burden of establishing its admissibility." *Wood v. Showers*, 822 F. App'x 122, 124 (3d Cir. 2020) (citation omitted). And the dictates of *Daubert* apply equally to expert testimony submitted in support of a motion for class certification. *See In re Blood Reagents Antitrust Litig.*, 783 F.3d 183, 187 (3d Cir. 2015). In addition, "an expert witness is prohibited from rendering a legal opinion" in order not to "usurp the District Court's pivotal role in explaining the law to the jury." *Berckeley Inv. Grp., Ltd. v. Colkitt*, 455 F.3d 195, 217 (3d Cir. 2006) (citation omitted).

ARGUMENT

I. Plaintiffs' Experts Offer Improper Legal Opinion Testimony They Are Not Qualified To Offer

Each of Plaintiffs' three experts spends a significant portion of their report purporting to offer legal opinion. As noted, legal opinion is not a proper subject of expert testimony, and in any event these non-lawyer experts are not qualified to provide this type of opinion. *See Colkitt*, 455 F.3d at 217; *Taylor v. SEPTA*, No. 23-2140-KSM, 2024 U.S. Dist. LEXIS 113218, at *15-16 (E.D. Pa. June 27, 2024) (striking expert testimony where it "purports to interpret the regulations . . . and offers a legal conclusion about the scope of discretion that those regulations afford employers like SEPTA").

Just as they have here, Plaintiffs' experts Manger and Briggs attempted to put their legal gloss on the PPP regulations in *Greathouse* to argue for commonality, and that effort failed. Although the court declined to strike the expert testimony, it took pains to emphasize that it "is not considering this testimony in an 'expert' capacity." *Greathouse*, 2023 U.S. Dist. Lexis 157204, at *15 n.2. Moreover, the court expressly rejected the experts' legal interpretation of the regulations, underscoring that this was the province of the court. As the court explained:

> [Plaintiffs] claim that if their loans had problems, Capital Plus should not have issued an SBA number to begin with or should have reported cancelation within twenty calendar days in line with the federal regulations. **To back this up, Plaintiffs bring affidavits from multiple "experts"** [Briggs and Manger] on PPP loan funding. These experts claim that any failure to cancel a loan "for whatever reason" within twenty days of issuance of an SBA number would be inconsistent with the program . . . [and] **in violation of the rules**." But while this reading of the provision would solve the commonality issue here, **the Court disagrees with this interpretation.**

Id. at *15 (emphasis added).

In their reports in the instant case, Plaintiffs' experts have doubled down in their effort to masquerade as lawyers. For example, Briggs opines on multiple legal issues, including:

- The meaning of the PPP regulations, Pls.' App. Ex. 13, ECF No. 139-14, Briggs Report ¶ 20 ("Program language was clear: lenders ***must*** fully disburse loan funds within the time period set by the PPP");

- Differences in the class definitions in this case as compared to those in *Greathouse*, *id.* ¶ 32 ("[I]n this lawsuit as stated in plaintiffs' complaint, the class that the plaintiffs allege follows that Court's ruling and is narrower than the class alleged in [*Greathouse*]"); *see also id.* ¶¶ 23, 30-31, 33-38;

- The lender's obligations under the PPP, *see id.* ¶ 41 ("Even in instances where a PPP lender use [sic] a third-party agent to assist with loan origination and the lender's PPP program mechanics, I believe the lender was and is ultimately responsible for what happens or doesn't happen with their PPP loan portfolio"); *see also id.* ¶¶ 43, 44, 48, 51; and

- The scope of loan forgiveness, *see e.g.*, *id.* ¶ 53 ("I also believe the plaintiffs and other unfunded class members were also deprived of the opportunity to obtain loan forgiveness as the PPP was designed to do and widely did.").[2]

Similarly, Manger offers his legal opinions on:

- The loan process, *see* Pls.' App. Ex. 11, ECF No. 139-12, Manger Report ¶ 20 ("[I]f the borrower submitted the loan documents and Prestamos received an SBA loan number signifying that a PPP loan was approved, Prestamos was required to make a full disbursement of the loan amount and record it with the SBA by filing a form 1502 within 20 days.");

- Prestamos's obligations relating to Form 1502, *see id.* ("Prestamos should not have filed an SBA Form 1502");

- Prestamos's right to receive loan processing fees under the PPP, *see id.* ("Prestamos should not have received the SBA lender's fee");

- Plaintiffs' supposed legal obligation to repay the loans, *see id.* ¶ 23 ("This attempt to collect repayment plus interest clearly is in my view unfair and does not make sense."); and

- Differences between the classes here and those in *Greathouse* from the perspective of Rule 23, *see id.* ¶ 24 ("I have . . . reviewed the Court's ruling on

[2] The Briggs report includes two paragraphs numbered 53. This cite is to the first one.

> class certification [and] [t]he proposed classes in this case are narrower than alleged in the [*Greathouse*] case").[3]

Even Feinstein provides improper legal opinion, explaining why he believes class certification should be granted here even though it was denied in *Greathouse*. Pls.' App. Ex. 12, ECF No. 139-13, Feinstein Report ¶ 48 ("[T]his case and proposed Class is materially different than that case" because "Plaintiffs obtained [certain] evidence in discovery").

None of these experts is qualified to opine on the propriety of class certification or any other legal requirement. Not one of them is a lawyer, let alone a seasoned class action practitioner. And notwithstanding opinions expressed in their reports, the experts freely conceded in their depositions that they lack training and expertise to express an opinion on why class certification is appropriate here even though it was denied in *Greathouse.* Def.'s App. Ex. 15, ECF No. 142-20, Briggs Dep. 27:3-4 (acknowledging he is not a lawyer); *id.* 48:21-49:9 (conceding he is not an expert in civil procedure); Def.'s App. Ex. 14, ECF No. 142-19, Manger Dep. 17:8-24 (confirming he is not an attorney and is "not well-versed on the specifics of class certification"); *id.* 31:21-22 ("You have to help me because, again, I'm not an attorney"); Def.'s App. Ex. 23, ECF No. 142-28, Feinstein Dep. 130:8-9 (conceding he is not a lawyer).

In view of the experts' lack of legal training or class action experience, it is not surprising that their opinions bear the unmistakable fingerprints of Plaintiffs' counsel by essentially repeating arguments in the Plaintiffs' class certification brief. *Compare* ECF 139 at 15 ("the Classes have been narrowed from those alleged in *Greathouse*"), *and* ECF 139 at 20 ("whether class members are still bound to repay and were precluded from forgiveness"), *with* Pls.' App.

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[3] Manger states Georgina Drevnak ("Drevnak") "never received loan proceeds [but was] requested by Prestamos to repay PPP loan amounts plus interest." Pls.' App. Ex. 11, ECF No. 139-12, Manger Report ¶ 23. But Drevnak received the full amount of her PPP loan. *See* ECF 136 (dismissing Drevnak as a putative class representative, with prejudice).

Ex. 11, ECF No. 139-12, Manger Report ¶ 24 ("The proposed classes in this care are narrower than alleged in the *Capital Plus* case."), *and id.* Ex. 16, ECF No. 139-17, Briggs Rebuttal Report ¶ 22 ("Plaintiffs and class members were effectively precluded from even *applying* for loan forgiveness").

But "[i]t is not the job of an expert to parrot the opinions of counsel" and an expert's "reliance on information provided to him by counsel . . . and [a] failure to investigate or seek independent corroboration of conflicting theories[] calls into question[] his ability to assist the trier of the fact to understand the evidence or to determine a fact at issue." *Rivera-Cruz v. Latimer, Biaggi, Rachid & Godreau, LLP*, No. 04-2377 (ADC), 2008 U.S. Dist. LEXIS 46562, at *15-16 (D.P.R. June 16, 2008); *see also Piepes v. Nai Entm't Holdings LLC*, 394 F. Supp. 3d 315, 319 (E.D.N.Y. 2019) (where an expert opinion "parrots the end result a lawyer or someone else has asked him to reach . . . the Court cannot conduct the necessary gatekeeping function under *Daubert*" (citation omitted)).

In sum, the Court should disregard the legal opinions expressed in all three experts' reports.

II. The Briggs and Manger Reports are Unreliable

Significant aspects of the Briggs and Manger reports are demonstrably incorrect, further undermining their credibility and the reliability of their opinions. For example, both Manger and Briggs state that, once a PPP loan application was submitted and an SBA number was assigned, a borrower's loan was required to be funded. *See* Pls.' App. Ex. 13, ECF No. 139-14, Briggs Report ¶ 20 (lenders ***must*** fully disburse loan funds . . . ten days after the loan was approved by the SBA and the borrower returned to the lender the loan documentation"); *id.* Ex. 11, ECF No. 139-12, Manger Report ¶ 20 ("if the borrower submitted the loan documents and Prestamos received an SBA loan number signifying that a PP loan was approved, Prestamos was required to make a full disbursement of the loan amount"). When pressed on this issue at their depositions, Manger and Briggs admitted that the PPP required more, specifically documentation establishing that the borrower operated a legitimate ongoing business. *See* Def.'s App. Ex. 15, ECF No. 142-20, Briggs Dep. 78:24-79:9 (specific tax information was required, without which a borrower was ineligible); *id.* Ex. 14, ECF No. 142-19, Manger Dep. 60:18-21 (in addition to the loan application, "[y]ou had to show . . . other things such as like the business had been in operation prior to a certain date and, you know, lots of different components").

Briggs and Manger also based their opinion that Prestamos filed "false" Form 1502s on an incorrect factual premise because neither of them appeared to comprehend that Prestamos is a non-depository institution. *See, e.g.*, Pls.' App. Ex. 16, ECF No. 139-17, Briggs Rebuttal Report ¶ 18 ("The allegedly inaccurate 1502 reports are a specific attribute in this case that is shared classwide by class members"); *id.* Ex. 11, ECF No. 139-12, Manger Report ¶ 20 ("the SBA Form 1502 was to be filed only after, and subject to, the PPP loan actually being funded"). As explained in the unrebutted declaration of Prestamos Chief Credit Officer David Castillo, "Prestamos is a non-depository bank, and did not (and does not) have the liquidity that other SBA-approved PPP lenders had. As a result, in order to obtain to fund PPP loans, Prestamos needed a credit advance from the Federal Reserve." Def.'s App. Ex. 2, ECF No. 142-4, Castillo Decl. ¶ 28; *id.* ¶ 29 ("In order for the Federal Reserve to release the funds for a credit advance, Prestamos had to submit both the SBA Form 1502 to the SBA and the 'Paycheck Protection Program Liquidity Facility PPP Pledge and Advance Request' to the Federal Reserve").

Moreover, neither Briggs nor Manger connect their allegations relating to Form 1502 to any entitlement or duty to Plaintiffs, nor do they explain how the filing of Form 1502s while their loan applications remained pending caused Plaintiffs' injury. As a result, Briggs's and

Manger's opinion on the Form 1502s is not relevant to Plaintiffs' claims and therefore not helpful to this Court in determining whether Plaintiffs' proposed class meets the requirements of Rule 23. *See In re Lincoln Nat'l 2017 COI Rate Litig.*, 620 F. Supp. 3d 268, 279 (E.D. Pa. 2022) (*Daubert* requires experts to offer "opinions that are relevant and helpful to the trier of fact").

Briggs and Manger also erroneously suggest it was improper for Prestamos to receive or retain the PPP loan processing fees for loans that it ultimately cancelled. *See, e.g.*, Pls.' App. Ex. 13, ECF No. 139-14, Briggs Report ¶ 37 ("The PPP was clear in that the lender should obtain a loan processing fee if it fully disbursed the loan(s)."); *see also id.* ¶¶ 43, 51; Pls.' App. Ex. 11, ECF 139-12, Manger Report ¶ 20 ("A mere attempt to fund a loan, or an attempt to do so that, for instance, the borrower's bank rejected, should have resulted in the loan being cancelled in SBA's e-tran system and no payment of the loan processing fee being made by the SBA to the lender.").

But the applicable SBA regulation provides that "[i]f the Lender has received a processing fee on a loan that was cancelled . . . 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 the PPP loan." Def.'s App. Ex. 22, ECF No. 142-27, SBA Procedural Notice 5000-20091 at 7 n.5 (emphasis added). The SBA confirmed this rule in response to Prestamos's inquiry. *See id.* Ex. 12, ECF No. 142-17, Sept. 7, 2021 Email from Craig Jordan (stating that "[t]he Lender is able to retain the processing fees" on loans that were disbursed and then cancelled). Confronted with this unambiguous SBA directive at their depositions, Manger and Briggs backtracked on their unwarranted and improper criticism of Prestamos. *See id.* Ex. 15, ECF No. 142-20, Briggs Dep. 118:8-18 (conceding that, per SBA guidance, Prestamos was permitted to keep the processing fees for cancelled loans); *id.* Ex. 14, ECF No. 142-19, Manger Dep. 113:13-115:7 (same).

Briggs and Manger also incorrectly assert or imply that Prestamos improperly retained the loans that it ultimately could not deposit in borrowers' accounts. *See* Pls.' App. Ex. 11, ECF No. 139-12, Manger Report ¶ 20 ("I have not seen any evidence indicating that Prestamos returned to the PPPLF or otherwise to the U.S. Federal Reserve any of those PPPLF advances it obtained but failed to disburse to SBA-approved borrowers."); *id.* Ex. 16. ECF No. 139-17, Briggs Rebuttal Report ¶ 16 ("Nor does Mr. Swain analyze or mention in his opening report Plaintiffs' allegations that Prestamos obtained advances from the PPPLF to fund the loans, or what Prestamos did with those funds or the present status of those advances.").

Notwithstanding Manger's and Briggs's speculation, the unrebutted declaration of David Castillo states that "[i]n September 2021, Prestamos returned the credit advances from the Federal Reserve for loans that were ultimately not funded." Def.'s App. Ex. 2, ECF No. 142-4, Castillo Decl. ¶ 51. Despite the unambiguous language of Castillo's Declaration, Manger claimed to find it "unclear," i*d.* Ex. 14, ECF No. 142-19, Manger Dep. 102:20, and added, without elaboration, that "[i]t needs more definition and more backup or background as to exactly what happened in September of 2021," *id.* 103:15-17.

The numerous factual errors in the Manger and Briggs reports render them unreliable, providing yet another basis to exclude them.

III. None of The Expert Opinions Meets the "Fit" Requirement of *Daubert*

In order to meet the "fit" requirement of *Daubert*, expert testimony must "assist the trier or fact to understand the evidence or to determine a fact in issue." *Daubert*, 509 U.S. at 591 (citations omitted); *Torain v. City of Phila.*, No. 14-1643, 2023 U.S. Dist. LEXIS 5657, at *8-9 (E.D. Pa. Jan. 12, 2023). "This condition goes primarily to relevance," and "[e]xpert testimony which does not relate to any issue in the case is not relevant and, ergo, non-helpful." *Id.* at 591 (citations and internal quotation marks omitted).

A. Manger and Briggs Shed No Light on the Rule 23 Issues

Here, Plaintiffs offer the expert testimony of Manger and Briggs to support their contention that the proposed class complies with Rule 23 of the Federal Rules of Civil Procedure, ECF 138 at 7-19, but none of their reports even attempts to parse or apply Rule 23—instead focusing on premature and irrelevant merits issues. *See supra* at Arg., § I. Expert reports that are not relevant to the matter before the Court should be stricken. *See Ctr. City Periodontists, P.C. v. Dentsply Int'l, Inc.*, 321 F.R.D. 193, 203 (E.D. Pa. 2017) (striking expert testimony that was irrelevant to class certification).

B. Feinstein's Opinion is Not "Helpful" to the Court

Daubert also requires that an expert "offer opinions that are relevant and helpful to the trier of fact." *In re Lincoln Nat'l 2017 COI Rate Litig.*, 620 F. Supp. 3d at 279. Feinstein's expert report is anything but helpful because all he does is advocate for simple arithmetic by proposing that the Court award each plaintiff the amount of the loan at issue plus prejudgment interest. Pls.' App. Ex. 12, ECF No. 139-13, Feinstein Report ¶ 23. No expertise is required to develop this approach or calculate these amounts, nor is it relevant or "helpful" in determining if Plaintiffs satisfy Rule 23.

Separate but equally disqualifying, Feinstein's methodology does not comport with the requirement in *Comcast Corp. v. Behrend*, that a party seeking class certification must set forth a classwide damages model. 569 U.S. 27, 34 (2013); *see also In re Paulsboro Derailment Cases*, No. 13-784 (RBK/KMW), 2014 U.S. Dist. LEXIS 115542, at *43 (D.N.J. Aug. 20, 2014) ("At the certification stage, the Court must be assured that the determination of whether the defendant's conduct caused injury to each class member can be made at the class level and without identifying damages that are not the result of the wrong. Damages must be capable of measurement on a classwide basis." (citations and internal quotation marks omitted)).

Feinstein's methodology fails to consider differences among class members, in particular "how businesses in different industries, service types, and locations were impacted by the COVID-19 pandemic," Def.'s App. Ex. 17, ECF No. 142-22, Baez Rebuttal Report ¶ 23, or the fact that "[p]roposed class members that did not meet the stipulated loan conditions would have been in default on their loan and thus not in the same position as proposed class members that met these conditions," *id.* ¶ 34. Even Feinstein himself notes that the methodology does not include "consequential losses," anything related to "harm sustained by Class members beyond the quantity of funds not received and above the risk-free, low-yield Treasury note interest," or potential "punitive damages." Pls.' App. Ex. 12, ECF No. 139-13, Feinstein Report ¶¶ 53-54. Instead, Feinstein contends that "prejudgment interest"—awarded at the same rate for all class members—adequately compensates class members for their consequential damages, regardless of whether they suffered any consequential damages (such as lost profits) or not. *Id.*¶ 42. And despite providing an improper legal opinion about the differences between the class in this matter and the class in *Greathouse*, *see supra* at Arg., § I, Feinstein admitted in his deposition that he used the exact same methodology in both cases, Def.'s App. Ex. 23, ECF No. 142-28, Feinstein Dep. 170:20-171:12.

Prestamos does not concede that Plaintiffs are entitled to consequential damages (or any damages at all), but Feinstein's belief that they are relevant notwithstanding his choice to gloss over that category of damages in his opinion underscores the obvious flaws of his report.

CONCLUSION

For the foregoing reasons, the Court should grant the motion and strike the expert reports of Briggs, Manger, and Feinstein.

Dated: October 4, 2024

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