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Subject:	FRB/Benworth (3:23-cv-01034-GMM) - April 24 M&C
Date:	Monday, April 28, 2025 12:27:05 PM

Counsel,

Following our discussion on Thursday, April 24, 2025, please see the Reserve Bank's questions regarding outstanding discovery items followed by a summary of our discussion.

Follow-Up Questions for Defendants:

A. **Claudia Navarro documents**
   - As we discussed, we have not identified any emails from Mrs. Navarro in prior productions, and only a few dozen for which she is a custodian.
     - How does Mrs. Navarro communicate as a member of Benworth PR senior leadership?
     - Does Mrs. Navarro conduct business using any email other than her @benworthcaptial.com email?
     - Please confirm all email accounts Mrs. Navarro uses and which of Mrs. Navarro's email accounts were collected.
   - We see Mrs. Navarro's @hotmail.com account on emails in the production related to the PPP business (e.g., Defendants_00076150).
     - Why was this account not collected?
   - It appears that Mrs. Navarro's email was collected from Office 365 exchange, whereas other Benworth custodians' data was collected from Microsoft Exchange.
     - Can you explain the reason for the difference in collection?

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B. **ESI Search String Proposal**
   - While reserving rights to request additional discovery, the Reserve Bank is willing to compromise on the remaining search strings we discussed on March 31. Specifically, the Reserve Bank will withdraw its request for the strings in Row 2 in exchange for Defendants review of a portion of the strings in Row 1, as set forth in the below table. Based on Defendants January 23 hit report, these searches collectively return 1,152 unique hits, significantly fewer than our prior proposals). Please let us know if you agree to review these documents and produce any that are responsive.

Reserve Bank Proposal (December 16)	Reserve Bank Proposal (February 11), as sampled by Defendants	Reserve Bank Proposal (April 28)

(wire OR transf*) w/10 ("Benworth Capital Partners PR" OR "Benworth PR" OR "BCP PR" OR "BWC PR" OR "PR" OR "Puerto Rico" OR "Benworth Capital Partners" OR "Benworth FL" OR "BCP" OR "BWC" OR "FL" OR "Florida" OR "Navarro" OR "Bernardo" OR "Bernie" OR "Claudia") **13,634 unique hits (per 1/23 report)**	(wire OR transf*) w/10 ("Benworth PR" OR "BCP PR" OR "BWC PR" OR "PR" OR "Puerto Rico" OR "Benworth Capital Partners" OR "Benworth FL" OR "BCP" OR "BWC" OR "Bernardo" OR "Claudia") **5,106 unique hits (per 1/23 report)**	(wire OR transf*) w/10 ("Benworth FL" OR "Benworth PR" OR "Bernardo" OR "BWC PR" OR "BWC" OR "Claudia" OR "Puerto Rico") **1,152 unique hits (per 1/23 report)**

C. **Promissory Notes**

- At our March 31 M&C, Defendants represented that all promissory notes between the Navarros and BW affiliates had been produced, but that additional communications to which the notes were attached would be produced in an April 11 production. <u>Have these additional communications been produced, or are you still reviewing them for inclusion in a future production?</u>
- Based on the produced list of transfers from Benworth PR to the Navarros (Defendants_00240127), the Reserve Bank understands that Mr. Navarro executed promissory notes evidencing at least $77 million in indebtedness owed to Benworth PR. We have identified only one such promissory note dated October 18, 2021, evidencing $30 million owed from Mr. Navarro to Benworth PR. <u>Are there other promissory notes in the productions we are missing?</u>

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<u>Summary of April 24, 2025 Meet and Confer Discussion:</u>

1. **<u>Additional Written Discovery</u>**
   - Both parties agreed that Defendants' Answers opened the potential for additional discovery requests and both parties anticipated serving additional requests.

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2. **<u>Navarro Entity Production</u>**
   - Defendants confirmed that their Monday, April 21 production was the complete and final production related to Navarro Entity documents, but that additional quality control and

privilege review is ongoing. Defendants represented that a privilege log is forthcoming within 10 days from production.

3. **<u>QuickBooks Database Production</u>**

- The Reserve Bank repeated its view that the Court's order does not give Defendants the unilateral right to elect the mode of production of QuickBooks data and asked whether Defendants had any additional detail to share other than that sessions would be conducted via Zoom. Defendants explained that each time the Parties coordinate to schedule a QuickBooks database access session, the representative for the Reserve Bank would be provided a one-time username and password that day and would access the database through their computer and share their screen in a Zoom meeting with Defendants' representative, who would observe. The Reserve Bank explained why this does not address the burdens previously discussed or answer key questions raised during the parties' March 31 discussion on this topic, including (1) the difficulties of scheduling multiple rounds of supervised access with an undetermined number of individuals, (2) the uncertainty around how many access sessions would be needed, given incomplete and ongoing discovery by Defendants and future fact discovery by the Reserve Bank, (3) the uncertainty around how much time will be required to access and review the database, given the Reserve Bank's lack of knowledge about the type and volume of data, and (4) Defendants' failure to describe their position on what and how data may be retrieved as a result of the supervised Zoom access session. When the Reserve Bank asked Defendants how the Reserve Bank could retrieve the data, Defendants did not answer the question but asked the Reserve Bank to propose exactly what the Reserve Bank "envisioned with remote access" and what the Reserve Bank is "going to do with the data," but to do so without sharing privileged information. The Reserve Bank explained that it is difficult to share with Defendants what access the Reserve Bank will need for the reasons previously described and again asked Defendants' position on data retrieval. The Reserve Bank represented that the Parties are at an impasse and intended to raise this issue with the Court.

4. **<u>Accountant-Client Privilege</u>**

- The Reserve Bank informed Defendants that some subpoenaed third parties are withholding engagement letters. The Reserve Bank asked Defendants if it was their position that engagement letters are privileged. Defendants represented that their position is not that engagement letters are privileged and followed up by asking which third parties are not producing engagement letters. The Reserve Bank shared that Forvis has not produced anything, including the engagement letters, because Forvis thought Defendants were withholding consent to produce these. <u>Defendants were not aware of</u>

<u>this and agreed to revert about whether they have any remaining objection to production of engagement letters</u>, but objected to the Reserve Bank representing to third parties that Defendants agreed engagement letters were not privileged and could be produced**.**

- The Reserve Bank asked Defendants if they were asserting privilege over transfer pricing study documents. Defendants represented that they are not claiming privilege over the final versions of the transfer pricing studies, but that they are claiming privilege over some drafts that include confidential communications or comments from a CPA, specifically about financial advice to Benworth related to taxes. The Reserve Bank asked whether all communications with CPAs about the transfer pricing studies were asserted to be privileged and Defendants responded that the determination was communication-specific. Defendants represented that they would assert privilege to the extent it involves confidential communication related to accounting advice.
- The Reserve Bank asked Defendants what the accountant relationship was between Defendants and H&Co. Defendants represented that H&Co may have been accidentally listed as a third party over which the privilege was being asserted. <u>Defendants agreed to revert to the Reserve Bank about which entities were relevant to its privilege assertion.</u>

5. **<u>Reserve Bank Requests</u>**
    - Defendant Mobile Data
        - The Reserve Bank reminded Defendants of questions the Reserve Bank asked about the Navarro's mobile data use on April 8 (excerpted below), to which Defendants have not responded. <u>Defendants agreed to double check with their clients whether multiple devices were used by the clients, such as a corporate phone and a personal phone</u>
            - "In light of Defendants' April 4 representation regarding the Navarros' use of mobile data: Please clarify whether the representation applies to all mobile devices used by the Navarros during the relevant period (as identified in the Reserve Bank's requests), including any personal devices. Please confirm that Defendants are reviewing and will produce responsive mobile data from the Navarros' phones, including communications between the Navarros and communications among the Navarros and other Benworth employees."
        - The Reserve Bank asked Defendants if the review of mobile data for Mr. and Mrs. Navarro was underway and if their phones have been imaged and collected. Defendants could not confirm but agreed that they are planning to review, if it was not already underway. Defendants explained they were focused on "big projects" such as the Navarro Entity productions ordered by the Court and that they would look into mobile data production. The Reserve Bank observed that the parties have discussed mobile data since 2024.
    - Reserve Bank ESI Search Strings
        - <u>Defendants represented that they would produce documents in response to</u>

the search strings agreed to review after the March 31 M&C by mid-May.
    - The Reserve Bank previewed a proposal for the remaining search strings, specifically rows 1 and 2, and agreed to follow-up via email with that proposal.
- Claudia Navarro Documents
    - The Reserve Bank explained to Defendants that documents from Claudia Navarro seem to be very thin and, notably, there are no produced emails from Mrs. Navarro herself. The Reserve Bank asked Defendants about the diligence of her collections and the apparent gaps the Reserve Bank is seeing. Defendants represented that they could not share the diligence for the collection at that moment as it was done last year. Defendants asked the Reserve Bank to include this issue in its follow-up email so Defendants can have their eDiscovery paralegal track down the diligence, and the Reserve Bank agreed to do so.
- Volume 5 Production
    - The Reserve Bank asked Defendants to confirm that the issues impacting their Volume 5 production were identified to avoid problems in the future with productions. Defendants represented that the Volume 5 issues were not problems in other productions but that they cannot confirm more technical errors will not happen in the future.
- Follow-Up Email
    - The Reserve Bank agreed to follow up with Defendants via email regarding the remainder of issues that the Reserve Bank wanted to discuss.

6. **Defendant Requests**
    - PPP Servicing Pricing
        - Defendants said they plan to revisit the discovery requests related to Search String 6 in the Reserve Bank hit report shared on March 11, 2025 following review of the term sheets the Reserve Bank produced on April 11, 2025. Defendants asked Reserve Bank for assistance in identifying false hits and agreed to share an initial proposal based on the hit report. Reserve Bank agreed to consider a sampling review for responsiveness.
        - Defendants asked the Reserve Bank the basis for the Reserve Bank's redactions in the term sheets. The Reserve Bank asserted that the redactions were primarily for the sensitive names of other companies servicing PPP loans in the term sheets that the Reserve Bank found not relevant to evaluating the term sheets. Defendants asked the Reserve Bank to consider re-evaluating the redactions so Defendants can understand why the names are so sensitive. The Reserve Bank agreed to do so.

Best,
Mitchell

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