IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

OTO ANALYTICS, INC. d/b/a WOMPLY Plaintiff, v. CAPITAL PLUS FINANCIAL, LLC, CROSSROADS SYSTEMS, INC., ERIC DONNELLY, BA FIN ORION, LLC d/b/a BLUEACORN, and BARRY CALHOUN Defendants.	§ § § § § § § § § § § §	Civil Action No. 3:21-cv-2636-B

PLAINTIFF'S SECOND AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15(a)(2), the Court's May 11, 2022 Order (ECF No. 82), and the Court's July 7, 2022 Order (ECF No. 101), Plaintiff Oto Analytics, Inc. d/b/a Womply (n/k/a Oto Analytics, LLC) ("Womply"), by and through its undersigned counsel, files its Second Amended Complaint against Defendants Capital Plus Financial, LLC ("Capital Plus"), Crossroads Systems, Inc. ("Crossroads"), and Eric Donnelly ("Donnelly"; together with Capital Plus and Crossroads, the "Capital Plus Defendants"), and Defendants BA Fin Orion, LLC d/b/a Blueacorn ("Blueacorn")[1] and Barry Calhoun ("Calhoun"; together with Blueacorn and the Capital Plus Defendants, "Defendants") and alleges as follows:

INTRODUCTION

1. This case concerns fees Womply earned by creating and providing technology infrastructure crucial to the success of the federal Paycheck Protection Program ("PPP"). Congress enacted the PPP to authorize banks and other lenders to make federally guaranteed and (if statutory

[1] On information and belief, BA Fin Orion, LLC has since been restructured and is owned by Blueacorn PPP, LLC.

conditions are met) forgivable loans to businesses that sought to continue to cover payroll and other basic expenses during the height of the COVID-19 pandemic. Congress tasked the United States Small Business Administration ("SBA") with implementing the PPP's ambitious objectives. The program required connecting millions of potential borrowers with thousands of lenders, which were required to organize and review applications for compliance with the PPP's criteria and, if a loan was approved, track and service the loan in accordance with still further program requirements. All told, more than 10 million borrowers obtained PPP loans from approximately 5,500 national and local lenders.

2. Many of the PPP loans were of modest size, and much smaller than most lenders were accustomed to making. Moreover, the vast majority of the 5,500 PPP lenders did not have previous experience funding and managing a large volume of loans. As a result, many of those lenders lacked the personnel and technological infrastructure to receive thousands upon thousands of loan applications, conduct the review and approval process, and maintain the records required for servicing and tracking so many loans. All of these challenges had to be overcome expeditiously enough to provide urgently needed economic relief to the borrowers.

3. Womply is a technology company that filled a crucial role in solving those problems. As relevant here, Womply performed two primary functions: (i) Womply developed and maintained a website through which small businesses searching for PPP assistance could be connected with and submit application materials to PPP lenders; and (ii) Womply provided lenders and lenders' partners (such as loan-servicing companies) with a technology platform necessary to manage the enormous logistical difficulties inherent in reviewing, approving, and servicing thousands—and, in some cases, hundreds of thousands—of small-dollar PPP loans. Womply provided some or all such services to fifteen lenders and lender partners, resulting in more than

1.3 million PPP loans to small businesses across the country, totaling nearly $19 billion in principal amount.

4. In addition to interest and a federal guarantee, the PPP provided lenders with "processing fees" that were generous relative to the size of the loans. For example, lenders would receive a 50% fee for any loan of up to $5,000 and a flat $2,500 fee for loans between $5,000 and $50,000. Recognizing the difficulty of connecting borrowers with lenders across such a scale (but with small loan amounts involved in most transactions), SBA rules authorized lenders to pay up to 1% of the loan amount to a third-party "Agent" that helped a borrower prepare and submit its application to a lender. The SBA noted that this modest fee was reasonable in light of the limited time and effort required to fill out a PPP loan application. The SBA also recognized that lenders may choose to obtain a wide variety of technology services from third-party service providers to help the lenders process and manage thousands of small-dollar PPP loans, and SBA rules did not cap such technology services fees; lenders were free to contract for those services as their particular needs required.

5. This lawsuit arose because lender Capital Plus and its lender service provider Blueacorn have refused to pay Womply for its provision of applicant referral services ***and*** substantial technology services. They refuse even though Womply's services enabled them to earn massive fees from the federal government under the PPP. Before the PPP, Capital Plus was a small regional lender with less than $40 million in annual revenue. Capital Plus nonetheless originated more than [redacted] risk-free PPP loans through its partnership with Blueacorn, totaling more than $[redacted] in principal amount. In total, Capital Plus received $930 million in fees from the SBA for its participation in PPP. Just the loans Capital Plus originated and managed using Womply's technology platform generated fees of more than $[redacted] million for Capital Plus.

Meanwhile, Capital Plus and Blueacorn made extensive use of Womply's technology platform to review, approve, and manage those loans. Indeed, Capital Plus's and Blueacorn's contractors and employees—including Capital Plus's CEO (Defendant Eric Donnelly) and CFO, as well as Blueacorn's CEO (Defendant Barry Calhoun)—logged in to the lender-facing portal numerous times to review, approve, and manage PPP loans and loan applications.

6. There is no dispute that Womply is owed more than $76 million (plus interest) under two contracts with Blueacorn: (1) the referral contract (which accounts for approximately $9 million) and (2) the technology contract (which accounts for approximately $67 million). Blueacorn has refused to pay Womply, however, asserting that Blueacorn is, in turn, waiting for payment from Capital Plus. For its part, Capital Plus admits it has already received more than $[redacted] million in fees from the federal government for the Womply-referred loans, and does not deny that it is contractually obligated to pay Blueacorn. Capital Plus's failure to pay Blueacorn is no oversight: under the Lender Service Provider agreement between Blueacorn and Capital Plus, Capital Plus agreed [redacted]

7. Womply filed its initial lawsuit in Texas state court seeking to require Capital Plus to honor its obligations. Capital Plus then saw an opportunity to reap a massive windfall for itself, claiming for the first time that Capital Plus was ***prohibited*** by SBA rules from paying Blueacorn, despite the absence of any authority supporting Capital Plus's newfound reading of the rules and the fact that Capital Plus had paid Blueacorn such fees in the past. Lest there be any doubt as to Capital Plus's true motives, Capital Plus has refused to pay even the portion of the fees it says ***are*** allowed by the SBA's rules (*i.e.*, the $9 million due under the referral contract), and Capital Plus

proposes to keep for itself the fees it received from the federal government but is supposedly forbidden from paying for Womply's technology services. This is a money grab, plain and simple.

8. One might expect Blueacorn to share Womply's outrage, but recent events have revealed that Blueacorn is engaged in a coordinated scheme with Capital Plus. Their strategy started with Blueacorn and Capital Plus representing to Womply that fees Capital Plus would receive from the federal government would go directly into an account jointly held by Blueacorn and Capital Plus—thus eliminating Blueacorn's ability to claim it could not pay Womply until Capital Plus paid Blueacorn. That was a lie. Capital Plus recently admitted that all of the more than $[redacted] million Capital Plus received from the SBA for funding Womply-referred PPP loans was instead deposited directly into [redacted]

9. What is more, Blueacorn hopes to facilitate the windfall to Capital Plus without risking a penny of Blueacorn's own money. Pursuant to agreements between Blueacorn and Capital Plus, [redacted] Nevertheless, Blueacorn has not sought to compel payment from Capital Plus because Blueacorn is beholden to Capital Plus; Blueacorn did not even exist before April 2020, and Capital Plus is one of just ***two*** Blueacorn lender counterparties. In fact, Capital Plus has paid Blueacorn more than $600 million in fees from what Blueacorn and Capital Plus claim are non-Womply loan transactions under the PPP.

10. Womply now commences this lawsuit to obtain, among other things, (i) a declaratory judgment that SBA rules capping fees for PPP loan application preparation and referral

services do not apply to the technology fees charged by Womply; (ii) money damages, including contractual fees and punitive damages; (iii) equitable relief, including disgorgement and/or constructive trust; and (iv) reasonable attorneys' fees and costs.

PARTIES

11. Plaintiff Womply is a limited liability company organized under the laws of Delaware.

12. Defendant Capital Plus is a Texas limited liability company with its principal place of business located in Bedford, Texas.

13. Defendant Crossroads is a Delaware corporation with its principal place of business located in Dallas, Texas. Capital Plus is a wholly owned subsidiary of Crossroads.

14. Defendant Donnelly is an individual who, on information and belief, resides in Denver, Colorado. Donnelly is the CEO and a member of the Board of Directors of Crossroads. Until August 30, 2021, Donnelly was also the CEO of Capital Plus. Donnelly is Capital Plus's registered agent for service of process, which may be served at 2247 Central Drive, Bedford, Texas 76021.

15. Defendant BA Fin Orion, LLC d/b/a Blueacorn is a Wyoming limited liability company with its principal place of business in Wyoming. On information and belief, BA Fin Orion, LLC d/b/a Blueacorn has been restructured and is now owned by Blueacorn PPP, LLC, which is an Arizona limited liability company with its principal place of business in Arizona. Also on information and belief, BA Fin Orion, LLC d/b/a Blueacorn is affiliated with Fin Cap, Inc., a Wyoming corporation that also does business as Blueacorn.

16. Defendant Calhoun is an individual who, on information and belief, resides in Scottsdale, Arizona. Calhoun is the CEO of Blueacorn.

JURISDICTION AND VENUE

17. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1441(a), and 1442(a) and supplemental jurisdiction over the state law claims alleged herein pursuant to 28 U.S.C. § 1367.

18. This Court has subject matter jurisdiction over Womply's claims against Blueacorn because the arbitration provision in the agreements between Womply and Blueacorn was procured through fraud and therefore is unenforceable.

19. This Court has personal jurisdiction over Defendant Capital Plus because Capital Plus is a Texas limited liability company with its principal place of business located in this District.

20. This Court has personal jurisdiction over Defendant Crossroads because Crossroads has its principal place of business located in this District.

21. This Court has personal jurisdiction over Defendant Donnelly because he has continuous and systematic contacts with Texas by virtue of his active role as an officer and director of Crossroads and as a former officer of Capital Plus. This Court also has personal jurisdiction over Donnelly because he has purposefully conducted activities in Texas on behalf of Crossroads and Capital Plus, the causes of action herein arise from or relate to those purposeful contacts with Texas, and the exercise of personal jurisdiction does not offend traditional notions of fair play and substantial justice.

22. This Court has personal jurisdiction over Defendant Blueacorn because Blueacorn has purposefully conducted activities in Texas, including through its business relationship with Capital Plus, the causes of action herein arise from or relate to those purposeful contacts with Texas, and the exercise of personal jurisdiction does not offend traditional notions of fair play and substantial justice.

23. This Court has personal jurisdiction over Defendant Calhoun because he has purposefully conducted activities in Texas on behalf of Blueacorn, including through his active role as an officer of Blueacorn and his business relationship with Capital Plus, the causes of action herein arise from or relate to those purposeful contacts with Texas, and the exercise of personal jurisdiction does not offend traditional notions of fair play and substantial justice.

24. As discussed in more detail below, Defendants Blueacorn and Calhoun, and Blueacorn's agreements with Womply, have substantial connections to Texas, including that:

a. Blueacorn was created to provide PPP loan services to just two lenders, one of which is Capital Plus, which is based and operates solely in Texas;

b. Blueacorn entered into Lender Service Provider Agreements with Texas-based Capital Plus;

c. As Capital Plus's Lender Service Provider, Blueacorn was Capital Plus's "Agent" under applicable SBA regulations at all relevant times;

d. As described in the Lender Service Provider Agreements between Capital Plus and Blueacorn, Capital Plus retained Blueacorn as a Lender Service Provider to [redacted]

e. Pursuant to those agreements, Blueacorn provided Texas-based Capital Plus with [redacted]

[redacted]

f. Also pursuant to those agreements, Blueacorn [redacted]

g. On information and belief, Blueacorn also contracted with PPP loan referral agents on behalf or for the benefit of Capital Plus, and the agreements between Capital Plus and Blueacorn provided that [redacted]

h. Blueacorn's agreements with Capital Plus include [redacted]

i. Blueacorn referred hundreds of thousands of non-Womply PPP loans to Capital Plus in Texas, and, using Blueacorn's services, Capital Plus funded more than [redacted] of those loans totaling more than [redacted] in principal amount;

j. Blueacorn referred hundreds of thousands of Womply-referred PPP loans to Capital Plus in Texas, and, using Blueacorn's services, Capital Plus funded more than

87,000 of those loans (which loans are the subject of this action) totaling more than $960 million in principal amount;

k. Through its partnership with Blueacorn, Texas-based Capital Plus received more than $930 million in fees from the SBA;

l. Blueacorn received more than $600 million in fees from Texas-based Capital Plus;

m. Blueacorn marketed its services in Texas, originated PPP loans for Capital Plus from borrowers in Texas, facilitated PPP loans to borrowers in Texas, and provided Capital Plus with services for PPP loans made to borrowers in Texas;

n. Blueacorn and Capital Plus together negotiated and induced Womply to enter into agreements for Womply's referral and technology services, including by sending diligence lists, exchanging emails, and participating in a joint telephone call; and

o. Blueacorn and Capital Plus coordinated closely to perform the agreements with Womply, including by jointly setting rules for Womply to apply and by using Womply's technology platform to review, track, and manage PPP loans.

25. This Court also has personal jurisdiction over Defendants Blueacorn and Calhoun because, as discussed in more detail below, they conspired with the Capital Plus Defendants against Womply, the Capital Plus Defendants committed purposeful acts in Texas in furtherance of that conspiracy, and those acts in Texas are attributable to Defendants Blueacorn and Calhoun as co-conspirators.

26. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c), because a substantial part of the events or omissions giving rise to the claims alleged herein occurred in this District.

27. Declaratory relief is appropriate pursuant to 28 U.S.C. § 2201 because an actual controversy exists regarding the disputed SBA rules and regulations at issue in this action.

FACTS

A. Congress Creates The Paycheck Protection Program Administered By The SBA Under The Existing Framework Of The SBA's Section 7(a) Program.

28. In response to the COVID-19 pandemic, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020), which, among other things, created the Paycheck Protection Program. The PPP allowed qualifying small businesses to apply for low-interest private loans to fund expenses such as payroll costs, rent, interest, and utilities. PPP loans were guaranteed by the SBA and could be partially or fully forgiven if a borrower spent the loan money in accordance with the program requirements. As a result, lenders that funded PPP loans bore no financial risk if borrowers failed to repay their loans. The SBA paid lenders interest on the PPP loans and Lender Processing Fees pursuant to applicable SBA rules. The President signed the CARES Act into law on March 27, 2020.

29. Congress decided that the SBA should implement the PPP using the framework of its preexisting small-business lending program under Section 7(a) of the Small Business Act, 15 U.S.C. § 636(a). Before the PPP, small businesses applying for a Section 7(a) loan sometimes engaged the services of "borrower Agents" that would help the applicant prepare a loan application. Section 7(a) lenders also sometimes retained outside vendors, such as "Lender Service Providers," to assist with lender functions.

30. SBA regulations define the term "Agent," to include certain borrower Agents and certain types of lender-side outside vendors, including Lender Service Providers. Those regulations define "Agent" to mean "an authorized representative, including an attorney,

accountant, consultant, packager, lender service provider, or any other person representing an Applicant or Participant by conducting business with SBA." 13 C.F.R. § 103.1(a).

31. The SBA defines "conduct business with SBA" to mean:

> (1) Preparing or submitting on behalf of an applicant an application for financial assistance of any kind, assistance from the Investment Division of SBA, or assistance in procurement and technical matters;
>
> (2) Preparing or processing on behalf of a lender or a participant in any of SBA's programs an application for federal financial assistance;
>
> (3) Participating with or communicating in any way with officers or employees of SBA on an applicant's, participant's, or lender's behalf;
>
> (4) Acting as a lender service provider; and
>
> (5) Such other activity as SBA reasonably shall determine.

13 C.F.R. § 103.1(b).

32. SBA regulations separately define a category of "Referral Agents," independent of the definition of "Agent." "Referral Agent means a person or entity who identifies and refers an Applicant to a lender or a lender to an Applicant." 13 C.F.R. § 103.1(f).

33. The SBA has also recognized that lenders may choose to contract with technology service providers. The SBA treats lenders' relationships with technology service providers differently from lenders' relationships with "Agents" that provide lender services. The SBA Standard Operating Procedure (SOP) 50 10 6, effective October 1, 2020 (the "SBA SOP"), which is the principal guidance document interpreting the regulations governing the Section 7(a) program, states that "***SBA does not consider entities providing technology services that do not include underwriting to be Agents.***" SBA SOP at 179, 185, 194 (emphasis added). Unlike the fees lenders pay to Agents for providing borrowers with limited application preparation and

referral services, the fees lenders pay to technology service providers for providing the lenders with technology are not capped by SBA rules or any other applicable regulation, rule, or law.

34. The SBA defines "technology services fees" to include, for example, "[t]he costs or fees for ***software or technology*** used in connection with preparing SBA loan documents . . . or closing the SBA-guaranteed loan," "[a]cquisition costs or fees for licensing ***software or software platforms*** to 7(a) Lenders solely for the purpose of performing administrative functions (not including underwriting functions), such as generating SBA-required forms," and "[f]ees associated with entities that develop systems or ***lending platforms to automate the 7(a) Lender's internal loan decision making process***." *Id.* at 179 (emphasis added).

B. Congress Passes Legislation And The SBA Issues Rules Regarding The Fees Agents Can Collect For Assisting Borrowers With Applications.

i) The SBA's Pre-PPP February 2020 Rule Regarding Borrower Agent Fees

35. Before the COVID-19 pandemic, the SBA had been working to "minimize the cost for a small business Applicant to obtain an SBA-guaranteed loan." Express Loan Programs; Affiliation Standards, 85 Fed. Reg. 7,622, 7,630 (Feb. 10, 2020) ("February 2020 Rule").[2] Among other issues, the SBA was concerned that borrowers would retain agents to assist them with obtaining SBA loans, and that those agents would charge the borrowers unreasonably high fees. Accordingly, the SBA proposed, and in February 2020 promulgated, an Interim Final Rule providing that fees that an "Agent" charged an "Applicant,"—*i.e.*, a borrower—"for services rendered in connection with obtaining an SBA-guaranteed loan must be reasonable." *Id.* at 7,647. As the SBA explained, "[b]ecause SBA's primary concern is to minimize the cost for a small business Applicant to obtain an SBA-guaranteed loan, these fee limitations will not apply when an

[2] *Available at* https://www.govinfo.gov/content/pkg/FR-2020-02-10/pdf/2020-02128.pdf.

SBA Lender pays fees to an Agent for services in connection with an SBA-guaranteed loan." *Id.* at 7,630–31.

36. The February 2020 Rule also modified the definition of Agent so that Referral Agents (now called "Loan Brokers") would be a subset of Agents, rather than an independently defined category. *Id.* at 7,647.

37. The February 2020 Rule was promulgated just as the COVID-19 pandemic was arriving in the United States. When Congress created the PPP program in March 2020 as part of the CARES Act, it rescinded the February 2020 Rule. CARES Act § 1102(e), 134 Stat. at 294, codified at 15 U.S.C. § 636.

38. In the CARES Act, Congress empowered the SBA to "establish[]" "limits" on fees that Agents could collect for "assist[ing] an eligible recipient"[3]—*i.e.*, a borrower—"to prepare an application for a [PPP] loan." CARES Act § 1102(a)(2), 134 Stat. at 293, codified as amended at 15 U.S.C. § 636(a)(36)(P)(ii). As discussed below, the SBA promptly promulgated a rule establishing a limit on fees that an Agent could charge *for assisting a borrower* with preparing an application for a PPP loan and referring the borrower to a lender, but it did not establish any limit on fees that an Agent could charge a PPP lender for assisting the lender with a PPP loan.

ii) The SBA's April 2020 PPP Rule Creates Uncertainty About Who Pays Agent Fees.

39. On April 15, 2020, the SBA implemented the PPP by, among other things, promulgating an Interim Final Rule (the "April 2020 PPP Rule"). *See* Business Loan Program Temporary Changes; Paycheck Protection Program, 85 Fed. Reg. 20,811, 20,816 (Apr. 15, 2020).[4]

[3] An "eligible recipient" is "an individual or entity that is eligible to receive a covered loan"—in other words, a borrower. 15 U.S.C. § 636(a)(36)(A)(iv).

[4] *Available at* https://www.govinfo.gov/content/pkg/FR-2020-04-15/pdf/2020-07672.pdf.

Under the April 2020 PPP Rule, for funding a PPP loan of $350,000 or less, the SBA would pay a lender a Lender Processing Fee equal to 5% of the PPP loan amount.

40. Consistent with its statutory authority to limit fees that Agents could collect for "assist[ing] an eligible recipient to prepare an application for a [PPP] loan," CARES Act § 1102(a)(2), the SBA limited the fees that "[a]n agent who assists a borrower" could charge for "assistance in preparing an application for a PPP loan." *Id.* at 20,816. For PPP loans of $350,000 or less, an Agent could collect no more than 1% of the PPP loan amount for assisting the borrower (the "Borrower Agent Fee Cap"). *Id.* The April 2020 PPP Rule explained that this 1% cap on fees was "reasonable based upon the application requirements and the fees that lenders receive for making PPP loans." *Id.*

41. However, unlike under the pre-PPP February 2020 Rule, the April 2020 PPP Rule prohibited Agents from collecting fees from the borrower, including from the proceeds of the PPP loan. *Id.* Instead, it required that any Agent fees must be paid out of the fees the lender receives from the SBA. *Id.* The relevant text of the April 2020 PPP Rule's Borrower Agent Fee Cap provided:

> Who pays the fee to an agent who assists a borrower?
>
> Agent fees will be paid by the lender out of the fees the lender receives from SBA. Agents may not collect fees from the borrower or be paid out of the PPP loan proceeds. The total amount that an agent may collect from the lender for assistance in preparing an application for a PPP loan (including referral to the lender) may not exceed: . . . One (1) percent for loans of not more than $350,000 . . . .

Id.

42. The April 2020 PPP Rule led to some confusion about who was responsible for paying a borrower Agent's fees. Some Agents helped borrowers prepare applications and referred

the borrowers to lenders, but because the Agents could not collect fees from the borrowers, the Agents sought payment from the lenders. Those lenders refused to pay, arguing that they had never agreed to pay the Agent any fees for helping the borrower. As a result, some of these Agents sued the lenders seeking payment, arguing that the CARES Act and April 2020 PPP Rule created a statutory or regulatory obligation on the part of the lenders to pay the Agents their fees. *See, e.g.*, *Daniel T.A. Cotts PLLC v. Am. Bank, N.A.*, 2021 WL 2196636, at *1 (S.D. Tex. Feb. 9, 2021) (collecting cases). Federal district courts around the country uniformly rejected that argument. *Id.*; *see also, e.g.*, *Johnson v. JPMorgan Chase Bank, N.A.*, 488 F. Supp. 3d 144, 157 (S.D.N.Y. 2020); *Am. Video Duplicating, Inc. v. City Nat'l Bank*, 2020 WL 6882735, at *1 (C.D. Cal. Nov. 20, 2020). Those courts held that the April 2020 PPP Rule did not obligate a lender to pay a borrower Agent's fees; rather, the April 2020 PPP Rule required only that a borrower's Agent be paid—if at all—out of fees the lender received from the SBA. In other words, for an Agent to be paid for assisting a borrower with preparing an application for a PPP loan and referring the borrower to a PPP lender, the lender must first agree to pay the borrower Agent for providing those services to the borrower.

iii) The Economic Aid Act Clarifies Who Pays Borrower Agent Fees.

43. In late 2020, Congress responded to the wave of litigation over Agent Fees by codifying the courts' holdings that the PPP did not create a statutory or regulatory obligation on the part of lenders to pay fees to borrower Agents. Specifically, in the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (the "Economic Aid Act"), Pub. L. No. 116-260, 134 Stat. 1182 (Dec. 27, 2020), Congress amended Section 7(a)(36)(P)(ii)—which, as discussed above, gave the Administrator of the SBA the power to limit the fees of a borrower Agent—to read as follows (with the newly added text in bold):

> An agent that assists an eligible recipient to prepare an application for a covered loan may not collect a fee in excess of the limits established by the Administrator. **If an eligible recipient has knowingly retained an agent, such fees shall be paid by the eligible recipient and may not be paid out of the proceeds of a covered loan. A lender shall only be responsible for paying fees to an agent for services for which the lender directly contracts with the agent.**

Economic Aid Act § 340(b)(1), 134 Stat. at 2050, codified at 15 U.S.C. § 636(a)(36)(P)(ii) (emphasis added to reflect newly added text).

44. As supplemented by the Economic Aid Act, Section 7(a)(36)(P)(ii) made two important changes to the legal framework governing the fees of borrower Agents. First, Congress abandoned the restriction on Agents collecting fees from borrowers and, instead, allowed borrower Agents to collect fees from borrowers who "knowingly" procured Agent services. Second, Congress made clear that lenders did not have a statutory or regulatory obligation to pay borrower Agents' fees; instead, lenders would be responsible for such fees only if they expressly agreed to pay them.

45. The Economic Aid Act did not, however, alter the SBA's authority to establish limits on Agent fees as provided for by the CARES Act. That authority remained limited to the fees that an Agent collects for providing assistance to "an eligible recipient"—*i.e.*, a borrower—"to prepare an application" for a PPP loan.

46. Neither Congress nor the SBA has ever purported to limit fees that an Agent can charge for services it provides to a *lender*. To the extent the SBA's regulations have spoken to that issue at all, it is clear that no such limitation exists. 13 C.F.R. § 103.5(c) (except for a prohibition on sharing secondary-market premiums, "lenders have reasonable discretion in setting compensation for Lender Service Providers"); SOP 10 5 6, at 176–81, 195–96 (devoting seven

pages in SBA's guidance document to explaining what fees an Agent or lender can collect from a borrower, but no pages to what fees an Agent can collect from a lender).

iv) The Economic Aid Act Increases Lender Processing Fees For Small Dollar Loans.

47. In addition to clarifying who pays a borrower Agent's fees, the Economic Aid Act also increased Lender Processing Fees for small loans, seeking to incentivize lenders to fund PPP loans for small businesses.

48. Under the CARES Act, many relatively small businesses initially struggled to obtain PPP loans. Reviewing and processing PPP loan applications and managing and tracking a PPP loan portfolio require substantial resources and involves a tremendous amount of paperwork, and many lenders were not able or willing to devote such resources to funding smaller PPP loans when they stood to recover a Lender Processing Fee of just 5% of the PPP loan amount under the April 2020 PPP Rule. Instead, Lenders focused on approving and funding larger PPP loans, which paid larger Lender Processing Fees. Before the Economic Aid Act was enacted in December 2020, more than half of all funded PPP loans had a principal amount of $350,000 or more; more than 78% of all funded PPP loans had a principal amount of $100,000 or more; and the average PPP loan amount was $101,000.

49. In an effort to increase the number of PPP loans going to smaller businesses, Congress increased the Lender Processing Fees for PPP loans of $50,000 or less from 5% of the loan amount (under the April 2020 PPP Rule) to the lesser of $2,500 or 50% of the loan amount. The following table illustrates the significant differences in fee amounts for several hypothetical smaller loan amounts:

	PPP LENDER PROCESSING FEE	
Loan Amount	April 2020 Rule	2021 Amendment
$40,000	$2,000	$2,500
$30,000	$1,500	$2,500
$20,000	$1,000	$2,500
$10,000	$500	$2,500
$5,000	$250	$2,500
$3,000	$150	$1,500

50. Following the increase in Lender Processing Fees for these smaller PPP loans, the average PPP loan dropped to $59,000.

v) The SBA Promulgates The January 2021 PPP Rule To Implement The Changes In The Economic Aid Act.

51. In January 2021, shortly after the Economic Aid Act was enacted, the SBA promulgated an Interim Final Rule (the "January 2021 PPP Rule"). Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by Economic Aid Act, 86 Fed. Reg. 3,692 (Jan. 14, 2021). The SBA explicitly stated that, other than incorporating Congress's clarifications of who pays borrower Agents to the April 2020 PPP Rule, the January 2021 PPP Rule did not "substantively alter or affect PPP rules that were not amended by the Economic Aid Act," 86 Fed. Reg. at 3,692, including the rule that borrower Agents could not collect more than 1% of a PPP loan amount for assisting a borrower with preparing an application and referring the borrower to a lender.

52. In the January 2021 PPP Rule, the SBA changed the wording of the Borrower Agent Fee Cap to reflect the changes made by Congress in the Economic Aid Act. The below table

compares the language of the Borrower Agent Fee Cap in the April 2020 PPP Rule with the corresponding language in the January 2021 PPP Rule:

April 2020 PPP Rule	January 2021 PPP Rule
Who pays the fee to an agent ***who assists a borrower?***	Who pays the fee to an agent ***who provides assistance in connection with a PPP loan?***
Agent fees will be paid by the lender out of the fees the lender receives from SBA. Agents may not collect fees from the borrower or be paid out of the PPP loan proceeds. The total amount that an agent may collect from the lender for assistance in preparing an application for a PPP loan (including referral to the lender) may not exceed: . . . One (1) percent for loans of not more than $350,000	Agent fees may not be paid out of the proceeds of a PPP loan. <u>If a borrower has knowingly retained an agent, such fees will be paid by the borrower. A lender is only responsible for paying fees to an agent for services for which the lender directly contracts with the agent.</u> The total amount that an agent may collect from the lender for assistance in preparing an application for a PPP loan (including referral to the lender) may not exceed: . . . One (1) percent for loans of not more than $350,000 . . . .
85 Fed. Reg. at 20,816 (emphasis added).	86 Fed. Reg. at 3,709 (emphasis added).

53. As reflected above, the SBA added the two underlined sentences to the Borrower Agent Fee Cap in the January 2021 PPP Rule in order to implement the Economic Aid Act's direction on when a borrower or a lender is responsible for paying a borrower Agent's fees.

54. In addition, as reflected by the italicized language above, the SBA changed the prompt that appears before the Borrower Agent Fee Cap in the January 2021 PPP Rule. That change is not related to anything in the Economic Aid Act or any other legislation passed by Congress. While the SBA removed the reference to "a borrower" in the prompt that appeared in the April 2020 PPP Rule, there is nothing to suggest that with this change the SBA intended to implicitly expand the Borrower Agent Fee Cap to apply to fees Agents collect for providing services ***to lenders***. To the contrary, the Borrower Agent Fee Cap in the January 2021 PPP Rule limits only those fees an Agent collects for providing "***assistance in preparing an application for***

a PPP loan (including referral to the lender)," 86 Fed. Reg. at 3,709 (emphasis added), which are by their nature services provided to a borrower.

55. On August 16, 2021, certain PPP lenders sent a letter (attached as Exhibit 1 hereto) to the SBA claiming, without acknowledging the January 2021 PPP Rule, that the SBA had not "issued regulations . . . regarding the maximum loan agent fees that lenders could pay for referrals" of PPP loans after passage of the Economic Aid Act. These lenders proposed that the SBA address this purported "oversight" by issuing "a short regulation . . . indicating that no lender may pay more than 50% of their earned processing fees made on these smaller ($50,000 and under) PPP loans to any loan agent."

56. The SBA rejected the lenders' proposal. On September 14, 2021, the SBA sent a letter to the lenders (attached as Exhibit 2 hereto) directing them to the January 2021 PPP Rule.

C. During The First Round Of The PPP In 2020, Womply Begins Providing Limited PPP Loan Referral Services.

57. Womply was founded in 2011 as a technology company that provided small businesses with tools to facilitate reputation management, email marketing, and business intelligence.

58. Because of its work with small businesses, Womply was keenly aware in early 2020 of the devastating impact that the COVID-19 pandemic was having on small businesses, including its own clients. It recognized that many small businesses were at risk of shutting down permanently and desperately needed an injection of cash to stay afloat.

59. Following the passage of the CARES Act, Womply saw an opportunity to use its existing technology platform to help small businesses obtain PPP Loans. In April 2020, Womply made publicly available a website through which small businesses seeking PPP loans could submit some basic contact and business information.

60. Womply also contracted with several PPP lenders, pursuant to which Womply agreed to direct the small businesses that entered information in Womply's website to the lenders' websites. Womply routed the applicants to the lenders partners based on the lenders' instructions regarding the types of loans they would fund. Womply's website made clear to borrowers that Womply was not a lender and was not itself providing PPP loans.

61. After Womply directed a small business to a PPP lender partner, that lender was responsible for collecting additional information and supporting documentation from the applicant, performing any Know Your Customer ("KYC") and anti-fraud checks the lender chose to perform, verifying applicant information, deciding whether to fund the loan, having a PPP loan application and promissory note completed and executed, organizing and maintaining the loan file, and processing, managing, and tracking the Womply-referred PPP loan and all other PPP loans the lender funded.

62. For providing this limited referral service ("Non-Fast Lane"), Womply's lender partners agreed to pay Womply referral fees pursuant to negotiated agreements. Womply did not provide these lender partners with technology services in connection with these referrals. In accordance with the April 2020 PPP Rule, Womply did not charge borrowers any fees. Neither Blueacorn nor Capital Plus participated in Non-Fast Lane.

D. Womply Develops A Technology Platform That Integrates Critical Technology Services, Allowing Lenders Like Capital Plus To Efficiently and Economically Fund And Manage A Large Volume Of Small-Dollar Loans.

63. Womply was committed to helping many of the nation's smallest businesses, which were at greatest risk of going out of business during the pandemic, access the PPP. During the first round of the PPP in 2020, however, Womply observed that many lenders had limited personnel and technological infrastructure, and they were unable or unwilling to handle the workload associated with processing, managing, and tracking a large volume of PPP loans.

Womply also recognized that, as discussed above (*supra* ¶ 48), many lenders focused primarily on funding larger PPP loans to maximize the interest the lenders received on the loans and the Lender Processing Fees the lenders received from the SBA. This left millions of eligible small businesses without ready access to PPP loans.

64. These barriers were reflected in Womply's own data. Despite its efforts to convince lenders to loan to the smallest businesses, the average Womply-referred PPP loan funded by PPP lenders during the first round of PPP was approximately $52,000. While this was well below the program-wide average of $101,000, it was much higher than the relatively small loans that the country's smallest businesses needed.

65. Womply sought to overcome these obstacles by developing new technology that would make it efficient and economical for lenders to process, manage, and track a large volume of small dollar PPP loans for the country's smallest businesses.

66. As part of that effort, Womply acquired Insurgent, Inc. d/b/a FundRocket ("FundRocket") in November 2020 for approximately $15 million in stock, obtaining FundRocket's proprietary technology platform and personnel with expertise in loan file management, small business data analysis, and fraud detection.

67. In January and early February 2021, Womply sought to partner with large financial institutions and personal finance companies to help develop the technology, including Intuit, Capital One, PayPal, American Express, Square, and H&R Block. None of the financial institutions that Womply approached were interested.

68. Womply instead decided to develop its own technology and borrowed tens of millions of dollars in emergency financing to support PPP operations. To that end, Womply leveraged its existing commerce platform and small business expertise, plus the technology and

team acquired from Fundrocket. Womply personnel worked almost around the clock, seven days a week, developing a new technology platform that successfully integrated technology services from multiple third-party applications. Womply invested substantial amounts of time and money into this project, without any assurance that the initiative would be commercially successful.

69. In late February 2021, Womply released "PPP Fast Lane," a technology platform that allowed small businesses to submit documents and information to apply for a PPP loan and allowed lenders to efficiently process, manage, and track their PPP loans, particularly the smaller PPP loans to the smallest businesses (the "Technology Platform" or "Fast Lane").

70. Womply's Technology Platform was a major advancement compared to the initial website Womply developed to provide limited referral services in the first round of PPP in 2020. The Technology Platform had three main components: (i) a user-friendly, borrower-facing website through which small businesses could submit information to apply for a PPP loan; (ii) integrated technology services and application program interfaces ("APIs")—a type of complicated software code that allows data to be transferred—which evolved over time and ultimately included services from more than ten third-party technology service providers; and (iii) a lender-facing portal through which lenders could manage the entire PPP loan process.

71. ***First***, the borrower-facing website allowed a prospective applicant to enter the information necessary to populate the SBA-required application form for a PPP loan and provide the documentation or information lenders used to evaluate each application. Applicants continued to have access to the Fast Lane borrower-facing website after submitting their documentation and information, which allowed the applicants to, among other things, monitor the status of their applications and securely provide additional information to lenders. Womply also provided

customer service to applicants seeking assistance in connection with the Fast Lane borrower-facing website.

72. ***Second***, the technology services integrated into the Technology Platform performed various services regarding the information provided by applicants. Womply supported these tools through its own personnel and technology. For example, the Technology Platform:

a. checked the validity of an applicant-provided email address using the third-party application Kickbox;

b. verified an applicant's access to the applicant's email address and mobile telephone number using third-party applications SendGrid and Twilio;

c. performed biometric selfie scans using third-party application Persona to confirm that the applicant submitted a selfie of an actual human;

d. checked applicant information against various databases to confirm identity using Persona;

e. checked applicant information against various databases to identify potential red flags—such as individuals subject to OFAC sanctions and politically exposed persons—using Persona;

f. verified government identification provided by applicants using Persona;

g. extracted bank account information and transaction history using third-party application Plaid;

h. performed knowledge-based authentication using third-party application DocuSign;

i. classified tax documents provided by applicants using third-party application Mindee;

j. extracted information from tax documents provided by applicants using third-party application Ocrolus; and

k. scanned bank and tax documents provided by applicants to identify potential fraud using third-party applications Ocrolus and Inscribe.[5]

73. After performing these various technology services, Womply routed loan applicants to a PPP lender based on a variety of factors.

74. ***Third***, the Technology Platform also included a new lender-facing portal, which Womply developed in conjunction with 3E Software, Inc. d/b/a Teslar Software ("Teslar") and other third parties. The lender-facing portal (the "Teslar Portal") was a web-based portal that allowed lenders to efficiently manage nearly the entire process of processing, reviewing, and managing PPP loans referred to the lender. Through the Teslar Portal, PPP lenders could, among other things:

a. review applicant information and documentation to determine whether an applicant qualified for a loan and the amount of the loan;

b. review KYC detail reports, proof-of-in-business reports, tax document reports, and funding instructions;

c. approve PPP loans the lender wanted to fund, or reject PPP loans for missing information or other reasons;

d. generate, populate, and transmit promissory notes;

e. submit applicant information to the SBA for approval of a loan;

f. monitor the status of loan applications under review by SBA;

[5] Womply added technology services at different points in time and each technology service did not necessarily apply to all applications at any given time.

g. send adverse action notices for declined loans;

h. resubmit loans with corrected information if needed; and

i. initiate payment of loan proceeds.

75. The Technology Platform also provided lenders with cybersecurity protection and a Slack channel through which Womply and the lender could communicate in real time to address any technical issues.

76. Womply released the Technology Platform in mid-February 2021. As discussed above, the Technology Platform—with its borrower-facing website, numerous integrated technology services, and Teslar Portal—ultimately integrated services from more than ten third-party applications. That required Womply engineers to develop unique APIs that would allow all of these different applications to communicate and work with each other and with the Technology Platform. Womply also successfully developed APIs so that the Teslar Portal connected with the SBA. Womply and its software engineers engaged in a Herculean, virtually round-the-clock effort to develop and maintain these APIs, and Womply engineers continued to refine the Technology Platform throughout the remainder of the PPP.

77. Womply's Technology Platform allowed lenders to utilize, in one web-based platform: (i) PPP referral services; (ii) Womply's loan portfolio management services; and (iii) a wide range of other integrated, valuable technology services. As a result, Womply's lender partners could easily and quickly conduct underwriting, determine whether to submit loan applications to the SBA, and fund the loans that the SBA approved. Without the Technology Platform and its Teslar Portal and integrated services, a lender wanting the same services would have needed to hire and maintain a large staff to perform all of those services in-house, which was not economical or logistically feasible for many lenders (particularly under the constraints the

pandemic imposed), or contract with numerous separate technology service providers and manage to coordinate those services and the underlying data under enormous time constraints.

78. Womply did not provide underwriting services, submit loan applications to the SBA, or otherwise communicate with the SBA on behalf of a lender or borrower. Indeed, the contracts made clear that Womply was not responsible for determining whether applicants qualified for PPP loans or whether the information applicants provided was accurate. To the contrary, Womply's lender partners retained responsibility for (i) ensuring that applicants qualified for PPP loans; (ii) underwriting; (iii) submitting loan applications to the SBA for approval; (iv) communicating with the SBA; and (v) funding loans approved by the SBA.

79. Womply contracted for referral services with fifteen lenders and non-lender entities (which referred PPP loans to lenders). Seven of those entities also purchased access to the "PPP Fast Lane" Technology Platform and its integrated technology services from Womply. Even after Womply released the Technology Platform, Womply's Non-Fast Lane (referral-only) services remained available to lenders, and some of Womply's referral partners continued to use only Womply's Non-Fast Lane, referral-only services. Those Non-Fast Lane partners continued to be connected with prospective applicants via a separate website from the Fast Lane borrower-facing website, and the Non-Fast Lane partners did not receive any of the enhanced technology services offered through the Technology Platform. The partners that chose to receive Fast Lane services, on the other hand, received their referrals through the Technology Platform and the additional technology services integrated in the Technology Platform.

80. Womply's Technology Platform was instrumental to the success of the PPP, and, more particularly, to the smallest businesses receiving much-needed PPP loans during the spring of 2021. In 2021, Womply referred more than 2.8 million applicant submissions to lenders, leading

to approximately 1.3 million funded PPP loan draws with a total principal amount of more than $18.6 billion. The Technology Platform proved especially successful in enabling lenders to make the smallest PPP loans: in 2020, when Womply offered only Non-Fast Lane referral services, lenders funded loans averaging approximately $52,000, while the release of its Technology Platform and integrated technology services in 2021 resulted in lenders funding loans averaging approximately $14,000.

E. Capital Plus And Blueacorn Establish A Deep Commercial Relationship Regarding PPP Loans.

81. Capital Plus is a Certified Community Development Financial Institution ("CDFI"). "CDFIs are mission-driven financial institutions that create economic opportunity for individuals and small businesses, quality affordable housing, and essential community services in the United States."[6] Prior to the PPP, Capital Plus specialized in residential mortgage lending in the Dallas/Fort Worth, Houston, and San Antonio areas; Capital Plus was a small, regional lender with total revenue from operations for the fiscal year ending October 31, 2020 of just $36.6 million. Capital Plus is a wholly owned subsidiary of Crossroads, a public holding company.

82. Blueacorn was founded in April 2020 "with the singular purpose" of referring and servicing PPP loans for two lenders, one of which is Texas-based Capital Plus. On its website, Blueacorn describes itself as a Lender Service Provider that "help[s] people get the PPP paperwork done correctly" and partners with banks "to apply for and secure" loans.[7] Blueacorn acted as a

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[6] *See Community Development Financial Institution (CDFI) and Community Development (CD) Bank Resource Directory*, Office of the Comptroller of Currency, available at https://www.occ.gov/topics/consumers-and-communities/community-affairs/resource-directories/cdfi-and-cd-bank/index-cdfi-and-cd-bank-resource-directory.html (last visited July 11, 2022).

[7] *See* https://blueacorn.co/faq/ (last visited July 11, 2022).

Lender Service Provider to Capital Plus. SBA regulations define a Lender Service Provider as "an Agent who carries out lender functions in originating, disbursing, servicing, or liquidating a specific SBA business loan or loan portfolio for compensation from the lender." 13 C.F.R. § 103.1(d); *see id.* § 103.1(a).

83. On January 11, 2021, Capital Plus issued a press release announcing that it was "partnering with Blueacorn to provide a simple and efficient platform for small businesses across the country to apply for first and second draw [PPP] loans via the [SBA]."[8]

i) Capital Plus's And Blueacorn's Lender Service Provider Agreements

84. On or about January 12, 2021, Capital Plus and Blueacorn executed a Lender Service Provider Agreement with an effective date of October 23, 2020. A copy of that agreement is attached as Exhibit 3 hereto. In that agreement, [redacted]

85. Because Blueacorn was Capital Plus's Lender Service Provider, Capital Plus was required to submit the Lender Service Provider Agreement to the SBA for review and approval. 13 C.F.R. § 103.5(a). [redacted]

[8] Small businesses that had not received a PPP loan could apply for "First Draw" PPP loans. Small businesses that received a "First Draw" PPP loan could apply for a "Second Draw" PPP loan. *See Paycheck Protection Program*, SBA, https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program.

[9] [redacted]

86. On or about February 10, 2021, Capital Plus and Blueacorn executed a second Lender Service Provider Agreement (the "LSP Agreement"), also with an effective date of October 23, 2020, that [redacted] A copy of that second agreement is attached as Exhibit 4 hereto. [redacted] On information and belief, the SBA approved the LSP Agreement.

87. The LSP Agreement explains that [redacted]

88. [redacted]



89. As a PPP lender, Capital Plus is required to exchange data and information with the SBA electronically through the SBA's Capital Access Financial System ("CAFS"), the SBA's electronic platform. Pursuant to the LSP Agreement, [redacted]

90. In return for these services, [redacted]

[10] [redacted]

[redacted]

92. Each Lender Service Provider Agreement between Blueacorn and Capital Plus [redacted]

93. [redacted]

[redacted]

94. [redacted]

ii) Capital Plus's And Blueacorn's Third-Party Vendors

95. Blueacorn and Capital Plus retained third-party vendors in connection with PPP loans and loan applications.

96. Blueacorn contracted with elev8 Advisors Group ("Elev8"), a financial services consulting firm that "help[s] financial institutions, payment providers, fintech companies, and others in the industry" with "distribution, technology, marketing, and sales."[12] Elev8 assisted Blueacorn with implementing fraud-detection and -prevention measures, providing loan servicing technology, and connecting Blueacorn with its banking partners.

97. Blueacorn relied upon Elev8 when negotiating agreements with Womply and servicing Womply-referred PPP loans. Emails between Elev8 and Womply show that Adam Spencer ("Spencer"), Elev8's Managing Partner, reviewed drafts of the agreements, participated in diligence calls with Womply personnel, discussed Blueacorn's banking relationships with Womply's CEO, helped on the "technical side as far as the transfer of information," and reviewed Womply's "KYC, BSA, OFAC, [and] AML pieces" on behalf of Blueacorn.

98. Capital Plus contracted with Everett Advisory Partners ("EAP"), "an independently-owned advisory firm focused on the banking and financial services sector."[13] According to its website, EAP "provid[es] decision-makers at community and regional banks

[12] *See* https://elev8withus.com/ (last visited July 11, 2022).

[13] *See* https://everettadvisory.com/about/ (last visited July 11, 2022).

advice and execution resources to help with regulatory orders, governance, credit & risk management, distressed assets and holistic 'defense of house' strategies."

99. In its written discovery responses in this action, Capital Plus represented [redacted] Multiple EAP employees accessed the Teslar Portal to review PPP loan application materials on behalf of Capital Plus, including CEO Lisa Narrell-Mead, Managing Director James Phillips, and Managing Director Peter Brown.

iii) Blueacorn's Substantial Business Activities Directed Towards Texas

100. Blueacorn marketed its services in Texas, provided services to PPP loan applicants in Texas, and facilitated PPP loans to borrowers in Texas that were approved by the SBA and funded by a lender.

101. For example, on May 5, 2021, Blueacorn advertised on Facebook—which announcement was accessible to and, upon information and belief, viewed by numerous Texas residents—that "[d]espite reports that the PPP has run out of funding, Blueacorn partners with community financial institutions that still have access to funds," including Texas-based Capital Plus. Blueacorn advertised that "[i]f you are still in processing . . . we are committed to getting your application pushed through for approval" by the SBA, and "[i]f you have not started your application . . . [w]e can still help you access the PPP funds that you need and deserve." Multiple Facebook users whose account information states that they live in Texas commented in response to Blueacorn's post that they applied for a PPP loan through Blueacorn.

102. According to *ProPublica*, in May 2021, a PPP loan applicant "living in a hotel in Lewisville, Texas" saw an advertisement to apply for a PPP loan "posted by a company called

Blueacorn."[14] The Texas-based applicant "registered on the Blueacorn site and answered a few basic questions about his business," and applied for a PPP loan.

F. Capital Plus Is One Of The Largest Lenders Of PPP Loans In Part Because Of Its Partnership With Blueacorn.

103. As of June 9, 2021, Blueacorn announced that it had processed more than 860,000 PPP loans totaling more than $14 billion through its partnerships with Texas-based Capital Plus and one other lender. [redacted]

104. According to *The New York Times*, "Blueacorn will take in at least $1 billion this year [2021] on the loans it processed" for the PPP, including at least $314 million in fees from Capital Plus in the quarter ending on April 30, 2021.[15]

105. On June 14, 2021, Crossroads released its consolidated financial results for the second quarter of 2021, ending April 30, 2021. Crossroads disclosed that its "[g]ross origination fees associated with PPP loans totaled $464.1 million for the quarter," and that Crossroads "[e]xpects to accrue a total of $1.1 billion in deferred gross origination fees from the [PPP]." It

[14] *See* Lydia DePillis & Derek Willis, *They Promised Quick and Easy PPP Loans. Often, They Only Delivered Hassle and Heartache*, ProPublica (Jan. 14, 2022), *available at* https://www.propublica.org/article/they-promised-quick-and-easy-ppp-loans-often-they-only-delivered-hassle-and-heartache.

[15] *See* Stacy Cowley & Ella Koeze, *How Two Start-Ups Reaped Billions in Fees on Small Business Relief Loans*, N.Y. Times (June 27, 2021, updated October 11, 2021), *available at* https://www.nytimes.com/2021/06/27/business/ppp-relief-loans-blueacorn-womply.html.

also disclosed that as of April 30, 2021, Crossroads "held a cash balance of $213.1 million compared to $2.6 million as of October 31, 2020."

106. The June 14, 2021 financial release also included statements from Defendant Donnelly describing how enormously lucrative participating in the PPP had been for Crossroads and Capital Plus:

> "In the last several months, Capital Plus has transformed from a regional single-family mortgage-based lending institution into ***one of the country's largest providers of small business loans***," said Eric A. Donnelly, Chief Executive Officer of Crossroads Systems. When the SBA announced its reopening of the program in January, we immediately identified strong synergies between the program's focus on small businesses and Capital Plus' core mission as a CDFI. Together with our loan service providers, we established early incumbency as the go-to institution for small business owners, independent contractors, and sole proprietors. Financially, our success in the program has put us into the ***best position we have ever been in, netting us more than $150 million in operating income for the quarter***. ***At a record cash position***, we are well-capitalized to support the future growth initiatives that will drive our double-bottom line. We will provide a more detailed review of the quarter and these growth initiatives in the near future upon the completion of PPP.

(emphasis added).

107. In a later July 8, 2021 letter to Crossroads' shareholders, Donnelly again touted the success of its partnership with Blueacorn:

> ***With the help of loan service providers like Blueacorn*** . . ., we were able to issue and approve loan applications at an unprecedentedly rapid pace. Within just five months, ***we have approved 472,036 loans*** at an average amount of $16,062. In total, this amounts to ***$7.6 billion in funding*** . . . . As a result of our early dominance in PPP lending, ***Capital Plus was ranked the fourth largest PPP lender by net dollar amount and the second largest by the number of loans approved***. Blueacorn's early traction amongst sole proprietors and independent contractors was critical to scaling the operation and enabling us to compete with the country's largest financial institutions.

(emphasis added).

108. In the same letter, Donnelly described Crossroads and Capital Plus's success in connection with the PPP as a "windfall." He told shareholders that the "[t]he program will result in Capital Plus holding the $7.6 billion in loans on its balance sheet until they are forgiven," and that Capital Plus "anticipate[s] full forgiveness." He further disclosed that Capital Plus "issue[s] PPP loans at a rate of 1%," and that "[w]ith a 35-bps cost of capital through the SBA's credit facility, [Capital Plus] recognize[s] a 65-bps spread, which nets out as interest income."

109. Capital Plus's PPP lending program was so successful that Crossroads concluded it was "overcapitalized." In the July 8 letter, Donnelly disclosed to shareholders that Crossroads "intend[ed] to pay out a special dividend of $40 per share on July 26, 2021," but that Crossroads would "retain $120 million of liquidity." Capital Plus paid the special dividend on July 26, 2021, totaling approximately $238.9 million.

110. On September 14, 2021, Crossroads released its consolidated financial results for the third quarter of 2021, ending July 31, 2021. Crossroads disclosed that its "[t]otal revenue from operations for the nine months ended July 31, 2021, was $970.5 million compared to $27.5 million for the same period of 2020. The increase in revenue was the result of the Company participating in the [Paycheck] Protection Program," and "[t]he Company earned fees from the program totaling approximately $930.0 million. The Company has taken the full amount of fees earned during the period from the program into income." The Company also incurred $606.4 million in "fees paid to the loan servicer provider," Blueacorn, "related to the PPP loan program the Company participated in."

111. On December 14, 2021, Crossroads reported its financial results for its fiscal fourth quarter and year ended October 31, 2021. Crossroads disclosed that, for fiscal year 2021, "[t]otal revenues increased 2,446% to $932.7 million, up from $36.6 million in the comparative 2020

period," "[t]otal interest income increased 220% to $40.5 million, up from $12.6 million in 2020," and "[o]perating income increased 4,127% to $243.4 million, up from $5.8 million in 2020." Crossroads disclosed that "[t]he substantial increase in operating income was primarily due to origination fees associated with the Company's participation in the PPP loan program."

112. On March 15, 2022, Crossroads reported its financial results for its fiscal first quarter for the period ending January 31, 2022. Crossroads disclosed that "total revenue from operations for the quarter ended January 31, 2022 was $63.1 million compared to $7.3 million for the same period of 2021" and that the increase in revenue "was from recognizing PPP fee income of approximately $50.1 million during the quarter." Furthermore, Crossroads disclosed that "[n]et operating income before taxes and non-controlling interest for the quarter ended January 31, 2022 was $51.7 million compared to $921,000 for the same period of 2021." During this period, Capital Plus "paid preferred dividends totaling $155,773" and paid holders of preferred stock units "cumulative dividends at an annual rate of 3.5% through June 2022."

113. On June 14, 2022, Crossroads reported its financial results for its fiscal second quarter for the period ending April 30, 2022. Crossroads disclosed that "[t]otal revenue from operations for the six months ended April 30, 2022 was $79.7 million compared to $483.9 million for the same period of 2021" and that the decrease in revenue "was due to a reduction in one time PPP fee income of approximately $411.4 million." Furthermore, Crossroads disclosed that "[n]et operating income before taxes and non-controlling interest for the six months ended April 30, 2022 was $56.8 million compared to $151.2 million for the same period of 2021."[16]

[16] Despite this declining revenue, Crossroads disclosed that "[d]uring the six months ended April 30, 2022, CPF paid preferred dividends totaling $314,137" and continued to provide holders of preferred units with "cumulative dividends at an annual rate of 3.5%."

G. Blueacorn And Capital Plus Urgently Look For Additional PPP Loans To Fund Quickly After The SBA Announces That PPP Funding Is Nearly Exhausted.

114. On May 4, 2021, the SBA announced (without prior notice) that most funding for the PPP had been exhausted and that its PPP application portal had stopped accepting applications for loans from most lenders. The SBA further announced, however, that approximately $8 billion of congressionally mandated funding for PPP loans made by designated "community financial institutions," such as minority depository institutions ("MDIs") and CDFIs remained available.[17]

115. It was commonly understood in the lending industry that these remaining funds would be exhausted relatively quickly. Accordingly, MDIs and CDFIs were under pressure to submit loan applications to the SBA quickly. One of those CDFIs was Capital Plus.

116. Capital Plus could have relied on Blueacorn and/or another referral partner to seek additional referrals. However, that would have required Capital Plus and Blueacorn to locate application referrals, collect information from the applicants, verify the applicant information, submit the applicant information to the SBA for approval, and manage all other aspects of the PPP loan process—all on a highly expedited timeline.

117. Instead, Blueacorn approached Womply with a proposal. On information and belief, Blueacorn understood that Womply likely had information from a large number of PPP applicants seeking PPP loans, but that those applicants could no longer obtain PPP loans from most lenders following the SBA's May 4, 2021 announcement. Blueacorn therefore proposed that Womply would refer PPP applicants to Capital Plus through Blueacorn as the intermediary, and

[17] *See* Stacy Cowley, *The Paycheck Protection Program Is Out of Money*, N.Y. Times (May 4, 2021), *available at* https://www.nytimes.com/2021/05/04/business/paycheck-protection-program-closes.html; *SBA: PPP Funds Exhausted for All But CDFIs, MDIs*, ABA Banking J. (May 4, 2021), *available at* https://bankingjournal.aba.com/2021/05/sba-ppp-funds-exhausted-for-all-but-cdfis-mdis/.

that Womply would provide access to the Technology Platform to both Blueacorn and Capital Plus. Womply would contract directly with Blueacorn, and in return for Womply's referral and technology services, Womply would receive separate contractually-specified fees (one for referral services, and one for technology services) from Blueacorn for each Womply-referred PPP loan that Capital Plus funded and managed through the Technology Platform.

118. Contracting for Womply's Fast Lane technology services (and not just its Non-Fast Lane referral services) provided Capital Plus and Blueacorn a tremendous advantage. It meant that Blueacorn and Capital Plus would receive applicant information that had already undergone Womply's extensive verification checks, including email and phone verification, biometric selfie scans, database checks, bank account verification, and bank and tax document information extraction. Capital Plus and Blueacorn also would receive access to the Technology Platform's Teslar Portal, allowing them to (among other things) review extracted application information and supporting documentation, review KYC reports, determine whether applicants qualified for PPP loans and for how much, determine whether to fund a loan, submit applicant information to the SBA for approval, monitor the status of loans applications at the SBA, and generate PPP loan application documents and promissory notes. Given the rapidly dwindling remaining funding, time was of the essence, and Womply's Technology Platform was a highly efficient tool.

119. Blueacorn made its proposal shortly after the SBA's May 4, 2021 announcement, reflecting the urgency with which Blueacorn and Capital Plus were looking for PPP loans to submit to the SBA before the PPP came to an end. On May 4–5, 2021, Defendant Calhoun texted Womply's CEO: "Do you need a home? I might be able to help," and "Cpf [Capital Plus Financial] is interested in helping."

120. On May 6, 2021, Defendant Calhoun again texted Womply's CEO: "If I [g]et cap plus on board, what's the dollar volume you're thinking and the fee size in total and number of files[?]" Later on May 6, 2021, Womply's CEO replied to Defendant Calhoun via text: "Our team put together our contracts for Capital Plus with flat 50/50 economics, which are ready to send. I am assuming you and CP would handle whatever you guys agree to on your end. Lmk if you're thinking about the structure differently."

121. On May 9, 2021, Womply personnel had a call with Spencer from Elev8 (Blueacorn's consulting firm) regarding "diligence items" from Capital Plus, and discussed "a direct sync up call with capital plus" and "bring[ing] cap plus into the conversation."

122. Later on May 9, 2021, Blueacorn and Womply personnel coordinated to obtain "Capital Plus's SBA [Application Programming Interface] credentials" so that Capital Plus could obtain access to Womply's Technology Platform and submit PPP loan applications directly to the SBA for approval using the Technology Platform.

H. Defendants Donnelly And Calhoun Make Material Representations To Womply To Convince Womply To Refer PPP Loans And Provide Technology Services To Capital Plus And Blueacorn.

123. Womply was initially hesitant to accept Blueacorn's proposal. Womply was particularly concerned that Capital Plus would have no direct contractual obligation to pay Womply for the referral and technology services, and that Blueacorn may default on its contractual obligations if Capital Plus chose not to compensate Blueacorn.

124. Womply repeatedly communicated these concerns to Capital Plus and Blueacorn. For example, on May 9, 2021, Womply's CEO emailed Defendant Calhoun that "[i]f our agreements aren't with Capital Plus directly, I think we'd just want an email from them confirming they understand the high level structure and economics. Usually we deal directly with lenders."

125. Later on May 9, 2021, Womply's CEO emailed Defendant Calhoun requesting a "clear line of sight to the funds," "some confirmation from Cap[ital] Plus that they're aware of the terms and our involvement (simple email with high level bullets is fine)," and noted that Blueacorn's representative "mentioned that we would have visibility into [the] FBO [For-Benefit-Of] account with Evolve." Defendant Calhoun responded that he would "get this done."

126. In an effort to dispel Womply's concerns, Defendants Donnelly and Calhoun each made material representations to Womply's CEO. On May 11, 2021, Donnelly and Calhoun each represented to Womply's CEO during a phone call (the "May 11 Call"), in sum and substance, that (i) Blueacorn would pass all Womply-referred PPP loans to Capital Plus for origination; (ii) Blueacorn and Capital Plus held a joint or For-Benefit-Of ("FBO") account at Evolve Bank & Trust (the "Joint Access Account") into which all fees received from the SBA for PPP loans funded by Capital Plus were deposited directly; (iii) the SBA fees for all Womply-referred PPP loans funded by Capital Plus would be deposited directly into the Joint Access Account; and (iv) Blueacorn and Capital Plus would provide Womply with visibility into the Joint Access Account so that Womply could verify when Blueacorn and Capital Plus received funds from the SBA. As discussed below, those representations were false.

127. In actuality, there was no such "Joint Access Account" held by Blueacorn and Capital Plus. According to Capital Plus's written discovery responses in this litigation, [redacted]

[redacted]

128. During the May 11 Call, Defendant Donnelly, Defendant Calhoun, and Womply's CEO agreed to financial terms regarding Blueacorn's and Womply's fee structure, and that both Blueacorn and Capital Plus would have access to Womply's Technology Platform. After the call, Defendant Donnelly emailed Womply's CEO, stating that he was "glad we were able to connect today and look[ed] forward to working together."

I. Womply, Blueacorn, And Capital Plus Negotiate The Referral Agreement And Developer Order Form.

129. Through its CEO and its legal counsel, Womply entered into two separate written agreements with Blueacorn, which were executed on May 19, 2021: (i) a PPP Loan Referral Agreement, dated as of May 10, 2021 (the "Referral Agreement"); and (ii) the Womply Developer Order Form, dated May 10, 2021 (the "Order Form," and together with the Referral Agreement, the "Agreements," which are appended as Exhibit 6 hereto).

130. Those agreements were the product of extended negotiations. On May 9, 2021, after an initial discussion with Calhoun, Womply's CEO emailed Calhoun drafts of the Referral Agreement and Order Form. In that email, Womply's CEO also asked for some information about the Blueacorn legal entity that would be Womply's counterparty, "so we have enough visibility to ensure that the structure here is appropriate from an SBA pov [point of view] and that we can have clear line of sight to the funds."

131. By May 10, 2021, negotiations were far enough along that Womply set up access for Blueacorn in the Teslar Portal and routed 100 PPP loan applications to Blueacorn through the Technology Platform.

132. As discussed above, on May 11, 2021, Womply's CEO had a telephone call with Calhoun and Donnelly, during which Calhoun and Donnelly made material misrepresentations that induced Womply to enter into the Agreements. Also during that call, the participants discussed the details of their three-way business arrangement, including how fees would be divided among Womply, Blueacorn, and Capital Plus. Calhoun represented to Womply's CEO that Blueacorn would be responsible for underwriting and would perform its own analysis of the application data it received from Womply.

133. Over the next few days, Womply's counsel continued to work on details of the draft Agreements with Blueacorn's counsel. In one such exchange, Blueacorn's counsel returned redline comments on the Referral Agreement but wrote that he did not think there was a "need for the developer order form," which covered the technology services. That statement was apparently based upon a misunderstanding of the business arrangement reached by the CEOs of Womply, Blueacorn, and Capital Plus. When Blueacorn's counsel again expressed that misunderstanding on May 14, 2021, Womply's counsel responded that there was a "disconnect" between Blueacorn's counsel's understanding and the conversations that Womply's CEO had with Calhoun, explaining that "the entire business relationship is dependent on Blueacorn relying on Womply's technology platform to process these referrals."

134. Later that same day, Calhoun confirmed to Womply's CEO that Blueacorn's counsel now understood the need for a separate agreement to cover Womply's provision of technology services, and that "he'll get it done." Womply's counsel and Blueacorn's counsel continued exchanging comments and edits on both Agreements. Womply executed final versions of both Agreements on May 19, 2021, in reliance on Defendants Donnelly's and Calhoun's representations during the May 11 Call.

J. Womply Routes More Than 220,000 PPP Loan Applicants To Capital Plus And Blueacorn, Which Approve, Originate, And Manage More Than 87,000 PPP Loans Using Womply's Technology Platform.

135. Blueacorn and Capital Plus reviewed the initial sample of 100 PPP applications through the Technology Platform and funded 60 PPP loans. In reliance on Donnelly's and Calhoun's representations and promises made during the May 11 call, Womply began routing a large volume of PPP loan applicants to Blueacorn and Capital Plus.

136. Reflecting Capital Plus's and Blueacorn's urgency to submit the PPP loan applications to the SBA before PPP funding was exhausted, Capital Plus and Blueacorn started using Womply's Technology Platform almost immediately (and even before the Agreements were executed).

137. Between May 11 and May 20, 2021, Womply referred information for 223,634 potential PPP loans to Blueacorn and Capital Plus, as reflected in the following table:

Date	Potential PPP Loans Womply Referred To Blueacorn And Capital Plus
May 11, 2021	143,074
May 18, 2021	31,543
May 19, 2021	10,173
May 20, 2021	38,844
Total	**223,634**

138. Between May 14 and May 23, 2022, Blueacorn and Capital Plus submitted information for more than ***100,000*** of these potential PPP loans to the SBA for approval using the Technology Platform's API with the SBA's online portal. Capital Plus and Blueacorn could not

have reviewed and submitted for SBA approval this many new PPP loan applications in such a short period of time without the efficiencies created by Womply's Technology Platform.

139. Capital Plus and Blueacorn's decision to use Womply's Technology Platform to expeditiously and efficiently process PPP loan applications paid off. Capital Plus and Blueacorn had submitted to the SBA all of the loans they selected for approval by May 21, 2021, and the SBA stopped accepting PPP loan applications just eleven days later on May 31, 2021.[18]

140. Ultimately, Blueacorn and Capital Plus funded ***87,159*** Womply-referred PPP loans.

141. The fact Capital Plus sent to the SBA for approval approximately 47% of the potential PPP loans referred by Womply from May 11 to 20, 2021, and therefore did not agree to fund approximately 53% of the referrals, reflects that these loan applications were being reviewed by Capital Plus and its vendors, which were deciding which PPP loan applications to underwrite and fund. Employees of Capital Plus, Blueacorn, Elev8, and Everett each accessed and made substantial use of the Technology Platform to review and/or manage PPP loans and loan applications. The following table reflects data related to certain employees from each of these companies, showing that they accessed the Technology Platform over a period of several months to review and manage the portfolio of Womply-referred PPP loans and loan applications:

Name	Company	Credentials Created	First Login	Last Login
Peter Brown	EAP	5/10/2021	5/10/2021	7/14/2021
Justin Crossman	Blueacorn	6/18/2021	6/18/2021	6/18/2021
Eric Donnelly	Capital Plus	5/28/2021	5/28/2021	8/18/2021
Farzana Giga	Capital Plus	5/28/2021	6/18/2021	9/7/2021

[18] *See* https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program (last visited July 11, 2022).

Name	Company	Credentials Created	First Login	Last Login
Lisa Narrell-Mead	Elev8	5/9/2021	5/10/2021	5/10/2021
Celena Phillips	Capital Plus	6/22/2021	6/23/2021	9/6/2021
Jim Phillips	EAP	5/10/2021	5/10/2021	5/12/2021
David Rathmann	Elev8	5/9/2021	5/10/2021	6/13/2021
Noah Spirakus	Blueacorn	5/9/2021	6/18/2021	9/7/2021

142. Womply also created a private Slack chat channel on May 10, 2021 called "ppp-fast-lane-blue-acorn" for four Womply employees and eight Blueacorn employees and contractors, including Defendant Calhoun.

143. Blueacorn and Capital Plus coordinated closely with Womply on their use of the Technology Platform.

144. For example, on May 18, 2021, Blueacorn sent Womply via Slack chat "Capital Plus PPP Loan Documents" that would be provided to PPP loan applicants referred to Capital Plus.

145. Also on May 18, 2021, Defendant Donnelly emailed Defendant Calhoun and others at Blueacorn and Capital Plus regarding a process for managing loans funded by Capital Plus referred through the "Womply portal."

146. On May 19, 2021, Defendant Calhoun emailed Womply's CEO to "get a process in place to manage this stuff" among Capital Plus, Blueacorn, and Womply

147. On June 2, 2021, Blueacorn sent Womply chats about a promissory note for a particular PPP loan borrower titled "Loan by Lender, Capital Plus Financial, LLC to Borrower." Blueacorn wrote that "[w]e have approval on PROM [promissory] note" for this particular borrower, using "we" to refer to both Blueacorn and Capital Plus.

148. On June 9, 2021, Blueacorn sent Womply a chat stating that "we will process additional fundings," and clarifying that "*we = Cap Plus."

149. On June 18, 2021, Capital Plus's CFO emailed Womply and Blueacorn personnel asking Womply to request additional documents from certain potential borrowers to "BA/CPF" [Blueacorn and Capital Plus] otherwise they "will not be able to get funds."

150. On June 24, 2021, Capital Plus and Womply discussed Capital Plus's rejection of certain PPP loan applicants who entered their information through Womply. Capital Plus represented that "we set the rules" and agreed that Womply applied the "rules BlueAcorn/CapPlus have asked us to apply."

151. On June 25, 2021, Donnelly represented to the SBA that "we're working with Womply" on particular loans, and Capital Plus's and Womply's personnel discussed those loans.

152. By July 12, 2021, Capital Plus had funded most of the 87,159 Womply-referred PPP loans approved by the SBA for funding, which totaled more than $950 million. Capital Plus had funded the remainder of those PPP loans by the end of August 2021.

K. For Providing These Services, Womply Is Entitled To Referral Fees And Technology Fees Pursuant To The Agreements.

153. The Referral Agreement and Developer Order Form, respectively, govern the provision of referral and technology services. Each agreement establishes a separate fee structure.

154. Under the Referral Agreement, Blueacorn and Womply agreed that "Womply may, from time to time, refer to Blueacorn such PPP loan applicants as Womply shall, in its sole and absolute discretion, deem appropriate." (Referral Agreement § 1.1.) In return, Blueacorn agreed to pay Womply a referral fee like Womply received for its limited referral services to its Non-Fast Lane partners. Specifically, "[i]n consideration of Womply providing Blueacorn with Referrals, Blueacorn shall pay to Womply" a referral fee (the "Referral Fee") of 1% of the outstanding

balance of each Womply-referred PPP loan at the time of loan disbursement. (*Id.* § 2.2.) This 1% referral fee for the Womply-referred PPP loans, all of which were well under $50,000, was consistent with the Agent Fee Cap in the January 2021 PPP Rule, and Section 9 of the Referral Agreement incorporates by reference "SBA Regulations," which "control" "[i]n the event of any conflict between the governing law and the SBA Regulations."[19]

155. In the Order Form, Blueacorn contracted with Womply for access to Womply's Technology Platform and integrated technology services. These technology services were described as "Tax Documents" (*i.e.*, tax document collection, information extraction, and collection services), "Bank Data" (*i.e.*, bank account information extraction and analysis services), "Identity" (*i.e.*, various identity verification checks), "Account Verification" (*i.e.*, bank account verification), and "PPP Portfolio Management System" (*i.e.*, the Teslar Portal and organization of loan files). (Order Form at 1.) The Technology Platform also "includes integrations with and/or links to certain third-party service providers (including, without limitation, Plaid, Docusign, LexisNexis, Teslar, Inscribe, Ocrolus, AWS Mechanical Turk, Mindee, Persona, Twilio, Sendgrid, etc.)." (*Id.* § 2.2.)

156. The Referral Agreement and Order Form were assembled into a single electronic file, with an Exhibit A attached, and then the file was sent to Womply's CEO and Blueacorn's CEO electronically through DocuSign for execution. The Exhibit A attached to the Agreements

[19] The Referral Agreement defines "SBA Regulations" to "mean[] all PPP requirements and SBA guidelines under the CARES Act, the Economic Aid Act, the PPP Flexibility Act, any rules or guidance that have been issued by SBA implementing the PPP, including SBA regulations published at 86 Fed. Reg. 3692 (Jan. 14, 2021) and 85 Fed. Reg. 20811 (Apr. 15, 2020) and any subsequent Interim Final Rules and other guidance as may have been or may be subsequently issued by SBA or the U.S. Department of the Treasury with respect to the origination, servicing and forgiveness of loans under the PPP and Frequently Asked Questions, or any other applicable SBA loan requirements, including those codified in 13 CFR part 120, in each case as amended, supplemented or modified from time to time." (Referral Agreement § 9.)

says that it was "[u]pdated May 11, 2021" (when Capital Plus and Blueacorn started receiving a substantial volume of PPP loan applicant information from Womply). The content of Exhibit A was finalized on May 11, 2021 after Womply's CEO updated it in response to a request from Lisa Narrell-Mead of EAP, Capital Plus's advisor. Exhibit A provides further detail of the extensive technology services that Capital Plus and Blueacorn expected Womply to apply to applicant information pursuant to the Order Form. For example, Exhibit A explained how the Technology Platform would perform various KYC checks using third-party applications Persona and DocuSign ID Check, verify applicant bank account information, extract applicant bank data and information, and extract information from applicant tax documents.

157. Reflecting the importance and value of these technology services to Capital Plus and Blueacorn, Exhibit A to the Agreements expressly provided that:

> The following conditions must be met individually prior to Womply sending an application to Blue[a]corn:
>
> - Email verified
> - Phone verified
> - Name, address, EIN, other basic info passes SBA form validation
> - Business Activity check (as defined by Blue Acorn) passed
> - Tax Document check passed
> - KYC check passed
> - Bank is verified and fundable based on global limits per bank account and RDFI rules
> - Fraud is not detected
> - Application info (email, phone, tax ID, bank account) has not been associated with any other application that was declined for fraud

- Other less common criteria pass including First Draw PPP loan number validation/disbursement, as appropriate.

158. In consideration for providing access to the Technology Platform, the Teslar Portal, and these integrated technology services (none of which Womply provided to its referral-only, Non-Fast Lane partners), Blueacorn agreed to pay Womply a technology fee (the "Technology Fee") equal to "the first $250 from any Lender Processing Fee, plus 1/3 of the remaining Lender Processing Fee after the $250 is subtracted." (Order Form § 3.3.)

159. The Agreements include strict deadlines for the payment of the Referral Fees and Technology Fees to Womply. Section 2.3 of the Referral Agreement states that, "[w]ithin five (5) days after Blueacorn receives its fees from the lender that submitted the Referred Loan to the SBA [*i.e.*, Capital Plus], Blueacorn will pay Womply all associated Referral Fees for such applicable Referred Loan." Similarly, Section 3.5 of the Order Form states that, "[w]ithin five (5) days after Blueacorn receives its fees from [Capital Plus] . . . , [Blueacorn] will pay Womply all associated Technology Fees for each applicable Referred Loan."

160. The Agreements provide that if the Referral Fees and Technology Fees are not paid on time, Blueacorn will incur a finance charge of 1.5% per month or the maximum permitted by law, whichever is lower. (Referral Agreement § 2.4; Order Form § 3.7.)

161. The Agreements also provide that "[t]he prevailing party in any action to enforce this Agreement shall be entitled to costs and attorneys' fees." (Referral Agreement § 10; Order Form § 10.)

L. Womply's Technology Fees Are Not Subject To The Borrower Agent Fee Cap.

162. Womply's technology services to Capital Plus and Blueacorn do not constitute the type of "assistance in preparing an application for a PPP loan" that is subject to the Borrower Agent Fee Cap. When the SBA promulgated the Agent Fee Cap in the April 2020 PPP Rule, the

SBA explained that its 1% cap on an a borrower Agent's fees for providing such limited assistance was "reasonable based upon the ***application requirements*** and the fees that lenders receive for making PPP loans" (emphasis added). This reflects that the SBA considered only the requirements for a borrower to *complete* an application, which is relatively simple, and not services that a lender may procure to assist it with reviewing and managing PPP loans.

163. Womply also was not an "Agent," as that term is defined by the SBA, when it provided Capital Plus and Blueacorn with access to its Technology Platform, the Teslar Portal, and technology services. Womply was not an "authorized representative" of an "Applicant or Participant." Nor did Womply "conduct business with SBA," "[p]articipat[e] with or communicat[e] in any way with officers or employees of SBA on an applicant's, participant's, or lender's behalf," "act[] as a lender service provider," or "prepar[e] . . . on behalf of an applicant an application for financial assistance."

164. Moreover, the SBA SOP states that "SBA does not consider entities providing technology services that do not include underwriting to be Agents." Womply did not provide underwriting services to Capital Plus and is therefore not an "Agent" with respect to its provision of technology services. Indeed, the Referral Agreement states that "Blueacorn desires to engage in . . . initial underwriting," and that Capital Plus "retains ultimate responsibility for all . . . underwriting" of Womply-referred PPP loans. (Referral Agreement at 1.)

165. The LSP Agreement further confirms that Womply did not provide underwriting services to Capital Plus. [redacted]

[redacted]

166. Capital Plus's limited discovery responses thus far further establish that Womply did not provide underwriting services to Capital Plus. Capital Plus has represented that [redacted] Capital Plus has also represented that [redacted]

167. As still further confirmation of that fact, Capital Plus itself did not believe Womply to be providing underwriting services. If Womply were providing underwriting services, that would make Womply a Lender Service Provider under SBA regulations, and Capital Plus would be required to submit a Lender Service Provider agreement to the SBA for review and approval. 13 C.F.R. § 103.5(a). Capital Plus never submitted such an agreement with Womply to the SBA (although Capital Plus did submit its LSP Agreement with Blueacorn), evidencing Capital Plus's understanding that Blueacorn—but not Womply—was providing underwriting services.

168. The SBA ordinarily requires lenders to submit a compensation agreement or Form 159 to the SBA for all Agents. 13 C.F.R. § 103.5(a); SBA SOP at 183, 189–90. However, the SBA did not require submission of Form 159 in connection with the PPP. On information and

belief, Capital Plus did not submit a Form 159 for any of its Referral Agents in connection with PPP loan referrals.

M. Capital Plus Receives More Than $[redacted] Million In Fees From The SBA For Womply-Referred PPP Loans, For Which Womply Is Owed More Than $76 Million In Referral And Technology Fees.

169. Despite Defendant Donnelly's representations to Womply on the May 11 Call, Capital Plus never gave Womply visibility into the account into which SBA fees for Womply-referred loans were deposited, so Womply cannot verify when Capital Plus received fees from the SBA for those loans.

170. On information and belief, however, Capital Plus has received the Lender Processing Fees from the SBA for the Womply-referred loans. Lenders of PPP loans typically are paid the Lender Processing Fee from the SBA within approximately two to three weeks following the funding of a PPP loan.

171. The last day the SBA accepted PPP applications was May 31, 2021, and the program ended on June 30, 2021. On information and belief, by the end of July 2021, the SBA had paid all or substantially all Lender Processing Fees due to lenders under the PPP.

172. Capital Plus has received Lender Processing Fees totaling $[redacted] from the SBA for all Womply-referred PPP loans.

173. On July 21, 2021, Womply sent an invoice to Blueacorn indicating that more than $74 million was owed to Womply in outstanding Technology Fees and Referral Fees, not including the finance charge applicable to late fees.

174. On August 4, 2021, Womply sent a second invoice to Blueacorn stating that more than $76 million was due to Womply in outstanding Technology Fees and Referral Fees, not including the finance charge applicable to late payments.

175. Womply remains owed more than $9 million in Referral Fees and more than $67 million in Technology Fees, plus finance charges on the delinquent fees.

N. Capital Plus And Blueacorn Conspire To Avoid Paying Womply And To Extract Concessions From Womply.

176. On or around June 7, 2021, Capital Plus received a government subpoena seeking documents related to certain Womply-referred PPP loans.

177. The subpoena was not issued to Womply, and Womply had no obligation to provide Blueacorn, Capital Plus, or the government with any documents or information as a result of the subpoena. Nevertheless, acting in good faith, Womply provided Capital Plus with documents sought by the subpoena.

178. In late July 2021, Blueacorn's counsel approached Womply's outside counsel and asked if Womply would consider putting in place a process for providing documents and information to Blueacorn and Capital Plus in response to future government inquiries and subpoenas. Womply agreed to discuss that request in good faith.

179. Blueacorn's proposed process, initially premised on obtaining cooperation for government inquiries and subpoenas, grew into a demand that Womply agree to provide Blueacorn and Capital Plus with virtually any document in its possession on demand for virtually any reason. These discussions over documents were merely a pretext for Capital Plus and Blueacorn to withhold from Womply the fees Womply was owed for providing referral and technology services under the Agreements.

180. Blueacorn also informed Womply that Capital Plus was withholding payment from Blueacorn in connection with Womply-referred PPP loans, thus preventing Womply from receiving the more than $76 million in fees it was owed under the Agreements from Blueacorn, as leverage over Womply.

181. For example, on August 9, 2021, in response to Womply expressing its expectation that it would be paid its fees under the Agreements promptly, Blueacorn's counsel sent an email to Womply's outside counsel stating:

> We're working on making payment happen as soon as possible, because obviously Blueacorn wants to be paid too. If it happens today, that will be great, but Womply should not "expect" it, in particular because the contract only calls for Womply to be paid within "five (5) days after Blueacorn receives its fees from the lender that submitted the Referred Loan to the SBA." ***Blueacorn has not received its fees from Capital Plus***, so Womply's expectation is premature.
>
> This issue of having confidence that government requests for information will be promptly and fully responded to is important to Capital Plus and Blueacorn. To the extent Womply is intending something precipitous before that confidence can be obtained, the obvious solution is for Blueacorn to terminate the contract and, per the contract, require Womply to gather up and provide to Blueacorn 100% of all loan-file records for all applicants from all sources. That would give Blueacorn and Capital Plus the assurance they need. You had suggested that wasn't Womply's first choice, and it seems unlikely to speed the payment process while we waited for Womply to comply. So probably the better option is for us to take the little time needed to give Capital Plus the confidence we've been discussing about the procedures for responding to government requests for information. To that end, attached is a memo outlining what we think those procedures should be. If you tell us Womply agrees that these are the appropriate procedures it will follow, we'll take it to Capital Plus and find out whether this resolves the issue.

(emphasis added).

182. Blueacorn's counsel's statements are inconsistent with Defendants Donnelly's and Calhoun's representations during the May 11 Call that Capital Plus would deposit SBA fees for all Womply-referred PPP loans directly into the Joint Access Account with Blueacorn.

183. Adding further confusion to the matter, on August 13, 2021, Defendant Calhoun again falsely claimed that Blueacorn and Capital Plus have a Joint Access Account into which SBA fees are deposited. Specifically, Womply's CEO sent a message to Calhoun via Signal

stating: "You and Eric [Donnelly] said you had an FBO account where all funds were deposited directly from the govt. Did that change?" Calhoun responded simply: "No." In fact, [redacted]

184. On August 30, 2021, Womply sent a letter to Blueacorn's counsel demanding that, by September 3, 2021, Blueacorn (i) pay Womply all Referral Fees and Technology Fees for all Womply-referred PPP loans, which totaled $76,714,482.67; and (ii) provide Womply with a full accounting of when the SBA paid fees to Capital Plus for the Womply-referred PPP loans so that Womply could calculate the appropriate finance charge to apply to the delinquent fees.

185. Womply further demanded that if Blueacorn continued to insist that it had not received any fees from Capital Plus for Womply-referred PPP loans, Blueacorn should produce all correspondence between Blueacorn and Capital Plus concerning fees related to the Womply-referred PPP loans.

186. Blueacorn did not substantively respond to Womply's August 30 letter.

187. On September 6, 2021, Womply sent a letter to Capital Plus demanding that, by September 8, 2021, Capital Plus: (i) confirm whether SBA fees for Womply-referred PPP loans were deposited into the Joint Access Account, as promised by Donnelly; (ii) confirm whether Capital Plus was withholding SBA fees for Womply-referred PPP loans from Blueacorn and, if so, why; (iii) release all funds owed to Blueacorn in connection with the Womply-referred loans; and (iv) provide Womply with a full accounting of when Capital Plus received SBA fees for Womply-referred loans. Womply's letter further stated that if Capital Plus did not respond, Womply would have to assume that Capital Plus was withholding SBA fees for Womply-referred

PPP loans from Blueacorn in order to compel Womply to agree to produce certain documents and information to Capital Plus.

188. Capital Plus did not respond to Womply's September 6 letter.

189. As a result of Donnelly's and Capital Plus's fraudulent misrepresentations and wrongful retention of payment to Blueacorn for all Womply-referred PPP loans, Womply has suffered extensive damages, including the loss of more than $76 million in fees and finance charges due under the Agreements.

190. Blueacorn claims that it is not required to pay Womply under the Agreements because it has not received payment from Capital Plus for the Womply-referred PPP loans.

191. Blueacorn's position is wrong. Under Section 3.3 of the Order Form, Blueacorn "***shall pay*** Womply the technology fees" for each PPP loan it refers to a lender that is funded (emphasis added). Thus, Blueacorn's obligation to pay Womply the Technology Fees is not contingent on receiving payment from Capital Plus. Payment by Capital Plus affects only the timing of Blueacorn's payment to Womply, which must be paid "[w]ithin five (5) days after Blueacorn receives its fees from the [] lender" (Order Form § 3.5), not Blueacorn's obligation to pay Womply.

192. Blueacorn is acting in concert with Capital Plus to deprive Womply of more than $76 million owed under the Agreements. Blueacorn refuses to pay Womply under the Agreements and has asked repeatedly that Womply drop its lawsuit against Capital Plus for no consideration in return.

193. Despite claiming that it has not received payments from Capital Plus, Blueacorn refuses to initiate any action against Capital Plus.

194. Blueacorn has represented that initiating legal action against Capital Plus will harm its commercial relationship with Capital Plus. Blueacorn's representation is false. Blueacorn is a Lender Service Provider for PPP loans. According to Blueacorn's own website, its only business is "to streamline the PPP application process," "compile loan application paperwork for the PPP," and "get the PPP paperwork done correctly."[20] The SBA stopped accepting PPP applications as of May 31, 2021, and the program ended on June 30, 2021, so Blueacorn no longer has a meaningful commercial relationship with Capital Plus.

195. Blueacorn is not initiating any action against Capital Plus to help it obtain payment from Capital Plus. Instead, Blueacorn is hoping that Capital Plus prevails in this action and the Agreements are invalidated, and then Capital plus will pay Blueacorn and Blueacorn will not have to pay Womply.

196. Blueacorn is seeking to obtain payment from Capital Plus at Womply's expense. Blueacorn is also prioritizing its relationship with Capital Plus over its contractual obligations to Womply to avoid paying Womply under the Agreements.

O. The Arbitration Provision In The Agreements Between Womply And Blueacorn Was Procured Through Fraud.

197. The Agreements contain the following arbitration provision (the "Arbitration Provision"):

> Without limiting a party's right to seek injunctive or other equitable relief in court, any dispute between the parties related to the subject matter of this Agreement will be resolved by binding arbitration in the English language in San Francisco County, California under the rules of JAMS; the decision of the arbitrator will be enforceable in any court.

[20] *See* https://web.archive.org/web/20210803201826/https://blueacorn.co/about/ (Aug. 3, 2021 version). After Womply filed its First Amended Complaint, Blueacorn revised its website to remove this language. *See* https://blueacorn.co/about/ (last visited July 11, 2022).

(Referral Agreement § 10; Order Form § 10.)

198. Womply entered into the Arbitration Provision in reliance on Defendants Donnelly's and Calhoun's representations during the May 11 Call.

199. Before entering into the Agreements, Womply was concerned that, by contracting with Blueacorn as an intermediary, Capital Plus would have no contractual obligation to pay Womply for the services it provided, and that Blueacorn may default on its payment obligations if Capital Plus chose not to compensate Blueacorn for Womply-referred PPP loans. While Womply had previously entered into agreements to arbitrate disputes with lenders, arbitration against Blueacorn alone potentially would be fruitless if Blueacorn never received money from Capital Plus. Womply agreed to arbitrate disputes with Blueacorn based on Defendants Donnelly's and Calhoun's representations that, among other things, fees Capital Plus received from the SBA for all Womply-referred PPP loans would be deposited directly into the Joint Access Account and Womply would receive visibility into the Joint Access Account.

200. As discussed above, Defendants Donnelly's and Calhoun's representations during the May 11 Call were false.

201. Although the Arbitration Provision was procured by fraud and is therefore unenforceable, Womply nevertheless requested repeatedly that Blueacorn waive the Arbitration Provision to participate in this action, including by letter dated December 13, 2021. Blueacorn refused to do so.

P. Crossroads Is The Alter Ego Of Capital Plus.

202. Crossroads is a holding company and, on information and belief, Capital Plus is Crossroads' only operating subsidiary.

203. The websites for each of Crossroads and Capital Plus promote the business of the other entity and include links to presentations to both companies in the "About" sections of their respective websites.

204. The Crossroads Investor Presentation, available on Crossroads' website, is focused almost entirely on the business of Capital Plus.

205. According to the Crossroads Investor Presentation, 66% of Crossroads' stock is owned by Crossroads' directors and executives, including Defendant Donnelly.

206. Crossroads and Capital Plus have overlapping executives. Until August 30, 2021, Donnelly was the CEO of both Capital Plus and Crossroads, and he remains the CEO of Crossroads today. Both Capital Plus and Crossroads share the same Chief Financial Officer.

207. At all relevant times, Donnelly was acting on behalf of Crossroads and Capital Plus.

208. As the CEO of both Crossroads and Capital Plus, Donnelly perpetrated a fraud on Womply as alleged herein.

209. Crossroads and its shareholders—including Donnelly himself—have received a substantial benefit from Donnelly's fraud, including through the distribution of a dividend to Crossroads' shareholders on July 26, 2021, totaling nearly $240 million, which, on information and belief, includes fees and interest that Capital Plus received in connection with the Womply-referred PPP loans. Crossroads has continued to pay its shareholders, including Donnelly, substantial dividends during the course of this litigation.

210. Womply respectfully requests that Crossroads' corporate fiction be disregarded, and that Crossroads be held liable for the acts of Donnelly and Capital Plus and be ordered to pay all actual and consequential damages resulting from Donnelly's and Capital Plus's wrongful conduct.

211. Womply reserves the right to add as defendants in this litigation additional executives, directors, and/or shareholders of Crossroads and Capital Plus based on information obtained through discovery.

COUNT 1 — DECLARATORY JUDGMENT

(Against Capital Plus Defendants)

212. Plaintiff Womply re-alleges and incorporates by reference paragraphs 1–211 above as if fully set forth herein.

213. There is an actual, ongoing, and justiciable controversy between Womply and Capital Plus regarding whether the Borrower Agent Fee Cap applies to fees charged for technology services, such as those Womply provided to Capital Plus and Blueacorn.

214. This dispute is immediate and real because Capital Plus is withholding payment from Blueacorn for Womply-referred PPP loans, and Blueacorn has not paid Womply any fees under the Agreements, based on Capital Plus's interpretation of the Borrower Agent Fee Cap. (*See* Notice of Removal ("Notice") ¶ 16, ECF No.1.)

215. A judicial resolution of this dispute will resolve the considerable uncertainty and controversy that currently exists between the parties with respect to whether Capital Plus and Blueacorn are required to pay Technology Fees to Womply, or whether they may avoid such fees based on the Borrower Agent Fee Cap.

216. Accordingly, pursuant to 28 U.S.C. § 2201, Womply requests a declaration from this Court that Womply's agreements with Blueacorn—including Blueacorn's agreement to pay the Technology Fees for access to Womply's technology services, including the Teslar Platform—are valid and consistent with applicable laws and SBA regulations for any or all of the following reasons:

a. The Borrower Agent Fee Cap does not apply to fees for technology services;

b. Womply provided technology services outside the scope of the Borrower Agent Fee Cap;

c. The Borrower Agent Fee Cap applies only to fees for "assistance in preparing an application for a PPP loan (including referral to the lender)";

d. Womply provided services other than "assistance in preparing an application for a PPP loan (including referral to the lender)" outside the scope of the Borrower Agent Fee Cap;

e. The Borrower Agent Fee Cap applies only to fees for services that an Agent provides to borrowers;

f. Womply provided services to Capital Plus and Blueacorn outside the scope of the Borrower Agent Fee Cap; and

g. In any event, Womply's Referral Fees are consistent with the Borrower Agent Fee Cap.

COUNT 2 — TORTIOUS INTERFERENCE WITH CONTRACTS

(Against Capital Plus Defendants)

217. Plaintiff Womply re-alleges and incorporates by reference paragraphs 1–216 above as if fully set forth herein.

218. The Agreements by and between Womply and Blueacorn are valid and binding contracts.

219. Under the Agreements, for each Womply-referred PPP loan funded by Capital Plus, Womply is entitled to receive all associated Referral Fees and Technology Fees within five days of Blueacorn receiving payment from Capital Plus.

220. The Referral Fees are consistent with, and incorporate by reference, applicable SBA rules, regulations, and guidance.

221. The Capital Plus Defendants are aware that the Referral Fees are consistent with, and incorporate by reference, applicable SBA rules, regulations, and guidance. (*See* Notice ¶¶ 15, 30.)

222. The Capital Plus Defendants do not challenge the validity of the Referral Fees. (*See* Notice ¶¶ 29–32.)

223. The Technology Fees are not subject to the Borrower Agent Fee Cap.

224. Capital Plus is withholding payment from Blueacorn for Womply-referred PPP loans, and Blueacorn has not paid Womply any fees under the Agreements. (*See* Notice ¶ 16.)

225. The Capital Plus Defendants are willfully and intentionally interfering with the Agreements by withholding payment from Blueacorn for Womply-referred PPP loans. The Capital Plus Defendants were aware that Womply would receive fees in excess of 1% of the loan amount under the Agreements before they funded Womply-referred PPP loans. On information and belief, the Capital Plus Defendants seek to obtain a windfall by refusing to pay fees in connection with the Womply-referred PPP loans.

226. The Capital Plus Defendants' improper interference with the Agreements has caused Womply substantial damages, including the loss of more than $76 million in fees plus finance charges due under the Agreements.

COUNT 3 — FRAUD

(Against all Defendants)

227. Plaintiff Womply re-alleges and incorporates by reference paragraphs 1–226 above as if fully set forth herein.

228. On the May 11 Call, Defendant Donnelly, on behalf of Defendants Crossroads and Capital Plus, and Defendant Calhoun, on behalf of Defendant Blueacorn, made several misrepresentations to Womply's CEO, including that:

a. Blueacorn and Capital Plus held a Joint Access Account at Evolve Bank & Trust into which all fees received from the SBA for PPP loans funded by Capital Plus were deposited directly;

b. the SBA fees for all Womply-referred PPP loans funded by Capital Plus would be deposited directly into the Joint Access Account; and

c. Blueacorn and Capital Plus would provide Womply with visibility into the Joint Access Account so that Womply could verify when Blueacorn and Capital Plus received funds from the SBA.

229. Some or all of the foregoing representations were false when made.

230. There was no Joint Access Account held by Blueacorn and Capital Plus into which Capital Plus's fees were deposited. Instead, [redacted]

231. Defendants did not intend to give Womply visibility into the purported Joint Access Account when the foregoing representations were made.

232. Defendants did not in fact give Womply visibility into any account, much less the fictitious Joint Access Account.

233. Defendants did not intend to directly deposit into any Joint Access Account the SBA fees that Capital Plus received for Womply-referred PPP loans.

234. Defendants did not in fact deposit into any Joint Access Account the SBA fees that Capital Plus received for Womply-referred PPP loans.

235. On information and belief, Defendants Donnelly and Calhoun made the foregoing misrepresentations to Womply with the intent that Womply would rely on the misrepresentations, and Womply justifiably relied on Donnelly's and Calhoun's representations when it agreed to enter

into the Agreements with Blueacorn and provided referral and technology services to Capital Plus and Blueacorn.

236. Womply's reliance on Defendants Donnelly's and Calhoun's misrepresentations has caused Womply substantial damages, including the loss of more than $76 million in fees and finance charges due under the Agreements.

COUNT 4 — NEGLIGENT MISREPRESENTATION

(Against all Defendants)

237. Plaintiff Womply re-alleges and incorporates by reference paragraphs 1–236 above as if fully set forth herein.

238. On the May 11 Call, Defendant Donnelly, on behalf of Defendants Crossroads and Capital Plus, and Defendant Calhoun, on behalf of Defendant Blueacorn, made several misrepresentations to Womply's CEO, including that:

a. Blueacorn and Capital Plus held a Joint Access Account at Evolve Bank & Trust into which all fees received from the SBA for PPP loans funded by Capital Plus were deposited directly;

b. the SBA fees for all Womply-referred PPP loans funded by Capital Plus would be deposited directly into the Joint Access Account; and

c. Blueacorn and Capital Plus would provide Womply with visibility into the Joint Access Account so that Womply could verify when Blueacorn and Capital Plus received funds from the SBA.

239. Some or all of the foregoing representations were false when made.

240. Each of Defendants' misrepresentations was made in the course of Defendants' business and in relation to PPP lending transactions in which Defendants had a pecuniary interest.

241. On information and belief, Defendants did not exercise reasonable care in obtaining or communicating the foregoing false information to Womply because Defendants did not intend to give Womply visibility into the fictitious Joint Access Account when the foregoing representations were made.

242. Defendants did not in fact give Womply visibility into any Joint Access Account.

243. On information and belief, Defendants did not exercise reasonable care in obtaining or communicating the foregoing false information to Womply because Defendants did not intend to directly deposit into the Joint Access Account the SBA fees that Capital Plus received for Womply-referred PPP loans.

244. Defendants did not in fact deposit into any Joint Access Account the SBA fees that Capital Plus received for Womply-referred PPP loans.

245. Womply has incurred more than $16 million in out-of-pocket expenses in reliance on Capital Plus's misrepresentations, including per-loan fees Womply paid to its technology partners and per-loan internal expenses such as personnel time. Womply has not completed its investigation, discovery, analysis, legal research, or preparation for trial, and reserves the right to amend and/or revise its damages calculations.

COUNT 5 — PROMISSORY ESTOPPEL

(Against Capital Plus Defendants)

246. Plaintiff Womply re-alleges and incorporates by reference paragraphs 1–245 above as if fully set forth herein.

247. Defendant Donnelly, on behalf of Defendants Crossroads and Capital Plus, promised to pay Technology Fees in excess of 1% of the PPP loan amount for Womply-referred PPP loans for the services and benefits it received through the use of Womply's Technology Platform by depositing the fees into a Joint Access Account of Capital Plus and Blueacorn.

248. Capital Plus pays technology fees in excess of 1% of the PPP loan to other service providers for assistance with funding PPP loans.

249. For example, Capital Plus pays Blueacorn [redacted] The SBA pays Lender Processing Fees of 50% of the PPP loan amount for certain loans. For these loans, Capital Plus pays Blueacorn [redacted].

250. Womply relied on Capital Plus's promise to pay Technology Fees as evidenced by Donnelly's communications and Capital Plus's payment of technology fees greater than 1% of the PPP loan amount to other service providers.

251. Defendants knew and could reasonably foresee that Womply would not have provided referral and technology services to Capital Plus without the promise made that Capital Plus would pay Womply, through Blueacorn as an intermediary, Technology Fees in excess of 1% of the PPP loan amount.

252. Capital Plus has benefitted from Womply's services by using Womply's Technology Platform to fund thousands of PPP loans and collect more than $[redacted] million in SBA Lender Processing Fees.

253. Womply was not required to complete SBA Form 159 because, among other reasons, (i) both Form 159 and the SBA SOP state that Form 159 must be completed by the lender, here Capital Plus; (ii) the SBA did not require Form 159 for PPP loans; and (iii) courts have held that failure to file Form 159 bars recovery only for *borrower* Agents who assisted borrowers with PPP loan applications, not technology companies that provided services to *lenders and lender service providers*.

254. Womply was not required to contract directly with Capital Plus. An equitable claim for quasi-contract lies only where the parties did not enter into a valid contract.

255. Womply has incurred at least $16 million in out-of-pocket expenses in reliance on Capital Plus's misrepresentations, including per-loan fees Womply paid to its technology partners and per-loan internal expenses such as personnel time. Womply has not completed its investigation, discovery, analysis, legal research, or preparation for trial, and reserves the right to amend and/or revise its damages calculations.

COUNT 6 — UNJUST ENRICHMENT

(Against Capital Plus Defendants)

256. Plaintiff Womply re-alleges and incorporates by reference paragraphs 1–255 above as if fully set forth herein.

257. Defendants Capital Plus and Crossroads received benefits from Womply in the form of: (i) referrals of PPP loans from Womply, (ii) access to and use of Womply's Technology Platform that allowed Defendants to manage and track Womply-referred PPP loans, (iii) SBA fees for Womply-referred PPP loans, and (iv) interest on Womply-referred PPP loans.

258. On information and belief, Defendant Donnelly received a benefit from Womply in the form of a dividend Crossroads paid to its shareholders, including Defendant Donnelly, from SBA fees for and interest on Womply-referred PPP loans.

259. The Capital Plus Defendants received these benefits based on Defendant Donnelly's fraudulent misrepresentations to Womply, which he made in his capacity as CEO of Crossroads and Capital Plus.

260. The Capital Plus Defendants are willfully and intentionally withholding from Blueacorn and Womply the Technology Fees and Referral Fees for all Womply-referred PPP loans funded by Capital Plus.

261. It would be unjust to allow the Capital Plus Defendants to retain these benefits without releasing the Technology Fees and Referral Fees to Womply.

262. Womply was not required to complete SBA Form 159 because, among other reasons, (i) both Form 159 and the SBA SOP state that Form 159 must be completed by the lender, here Capital Plus; (ii) the SBA did not require Form 159 for PPP loans; and (iii) courts have held that failure to file Form 159 bars recovery only for *borrower* Agents who assisted borrowers with PPP loan applications, not technology companies that provided services to *lenders and lender service providers*.

263. Womply was not required to contract directly with Capital Plus. An equitable claim for quasi-contract lies only where the parties did not enter into a valid contract.

264. Womply seeks restitution or, alternatively, the imposition of a constructive trust over all SBA fees and interest Capital Plus has received for the Womply-referred PPP loans.

COUNT 7 — BREACH OF CONTRACT

(Against Capital Plus and Blueacorn)

265. Plaintiff Womply re-alleges and incorporates by reference paragraphs 1–264 above as if fully set forth herein.

266. On May 11, 2021, Defendant Donnelly, in his capacity as CEO of Capital Plus and Crossroads, and Defendant Calhoun, in his capacity as CEO of Blueacorn, promised Womply's CEO during a telephone call that, among other things, (i) the SBA fees for all Womply-referred PPP loans funded by Capital Plus would be deposited directly into the Joint Access Account, and (ii) Capital Plus and Blueacorn would provide Womply with visibility into the Joint Access Account so that Womply could verify when Blueacorn and Capital Plus received funds from the SBA.

267. On May 19, 2021, Womply executed the Agreements. Under the Agreements, Womply referred more than 220,000 PPP loans to Capital Plus and Blueacorn and provided valuable technology services to Capital Plus and Blueacorn. Capital Plus funded more than 87,000 Womply-referred PPP loans using Womply's Technology Platform.

268. Capital Plus, Blueacorn, and Womply entered into a valid and enforceable oral contract.

269. All conditions precedent were performed, fulfilled, or waived, including demand and presentment.

270. Womply performed all applicable duties under the contract and tendered performance under the contract, including by referring PPP loans to Capital Plus through Blueacorn and providing technology services to Capital Plus and Blueacorn.

271. Capital Plus and Blueacorn breached the contract by, among other things, failing to give Womply visibility into a Joint Access Account. Capital Plus provided Blueacorn with access to reports that showed the deposits into the account. Capital Plus and Blueacorn could have provided the same information and access to Womply but refused to do so in breach of the oral agreement entered into on May 11, 2021.

272. Womply suffered substantial damages resulting from Defendants' breach, including the loss of more than $76 million in fees and finance charges due under the Agreements. In addition to its damages, Womply is entitled to recover its attorneys' fees and litigation costs pursuant to Section 38.001 of the Texas Civil Practice and Remedies Code.

COUNT 8 — QUANTUM MERUIT

(Against Capital Plus Defendants)

273. Plaintiff Womply re-alleges and incorporates by reference paragraphs 1–272 above as if fully set forth herein.

274. Womply provided valuable services to Capital Plus, including referral of more than 220,000 PPP loans and additional technology services that enabled Capital Plus to process, track, and service more than 87,000 PPP loans.

275. Capital Plus accepted Womply's services. Capital Plus funded more than 87,000 PPP loans Womply referred and earned fees and interest on those loans. Capital Plus also used Womply's Technology Platform and services to, among other things, process, track, and service these loans.

276. Capital Plus had reasonable notice of Womply's expected compensation for its services. During the May 11 Call, Womply notified Capital Plus of the fees it expected to receive for referring PPP loans and providing technology services. Capital Plus agreed to deposit the fees it received from the SBA for these loans into the Joint Access Account that it purportedly held with Blueacorn and to provide Womply with visibility into the Joint Access Account.

277. Capital Plus never compensated Womply for its referral and technology services in connection with the more than 87,000 Womply-referred PPP loans Capital Plus funded. Capital Plus also did not provide Womply with visibility into any Joint Access Account.

278. Womply was not required to complete SBA Form 159 because, among other reasons, (i) both Form 159 and the SBA SOP state that Form 159 must be completed by the lender, here Capital Plus; (ii) the SBA did not require Form 159 for PPP loans; and (iii) courts have held that failure to file Form 159 bars recovery only for *borrower* Agents who assisted borrowers with PPP loan applications, not technology companies that provided services to *lenders and lender service providers*.

279. Womply was not required to contract directly with Capital Plus. An equitable claim for quasi-contract lies only where the parties did not enter into a valid contract.

280. Womply suffered substantial damages resulting from the Capital Plus Defendants' conduct, including the loss of more than $76 million in fees and finance charges due under the Agreements. In addition to its damages, Womply is entitled to recover its attorneys' fees and litigation costs pursuant to Section 38.001 of the Texas Civil Practice and Remedies Code.

COUNT 9 — BREACH OF CONTRACT

(Against Blueacorn)

281. Plaintiff Womply re-alleges and incorporates by reference paragraphs 1–280 above as if fully set forth herein.

282. The Agreements between Womply and Blueacorn "shall be governed by and construed in accordance with the laws of the State of California, without regard to the provisions of the conflict of laws thereof." (Referral Agreement § 9; Order Form § 9.)

283. All conditions precedent were performed, fulfilled, or waived, including demand and presentment.

284. Womply performed all applicable duties under the contract and tendered performance under the contract, including by referring PPP loans to Capital Plus through Blueacorn and providing technology services to Capital Plus and Blueacorn.

285. Blueacorn claims that it is not required to pay Womply under the Agreements because it has not received payment from Capital Plus.

286. Blueacorn is coordinating with Capital Plus to avoid paying Womply under the Agreements.

287. In breach of the implied covenant of good faith and fair dealing, Blueacorn refuses to initiate any action against Capital Plus to obtain payment.

288. Blueacorn is acting in bad faith by prioritizing its commercial relationship with Capital Plus over its contractual obligations to Womply.

289. Blueacorn has agreed [redacted]

290. Blueacorn is also acting in bad faith by waiting to see whether Capital Plus succeeds in invalidating the Agreements between Blueacorn and Womply, which would enable Blueacorn to avoid paying Womply.

291. Womply suffered substantial damages resulting from Blueacorn's conduct, including the loss of more than $76 million in fees and finance charges due under the Agreements.

COUNT 10 — CIVIL CONSPIRACY

(Against all Defendants)

292. Plaintiff Womply re-alleges and incorporates by reference paragraphs 1–291 above as if fully set forth herein.

293. At all relevant times, Defendants Capital Plus, Crossroads, and Donnelly were jointly engaged in the commission of the tortious and unlawful actions alleged herein. Capital Plus, Crossroads, and Donnelly each acted intentionally, and their actions caused injury to Womply.

294. At all relevant times, Defendants Blueacorn and Calhoun were jointly engaged in the commission of the tortious and unlawful actions alleged herein. Blueacorn and Calhoun each acted intentionally, and their actions caused injury to Womply.

295. At all relevant times, Defendants Capital Plus, Crossroads, Donnelly, Blueacorn, and Calhoun conspired together, acted in concert, and came to a mutual understanding to injure Womply. Defendants Capital Plus, Crossroads, Donnelly, Blueacorn, and Calhoun committed unlawful overt acts in furtherance of this conspiracy that proximately caused injury to Womply.

296. Capital Plus and Blueacorn have agreed [redacted]

297. Womply suffered substantial damages proximately caused by those unlawful acts, including the loss of more than $76 million in fees and finance charges due under the Agreements.

298. Defendants are jointly and severally liable for all of Womply's damages proximately caused by Defendants' individual unlawful acts committed pursuant to the conspiracy.

JURY DEMAND

299. Womply hereby requests a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

300. WHEREFORE, Womply respectfully requests that the Court enter judgment in Womply's favor and grant the following relief:

a. A declaration that (i) the Borrower Agent Fee Cap does not apply to fees for technology services; (ii) Womply provided technology services outside the scope of the Borrower Agent Fee Cap; (iii) the Borrower Agent Fee Cap applies only to fees for "assistance in preparing an application for a PPP loan (including referral to the lender)"; (iv) Womply provided services other than "assistance in preparing an application for a PPP loan (including referral to the lender)" outside the scope of the Borrower Agent Fee Cap; (v) the Borrower Agent Fee Cap applies only to fees for services that an Agent provides to borrowers; (vi) Womply provided services to lenders outside the scope of the Borrower Agent Fee Cap; and (vii) in any event, Womply's Referral Fees are consistent with the Borrower Agent Fee Cap.

b. Actual damages to be determined at trial, but not less than $76,714,482.67 plus applicable financing fees;

c. Punitive or exemplary damages;

d. Womply's out-of-pocket expenses in connection with the referral and technology services provided to Capital Plus and Blueacorn;

e. Restitution and/or a constructive trust;

f. Costs and disbursements assessed by Womply in connection with this action, including reasonable attorneys' fees pursuant to Section 38.001 of the Texas Civil Practice and Remedies Code;

g. Pre-judgment and post-judgment interest at the maximum applicable rate; and

h. Such further and other relief as this Court may deem proper and just.

Respectfully submitted,

By: /s/ Jason P. Bloom
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EXHIBIT 1

FOUNTAINHEAD

August 16, 2021

The Honorable Isabella Casillas Guzman
Administrator of the U.S. Small Business Administration
409 3rd Street SW
Washington, D.C. 20416

Re: The Absence of PPP loan agent fee regulations for 2021 PPP loans

Dear Administrator Guzman:

We write to you regarding an apparent oversight by SBA in NOT issuing regulations concerning loan agent fees paid on Paycheck Protection Program (PPP) loans made during calendar year 2021. While this oversight has caused some problems for various lenders due to the absence of this guidance, this issue can be easily rectified if SBA takes quick action.

Our three Florida-based small business lending firms (Fountainhead, Benworth and SEDCO) made 627,566 PPP loans in 2021 (for approximately $8.7bn) which represents 9.39% of all PPP loans made this year (and approximately 3.14% of the dollar amount of PPP loans made in 2021). While none of our lending firms are household names, we all pivoted our businesses to respond to the dire needs of small businesses and contributed significantly to the government's economic recovery efforts. Out of 5,242 participating PPP lenders in 2021, our three firms helped save an estimated 690,000 American jobs.

In early April 2020 with the launch of the first round of PPP loans, Treasury issued regulations regarding the maximum fee a participating PPP lender could pay a "loan agent" for their PPP loan referrals. These maximum loan agent fees ranged from between 16.67% and 25% of the lenders' processing fees (no more than 1% of the loan amount could be paid on PPP loans up to $350,000; no more than 0.5% of the loan amount could be paid on PPP loans between $350,000 and $2,000,000; and no more than 0.25% of the loan amount could be paid on PPP loans above $2,000,000).

Unfortunately, with the passage of round three of PPP loans in late December 2020 (which enabled 2021 PPP loans to be made), neither Treasury nor SBA issued regulations (or updates to existing regulations) regarding the maximum loan agent fees that lenders could pay for referrals. Especially problematic was that the lender processing fees earned on the smallest PPP loans (those of $50,000 or less) were dramatically changed from 2020 PPP loans to incentivize lenders to make these smaller loans to underserved small business owners. However, no regulation has been issued regarding the maximum fee a lender can pay a loan agent for these particular 2021 PPP loan referrals. The absence of this guidance has caused considerable ambiguity and unnecessary disputes between lenders and loan agents.

800-770-1504
www.fountainheadcc.com
3216 W. Lake Mary Blvd.
Lake Mary, FL 32746

FOUNTAINHEAD

We believe this oversight can be rectified quickly and easily with the issuance of a regulation about these smaller 2021 PPP loans regarding the maximum amount a lender may pay a loan agent on each referred PPP loan made in 2021. Our suggestion would be that SBA issue a short regulation (in the Federal Register and/or in your PPP FAQ's) indicating that no lender may pay more than 50% of their earned processing fees made on these smaller ($50,000 and under) PPP loans to any loan agent.

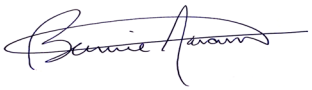
We urge you to make this simple fix and end this ambiguity so we may refocus our efforts on continuing to support small businesses with other SBA loan programs.

Thank you for your consideration.

Sincerely,



Chris Hurn,
Founder/CEO
Fountainhead SBF



Bernie Navarro,
Founder/CEO
Benworth Capital Partners



Brooke Mirenda,
President & CEO
Sunshine State Economic Development Company (SEDCO)

800-770-1504
www.fountainheadcc.com
3216 W. Lake Mary Blvd.
Lake Mary, FL 32746

EXHIBIT 2

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

Sent Via Email: Chris@fountainheadcc.com; BNavarro@BenworthCapital.com; BMirenda@sedco504.com

September 14, 2021

Mr. Chris Hurn
Founder/CEO
Fountainhead SBF

Mr. Bernie Navarro
Founder/CEO
Benworth Capital Partners

Ms. Brooke Mirenda
President/CEO
Sunshine State Economic Development Company (SEDCO)

Re: August 16, 2021 Letter to the Administrator

Dear Messrs. Hurn and Navarro and Ms. Mirenda:

Thank you for your letter to Administrator Guzman dated August 16, 2021, expressing your concern that the Small Business Administration (SBA) has not issued guidance regarding the maximum loan agent fees that lenders could pay for referrals of Paycheck Protection Program (PPP) loans. The Administrator has asked me to respond on her behalf.

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116-136) stated the fees that SBA would pay to lenders for processing PPP loans and provided SBA with the authority to set limits on agent fees.

On January 14, 2021, SBA published an interim final rule implementing updates to the PPP as a result of the enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Pub. L. 116-260). That interim final rule included the following guidance regarding fees paid to an agent who provides assistance in connection with a PPP loan, including referral of the loan to the lender:

> "Agent fees may not be paid out of the proceeds of a PPP loan. If a borrower has knowingly retained an agent, such fees will be paid by the borrower. A lender is only responsible for paying fees to an agent for services for which the lender directly contracts with the agent. The total amount that an agent may collect from the lender for assistance in preparing an application for a PPP loan (including referral to the lender) may not exceed:
>
> a. One (1) percent for loans of not more than $350,000;
> b. 0.50 percent for loans of more than $350,000 and less than $2 million; and
> c. 0.25 percent for loans of at least $2 million.

The Act authorizes the Administrator to establish limits on agent fees. The Administrator, in consultation with the Secretary, determined that the agent fee limits set forth above are reasonable based upon the application requirements and the fees that lenders receive for making PPP loans."

We hope that this information is helpful and thank you for your commitment to the nation's small businesses.

Very truly yours,

SUSAN STREICH

Digitally signed by SUSAN STREICH
Date: 2021.09.14 14:29:48 -04'00'

Susan E. Streich
Director - Office of Credit Risk Management

Cc: Isabella Guzman, Administrator – Small Business Administration
Patrick Kelley, Associate Administrator – Office of Capital Access
John Miller, Deputy Associate Administrator – Office of Capital Access
Dianna Seaborn, Director, Office of Financial Assistance

EXHIBIT 6

Womply Developer Order Form

Client:	Blue Acorn
Effective Date:	May 10th, 2021
API Access End Date:	The earlier of twelve (12) months from Effective Date or when this Order or the Agreement is terminated (the "Term").

Service	**Fees**
Tax Documents Bank Data Identity Account Verification PPP Portfolio Management System	The Technology Fee set forth in Section 3 below.

This Womply Developer Order Form agreement ("**Agreement**") is entered into as of the Effective Date and is between Oto Analytics, Inc. d/b/a Womply ("**Womply**") and the Client listed above. This Agreement includes and incorporates (i) the above Order Form, (ii) any Order Forms subsequently entered into by the parties, and (iii) the Additional Terms and Conditions set forth below. Unless set forth otherwise, undefined capitalized terms are defined in the PPP Loan Referral Agreement between the Parties (the "**Referral Agreement**"). To the extent there is a conflict between the Order Form Terms and the Referral Agreement, the Order Form Terms shall take precedence.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Womply:

By: _____

Name: Toby Scammell

Title: Founder

Client:

By: _____

Name: Barry Calhoun

Title: CEO

Additional Terms and Conditions

1. Service.

1.1. Access. Subject to the Client's compliance with the terms and conditions of this Agreement, Womply hereby agrees that during the Term, the Client has the non-exclusive right to: (i) use the Service (detailed on the Order Form) with an application owned and operated by the Client (the "**Client Application**") provided to end users (consumers or businesses) (the "**End Users**"), and (iii) use the End User information and data provided via the Service (the "**Output**") solely in the Client Application for the purpose of processing Referrals.

1.2. Restrictions. Unless Womply specifically agrees in writing, Client will not, and will use commercially reasonable efforts to make sure third parties do not: (i) attempt to reverse engineer (except as permitted by law), decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Service; (ii) modify, translate, or create derivative works based on the Service; (iii) make the Service or Output available to, or use the Service or Output for the benefit of anyone other than Client or End Users; (iv) sell, resell, license, sublicense, distribute, rent or lease any Service or Output to any third party, or include any Service or Output in a service bureau, time-sharing, or equivalent offering or (v) attempt to create a substitute or similar service through use of, or access to, the Services or Output. Client will use the Service and Output only in compliance with (i) the rights granted hereunder and (ii) any agreements between Client and End Users. All use of the Service and Output must be only as provided herein and only in accordance with the rights of business partners in Womply's privacy policy and applicable user documentation (and all other Womply-provided written instructions).

1.3. Ownership. Except for the rights expressly granted under this Section 1, Womply reserves and retains all right, title, and interest in and to the Service and any related Output, software, products, works, and other intellectual property created, used, or provided by Womply for the purposes of this Agreement. To the extent the Client provides Womply with any feedback relating to the Service (including, without limitation, feedback related to usability, performance, interactivity, bug reports and test results) ("**Feedback**"), Womply will own all right, title and interest in and to such Feedback (and the Client hereby makes all assignments necessary to achieve such ownership).

1.4. Privacy and Authorization. The Client represents that its privacy policy shall, for the duration of this Agreement, (a) be maintained in a manner that is compliant with applicable law and (b) obtain sufficient consents and provide sufficient notice for Womply to use and process End User data in accordance with Womply's Privacy Policy.

2. Disclaimers.

2.1. Section 1.2 of the Referral Agreement is hereby incorporated by reference.

2.2. The Services includes integrations with and/or links to certain third-party service providers (including, without limitation, Plaid, Docusign, LexisNexis, Teslar, Inscribe, Ocrolus, AWS Mechanical Turk, Mindee, Persona, Twilio, Sendgrid, etc.) ("**Third-Party Providers**"). WOMPLY HAS NO CONTROL OVER AND ASSUMES NO RESPONSIBILITY FOR THE ACTIONS, ERRORS, OR OMISSIONS OF THE THIRD PARTY PROVIDERS.

2.3. Section 1.3 of the Referral Agreement is hereby incorporated by reference.

2.4. OTHER THAN AS SET FORTH IN SECTION 1.2 OF THE REFERRAL AGREEMENT, THE SERVICE AND ANYTHING ELSE PROVIDED BY WOMPLY HEREUNDER IS PROVIDED "AS IS." TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER WOMPLY NOR ITS AFFILIATES, SUPPLIERS, LICENSORS, OR DISTRIBUTORS MAKE ANY WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ANY WARRANTY THAT THE SERVICE IS FREE FROM DEFECTS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, WOMPLY DOES NOT MAKE ANY OTHER WARRANTY AS TO THE OUTPUT THAT MAY BE OBTAINED FROM USE OF THE SERVICE.

3. Technology Fee.

3.1. The Client agrees to the following:

3.1.1. The Client or any of the Client's third party lenders will not process any Second Draw Referred Loans for any First Draw Referred Loans from Womply without the express consent and direction from Womply.

3.2. If Womply collects forgiveness information and submits such info to the SBA on behalf of the Client or the Client's lender, then the Client shall pay Womply $100 per loan. Womply will only participate in this activity if both it and the Client agree.

3.3. Client shall pay Womply the technology fees described below for (i) each loan originated by Client under the PPP resulting from a Referral plus, if applicable, (ii) each Second Draw loan associated with a First Draw Referral (the "**Technology Fees**").

Referred Loan Volume	**Referral Fee Percentage**
1 through unlimited Referred Loans	Womply shall receive the first $250 from any Lender Processing Fee, plus 1/3 of the remaining Lender Processing Fee after the $250 is subtracted

3.4. The Technology Fee payable to Womply for any Referred Loan shall be reduced by any Referral Fee paid to Womply in respect of such Referred Loan. By way of example, if the Referred Loan has a principal amount of $50,000 and if Client receives a Lender Processing Fee of $2,500, then the Technology Fees payable to Womply shall be as follows:

Lender Fee: $2,500

Referral Fee: $500 (i.e., 1% of the value of the Referred Loan, as defined the by the PPP Loan Referral Agreement)

Technology Fee: $499.99 (i.e., $250 plus 1/3 of the $2,250 Lender Processing Fee less $500 Referral Fee (paid separately))

3.5. Within five (5) days after Blueacorn receives its fees from the the lender that submitted the Referred Loan to the SBA, Client will pay Womply all associated Technology Fees for each applicable Referred Loan. Womply shall return any Technology Fees paid in the event that the SBA or other governmental agency requires Client to return the Lender Processing Fee. Additionally, Womply shall return any portion of the Technology Fees paid that the SBA or other governmental agency determines were not in compliance with applicable SBA and/or PPP Loan Program Requirements. Such return of fees will occur within fifteen (15) days of Womply receiving notice of such return of fees from Client. All payments herein shall be made by wire transfer.

3.6. Each party shall be responsible for and pay any and all applicable taxes, customs, withholding taxes, duties, assessments and other governmental impositions resulting from its own activities under this Agreement.

3.7. Unpaid invoices are subject to a finance charge of 1.5% per month or the maximum permitted by law, whichever is lower, plus all expenses of collection. All payments made are non-refundable, non-cancellable, and not subject to set-off.

4. Representations and Warranties. Each party represents, warrants, and covenants that: (a) it has the full right, power and authority to execute this Agreement and perform its obligations hereunder; (b) its performance hereunder will not conflict with any obligation it has to any third party; and (c) it has and will maintain such comprehensive general liability and other insurance as is necessary to cover any claims and losses associated with its obligations under this Agreement.

5. Term; Termination.

5.1. The term of this Agreement shall be for the Term detailed in the Order Form.

5.2. Notwithstanding Section 5.1 above, either party may terminate this Agreement at its option by providing no less than thirty (30) days' written notice ("**Notice of Termination**") to the other party. Either party may also terminate this Agreement immediately upon delivery of a Notice of Termination if the other party is in material breach of any warranty, representation, covenant or obligation under this Agreement or

the Referral Agreement and is not able to cure such breach within seven (7) calendar days of receiving the Notice of Termination.

5.3. Upon Client's receipt of a Notice of Termination, Client may request from Womply, and Womply shall reasonably provide to Client, a plan for transmitting to Client electronic copies of loan files in its possession that relate to the Referred Loans, to the extent not otherwise in the possession of Client. Womply will not unreasonably withhold its cooperation in such selection and transmission. Both parties shall agree upon a data format and method of transmission. Womply shall reasonably provide such requested information to Client no later than thirty (30) days following the termination of this Agreement.

5.4. The following Sections shall survive termination or expiration of this Agreement: 1.2, 1.3, 1.4, 2, 3 (to the extent Referral Fees remain outstanding), 4, 5.3, 5.4, 5.5, and 6 through 16.

5.5. Womply shall be entitled to all Technology Fees accrued in connection with Referred Loans pursuant to the terms and provisions of Section 3 above, including services provided after termination of this Agreement pursuant to Client's request.

6. Confidentiality.

6.1. During the course of performing this Agreement, each party may have access to confidential or proprietary information of the other party, as well as confidential customer information that accompanies each Referral ("**Confidential Information**"). The protection of confidential customer information is required at all times and Client and Womply shall at all times comply with relevant state and federal regulations regarding disclosure of such Confidential Information, including if applicable the Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801-6809) and the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.).

6.2. A party's Confidential Information shall not include any information which (i) becomes part of the public domain through no act or omission of the other party; (ii) is lawfully acquired by the other party on a non-confidential basis from a third party without any breach of a confidentiality obligation; (iii) is disclosed by such party to a third party without any obligation of confidentiality; or (iv) was independently developed by the other party without reference to such party's Confidential Information. Each party agrees to use the other party's Confidential Information only as necessary to perform its obligations under this Agreement or to address any issues related to fraud or investigations into fraud related to the Referred Loans and to maintain the confidentiality of the other party's Confidential Information using at least the same degree of care in safeguarding the other's Confidential Information as it uses in safeguarding its own Confidential Information, subject to a minimum standard of reasonable diligence and protection to prevent any unauthorized copying, use, distribution, installation or transfer of possession of such information. If required by law, the receiving party may disclose Confidential Information of the disclosing party, provided the receiving party gives adequate prior notice of such disclosure to the disclosing party to permit the disclosing party to intervene and to request protective orders or other confidential treatment therefor. Notwithstanding the foregoing, the confidentiality protections set forth in this Section 6 do not apply to the use of the Confidential Information by any third-party lenders to which the Referred Loans are sent for processing.

7. Indemnification.

7.1. Subject to Section 7.3, each party ("Indemnifying Party") shall indemnify, defend, and hold the other party, its officers, directors, employees, representatives and agents ("Indemnified Parties"), harmless from and against any Claim (defined below) to the extent resulting from infringement, conflict with, or violation by the Indemnifying Party of any intellectual property rights, contracts rights, or tort rights (including the right of publicity or right of privacy) of any third party. Indemnifying Party agrees to promptly pay and fully satisfy any and all Losses (defined below), including, without limitation, reasonable attorneys' fees, actually incurred, or sustained, as a result of any Section 7.1 Claims. "Claim" means any third-party claim, legal or equitable, cause of action, suit, litigation, proceeding (including a regulatory or administrative proceeding), complaint, demand, charge, investigation, audit, arbitration, mediation, or other process for settling disputes or disagreements, including, without limitation, any of the foregoing processes or procedures in which injunctive or equitable relief is sought. "Losses" mean and include any loss, assessment, fine, penalty, deficiency, interest, payment, expense, cost, debt, indebtedness, liability, lien, judgment, or damage, which is both (a) sustained, incurred, or accrued and (b) paid to an unaffiliated third party.

7.2. Subject to Section 7.3, the Client will defend, indemnify and hold Womply harmless from and against all Claims to the extent resulting from Client breach of Section 1.2. The Client agrees to promptly

pay and fully satisfy any and all Losses, including, without limitation, reasonable attorneys' fees, actually incurred, or sustained, as a result of any Section 7.2 Claims.

7.3. The Indemnified Party shall: (i) promptly notify the Indemnifying Party in writing of any Losses for which the Indemnified Party seeks indemnification; (ii) provide reasonable cooperation to the Indemnifying Party and its legal representatives in the investigation of any matter which is the subject of indemnification; and (iii) permit the Indemnifying Party to have full control over the defense and settlement of any matter subject to indemnification. The Indemnified Party shall have the right to participate in the defense at its own expense.

8. Limitation of Liability. EXCEPT WITH RESPECT TO SECTION 1.2(I) AND SECTION 5 OF THE REFERRAL AGREEMENT OR A BREACH OF SECTION 6 OF THIS AGREEMENT AND EACH PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, (I) NEITHER PARTY WILL BE LIABLE OR OBLIGATED WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR UNDER ANY CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES WHATSOEVER, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, RELIANCE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA OR USE, AND (II) NEITHER PARTY'S LIABILITY SHALL EXCEED THE AMOUNTS PAID AND PAYABLE (IN THE CASE OF CLIENT'S BREACH ONLY) TO WOMPLY DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY.

9. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the provisions of the conflict of laws thereof. Notwithstanding the foregoing or any provision of this Agreement to the contrary, this Agreement is subject to all Applicable Laws, including SBA Regulations. In the event of any conflict between the governing law and the SBA Regulations (defined below), the SBA Regulations shall control. "SBA Regulations" means all PPP requirements and SBA guidelines under the CARES Act, the Economic Aid Act, the PPP Flexibility Act, any rules or guidance that have been issued by SBA implementing the PPP, including SBA regulations published at 86 Fed. Reg. 3692 (Jan. 14, 2021) and 85 Fed. Reg. 20811 (Apr. 15, 2020) and any subsequent Interim Final Rules and other guidance as may have been or may be subsequently issued by SBA or the U.S. Department of the Treasury with respect to the origination, servicing and forgiveness of loans under the PPP and Frequently Asked Questions, or any other applicable SBA loan requirements, including those codified in 13 CFR part 120, in each case as amended, supplemented or modified from time to time. In the event that this Agreement conflicts with any other contract or agreement between the parties, now or in the future including the Womply Developer Order Form, this Agreement shall control with respect to any Referred Loan unless the other contract or agreement specifically states that it supersedes this Agreement.

10. Arbitration. Without limiting a party's right to seek injunctive or other equitable relief in court, any dispute between the parties related to the subject matter of this Agreement will be resolved by binding arbitration in the English language in San Francisco County, California under the rules of JAMS; the decision of the arbitrator will be enforceable in any court. The prevailing party in any action to enforce this Agreement shall be entitled to costs and attorneys' fees.

11. Independent Contractors. This Agreement is not intended to establish any partnership, joint venture, employment, or other relationship between the parties except that of independent contractors. Neither party has, or may represent that it has, any authority under or as a result of this Agreement to act on behalf of the other party in any way.

12. Notices. Any notice or other communication required or permitted in this Agreement shall be in writing and shall be deemed to have been duly given on the day of service if served personally or upon receipt if sent by facsimile transmission with confirmation or if mailed by First Class mail, registered or certified, postage prepaid, and addressed to the respective parties at the addresses set forth above, or at such other addresses as may be specified by either party pursuant to the terms and provisions of this section.

13. Assignment. Neither party may assign, without the prior written consent of the other, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part; provided, however, that this Agreement may be assigned by a party without the consent of the other to any successor corporation or entity whether by purchase of all or substantially all of the assets relating to this Agreement,

a sale of a controlling interest of the capital stock of the assigning party, by merger, consolidation or otherwise. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

14. Force Majeure. Neither party will be liable for failure or delay in performance of any of its obligations under this Agreement arising out of any event or circumstance beyond that party's reasonable control; provided, however, that such party promptly notifies the other party of the nature and duration of the force majeure event and resumes performance as soon as possible.

15. Severability. Any provision of this Agreement that is determined to be unenforceable or unlawful shall not affect the remainder of the Agreement and shall be severable therefrom, and the unenforceable or unlawful provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

16. Entire Agreement. Excluding the Referral Agreement, this Agreement constitutes the entire agreement between the parties and supersedes any and all prior communications or agreements between them, whether written or oral, with respect to the subject matter hereof. This Agreement may not be amended, modified or any provision hereof waived, except in a writing signed by the parties hereto. No waiver by either party, whether express or implied, of any provision of this Agreement, or of any breach thereof, shall constitute a continuing waiver of such provision or a breach or waiver of any other provision of this Agreement.

16. Press Releases. Any news release, public announcement, advertisement, or other publicity released by either party concerning this Agreement shall be subject to the prior approval of the other party, which approval shall not be unreasonably withheld or delayed. The parties will cooperate with each other to issue a joint press release announcing their relationship established by this Agreement.

womply

1.PPP Loan Referral Agreement

This PPP Loan Referral Agreement (the "**Agreement**") is made and entered into on May 10th, 2021 (the "**Effective Date**") by and between Oto Analytics, Inc. d/b/a Womply ("**Womply**") and BA Fin Orion, LLC ("**Blueacorn**"). In consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, Womply and Blueacorn hereby agree as follows:

WHEREAS, Blueacorn desires to engage in the marketing, initial underwriting, and submission to third-party lenders of loans funded and created under the U.S. Small Business Administration ("**SBA**") Paycheck Protection Program (the "**PPP**");

WHEREAS, Blueacorn and Womply desire to establish an independent contractor relationship whereby Womply provides referrals to Blueacorn in connection with potential loan applicants seeking loans under the PPP from third-party lenders; and

WHEREAS, Blueacorn and Womply specifically acknowledge that any third-party lender retains ultimate responsibility for all loan decisions, including approvals, underwriting, closings, disbursements, due diligence, and loan servicing actions (including those relating to loan deferments, loan forgiveness, and loan guarantees), as required by the SBA, and Womply will exercise all best efforts to comply with all regulatory requirements of the PPP.

NOW THEREFORE, in consideration of the mutual covenants, promises, and undertakings contained herein, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. **Referrals**.

1.1. Womply may, from time to time, refer to Blueacorn such PPP loan applicants as Womply shall, in its sole and absolute discretion, deem appropriate (each such applicant a "**Referral**"). Womply acknowledges that sometimes the same borrower is submitted to Blueacorn by multiple referring parties. Womply will be the party paid if they were the first to submit a complete package to Blueacorn for the requested loan.

1.2. WOMPLY SHALL EXERCISE COMMERCIALLY REASONABLE EFFORTS TO (I) COMPLY WITH THE APPLICATION REVIEW PROCESS SET FORTH ON EXHIBIT A, AND (II) WOMPLY REPRESENTS AND WARRANTS, TO ITS KNOWLEDGE AS OF THE EFFECTIVE DATE, THAT THE INFORMATION ACCOMPANYING ANY REFERRAL COMPLIES WITH THE REGULATORY GUIDANCE FROM THE SBA. NOTWITHSTANDING THE FOREGOING WOMPLY MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT, AND HEREBY DISCLAIMS ALL RESPONSIBILITY FOR THE ACCURACY OR COMPLETENESS OF ANY AND ALL APPLICATION INFORMATION PROVIDED BY AN APPLICANT THAT IS DEEMD A REFERRAL HEREUNDER. WOMPLY ACKNOWLEDGES AND AGREES THAT BLUEACORN WILL NOT CONDUCT AN INDEPENDENT REVIEW OF THE REFERRED LOANS (AS DEFINED BELOW) PRIOR TO SUBMISSION TO A THIRD PARTY LENDER.

1.3. Neither Blueacorn nor Womply is a lender or lender service provider as defined by the SBA.

2. **Compensation**.

2.1. The Referral Fees described in this Section 2 will be paid out of the fees actually received by Blueacorn in respect of Referred Loans (defined below) (the "**Loan Fees**").

2.2. In consideration of Womply providing Blueacorn with Referrals, Blueacorn shall pay to Womply the referral fee set forth in the table below, which is expressed as a percentage of the outstanding balance of the Referred Loan at the time of loan disbursement (such fees, the "**Referral Fees**"), for each loan originated by Blueacorn under the PPP resulting from a Referral (such loan a "**Referred Loan**"). Blueacorn retains the right, in its sole and absolute discretion, to refuse to submit any Referred Loan to a third party lender for any reason.

Referral Fee Amount	1.00% for each Referred Loan

2.3. Within five (5) days after Blueacorn receives its fees from the lender that submitted the Referred Loan to the the SBA, Blueacorn will pay Womply all associated Referral Fees for such applicable Referred Loan. Womply shall return any Referral Fees paid in the event that the SBA or other governmental agency requires Blueacorn to return the Blueacorn Fee. Additionally, Womply shall return any portion of Referral Fees paid that the SBA or other

governmental agency determines were not in compliance with applicable SBA and/or PPP Loan Program Requirements. Such return of fees will occur within fifteen (15) days of Womply receiving notice of such return of fees from Blueacorn.

2.4. Each party shall be responsible for and pay any and all applicable taxes, customs, withholding taxes, duties, assessments and other governmental impositions resulting from its own activities under this Agreement. Referral Fee payments not made in accordance with the foregoing schedule are subject to a finance charge of 1.5% per month or the maximum permitted by law, whichever is lower, plus all costs of collection. Except as expressly set forth above, all Referral Fees paid are non-refundable, non-cancellable, and not subject to set-off. All payments described in this Section 2 must be made by wire transfer.

3. **Representations and Warranties**. Each party represents, warrants, and covenants that: (a) it has the full right, power and authority to execute this Agreement and perform its obligations hereunder; (b) its performance hereunder will not conflict with any obligation it has to any third party; and (c) it has and will maintain such comprehensive general liability and other insurance as is necessary to cover any claims and losses associated with any of its obligations under this Agreement.

4. **Term; Termination**.

4.1. The term of this Agreement shall be one (1) year from the Effective Date (the "**Term**"), and thereafter upon the mutual written consent of both parties shall renew for successive one (1) year terms unless earlier terminated, if Notice of Termination is timely provided, in accordance with this Section 4.

4.2. Notwithstanding Section 4.1 above, either party may terminate this Agreement at its option by providing no less than thirty (30) days' written notice ("**Notice of Termination**") to the other party. Either party may also terminate this Agreement immediately upon delivery of a Notice of Termination if the other party is in material breach of any warranty, representation, covenant or obligation under this Agreement or the Womply Developer Order Form and is not able to cure such breach within seven (7) calendar days of receiving the Notice of Termination.

4.3. Upon Blueacorn's receipt of a Notice of Termination, Blueacorn may request from Womply, and Womply shall reasonably provide to Blueacorn, a plan for transmitting to Blueacorn electronic copies of loan files in its possession that relate to the Referred Loans, to the extent not otherwise in the possession of Blueacorn. Womply will not unreasonably withhold its cooperation in such selection and transmission. Both parties shall agree upon a data format and method of transmission. Womply shall reasonably provide such requested information to Blueacorn no later than thirty (30) days following the termination of this Agreement.

4.4. The following Sections shall survive termination or expiration of this Agreement: 1.2, 2 (to the extent Referral Fees remain outstanding), 3, 4.3, 4.4, 4.5, and 5 through 17.

4.5. Womply shall be entitled to all Referral Fees accrued in connection with Referred Loans pursuant to the terms and provisions of Section 2 above, including services provided after termination of this Agreement pursuant to Blueacorn's request.

5. **Confidential Information**.

5.1. During the course of performing this Agreement, each party may have access to confidential or proprietary information of the other party, as well as confidential customer information that accompanies each Referral ("**Confidential Information**"). The protection of confidential customer information is required at all times and Blueacorn and Womply shall at all times comply with relevant state and federal regulations regarding disclosure of such Confidential Information, including if applicable the Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801-6809) and the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.).

5.2 A party's Confidential Information shall not include any information which (i) becomes part of the public domain through no act or omission of the other party; (ii) is lawfully acquired by the other party on a non-confidential basis from a third party without any breach of a confidentiality obligation; (iii) is disclosed by such party to a third party without any obligation of confidentiality; or (iv) was independently developed by the other party without reference to such party's Confidential Information. Each party agrees to use the other party's Confidential Information only as necessary to perform its obligations under this Agreement or to address any issues related to fraud or investigations into fraud related to the Referred Loans and to maintain the confidentiality of the other party's Confidential Information using at least the same degree of care in safeguarding the other's Confidential Information as it uses in safeguarding its own Confidential Information, subject to a minimum standard of reasonable diligence and protection to prevent any unauthorized copying, use, distribution, installation or transfer of possession of such

information. If required by law, the receiving party may disclose Confidential Information of the disclosing party, provided the receiving party gives adequate prior notice of such disclosure to the disclosing party to permit the disclosing party to intervene and to request protective orders or other confidential treatment therefor. Notwithstanding the foregoing, the confidentiality protections set forth in this Section 5 does not apply to the use of the Confidential Information by any third-party lenders to which the Referrred Loans are sent for processing.

6. Indemnification.

6.1. Subject to Section 6.2, each party ("**Indemnifying Party**") shall indemnify, defend, and hold the other party, its officers, directors, employees, representatives and agents ("**Indemnified Parties**"), harmless from and against any Claim (defined below) to the extent resulting from (i) infringement, conflict with, or violation by the Indemnifying Party of any intellectual property rights, contracts rights, or tort rights (including the right of publicity or right of privacy) of any third party or (ii) a breach by the Indemnifying Part of Section 1.2(I). Indemnifying Party agrees to promptly pay and fully satisfy any and all Losses (defined below), including, without limitation, reasonable attorneys' fees, actually incurred, or sustained, as a result of any Claims. "**Claim**" means any third-party claim, legal or equitable, cause of action, suit, litigation, proceeding (including a regulatory or administrative proceeding), complaint, demand, charge, investigation, audit, arbitration, mediation, or other process for settling disputes or disagreements, including, without limitation, any of the foregoing processes or procedures in which injunctive or equitable relief is sought. "**Losses**" mean and include any loss, assessment, fine, penalty, deficiency, interest, payment, expense, cost, debt, indebtedness, liability, lien, judgment, or damage, which is both (a) sustained, incurred, or accrued and (b) paid to an unaffiliated third party.

6.2. The Indemnified Party shall: (i) promptly notify the Indemnifying Party in writing of any Losses for which the Indemnified Party seeks indemnification; (ii) provide reasonable cooperation to the Indemnifying Party and its legal representatives in the investigation of any matter which is the subject of indemnification; and (iii) permit the Indemnifying Party to have full control over the defense and settlement of any matter subject to indemnification. The Indemnified Party shall have the right to participate in the defense at its own expense.

7. **Limitation of Liability**. EXCEPT WITH RESPECT TO A BREACH OF SECTION 5 AND EACH PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, (I) NEITHER PARTY WILL BE LIABLE OR OBLIGATED WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR UNDER ANY CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES WHATSOEVER, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, RELIANCE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA OR USE, AND (II) NEITHER PARTY'S LIABILITY SHALL EXCEED THE AMOUNTS PAID AND PAYABLE (IN THE CASE OF BLUEACORN'S BREACH ONLY) TO WOMPLY DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY.

8. **Recitals**. The recitals set forth above are hereby incorporated into this Agreement.

9. **Choice of Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the provisions of the conflict of laws thereof. Notwithstanding the foregoing or any provision of this Agreement to the contrary, this Agreement is subject to all Applicable Laws, including SBA Regulations. In the event of any conflict between the governing law and the SBA Regulations (defined below), the SBA Regulations shall control. "SBA Regulations" means all PPP requirements and SBA guidelines under the CARES Act, the Economic Aid Act, the PPP Flexibility Act, any rules or guidance that have been issued by SBA implementing the PPP, including SBA regulations published at 86 Fed. Reg. 3692 (Jan. 14, 2021) and 85 Fed. Reg. 20811 (Apr. 15, 2020) and any subsequent Interim Final Rules and other guidance as may have been or may be subsequently issued by SBA or the U.S. Department of the Treasury with respect to the origination, servicing and forgiveness of loans under the PPP and Frequently Asked Questions, or any other applicable SBA loan requirements, including those codified in 13 CFR part 120, in each case as amended, supplemented or modified from time to time. In the event that this Agreement conflicts with any other contract or agreement between the parties, now or in the future including the Womply Developer Order Form, this Agreement shall control with respect to any Referred Loan unless the other contract or agreement specifically states that it supersedes this Agreement.

10. **Arbitration**. Without limiting a party's right to seek injunctive or other equitable relief in court, any dispute between the parties related to the subject matter of this Agreement will be resolved by binding arbitration in the English language in San Francisco County, California under the rules of JAMS; the decision of the arbitrator will be enforceable in any court. The prevailing party in any action to enforce this Agreement shall be entitled to costs and attorneys' fees.

11. **Independent Contractors**. This Agreement is not intended to establish any partnership, joint venture, employment, or other relationship between the parties except that of independent contractors. Neither party has, or may represent that it has, any authority under or as a result of this Agreement to act on behalf of the other party in any way.

12. **Notices**. Any notice or other communication required or permitted in this Agreement shall be in writing and shall be deemed to have been duly given on the day of service if served personally or upon receipt if sent by facsimile transmission with confirmation or if mailed by First Class mail, registered or certified, postage prepaid, and addressed to the respective parties at the addresses set forth above, or at such other addresses as may be specified by either party pursuant to the terms and provisions of this section.

13. **Assignment**. Neither party may assign, without the prior written consent of the other, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part; provided, however, that this Agreement may be assigned by a party without the consent of the other to any successor corporation or entity whether by purchase of all or substantially all of the assets relating to this Agreement, a sale of a controlling interest of the capital stock of the assigning party, by merger, consolidation or otherwise. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

14. **Force Majeure**. Neither party will be liable for failure or delay in performance of any of its obligations under this Agreement arising out of any event or circumstance beyond that party's reasonable control; *provided*, *however*, that such party promptly notifies the other party of the nature and duration of the force majeure event and resumes performance as soon as possible.

15. **Severability**. Any provision of this Agreement that is determined to be unenforceable or unlawful shall not affect the remainder of the Agreement and shall be severable therefrom, and the unenforceable or unlawful provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

16. **Entire Agreement**. Excluding separate agreements Blueacorn may have for the purchase of Womply's products and services, this Agreement constitutes the entire agreement between the parties and supersedes any and all prior communications or agreements between them, whether written or oral, with respect to the subject matter hereof. This Agreement may not be amended, modified or any provision hereof waived, except in a writing signed by the parties hereto. No waiver by either party, whether express or implied, of any provision of this Agreement, or of any breach thereof, shall constitute a continuing waiver of such provision or a breach or waiver of any other provision of this Agreement.

17. **Press Releases**. Any news release, public announcement, advertisement, or other publicity released by either party concerning this Agreement shall be subject to the prior approval of the other party, which approval shall not be unreasonably withheld or delayed. The parties will cooperate with each other to issue a joint press release announcing their relationship established by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Amendment Effective Date.

Womply:

By: _____

Name: Toby Scammell

Title: Founder

Blueacorn

By: _____

Name: Barry Calhoun

Title: CEO

womply

EXHIBIT A

APPLICATION REVIEW PROCESS

Attached Hereto

PPP Fast Lane Data Collection Overview

Updated May 11, 2021

Summary

The following conditions must be met individually prior to Womply sending an application to BlueAcorn:

- Email verified
- Phone verified
- Name, address, EIN, other basic info passes SBA form validation
- Business Activity check (as defined by Blue Acorn) passed
- Tax Document check passed
- KYC check passed
- Bank is verified and fundable based on global limits per bank account and RDFI rules
- Fraud is not detected
- Application info (email, phone, tax ID, bank account) has not been associated with any other application that was declined for fraud
- Other less common criteria pass including First Draw PPP loan number validation/disbursement, as appropriate.

KYC

Womply uses Persona as the primary KYC vendor for our lenders. In some cases we also use Docusign ID Check (LexisNexis KBA).

Persona analyzes the following for each applicant:

- Database lookup (using DOB, SSN, Name)
- US Sanctions & watchlist check (including OFAC)
- Government ID authentication
- Government ID barcode scan (depends on other factors and ID type)
- Video Selfie

Persona automatically declines users with:

- foreign IPs and proxies/VPNs/Tor
- IDs that are expired (beyond the grace period set by states)
- >3 devices used across any inquiry
- Any selfie that fails their automated liveness check

Womply only passes applications through to lenders if the applicant has been “Approved” by Persona. Their approval requires passing, at minimum, the government database check, the ID check, and the selfie check.

Furthermore, Womply manually reviews selfies & IDs prior to funding. This manual review may or may not be conducted before the application is sent to BlueAcorn for their review. During manual review, Womply's team visually reviews each ID & selfie and declines any applications that slipped through automated filtering. For example, animations, deep fakes, and other info may be "Approved" by Persona's automated review but declined by Womply's KYC team.

Additionally, Womply sometimes requires Docusign ID Check when users sign promissory notes (e.g. if manual review of Persona KYC data hasn't been completed by that time).

We summarize KYC data on the KYC Details pdf file that is provided with each application.

Business Activity

For BlueAcorn, there are two ways that applicants can provide evidence that they were in business on or around Feb 15, 2020:

1. Instant verification via Plaid looking for any transaction activity in February 2020. As of May 10th, we require that an applicant has at least 5 transactions in the month of February 2020.
2. Manual upload of bank statements from February 2020. Bank documents are analyzed for fraud and OCR'd by one or more of our third party providers.

Applications are only sent to BlueAcorn if they meet one or more of the criteria set forth above for business activity in February 2020.

We summarize bank data on the Bank Data pdf file that is provided with each application.

Tax Documents

Here's an overview of our tax document analysis:

Instant classification

Since March 14, we've been conducting real-time evaluations of 100% of the tax documents uploaded during our PPP Fast Lane application flow. This provides a first pass to determine if the forms look legitimate. We use a machine-learning platform to detect the type of document uploaded (e.g. Schedule type, year) and to provide the Borrower with feedback about whether they provided the correct forms. This significantly reduces error rates upfront and acts as our first fraud check. Applications that don't pass this instant classification are unlikely to pass through to BlueAcorn without correction from the Borrower.

Second tax document review

100% of tax and bank documents uploaded in the application process go out for third party classification, verification, and data extraction. The extracted data goes through mathematical checks to determine if the values and calculations on the forms would be permissible for submission under IRS rules. In all cases, a human reviews the documents and confirms the OCR extraction is correct. We match the extracted tax IDs to the application to ensure the form matches the applicant. We have seen an extremely low error rate on this process (under 1%), which is significantly below the error rate we've seen from human-only reviews. In cases where math errors or other problems are significant, the document is flagged as suspicious.

Third tax document review

All documents flagged as suspicious by our second tax review undergo a third automated fraud review.

In addition, of the documents *not* flagged as suspicious by our third-party review, we sample about 1 in 3 documents for a third tax document review. This review involves a variety of checks to detect if the document has been photoshopped or shows other evidence of tampering.

Final tax document review

In cases where our secondary or tertiary review suggests the document is fraudulent, we perform another human review. Ultimately, more than half of documents flagged for this final review are deemed to be not fraudulent, despite the multiple checks and flags. This suggests to us that our filtering continues to be quite strict. But it also highlights that, without a way to definitively confirm the data on the tax documents (e.g., with an IRS API or Transcript), we are unable to distinguish between a well-executed fake document and a real one. Visually, they will look identical. Nonetheless, to avoid program paralysis based on the mere possibility of fraud, our process considers documents that pass through all of these fraud checks acceptable.

Applications are only sent to BlueAcorn if they pass the review outlined above and they are the correct form and year, with a tax ID that matches the application.

We summarize relevant tax documents on the Tax pdf provided with each application.

Bank Verification

Womply verifies the association of the applicant to the bank account in one or more of the following ways:

1 Instant verification: We compare Plaid Auth data to the account number that's manually entered by the user. We also use the Plaid Identity feature (where available) for comparison purposes to application data.

2 Manual verification: We compare the uploaded documents (bank statement, direct deposit form, and/or check) to the account number that's manually entered by the user.

- We exclude certain banks that have a high rate of KYC related fraud.
- We don't allow bank changes after an application is submitted.
- Once a reject is received on a bank account we prohibit that account from being used (by any applicant across any lender).
- We limit the total number of deposits that can be made to a single bank account by any lenders (4) and the total number of tax IDs that can be associated with a single bank account (2).
- We restrict deposits to new bank accounts as determined by logic that we've agreed upon with various RDFIs.

HELLOSIGN

Audit Trail

TITLE	Womply - Blueacorn Referral Agreement & Womply Developer...
FILE NAME	Womply Developer Agreement - Final.docx and 1 other
DOCUMENT ID	e103cc00bf0fa2d8e2e37ff2ef66181b9495251f
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	Completed

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COMPLETED	**05 / 19 / 2021** 08:56:35 UTC-8	The document has been completed.