EXHIBIT 3

JAMS ARBITRATION

OTO ANALYTICS, INC. d/b/a Womply, Claimant/Counter-Respondent, v. BENWORTH CAPITAL PARTNERS LLC, Respondent/Counter-Claimant.	No. 1210038203

WOMPLY'S OPPOSITION TO BENWORTH'S MOTION TO STAY

Oto Analytics, Inc. d/b/a Womply (n/k/a Oto Analytics, LLC) ("**Womply**"), by and through its undersigned counsel, respectfully submits this opposition to Benworth Capital Partners LLC's ("**Benworth**") Motion to Stay the Arbitrator's issuance of an interim award (the "**Motion**"). Benworth's latest attempt to delay the resolution of this Arbitration, based on informal email correspondence with a single lawyer from the Small Business Administration ("**SBA**"), should be denied.

Womply commenced this Arbitration more than two years ago, on August 25, 2021, and Womply anticipates that the Arbitrator will issue his interim award this Friday, September 15, 2023. (Hr'g Tr. at 1761:11–13 ("I am looking at probably September 15th, that will be my target date, for trying to get you an interim award.").) Now, with the Arbitration at the proverbial one-yard line, Benworth seeks an indefinite stay pending a purported investigation into Womply's fees by the SBA. Benworth's Motion is based on a single email from Eric Benderson, Associate General Counsel for Litigation at the SBA, in which he claims that the agency is looking into "the fees that Womply charged and its representations as to their nature and what services Womply rendered to earn them in light of the amount of fraudulent loans that resulted from the underwriting and processing of those loans." (Motion Ex. A (Sep. 13, 2023 Benderson Email).) Mr. Benderson's email further claims that the SBA has "a target date of December to complete our investigation as to Womply, although we cannot guarantee that is when we will conclude our investigation." (*Id.*) This is nothing more than a new articulation of the same claim that Benworth made immediately before and during the merits hearing in an (unsuccessful) effort to postpone the hearing. And the Arbitrator already indicated that informal communications—like Mr. Benderson's email—claiming that the SBA has or is about to make a determination as to Womply's fees would not be sufficient to justify a stay of these proceedings.

As the Arbitrator may recall, Benworth has a history of relying on informal correspondence with Mr. Benderson to try to interfere with this case.[1] On January 20, 2023, after the Arbitrator ordered Benworth to produce certain documents relevant to disputed issues, Benworth sought and obtained an email from Mr. Benderson directing Benworth not to produce those documents. Benworth relied on that email to defy the Arbitrator's order. (*See* Exhibit 1 (Benworth's Jan. 20, 2023 Ltr. to Arbitrator) at Ex. A.) On the same day, Benworth asked for permission to disclose to the SBA certain deposition testimony protected from disclosure under the protective order in this case based on a letter from Mr. Benderson. (*See* Exhibit 2 (Jan. 20, 2023 Benworth Ltr.).) The circumstances surrounding that letter were highly suspicious. Benworth represented to the Arbitrator that Mr. Benderson's letter was dated January 3, 2023, but the letter Benworth submitted was actually dated January 20, 2023 (the same day as Benworth's letter motion to the Arbitrator). Then, on January 27, 2023, Benworth submitted an identical copy of Mr. Benderson's January 20 letter, but this time it was dated *January 3, 2023*. (*See* Exhibit 4 (Benworth's Jan. 27, 2023 Ltr. to

[1] Mr. Benderson is a former colleague of Benworth's SBA counsel, Martin Teckler. (*See* Exhibit 3 (Mar. 14, 2023 Womply Ltr. to JAMS) at 8.)

Arbitrator) at 5.) It therefore appears that Mr. Benderson provided Benworth with a backdated letter in aid of Benworth's request to the Arbitrator.

Before the merits hearing in this case, Womply expressed its concerns that Benworth may again call on Mr. Benderson to provide informal correspondence to delay this case. During the pre-Arbitration conference on March 8, 2023, Benworth's counsel made several inconsistent and unsupported representations concerning the SBA and its purported investigation. First, he represented that Benworth intended to call Diana Seaborn, an SBA employee, to testify at the Arbitration hearing, and that she would present the SBA's "determination" regarding the legality of Womply's fees. (*See* Exhibit 3 (Womply's Mar. 14, 2023 Ltr. to JAMS) at 9–10.) That representation was inconsistent with a brief Benworth filed shortly before the conference, in which it claimed that "Ms. Seaborn has not communicated with Benworth regarding her testimony," and that "Benworth and Womply are on equal footing regarding Ms. Seaborn's testimony [because] her testimony could be beneficial or harmful to either party." (*Id.* at 10 (quoting Benworth's Mar. 6, 2023 Ltr. to Arbitrator).) Benworth's counsel then claimed that the SBA was going to decide the legality of Womply's fees "by the end of this month." (*Id.* at 10.) This appears to have been made up out of whole cloth. The Arbitrator directed that, if Benworth submitted evidence supporting its claim that the SBA was about to make a determination as to Womply's fees that would resolve issues in this case, he would consider whether to stay the Arbitration. (*Id.* at 10–11).) Womply's counsel expressed its concern that Benworth would seek a continuance based on informal correspondence from Mr. Benderson, which should carry little weight. In response, the Arbitrator ordered that Benworth had until Friday, March 10, to prove that the SBA was investigating the legality of Womply's fees, and the Arbitrator expressly stated that such proof would have to be an official statement by the SBA and not simply an email. (*Id.*; *see also* Hr'g

Tr. 830:11–832:7.) Benworth failed to provide any such evidence then, and it fails to provide it now.

The events surrounding Benworth's Motion and the Benderson email on which it relies also are highly suspicious. Based on Benworth's own Motion, it is evident that, just three days before the Arbitrator is scheduled to resolve the merits of the parties' dispute, Benworth's counsel sought informal correspondence from Mr. Benderson that Benworth hoped to use to delay this case further. That correspondence shows that, on September 12, 2023, Benworth's CEO—Mr. Navarro—and his counsel met with certain undisclosed SBA representatives, including Mr. Benderson. (*See* Motion Ex. A (Sep. 13, 2023 Benderson Email) ("I want to thank you, the other attorneys that represent Mr. Navarro and especially Mr. Navarro for taking the time to meet with us and answer with great candor the extensive questions that we asked in yesterday's interview.").) The Motion does not disclose the details of that meeting, but it is safe to assume that Mr. Navarro and his counsel discussed Womply and sought to have the federal government investigate Womply's fees—as it has done before. (*See* Exhibit 5 (Benworth's Nov. 21, 2022 Ltr. to Hon. James E. Clyburn) at 2 ("In addition, we request that Congress instruct the Small Business Administration ('SBA') to investigate Womply's conduct connected to the Benworth relationship. Pursuant to the Lender and Development Company Loan Programs, the SBA committed to investigate any complaint concerning fees charged in connection with an SBA program like PPP.").) During or shortly after that meeting, at 3:54 PM on September 12, Benworth's counsel sent a strikingly informal email to Mr. Benderson stating: "Mr. Benderson, if you could let us know on the following questions asap, we would appreciate it." (*See* Motion Ex. A (Sep. 13, 2023 Benderson Email).) The three questions that followed were plainly designed to elicit a response that the SBA was "investigating whether the fees Womply collected from lenders were in compliance with SBA and/or PPP loan program requirements." (*Id.*) Mr. Benderson responded to Mr. Navarro's counsel's request less than 24 hours later, at 10:17 AM on September 13. One hour and 13 minutes later—at 11:30 AM on September 13—Benworth filed its Motion. This strongly suggests that Benworth had advance notice of what Mr. Benderson's response would be and had already prepared its Motion before receiving Mr. Benderson's email.

Womply continues to be deeply troubled by the apparent close coordination between lawyers connected to Benworth and Mr. Navarro, on the one hand, and Mr. Benderson, on the other hand, and their collective efforts to interfere with this case. It is unheard of for a lawyer of a government agency to disclose non-public information about a purported agency investigation to a third party, including the scope and timing of that investigation. The SBA first announced that it was investigating Benworth, Womply, and other participants in the SBA in December 2022. (*See* JX312 (Dec. 8, 2022 SBA Press Release).) Since then, Womply has consistently represented to the Arbitrator that the SBA has not communicated with Womply—let alone sought information from Womply—regarding any investigation into Womply, its services, or its fees.[2] That remains true today—the SBA still has not contacted or otherwise communicated with Womply regarding any such investigation. Mr. Benderson's motivations to repeatedly provide Benworth with information and communications to aid it in this private commercial dispute—and to not engage with Womply—remain a mystery. But that is an issue for the SBA or its Office of Inspector General, and not the Arbitrator, to consider.

[2] The SBA's only communication with Womply regarding its investigation are the two letters in which it claimed to be investigating Benworth, Womply, and other participants in the PPP. Those letters have already been disclosed to the Arbitrator, and the Arbitrator did not find them to be a sufficient basis to stay this action. (Hr'g Tr. 832:8–13.)

Further delay of the Arbitrator's interim award would be extremely prejudicial to Womply. Womply commenced this arbitration more than two years ago seeking more than $150 million in fees from Benworth. During the Arbitration, Womply discovered that Benworth's claim that it was holding Womply's fees "in trust" was false, and that Benworth had transferred more than $170 million to a Puerto Rico entity formed by Mr. Navarro and his wife, rendering Benworth insolvent. (*See* Jan 17, 2023 Order No. 5 at 2.) Womply has commenced litigation in the United States District Court for the District of Puerto Rico against Benworth, the Navarros, and others seeking prejudgment attachment and other relief. *Oto Analytics, LLC v. Benworth Capital Partners PR LLC et al*, 3:23-cv-01034-GMM, ECF No. 1. Benworth's strategy has been to seek delay at every turn. As discussed above, in an effort to avoid a merits hearing, Benworth first claimed the SBA had already made a determination as to the legality of Womply's fees and then claimed it would make that determination by the end of the month. Neither claim was true. Then, just days before the Arbitration hearing, Benworth sought to cause further delay by seeking to disqualify the Arbitrator as biased. JAMS rejected those allegations as unfounded and expressly stated that the delay caused by replacing the Arbitrator would be prejudicial to Womply. (*See* Exhibit 6 (Mar. 16, 2023 JAMS Order on Motion to Disqualify) at 2.) In the Puerto Rico case, Mr. Navarro and his wife evaded service of process for months, forcing Womply to move for leave to serve them by publication, which the court granted. *Oto Analytics, LLC v. Benworth Capital Partners PR LLC et al*, 3:23-cv-01034-GMM, ECF No. 77. In addition, Benworth moved to dismiss the Puerto Rico case on March 29, 2023, arguing that Womply's claims are not ripe because this Arbitration has not been resolved. *Oto Analytics, LLC v. Benworth Capital Partners PR LLC et al*, 3:23-cv-01034-GMM, ECF No. 35 at 4–5. Its motion has been pending since, strongly suggesting that the Puerto Rico court is waiting for the Arbitrator to issue his decision in this case. Meanwhile, Benworth is asking the Arbitrator to stay this case indefinitely pending a purported SBA investigation that may or may not conclude in December. Indeed, Mr. Benderson admits that December is simply a "target date" and that he "cannot guarantee that is when we will conclude our investigation."[3]

Finally, Womply respectfully requests that the Arbitrator not schedule oral argument on this matter. Benworth claims that it "requires" oral argument, but it does not (because it cannot) explain why that would be helpful to the Arbitrator. Now, more than two years after this case commenced, and more than five months after the Arbitration hearing, Womply is entitled to a decision on the parties' claims and defenses. Scheduling oral argument to discuss a single email from Mr. Benderson would cause unnecessary delay and severely prejudice Womply, which is precisely what Benworth seeks with its Motion.

For the foregoing reasons, Womply respectfully requests that the Arbitrator deny Benworth's Motion and issue his decision on the merits and interim award on September 15, 2023, or as soon thereafter as the decision is ready.

[3] Benworth's reliance on *Naing Int'l Enters., Ltd. v. Ellsworth Assocs., Inc.*, 961 F. Supp. 1 (D.D.C. 1997), to argue that it would be prejudiced if the arbitration is not stayed is misplaced. The court in *Naing* found that the defendant was prejudiced when an arbitration panel refused to postpone an arbitration hearing for less than one month to allow the SBA to act on a report of the SBA Inspector General. *Id.* at 4. The SBA investigation at issue in *Naing* had a limited scope (whether the plaintiff qualified for the SBA's 8(a) program) and a clear deadline (May 10, 1996), and the defendant moved for the postponement *before* the arbitration hearing took place. Here, more than five months *after* the arbitration hearing, Benworth seeks an indefinite stay of an interim award to allow the SBA to conclude an investigation that may or may not be relevant to this arbitration and that has no firm deadline.

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Respectfully submitted,

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