

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

OTO ANALYTICS, LLC,

Plaintiff,

v.

**BENWORTH CAPITAL PARTNERS PR,
LLC; BENWORTH CAPITAL
PARTNERS, LLC; BERNARDO
NAVARRO and CLAUDIA NAVARRO,**

Defendants.

Civil No. 23-01034 (GMM)

**FEDERAL RESERVE BANK OF SAN
FRANCISCO,**

Plaintiff-Intervenor,

v.

**OTO ANALYTICS, LLC; BENWORTH
CAPITAL PARTNERS PR, LLC;
BENWORTH CAPITAL PARTNERS,
LLC; BERNARDO NAVARRO and
CLAUDIA NAVARRO,**

Defendants in Intervention.

**BENWORTH CAPITAL PARTNERS, LLC’S
ANSWER AND AFFIRMATIVE DEFENSES TO THE AMENDED COMPLAINT**

TO THE HONORABLE COURT:

COMES NOW co-defendant Benworth Capital Partners, LLC (“Benworth FL”), through the undersigned counsel, and respectfully submits its Answer and Affirmative Defenses to the Amended Complaint (D.E. 125):

Benworth FL's Answer and Affirmative Defenses to the Amended Complaint

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INTRODUCTION

1. Paragraph 1 of the Amended Complaint is Plaintiff Oto Analytics, LLC's ("Womply") conclusory characterization of the instant action and its legal conclusions pertaining to the applicable law. Benworth FL denies any factual averments in this paragraph.

2. From Paragraph 2, Benworth FL admits that (1) Defendant Bernardo Navarro ("Mr. Navarro") has an ownership interest in Benworth FL, (2) Benworth FL participated in the PPP¹ and (3) Womply filed a JAMS arbitration proceeding against Benworth FL in August 2021. The remainder of the paragraph is denied as drafted.

3. Paragraph 3 contains legal references or interpretations of law and, as such, does not require a response. In the event a response is required, Benworth FL admits that (1) Congress directed the SBA to implement the PPP, (2) the PPP required connecting potential borrowers with lenders, and (3) those lenders had to service the loans to borrowers under the PPP. The remainder of the paragraph is denied as drafted.

4. Paragraph 4 contains compound and vague allegations about unspecified lenders of which Benworth FL lacks sufficient information to form a belief about the truth of such allegations, and therefore this paragraph is denied.

5. Paragraph 5 is denied for lack of information sufficient to form a belief about the truth of the allegation.

6. From Paragraph 6, Benworth FL admits that it (1) used Womply's services, (2) sought and obtained authorization from the SBA to make PPP loans, and (3) processed and funded approximately 700 PPP loans in 2020. The remainder of the paragraph is denied.

¹ For clarity and precision, Benworth FL will use the same abbreviations and shorthand references Womply uses in its Amended Complaint.

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7. From Paragraph 7, Benworth FL admits that it contracted with Womply in February 2021. The remainder of the paragraph is denied as drafted. Benworth FL affirmatively alleges that the contract speaks for itself as to the parties' rights and obligations.

8. Paragraph 8 is denied.

9. Paragraph 9 is denied.

10. From Paragraph 10, Benworth FL admits that it (1) transferred funds to Benworth Capital Partners PR LLC ("Benworth PR") and (2) entered into a contract with Benworth PR. The remainder of the paragraph is denied.

11. Paragraph 11 is denied.

12. From the second sentence in Paragraph 12, Benworth FL admits that it filed an Answer in the arbitration, which speaks for itself. The remainder of the paragraph, including Womply's characterization and legal conclusions and/or inferences of the Answer, is denied.

13. Paragraph 13 is directed to co-defendant Mr. Navarro, not Benworth FL, and contains Womply's legal interpretations and conclusions of case *TotalBank Florida Bank Corp. v. Bernardo Enrique Navarro*, Case No. 2012-012858 (Fla. Cir. Ct. Miami-Dade Cnty.), and thus does not require a response from Benworth FL. Should a response be required, Benworth FL adopts and incorporates herein Mr. Navarro's response to Paragraph 13 in his Answer to Amended Complaint.

14. From Paragraph 14, Benworth FL admits that (1) Womply filed a motion seeking the arbitrator's permission to disclose information obtained in the arbitration, (2) the arbitrator entered an order relating to that motion, and (3) Paragraph 14 cites portions of said order. Benworth FL denies that such citations are the sole statements contained in the order and denies any inferences from the cited portions based on completeness of the allegations. The remainder of the

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paragraph, including Womply's characterization and legal conclusions of the motion and order, is denied. Benworth FL affirmatively alleges that the motion and order referenced in this Paragraph 14 speak for themselves.

15. From Paragraph 15, Benworth FL admits that the arbitrator entered an order relating to that motion and that Paragraph 15 cites portions of said order but denies that such citations are the sole statements contained in the order and denies any inferences from the cited portions based on completeness of the allegations. The remainder of the paragraph, including Womply's characterization and legal conclusions of the order, is denied. Benworth FL affirmatively alleges that the order referenced in this Paragraph 15 speaks for itself.

16. Paragraph 16 is denied.

17. Paragraph 17 contains statements regarding co-defendant Mr. Navarro that are not directed to Benworth FL and thus do not require a response from Benworth FL. Should a response be required, Benworth FL adopts and incorporates herein Mr. Navarro's response to Paragraph 17 in his Answer to the Amended Complaint.

18. Paragraph 18 is denied.

19. Paragraph 19 is denied.

20. Paragraph 20 is denied.

PARTIES

21. Paragraph 21 is denied for lack of information sufficient to form a belief about the truth of the allegation.

22. Paragraph 22 contains statements regarding co-defendant Benworth PR that are not directed to Benworth FL and thus do not require a response from Benworth FL. Should a response

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be required, Benworth FL adopts and incorporates herein Benworth PR's response to Paragraph 22 in its Answer to the Amended Complaint.

23. Paragraph 23 is admitted.

24. Paragraph 24 contains statements regarding co-defendant Mr. Navarro that are not directed to Benworth FL and thus do not require a response from Benworth FL. Should a response be required, Benworth FL adopts and incorporates herein Mr. Navarro's response to Paragraph 24 in his Answer to the Amended Complaint.

25. Paragraph 25 contains statements regarding co-defendant Claudia Navarro ("Mrs. Navarro") that are not directed to Benworth FL and thus do not require a response from Benworth FL. Should a response be required, Benworth FL adopts and incorporates herein Mrs. Navarro's response to Paragraph 25 in her Answer to the Amended Complaint.

JURISDICTION AND VENUE

26. Paragraph 26 contains Womply's conclusion over the jurisdiction of this Honorable Court over the present action, a statement that does not require a response. Benworth FL denies any factual averments in this paragraph.

27. Paragraph 27 contains Womply's conclusion over the jurisdiction of this Honorable Court over the present action, a statement that does not require a response. Should a response be required, Benworth FL admits only that the cited text is taken from the referenced agreement but denies any inferences from the cited portions based on completeness of the allegations. The remainder of the paragraph, including Womply's characterization and legal conclusions stemming from the cited document, is denied.

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28. Paragraph 28 contains Womply's conclusion over the jurisdiction of this Honorable Court over the present action, a statement that does not require a response. Benworth FL denies any factual averments in this paragraph.

29. Paragraph 29 contains Womply's conclusion over the jurisdiction of this Honorable Court over the present action, a statement that does not require a response. Should a response be required, Benworth FL admits only that the arbitrator entered an order on the referenced date and that the cited text is taken from said order but denies any inferences from the cited portions based on completeness of the allegations. The remainder of the paragraph, including Womply's characterization and legal conclusions stemming from the cited document, is denied.

30. Paragraph 30 contains Womply's conclusion over the jurisdiction of this Honorable Court over the co-defendant Benworth PR, a statement that is not directed toward Benworth FL and does not require a response. Should a response be required, Benworth FL adopts and incorporates herein Benworth PR's response to Paragraph 30 in its Answer to the Amended Complaint.

31. Paragraph 31 contains Womply's conclusion over the jurisdiction of this Honorable Court over the co-defendant Mr. Navarro, a statement that is not directed toward Benworth FL and does not require a response. Should a response be required, Benworth FL adopts and incorporates herein Mr. Navarro's response to Paragraph 31 in his Answer to the Amended Complaint.

32. Paragraph 32 contains Womply's conclusion over the jurisdiction of this Honorable Court over the co-defendant Mrs. Navarro, a statement that is not directed toward Benworth FL and does not require a response. Should a response be required, Benworth FL adopts and incorporates herein Mrs. Navarro's response to Paragraph 32 in her Answer to the Amended Complaint.

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33. Paragraph 33 contains Womply's conclusion over the jurisdiction of this Honorable Court over the present action, a statement that does not require a response. Should a response be required, Benworth FL denies any factual averments in this paragraph.

34. Paragraph 34, including its subsections (a) through (f), contains Womply's conclusion over the jurisdiction of this Honorable Court over the present action, a statement that does not require a response. Should a response be required, Benworth FL denies any factual averments in this paragraph, including its subsections (a) through (f).

35. Paragraph 35 contains Womply's conclusion over the proper venue for the present action, a statement that does not require a response. Should a response be required, Benworth FL denies any factual averments in this paragraph.

FACTS²

36. Paragraph 36 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 36 as drafted. Benworth FL affirmatively alleges that the CARES Act speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same.

37. Paragraph 37 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 37 as drafted. Benworth FL affirmatively alleges that the CARES Act speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same.

38. Paragraph 38 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 38 as drafted. Benworth

² Benworth FL denies the factual averments and legal conclusions Womply makes in each of its headings and sub-headings.

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FL affirmatively alleges that the SBA regulations speak for themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same.

39. Paragraph 39 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 39 as drafted. Benworth FL affirmatively alleges that the SBA regulations speak for themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same.

40. Paragraph 40 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 40 as drafted. Benworth FL affirmatively alleges that the SBA regulations speak for themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same.

41. Paragraph 41 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 41 as drafted. Benworth FL affirmatively alleges that the SBA Standard Operating Procedures speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same.

42. Paragraph 42 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 42 as drafted. Benworth FL affirmatively alleges that the SBA Standard Operating Procedures speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same.

43. Paragraph 43 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 43 as drafted. Benworth FL affirmatively alleges that the February 2020 Rule speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same.

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44. Paragraph 44 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 44 as drafted. Benworth FL affirmatively alleges that the February 2020 Rule speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same.

45. Paragraph 45 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 45 as drafted. Benworth FL affirmatively alleges that the February 2020 Rule and CARES Act speak for themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same.

46. Paragraph 46 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 46 as drafted. Benworth FL affirmatively alleges that the CARES Act speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same.

47. Paragraph 47 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 47 as drafted. Benworth FL affirmatively alleges that the April 2020 PPP Rule speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same.

48. Paragraph 48 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 48 as drafted. Benworth FL affirmatively alleges that the April 2020 PPP Rule and CARES Act speak for themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same.

49. Paragraph 49 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 49 as drafted. Benworth FL affirmatively alleges that the February 2020 Rule and April 2020 PPP Rule speak for

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themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same.

50. Paragraph 50 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 50 as drafted. Benworth FL affirmatively alleges that the April 2020 PPP Rule and CARES Act speak for themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same.

51. Paragraph 51 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 51 as drafted. Benworth FL affirmatively alleges that the Economic Aid Act speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same.

52. Paragraph 52 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 52 as drafted. Benworth FL affirmatively alleges that the Economic Aid Act speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same.

53. Paragraph 53 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 53 as drafted. Benworth FL affirmatively alleges that the Economic Aid Act and CARES Act speak for themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same.

54. Paragraph 54 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 54 as drafted. Benworth FL affirmatively alleges that the SBA regulations and SBA Standard Operating Procedures speak for themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same.

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55. Paragraph 55 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 55 as drafted. Benworth FL affirmatively alleges that the Economic Aid Act speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same.

56. Paragraph 56 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 56 as drafted. Benworth FL affirmatively alleges that the Economic Aid Act and CARES Act speak for themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same.

57. Paragraph 57 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 57 as drafted. Benworth FL affirmatively alleges that the April 2020 PPP Rule and CARES Act speak for themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same.

58. Paragraph 58 contains vague allegations about unspecified PPP loans that do not require a response. Should a response be required, Benworth FL denies Paragraph 58 as drafted.

59. Paragraph 59 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 59 as drafted. Benworth FL affirmatively alleges that the January 2021 PPP Rule speaks for itself and denies Womply's characterization and legal conclusions as to the same.

60. Paragraph 60 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 60 as drafted. Benworth FL affirmatively alleges that the April 2020 PPP Rule and January 2021 PPP Rule speak for themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same.

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61. Paragraph 61 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 61 as drafted. Benworth FL affirmatively alleges that the January 2021 PPP Rule speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same.

62. Paragraph 62 contains legal references or interpretations of law that do not require a response. Should a response be required, Benworth FL denies Paragraph 62 as drafted. Benworth FL affirmatively alleges that the April 2020 PPP Rule and January 2021 PPP Rule speak for themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same.

63. Paragraph 63 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 63 for lack of information sufficient to form a belief about the truth of the allegation.

64. Paragraph 64 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 64 for lack of information sufficient to form a belief about the truth of the allegation.

65. Paragraph 65 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 65 for lack of information sufficient to form a belief about the truth of the allegation.

66. Paragraph 66 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 66 for lack of information sufficient to form a belief about the truth of the allegation, including its footnote 6.

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67. Paragraph 67 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 67 for lack of information sufficient to form a belief about the truth of the allegation.

68. From Paragraph 68, Benworth FL admits that it did not participate in Non-Fast Lane. The remainder of Paragraph 68 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies the remainder of Paragraph 68 for lack of information sufficient to form a belief about the truth of the allegation.

69. Paragraph 69 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 69 for lack of information sufficient to form a belief about the truth of the allegation.

70. Paragraph 70 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 70 for lack of information sufficient to form a belief about the truth of the allegation.

71. Paragraph 71 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 71 for lack of information sufficient to form a belief about the truth of the allegation.

72. Paragraph 72 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 72 for lack of information sufficient to form a belief about the truth of the allegation.

73. Paragraph 73 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 73 for lack of information sufficient to form a belief about the truth of the allegation.

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74. Paragraph 74 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 74 for lack of information sufficient to form a belief about the truth of the allegation.

75. Paragraph 75 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 75.

76. Paragraph 76 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 76.

77. Paragraph 77 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 77.

78. Paragraph 78 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 78.

79. Paragraph 79 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 79.

80. Paragraph 80 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 80.

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81. Paragraph 81 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 81.

82. Paragraph 82 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 82.

83. Paragraph 83 contains statements that are not directed toward Benworth FL and therefore no response is required. In the event a response is required, Benworth FL denies Paragraph 83.

84. Paragraph 84 is admitted.

85. Paragraph 85 is denied.

86. From Paragraph 86, Benworth FL admits that Mr. Navarro has been deposed in foreclosure actions. The remainder of the paragraph and footnote 8, including Womply's characterization and legal conclusions and/or inferences, is denied.

87. From Paragraph 87, Benworth FL admits that "[p]rior to 2020, Benworth FL was not an SBA-approved lender and did not issue any SBA-sponsored loans. PPP was Benworth FL's first experience with SBA lending and regulations." The remainder of the paragraph, including Womply's characterization and legal conclusions and/or inferences as to the attached letter, are denied for lack of information sufficient to form a belief about the truth of the allegation.

88. From Paragraph 88, Benworth FL admits that the SBA approved it to become a PPP lender and that it hired employees to review PPP loan applications. The remainder of the paragraph is denied.

89. Paragraph 89 is admitted.

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90. Paragraph 90 is admitted.

91. Paragraph 91 is admitted.

92. Paragraph 92 is admitted.

93. Paragraph 93 is admitted.

94. Paragraph 94 is denied as drafted. Benworth FL affirmatively alleges that the Agreements speak for themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same.

95. Paragraph 95 is denied as drafted. Benworth FL affirmatively alleges that the Referral Agreement speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Referral Agreement itself for its true and complete contents.

96. Benworth FL admits that Paragraph 96 quotes a portion of the Referral Agreement but denies that such citation is the sole statement contained in the Referral Agreement and denies any inferences from the cited portions based on completeness of the allegations. Benworth FL affirmatively alleges that the Referral Agreement speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Referral Agreement itself for its true and complete contents.

97. Paragraph 97 is denied as drafted. Benworth FL affirmatively alleges that the Referral Agreement speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Referral Agreement itself for its true and complete contents.

98. Benworth FL admits that Paragraph 98 quotes a portion of the Referral Agreement but denies that such citation is the sole statement contained in the Referral Agreement and denies

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any inferences from the cited portions based on completeness of the allegations. Benworth FL affirmatively alleges that the Referral Agreement speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Referral Agreement itself for its true and complete contents.

99. Benworth FL admits that Paragraph 99 quotes a portion of the Referral Agreement but denies that such citation is the sole statement contained in the Referral Agreement and denies any inferences from the cited portions based on completeness of the allegations. Benworth FL affirmatively alleges that the Referral Agreement speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Referral Agreement itself for its true and complete contents.

100. Paragraph 100 is denied as drafted. Benworth FL affirmatively alleges that the Referral Agreement speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Referral Agreement itself for its true and complete contents.

101. Paragraph 101 is denied as drafted. Benworth FL affirmatively alleges that the Referral Agreement speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Referral Agreement itself for its true and complete contents.

102. Paragraph 102 is denied as drafted. Benworth FL affirmatively alleges that the Order Form speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Order Form itself for its true and complete contents.

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103. Paragraph 103 is denied as drafted. Benworth FL affirmatively alleges that the Order Form speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Order Form itself for its true and complete contents.

104. Paragraph 104 is denied as drafted. Benworth FL affirmatively alleges that the Order Form speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Order Form itself for its true and complete contents.

105. Paragraph 105 is denied as drafted. Benworth FL affirmatively alleges that the Order Form speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Order Form itself for its true and complete contents.

106. Benworth FL admits that Paragraph 106 quotes a portion of the Order Form but denies that such citation is the sole statement contained in the Order Form and denies any inferences from the cited portions based on completeness of the allegations. Benworth FL affirmatively alleges that the Order Form speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Order Form itself for its true and complete contents.

107. Paragraph 107 is denied as drafted. Benworth FL affirmatively alleges that the Referral Agreement and the Order Form speak for themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Order Form itself for its true and complete contents.

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108. Paragraph 108 is denied as drafted. Benworth FL affirmatively alleges that the Order Form speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Order Form itself for its true and complete contents.

109. Paragraph 109 is admitted.

110. Paragraph 110 is denied as drafted. Benworth FL affirmatively alleges that the Order Form speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Order Form itself for its true and complete contents.

111. Benworth FL admits that Paragraph 111 quotes a portion of the Order Form but denies that such citation is the sole statement contained in the Order Form and denies any inferences from the cited portions based on completeness of the allegations. Benworth FL affirmatively alleges that the Order Form speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Order Form itself for its true and complete contents.

112. Benworth FL admits that Paragraph 112 quotes a portion of the Order Form but denies that such citation is the sole statement contained in the Order Form and denies any inferences from the cited portions based on completeness of the allegations. Benworth FL affirmatively alleges that the Order Form speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Order Form itself for its true and complete contents.

113. Paragraph 113 is denied.

114. Paragraph 114 is denied.

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115. Paragraph 115 is denied as drafted. Benworth FL affirmatively alleges that the Order Form speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Order Form itself for its true and complete contents.

116. Paragraph 116 is denied as drafted. Benworth FL affirmatively alleges that the Order Form speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Order Form itself for its true and complete contents.

117. Paragraph 117 is based on a hypothetical and not an averment of fact and consists of a legal conclusion to which no response is required. Should a response be required, Benworth FL denies Paragraph 117.

118. Paragraph 118 is denied as drafted. Benworth FL affirmatively alleges that the Order Form speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Order Form itself for its true and complete contents.

119. From Paragraph 119, Benworth FL admits that Womply later agreed that for each PPP loan Benworth FL funded, Womply would not collect from Benworth FL for fees greater than the Lender Processing Fee Benworth FL received for funding the loan. The remainder of the paragraph is denied.

120. Paragraph 120 is denied as drafted. Benworth FL affirmatively alleges that the Referral Agreement and the Order Form speak for themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Referral Agreement and the Order Form themselves for their true and complete contents.

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121. Paragraph 121 is denied as drafted. Benworth FL affirmatively alleges that the Referral Agreement and Master Developer Agreement speak for themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Referral Agreement and Master Developer Agreement themselves for their true and complete contents.

122. Paragraph 122 is denied as drafted. Benworth FL affirmatively alleges that the Referral Agreement and Master Developer Agreement speak for themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Referral Agreement and Master Developer Agreement themselves for their true and complete contents.

123. Paragraph 123 is denied as drafted. Benworth FL affirmatively alleges that the Referral Agreement and the Order Form speak for themselves and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Referral Agreement and the Order Form themselves for their true and complete contents.

124. From Paragraph 124, Benworth FL admits that it "processed, funded, and managed 307,790 Womply-referred PPP loans with a principal amount of more than **\$4 billion**". The remainder of the paragraph is denied as drafted.

125. Paragraph 125 is denied.

126. Paragraph 126 is denied.

127. Paragraph 127 is denied as drafted. Benworth FL affirmatively alleges that the Order Form speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Order Form itself for its true and complete contents.

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128. Paragraph 128 is denied as drafted. Benworth FL affirmatively alleges that the Order Form speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the Order Form itself for its true and complete contents.

129. Paragraph 129 is denied.

130. Paragraph 130 is denied.

131. Paragraph 131 is denied.

132. From Paragraph 132, Benworth FL admits that it sent an email to Womply on July 1, 2021. Benworth FL affirmatively alleges that the email referenced in this paragraph speaks for itself and denies the remainder of the paragraph, including Womply's characterization and legal conclusions and/or inferences of the email.

133. Paragraph 133 is denied.

134. Paragraph 134 is denied.

135. Paragraph 135 is denied.

136. Paragraph 136 is denied.

137. Paragraph 137 is denied.

138. Paragraph 138 is denied.

139. Paragraph 139 is denied.

140. Paragraph 140 is denied.

141. From Paragraph 141, Benworth FL admits that Mr. Navarro received the email referenced in this paragraph. The remainder of the paragraph, including Womply's characterization and legal conclusions and/or inferences of the email, is denied. Benworth FL affirmatively alleges that the email referenced in this paragraph speaks for itself.

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142. Paragraph 142 is denied.

143. From Paragraph 143, Benworth FL admits that on July 23, 2023, it received certain notices from Womply by email and First-Class Certified Mail. The remainder of the paragraph, including any implication that Benworth FL breached the contracts, is denied.

144. Paragraph 144 is denied.

145. Paragraph 145 is denied as drafted. Benworth FL affirmatively alleges that the August 16 Letter speaks for itself and denies Womply's characterization and legal conclusions and/or inferences of the same.

146. Paragraph 146 is denied as drafted. Benworth FL affirmatively alleges that the August 16 Letter speaks for itself and denies Womply's characterization and legal conclusions and/or inferences of the same.

147. Paragraph 147 is denied as drafted. Benworth FL affirmatively alleges that the August 16 Letter speaks for itself and denies Womply's characterization and legal conclusions and/or inferences of the same.

148. Paragraph 148 is denied as drafted. Benworth FL affirmatively alleges that the August 16 Letter and January 2021 Final Rule speak for themselves and denies Womply's characterization and legal conclusions and/or inferences of the same.

149. Paragraph 149 contains statements regarding co-defendant Mr. Navarro that are not directed toward Benworth FL and thus do not require a response from Benworth FL. Should a response be required, Benworth FL adopts and incorporates herein by reference Mr. Navarro's response to Paragraph 149 in his Answer to Amended Complaint.

150. Paragraph 150 contains statements regarding co-defendant Mr. Navarro that are not directed toward Benworth FL and thus do not require a response from Benworth FL. Should a

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response be required, Benworth FL adopts and incorporates herein by reference Mr. Navarro's response to Paragraph 150 in his Answer to Amended Complaint.

151. Paragraph 151 contains statements regarding co-defendant Mr. Navarro that are not directed toward Benworth FL and thus do not require a response from Benworth FL. Should a response be required, Benworth FL adopts and incorporates herein by reference Mr. Navarro's response to Paragraph 151 in his Answer to Amended Complaint.

152. From Paragraph 152, Benworth FL admits that it sent a letter to Senator Rubio's office on August 16, 2021. The remainder of the paragraph, including Womply's characterization and legal conclusions and/or inferences regarding the letter, is denied. Benworth FL affirmatively alleges that the letter referenced in this paragraph speaks for itself.

153. Paragraph 153 contains statements regarding co-defendant Mr. Navarro that are not directed toward Benworth FL and thus do not require a response from Benworth FL. Should a response be required, Benworth FL adopts and incorporates herein by reference Mr. Navarro's response to Paragraph 153 in his Answer to Amended Complaint.

154. From Paragraph 154, Benworth FL admits that Senator Rubio sent a letter addressed to Administrator Guzman of the SBA that was dated August 26, 2021. The remainder of the paragraph, including Womply's characterization and legal conclusions and/or inferences regarding the August 26 Letter, is denied. Benworth FL affirmatively alleges that the August 26 Letter speaks for itself.

155. Paragraph 155 is denied.

156. From Paragraph 156, Benworth FL admits that the SBA sent the September 14 Letter to Benworth FL. The remainder of the paragraph, including Womply's characterization and

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legal conclusions and/or inferences regarding the September 14 Letter, is denied. Benworth FL affirmatively alleges that the September 14 Letter speaks for itself.

157. Paragraph 157 is admitted.

158. From Paragraph 158, Benworth FL admits that Womply sought payment of \$153,063,872 and interest in the arbitration. The remainder of the paragraph, including footnote 9 therein, is denied.

159. From Paragraph 159, Benworth FL admits that it filed its Answer to Womply's Demand for Arbitration, Affirmative Defenses, and Counterclaims on October 1, 2021. The remainder of the paragraph, including Womply's characterization and legal conclusions and/or inferences regarding the Answer, Affirmative Defenses, and Counterclaims, is denied.

160. From Paragraph 160, Benworth FL admits that, as part of its claims in the arbitration, it averred that it need not pay Womply more than \$153 million under the Agreements and that Womply must disgorge API and Technology Fees that Benworth FL already paid it for services rendered. The remainder of the paragraph, including Womply's characterization and legal conclusions and/or inferences of Benworth FL's counterclaims, is denied.

161. Paragraph 161 contains legal conclusions and interpretations that do not require a response. Should a response be required, the paragraph is denied.

162. Paragraph 162 contains legal conclusions and interpretations that do not require a response. Should a response be required, the paragraph is denied.

163. From Paragraph 163, Benworth FL admits that it pleaded as an affirmative defense that Womply is barred from recovering outstanding Referral Fees. The remainder of the paragraph, including Womply's characterization and legal conclusions and/or inferences as to the Answer, Affirmative Defenses, and Counterclaims, is denied.

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164. Paragraph 164 is denied as drafted. Benworth FL affirmatively alleges that its Answer, Affirmative Defenses, and Counterclaims in the arbitration speak for themselves, and denies Womply's characterization and legal conclusions and/or inferences as to the Answer, Affirmative Defenses, and Counterclaims.

165. Paragraph 165 is denied.

166. From Paragraph 166, Benworth FL admits that (1) Mr. Navarro was deposed on October 26, 2022, (2) Womply filed a motion to compel discovery into Benworth PR, (3) the arbitrator entered an order for Benworth FL to produce its agreements with Benworth PR, and (4) the arbitrator entered an order to produce Mr. Navarro for a second deposition in the arbitration. The remainder of the paragraph, including Womply's characterization and legal conclusions and/or inferences as to the motion, orders and depositions, is denied.

167. Paragraph 167 is denied.

168. From Paragraph 168, Benworth FL admits that (1) it entered into the Original LSA with Benworth PR, (2) Mr. Navarro executed the agreement on behalf of Benworth FL, and (3) co-defendant Mrs. Navarro executed the agreement on behalf of Benworth PR. The remainder of the paragraph, including Womply's characterization and legal conclusions and/or inferences as to the Original LSA, is denied.

169. Paragraph 169 is denied as drafted. Benworth FL affirmatively alleges that the Original LSA speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same.

170. Paragraph 170 is denied as drafted. Benworth FL affirmatively alleges that (1) Benworth PR filed a Certificate of Organization and Certificate of Formation of a Limited Liability Company with the Government of Puerto Rico Department of State on June 28, 2021, and (2)

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Benworth FL and Benworth PR executed the Amended LSA but denies Womply's characterization and legal conclusions and/or inferences as to the same.

171. Paragraph 171 is denied as drafted. Benworth FL affirmatively alleges that the Amended LSA speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same.

172. Paragraph 172 is denied as drafted. Benworth FL affirmatively alleges that the Amended LSA speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same.

173. From Paragraph 173, Benworth FL admits that Mr. and Mrs. Navarro collaborated to draft the LSAs. The remainder of the paragraph is denied.

174. From Paragraph 174, Benworth FL admits that it considered quotes received by the four firms mentioned in this paragraph in developing its PPP loan fee structure with Benworth PR. The remainder of the paragraph is denied.

175. From Paragraph 175, Benworth FL admits that it produced an agreement between it and Lendio. The remainder of the paragraph, including Womply's characterization and legal conclusions and/or inferences regarding the agreement, is denied. Benworth FL affirmatively alleges that the agreement between it and Lendio speaks for itself.

176. From Paragraph 176, Mr. Navarro admits that Benworth FL funded approximately 311,000 PPP loans. The remainder of the paragraph is based on a hypothetical and not an averment of fact and consists of a legal conclusion to which no response is required. Should a response be required, Mr. Navarro denies the remainder of the paragraph and affirmatively alleges that the LSA speaks for itself.

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177. Paragraph 177, including its footnote 10, is denied. Benworth FL affirmatively alleges that the LSA and Mr. Navarro's testimony speak for themselves and denies Womply's characterization and legal conclusions and/or inferences of the same.

178. Paragraph 178 is denied. Benworth FL affirmatively alleges that the LSA speaks for itself and denies Womply's characterization and legal conclusions and/or inferences regarding the same.

179. Paragraph 179 is denied. Benworth FL affirmatively alleges that the LSA speaks for itself and denies Womply's characterization and legal conclusions and/or inferences regarding the same.

180. From Paragraph 180, Benworth FL admits that Mr. Navarro provided testimony regarding payments to Benworth PR. The remainder of the paragraph, including Womply's characterization and legal conclusions and/or inferences regarding Mr. Navarro's testimony, is denied. Benworth FL affirmatively alleges that Mr. Navarro's testimony at his depositions speaks for itself.

181. Paragraph 181 is denied.

182. Paragraph 182 is denied.

183. Paragraph 183 is denied. Benworth FL affirmatively alleges that Mr. Navarro's testimony at his depositions speaks for itself and denies Womply's characterization and legal conclusions and/or inferences regarding Mr. Navarro's testimony.

184. Paragraph 184 is denied as drafted.

185. Paragraph 185 is denied.

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186. Paragraph 186 is denied as drafted. Benworth FL affirmatively alleges that Mr. Navarro's testimony at his depositions and the Amended LSA speak for themselves and denies Womply's characterization and legal conclusions and/or inferences regarding the same.

187. Paragraph 187 is denied.

188. Paragraph 188 is denied as drafted. Benworth FL affirmatively alleges that the content of its website speaks for itself and denies Womply's characterization and legal conclusions and/or inferences regarding the same.

189. Paragraph 189 is denied as drafted. Benworth FL affirmatively alleges that the content of Mr. Navarro's LinkedIn profile speaks for itself and denies Womply's characterization and legal conclusions and/or inferences regarding the same.

190. From Paragraph 190, Benworth FL admits that it has serviced its own PPP loans in the past. The remainder of the paragraph is denied.

191. From Paragraph 191, Benworth FL admits that (1) it sent a letter to Congress in 2022 and (2) Paragraph 191 cites portions of said letter but denies that such citation is the sole statement contained in the letter and denies any inferences from the cited portions based on completeness of the allegations. Benworth FL affirmatively alleges that the letter referenced in this paragraph speaks for itself and denies Womply's characterization and legal conclusions and/or inferences as to the same. Benworth FL refers to the letter itself for its true and complete contents.

192. Paragraph 192 is denied.

193. Paragraph 193 is denied.

194. Paragraph 194 is denied.

195. Paragraph 195 is denied as drafted.

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196. Paragraph 196 is denied as drafted. Benworth FL affirmatively alleges that Mr. Navarro's testimony at his depositions speaks for itself and denies Womply's characterization and legal conclusions and/or inferences regarding the same.

197. Paragraph 197 is denied as drafted. Benworth FL affirmatively alleges that the testimony referenced in this paragraph speaks for itself and denies Womply's characterization and legal conclusions and/or inferences regarding the same.

198. Paragraph 198 is denied as drafted. Benworth FL affirmatively alleges that Mr. Navarro's testimony at his depositions speaks for itself and denies Womply's characterization and legal conclusions and/or inferences regarding the same.

199. Paragraph 199 contains statements regarding co-defendants Benworth PR, Mr. Navarro and Mrs. Navarro that are not directed to Benworth FL and thus do not require a response from Benworth FL. Should a response be required, Benworth FL adopts and incorporates herein Benworth PR's, Mr. Navarro's and Mrs. Navarro's responses to Paragraph 199 in their respective Answers to Amended Complaint.

200. Paragraph 200 is denied as drafted. Benworth FL affirmatively alleges that Mr. Navarro's testimony speaks for itself and denies Womply's characterization and legal conclusions and/or inferences regarding the same.

201. Paragraph 201 is denied.

202. Paragraph 202 is denied.

203. Paragraph 203 is denied as drafted. Benworth FL affirmatively alleges that Mr. Navarro's testimony at his depositions speaks for itself and denies Womply's characterization and legal conclusions and/or inferences regarding the same.

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204. Paragraph 204 is denied as drafted. Benworth FL affirmatively alleges that Mr. Navarro's testimony at his depositions speaks for itself and denies Womply's characterization and legal conclusions and/or inferences regarding the same.

205. Paragraph 205 contains statements regarding co-defendant Mr. Navarro, not Benworth FL, and contains Womply's legal interpretations and conclusions of case *TotalBank Florida Bank Corp. v. Bernardo Enrique Navarro*, Case No. 2012-012858 (Fla. Cir. Ct. Miami-Dade Cnty.) and thus does not require a response. Should a response be required, Benworth FL adopts and incorporates herein Mr. Navarro's response to Paragraph 205 in his Answer to the Amended Complaint.

206. Paragraph 206 contains Womply's legal interpretations and conclusions of case *TotalBank Florida Bank Corp. v. Bernardo Enrique Navarro*, Case No. 2012-012858 (Fla. Cir. Ct. Miami-Dade Cnty.) and thus does not require a response. Should a response be required, Benworth FL denies Paragraph 206.

207. Paragraph 206 contains Womply's legal interpretations and conclusions of case *TotalBank Florida Bank Corp. v. Bernardo Enrique Navarro*, Case No. 2012-012858 (Fla. Cir. Ct. Miami-Dade Cnty.) and thus does not require a response. Should a response be required, Benworth FL denies Paragraph 207.

208. Paragraph 208 is denied as drafted. Benworth FL affirmatively alleges that Mr. Navarro's testimony speaks for itself and denies Womply's characterization and legal conclusions and/or inferences regarding the same.

209. Paragraph 209 contains Womply's legal interpretations and conclusions of case *TotalBank Florida Bank Corp. v. Bernardo Enrique Navarro*, Case No. 2012-012858 (Fla. Cir. Ct. Miami-Dade Cnty.) and thus does not require a response. Should a response be required,

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Benworth FL denies Paragraph 206 as drafted. Benworth FL affirmatively alleges that the transcript from the hearing referenced in this paragraph speaks for itself and denies Womply's characterization and legal conclusions and/or inferences regarding the same.

210. From Paragraph 210, Benworth FL admits that Womply filed a motion in the arbitration asking for permission to disclose documents and information it obtained through discovery in the arbitration, which were covered by a protective order, to a court of competent jurisdiction. The remainder of the paragraph is denied.

211. Paragraph 211 is admitted.

212. Benworth FL admits that Paragraph 212 cites a portion of the arbitrator's order issued on January 17, 2023, but denies that such citation is the sole statement contained in the order and denies any inferences from the cited portions based on completeness of the allegations. Benworth FL affirmatively alleges that the order referenced in this paragraph speaks for itself and denies Womply's characterization and legal conclusions and/or inferences regarding the same.

213. Benworth FL admits that Paragraph 213 cites a portion of the arbitrator's order issued on January 17, 2023, but denies that such citation is the sole statement contained in the order and denies any inferences from the cited portions based on completeness of the allegations. Benworth FL affirmatively alleges that the order referenced in this paragraph speaks for itself and denies Womply's characterization and legal conclusions and/or inferences regarding the same.

214. Benworth FL admits that Paragraph 214 cites portions of the arbitrator's order issued on January 17, 2023, but denies that such citations are the sole statements contained in the order and denies any inferences from the cited portions based on completeness of the allegations. Benworth FL affirmatively alleges that the order referenced in this paragraph speaks for itself and denies Womply's characterization and legal conclusions and/or inferences regarding the same.

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COUNT I – ACTUAL FRAUDULEN TRANSFER

(Against Benworth PR and Benworth FL)

215. Benworth FL incorporates its responses to paragraphs 1 through 214 as if fully stated herein.

216. Paragraph 216 is denied.

217. Paragraph 217 is denied.

218. Paragraph 218 is denied.

219. Paragraph 219 is denied.

220. Paragraph 220 contains statements regarding co-defendant Mr. Navarro that are not directed to Benworth FL and thus do not require a response from Benworth FL. Should a response be required, Benworth FL adopts and incorporates herein Mr. Navarro's response to Paragraph 220 in his Answer to the Amended Complaint.

221. Paragraph 221 contains statements regarding co-defendant Mrs. Navarro that are not directed to Benworth FL and thus do not require a response from Benworth FL. Should a response be required, Benworth FL adopts and incorporates herein Mrs. Navarro's response to Paragraph 221 in her Answer to the Amended Complaint.

222. Paragraph 222 is denied.

223. Paragraph 223 is denied.

224. Paragraph 224 is denied. Benworth FL affirmatively alleges that Benworth PR filed a Certificate of Organization and Certificate of Formation of a Limited Liability Company with the Government of Puerto Rico Department of State on June 28, 2021.

225. Paragraph 225 is denied.

226. Paragraph 226 is denied.

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227. Paragraph 227 is denied.

228. Paragraph 228 is denied.

229. Paragraph 229 is denied.

COUNT II – CONSTRUCTIVE FRAUDULENT TRANSFER

(Against Benworth PR and Benworth FL)

230. Benworth FL incorporates its responses to paragraphs 1 through 229 as if fully stated herein.

231. Paragraph 231 is denied.

232. Paragraph 232 is denied.

233. Paragraph 233 is denied.

234. Paragraph 234 is denied.

235. Paragraph 235 is denied.

236. Paragraph 236 is denied.

237. Paragraph 237 is denied.

238. Paragraph 238 is denied.

239. Paragraph 239 is denied. Benworth FL affirmatively alleges that Benworth PR filed a Certificate of Organization and Certificate of Formation of a Limited Liability Company with the Government of Puerto Rico Department of State on June 28, 2021.

240. Paragraph 240 is denied.

COUNT III – DECLARATORY JUDGMENT – ALTER EGO OR SUCCESSOR

(Against Benworth PR and Benworth FL)

241. Benworth FL incorporates its responses to paragraphs 1 through 240 as if fully stated herein.

242. Paragraph 242 is denied.

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243. Paragraph 243 is denied.

244. Paragraph 244 is denied.

245. Paragraph 245 is denied.

246. Paragraph 246, including its subsections (a) through (n), is denied.

247. Paragraph 247 is denied.

248. Paragraph 248 is not a factual averment and thus does not require a response.

Should a response be required, Benworth FL denies Paragraph 248.

COUNT IV – DECLARATORY JUDGMENT – VEIL PIERCING

(Against Bernardo Navarro, Claudia Navarro, and Benworth PR)

249. Count IV is not against Benworth FL, but, to the extent necessary, Benworth FL incorporates its responses to Paragraphs 1 through 248 as if fully stated herein.

250. Count IV is not against Benworth FL, but, to the extent necessary, Paragraph 250 is denied and Benworth FL incorporates its responses to Paragraphs 1 through 248 as if fully stated herein.

251. Count IV is not against Benworth FL, but, to the extent necessary, Paragraph 251 is denied and Benworth FL incorporates its responses to Paragraphs 1 through 248 as if fully stated herein.

252. Count IV is not against Benworth FL, but, to the extent necessary, Paragraph 252 is denied and Benworth FL incorporates its responses to Paragraphs 1 through 248 as if fully stated herein.

253. Count IV is not against Benworth FL, but, to the extent necessary, Paragraph 253 including its subsections (a) through (p), is denied and Benworth FL incorporates its responses to Paragraphs 1 through 248 as if fully stated herein.

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254. Count IV is not against Benworth FL, but, to the extent necessary, Paragraph 254 is denied and Benworth FL incorporates its responses to Paragraphs 1 through 248 as if fully stated herein.

255. Count IV is not against Benworth FL and Paragraph 255 is not a factual averment, but, to the extent necessary, Paragraph 255 is denied and Benworth FL incorporates its responses to Paragraphs 1 through 248 as if fully stated herein.

PRAYER FOR RELIEF

256. Paragraph 256 is denied. Womply is not entitled to any of the relief sought in the Amended Complaint.

JURY TRIAL DEMAND

Benworth FL demands trial by jury on all issues and counts.

BENWORTH FL'S AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Lack of Subject Matter Jurisdiction)

The Amended Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, because there is no subject-matter jurisdiction over Womply's claims. Womply must establish "as a matter of black letter law, . . . the citizenship of all of its members" to establish diversity jurisdiction. *BRT Mgmt. LLC v. Malden Storage LLC*, 68 F.4th 691, 693 (1st Cir. 2023). Here, Womply alleges that its sole member is Oto Holdco, LLC, whose sole member is SCAT20210724, LLC, whose sole member is "AltoIRA Custodian" for the benefit of Toby Scammell's Roth IRA retirement account. Womply, however, has not established the citizenship of "AltoIRA" or that the citizenship of a beneficiary of a Roth IRA retirement account is sufficient to establish diversity.

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SECOND AFFIRMATIVE DEFENSE

(Unclean Hands)

The Amended Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, by the doctrine of unclean hands. Specifically, the fees Womply seeks from Benworth FL include fees gained through missing loan files and fraudulent applications for PPP loans that Womply referred. The SBA has denied the guaranteed purchase of thousands of Womply-referred loans totaling more than \$51 million, and it may deny an additional \$68 million more. Thus, if the SBA ultimately does not buyback these loans, Benworth FL will have to refund the principal loan amounts that the Federal Reserve advanced to Benworth FL for funding these Womply-referred fraudulent PPP loans.

THIRD AFFIRMATIVE DEFENSE

(Ripeness)

The Amended Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, because Womply's claims are not ripe because the issue of whether Benworth FL is a debtor of Womply has not yet been confirmed under the Federal Arbitration Act.

FOURTH AFFIRMATIVE DEFENSE

(Reasonable Actions and Good Faith)

The Amended Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, because Benworth FL's conduct was at all times reasonable, proper, in good faith, and in compliance with applicable law.

FIFTH AFFIRMATIVE DEFENSE

(Good Faith and Fair Value)

The Amended Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, because Benworth FL's conduct was at all times made in good faith and that

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reasonably equivalent value was received in exchange for the transfers referenced in the Amended Complaint.

SIXTH AFFIRMATIVE DEFENSE

(Lack of Insolvency)

The Amended Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, because the transfers referenced in the Amended Complaint did not render Benworth FL insolvent.

SEVENTH AFFIRMATIVE DEFENSE

(Ordinary Course of Business)

The Amended Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, because the transfers referenced in the Amended Complaint were made in the ordinary course of business.

EIGHTH AFFIRMATIVE DEFENSE

(Lack of Fraudulent Intent)

The Amended Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, because Benworth FL lacks the intent to defraud creditors.

NINTH AFFIRMATIVE DEFENSE

(Subsequent Good Faith Transferee)

The Amended Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, because the subsequent transferee took the funds in good faith and for value, without knowledge of the alleged fraud.

TENTH AFFIRMATIVE DEFENSE

(Payment of Legitimate Debt)

The Amended Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, because the transfers referenced in the Amended Complaint were not fraudulent

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but, instead, were made to pay off a legitimate obligation under Benworth FL's loan servicing agreements with Benworth PR.

ELEVENTH AFFIRMATIVE DEFENSE

(Separate Financial Records)

The alter ego or successor claim (Count III) in the Amended Complaint is barred, in whole or in part, because Benworth FL's finances were kept separate from those of Benworth PR, indicating a clear distinction between the corporate entities.

TWELFTH AFFIRMATIVE DEFENSE

(No Commingling of Assets)

The alter ego or successor claim (Count III) in the Amended Complaint is barred, in whole or in part, because there was no commingling of corporate assets between Benworth FL and Benworth PR.

THIRTEENTH AFFIRMATIVE DEFENSE

(Legitimate Business Purpose)

The alter ego or successor claim (Count III) in the Amended Complaint is barred, in whole or in part, against Benworth FL because Benworth PR was formed and operated for legitimate business purposes and not to perpetrate fraud or evade obligations.

FOURTEENTH AFFIRMATIVE DEFENSE

(Set Off)

The damages Womply seeks are subject to a set off. The fees Womply seeks from Benworth FL include fees gained through missing loan files and fraudulent applications for PPP loans that Womply referred. The SBA has denied the guaranteed purchase of thousands of Womply-referred loans totaling more than \$51 million, and it may deny an additional \$68 million more. Thus, if the SBA ultimately does not buyback these loans, Benworth FL will have to refund the principal loan amounts that the Federal Reserve advanced to Benworth FL for funding these

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Womply-referred fraudulent PPP loans. Benworth FL asserts that Womply's recovery should therefore be offset by the amount that Benworth FL is ultimately required to repay to the Federal Reserve.

FIFTEENTH AFFIRMATIVE DEFENSE

(Set Off)

The damages Womply seeks are subject to a set off. Section 2.3 of the Referral Agreement and Section 2.3 of the Order Form provide that Womply shall return any fees paid by Benworth FL that the SBA or other governmental agency determines were not in compliance with applicable SBA and/or PPP Loan Program Requirements. Benworth FL has paid Womply approximately \$465 million in fees and those fees are currently the subject of an investigation by the SBA and/or other governmental agencies. If the SBA and/or another governmental agency determines that the fees Benworth FL paid Womply, in whole or in part, were not in compliance with applicable SBA and/or PPP Loan Program Requirements, Womply must return those fees to Benworth FL and any damages awarded to Womply here should therefore be set off by the amount of fees that Womply is required to return to Benworth FL.

SIXTEENTH AFFIRMATIVE DEFENSE

(Public Policy)

The damages Womply seeks are barred, in whole or in part, because compelling Benworth FL to pay Womply fees would require Benworth FL to violate public policy. The SBA has an explicit, well-defined policy that specifically militates against the relief Womply seeks here. That public policy expressly provides that agents, including lender service providers, like Womply, are only entitled to fees from lenders in connection with SBA loans that are owed under agreements that were submitted to and approved by the SBA. *See* 13 C.F.R. §§ 103.5(a), (c); Small Business Administration, Office of Capital Access, *SOP 50 10 6: Lender and Development Company Loan*

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Programs at p. 185 (Oct. 1, 2020). Womply acted as an agent and lender service provider under the Parties' Agreements. The relief Womply seeks here is the payment of fees under agreements that indisputably were never submitted to or approved by the SBA. Ordering Benworth FL to pay Womply those fees as damages here would thus require Benworth FL to violate the SBA's explicit, well-defined policy. Accordingly, Womply is barred from recovering damages in this action from Benworth FL.

CERTIFICATE OF SERVICE: We hereby certify that on this same date the foregoing reply was filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys and participants of record.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on August 19, 2024.

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